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

Summary

Myanmar undertook national elections for the first time in over two decades on 7 November 2010. One week later, Daw Aung San Suu Kyi was released unconditionally upon the end of her house arrest term. The new national parliament began meeting on 31 January 2011. Amidst much uncertainty, there appears to be some cautious optimism that positive change may be possible. Among those changes that the people of Myanmar dare to hope for is the realization of their economic, social and cultural rights. For this reason, the Special Rapporteur begins to address in the present report the subject of economic, social and cultural rights, starting with the right to education.

* Late submission.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established pursuant to resolution 1992/58 of the Commission on Human Rights. This mandate was most recently extended by the Human Rights Council in its resolution 13/25. The current Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana (Argentina), officially assumed the function on 1 May 2008.

2. The present report is submitted pursuant to Human Rights Council resolution 13/25 and covers human rights developments in Myanmar since the Special Rapporteur's third report to the Human Rights Council (A/HRC/13/48) in March 2010 and his report to the General Assembly (A/65/368) in October 2010.

3. Myanmar undertook national elections for the first time in over two decades on 7 November 2010. One week later, Daw Aung San Suu Kyi was released unconditionally upon the end of her house arrest term. The new national parliament began meeting on 31 January 2011. Amidst much uncertainty, there appears to be some cautious optimism that positive change may be possible. Among those changes that the people of Myanmar dare to hope for is the realization of their economic, social and cultural rights. For this reason, the Special Rapporteur begins to address in the present report the subject of economic, social and cultural rights, starting with the right to education.

4. On 12 November 2010, the Special Rapporteur wrote to the ambassador of Myanmar to the United Nations in Geneva requesting a mission in December 2010. He wrote again on 1 December inquiring about the status of his request and further offering his availability for a visit in early January 2011. On 17 December, the Permanent Mission of the Union of Myanmar to the United Nations Office and other International Organizations in Geneva replied that "the information received from the authorities concerned of the Union of Myanmar [is] that due to authorities' preoccupation with post-election preparations for transformation process, the relevant authorities of Myanmar are not in position to reply to Mr. Quintana's request at present".

5. The Special Rapporteur regrets that he has not been invited to visit Myanmar since February 2010. He hopes that the new Government will honour its commitments to cooperate with the United Nations, including his mandate, and that he will be invited to visit Myanmar as soon as possible. The Special Rapporteur considers it particularly important to be able to engage with the authorities and other stakeholders at this critical time in Myanmar as the new Government undertakes efforts at national reconciliation and building a functioning democracy.

6. The Special Rapporteur met with the country's ambassadors to the United Nations in Geneva and New York and to the European Union in Brussels on 19 October 2010 in New York for a productive discussion on various issues. He has continued to highlight specific issues through written communications and public statements, including a joint statement made on 12 November 2010 with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders, calling for the unconditional release of Daw Aung San Suu Kyi at the end of her sentence of house arrest, and his statement of 13 December 2010 urging the Government to release the remaining prisoners of conscience on the one-month anniversary of Daw Aung San Suu Kyi's release.

7. In this dynamic period in Myanmar's history, there are many uncertainties that give cause for hope and optimism for changes that will bring real improvement to the lives of the people of Myanmar. While looking forward, it is necessary to assess events as they are

happening and to address truth, justice and accountability issues that will continue to impact the human rights situation. The Special Rapporteur intends to continue engaging the Government of Myanmar in the spirit of mutual respect and cooperation as called for by the General Assembly and the Human Rights Council. The Special Rapporteur will continue to address the important issues of truth, justice and accountability, prisoners of conscience and his four core human rights elements while also examining economic, social and cultural rights.

8. As he was unable to conduct a country visit, the Special Rapporteur is planning a mission to the region before his presentation to the Human Rights Council in March 2011 in order to update his understanding of the human rights situation in Myanmar.

9. The Special Rapporteur would like to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR), in particular at Headquarters, Bangkok and New York, for assisting him in discharging his mandate.

II. Analysis of the elections of 7 November 2010

10. National legislative elections were held on 7 November 2010, the first national elections since 1990. The official *New Light of Myanmar* newspaper published a 24-page supplement on 17 November with the ballot count of each parliamentary seat. Until then, results had been incrementally announced in the State-run media. The Election Commission reported voter turnout exceeding 100 per cent in some constituencies and declared two pro-Government candidates winners in constituencies in Kachin State where elections had been cancelled. On 7 December, the Election Commission announced voter turnout had been 77 per cent of Myanmar's 29 million eligible voters.

11. Prior to the election, the Union Solidarity and Development Association, a mass organization created by the ruling State Peace and Development Council officials, was transformed into the Union Solidarity and Development Party (USDP), with former Prime Minister Thein Sein as head. USDP won 883 of the 1,154 seats open to the electorate. In the Nationalities Assembly (the upper house), the party took 77 per cent (129) of the elected seats, and in the People's Assembly (the lower house), it won 79 per cent (259) of the elected seats. With the seats reserved for the military (25 per cent of each legislature), USDP and the military bloc will have an overwhelming legislative majority.

12. In the 14 regional and state assemblies, however, the results were mixed. While USDP won almost all the seats in most Burman-dominated central regions, in ethnic areas the party won sizeable blocs but has a majority only in Kayah State. In Chin State, USDP won 29 per cent of seats while the Chin Progressive Party and the Chin National Party each won 21 per cent. In Rakhine State, USDP won 30 per cent of seats while the Rakhine Nationalities Development Party won 38 per cent. In theory, special sessions could be convened by these other parties, which might mean that they would have the ability to influence these bodies to positive effect. However, the actual functioning of the regional assemblies, including how often they meet, remains to be seen.

13. According to observers inside Myanmar, polling on election day itself was generally peaceful and orderly despite some reports of irregularities. There were numerous reports of intimidation of journalists and confiscation and destruction of their property throughout the country. The Press Scrutiny and Registration Division also reportedly informed private media that they were only allowed to carry official news issued by the Union Election Commission.

14. During the counting process, the phenomenon of advance votes caused upsets in numerous instances. On the evening of 7 November, on the basis of observation of votes

counted at the polling stations, opposition candidates and a local Myanmar organization reported strong support in the constituencies those candidates contested with projections that they might win over 40 per cent of the elected seats at the national level. However, some candidates reported that the vote count was suspended and resumed later without observers, resulting in a change of outcome with the USDP candidate suddenly winning. Some reported that when the USDP candidate was losing, large numbers of advance votes arrived at the last minute to change the balance.

