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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).

Myanmar at risk of land-grabbing epidemic

In a written statement during its September 2011 session, the Asian Legal Resource Centre alerted the Human Rights Council to the dangers posed to the rights of people in Myanmar by the convergence of military, business and administrative interests in new projects aimed at displacing cultivators and residents from their farms and homes. At that time, the Centre wrote that whereas seizure of land has long been practiced in Myanmar, in recent years its dynamics have changed, from direct seizure by army units and government departments, to seizure by army-owned companies, joint ventures and other economically and politically powerful operations with connections to the military. The ALRC cited details of two cases which it had followed closely: the encroachment onto land of farmers in Kanma Township of Magway Region, followed by the attack upon and prosecution of a number of those who resisted the encroachment; and, and an attempt to demolish an historic Muslim cemetery in Mandalay to make the land available for commercial use.

Since making that submission, the ALRC has received the details of many other such cases. Nor is it by no means the only organization to have received, and be aware of the details of many more cases. According to an article in a local news periodical published in April, the majority of over 1700 complaints that the newly established national human rights commission—which is not a national human rights institution established in accordance with the Paris Principles—received in the first six months of its operations concerned land grabbing cases. These probably must constitute only a fraction of the total number of cases. Land grabs are occurring all over the country. Almost daily, news media carry reports of people being forced out of their houses or losing agricultural land to state-backed projects, sometimes being offered paltry compensation, sometimes nothing. Some cases on which the ALRC has recently collected information include the giving over of agricultural land cultivated by people in New Dagon, near the commercial capital of Yangon, to government officials; the forcing out of 212 households from an area in Chaungthar, a tourist town on the western coastline of the delta, for planned township redevelopment; and, the theft of the smallholdings of an entire village in Bago Region, already been decimated by the construction of a dam nearby in 1999, so that a company can plant teak.

People who refuse to move when forced out by land grabbers risk prosecution and jail. In one case, the Naypyidaw municipal council prosecuted 21 householders for refusing to vacate their village when ordered in 2011: in March 2012 a court sentenced six of the group to three months in jail each, and in April it sentenced another three to jail terms; the others demolished their houses and left after the court gave its first sentences, out of legitimate fear that they also would also go to jail. Only about one third of the approximately 150 households evicted were given land on which to resettle. According to a lawyer working on the cases, some of those who left under threat of imprisonment deposited their property at a local Buddhist temple and have been struggling to eke out a living in nearby hills and forests. He has added that the municipality did not bother to produce evidence that it had obtained the requisite approval to seize the land.

Two fundamental reasons exist for the increase in land grabbing in Myanmar. First, as political, economic and social conditions change rapidly, the country is touted as the last emerging "land of opportunity" for global business with interests in Southeast Asia. Serving and former military officers who are still in government are together with their business partners lining up to do deals that will make them rich. Military-owned or connected companies and businessmen—which dominate the country's economy—are hurrying to force ordinary citizens off real estate that they can use to attract foreign investors. In some cases, such as a recent grab of 815 acres for construction of an industrial zone in Mingalardon, on the outskirts of Yangon, members of parliament for the military-

established Union Solidarity and Development Party themselves wholly or partly own the companies involved. In many, such as the encroachment in Kanma, it is the military's Union of Myanmar Economic Holding Limited—which is staffed by former army officers—or its subsidiaries that are responsible for the theft of land. And in practically all cases, administrative officials have continued to behave as they have for decades, treating villagers with contempt, using tried and tested tactics of threats and intimidation, to force people out against their will.

Second, as land grabbing accelerates, the legal framework has not only failed to keep pace but has in fact gone backwards. Myanmar's justice system has for decades been integrated into authoritarian structures and mindsets. The system is in massive disrepair: decrepit, incompetent and virtually powerless against vested interests in other parts of the state or in private enterprise. Its institutions are neither inclined to intervene, nor are capable of intervening to protect the rights of farmers, householders and others facing the encroachment of military-owned companies and their partners.

