

UNITED NATIONS

Economic and Social Council

Distr. LIMITED

E/CN.4/2004/L.34

9 April 2004

[the present version incorporates amendments dated 20 April 2004 and extra co-sponsors added on 21 April 2004]

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixtieth session

Agenda item 9

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Albania*, Andorra*, Australia, Austria, Belgium*, Bulgaria*, Canada*, Cyprus*, Czech Republic*, Denmark*, Estonia*, Finland*, France, Germany, Greece*, Hungary, Iceland*, Ireland, Italy, Latvia*, Liechtenstein*, Lithuania*, Luxembourg*, Malta*, Monaco*, Netherlands, New Zealand*, Nicaragua*, Norway*, Peru* Poland*, Portugal*, Republic of Korea, Romania*, Slovakia*, Slovenia*, Spain*, Sweden, Switzerland*, Turkey* United Kingdom of Great Britain and Northern Ireland, United States of America: draft resolution

2004/... Situation of human rights in Myanmar

The Commission on Human Rights,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other human rights instruments,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms and the duty to fulfil the obligation they have undertaken under the various international instruments in the field,

Aware that Myanmar is a party to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions of 12 August 1949 on the protection of the victims of war, as well as the Convention concerning Forced or Compulsory Labour, 1930 (No. 29) and the Convention concerning Freedom of Association and Protection of the Right to Organize, 1948 (No. 87) of the International Labour Organization,

Recalling its previous resolutions on the subject, the most recent of which is resolution 2003/12 of 16 April 2003, and those of the General Assembly, the most recent of which is resolution 58/247 of 23 December 2003,

Bearing in mind the report of the Secretary-General on children and armed conflict (S/2003/1053 and Corr.1),

Recalling resolution I adopted by the International Labour Organization at its eighty-eighth session, on 14 June 2000, concerning the practice of forced or compulsory labour in Myanmar,

Affirming that the will of the people is the basis of the authority of government and that the will of

the people of Myanmar was clearly expressed in the elections held in 1990,

Affirming also that the establishment of a genuine democratic government in Myanmar is essential for the realization of all human rights and fundamental freedoms,

Recognizing that good governance, democracy, the rule of law and respect for human rights are essential to achieve sustainable development and economic growth, and that good governance includes the idea of transparent, responsible, accountable and participatory government at all levels,

Taking note of the road map for the transition to democracy announced by the Prime Minister of Myanmar on 30 August 2003,

1. **Welcomes:**

- (a) The reports of both the Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2004/33) and of the Secretary-General (A/58/325 and Add.1 and E/CN.4/2004/30);
- (b) The visits to Myanmar by the Special Envoy of the Secretary-General during the past year and the cooperation extended to him by the Government of Myanmar;
- (c) The visits to Myanmar by the Special Rapporteur during the past year, noting that the Government of Myanmar has communicated to the United Nations High Commissioner for Human Rights the results of its investigation into the placing of listening devices during the interviews held by the Special Rapporteur with prisoners in Insein prison in March 2003, which led to the curtailment of his fact-finding visit;
- (d) The release from prison of a number of persons detained for political activities and the continued cooperation with the International Committee of the Red Cross;
- (e) The agreement reached, in Yangon on 27 May 2003, on the Joint Government of the Union of Myanmar-International Labour Organization Plan of Action for the Elimination of Forced Labour Practices in Myanmar, including the agreement on the establishment of an independent facilitator to assist possible victims of forced labour, while noting that the conditions for the implementation of the Plan of Action do not exist at present;
- (f) The second visit by an Amnesty International delegation to Myanmar, which took place in December 2003, but notes with concern that it was unable to meet all those it requested to meet;
- (g) The continued presence of the liaison officer of the International Labour Organization and his efforts to fulfil his mandate;
- (h) The dissemination of human rights standards for public officials and some non-governmental organizations and ethnic groups through a series of human rights workshops, but stresses that such activities need to lead also to concrete efforts to improve the human rights situation on the ground;
- (i) The establishment by the Government of a Committee for Preventing Recruitment of Child Soldiers, and stresses the need for it to work closely with the United Nations Children's Fund;
- (j) The negotiations to conclude a ceasefire agreement between the Government and the Karen National Union, and hopes that this will contribute to the elimination of human rights abuses in Karen State;

