

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COUNCIL UPDATE – ITEM 4 SPECIAL RAPPORTEUR ON MYANMAR HUMAN RIGHTS COUNCIL, 10<sup>TH</sup> SESSION 17 MARCH 2009

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### Overview

The Special Rapporteur on the situation of human rights in Myanmar, Mr Tomas Ojea Quintana, presented on 17 March 2009 his latest report<sup>1</sup> to the Human Rights Council (the Council). The report covers human rights developments since the Special Rapporteur's first reports to the Council<sup>2</sup> and the General Assembly.<sup>3</sup> It mainly focuses on the Special Rapporteur's findings during his last country visit from 14 February to 19 February 2009 and the developments since his visit in August 2008. The Special Rapporteur described both the visits and dialogue with the Government of Myanmar as constructive. However he identified various areas of serious human rights violations such as the detention of prisoners of conscience, the conditions in prisons, the use of anti-personnel landmines, the recruitment of child soldiers, the discrimination of minorities, forced labour, and the shortage of food supply in certain regions. To address these issues Mr. Quintana recommended four core human rights elements to be implemented before the national elections taking place in Myanmar in 2010. Myanmar partly accepted the report of the Special Rapporteur, but rejected specific findings and claimed that the report 'fails to reflect the true situation on the ground.' During the interactive all States that spoke welcomed the Special Rapporteur's report. Overall States did not criticise the report or its findings, but several ASEAN members and neighbouring countries only highlighted positive developments regarding human rights without making any reference to specific and existing human rights violations, which were outlined in Mr Quintana's report.

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<sup>1</sup> A/HRC/10/19 available at <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>

<sup>2</sup> A/HRC/7/24 available at <http://www2.ohchr.org/english/bodies/hrcouncil/>

<sup>3</sup> A/63/341 available at <http://documents.un.org/welcome.asp?language=E>

## Report of the Special Rapporteur on the situation of human rights in Myanmar

Mr Quintana presented a balanced report to the Council highlighting both positive developments, i.e. the willingness of Myanmar to facilitate his country visits and to engage in constructive dialogues, as well as continuing human rights violations. In his report he recommended four core human rights measures to address the persistent violations and to assist the Government in resolving the existing problems. He stressed that these measures should be implemented before the national elections in 2010 to ensure democratic free and fair elections:

- Review national legislation in accordance with the new constitution and international human rights obligations
- Progressively release of prisoners of conscience
- Training for the armed forces to ensure respect of international human rights and humanitarian law
- Establish of an independent and impartial judiciary.

The Special Rapporteur explained that during his last mission he had in depth discussions with the relevant authorities regarding the implementation of these core elements and the Attorney General announced that 380 laws will be reviewed by the relevant ministries to ensure compliance with the human rights provisions of the new constitution. The Minister of Home Affairs announced during the visit that he would consider the recommendation on progressive release of prisoners of conscience. Additionally the Special Rapporteur described the discussions with the Head of the Police and the Judge Advocate General regarding human rights training as positive. The Chief Justice, even though he claimed that the judiciary was independent, accepted to engage and receive a visit by the Special Rapporteur on the independence of judges and lawyers.

The Special Rapporteur pointed to serious human rights violations in his report, including the continuing imprisonment of a large number of prisoners of conscience. In spite of the release of 29 prisoners after his second visit, around 21,000 are still in detention, either under house arrest or in remote prisons. Mr Quintana drew attention in particular to the cases of Ms Aung San Suu Kyi and Mr Tin Oo, the Vice-Chairman of the National League for Democracy, who was arrested in 2003. He urged the Government to progressively release all prisoners of conscience. The Special Rapporteur criticised the harsh sentences delivered by prison courts during the period of October to December 2008. He urged the army and armed groups to respect and not use violence against civilians and demanded that in this respect the recruitment of child soldiers, displacement of villagers, the use of anti-personnel landmines, and forced labour should end immediately. The Special Rapporteur underlined concerns about the human rights situation of the Muslim population in North Rakhine state as they are not granted citizenship and are subject to persistent discrimination. Finally Mr. Quintana touched upon the shortage of food in many states. Lastly, he called on the international community to provide the UN with the necessary resources to assist the government of Myanmar to achieve the Millennium Development Goals (MDGs).

### Response by Myanmar

Myanmar stated that the engagement with the Special Rapporteur is ‘a clear demonstration of the Government in engaging with the Human Rights Council in realizing the promotion and protection of human rights in the country.’ Myanmar acknowledged that the report reflects some positive developments and significant progress in the human rights situation, ‘but still fails to reflect the true situation on the ground.’ Myanmar welcomed positive suggestions and comments from the Special Rapporteur provided that the sovereignty of the State is not infringed. Myanmar denied the allegation that over 2,000 prisoners of conscience are in detention. It as in the past argued that there are no prisoners of conscience in Myanmar, and that prisoners are serving prison terms for breaking existing laws. In response to the report’s findings regarding prison conditions Myanmar stated that it had terminated the prison terms of 9,315 and 6,313 prisoners on 23 September 2008 and 21 February 2009, respectively. Myanmar claimed that the Special Rapporteur should highlight the positive initiatives taken by the Government to demonstrate his constructive approach. Myanmar claimed that the report is ‘replete with sweeping statements focusing mainly on the lack of independency and impartiality of the systems.’ It further stated that the country cannot be considered to be in a situation of armed conflict and that positive actions taken by the

Government to refrain from recruiting child soldiers were not accurately reflected in the report. Myanmar rejected the respective paragraphs in the report.<sup>4</sup> Finally Myanmar asserted that it will continue to cooperate with the Special Rapporteur and the Council as long as its national interests and sovereignty are not infringed.

