



February 17, 2012

H.E. United Nations Secretary General Ban Ki-Moon
Executive Office of the Secretary General
3 United Nations Plaza
New York, NY 10017

Re: An Urgent Call to Correct Critical Errors Regarding Military Rapes in Myanmar in Your January 13, 2012, Report to the Security Council on Conflict-related Sexual Violence

Your Excellency,

We are writing to respectfully urge you to amend your January 13, 2012, report to the Security Council (“S.C.”) discussing war rape in Myanmar¹ (the “Report”) as it undermines the reporting requirements of Security Council Resolutions (“S.C.R.”) 1820, 1888, and 1960 under which the Report was written. First, the Report fails to inform the S.C. that an amnesty provision in Myanmar’s constitution precludes any prosecutions of the *Tatmadaw Kyi* (government armed forces) for international crimes, including rape. These prosecutions are critical tools for the S.C. to enforce its mandates to end impunity. Second, the failure to list the *Tatmadaw Kyi* in the annex as a party credibly suspected of conflict-related sexual violence flies in the face of the extensive and reliable evidence of systematic rape of Myanmar’s ethnic minorities. These omissions undermine the credibility and objectivity of your office in reporting on this issue to the S.C.

1. Security Council Resolutions 1820, 1888, and 1960 require that you report Myanmar’s amnesties for military rapists to the Security Council

On January 31, 2011, Myanmar implemented a new constitution containing blanket amnesties for *Tatmadaw Kyi*, for all international crimes, including rape and other crimes of sexual violence.² This amnesty provision was hastily inserted into the final draft of the constitution soon after the passage of S.C.R. 1820 mandating no amnesties for sexual violence crimes, including rape.³ The insertion of this amnesty provision (only applicable to government actors) in Myanmar’s new constitution is an internationally wrongful action by Myanmar in defiance of S.C.R. 1820 and international humanitarian law. No such amnesty provision exists in any other constitution in the world. The amnesty provision in Myanmar’s constitution flouts S.C.R.’s 1820, 1888, and 1960, under which the Report was written, as well as S.C.R.’s 1325, 1612, 1674, 1882 and 1889.

¹ The Secretary-General, *Report of the Secretary-General on Conflict-related sexual violence*, ¶¶ 39-41, delivered to the Security Council and the General Assembly, U.N. Doc. S/2012/33, A/66/657 (Jan. 13, 2012) (“SG 2012 1960 Report”).

² CONST. OF THE REPUBLIC OF THE UNION OF MYANMAR §445, (2008) (“No proceeding shall be instituted against the said Councils or any member thereof or any member of the Government, in respect to any act done in the execution of their respective duties.”).

³ S.C. Res. 1820, ¶ 4, U.N. Doc. S/RES/1820 (Jun. 19, 2008).

Information about this amnesty should be the defining feature of the Report, instead of being omitted.

The blanket amnesty for crimes of Myanmar's military has been repeatedly brought to the attention of your office, including by a United States ("U.S.") Senate Women's Caucus on Burma letter,⁴ dated April 9, 2009, and the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, in September 2010.⁵ Your failure to note the permanent amnesties in Myanmar stands in sharp contrast to your condemnation of such amnesties in other contexts. Just six days after omitting mention of Myanmar's amnesties to the S.C. in the Report, your opening remarks to the S.C. on January 19, 2012 on the rule of law called on the Council to "... reject any endorsement of amnesty for genocide, war crimes, or crimes against humanity or gross violations of human rights and international humanitarian law."⁶

Further, your silence on amnesties in the Myanmar section of the Report undercuts your recommendations that: (1) United Nations (U.N.) mediators "ensure that amnesties for crimes under international law are prohibited;"⁷ and (2) the S.C. "employ all means at its disposal to address conflict-related sexual violence, including referrals to the International Criminal Court."⁸ It is unclear how U.N. mediators and the S.C. can take actions to ensure justice, including by referral to the International Criminal Court ("ICC"), unless they are provided with credible and comprehensive reports on conflict-related violence that address, among other things, serious violations of international law, including constitutional amnesties for international crimes, such as rape.

2. Security Council Resolution 1960 requires that the *Tatmadaw Kyi* be listed in the report's annex

Myanmar is a country in armed conflict on the S.C.'s agenda ruled by a party (the *Tatmadaw Kyi*) that is "credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict." By not listing the *Tatmadaw Kyi* in the annex, the report fails to properly consider the incidents within the reporting period, in the context of the long-term systematic use of sexual violence against the ethnic groups in Myanmar. Myanmar is engaged in the longest running armed conflict in the world. The International Committee of the Red Cross (ICRC) has publicly stated that the Myanmar military has committed

⁴ Letter to Ban-ki Moon, Secretary General, United Nations, from U.S. Senate Women's Caucus on Burma, (Apr. 9, 2009) ("The constitution...attempts to give amnesty to the military junta and thus deny access to justice for the victims of the military regime's systematic sexual violence against ethnic minority women.").

