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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Asian Legal Resource Centre, 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.

[25 August 2014]

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



## **MYANMAR: Features of the practice of torture by law enforcement agencies**

1. The practice of police torture in Myanmar remains unchanged despite the efforts and work of countless individuals across the globe. The practice of such human rights abuse in Myanmar predates recent political changes and continues even after government reform. Myanmar citizens expected the new government to move away such human rights abuse. Earlier this year, the Government of Myanmar planned and discussed signing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with the UN Human Rights Council. This too suggested improvement. But, in practice, there is no change.

2. The Asian Legal Resource Centre (ALRC) has long sought the attention of the Council and its predecessor organization regarding the practice of torture in Myanmar. Although it has been discussed at higher levels of government, the practice of torture or ill-treatment in police custody continues. The ALRC draws to the attention of the Council a few cases that it has been working on this year.

a) In July 2014, Ko Zin Aung, a rickshaw driver, was tortured in police custody, and subsequently admitted to a hospital in critical condition where he died from his injuries. Without notifying an administrative officer and without any arrest warrant, the police arrested him after accusing him of stealing a bottle of motorcycle fuel. They detained him without a court order and never filed a case against him. After his death on 7 July 2014, his cousin sent complaint letters to authorities with photographic evidence taken prior to the postmortem examination. The Insein Criminal Investigation Department (CID) went to meet the victim's relatives and threatened them with arrest if they spread "wrong" information about the case. In addition, in their own investigation, the CID officials forced the witnesses to sign statements they had distorted with their own interpretation. The victim's relatives are vulnerable and fear reprisal.

b) In May 2013, Ko Nan Win was accused of theft, arrested, and detained in custody, where he was tortured for several days to extract a confession. Because he did not confess, the police took his pregnant wife in custody and tortured her as well. After extracting her confession, the police handcuffed her, tied her feet together, and put her in a boat, ostensibly to take her to the spot where stolen goods were allegedly kept across the river. The police claim she jumped into the river and that they could not rescue her. The police found her dead body three days later. Since there is no evidence against him, Ko Nan Win was acquitted by the Patheingyi Township Court on 30 July 2014.

c) A 14-year-old girl, who began working as a domestic help in December 2013, has been tortured by her employers. After a few months of work, she was found in a hospital bruised and burned. The injury on her hands has made her incapable of using them; her employers forced them into hot oil as punishment. The victim's mother has lodged a complaint but the relevant police authorities have not taken action in over five months, indicative of their apathy to such practice. The girl remains physically and mentally traumatized.

d) Farmer and land rights activist, U Than Htun, was arrested without warrant on May 17, 2013, detained in custody, and tortured. As a result of torture, on May 23, 2013, he died. The police have claimed he was an alcoholic and had beaten himself to death. However, the body showed dramatic signs of torture. The forensic doctor noted the victim died from bleeding inside the lungs (haemothorax) due to broken ribs on his right side, caused by trauma inconsistent with the police version of the event. The postmortem examination also showed that the skin on both wrists was torn apart due to prolonged time in handcuffs. The application of the victim's wife to open the case has been unsuccessful in court. It should also be noted that the Bago Region High Court has declared the death unnatural, but has not given any order for further action.

e) In January 2013, the police arrested two villagers (Myint Lwin and Ohn Lay) without warrants and tortured them while they were in detention for 17 days in Nattalin Township. The brother of one of the victims opened a case against the police for causing injury but the court shut the case. The police decided not to prosecute the officers responsible, instead transferring those involved to other police stations. The matter was not handled by criminal law, but under the Police Maintenance of Discipline law. No further action has been taken

against the officers. The defence lawyer for the victims is preparing a Supreme Court appeal against the decision not to prosecute the officers.

f) Two men were imprisoned for one and a half years for thefts in 2012. In this case, an elderly man and a young man were accused of stealing a box of gold jewelry, but no evidence has proven that they stole the box. However, the police tortured the elderly man in custody to obtain a confession. Because he was innocent, he refused to confess. Consequently, the police took the young man to a room where he could see the old man being tortured and threatened him that he too would be tortured if he did not confess. The young man was so afraid he falsely confessed that they stole the box. In a court, the judge saw the physical evidence of the torture on the body of the victim but ignored it and said that since there was no evidence that the young man was tortured, the court could accept the confession as evidence.

3. These are a few of the cases the ALRC has documented. There are far more incidents of torture that continue to occur throughout the country. There is still no remedy available to victims or their families.

