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人权理事会
第六届会议
议程项目 4

需要理事会注意的人权状况

人权理事会第五届特别会议通过的第 S-5/1 号决议
授以任务的缅甸人权状况特别报告员
保罗·塞尔吉奥·皮涅罗的报告*

* 本报告附件不译，原文照发。

内 容 提 要

人权理事会在专门讨论缅甸人权状况的第五届特别会议通过的 2007 年 10 月 2 日第 S-5/1 号决议中请“缅甸人权状况特别报告员评估目前的人权状况并监测本决议的执行情况，包括设法紧急访问缅甸，并向人权理事会第六届会议续会提出报告”。它还“促请缅甸政府与特别报告员合作”。2007 年 10 月 19 日，缅甸政府向特别报告员正式发出邀请，并表示将与他“充分合作”。特别报告员于 2007 年 11 月 11 日至 15 日正式访问了缅甸。他还于 2007 年 11 月 16 日至 17 日与驻曼谷的外交界人士、联合国机构和公民社会团体另外举行了会议。

本报告载有特别报告员在正式访问之前和访问期间收集的信息，主要关注的是目前的人权状况，包括镇压示威和严厉报复的行动对人权产生的影响。本报告叙述了从 8 月到 2007 年 10 月 20 日结束宵禁为止的这段期间的事态发展，特别是 2007 年 9 月 26 日至 29 日在缅甸发生的悲剧性事件。报告最后载有特别报告员的一些建议。

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导 言

1. 2007 年 8 月 15 日，缅甸政府调高了燃料的零售价格，涨幅达 500%。这个决定对缅甸人民的生计造成了巨大影响。人民的生活水平在近几年原已大为下降，因而民众对这个决定反应激烈，在整个 8 月到 9 月初开始进行小规模和平示威。9 月 5 日，在木各具的一次示威中，许多僧侣遭到殴打。民众和僧侣们对此行为感到不满，继续对经济生活条件表示抗议，于 9 月 18 日至 26 日在全国各地发起了大规模的和平示威，示威地点包括仰光、曼德勒、木各具和实兑。

2. 9 月 26 日至 29 日，国家及其代理人严厉镇压了和平示威者。通过国际媒体的摄影镜头，全世界目睹了人民遭到杀害、毒打和大规模逮捕。镇压过程中，由警察和军队或武警(Lone Htein)组成的保安部队以及联邦巩固与发展协会(巩协)和 Swan Ah Shin(SAS)民兵组织对平民过度使用了武力，包括不必要和不相称的致命性武力。

3. 镇压之后，收到了若干关于杀害、毒打和逮捕的报告以及关于酷刑、拘押期间死亡、躲藏起来的人的亲属被劫持和伤者得不到医疗的指控。还收到了关于据报在镇压过程中丧命的一些人的遗体被焚化的指控。缅甸政府提供了一些数字，但许多独立观察家认为这些数字可能低估了镇压行动的真实影响。

一、特别报告员的工作方法和活动

4. 应缅甸政府邀请，特别报告员于 2007 年 11 月 11 日至 15 日对缅甸进行了为期五天的访问。他要感谢缅甸政府的接待以及按他提出的日程行事，并感谢政府提供了若干记录及书面的事件发展历程和准许他去他所要求去的大多数地方。特别报告员要强调的是，不能将他这次访问视为进行全面的实况调查。若要进行独立且机密的调查，将需要一个不同的任务框架。为此，特别报告员指出，应当将这次访问视为一个进程的开端，而当局也表示愿意让他再去进行后续访问。

5. 在缅甸的新首都内比都，特别报告员会见了下列人士：内政部长貌乌少将；外交部长吴年温；劳工部长兼与全国民主联盟(民盟)总书记联络的部长吴昂季；国家计划与经济发展部长吴梭达；宗教事务部长杜拉敏貌准将；和巩协联合总书记吴佐敏。他还与新设立的政府人权机构的 20 名成员举行了圆桌会议。特别报告员将在提

交人权理事会的年度报告中论述向当局提出的种种重要主题。他将在日后访问该国期间就这些主题进行进一步的调研。

6. 在政府官员在场的情况下，特别报告员会见了联合国驻地协调员和驻该国工作人员、20 多名大使和外交使团代表以及国际非政府组织代表。他还会见了该国少数民族团体和妇女发展协会的代表。

7. 在仰光，特别报告员与内政部、各执法机构、仰光和平与发展委员会等部门的高级官员和仰光总医院领导进行了磋商。他感到遗憾的是未能见到军事指挥官。特别报告员还访问了前政府技术学院(示威期间用作拘留所)、设在皎丹一丁茵的第七警察大队控制指挥部和滕宾火化场。

8. 在第二次访问永盛监狱期间，特别报告员获准与下列五名被拘留者进行了一对一的谈话：Win Tin, 年龄最大的政治犯，在狱中度过了 18 年，特别报告员过去和这次都要求立即释放他；Su Su Nway 一个著名的积极分子，在特别报告员访问期间被捕；Min Zeya 和 Than Tin(又名 Kyi Than)，两人都是“88 年代学生运动”成员；和 Maung Kan 民盟成员。特别报告员曾致函当局，要求与名单上开列的 21 名被拘留者及 Su Su Nway 和 U Gambira 会面，以了解他们的罪名。

9. 特别报告员会见了国家佛教僧侣理事会、勃固的 Kya Khat Waing 寺院和 Shwedagon 佛塔董事会的一些高僧。此外，他访问了两间寺院(Nan Oo 和 Ngwe Kyar Yan)，讨论了示威期间发生的事件。他获准私下会见了被转往他处的 92 名 Ngwe Kyar Yan 寺院僧侣。

10. 宣传部长兼国民大会召集委员会秘书觉山准将向特别报告员介绍了七步民主路线图的发展情况。第一步和第二步是完成制宪国民大会所通过的基本原则和详细原则，正在执行的第三步是设立宪法起草委员会。应指出的是，民盟及其他民族政策只能参与第四步，也就是对宪法草案进行全民公决。宣传部长表示，关于人权的 50 项详细原则是符合国际准则的。

11. 特别报告员注意到，政府的国家和平与发展委员会(和发委)为了庆祝宪法起草委员会开始运作和国民大会完成使命，于 12 月 3 日特赦了 8,552 名囚犯，包括 33 名外国人。但据消息来源说，只有 10 名政治犯名列其中。

12. 劳工部长兼与民盟总书记联络的部长积极评价了 2007 年签署谅解备忘录之后与国际劳工组织(劳工组织)之间开展的合作，备忘录为强迫劳动的受害者提供了要

求补偿的机制。他预期，再过几个月或几年，就可以根除强迫劳动现象。劳工部长提到了国际制裁对就业的影响。

13. 特别报告员会见了妇女发展协会和妇女事务联合会秘书处的代表，讨论了两个组织对将要提交给消除对妇女歧视委员会和儿童权利委员会的国别报告可作的贡献。它们无法为特别报告员提供因示威活动和在示威期间被拘留的妇女案件情况。

二、2007 年 9 月和 10 月事件的根源

14. 自 1962 年发生军事政变以来，缅甸经济持续恶化，人民越来越难满足基本需求。尽管自然资源丰富，全国仍然陷于普遍贫困。由于几十年来的错误经济政策、贪污腐败及任人唯亲的现象猖獗和不成比例的军事开支，一度稳定的经济遭到了破坏。人口中的很大一部分因人权遭受侵犯，包括强迫劳动、任意征税和敲诈勒索、强迫搬迁和没收土地，生活水平大为下降。

15. 过去两年来，特别报告员收到了几份报告，其中指控政府参与压制人民发起的几次联合行动，这些行动并非为了政治目的，而是为了解决社会和经济问题。自 2007 年年初以来，恶劣的经济条件引发了多次示威事件和逮捕行动。在这一整年中，即使是在燃料零售价格于 8 月大幅上调之前，经济情况都受到人们的关注。2 月 22 日，政府逮捕了 9 名抗议者，他们参加了反对经济和社会条件恶化的和平示威。他们后来于 2 月 27 日无罪释放。2 月底到 4 月之间，发生了更多的抗议事件和逮捕行动。其后，全国出现了小规模零星抗议行动。6 月，媒体报道说，若开邦的一名抗议者在进行了反对通货膨胀的一人示威活动后，被拘留了两天，然后释放。曾有多人围观他的示威活动。5 月 1 日，有 33 人因参加了两场分开举行的工人权利讨论会而被捕。大多数人随后被释放，但在美国中心举办的那场讨论会的六名组织者被控以叛乱、成立非法组织和与非法组织联系等罪名。Thurein Aung、Wai Lin、Myo Min 和 Kyaw Win 各判 28 年徒刑，Nyi Nyi Zaw 和 Kyaw Kyaw 则各判 20 年徒刑。这突出表明，在 2007 年 8 月的和平抗议事件发生之前，缅甸已经出现了镇压异己的气氛。

三、实情—背景情况和主要事件

A. 2007 年 8 月的和平抗议

16. 燃料价格上涨后，8 月 19 日，有几十人走上仰光街头举行和平抗议，其中包括“88 年代学生运动”主要的学生领袖。随后的一个星期中有一百多人被逮捕，包括“88 年代学生运动”的几乎整个领导层、缅甸劳工团结组织前主席、捍卫和促进人权组织的领导人、前政治犯、大学生、民盟和缅甸发展委员会成员。尽管如此，社会和政治积极分子的小规模零星和平示威一直持续不断。当局部署了 SAS 民兵，及时强制驱散积极分子的任何集会。

