

Draft (10th of March) for open-ended informal consultation

Human Rights Council

~~Thirteenth~~ **Sixteenth session**

Agenda item 4

Human rights situations that require the Council's attention

Resolution adopted by the Human Rights Council*

1316/25

Situation of human rights in Myanmar

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights, and reaffirming also previous resolutions of the Commission on Human Rights, the Human Rights Council and the General Assembly on the situation of human rights in Myanmar, including Council resolutions 10/27 of 27 March 2009, ~~and 12/20 of 2 October 2009, and 13/25 of 26 March 2010~~ and General Assembly resolution 64/238 of 24 December 2009; **and 65/241 of 24 December 2010,**

Welcoming the **latest** report of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC/16/43/48...), urging the implementation of the recommendations contained therein and those within previous reports, **concerned about the lack of implementation of previous recommendations** ~~and welcoming the visit of the Special Rapporteur from 15 to 19 February 2010,~~ **regretting that no visit of the Special Rapporteur has been allowed to the country since February 2010,**

Increasingly concerned that the urgent calls contained in the above-mentioned resolutions and reports and in those of other United Nations bodies concerning the human rights situation in Myanmar have still not been met, and emphasizing the urgent need for significant progress towards meeting those calls of the international community,

Recalling Council resolutions 5/1 on institution-building of the Council and 5/2 on the Code of Conduct for special procedures mandate holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto,

Reaffirming that it is the responsibility of the Government of Myanmar to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population, as stated in the Charter, the Universal Declaration of Human Rights and other applicable human rights instruments,

Particularly concerned by restrictions imposed on the representatives of the National League for Democracy and other political parties and other relevant stakeholders, including a number of ethnic groups, thus preventing a genuine process of dialogue, national reconciliation and transition to democracy,

Deeply regretting that the Government of Myanmar did not take the necessary steps to ensure a free, fair, transparent and inclusive electoral process leading up to the November 7 election, noting in particular in this respect the restrictions imposed by the electoral laws as enacted and implemented by the Government, including those placed on the registration of voters, parties and candidates, as well as the detention of political activists, the restrictions on international observers' presence, on free reporting and on freedom of assembly, the limited access to media, funding and campaigning possibilities, the reported incidents of official intimidation, the cancellation of elections in certain

ethnic areas, and the lack of independence of the electoral commission, and also expressing concern about the failure by the electoral commission to follow up on complaints about the electoral process, including voting procedures, and expressing serious concern at reports of fraud, including through advance voting arrangements; (PP 10 of A/RES/65/241 with some additions)

Welcoming the release of Daw Aung San Suu Kyi, following the most recent period of her arbitrary house arrest, while expressing grave concern over the increased number of prisoners of conscience and consistent reports of their torture and ill-treatment;

Taking note of the participation by the Government of Myanmar in the Universal Periodic Review in January 2011 as the State under review, acknowledging in this regard its support to certain recommendations, expressing hope for the due consideration and acceptance of pending recommendations and deeply regretting the rejection of many important recommendations, including calls to release all political prisoners, to end impunity for human rights violations, to begin a transparent and inclusive dialogue with all national stakeholders, and to halt discrimination against Rohingya, Karen, Chin, Shan and Mon and other ethnic groups;

Notes with serious concern that the grave human rights situation in Myanmar forces thousands of people to seek refuge in neighboring countries; (based statement by SR after his recent visit to the region)

~~Expressing grave concern at the trial, conviction and continued arbitrary house arrest of the General Secretary of the National League for Democracy, Daw Aung San Suu Kyi, and the rejection of her judicial appeal by the Myanmar Supreme Court,~~

1. *Strongly condemns* the ongoing systematic violations of human rights and fundamental freedoms of the people of Myanmar;
2. ~~Expresses concern that the newly adopted electoral laws do not meet the expectations of the international community regarding what is needed for an inclusive political process and calls upon the Government of Myanmar to ensure a free, transparent and fair electoral process which allows for the participation therein of all voters, all political parties, and all other relevant stakeholders in a manner of their choosing;~~
3. ~~Calls upon~~ Urges the Government of Myanmar to ~~pursue a~~ **begin an inclusive post-election process of national reconciliation for a credible transition to democracy, including through meaningful dialogue and the participation of representatives of all groups in the political life of the country, within the framework of a transition to a civilian, legitimate and accountable system of government, based on the rule of law and the respect for human rights and fundamental freedoms, and to these ends take immediate measures to engage in a meaningful and substantive dialogue through all channels with all opposition parties, political and ethnic and civil society groups and actors, including Daw Aung San Suu Kyi, and to permit her unrestricted contact with all members of the National League for Democracy and other domestic stakeholders, and notes with interest her recent contacts with the Government of Myanmar;** (op5 of UNGA Res 65/241)

OP 3 bis Welcomes the release of Daw Aung San Suu Kyi following the most recent period of her arbitrary house arrest, and noting that her release is unconditional, calls on the Government of Myanmar to guarantee full enjoyment of all her human rights and fundamental freedoms, including her civil and political rights, in particular with regard to unrestricted movement in and outside the country and unrestricted contact with all members of the National League for Democracy and other domestic stakeholders ;

