



# **International Tribunal on Crimes against Women in Burma**

**Toward Justice and Accountability  
for Grave Human Rights Violation  
against Women in Burma**





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## Toward Justice and Accountability for Grave Human Rights Violation against Women in Burma



### HRN statement on the International Tribunal on Crimes against Women in Burma

On June 27, Human Rights Now (HRN), a Tokyo-based international human rights NGO, together with the Women's League of Burma, an association that has worked for the democratisation and realisation of human rights for women in Burma, co-hosted the International Tribunal on Crimes against Women in Burma. The Tribunal considered whether the military regime should be held responsible for human rights violations against women in Burma. The first Tribunal of this kind was held in New York this March by the Noble Women's Initiative, a group of six female Noble Peace Laureates. The Tribunal held in Tokyo on June 27 is the second such event in the world, and the first in Asia. The Tribunal investigated whether or not the human rights violations such as murder, rape, forced labour and torture committed against women throughout Burma by the military regime amount to 'crimes against humanity'. The Tribunal based its judgment on testimonies from the victims of such violations who had travelled to Japan for the Tribunal, and on documents submitted to the Tribunal.

The judges of the Tribunal concluded that 'it is highly probable that the human rights violations suffered by the women of Burma rise to the level of crimes against humanity' and issued an Advisory Opinion, calling for the active cooperation of the international community.

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It is noteworthy that the Judges recognised the human rights violations and the impunity enjoyed by perpetrators of the crimes in Burma as a situation which ‘has gone far beyond the stage where simply depending on the Burmese government to take its own independent measures to address these violations can be justified’ and called for the international community to ‘affirm that the situations demands the formation and deployment of a Commission of Inquiry under the authority of the U.N. Secretary-General or the U.N. Human Rights Council, and the dispatch of the Commission to Burma’ ‘[b]ecause it is strongly suspected that the human rights violations against the women of Burma described to this Tribunal constitute crimes against humanity’. Furthermore, the Judges called for the international community to ‘demand, as a next step, that the U.N. Security Council consider discussing crimes against humanity in Burma and passing a resolution referring the situation to the Prosecutor of the International Criminal Court’, if the activities of the Commission of Inquiry fail to improve the situation.

In Burma, the military regime, which has been in power for more than 20 years, has carried out grave human rights violations such as forced labour, rape, murder and torture in a systematic and widespread manner. Many people, especially women, became the victims of such violations, and those responsible for the violations continue to enjoy a state of impunity. Over the past two decades, the military regime has failed to follow U.N. General Assembly resolutions and recommendations to improve the human rights situations issued almost every year by the U.N. Special Rapporteur and other U.N. bodies. Given such a situation in Burma, it is of extreme importance to dispatch the Commission of Inquiry and, if necessary, refer the situation to the International Criminal Court (ICC).

HRN affirms that the decision of the Judges is crucially important to put an end to the impunity that the military regime enjoys regarding the systematic and widespread human rights violations which have continued over the past two decades, and to restore justice and human rights, and welcomes the decision.

Furthermore, HRN strongly requests that the international community make an effort to consider and realize the dispatch of the Commission of Inquiry, as was recommended in the Advisory Opinion.

Mr. Quintana, the Special Rapporteur on the situation of human rights in Myanmar (Burma), in his report submitted in March, indicated that there was a possibility that human rights violations which constitute war crimes and crimes against humanity may have been committed, and recommended that the U.N. consider establishing a Commission of Inquiry to investigate international crimes, given the Burmese government’s lack of accountability. Australia, the U.K. the Czech Republic, and Slovakia officially supported the formation of the Commission. In the U.K., 176 MPs have signed a Parliamentary motion to support the establishment of a Commission of Inquiry.

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Commissions of Inquiry were dispatched to East Timor and Nepal in the Asian region during the peak of grave human rights violations. Both countries accepted the findings and recommendations of the Commissions after they had been dispatched, and both countries made contributions to improving the human rights situations in their countries.

The international community should urgently address the situation in Burma with a view to improving the extremely grave human rights situation there. If the situation remains of an extremely grave nature even after the Commission's involvement, a referral to the ICC, a permanent court to judge the most serious international crimes, is the last resort to end impunity and realise justice. The U.N. Security Council should adopt a resolution to refer the situation to the ICC so that the ICC may exercise its jurisdiction over Burma, which is not a State Party to the ICC. The U.N. dispatched a Commission of Inquiry to the Darfur region in Sudan which is also a non-State Party to the ICC, after reports detailing grave human rights violations in the region were submitted to the U.N. In response to the recommendations of the commission, the U.N. Security Council adopted a resolution to refer the situation to the ICC and the ICC has begun to investigate it. If Burma fails on its own to end the current era of impunity, a similar referral to the ICC should be made. HRN requests the U.N. and the international community to establish a Commission of Inquiry and to give serious consideration to the Advisory Opinion of the International Tribunal on Crimes against Women of Burma as a the first step ending the impunity.

The U.N. General Assembly, which will be held this autumn, and the U.N. Human Rights Council should give this matter serious consideration act accordingly.

HRN also requests that the Japanese government, as the governing authority of the place the Tribunal was held, support any initiative to establish a Commission of Inquiry.



July, 2010

阿部 浩己

Kohki Abe

伊藤 和子

Kazuko Ito





## 1. Introduction

On 27 July 2010, the International Tribunal on Crimes Against Women in Burma was held at Aoyama Gakuin University. Human Rights Now and the Women's League of Burma co-hosted the event.

The first Tribunal of this kind held in New York in March, and the Tribunal held on 27 July, was the first such event in Asia. In continuing the work of the New York Tribunal, the Tokyo Tribunal considered whether or not the human rights violations (rapes, enforced labour and torture) perpetrated throughout the whole of Burma by the Burmese military regime against the women of Burma, could constitute crimes against humanity. The Tribunal heard the testimony of women who are victims of such human rights violations, and also considered other related evidence.

Four women who are the victims of crimes perpetrated by the Burmese military regime came to Japan to testify at the Tribunal. These women, some weeping, spoke of their experiences of attempted rapes committed by Burmese soldiers, forced labour and the cruel treatment and torture that accompanied such labour, of imprisonment as a result of involvement with democracy movements, and cruel methods of interrogation.

Almost 200 people attended the Tribunal, and independent Burmese media organizations simultaneously broadcasted the events of the Tribunal to the world. In addition to the Japanese media, international news organizations such as the BBC covered the event. HRN believes that the democratic movement activists, the Burmese refugees around the world, and in particular the women among them, will be given hope and encouragement from the Tribunal's strong attendance and broad coverage will give hope and encouragement.





**Date:** Sunday, June 27, 2010

**Place:** Aoyama Gakuin University, Court Room at 6th Building

**Program:**

Opening address by the co-hosts and visitors  
Arraignment  
Opening Statements  
Cross-examination of witnesses, examination of evidence  
Closing statements of Prosecution and Defence  
Closing address

**Chief Judge:**

Hiroko Goto                      Professor of Law (Chiba University),  
Member of Governmental Research Committee on Violence Against Women

**Judges:**

Hideaki Kubori                      Lawyer, Former Vice President of JFBA (Japan Federation of Bar Association)

Miho Shikida                      Former Secretary General of Jury for Citizen

Osamu Niikura                      Professor of Law (Aoyama Gakuin University)  
Secretary General of IADL (International Association of Democratic Lawyers)

Kunio Hamada                      Lawyer, Former Supreme Court Justice Member

**Prosecutors:**

Juri Yukita	Lawyer
Shogo Watanabe	Lawyer
Mami Ishida	Lawyer
Yoshie Hirokawa	Lawyer
Ayane Odagawa	Lawyer
Sakie Miwa	Lawyer

**Defense Counsels:**

Kohei Yabana	Lawyer
Izumi Harada	Lawyer
Taeko Suzuki	Lawyer
Naofumi Ogawa	Lawyer



**Hosts:** Women's League of Burma, Human Rights Now

### **Women's League of Burma**



Since 1999, Women League of Burma, an umbrella organization comprising thirteen women's organizations of twelve different ethnic backgrounds from Burma has worked for the advancement of the status of women towards a peaceful and just society.

### **Human Rights Now**



Human Rights Now (HRN) is an international human rights NGO based in Tokyo with over 600 members, among which are lawyers and academics. HRN is dedicated to protecting and promoting the human rights of people worldwide.

**Sponsors:**

- Asia-Japan Women's Resource Centre
- Amnesty International Japan
- Burmese Democratic Groups in Japan
- Alliance of Feminist Representatives
- People's Forum on Burma
- Human Rights Watch



## 2. Advisory Opinion of the International Tribunal on Crimes against Women in Burma

First, before offering the opinion of the Tribunal, we would like to express our respect for everyone who helped make this trial a reality. We would also like to express our gratitude to everyone in the audience who participated with us in order to become a witness of history.

We would particularly like to give our deepest thanks to the Burmese women who participated as witnesses. Thank you for speaking before the Tribunal about your painful experiences in spite of the emotional scars that still remain. Your testimony moved all of us deeply. We are truly grateful that you traveled all the way to Japan to participate in this Tribunal.

Although the Union of Burma officially became the Union of Myanmar in June 1989, we shall refer to it here as "Burma", in accordance with the name of this Tribunal.

According to the statute of the Tribunal, the International Tribunal on Crimes Against Women of Burma is "an ad hoc tribunal for the purpose of discovering the truth regarding serious human rights violations against women occurring in" the Union of Burma since 1988. The "crimes against humanity" for which this Tribunal has jurisdiction are as defined in Article 7 of the Rome Statute of the International Criminal Court (the "Rome Statute") (Article 2).

Thus, the task for this Tribunal is to determine whether or not there are facts that constitute "crimes against humanity" committed against women in Burma, and whether the defendant Than Shwe should be held liable for these crimes.

In order to make a finding of crimes against humanity, it is necessary to find not only that "murder," "enslavement," "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law," "torture," "rape and sexual violence" as set forth in the indictment were actually perpetrated, but also that the acts were "directed against a civilian population" and "committed as part of a widespread or systematic attack."

The many reports and documents submitted to the Tribunal as evidence, such as those authored by the *United Nations Special Rapporteur on the Situation of Human Rights in Myanmar*, convincingly demonstrate that the terrible experiences of the women who testified in this Tribunal today were not simply isolated individual experiences, but were rather shared by numerous Burmese women.

This indicates that the human rights violations experienced by women in Burma were likely committed "as part of widespread or systematic" acts against ordinary citizens like yourselves, who were not combatants.

The prosecution asserts that liability for such human rights violations should be borne by Than Shwe, the Chairman of the State Peace and Development Council, Minister of Defense, and Commander in Chief of Defense Services.