B. 木各具事件 — 一个转折点

17. 燃料价格暴涨引发了大规模抗议，但是直到位于仰光西北约 600 公里的木各具(马圭省)的佛教僧侣举行的抗议遭到暴力镇压后，局势才骤然升级。该镇是缅甸著名的宗教中心，其所在省份在过去十年中生计的可持续性急剧下降。

18. 9 月 5 日，警察、军队和 SAS 民兵强制驱散了木各具佛教僧侣的和平示威。有报道说，有人向僧侣的头顶上空多次开枪，民兵和保安部队成员毒打一些僧侣，有些僧侣先被绑起来，然后遭到毒打。有传言说一名僧侣死于毒打。虽然很多人相信，但是该传言未得到证实。第二天，僧侣将几名去寺院的军官押为人质。有些报告说，这些军官到寺院去命令僧侣停止参与反政府游行；而其他报告说，他们去向僧侣道歉。据报道，僧侣们因为对前一天和平抗议中遭到逮捕和殴打表示愤怒，所以烧毁了几辆汽车。

19. 9 月 9 日，新成立的组织—全缅甸僧侣联盟(由一些缅甸现有的佛教僧侣组织创建)发表声明，对当局提出四条要求：(1) 为木各具事件道歉；(2) 降低商品和燃料价格；(3) 释放所有政治犯，包括昂山素季和近期参与抗议而被拘留的人；(4) 与民主力量展开对话，以期实现民族和解并解决人民的苦痛。声明要求当局在 9 月 17 日之前满足这些要求，否则将采取宗教抵制行动。这个最后期限的选择具有政治的象征意义，因为 9 月 18 日是当前军事政权于 1988 年发动政变夺取权力的纪念日。

20. 因为政府没有对提出的要求作出反应，所以僧侣们于 9 月 18 日开始领导举行大规模的和平示威，后来平民也加入了这些活动。僧侣还拒绝军队和军人家庭的宗

教布施。该行动的标志是“倒钵”(上座部佛教语言为：“patam-nikkujjana-kamma”),许多参与示威活动的僧侣倒举化缘钵作为象征性手势。因为布施是佛教精神和宗教生活的重要组成部分,而该行动拒绝军人领袖及其家人的布施,所以影响力特别强大。一般只有在最迫不得已的道德状况下,僧侣才会拒绝布施。按照僧侣的戒律——律藏,抵制活动于9月18日在集会中正式商定并对外宣布。

21. 在缅甸,这并非第一次由僧侣组织示威。实际上,该国的寺院自古以来就有社会和政治斗争传统。缅甸的几次反殖民起义是由僧侣组织和领导的,或者至少部分由他们组织和领导。僧侣还积极参与了1988年席卷全国的民主起义。当时的国家恢复法律和秩序委员会(恢委会)发动了镇压活动,寺院受到围攻,多达300多名僧侣被脱去僧袍,投入监狱。

22. 但是这一次有一个重要区别,即僧侣们的参与源于缅甸人民被迫承受的艰苦生活条件。不断恶化的生活水平也使僧侣的生计日益艰难,因为人们的需求越来越多,而僧侣获得的布施十分微薄。穷苦无望的人不断涌向寺院,向僧侣寻求庇护所和食物,但是僧侣不得不将他们拒之门外,因为寺院微薄的布施无法维持僧侣和通常可以收留的人的生活。对该国大部分群体来说,寺院是唯一的社会安全网。虽然全缅甸僧侣联盟的声明从一开始就带有明显的政治性,但是大多数僧侣还是试图表明,他们示威的原因是为了反映他们和人民所面临的社会经济困境,而不是为了达到某种政治目的。

23. 因此,在9月18日之后仰光僧侣示威的前几天中,俗人必须和示威队伍分开,也不能呼喊政治口号。除了向当局强化一个信息,即僧侣的行动源自真正的社会和宗教不满以外,重要的是确保尽可能扩大参与僧侣的范围,包括不关心政治和更保守僧侣的参与。但是,随着抗议的规模不断升级,一群年轻的僧侣积极分子逐渐担当起了示威的领导角色。越来越多的学生、政党、公民社会团体和一般大众也加入了示威。

24. 示威的规模和僧侣的领导作用使所有人感到惊讶。在过去,当局更容易为自己的行动开脱,理由是其行动并不针对僧侣本身而是针对因涉足政治而违反戒律的激进分子(当局的说法是“假僧侣”)。虽然这个理由对大多数人来说不具说服力,但它的确能引起一些保守的寺院住持和俗人的某种共鸣。他们认为,僧侣应该完全脱离世俗

事务。在该事件中，针对僧侣和寺院的暴力和侮辱的情况非常令人震惊，不仅如此，僧侣所反映的主要不满并不带有政治性，所以得到了广泛的认同。

25. 据宗教事务部长称，对政府而言，9 月和 10 月事件的根源是“国内和国外的破坏分子因为嫉妒国家的发展和稳定，对所有政府工作实施破坏的犯罪行为”。部长还提到，外部的“全球势力”不满宪法提案，因为其中包括自决以及禁止外国军队在缅甸境内驻扎的条款。他还说，这些势力与“破坏分子”相勾结，挑起了当前的“动荡”。¹ 国家计划与经济发展部长告诉特别报告员，缅甸的燃料价格依然低于其邻国。燃料价格上升被用作抵制政府的借口是出于政治目的。有关政府如何看待抗议的进一步解释载于附件中。

C. 2007 年 9 月的和平抗议(2007 年 9 月 18 日至 25 日)

26. 9 月 18 日至 25 日，和平抗议的僧侣人数不断增加，抗议蔓延到全国，包括仰光、曼德勒、木各具和实兑。虽然几乎没有收到关于各省组织示威的情况报道，但是，对 9 月 18 日至 25 日仰光的一系列事件有详细记载，而且有可靠和独立的不同消息来源证实了这些记载。在事件期间，每天都有和平抗议，抗议的数量与日俱增，但是没有立刻受到当局的镇压(见附件)。

D. 对和平示威者过度使用武力(2007 年 9 月 26 日至 29 日)

27. 9 月 26 日，还有大量僧侣和平民聚集示威。保安部队(军队和武警)以及非执法人员，包括巩协成员和 SAS 在木各具事件后第一次过度使用武力，使用了催泪瓦斯和烟雾弹；用木棍和竹棍、橡皮警棍和弹弓进行毒打，之后还使用了橡皮子弹和实弹。据一名证人说：“保安部队先向空中开枪，然后向示威者射击”。

28. 有证词指出使用了催泪瓦斯。但是，某独立消息来源采访的证人指出，更有可能使用的是烟雾弹，因为其烟雾与催泪瓦斯造成的生理反应不同。根据其他消息来源，二者都曾使用。虽然报道称现场有消防队，但是没有像 1988 年一样利用水龙驱散人群。来自示威者的报告和媒体拍摄的用过的弹药筒的照片显示，使用的橡皮子弹

¹ 《缅甸新光》，2007 年 9 月 25 日。

不是防暴枪的大型子弹，而是涂有一层橡胶的金属滚珠子弹。特别是在短的射程(不到 40 米)内，这种子弹可以造成致命伤害。许多人被逮捕，不少人受伤(包括僧侣和尼姑)，据报道，有几人死亡(见附件)。

四、初步调查结果

29. 特别报告员回顾说，他的访问不能被视为全面的实况调查，因为实况调查要求满足一些条件，如独立走访所有地方和人民，以便核实收集的信息。有鉴于此，特别报告员根据到目前为止的调查结果，向人权理事会提出以下初步调查结果。

A. 对平民过度使用武力，包括使用不必要和不相称的致命性武力

30. 特别报告员认为，虽然国际上几次呼吁缅甸政府在管制示威者时力行克制，但在 2007 年 9 月 26 日至 29 日期间，保安部队，包括军队和武警，对平民过度使用武力。其行为包括使用实弹、橡皮子弹、催泪瓦斯和烟雾弹、竹棍和木棍、橡皮警棍和弹弓等。主要是这些行为造成了所报道的死亡和严重受伤情况。受害者包括僧侣以及男子、妇女和儿童，他们有些直接参与了抗议，而有些只是附近的围观群众。在有些情况下，殴打不区分对象，但在其他情况下，当局有意针对个人，对他们进行追打。至少有一名示威者——民盟成员 Ko Ko Win 于 9 月 27 日在仰光的苏雷佛塔附近遭到殴打后，由于伤势过重死亡。据称还曾杀害特定对象和使用狙击手，但是该说法没有得到证实。

31. 特别报告员在 2007 年 11 月 1 日的信中要求缅甸政府提供一份死亡者名单。政府已经承认有 15 人在示威中死亡，并详细叙述了死亡原因。但是，几个关于死亡人数的报告说，政府提供的数字可能远远低于实际死亡人数。到目前为止，除了政府在资料中提供的 15 人外，特别报告员已收到 9 月和 10 月镇压示威中另外 16 人死亡的资料。特别报告员已经将该资料转发给政府进行确认。

32. 根据收到的资料和可信目击者的报告，有 30 多起发生在仰光的死亡与 2007 年 9 月 26 日至 27 日的抗议有关，死亡主要发生在 9 月 27 日的苏雷佛塔附近。没有收到仰光以外有人死亡的报道。外交官称，还有 500 多名抗议者被关押在仰光、曼德勒、实兑、密支那和毛淡棉。

