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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 organisation with 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.

[18 February 2009]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).
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Myanmar: Non-application of law and the cases arising from September 2007 in Myanmar

1. For a number of years that the Asian Legal Resource Centre (ALRC) has worked closely and consistently on the situation of human rights in Myanmar it has stressed the need for international organisations and others concerned with the situation there to concentrate their attention on the features of and defects in the criminal justice system as a means to better understand the mechanisms both for persistent authoritarian control of the state there and to deny redress for abuses of fundamental rights.

2. Since the massive September 2007 monk-led demonstrations, the ALRC has documented numerous cases brought against persons accused of involvement in the protests that together again underline the telling need for this approach to the situation of human rights in Myanmar. Just a few of the violations of provisions of Myanmar domestic law, to say nothing of international law, and comments upon their ramifications for the judicial system in Myanmar as a whole, follow:

a. Coerced signing of confessions and “pledges” that had no basis in law

Persons in civilian clothes waylaid Khin Sanda Win, 23, on 29 September 2007 outside the Pansodan Department Store in Kyauktada Township, Yangon, tied her hands behind her back and took her to the town hall where she was put together with ten men who were unknown to her and then they were each photographed with various weapons, including knives, slingshots and pellets. Then they were allegedly forced to sign confessions that the weapons had been found in their bags. Khin Sanda Win was sent to the special interrogation centre at Kyaikkasan and she was kept there without charge, warrant or otherwise until October 7, when she was transferred to the central prison and held there, again without charge, warrant or any other legal order until October 25, when she was sent to the Hlaing Township Peace and Development Council office where in the presence of the council chairman and her parents she was told to sign a pledge that she would not take part in any anti-state activities, after which she was released. According to state news reports, thousands of people were given similar pledges and released in this period. But on 1 November 2007 two police officers came to Khin Sanda Win’s house and informed her that she would be charged with having illegal arms. When Khin Sanda Win went to court the next day, the charge that the court put against her was not as the police had indicated but instead acting “to endanger human life or the personal safety of others” under sections 336/511 of the Penal Code (charge brought by Inspector Soe Naing, Kyauktada Police Station, Serial No. La/147569). When her lawyer applied for bail, the amount set was vastly in excess of the legal maximum, and thereafter Assistant Judge U Thaung Lwin (First Class) (Kyauktada Township Court) unilaterally revoked bail without giving a reason. Appeals to higher-level courts were unsuccessful.

b. Illegal arrest and arbitrary detention in violation of section 59 of the Criminal Procedure Code (CrPC) of Myanmar, which requires a detainee to be taken to a police station and section 61, which requires a detainee to be brought before a magistrate within 24 hours

U Ohn Than, 60, on 23 August 2007 went by himself to the front of the then-Embassy of the United States of America in Kyauktada, Yangon and held a placard with a series of points written on each side. On one, he called among other things for the UN Secretary General to intervene and support the people's will for the restoring of parliament in Myanmar. On the other, he called on soldiers to uphold the armed forces' dignity and defy the orders of their superiors in order to bring an end to dictatorship. Like other protestors, Ohn Than was not arrested according to any law. After being bundled away in a vehicle by men in plain clothes who did not identify themselves to him, he was taken to the Kyaikkasan special military interrogation camp rather than a police station where he was kept incognito for 160 days until the end of January 2008 when his case was finally brought into a court (by brought by Inspector Soe Naing, Kyauktada Township Police, Serial No. La/147569). Like others, he was not tried in an open court but in a special closed court. Judge U Kyaw Swe (Deputy District Judge No. 3, Yangon Western District Court [Special Court], Judge No. Ta/1867) on 2 April 2008 found him guilty of violating section 124A of the Penal Code on the basis that standing alone at a busy place in front of a foreign embassy with a placard amounted to an act of sedition, and sentenced him to life imprisonment.

c. Closed trials in violation of section 2(e) of the Judiciary Law 2000 and section 352 of the CrPC, and denial of the right to appeal against maltreatment of court

Ko Htun Htun Oo, Ko Maung Maung Latt and Ko Aung Kyaw Moe, and Ma Htar Htar Thet, had four cases pending before Judge Daw Aye Myaing of the Hlaing Township Court, Yangon, at a special courtroom within the Insein Central Prison, under an order from the Supreme Court on 3 October 2008 when their family members were not allowed to enter the courtroom nor leave food for them. Thereafter, at the hearing on October 6, Ko Htun Htun Oo, speaking on behalf of the four defendants, informed the court that as the family members had been denied the right to attend the hearings and as the defendants "no longer had faith in the judicial process" they had decided that they would no longer cooperate with the court. They would refuse to be examined, give testimony, or cross-examine witnesses through their counsel. They also would withdraw the power of attorney from the two lawyers at the next hearing. After he made this statement, the judge instructed that the same be put to the court through the lawyers. When this was subsequently done, the lawyers themselves were accused of contempt of court and imprisoned (their case is taken up in a separate submission of the ALRC to the Human Rights Council).

