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Human rights situations that require the Council's attention

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.

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

From blinkered to enlightened despotism: Human rights in Myanmar under new government

1. Over a number of years, the Asian Legal Resource Centre (ALRC) has stressed to the Human Rights Council that the grave human rights problems in Myanmar need to be understood as problems arising from a profound disconnect between the member state and the human rights standards of the international community. These problems are not ones that can be addressed by tinkering at the edges, making some technical reforms, or through a process of incremental administrative change of the sort advocated by some experts. Although such activities will obviously effect some change, and perhaps result in successful outcomes in individual cases, unless they touch on the underlying problem of the gap between the norms-based language and activities of the global human rights movement and the norm-less reality of a member state, from a human rights perspective they will not amount to much.

2. This point, which the ALRC made explicitly in a submission on Myanmar to the Council at its 16th session (A/HRC/16/NGO/55), has been very clearly demonstrated since a new quasi-parliamentary government led by former army officers began work earlier this year. Some observers have argued that the government can bring about, albeit cautiously, reforms that will result in an overall improvement in conditions. In fact, the new government constitutes a shift from the blinkered despotism of its predecessors to a type of semi-enlightened despotism, under which intellectuals flattered at the opportunity to have some input into the affairs of state are encouraged to conjure up an image of progress that does not actually exist, or is progress not of the sort that they describe or to which they aspire. This type of political shift will not give meaning to the values of the global human rights movement, but it is resulting in changes to the dynamics of human rights abuse in Myanmar, and perhaps leading to a worsening of overall conditions compared to those which existed under successive military regimes.

3. One obvious short-term indicator of the worsening conditions in the country since the new government took power, which speaks to the continued hold that the military has on all affairs of any importance, is the resurgence of civil warfare in at least three states. Another is the failure to release most political detainees, including practically all of those imprisoned following the monk-led uprising of 2007. However, there are many other aspects of the current situation that while being represented as signs of improvement on closer examination are found to be exaggerated or false. These include the following:

- Freedom of expression: Some government proponents have pointed to the relaxation of censorship since it took power as a sign of improvement. However, the extent to which censorship has in fact relaxed is questionable. It is true that publishers are able to cover more topics than previously. But most of what is published is vague and exhibits an extreme sensitivity not to overstep lines that have moved only slightly. And despite the formal relaxing of some requirements on submission of copy for censorship prior to going to press, the government has introduced a new oversight board under the information ministry to investigate alleged violations. The board has issued a series of notifications, among which No. 46 (7 June 2011) states that it is prohibited to publish and distribute material that is contrary to the Three National Causes (non-disintegration of the union, non-disintegration of national solidarity, perpetuation of national sovereignty), the 2008 Constitution or the Official Secrets Act; that is damaging to relations among ethnic national races or religions; that upsets peace and tranquility or incites disturbances; that exhorts members of the armed services to commit traitorous acts or undermines the performance of public service duties, and so forth. The issuance of such blanket

directives contradicts claims that the censorship regime is being relaxed and raises doubts that any real space is being opened up in Myanmar for free expression.

- **Economic rights:** Much of the current discussion about reform has concerned changes to the banking system, foreign exchange, and investment laws. None of these go to the problems of massive poverty afflicting millions of people all across the country, or the ever-growing gap between the wealthy few and the many poor. Even in urban areas, they are not matters that have captured the attention of working people. They are reforms for the advantage of the new government's constituency: medium to large-size businessmen connected to the military, and others connected to them in turn. Experts involved in making reform proposals seem to assume that such changes will indirectly benefit the wider population; however, evidence from all around the world shows that very often this presumption is false. The evidence from Myanmar so far is that a tiny percentage of the population is becoming grossly enriched through those so-called reforms that have already been introduced, while millions grow poorer.
- **Criminal justice:** Structural changes to the judiciary under the 2008 Constitution have not been accompanied by any changes, or any evidence of intended changes, in the judicial system's actual operations. On the contrary, it continues to be as closed and obscured from public view as before, perhaps even more so. For instance, at time of writing still no biographies or details have been made known publicly of the new Supreme Court justices, among whom three are believed to have come from the armed forces, two others from the civil administration. Legal professionals have doubts about the background and abilities of these persons, yet they too have no detailed knowledge about them, let alone the opportunity to discuss such matters. Meanwhile, legal professionals also say that the amount of corruption in the system is growing exponentially, as the costs of living rise and more and more judges and lawyers look to whatever opportunities they can to make as much money as they can. In some courts, lawyers estimate that up to 70 per cent of cases are decided in part or whole through the payment of money. This situation will continue to worsen. Simultaneously, no evidence exists to suggest plans for any meaningful reform to the highly abusive and corrupt police force.