However, the Tribunal was not able to find based on the evidence presented, that Than Shwe as a superior officer committed crimes against humanity. Even though gross human rights violations are likely being committed in Burma, even though the defendant indisputably holds the highest position in the current military junta, and even though there is ample reason to suspect that the military junta has taken no measures to address or punish the perpetrators of these human rights violations, the evidence must clearly prove the defendant's involvement in these in order to say that the defendant is guilty of crimes against humanity under Article 7 of the Rome Statute.

Even so, it can be easily deduced from the evidence presented to the Tribunal that human rights violations of a "widespread or systematic" nature continue to occur against women under the Burmese junta led by Than Shwe. Consequently, we can conclude that it is highly probable that the human rights violations suffered by the women of Burma rise to the level of crimes against humanity.

In light of the powerful evidence of human rights violations that most likely constitute crimes against humanity, we the Tribunal request that the international community including Japan and members of the international community including ourselves act as follows in response to violations of the human rights of the women of Burma:

1. That the international community reaffirm that violence against women is a crime no matter where it takes place nor whom it is committed by, and that countries have the responsibility of prosecuting crimes occurring therein and are responsible for taking appropriate measures including the implementation of just punishment. In particular, that it makes clear to those countries that have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that to have ratified is to have stated one's intent to eradicate violence against women in accordance with the rules of the international community.
2. Thus far, through the work of the U.N. *Special Rapporteur*, the international community has shared information showing that human rights violations are being committed against women in Burma, that such violations remain unpunished, and that it is very likely that crimes against humanity are being committed. That the international community continue to gather and share all forms of information relevant to these crimes in the future.
3. Given that it is highly probable that the human rights violations suffered by Burmese women qualify as crimes against humanity, that the international community affirm the necessity of taking measures beyond the mere sharing of information.
4. Despite the numerous reports, resolutions, and recommendations issued by the international community over the years, we have seen no indication that Burma, as a member of the international community, has responded to the international community's pleas and taken measures to stop violence against women or properly punish the perpetrators. Thus, given the likelihood that human rights violations still continue in Burma, that the international community recognize that the situation has gone far beyond the stage where simply depending on the Burmese government to take its own independent measures to address these violations can be justified.
5. Because it is strongly suspected that the human rights violations against the women of Burma described to this Tribunal constitute crimes against humanity, that the international community affirm that the situation demands the formation and deployment of an independent international investigative body under the authority of the U.N. Secretary-General or the U.N. Human Rights Council.



## The International Tribunal on Crimes Against Women in Burma

6. If the activities of this independent international investigative body fail to improve the situation, that the international community demand, as a next step, that the U.N. Security Council consider passing a resolution referring the situation to the prosecutor of the International Criminal Court.

7. Given that it is highly likely that human rights violations strongly indicating the perpetration of crimes against humanity will continue even if the U.N. takes further proactive actions such as those described in paragraphs 5 and 6 above, that the international community as well as members of the international community such as ourselves further make efforts to find effective methods for assisting those women who are victimized by, and fighting against, the oppression.

8. Finally, in light of the fact that Japan is a part of Asia, that the government of Japan and the Japanese people affirm that we have a greater obligation than that of Western countries to support Burmese people. That we more effectively gather and share information about the situation of women in Burma and provide information on human rights violations to the government and people of Burma in order to further their understanding. That we offer as much true humanitarian support as possible to people suffering oppression in Burma as well as those who have fled and are living abroad.

June 27, 2010

International Tribunal on Crimes Against Women of Burma

Chief Judge: Hiroko Goto

Judge: Hideaki Kubori

Judge: Miho Shikida

Judge: Osamu Niikura

Judge: Kunio Hamada



### 3. Witnesses: At a glance

#### **Kanae Doi**      **Japan Director of Human Rights Watch**



Ms. Doi gave evidence about the current situation in Burma in her position as the Director of the Tokyo branch of Human Rights Watch. She testified that human rights violations against citizens (extra-judicial killings, sexual violence, forced labour, torture, beatings, the confiscation of land and assets) in conflict areas are widespread and systematic. She further testified that Burmese minority women who live in these areas suffer sexual violence regularly at the hands of soldiers, and minority women forced to engage in labour by soldiers suffer extremely cruel treatment. Ms. Doi emphasized that the Burmese military, without regard for international criticism, continues to act with impunity, and highlighted the fact that the Burmese national army uses the legal system as a tool of oppression - a neutral and independent

investigation has never been carried out to investigate the human rights violations committed by the Burmese army soldiers against women.

#### **Kyi Kyi Khin**      **Survivor of human rights violations in Burma**

Ms. Khin, who was a member and activist of the All Burma Student's League, gave evidence that she was suddenly arrested without a warrant. After she was arrested, she was imprisoned for 28 days, and was subjected to cruel methods of interrogation and torture for this entire period. Everyday, she was interrogated while her head was covered with a cloth and she was forced to stand for long periods. At times she was kicked by the interrogators. Ms. Khin was found guilty of violating article 17 subsection 6 of the Printers and Publishers Registration Act. The Court's judgment was based on a declaration that Ms. Khin was forced to sign during her imprisonment. Ms. Khin did not have access to a legal representative at the trial, and she received a sentence of 2 years imprisonment. The prison where she was incarcerated for two years had poor sanitary conditions and medical treatment, further, women incarcerated there suffered cruel treatment. After she was released from prison she and her family were remained under surveillance, and half her house was destroyed by the military regime. She testified that in 2006, she could not stand her living conditions any more and left Burma.





**Naw Sun Set      Survivor of human rights violations in Burma**

Ms. Naw Sun Set, who is from Toungoo Township in Bago Division, was forced to work as a porter for the army from 2003 to 2004. In Ms. Naw Sun Set's village, the villagers, regardless of whether they were male or female, were made to engage in forced labour. Among the villagers who were forced to work for the military were pregnant women and children. On 21 November 2005, Ms. Naw Sun Set was in her house alone when a soldier from the Burmese military entered her house. He covered her mouth with his hand, and attempted to rape her. Her second son, who had returned from school as this was happening, heard screaming from the house. He entered the house and upon seeing the situation, stabbed the soldier. Ms. Naw Sun Set then fled. She could not return to the village and escaped Burma in order to seek asylum.

**Ma Pu Sein      Survivor of human rights violations in Burma**



Ms. Ma Pu Sein from Rhakine State gave evidence about the forced labour she experienced under the Burmese military regime authority. Ms. Ma Pu Sein, who was forced to work on a road connecting Kyaukphu and Ann, saw many people fall ill as a result of terrible working conditions and the army's onerous orders regarding work. She also saw people suffering violent treatment at the hands of the army, and in some cases losing their lives. She spoke of a woman forced to perform arduous labour just after giving birth, who died as a result; and a girl who was raped by army officers. Ms. Ma Pu Sein herself was forced to perform exhausting labour, and she found it necessary to flee the country. However, she was unable to take all of her children with her. The fact that some of her children remain in a terrible situation in Burma causes her to suffer deep emotional distress.



## **4. International Tribunal on Crimes Against Women of Burma**

### **Prosecutors**

**v.**

### **Than Shwe**

### **Indictment**

The prosecutors of the International Tribunal on Crimes Against Women of Burma (“ITCAWB”) hereby charges the defendant as set forth below.

#### **The Defendant**

Than Shwe was born on February 2, 1933, in Kyaukse, Mandalay Division, Burma. From 1988 until April 23, 1992, Than Shwe was a member of the State Law and Order Restoration Council (SLORC). From April 23, 1992 until the present, Than Shwe has held the positions of chairman of SLORC and the State Peace and Development Council (SPDC) (SLORC was reorganized and became the SPDC in 1997) and Secretary of Defense and Commander-in-Chief of the armed forces. Through the exercise of his authority, Than Shwe acts as the head of Burma and is deemed internationally as the leader of Burma.

#### **Crimes Against Humanity**

In the present case, the prosecutors bring charges for crimes against humanity committed under the military dictatorship in Burma, including systematic and widespread human rights violations against women. Than Shwe, the head of the military junta, is charged with criminal liability for these crimes against humanity as the leader of Burma.

Together with war crimes, genocide, and crimes of aggression, crimes against humanity were first tried before the two international war crimes tribunals established in Nuremberg and Tokyo to prosecute the large-scale human rights violations and acts of aggression, such as the Holocaust, that took place during World War II. On December 11, 1946, the United Nations General Assembly unanimously adopted a resolution confirming the “Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal,” and since then the international community has established the concept that war crimes, crimes against humanity and genocide are strictly prohibited under customary international law.

Thereafter, during the conflicts in the former Yugoslavia and Rwanda in the 1990s, the world was shaken by the widespread use of violence against women as an instrument of genocide and war, and the sacrifice of a great number of human lives that occurred in the name of “ethnic cleansing”. In light of these events, the United Nations established the International Criminal Tribunal for the former Yugoslavia and the



International Criminal Tribunal for Rwanda pursuant to resolutions of the United Nations Security Council. These tribunals handed down sentences for genocide, crimes against humanity, and war crimes committed during these conflicts. Rather than relying on the domestic courts, the tribunal for the former Yugoslavia exercised jurisdiction on the basis that prosecuting serious violations, such as crimes against humanity, is a major concern for all countries of the world because such crimes, “if proven, do not affect the interests of one State alone but shock the conscience of mankind.”<sup>1</sup>

The determination to exercise jurisdiction subsequently received wide support from the international community and, in 2002, the “International Criminal Court” was established as a permanent international tribunal to prosecute crimes against humanity, war crimes, and genocide, and presently continues to conduct investigations and trials.

Because of the gravity and breadth of the harm of serious human rights violations, including crimes against humanity, war crimes, and genocide, the international community is becoming increasingly aware that such violations are not merely the concern of a single country and that the international community should prosecute and punish these offenses and play a role in preventing serious human rights violations in the future.

Furthermore, women have played a prominent role in advancing these developments. The world was shocked during the 1990s by the widespread systematic rape of women in the former Yugoslavia and Rwanda and revelations of the existence of wartime comfort women involving the Japanese military during World War II. The rape of a woman as a crime against humanity was first explicitly recognized in the statute of the Rwanda tribunal, and the International Criminal Court has also stipulated that widespread violence against women constitutes a crime against humanity. It has rapidly been recognized internationally that if a “crime against humanity” which is committed against women is left unpunished by a state, the rule of law and human rights must be restored by pursuing liability through an international tribunal.<sup>2</sup>

To advance international recognition of crimes against humanity, the prosecutors of this tribunal prosecute crimes against humanity in accordance with the Statute of the ITCAWB, which is based on Article 7 of the Rome Statute of the International Criminal Court.

