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Human rights situations that require the Council's attention

Written statement* submitted by the Asian Forum for Human Rights and Development (FORUM-ASIA), a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Myanmar: Serious human rights challenges require the sustained attention of the Human Rights Council*

The Asian Forum for Human Rights and Development (FORUM-ASIA), in association with Human Rights Education Institute of Burma (HREIB), Burma Partnership, and the Alternative ASEAN Network on Burma (ALTSEAN-Burma), urges the United Nations Human Rights Council to remain seized of the serious and on-going human rights abuses occurring in Myanmar. In the past two years, the Myanmar government has undertaken several important steps towards democratic reforms, however, serious human rights violations have continued to take place in an environment of impunity where the rule of law and an independent and impartial justice system are still largely absent. Most pre-existing repressive legislations remain in place with several new laws providing a justification for more restrictions.

Gross human rights violations in ethnic nationality areas and discrimination against ethnic and religious minorities

The situation in Kachin State remains grave, with the Myanmar Army intensifying its offensive against the Kachin Independence Army (KIA) since December 2012 with the use of air strikes, artillery fire, and cluster bombs and the targeting of civilians.¹ The well documented gross and systematic human rights violations committed by the Myanmar Army against the Kachin people include sexual violence, torture, arbitrary arrest, and extrajudicial killings, and may amount to crimes against humanity. The crisis in Kachin State also seriously threatens to jeopardize preliminary ceasefire agreements reached with other ethnic opposition groups.

In Arakan State, outbreaks of communal violence between Rakhine Buddhists and Rohingya Muslims occurred from June to October 2012. According to official figures, 178 people were killed and 115,000 displaced in the unrest. Most of those displaced are Rohingya, who are segregated into squalid camps with insufficient food and lack of access to other basic needs. Although the violence has been perpetrated by both communities, the government has failed to take any meaningful steps towards constructively addressing the systemic discrimination against the Muslim population. The recent violence in Arakan State is inextricably linked to the decades-long discriminatory policies of the government towards Rohingya Muslims, including the withdrawal of citizenship under the 1982 Citizenship Law and severe restrictions on freedom of religion, movement, and marriage.

As stated by the Special Rapporteur on the situation of human rights in Myanmar, Mr. Tomas Ojea Quintana, in his report to the United Nations General Assembly (A/67/383), “any durable political solution must address the root causes of the conflict and the particular concerns of ethnic minority groups”.

* Human Rights Education Institute of Burma (HREIB), Burma Partnership, Alternative ASEAN Network on Burma (ALTSEAN-Burma), NGOs without consultative status, also share the views expressed in this statement.

¹ Burma Partnership, “Burma Must End Offensives and Dialogue with Ethnic Armed Groups for a National Political Settlement”, 14 January 2013, <http://www.burmapartnership.org/2013/01/8-14-january-burma-must-end-offensives-for-political-settlement>.

Suppression of freedoms of expression, peaceful assembly and association

The government of Myanmar continues to arbitrarily arrest and imprison activists.² Although the government on 28 January 2013 repealed Order 2/88 which banned public gatherings of more than four people, the Peaceful Assembly and Peaceful Procession Law in December 2011 prohibits public gatherings without official permission. Recently, peaceful dissent has been criminalized through the use of Section 18 of the Peaceful Assembly and Peaceful Procession Law and Section 505(b) of the Penal Code.³

Resistance and dissent is growing among communities facing land grabbing, which is endemic in the country. In November 2012, riot police attacked civilians protesting the Letpadaung copper mine with water cannons and white phosphorus grenades resulting in severe injuries to at least 70 activists and monks.⁴

Consultations with civil society on the proposed law to regulate the registration of NGOs have been extremely limited. The proposed law, in addition to the existing Unlawful Association Act and the Law Relating to Forming of Organizations, could increase restrictions on civil society activities.

Political prisoners

Despite the much-publicized release of over 700 political prisoners since 2011, 222 known political prisoners remain behind bars.⁵ While the government announced the establishment of a Political Prisoner Verification Committee, the committee's precise powers, composition, and budget have not been disclosed.

Absence of independent investigations and accountability mechanisms

As noted by the Special Rapporteur in his report to the United Nations General Assembly (A/67/383), it is crucial that the government of Myanmar ensure that truth, justice, and accountability remain part of the reform agenda. To this end, there is an urgent need for independent, transparent, impartial, and credible investigations into allegations of violations of international humanitarian and human rights law. The Myanmar National Human Rights Commission (MNHRC) lacks the legitimacy to do so, due to its questionable independence and effectiveness as well as its non-compliance with the Paris Principles. Current efforts to draft new legislation to re-establish the MNHRC to ensure better compliance with the Paris Principles has involved very limited and selective consultation with civil society. The MNHRC has also failed its mandate through its ineffective complaints-handling mechanism, among others. During the recent fact-finding mission by FORUM-ASIA to Yangon, an NGO claimed that it had submitted over 800 complaints to the MNHRC, out of which only 15 were responded to.⁶

² ALTSEAN-Burma, "Burma Bulletin, Issue 73", January 2013, <http://www.altsean.org/Reports/Burma%20Bulletin/BBJanuary13.php>.