15. Despite what should have been a relatively tiny margin of votes, these advance voting ballots are estimated to have represented 10 per cent of the vote nationwide. On 18 October 2010, Thein Soe, the Chairman of the Union Election Commission, referring to advance votes, had explained that: "The categories include those under hospitalization, under detention, military personnel on duty, training and those abroad. These numbers are small." Almost all advance votes appear to have gone to USDP candidates. The use of advance votes further undermined the credibility of an election process that was seriously flawed from the start. The election laws limited freedom of expression and freedom of assembly and association. Key stakeholders were excluded from the process, while significant barriers to participation hampered candidates and parties from contesting fairly.

16. International responses include disappointment by Secretary-General Ban Ki-Moon; in a statement issued by his spokesperson, it was noted that voting was held "in conditions that were insufficiently inclusive, participatory and transparent".[1] The European Union and the United States of America said that the elections had not been free, fair or inclusive while others, such as South Africa and the Philippines, emphasized the non-inclusive nature of the exercise. Viet Nam, which held the rotating chair of Association of Southeast Asian Nations (ASEAN) in 2010, welcomed the general election and encouraged Myanmar to further promote the national reconciliation and democratization process for the goal of stability and development of the nation, expecting Myanmar to closely work together with ASEAN and the United Nations in that process. Thailand hailed the elections as "an important step in the democratization process and national reconciliation in Myanmar which the Royal Thai Government has long supported," while urging the new Government "to ensure the inclusion of all stakeholders in Myanmar society, including opposition and ethnic minorities, to work together constructively for the long-term national reconciliation, stability, peace and prosperity of their country".[2]

17. The procedure for filing a complaint about the electoral process as elaborated in the Complaints Procedure for Election Fraud is highly problematic and in fact unprecedented. A non-refundable fee of one million kyat (about $1,200) is required to formally file a complaint. Given that the average annual salary in Myanmar is $459, this fee is prohibitively expensive and appears intended to prevent complaints. In contrast, the maximum penalty for an election violation such as "violence, threat, undue influence, cheating, taking or giving of bribes to prevent a person from exercising the right of voting and the right to stand for election" is 100,000 kyat ($120) (as well as the possibility of one year of imprisonment). The disproportion between the complaint-filing fee and the penalty for violations is incompatible with a fair electoral process.

18. In addition to the financial burden of filing a complaint, the Government appears to have issued an implicit threat of further fines and imprisonment for complainants who pursue justice. *The New Light of Myanmar* reported on a letter sent by the Union Election Commission to political parties which stated that some parties had made allegations through foreign radio stations and print media "on the grounds that their candidates were

[1] Available from www.un.org/apps/sg/sgstats.asp?nid=4911.

[2] Available from http://thailand.prd.go.th/view_inside.php?id=5346.

not elected in the elections", and that such allegations went against article 64 of the respective Election Law.[3] Yet article 64 does not refer to general criticism in the media, rather: anyone "found guilty of dishonestly and fraudulently lodging any criminal proceedings against any person regarding offences relating to election shall, on conviction, be punishable with imprisonment for a term not exceeding three years or with fine not exceeding three hundred thousand kyats or with both". In this kind of pronouncement, the intention of the Government appears to be intimidation of candidates from filing complaints

III. Post-election situation

19. Regrettably, the Special Rapporteur notes that the elections failed to meet international standards, and the implications of this for the legitimacy of the process and outcome will pose further challenges for the transition. Nonetheless, the elections appear to have had some significant positive consequences, including the resumption of legal political activity and discussion in Myanmar. In the view of some observers, this election is the start of a longer transition process with the next legislative elections in 2015 providing more opportunity for the fulfilment of various human rights.

20. On 13 November 2010, the Government released Daw Aung San Suu Kyi from house arrest at the end of her sentence. The Special Rapporteur notes with appreciation that the Government did not impose restrictions on her liberty. Since her release, Daw Aung San Suu Kyi has been meeting with and speaking to a wide range of interested parties. She has called for dialogue with the military leadership of Myanmar and has pledged to continue to seek national reconciliation in the most constructive way possible. The Special Rapporteur spoke with Daw Aung San Suu Kyi by phone on 11 January 2011.

21. The new Government is in the process of being constituted at this time. The first parliamentary session took place on 31 January 2011. The 2008 Constitution comes into force at the start of the legislative term. The USDP majority allowed the party to choose two of the three presidential nominees while the military bloc chose the third. On 4 February 2011, the Chairman of USDP, former Prime Minister Thein Sein, was named President. Tin Aung Myint Oo and Sai Mauk Kham, both of USDP, are the Vice-Presidents. The President is expected to appoint his cabinet soon.

22. The Special Rapporteur is concerned that restrictions have already been imposed on parliamentarians regarding their freedom of expression. On 26 November 2010, laws signed by Senior-General Than Shwe stipulate that parliamentarians will be allowed freedom of expression unless their speeches endanger national security or the unity of the country or violate the Constitution. These are very broad categories that could be used to limit discussion. The laws also provide a two-year prison term for those who stage protests in the parliament compound or physically assault a lawmaker on its premises.

23. Other indications that the right to freedom of expression continues to be restricted in Myanmar include the suspension of nine private journals by the Press Scrutiny and Registration Division under the Ministry of Information on 21 November 2010. They did not follow official guidelines limiting coverage of Daw Aung San Suu Kyi to one picture and one report and not on the front page. There also appear to have been news blackouts on fighting between the military and armed rebel groups in Myawaddy in the days after the election.

[3] "Political parties can remonstrate with UEC about representatives-elect in accordance with rules and regulations", 17 November 2010, p. 16.

24. The Special Rapporteur is concerned about reports that a recently announced upgrade of Myanmar's Internet service will allow the Government to reinforce surveillance and thus repression of national Web users. In October 2010 the Government announced the launch of the country's first national Web portal, which will be operated by the State-run Yatanarpon Teleport and grants the military exclusive control over the Hantharwaddy National Gateway, Myanmar's main link to the Internet. According to reports, the new system could allow the Government to capture data packets and confidential user information.[4]

25. In the Special Rapporteur's past two reports (A/65/368 and A/HRC/13/48), he emphasized the urgent need for concrete justice and accountability measures for Myanmar. On 2 September 2010 the Government responded to a draft of the Special Rapporteur's 2010 report (A/65/368), which had been shared with it in advance. The Government has argued that it is addressing the charges of grave and systematic human rights violations. For example, it stated that the Myanmar Human Rights Body under the Chairmanship of the Minister of Home Affairs had established a team to investigate human rights violations whenever they were lodged by citizens and to take punitive actions against violators. However, the Government also reported that the entity had not received any complaints to date regarding crimes against humanity or war crimes.

