



## Submission to the Human Rights Council's Universal Periodic Review concerning the human rights situation in Myanmar

### I. SUMMARY:

1. This submission, pursuant to Human Rights Council resolution 5/1, which provides for civil society to participate in the Universal Periodic Review process of United Nations Member States' human rights obligations and commitments, concentrates on the features of legal, judicial and policing frameworks that enable the un-rule of law in Myanmar. The country lacks a normative framework to protect human rights under article 5 and articles 8 through 13 of the Universal Declaration of Human Rights. It lacks an independent and impartial judiciary. Its police force is militarized. Gross human rights abuse is systemic. Avenues for redress as envisaged in international standards are absent. Two major obstacles to implementation of human rights are the State's perception that the rule of law is a function of the executive and therefore that the role of the judiciary is to enforce policy rather than law; and, the accompanying systemic corruption in all parts of the State apparatus, especially in the judiciary and police.

**Key Words:** Rule of law, judiciary, police, arbitrary arrest, arbitrary detention, torture, deaths in custody, trial, redress, corruption

### II. METHODS:

2. Specialist staff and associates of the Asian Legal Resource Centre ('ALRC') have worked intensively on the situation of human rights and the rule of law in Myanmar over the last 12 years with which the Review process is concerned. In this time, the ALRC has studied and documented hundreds of cases upon which the analysis in this submission is based. The ALRC communicates regularly work closely with human rights defenders and other persons inside the country, and with experts and knowledgeable concerned persons abroad. It follows closely media reports in Burmese and English from inside and outside the country. And, it has done extensive documentary research on the historical causes of the current un-rule of law in Myanmar.

3. The ALRC has frequently communicated its findings to the Special Procedures, and has presented them in submissions to the Council at successive sessions. It has issued a number of special reports on Myanmar. An annex to this submission contains a list of pertinent documentation.

### III. BACKGROUND:

4. At independence in 1948, Myanmar inherited British colonial laws, policing and judicial systems. The police force was corrupt and violent; however, the courts checked abuses. Under the 1947 Constitution they exercised powers independently. The superior judiciary had a reputation for impartiality and concern for constitutionally-enshrined fundamental rights. After the military coup in 1962, the administration brought the judiciary under its control. It steadily degraded the entire institutional framework for the rule of law. In 1972, it abolished the professional judiciary and integrated the courts into the executive. It also brought specialised policing units under military intelligence. Citizens had no means for effective redress of fundamental rights without executive endorsement.

5. In 1988 following nationwide protests, the massacre of protestors and establishment of a new military regime, the administration laid down the basic blocks for the present-day legal, judicial and policing framework. It re-established a professional judiciary, but kept it under executive control through supervision of the Supreme Court. It has increasingly militarized the police force, and has also assigned other agencies—such as the fire brigade—policing and paramilitary functions. It has continued to assign the police a de facto military intelligence role. In recent years, as seen during the September 2007 protests, it has used auxiliary paramilitary forces of ambiguous legal status for

security purposes. In 2008, it passed a new constitution that came into effect after 2010 general elections.

6. In 2010 general election, many activists and politicians including opposition party leader Aung San Su Kyi were in still in jail so they didn't get chance to take part in election. NLD party boycotted the 2010 election. U Thein Sein became the President and his party, SPDP got the most seats in parliament. However, in 2012 by-election most of the political prisoners had been released and legislature amended some provisions of the Constitution. The NLD party and other parties were registered and participated in the election.

#### **IV. FRAMEWORK:**

##### **A. The Normative Framework.**

7. The State is not a party to most international human rights treaties, including the International Covenant on Civil and Political Rights despite the fact that the First Cycle of the Universal Periodic Review (UPR) adopted 180 recommendations including the ratification of the ICCPR (In reference to Recommendations No. 104.6.,104.7.,106.4. and 106.13.). Therefore in international law its human rights obligations in terms of the rule of law must be assessed in accordance with the Universal Declaration, in particular, articles 5, and 8–13.

8. The State has practically no domestic normative framework for the protection of human rights through the rule of law. Rather, it has a framework for the denial of rights through what the Special Rapporteur on the situation of human rights in Myanmar in 2003 correctly described as the “un-rule of law’ which presently affects most of the population in Myanmar” (E/CN.4/2003/41, para. 58).

9. Certain laws have limited provisions to protect the rights outlined in the Universal Declaration. These are mostly procedural delimitations on police powers under the Criminal Procedure Code and Evidence Act, and some broad guarantees under the Judiciary Law. Not only are these routinely ignored in reality—both deliberately as well as through the overall debasement of the legal system, and through the loss of judicial independence upon which they are premised—they are formally negated through jurisprudence.

10. The preponderance of legislation in Myanmar continues to be aimed not at the defence of human rights but at their denial. The State has retained and continues to use antiquated colonial-era and postcolonial statutes. Those include but are not limited to: New Contempt Law; Emergency Provisions Act, 1950, section 5; Foreign Exchange Regulation Act, 1947, section 24(1); Immigration (Emergency Provisions) Act, 1947, section 13(1); Official Secrets Act, 1923, section 3(1); Penal Code, sections 124A, 153A, 186, 189, 211, 294, 295A, 332, 353, 505(b); Tuition Law, 1984; and, Unlawful Associations Act, 1908, section 17(1). From 1988 to 2011, all laws were passed as executive decrees, not through any legislative process. In this time, the laws that have been introduced to curtail human rights include: the so-called Anti-Subversion Law, 1996; Electronic Transactions Law, 2004; and, Television and Video Law, 1996. After 2011, 64 new laws were enacted, 55 laws were amended and 14 laws were repealed.