³ Burma Partnership, "Burma Continues to Repress Critical Voices", 20 January 2013, <http://www.burmapartnership.org/2013/01/burma-continues-to-repress-critical-voices>.

⁴ Assistance Association for Political Prisoners - Burma (AAPP-B), List of monks and activists who received medical attention in hospitals as a result of the violent crackdown of the Letpadaung protests, http://www.aappb.org/Injure_List_of_brutally_crack_down_in_Latt_Pa_Daung_Mountain_Copper_Mine.pdf.

⁵ AAPP-B, List of Political Prisoners whose whereabouts are verified, 8 January 2013, <http://www.aappb.org>.

⁶ FORUM-ASIA, "Burma: Continued Violations of Fundamental Freedoms and New Forms of Control Expose the Empty Façade of Reforms", 5 November 2012, <http://www.forum-asia.org/?p=15543>.

In light of these, FORUM-ASIA, together with HREIB, Burma Partnership and ALTSEAN-Burma, make the following urgent calls to the government of Myanmar:

1. On gross human rights violations in ethnic nationality areas and discrimination against ethnic and religious minorities
 - Immediately cease violations of international humanitarian and human rights law against ethnic minority civilians in conflict and ceasefire areas, particularly the widespread rape of ethnic women by the Myanmar Army;
 - Allow and facilitate full, unrestricted, and safe delivery of humanitarian assistance to all persons in need throughout the country;
 - Allow and facilitate access by the United Nations and other independent humanitarian organizations to non-State armed groups to facilitate the negotiation of action plans, to monitor and verify reports of child recruitment and use, and to ensure the safe release and reintegration of children affected;
 - End all forms of discrimination in law and in practice against ethnic and religious minorities, including by repealing the 1982 Citizenship Law; and
 - Enter into a political dialogue that fully engages the democratic opposition, representatives of all ethnic opposition groups, and civil society actors.
2. On the suppression of fundamental freedoms:
 - Review all legislation, including the 2008 Constitution and those laws specifically identified by the Special Rapporteur on the situation of human rights in Myanmar, in line with international human rights norms and standards;
 - Cease all forms of intimidation, including arbitrary detention and judicial harassment of human rights defenders, as well as restrictions and charges against peaceful protesters;
 - Repeal the 1908 Unlawful Associations Act and the 1988 Law Relating to Forming of Organizations, and ensure that the recently-proposed NGO registration law does not further restrict the right to freedom of association while ensuring the meaningful representation and participation by the democratic opposition, civil society, and ethnic nationalities in the drafting process; and
 - Ratify and effectively implement core human rights treaties and their optional protocols.
3. On the rights of political prisoners:
 - Release immediately and unconditionally all political prisoners, including those charged and sentenced under the Unlawful Associations Act;
 - Ensure that the Political Prisoner Verification Committee is comprised of independent experts and representatives of civil society to guarantee its independence, impartiality, and expertise to investigate, verify, and identify individuals currently imprisoned on politically-motivated charges; and
 - Immediately end torture and other ill-treatment and punishment during interrogation and in prisons.
4. On ensuring truth, justice, and accountability:
 - Undertake judicial reforms to ensure the independence, impartiality, and accountability of the judiciary, lawyers, and prosecutors;

- Conduct credible and independent investigations into allegations of past violations of human rights in the country;
- Ensure that the proposed law to re-establish the MNHRC fully complies with the Paris Principles and that the drafting process includes meaningful participation by the democratic opposition, civil society, and ethnic nationalities; and
- Agree to the establishment of an OHCHR office in Myanmar with a full mandate of human rights protection and promotion as well as unhindered access throughout the country.

FORUM-ASIA, together with HREIB, Burma Partnership, and ALTSEAN-Burma, further call on the Human Rights Council to:

- Maintain the resolution on the situation of human rights in Myanmar under agenda item 4, “human rights situations that require the Council’s attention”, and renew the mandate of the Special Rapporteur in this regard;
 - While encouraging positive developments, continue to highlight in the resolution ongoing human rights challenges existing in Burma/Myanmar, while outlining expectations for substantive and far-reaching reforms; and
 - Support the establishment of an OHCHR office in Myanmar with a full mandate of human rights protection and promotion as well as unhindered access throughout the country, and urge the government of Myanmar to sign the host country agreement to formalize their commitment.
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