

Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar

By Tomás Ojea Quintana, 19 February 2014, Yangon International Airport, Myanmar

I have just concluded my mission to Myanmar, which lasted for six days - my ninth visit to the country, which is also my final visit since I have now served the maximum of six years on this mandate. I would like to express my sincere appreciation to the Government of Myanmar for its invitation and organisation of this visit, and the cooperation it has shown me during the past six years.

Summary of meetings:

In Naypyitaw, I met with the Minister of Foreign Affairs; the Minister of Home Affairs; the Ministers of the President's Office; the Minister of Information; the Minister of Education; the Minister of Health; the Minister of Environmental Conservation and Forestry; the Attorney General; the Chief Justice and other members of the Supreme Court; parliamentarians and members of parliamentary committees, including the Bills Committee and International Relations Committee of the Amyotha Hluttaw; the Election Commission; advisors to the President; and the Chief of Police. I also met with Daw Aung San Suu Kyi.

In Yangon, I met with former prisoners of conscience; members of the prisoner review committee; members of the media; members of the 88 Generation; a range of civil society organisations, including those campaigning for civil liberties, land rights, and a human rights approach to development; the Myanmar National Human Rights Commission; lawyers; and members of interfaith organisations. While in Yangon, I visited Insein Prison and met with two prisoners of conscience, and made a tour of the female quarter. And I met with the INGO community and members of the United Nations Country Team and briefed the diplomatic community. I would like to thank the Resident Coordinator and the Country Team for the support provided to me during my mission.

During this mission, I visited Rakhine State, including Sittwe Prison, Shwe Kyaung Monastery, IDP camps and Aung Mingalar quarter. I went to Kachin State, and met with state authorities in Myitkyina as well as Kachin Independence Organisation (KIO) officials and civil society representatives before proceeding up to Laiza for the first time. In Laiza, I met with KIO officials at their headquarters and visited Je Yang IDP camp. I visited Thilawa Special Economic Zone, south of Yangon, and met with communities who had been displaced by the development project and spoke with members of the Thilawa management committee. I also visited the copper mines in Monywa in Sagaing Region, including the Letpadaung copper mine, and met with opponents of the mine as well as the State Government and members of Wanbao, the Chinese company active in developing the copper mine at Letpadaung.

Kachin State:

Let me start with the ongoing efforts to secure peace and national reconciliation between the State and Myanmar's ethnic armed groups. The State and Union government and the Kachin Independence Organisation agreed on my visit to Laiza in Kachin State, a non-State controlled area. This is the first time that a human rights rapporteur has been able to visit Laiza. I believe that allowing this visit will help to support the integration of human rights elements in the negotiations for peace in Kachin State, and that the Government's permission for my visit was a good gesture to help build trust with the KIO.

In Laiza I met with the KIO authorities, including the Chairman and the Chief of Staff, who expressed their willingness to agree on a ceasefire but with guarantees of political dialogue. They also expressed their wish to see reflected in the ceasefire an agreement on a code of conduct for troop behaviour, including troop withdrawal, which I believe would have an immediate positive impact on the human rights situation.

During my drive up from Myitkyina to Laiza, I saw villages that had been abandoned over the previous years by those fleeing advancing military troops. In Je Yang Internally Displaced Persons (IDP) camp in Laiza, I spoke with people who had been violently displaced during the military advances into their villages in August 2011, and listened to descriptions of human rights violations suffered by their families and communities. I received allegations of more recent human rights violations following military clashes in Kachin State and Northern Shan State, including cases of rape, arbitrary detention and torture during interrogation, which I later raised with the authorities in Nay Pyi Taw. I also raised my concerns with the KIO over human rights violations allegedly committed by the Kachin Independence Army, including the reported ongoing recruitment of child soldiers. In general, the visit to Laiza brought home to me how closely related the fighting is with serious human rights violations, and the importance of securing a national ceasefire accord in the coming months.

The IDPs I visited in Kachin State described how vital humanitarian assistance had been provided by the UN as well as by local religious groups. This highlights the need for the State and Central authorities to provide regular and predictable access to non-government controlled areas by humanitarian organisations.

