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Appeal to Take Action on Prosecution of Daw Aung San Su Kyi Under the Rome Statute of the International Criminal Court

1. Recently, the president of East Timor and Nobel Peace Prize laureate Jose Ramos-Harto claimed that, if the SPDC does not immediately release Daw Aung San Su Kyi, he will urge the Office of the Prosecutor of the International Criminal Court (ICC) to investigate and prosecute Sen. Gen. Than Shwe and other responsible leaders of the SPDC for the crimes they have committed over the years. The Burma Lawyers' Council welcomes and fully supports Mr. Ramos-Harto's statement.
2. The ICC may have jurisdiction to investigate and/or prosecute heinous crimes which have been committed and are being committed if a given state's judicial system is unable or unwilling to investigate and take legal action to ensure justice. Daw Aung San Su Kyi is being detained under the State Protection Law of 1975. The government is permitted to detain her for five years under that law. Contrary to law, they have already held her in detention for almost six years. Despite that she is being unlawfully detained Burma's judiciary did not provide any protection. According to Article 9 of that Law, restrictions may be laid down by the Central Board only, not the judiciary. However, judiciary has admitted the complaint of the government to extend her detention by accusing her of violating the conditions of her original detention under the State Protection Law of 1975. This is a blatant disregard of the Burma's judiciary for the rule of law. It is evident that Burma's judicial system is unable or unwilling to ensure justice.
3. Illegal detention of Daw Aung San Suu Kyi and other political prisoners causes commission of international crime provided for in the Rome Statute of the ICC, article 7 Crimes Against Humanity, sub-article 1(e) which states that a crime against humanity is imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law. According to Article 14, "a State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed." Under article 15(1), should a "situation" be referred by a State Party, the Prosecutor may initiate investigations on the basis of information related to crimes within the jurisdiction of the Court.
4. Some Generals in the Army may desire a genuine national reconciliation and hold the belief that the military should not interfere in politics. However, Sen. Gen. Than Shwe and other military officials have been committing heinous crimes repeatedly, to strengthen their political power, with impunity given that judiciary did not take any action, denying the principles of the rule of law. If there is no rule of law, a genuine national reconciliation will never become a reality in Burma. The Burma Lawyers' Council requests the international community to work together to restore the rule of law in Burma, by seeking the power of the International Criminal Court.

Burma Lawyers' Council

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