33. 示威期间被保安部队杀害的死者中有日本摄影记者长井健司。记录了长井健司死亡的电视录像说明，他可能是在近距离被故意杀害，而非死于保安部队的流弹。东京都警视厅于 10 月 4 日在杏林大学(东京，三鹰市)对长井先生的尸体进行了检验，² 滕宾火化场也向特别报告员提供了他的验尸证明。

34. 特别报告员在访问滕宾火化场期间从当局获悉，在 9 月动乱期间，仰光总医院向火化场移交了有相关丧葬证书的 14 具尸体。这些尸体经登记后火化。医院证明有 11 人死于重伤(主要为枪伤)、两人死于疾病、一人为溺死。火化场无法辨认三具尸体。据报道，辨认出的尸体的亲属参加了火化仪式。无法辨认的尸体于 10 月 1 日火化。据称，该火化场仅从总医院接收尸体，每天火化 25 具尸体。虽然特别报告员获悉，在 14 具尸体中没有僧侣，但是照片没有提供足够证据证实这一点。登记的照片和丧葬证书也提供给了特别报告员。

35. 虽然特别报告员提出了要求，但是没有获准走访仰光的第二家火化场 Ye Way。该火化场受警察署中央控制处的控制。据可靠消息报道，许多(用塑料袋和米袋包裹的)尸体在 9 月 27 日至 30 日的夜间 4 点至 8 点之间在该火化场火化。有消息称，上述时间火化场通常不进行火化。那几夜普通员工必须离开，火化设备由国家安全人员或国家支持的团伙操作。至少有一个报道说，有些火化的死者是光头，有些死者身上有重伤的痕迹。特别报告员向政府表示了对这些说法的关切，并希望今后的调查能够对所称的仰光的这些夜间火化事件作出解释。死者的骨灰应该归还给他们的亲属，以便他们按照其宗教和信仰为死者举行适当的葬礼。

36. 因为据说受伤者只能在公立医院治疗，所以特别报告员向总医院职员询问有多少抗议者受伤。仰光总医院记录了 30 人的入院情况，其中 23 人为事故和急诊。根据经政府准许向特别报告员提供的名单，除其他外，病人的伤处为枪伤和殴打所致。特别报告员曾询问伤者是否被拘留。伤者被急诊病房接收之后就转送到普通外科病房，之后有的伤者就出院了。这个信息也提供给在医院询问过病人的保安人员。

² 《产经新闻》，2007 年 10 月 5 日。

37. 缅甸执法人员在 2007 年 9 月 26 日至 29 日期间使用致命性武力，该举动不符合源自国际习惯法的基本国际惯例的根本原则。³ 他们无视《执法人员行为守则》第三条及其评注中规定的必要性和相称性原则。第三条规定：“执法人员只有在绝对必要时才能使用武力，而且不得超出执行职务所必需的范围。”该条附加的评注解释：“本条文绝不应解释为准许使用同所要达到的合法目标并不相称的武力。”同样，在《执法人员使用武力和火器的基本原则》中，关于使用致命性武力的最一般性陈述，即第 9 条原则规定：“无论如何，只有在为了保护生命而确实不可避免的情况下才可能有意使用致命火器。”虽然缅甸的《刑事诉讼法》规定，可以为驱散集结人群使用民兵(第 128 条)或军队(第 129 条)，但是它同时规定，为了避免“人员受伤和财产受损”，应使用与驱散集结人群相称的尽可能少的武力(第 130 条)。毫无疑问，在 9 月 26 日至 29 日期间，保安部队的行为超出了法律授予它们的权限。

38. 特别报告员认为，虽然政府及其机构表现出一定的努力，防止大屠杀，但是保安部队决定开枪射杀和毒打抗议者，造成人员死亡。该决定构成任意剥夺生命，违反了生命权，因为使用的致命性武力不具有必要性和相称性。

B. 使用非执法人员

39. 特别报告员认为，巩协成员和 SAS 民兵在相当大程度上促成了对和平抗议者过度使用武力。令人感到不幸的是，缅甸《刑事诉讼法》(第 128 条)规定当局可利用民间力量驱散集会。除了政府士兵和武警之外，得到政府支持的巩协成员和(Swan Ah Shin SAS)民兵在政府默许或准许之下，参与了迫害抗议者的暴力行动。这个团体是否在政府的直接授意下行动尚不明确。有证据表明，缅甸当局一直是上述团体迫害行为的共谋，或犯有不干预、不惩罚或不防止上述迫害的渎职行为。

40. 1993 年，国家和平与发展委员会(和发会)建立了巩协，并于 2006 年宣布打算使之成为一个政治党派，推举出了下届竞选的候选人。特别报告员在前几次报告中对各类指控巩协成员卷入政治和刑事暴力的行为表示了关注。2003 年首次报道了 SAS

³ 在这些情况下适用的国际人权法原则主要来自：《执法人员行为守则》和《执法人员使用武力和火器的基本原则》。

在存在，当时他们被控与 Depayih 悲惨事件有关。⁴ 据消息来源称，有报道说 SAS 早就卷入了 1997 年事件。SAS 是一个没有法律地位、由一些平民组成的基层力量，据称他们协助政府当局执法，提供准军事化役务和军事情报，但不领取政府薪酬。SAS 成员有消防队员、急救组织、妇女组织和巩协成员以及释放出狱的罪犯/判刑犯、地方黑帮成员和极端贫困者和失业人员。

C. 任意逮捕和拘留

41. 从 9 月 18 日直至 10 月 20 日宵禁结束这段期间，在 9 月 26 日、27 日、28 日和 29 日这几天，每天都有许多人遭逮捕。在此必须强调，自 10 月 20 日宵禁撤销后，特别报告员仍持续收到有人遭逮捕和进一步获释的通报。在审查了各类报告和证词之后，据估计 9 月和 10 月有 3,000 至 4,000 人遭逮捕，在撰写本报告时，还有 500 至 1,000 人仍在拘留之中。此外，在抗议之前被拘留的 1,150 名政治犯尚未获释。大部分人在治安部队和非执法人员(巩协和 SAS)镇压示威游行和夜袭行动期间遭到逮捕。对若干可靠报道的分析加强了特别报告员的看法，认定在夜袭期间一些躲藏者的亲属也被当作人质收押。特别报告员在为访问做准备时，于 2007 年 11 月 1 日致函缅甸政府，要求提供被逮捕者、获释者和仍被拘留者的名单，包括他们的下落、拘留条件及其拘留的罪名等资料。他还询问拘留这些人是依据哪项法律。

42. 内政部长向特别报告员通报，自 2007 年 9 月镇压以来，有 2,927 人被捕受调查，2,836 人已经获释，还有 91 人仍在拘留中。其中大多数人是按《刑法》恐怖主义罪名遭拘留，而对另一些人的调查正在进行之中。自 8 月以来，至少有 15 人与和平抗议相关被判处达 9 年半的徒刑。据可靠消息来源称，9 月 24 日和 26 日，据称有 5 人很可能在马圭省 Thayet 监狱内设的法庭遭受秘密且显然不正规的审判。在此应指出，特别报告员无法核实所收集的数字。

43. 特别报告员尤为关切地感到，许多消息称，政府使用了当局不承认的一些被视为“秘密”设施的大规模非正式集中营。这些被拘留的人中，包括了儿童和孕妇。据各类报告称，这些人被羁押在 6 个不同的地点，包括设在永盛镇的“政府技术学

⁴ 2003 年 5 月 30 日在 Depayin 发生了大屠杀事件。据称，当时至少有 70 名与全国民主联盟有关的人遭政府支持的暴民杀害。

院”、丁茵镇的第 7 号警署中心、Mayagone 镇的 Aung Tha paye、Hmawbe 镇的第 5 号武警中心、曼德勒省 Plate Myot 警署中心和 Tamwe 镇 Kyaik Ka San 侦讯中心。鉴于许多人已经获释，据信其余的被拘留者被羁押在少数几个拘留点，包括特别报告员在正式访问期间探访过的政府技术学院和第 7 号警署中心等地。

44. 在访问政府技术学院期间，警方告诉特别报告员，从 9 月 27 日至 10 月 15 日，保安部队逮捕了 1,930 名示威者(自 2007 年 7 月以来属仰光辖区)，其中 80% 被拘留者被作为破坏治安者押入永盛监狱。据称，其他人当即获释。特别报告员访问时，向他提供了一张详细平面图，标明了各个(男女分开关押的)囚禁室。他被告知，政府技术学院已经不再是技术学院，而只是计划在紧急状况时(与缅甸红十字会协调)临时使用的收容所。虽然当时只收容了 1,500 人，但政府官员告诉特别报告员，准备了 2,500 条毛毯；……据报告当时 488 名患病者得到 5 名医生和 15 名护士的照管；有 5 人被转送总医院急救。特别报告员走访了拘留 153 名妇女和 140 名男子的各间囚室(每间拘留 70 人)。守卫警察有 100 名。特别报告员被告知，被拘留者的伤情和调查资料是保密的。