National ceasefire talks:

Positive progress towards a national ceasefire accord continues, with 14 individual ceasefire agreements now signed with the ethnic armed groups and only two outstanding. There is the prospect that a national ceasefire accord will be signed by April. I continue to commend and support this progress. What is now needed is further trust building between the Government and the ethnic armed groups. The implementation of ceasefire agreements has been poor due to the absence of monitoring mechanisms. Rather than drawing back troop numbers, in many areas,

including in Kayin State, the military has reinforced existing outposts and confiscated land. The KIO told me that while the Union Government negotiates a ceasefire agreement, the army continues to push forward and attack outposts. In my meetings in Nay Pyi Taw, relevant senior Government officials acknowledged that greater internal coordination was needed to address this. Furthermore, the lack of grass roots participation in ceasefire negotiations means that people lack confidence in the implementation of agreements that have been signed. The lack of transparency in negotiations has also enabled ethnic leaders to benefit from profitable business deals, which has led communities to question whether their interests are at the heart of negotiations.

Inclusive political negotiations need to proceed quickly following ceasefire agreements, so that underlying grievances can be addressed. This will do much to bridge the gaps in trust. In my meeting with Aung Min, Minister in the President's Office leading the peace negotiations, he reassured me of the Government's commitment to promptly pursue political dialogue following the signing of a national ceasefire accord. The Government should also consider the involvement of international mediators in these political negotiations to help address the lack of trust.

Whatever the course of these negotiations, military and non-state actors need to abide by humanitarian and human rights law. This has been a persistent call of mine throughout the course of my mandate.

During my visits, I have continued to meet with refugees and internally displaced persons and listen to their stories, concerns and hopes for a better future. They desire to return to their land, but continue to fear and mistrust the military that caused them to flee in the first place. In places such as Kayin State, the Union and State authorities need to ensure the provision of land and guarantee the rights to education, healthcare and livelihoods to reassure these refugees on return. I also encourage the Government to send out clearer messages of reconciliation to these communities to welcome them back.

Constitutional reform:

At some point, addressing the underlying grievances of Myanmar's ethnic groups will require changes to the Constitution. Constitutional reform is inseparable from the process of national reconciliation. Reform will need to embrace the aspirations of the ethnic communities to have a say over their own future and benefit from the resources held within their lands. Constitutional amendments are also needed for the democratic transition to proceed. Reforms will need to address the undemocratic powers granted to the military and further democratise parliament, upholding the right of people to choose their own government and president.

Other Legislative Reforms:

Other legislative reforms in Myanmar need to accompany constitutional reform to create an environment where the rule of law is established and human rights are upheld. This includes reform of section 18 of the Peaceful Assembly and Peaceful Procession Act, and the passing of an Associations Law and Printing and Publishing Law that meet international human rights standards. It is notable that the laws from which charges were dropped and persons released during the President's Amnesty at the end of December 2012 remain on the books and continue to be used to violate human rights, including the right to freedom of expression and assembly. During my meetings with the authorities, I was again reassured that these and other laws were being amended, but I have yet to see much by way of clear outcomes. I realise the process of legal reform will take time, but Parliament needs to prioritise the reform of laws which are leading to ongoing human rights violations.

Freedom of the Media:

I have previously praised the progress Myanmar has made towards greater press freedom. However, for the time being, media freedom is only being allowed to go so far. During this mission, I met journalists who described a prevailing climate of uncertainty and fear of arrest, particularly if reporting dealt with issues too close to the interests of the military or other powerful elites. Over the past weeks, four journalists and the CEO of the journal Unity have been detained for investigating stories on chemical weapons factories. A Daily Eleven reporter is currently serving a three months sentence in Kayah State related to a story she was pursuing on corruption. I tried to visit the Unity journalists during my visit to Insein Prison, but was informed that they had been transferred to another prison two days previously. When I met with the Minister of Information, I encouraged him to engage more with the interim press council, including to help mediate on cases where journalists are in dispute with the authorities. Detaining journalists for the coverage of sensitive stories is something that belongs in Myanmar's past.

Rakhine State:

In Rakhine State I had a long meeting with the chief of the state's police. He informed me that in Du Chee Yar Tan, on the 13 and 14 January, the police conducted a large security operation involving over 100 police officers armed with live ammunition to search for a police officer who was taken by the villagers and reportedly killed. He denied that there had been any incident that had compromised the physical integrity or property of the villagers. However, I have continued to receive allegations of serious human rights violations being committed during this police operation, which also involved Rakhine mobs, including allegations of the brutal killing of men, women and children, sexual violence against women, and the looting and burning of properties.

