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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.

[22 August 2010]

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

Legal and institutional encouragement of torturers in Myanmar

1. At the 13th session of the Human Rights Council, the Asian Legal Resource Centre described the incidence of torture in all types of criminal cases in Myanmar (A/HRC/13/NGO/56, 23 February 2010). These include cases involving persons accused of anti-government activities, persons alleged to have committed ordinary crimes, and persons whom the police and other officials torture simply to extract payments. The types of torture in all varieties of cases ranges from the mundane--such as forcing the victims to stand in stress positions for extended periods--to the extreme, such as burning of genitalia and constant severe physical assault.

2. Since that submission, the ALRC has continued to receive accounts and complaints of many types of torture in different settings from various parts of the country. Although many of these stories cannot be told lest the victims be exposed to further risk, some have spoken out loudly about their ordeals, and demanded redress of a system that knows not the notion of redress.

3. In this submission, we draw to the attention of the Council two recent cases of alleged extreme torture both in order to draw attention to the pattern of systemic abuses at the hands of the Myanmar Police Force but also, in particular to draw attention to the encouragement of these torturers through the existing legal and institutional arrangements in the country.

4. The first case is of Nyi Nyi Htun. In May 2010, he had a letter of complaint submitted on his behalf to the Minister for Home Affairs, who is responsible for overseeing the police force. In the contents of the letter, Nyi Nyi Htun, a 47-year-old editor of a news journal, explained that the police arrested him in October 2009 and accused him of involvement in a bombing plot. According to the complaint, thereafter the police tortured him continuously for six days at the Yangon Divisional Police Headquarters in the following manner:

"From the day Nyi Nyi Htun was arrested and thus detained, 16 police including Inspector Aung Soe Naing interrogated him in pairs on rotation continuously for the six days... He was not fed throughout the 6 days and was given only two handfuls of water per day. Nyi Nyi Htun was hit in the face and on the cheeks with shoes; was kicked and stomped on the head while his hands were tied with rope at the rear; was forced to kneel on gravel for 30 minutes at a time; had his fingers squeezed together with ball pens between them; had a truncheon pushed into his anus; and, was beaten with truncheons on his back, chest and feet, resulting in serious injuries to his body."

5. The second case is of Phyo Wai Aung. Like Nyi Nyi Htun he was accused of involvement in a bombing plot, in his case, a series of blasts on 15 April 2010 during a traditional carnival. According to a complaint made on behalf of this accused, a 31-year-old electrical engineer, after he was arrested at his house and taken to the Special Branch facility at Aungthapyay interrogation centre on 22 April 2010. He was unlawfully detained and tortured over approximately nine days, according to the complaint, in the following manner:

"Phyo Wai Aung was forced to stand throughout interrogation for two whole days and nights with his hands cuffed behind his back. He was forced to sit and was hit and kicked in the head; stepped on in the crook of the knee and hit with a broom; boxed simultaneously on both ears; stripped naked and forced to kneel on gravel with arms raised; burned on his genitals with paper that had been set alight; had hot wax dripped onto his genitals; was blindfolded throughout various types of torture;

was forced to sit down and stand up repeatedly for over an hour at a time; and was forced to stay seated in a chair for five days without sleeping."

6. The use of torture in criminal inquiries of the sort described above is by no means unique to Myanmar, and is unfortunately all too common in other countries of Asia and many around the world. However, in Myanmar the particular problem that complainants face in cases like these is not only that they have been tortured to confess but that there are literally no legal and institutional measures to support their complaints or bring action against the alleged torturers. There is no law to prohibit torture or institutions capable of investigating or prosecuting it. On the contrary, the courts and other parts of the legal system encourage the use of torture in cases like this, because they consistently admit evidence and confessions obtained from investigations in which the police have used torture, and because when accused persons retract their confessions and allege torture in court, the judges reject their allegations on the spurious basis that the defendants have no proof.

7. The institutional encouragement of torture is manifest in the belief in complete impunity among the police officers and other personnel who commit abuses of the sort described above. In Phyo Wai Aung's case, an officer named Inspector Swe Lin allegedly told him that, "If you die it's nothing to us", while another, Police Major Tin Kun, said that, "Since all the accused have absconded abroad, we'll interrogate until you can't take it. We'll call your family and torture you in front of them." These expressions are indicative of thinking in a police force in which torture is endemic and the police are predominant, as in Myanmar, where their power greatly exceeds that of the judiciary.

