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Human rights situations that require the Council's attention

Written statement* submitted by Amnesty International, 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.

[17 February 2012]

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

The serious human rights situation in Myanmar requires the Human Rights Council's continued attention

Over the past year, Myanmar's human rights situation has improved notably in some respects but has significantly worsened in others. Freedoms of assembly and expression remain restricted; there still are hundreds of political prisoners and many prisoners of conscience. In several ethnic minority areas the army continues to commit violations of international human rights and humanitarian law against civilians, including acts that may constitute crimes against humanity or war crimes.

Atrocities against ethnic minority civilians

Amnesty International continues to receive credible reports of crimes against humanity by the security forces against ethnic minority civilians in eastern Myanmar. Many of these reported crimes are taking place despite ceasefire agreements between the Myanmar army and the relevant ethnic minority armed groups; in some cases the ceasefire is not being obeyed, while in others serious human rights violations continue even when the fighting has stopped.

In several ethnic minority areas, including in parts of Kayin, Kachin and Shan States where conflict reignited or intensified in 2010 and 2011, the Myanmar army continues to commit widespread and systematic human rights violations against civilians.

Civilians have been a target of the Myanmar army. From Kayin (Karen) State (and bordering parts of Bago and Tanintharyi Regions), there have been credible accounts of the army using prison convicts as porters, forcing them to act as human shields and mine-sweepers. In Kachin State, where at least 55,000 people have been internally displaced since fighting resumed in mid-2011, sources report extrajudicial executions, children killed by shelling and other indiscriminate attacks, forced labour, and unlawful confiscation of food and property. Ethnic Shan civilians recount stories of torture, arbitrary detention and forced relocation.

Human rights violations are not confined to the conflict zones, as evidenced by reports of forced labour on a large scale in Chin and Rakhine States (usually targeting the Rohingya ethnic minority in the latter).

The need for accountability

Impunity for human rights violations continues to prevail, in particular in ethnic minority areas. Widespread and systematic attacks on civilians in eastern Myanmar have been carried out with virtual impunity. In May 2011, the Special Rapporteur on the situation of human rights in Myanmar referred to evidence that the armed forces continue to commit serious and systematic violations there with impunity.¹

Myanmar's civilian government has not taken any meaningful steps toward holding suspected perpetrators of human rights violations accountable. Investigation and prosecution of human rights violations and crimes against humanity are obstructed by Article 445 of the 2008 Constitution, which stipulates that "no proceeding" may be instituted against officials of the military governments since 1988 "in respect of any act done in the execution of their respective duties". In light of the lack of commitment to

¹ See statement by Tomás Ojea Quintana, 23 May 2011, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11046&LangID=E>

ending impunity, in the face of repeated calls from the Human Rights Council and the General Assembly to end impunity, the UN should seriously consider the establishment of an international commission of inquiry.

In an early February statement, Mr. Ojea Quintana stressed that moving forward on Myanmar cannot ignore or whitewash what happened in the past, and that acknowledging the violations suffered will be necessary to ensure national reconciliation and prevent future violations from occurring.²

Systemic discrimination against ethnic minorities

Much more needs to be done to bring an end to the systemic discrimination against ethnic minorities.

Ethnic minorities make up approximately 35-40% of the country's population, including people of Chinese and Indian ethnicities. According to the government, there are at least 135 different ethnic nationalities in Myanmar, but the exact number is difficult to determine conclusively. There is clear evidence that Myanmar's authorities often target members of ethnic minorities on discriminatory grounds, such as religion or ethnicity, or seek to crush their opposition to major development projects that adversely affect their lands and livelihoods. The Myanmar government often suppresses social organizations, including groups focused around religion or ethnic identity that are outside its authority and control. Some minorities' ethnic identity in Myanmar is closely related to their association with a religion other than the majority Buddhism; this generally means Islam for most Rohingya, and Christianity for many Chin, Kachin, and Karen.

The Rohingya ethnic minority are particularly exposed to human rights violations, as they are singled out in practice and law, with discrimination against them codified. Under the 1982 Citizenship Law, they are denied citizenship and thus are de facto and de jure stateless.

