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Human rights situations that require the Council's attention

Written statement* submitted by the Asian Legal Resource Centre (ALRC), 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.

[15 February 2010]

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

Myanmar: Torture of detainees in Myanmar

1. Anecdotally, the use of torture in Myanmar is extremely common. Torture is committed not only in special interrogation centres at the hands of military intelligence personnel and Special Branch police but also in ordinary police stations around the country, and cruel, inhuman and degrading treatment or punishment is routine in prisons and other detention facilities.

2. In September 2009, some thousands of prisoners were released from Myanmar jails. While their release was welcomed, some of the detainees told overseas media and human rights groups of the types of torture that they had suffered during interrogation. The physical and mental injuries caused were either not adequately treated or not treated at all during their imprisonment, causing some of them lifelong damage. Among them:

a. Ko Myo Yan Naung Thein, a former technical institute student, who was assaulted by unknown assailants and taken from a march during the monk-led protests of September 2007. He suffered injuries to his nerves during torture under interrogation and did not get adequate treatment in Sittwe Prison; he is now reportedly unable to walk.

b. Ko Bo Bo, a former student leader also known as Ko Moe Kyaw Thu, who had been imprisoned on a range of charges since 1992. He told a radio station abroad that after his arrest he was taken to a military intelligence unit in Rangoon where he was hooded and repeatedly assaulted, denied water and refused access to a toilet. During his term at Ohboe Jail he was twice seriously assaulted, in 2000 and 2005, causing him to suffer constant headaches.

c. U Aung Myint, who was also detained after September 2007 and jailed on a two-year sentence at Myaungmya, of which he served nearly the full time. He also said on radio that he and other prisoners had been tortured and had not received timely medical attention during imprisonment.

3. At the same time that these persons were being released, others were being arrested and tortured. It is important to underscore that most such persons are not political detainees of the type that normally attract the largest amount of attention concerning abuses of human rights in Myanmar. Rather, most are ordinary criminal suspects who are tortured for reasons of money and other advantage of the police. For instance, in one case that came to the attention of the Asian Legal Resource Centre (ALRC) at the end of September 2009 two young male victims were tortured at an urban police station over an alleged robbery. Neither of them was taken before a judge, even though this should have happened within 24 hours of arrest. According to the first:

"I was interrogated by eight police for three days. They said to give back what I had robbed. They covered my face with a sarong and then four or five of them assaulted me. They hit me on the cheeks and punched me in the face. They hit me with batons over a hundred times on my ankles, finger and elbow joints, shoulder blades and head. They made me stand on my tip-toes then put something with sharp points under my feet and made me hold a pose like I was riding a motorcycle, for about two hours. They prodded my back with a baton. During this time they were drunk."

4. He added that his wife paid the police the equivalent of around USD100, which is a couple of month's wages for poor people in Myanmar, so that they would not torture him. His companion also said that, "I was detained and interrogated for two days. While interrogating me they hit my cheeks and pressed a piece of bamboo on my shins and ran it up and down. They kept my wristwatch."

5. The techniques described in this case are advanced methods of routine torturers. The motorcycle and rolling bamboo are particularly familiar methods in the documentation of military intelligence and special police torturers. However, the torturers in this case were police in an ordinary suburban station. Thus the methods of torture ordinarily associated with cases of political prisoners or alleged insurgents are spreading across the entire system.
6. Also in September the ALRC received information on the alleged torture of Dr. Wint Thu and eight others who were arrested and accused over their involvement in a prayer campaign for the release of political prisoners, and of having had contact with groups abroad that the state has designated unlawful. They were allegedly held incommunicado until their trials in December and tortured as follows.
 - a. Officers including Sub-inspectors Aung Thwin, Hsan Lin and Win Myint Htun allegedly forced Than Htaik Aung to stand with toothpicks inserted into his heels, to drink putrid drain water, and allegedly also came into his cell and urinated. Officers including Police Captain Zaw Lwin and Sub-inspectors Thet Wei, Kyaw Myo Hlaing and Kyaw Htoo Naing allegedly forced U Nandawuntha, a monk, to stand throughout two days of interrogation and then forced him to kneel on sharp gravel while an officer jumped up and down on his calves. If he didn't give the answers that they wanted then they hit him on the head with a wooden rod. Dr. Wint Thu and Ko Myo Han were also both allegedly forced to stand throughout interrogations of two and four nights respectively.
 - b. Four officers at the Aungthapyay interrogation facility in Yangon Division, including Sub-inspectors Win Myint and Soe Aung allegedly dripped candle wax onto the genitalia of co-accused Wei Hypoe, splashed him with boiling water and tied him to metal bars then assaulted him with bamboo rods. They also applied a stinging substance to his open wounds.
 - c. In a related case, Special Branch officers Sub-inspector Thet Wei and Kyaw Htoo Naing alleged injected a detainee from Nyaung-U by the name of Ko Zaw Zaw with an unknown substance during interrogation.
7. All of the victims were sentenced to long jail terms in December, at a closed court inside a prison. Their convictions were reportedly based upon the confessions that the police obtained through the use of torture.
8. Although the Evidence Act and other parts of law prohibit the use of confessions obtained during police interrogation, the current Supreme Court of Myanmar has enabled their use and has thereby encouraged the practice of torture by virtue of a number of orders, including two rulings from 1991. In the first of these, the U Ye Naung case, the court overturned all previous precedent and effectively also the Evidence Act itself by allowing for evidence obtained during a military intelligence interrogation to be admitted to trial where the accused could not prove that it had been obtained through duress. Similarly, in the second, the Maung Maung Kyi case, the court placed the burden of proof onto the accused to show that he had not been tortured and threatened into making a confession.
9. The systemic consequences of these and other similar rulings are twofold: first, courts at all levels in Myanmar routinely accept as evidence confessions that have been obtained through the use of torture; and second, anecdotally the use of torture is now more widespread than at any time in recent decades. The making of payments to police officers to have them not torture detainees is also reportedly commonplace, although the making of such payments does not apply in cases like that of Dr. Wint Thu where the families of victims are not even able to locate the whereabouts of their loved ones, much less do anything to stop their suffering through the payment of money or by other means.

