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24.07.2009

**His Excellency Mr Ban Ki-moon  
The United Nations Secretary-General  
United Nations Building  
New York, NY 10017  
USA**

## **UN ACTION ON BURMA**

Dear Mr Secretary-General,

We, Burmese democratic and human rights activists in Europe, welcome the leadership you have shown during your recent visit to Burma. We express our appreciation for your long-standing support to improvement of human-rights and humanitarian situations in Burma, and are grateful to you for strongly conveying of the messages of the international community to Burmese military regime.

We cautiously agree with the proposals you put forward to the Burmese military regime – release of political prisoners, ‘resumption’ of a political dialogue and credible & legitimate elections - but we believe that the release of all political prisoners, including Daw Aung San Suu Kyi, will not be in itself signify that there is real change. We have seen in the past that the release of Daw Aung San Suu Kyi (twice) and other pro-democracy leaders such as Min Ko Naing and other student leaders were released but were then detained again despite breaking no law. The releases in themselves did not lead to meaning and full dialogue, despite the National League for Democracy agreeing to talks with no pre-conditions. Now it is vital that the UN should send a clear and loud message to SPDC that:

In addition to the release of all political prisoners, three basic freedoms, in terms of expression, association and assembly, be guaranteed in accordance with constitutional norms and the Universal Declaration Of Human Rights. Independence of the judiciary is also essential.



A substantive dialogue between the Government and the opposition has never taken place, except for a sham dialogue between Major General Aung Kyi and Daw Aung San Suu Kyi fabricated by the SPDC. As such, the term 'resumption' is not appropriate. In addition to asking for political dialogue, UN should manifestly demand SPDC to create political environment in which a genuine dialogue can really occur, including cancellation of draconian laws, such as the 1975 State Protection Act.

The UNs' way to approach the 2010 election - the creation of conditions conducive to credible and legitimate elections - is insufficient. Instead of solely focussing on the process of the election, now it is time for UN to highlight the criminality of SPDC's 2008 Constitution, with reference to Article 445 which provides self-amnesty to all SLORC/ SPDC authorities. So long as that constitution is in place, 2010 election is meaningless to our people from the aspect of human rights, even if it is held under the supervision of the international community. In effect the constitution legalises dictatorship, and all repressive laws will remain in place. At a minimum, you should insist on the implementation of proposals by your Special Advisor, Mr Ibrahim Gambari to form a "Constitutional Review Commission", which will include the participation of democratic opposition, mainly NLD and genuine ethnic leaders.

We are in solidarity with you in the belief that the political process in Burma must be all inclusive and serves the interest of all the people of Burma, and that the regime must take necessary steps on your specific proposals in the very near future to ensure the inclusiveness and credibility of the political process. We are very pleased to notice that, during the post-briefing press conference, you emphatically stated that without participation of Daw Aung San Suu Kyi, without her being able to campaign freely, and without her NLD party being able to establish party offices all throughout the provinces, the 2010 election cannot be regarded as credible and legitimate.

Even during your recent visit to Burma, we could see very clearly that the regime made their hardest efforts to manipulate the visit as if it is a form of endorsement on their fake election plans for 2010. From our experience we know that the regime is very manipulative and deceitful, and over the past 20 years has broken its word to the United Nations time and again.

Furthermore, in addition to talking about the regime's 2010 election plans, we also would like the United Nations to also pressure the Burmese military regime to give due recognition to the results of Burma's last free and fair elections in 1990. If and when a constitutional review is carried out on the regime's promilitary constitution, representatives must not be hand-picked by the Generals as they were in the National Convention.

The 2008 Constitution was passed forcibly by vote rigging and voter intimidation



in the May 2008 referendum, while at the same time millions were made homeless by post-cyclone floods. The constitutional review must be led by the people's representatives who have been democratically elected in the 1990 elections, as it is the mandate and the responsibility of people's elected representatives to draft and/or amend a country's constitution.

Moreover, we also would like to suggest that the United Nations Security Council establish a Commission of Inquiry on crimes against humanity and war crimes committed in Burma, and if the inquiry establishes that crimes have taken place it should refer the situation of Burma to the International Criminal Court. Even the UN actors, particularly the UN Special Rapporteur on Burma, have highlighted the culture of impunity around sexual violence perpetrated by the Burmese military as an area of serious concern and particularly alarming. Such culture of impunity occur not only around sexual violence, but also around extrajudicial killings and torture, which have never been investigated and those responsible have never been prosecuted. The pattern and manner of these atrocities obviously constitute international crimes.

In addition, we would as well like to draw your attention to your report issued on 30 January 2009 on "Implementing the Responsibility to Protect" (R2P), in which you committed to turn the concept into policy, which we profoundly welcome. Accordingly, it is the responsibility of States to protect their populations from crimes against humanity, war crimes, ethnic cleansing and genocide. As you are well aware, there are reliable documents, including UN documents, of the widespread and systematic violations of forced displacement, sexual violence, extrajudicial killings and torture occurring in eastern Burma. It is obvious that the military regime in Burma is not taking any responsibility to protect the populations of Burma from the brutalities of its own army, and therefore the Security Council has the responsibility to take timely and decisive actions to prevent and halt crimes against humanity and war crimes.

We are of the firm opinion that \_

(a) the Security Council and the General Assembly should appoint a Commission of Inquiry to investigate and report on alleged violations of international law, and if necessary to refer to the International Criminal Court under the Rome Statute;

(b) the UN Security Council resolution 1325 has highlighted the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes. The SPDC's 2008 Constitution totally denies that responsibility; grants self amnesty for the perpetrators; and has nurtured endless impunity in Burma, contrary to UNSC resolution 1325. As such, UNSC is responsible to declare SPDC's 2008 Constitution 'null and void' as was the case for 1983 Constitution of South Africa in accordance with the UNSC resolution 554 (1984) of 17 August 1984; and



(c) it is the responsibility of the Secretary-General to provide Members of the Security Council and General Assembly with the information about potential R2P situations and to ensure that they act in a timely and decisive manner. Lastly, but not least, we would like to reiterate that the United Nations Security Council will need to take concrete measures to ensure that Burmese military regime genuinely cooperates to help translate your proposals into tangible actions and results.

We look very much forward to your positive response at your earliest convenience, and express our sincere gratitude for your kind efforts.

Yours sincerely,

On behalf of the Forum of Burmese in Europe,

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*The Forum of Burmese in Europe ( F B E ) represents a network of Burmese communities across Europe and is advocating for democracy, social justice and human rights in Burma. The FBE strongly rejects the military dictatorial rule in Burma and has been working closely together with the democratic forces around the world.*

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