8. The institutional encouragement is also manifest in the complete lack of avenues for complaint or redress in Myanmar. According to the complaint in the case of Nyi Nyi Htun, after he was transferred into police custody at Aungthapyay camp the officers there in fact recorded his injuries and had a medical examination done before transferring him to prison for trial. In other settings, that an objective record of the injuries sustained to the victim through torture exists would be sufficient grounds to warrant special inquiries. The written records and photographs could be scrutinized, the doctor who conducted the medical examination called and other steps taken to ascertain--perhaps under public pressure--what happened. But in Myanmar the victim can have no such expectations. The second police unit having taken the record seemingly buries it along with everything else, while the victim proceeds to jail, to some kind of trial, and back to jail. The victim may wind up making any number of urgent requests to the highest authorities for action to be taken against the alleged torturers, to no avail.

9. The lack of legal or judicial avenues for complaint and inquiry into allegations of torture is acknowledged by complainants in Myanmar themselves, who can do no more than submit complaints to the national leadership to request that action be taken against perpetrators. Where these complaints go, who reads them and whether or not any action is ever in fact taken nobody knows. This process of complaint making is feudalistic, in that it resembles the making of complaints to an ancient absolute monarch with discretion to decide whose complaints are acted upon and whose are simply ignored. It is the exact opposite of what the contemporary human rights movement represents and aspires to and indeed, in this respect emblematic of the state of human rights in Myanmar as a whole.

10. Although the day in which torture will be a thing of the past to Myanmar is obviously a long way off, it is unacceptable for the Human Rights Council and other United Nations agencies, particularly those that have relations with the Myanmar Police Force, to carry along with the pretence that some kind of framework does in fact exist for the protection of human rights and the prevention of torture in Myanmar and it is simply a question of getting the state to demonstrate a commitment to putting a stop to the practice, better education for law enforcement officers, and other steps that are usually associated

with the superficial introduction of human rights rhetoric and pretended adoption of international standards. Where, as in Myanmar, the legal and institutional arrangements actively encourage the practice of torture, international intervention also cannot consist of piecemeal measures or diplomatic niceties. To that end, the Asian Legal Resource Centre calls upon the Council to start by demanding of the Government of Myanmar that,

a. The 2008 Constitution of Myanmar, which will not come into effect until after elections are held for semi-elected parliaments--scheduled for November--be amended to prohibit torture; that Myanmar accede to the UN Convention against Torture and its Optional Protocol; that a law to prohibit torture be introduced and that international agencies be invited to assist in the setting up of special units for the investigation and prosecution of acts of torture and the rehabilitation of victims. These are all of course long-term objectives but it is essential that the United Nations human rights agencies and representatives stand firm for the principles that they represent and reiterate the necessity for the Government of Myanmar, as other governments around the world, to comply.

b. It renew the mandate of the International Committee of the Red Cross to visit detention facilities in Myanmar without further delay. Although renewal of the mandate--which the ICRC suspended in 2005 because of the government's failure to respect its internationally-recognized terms--cannot fully prevent torture or protect detainees from abuse, it would be a practical and immediate step to reduce the incidence of abuse and ameliorate some of its worst consequences. Renewal of the mandate is long overdue. There is absolutely no reason for the Government of Myanmar to object, given that the agency is bound by confidentiality, and the visits cost the government nothing. The persistent failure of the government to allow for even this much demonstrates its manifest disregard for even the most basic international norms and standards for the protection of the rights of detainees from torture and cruel, inhuman and degrading treatment or punishment for which it and its functionaries must continue to be condemned in the strongest possible terms until such a time as they demonstrate a genuine commitment to something of the values that the Human Rights Council represents and which it is expected to uphold.

c. It investigate fully the two cases of alleged torture of Nyi Nyi Htun and Phyo Wai Aung described above and report back to the Council on its findings and action taken against the alleged torturers at the next session of the Council. Although even the senior authorities in Myanmar have at times themselves acknowledged the incidence of torture committed by the police force there, the absence of action taken against any of the accused further encourages the perpetrators and fosters the type of attitudes expressed in the police remarks quoted above. Until specific officers are arrested, charged, prosecuted and imprisoned for their crimes, the torture will continue.
