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Human rights situations that require the Council's attention

### **Written statement\* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status**

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

[10 May 2013]

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

## Myanmar: Official report on Rakhine State conflict gravely flawed

1. Following the communal violence that wracked the western parts of Myanmar near the border of Bangladesh in 2012, the country's president established a commission of inquiry comprising of retired public servants, religious figures, politicians, academics and members of civil society. The commission handed down its findings on 22 April 2013. Despite high expectations, the 119-page report is gravely flawed. Although it contains a few useful recommendations and observations, to which the Special Rapporteur on human rights in Myanmar alluded in a press release of 1 May 2013, the commission's positive contributions are outweighed by a range of omissions and misrepresentations and by an us-versus-them mentality that pervades the document.

2. The government of Myanmar will now use this report to justify interventions that are liable to contribute to ongoing human rights violations in Rakhine State. The contents of the report also have a direct bearing on the work of international agencies in the region. Therefore, the following are some features of the report of which the Asian Legal Resource Centre wishes to alert the Human Rights Council.

3. National security mindset: The report is throughout concerned with two aspects of the conflict: first, national security; and second, the identification and removal of foreigners. Despite its authors' pretensions to objectivity, it is in fact occupied with the taking of sides, and the correcting of the public record in favour of "Rakhine nationals" against "Bengalis". This side taking is juxtaposed with a different story being told by official statistics cited, which suggest that those persons designated Bengalis have suffered disproportionately (i.e. as of November 2012, 3500 Rakhines displaced by the violence and destruction of towns and villages, as against 103,000 Bengalis; para. 6.6). Although the report's authors at various points mention that security operations need to have regard for international standards, these references appear more as afterthoughts rather than serious considerations. Indeed, the expressed main concern of the authors with regards to the international community lies with damage to Myanmar's national prestige due to negative reporting of the violence (part 5.5). Thus, the authors hold contradictory positions, for example, on the one hand calling for observance of international standards, on the other demanding the firm enforcement of the 1982 Citizenship Law (para. 12.19), which is inconsistent with international standards, and which the Special Rapporteur has called on the government of Myanmar to amend (Press statement, 16 February 2013).

4. Blaming victims and international organisations:

- The report implicitly or explicitly blames persons designated Bengalis for the violence not only that they perpetrated but also that they suffered. The blame comes in a variety of forms, sometimes generally, that the affected persons cannot speak Burmese and refuse to assimilate; and sometimes specifically, such as that police twice warned 10 Muslims killed while travelling by bus on 3 June 2012 that the situation ahead was not good and they or the vehicle in which they were travelling ought not proceed (para. 3.2.1).
- The report also blames corrupt local administrative and security services for the ability of Bengalis to obtain Myanmar nationality illegally (para. 4.14). It implies that some members of parliament themselves obtained citizenship illegally because of the corruption of underlings. According to recent domestic news reports, the immigration minister—formerly the police chief under the military government, and a man notorious for fabricating stories of conspiracies and criminality—has already ordered investigations into some MPs.

- In part 11, the report also blames international agencies for communal tensions. A range of specific allegations follow, some of which are pertinent but many of which are irrelevant, and some absurd. They include that international groups are biased in employment and other respects towards Bengalis and helped some obtain citizenship; that Bengali employees abused Rakhine employees; that Rakhine employees lost their jobs for innocently using a derogatory term for people of South Asian descent; that the office of the UN High Commissioner for Refugees had an agenda to create a new hybrid race of Rakhine-Bengalis (para. 11.3); and, that the UNHCR allowed Muslims to use a room in its office as a prayer room (para. 11.4). The report also quotes local people as asking why international agencies re-employed Bengalis who had been imprisoned for instigating the violence and who obtained clemency from the president under pressure from the same agencies (para. 11.4), ignoring that the arrest and imprisonment of these persons was conducted unfairly, and overlooking the non-independent and politicized character of the Myanmar judicial system, on which the ALRC has submitted numerous statements and reports to the Council over the last decade.
5. Failure to account for militarization:
- The report selectively examines causes of the conflict, attributing some to outdated notions of primordial conflict, as well as, more saliently, distrusts arising from prior violence in modern times. Curiously absent from explanations is half-a-century of military dictatorship. The report omits from its discussion of causes the massive and repeated human rights abuses committed by the military against populations in the west. Paragraph 2.7.2 describes the 1978 Nagamin Operation as if it were a simple policing operation, rather than a systematic programme to force hundreds of thousands of people to flee their homes through use of terror; and does not discuss a repeat operation in 1990-91, contributing to further violence in 1994, to which it does allude (para. 2.8.4). The report again places blame on the victims of the state-sponsored violence for destruction of villages, suggesting that the operation went smoothly elsewhere in the country and only in Rakhine State did conflict ensue (para. 2.7.1); a false statement, since human rights groups in Thailand in the 1990s documented how the programme also was used to perpetrate gross levels of violence on minority communities in the east of the country.
  - The report also fails to identify as a cause the strategies of military forces to generate violence from within communities, through the activities of ambiguous groups and individuals like the Swanarshin gangs of the 2000s. At a number of points it discusses briefly the 969 group calling for Buddhists to boycott Muslim stores, and its attempts to create a segregated society (para. 5.4.9). The group has been directly implicated in more recent violence in central Myanmar during this year. Although expressing concern about the group and its activities, the investigative commission fails to dig deeper, and probe the origins of the group and its participants, some of whom, according to sources of the ALRC, were formerly members of Swanarshin. The group also appears to have a capacity, at least at a local level, to coordinate in a manner that suggests a reasonably high level of planning and design.
  - Militarization has also inculcated deeply chauvinistic mentalities among some segments of the population that will take a long time to pass out of society; however, the consequences of such mentalities pass unacknowledged in the report, except insofar as they concern Muslims. The 969 group, for instance, uses the idiom of military propaganda about patriotism, love of race and religion; employing devices to attract attention and promote its cause that have clearly been learned from decades of military rule in which people have been encouraged to think about their society in terms of enemies. Again the report fails to acknowledge the implications of these

