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Human rights situations that require the Council's attention

Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 February 2020]

* Issued as received, in the language(s) of submission only.

The Government of Myanmar Must Comply with the ICJ Order and Ensure Accountability for Violations Caused by its Military and Other Security Forces

Abuses by the Myanmar military and other security forces against the Rohingya, Kachin, Arakan, and other peoples, both past and ongoing, have deeply injured Myanmar's ability to peacefully transition into a democratic state. More than a year after the agreement on the Rohingya repatriation, nearly a million remain in refugee camps in Bangladesh. Those responsible for their abuses have avoided any serious accountability, creating an environment of impunity that deters returns. The government of Myanmar has taken insufficient measures to protect the rights of the returning Rohingya and meet other essential conditions for return. Conflict is also ongoing in Rakhine state and at a lower level in Kachin and Northern Shan states, despite the ceasefire, and over 100,000 Kachin remain displaced.

1. Accountability

The Gambia, backed by the Organization of Islamic Cooperation, on 11 November 2019, filed the *Application on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* to the International Court of Justice alleging the government of Myanmar violated the Genocide Convention by its military and other security forces, specifically the Myanmar army (*tatmadaw*), having committed acts of genocide against the Rohingya minority. The Gambia requested provisional measures to stop acts of genocide and protect evidence. On 23 January, the court granted the request, requiring Myanmar to stop the violation of Article II of the Genocide Convention and preserve evidence.¹ Nevertheless, the Myanmar government continues to deny that the *tatmadaw*'s violence and the government's apartheid policies amounted to genocide, and it still refuses to use the term "Rohingya" in its statements, denying recognition of the group.²

Also in November the International Criminal Court (ICC) authorized an investigation into the ICC's jurisdiction over crimes by Myanmar forces committed in Bangladesh, a party to the ICC, particularly forced displacement.³ The Myanmar government argues the ICC lacks jurisdiction over the matter.⁴

The Myanmar government has also released the report of its own Independent Commission of Enquiry (ICOE), which has denied the occurrence of genocide by its military and other security forces and exculpates them for planning intentional violations, instead focusing on token admissions of abuses by their personnel.⁵ However, it lacks credible features to ensure its independence and the accuracy of its findings, for example, by occurring alongside strict restrictions on independent investigations by neutral investigators and journalists.⁶

The response of the government of Japan has been the appeasement of the government of Myanmar, which only reinforces its culture of impunity. One ICOE member is a Japanese former diplomat. Ichiro Maruyama, the Japanese ambassador to Myanmar, stated that that "his government firmly believes that no genocide was committed", and referring to the ICJ's forthcoming order of

¹ ICJ, 23 Jan. 2020, <https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>.

² AlJazeera, 23 Jan. 2020, <https://www.aljazeera.com/news/2020/01/icj-ruling-myanmar-denies-genocide-rohingya-200123180205332.html>.

³ ICC, 14 Nov. 2019, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1495>.

⁴ Aydin, Anadolu Agency, 17 Nov. 2019, <https://www.aa.com.tr/en/asia-pacific/myanmar-rejects-jurisdiction-of-icc-for-rohingya-muslim/1648020>.

⁵ Nachemson, AlJazeera, 16 Jan 2020, <https://www.aljazeera.com/news/2020/01/myanmar-release-rohingya-crackdown-investigation-results-200115232104648.html>; ICOE, 20 Jan. 2020, <https://www.icoe-myanmar.org/icoe-pr-final-report>.

⁶ Nachemson, *Id.*

provisional measures, he said, “Japan will look at ways to help Myanmar handle the process smoothly.”⁷ The Japanese government opposed the establishment of an independent fact finding mission and sanctions against Myanmar, supports the ICOE’s findings, and failed to prevent or reprimand a major Japanese company donating money to the *tatmadaw* during its campaign against Rohingya.⁸

2. Repatriation

According to interviews with major stakeholders in Myanmar, “refugee repatriation of any scale has few—if any—politically significant backers in Rakhine or Myanmar.”⁹ A nominal effort was made in August 2019 when 3,450 Rohingya were cleared for repatriation, but less than 500 have voluntarily returned.¹⁰ The lack of returns is due to the demonstrated unwillingness of the Myanmar government to create adequate living conditions, ensure the respect of Rohingya’s rights, recognize the Rohingya as an official ethnic group, or provide them citizenship status.¹¹ It also does not allow international actors to assist or participate in the return process.

The government has also not provided adequate housing for the returning Rohingya. As of June 2019, according to satellite images, of 392 Rohingya villages destroyed by the *tatmadaw* and local vigilantes in 2017, 320 have not been reconstructed, 58 are further damaged, and 40% were razed.¹² They have been replaced with an increased military presence. Six military compounds have been built on destroyed Rohingya settlements, and 45 prison-like camps have been created for returning Rohingya with intolerable conditions, consisting of temporary, poorly built settlements managed by the Myanmar Border Guard Police, who have a history of torturing Rohingya, and barriers that appear to restrict Rohingya’s ability to freely leave the camps.¹³

3. Conditions in Refugee Camps

Over 900,000 Rohingya currently reside in Bangladesh refugee camps,¹⁴ but only \$488 million of the \$920.5 million in aid requested from states for the camps under the Joint Response Plan has been received¹⁵ as living conditions continue to deteriorate. The camps in Cox’s Bazar are overcrowded; Bangladesh has not provided adequate options for relocation or a legal status allowing free movement; the difficult topography is prone to flooding and landslides, damaging shelters;¹⁶ and adequate access to water is limited.¹⁷ Such conditions negatively affect refugees’ health and well-being, with few resources for health services.¹⁸

4. Situation of People in Rakhine and Kachin States

⁷ Nagakoshi, 15 Jan. 2020, <https://thediplomat.com/2020/01/japan-and-myanmars-toxic-friendship>.

