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Legal Analysis on Heinous Crimes in Burma (May 29, 2007)

Article 6 of the Rome Statute delineates the crimes over which the International Criminal Court shall have jurisdiction. They are considered the most serious violations of international humanitarian law as formulated throughout the history of human society. The military regime has violated a litany of these crimes as delineated in Article 5 with complete impunity and therefore the military regime in Burma falls squarely under the jurisdiction of the International Criminal Court.

Under the principle of complementarity, the International Criminal Court will not exercise jurisdiction if the national court maintaining original jurisdiction over the crimes has initiated a prosecution. The principle of complementarity also implicates the principle of exhausting domestic remedies. Pursuant to Article 17(1)(a) a case shall be deemed inadmissible when it is found that the state with jurisdiction over the crime is investigating or prosecuting the case. There is no independent judiciary in Burma, the judges are appointed by the military regime and are often members of the regime therefore there can be no reasonable expectation that the courts in Burma will impartially investigate or prosecute heinous crimes in regards to Article 5.

Case Studies

The use of forced labor by the military regime in Burma has been well documented and is a violation of Article 7(1)(c) of the Rome Statute of the International Criminal Court. The Burmese military junta regularly employs a policy of forced relocation against ethnic minorities and other identifiable groups in violation of Article 7(1)(d), as forcible transfer of population. The military regime has continued its policy of imprisoning and severely depriving physical liberty of political opposition members and the terms and conditions of the prisons in Burma are in violation of the fundamental norms of international law in violation of Article 7(1)(e). It is also evident, inter alias, in a case, that U Khun Htun Oo and eight other Shan ethnic leaders were sentenced into long term imprisonments, from 75 to 106 years, respectively, for peacefully expressing their political opinions, and for their attempt to form an organization "Shan State Consultative Council" without getting involve in any violent means.

The practice of torture has become an institution under the successive military regimes in Burma and the practice continues to this very day in violation of Article 7(1)(f). The military junta has been implicated in the systematic use of rape as means of

oppression and the enforced prostitution and enforced pregnancy and sterilization in violation of Article 7(1)(g).

In its reign of terror the military regimes have employed various modes of oppression against any who have dared to oppose their rule and also any whom the junta has even slightly suspected of harbor such disloyalties to their rule, one such method has been the intentional enforced disappearances of persons in violation of Article 7(1)(i). The crime of enforced disappearance is not merely a crime perpetrated against the victim of the disappearance but it also constitutes a crime against the larger group of which the victim is a member of, such as political groups. Thus, the crime of enforce disappearance also implicates the crime of persecution against identifiable groups because it is intended to terrorize the representative group such that will be unwilling to exercise any of their inherent rights such as self-determination in violation of Article 7(1)(h). Furthermore, the crime of enforced disappearance also implicates the crime of torture because the family of the vanished person are also victims of this crime in that they suffer an intentional infliction of severe pain and suffering for a prolonged duration (i.e. until the discovery of their loved one's fate). **Furthermore, since this torture is ongoing in that the families still suffer from not knowing the fates of their family members the crime is therefore ongoing and thus the perpetrators are within the jurisdiction of the ICC.**

The systematic and institutionalized persecution of the ethnic minorities in Burma by the ruling military regime constitutes the crime of apartheid as forbidden by Article 7(1)(j). A caste system has been instituted in Burma whereby members of ethnic groups receive second class citizen status and are thereby constricted in there movement and rights in the Burmese society. The practice of discrimination in awarding citizenship and brutal oppression against the ethnic minorities constitute the crime of apartheid as defined in Article 7(2)(h) as a institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining the regime.

The junta has employed a systematic and wide spread campaign of violence against the civilian population of Burma in furtherance of state and organizational policies to commit such violent acts, such as to meet the definition of "attack against any civilian population" as delineated in Article 7(2)(a).

The military regime has intentionally inflicted conditions of life upon identifiable groups, such as the deprivation of access to food and medicine, in a calculated attempt to bring about the destruction of those identifiable populations in whole or in part, as defined by Article 7(2)(b).

The military regime has completely flouted the fundamental principles of humanitarian law as applying in armed conflicts, namely the principles of proportionality, military necessity, and discrimination in the protection of the civilian population. The military regime, in ignoring these fundamental principles, has committed with complete impunity both grave and serious breaches of the laws of war.

The actions of the military junta cannot be deemed legitimate means of maintaining or re-establishing law and order in the state or defending the unity and territorial integrity of the state as in accordance with Article 8(3). The acts committed by the military junta cannot be deemed legitimate because acts of violence against civilians are forbidden by the fundamental laws of war and even during an armed conflict the laws of war still apply (i.e. proportionality and military necessity).

The junta has committed as part of plan and in part of a large-scale commission of crimes that constitute grave breaches of the Geneva Conventions of 12 August 1949 in violation of Article 8. The military regime has committed acts of willful killing; torture; and willfully causing of great suffering and bodily injury in violations of Article 8(2)(a)(i), (ii), and (iii). A policy of extensive destruction and appropriation of property, which has not been justified by military necessity and has been carried out unlawfully and wantonly against civilian populations in Burma, as prohibited by Article 8(2)(a)(iv). **In violation of Article 8(2)(a) (v) the military regime has forced protect persons under the Fourth Geneva Convention (i.e. civilians, children, and prisoners of war) to serve in the forces of the military as child soldiers, porters, and human shields.** Furthermore, the junta has violated Article 8(2)(a) (vi) by committing extrajudicial killings of prisoners of war and civilians not party to the hostilities.

Under Article 8(2)(c) the acts committed by the military junta constitute serious violations of article 3 common to the four Geneva Conventions in the case of an armed conflict not of international conflict. Article 8(2)(d) does not apply to the circumstances of Burma because the situation is not one of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, rather the situation resembles more that of a civil war of a prolonged duration. In the situation of Burma Article 8(2)(f) applies in that the armed conflict takes place in the territory of the state of Burma and is a protracted armed conflict between governmental authorities (albeit an illegitimate one) and organized groups. Some of the serious breaches which the junta has committed are systematic rape, attacks directed at civilian targets, and intentionally directing attacks against buildings dedicated to religion, education, art, science and others which do not constitute military targets.

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