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Human rights situations that require the Council's attention

Written statement* submitted by Human Rights Now, 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).

Overseas aid and investment to Myanmar without principles inhibits democratization and conflict resolution, accelerating human rights violations against ethnic minorities*

1. Background

Since Daw Aung San Suu Kyi's release in 2010, the human rights situation in Myanmar has been changing day by day. Nevertheless, grave concerns remain over the human rights situation in Myanmar, especially in ethnic minority areas. This is in tandem with the increasing trend in Western countries and Japan of increasing investments and official assistance.

We express its serious concern that increased investments could accelerate human rights violations and make it difficult to solve the root causes of conflicts in Myanmar.

2. Human rights violations in Myanmar remain serious. Oppressive laws contradicting international human rights standards remain in force, and there are no legal safeguards to prevent authorities from committing human rights violations. Under restrictive laws such as the 1962 Printers and Publishers Registration Law, freedom of expression and political activities cannot be guaranteed.

More significantly, fighting has been continuing in areas such as Kachin and Northern Shan states, where grave human rights violations by the Myanmar military have been reported. One recent report noted an air attack by the military in Laiza, Kachin, in January 2013, killing at least three civilians and wounding six. Even in some areas where ceasefire agreements have been concluded, such as in Karen and Shan states, armed conflict has continued.¹

3. Since the Myanmar government prioritizes ceasefire agreements over inclusive peace agreements which guarantee the rights of ethnic minorities, ethnic minorities receive no concrete rights after ceasefires. In many regions where ceasefires have been adopted, the National Army is continuously and increasingly occupying instead of withdrawing. In such areas, the minorities are placed in an even more vulnerable position and are persecuted ever more severely, even after the ceasefire. There are many claims that ethnic minorities are pressed into forced labour for the National Army after ceasefires.

Moreover, it is reported that under the name of "development," ethnic minorities have been deprived of their resources and lands, thus losing the foundations for their way of life. Such incidents are reported throughout Myanmar, where the development of mines and ports have accelerated mainly at the hands of the army, with residents living in planned development areas forced to relocate and lose their way of life without any compensation.²

According to Article 37 of Myanmar's 2008 Constitution, all land in Myanmar is owned by the state, and the rights to land are not given to those who have cultivated it; thus, residents are very vulnerable to land usurpation. The Agricultural Land Law enforced on March 30, 2012, states that persons over 18 years old who have been continuously engaged in agriculture could acquire "the agriculture right" to land for cultivation, and a registration

* The Burma Lawyers' Council, an NGO without consultative status, also shares the views expressed in this statement

¹ <http://hrn.or.jp/eng/activity/area/burma/statementstatement-on-human-rights-violations-in-burma-myanmar-amidst-air-strikes-on-the-people-of-k/> <http://hrn.or.jp/eng/activity/Burma%20statement20120713.pdf>.

² Human Rights Now Investigation in 2012, About Shan People: <http://www.shanhumanrights.org/>.

system was founded to support it. However, such a legal system has not been fully announced to most farmers, and it is extremely difficult to actually acquire "the agriculture right". Thus, the law has not become a safeguard to protect people's farmland. Furthermore, an appropriate standard for compensation for land expropriation has not been established, nor a fair judicial system maintained to legally solve disputes about land.

4. If foreign investment and development, mainly by Japan and Western countries, increase in the current situation, where the National Army is expanding its grip on ethnic minority regions and the rights of ethnic minorities are not guaranteed, then human rights violations under the name of "development" will only be accelerated. This makes it difficult to facilitate a peaceful resolution of conflicts with guarantees of ethnic minorities' rights, even undermining the entire peaceful conflict resolution process.

For these regional developments, it is necessary that local residents be allowed to participate in decision-making processes; that prior consultation with residents and their free, prior, and informed consent be established as a prerequisite for development; that they have access to courts in cases of disputes and effective legal remedies in cases of losses; and that social and environmental impact assessments are conducted to prevent negative human rights and environmental consequences. None of these mechanisms have been effectively established in Myanmar.

Furthermore, it cannot be said that effective monitoring mechanisms for development projects have been established in donor states, leading to a lack of transparency in the implementation of support. In particular, it is expected that the agricultural sector will be most severely affected, affecting the many ethnic minorities in Myanmar engaged in it.

5. Looking at past developments in Myanmar, major extraction projects for natural resources have taken away the precious resources of people in the ethnic minority areas with the deeply unjust result that the local population never sees any benefits, while extractors and their clients are significantly enriched, even at the expense of serious environmental harms and human rights abuses offloaded onto the local population. The occurrence of serious human rights violations in the course of such development was unfortunately an all too common situation, with violations such as land seizures, forced relocations to impoverished areas, forced labor, torture, rapes, and killings.³ Multinational corporations like Unocal engaging in such development while knowing about such abuses by the military were strongly criticized by the human rights community as accomplices to human rights violations, and asked to bear legal responsibility. Whether the situation has truly improved in the recent opening of Myanmar must be carefully examined based on a clear index of established international human rights standards.

6. If the future financial development of Myanmar accelerates with support and investment from overseas under the current situation where ethnic minorities rights are not guaranteed and legal protections are not provided to prevent a repeat of abuses and environmental destruction, then there is a serious risk that the human rights situation of people in Myanmar will worsen, the environment will suffer, and disputes will proliferate.

Respect for human rights is at the foundation of the Western and Japanese aid principles. For multinational corporations, due diligence obligations have been established to not be complicit with human rights violations, under principles of the United Nations *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*.

³ See Unocal Case <http://www.earthrights.org/legal/doe-v-unocal-case-history>.

We demand that governments and multinational corporations concerned with financial aid and the development of Myanmar consider and respect the human rights of local people, especially of ethnic minorities, based on established human rights principles as a prerequisite to their support. Governments, supporting institutions, and companies must carefully reconsider projects that risk infringing the human rights of ethnic minorities and local populations, and they should halt projects as long as risks remain.

7. The following should be prerequisites for the implementation of projects:
 - Comprehensive agreement between ethnic minorities and the army;
 - Mechanisms which enables local residents to participate in decision-making; prior consultation with residents; and free, prior, and informed consent of residents to projects which may affect their rights or livelihoods;
 - The implementation of prior social and environmental impact assessments on the negative impacts of projects on human rights and the environment;
 - The foundation of effective monitoring mechanisms to monitor human rights violence, environmental damage, and the proper implementation of support;
 - Access of affected populations to fair and effective legal dispute resolution mechanisms and legal remedies to resolve disputes;
 - The establishment of safeguard policies for local residents to not be victimized by development, especially major projects such as dam construction; large-scale development projects involving natural resource extraction of natural gas, oil, mines, timber, and other resources; and infrastructure construction projects. Human Rights Now requests special attention be paid to these types of projects since they have a high potential to cause serious human rights violations;
8. Considering that the human rights situation in Myanmar is still serious, we request that the Human Rights Council continue its mandate on this matter under Agenda Item 4.