So far, the domestic investigations have failed to satisfactorily address these serious allegations. The Government of Myanmar has shown a willingness to engage with the international community on key issues such as forced labour, economic development and even training in international human rights standards for the police and military. This cooperation now needs to extend to one of the most important challenges that Myanmar is facing, which is to address its long history of impunity. If the President's recently established Investigation Commission on Du Chee Yar Tan fails to carry out an investigation that meets international standards, I will urge the UN Human Rights Council to work with the Government of Myanmar to establish a credible investigation to uncover the truth of what happened in Du Chee Yar Tan and to hold anyone responsible for human rights violations to account. An investigation conducted with the involvement and support of the international community, including in relation to technical assistance, represents an opportunity to turn the tide of impunity in Myanmar.

In this respect, I was encouraged by the openness of the Minister of Home Affairs during my meeting with him on receiving suggestions on how to make an investigation into the incident independent, including suggestions of international technical experts.

The situation of the IDPs in Rakhine State is still concerning. Muslim communities remain segregated from Buddhist communities and completely restricted in their freedom of movement. I again visited Aung Mingalar quarter, which I can only describe as a ghetto in the heart of Sittwe. These targeted restrictions on freedom of movement impacts a range of other human rights including access to livelihoods, healthcare and education, and entrenches the pattern of systematic discrimination against the Rohingya community.

Particularly concerning are the campaigns to incite hatred against the Rohingya community. Ordinary Rakhine Buddhists have a genuine and legitimate desire to have their economic, social and cultural rights respected, promoted and protected after years of neglect. The grievances of the Rakhine Buddhist community must be heard. However, some community and political groups are manipulating this community for political and extremist ends by instigating campaigns of hatred, the consequences of which can be seen with acts of extreme violence against Rohingya communities which have also spread outside of Rakhine State.

Humanitarian organisations providing life-saving assistance to Rohingya as well as Rakhine Buddhist communities are also being increasingly threatened and prevented from doing their work. State and local authorities need to draw a line in the sand, and tackle incitement of hate speech and the violation of human rights in accordance with the rule of law.

Prisoners of Conscience:

Myanmar has made great progress in the release of prisoners of conscience. 15 Presidential amnesties since May 2011 have resulted in the release of over 1,100 prisoners of conscience; a major achievement of the Thein Sein administration. I also commend the work of the Prisoner Review Committee set up last February to identify remaining prisoners of conscience.

Some prisoners of conscience remain. In Nay Pyi Taw, I met with U Soe Thein, who reassured me of his commitment to continue working for the release of all prisoners of conscience. I urge the Government to continue working with the Prisoner Review Committee to bring the release of these prisoners and ensure that future persons are not arrested for political reasons.

Furthermore, the necessary legislative and institutional reforms have not yet taken place to prevent the future arrest of prisoners of conscience. The Presidential Amnesty of 30 December 2013 included cases under the Peaceful Assembly and Peaceful Procession Act. But this and other problematic laws remain on the books. Since the Presidential Pardon, others have been detained under section 18 of this act, including land rights activists.

Parliament needs to prioritise the reform of these laws, which also include the Unlawful Associations Act, and in the meantime the Government needs to ensure that the police and judiciary stop applying these laws, which fall below international human rights standards.

In Sittwe Prison I met with a Rohingya prisoner of conscience, named Than Shwe, who was detained because he had tried to come and meet me last August during my visit to Buthidaung. Such human rights violations also compromise the integrity of my mandate by preventing the human rights rapporteur from meeting with the people to listen to their concerns. I met with Kyaw Hla Aung in Sittwe prison and Dr. Tun Aung, who had recently been transferred to Insein Prison, and reiterate the need for the authorities to release these elderly prisoners of conscience immediately as well as the remaining 3 INGO workers. In Insein Prison, I also met with Mr. Chit Ko, who had made contact with the ILO to seek release from military service. This showed me that former soldiers have not benefitted from the President's amnesties for prisoners of conscience, which the Government also needs to address. I raised these cases in Nay Pyi Taw with the Minister of Home Affairs.

Torture in Police Detention:

I remain concerned over the ongoing practice of torture in places of detention in Myanmar. In my meeting with the Chief of Police, he informed me that CCTV cameras were now placed in all city police stations across the country. This is a positive step forward. However, accountability for the perpetrators of torture remains elusive. In Yangon, I met with the family of U Than Htun, who had been tortured to death while in police custody. Despite the perpetrators being known, they have not been held accountable through the criminal justice system. Only administrative sanctions have been applied.

