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**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.

[10 February 2013]

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

Myanmar: Savage torture in ordinary criminal cases

1. One misconception about the use of torture in Myanmar is that it has been a form of human rights abuse most commonly associated with the cases of political prisoners, and therefore in the current period we should expect the incidence of torture to diminish as political conditions change. This misconception is in part because of the heavy concentration of human rights documentation on Myanmar over the years on political detainees, to the omission of ordinary criminal detainees. However, the Asian Legal Resource Centre has long brought to the attention of the Human Rights Council and its predecessor that torture in Myanmar is not confined to any particular type of case but rather is systemic and ongoing. Furthermore, the types of torture practiced in ordinary criminal cases in Myanmar are not mere slapping and beating, which people in the country take for granted when they are detained by police or other officials, but are also extremely savage and highly professional.

2. To illustrate, the ALRC draws to the attention of the Council the details of a case that it submitted in January 2013 to a number of Special Procedures of the High Commissioner, including the Working Group on Arbitrary Detention. The torture committed in this case was in April 2010; however, it has only come to light recently following detailed depositions by the two victims. The ALRC is aware that such practices as described in this case are continuing in the present time, and therefore considers this case a suitable one to describe the problems that the country is facing, and also to highlight the plight of two specific victims.

(a) The facts of the case briefly are that police detained the two victims, San Win and U Thubodha (a monk), and accused them of raping and murdering an underage village girl. Their method of investigation was in the first instance to call all males aged 12 to 50 in the village to the school, where they questioned each and ordered them to strip off their shirts. By that time, the actual alleged offender, the son of the head of the village administration, had already left the village, but through this technique they could identify other persons who would make suitable accused.

(b) The police who detained the two accused denied them food, water and sleep throughout the time of their interrogation, in order to weaken their ability to resist the methods of torture used. These included repeated kicking, punching, slapping and beating with fists, shoes, truncheons, sticks and various other objects, while naked or mostly naked; hanging from the ceiling with hands cuffed behind the back while also being assaulted; hitting genitalia, burning genital hair with cigarettes; hitting the accused's forehead into the floor; forcing into stress positions, including kneeling for long periods on sharp gravel, and pretending to ride a horse; rolling a rod over the shins under heavy pressure to cause the skin to peel from the bone; and, repeated threatening to kill the accused if they did not admit to the crime. One of the accused the police also hung by his tip-toes with a noose, and forced needles through his tongue, causing him to swallow blood and have a sensation of death.

(c) In addition to the above techniques, the police required both of the accused to put on the clothes of the victim, which they were keeping as evidence. When one of the accused wore the clothes the police were reportedly drunk and they gathered outside the cell and jeered at him while calling the name of the girl.

(d) At various points, the police intimidated the accused or other persons that they knew the accused were not the perpetrators. Others, including a doctor and judge, were also overheard to say the same thing. Nonetheless, the police discussed among themselves that they were under pressure from above to solve the case quickly and they needed to extract confessions from the two for reasons of their own job prospects.

(e) When one of the accused could not tolerate the torture any longer and agreed to confess, the police tutored him and then took him before a judge to record the confession. He then refused to cooperate, denied the crime and said that he had been tortured. Rather than responding to his statements by any attention to the rights of the accused, the judge simply told the police to take him back. After further torture when he again came to court he was brought before the same judge, who this time did not ask him anything at all but instead helped the police to record falsely that no injuries were visible on the body of the accused, and required him to sign documents that amounted to a confession.

(f) When the case came to trial, both accused testified that they had been tortured throughout their custody and U Thubodha retracted the confession that he had given. Furthermore, the material evidence was inconclusive. Nonetheless, the district court sentenced the accused based on the confession and on witness testimonies against them that the police had also coerced or cajoled other villagers to give, and presently the two accused are detained in Mandalay Central Prison.

3. The features of the torture practiced in this case consistent with others that the ALRC has documented in ordinary criminal cases in Myanmar before and since the date of its occurrence, which are also consistent with practices of torture in other parts of Asia, include the following:

(a) The practice of extremely brutal forms of torture is systemic. Officials at all different levels of the police hierarchy, courts, administration and hospitals are aware of its occurrence, are involved actively or are complicit and condone it. Superiors do not prohibit the use of torture by subordinate officers but delimit it by warnings 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 know that the victims of torture are innocent. The police may be acting to protect actual offenders or may not know who the actual offenders are but not have the means or inclination to find them within the short time required to solve cases in order to satisfy requirements for administrative efficiency coming from above. 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 passing throughout the policing institution through deliberate and meticulous attention to their use. The types of stress positions described, use of 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 accused at a time, and threatening and cajoling them to winnow out those who will do for the purpose of having some accused with which to finalize 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 of recourse.

4. Obviously, these systemic forms of extreme torture, carried on with the awareness, involvement or condoning of officials at a range of levels will not be eliminated simply as a consequence of the changed political conditions at the national level. The increasing amount of domestic media reporting about such cases may push the police to be more covert in how they operate; however, these practices will continue not least of all because police are cognizant that they are unlikely to suffer anything other than disciplinary slaps on the wrist for their involvement in such acts, while on the other hand they are under pressure to "solve" cases of this sort as quickly as possible and the sanctions they face for failure to get results are likely to outweigh the risks arising from the use of torture.

5. In December 2012, staff of the ALRC and DIGNITY, the Danish organisation against torture, met with human rights defenders from Myanmar working on cases of torture. Apart from hearing of cases that speak to the continued incidence of practices of the sort described above, the meeting reached a number of conclusions concerning the requirements of a programme to address the systemic use of torture in Myanmar today, and its consequences. Among these conclusions, the Asian Legal Resource Centre commends 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, both for their own benefit and also to address its continued incidence. 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 and abhorred, and can be 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 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 especially need to reorient their work towards these types of cases, since the possibility of torture being eliminated from Myanmar is nil if it cannot be eliminated in these most common cases.

(c) Analysis of institutional weaknesses in Myanmar, in particular of the judiciary, prosecution and police, must incorporate 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.