26. The Special Rapporteur requested further information about the Human Rights Body, namely: what legislation authorized the Myanmar Human Rights Body to undertake its investigative and punitive functions; what procedure was available for citizens to file complaints; were any witness protection measures provided for citizens who might file complaints against officials or others in positions of power who could retaliate against them; had this function of the Human Rights Body been publicized, and if so, how; and finally, when did the Human Rights Body take up this investigation function (A/65/368, para. 86). The Special Rapporteur regrets that he has not received any response to these questions, nor has he been invited to Myanmar to discuss these important matters in person with the relevant authorities.

27. In the same written response of 2 September, the Government noted that in 2000 it had notified the people through newspapers about a citizen's right "to lodge a complaint to respective Ministries relating to alleged injustices and grievances that may breach their rights". The Special Rapporteur also requested information about this mechanism, including any available data and the role of prosecutors and the judiciary (ibid., para. 88). He recommended that Myanmar consider cooperation with international agencies or non-governmental organizations (NGOs) that specialize in human rights and justice to further develop this mechanism (ibid., para. 87). During the review of Myanmar under the universal periodic review, the Government delegation said that the notice had been published in newspapers in 2006, and cited the following figures: from January to August 2010, the Ministry of Home Affairs received 503 submissions and action was taken on 199 complaints, 203 complaints were under investigation, and 101 complaints were found to be false. These figures, and the mechanism itself, raise many questions that remain unanswered. While the Government claims that independent investigations according to international law require an exhaustion of local remedies, the Special Rapporteur notes that even domestic investigations need to be independent, impartial, credible and without delay. The Special Rapporteur again requests further information about these efforts by the Government to address the grave and widespread human rights violations that have taken place and continue to affect the people of Myanmar.

[4] Reporters without Borders, "National Web portal: development or repression?", November 2010, pp. 2 and 9. Available from www.scribd.com/doc/47540016/National-Web-Portal-Development-or-Repression-Report.

A. Prisoners of conscience

28. Despite indications that the Government was considering a release of prisoners before the elections, no such release occurred. As of the beginning of January 2011, 2,189 prisoners of conscience remained in detention. The Special Rapporteur repeats his recommendation to the Government that it immediately release all prisoners of conscience.

29. The Special Rapporteur regrets that in the lead-up to the elections, the number of prisoners of conscience expanded. At least 15 people were arrested in the pre-election period for their opposition to the 2010 elections, including nine students who remain in detention at an interrogation centre at Insein Prison, where they have been held without trial since September 2010, when they were arrested for distributing leaflets at Dagon University campus.

30. U Oakkantha, a 28-year-old monk, was arrested by the Special Police in January 2010 in Thanbyuzayat Township in Mon State for painting "No 2010 election" along the highway from Moulmein Township to Ye Township. On 27 September 2010, he was sentenced to 15 years imprisonment on three charges of "disturbing public tranquillity" under the Press Law, the Electronics Act, and article 505 (b) of the Criminal Code.

31. The Special Rapporteur repeats the recommendations he first made in 2008 with respect to the four core human rights elements detailed in his earlier report to the General Assembly (A/63/341). The Special Rapporteur urges the Government to prioritize the release of, inter alia, prisoners requiring urgent medical care, particularly as this touches upon the Government's obligations towards upholding the right to health of these individuals. According to available information, at least 142 prisoners of conscience are in dire medical condition and require immediate attention.

32. On 13 December 2010, the Special Rapporteur issued a press statement calling on the Government to release remaining prisoners of conscience, noting that many of them suffered from serious health problems due to the harsh conditions of their detention. He noted that such a release would send a strong signal that the new Government of Myanmar intended to uphold human rights and would be welcomed by people both inside and outside the country. The Special Rapporteur expressed his deep sadness at the death in custody of 50-year-old U Naymeinda (also known as Myo Min or Nay Win) on 8 December 2010. The Government responded in writing on 22 December 2010. According to the Government, U Naymeinda was in good health when he was transferred to Mawlamyaing prison in July 2000 but he began to suffer from bullous impetigo in October 2010, for which he was provided necessary and adequate medical treatment. The Special Rapporteur is alarmed that this condition, which is extremely uncommon in adults and should never be fatal or even cause serious injury as it is easily treatable, would rapidly lead to the death of U Naymeinda.

33. Other prisoners of conscience for whom the Special Rapporteur has expressed serious concern include Nyi Nyi Tun, editor of the Kandarawaddy news publication, who was sentenced to 13 years in prison under the Unlawful Associations, Immigration Emergency Provisions and Wireless Acts on 13 October 2010, one year after he was first arrested. Nyi Nyi Tun was the subject of an urgent appeal sent jointly by the Special Rapporteur and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 18 August 2010, to which no reply was received. According to reports, as authorities initially tried to elicit a confession connecting him to a series of bomb blasts, Nyi Nyi Tun was allegedly brutally tortured for six days by 16 police personnel, including Police Lieutenant Aung Soe Naing. Nyi Nyi Tun was allegedly repeatedly kicked in the head and face with boots and sodomized with a baton. As a consequence, he appears to be partially paralysed.

34. Another prisoner is Mya Than Htike, a member of the National League for Democracy Youth group, arrested in 2007, who is reportedly in very bad health. At the time of his arrest he had a gunshot wound and was not immediately offered essential medical treatment. In November 2010 his sister found him to be unconscious when she tried to visit him at Taungoo prison.

35. The Special Rapporteur had expressed concern, in his press statement of 21 December 2010, about reports of prisoners in Block 4 of Insein prison suffering from malnutrition and tuberculosis. The Government replied that all 17 prisoners were in good health. The Special Rapporteur strongly recommends that Myanmar resume cooperation with the International Committee of the Red Cross, allowing prison visits to verify facts in these types of allegations.

36. The Special Rapporteur would like to remind the Government of the Standard Minimum Rules for the Treatment of Prisoners. Rule 22, paragraph 2, provides that: "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers." Furthermore, rule 25, paragraph 1, provides that: "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed."