⁸ *Id.*

⁹ USIP, https://www.usip.org/sites/default/files/2019-04/pw_146-myanmars_2020_election_and_conflict_dynamics.pdf

¹⁰ UNHCR, 22 Aug. 2019, <https://www.unhcr.org/news/press/2019/8/5d5e720a4/unhcr-statement-voluntary-repatriation-myanmar.html>.

¹¹ *Id.*; Abdullah, VOA, 20 Dec. 2019, <https://www.voanews.com/east-asia-pacific/myanmar-rohingya-talks-yield-no-progress-repatriation-refugees-say>.

¹² Thomas, Ruser, and Walker, ASPI, 24 July 2019, <https://www.aspi.org.au/report/mapping-conditions-rakhine-state>.

¹³ *Id.*

¹⁴ UNHCR, 30 Sep. 2019, https://data2.unhcr.org/en/situations/myanmar_refugees.

¹⁵ ISCG, Sep. 2019, https://reliefweb.int/sites/reliefweb.int/files/resources/sitrep_september_2019_final.pdf.

¹⁶ UNHCR, 30 Nov. 2019, <https://data2.unhcr.org/en/documents/download/73550>.

¹⁷ UNHCR, 30 Nov. 2019, <https://data2.unhcr.org/en/documents/download/73549>.

¹⁸ UNHCR, 30 Nov. 2019, <https://data2.unhcr.org/en/documents/download/73551>.

Violations are also continuing against other ethnic minority groups. In the *tatmadaw*'s conflict against the Arakan Army (AA) in Rakhine state, villages have been shelled, and suspected AA members or supporters have been reportedly arbitrarily arrested or summarily executed.¹⁹

The *tatmadaw* also continues to commit violence in Kachin and northern Shan states and to block aid agencies to affected areas. As of July 2019, there were 97,806 internally displaced people (IDPs) in Kachin state at 138 IDP sites.²⁰ Their homes are destroyed and their ancestral lands are riddled with landmines. Also, 84% of Kachins surveyed by the UN did not have the legally required documentation of ownership of abandoned land, hindering respect of their land rights.²¹

The lack of aid to IDPs, most of whom reside near the Chinese border, is of particular concern now with the coronavirus outbreak in China. Many migrant workers (both Kachin and Chinese) regularly cross between Kachin state and China in both directions.²²

To give one reported example of the insufficiency of the response, only \$35 worth of masks were received at a camp with instructions to distribute them to other camps—covering 40,000 Kachin IDPs living on the Chinese border—to protect from coronavirus.²³

5. Recommendations

HRN offers the following recommendations to relevant parties.

To the government of Myanmar:

- Cooperate with international accountability mechanisms, including following the provisional measures ordered by the ICJ and cooperating with the ICC's processes;
- Ensure the future protection of Rohingya and other victims' rights, provide redress and a safe, sustainable, and voluntary end of displacement for those displaced by conflict, and take measures to prevent future violations by military and other security forces;
- Implement measures creating adequate conditions for repatriation for the Rohingya people including the protection of Rohingya rights, resolution of their citizenship status, and guarantees of non-repetition of violence; and
- Implement the recommendations of relevant Council mandates.

To the government of Bangladesh:

- Grant legal status for the Rohingya and ensure their freedom of movement and work; and
- Provide suitable land for expansion of Rohingya camps, and improve camp services.

To the states which protect the impunity of the Myanmar government, including the government of Japan:

- Recognize that the protection of impunity encourages gross human rights violations and genocide against minorities in Myanmar;
- Make all efforts and apply measures towards the Myanmar government to ensure accountability and its compliance with UN resolutions, recommendations, and the ICJ order.

19 AlJazeera, <https://www.aljazeera.com/news/2020/01/rakhine-front-myanmar-violent-ethnic-conflicts-200106065650305.html>

20 ReliefWeb, 29 Aug. 2019, <https://reliefweb.int/map/myanmar/myanmar-idp-sites-kachin-state-31-july-2019>.

21 Bangkok Post, 12 Oct. 2019, <https://www.bangkokpost.com/opinion/opinion/1770504/internally-displaced-kachin-battle-to-return-home>.

22 Eleven Myanmar, 29 Jan. 2020, <https://elevenmyanmar.com/news/border-cities-launch-coronavirus-screening>.

23 Irrawaddy, 29 Jan. 2020, <https://www.irrawaddy.com/news/burma/kachin-ngos-ask-mask-donations-idps-near-china-myanmar-border.html>.

To the international community and the Council:

- Take stronger and more effective measures to pressure the Myanmar government to ensure justice and accountability for the violations against ethnic minorities, fully comply with ICC procedures, and fully implement all relevant UN resolutions, recommendations and the ICJ's legally binding order;
 - Provide sufficient aid and assistance to address the humanitarian concerns of displaced people.
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