
Statement of Mr. Marzuki Darusman, Chairperson of the Independent International Fact-Finding Mission on Myanmar to the General Assembly, Third Committee

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23 October 2018

Chairperson, Distinguished Delegates, Ladies and Gentlemen,

The Human Rights Council mandated the Independent International Fact-Finding Mission on Myanmar to establish the facts and circumstances of recent alleged human rights violations and abuses in Myanmar with a view to ensuring full accountability for perpetrators and justice for victims. We have done so and submitted our report to the Human Rights Council last month. We welcome the opportunity to address the General Assembly.

Our report documents the utter disregard of the Myanmar military, known as the Tatmadaw, for human life and dignity, and for international law in general. It presents horrific patterns of human rights violations inflicted not only on the Rohingya but also on ethnic Rakhine, Kaman Muslims, ethnic or religious minorities in Kachin and Shan, and others, including Bamar human rights defenders. It shows how these violations are linked to Tatmadaw policies and tactics that prescribe, encourage or permit the attacking of civilians and the raping of women and girls. It analyses how its commanders are in charge, and how it has been able to act with impunity.

The report is based on an intensive year-long investigation, conducted in accordance with international best practices on fact-finding methodology. We strictly adhered to the principles of independence, impartiality and objectivity. We invite anyone who wishes to challenge our findings to read our detailed 444-page report, including an account of our methods of work.

Chairperson,

The Rohingya were and are being subjected to particularly brutal treatment. A significant portion of our report is dedicated to the Tatmadaw's "clearance operations" that led to the mass exodus of the Rohingya to Bangladesh. It presents the facts, their causes and consequences. It characterizes the events as a human rights catastrophe that was foreseeable and planned, and that will have severe impact for many generations to come – if not forever.

The report describes in detail the "clearance operations" in six villages, marked by large-scale massacres and other killings of men, women and children; mass gang-rape; burning and looting. The Mission verified similar operations in 54 separate locations across northern Rakhine State and received

first-hand accounts of additional operations in another 22 locations. Over 725,000 Rohingya fled. At least 392 villages were partially or totally destroyed. Estimates of 10,000 Rohingya deaths are conservative. These attacks were widespread and systematic, their modus operandi across northern Rakhine State strikingly similar. While the Arakan Rohingya Salvation Army's attacks contributed to this escalation and must be condemned, the security forces' operations were utterly disproportionate and brutal. They were conducted in total disregard for human life and dignity, in violation of human rights and international humanitarian law.

Such levels of extreme violence can only be understood against a backdrop of State policies and practices implemented over decades, steadily marginalizing and "othering" the Rohingya. It has resulted in a State-sanctioned and institutionalised system of oppression affecting the lives of Rohingya from birth to death, significantly weakening the population for years. This process has been fed and exacerbated by concerted hate campaigns against Rohingya with the involvement of and condoning by State authorities, in recent years greatly facilitated by social media platforms. It has been fuelled by actively instigated violence between ethnic communities, resulting in mass arrests and policies of segregation. It has been enabled by a Government response that has consistently failed to attribute responsibilities, giving the perpetrators a stamp of approval.

All these factors continue to exist today. Remaining Rohingya in Rakhine State are at grave risk and conditions are not in place for a safe, dignified and sustainable return of the Rohingya in Bangladesh. Returning people to the same circumstances from which they fled would be tantamount to condemning them to repeat their suffering. This is not an abstract possibility: several of our interviewees told us that they or their families had gone through similar cycles of oppression, violence and displacement since the 1970s.

Chairperson,

The events we have described in relation to the Rohingya in Rakhine State are especially shocking for their intensity and cruelty. However, serious human rights violations are not restricted to Rakhine. Our investigations in Kachin and Shan States have revealed similar patterns of serious human rights violations that are rooted in the same Tatmadaw tactics and conduct. These include the targeting of civilians, unlawful killings, rape and other forms of sexual violence, arbitrary detention and enforced disappearance, torture, forced labour and forced displacement.

We have concluded that gross human rights violations and serious violations of international humanitarian law have been committed in Rakhine, Kachin and Shan States since 2011 and that many of these violations undoubtedly amount to the gravest crimes under international law. War crimes and crimes against humanity have been committed in all three States. With respect to the Rohingya in Rakhine, the Mission also found sufficient information to warrant the investigation and prosecution of senior officials in the Tatmadaw on charges of genocide.

Where do we go from here?

