CRIMINAL ACCOUNTABILITY FOR HEINOUS CRIMES IN BURMA

1. A Consultation on the International Criminal Court and the Rule of Law: Burma and Thailand, was held on November 22-23 at the SASA International House in Bangkok, Thailand. Organized by the Burma Lawyers’ Council (BLC) and the Union for Civil Liberty (UCL), the Consultation featured presentations by organizations and individuals such as the International Federation of Human Rights, Mr. Harry Roque, Jr., International Criminal Court Counsel, Mr. Teerapat Asavasungsidhi, Legal Adviser of the International Committee of the Red Cross, Ms. Evelyn Balais-Serrano, Coordinator for Coalition for the International Criminal Court – Asia, Mr. Sarawut Pratoomraj, ICC Coordinator of the UCL, as well as Mr. Aung Htoo, General Secretary, and Mr. Stewart Manley, Staff Attorney, of the BLC.

2. The Consultation included focused discussions on the serious crimes perpetrated by the SPDC and how to obtain justice for the victims. The recent violent crackdown in September 2007 of peaceful demonstrators, including thousands of Buddhist monks, was a vivid reminder of why the State Peace and Development Council (SPDC), the military government that has ruled Burma since 1988, is notorious worldwide for suppression of political opposition groups and violations of human rights.

3. There is overwhelming evidence that these crimes have been committed for decades and are still being committed with impunity, despite regular international condemnation. They include crimes against humanity such as torture, rape, enslavement, murder, imprisonment in violation of international law, and forcible transfer of population, all committed as part of a widespread and systematic attack against the civilian population of the country. To illustrate, in February 2006 a representative from Human Rights Watch stated that torture continues in Burma and is a policy instrument. The U.S. Department of State reported that, in 2006, “Persons forced into portering or other labor faced extremely difficult conditions, beatings, rape, lack of food, lack of clean water, and mistreatment that at times resulted in death.” The Karen Human Rights Group has added that “the fear of potential rape serves the military as a tool for intimidation and control of women and entire communities.” There is also evidence of war crimes and possibly genocide.

4. These acts go far beyond a repudiation of democracy; they are criminal violations of international humanitarian and human rights law, including grave breaches...
of the Geneva Conventions, and squarely fit within the jurisdiction of international justice mechanisms, such as the International Criminal Court.

5. With the establishment of the International Criminal Court, there is a growing consensus that no safe harbor should exist for perpetrators of heinous crimes. National courts in Burma are incapable and unwilling to prosecute the perpetrators of these serious crimes; thus, a remedy is not available domestically. A statement by Paulo Sergio Pinheiro, the United Nations Special Rapporteur on the Situation of Human Rights in Burma, illustrates this condition: “The judicial system, far from affording individuals basic standards of justice, is employed by the Government as an instrument of repression to silence dissent.” Moreover, it is the best interest of justice to provide the victims of these crimes with a venue to hold the perpetrators responsible for their actions.

6. **The first step of the Project on Criminal Accountability for Heinous Crimes in Burma is to seek the establishment of an Independent Commission of Inquiry, by either the Security Council or the UN Secretary General’s Office, to investigate the commission in Burma of the most serious of crimes of concern to the international community as a whole, which threaten the peace, security and well being of the world.** We believe that the results of an investigation by such a Commission of Inquiry will lead to a UN Security Council resolution referring the heinous crimes in Burma to the International Criminal Court.

7. Various Security Council resolutions acknowledge that state sponsored heinous crimes can constitute a threat to global peace and security. Protection of women and children during conflict is underscored by the unanimous passage of Security Council Resolution 1325 on women, peace and security, which buttresses the “Responsibility to Protect” Doctrine, under Security Council Resolution 1674. The Genocide Convention, to which Burma is a party, requires prosecution of perpetrators and the Security Council can be seized under Article 8 for enforcement. In addition, Burma has been in a state of internal armed conflict for over forty years, devoting nearly half of its budget to maintain a standing army; thus the crimes inflicted on civilians are also clear violations of the Geneva Conventions.

8. Over the last two decades there has been a growing consensus, not only that lawless states are a threat to security, but also that the world community has a moral and legal duty to protect people held prisoners by their own leaders. Setting up an international criminal investigation is not a political decision, but rather a legal obligation enforcing the most fundamental of rights of the people of Burma.
9. The BLC urges that:
   • Human rights and humanitarian organizations, concerned individuals, and all others who believe in the protection of innocent victims and the accountability of perpetrators of serious crimes include criminal accountability in their discussions of the situation in Burma.
   • The UN Security Council act under its Chapter 7 powers to end the impunity accorded the SPDC.
   • All nation governments, including Burma, cooperate with this inquiry and be part of a constructive engagement with justice.

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