



March 4, 2009

Secretary General Ban Ki-moon
Secretary General United Nations
UN Headquarters
First Avenue at 46th Street
New York, NY 10017

Re: Urgent Action Needed to Denounce Myanmar/Burma's 2010 Elections and Constitution Which Disenfranchises Women and Attempts to Give the Military Junta Amnesty From Prosecution at the International Criminal Court

Dear Secretary General Ban Ki-moon:

We applaud your strong commitment to advancing gender equality and your leadership in promoting the critical role of women's participation in establishing lasting peace and security. In furtherance of this important principle, we urge you to take immediate action to denounce Myanmar/Burma's 2010 elections which are based on an illegitimate constitution that violates international law and the rights of the people of Myanmar/Burma. In particular, we draw your attention to the violations of women's fundamental human rights to political participation, political representation, and justice for the regime's use of systematic sexual violence, as guaranteed in CEDAW and Security Council Resolutions 1325 and 1820.

This constitution represents a gross injustice against women's human rights as it:

- 1.) **Entrenches gender apartheid in Myanmar/Burma by reinforcing the stranglehold of the brutal military regime and excludes women from holding high-level government positions;**
- 2.) **Attempts to give amnesty to the military junta and thus deny access to justice for victims of systematic sexual violence which the military regime uses as a tactic of warfare against its ethnic women.**

The constitution entrenches gender apartheid in Myanmar/Burma by reinforcing the stranglehold of the brutal military regime and excludes women from holding high-level government positions. The new constitution goes further than any other constitution in modern times in setting forth formal guarantees of inequality, constitutionalizing gender apartheid, requiring military experience for all major government offices, including the Presidency, Vice-Presidency and key ministries, as well as disenfranchising women from the block of (active) military-only legislative seats. Further, the most powerful position is the Commander-in-Chief, not the President, an office that is solely for the active military. The Constitution is a flagrant dismissal of democracy, enshrining military rule by giving 25% of parliamentary seats to the military, allowing military leaders veto power over decisions made by Parliament and making the military and police exempt from civilian courts. It is constitutionally impossible for Myanmar/Burma to accomplish CEDAW objectives: "to achieve broad representation in public life, women must have full equality in the exercise of political and economic power; they must be fully and equally involved in the decision-making at all levels."

The constitution attempts to give amnesty to the military junta and thus deny access to justice for victims of systematic sexual violence which the military regime uses as a tactic of warfare against its ethnic women. The constitution includes an amnesty provision for members of the government. This provision is a bald attempt to deny justice in the face of ample evidence that the military regime has committed war crimes, crimes against humanity and potentially even genocide through forced relocation, torture, rape, enforced disappearances and extermination. Rape reports published by ethnic women in Burma including the Shan, Mon, Karen, Palaung, and Chin, as well as by Refugees International, document sexual and other forms of violence against women systematically perpetrated by the junta. The Shadow Report by the Women's League of Burma released in November 2008 provides detailed evidence that the sexual violence continues and is fueled by impunity.

The CEDAW Committee's General Recommendation on Myanmar/Burma from 1997 particularly noted that states are required *"to prosecute and punish those who violate the human rights of women, including military personnel."* Yet UN Special Rapporteur Sérgio Pinheiro confirmed the continued lack of legal protection for women in the *Report of the Situation of Human Rights in Myanmar* released February 2006, stating that he *"deeply regrets that the Government has not agreed to an independent investigation into the allegations of systematic sexual violence in Shan State. Such a culture of impunity which continues to pervade Myanmar, whereby State agents who perpetrate serious crimes are rarely prosecuted, is of grave concern."*

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, war crimes including those relating to sexual violence against women and girls, and in this regard, stresses the need to exclude these crimes, where feasible from amnesty provisions."*

Security Council Resolution 1820, *"stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation."*

The UN should support the equal participation of the women of Myanmar/Burma in the governance of their country and end the impunity of Senior General Than Shwe and the military junta. The U.N. should continue to fulfill its strong commitment to women's rights and to international law and justice. We hope that you, Secretary General Ban Ki-moon, will take this opportunity to reinforce your promise to support the rights of all women by supporting the women in Myanmar/Burma.

This letter has the additional support of the individuals and organizations on the attached list.

Sincerely,

Janet Benshoof
President, Global Justice Center