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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**Written statement* submitted by the Asian Legal Resource Center (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.

[13 February 2006]

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

AN INJUSTICE SYSTEM AND UN-RULE OF LAW IN MYANMAR

1. In a written statement to the sixty-first session of the Commission, the Asian Legal Resource Centre (ALRC) pointed to the fundamental absence of the rule of law in Myanmar and its effects on human rights: a condition earlier described by the Special Rapporteur on the situation of human rights in Myanmar as the "un-rule of law" there (E/CN.4/2005/NGO/41). Regrettably, events since have only served to further reinforce perceptions of this condition.

2. The persistent decline of human rights in Myanmar can be seen in the corrosion of institutions for the rule of law and social administration, and organizations through which parts of civil society might find some opportunity for expression. The majority of people there must daily endure an abrasive fear of police and government officials with powers to abuse and axes to grind, and against whom there is no possibility of effective redress or recourse.

3. With the jailing of Ma Su Su Nwe in October 2005 is illustrative. Indeed, Ma Su Su Nwe symbolises all that is tragically wrong in Myanmar. An ordinary villager, 34-year-old Ma Su Su Nwe lodged a complaint in 2004 against local government officials over their use of forced labour on a road construction project, under new regulations introduced by the government to appease the International Labour Organisation (ILO). In early 2005, with pressure on the authorities from the ILO, she won her case: the first successful prosecution for use of forced labour in Myanmar. What happened next was instructive. The new local authorities accused Ma Su Su Nwe of criminal intimidation, and lodged charges against her: a pattern already seen in earlier cases that complainants had anyhow lost, or where complaints have been lodged but rejected. On October 13 she was found guilty and sentenced to 18 months in jail. She was immediately transported to the notorious central Insein Prison, where she has been kept in special quarters to this day. Visitors have alleged that she has been denied medicines for a chronic heart illness, and is suffering from worsening symptoms that may ultimately cause her death. The ALRC has also made a separate statement to the Commission further detailing her case.

4. The role of the courts in Ma Su Su Nwe's case speaks to what has been rightly called the "un-rule of law" in Myanmar. During the trial in the township court, the judge was replaced with a judge who has been used in the past to secure convictions in cases stemming from allegations of forced labour. Successive appeals against the sentence given by her, which is bailable, have been summarily thrown out of court, with the judges reportedly not even listening to the arguments of the defence lawyer. Similarly, the case of 40-year-old U Aung Pe has been thrown out of the courts without a second thought, after he was jailed for three years for leading his English class students in paying their respects to an image of national independence hero General Aung San, the father of democracy leader Daw Aung San Suu Kyi. U Aung Pe has reportedly been beaten up inside the prison by a gang that works together with the authorities which consists of former members and associates of the regime, jailed during political turmoil in 2004.

5. Thuggery and coercion by local authorities and police are part of life for people throughout Myanmar, whether inside prisons or out. In September, for instance, Ma Aye Aye Aung, a betel nut seller, was reportedly surrounded and beaten up in public together with her husband by a group led by the local ward chairman in Mandalay division. Ma Aye Aye Aung courageously lodged a complaint in the local court. Although the case is still to be opened, she has since said

that the court has harassed her constantly, calling her in nine times. Each time she has gone expecting to give her account of how she was beaten, and has instead been sent home without explanation. Her meagre livelihood has been undermined by constant interruptions, and she has had to sell household possessions to survive. Thus the role of the court has been to intimidate rather than hear the complainant. In May, the Asian Human Rights Commission reported on the case of two cousins who were beaten by the police in the capital after one of them unwittingly exposed a pro-democracy tattoo. After the two victims lodged a complaint about the assault, they themselves were detained. Although a court later released one of the perpetrators, one victim remained imprisoned, allegedly for having broken a restraining order on his movement.

6. Anecdotal evidence suggests that torture is a routine part of investigation and imprisonment in Myanmar, although conditions in the country make it impossible to monitor effectively. Increasingly, where it results in a death in custody there are reports that the authorities have immediately destroyed the body of the deceased. One prominent case in May 2005 was that of Aung Hlaing Win, who was dead by the time he was delivered to a hospital by military intelligence officers. Doctors found that his body had at least 24 external bruises, three broken ribs and a bruised heart. The officers took the body away and cremated it. In June the local township court concluded that Aung Hlaing Win had died of chronic illness, although the doctors testified to the injuries they had seen. It reportedly refused to entertain questions from his wife as to why the body was cremated and not returned to the family, and refused her the right to appoint an advocate of her choice. It also allegedly refused to give copies of the judgment and other court records to the family. Appeals to higher courts over the case were also unsuccessful. In a similar case, the corpse of Min Tun Wai, who died within a day of being sent to Moulmein Prison after a summary trial during May, was disappeared by the authorities there. In November, the authorities at Insein Prison allowed the family of Ko Aung Myint Thein to view his corpse, but insisted on cremating him without delay, raising doubts among family members that he had not died of stomach cancer as they were told.

