

Check against delivery



The Statement

of

**The Special Rapporteur on the Situation of Human Rights
in Myanmar**

Mr. Tomas Ojea Quintana

**Human Rights Council
19th Session
12 March 2012**

Madame President, Excellencies, Distinguished Delegates, Ladies and Gentleman,

I address you today at this key moment for Myanmar. Since its formation on 1 April 2011, the Government has undertaken a number of reforms resulting in the adoption of new policies and legislation and the creation of new national institutions and bodies. Following my recent mission to Myanmar in February this year, I am of the view that a positive impact on the human rights situation has been made. Nevertheless, it is clear that there are ongoing and serious human rights concerns that remain to be addressed; these cannot be ignored in the rush to reform and to move forward. And various positive developments should not be based on the mere discretion of the authorities, but rather on a democratic institutional approach that allows transparency, predictability and continuity to reforms. There is also a real risk of backtracking on the progress achieved to date.

The report before you therefore highlights key positive developments in the country but also the remaining challenges. It also contains a number of recommendations to address these challenges, which I hope and encourage the Government of Myanmar and the international community to consider seriously and to take forward.

Madame President,

At the outset, I am encouraged that the Parliament has been active in the legislative reform process. Of significance are the many legislative reforms that have been undertaken or are underway. The Labour Organizations Law was signed by the President and made effective from 9 March and the Director-General of the Department of Labour has been appointed as Chief Registration Officer. The Peaceful Demonstration and Gathering Law as well as the amendment to the Political Party Registration Law were adopted. A revised Prisons Act, a new media law and a new social security law, among others, are currently under preparation. While I welcome these developments, I note concerns regarding some of the provisions in these legislation and the insufficient attention being paid to ensure their effective implementation.

There is also a lack of clarity and progress on reforming the laws that I have previously identified as not in full compliance with international human rights standards, such as the State Protection Act, the Unlawful Association Act, certain sections of the penal code, the Television and Video Law, the Motion Picture Law, the Computer Science and Development Law, and the Printers and Publishers Registration Act. These laws have been systematically applied against those opposed to the Government. I reiterate the need to accelerate this process and identify clear time-bound target dates for the conclusion of the review.

Regardless of efforts made to reform legislation, I remain concerned with the lack of an independent, impartial and effective judiciary to uphold the rule of law and ensure checks and balances on the executive and the legislative. In my meeting with the Supreme Court, I have noted little acknowledgement of challenges and gaps, and a lack of willingness to address my previous recommendations. I strongly call on the judiciary to take a proactive approach to apply laws in a way that would safeguard and guarantee fundamental freedoms and human rights in line with international human rights standards. In this regard, I urge the judiciary to seek technical assistance from the international community, particularly the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other organizations.

Excellencies and Distinguished Delegates,

I have stated previously and continue to believe that the upcoming by-elections on 1 April will be a key test of how far the Government has progressed in its process of reform. It is essential that they are truly free, fair, inclusive and transparent. I note that developments, such as the easing of media restrictions and the revision of the Political Party Registration Law, resulting in the re-registration of a number of political parties, including the National League for Democracy, and the decision of some to contest the by-elections, may allow for the organization of more credible elections.

I must stress that the credibility of the elections will not be determined solely on the day of the vote, but on the basis of the entire process leading up to and following election day. Thus, reports I received of campaign irregularities and restrictions on the ability of political parties to carry out campaign activities should be addressed seriously by the Union Election Commission. Additionally, lessons should be learned from the 2010 elections. Respect for freedom of speech should be fully ensured.

In this regard, while I welcome the easing of restrictions on the media and the internet, the recent lifting of a ban on exiled journalists and the Government's stated intention to reform journalism laws and abolish censorship, I note that there are continuing restrictions on the media and on the freedom of opinion or expression more generally, including under various laws that I have highlighted in my previous reports, such as the Television and Video Law (1985), the Motion Picture Law (1996), the Computer Science and Development Law (1996), and the Printers and Publishers Registration Act (1962). I hope that the establishment of a national press council and the preparation of a new draft media law, currently underway, would guarantee press freedom and abolish censorship. I therefore encourage the Government to continue to engage relevant international organizations in the drafting of the new media law.

Excellencies,

During my last mission, I had the opportunity to engage with members of the National Human Rights Commission for the first time since its establishment in September last year. I was informed of some of the actions undertaken by the Commission, including prison visits, visits to internally displaced persons in Kachin State, and the receipt of complaints from citizens. I was encouraged to hear that the resources available to the Commission may be increased significantly.

But I must register my concern about the composition, role and functioning of the Commission and that to date, there are no indications that the Commission is fully independent and compliant with the Paris Principles.

There is also a strong need to enhance the technical and substantive capacity of the Commissioners and its staff on human rights issues. I hope that the Commission will seek training and technical assistance from OHCHR and the international community.