37. The Special Rapporteur urges the Government to halt the practice of transferring prisoners of conscience to remote locations, a practice that reportedly began in late 2008, and appears to be further punishment that deprives prisoners of regular family visits as well as crucial supplemental food and necessary medicine. This practice endangers prisoners of conscience, as they suffer additionally from these even harsher conditions of detention, and creates additional hardship for the families of the prisoners.

38. The Special Rapporteur would like to draw particular attention to Nilar Thein, a prominent human rights activist in Myanmar and a leading member of the 88 Generation Student Group, one of at least 177 women still imprisoned in Myanmar for exercising her fundamental rights to freedom of speech and freedom of assembly. She has been arrested and imprisoned on three occasions. Most recently, Nilar Thein was arrested on 10 September 2008 and sentenced on 11 November 2008, along with 13 other activists, to 65 years' imprisonment under the Unlawful Associations Act and the Electronic Transactions Act. In August 2007, the 88 Generation Students Group, along with other activists, had staged peaceful walking protests throughout Yangon. Nilar Thein and her husband, Kyaw Min Yu, had helped to lead these marches. In October 2007, Nilar Thein and three other prominent activists had signed a letter urging the United Nations to help protect women in Myanmar from human rights abuses and to ensure that the Government of Myanmar complied with its obligations under international law.

39. Nilar Thein was transferred to Thayet prison in Magwe Division, 340 miles from Yangon, on 20 November 2008. She has been held in solitary confinement. Kyaw Min Yu is also serving a 65-year prison sentence. He was transferred to Taunggyi prison in Shan State on 21 November 2008. In December 2008, Nilar Thein had sent authorities in Nay Pyi Taw a written request to be held in the same prison as her husband and to be able to be joined by their baby daughter, asking them to consider her request on compassionate grounds. The request was denied. On 6 December 2010 Nilar Thein's sister-in-law travelled 340 miles to bring Nilar Thein's 3-year-old daughter to Thayet prison for a visit. Despite the sister-in-law's pleas, authorities would not permit the family to see Nilar Thein because she was on a hunger strike, which she subsequently ended on 10 December 2010. Family members believe that Nilar Thein currently suffers from eye and gynaecological problems, and that she has been denied urgently needed medical attention.

40. On 2 October 2008, the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on violence against women and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention issued a joint urgent appeal regarding the measures taken to guarantee the rights of Nilar Thein not to be deprived arbitrarily of her liberty, to fair proceedings before an independent and impartial tribunal, to freedom of opinion and expression, and to peaceful assembly. No response was received from the Government.

41. The Special Rapporteur expresses particular concern about the condition of women in prison, which in numerous cases appears to be in contravention to international standards. On 15 October 2010 the General Assembly adopted the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules). According to the rules, women prisoners should be "allocated, to the extent possible, to prisons close to their homes", (rule 4) and their "contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means" (rule 26). Rule 23 explicitly states: "Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children."

B. Ethnic minorities and border situation

42. The situation in the border areas is of great concern to the Special Rapporteur. Fighting erupted on 8 November 2010 after a faction of the Democratic Karen Buddhist Army took key military positions in Myawaddy, forcing up to 20,000 refugees across the border into neighbouring Thailand. Fighting also occurred further south in Payathonzu (Three Pagodas Pass), forcing additional refugees across the border into Thailand. Some of these refugees returned after the military resumed its positions, while others appear to have gone into hiding or have been forced by the insecure conditions to move back and forth across the border several times. The insecurity constitutes a humanitarian emergency and increases the vulnerability of these populations to violations of their human rights.

43. On 7 October 2010, the Special Rapporteur, along with the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the question of torture, issued a joint allegation letter to the Government regarding serious violations of human rights committed at the Thai-Myanmar border against migrants who were deported to Myanmar from Thailand. These alleged violations include extortion of money from migrant workers for their release, girls being sold to brothels or brokers, and boys being conscripted. While the perpetrators appear to be third parties, the Government is obliged to protect individuals within its territory from violations of their human rights. The Government responded on 8 November 2010, noting that Myanmar had acceded to the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and had enacted the Anti-Trafficking in Persons Act in 2005. The Government replied that it had consistently taken all necessary measures to combat human trafficking and had undertaken systematic investigations and prosecution of perpetrators—since 2005, 469 human trafficking cases had been identified, 1,690 offenders prosecuted and 1,344 victims rescued and assisted.

44. The Special Rapporteur commends the Government's overall efforts in combating human trafficking. Nevertheless, he would appreciate more detailed information about the reports of the specific allegations of human rights violations at the Ranong-Kawthaung checkpoint and Gates 10 and 16 near Mae Sot. The Special Rapporteur believes that the various push factors for irregular migrants from Myanmar are at the root of the problem and require more comprehensive solutions. While armed conflict remains a main reason for flight, other factors, including a deprivation of economic, social and cultural rights, lead to

displacement of populations, in particular those from the ethnic minorities. Remedying the current situation of human rights is therefore fundamental to solving these problems.

45. Tensions between the Government and other armed ethnic groups remain high. The Kachin were excluded from the political process. The Wa and Mongla groups refused to participate. There are reports of ceasefire groups re-arming in anticipation of resumption of armed conflict. The Special Rapporteur has also received reports of sporadic fighting in Kachin and Shan States in past months. The effect of such a resumption would be catastrophic to the civilians in these areas. The Special Rapporteur urges the Government to take appropriate measures to avoid armed conflict and to undertake the necessary political steps towards national reconciliation.

46. Recent reports of Rohingya arriving in Thailand by sea as they flee conditions they have faced in Myanmar are of great concern to the Special Rapporteur. He has written about the particular problem of endemic discrimination against the Muslim minority population in Northern Rakhine State and the need to address the myriad human rights violations that follow from this discrimination. The Special Rapporteur stresses the urgent need for the Government, in any serious national reconciliation effort, to address the particular needs of the ethnic minority populations who continue to suffer from a range of human rights violations.

C. Economic, social and cultural rights

47. The transition to civilian rule raises the possibility of a brighter future for the people of Myanmar; for this potential to be realized, the new Government must address many urgent matters. Although all human rights are universal, indivisible, interdependent and interrelated, the deprivation of economic, social and cultural rights looms large for Myanmar. Economic, social and cultural rights are those human rights relating to the workplace, social security, family life, participation in cultural life and an adequate standard of living that includes access to food, water, housing, education and health care. Failure to address systematic discrimination and inequities in the enjoyment of these rights will undermine efforts to build a better future for the people of Myanmar. It has been noted that transitional justice, in fact, should encompass not only measures to address gross violations of all human rights during conflict but also the gross violations that gave rise to or contributed to the conflict in the first place; many of these violations that engender conflict are, in fact, failures to address economic, social and cultural rights.