7. There are also numerous reported cases of violence against women in Myanmar by state agents, which are consistently followed by attempts to conceal the crimes. After two police allegedly raped 30-year-old Ma Soe Soe in June, they arrested a witness and took other steps to silence the matter. After a police officer in Taunggut Township reportedly raped a local woman in May the village chairman refused to take up the parents' complaint because the perpetrator was a police officer. After they took it direct to the police station, the superintendent reportedly ordered the rapist and victim to marry and then divorce. When the victim refused to cooperate, she was reportedly assaulted inside the station. In mid-2004, an officer from the Meikhtila Training Airbase allegedly beat a 15-year-old girl to death after she was careless in her work as a housekeeper. Although doctors examining the body again found numerous injuries, the perpetrator had allegedly poured poison into her mouth in a clumsy attempt at making her death look like suicide. The local battalion commander arranged to prevent the case from going to court by paying and threatening the family and other persons. In 2004 the Asian Human Rights Commission reported on how Ma San San Aye and Ma Aye Mi San were allegedly raped by a local government official in Pyapon Township. At least one of the two was a child at the time of the alleged rape. Although the AHRC has obtained documentation regarding the allegation in that case, after the matter was dropped by the local authorities and the victims attempted to take it higher up, they themselves were convicted of defamation and sentenced to four years' rigorous imprisonment. Despite raising the details of the case repeatedly with government authorities and

concerned UN and international agencies, no further information has been made known to the AHRC regarding the fate of the two young victims or the alleged rapist.

8. Together these cases speak to the lack of possibilities for obtaining redress for rights violations anywhere in Myanmar today. The purpose of its institutions is to support the interests and authority of the army and subsidiary state agencies. Although Myanmar is a party to the U.N. Convention on the Elimination of Discrimination against Women and U.N. Convention on the Rights of the Child, there is no means by which to protect the rights of victims in accordance with these treaties. Although it has committed itself to the elimination of forced labour and instituted regulations with a view to the same, an ILO presence in the country has ultimately failed to make any significant progress towards this goal, and small victories have been soured by retributive actions against complainants that together send a clear message to others who may think of objecting when they are sent to work without pay. Although it remains a member of the U.N. Human Rights Commission, it has exhausted one Special Rapporteur on the situation of human rights in Myanmar after the next without any signs of meaningful progress.

9. The same denials of fundamental civil and political rights in Myanmar are reflected in denials of basic economic and social rights. Since 1998 the AHRC has pointed to the connections between the un-rule of law in Myanmar and the hunger, sickness and growing deprivation suffered by its people. This assessment was validated in August when the executive director of the World Food Programme (WFP) said after a visit to Myanmar that its food shortages and malnutrition are serious, and drew a direct line between them and the policies and practices of its government. He underlined his concerns by pointing out that Myanmar is the only country in the world where the WFP is obliged to pay a tax on food bought within the country for local distribution.

10. On International Human Rights Day, 10 December 2005, the sister organisation of the ALRC, the Asian Human Rights Commission (AHRC), called upon the High Commissioner for Human Rights to take a determined step and initiate action to suspend Myanmar from the Commission. Reviewing conditions in the country, the AHRC continued that

"The situation of human rights in Myanmar has been amply documented by the Special Rapporteurs of the Commission on Human Rights appointed for this purpose. The Government of Myanmar has shown no sincerity in its dealings with any of the Special Rapporteurs. It has played charades. It has treated one after the next with polite contempt.

"The current Special Rapporteur is due to complete his term in office. The Asian Human Rights Commission urges you today to take steps so that the post is not renewed. Instead, we call upon you to take see that Myanmar is suspended from participating in the Commission on Human Rights, and any subsequent Human Rights Council, until its government is prepared to take seriously its obligations under international human rights law. The presence of the Government of Myanmar at the Commission is nothing more than a cruel joke on the global community, and most of all, on its own people. It serves no good purpose. The government deserves less respect; its people deserve more."

11. The Asian Legal Resource Centre reiterates that call and urges the Commission to suspend the Government of Myanmar for participating in its proceedings until such a time as it approaches the Commission and its special procedures with an iota of sincerity. Until that time, there is really no point in continuing what is at present a fruitless relationship.