## Overall Situation in Burma

### - Ethnic Groups and Religions in Burma

Burma is a multiethnic country and approximately 70% of its population is ethnic Burmese while the remaining 30% of its population is made up of minority groups such as the Shan, Karen, Arakan, Mon, Kachin, and Kayah peoples (the Burmese government recognizes 135 minority groups). Approximately 90% of the Burmese population is Buddhist, while approximately 4% are Christian and approximately 4% are Muslim.

### - Historical Background

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<sup>1</sup> Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal of Jurisdiction, October 2, 1995, para. 57.

<sup>2</sup> UN Security Council Resolution No. 1325, 1820, etc.



(1) Independence

In July 1942, the Burma Independence Army drove out the British military and declared Burma to be an independent country but, following its independence, Burma was effectively under the control of the Japanese military. With the defeat of Japan in World War II, Burma was again placed under British control but in January 1948 Burma gained its independence from Britain. The political situation in Burma was unstable following its independence and in 1962 General Ne Win led a military coup d'état and assumed full control of the government. Burma was then ruled by the “Burma Socialist Programme Party” as the sole political party under the supervision of the national military, companies became nationalized, and an isolationist economic policy was adopted. As a result, Burma suffered economic stagnation, and in December 1987, Burma was designated a ‘Least Developed Country’ by the United Nations.

(2) Pro-Democracy Movement and Establishment of the Military Dictatorship

In March 1988, students from the Rangoon Institute of Technology began to protest against the government, which led to resistance throughout the country culminating in a pro-democracy movement lasting from the latter half of August until the first half of September 1988. However, on September 18, 1988, in order to suppress the ongoing pro-democracy movement, twenty generals of the national military formed the State Law and Order Restoration Council (SLORC),<sup>3</sup> suppressed the pro-democracy movement with force, and declared the establishment of a military junta.

While suppressing these movements with violence, SLORC promised to introduce multiple political parties and hold general elections, as demanded by the pro-democracy movement.

On September 27, 1988, the National League for Democracy (NLD) was formed and Aung San Suu Kyi was appointed as the general secretary of the NLD. The NLD called for and worked towards the realization of multiple political parties, respect for human rights, and economic liberalization.

On May 27, 1989, the military junta unilaterally changed the name of the country from “Union of Burma” to “Union of Myanmar,” and Rangoon, the capital, was renamed Yangon.

On July 20, 1989, the military junta placed Aung San Suu Kyi and Chairman Tin Oo of the NLD under house arrest.

(3) Circumstances Following the General Election of May 1990

On May 27, 1990, a general election based on a multiparty system was held in Burma for the first time in 30 years, and the NLD won 392 seats out of a total of 485 seats. The National Unity Party (NUP), which was supported by the military junta, won only 10 seats. However, SLORC did not recognize the election results and declared an indefinite postponement of the transfer of power.

Since then, the Burmese military has suppressed pro-democracy movements including the NLD and has silenced the voices of the people by violently suppressing several pro-democracy movements that have arisen, and the military junta’s dictatorship has continued.

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<sup>3</sup> State Law and Order Restoration Council



On November 15, 1997, SLORC changed its name to the State Peace and Development Council (the SPDC).

Under the military junta, freedom of political activity is severely restricted and human rights violations are regularly committed, including not only arbitrary arrest and persecution, but also forced labor and systematic sexual abuses that are targeted against Burma's minority groups, which comprise 30% of the population. These crimes against humanity are described below.

## Crimes Against Humanity in Burma

Acts that are set out in Article 7 of the Rome Statute constitute crimes against humanity when they are committed as part of a widespread or systematic attack directed against a civilian population.

Since 1988, the Burmese military and other government officials have murdered many people within Burma, including political activists, people belonging to minority groups, and women.

Since 1988, Burmese soldiers have committed sexual assaults such as rape in every region of the country. Countless women belonging to minority groups in particular have suffered the trauma of being raped by Burmese soldiers.

Since 1988, Burmese government officials have forced Burmese civilians to engage in forced labor. Civilians have been forced to work as porters at Burmese military camps, construct and maintain military camps, construct roads and railroads, and work on other infrastructure projects.

Furthermore, since 1988, the Burmese police and government officials have primarily detained or imprisoned political activists. The conditions of imprisonment and detainment are atrocious, while access to food and medical services is severely limited. Moreover, prisoners and detainees are often placed in solitary confinement for sustained periods.

In addition, since 1988, the police and government officials have tortured many people, both in and outside detainment, who support political opposition groups such as the NLD or other minority ethnic groups from Karen State, Shan State and other states. The methods of torture include acts of violence that may lead to unconsciousness or death, deprivation of sleep or food, and the threat of rape or other sexual violence.

In light of these facts, a widespread and systematic attack against a civilian population has been committed by the military junta in Burma since 1988.

On March 10, 2010, Tomás Ojea Quintana, the Special Rapporteur on the situation of human rights in Myanmar to the United Nations Human Rights Council, stated in his report that there is in Myanmar a "pattern of widespread and systematic violations which has existed for many years and still persists. The prevailing culture of impunity, in fact, is a necessary consequence of the lack of accountability for grave human rights violations when they do occur. The lack of independence of the judiciary and weak rule of law are also pre-conditions for this pattern."<sup>4</sup>

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<sup>4</sup> A/HRC/13/48, para 13.



Since 1988, the United Nations Special Rapporteur has reported almost every year that the situation in Burma presents a “pattern of widespread and systematic human rights violations,” and the United Nations General Assembly, the United Nations Commission on Human Rights, and the Human Rights Council have all adopted numerous resolutions aimed at improving the human rights situation in Burma. International human rights groups have also published many investigative reports on human rights violations, such as those described above.

At a minimum, it is expected that the Burmese military junta, as the representative government of a member state of the United Nations, is aware that the United Nations General Assembly has consistently adopted resolutions calling for an immediate halt to human rights violations and forced labor committed against ethnic minorities and women and the release of political prisoners, but has completely ignored the voice of the international community and failed to punish criminal acts.

Therefore, the charges set forth below are part of a “pattern of widespread and systematic human rights violations,” and consequently form part of a widespread or systematic attack directed against a civilian population.

### **Jurisdiction**

Each of the offenses that the accused is charged with took place between 1988 and June 2010 and the ITCAWB thus has jurisdiction *ratione temporis*. Further, each of the offenses took place within the territory of Burma and is subject to the territorial jurisdiction of the ITCAWB.

As noted above, the offenses are part of serious human rights violations. However, the Burmese government does not have any intention of prosecuting the defendant or any other person with criminal responsibility for these offenses and, since the judiciary lacks independence, the domestic courts of Burma are not in a position to redress the failure to prosecute these offenses.

It is therefore essential that the defendant be prosecuted before the ITCAWB.

### **Responsibility as a Leader**

Than Shwe, the defendant, has been a member of SLORC and the chairman of the SLORC/SPDC since 1988, and since April 23, 1992 has been Commander-in-Chief of the military and the leader with ultimate responsibility for all acts of Burma’s military and security organizations.

Than Shwe knows that the military has committed or attempted to commit crimes, or alternatively, should have known of such crimes based on the circumstances prevailing at the time. However, Than Shwe did not take all necessary and reasonable measures within his authority to refer cases to competent authorities in order to prevent or deter the military from committing crimes, or to investigate and prosecute such crimes.

Therefore, under the Statute of the ITCAWB, Than Shwe, the defendant, is criminally responsible for the criminal acts committed by Burmese government authorities or the Burmese military set forth below.

### **Institution of Prosecution**

Than Shwe committed crimes against humanity by persecuting the people of Burma within the territory



of Burma between 1988 and June 2010. In his role as commander, Than Shwe, the defendant, is criminally responsible for murder, enslavement, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, and rape and sexual violence. These crimes are set forth below and were committed as part of a widespread or systematic attack directed against a civilian population.

### Murder

- Since 1988, Burmese troops and other officials have murdered numerous persons, including political activists, members of minority groups, and women.
- Between 1997 and 2001, the Burmese military committed at least 48 murders of Shan women and their relatives and neighbors in connection with rape and forced labor in Shan State.

### Enslavement

Since 1988, the Burmese military junta has forced civilians to work as porters at Burmese military camps, construct and maintain military camps, construct roads and railroads, and work on other infrastructure projects.

- For seven months between October 1993 and May 1994, and then from 1995 until 1996, Ma Pu Sein, a Rhakine woman, and other Rakhine people, including women and children, were forced to work on the construction of a road from Kyaukphyu to Ann in Rakhine State.
- From 2003 until 2004, Naw Sun Set, a Karen woman, and other Karen people were forced to work as military porters in the village of Kler La in the city of Toungoo in the Bago Division of Burma.

### Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law

Since 1988, the Burmese military junta has continued to arbitrarily detain pro-democracy activists and others who are opposed to the government.

- Kyi Kyi Khin was arrested and detained without due process by the Burmese military junta in Patheingyi city in the Ayeyarwady Division of Burma in October 1990 because she was involved in publishing a book by the Burma Federation of Student Union that was distributed in July 1990. Without legal representation, she was then convicted and sentenced by a court to two years imprisonment with labor.

### Torture

Since 1988, the Burmese military junta has cruelly tortured many people suspected of being pro-democracy activists or other opponents of the government.

- Khi Khi Khin was tortured when she was detained for interrogation between October and November 1990. The forms of torture Khi Khi Khin suffered include sustained interrogation in a standing position or kneeling position, and physical assault, all while hooded.



### Rape and sexual violence

Since 1988, the Burmese military has repeatedly and widely committed rape and other sexual violence in all regions of the country. Burmese soldiers have repeatedly committed rape against countless women belonging to minority groups in particular.

- From 1991 until 2001, the Burmese military committed at least 173 acts of rape or gang rape in Shan State, and those rapes involved 625 women and girls.
- On November 21, 2005, one SPDC soldier assaulted Naw Sun Set for the purpose of raping her in the village of Kler La in the city of Toungoo in the Bago Division of Burma.

In light of the acts detailed above, the defendant Than Shwe has committed the following crimes:

Crimes against humanity as set forth in the Statue of ITCAWB, and in Items (a), (c), (e), (f) and (g) of Article 7, Paragraph 1 of the Rome Statue, which have been incorporated into the ITCAWB.

### **Recommendations**

The prosecutors urge this court to convict the defendant and to issue the following recommendations. The purpose of the recommendations is to end impunity for crimes against humanity, to improve the grave human rights situation in Burma, and to provide justice for the victims.

#### **1. Dispatch a Commission of Inquiry**

The United Nations Human Rights Council and the Special Rapporteur appointed by the United Nations Commission on Human Rights, which is the predecessor of the Human Rights Council, have monitored the human rights situation in Burma and issued recommendations to improve the situation there. However, the Burmese military junta has not acted in accordance with these recommendations and there have even been cases where the Special Rapporteur's entrance into Burma has not been permitted.