48. According to the *2010 Human Development Report* of the United Nations Development Programme, Myanmar ranks 132nd out of 169 States in the Human Development Index, lagging behind all of its ASEAN neighbours on most socio-economic indicators for poverty, health and education. The Government of Myanmar must address this deficit in economic, social and cultural rights as an utmost priority. While the international community should provide necessary assistance, both financial and technical, it is foremost the responsibility of the State to ensure the promotion, protection and fulfilment of these rights.

49. Not all of these rights require financial resources, but they do require action. In many cases, they require a re-alignment of priorities and a change of policies. The elimination of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status is a key starting point. Actions that do not require State expenditure include respecting the right to form and join trade unions or ending forced evictions of people from their homes for extractive industry and other projects.

D. Focus on the right to education

50. In paragraph 1 of its general comment No. 13 (1999), the Committee on Economic, Social and Cultural Rights notes that education is essentially an enabling right: "Education is both a human right in itself and an indispensable means of realizing other human rights." As such, the Special Rapporteur begins his assessment of the situation of economic, social and cultural rights in Myanmar with the right to education.

51. Although Myanmar has not ratified either of the two main human rights covenants, the right to education is explicitly covered by article 26 of the Universal Declaration of Human Rights, which states, inter alia, that "everyone has the right to education", and it is covered by article 28 of the Convention on the Rights of the Child to which Myanmar is a State party.

52. Moreover, Myanmar is also a State party to the Convention on the Elimination of All Forms of Discrimination against Women, which further binds the Government to the obligation to promote, protect and fulfil the right to education.

53. National authorities are responsible for realizing the right to education for the people. Article 28 of the 2008 Myanmar constitution includes State duties to implement free primary education, improve education and implement a modern education system.

54. The Special Rapporteur recognizes that Myanmar has made commitments to implement the right to education. In 1990 the State adopted the World Declaration on Education for All. The Education Law of 2000 provides for compulsory education, although it is not effectively enforced. The Government of Myanmar has developed a 30-year education development plan that incorporates the vision of creating "an education system that will generate a learning society capable of facing the challenges of the Knowledge Age," as well as a more detailed plan, namely, Education for All: National Plan of Action (2003-2015). However, neither act as adequate planning frameworks and they do not have accompanying budgets. In fact, it appears that there is no overall education budget and finances are fragmented, with 13 ministries running education institutes.

55. The lack of reliable data, particularly data disaggregated by gender, age, and urban and rural area, which the Committee on the Rights of the Child recommended the Government remedy, as well as the difficulty in obtaining data on public expenditures, pose a challenge to addressing the education situation in Myanmar. The lack of data further reduces the capacity of the Ministry of Education to manage its responsibilities in ensuring the right to education.

56. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), two main indicators are used to measure government commitment to education: education expenditure as a share of national wealth or gross domestic product (GDP) per capita and the share of the total public budget devoted to education. Other indicators are also available, such the table of illustrative indicators on the right to education prepared by OHCHR in consultation with UNESCO. It is estimated that Myanmar has spent 1.3 per cent of its GDP on education in recent years, although one international source put the figure for 2010 at 0.9 per cent. According to the Government, 0.4 per cent of GDP was spent on primary education in 2002. What is apparent is that the expenditure is very low by international standards. Governments in North America and Western Europe invest 5.6 per cent of the regional GDP. In East Asia and the Pacific only 2.8 per cent of GDP is spent on education, but this average for the region is still up to three times higher than Myanmar's expenditure. Although the Government claims that education is a high priority for national development, the resources allocated to education are woefully insufficient and do not reflect this.

57. According to official figures, primary education has a 97 per cent intake rate with gender parity. There are currently some 40,000 schools and about 150,000 schoolteachers in Myanmar, as well as 23 teacher training colleges and institutes that produce around 10,000 teachers annually. However, less than 60 per cent of children complete the full cycle of primary education. According to some international figures, 45 per cent of children in Myanmar initially enrolled in school failed to complete fourth grade, with the highest rate of dropout (19 per cent) at the end of first grade.

58. Participation rates in secondary school are not available but are estimated to be extremely low, with only 1,099 high schools in the country. The right to education includes availability and accessibility of secondary education, which should be the completion of basic education and consolidation of the foundations for life-long learning and human development. Secondary education should prepare students for vocational or higher education opportunities.

59. A useful framework to evaluate Myanmar's commitment to education is to consider the interrelated and essential features of availability, accessibility, acceptability and adaptability as outlined in general comment No. 13 of the Committee on Economic, Social and Cultural Rights. To gauge availability, one could ask, are there a sufficient number of schools offering quality primary education in Myanmar with trained teachers and educational materials? Are there sufficient numbers of school buildings with adequate sanitation facilities for both sexes? Accessibility rests on the principle of non-discrimination and must include both physical and economic accessibility. Acceptability speaks to the quality and cultural and linguistic appropriateness for the child. Adaptability calls for education to be flexible to accommodate the needs of changing societies and communities.

60. For example, regarding availability, according to official figures, in 2008 there were 4,777 teaching staff and 109,334 students in Chin State for an average of one teacher for every 22 students. However, in rural areas, the larger portion of Chin State, up to 200 students share a single teacher and a school is shared by up to four to five villages in the area. According to reports, about half of Myanmar's schools are multi-grade with teachers responsible for more than one grade at a time, yet most teachers are not trained in the special skills required for this type of teaching.

61. In its concluding observations on the second periodic report of Myanmar (CRC/C/15/Add.237), the Committee on the Rights of the Child expressed serious concerns about the "low quality of education reflected in the high repetition and dropout rates, which affect more girls than boys" (para. 62 (a)). The Committee also mentioned the lack of "a conducive learning environment for children owing to, inter alia, the poor conditions of buildings, the poor quality of teaching/learning methodologies and the shortage of qualified teachers" (para. 62 (e)).

62. The underfunding for education manifests in major problems of availability and accessibility that include low salaries for teachers and a system whereby families of students are required to pay indirect costs despite the provision for a "fee-free" entitlement. Underfunding also impacts acceptability. Parents of primary-school students usually have to purchase uniforms, textbooks, stationary and other supplies. According to some figures, the costs to parents to send their child to a typical government primary school, including annual fees, uniform and school materials, can reach 60,000 kyat ($67). Other "voluntary" contributions can include enrolment levies and examination fees as well as cash or in-kind labour for school construction and maintenance. The cost of education is reported to be a major reason for non-attendance at school among children aged 5 to 10 years. In the age group of 11 to 15 years, the cost of supplementary items and the requirement to work are reasons for non-attendance.

