



Security Council Resolutions on Women, Peace and Security in Practice: The Failed Case of Burma

I. Introduction

“The overwhelming majority of victims [of sexual violence in conflict] never see justice for what they have endured nor receive the necessary assistance and support. We must shatter the culture of impunity for those who commit these crimes, by bringing those responsible to justice – as a critical element of our prevention efforts. There should be no safe haven for perpetrators.”

-from “A Declaration of Commitment to End Sexual Violence in Conflict” (2013)

In 2000, the United Nations (UN) Security Council passed a historic resolution as its clarion call for ending sexual violence in conflict. This Resolution, SCR 1325, as well as the succeeding Resolutions, that together form the Women, Peace and Security (WPS) Resolutions recognized the gender-specific impact of conflict and historic gender discrimination in criminal accountability for sexual violence in conflict, and underscored the need for women to participate in post-conflict reconstruction. The Global Summit to End Sexual Violence (the Summit) has been convened to create a “sense of irreversible movement to end the use of rape and sexual violence in conflict” and, therefore, is a time to assess how the WPS Resolutions have translated into protections for women during conflict.

Using the current conflict situation in Burma as a test of the WPS Resolutions demonstrates how ineffective they have been in providing protection and remedy for women on the ground during conflict. Despite the mandates of the WPS Resolutions, credible evidence continues to indicate that the military uses sexual violence against ethnic women in Burma as a means to assert its authority and to destroy ethnic communities. The military continues to operate with Constitutionally-sanctioned impunity for its actions. Moreover, current peace negotiations, intended to end decades of ethnic conflict, have almost completely failed to include women, especially ethnic women.

Unless commitments on paper, such as those set forth in the WPS Resolutions, are given force in practice, they are only of symbolic value. To translate these commitments into action in Burma requires that perpetrators of sexual violence are brought to justice and women be allowed to participate fully in the peace process. The Summit is the perfect time for the international community to issue long-overdue calls for accountability and inclusion in Burma and show true commitment to the WPS Resolutions.



II. Legal Mandates of the WPS Resolutions

The Security Council has passed seven WPS Resolutions with the intention of demonstrating that preventing sexual violence in conflict is a matter of international peace and security. The WPS Resolutions recognize the disproportionate impact of conflict on women and girls, and seek to ensure that women play a role in conflict resolution and prevention. Specifically, the WPS Resolutions call for an end to impunity for sexual violence crimes in conflict, which can constitute a war crime, genocide, and a crime against humanity. All victims of sexual violence in conflict must have access to justice mechanisms to prosecute perpetrators. Immunity and amnesties for sexual violence crimes are not to be recognized. Moreover, women must play an active and vital role in conflict resolution and peacebuilding, including free and fair access to national, regional, local, and international decision-making institutions.

III. Burma's Failure to Comply with the WPS Resolutions

The women of Burma are entitled, as a matter in international law, to the specific and detailed protections set forth in the WPS Resolutions; yet, they continue to be subjected to sexual violence at the hands of the military and excluded from the peace process. Documented evidence demonstrates that there is a climate of impunity in Burma that not only enables the military to evade prosecution for rape and other crimes against civilian women, but also fosters a culture of continued violence. When military officials commit sexual violence against women it goes unreported because of fear of reprisals – victims are threatened with or subjected to detention, threats to family, or even killed.

The prevalence of sexual violence in Burma is known to the international community. In fact, the Secretary-General has reported Burma as a state suspected of violating the mandates against sexual violence (as required by the WPS Resolution 1860), yet virtually none of the perpetrators have been brought to justice. This is due, in part, to the absence of any system for redress or remedies for victims. Reports issued in 2014 highlight the continuation of this pattern of abuse.

In fact, the civilian government of Burma cannot enforce the WPS Resolutions, or any other UN Resolution, against the military as required by the UN Charter because the civilian government has no legal authority over the military. According to the Constitution (2008), all military matters are under the sole jurisdiction of the military, including legal proceedings, and the decision of the Commander-in-Chief is final and conclusive. Further, the Constitution provides a blanket immunity clause for the military. These Constitutional provisions ensure that there can be no justice for victims of sexual violence at the hands of the military.