45. 特别报告员还欢迎允许他访问位于离仰光 60 公里处、设在丁茵一皎丹的第七警察大队控制指挥部。据报道，那些被押送至该处的被拘留者，押入后又被押走，因为那儿最多只能羁押 30 人。该设施由南部省镇保安营控制，他们主要活动是保护使馆高级官员、Nay Pyi Taw 的安全和边界地区的治安工作。特别报告员询问了他们参加执法活动的情况。对此，他们说，他们负责接收其它保安部队送来的被拘留者。当他追问为何嫌犯都被移送到这么一个孤立偏远的地区时，他得到的答复是，其辖区包括仰光市区。当局称，对那些参与示威者要分开关押、审讯和调查。据报告，没有人受伤，所有被押到皎丹的人都被押送回去，但没有具体说明押到哪儿。尽管特别报告员提出了要求，但没有让特别报告员查看记录。察看档案要经内政部长和警察总监批准。

46. 特别报告员被告知，永盛监狱关押着 10,000 名囚犯，由 500 名狱警看守管理，据称有 70 名被拘留者关在另一栋楼里。囚犯可以接受朋友和家属、医生的探访，收受包裹和报刊，但只允许写信。由于监狱的环境，大部分囚犯需要治疗而且健康状况差。许多“88 年代学生运动”囚犯体质虚弱，几乎走不动路。特别报告员注意到，民盟和“88 年代学生运动”的政治犯以及僧侣都被当局打成恐怖分子，并根据治

安法遭受迫害。许多政治犯被关押在所谓的永盛附属宿舍 5 号楼，据称，那儿甚至监狱守卫都不得进入(有 70 名被拘留者羁押在第 8 号囚室)。特别报告员得到了一份该监狱的商业卫星图。据称，在特别报告员抵达永盛监狱前一天，Min Ko Naing 被关进了上述附属宿舍楼。这座楼里还关押着 Htay Kywe、Min Zeya、Mie Mie、Mya Aye、Aung Thu、Ko Ko Gyi、Aung Naing、U Pyi Kyaw 和 U Zin Payit 等人。

47. 可靠的消息来源报告，这些被拘留者被关押在永盛监狱内一个通常被称为“军犬窝”的条件恶劣的特别惩戒区，院内有九小间二米宽二米长的单独囚室，日夜有 30 条军犬看守。囚室内既不通风，也无马桶，被拘留者(大部分为政治犯)只能铺一条薄席子睡在水泥地上，只允许三天一次用冷水洗 5 分钟。最近获释的一名被拘留者作证称，他被强迫裸腿跪在碎砖上，并迫使他用脚尖站立了很久。还有些报告确认，僧侣们被剥去僧袍，并故意违反僧侣中午禁餐的宗教戒规，逼僧侣中午进食。

48. 国家保安人员继续以夜袭行动为主，闯入民居搜捕某些被怀疑参与反政府抗议行动的人。同时，据确认，当局还任意和非法拘留那些目前藏匿起来的抗议者的家人或亲友以及被怀疑的同情者。这就构成了劫持人质——对被怀疑参与抗议的人施加明或暗的压力，迫其自首以作为释放或不伤害人质的条件。这是违反国际法基本原则的行为。例如，10 月 19 日在 Thet Then Aung 被拘留前，她母亲和婆婆遭到当局的任意逮捕，显然是为了恫吓和逼迫 Thet Then Aung 自首，否则当局根本就不必逮捕她们。此后，两位老人都被释放，但她母亲一直被拘留到 11 月 2 日。同样，在当局抓捕到诗人 Ko Thit 之前，他的妻子 Khin Mar Lar 于 10 月 1 日遭到拘留，一直到 10 月 21 日才获释。当 Di Nyein Lin 躲过了 10 月 12 日的抓捕之后，他藏身的房主 Thein Aye 遭到任意逮捕。Di Nyein Lin 于 10 月 23 日被捕，但 Thein Aye 仍在拘留之中。

49. 特别报告员收到的一些指控称，106 名妇女，包括 6 名尼姑，因与 9 月的示威相关而被捕后，被关押在仰光。他要赞扬 25 名妇女活动者为纪念消除暴力侵害妇女国际日，自 9 月镇压行动以来于 11 月 26 日首次游行穿越仰光市中心，公开表示反对军政权。这群妇女中既有家庭主妇，也有学生，她们从苏雷佛塔走到 Botataung 佛塔，一路为 9 月示威中死亡的僧侣和其他抗议者以及为被拘留者获释诵经。政府支持的巩协和 SAS 民兵一路跟踪这群妇女，但未加干涉。

50. 11 月 20 日，在特别报告员访问结束并根据其上一次提交大会的报告(A/62/223)所载的行动计划呼吁释放所有政治犯的一个星期之后，缅甸政府宣称，基

于人道主义原因释放了 58 名囚犯。政府说，9 名 65 岁以上的男性和 49 名怀孕或有子女的妇女获释。政府未阐明这些人是否政治犯，没有提及亲民主领导人昂山素季。政府宣称“政府将继续释放那些在本国稳步走向民主期间既不会对社会造成损害也不会威胁目前和平、稳定和民族统一的人”。

51. 然而，特别报告员要谴责的是，尽管总理登盛在 11 月初曾向秘书长缅甸情况特别顾问易卜拉欣·甘巴里作出了不再进行逮捕的承诺，但又逮捕了新的政治犯。据可靠的报导，自 11 月初以来下列人士已遭逮捕：U Gambira，全缅甸僧侣联盟领袖和 9 月抗议领导人，及其父亲 Min Lwin 和兄弟 Aung Kyaw Kyaw，他们先被当作人质拘留，以逼迫 U Gambira 放弃躲藏，来自自首；Su Su Nway，民盟的青年党翼成员；和同党青年活动人士 Bo Bo Win Hlaing。当局搜查了西若开邦的一座寺院，因与 9 月的抗议者有牵连逮捕了僧侣 U Than Rama，意在缉拿那些已经藏匿的抗议者。民盟的一位资深成员 Myint Naing 被拘捕。若开邦族裔领导人 U Tin Ohn 遭到逮捕，其被拘留处不明。其他族裔领导人，包括孟邦全国民主阵线的若开族人 Cin Sian Thang 和 U Aye Thar Aung、Naing Ngwe Thein 和克钦邦政治领导人 U Hkun Htoo 均遭围捕，但在审讯后获释。Aung Zaw Oo，一位捍卫和促进人权组织的成员，很可能因参与计划 12 月 10 日国际人权日的活动而在仰光遭逮捕。另外 3 人也遭到逮捕：一支受大众欢迎的乐队 Shwe Thansin 乐队的首席吉它手 Win Maw；三色学生团体的一名成员，Myat San，和上述两人的朋友 Aung Aung。此外，还有克钦邦独立组织(克独组织)的 8 位成员在 Momauk 镇 Bamaw 区的 Daw Hpum Yang 被捕。据悉，这是因为克独组织拒绝听从和发会的旨意，不肯公开指责由特别顾问甘巴里先生公布的昂山素季最近发表的讲话。

52. 因此，特别报告员紧急呼吁缅甸政府释放所有仅因和平行使其言论、集会和结社自由权以及在和平示威中遭拘留或监禁的人，包括长期或最近的良心犯，并停止再进行抓捕。他严重关注当局对良心犯包括对昂山素季、U Win Tin 和其他少数民族高级反对人士诸如 U Khun Htun Oo 等人采取的任意拘留做法。据确认，迄今为止，许多被拘留者是以签名同意不再参与政治活动为条件获释的。

D. 失 踪

53. 特别报告员在迄今为止的调查过程中获悉至少 74 起失踪案。对此，缅甸当局既无法也不愿意说明这些人的下落，然而有合理的理由认为，这些人被国家代理人带走羁押。不同消息来源提供的数字可能低估了实际人数，因为出于担心遭报复或严厉惩罚，不是所有的家庭都报告了有家人失踪。特别报告员在访问期间与当局对话时，要求当局透露有关人员的命运和下落。当局只部分答复了他的要求。

54. 前述关于焚化大量尸体的指控令人极感不安。本阶段不准备对这些报告的真确性发表意见，但认为应对这项指控给予认真的关注，因为这有可能解释为何迄今为止当局无法提供一些被拘留者和失踪人员下落。这也可解释所收到的许许多多关于保安部队在镇压和夜袭某些寺院期间移走尸体的报告。

E. 拘押期间死亡

55. 根据从一个独立来源收到的可靠报告，9 月 27 日至 10 月 5 日被拘留在政府技术学院拘留中心的一名僧侣报告，在拘留期间，有 14 人死亡，包括 8 名僧侣和头一天即死亡的 1 名少年。据这位与几百人关押在一起的僧侣称，这些死亡与其说是因为在镇压期间受了伤，不如说是因为监禁条件恶劣所致。据报告，9 月 26 日在曼德勒附近被捕的民盟成员 Win Shwe 10 月 9 日在 Plate Myot 警署中心受审讯期间死亡。他的遗体没有交还给其家人。据称，9 月 26 日，密支那的 Yuzana Kyaungthai 寺副住持 U Thilavantha 大师也同样被毆身亡，前一天夜晚当其寺院遭袭时他就遭受了殴打。

F. 残忍、不人道和有辱人格的待遇与酷刑

56. 有越来越多来自被释放人员的报告，其中描述了有辱人格的拘留条件和酷刑做法。特别报告员总的印象是，被拘留者在被审讯期间受到粗暴的对待，审讯一般持续 4 至 8 天，在拘留地以外的地点(例如仰光内政部和税务委员会办公室)单独进行。许多被拘留者戴着手铐接受审讯，他们睡在冰冷而潮湿的地板上。食物和饮水的提供视被拘留者的回答情况而定。一些囚犯被单独关押，每天上下午仅各有一小时的活动时间(在特别报告员访问期间，这些时间延长了半小时)。