4. As the ALRC has continuously pointed out, the practice of torture by law enforcement agencies has been standard operating procedure through the interrogation process and it has been used to “solve” any unsettled criminal cases filed by officials. Even in an ordinary criminal case, those in custody are without the protection of law due to the quality and corruption of law enforcement agencies.

5. Therefore, ALRC wishes to reiterate the features of the practice of torture that remain valid because of unchanged conditions in Myanmar. As delineated in an earlier submission (A/HRC/22/NGO/41):

a. The practice of torture is systemic. Officials at all levels of the police hierarchy, courts, administration, and hospitals are aware of its occurrence; are involved actively; and are either tacitly complicit or condone it. Superiors do not prohibit the use of torture by subordinate officers. They only react to it by warning not that it is illegal or a violation of human rights, but that if the torturers go too far and the victim dies then the police officers will, despite their pretenses to the contrary, have trouble.

b. The police often know that the victims of torture are innocent. The police may be acting to protect actual offenders, may not know who the actual offenders are, or do not have the means or inclination to find them within the short time available to solve cases in order to satisfy requirements for administrative efficiency dictated by their superiors. Under pressure, they find innocent persons who will not be able to resist their efforts to fabricate a case, and constantly work to convince those persons that they are actually guilty. Therefore, the purpose of torture is not to actually extract information, but merely to extract an admission of guilt.

c. The practices of torture are highly professionalized. The methods of torture used are those of people with extensive knowledge and training in these techniques. They are not made up on the spur of the moment but are passed down and practiced throughout the policing institutions deliberately and meticulously. The use of stress positions, sharp gravel, dangling of the victim, and other techniques described, particularly those aimed at simulating death, are used across different parts of the country in different types of cases. That the equipment of torture and rooms for its purpose are made available in ordinary police stations in rural areas also speak to its endemic character.

d. Other investigation techniques are extremely basic or non-existent. Where police resort to torture and attendant techniques, other methods for investigation of crimes are undeveloped. Police resort to methods such as gathering up dozens or hundreds of possible suspects at a time, and threatening and cajoling them to winnow out those who will be best suited for use as a hasty scapegoat to close the case. Not only do they not use scientific techniques, but they also resort to methods that damage or destroy evidence, such as forcing accused to wear the clothes of victims as part of their psychological games.

e. The judiciary participates in the process of torture. Judges know that people brought before them have been tortured, whether when they are brought for the purpose of giving confession or when they retract confessions in court. However, they fail in their duties to make inquiries and protect the rights of the accused, either because they are fearful of the power of the police themselves, or because they have arrangements with the police and other officials that are in their own interests. Consequently, victims of torture in Myanmar lack any effective means to pursue recourse.

6. The ALRC also reiterates the following to the Council, and urges that the relevant United Nations agencies communicate the same to the Government of Myanmar, with a view to multilateral and bilateral programmes being established accordingly:

a. Psychological counseling and physical rehabilitation services are required for persons who have already suffered torture in Myanmar. This is both for their own benefit and also to address its continued practice. Torture will only be stopped if people who have suffered torture are able to talk about it, so that the phenomenon of torture is widely known, abhorred, and addressed societally. Survivors of torture will be in a position to do this only if they get the services and support that they need. Therefore, in any programme to eliminate the use of torture in Myanmar, the medical and rehabilitation aspect is paramount.

b. Documentation of cases must be conducted much more systematically and thoroughly. All persons who class themselves as human rights defenders should be allowed to be involved in this work. At present, the extent and scale of the use of torture in Myanmar is little understood because of the lack of attention, especially to the incidence of torture in ordinary criminal cases. Human rights defenders in the current period of political change need to reorient their work towards these types of cases, since the possibility of torture being eliminated from Myanmar requires that it be eliminated in these most common cases.

c. Analysis of institutional weaknesses in Myanmar, particularly the judiciary, prosecution, and police, must incorporate education on the phenomenon of torture more forcefully and consistently. At present, the analyses and critiques tend to be abstract, concerned with vague notions of judicial independence, and on topics that are commonplace but are relatively comfortable for people to discuss, such as widespread corruption. International agencies, including the Special Procedures of the High Commissioner, should do as much as they can to help break open the discussion on torture and bring critical analysis of the phenomenon into their work on institutional problems, including by narrating and building analysis from specific cases.

7. The ALRC urges all parties to re-examine the matter of torture in Myanmar and put into action solutions that will produce actual impact for the citizens that live in fear every day. The ALRC hopes that this will lead to demonstrable and meaningful changes that have remained elusive so far.

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