In addition, women who are affected by the ongoing ethnic conflict have been excluded from the ongoing peace process, which has been funded in large part by a consortium of European nations and international organizations such as the UN. The WPS Resolutions recognize that a successful political solution to conflict must reflect women's concerns as well as guarantee rights and protections for women. While a few women have been allowed to be present at peace negotiations, they are not considered participants. The military is male-dominated with only a few ceremonial positions for women. Thus, the military negotiators are male. The parliamentary committees on peace issues are also male-dominated, in part due to the Constitutional provision allowing the military to appoint 25% of Parliamentarians.

Therefore, the mandates in the WPS Resolutions against amnesty for sexual violence, calling for access to justice mechanisms for victims of sexual violence, and insisting on the inclusion of women in the peace process are being summarily ignored in Burma.

IV. The International Community Must End the Culture of Impunity and Insist on Burma's Compliance with the WPS Resolutions

By failing to stand behind and insist on compliance with the WPS Resolutions in Burma, the international community has failed the women of Burma and failed to honor the 14 years of work on this topic. The fact that women in Burma are still systematically subjected to sexual violence by the military, that they have no access to justice mechanisms, and that they have been largely absent from (internationally-funded) peace negotiations should be unacceptable to every member of the international community, including UN Member States, and to the Security Council. Members of the international community and international organizations must follow through on the commitments made in the WPS Resolutions by demonstrating the collective political will to enforce them in Burma. Much can and should be done to ensure these protections for the women of Burma, as detailed below.

General Recommendations to Ensure Justice for Victims of Sexual Violence

- ❖ Establish a permanent working group to monitor countries for WPS Resolution violations, including but not limited to those on its agenda. The permanent working group should provide annual submissions detailing these violations to the Security Council;
- ❖ For countries found in violation of the WPS Resolutions, including States that have failed to end impunity, establish an automatic sanctions regime. Violator states should be required to draft a detailed plan, including a timeline for ending impunity through prosecutions within the national judiciary or a Truth and Reconciliation Commission using international legal standards. Violator states should be subject to an annual review by a working group to ensure compliance and oversee criminal prosecutions;

- ❖ Set forth specific measures regarding States' commitments to end impunity including, where necessary, commitments to prosecute perpetrators of IHL crimes under universal jurisdiction laws.

Burma-Specific Recommendations to Ensure Justice for Victims of Sexual Violence

- ❖ Support amendments to the Constitution, such as to the provisions that allow the military to appoint 25% of Parliamentarians and guarantee the military a veto power over all Constitutional amendments;
- ❖ Utilize all available international fora to pressure the Burmese government and military, such as referring the Constitution to the International Court of Justice to determine whether it is consistent with the UN Charter, and referring military officials to the International Criminal Court for adjudication of human rights violations;
- ❖ Urge and pressure the Burmese military to submit to the jurisdiction of civilian courts for sexual violence crimes. Insist on transparency for military "prosecutions" for sexual violence, including detailed information about applicable law;
- ❖ Encourage the Burmese government to establish a National Action Plan, as required by the WPS Resolutions;
- ❖ Pressure the Burmese government to allow the UN to establish an in-country office of the Office of the High Commissioner for Human Rights, as promised.

Burma-Specific Recommendations to Ensure Women's Participation in the Peace Process:

- ❖ Ensure that all funding for the peace process, including the Myanmar Peace Centre, as well as bilateral aid meets the requirements of the WPS Resolutions regarding participation of women;
- ❖ Support civil society groups in ethnic conflict areas, not just Rangoon-based groups;
- ❖ Support a Parliamentary quota for women as a temporary special measure to achieve equality.

"Ensuring women's and girls' full human rights and fundamental freedoms and women's active, full and equal political, social and economic participation, including in all conflict prevention and resolutions, justice and security sector processes, as well as in wider development activities, is critical to ending sexual violence in conflict."

-from "A Declaration of Commitment to End Sexual Violence in Conflict" (2013)