⁵ Special Rapporteur on the situation of human rights in Myanmar, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, ¶ 68, U.N. Doc. A/65/368 (Sept. 15, 2010) ("If the Government fails to assume this responsibility, then the responsibility falls to the international community. In this respect, of particular concern is article 445 of the 2008 Constitution, which may impede the Government from effectively addressing justice and accountability in the future.").

⁶ U.N. SCOR, 67th Sess., 6705th mtg. at 3, U.N. Doc. S/PV.6705 (Jan. 19, 2012).

⁷ SG 2012 1960 Report, ¶ 107, *supra* note 1.

⁸ *Id.* at ¶ 116(b).

international crimes,⁹ and numerous NGO reports have found evidence of widespread and systematic crimes of conflict-related sexual violence, including:

- (1) Special Rapporteur Quintana stated in his September 2011 report that “[a]llegations of abuses against civilian populations throughout Kachin State include reports of 18 women and girls having been gang raped by army soldiers, and of four of those victims being subsequently killed.”¹⁰
- (2) Your 2009 report on Resolution 1820 claimed that in “Myanmar, recent concern has been expressed at...the high prevalence of sexual violence perpetrated against rural women from the Shan, Mon, Karen, Palaung and Chin ethnic groups by members of the armed forces and at the apparent impunity of the perpetrators.”¹¹
- (3) The Women’s League of Burma (WLB) has been documenting the crimes of sexual violence occurring in Myanmar and wrote to the Special Representative on Sexual Violence in Conflict on October 6th, 2011 and provided a detailed list of conflict-related sexual violence perpetrated by government forces in ethnic Shan and Kachin States between 2009 and 2011. WLB also expressed concern over the fact that your 2010 report on Resolution 1820 “contained no mention of, or information about Burma despite the fact that the systematic use of rape and other forms of sexual violence in the context of armed conflict continues to be widely perpetrated and documented.”¹²
- (4) Human Rights Watch’s 2012 world report found that the “Burmese military continues to be responsible for abuses against civilians in conflict areas, including [...] sexual violence.”¹³ It also states that local women’s rights groups reported high levels of sexual violence with more than 35 women and girls raped in the first two months of fighting alone.¹⁴

These examples detail the pattern of systematic sexual violence perpetrated by the *Tatmadaw Kyi*, particularly against the women in Myanmar’s ethnic groups. The criteria for listing is met in this case, as it is clear that crimes of conflict-related sexual violence in Myanmar are a part of a “methodical plan or system that implicates a collectivity of victims”¹⁵ and are not, in fact, isolated

⁹ International Committee of the Red Cross, Press Release, *Myanmar: ICRC denounces major and repeated violations of international humanitarian law* (June 29, 2007).

¹⁰ Special Rapporteur on the situation of human rights in Myanmar, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, ¶ 32, U.N. Doc. A/66/356 (Sept. 16, 2011).

¹¹ The Secretary-General, *Report of the Secretary-General pursuant to Security Council resolution 1820*, ¶ 15, delivered to the Security Council, U.N. Doc. S/2009/362 (Aug. 20, 2009).

¹² Letter to Ban-Ki moon, Secretary-General, United Nations, from Tin Tin Nyo, General Secretary, Women’s League of Burma (Dec. 10, 2011) (on file with the Global Justice Center).

¹³ Human Rights Watch, *World Report 2012* at 300 (2012).

¹⁴ *Id.* at 302.

¹⁵ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Provisional Guidance Note: Implementation of Security Council Resolution 1960 (2010) on Women, Peace, and Security (Conflict-Related Sexual Violence)*

offenses, especially when considered in the context of the long-standing policy of Myanmar's military to rape ethnic women. Accordingly, the *Tatmadaw Kyi* should be listed in the annex to your report.

The Report, pursuant to S.C.R.'s 1820, 1888 and 1960, is a critical tool for those working to address conflict-related sexual violence. Furthermore, the S.C. has specifically tasked your office with presenting them with complete information on conflict-related sexual violence, including information related to factors that could contribute to impunity for conflict-related sexual violence through Resolutions 1820, 1888, and 1960. Accordingly, where the Report fails to include essential information, such as Myanmar's constitutional amnesty provision, it directly undermines your duties to the S.C.

Your office is a critical force for advocating against repression and ensuring justice, and we trust you will consider the points in this letter and amend the Report accordingly.

Yours faithfully,



Janet Benshoof,
President of the Global Justice Center

cc:

Navanethem Pillay, High Commissioner for Human Rights

Margot Wallström, Special Representative of the Secretary General on Sexual Violence in Conflict

Tomás Ojea Quintana, Special Rapporteur on the situation of human rights in Myanmar

Vijay Nambiar, Secretary-General's Special Advisor for Myanmar

Sarah Taylor, Executive Coordinator, NGOWG on Women, Peace and Security

at 16 (June 2011). *See also* The Secretary-General, *Report of the Secretary-General on Children and armed conflict*, ¶175, delivered to the Security Council and the General Assembly, U.N. Doc. S/2010/181, A/64/274 (Apr. 13, 2010).