57. 过去 7 年来，各观察员以及特别报告员所提供的文件都证明了缅甸存在酷刑做法。经验表明，在逮捕、审讯和拘留过程中，政治活动家和人权维护者尤其成为施虐的目标。有报道证实拘留条件骇人听闻，不仅未达到有关犯人待遇的国际标准，实际上还构成国际法所禁止的残忍、不人道和有辱人格的待遇。自镇压行动以来，有越来越多的报道描述了拘留期间的死亡事件以及全国各地的拘留设施人满为患、卫生状况恶劣、殴打、虐待、缺少食物、饮水或医疗等情况。没有提供基本必需品，包括食物、饮水、毯子和睡眠空间，也不让使用卫生设施。

G. 对和平抗议者严厉报复

58. 在其最近提交大会的报告(A/62/223)中，特别报告员特别关注继续限制言论自由权、和平集会权和行动自由权的做法。2007 年 9 月和 10 月的事件再次显示采用严厉的迫害和骚扰手法在缅甸十分普遍。9 月 26 日至 10 月 20 日，当局严格实施了缅甸法律中明文规定的集会禁令(五人或五人以上)，宵禁严格限制人们的行动自由，同时动用保安部队实施夜袭。

59. 据报道，夜袭是在宵禁期间进行的。9 月 26 日，头天晚上保安部队逮捕了反对派领导人昂山素季的政党发言人吴敏登。据闻，躲藏者的亲属在这些袭击中作为人质被抓走。10 月 2 日缩短宵禁时间的决定没有对晚 11 时至凌晨 3 时传闻发生的这些事件产生任何影响。

60. 据报道，9 月 26 日至 10 月 6 日期间，保安部队在全国各地袭击了 52 间寺院，劫掠僧侣的财物并殴打和逮捕了许多人。也接到有关杀害人的指称。9 月 27 日星期四凌晨零点 30 分，保安部队袭击了维觉延寺院——仰光著名的佛教修习中心(南欧卡拉帕)，据称他们防火烧寺，殴打并逮捕了 70 名僧侣。宵禁后在现场拍摄的照片显示，寺院各处有喷溅的血迹，包括门窗和其他家具在内的财产遭到破坏。照片也表明寺院遭受劫掠，不同消息来源包括直接证词都指称发生了此种行为。根据未加证实的报道，一些僧侣在暴力袭击后离开，他们报告说逮捕了多人并挪走了据称被保安部队殴打致死的僧侣的尸体。维觉延寺是当天晚些时候保安部队与平民之间发生激烈对抗的地点。从下午晚些时候一直到晚上，寺院四周围满了士兵和平民，不时听到枪声。

61. 特别报告员被带入空无一人的维觉延寺，但不能进入寺院。当局给他看了一些据报道在寺院内发现的实物(武器、诽谤性标记、赌博和色情图象)照片。最初寺院

内的僧侣总数在 180 至 200 人之间。他被告知 9 月 27 日那天有 92 名僧侣被转移到国家监管下的另一所寺院，但没有被拘留。在访问最后一天， he 可以与这 92 名僧侣中的 10 人进行一次私下会面。特别报告员对其他僧侣下落不明表示关切，据当局说，这些人潜逃回家(据称这些人因品行不端被除名，因为根据僧侣的戒律，必须得到主持的许可方可离开寺院)。特别报告员指出，他在进行后续访问时还要探访这些僧侣。

62. 当局宣布，截至 10 月 5 日，共拘留了 533 名僧侣，其中 398 人在当局从假冒的僧侣中筛选出后即被释放，称之为真正的僧侣。据报道，有 21 名僧侣被关押在永盛监狱。不过，可靠的消息来源认为，还有许多僧侣被关押或失踪。许多过去在修习佛教经典的年轻僧侣现在不敢回到仰光，因为寺院仍在当局的监视之下，空缺位置已由巩协成员占据，这些人在镇压之后迅速成为托管人。受地方当局严密审查的寺院，随时遭到突然检查。11 月 29 日，军方强迫为艾滋病毒/艾滋病患者提供服务的僧侣离开 Maggin 寺院，该寺院被当局封锁。

五、国家及其代理人的责任

63. 国家及其代理人有好几次机会与和平示威者进行对话，以寻求和平解决争端的办法。但是国家及其代理人不是考虑以最佳办法来限制抗议活动，也无视国际社会的一再呼吁，而是决定实施镇压行动。国家及其代理人在使用武力驱散抗议者之前，本应设法搞清和解决和平示威的根本原因。即使作为最后手段使用武力，也不应超过国际社会商定的示威管制标准所界定的限度。

64. 尽管在调查的现阶段很难清楚地确定导致 2007 年 9 月和 10 月悲剧性事件发生的指挥系统，特别报告员仍然认为，政府知道有可能发生严重侵犯人权行为，但并未加以制止，没有采取一切可能的措施，也未对示威管制行动实施限制。他还认为，镇压示威活动不是什么管制行为，而是一种军事反应。特别报告员指出，过度使用武力，包括致死性武力，是不必要和不相称的。他还认为，实际上开展了一场严厉报复运动，报复的目标是僧侣、修女、政治活动家、人权维护者和其他组织或参与和平示威的个人以及他们的家人。

65. 在其 2007 年 10 月 4 日第 1/2007 号公告中，和发委的宣传委员会强调，政党和其他组织把僧侣提出的要求政治化，导致局面出现动乱。⁵ 认为 8 月和 9 月的和平示威是发生动乱的根源，这一观点从事件发展过程来看难以令人接受。要说由于国家及其代理人过度使用武力，促使发生暴力骚乱和混乱状态，这样讲似乎较为准确。必须承认，严重侵犯人权和违反国际人道主义法行为必须要承担个人刑事责任。既然政府未能防止发生这些严重侵权行为，那它现在就有责任对这些严重侵犯人权的行为进行彻底调查，起诉那些对其犯罪负有责任的人，如果罪名成立，则严惩不贷。

66. 根据可靠的消息来源，除了武警大队以外，据信还有以下武装部队参与了在五号特别行动局领导下对仰光示威群众的镇压，该机构负责监督仰光军事指挥部及其下辖单位：

- (一) 五号特别行动局(指挥官：Myint Swe 中将)；
- (二) 仰光指挥部(指挥官：Hla Htay Win 少将、副指挥官：Kyaw Kyaw Tun 准将、卫戍部队指挥官：Myint Soe 准将、卫戍部队 2 号指挥官：Tin Tun 上校、卫戍部队 3 号指挥官：Hla Aye 上校)；
- (三) 第十一轻步兵师(指挥官：Hla Min 准将、第一十一部队战术指挥官：Myat Thu 上校、第一一二部队战术指挥官：Htein Lin 上校、第一一三部队战术指挥官：Tun Hla Aung 中校)；
- (四) 第六六轻步兵师(指挥官：Maung Maung Aye 少校、第六六一部队战术指挥官：Htwe Hla 少校、第六六二部队战术指挥官：不详、第六六三部队战术指挥官：Han Nyunt 少校)；以及
- (五) 第七七轻步兵师(指挥官：Win Myint 准将、第七七一部队战术指挥官：Mya Win 中校)。

67. 令人遗憾的是，尽管特别报告员提出请求，但依然未能与这些参与镇压行动的军事指挥官会面。还需要开展进一步调查，以核实不同消息来源提出的上述指称，并确定参与该国其他地方(包括曼德勒、木各具和实兑)的镇压行动的武装部队和指挥部。如果当局能够向其提供有关资料，说明军事指挥官指挥的武装部队的部署情况(时

⁵ 缅甸《新光》，2007 年 10 月 5 日。

间、地点、保安部队人数)、保安部队装备的武器种类、军事指挥官接到的命令以及尤其是谁下令真枪实弹地开火,特别报告员将不胜感谢。

68. 编写本报告之时,特别报告员尚未得到缅甸政府的承诺,保证将那些对侵犯人权行为负有责任的人送上审判台,并保证受害人获得赔偿。

六、结 论

69. 特别报告员已将本报告和一份列有 653 人被拘留、74 人失踪和 16 人被杀害的名单(除当局提供的 15 名死者名单之外)送交缅甸政府征求意见。名单仅涉及引用所涉人员姓名的那些事件。另外还列举了若干事件,虽没有指名道姓的报道,但有指称说,据闻成群的人被打死。这份名单将定期更新,并就此与当局保持对话。

70. 特别报告员希望看到缅甸与其国际和区域对等机构的接触发生积极的变化,尤其是通过《东南亚国家联盟(东盟)宪章》开展的此类活动,缅甸也签署了该项文书,其中包括对国际人权和人道主义原则的坚定承诺,以及保证设立一个专门的东盟人权机构。特别报告员还想重新强调对当局的强烈呼吁,要求当局与红十字国际委员会(红十字会)重新合作,允许其自由出入拘留中心。

71. 所报道的事件证明了缅甸社会的经济社会基础十分脆弱。事实表明,言论自由权与和平集会权尚未得到充分的保障,在对本报告中有文件证明的严重犯罪行为的犯罪者追究其责任从而确保法治方面,缅甸还面临着巨大的挑战。另外还表明,迫切需要废止旧法律和法规或者按照国际人权标准加以修正,并重新考虑军队和非执法人员参与管制示威的问题。