On March 10, 2010, Special Rapporteur Tomás Ojea Quintana suggested that United Nations bodies consider dispatching a Commission of Inquiry to Burma for the purpose of investigating international crimes. The grounds for this suggestion were that human rights violations possibly constituting crimes against humanity and war crimes under the Rome Statue had been committed in Burma and that the Burmese government would not pursue liability for these crimes.<sup>5</sup> This tribunal should seriously consider this recommendation.

Commissions of Inquiry were sent to the Asian region in response to extremely serious human rights violations in East Timor and Nepal. After the dispatch of these Commissions of Inquiry, each of those countries accepted the investigative report and recommendations of the respective Commission of Inquiry, with Commissions of Inquiry playing a concrete role in improving the human rights situation in those countries.<sup>6</sup>

To improve the human rights situation in Burma and end the failure to prosecute serious crimes, a

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<sup>5</sup> A/HRC/13/48, para. 121, 122

<sup>6</sup> Since a Commission of Inquiry was sent, a country office of the Office of the United Nations High Commissioner for Human Rights has been in Nepal until the present.



Commission of Inquiry should be formed and dispatched under the authority of the Secretary General of the United Nations or of a resolution of the United Nations Human Rights Council. The prosecutors therefore request that the court:

make a recommendation to the Secretary General of the United Nations, United Nations Security Council, and the United Nations Human Rights Council to make a decision to dispatch a Commission of Inquiry.

## 2. Prosecution before the International Criminal Court

If a Commission of Inquiry is dispatched as described above, and if the Commission finds that crimes against humanity have been committed but the Burmese military junta still fails to investigate or prosecute responsible persons,, the Security Council should pass a resolution to refer this case to the prosecutor of the International Criminal Court.<sup>7</sup> The prosecutors therefore request that this court:

make a recommendation that if the situation does not improve even after an independent Commission of Inquiry is deployed, the United Nations Security Council should discuss crimes against humanity in Burma and pass a resolution to refer the case to the Prosecutor of the International Criminal Court.

June 2010

### **Prosecutors**

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<sup>7</sup> A Commission of Inquiry was sent with respect to crimes against humanity in the Darfur region of the Sudan, after which the UN Security Council passed a resolution to refer the situation in Darfur to the International Criminal Court.



## 5. International Tribunal on Crimes Against Women of Burma

### Closing Argument

#### I. Introduction

Today we have heard courageous Burmese women share what they have seen and we have examined numerous reports by international organizations, national governments, and reputable NGOs. We believe that there is sufficient evidence—enormous in volume and internally consistent—to warrant an inquiry into the individual responsibility of the defendant Than Shwe, the Head of State of Burma, for crimes against humanity.<sup>8</sup>

In addition, we request that the Tribunal conduct further investigations regarding this issue and put an end to the human rights violations against women which have been occurring in Burma for so long with impunity.

Crimes against humanity are “the most serious crimes of concern to the international community as a whole,” they “warrant and entail individual criminal responsibility, and require conduct which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world.”<sup>9</sup> The International Criminal Tribunal for Rwanda once stated that “part of what transforms an individual’s act(s) into a crime against humanity is the inclusion of the act within a greater dimension of criminal conduct.”<sup>10</sup> As the testimonies and documentary evidence show, the magnitude and gravity of the offenses in Burma warrant recognition as crimes against humanity.

Furthermore, an international criminal tribunal would be the only venue where judgment on the criminal responsibility of the defendant Than Shwe can be rendered, given that he has immunity in the courts of the Union of Burma.

As stated in the indictment, after World War II, the belief that crimes against humanity were crimes of such seriousness and gravity that they could not be permitted internationally spread throughout the international community. As seen in the former Yugoslavia, Rwanda, and with the establishment of the International Criminal Court (ICC), the belief that international tribunals can and should exercise jurisdiction when domestic courts leave crimes against humanity to be committed with impunity has become a commonly accepted principle of international law. It is therefore appropriate for this Tribunal to exercise its jurisdiction accordingly.

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<sup>8</sup> Much of the material in the following arguments is drawn from a recent report by the International Human Rights Clinic at Harvard Law School. See International Human Rights Clinic at Harvard Law School, *Crimes in Burma* (May 2009), [hereinafter *Crimes in Burma*] (P-10) and the United Nations Special Rapporteur’s Reports (P-4 to P-6).

<sup>9</sup> International Criminal Court, Elements of Crimes, Art. 7(1), 9 Sept. 2002, U.N. Doc. ICC-ASP/1/3(part II-B).

<sup>10</sup> Prosecutor v. Kayishema and Ruzindana, ICTR Case No. ICTR-95-1-T, Trial Chamber Judgment, at ¶134 (ICTR, May 21, 1999).



## II. General Situation in Burma

The autocratic military regime headed by the defendant Than Shwe has continued to oppress the people of Burma and commit grave human rights violations from 1988 through to the present.

In 1988, the democratic movement was growing throughout Burma. However, on 18 September 1988, 20 top military leaders, including the defendant Than Shwe, formed the State Law and Order Restoration Council (SLORC)<sup>11</sup> and used military force to repress the democratic movement, and declared military rule.

On 27 May 1990, a general election involving multiple parties was held in Burma for the first time in thirty years. With Aung San Suu Kyi as its Secretary General and an agenda aimed at the promotion of democracy and respect for human rights, the National League for Democracy (NLD) received overwhelming support, winning more votes than any other party. However, SLORC did not recognize the election result and declared an indefinite postponement of the transfer of power. Since then, the Burmese army has oppressed the NLD and prodemocracy movement, continuously held Aung San Suu Kyi under house arrest, used military force to crack down on the growth of prodemocracy activities, silenced the voices of the people, and continued the autocratic rule of the military junta.

Under the military junta, freedom of political activity is severely restricted and human rights are violated. Human rights abuses include not only arbitrary arrests and persecution, but also forced labor and systematic sexual violence, and these abuses are perpetuated particularly against the ethnic minorities that make up 30% of the population.

The nation of Burma is comprised of many ethnic groups, and in addition to the Burmese who make up 70% of the population, there are minority groups such as the Shan, Karen, Arakan, Mong, Kachin and Kayah living in areas close to the national borders. These minorities have been conducting resistance activities in their efforts to seek autonomy, but SLORC (which later became the SPDC) has responded by intensifying its military operations in order to suppress ethnic minority rebel groups. Moreover, SLORC has requested each minority group to commit to a cease fire, but in cases where such groups have not complied, it has intensified the use of military force. Many states that have agreed to a ceasefire are now occupied by the Burmese army and people there have been forced to work under harsh conditions on infrastructure projects, etc. Furthermore, SLORC has implemented a policy that uses human rights abuses such as sexual violence, forced labor, extrajudicial punishment, and torture as tools to control minority ethnic groups.

In 1997 SLORC changed its name to the State Peace and Development Council (SPDC), but from April 23, 1992 to the present, the defendant Than Shwe has held the position of Chairman of the State Peace and Development Council, Minister of Defense, and Senior General of Defense Services.

Through various human rights mechanisms, the United Nations has investigated these human rights violations, and, since the inception of SLORC, has reported innumerable human rights violations, including arbitrary arrests, torture, the suppression of the prodemocracy movement's freedom of expression, as well as sexual violence, forced labor, extrajudicial punishment, and torture that have targeted members of minority ethnic groups. Nearly every year, the United Nations General Assembly has adopted resolutions demanding that such violations be remedied. Last year, the United Nations

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<sup>11</sup> State Law and Order Restoration Council



reported that human rights violations in Burma had gone on for too long, and were widespread and systematic (see, e.g., P-4, 5).

However, while being aware of these voices in the international community, the Burmese junta has, to this day, continued to perpetuate human rights violations, and failed to remedy its practices or past crimes. Furthermore, human rights violations committed daily by persons involved in the military are almost never prosecuted, and continue to be carried out with impunity. These violations continue with impunity due to the national policy of suppressing the prodemocracy movement and minority ethnic groups, and due to the lack of an independent judiciary (see, e.g., P-4).

As explained in detail below, the serious and widespread human rights violations carried out by the army in Burma constitute crimes against humanity. Furthermore, if no perpetrators are prosecuted for such crimes and the perpetrators are left to carry them out with impunity, the same human rights violations and crimes will continue to be repeated in the future, and those in a position of weakness—minority ethnic groups and women—will forever be the victims of violations such as murder, rape, torture and forced labor. We call upon the Tribunal to play a role in putting an end to the long history of human rights violations that have continued with impunity, and in promoting the first step towards restoring a situation in which the people of Burma can enjoy their human rights free from fear.

### III. Governing Law

The purpose of the Statute of the International Tribunal on Crimes Against Women in Burma<sup>12</sup> (“ITCAWB Statute”), the governing law of this Tribunal, is to serve as a basis to adjudicate crimes against humanity as defined in the Rome Statute of the International Criminal Court (“Rome Statute”). Accordingly, in this Tribunal, crimes against humanity must be established with reference to the definitions contained in the Rome Statute, the ICC *Elements of Crimes*,<sup>13</sup> and the case law of international criminal tribunals.

### IV. Application of Law to Facts

The witness testimony we have heard and the documentary evidence we have examined today demonstrate that the following crimes against humanity have been committed in Burma. Each pertains to acts enumerated as prohibited acts in Art. 7(1) of the Rome Statute.

#### A. Crimes Against Humanity (Rome Statute, Art. 7): Prohibited Acts

##### 1. Murder (Rome Statute Art. 7(1)(a))

The Rome Statute defines “murder” relatively broadly. A perpetrator who “caused death”<sup>14</sup> or “killed one or more persons”<sup>15</sup> is regarded as having committed “murder” within the meaning of Art. 7 of the Rome Statute.

<sup>12</sup> The Statute of the International Tribunal on Crimes Against Women in Burma (“ITCAWB Statute”) was drafted for the purposes of the Women’s International Criminal Tribunal for Burma, which was organized on June 27, 2010 by the Women’s League of Burma and Human Rights Now.

<sup>13</sup> International Criminal Court, *Elements of Crimes*, U.N. Doc. ICC-ASP/1/3(part II-B), *adopted* 9 Sept. 2002 (hereinafter *Elements*).

<sup>14</sup> *Elements*, 5 n.7.

<sup>15</sup> *Elements*, 5.



As documented by the report *License to Rape* (P-7),<sup>16</sup> which was submitted to the Tribunal, there were at least 48 murder cases on Shan women, their families, and their neighbors, where the victims also suffered rape and forced labor at the hands of Burmese soldiers from 1997 to 2001. In some of these cases, the rape victim was not only shot dead or beaten to death, but the father and brothers of the rape victim, together with other males from the same village, were also murdered. Such acts constitute “murder,” as set forth in Art. 7 of the Rome Statute.

