

U.N. Centre for Human Rights

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Dr U Ne Oo

November 25, 1996.

Mr Jose Ayala-Iasso
U.N. High Commissioner for Human Rights
c/- U.N. Centre for Human Rights
CH- 1211 Geneva 10
Switzerland

Dear High Commissioner:

Re: The United Nations General Assembly resolution on Myanmar in 1996.

I am a Burmese national presently residing in Australia and I call the High Commissioner for Human Rights' attention to the continuing serious violation of human rights and the lack of progress towards democracy in the State of Myanmar. In this connection, I enclose with this letter the statement made by the State Law and Order Restoration Council (SLORC) on 27 September 1988 regarding with assuming of state power. I also would like to refer to the Paragraph 30-33 of the interim report on the Situation of Human Rights in Myanmar, A/51/466, prepared by Judge Rajsoomer Lallah.

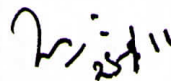
The military authorities promised in their statement on 27 September 1988 that SLORC will not to hold on to power for long period and will transfer the state power to democratically elected government. On contrary to that statement, the military authorities have refused to transfer power to the people's representatives after the election in 27 May 1990. As has been pointed out by Special Rapporteur in Para. 31 of his interim report, the present situation in Myanmar, particularly of the period following May-1990 election, no longer necessary for the military rule to be continued. I therefore request the High Commissioner for Human Rights to make measures to ensure the SLORC respect the result of May-1990 election and, also, to remove the illegitimate Myanmar's military government from the office.

Firstly, I request the High Commissioner to make measure to highlight the illegitimacy of SLORC in this year's U.N. General Assembly resolution. We notice that the previous years' U.N. General Assembly resolutions only include, among other measures, the paragraph urging the SLORC to respect the result of May-1990 election. I ask the High Commissioner for Human Rights to introduce a paragraph, in this years' U.N. General Assembly resolution, which explicitly states that the ruling of the State Law and Order Restoration Council after 27 May 1990 Election is un-constitutional and an illegitimate one; eventhough the SLORC has an effective control of the country. I believe that such measure by UN General Assembly will enhance the legitimacy of the democratic struggle in Burma.

Secondly, I request the High Commissioner for Human Rights to support creation of safety zone in Myanmar. As the High Commissioner may aware, the situation of Burma's refugees and displaced people has been a long-standing one which require an urgent solution. I ask the High Commissioner request the U.N. Security Council to convene a meeting on Burma in order to solve this serious human rights problem.

Finally, I thank the High Commissioner for your kind attention to Burma matters. I also wish to express my sincere thanks to the United Nations Human Rights Committee and, particularly, the Special Rapporteur, Judge Rajsoomer Lallah, for their continuing kind efforts made on Burma.

Yours respectfully and sincerely,



(U Ne Oo)

1. Dr Boutros Boutros-Ghali, U.N. Secretary-General, U.N. Secretariat, United Nations New York NY 10017, United States of America.
2. Ms Sadako Ogata, U.N. High Commissioner for Refugees, Case Postale 2500, CH-1211 Geneva 2-Depot, Switzerland.
3. Hon. Rajsoomer Lallah, Special Rapporteur for Human Rights in Myanmar, c/- U.N. Centre for Human Rights, CH - 1211 Geneva 10, Switzerland.
4. Hon Warren Christopher, United States Secretary of State, Main State Building, 2201 C Street NW, Washington D.C. 20520-7512, United States of America.

8-October 1996

Special Reporter's report to

UNGA-1996; A/51/466

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among themselves. All papers have to be scrutinized by the chairmen to scrutinize the contents and, if the statements are found not to comply with the established principles, the relevant parts are deleted; only then will the papers be read at the group meetings. When the proposed statements are to be read before the plenary, they have to be submitted again for scrutiny by the Work Committee. Moreover, it appears that delegates are not totally free to meet other delegates and to exchange their views freely inside the compound. They are reportedly not entitled to distribute leaflets, wear badges or bring any written or printed materials to the Convention without the prior approval of the National Committee.

D. Non-conformity of the legal framework with international norms

30. Article 21 of the Universal Declaration of Human Rights proclaims, in paragraph 1, that everyone has the right to take part in the government of his country, directly or through freely chosen representatives. It further proclaims, in paragraph 3, that the will of the people shall be the basis of the authority of government and that this will shall be expressed in periodic and genuine elections.

31. In essence, the assumption of all governmental powers by SLORC in 1988 constituted, as mentioned earlier, a break from constitutionality and legal continuity and further constituted a departure from the norms governing the enjoyment of political rights proclaimed in article 21 of the Universal Declaration. There could, arguably, have been some legitimacy in the assumption of power by SLORC, without the consent of the people, in circumstances which could be said to have amounted to a state of public emergency threatening the life of the nation. In any event, as its name indicates, an emergency is only temporary and cannot be said to last longer than a given situation requires. It is not uncommon, however, to have a civilian government managing a state of emergency, with the military playing an important

but still under the policy directions of the civil authorities. the case of Myanmar, general elections took place so that a civilian government was chosen as a result of the freely expressed will of the people. The will of the people has remained frustrated for a period which is now in excess of five years. The question arises, with growing urgency, as to whether any juridical legitimacy that could, arguably, have been derived from past acquiescence in the assumption of power by the Military Forces can any longer provide a defensible basis for the continued maintenance of a non-constitutional system based on the assumption of martial powers, having such an unfavourable impact on human rights in the context of generally accepted international norms and the obligations undertaken by Myanmar.

32. SLORC gave the explanation, in Declaration No. 1/1990, that the people's Assembly could not be convened until a constitution was drafted and that it was the responsibility of the elected representatives to draft the constitution. However, it has not been left to the People's Assembly, returned by the people, to draft the constitution and determine the principles on which it should be founded. Instead, a National Convention, consisting of delegates who in their overwhelming majority were not returned by the people, was devised some three years after the general elections of 1990. Two features of this Convention require to be mentioned. First, it was expressly mandated to adopt principles on the basis of which a democratic constitution would be drafted by the People's Assembly. Already, however, the mandate contained the principle that the Armed Forces would have a leading political role in the constitutional system. It is questionable whether this principle would be consistent with article 21 (3) of the Universal Declaration of Human Rights, which requires that the will of the people "shall be expressed in periodic and genuine elections" and that although the Armed Forces can be understood to be part of the State's services, it cannot be understood how they could be periodically elected. In any event, this principle could not be said to have been a political principle approved by the people in the general elections of 1990. Second, three more years have gone by since the National Convention started its work and from all accounts it would appear that detailed provisions are being worked out for a constitution and not merely general principles which could be considered by the People's Assembly in the drafting of the constitution.

33. With regard to the proceedings of the National Convention, the main criticisms which have been variously made have centred around, first, the composition of the delegates and the absence of genuine and proper representation of members returned at the general elections; second, the restrictions imposed upon the delegates and the restrictive procedures which are required to be followed; and third, the restricted opportunity for meaningful discussion, including the absence of free debate and exchange of ideas. These features do not appear to constitute the necessary steps towards the restoration of democracy so as to respect the will of the people as expressed in the democratic general elections held in 1990 and do not conform to the rights to freedom of thought and expression in accordance with international norms necessary for the exercise of political rights, especially when a constitution is being formulated.

E. Remedial measures for the re-establishment of constitutional order

34. Given the non-conformity of the present legal framework with international norms, coupled with steps taken over the past six years which have been adverse to the implementation of the democratically