We submit that the international community should take a unified and comprehensive approach towards Myanmar, that is based on respect for human rights and accountability. We should not fall into the trap of a false dichotomy of peace versus justice or of development and humanitarian work versus human rights. The case of Myanmar presents the best possible example of how these aspirations are linked and mutually reinforcing. In Myanmar, deeply entrenched impunity is at the root of the problem.

Impunity has wrecked the country and derailed every attempt at reform towards democracy. It has emboldened perpetrators and silenced victims. Accountability, in its broadest sense, will assist the transformation of the country into one that is based on rule of law, equality, non-discrimination, and respect for human rights. It will create a conducive environment for refugees to return to Myanmar, and for the entire population to regain trust in its institutions. We firmly believe that accountability will help prevent a recurrence of extreme violence and atrocity crimes. It will pave the way towards stability, development, peace and security for all in Myanmar.

Unfortunately, we have had to conclude that accountability at the domestic level is currently unattainable. We therefore recommended that the Security Council refer the situation in Myanmar to the International Criminal Court or another international ad hoc tribunal. Failing this, State Parties to the Rome Statute may also take the initiative. And all member States of the United Nations can exercise their universal jurisdiction over such serious crimes through their own domestic courts. In the meantime, the Fact-Finding Mission welcomes the recent resolution of the Human Rights Council to establish an Independent Mechanism to prepare for eventual prosecutions. We urge the General Assembly to support this initiative.

In the same spirit of accountability and prevention of recurrence, we have also recommended that all countries, collectively and individually, prohibit all engagement with the Tatmadaw until there is a process to transform the Tatmadaw into a proper professional defence force. We have also called on the Security Council to adopt individual sanctions against those who appear most responsible for serious crimes under international law; and have provided six names of top commanders to that effect. The Security Council should also impose an arms embargo on Myanmar.

In addition, every country and institution with influence in Myanmar should be reflecting on its role, past and present. Have we done everything possible to prevent these atrocities, or have we bound ourselves to an approach of cooperation at all cost? The United Nations system is no exception. We call on it to conduct an independent inquiry into its own operations in Myanmar since 2012, and we call on you to support such a review.

Chairperson,

We are aware that some Member States still hold hope that Myanmar will find its own solutions. Unfortunately, the democratisation process was flawed from the beginning and has now ground to a halt. The Myanmar authorities have denied what has happened, refused to accept responsibility, and shown no will to change course, much less any serious intention to bring perpetrators to account. The authorities and extremist nationalists are now resorting to the mantra of national sovereignty. They fail to grasp that national sovereignty is not a licence to commit genocide, crimes against humanity or war crimes.

Myanmar's nation-building process, envisioned at independence as an inclusive process in which all minorities would have equal participation rights, has been derailed by half a century of military dictatorship. Despite some reforms, the current constitution still entrenches military domination in politics and governance. It gives the military an opportunity to continue pursuing racist and exclusionary visions for the country with impunity.

Today, Myanmar stands at a cross roads. Either it continues on this path, which will inevitably lead to more of the violence and serious human rights violations described in our report. Or it embarks on a true

reform process, based on the acceptance of diversity, equality for all, non-discrimination and respect for human rights. The latter option requires a security sector placed under civilian oversight.

We remain hopeful that Myanmar will ultimately make the right choices. For instance, it could itself refer the situation to the International Criminal Court. It could instruct its new Commission of Enquiry to strictly follow international best practices in investigations. It could confirm that investigating human rights violations and ensuring accountability is squarely part of that Commission's mandate. It could organize a meaningful national dialogue about a constitutional reform that guarantees human rights for all and provides civilian oversight over the Tatmadaw. With our Mission having been extended for another year by the Human Rights Council, the authorities now also have new opportunities to engage with us. We invite them to do so.

Chairperson,

It is hard to fathom the extreme brutality of the Tatmadaw. One woman we interviewed took considerable time before telling us of the rape she had endured because she was focused on relating us what happened to her husband and children while she was being raped. Another woman who had been locked in her burning house with her small children looked at us with empty eyes as she said she would be forever haunted. The house was burning so furiously that, when she found a way to escape, she had to make a split-second decision about which of her children she would save. These crimes must have consequences.

We urge this Assembly to bear in mind that, when atrocities of the kind and scale that we present to you have occurred, "moving on" means dealing with those atrocities and preventing them from occurring again. Myanmar can choose to do so and, if the United Nations Charter is to have any meaning, every relevant organ, department and agency of the United Nations must help. We urge the authorities and the international community to ensure that accountability and human rights are part to the response. Only with that, can justice be done to the people of Myanmar – all its people.

Thank you.

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