In ethnic minority regions such as Rakhine State and Shan State, murders caused by rape and extrajudicial killings have continue to be reported in the many reports produced by the United Nations and international nongovernmental human rights organizations. In particular, *Crimes in Burma* (P-10) analyzes these matters in detail, but all of the prosecution exhibits P-1 through P-11 also report murders that exhibit a similar pattern to the murders described above. The descriptions in *License to Rape* relating to the crimes prosecuted here today are consistent with numerous past reports, and we therefore regard them as sufficiently reliable.

Furthermore, evidence presented in the Tribunal today shows that prisoners have been shot in Insein prisoners by police, civilians undergoing questioning were killed by police and arbitrary killings by the Burmese junta (P-11: U.S. State Department Report). Additionally, there have been reports of “shootings on the spot” in some areas of eastern Burma (P-10: *Crimes in Burma*).

These acts all constitute “murder” under Art. 7 of the Rome Statute.

## 2. Enslavement (Rome Statute, Art. 7(1)(c))

In order to establish that enslavement occurred under Article 7(1)(c) of the Rome statute, it must be shown that “[t]he perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty”<sup>17</sup> where “the deprivation of liberty may...include exacting forced labor.”<sup>18</sup>

The testimony of Ma Pu Sein, who lived in La Mu Khri village of Ramree District in Rakhine State, shows that the crime against humanity of forced labor was committed.

According to her testimony, the military forced Ma Pu Sein and inhabitants of her village to work on road construction from KyaukPhu to Ann in Rakhine State between October 1993 and May 1997. This forced labor consisted primarily of earth removal. The districts affected include KyaukPhu, Ramree, MinPyar and KyarNyo, all of which are in Rakhine State.

As she stated in her witness testimony today, Ma Pu Sein of Rakhine State was forced to build a road from Kyaukphyu to Ann for seven months between October 1993 and May 1994, and again from 1995 to 1996. The labor involved was extremely demanding and involved digging and carrying dirt all day, as well as carrying and laying stones. Since one person had to be conscripted from each household, in households with no males, women were conscripted, and in households with no adults, children were conscripted.

<sup>16</sup> The Shan Human Rights Foundation & The Shan Women's Action Network, *License to Rape: The Burmese military regime's use of sexual violence in the ongoing war in Shan State* (May 2002).

<sup>17</sup> *Elements*, 6.

<sup>18</sup> *Elements*, 6 n.11.



In addition, no food or potable water was provided during the period of forced labor, labourers often developed medical conditions that the military neglected to treat. Because food rations were not provided, laborers had no alternative but to boil rice brought from home in salt water. When forced laborers lived in the labor camp, they were forced to sleep on the ground with no roof or walls for shelter, and these highly unsanitary conditions contributed to various diseases among the conscripted. Then, when night came, the women were frequently raped by the Burmese soldiers. Ma Khin May, who was 16 at the time, was one of these women.

Ma Pu Sein testified that a woman called Ma Khin San Yee was conscripted into forced labor together with her three-month-old infant and died from diarrhea brought on by the labor and by only being able to eat rice boiled in salt water. Her child died two days later.

In this way, countless people endured forced labor in Rakhine State, which caused the deaths of many people.

According to the written statement of Naw Sun Set (P-15), who resided from 2003 until 2004 in Kler La village of Toungoo District within Bago Division, residents of Kler Lar village, regardless of gender, age, or pregnancy, were required to carry baggage as porters for the military. It is alleged that women who were pregnant or even close to giving birth were taken and forced to carry munitions and baggage. Moreover, even women with newborn infants were made to carry munitions and baggage weighing as much as 20 kg on their backs and were forced to work as porters for two days. While forced to work as porters, they were given no food, and soldiers kicked those who could no longer walk and beat them with guns to force them to work.

The circumstances of forced labor in Burma clearly show that it was implemented as part of a widespread or systematic attack directed against the civilian population.

Numerous reports published by the United Nations, international nongovernmental human rights organizations and the International Labour Organization, such as the 1993 Report of the Special Rapporteur (P-6), have repeatedly reported that forced labor for infrastructure projects in ethnic minority areas such as Rakhine frequently led to the deaths of laborers, particularly when people were forced to do physically demanding jobs, such as serving as porters. All of the evidence submitted to the Tribunal by the prosecutors detail the same patterns of forced labor that were discussed above.

The International Labor Organization (ILO) sent a Commission of Inquiry to Burma in 1998. Its investigations concluded that the Burmese junta coerced many people, including women and children, into forced labor not only in a widespread and systematic manner, but also with total disregard for human dignity, safety and basic health requirements (P-13, paragraph 536).<sup>19</sup> The ILO has urged that this situation be remedied, it is clear that the Burmese junta has failed to do so, as has been repeatedly indicated in United Nations reports (P-4, P-5, P-10).

The written statements and testimony regarding the crimes prosecuted in this case are consistent with all such past reports and we therefore regard them as sufficiently reliable.

In sum, the kind of mandatory labor that Ma Pu Sein, Naw Sun Set, and Ma Khin San Yee, as well as countless men, women, and children from Rakhine State, were forced to perform, together with the

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<sup>19</sup> *Crimes in Burma* at p. 15-16.



instances of forced labor in all other parts of Burma revealed by the documentary evidence, amount to “enslavement,” as defined in Art. 7 of the Rome Statute.

### 3. Imprisonment or Other Severe Deprivation of Physical Liberty (Rome Statute, Art. 7(1)(e))

Imprisonment or other severe deprivation of physical liberty constitutes a crime against humanity when “the gravity of the conduct was such that it was in violation of fundamental rules of international law.”<sup>20</sup>

The Fourth Geneva Convention contains articles that govern the protection of civilian persons in times of war. Under those articles, the internment of persons is considered “the severest measure of control that the belligerent may apply to protected persons,”<sup>21</sup> and therefore “may be ordered only if the security of the Detaining Power makes it absolutely necessary.”

The International Criminal Tribunal for the Former Yugoslavia (ICTY), citing the Fourth Geneva Convention, defined imprisonment that amounts to a crime against humanity as being the: “arbitrary imprisonment, that is to say, the deprivation of liberty of the individual without due process of law.”<sup>22</sup> The ICTY further elaborated on this point, stating that imprisonment is unlawful where civilians have been detained without reasonable grounds to believe that such detention is absolutely necessary<sup>23</sup> and where there is a failure to comply with the procedural safeguards<sup>24</sup> required by the Fourth Geneva Convention.

With respect to this point, it must first be noted that the military and police authorities in Burma have special powers to search and arrest people at will, and that they do in fact arbitrarily arrest people who are deemed to be a threat to the government for “political crimes.” Those who are imprisoned are taken to an interrogation center where they are interrogated for hours or even months (P-11).

On 7 July 1990, Kyi Kyi Khin, who is from Patehin in Ayeyarwaddy Division and testified today, distributed a book that was published by the All Burma Federation of Students Unions, she was forcibly taken away by the police without a warrant on suspicion of having been involved in its publication. After being interrogated for days on end, she was taken to an interrogation camp, where she was detained for a further 28 days.

During her imprisonment, except when she was questioned, she was permitted to leave her cell only once a day to empty the bowl she used as a toilet. The authorities then forced her to sign a statement admitting certain crimes without permitting her either to read the statement or have it read to her.

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<sup>20</sup> *Elements*, 7.

<sup>21</sup> Commentary to Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 42, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 973 [hereinafter Geneva Convention IV].

<sup>22</sup> Prosecutor v. Kordić and Čerkez, ICTY Case No. IT-95-14/2-A, Appeals Chamber Judgment, ¶ 116 (Dec. 17, 2004) [hereinafter *Kordić*].

<sup>23</sup> *Id.*, ¶ 114 (“[I]mprisonment of civilians is unlawful where...they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary.”)

<sup>24</sup> *Kordić*, ¶ 114 (“[I]mprisonment of civilians is unlawful where...the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where initial detention may have been justified.”). Article 43 states, “[a]ny protected person who has been interned...shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment...is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case with a view to the favourable amendment of the initial decision, if circumstances permit.” Geneva Convention IV, art. 43.



In a closed trial, without legal representation, Kyi Kyi Khin was then found to have been involved in the publication of the book by the All Burma Federation of Student Unions, and was convicted of the crime of violating the “Printers and Publishers Registration Law<sup>25</sup>” based on her forced confession. She was sentenced to two years imprisonment and held in Patheingyi Prison as a political prisoner. The “Printers and Publishers Registration Law” prohibits the publication and distribution of any printed or published materials without prior approval, and restricts many forms of expression, including handwritten pamphlets. Not only is this law an excessive restriction on the freedom of expression (P-11), but to arrest and convict Kyi Kyi Khin for being involved in the publication of unregistered published materials and for having distributed the All Burma Federation of Students Unions violates her freedom of expression and clearly constitutes arbitrary imprisonment.

Kyi Kyi Khin testified that 15 female political prisoners, including women under the age of 18 and pregnant women, were held in Patheingyi Prison for conducting political activities.

The military arrested Kyi Kyi Khin without a warrant, held her for 28 days in a camp under poor conditions, sentenced her to two years in prison after a closed trial in which completely baseless evidence was used without allowing her access to legal representation, and finally imprisoned her for two years. The government also held Kyi Kyi Khin and 15 other female political prisoners for their political activities. These acts constitute “imprisonment or other severe deprivation of physical liberty,” as set forth in Art. 7 of the Rome Statute.

The Thailand-based private organization, Assistance Association for Political Prisoners (Burma), which is run by former political prisoners, stated that there were as many as 2,157 political prisoners in Burma as of June of this year. It made public the names of all political prisoners and where they are being held.<sup>26</sup> Of these political prisoners, 177 are female.<sup>27</sup>

According to United Nations documents there are currently at least 2,000 (P-1: 2010 United Nations General Assembly Resolution) to 2,010 (P-4: Report of the Special Rapporteur) political prisoners. While the United Nations has demanded that the Burmese junta promptly release all political prisoners, it is clear to the international community that the Burmese junta will not release them.

Such widespread and systematic imprisonment of political prisoners by the Burmese junta constitutes “imprisonment or other severe deprivation of physical liberty,” as defined in Art. 7 of the Rome Statute.

#### 4. Torture (Rome Statute, Art. 7(1)(f))

Under the provisions of the Rome Statute, torture as a crime against humanity is defined as: “1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons. 2. Such person or persons were in the custody or under the control of the perpetrator. 3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.”<sup>28</sup> In addition, “no specific purpose need be proved” for an act to constitute torture.<sup>29</sup>

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<sup>25</sup> Printers and Publishers Registration Law.