OP3ter Calls on the Government of Myanmar to protect the physical safety of all people in Myanmar, including Daw Aung San Suu Kyi, in a manner that is consistent with a respect for human rights and fundamental freedoms;

OP 3 quatr Strongly regrets that the Government of Myanmar did not hold free, fair, transparent and inclusive elections and strongly calls upon the Government to recognize the National League for Democracy's pre-election registration status and lift all restrictions imposed on its representatives, as well as on other political and civil society actors in the country;

4. *Strongly calls upon* the Government of Myanmar to cooperate with the international community in order to achieve concrete progress as regards human rights and fundamental freedoms, and political processes;
5. *Strongly urges*, **the unconditional release of all prisoners of conscience without delay, while expressing concern over the increase in their number while noting the release from house arrest of U Tin Oo, the Vice-Chairman of the National League for Democracy, and of more than 100 prisoners of conscience, and also urges that for a credible transition to democracy the Government of Myanmar to desist from carrying out further politically motivated arrests, and to release without delay and without condition all prisoners of conscience, whose number is estimated to be about [2,2400], including the General Secretary of the National League for Democracy, Daw Aung San Suu Kyi, the Chairman of the Shan Nationalities League for Democracy, U Khun Tun Oo, the leader of the 88 Generation Students Group, U Min Ko Naing, and one of the founders of the 88 Generation Students Group, Ko Ko Gyi, journalist Hla Hla Win,** and to allow their full participation in the political process;
6. *Strongly calls upon* the Government of Myanmar to lift restrictions on the freedom of assembly, association, movement and expression, including for free and independent media, through ensuring the openly available and accessible use of Internet and mobile telephone services, and ending the use of censorship, including the use of the Electronic Transactions Law to prevent the reporting of views critical of the Government;
7. *Calls upon* the Government of Myanmar to undertake a transparent, inclusive and comprehensive review of compliance of **the Constitution and** all national legislation with international human rights law, while fully engaging with democratic opposition, **political and ethnic and civil society groups and actors**, recalling **once more** that the procedures established for the drafting of the Constitution resulted in a de facto exclusion of opposition groups from the process; (based on OP 8 of UNGA res 65/241)
8. *Urges* the Government of Myanmar to ensure the independence and impartiality of the judiciary, **the independence of lawyers**, to guarantee due process of law, and to fulfill earlier assurances given by the authorities of Myanmar to the Special Rapporteur with respect to beginning a dialogue on judicial reform;

Op8bis: *Strongly calls upon* the Government of Myanmar to take urgent measures to put an end to continuing grave violations of international human rights and humanitarian law, including the targeting of persons based on their belonging to particular ethnic groups, the targeting of civilians as such in military operations, and rape and other forms of sexual violence, and to end impunity for such acts without delay; (OP 12 of UNGA res 65/241, also former op14 of this resolution)

9. **Expresses serious concern that previous calls to end impunity have not been heeded and therefore strongly renews its calls upon the Government of Myanmar to undertake without delay as a matter of priority and with appropriate assistance from the United Nations a full, transparent, effective, impartial and independent investigation into all reports of human rights violations, some of which may entail categories of crimes against humanity or war crimes, including enforced disappearances, forced displacements, forced labor, arbitrary detentions, rape and other forms of sexual violence, and torture and other forms of ill-treatment, and to bring to justice as a matter of priority and with appropriate assistance from the United Nations those responsible in order to end impunity for violations of human rights; (inspiration from OP7 of A/RES/65/241 and reports of the Special Rapporteur)**

op 9 bis Urges the Government of Myanmar to ensure compliance of the Constitution with international human rights law, including by repealing clauses of the Constitution guaranteeing immunity to officials in respect of any act done in the execution of their respective duties.

10. **Also calls upon the Government of Myanmar to address as a matter of urgency consistent reports of torture and ill-treatment of prisoners of conscience, and ensure that proper investigations are conducted of all deaths in prison with family members duly informed of the findings as well as to improve conditions in prisons and other detention facilities, and to avoid the dispersal of prisoners of conscience to isolated prisons far from their families where they cannot receive regular visits or deliveries of supplementary supplies, including food and medicine ; (SR report to UNGA, doc. A/65/368 para 43.,)**

op 10 bis Strongly recommends that the Government of Myanmar resume cooperation with the International Committee of the Red Cross and allow visits to prisons;

11. **Strongly urges the Government of Myanmar to end all forms of discrimination and to protect civil, political, economic, social and cultural rights on the basis of the Universal Declaration of Human Rights and, in particular, to comply with its human rights obligations under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child in this regard;**
12. **Expresses its serious concern about the continuing discrimination, human rights violations, violence, displacement and economic deprivation affecting numerous ethnic minorities, including, but not limited to, the Rohingya ethnic minority in Northern Rakhine State, and calls upon the Government of Myanmar to take immediate action to bring about an improvement in their respective situations, and to recognize the right of members of the Rohingya ethnic minority to nationality and to protect all of their human rights;**
13. **Welcomes the prolongation in February 2010 of the Supplementary Understanding between the International Labour Organization and the Government of Myanmar, the Government's commitment to introduce new legislation making forced labour illegal and repealing the provisions of the Villages and Towns Acts 1907 increased willingness to apply penalties against those perpetrating forced labour, and the joint Government-International Labour Organization awareness-raising activities, but strongly condemns the continued and serious harassment of complainants and facilitators, and urgently calls for the release of those who remain in detention, as well as of the International Labour Organization facilitator U Zaw Htay, and urges the Government to proactively intensify measures to end forced labour including the agreement to produce information brochures in all national languages and to facilitate the strengthening of the ILO cooperation in Myanmar to further enhance the efficiency of the educative and complaints management activit**