72. 此外,这些事件也是证明人权的不可分割性的又一例证,极具说服力。几十年对基本公民权利和政治权利的否定,已使人民的生活水平受到极大影响。多年来,政府对言论自由权与和平集会权严加限制,阻挠出现可进行真正公开对话的平台,而如果有此平台,人们就可以分享他们对日益缺少工作机会、缺少基本社会服务包括卫生保健和食品短缺的种种关切。

73. 在这种情况下,政府仍决定准许特别报告员访问缅甸,对这一举措应当给予赞扬。通过允许特别报告员进行正式访问,政府也重新开始与联合国人权机制的对话,并允许对 2007 年 9 月和 10 月事件进行调查。特别报告员希望当局向其提供所要求的进一步资料,说明被拘留者的下落、他们的拘留条件、释放人数以及死亡原因。

政府向他提供了若干详细记录，对其要求作出了部分反应。他还将继续就此事与政府联络。

74. 不过，特别报告员并未看到有重大迹象表明政府开始实施人权理事会第 S-5/1 号决议执行部分第 2、第 3 和第 4 段中提出的实质性要求，其中，除其他以外，促请缅甸政府：

“确保充分尊重人权和基本自由，消除有罪不罚现象，并对侵犯人权者、包括最近侵犯和平抗议者的权利者进行调查并将其绳之以法；”

“立即释放最近在镇压和平抗议者事件中遭逮捕的人，以及释放所有政治犯、包括昂山素季，并确保拘留条件符合国际标准，并允许探视所有被拘留者；”

“撤销对所有人进行和平政治活动的一切限制，除其他外其办法包括：保障和平集会自由和结社自由以及见解和言论自由，包括媒体独立自由，并确保缅甸人民能够不受阻碍地取得信息。”

75. 特别报告员对于未能会见民盟总书记昂山素季表示遗憾，因为这一会见原可增进调查工作的独立性，但是当局向他保证会见民盟总书记仍将列为他在后续访问期间可能进行的一项活动。特别报告员认为必须与秘书长的“斡旋”保持紧密协调，并就此事项与易卜拉欣·甘巴里先生保持经常接触。

七、建 议

76. 鉴于其缅甸之行的目标以及按照其前几次报告中提出的建议，特别报告员建议可请缅甸政府采取下列一些紧急措施和过渡措施。

紧急措施：

- (一) 确保所有被拘押者的身心健康；
- (二) 说明依然在押者或失踪者的下落；
- (三) 将死者遗体归还家人或亲戚，以便他们能够按照其宗教和信仰给逝者举行适当的葬礼；
- (四) 确保红十字国际委员会和其他独立人道主义人员能立即探视所有被拘留者；

- (五) 无条件释放所有因和平集会或和平表达其政治信念而被关押的人；
- (六) 对已判定有罪者予以无条件大赦，并撤销对正在受到起诉的那些人的指控；
- (七) 就杀人、毒打、劫持人质、酷刑和失踪事件进行独立、深入的调查；
- (八) 按照缅甸法律把民兵列为非法团伙予以取缔；
- (九) 将侵犯人权行为的罪魁祸首绳之以法，并向受害人及其家属提供有效补救；
- (十) 与人权理事会及其特别程序切实开展持续的建设性对话，尤其是与缅甸人权状况特别报告员的任务配合；
- (十一) 与缅甸人权状况特别报告员商定下次访问该国的权限和日期；
- (十二) 请国际调查委员会或实况调查团对最近的事件开展更加全面的调查。

过渡措施：

- (十三) 建立有效渠道，促进与特别报告员的后续任务沟通与合作，并允许特别报告员及其助理定期进入该国；
- (十四) 按照特别报告员在其上一次提交大会的报告(A/62/223)中的建议，考虑实施释放所有政治犯的行动计划；
- (十五) 通过劳工部长和联络部长与昂山素季进行对话；
- (十六) 废止与和平集会权、言论自由权、行动自由权以及刑事诉讼程序和监禁条例所涉一切事项有关的旧法律，或者加以修正；
- (十七) 在国民大会的框架内和最近危机事件的背景下，寻求技术援助，以废止或修正刑法典和刑事诉讼法，并审查示威管制规则。

Annex

CHRONOLOGY AND FACTS: THE PEACEFUL PROTESTS OF SEPTEMBER 2007 (18-25 SEPTEMBER 2007)

On 18 September, monks gathered at 9 am at the Shwedagon Pagoda to prepare the demonstration. At 1 pm a group of about 300 monks gathered at the southern stairway. The access to stairway was blocked by burly plain-clothed unarmed individuals who formed a cordon. The monks, after hesitating, marched instead to the downtown Sule Pagoda, then Botahtaung Pagoda, gathering several hundred lay followers as they went. Similar marches were held on subsequent days, gaining momentum every day despite torrential monsoon rains. One monk at the front of the procession held an upturned alms bowl, a symbol of religious boycott. There was no visible uniformed security presence, although plain-clothes personnel photographed and videoed the marchers. However, over the weekend of 22-23 September, the nature of the demonstrations shifted, becoming much larger in scale and more overtly political, thus posing a level of challenge to the regime that it must have found impossible to ignore. A highly symbolic moment in this regard occurred on 22 September, when a group of protesters were permitted to pass a police checkpoint and pass by the house of Daw Aung San Suu Kyi, who briefly appeared at her gate to greet them. By 24 September, the demonstrations in Yangon involved thousands of people led by monks. The same day, monks, nuns and students reportedly staged the largest demonstration so far in Sittwe (Rakhine state) demanding a reduction in essential commodities prices.

The general population in Yangon was becoming more defiant, increasingly taking part in the demonstrations rather than watching the monks or escorting them. Students, prominent political actors (from NLD and the ethnic political parties represented in the Committee Representing People's Parliament) and well-known personalities (actors, artists, writers) were joining the demonstrations, in some cases carrying red "fighting peacock" flags, a symbol of resistance. Comedian and former political prisoner Zaganar the movie star Kyaw Thu, and independent politician U Win Naing publicly offered food and drink to the monks before they started their march from Shwedagon. That evening, in the first reaction to the week of monk-led demonstrations, the authorities announced on television that further demonstrations would not be tolerated, and that action would be taken "according to the law". A statement by the Minister for Religious Affairs was carried on state television. No details were given concerning which laws he was referring to, but para. (b) of Order 2/88 of 18 September 1988 prohibits unauthorized public assembly of five or more persons (it should be noted that other provisions of Order 2/88 have been abrogated); and Order 6/90 of 20 October 1990 bans all unlawful Sangha (Buddhist monk) organizations, except the nine legal Buddhist sects. A number of other laws prohibit criticism of the Government or otherwise curtail freedom of expression.^a

^a The Official Secrets Act of 1923, the Burma Wireless Telegraphy Act of 1933, Section 122, Penal Code of Burma, the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions, Emergency Provisions Act of 1950, the Printers and Publishers Registration Law of 1962, State Protection Law of 1975 (a.k.a. the "Law to Safeguard the State from the Dangers of Destructive Elements"), the Television and Video Law, the Motion Picture Law and the Computer Science Development Law.

In his discussions with senior officials in Yangon, the Special Rapporteur asked why the Government had decided to “take effective action” at this stage of the demonstrations and what was the legal basis of the ban on gathering. He further enquired on whether the Government tried to engage in a dialogue with the monks after the incident of the 5 September in Pakokku and whether it tried to give consideration to the demands by the monks on 9 September. He asked whether the chain of command for law enforcement came from the police or in coordination with other sectors of the military, what was the role and connection of the Specific Operation N° 5, the participation of security forces, the number of police and other persons involved in the operations, arms authorized, and whether orders were given to fire with live ammunition and rubber bullets, and use smoke bombs, tear gas and water canons.

The Yangon Division Commissioner, U Hla Soe acknowledged that “the monk strike was due to the world increase of the price of petroleum which affected the change of fuel price in Myanmar on 15 August 2007. This was taken advantage of by the monks in Pakkoku to organize strikes and terrorism. Both internal and external anti-government organizations expanded the strike with the help of the media, persuading peaceful monks to go on strike, presenting a difficult solution for the authorities in a majority-Buddhist-living country and generating further opposition to the Government. According to the Commissioner the monk demonstration in Yangon began on 18 September when 150 monks assembled at Theinbyu Street in Botahtaung Township and marched to the East gate of Shwedagon Pagoda. Because of the prohibition of Divisional and Township Sangha Nayaka abbots, the marching monks made prayers in front of the Bronze Buddha Image at Yedashe junction and marched to Sule Pagoda from where to Botahtaung Pagoda and Pazundaung Market. On the same day 19 monks gathered and made the strike at Thingangyun Kyatksan Pagoda. On 19 September, 120 monks from Ahlone Township and 97 monks from South Okkalapa Nswe Kya Yan monastery assembled at Yankin Moegaung pagoda Compound and 30 monks at Mayangon Kaba Aye Pagoda did the same. Out of 150 monks in front of the Bronze Buddha Image at Bahan, some marched to Tamwe Shwe Baho Cinema Hall and some to Sule Pagoda and dispersed at Theinbyu Street”.

