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HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

**Written statement* submitted by 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.

[20 February 2008]

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

MYANMAR: Utter lawlessness in the aftermath of September 2007

1. The Asian Legal Resource Centre has obtained lists of hundreds of monks, nuns and civilians who have remained in detention since the protests in Myanmar of September 2007—of which the Human Rights Council is already fully apprised thanks to the dedicated work of the Special Rapporteur on Myanmar—without any regard to either domestic or international law.

2. Among those detained are eighteen monks and nuns from Thitsatharapu and Hanthawadi Monasteries in Yangon. Despite being held without charge and incommunicado, in violation of the Criminal Procedure Code, they have since been accused of “destroying, damaging or defiling any place of worship...with the intention of thereby insulting the religion” under Penal Code section 295, and acting maliciously to intentionally offend the religious beliefs of others (section 295A). They have all been disrobed and are currently facing trial.

3. Many of the civilians detained in September have been charged under the Arms Act, and Section 5J of the Emergency Provisions Act with intent to “spread false news, knowing or having reason to believe that it is not true” and “to alarm the people...in a way that would create panic amongst them”. Many have not had access to lawyers or been able to meet family members while being held in custody since time of arrest. Some have not received urgent medical treatment, including the elected Member of Parliament for Mettaya Township, U Than Lwin, whom a government-backed thug assaulted in mid-2007 and who has now reportedly gone blind in one eye and is at risk of losing his eyesight altogether.

4. Those being released are required to sign “pledges”. These bizarre documents state that the signatory acknowledges having committed an undefined offence but that thanks to the goodwill of the state no charges are being laid. However, the signatories realise that if they commit this undefined wrongdoing again then prosecution will follow. The abbots of monasteries are also being required to cross sign such documents where monks or nuns are released, to the effect that they will take responsibilities for the freed signatories and also accept liability if they commit these undefined offences again in the future.

5. To illustrate the utter lawlessness that now pervades Myanmar in the manner of detaining and accusing persons connected with the September protests, the ALRC draws attention to the case of Khin Sanda Win.

a. Khin Sanda Win is a 23-year-old university student who has been illegally detained since a group of men in plain clothes stopped her and searched her bag at 10am on 29 September 2007. Although they did not find anything, they allegedly tied her hands behind her back and took her to the Yangon Town Hall, where they put her together with ten unknown men and photographed each along with various weapons, including knives, slingshots and pellets. Then they were allegedly forced to sign confessions that the weapons had been found in their bags. When Khin Sanda Win refused to sign, one of the men in plain clothes allegedly hit her on the head with a bamboo rod.

b. Khin Sanda Win was sent that night to the Kyaikkasan Interrogation Camp and she was kept there without charge, warrant or otherwise until October 7 when she was transferred to Insein Prison and held there, again without charge, warrant or any other legal orders until

October 25. On that day she was sent to the Hlaing Township Peace and Development Council office where in the presence of the council chairman and her parents she was told to sign a pledge, after which she was released.

c. However, on November 1 two police officers from Kyauktada Township Police Station came to her house and informed her that she would be charged with having illegal arms in her possession as per section 19(e) of the Arms Act, although the “arms” they claimed to have found were a slingshot and some pellets, which are not listed under the act. Instead, when Khin Sanda Win went to court the next day, the charge put against her was acting “to endanger human life or the personal safety of others” under section 336/511 of the Penal Code. Under cross-examination, a police officer testified at her trial that the charge had been changed because a slingshot is not an offensive weapon under the Arms Act.

d. Section 336 is a bailable offence, but Assistant Judge U Thaung Lwin set bail at five million Kyat (USD 4000) from two separate bailors. In fact, this amount is far more than the amount that a township judge can legally set in a felony, which is three million Kyat (USD 2400) from a single bailor.

e. Then, on November 12 the judge, without any recommendation or urging from the police, unilaterally revoked the bail on the grounds that Khin Sanda Win is a threat to security forces personnel because the charge against her relates to the protests of September. Her lawyer has applied unsuccessfully for a review of the decision up to the level of the Supreme Court. Meanwhile, his client has been held in Insein Prison, reportedly in solitary confinement.

