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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: Targeting and torturing public enemies through the unlawful associations act in Myanmar

1. In January 2013, the Asian Legal Resource Centre released a special dossier of 36 cases brought by personnel of the Myanmar armed forces and police under the 1908 Unlawful Associations Act, against people accused of contact with the Kachin Independence Army, which since 2011 has resumed armed combat with government forces in the north of the country. The cases were researched and compiled in 2012 by independent human rights defenders in Myanmar. Most of the contents of the dossier are testimonies of persons affected by the use of the Unlawful Associations Act, especially the mothers and wives of detainees. This submission begins with some of their testimonies, followed by the ALRC's analysis.

(a) Bawk La's son is accused in connection with an explosion at a house. According to her,

"Two policemen came at about 5-6 pm on 15 November 2011. They told him that they had something to ask him and took him away. Later, they handcuffed him behind his back and pushed him into the vehicle. I did not know where he was taken away. I inquired in No. 1 police station and No. 2 police station but they told me that he was not there. Later, I went to the Kachin State auxiliary police department and inquired about his. A person on duty said that he was there. Another one said that he was not there. I was weeping. My daughter-in-law was due for delivery. Eventually, the man told us that my son was there. I could not eat anything for about five days. I was informed to go there with community leaders. But I was not allowed to see him. On the sixth day I was told that he had been detained by SB (Special Branch), when I went to SB, they told me that they did not keep him there. On the 7th day, I was told that he had been transferred to No. 1 police station... We could meet him on 27 November 2011. As soon as I met him, I was shocked and I cried. My son also cried. He was behind the iron bars. He said he could not hear properly because they had struck him on his temple with the butt of a gun... He said he did not make confession when I asked him later. He lost his hearing after his temple had been struck for three days... I felt like my heart and my bones had been taken out and crushed."

(b) Ze Nyoi's husband is accused of being a KIA officer. He was arrested at an Internally Displaced Persons camp. She says,

"They came and arrested him with the accusation of my husband involving in bomb explosion. They had no evidence or warrant for arrest. Over 10 people were arrested. Four of them were arrested inside the IDP camp. They were told they were going to be questioned on the explosion. Saya Aung Myat, the camp in-charge went along with them. When they reached there, they were given seats in the sitting room, and Brang Shawng was led away inside. I asked my husband what they did to him inside. He said that the interrogator told him he had seen him before, and accused him as a KIA captain as soon as they reached inside the room. My husband replied that he was not a KIA captain, but an ordinary citizen earning his simple living. From that time on, they bound his hands behind his back and began to torture him. They hit his head many times and his nose was bleeding a lot. Now, his mind is not normal... his left ear cannot hear at all. His right ear still can hear a little... I have had 9 court appointments now. Every time I go to court I have to spend Ks. 8,000–10,000 (USD9.60-12)."

(c) Nang Shwe Nan Be's husband is accused of harbouring people connected to KIA. She testifies that,

"The police knew that he was innocent. But they said, 'It is an order from superiors. The arrest warrant came from the Ministry of Home Affairs. We can do nothing. Everything will be all right when you are at the court.' ... But for penniless people like us we will have nothing left when we reach the court. They have arrested the head of our family and now they say that things will be all right when we get to the court. What should we do? He should be released if he is innocent... Does the government realize our family members are suffering because they have detained the innocent man? Is it enough by saying, 'Everything will be all right when you get to the court'? Who will compensate for our sufferings and trauma?"

(d) Nhkum Kaw's son was tortured to admit to being a member of the KIA:

"The torture started upon their arrival in Myitkyina for interrogation. He was confined to a cell for two nights. They (military intelligence) hit him with iron bars and gun butts. He was blindfolded when he went to the toilet. I have three children. He is my only son. I love him not wanting to be out of sight. I was unhappy when I saw him being tortured. I felt pity on him too. Every time I remembered this I wept. When he got sick we were not allowed to send western medicine. Only Burmese and Kachin traditional medicines (herbal) were allowed... Moreover, I have to pay bribe money so that they may not assign him chores. I had to buy a bed for him with Ks. 50,000 (USD60). In prison, the inmate has to give the warden a packet of coffee mix every time he goes to toilet. My son is the only breadwinner for me. My daughters are married and they cannot support me like he does. Now that he is in jail, I have no one to take care of me. I am in real trouble."