63. These indirect costs reflect Myanmar's failure to achieve free and compulsory primary education. Free and compulsory primary education is part of the core obligations regarding the right to education according to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

64. Myanmar's failure to adequately fund education results in corruption in the system. Parents are often pressured to pay additional fees, especially those wishing to have their children attend well-respected schools. In Myanmar, low salaries lead teachers to conduct extra-curricular tutoring that is often essential to students' success but poses an additional cost to families. For example, in Chin State, the monthly salary for high school teachers is between 59,000 and 64,000 kyat ($66-$71); for primary school teachers, monthly salaries range between 47,000 and 53,000 kyat ($52-$59). For reference, in Hakha, the state capital, one 50-kg sack of rice costs between 28,000 and 35,000 kyat ($31-$39), depending on the quality.

65. There is great disparity in access to education among different states and divisions. According to official figures, the net enrolment ratio for primary school in Kachin State is 94.8 per cent, whereas in Shan State East it is 61.2 per cent. Due to the ongoing food crisis in Chin State, primary school enrolment is currently believed to be only 59 per cent. The Committee on the Rights of the Child has expressed concern about the "significant variation in school enrolment between urban and rural areas, and the particularly low level of enrolment of children belonging to minority groups" (CRC/C/15/Add.237, para. 62 (b)).

66. In many rural areas, especially those affected by armed conflict, government schools simply do not function. Poor communications and transport infrastructure handicap rural Myanmar. Teacher attrition and turnover are particularly high there. Even when schools are operational, many rural parents in particular cannot afford school fees, uniforms and book costs.

67. The long-established tradition of monastery schools, which do not carry similar fees, has filled some of the needs. Since September 2007, many such schools appear to be negatively affected by Government pressure against monks. Nevertheless, they highlight how public schools do not serve this segment of the population.

68. Despite official acknowledgement of 135 ethnic minority groups with almost 100 local languages, it is not legal to teach in any language except the Myanmar language. This prohibition on local languages prevents acceptability and adaptability in the education method. The principle of non-discrimination should ensure equal access to education for minority groups**.** As many students speak an ethnic minority language as a mother tongue, the prohibition of bilingual education poses a barrier to early learning as children must become literate in a new language before they are literate in their mother tongue. In some places, the restrictions on the use in school and against the teaching of other languages prevent those children from learning to read and write in their own language; consequently they lose access to a part of their culture and traditions. For example, teaching of the Chin language as a separate subject in primary schools has been banned since 1990 and only the Myanmar language is allowed as the medium of communication in school. Prior to 1988, the Chin language was allowed to be taught up to the fourth grade as part of the official curriculum. Informal primary schools which provided learning in Chin language, set up by communities in the rural areas, have also been banned since 1998.

69. Education should respect cultural identity, language and religion. According to the Convention on the Rights of the Child, education should develop the child's respect for "his or her own cultural identity, language, and values" (art. 29, para. 1 (c)). In its concluding observations, the Committee on the Rights of the Child recommended that Myanmar "adapt school curriculum to suit the particularities of the local communities … and make use of local teachers to help children who are experiencing language difficulties"

(CRC/C/15/Add.237, para. 63 (f)). At the same time, a systematic solution to the prohibition against teaching in the mother tongue of ethnic minority children would need to be found.

70. While a failure to accommodate ethnic minority needs is thwarting the adaptability principle, there is some disturbing evidence of the Government using State resources to promote Buddhism through the Ministry for Development of Border Areas and National Races and Municipal Affairs. In Kanpalet Township in Chin State, the Border Areas Ethnic Youth Development Training School, which is separate from the regular public school system and provides free uniforms and monthly rations, reportedly requires Christian students to convert to Buddhism. Required conversion is in fact considered to be indoctrination, which is in contravention of the goals of education as stated in article 29 of the Convention on the Rights of the Child. It is also a violation of the freedom of religion.

71. Myanmar has faced armed conflict and civil unrest in large parts of the country since independence, with widespread internal displacement in some ethnic border areas and large-scale refugee and migration outflows to neighbouring States. Nevertheless, the State has obligations to displaced people, including the right to education. At the most basic level, schools should be free from attack and children should not be recruited for underage service or for forced labour. The Rome Statute of the International Criminal Court, for instance, defines intentional attacks against civilian objects, including schools, as a war crime (art. 8, para. 2 (b)(ii)). There is evidence that schools were attacked during the many years of systematic destruction of entire villages by the military carrying out its "four cuts" policy. The attacks against schools would be an additional subject in pursuing truth, justice and accountability, actions which the Special Rapporteur has recommended in his past reports as an important step towards national reconciliation in Myanmar.

72. There are particular challenges to servicing displaced populations. The Committee on the Rights of the Child recommended that Myanmar "strengthen its efforts to provide adequate assistance to internally displaced children, including their access to food, education and health, and to support the return home of internally displaced populations and their reintegration into their communities" (CRC/C/15/Add.237, para. 65 (b)). Systematic measures to address the needs of internally displaced people should be part of national reconciliation efforts.

73. Acceptability also refers to the content of education. According to reports, Myanmar's current curriculum has not been assessed for content quality or gender stereotyping. Acceptability requires that the form and substance of education, including curricula and teaching methods, have to be acceptable to students and parents, that is, relevant, culturally appropriate and of good quality. Teaching methods in Myanmar also are traditionally based on rote learning rather than a more child-centered approach. The Special Rapporteur notes that these important and much needed improvements to both the current curricula and teaching methods would require serious investments by the Government.

74. Although the right to education begins with free, compulsory primary education, the right applies also to older children and adults. However, there appears to be a serious shortage of education opportunities above primary school. For example, there are only 49 high schools and no higher learning institution such as college or university in Chin State. High school graduates must continue their higher education outside of Chin State, a considerable additional financial burden for parents, and thus an added barrier to educational access for Chin students. Equitable expansion of secondary schools remains a major policy issue for Myanmar.

75. In Myanmar, colleges and universities have frequently been closed over the past two decades due to concerns about students' political activism, and universities have been restructured so as to prevent students from organizing. Students unions are banned. The

Special Rapporteur notes that many of the current prisoners of conscience are former student leaders.

