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The Women's League of Burma Calls for an ICC Referral

The Women's League of Burma (WLB) calls on the United Nations Security Council (UNSC) to refer the situation in Burma to the International Criminal Court (ICC) in order to allow the prosecution of Senior General Than Shwe and to put an immediate end to the longstanding impunity that has been afforded to the brutal military junta in Burma.

Introduction to the Conflict in Burma

For over forty years the Burmese military regime has routinely employed torture, rape, slavery, murder, and mass imprisonment in order to silence any dissent within Burma and to maintain its power. Yet, the military junta has not been held accountable for these state-sponsored, widespread and systematic human rights violations. In order to prevent systematic impunity from prevailing in Burma and to enforce the fundamental rights of the people of Burma, the UNSC must fulfill its obligation to maintain and restore international peace and security under Chapter VII of the UN Charter by referring the situation in Burma to the ICC.

Grounds for Referring the Situation in Burma to the ICC

International law prohibits many acts perpetrated by the SPDC in Burma, including forced displacement, extrajudicial killings, sexual violence, and torture. These crimes have been documented in numerous UN Resolutions on Burma and in the reports of all UN Envoys, which called upon the regime to end impunity. However, the junta has continued to ignore the call of the UN and human rights' groups for an independent investigation into these crimes, including the Depayin massacre of 2003, the killing of monks during the Saffron Revolution in 2007, the arbitrary political imprisonment of Daw Aung San Sui Kyi, and the rapes by the military of ethnic women, all crimes which have occurred after 1 July 2002 when the Rome Statute establishing the ICC entered into force.

Women & International Law: A Focus on UNSC Resolutions 1325 & 1820

As an organization working to enhance the role of the women of Burma at both a national and international level, the WLB calls on the UN Security Council to take immediate action to end the long-standing impunity for gender crimes committed by the Burmese military. The conflict in Burma has especially impacted women and children due to the persistent rape and sexual violence committed against ethnic women. Therefore, the WLB focuses on the directives of UNSC Resolutions 1325¹ and 1820² in calling for an ICC referral. These resolutions mandate criminal accountability for the perpetrators of gender crimes in conflict situations. Resolution 1325 specifies the need to affirm the link between women and peace and security and to address sexual violence against women in conflict. In Resolution 1820, the Security Council resolved to take action to end the impunity of those responsible for sexual violence in armed conflict once and for all.

¹ UN Security Council, Resolution 1325, S/Res/1325, adopted 13 Oct. 2000.

² UN Security Council, Resolution 1820, S/Res/1820, adopted 19 June 2008.

Resolution 1325 applies to all aspects of the current situation in Burma, to both the SPDC as well as the groups working to restore democracy to Burma. The Resolution specifically addresses the obligation of "all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse." 1325 also calls on the state to end impunity for those responsible for "genocide, crimes against humanity, and war crimes including those relating to sexual violence against women and girls."

Resolution 1820 recognizes the importance of full implementation of Resolution 1325 and reaffirms the Security Council's commitment to end sexual violence as a weapon of war and a means to terrorize populations and destroy communities. Resolution 1820 states:

"Recalling the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals... Notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation."

On 15 July 2009, the UN Secretary General (SG) issued his report³ on Resolution 1820 affirming that the on-going gender crimes committed by the military in Burma are covered by the legal mandates of 1820, including the right to criminal accountability and the prohibition of any amnesty for the military. The confirmation by the SG that, despite the *documentation and identification* of military personnel responsible for crimes of sexual violence, disciplinary or criminal action has yet to be undertaken emphasizes the need for an ICC referral in order to obtain justice for the victims of these crimes.

Crimes of sexual violence carried out by the military regime are part of a systematic strategy for destroying ethnic communities in Burma and constitute a threat to international peace and security. While the UNSC and a number of human rights organizations have spoken out against the regime, recent reports from The International Human Rights Clinic at Harvard Law School and the International Federation for Human Rights (FIDH), ALTSEAN Burma, and the Burma Lawyers' Council document not only the extent and severity of the human rights abuses occurring in Burma but also the fact that the UN has, for years, been on notice that such abuses were taking place.⁴

³ Report of the Secretary-General Pursuant to Security Council Resolution 1820 (2008), S/2009/362, issued 15 July 2009. See paragraphs 15, 19, 23 & 26 for references to Resolution 1820 as it pertains to the current situation in Burma.

⁴ For detailed documentation of the human rights abuses being perpetrated in Burma, as well as an analysis of UN documents detailing such abuses see The International Human Rights Clinic at Harvard Law School, CRIMES IN BURMA, available at <http://www.google.co.th/url?sa=t&source=web&ct=res&cd=2&url=http%3A%2F%2Fwww.law.harvard.edu%2Fprograms%2Fhrp%2Fdocuments%2FCrimes-in-Burma.pdf&ei=Tri9Ss-xKNKBkQX5j4Uh&usq=AFQjCNG1fnzOdUEIH4VYFicKYeICyDnjWg&sig2=NSchGTnSIt96X0JT3ksjRw>; see also FIDH, ALTSEAN Burma & Burma Lawyers' Council, BURMA/MYANMAR INTERNATIONAL CRIMES COMMITTED IN BURMA: THE URGENT NEED FOR A COMMISSION OF INQUIRY, August 2009, no 527a, available at <http://www.google.co.th/url?sa=t&source=web&ct=res&cd=1&url=http%3A%2F%2Fwww.fidh.or>

WLB Actions on the ICC

In addition to these reports, the WLB has also issued publications providing evidence of the abuses suffered by the people of Burma. “Ending Impunity”⁵ documents the SPDC’s use of rape and other forms of gender based violence against the women of Burma and demonstrates the need for Security Council action to pursue criminal accountability against the perpetrators of these acts. “In the Shadow of the Junta,”⁶ the WLB’s response to Burma’s 2007 report to the Convention on the Elimination of Discrimination against Women (CEDAW) Committee, highlights the fact that women in Burma are facing violence at every level as a direct result of military rule and the lack of rule of law and contributes to the mounting evidence of the SPDC’s use of rape as a weapon of war.

Call for Support

Despite its knowledge of the crimes being perpetrated by the military regime and the aforementioned documentation providing *prima facie* evidence of crimes against humanity and war crimes, the UN has failed to move forward as it has in the past with regard to similar situations, including those in the former Yugoslavia, Rwanda, and Darfur. For Burma, politics must yield to justice, and the SPDC must be compelled to comply with its international legal obligations, including those under CEDAW and UNSC Resolutions 1325 and 1820. The women suffering at the hands of the military regime are presently without means of redress. Accordingly, the WLB calls on women around the world to support the request for Security Council action. In order to end the impunity that continues to allow the SPDC to unjustly persecute the people of Burma, the WLB appeals to the Security Council to use its Chapter VII powers to refer the situation in Burma to the International Criminal Court.

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⁵ Women’s League of Burma, *Ending Impunity*, available at <http://www.womenofburma.org/>.

⁶ Women’s League of Burma, *IN THE SHADOW OF THE JUNTA: CEDAW SHADOW REPORT (2008)*, available at <http://www.womenofburma.org/Report/IntheShadow-Junta-CEDAW2008.pdf>.