11. The 2008 Constitution is in terms of human rights a norm-less constitution. Under its provisions, the armed forces are placed outside of judicial authority. The military, not the judiciary, is the constitution's guardian. The judiciary is separated from other branches of government only “to the extent possible”. All rights are qualified with ambiguous language that permits exemptions under circumstances of the State's choosing. For instance, the right not to be held in custody for more than 24 hours before being brought before a magistrate, which already exists in the Criminal Procedure Code, is under the new constitution delimited by an exception for “matters on precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquility in accord with the law in the interest of the public, or the matters permitted according to an existing law” (section 376). This provision effectively legalizes arbitrary detention of the sort that is already rife in Myanmar. Other provisions that purport to guarantee rights do so only to the extent permitted by other laws, and in so far as they do not threaten the security of the state or contravene undefined standards of public morality. The constitution allows for rights to be

revoked at any time and for their suspension during a state of emergency. The cumulative effect of these qualifications is to render all statements of rights meaningless. Some relevant sections of the constitution can be found in the annex.

## **B. The Institutional Framework:**

12. Despite the political changes in Myanmar since 2011 to the very limited extent that norms exist for the protection of human rights in Myanmar, under the current institutional framework they cannot be enforced except in certain types of cases that correspond with state policy. The main features of the institutional framework that prohibit enforcement are the militarized functions of the police force, resulting in routine and systemic human rights abuses, and the non independence of the judiciary.

13. The police force in Myanmar has two broad functions that correspond with those of other forces around the world. First, it secures public order, and second, it investigates crime. However, in Myanmar it does not perform these functions as a discrete professional civilian force but as a paramilitary and intelligence agency under command of the armed forces. Policing functions are also shared among other parts of the state apparatus, including with executive councils at all levels that supervise and oversee other agencies, and with other local bodies, including the fire brigade and a government-organized mass group. At the same time, specialized agencies, in particular the Special Branch, operate as proxies for military intelligence, rather than as autonomous investigators of crime. Consequently, the characteristics of policing and prosecutions in Myanmar include: routine arbitrary arrest and detention; common use of torture and other forms of cruel and inhuman treatment, and frequent deaths in custody; coerced signing of documents that have no basis in law; baseless and duplicated charges; and fabricated cases. The annex to this submission contains examples to illustrate and support each of these points, as well as for those in the next paragraph, on the judiciary.

14. Although the courts are not formally subordinate to the executive, they can neither function in accordance with the laws that they purport to uphold nor in a manner that can defend, let alone implement human rights. Some of their features include:

a. Procedurally-incorrect cases: Breaches of legal procedure are routine in all types of cases. In politically-motivated cases, breaches occur because of the imperative to arrive at predetermined verdicts; in ordinary cases, because of the general debasement of the judiciary under the un-rule of law and because of endemic corruption.

b. Evidence-less cases: Accused persons in criminal cases in Myanmar are routinely imprisoned without evidence for the same reasons that cause procedural incorrectness.

c. Lack of means for redress: There are no effective means for redress to victims of human rights abuse through the courts in Myanmar.

The First Cycle of the UPR on Myanmar recommended (Recommendation No. 104.37.) the State to 'ensure the independence of judiciary and guarantee due process of law'. Regrettably, Myanmar has failed to initiate any step in ensuring the country's judicial independence in compliance with the recommendations.

## **V. Current Issues:**

15. Impunity of the military and police is being guaranteed where rule of law is not well functioning in the system. When the military personnel committed crime, the perpetrators are hardly punished in accordance with law. Several cases of torture to death in custody, arbitrary arrest and detention, torture and extra-judicial killing were documented even after political changes in 2011. Impunity to the perpetrators of torture, extrajudicial executions and other gross violations of human rights continues unabatedly. The culture impunity is maintained by the State despite the Recommendations (No. 107.6., 107.42. and 107.44.) in the First Cycle of the UPR.

Although citizen use their democratic rights, according to Constitution or in accordance with law, their rights have been denied. Since the new land law amendment on 30 March 2012, the farmers began attempting to get their land back and Commander-in-Chief said Farmers protest over land grabbing however their peaceful protest turned into sending themselves to jail. Their right to life even threaten over protesting land dispute cases.

With the lack of rule of law, religious conflict were taking place during last few years. Government let the hate speech spread among each other through social media or in any vacuum. The council and international community should closely watch the upcoming 2015 general election to be held without any interference by any reason.

**VI. REQUIRES A REALISTIC APPROACH:**

16. The Council's continued support for the mandate of the Special Rapporteur assigned to the country is commendable, and successive mandate holders have played an important role in outlining the features of abuse and some of the obstacles to a regime of human rights in Myanmar; however, the mandate is limited by the amount of time that each rapporteur can devote to it, the limited resources and support for the mandate, and the fact that each new mandate-holder has to acquaint himself with the country before engaging with the issues and concerned persons. Therefore, the Council should not be satisfied with limiting itself to the work of the Special Rapporteur or other Special Procedures, but consider how it can use these and other mechanisms to work better within and through the wider United Nations system, to apprise itself of the facts, and coordinate its activities with other parts of the system with a view towards substantive political change of the sort that must pre-empt any substantive change in the normative and institutional frameworks through which to implement human rights. Its strategy should take into account and be coordinated with initiatives on Myanmar in other peak bodies, including the General Assembly and the Security Council, as well as draw upon the work undertaken by a range of UN agencies within Myanmar.