That the justice system as it exists now has neither the means nor the inclination to act in the interests of the public against land grabbers is already a cause for concern. On top of this concern, in March the national legislature passed a new law that places legal authority over decision-making on land issues in the hands of the executive. The Farmland Law 2012, while supposedly being forward-looking in fact resembles the authoritarian socialist-era laws of old. The basic rationale of the law is found in article 37(a) of the 2008 Constitution of Myanmar, that the state is the ultimate owner of all land and all natural resources above and below the ground: today, as it was in the past. Accordingly, the law in its section 29 enables the state to take over any land on the pretext of embarking upon a project in "the national interest". Under the law, authorization for the takeover of land, and resolution of any disputes over land usage, lies not with the judiciary but with a new central council, comprising of the agriculture and irrigation minister and deputy minister, the director general of the land revenue and registration department, and unspecified officials from other "relevant government departments" (section 15). Similar councils of unspecified composition will operate at all other levels of government (section 16). Although the law gives no details of who will sit on these bodies, presumably no independent experts, no representatives of farmers' interests or other outside voices will be invited to participate. The law envisages a system of decision-making that from top to bottom is monopolized by government officials. Furthermore, under the law's section 4, once the new councils are operational all persons with usage rights to farmland will be obligated to apply for authorization to continue to work it. In other words, even people with tenure over land today may lose it tomorrow through a process of review and scrutiny of existing holdings that will enable the state not only to identify those areas of land over which it has uncontested possession, but also those areas of land over which farmers' claims are tenuous, or might be contested through the fabrication of alternative documentary claims and the use of various illegal coercive methods.

In short, far from reducing the prospects of land grabbing, the Farmland Law opens the door to confiscation of agricultural land on any pretext associated with a state project or the "national interest". Far from guaranteeing the rights of farmland users to cultivate and sell their products for fair prices, it guarantees only that whatever state agencies want, they can get. It also precludes any role for the already weak and ineffectual judiciary, ensuring that administrators and government ministers have final say on all matters of importance concerning the occupation and usage of agricultural land: as indeed they did in the 1970s and 1980s under a one-party regime.

The law came into effect without any evidence of public consultation or debate, much as laws have come into effect in Myanmar over the last few decades. That people lacked opportunities to debate the law is not for want of people who wished to debate it. The

ALRC is aware that, for instance, over 3300 farmers in Magway Region had by December 2011 signed a petition opposing the law in its draft form and calling instead for a draft that would protect their rights to cultivate agricultural land and gardens; their rights to cultivate crops as they saw fit; and to stop unlawful land grabbing. It is also aware that lawyers and experts who have worked closely with farmers on land-related issues made or sought to make submissions but that the legislature apparently ignored these.

To prevent an epidemic of land grabbing in Myanmar the Asian Legal Resource Centre calls on the Government of Myanmar to suspend implementation of the Farmland Law and to begin a meaningful process of engaging with members of the public at all levels and in all parts of the country, with landholders, land users and legal and technical experts, among others, to get the widest and most comprehensive range of views on how genuinely to protect public interests. Obviously, one outcome of this process would be that the law would have to be redrafted to guarantee the livelihood rights and food rights of occupiers and cultivators of land, and these should be clearly and explicitly expressed in the law, and procedures and structural arrangements spelled out to protect them, based on what lessons are learned from the consultative process.

The ALRC also calls upon the Government of Myanmar to ensure that whatever form the revised law takes, cases decided under it are subject to judicial review. The Centre makes this call cognizant of the heavy deficiencies in the present justice system, some of which it has described in a separate statement to the current session of the Council. However, these deficiencies will not be addressed by further sidelining and undermining judicial authority through laws of the sort passed this March. Only by working to make the judiciary an effective and credible institution, by bringing the judiciary back into the political and legal system in a meaningful way, can the government expect to come to terms with these deficiencies.

In recent years a number of other countries in Southeast Asia have already experienced land grabbing on a massive scale, due to legal and institutional weaknesses and continued authoritarian practices analogous to those found in Myanmar, combined with a large-scale and rapid influx of foreign capital tied to local joint ventures. The writing is now clearly on the wall for the people of Myanmar. Swift interventions could prevent the country from going down the path of Cambodia, where land grabbing is so rife and the political and economic systems so heavily bound up in the state-sponsored theft of land that it is too late for the international community to do anything effective to stop it. The Government of Myanmar is currently more open to international criticism and advice than at any other time in recent years. The Human Rights Council and its Special Procedures are well placed to make strong interventions to the government to urge it to review the Farmland Law, and to call for reforms to make the judiciary a working institution again.