The Commissioner noted that “on 20 September 300 monks near the Bronze Buddha Image, East of Shwedagon Pagoda marched to Sule and Botahtaung Direction. Similarly 200 monks from South Dagon Township, 300 monks from South Okkalapa Ngwe Kya Yan monastery, 50 monks from Hlegu Township, 50 monks from Kon Chan Gon Township and 50 monks from Khayan Township marched through the town. On 21 September 540 monks from Ngwe Kya Yan monastery marched from Shwedagon Pagoda to Sule and Botahtaung Direction, 200 monks from North New Dagon Township, 15 monks from South Okkalapa Pagoda and Moengaung Pagoda, 70 monks from Than Lyan Township and 20 monks from Khayan Township marched about the township. After the 22 September strike the number of people increased in which the 88 Generation Student Group and anti-political party members persuaded

the people and the roadside to join them on strike. Out of 45 Townships in Yangon Division, strike occurred in 36 Townships, sparing 9 Townships. The strike was mostly concentrated in a busy street in downtown of Yangon. The monk strike comprised 15,000 monks and 15,000 people which are beyond the estimate due to the majority of spectators which were peaceful at first, and later got involved by the political demon and terrorism”.

The Special Rapporteur was informed by the authorities that “buses and taxis were stopped and the passengers were emptied while the drivers were forced to take the striking monks to the Shwedagon and Sule Pagodas. At Tamwe Township, car owners were forced to drive the monks to the Pagodas under threats of burning their cars. The owners were consequently beaten and the car doors destroyed. Two police motorcycles were burned and car windows were stoned. Trees were felled to block the way while advertising boards and telephone booths were destroyed”. According to the Commissioner “people suffered losses due to the anarchy and daily-wage workers became unemployed. The hawkers were affected in business and the taxi and trishaw drivers lost income. Stores and restaurants were shut and passengers were disturbed. The schools did not close but the parents kept their kids at home for fear of terrorism”. The Special Rapporteur was provided with a list recording from 17 to 26 September the “total number of Sanghas, nuns and laypersons participating in the praying procession activities on the Shwedagon Pagoda platform after having agitation leaflets dating 13 September”.

The authorities noted that “the strike monks did not obey the State Sangha Maha Nayaka Committee who instructed them to live according to Buddhist Sangha discipline. The monks are liable to obey the rules and instructions of Buddha and State Laws prescribed by the Committee”. On 24 September, the Directive 93 was issued by the State Sangha Maha Nayaka Committee calling for state/division/township/ward Sangha Nayaka Committees to supervise the monks and novices so that they only practice Pariyatti and Patipatti. In other words, the Directive prohibited the participation of monks in secular affairs.^b The Special Rapporteur asked the Sangha what had been the process for issuing Directive 93 and whether the Parivetti and Patipatti prevents monks to address the economic and social grievances of peoples. He was informed by the authorities that “the activities of the strike monks, 88 Generation Student Group, Political parties and terrorists affected the peace, security and lead to riots. In order to prevent the danger to the public, the Curfew N 144, under the Code of Criminal Procedure was announced according to the existing law by the Yangon Division Commissioner himself. The Order N 1/2007 was announced at 8.45 pm on 25 September which was made known to the public from 9 pm through the towns overnight by thirty-three cars through loud-speakers, advertised on boards at public places and broadcasted by the City FM Radio and advertised in newspapers and journals. Action was taken according to the law against people disobeying the order. Within three days of the strike, people were taken into custody and the worries of the public were reportedly released after which the Curfew Order was lifted step by step depending on the situation. The Order N 2/2007 at 9 pm on 2 October, the Order N 3/2007 at 8.45 pm on 12 October and the Order N 4/2007 at 6 pm on 13 October were announced with the approval of the Yangon Division Peace and Development Council. Curfew Order Section N 144 which was expected to be in force for 2 months, until 24 November, was lifted by Order N 5/2007 at 6 pm on 20 October because of local peace and stability”.

^b New Light of Myanmar, 25 September 2007.

The Special Rapporteur met with the Minister of Home Affairs and 20 members of the Government-established Human Rights Body^c in Nay Pyi Taw. He was informed that “if more than 5 persons want to stage a demonstration, permission can be obtained from the authorities concerned in accordance with Notification N° 2/88 of the State Law and Order Restoration Council”. It was noted that “the protestors of September 2007 did not obtain prior permission from the authorities concerned in accordance with the procedures and acted against the Law. The instigation by some monks and laymen, who wants to overthrow the government through violent means, among the monks who peacefully participated in the demonstrations on the understanding that it was a religious act, led to violent activities. The Government had to control the situation in accordance with the Aid to Civil Power procedures”.

The Special Rapporteur was informed by the authorities that “the agitators contacted anti-government organizations based abroad, declared as terrorist organizations, and illegally received cash from them. The leading protestors aimed at paralyzing the State machinery through unrest and destruction to overthrow the Government, guided by anti-government organizations abroad through television broadcasts, internet websites and news media. The protestors in turn sent exaggerated information, photos and interviews to the foreign media painting the peaceful demonstrations as a political movement. The unrest which occurred in September was not the wish of the entire people, with the non-participation of these people”. It was noted that “at the beginning of the peaceful demonstrations, the Government tolerated without any action. The authorities concerned requested senior monks to prevent the violence. On 24 September the Minister for Religious Affairs reported the situation to the Chairman Sayadaw and members of the State Sangha Maha Nayaka Committee which issued nine directives instructing all monks to behave in accordance. Despite this, some monks involved in politics continued their activities with the infiltration of peaceful monks by violent persons and political opportunists instigated by foreign media. The demonstration transformed into violence and attacked security personnel by hitting with sticks and stones, putting state owned motorbikes and vehicles on fire, almost threatening lives.” The various warnings did not have a significant impact on the demonstrations, and on 25 September, tens of thousands of people again took to the streets of Yangon in protest. On the same evening, the authorities announced the night-time curfew (from 9 pm to 5 am), and by the following morning had positioned truck-loads of armed riot police and troops at key locations in Yangon, including at a number of monasteries. These troops sealed off a number of monasteries to prevent monks from joining the demonstrations.

The Minister of Home Affairs noted that “only the Government declared Article 144 in Yangon and Mandalay and the security forces dispersed the demonstrations. Therefore only 10 died and 14 were injured during the dispersion of a huge crowd of demonstrators. There were no monks among the dead. Among the tens of thousand of demonstrators, only those instigating and leading the demonstrations have been detained for investigation. Those who participated out of naivety in the demonstrations also violated the law, but were released after making undertakings”. He further stated that “up to 1 November 2,927 persons have been investigated and 2,836 of them have been released, with 91 persons remaining in custody. They have been

^c The formalization of the Human Rights Body was signed on 14 November 1997 by the Supreme Authority SPDC Notification, State P 53/2007, composed of 4 patrons (Prime Minister, Minister of Foreign Affairs, Key Justice and Attorney General) and 21 members.

detained and are investigated in accordance with the law for terrorist activities disrupting security and stability in connection with explosions, destructions and committing crimes. Those under temporary detention have been detained in accordance with the law and registered in the “Prisoner’s Personal Data”. It was reported by the authorities that the detainees who are not well have been given treatment by doctors from prison hospitals and township medical units. Each detainee is reportedly provided health care free of charge and arrangements are made for their health care, food and accommodation and for them to receive food from donors. Prisoners and detainees are treated kindly and sympathetically by allowing them to write to their families and receive food and necessities from them. The ICRC is allowed to visit prisoners together with NGOs from Myanmar, but the ICRC stopped the visits since 2005 stating that joint visits are contrary to the norms.”

The authorities acknowledged that the demonstrations were peaceful until the incidents were influenced by the meeting of the Security Council. The demonstrations were allegedly instigated by “terrorist” groups which had dispatched agents to the country working with labour groups, students and monks. Bomb blast, attacks with Yengali handmade tools and TNT explosives were reportedly used to obstruct the security forces and destabilize the authorities. These agents persuaded the demonstrators to come in strength robbing arms from security forces which had to intervene against the terrorist attacks, though without the intention of harming the peaceful demonstrators. During the Special Rapporteur’s visit to the monasteries and police station the authorities provided pictures of items that had reportedly been seized. The authorities informed the Special Rapporteur that they had learnt before the 18 August resumption of the National Convention, through a Karen statement, that monks attended trainings and that instigators had activated innocents at the Shwedagon and Sulive Pagodas. The law enforcement agents were responsible for enforcing the law against the mobs which had become a risk through their activities against the law. Around the Shwedagon Pagoda one group of 150 security forces and another group with 50 security people were facing 20,000 to 30,000 people.

The Special Rapporteur asked whether the SPDC had submitted a request to receive aid from civil powers. Under the Criminal Code Procedure Section 128, the police have the power to request assistance while law authorizes them to give orders. The Yangon Division and Peace Development controlled the police division. The Special Rapporteur enquired about the use of military commanders and participation of units used with Security Forces (11th, 6th and 77th light infantry divisions). The police forces were overwhelmed and had to ask for the support by military on 26 September at 1 pm, rendering aid to civil and military power. N° 3 and N° 77 light divisions participated, but not the N° 11 according to governmental sources.

