The generals are doing everything possible through the Constitution to prolong their hold on power and to protect them from the consequences of human rights violations and war crimes.

"In the military everybody is liable for their failure to abide by the law. No one is above the law," said Gen Thura Shwe Mann shortly after Gen Khin Nyunt had been taken into custody on corruption charges.

But, Burma's 2008 Constitution states things somewhat differently: it is not about equality under the law and justice. It's about special exemptions granted to the generals and those working for the state institutions that control Burma.

In paragraph 445 in the chapter "*Transitory Provisions*" of the Constitution, it states: "No proceeding shall be instituted against the said Councils (the State Law and Order Restoration Council and the State Peace and Development Council) or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties."

According to the above provision, no legal action can be taken for any act done by the members of SLORC or the SPDC in contrast to Gen Shwe Mann's statement. The generals are constitutionally above the law.

The need for constitutional impunity, is illustrated in some haunting stories that have followed generals for years.

In early July 1990, about a month after the election, U Kyi Maung, then de facto leader of the National League for Democracy, said in an interview with the now defunct Hong Kong-based *Asiaweek*
magazine that Burma did not need a Nuremberg type tribunal.

However, he said some individuals such as Major-Gen Khin Nyunt might reasonably feel themselves insecure. In a SLORC press conference, Major-Gen Khin Nyunt made a personal challenge to U Kyi Maung, saying he could be tested in comparison with U Kyi Maung in terms of intellect, patriotism or moral character.

The general's remark psychologically reflected his personal sensitivity and insecurity about legal proceedings against him. Fourteen years after his challenge against U Kyi Maung, he was arrested and sentenced to 44 years in prison on corruption charges. But the real reason for his arrest was his tacit challenge against Sen-Gen Than Shwe.

Gen Khin Nyunt is not the only general who has been victim of their own hypocrisy. In 1997, several generals who were members of SLORC, the first military clique who led the coup d'état in 1988, were expelled and arrested mostly due to their excessive corruption.

In fact, Sen-Gen Saw Maung, Than Shwe's predecessor and the coup leader in 1988, was also dethroned and died in oblivion not long after.

Gen Ne Win who was the pioneer of Burma's military coups and who ruled Burma for almost three decades died without a proper funeral ceremony under undeclared house arrest. His family, once the most powerful and influential in Burma, vanished and some were arrested and imprisoned.

In Gen Ne Win's era of 1962-88, a long list of military leaders from Major-Gen Aung Gyi, Major-Gen Maung Maung, Brig-Gen Kyaw Zaw, Brig-Gen Aung Shwe (now chairman of NLD) to Gen Tin Oo (now vice chairman of the NLD), Major-Gen Tin Oo (chief military intelligent), Col Kyi Maung, Col Maung Lwin, Col Chit Khaing and many others, were expelled or arrested for their potential threat to his power.

The current generals are aware of the history of generals in neighboring countries who try to rule by force.

In South Korea, former generals and presidents such as Chun Doo Hwan and Roh Tae Woo were jailed on charges of corruption in 1996 after they stepped down. Chun's family was accused of embezzling US $4 billion during his rule. He received a death sentence, which was later reduced to life.

In Indonesia, Suharto, the former president and coup leader, was put under house arrest and investigated for corruption, accused of embezzling US $571 millions. Suharto was not properly prosecuted due to deteriorating health, but many of his relatives, including his son, were sentenced to prison on corruption charges.

In the Philippines, after the “People Power Movement” in 1986, Marcos, then president, fled the country into exile. In the United States, he and his family were indicted for embezzlement. He died in the United States in 1989.

According to Transparency International, Marcos was the second most corrupt head of government ever, after Suharto.

There are many more stories of generals or self-proclaimed leaders who meet ignoble ends: Gen Noriega of Panama, Gen Pinoche of Chile, Gen Saddam Hussein of Iraq, Slobodan Miloševi? of Serbia and countless others in Africa continent.

Another reason the Burmese generals are trying to protect themselves is the fear of being indicted for “crimes against humanity” or “war crimes” committed during their rule.

In a report by the International Human Rights Clinic of the Harvard Law School titled “Crimes in Burma,” five of the world's leading international jurists analyzed scores of UN documents and reports from several different UN special rapporteurs, and suggested that abuses in Burma are potential crimes against humanity and war crimes and called for the UN Security Council to establish a Commission of Inquiry.

In August, 2009, a Paris-based INGO called the International Federation for Human Rights together with ALTSEAN Burma and the Burma Lawyer Council issued a report titled

“Burma/Myanmar International Crimes Committed in Burma: The urgent need for a Commission of Inquiry,” which presented an overview of existing documentation on human rights violations perpetrated by the military regime.

In the report, the organizations called for the establishment of an international Commission of Inquiry mandated by the United Nations Security Council to investigate allegations of crimes against humanity, war crimes and other widespread systematic human rights violations.

In another report released in September by the International Center for Transitional Justice titled “Impunity Prolonged: Burma and its 2008 Constitution” called for the international community to work with the Burmese government to establish an independent Commission of Inquiry into serious human rights violations, including sexual violence, the recruitment and use of child soldiers and forced labor.

The reason for calling for a Commission of Inquiry is because the only way to get the case to the ICC is through a UN Security Council referral, since Burma is not a signatory to the ICC statute.

To date, Uganda, the Democratic Republic of the Congo, and the Central African Republic which are member State Parties have referred cases occurring on their territories to the court. In addition, the Security Council has referred cases in Sudan, which is a non-State Party.

However, the Burmese generals may have an alternative to such trials should they attempt national reconciliation in the manner of South Africa, which established a truth and reconciliation commission.

After the abolition of apartheid, a Truth and Reconciliation Commission was set up and witnesses, victims and perpetrators of human rights violations were invited to give statements about their experiences. Most of the people who committed abuses during the apartheid era were granted amnesty.

However, the Burmese generals are hedging their bets through the Constitution, which also

grants them the right, during a State of Emergency, to abolish and take over the elected government.

In paragraph 432 of the Provisions on State of Emergency, it states that no legal action can be taken against the generals or any administrative body or any of its members when sovereign power are exercised by the National Defense and Security Council.

The generals are doing everything possible through the Constitution to prolong their hold on power and to protect them from the consequences of human rights violations and war crimes.

But clearly, if history is the judge, such efforts offer no real protection for those who abuse the rights of their fellow countrymen. The generals would be wise to pursue a course of national reconciliation as quickly as possible, including the establishment of a truth and reconciliation commission.