<sup>26</sup> <http://www.aappb.org/prisoners1.html>.

<sup>27</sup> <http://www.aappb.org/female.html>.

<sup>28</sup> *Elements*, 8.

<sup>29</sup> *Elements*, 8 n.14.



As she described in the testimony she gave today, Kyi Kyi Khin was arrested by the army in Patehin in Ayeyarwaddy Division in late October 1990, and during the 28 days she was in custody at a military facility, she was routinely interrogated.

She would be taken to the interrogation room with her head covered with a cloth so that she could not see. In the interrogation room she was forced to stand with the cloth still over her head. When her condition became so bad that she could not stand due to fatigue, she was ordered to kneel, and forced to stay in that position. She was interrogated standing up for hours on end, continuously for at least 20 days, and she was kicked and beaten with hard objects when she could not answer their questions. Her interrogators kicked her so hard that she hit her face on a desk.

In order to compel her to sign a written statement, the army left her locked in a pitch-black room for five days, only feeding her once a day and not giving her any medicine when she developed a fever.

Kyi Kyi Khin suffered severe physical and mental pain while she was incarcerated in the army facility. What was done to Kyi Kyi Khin clearly satisfies the criteria for torture.

Furthermore, Kyi Kyi Khin gave testimony that she saw pregnant woman from the same cell in Pathein Prison being subjected to electric shocks.

Based on the evidence examined by the Tribunal today as well, it is clear that torture and other cruel or inhumane treatment or punishments take place in Burmese prisons.

In addition, the Burmese junta regularly carries out physical, psychological and sexual violence against activists who oppose the junta. Tactics include severe blows, frequent electric shocks to all parts of the body including the genitals, scraping of the shins with a metal bar until the flesh falls off, pressing lighters or cigarettes into flesh, binding the neck and feet with rope or restraints, complete immobilization of the body for up to several months on end, continued blows to one part of the body over many hours, victims being forced to walk on shards of metal, stone or glass, or to crawl, rape of male inmates with dogs and the threat of rape against female inmates (P-11: U.S. State Department Report).<sup>30</sup>

Over many years, the United Nations and human rights organizations have produced numerous reports concerning the torture of “prisoners of conscience.” For example, The 2010 Human Rights Council Report by the United Nation Human Rights Council’s Special Rapporteur (P-4) reported, “According to testimonies from prisoners of conscience who were released, there are systematic patterns of abuse and torture of detainees. Various forms of physical, psychological and sexual violence by officials have been detailed in reports. Deliberately poor prison conditions combined with purposeful medical negligence caused extreme suffering of prisoners” (P-4, Para. 33).<sup>31</sup> These reports reinforce the claims of Kyi Kyi Khin’s testimony..

In sum, the series of attacks and abuse that Kyi Kyi Khin endured when she was interrogated and imprisoned by the military, namely the infliction of intense mental and physical suffering, the application of electric shocks to the woman who shared her cell, and finally, the pattern of inhumane treatment that many political prisoners experienced in prisons constitute “torture” under Art. 7 of the Rome Statue.

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<sup>30</sup> 2005 report of the Assistance Association for Political Prisoners (Burma).

<sup>31</sup> Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana A/HRC/13/48, 10 March 2010



## 5. Rape and Sexual Violence (Rome Statute, Art. 7(1)(g))

“Rape” and “sexual assault” constitute crimes against humanity under the Rome Statute.<sup>32</sup> During the 1990s, the awareness that widespread and systematic violence against women committed during times of war or by the military constitutes a crime against humanity, war crimes and genocide spread throughout the international community. As a result, it became clear that situations of impunity are unacceptable. Rape was first found to constitute a crime against humanity by the International Criminal Tribunal for Rwanda, and the ICC (established in 2002) has further held that many other acts of violence against women constitute a crime against humanity.

United Nations Security Council Resolution 1325 emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes, including those relating to sexual and other violence against women and girls. Resolution 1820 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,” and calls upon Member States to “comply with their obligations for prosecuting persons responsible for such acts.”

The Rome Statute’s definition of rape requires “a particular type of physical contact”<sup>33</sup> and “a lack of consent.”<sup>34</sup>

Ma Pu Sein told us that while she was engaged in forced labor in Rakhine state, Ma Khin May who was 16 years old at the time, was raped one night on her way back from the toilet. Ma Pu Sein testified that rapes such as the one committed against Ma Khin May were taking place all around Rakhine State in western Burma, where she lived. Further, from the written statement of Naw Sun Set, it is clear that on November 21, 2005, at her home in Kler La village, Toungoo district, Bago division, a Burmese soldier suddenly came in and grabbed Naw Sun Set by the neck, pulled her down, and attempted to rape her, but she narrowly managed to escape.<sup>35</sup>

Furthermore, the report *License to Rape* submitted to the Tribunal (P-7)<sup>36</sup> details 173 specific cases of Burmese soldiers raping women and girls in Shan State between 1991 to 2001, and states that in those 173 cases, as many as 625 women and girls were raped. This shocking report demonstrates how common, widespread and systematic rape by the military junta is.

In addition, as is clear from evidence such as the video (P-18) and the testimony of victims heard by the Tribunal, sexual violence by the Burmese Army against women from ethnic minorities is endemic.

Many cases of rape have been reported by UN bodies, governments and NGOs.

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<sup>32</sup> Rome Statute, Art. 7(1)(g)

<sup>33</sup> The ICC states that an essential element of rape is that “[t]he perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.” *Elements*, Art. 7(1)(g)-1

<sup>34</sup> Another essential element of rape, as defined by the Rome Statute, is that “[t]he [perpetrator’s] invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.” *Id.*

<sup>35</sup> Under the Rome Statute, a person is criminally responsible and liable for punishment not only for commission, but also attempts, of crimes within the jurisdiction of the Tribunal. *See* Rome Statute, Art. 25(3).

<sup>36</sup> The Shan Human Rights Foundation & The Shan Women’s Action Network, *License to Rape: The Burmese military regime’s use of sexual violence in the ongoing war in Shan State* (May 2002).



In 1993, the United Nations Special Rapporteur on the Situation of Human Rights in Myanmar (“Myanmar Rapporteur”) reported that many Muslim women and other ethnic minorities in Rakhine State had been raped and killed by the military (P-6, p. 16).

According to the *Crimes in Burma* report (P-10) submitted by the prosecutors, the Myanmar Rapporteur received reports of 625 cases of rapes of women and girls in Rakhine State from 1996 to 2001.

This situation has continued since then, and the Myanmar Rapporteur received reports of 188 cases of rape in Rakhine State between 2002 and 2005 (P-10, p. 52). He received reports of 125 cases of rape in Karen State in 2004, and reports of 30 cases of rape of Chin women in 2006 (P-10, p. 56). The United Nations Committee on the Elimination of Discrimination Against Women also expressed deep concern “at the high prevalence of sexual and other forms of violence, including rape, perpetrated by members of the armed forces against rural ethnic women, including, *inter alia*, the Shan, Mon, Karen, Palaung, and Chin” (P-14).<sup>37</sup>

Such reports are innumerable; further, there are reports of rape being used to suppress resistance by ethnic groups in internal conflicts, and of virtual “sexual slavery” where women undergoing forced labor on infrastructure project work teams are subjected to rape by soldiers at night.

According to reports, if a complaint of rape is filed with respect to the aforementioned crimes, there is a fear of being attacked by the military in some way, so these crimes remain unreported and a culture of impunity has taken root. Detailed and highly sensitive inquiry is necessary to confirm that every case meets the physical contact and consent requirements of the Rome Statute definition of rape.

Further, under the Rome Statute, a wide range of conduct may be considered “rape” as long as it is “of a gravity comparable to” rape and the other offences enumerated in Art. 7(1)(g).<sup>38</sup> UN bodies have reported that there have been high levels of sexual violence in Burma since at least 1992.<sup>39</sup>

The rape of 16-year-old Ma Khin May and many other women driven into forced labor in labor camps by soldiers, the acts against Naw Sun Set by a Burmese soldier, and all of the reported cases of rape and sexual violence including the 173 cases of rape involving 625 victims in Shan State, constitute “rape” or “sexual violence” under Article 7 of the Rome Statute.

## B. Crimes Against Humanity (Rome Statute, Art. 7): Common Elements

For the aforementioned crimes to be considered crimes against humanity, it must be shown that they satisfy another requirement of the Rome Statute, namely, that the crimes committed were part of a widespread or systematic attack directed against a civilian population.<sup>40</sup>

### 1. An attack directed against any civilian population

<sup>37</sup> Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Myanmar*, U.N. Doc. CEDAW/C/MMR/CO/3, ¶ 24 (Nov. 7, 2008) (hereinafter “Concluding Observations of CEDAW”).

<sup>38</sup> *Elements*, 5-10.

<sup>39</sup> For a summary of incidents of sexual violence reported by the General Assembly, see United Nations documents P-1 through P-6, *Crimes in Burma*, pp. 51-64 (P-10), and the Concluding Observations of CEDAW (P-14).

<sup>40</sup> *Elements*, 10.



An attack directed against a civilian population is “a course of conduct involving the multiple commission of acts referred to in [Art. 7(1)] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”<sup>41</sup>

“Civilian population” means “everybody physically present in a territory”<sup>42</sup> excluding members of the armed forces. Clearly, this includes Ma Pu Sein, Kyi Kyi Khin and Naw Sun Set, as well as numerous victims that are discussed in the documentary evidence.

In order to be found to be “directed against” a civilian population, an attack must be “directed against a ‘civilian population’, rather than against a randomly selected number of individuals.”<sup>43</sup> Whether an attack was directed against a civilian population or a limited number of individuals is determined based on factors such as the manner of attack, the status and number of the victims, and the nature of the crimes committed.<sup>44</sup> Further, such an attack must be found to be pursuant to or in furtherance of a State or organizational policy.<sup>45</sup>

It is clear from the sheer number of victims that the attacks discussed today were directed against a “civilian population,” not just targeted at certain individuals. For instance, the U.S. Department of State has observed that “[Burmese] law does not prohibit arbitrary arrest and detention, and the government routinely use[s arbitrary arrest or detention]” (P-11: U.S. State Department Report).<sup>46</sup>

It can be seen that these attacks against a civilian population by the army are part of a national policy to suppress the democratic movement, suppress resistance by ethnic minorities, and place the regions where ethnic minorities live under complete control, in order to promote the policies of the military junta.