10. Once deeply embedded in a system of policing, torture is extremely difficult to remove. Whatever happens in Myanmar in coming years the use of torture will remain endemic. Clearly, it is not something that will be addressed through some modest international interventions or expressions of concern. Notwithstanding, the Asian Legal Resource Centre urges the Human Rights Council and relevant Special Procedures--specifically, the Special Rapporteur on human rights in Myanmar, the Special Rapporteur on torture, the Special Rapporteur on independence of judges and lawyers, and the Working Group on arbitrary detention--to do the following concerning the incidence of torture in Myanmar:

a. Make torture the top priority and impress upon the government and members of the senior judiciary in particular that until orders that enable torture are reversed and instead orders are issued to prohibit unequivocally its use then those responsible for these orders shall be considered complicit in this abuse, for which they shall be subject to international scrutiny and censure in same measure as the torturers themselves. If the judges of the Supreme Court--U Aung Toe (Chief Justice), U Htun Htun Oo (Deputy Chief Justice), U Thein Soe (Deputy Chief Justice), U Khin Maung Latt (Deputy Chief Justice), U Khin Myint, Dr. Tin Aung Aye, U Myint Thein, U Chit Lwin, U Tin Aye, U Han Shein, U San Tint Yi, U Myint Aung, U Sein Hlaing, U Thet Htun and U Kyaw Win--are made aware that they are treated in the international community not as respected members of a court but as abettors of gross forms of human rights abuse then it may go some small way to having an effect on how the judiciary responds to pressure from the executive to do its bidding in cases of the sort described above.

b. Insist that the 2008 Constitution of Myanmar, which will not come into effect until after elections are held for semi-elected parliaments--possibly later this year--be amended to prohibit torture; that Myanmar accede to the UN Convention against Torture and its Optional Protocol; that a law to prohibit torture be introduced and that international agencies be invited to assist in the setting up of special units for the investigation and prosecution of acts of torture and the rehabilitation of victims. These are all of course long-term objectives but it is essential that the United Nations human rights agencies and representatives stand firm for the principles that they represent and reiterate the necessity for the Government of Myanmar, as other governments around the world, to comply.

c. Demand that the government renew the mandate of the International Committee of the Red Cross to visit detention facilities in Myanmar without further delay. Although renewal of the mandate--which the ICRC suspended in 2005 because of the government's failure to respect its internationally-recognized terms--cannot fully prevent torture or protect detainees from abuse, it would be a practical and immediate step to reduce the incidence of abuse and ameliorate some of its worst consequences. Renewal of the mandate is long overdue. There is absolutely no reason for the Government of Myanmar to object, given that the agency is bound by confidentiality, and the visits cost the government nothing. The persistent failure of the government to allow for even this much demonstrates its manifest disregard for even the most basic international norms and standards for the protection of the rights of detainees from torture and cruel, inhuman and degrading treatment or punishment for which it and its functionaries must continue to be condemned in the strongest possible terms until such a time as they demonstrate a genuine commitment to something of the values that the Human Rights Council represents and which it is expected to uphold.