4. Although the human rights situation in Myanmar is not improving, it is changing in ways that make understanding of conditions more difficult. One feature of this change to which the ALRC wishes to draw the attention of the Council is the convergence of military, business and administrative interests in new economic projects aimed at displacing ordinary people from land. Whereas seizure of land has long been practiced in Myanmar, in the past land seizure was mostly carried out directly by state officials or the military. Hence, contestation over land seizure in such cases was between the state and affected citizens. Increasingly, with the changes in government and economy in Myanmar, private companies with connections to military officers or retired military officers are seizing land. From a human rights perspective, these cases are much more difficult to narrate, since on the surface they may be presented as a dispute between private parties. Only through close study and patient analysis do all the characteristics of the case and the nexus between military, business and administrative interests made clear. Cases that the ALRC has been following and documenting in recent months along these lines include the following:

- On 4 February 2011 four farmers in Kanma Township, Thayet District, Magway Region lodged a complaint that the Htoo Company, which is one of the biggest and most powerful companies in Myanmar, had illegally trespassed on and destroyed their land as part of a government-contracted project to make a caustic factory. The farmers alleged that a week earlier, two army majors, one serving and one retired, representing an army-owned company that commissioned Htoo to do the project

threatened that the farmers had to give up the land and accept paltry compensation or else. The court summarily dismissed the farmers' complaint. When the farmers appealed, a group of men attacked a number of them adjacent to the land under dispute, and the police then lodged a case against the farmers rather than the attackers, for alleged theft. The local court convicted the farmers. On appeal they were released on reduced sentences for time served, rather than acquitted. The land dispute that gave rise to the legal action against the farmers remains unresolved.

- Around 2am on 25 July 2011, three bulldozers entered a historic Muslim cemetery in Meikhtila, Mandalay Region, and began destroying gravesites. After the intervention of the local Muslim community, they left the cemetery at about 11am on the same day. However, extensive damage had already been done to some graves. The cemetery is on glebe land and is fully in compliance with domestic law. It has been situated there for over 150 years, and in accordance with a government order no new burials are being undertaken there but the cemetery is being maintained as a heritage site. Local Muslim leaders have alleged that a company wanting to take over the land for commercial activities carried out the nighttime bulldozer raid. Two company officials are former army officers, one a retired colonel, the other a captain, and the Muslim community fears that they will use their influence to force the cemetery to relocate so that the land can be used for business interests. At time of writing, the chairman of the committee maintaining the cemetery had submitted complaints to senior government officials requesting guarantees of protection against the attempts to demolish the cemetery and grab the land.

5. These cases are illustrative of the types of incidents now taking place by the hundreds, if not thousands, all across central Myanmar, and also in more remote areas where massive new dams and ports are under construction altogether out of view of the mainstream population and without any public scrutiny or independent oversight. They speak to the evolution of human rights abuses from the state-versus-people dynamic of the 1980s and 90s into a much more complicated array of phenomena that require more effort on the part of human rights organizations and defenders to accurately document and interpret. They represent a new type of challenge for the international human rights community in coming to terms with a type of devolved military authoritarian state of the sort now found in Myanmar, in which aspiring technocrats take on de facto spokesperson roles for military personnel in civilian garb, and businessmen are increasingly unconstrained by ineffectual and often deliberately marginalized or coopted state agencies.

6. In its submission to the Human Rights Council earlier this year, cited above, the Asian Legal Resource Centre concluded that, "The most important problem for the Human Rights Council regarding Myanmar is not a functional problem, but a problem of understanding." This statement is truer today than it was when it was made, since the challenges for proper understanding of the situation in Myanmar are greater today than they have been at any time in recent years. The country's shift from blinkered to partially enlightened despotism is no cause for celebration by anyone concerned with the human rights of its populace. Rather, it is cause for further research and deeper analysis of the true conditions in the country and their foundations. It is cause for further analysis of the divorce between the thinking and behaviour of the state in Myanmar and the standards to which the global human rights community subscribes. And it is cause for consideration of the implications of these both for the human rights of Myanmar's people and for the work of the Council in addressing the type of protracted human rights crisis as found in Myanmar today.