According to the reports examined by the Tribunal today, such as those by the United Nations, it has become clear that attacks such as rape and extrajudicial killings are used as deliberate means to terrorize the population.<sup>47</sup> For instance, in the United Nations report, the “Four Cuts Policy” used by the Burmese junta as a policy to suppress rebel forces (to prevent recruiting food, funds, information and citizens from the population) is reported to be a means of terrorizing the population.<sup>48</sup>

Based on its detailed analysis of numerous rape cases, *License to Rape* (P-7) concluded that “soldiers of the Burmese military regime are systematically using rape as a weapon in their anti-insurgency campaigns against civilian populations in Shan State. [T]his practice is officially condoned by the military authorities.”

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<sup>41</sup> *Elements*, 5.

<sup>42</sup> International Committee of the Red Cross, Commentary on the Additional Protocols of 8 Jun. 1977 to the Geneva Conventions of 12 August 1949 611 ¶ 1917 (1987).

<sup>43</sup> *Prosecutor v. Kunarac, Kovac and Vukovic*, ICTY Case No. IT-96-23 & IT-96-23/1-T, Appeals Chambers Judgment, ¶ 90 (Jun. 12, 2002).

<sup>44</sup> “In order to determine whether an attack is “directed against” a civilian population, the court “will consider, *inter alia*, the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.” *Id.* ¶ 91.

<sup>45</sup> *Elements*, 5. However, the ICC has established that “in exceptional circumstances, [such a policy may] be implemented by a deliberate *failure to take action*, which is consciously aimed at encouraging such attack.” *Elements*, 5 n.6 (emphasis added).

<sup>46</sup> U.S. Dep’t of State, *2008 Country Reports on Human Rights Practices: Burma*, p.3.

<sup>47</sup> *Crimes in Burma*, pp. 74-75.

<sup>48</sup> *Special Rapporteur on extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Addendum: Summary of cases transmitted to Government and replies received*, U.N. Doc. A/HRC/4/20/Add.1, (2007), at 223.



Further, through infrastructure plans and military camps, forced labor is being implemented as an essential part of spreading the military regime's influence into ethnic areas. Moreover, the use of torture and arbitrary imprisonment forms part of a consistent policy to suppress the prodemocracy movement and restrict freedom.

In conclusion, all of these crimes are being undertaken pursuant to the military regime's policies.

## 2. A widespread or systematic attack

A crime against humanity must be “widespread or systematic.”<sup>49</sup> As the ICTY has clarified, “the adjective ‘widespread’ connotes the large-scale nature of the attack and the number of its victims,”<sup>50</sup> and “the adjective ‘systematic’ signifies the organized nature of the acts of violence and the improbability of their random occurrence.”<sup>51</sup>

The sheer number of attacks against civilian populations reported by international organizations, national governments, and reputable NGOs, as well as the consistency in the description of the attacks, indicates that murder, enslavement, imprisonment, torture, rape and sexual violence are widespread in Burma.

In his 2006 report, then-Myanmar Rapporteur Paulo Sergio Pinheiro, who investigated and reported on countless victims over many years, stated that “the Special Rapporteur received reports of widespread and systematic human rights violations, including summary executions, torture, forced labor practices, sexual violence and recruitment of child soldiers” (P-5, ¶ 27) and that “the serious human rights violations described above have been widespread and systematic over the last decade as to suggest they are not simply isolated acts of individual misconduct of middle or low rank officers but rather the result of the upholding of a system under which individuals and groups have been allowed to breach the law and violate human rights without being held to account” (P-5, ¶ 32).

The 2010 report of the Special Rapporteur also stated that there is a “pattern of widespread and systematic violations which has existed for many years and still persists,” and that the “culture of impunity” with respect to human rights violations has given rise to a situation where there is lack of accountability even when grave human rights violations occur (P-4).

As part of a separate inquiry, the ILO's Commission of Inquiry in 1998 found that forced labor was being implemented in a widespread and systematic manner (P-13, ¶ 536). Further, NGO reports on sexual violence, such as the *License to Rape* (P-7), conclude that attacks were “widespread and systematic.”

In this way, the evidence presented in support of the indictment gives rise to the conclusion that the junta carried out “widespread and systematic” attacks on the civilian population of Burma.<sup>52</sup>

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<sup>49</sup> Prosecutor v. Kunarac, Kovac and Vukovic, ICTY Case No. IT-96-23 & IT-96-23/1-T, Trial Chamber Judgment, ¶¶ 427-28 (Feb. 22, 2001).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* ¶ 429.

<sup>52</sup> See Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Myanmar*, U.N. Doc. CEDAW/C/MMR/CO/3, ¶ 24 (Nov. 7, 2008) (The Committee expresses its deep concern at the high prevalence of sexual and other forms of violence, including rape, perpetrated by members of the armed forces against rural ethnic women) (P-15); Special Rapporteur on the Situation of Human Rights in Myanmar, *Human Rights Situations that Require the Council's Attention: Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, delivered to the General Assembly, Human Rights Council*, U.N. Doc. A/HRC/7/18, ¶ 58 (Mar. 7, 2008) (describes “widespread and



Thus, it is clear that the cases of murder, torture, deprivation of freedom, and rape and sexual violence constitute crimes against humanity.

## V. Responsibility of the Commander

As a member of SLORC or Chairman of SLORD/SPDC, the defendant Than Shwe has held the position of head of state since 1988, and from April 23, 1992 he assumed the position of Senior General of the armed forces.

Given the circumstances, the defendant Than Shwe knew that the military was committing or attempting to commit crimes, or at the very least, *should* have known that such crimes or attempted crimes were occurring.

Even so, he did not take necessary and reasonable measures in his power to prevent or deter the commission of crimes by the military or to have the proper authorities investigate and prosecute the situation.

As the head of state of Burma, a Member State of the United Nations, the defendant Than Shwe knew of all of the reports and resolutions of the United Nations on the human rights situation in Burma, or was in a position to have knowledge thereof. Further, all of these reports and resolutions consistently came to the conclusion that widespread and grave human rights violations were being committed, and consistently demanded that they be remedied. The defendant Than Shwe should not have discounted these reports and resolutions as false facts that were coincidentally reported in large numbers; rather, he should have accepted and investigated the allegations, and punished those responsible. However, absolutely no such investigations or punishment took place.

Accordingly, pursuant to Article 28 (a) and (b)<sup>53</sup> of the Rome Statute, we believe that the defendant Than Shwe should bear criminal responsibility for the aforementioned crimes of the Burmese government authorities or the military, and should also be held responsible as the head of state, under the ITCAWB Statute.

## VI. Conclusion and Requests to the Tribunal

Today we have heard witness testimony and examined documentary evidence which we believe are sufficient to establish the crimes against humanity of murder, enslavement, imprisonment, torture, rape and sexual violence.

We request that the Tribunal make a finding of crimes against humanity and thereby play a role in moving investigations into these human rights violations even further forward. On 10 March 2010, Special Rapporteur Tomás Ojea Quintana suggested that United Nations organizations consider sending a Commission of Inquiry to Burma for the purpose of investigating international crimes, on the grounds that it is possible that human rights violations constituting crimes against humanity and war crimes under

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systematic” “murder, torture and sexual violence”).

<sup>53</sup> Rome Statute of the International Criminal Court, (17 July 1998)2187 U.N.T.S. 3, 105 (entered into force 1 July 2002), Art. 28. See also ITCAWB Statute, Art. 5.



the Rome Statute have been committed in Burma and that the Burmese government will not seek accountability for those crimes (P-4).<sup>54</sup>

This Tribunal must seriously consider that recommendation.

Commissions of Inquiry were sent to the Asian region when human rights violations became extremely serious in East Timor and Nepal; after those Commissions of Inquiry were sent, each of those countries accepted the investigation report and recommendations of the respective Commissions of Inquiry. Those Commissions of Inquiry played a role in making certain improvements to the human rights situation.<sup>55</sup>

In order to make positive improvements to the human rights situation and to put an end to impunity, a Commission of Inquiry should be formed and sent to Burma under the authority of the Secretary General of the United Nations or under a resolution of the United Nations Security Council or Human Rights Council.

The prosecutors therefore request that the Tribunal:

**Recommend that the Secretary General of the United Nations, United Nations Security Council, and United Nations Human Rights Council make a decision to send a Commission of Inquiry.**

If, based on the outcome of the Commission of Inquiry's investigation, it is recognized that there are crimes against humanity and if, in spite of that, the Burmese military junta does not seek accountability for those crimes, we anticipate that the Security Council will pass a resolution to refer this case on the situation in Burma to the Prosecutor of the International Criminal Court, so that charges can be formally brought against the defendant Than Shwe.<sup>56</sup>

The prosecutors therefore request that the Tribunal:

**Recommend that, if the situation fails to improve even after an independent Commission of Inquiry is sent, the United Nations Security Council discuss crimes against humanity in Burma and pass a resolution to refer this case to the Prosecutor of the International Criminal Court.**

We hope that the Tribunal agrees with the prosecutors, and recommend that the international community engage in further investigations into the scope and nature of the violations set forth in this document, and into additional cases of similar types of violations.

Such a decision by the Tribunal today would shine a light on the systematic human rights abuses carried out in Burma for decades, and help take the first step towards ending impunity for human rights violations in Burma.

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<sup>54</sup> Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana A/HRC/13/48, 10 March 2010, ¶¶ 121-22.

<sup>55</sup> Since the dispatch of a Commission of Inquiry until the present, Nepal has had a Country Office of the United Nations High Commissioner for Human Rights.

<sup>56</sup> A Commission of Inquiry was dispatched to Darfur in Sudan, and subsequently, the United Nations Security Council passed a resolution referring the situation to the ICC.



## Annex: United Nations Documents Regarding Human Rights Situations in Burma

The United Nations has repeatedly adopted resolutions and published various reports on the human rights situations in Burma over the last two decades. The reports describe countless human rights violations in Burma and the resolutions include a number of recommendations to the Burmese government. This is the list of those resolutions and reports.