14. ~~ies undertaken by the liaison officer of the International Labour Organization and to strengthen its growing cooperation with the liaison officer of the International Labour Organization;~~

13bis Strongly calls upon the Government of Myanmar to end the practice of systematic forced displacement of large numbers of persons within their country and to neighboring countries and to end other causes of refugee flows, including the targeting of persons based on their belonging to particular ethnic groups; (OP 13 of A/RES/65/241 with some additions)

15. ~~Strongly calls upon the Government of Myanmar to take urgent measures to put an end to violations of international human rights and humanitarian law, including the targeting of persons belonging to particular ethnic groups, the targeting of civilians by military operations, including in the eastern part of Myanmar, and rape and other forms of sexual violence, and to end impunity for such acts without delay;~~
16. *Also strongly calls upon* the Government of Myanmar to put an immediate end to the recruitment and use of child soldiers in violation of international law by all parties, welcomes the recent engagement of the Government on this issue and urges it to intensify measures to ensure the protection of children from armed conflict and to pursue its collaboration with the Special Representative of the Secretary-General for Children and Armed Conflict, including by granting access to areas where children are recruited, for the purpose of implementing an action plan to halt this practice;
17. *Urges* the Government of Myanmar to provide, in cooperation with the Office of the United Nations High Commissioner for Human Rights, adequate human rights and international humanitarian law training for its armed forces, police and prison personnel, to ensure their strict compliance with international human rights law and international humanitarian law and to hold them accountable for any violations thereof;
18. *Calls upon* the Government of Myanmar to ensure timely, safe, full and unhindered access to all parts of Myanmar, including conflict and border areas, for the United Nations, international humanitarian organizations and their partners, and to cooperate fully with those actors to ensure that humanitarian assistance is delivered throughout the country to all persons in need, including displaced persons;
19. *Also calls upon* the Government of Myanmar to consider acceding to the remaining international core human rights treaties, which would enable a dialogue with other human rights treaty bodies;
20. *Further calls upon* the Government of Myanmar to allow human rights defenders to pursue their activities unhindered and to ensure their safety, security and freedom of movement in that pursuit;
21. *Decides* to extend for one year the mandate of the Special Rapporteur on the situation of human rights in Myanmar, in accordance with Commission on Human Rights resolutions 1992/58 of 3 March 1992 and 2005/10 of 14 April 2005, and Council resolutions 7/32 of 28 March 2008 and 10/27 and 13/25 of 26 March 2010;
22. *Strongly urges* the Government of Myanmar to ~~continue to~~ respond favourably and on a more timely basis to the Special Rapporteur's requests to visit the country, to extend its full cooperation, including by providing access to all relevant information, bodies, institutions and persons, so as to enable him to fulfil his mandate effectively, and to implement **without delay** the recommendations addressed to the Government contained in his reports (A/HRC/6/14,

A/HRC/7/18, A/HRC/7/24, A/HRC/8/12, A/HRC/10/19, ~~and A/HRC/13/48 and A/HRC/16/59~~
and in Council resolutions S-5/1 of 2 October 2007, 6/33 of 14 December 2007, 7/31 of 28 March
2008, 8/14 of 18 June 2008, 10/27, ~~and~~ 12/20 **and 13/25**;

23. *Requests* the Special Rapporteur to submit a progress report to the General Assembly at its sixty-~~sixth~~^{fifth} session and to the Council in accordance with its annual programme of work;
24. *Calls upon* the Office of the High Commissioner to provide the Special Rapporteur with all necessary assistance and resources to enable him to discharge his mandate fully;
25. *Calls upon* the Government of Myanmar to continue to engage in a dialogue with the Office of the High Commissioner with a view to ensuring full respect for all human rights and fundamental freedoms;
26. *Expresses its strong support* for the good offices mission and commitment of the Secretary-General, and calls upon the Government of Myanmar to ensure full cooperation with the Secretary-General, his **Special Advisor on Myanmar** and the Special Rapporteur. (*OP 24 of A/RES/65/241*)

~~*The resolutions and decisions of the Human Rights Council will be contained in the report of the Council on its thirteenth session (A/HRC/13/56), chap. I.~~

~~United Nations A/HRC/RES/13/25~~

~~General Assembly Distr.: General~~

~~15 April 2010~~

~~Original: English~~

~~A/HRC/RES/13/25~~

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~~A/HRC/RES/13/25~~

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~~A/HRC/RES/13/25~~

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~~44th meeting~~

~~26 March 2010~~

~~[Adopted without a vote]~~