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(Open Letter)

To/
Mr. Kofi Annan
Secretary General
The United Nations
June 16, 2006

Dear Sir,

Warm greetings from the Burma Lawyers' Council! With our deepest concern over the continued detention of Daw Aung San Suu Kyi, who is a victim of Crime Against Humanity, we are writing to you with a request for your help.

The refusal of the Burmese military regime to release Daw Aung San Suu Kyi marks the third anniversary of the horrible crimes against humanity that occurred during the Depayin Massacre, the event which precipitated her current detainment. To this day, the Burmese military regime refuses to investigate the massacre, keeping victim Daw Aung San Suu Kyi in detention. In fact, much of the evidence points to high level government involvement in the attack. The refusal to investigate, the detainment of Daw Suu Kyi, and Burma's lack of an independent judiciary highlight the desperate need for international intervention to bring justice for these crimes. Permitting these heinous crimes to go unpunished is itself a great injustice. Seeking truth and accountability for the Depayin Massacre is a crucial step in the democratization of Burma and the process of securing international peace. Therefore, we ask Secretary-General Annan to propose to the Security Council a resolution referring the Depayin atrocity to the International Criminal Court (ICC) for adjudication.

On the 30 of May, 2003, in the Depayin township of Burma, members of the military regime organized and implemented nearly 5,000 perpetrators to attack the motor tour of Daw Aung San Suu Kyi, other leaders of the National League of Democracy and ordinary people, leaving a number of persons dead and missing. **Even though murder itself is not on a mass scale, it targeted a broader population and has resulted in intimidating not only the members and supporters of the NLD but also the entire 'civilian population'. The weight of the evidence shows that the junta orchestrated the massacre to silence democracy by producing terror in the hearts and minds of those in opposition to their policies.**

The government basis for Daw Suu Kyi's detainment has no legitimacy and is totally illegal. They alleged that the NLD had some responsibility for the violence, basing the detention on the threat to national security demonstrated by the Depayin violence. Since no investigation, trial or enquiry commission has occurred, the government has no grounds for her extended detainment. However, her detention continues, cut off from the world, in the face of attempts by Under-Secretary-General Ibrahim Gambari and the international community to compel her release. A Depayin investigation will prove that no grounds justify her detainment and press for her release.

The terror created by the Depayin massacre enables the government to continue to pursue other heinous crimes, such as massive displacement and suppression of political opposition. Prosecution will show the people of Burma that justice is not silent to those who commit international crimes. It will encourage them to continue their struggle for non-violent democratic change. Even if members of the international community would forestall a trial to conduct political negotiations with the regime, this can not outweigh the need for justice. Burma can not emerge as a democracy without investigation and punishment of the crimes that occurred at Depayin.

The regime refuses to investigate and prosecute the issue in direct opposition to the General Assembly of the United Nations at its 58th session which called for a full and independent inquiry into Depayin. This highlights that no judicial solution to the Depayin massacre can occur within Burma. Since the Security Council passed Resolution 1593, referring the international crimes committed in Darfur to the ICC, the precedent exists for referral of states not party to the Rome Statutes to be tried for their crimes when no legal mechanism is available within that country. For the crimes against humanity codified in the Rome Statutes to qualify for referral, the situation must pose a threat to international peace enabling the Security Council to exercise its power under Title VII of the Charter of the United Nations.

The Depayin massacre falls within the definition of crimes against humanity under the subject matter jurisdiction of the ICC and, further, the situation constitutes a threat to international peace. The standard for referral is laid out in the benefits outlined in the *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*. The Depayin massacre and the situation in Burma share the benefits of referral the commission outlined. First and foremost, as stated in the UN Darfur report, the ICC was created specifically to address severe crimes that pose a threat to international peace. In resolution 1556 (2004), the Security Council classified the situation in Darfur as a threat to international peace based on the vast humanitarian crisis, the commission of crimes against humanity and the displacement of civilian populations. The situation in Burma also represents a threat to international peace and security and to stability in the region. The recent report *Threat To The Peace*, commissioned by Desmond Tutu and President Václav Havel, lays out the case for why the abuses of the military regime in Burma constitute a threat to international peace. That report cites extrajudicial killing, forced displacement, sexual violence and forced labor as the necessary basis for UN Security Council involvement. Referral of the Depayin massacre represents an effective way for the Security Council to begin rectifying the situation in Burma on the basis of the Rule of Law.

Second, the Darfur commission found that Sudanese judicial mechanisms were unable and unwilling to address the international crimes. Similarly in Burma, due to the control of the judiciary by the military regime and the high profile of those who may be responsible for the massacre, justice will not be delivered within the national legal system of Burma. The only mechanism for adjudication is the ICC. Third, as pointed out in the Darfur case, due to the power and prestige of the United Nations, it represents the only credible entity that has jurisdiction over the issue since no mechanism exists within the state. The UN can use its power to compel the government to cooperate in the investigation and trial. Fourth, the Darfur commission pointed out that the ICC infrastructure is already developed and represents the most efficient and cost effective process for adjudication as opposed to the creation of a tribunal or some other mechanism. The ICC also presents the most efficient and cost effective way to prosecute the crimes committed in Burma.

Therefore, we respectfully request that Secretary-General Annan proposes that the Security Council refers the issue to the International Criminal Court as a crucial step for the Rule of Law in Burma towards the goal of international peace. We encourage for Secretary-General to make every effort to press the Security Council in this mission. The longer justice is delayed the harder it will be to collect evidence about the massacre and bring those responsible to justice. The time for justice is now.

Respectfully Yours,

Aung Htoo
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General Secretary
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