Madame President, distinguished delegates,

I have consistently called for the immediate and systematic release of all prisoners of conscience. I welcome the four amnesties that have been granted by the new Government, which have resulted in the release of a significant number of prisoners of conscience, including prominent figures and other individuals whose cases I had previously addressed, or whom I had visited in jail. I recently met with some of those released and received a clear signal of their intention to engage constructively in the political process and their commitment to further democratic transition. I note with concern that some of the prisoners released are being monitored or followed.

I am keenly aware that there are continuing discrepancies in the numbers of remaining prisoners of conscience from different sources. I urge that a comprehensive and thorough investigation be undertaken to clarify records and determine accurate numbers. The Government should initiate broad and public consultations with all relevant stakeholders, such as political and civil society organizations, as well as released prisoners, to collect and bring together information on remaining prisoners of conscience. The Government should consider this issue urgently, including with the assistance of this mandate holder and the international community as necessary.

Ladies and Gentlemen,

Among the most pressing challenges for Myanmar are poverty and food insecurity. I welcome the President's announcement of 1 March that there will be a four-fold increase in budget for the health sector and a two-fold increase for the education sector in the coming financial year. While I am encouraged by the various reforms undertaken to promote development and economic growth, I continue to be informed about the extent of deprivation of these rights throughout the country, particularly in ethnic border areas. These are fundamental rights that are equally essential to Myanmar's democratic transition, national reconciliation and its long-term stability.

Given the wave of privatizations last year and the expected increase in foreign investment, along with the new Government's plans to accelerate economic development, I also fear an increase in land confiscations, development-induced displacement and other violations of economic, social and cultural rights. The Government should develop the necessary legislative framework, in line with international standards on corporate social and environmental responsibility, regulating the prevention of, protection against and reparation of the adverse impacts of activities by private and state-owned companies, mainly in the extractive and large-scale energy-related sectors.

**Madame President,
Excellencies,**

The ongoing conflict with some armed ethnic groups, despite the President's orders to the military not to engage in offensive operations except in self-defense, continue to engender serious human rights violations, including attacks against civilian populations, extrajudicial killings, sexual violence, arbitrary arrest and detention, internal displacement, land confiscations, the recruitment of child soldiers and forced labour and portering. I continue to receive allegations of violations committed by both the military and non-State armed groups. I also continue to

receive disturbing reports of landmine use by both the Government and non-State armed groups, and subsequent casualties around the country.

Of particular concern is the ongoing conflict in Kachin State, where there are continuing reports of violations committed and where the needs of those displaced and affected by the conflict must be addressed as a matter of priority. I reiterate that the United Nations and its humanitarian partners should have regular, independent and predictable access to all in need of humanitarian assistance, independent of ongoing negotiations, without conditions attached, and regardless of whether they are in Government controlled areas.

I also reiterate my call for the Government and all armed groups to ensure the protection of civilians, in particular children and women.

I welcome the President's invitations for armed groups to engage in peace talks, the establishment of peace negotiating teams, and the various initial agreements with commitments made. I will closely monitor how these political negotiations will proceed.

Ultimately, I believe that any durable political solution must address the root causes of the conflict. In this respect, I have previously highlighted systematic and endemic discrimination faced by ethnic and religious minority groups, including the Rohingya community. I therefore reiterate my call for the Government to develop a comprehensive plan to officially engage ethnic minority groups in serious dialogue and to resolve long-standing and deep-rooted concerns. Ending discrimination and guaranteeing respect for the rights of ethnic minorities is essential for national reconciliation and for Myanmar's long-term political and social stability.

Distinguished delegates,

I remain of the firm conviction that justice and accountability measures, as well as measures to ensure access to the truth, are fundamental for Myanmar to move forward towards national reconciliation. However, considering the lack of independence and the limited capacity of the National Human Rights Commission to play a role in this regard, it is crucial that the Government consult all stakeholders, including victims of human rights violations, in order to get their advice and views on how and when to establish these measures. It is also important to learn lessons from other countries that have experience in these processes.

I have carefully listened to many views regarding forgiveness and the importance of moving forward. But I must stress that what happened in the past should not be ignored or whitewashed. Thus, facing up to recent history and acknowledging the violations that people have suffered, will be necessary to ensure national reconciliation, prevent future violation, and provide redress for victims. The international community also has a responsibility to support the people of Myanmar in this process.

Madame President,

Excellencies,

I welcome the increased engagement of Myanmar with international human rights mechanisms, including the treaty bodies, the Universal Periodic Review process, and its work with various United Nations offices and programmes on a range of initiatives, such as development policy, forced labour, and child soldiers.

To conclude, I strongly call on the Government to intensify efforts to implement its commitments and fulfil its international human rights obligations. I encourage the Government to cooperate with and seek appropriate assistance from the international community, in particular the United Nations, in order to meet the challenges and opportunities before it.

The international community must remain engaged, closely follow developments, and support and assist the Government during this important time, including the reexamination of present sanctions.

I thank the Government for the continued cooperation with my mandate and the acceptance to conduct the latest mission to the country. Let me take this opportunity to reaffirm my willingness to work constructively and cooperatively with Myanmar to improve the human rights situation of its people.