6 The following are just a few of the glaring violations of domestic criminal law and criminal procedure, to say nothing of international human rights standards, arising in this case.

a. The persons who took Khin Sanda Win into custody did not indicate at any time that they were state officials and there were no grounds for arrest by a private citizen as provided by section 59 of the Criminal Procedure Code (CrPC).

b. The persons searched her in violation of section 52 of the CrPC that the search of a woman should be conducted by another woman, and also tied her hands in violation of section 50 that no more restraint than necessary should be applied to prevent escape.

c. While in custody at the town hall, Khin Sanda Win was allegedly coerced to sign a fake confession and was assaulted.

d. Khin Sanda Win was first held without charge for total of 26 days, in violation of CrPC sections 167-9, which limit detention without charge to 24 hours, and she was denied access to a lawyer and her family. In order to be released she had to sign a document which has no legal authority or sense.

e. Assistant Judge U Thaung Lwin exceeded the maximum amount at which he could set bail in the first instance and then without justification withdrew the bail order altogether.

f. Khin Sanda Win has reportedly been held in solitary confinement since she was taken back into custody on November 12, for which there can be no justification.

7. In December 2007 the protests and violent government crackdown were subjects of special attention at the Sixth Session of the Human Rights Council (Resumed). At the time, the Asian Legal Resource Centre pointed out that a business-as-usual approach to Myanmar from the Council would be an inadequate response to an urgent situation. While appreciating the findings of the Special Rapporteur after his most recent visit to the country (A/HRC/6/14), and also acknowledging the diplomatic efforts of the Special Envoy of the Secretary General, it was apparent all along that these alone would not suffice.

8. The ALRC suggested that the Council initiate calls for a special study and strategy group to be established, comprising of representatives of all United Nations agencies working on Myanmar, in order to devise immediate, comprehensive steps in order to prevent a further decline in conditions there.

9. Regrettably, the Council offered no new initiatives and so the Government of Myanmar has predictably rolled back on its earlier hints of reform, as it has done on previous similar occasions. Its latest proposal that there be a constitutional plebiscite this May, followed by general elections in 2010, cannot be mistaken as anything other than another means to resecure its authority through pretence. It need not be said that the Myanmar Armed Forces intends to keep power over any future government as it has never pretended otherwise and the as yet unwritten charter to be ratified in May will evidently have this express purpose. Its behaviour in every other respect, not least of all in the continued detention and further arrests of large numbers of persons among the hundreds of thousands who have now openly demanded change also does nothing to suggest any differently.

10. In light of the above, the Asian Legal Resource Centre

a. Reiterates its call for the Human Rights Council to go beyond business as usual and initiate the establishment of a special high-level study and strategy group comprising of members from key concerned United Nations agencies to study conditions in Myanmar and formulate concerted and targetted methods of dealing with the Government of Myanmar in both the short and long term, rather than the piecemeal and uncoordinated measures of present.

b. Calls for the immediate release of all persons being held in Myanmar contrary to domestic law and the review and dropping of charges against those detained in connection with the events of last September in accordance with the principles of the Judiciary Law 2000 and the procedures of the Attorney General Law 2001.

c. Makes a special appeal for the immediate release on bail of Khin Sanda Win and a review of her case as above with a view also to having the charges against her dropped without delay, in accordance with the provisions of the same laws.

d. Urges that all detainees without delay be given access to lawyers, family members, doctors and the International Committee of the Red Cross.

e. Makes a special humanitarian appeal that, without regard to other factors, U Than Lwin be allowed the urgent medical attention he needs in order to save his eyesight.

About the ALRC: *The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission. The Hong Kong-based group seeks to strengthen and encourage positive action on legal and human rights issues at the local and national levels throughout Asia.*