76. Furthermore, the country's universities lack research and laboratory facilities and expertise. According to reports, many people in Myanmar believe that the best-functioning higher education institutions are those affiliated with the Defence Services, which are reserved for those intending to pursue a military career. This creates a two-tiered system of higher education in which the majority of the population cannot access high-quality training.

77. As regards economic, social and cultural rights, a central aspect of the State's legal obligations is the principle of "progressive realization". Myanmar must take appropriate measures towards full realization of the right to education to the maximum of the available resources. Compliance is assessed in the light of available resources, which is explicit in article 4 of Convention on the Rights of the Child. In contrast to other developing countries, Myanmar appears to have the means to pay for education. It seems that the considerable funds generated by the Government's exploitation of natural resources are not being used for this purpose.

78. It has been noted that the multi-billion-dollar profits from natural gas sales to Thailand have not been used to improve the educational infrastructure in the country. According to reliable sources, these revenues appear to be stored in offshore bank accounts, outside the national budget. Enormous amounts of revenue are expected to be generated from pending natural gas sales to China through the Shwe gas pipeline. These revenues from natural resource extraction should be used for improving the socio-economic situation of the people of Myanmar. The new Government must address the prioritization of economic, social and cultural rights. There will have to be fundamental changes to how the Government manages its budget. The funds from the sale of natural gas are estimated to account for 70 per cent of the country's total foreign exchange reserves, with sales totaling around $3 billion annually. If these funds had been included in the State budget, they would have accounted for 57 per cent of the total budget revenue. Instead, they contributed less than 1 per cent of total budget revenue, with much of this revenue reportedly never entering Myanmar.[5] These funds need to be included in the Government's budget and managed transparently with proper checks and balances.

79. In its general comment No. 13, the Committee on Economic, Social and Cultural Rights notes that "education is recognized as one of the best financial investments States can make" (para. 1).

80. There are some examples of positive developments, which include mobile schools, special classes for over-age children in primary classes and voluntary night schools for children. Another positive development is the provision of education and training outside the State education system by civil society groups and NGOs, with the tacit or explicit permission of the Government. The Special Rapporteur notes that the right to education includes parental freedom to choose education other than that provided by the State and the right of private individuals to establish schools different from State schools. Nevertheless, it is primarily the Government's responsibility to fulfil this crucial human right and to deploy the necessary resources to do so.

81. The Special Rapporteur would like to highlight the issue of accountability mechanisms. In order to monitor Government efforts to implement the right to education, the people of Myanmar should have access to complaints mechanisms that would be

[5] Earthrights International, "Revenue transparency in Burma". Available from www.earthrights.org/campaigns/revenue-transparency-burma-0.

capable of providing remedy, including independent courts to receive claims regarding the right to education. Best practices in other places have shown the importance of the participation of parents and children in school governance and in the adoption of educational policies, thus underscoring the value of a human rights-based approach to education.

E. International cooperation

82. With additional serious investment in education, Myanmar could achieve the Millennium Development Goals related to education. The Special Rapporteur encourages the Government of Myanmar to continue cooperation with the United Nations Children's Fund (UNICEF) and the Japan International Cooperation Agency to address the many challenges in ensuring the right to education as well as to consider expanding the range of partners for this very important area of development, particularly in regard to local groups.

83. The Special Adviser to the United Nations Secretary-General was able to continue the good offices dialogue through his visit on 27 and 28 November 2010, the first visit since the Secretary-General's own visit in July 2009. The Special Rapporteur hopes that this renewed direct engagement by the Special Adviser with authorities in Myanmar and other stakeholders, including Daw Aung San Suu Kyi, representatives of political parties who participated in the elections, and civil society, heralds an era of greater cooperation with the United Nations.

84. According to reports, the cooperation between the Government and the United Nations and the international humanitarian community in ensuring that emergency relief assistance was delivered to the victims of Cyclone Giri, which hit Rakhine State in October 2010, was both effective and timely. Cyclone Giri affected at least 200,000 people in Myanmar, causing 45 deaths, destroying 15,000 houses, damaging another 60,000 houses, and leaving 71,000 people homeless. The Government and Myanmar Red Cross Society had taken preparedness measures, including evacuation of the populations, and responded quickly by deploying senior Government officials to the affected areas.

85. Nevertheless, the Special Rapporteur remains concerned that full humanitarian access continues to be elusive and that practical problems, such as timely issuance of visas for United Nations staff and other humanitarian workers, continue to hamper efforts.

86. Ongoing consultations between the United Nations Country Team (UNCT) and the Government on the United Nations strategic framework for the period of 2012-2015 have resulted in the Government's endorsement of the four strategic priorities identified by the UNCT, one of which includes promoting good governance, democracy and human rights.

87. The Special Rapporteur is pleased to learn that a two-year Memorandum of Understanding has been signed by the Government and the Office of the United Nations High Commissioner for Refugees (UNHCR) for operations in south-eastern Myanmar aimed at assisting communities affected by the long-running conflict in the area. In 2010, the Government agreed to allow two new international humanitarian partners to work with UNHCR in this region.

88. The Special Rapporteur notes with appreciation that the International Labour Organization (ILO) has continued to address the elimination of forced labour in Myanmar with the one-year extension of the Supplementary Understanding in 26 Feb 2010. The ILO reports that during 2010, 327 complaints were received, of which 54 alleged traditional forced labour and 201 concerned cases of underage recruitment, while the others encompassed issues outside the ILO mandate, such as land confiscation, corruption and labour disputes.

89. The Special Rapporteur commends the considerable progress made in addressing underage recruitment. The Government cooperated with the ILO to return 73 underage recruits during 2010, 40 from complaints received in 2010 and 33 from complaints initiated in 2009. At the end of December 2010, the ILO had received 331 complaints of underage recruitment since beginning to monitor the problem in February 2007. Of those complaints, 142 underage recruits have been discharged back to their families, while 120 cases were in the process towards discharge and a further 60 complaints were either under assessment or required further information prior to submission.

90. Complaints have steadily increased: 13 were made in 2007, 31 in 2008, 86 in 2009, and 201 in 2010, a result of the increase in both the awareness of Myanmar residents of the existence of the minimum age and their confidence to complain rather than an indication of an increase in the actual recruitment rate. Each complaint that the ILO has filed on behalf of a family member has been investigated by the military. In most instances, it is reported that the identified military perpetrator of the underage recruitment is prosecuted under Military Regulations. Penalties have ranged from the issuing of a reprimand, loss of service rights, and monetary fines to, in three cases, terms of imprisonment. To date no prosecutions against identified civilian brokers have been reported.