The continued repression of political opponents and activists among ethnic minorities contradicts the Myanmar government's reform efforts to date toward increasing the level of political participation in the country. All political opposition groups—including those founded by ethnic minorities—must be able to participate meaningfully in Myanmar's political system. Ethnic minorities among the government's political opponents work towards similar aims as their ethnic majority Burman counterparts in the country's urban centres and central regions.³

The international community must improve its understanding of the aspirations of Myanmar's ethnic minorities generally and give greater attention to addressing the needs of these minorities in discussions of the country's human rights situation.

Prison conditions

Prison conditions fall far short of international standards. Food, water and medical care are insufficient; many political prisoners are held distant from their families; and many are subjected to torture and other ill-treatment or punishment. Prolonged solitary confinement is common, including in dark cells or military dog cells.

² Statement by Tomas Ojea Quintana, Special Rapporteur on the Situation of Human Rights in Myanmar, following his visit to Myanmar, 5 February 2012; available here: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11800&LangID=E>

³ Amnesty International report, "The repression of ethnic minorities in Myanmar", 2010.

Political prisoners and prisoners of conscience

Political prisoners in Myanmar are regularly charged under vaguely worded laws, usually relating to security or public order concerns, which allow excessively broad interpretation by the authorities.

Four prisoner amnesties have taken place since the current government was elected. In May 2011, the new government reduced by one year the sentences of all prisoners and commuted all death sentences to life imprisonment, resulting in the release of at least 73 political prisoners. In October 2011, the government released at least 241 political prisoners as part of a general amnesty. On 3 January 2012, all prison terms were reduced by various amounts depending on their length with the exception of life sentences; all death sentences were commuted to life imprisonment. At least 34 political prisoners were released. On 13 January 2012, the government released at least 300 political prisoners, including many former student and ethnic minority leaders, pursuant to a larger amnesty.

There is significant disagreement between the government and some opposition and civil society groups over the number of political prisoners in Myanmar. Amnesty International has recommended to the Myanmar authorities that they seek UN assistance in convening a panel that should include among others the National League for Democracy (NLD) to reconcile differences in numbers and definitions.

Although at least 648 political prisoners have been released, hundreds remain in detention. Many are prisoners of conscience. While the release of prisoners to date is a major step, all prisoners of conscience must be released immediately and unconditionally and all political prisoners released or charged with an internationally recognizable criminal offence and tried in full conformity with international standards for fair trial.

The government of Myanmar continues to present an overly rosy picture to the world. During Universal Periodic Review (UPR) of Myanmar in January 2011, the government denied imprisoning anyone for political reasons and stated that the Rohingya ethnic minority were “illegal immigrants”. Although the constitution effectively protects state officials from prosecution for past violations, the government maintained that it provides accountability for wrongdoers. On the adoption of the UPR outcome in June 2011, it rejected a wide range of recommendations, including “to immediately halt all violations of international human rights and humanitarian law by the security forces”, and to investigate and punish such violations. The situation in Myanmar requires the HRC’s continued attention.

Recommendations

Amnesty International urges the HRC to:

- Support the establishment of an international commission of inquiry with a specific fact-finding mandate to address the question of international crimes in Myanmar;
- Renew the mandate of the Special Rapporteur on the situation of human rights in Myanmar for a three year term.

Amnesty International also urges the HRC to call on the government of Myanmar to:

- Immediately cease violations of international human rights and humanitarian law against ethnic minority civilians, both in conflict and ceasefire areas;
- Hold perpetrators of human rights violations accountable;
- Release immediately and unconditionally all prisoners of conscience, including Khun Kawrio and Ko Aye Aung, and release political prisoners or charge them with

an internationally recognizable criminal offence and try them in full conformity with international standards for fair trial;

- Seek assistance from the United Nations in convening a panel to reconcile differences in numbers and definitions of political prisoners;
 - In full consultation with the UN and Myanmar civil society, amend or repeal laws used to stifle peaceful political expression, and reform the justice system;
 - End immediately torture and other ill-treatment and punishment during interrogation and in prisons;
 - Bring prison conditions in line with international standards;
 - Cooperate fully with UN human rights treaty bodies and Special Procedures, including the Special Rapporteur on Myanmar;
 - Ratify and effectively implement core UN human rights treaties and their optional protocols and the Rome Statute of the International Criminal Court.
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