d. Denial of the right to a lawyer and the right to make a proper defence under section 340 of the CrPC and section 2(f) of the Judiciary Law 2000 as well as denial of the right to present witnesses

Police arrested 34-year-old Ko Thiha on the night of 7 September 2007 south of Mandalay, near the town of Wundwin, over some allegedly inflammatory publications. They brought him to the Mandalay District Court (although by law it should have been initiated in the local township court) and charged him with sedition and upsetting public tranquility under sections 124A/505(b) of the Penal Code (charges brought by Police Captain Win Myint, Special Branch). The trial was held at a special court inside the Mandalay Prison. Thiha did not have a lawyer to represent him, even though he was facing a life sentence. He was not able to call any witnesses or defend himself in court. Meanwhile, the witnesses that the police called were not the ones present when Thiha was actually arrested. The police did not present any evidence to strongly support the

charge of sedition and instead called another judge who briefly testified that Thiha had made a confession before him, which was presented as evidence. However, Thiha claims to have never seen that judge before the trial. The hearings were all completed in a single day, and on 17 September 2007 after only ten days of investigation and trial the presiding judge, Win Htay, sentenced Thiha to 22 years in prison.

e. Evidence-less cases or cases consisting of inadmissible evidence under the Evidence Act

Ma Honey Oo, 21, was accused of having had contact with overseas radio stations to give out information at the time of the protests, and having been involved in making a student union. She was taken into custody on 9 October 2007 but was not brought before the Yangon Eastern District Court until 20 December 2007. The police accused Honey Oo of having been involved in a student union, having talked to foreign media by telephone and of having participated in protests at the Yuzana Plaza and on the road from Mingalar Market to Natmauk on 25-6 September 2007. However, when pressed in court they could not produce any evidence to support any of their claims and on the contrary showed ignorance and confusion about the laws under which she had been brought. The investigating detective, Sub-Inspector Soe Moe Aung (Serial No. La/134172, Tamwe Township Police) said that the information they had that Honey Oo was part of the group accused of having contact with overseas media was from a reliable source, but he could not divulge the source to the court and the source was not included among the list of witnesses in the case. He had no evidence to present to the court other than the supposed confession of the accused. Nor could he produce any photographs or other evidence that Honey Oo was in the protests as he had claimed in the charges against her, saying only that eyewitnesses had seen her, although he acknowledged that it was the responsibility of the police to take photographs and bring enough evidence with which to support the case. On the other hand, among the “evidence” presented against Honey Oo was that she had gone for English lessons at the American Center library. Notwithstanding, Daw Aye Thein, Deputy District Judge (1) (Judge No. Ta/1724) on 13 November 2008 sentenced her to four-and-a-half years in jail.

3. There are large numbers of cases and further violations of domestic law since the September 2007 events that the ALRC has documented in detail and could use to further illustrate the point that the Government of Myanmar is disinterested or unable to apply its own domestic law, let alone the standards to which the United Nations subscribes, in handling criminal cases of this sort. However, the bigger point that needs to be made here is that it is not merely these cases and the accused persons that are of concern. Rather, as a consequence of this sort of deliberate misuse and degrading of the institutions of criminal justice, there is a flow-on effect into the system as a whole. The perverting of due process in the courts, the encouragement of police and other state officials to ignore even the most basic procedures in arrest and detention, and the denial of the most fundamental rights to accused persons persist across all institutions thereby making the notion of justice for anyone in Myanmar in any case elusive if not altogether unattainable.

4. In keeping with this analysis, the Asian Legal Resource Centre has urged and again urges the concerned Special Procedures of the Council, in particular to the Special Rapporteur on the situation on human rights in Myanmar but also the mandates concerning arbitrary and illegal detention, independence of judges and lawyers, human rights defenders, and the question of torture to take up and pursue cases arising from extraordinary events, including the September

2007 protests and May 2008 cyclone, in the broader frame of systemic failure of criminal justice that impinges directly upon the lives of everyone in Myanmar, not merely those who have been targeted because of their supposed attempts to arouse dissent to the current government or others in cases of special interest. It is in the profound consequences for the lives of everyone in the country that these cases have their special importance and deserve, indeed demand, our attention.