### 1. U.N. General Assembly (GA)

#### UNGA Resolutions

1. A/RES/64/238, 26 March 2010, "Resolution Adopted by the General Assembly. 64/238. Situation Of Human Rights In Myanmar"
2. A/RES/63/245, 23 January 2009, "Resolution Adopted by the General Assembly. 63/245. Situation Of Human Rights In Myanmar"
3. A/RES/62/222, 28 February 2008, "Resolution Adopted by the General Assembly. 62/222. Situation Of Human Rights In Myanmar"
4. A/RES/61/232, 13 March 2007, "Resolution Adopted by the General Assembly. 61/232. Situation Of Human Rights In Myanmar"
5. A/RES/60/233, 23 March 2006, "Resolution Adopted by the General Assembly. 60/233. Situation of Human Rights in Myanmar"
6. A/RES/59/263, 17 March 2005, "Resolution Adopted by the General Assembly. 59/263. Situation Of Human Rights In Myanmar"
7. A/RES/58/247, 11 March 2004, "Resolution Adopted by the General Assembly. 58/247. Situation Of Human Rights In Myanmar"
8. A/RES/57/231, 28 February 2003, "Resolution Adopted by the General Assembly. 57/231. Situation Of Human Rights In Myanmar"
9. A/RES/56/231, 29 February 2002, "Resolution Adopted by the General Assembly. 56/231. Situation of Human Rights of Myanmar"
10. A/RES/55/112, 1 March 1001, "Resolution Adopted by the General Assembly. 55/112. Situation of Human Rights in Myanmar"
11. A/RES/54/186, 29 February 2000, "Resolution Adopted by the General Assembly. 54/186. Situation Of Human Rights In Myanmar"
12. A/RES/53/162, 25 February 1999, "Resolution Adopted by the General Assembly. 53/162. Situation of Human Rights in Myanmar"
13. A/RES/52/137, 3 March 1998, "Resolution Adopted by the General Assembly. 52/137. Situation of Human Rights in Myanmar"
14. A/RES/51/117, 6 March 1997, "Resolution Adopted by the General Assembly. 51/117. Situation of Human Rights in Myanmar"
15. A/RES/50/194, 11 March 1996, "Resolution Adopted by the General Assembly. 50/194. Situation of Human Rights in Myanmar"
16. A/RES/49/197, 9 March 1995, "Resolution Adopted by the General Assembly. 49/197. Situation of Human Rights in Myanmar"
17. A/RES/48/150, 31 January 1994, "Resolution Adopted by the General Assembly. 48/150. Situation of Human Rights in Myanmar"
18. A/RES/47/144, 1 March 1993, "Resolution Adopted by the General Assembly. 47/144. Situation in Myanmar"
19. A/RES/46/132, 17 December 1991, "Resolution Adopted by the General Assembly. 46/132. Situation in Myanmar"

#### Reports of the Secretary General to the GA

1. A/64/334, 28 August 2009, "Report of the Secretary-General: Situation of Human Rights in Myanmar"
2. A/63/356, 17 September 2008, "Report of the Secretary-General: Situation of Human Rights in Myanmar"
3. A/61/504, 9 October 2006, "Report of the Secretary-General: Situation of Human Rights in Myanmar"
4. A/56/505, 24 October 2001, "Report of the Secretary-General: Situation of Human Rights in Myanmar"
5. A/55/509, 20 October 2000, "Report of the Secretary-General: Situation of Human Rights in Myanmar"



6. A/54/499, 27 October 1999, "Report of the Secretary-General: Situation of Human Rights in Myanmar"
7. A/53/657, 10 November 1998, "Report of the Secretary-General: Situation of Human Rights in Myanmar"
8. A/52/587, 10 November 1997, "Report of the Secretary-General: Situation of Human Rights in Myanmar"
9. A/51/660, 8 November 1996, "Report of the Secretary-General: Situation of Human Rights in Myanmar"

#### Reports of the Special Rapporteur to the GA

1. A/64/318, 24 August 2009, "Report of the Special Rapporteur on the Situation of Human Rights in Myanmar"
2. A/63/341, 5 September 2008, "Report of the Special Rapporteur on the Situation of Human Rights in Myanmar"
3. A/62/223, 13 August 2007, "Report of the Special Rapporteur on the Situation of Human Rights in Myanmar"
4. A/61/369, 21 September 2006, "Report of the Special Rapporteur on the Situation of Human Rights in Myanmar"
5. A/60/221, 12 August 2005, "Interim Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar"
6. A/59/311, 30 August 2004, "Interim Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar"
7. A/58/219, 5 August 2003, "Interim Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar"
8. A/57/290, 9 August 2002, "Interim Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar"
9. A/56/312, 20 August 2001, "Interim Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar"
10. A/55/359, 22 August 2000, "Interim Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar"
11. A/54/440, 4 October 1999, "Interim Report on the Situation of Human Rights in Myanmar Prepared by the Special Rapporteur of the Commission on Human Rights in Accordance with Economic and Social Council Decision 1999/231 of 27 July 1999"
12. A/53/364, 10 September 1998, "Interim Report on the Situation of Human Rights in Myanmar Prepared by the Special Rapporteur of the Commission on Human Rights in Accordance with Economic and Social Council Decision 1998/261 of 30 July 1998"
13. A/52/484, 16 October 1997, "Interim Report on the Situation of Human Rights in Myanmar Prepared by the Special Rapporteur of the Commission on Human Rights in Accordance with General Assembly Resolution 51/117 and Economic and Social Council Decision 1997/272"
14. A/51/466, 8 October 1996, "Interim Report on the Situation of Human Rights in Myanmar, Prepared by Judge Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights, in Accordance with Commission Resolution 1996/80 of 23 April 1996"
15. A/50/568, 16 October 1995, "Interim Report Prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar, in Accordance with Commission on Human Rights Resolution 1995/72 of 8 March 1995 and Economic and Social Commission Decision 1995/283 of 25 July 1995"
16. A/49/594/Add.1, 9 November 1994, "Addendum to the Interim Report Prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar, in Accordance with Paragraph 20 of Commission on Human Rights Resolution 1994/85 of 9 March 1994 and Economic and Social Council Decision 1994/269 of 25 July 1994"
17. A/49/594, 28 October 1994, "Interim Report Prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar, in Accordance with Commission Resolution 1994/85 and Economic and Social Council Decision 1994/269"
18. A/48/578, 16 November 1993, "Interim Report Prepared by Professor Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in Accordance with Commission Resolution 1993/73 and Economic and Social Council Decision 1993/278"

## **2. U.N. Human Rights Council (HRC)**

### UN HRC Resolutions

1. A/HRC/RES/13/25, 15 April 2010, "Human Rights Situations that Require the Council's Attention: Resolution adopted by the Human Rights Council 13/25. Situation of Human Rights in Myanmar"
2. A/HRC/RES/12/20, 12 October 2009, "Human Rights Situations that Require the Council's Attention:



- Resolution adopted by the Human Rights Council 12/20. Aung San Suu Kyi and Other Political Prisoners in Myanmar”
3. A/HRC/RES/10/27, 27 March 2009, “Human Rights Council Resolution 10/27. Situation of Human Rights in Myanmar”
  4. A/HRC/RES/8/14, 18 June 2008, “Human Rights Council Resolution 8/14. Situation of Human Rights in Myanmar”
  5. A/HRC/RES/7/31, 28 March 2008, “Human Rights Council Resolution 7/31. Situation of Human Rights in Myanmar”
  6. A/HRC/RES/6/33, 14 December 2007, “Human Rights Council Resolution 6/33. Follow-up to the Report of the Special Rapporteur on the Situation of Human Rights in Myanmar”
  7. A/HRC/RES/S-5/1, 2 October 2007, “Human Rights Council Resolution S-5/1: Situation of Human Rights in Myanmar”

### Reports of the Special Rapporteur to the HRC

1. A/HRC/13/48, 10 March 2010, “Human Rights Situations that Require the Council’s Attention: Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana”
2. A/HRC/10/19, 11 March 2009, “Human Rights Situations that Require the Council’s Attention: Report of the Special Rapporteur on the situation of Human Rights in Myanmar, Tomás Ojea Quintana”
3. A/HRC/10/17, 11 February 2009, “Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Situation of Human Rights in Myanmar. Note by the Secretary-General”
4. A/HRC/8/12, 3 June 2008, “Human Rights Situations that Require the Council’s Attention: Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana, on the Implementation of Council Resolutions S-5/1 and 6/33”
5. A/HRC/7/24, 7 March 2008, “Human Rights Situations that Require the Council’s Attention: Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Paulo Sérgio Pinheiro, Mandated by Resolution 6/33 of the Human Rights Council”
6. A/HRC/7/18, 7 March 2008, “Human Rights Situations that Require the Council’s Attention: Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Paulo Sérgio Pinheiro”
7. A/HRC/4/14, 12 February 2007, “Implementation of General Assembly Resolution 60/251 of March 2006 Entitled ‘Human Rights Council’: Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Paulo Sérgio Pinheiro\*

### **3. U.N. Commission on Human Rights**

#### UN Commission on Human Rights Resolutions

1. E/CN.4/RES/2005/10, 14 April 2005, “Commission on Human Rights Resolution 2005/10. Situation on Human Rights in Myanmar”
2. E/CN.4/RES/2004/61, 21 April 2004, “Commission on Human Rights Resolution 2004/61. Situation on Human Rights in Myanmar”
3. E/CN.4/RES/2003/12, 16 April 2003, “Commission on Human Rights Resolution 2003/12. Situation on Human Rights in Myanmar”
4. E/CN.4/RES/2002/67, 25 April 2002, “Commission on Human Rights Resolution 2002/67. Situation on Human Rights in Myanmar”
5. E/CN.4/RES/2001/15, 18 April 2001, “Commission on Human Rights Resolution 2001/15. Situation on Human Rights in Myanmar”
6. E/CN.4/RES/2000/23, 18 April 2000, “Commission on Human Rights Resolution 2000/23. Situation on Human Rights in Myanmar”
7. E/CN.4/RES/1999/17, 23 April 1999, “Commission on Human Rights Resolution 1999/17. Situation on Human Rights in Myanmar”
8. E/CN.4/RES/1998/63, 21 April 1998, “Commission on Human Rights Resolution 1998/63. Situation on Human Rights in Myanmar”
9. E/CN.4/RES/1997/64, 16 April 1997, “Commission on Human Rights Resolution 1997/64. Situation on Human Rights in Myanmar”
10. E/CN.4/RES/1996/80, 23 April 1996, “Commission on Human Rights Resolution 1996/80. Situation on Human Rights in Myanmar”
11. E/CN.4/RES/1995/72, 6 March 1995, “Commission on Human Rights Resolution 1995/72. Situation of Human Rights in Myanmar”
12. E/CN.4/RES/1994/85, 6 March 1994, “Commission on Human Rights Resolution 1994/85. Situation of



- Human Rights in Myanmar”
13. E/CN.4/SUB.2/RES/1993/19, 20 August 1993, “Situation in Myanmar: Sub-Commission on Human Rights resolution 1993/19”
  14. E/CN.4/RES/1993/73, 10 March 1993, “Commission on Human Rights Resolution 1993/73. Situation of Human Rights in Myanmar”
  15. E/CN.4/RES/1992/58, 3 March 1992, “Commission on Human Rights Resolution 1992/58. Situation of Human Rights in Myanmar”

#### 4. U.N. Economic and Social Council (UN ECOSOC)

##### Reports of the Secretary General to the ECOSOC

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