Development:

The importance of human rights standards and principles shaping the process of economic development in Myanmar needs to remain a priority concern. In Yangon, I visited Thilawa Special Economic Zone, which is being supported by the Japan International Cooperation Agency. A large number of villagers are being relocated to make way for this development. When I met with the Thilawa management committee, they showed a keenness to address the human rights implications of this large scale development project. After meeting with the committee, I visited some of the relocation sites and talked to the farmers, who were struggling with the loss of their livelihoods and adjusting to a new life which they had not chosen. One of the biggest challenges will be to provide them with long-term livelihood assistance, where their opportunities expand, which the management committee admitted it was struggling with and asked for support and fresh ideas. The international community should support the committee's work so that it can ensure that Thilawa can help establish the precedence of large scale development projects being required to abide by human rights standards.

I also visited the copper mines in Monywa, Sagaing Region, including Letpadaung copper mine. While I commend the earlier initiative of the Government to set up a committee to help address the concerns of affected local communities, the Government has not mustered the political will to implement many of its key recommendations. Subsequently, local grievances remain over compensation, forced relocation, livelihoods and health problems related to the proximity of the project. In Monywa, I also heard from two monks left scarred by the excessive use of force by authorities to remove protestors from the site in November 2012, who expressed their concerns over the moving and destruction of religious sites. Instead of oppressing these voices, the concerns of the local community need to be addressed with more systematic and sustained dialogue, and the political will needs to be found to address the human rights dimensions of the project.

The rights of land users in Myanmar are currently not secure. The absence of legally secure tenure means that people are vulnerable to forced evictions, which constitutes a gross violation of a range of human rights related to housing, health, education, livelihoods and security of the person. During my visit, I met with residents of a village in northern Yangon, who had recently been forcibly evicted and their homes demolished after being told they were living in a military zone. The operation reportedly involved about 2,000 Government officials. Issues over land rights will be one of the major challenges of the Government over the years to come. During my visit, there was a recognition of this at the most senior levels of Government.

Rule of Law:

The need to establish the rule of law underlies all of Myanmar's human rights challenges and is integral to the process of democratic transition and national reconciliation. In Nay Pyi Taw, I met with the Chief Justice and the Attorney General, and was encouraged to hear about initiatives to develop the capacity of the judiciary and other relevant Ministries. However, the judiciary is a long way from being an independent institution. With no independent judiciary there is no rule of law. Furthermore, without the rule of law, the process of economic development will have a corrosive effect on Myanmar society and its environment, leading to exploitation and the reinforcement of the position of privileged elites. After decades of military rule, this state of affairs is perhaps inevitable, but establishing the rule of law needs to remain a focus of this transition.

Conclusion:

Throughout my six years on this mandate, I have seen important changes in Myanmar that have brought improvements to the human rights situation, including the release of prisoners of conscience, the opening up of space for freedom of expression, the development of political freedoms, and important progress in securing an end to fighting in the ethnic border areas. I believe there is limited space for backtracking though, as a senior Government official admitted to me in Nay Pyi Taw, the democratic transition is still fragile.

For the time being, the military retains a prevailing role in the life and institutions of Myanmar. State institutions in general remain unaccountable and the judiciary is not yet functioning as an independent branch of Government. Moreover, the rule of law cannot yet be said to exist in Myanmar. Tackling the situation in Rakhine State represents a particular challenge which, if left unaddressed, could jeopardize the entire reform process.

A critical challenge will be to secure ceasefire and political agreements with ethnic minority groups, so that Myanmar can finally transform into a peaceful multi-ethnic and multi-religious society.

A change of mind-set still needs to take place within all levels of Government, to allow civil society, political parties and a free media to flourish beyond the limited freedoms that have currently been granted. The energy and enthusiasm of the younger generation and of women needs to be allowed to come through to reinvigorate the reform process and ensure that Myanmar secures a successful transition. Review of the past will also become increasingly important.

It will be important for Myanmar to build on its progress of engagement with the international community, which should include the establishment of an OHCHR Country Office with a full mandate.

I hope that my six years on this mandate has helped improve the human rights situation of the people of Myanmar. It is important that this mandate remains well known and respected in the country, because it has helped to keep human rights on the agenda of reform and should continue to do so. Throughout my term and particularly during this mission, I have noticed how people from different parts of Myanmar value this human rights mandate. I am finishing my time on this mandate with a clear and visible human rights agenda to be followed up on by the Government, civil society and the international community.

I have to praise the cooperation extended by the former and current Government of Myanmar to this mandate. I believe this cooperation represents a good example of how States can progress on human rights through engagement with the international community as envisioned in the UN Charter.