(k) The developments allowing access for the Office of the United Nations High Commissioner for Refugees to Karen and Mon States in order to assist in creating conditions conducive to the return of refugees to these areas;

Takes note of the efforts of the Government of Myanmar to meet the HIV/AIDS challenge and calls upon it to enhance its efforts in this regard and to support the effective implementation of the UN Joint Plan of Action, in cooperation with the relevant international agencies.

2. Expresses its grave concern at:

(a) The ongoing systematic violation of human rights, including civil, political, economic, social and cultural rights, of the people of Myanmar;

(b) The events of 30 May 2003, the corresponding, subsequent and continuing violations of human rights, which constitute a serious setback for the human rights situation in Myanmar, and the apparent involvement of the Government-affiliated Union Solidarity and Development Association, as well as the ongoing systematic and consistent harassment of members of the National League for Democracy and other opposition activists;

(c) The detention and the house arrest of Daw Aung San Suu Kyi and the persistent denial of her human rights and fundamental freedoms, including freedom of movement and association, as well as the continued detention of other senior leaders of the National League for Democracy and of the leadership of other political parties or ethnic minorities;

(d) Extrajudicial killings, rape and other forms of sexual violence persistently carried out by members of the armed forces, continuing use of torture, renewed instances of political arrests and continuing detentions, including of prisoners whose sentences have expired, prisoners held incommunicado while awaiting trial, forced relocation, destruction of livelihoods and confiscations of land by the armed forces, forced labour, including child labour, trafficking in persons, denial of freedom of assembly, association, expression and movement, discrimination and persecution on the basis of religious or ethnic background, wide disrespect for the rule of law and lack of independence of the judiciary, unsatisfactory conditions of detention, systematic use of child soldiers and violations of the rights to an adequate standard of living, such as the rights to food, medical care and education;

(e) The violations of human rights suffered in particular by persons belonging to ethnic minorities, women and children, especially in non-ceasefire areas;

(f) The situation of the large number of internally displaced persons and the flow of refugees to neighbouring countries, and recalls in this context the obligations of Myanmar under international law;

3. Calls upon the Government of Myanmar:

(a) To fulfil its obligations to restore the independence of the judiciary and due process of law, and to take further steps to reform the system of the administration of justice;

(b) To take immediate action to implement fully concrete legislative, executive and administrative measures to eradicate the practice of forced labour by all organs of government, including the armed forces, and to implement fully the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of the Convention concerning Forced or Compulsory Labour (No. 29) of the International Labour Organization;

(c) To take the action foreseen by the Governing Body of the International Labour

Organization, most recently at its March 2004 session, which could enable the implementation of the Plan of Action to go ahead, in particular the functions of the facilitator as envisaged by the high-level team;

(d) To immediately ensure safe and unhindered access to all parts of Myanmar for the United Nations and international humanitarian organizations and to cooperate fully with all sectors of society, especially with the National League for Democracy and other relevant political, ethnic and community-based groups through consultation, to ensure the provision of humanitarian assistance and to guarantee that it actually reaches the most vulnerable groups of the population;

(e) To cooperate fully with the Special Envoy of the Secretary-General for Myanmar and the Special Rapporteur in order to bring Myanmar towards a transition to civilian rule, and to ensure that they are both granted full, free and unimpeded access to Myanmar and that no person cooperating with the Special Envoy, the Special Rapporteur and any international organization is subjected to any form of intimidation, harassment or punishment, and to review as a matter of urgency the cases of those currently undergoing punishment in this regard;

(f) To consider as a matter of high priority becoming party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relating to the Status of Refugees and the Protocol thereto, the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182) of the International Labour Organization, the Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, and the Additional Protocols of 8 June 1977 to the Geneva Conventions, of 12 August 1949;

(g) To pursue through dialogue and peaceful means the immediate suspension and permanent end of conflict with all ethnic groups in Myanmar;