mentalities on the long-term health of the society. It does include a section on the psychological effects of the conflict, but it fails to take into account the larger milieu. It also fails to raise important questions about the primary education system, which bears responsibility for the violence, given that it has for decades promoted a vision of society that is normatively Burman and Buddhist. While calling for the reopening of schools and introduction of civic education, questions about syllabi and pedagogy are left off the table.

6. Misrepresentations of facts: The report contains numerous statements of opinion that are passed off as though they deserve to be treated factually. It also dabbles in ancient history on which no agreement exists and regarding which any attempt to establish “facts” is only bound to lead to more disputes. It contains serious misrepresentations of recent events. For instance, according to paragraph 11.4, on 8 June 2012 the UNHCR office in Maungdaw refused temporary refuge from violence to ethnic Rakhines while harbouring a Bengali leader who was alleged to have instigated conflict. The allegation is attributed to persons with whom the commissioners spoke, but the material is presented in a manner as to make it seem credible. It refers, evidently, to the case of Dr Tun Aung. The Special Rapporteur has drawn the Council’s attention to this case (A/HRC/22/58, 6 March 2013, para. 57, Annex). According to information obtained by the ALRC, Dr Tun Aung was at the office because members of his family working for the UN had been evacuated to the premises along with more than 157 agency staff plus their relatives. Furthermore, more than 300 Rakhines from neighbouring villages took refuge at the UNHCR office at 3 Mile on the same afternoon. The UNHCR provided these people with food, water, bedding and shelter inside the compound until police transferred them to a school compound the following morning.

7. Given that investigative commissions are a new innovation for Myanmar in a period of political change following decades of direct military rule, it is to be expected that the commission in its work and findings might fall short of counterparts in states with more experience in the management of such agencies. However, it is deeply regrettable that not only has the commission fallen short, it has also written a report that in parts seems to miss the point inadvertently but in other parts seems to misrepresent facts and demonstrate bias deliberately.

8. Accordingly, the Asian Legal Resource Centre

- Deplores the national security mindset of the report, its narrow insistence on enforcement of existing domestic law; and, its placing of blame for the violence on victims and international agencies.
- Draws attention to the failure of the report to deal with key causal aspects of the violence associated with militarization and chauvinism, and downplay other features of state responsibility or complicity.
- Urges the government of Myanmar that it not take up recommendations of the report which will encourage further militarization of the Rakhine State and further division between the affected communities; and, that it discuss with international agencies plans for operations aimed at alleged foreigners in the country’s west.
- Demands the immediate release from prison of Dr Tun Aung. It takes this opportunity to note that not only has no progress been made on calls for his release by the Special Rapporteur, but that the public prosecutor has appealed for enhancement of the sentences against him, and furthermore has lodged new charges against him. To date, Tun Aung has not had a lawyer to represent him and has been unable to call witnesses for his defence, and the manner of his trial has been conducted contrary to international standards.

- Calls for United Nations agencies to respond in detail to the egregious allegations made against them by the commission.
  - Supports the calls of the Special Rapporteur on human rights in Myanmar for the amendment (or revocation) of the 1982 Citizenship Law, and for further investigations of human rights violations in Rakhine State with support of the Office of the High Commissioner for Human Rights (A/HRC/22/58, para. 49).
  - Encourages voices of reason among civil society, the media and religious groups in Myanmar to speak out bravely against those aspects of the report that are inaccurate and that encourage rather than diminish violence, since only through strong rebuttal of the report's national security mentality will it be possible for people in Myanmar to obtain the security that they need in which to inculcate ideas and practices that will encourage toleration rather than conflict in the future.
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