2. A number of features stand out from the above accounts that run across all of those contained in the special dossier.

(a) The police and soldiers involved in detaining and accusing people generally know that the accused are innocent of offences. Sometimes they detain them because the accused have failed to pay money; sometimes on orders from above; sometimes it is because an incident has occurred and they need to act to hold someone to account to demonstrate to superiors that they are performing their duties. In any case, nearly all accused are innocent and everyone involved in handling the cases also knows this. Therefore, the system is organised to deliberately capture, torture and imprison innocent persons.

(b) The reason that innocent people are deliberately and systematically imprisoned is inherent in the rationale of the Unlawful Associations Act, 1908. This colonial-era law is premised not on the idea that the accused persons under it have committed crimes, but that they are politically dangerous to the state by virtue of their identities. That is, the law serves the purpose of criminalizing people for what they are, not what they do. Its object is to criminalise whoever is identified as an internal enemy. This means that its primary concern is no longer with the individual, or whether or not the individual has committed a crime. Its problem is with groups of people, not individuals. And groups of people are necessarily identified prior to any alleged criminal acts that they do or do not commit. Whether or not someone commits a crime under the law is incidental. If they are identified as being part of the target population, they can be made subject to its terms. This is the inherent logic of the Unlawful Associations Act.

(c) Once people are treated as internal enemies for the purposes of criminal law, the use of torture that is seen throughout these cases also has a particular logic. Torture here is the extension of the violence of warfare into the internal space of the interrogation. It is the meeting point of the violence of the armed forces and the violence that the state claims

it has the legitimate right to exercise to protect its interests. Therefore the victims of torture in these cases are under the burden of dual forms of violence, those associated with both war and law. The noxious combination produces not only the worst forms of torture but also completely guarantees that any of the persons responsible for committing torture will be exempted from punishment.

(d) An additional feature of the cases is the crushing combination of emotional suffering imposed on the families of victims combined with the financial burdens imposed on them. The implications of these burdens cannot be understated. Many of the persons whose loved ones are imprisoned in these cases have already had to move one or more times due to civil war, and have lost houses, farmlands, livestock and property due to the conflict. Many are already surviving day to day before the arrests, torture and prosecutions under the Unlawful Associations Act. These cases are pushing families over the edge and into degrees of suffering from which many will be literally unable to recover. That they do this cannot be taken to be accidental. That they are aimed at compounding the misery of the affected persons is strategic, since, consistent with the logic of targeting the internal enemy as a group, they are aimed at inflicting further damage on the population of Kachin people as a whole. The military, legal, emotional and financial blows compound one another and cause permanent, inestimable damage to the lives of hundreds of thousands of people.

3. Accordingly, the Asian Legal Resource Centre urges the Government of Myanmar to:

(a) Cease the conflict with the KIA immediately. Both parties for many years had entered into a relatively successful ceasefire that had at least prevented the most egregious forms of suffering. The ceasefire needs to be restored and long-term discussions undertaken to achieve a political settlement that will prevent the types of cases as described in the dossier from occurring into the future.

(b) Revoke the 1908 Unlawful Associations Act. The law is incompatible with the needs and interests of a democratic society. If the Government of Myanmar is sincere about the progress it says it is making towards that political goal, then it will recognize the law as an impediment that must be removed. Regrettably, attempts by legislators in 2012 to have action taken to revoke the law failed due to the heavy concentration of army personnel, former army personnel and people connected with the army in the parliament. The government has told the Special Rapporteur on human rights in Myanmar and others that it is in the process of reviewing old and outdated laws, and it must reopen legislative processes to scrap this statute.

(c) Review all cases under the act and release persons innocent of criminal offences. Most persons currently prosecuted or imprisoned under the Unlawful Associations Act are innocent of crimes. All cases under the act need to be thoroughly reviewed, persons innocent of offences released, and redress provided to them and their families, both financial and medical.

4. These recommendations are for the short to medium-term. In the long term, the problem will remain of how to reform a policing and intelligence system in which arbitrary arrest, the use of torture and other violations of fundamental human rights are habituated. The ALRC calls upon the Human Rights Council and Special Procedures of the High Commissioner to pursue lines of communication and creative action with the government to see that this question is seriously and extensively explored so as to address the massive incidence of human rights abuse with impunity in Myanmar over the long term.