(h) To follow up the negotiations to conclude a ceasefire agreement with the Karen National Union with substantial political dialogue in order to ensure that the rights of ethnic nationalities are fully respected;

(i) To establish a national human rights commission in accordance with the Principles relating to the establishment of national institutions for the promotion and protection of human rights ("the Paris Principles");

4. Strongly urges the Government of Myanmar:

(a) To end the systematic violations of human rights in Myanmar, to ensure full respect for all human rights and fundamental freedoms, to end impunity and to investigate and bring to justice any perpetrators of human rights violations, including members of the military and other government agents in all circumstances, and to initiate a full and independent inquiry, with international cooperation, into the Depayin incident of 30 May 2003, as called for by the General Assembly;

(b) To lift all restraints on peaceful political activity of all persons, including former political prisoners, by, inter alia, guaranteeing freedom of association and freedom of expression, including freedom of the media, and to ensure unhindered access to information for the people of Myanmar;

(c) To restore democracy and respect the results of the 1990 elections by, inter alia, releasing immediately and unconditionally the leadership of the National League for Democracy, including Aung San Suu Kyi and members of the National League for Democracy detained on or after 30 May 2003, and to allow them to play a full role in bringing about national reconciliation and the transition towards democracy, and in this regard draws attention to the recommendation of the Special Rapporteur that a general amnesty would be the best path for releasing all political prisoners, who then would be able to play a positive role in the future political process;

(d) To enter into a substantive and structured dialogue with Aung San Suu Kyi and other leaders of the National League for Democracy intended to lead towards democratization and national reconciliation and at an early stage to include other political leaders in these talks, including representatives of the ethnic groups;

(e) To release unconditionally and immediately all political prisoners with particular emphasis on the elderly and the sick;

(f) To ensure that the National Convention is fully inclusive of all political parties and representatives elected in the last election and all major ethnic nationalities not represented by a political party and is held in a democratic atmosphere that allows for freedom of expression and guarantees the safety of all participants;

(g) Without further delay to cooperate fully with the Special Rapporteur to facilitate an independent international investigation of continuing reports of sexual violence and other abuse of civilians carried out by members of the armed forces in Shan and other states and further to ensure the safety and freedom from intimidation of all persons who collaborate with the Special Rapporteur;

(h) To put an immediate end to the recruitment and use of child soldiers and to extend full cooperation to relevant international organizations in order to ensure the demobilization of child soldiers, their return home and their rehabilitation in accordance with Security Council resolution 1460 (2003) of 30 January 2003;

(i) To end the systematic enforced displacement of persons and other causes of refugee flows to neighbouring countries, to provide the necessary protection and assistance to internally displaced persons, in cooperation with the international community, and to respect the right of refugees to voluntary, safe and dignified return monitored by appropriate international agencies;

(j) To elaborate the road map for the transition to democracy, which is still lacking in essential elements such as concrete timing and an adequate plan for the involvement of all political groups and ethnic nationalities, in a way that ensures the process is transparent and inclusive;

5. **Decides:**

(a) To extend the mandate of the Special Rapporteur, as contained in Commission resolution 1992/58 of 3 March 1992, for a further year and requests the Special Rapporteur to submit an interim report to the General Assembly at its fifty-ninth session and to report to the Commission at its sixty-first session and to integrate a gender perspective throughout his work;

(b) To request the Secretary-General to continue to give all necessary assistance to the Special Rapporteur to enable him to discharge his mandate fully;

6. Decides to continue consideration of this question at its sixty-first session;

7. Recommends the following decision to the Economic and Social Council for adoption:

The Economic and Social Council, taking note of the Commission on Human Rights resolution 2004/. of ... April 2004, endorses the Commission's decision to extend the mandate of the Special Rapporteur on the situation of human rights in Myanmar, as contained in Commission resolution 1992/58 of 3 March 1992, for a further year, and to request the Special Rapporteur to submit an interim report to the General Assembly at its fifty-ninth session and to the Commission at its sixty-first session.

* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

The resolution was adopted without a vote (by consensus) 21 April 2004