### Interactive Dialogue

All States welcomed the report of the Special Rapporteur and encouraged the constructive dialogue. They endorsed the recommendation to implement four core human rights elements as proposed by the Special Rapporteur. Many neighbouring States and ASEAN members however mainly stressed positive developments with regard to the situation of human rights in Myanmar and did not address any of the violations that were pointed out in the Special Rapporteur's report. As positive developments the release of prisoners, the facilitation of the Special Rapporteur's country visits, the dialogues with the authorities of Myanmar, the renewal of the Supplementary Understanding between Myanmar and the ILO to eradicate forced labour, the facilitation of the UNHCR visit and the visit of the Secretary-General's Special Envoy for Myanmar, Mr Ibrahim Gambari, were mentioned. Furthermore they welcomed the process of reconciliation and democratisation in accordance with the seven-step Roadmap.<sup>5</sup> Thailand, Malaysia and India stated that the human rights situation remains challenging and that the responsibility for engagement rests with the Government of Myanmar in addressing the concerns of the international community. Thailand and the Asian Forum for Human Rights and Development supported the call of the Special Rapporteur for expanding the mandate of the Tripartite Core Group to all regions where humanitarian assistance is needed. The Russian Federation claimed that the human rights situation is 'far from catastrophic' as Myanmar shows great efforts to grant economic and social rights to its population and as it released almost all of the people detained in 2007 and closely collaborates with the UN. The Russian Federation also claimed that the accusations are not fair and often stem from unreliable sources. It called for an unbiased approach and on the Council not to adopt a negative resolution.

In contrast some States, including the UK, the USA, Italy, Sweden, Norway, Australia, New Zealand, Slovenia and the Czech Republic (on behalf of the EU) not only commended the positive developments, but also highlighted areas of grave concern, which were outlined in the report of Mr Quintana, including problems relating to the administration of justice, in particular the lack of measures ensuring adherence to basic standards of due process; detention of prisoners of conscience; legal representation and counsel; ethnic discrimination, in particular violations against members of the Rohingya community; impact of armed conflict such recruitment of child soldiers and sexual violence against women committed by the armed forces; enforced disappearances; and lack of freedom of assembly, association and expression

New Zealand stressed that the Special Rapporteur's report highlights that the Government is failing to demonstrate a real commitment to the process of democratisation. Italy stated that the political process still suffers from lack of transparency and inclusiveness and cannot be considered free and fair. Moreover freedom of assembly, association and expression are not guaranteed. Sweden was concerned about the high number of prisoners of conscience, the conditions in prisons, cases of arbitrary detention, and restrictions on freedom of expression. Norway stated its concern that the Special Rapporteur was unable to meet with leaders of political parties. Argentina highlighted the constructive cooperation but also criticised the unchanged situation of the political prisoners.

The Asian Forum for Human Rights together with CONCETAS raised concern that the perpetrators of the killings and human rights violations against the demonstrators of September 2007 have not been brought to justice. This was supported by a joint statement by World Vision and *Federation Internationale Des Droits de l'Homme* (FIDH). The Asian Legal Resource Centre, World Vision and FIDH all expressed great concern about the criminal justice system and questioned the legitimacy of the new Constitution, which was imposed through intimidation and coercion by the military.

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<sup>4</sup> Para. 55 to 61 and 63

<sup>5</sup> Laos, India, Thailand, Republic of Korea, Indonesia, Japan, Malaysia, Singapore, Philippines, China

## Response by Special Rapporteur

The Special Rapporteur responded to questions regarding the state of the reform of the judiciary that the Attorney General and the President of the Supreme Court accepted the recommendation of technical cooperation. He further pointed out that human rights training for the armed forces and the police will be useful in itself but will also provide ground for discussions on other substantive issues. Regarding the concern of Sweden and Switzerland that the review of 380 national laws will pose an immense challenge to the different ministries, the Special Rapporteur emphasised that the laws regarding freedom of expression, the rights to participation and assembly have priority and should be reviewed first. As Slovenia among others expressed grave concern about the human rights situation of children, Mr Quintano urged the Government of Myanmar to respect its obligations and submit the overdue report to the Committee on the Rights of the Child. In response to concerns about harsh prison conditions, the Special Rapporteur advocated that Myanmar needs to resume relations with the International Committee of the Red Cross (ICRC), which can make a proper assessment of the situation and thus improve the dire situation of prisoners. He also warned that the situation in Rakhine State needs to be taken seriously and that the government of Myanmar needs to show respect for minority rights. He reiterated that he will work together with the Government on the progressive release of prisoners of conscience as their release must be complete before the elections in 2010. Myanmar should adopt a law to regulate the elections. Lastly, he called on the international community that the implementation of the four core human rights elements is essential for the population of Myanmar to fully enjoy all human rights.

## Further information

For further information on the Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to [information@ishr.ch](mailto:information@ishr.ch).
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 10<sup>th</sup> session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/10session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.
- More informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.

*NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.*

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The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at [www.ishr.ch](http://www.ishr.ch).

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