91. According to the ILO, the Myanmar Army has undertaken extensive training activities for military personnel on the legal issue of underage recruitment, including activities undertaken with UNICEF and the ILO. A brochure explaining the law relating to forced labour, including underage recruitment, and procedures to be taken in the event of a breach of the law, continues to be widely circulated nationwide.

92. The Special Rapporteur welcomes the report that there has been no harassment of persons who complained about child-soldier cases. In contrast, the ILO regards the ongoing imprisonment of three persons associated with the filing of forced labour complaints as a direct breach of the non-retribution provisions of the Supplementary Understanding and continues to call for their immediate release. The Special Rapporteur supports this call.

93. According to the ILO, the Government appears to have reduced, through extensive awareness-raising efforts, the incidence of forced labour imposed by the civilian authorities. However, the use of forced labour by the military continues unabated. Although formal complaints are not received from conflict areas, there are reliable reports on the systematic use of forced labour by the military in such activities as portering, sentry or guard duty and camp security fence construction.

94. The Special Rapporteur is concerned about reports of fundamental problems in the structure and application of the Land Laws that have resulted in numerous complaints by farmers who refused to undertake forced labour on their traditional family land and subsequently lost the land to the Army or companies owned by the Ministry of Defence.

95. The Government has formally advised the ILO of the intention to introduce legislation in the new parliament permitting the establishment of trade unions as reflected in the provisions of the 2008 Constitution. Such action also meets Government obligations as a ratifying signatory to ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise. The Special Rapporteur is encouraged to learn that a high-level ILO mission to Myanmar in late February 2011 will include, at the Government's request, a freedom-of-association expert who is expected to be consulted on the draft legislation content prior to its finalization and tabling in the parliament. Nine labour activists associated with the ILO remain in prison. The ILO expects those persons to be immediately released in the spirit of moving towards Myanmar's adoption of freedom-of-association principles.

96. Finally, the Special Rapporteur would like to draw attention to the HIV epidemic: there are estimated to be over 10,000 new infections a year in Myanmar, and HIV-related

stigma and discrimination continue. Punitive laws and practices drive people who use drugs, sex workers, men who have sex with men and transgender people away from HIV services. These laws and practices, including illegal police activity (arbitrary arrest, harassment and violence), are barriers for access to HIV-prevention education, information, treatment and care services and commodities. There are also cases of detention of alleged drug users in non-voluntary centres without due process, evidence-based treatment or minimum standards of care. While the participation of civil society in HIV response has increased over the past three years, there continue to be problems with the registering of community-based groups and local NGOs which provide HIV-related services. The Special Rapporteur calls on the Government to take active measures to address these problems that hamper a robust response to this health crisis, an obligation of the Government in ensuring the right to health.

IV. Conclusions

97. **The human rights situation remains serious, but in this historic moment for Myanmar, there are opportunities for positive developments that will require political will on the part of those authorities who control decision-making as well as active participation by all stakeholders. As the elections did not guarantee the inclusion of some important sectors of society, particularly from some of the ethnic minorities and the political opposition, it is crucial to implement effective remedies to ensure that their voices are heard. National reconciliation is a difficult process that cannot be short cut. As the Special Rapporteur has stated before, moving forward requires not only ending current human rights violations, but also ensuring accountability for past violations, which includes access to truth. Human rights must be placed at the core of the priorities of the new Government.**

98. **Myanmar was once the breadbasket of South-East Asia and the envy of its neighbours. Likewise, the education system of Myanmar was reputed to be among the best in the region. Myanmar is now the poorest country in the region in terms of social and economic development. Responsible investment in the economy, particularly investment in the most valuable resource of all—human resources—is urgently needed. In fact, Myanmar has the financial resources necessary to have an immediate impact on this situation. If the country already has the means to finance the necessary investments for economic and social development, then it is a matter of deploying these resources for the benefit of the people of Myanmar.**

V. Recommendations

99. **The Special Rapporteur repeats several of the recommendations he has made in past reports as they remain valid today.**

100. **The Special Rapporteur reiterates the importance of the four core human rights elements, detailed in his 2008 report to the General Assembly (A/63/341).**

101. **The Special Rapporteur urges the Government to release all prisoners of conscience unconditionally and immediately.**

102. **The Special Rapporteur recommends that the Government take seriously the wide-ranging calls for a more inclusive political process. As important stakeholders, like all citizens of Myanmar, have the right to freedom of expression, freedom of association and political participation, the Special Rapporteur encourages the Government to find the means to include all parties in the national reconciliation and transition processes.**

103. **In past reports, the Special Rapporteur has emphasized the important need for justice and accountability measures for Myanmar as well as access to the truth. While he has repeated that it is foremost the role of the Government to undertake these necessary measures, he has also noted that the responsibility falls to the international community if the Government fails to do so. In this respect, the Special Rapporteur has suggested the establishment of a commission of inquiry, as an option among others. While the Government has responded that allegations of violations of human rights are investigated already by competent authorities, in the context of the gross and systematic nature of human rights violations in Myanmar over a period of many years, the Special Rapporteur reiterates that it is essential for investigations of human rights violations to be conducted in an independent, impartial and credible manner, without delay.**

104. **Following the review of Myanmar under the universal periodic review mechanism, the Special Rapporteur hopes that the new Government will accept recommendations to ratify the two core human rights covenants as well as the other key human rights treaties.**

105. **Regarding the right to education, the Special Rapporteur recommends that the Government of Myanmar:**

(a) Significantly increase funding for education, and improve the efficiency and equity of that funding to ensure better availability and accessibility of schools for all children and to deliver truly free and compulsory primary education for all;

(b) Access and utilize all available resources by ensuring that revenues from all development projects appear transparently on the national budget to allow the parliament and civil society to monitor Government spending effectively;

(c) Enable teachers to teach by paying them reasonable salaries and by providing appropriate and adequate professional training and development opportunities;

(d) Provide good quality teaching and learning materials through a thorough review and reform of the curricula and pedagogy methods involving professional experts in education;

(e) Revise the language-instruction policy to reflect international standards regarding cultural rights;

(f) Invest in children's health and nutrition, which directly impact on their ability to claim their right to education;

(g) Strengthen monitoring and evaluation mechanisms, including independent courts, in the delivery of education.