The authorities said that they could not use the water canons, as they were not able to access the mobs and crowded areas, but used other techniques. It was noted that the decision to act was in accordance with the seriousness of the treat, decided by the Police Order and other chain of command. 13 police officers were reported wounded throughout the entire period of demonstrations (on 26 September) though no law enforcement agents were killed. The Special Rapporteur asked whether there were any prosecutions and who were the people responsible behind the procedures and their whereabouts. He was informed that the search by security personnel was complementary to the police forces and that there were only 1,200 police and military personnel. The Special Rapporteur asked where the arrested persons were placed, the coordination with the law enforcement and whether there were any civilians to be reported among the 1,200 effectives after the 26 September, when the General Administration

Department and Police rendered the power to the Senior Commanders to act upon groups that controlled the monks. They noted that there were no women but only men who willingly wanted to join in accordance with Section 120 of the criminal code, rendering power to the law enforcement forces. The Authorities noted that until 26 September the events were totally under police command, while after the 26 September the events were rendered to military command, in collaboration with police and administration, under the surveillance of the SPDC. The operations were overseen by a Permanent State Division Judge/City Judge present at the scene. The 1940 Control manual (from the colonial area) and 1961 Manual for riot control were applied under the supervision of the police division of Yangon.

The excessive use of force against peaceful demonstrators (26-29 September 2007)

26 September

Several confrontations between the security forces and protesters reportedly took place at different locations in Yangon, including Shwedagon pagoda, Bahan Township, Tamwe Township, Shwe Gone Daing road, Sule Pagoda and Yangon City Hall. Other incidents were reported in Mandalay, Loikaw, Sittwe, Kachin state, and Ba Maw and Myitkyina. According to various independent and reliable sources, and direct testimonies of victims and witnesses, two major incidents occurred in the streets of Yangon. This includes the crackdowns at Shwedagon Pagoda and Sule Pagoda. Many have witnessed monks and civilians being beaten and slapped during the demonstrations.

Monks started marching at around 10 am. The gates of the pagoda were locked and all roads were blocked by the security forces (riot police and army). At around 11.30 am, more riot police arrived at the site. As they could not pursue their peaceful walk, monks sat down. According to a direct testimony one of the monk leaders, Ven Kovida, who participated in the demonstration,^d a delegation of monks attempted to enter into negotiations with the security forces. The monks were ordered to disperse and get into military trucks to be brought back to their monasteries. Fearing arrests or other forms of reprisals, the monks agreed to disperse with the condition of going back to their monasteries on their own. The security forces refused. At around 11.45 am, violence began at Shwedagon pagoda. As the monks refused to disperse, security forces started beating monks on their heads with rubber batons. Teargas and smoke grenades were reportedly used. One victim who witnessed the crackdown heard orders to beat monks coming from behind the riot police. Whereas unconfirmed allegations of killings were received, several witnesses interviewed saw monks severely beaten who were lying down on the floor without moving. They were not in position to say if they were dead or unconscious. Several arrests were also reported by various credible sources.

At 1 pm, security forces were blocking the road to Sule pagoda at the intersection, south of Traders hotel. At 2.05 pm, security forces fired shots in the air and what appeared to be teargas or smoke grenades at the intersection south of Traders hotel and north of Sule pagoda. The crowd was effectively dispersed, but re-assembled at the intersection just north of Traders. Protesters then gathered around Sule Pagoda downtown directly in front of troops, and continued

^d See also International Herald Tribune, 26 October 2007.

to march around the area. Troops fired warning shots and either teargas or smoke grenades, which failed to disperse the people. Shots were fired in the air again at about 3 pm to scatter the crowd which kept re-assembling. At 3.10 pm, a large procession travelled south with many monks and walked across the front of the soldiers, without incident. They were travelling south on the north-south road one block east of Sule Pagoda Road, and then turned west to pass directly in front of the soldiers. At 3.15 pm, state television announced that all senior clergy should rein in their monks. According to the State-run newspaper the New Light of Myanmar, protesters entered homes, threatening families who refused to participate in the demonstrations. They also requested those who did not want to join the protests to provide financial assistance.^e

At 3 pm, most of the country's mobile phone lines were reportedly disconnected, preventing journalists and demonstrators from reporting on the crackdown launched by the security forces in the heart of Yangon. Several journalists were reportedly injured, including Than Lwin Zaung Htet of the magazine The Voice. The authorities closed internet cafés in Yangon while the government-controlled Internet Service Provider, Bagan Cyber, reduced internet traffic speed. It was getting harder and harder to send or receive photos and videos sent from Myanmar. Dozens of foreign journalists were refused tourist visas by the Myanmar embassy in Bangkok. Blogs, websites and Internet cafés were closed, while it was becoming increasingly difficult to call mobile phones from abroad.

The same day, the United Nations Secretary-General, Ban Ki-Moon, announced he was sending his Special Envoy, Ibrahim Gambari, to the region in response to the deteriorating situation in Myanmar, and once again urged Myanmar authorities to respond to the ongoing peaceful protests with the utmost restraint. While the Secretary-General's Special Envoy briefed the Security Council on the latest developments, the United Nations High Commissioner for Human Rights, Louise Arbour, urged the authorities to allow the peaceful expression of dissent in the country and to abide by international human rights law in their response. She further noted that "the use of excessive force and all forms of arbitrary detention of peaceful protesters are strictly prohibited under international law." She stressed that the serious abuses being currently perpetrated by the security forces "may constitute international crimes and could invoke individual criminal responsibility".

27 September

The Ministry of Foreign Affairs called a meeting in Nay Pyi Taw for United Nations heads of agencies and foreign diplomats. The Government blamed the internal and external destructive elements for inciting monks to protest, influenced by some foreign embassies. The Government however insisted that it would act with restraint. On 27 September, despite a heavy presence of the security forces and the use of lethal force the previous day, the demonstrations continued in Yangon. There was a smaller participation of monks, no doubt due in part to the large number of arrests and ongoing security presence at monasteries. Ignoring again the appeals by the international community, the security forces responded to the ongoing demonstrations with further violence, with the army now playing a more prominent role. State media acknowledged the firing of warning shots, the killing of 9 demonstrators and several wounded, including

^e New Light of Myanmar, 27 September 2007.

women on September 27.^f Many observers suggested that the real figure was several times higher. A diplomat in Myanmar, when interviewed by radio, said “several multiples of the ten acknowledged by the authorities” have been killed.

About 10,000 people demonstrated around Sule Pagoda, at the intersection of Sule Pagoda Road and Anawrahta Street. They were staging a peaceful sit-down protest in the intersection. At about 1.20 pm, they were reportedly fired upon with teargas and smoke grenades and beaten by security forces. Many people were found to be soaked with blood running away. Several rounds of gunfire were heard. The Japanese photojournalist, Kenji Nagai was shot dead at this intersection. The army reportedly fired upon demonstrators near Thingangyun Kyaikkasan Pagoda as well as at the Tamwe roundabout and Pansodan. Several allegations of killings were received. In front of Trader’s Hotel, 4 people were reportedly wounded from gunfire and one woman died on the spot after being shot.

According to various reports and testimonies, a particularly brutal incident occurred nearby the State High School No. 3 in Tamwe Township. One witness saw the crowd being ambushed by the security forces in front of the school. The army opened fire and drove a truck into the crowd, killing at least 2 people. The soldiers then stopped the truck and came out. They first shot in the air, then, at people. They did not make any announcements or warnings before they began shooting. One witness saw soldiers who shot one boy in the back when he was climbing the wall of the High School N° 3. One student, Maung Tun Lynn Kyaw, who died was reportedly shot in the head in cold blood in front of his mother. According to other sources, 5 or more people were killed. Many injuries and arrest were also reported during the incident. Several reports indicate that dead bodies were removed by the security forces. In the same area, one killing at the corner of Anawrahta and Pansodan streets was reported by an eyewitness. One young man was holding the fighting peacock flag and had an NLD Youth badge on his white shirt. He was reportedly shot in the head. There was only one shot and no soldiers in the immediate vicinity. Soldiers and police descended on several hotels in Yangon, including Traders, to check the IDs of foreign journalists. Internet and international phone lines were still open at these hotels. That night, further raids by security forces on monasteries were reported, and the surrounding areas were declared no-go zones. There were also raids on a number of residential areas and many arrests were reported.

28 September

The following day, the demonstrations had become much smaller, and were quickly broken up by security forces, with a number of further fatalities reported, and a large number of arrests. Among the fatalities, 3 more killings at the corner of Anawrahta and Pansodan were reported at around 2 pm. Eyewitnesses saw people being pushed back by trucks of military on Pansodan bridge and riot police charging and arresting a few people in front of the Traders Hotel.

^f New Light of Myanmar, 28 September 2007.

The main public internet link to the country was closed down, which significantly reduced the flow of media information coming from the country. The two internet service providers in the country are State-controlled. The only other internet access is by dedicated satellite links (such as those operated by foreign embassies, the United Nations, or multinational companies), as well as possibly a small number of data capable satellite phones. The same day, the State-run newspaper the New Light of Myanmar reported that more 5,700 people from Taungtha Township (Mandalay Division) staged a peaceful demonstration with the permission of the local authorities to protests against the demonstrations led by the monks.^g The following days, several ceremonies and demonstrations were organized by the Government to support the national convention and constitution.

29 September

When the Secretary-General's Special Envoy, Ibrahim Gambari arrived in Yangon in the afternoon, several demonstrators including some monks demonstrated in downtown Yangon. The demonstrations were mainly led by high school students. Troops fired warning shots. Demonstrators were reportedly cordoned off, beaten and arrested. Many escaped and staged demonstrations in other parts of downtown. A procession of 800 followed by civilians took place in Pakokku from 2 to 3.30 pm. At Kyaukpadaung, monks, nuns and civilians demonstrated peacefully. No significant incident was reported. Additional reports of killings were received, including a 40 year-old man named Pho Zaw and an 18 year-old man named Sunni Kalamalay.

^g New Light of Myanmar, 28 September 2007.