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Human rights situations that require the Council's attention

## Report of the Independent International Fact-Finding Mission on Myanmar\*

### *Summary*

The present report contains the main findings and recommendations of the Independent International Fact-Finding Mission on Myanmar.\*\*

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\* The present report was submitted after the deadline in order to reflect the most recent developments

\*\* For detailed findings, see document A/HRC/39/CRP.2.

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## **I. Introduction**

1. Human Rights Council resolution 34/22 established the independent international fact-finding mission on Myanmar (the Mission). The President of the Council appointed Marzuki Darusman (Indonesia) as chairperson and Radhika Coomaraswamy (Sri Lanka) and Christopher Sidoti (Australia) as members. A secretariat was recruited by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

2. The Mission presented an oral update at the Council's thirty-sixth session and an oral interim report at the thirty-seventh session, and delivered a video statement at the twenty-seventh special session on 5 December 2017. This report is submitted pursuant to Council decision 36/115, requesting the Mission to submit its final report at its thirty-ninth session. It presents its main findings and recommendations herewith, which are detailed in document A/HRC/39/CRP.2.

3. The Mission regrets the lack of cooperation from the Government of Myanmar, despite appeals from the Council and the Mission. The Mission requested in-country access through letters of 4 September 2017, 17 November 2017 and 29 January 2018. It sent a detailed list of questions on 27 March 2018. The Mission had limited informal contact with Government representatives, but received no official response to its letters. This report was shared with the Government prior to its public release. No response was received.

## **II. Mandate and methodology**

### **A. Mandate**

4. Resolution 34/22 mandated the Mission "to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, [...], with a view to ensuring full accountability for perpetrators and justice for victims."

5. The Mission focused on the situation in Kachin, Rakhine and Shan States since 2011. This reflects the resumption of hostilities in Kachin State and escalation in Shan State in 2011, and the outbreak of major violence in Rakhine State in 2012. These events were turning points, generating renewed allegations of serious human rights violations and abuses. The Mission selected several significant incidents for in-depth fact-finding, allowing detailed findings on specific allegations of violations and abuses, while revealing broader patterns of conduct. Serious allegations have also arisen in other contexts, meriting further investigation.

### **B. Methodology**

6. Factual findings are based on the "reasonable grounds" standard of proof. This standard was met when a sufficient and reliable body of primary information, consistent with other information, would allow an ordinarily prudent person to reasonably conclude that an incident or pattern of conduct occurred.

7. The Mission amassed a vast amount of primary information. It conducted 875 in-depth interviews with victims and eyewitnesses, both targeted and randomly selected. It obtained satellite imagery and authenticated a range of documents, photographs and videos. It checked this information against secondary information assessed as credible and reliable, including organizations' raw data or notes, expert interviews, submissions, and open source material. Specialised advice was sought on sexual and gender-based violence, child psychology, military affairs, and forensics. Only verified and corroborated information was relied upon.

8. To collect information, the Mission members travelled to Bangladesh, Indonesia, Malaysia, Thailand, and the United Kingdom. The secretariat undertook numerous additional field-missions between September 2017 and July 2018. The Mission also held

over 250 consultations with other stakeholders, including intergovernmental and non-governmental organizations, researchers, and diplomats – in person and remotely. It received written submissions, including through a public call.

9. The Mission strictly adhered to the principles of independence, impartiality and objectivity. It sought consent from sources on the use of information, ensuring confidentiality as appropriate. Specific attention was paid to the protection of victims and witnesses, considering their well-founded fear of reprisals. The Mission is gravely concerned at the intimidation and threats faced by persons cooperating with Council mechanisms examining the situation in Myanmar. It urges Myanmar to protect human rights defenders.

### **C. Legal framework**

10. Facts were assessed in light of international human rights law, international humanitarian law and international criminal law, as applicable in Myanmar. In addition to non-international armed conflicts in Kachin and Shan States, the Mission considered that the violence in Rakhine State between the Arakan Rohingya Salvation Army (ARSA) and the Myanmar security forces constituted a non-international armed conflict, at least since 25 August 2017.<sup>1</sup>

## **III. Context**

11. A succession of military regimes ruled Myanmar from 1962. In 2008, a new Constitution was adopted, designed by the military to retain its dominant role in politics and governance. It instituted a system of government with military and civilian components. The military (known as “Tatmadaw”) appoints 25 per cent of seats in both legislative bodies, and selects candidates for three key ministerial posts (Defence, Border Affairs and Home Affairs), and at least one of two Vice-Presidents. This is sufficient to control the National Defence and Security Council and the entire security apparatus, and block constitutional amendments. The Tatmadaw has the right to independently administer and adjudicate its affairs, without civilian oversight. Current or former military officers occupy positions of authority across all branches of government, within the civil service and the judiciary, and in many State-owned enterprises. In 2010, the Thein Sein government embarked on wide-ranging reforms towards political and economic liberalisation, without amending the Constitution. The National League for Democracy won the November 2015 election, and a government led by that party took office on 31 March 2016. Sanctions were lifted and foreign investment welcomed.

12. In addition to the Bamar, Myanmar includes other ethnic groups that constitute 32 per cent of the estimated population.<sup>2</sup> Since independence, the numerous ethnically-based armed conflicts have been used by the Tatmadaw to justify its power, presenting itself as the guarantor of national unity. Several groups hold deep-rooted grievances, struggling for greater autonomy and an equitable sharing of natural resources. While governments have made overtures towards negotiated peace agreements, hostilities have continued. These conflicts indicate that the nation-building efforts of the military have failed: there is no unifying “Myanmar” national identity and resentment against Bamar-Buddhist domination has only grown. Notably, under military rule the concept of “national races” has gradually become the key criterion for membership in Myanmar’s political community, creating a common “other”. The military regime has constructed eight major ethnic groups, further broken down into 135 “national races”. This list defines who “belongs” in Myanmar. All others, regardless how many generations have lived in Myanmar, are considered outsiders

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<sup>1</sup> This assessment is in line with that of the International Committee of the Red Cross. See e.g. “Speech by the ICRC President at the Shangri-La Dialogue”, 2 June 2018.

<sup>2</sup> Myanmar Population and Housing Census, 2014.

or immigrants. This includes the Rohingya.<sup>3</sup> The Tatmadaw expounds, “Despite living among peacocks, crows cannot become peacocks.”<sup>4</sup>

13. According to the 2014 census, 87.9 per cent of the population is Buddhist, 6.2 per cent Christian, and 4.3 per cent Muslim. The Bamar are predominantly Buddhist; many other ethnic groups contain large numbers of non-Buddhists. Attempts in the 1960s to designate Buddhism as the State religion were divisive. The 2008 Constitution recognises the “special position of Buddhism” while acknowledging other religions. Since reforms began in 2011, Myanmar has seen an increase in Buddhist nationalism, virulent anti-Muslim rhetoric and violence between Buddhists and Muslims. Among the largest Buddhist nationalist organizations is the Association for the Protection of Race and Religion (or “MaBaTha”), which cast itself as the protector of Buddhism. While MaBaTha was nominally disbanded, its successors are still widely supported.

14. Today, the Tatmadaw enjoys increased popularity among the Bamar-Buddhist majority. The violence, particularly the “Rohingya crisis”, has been used by the military to reaffirm itself as the protector of a nation under threat, and further cement its political role. This is remarkable considering the Tatmadaw’s appalling human rights record, and the democracy movement’s long struggle against its rule. Myanmar has been a country of concern for the United Nations for 30 years, with resolutions condemning its human rights situation since 1991. For three decades, successive Special Rapporteurs on the situation of human rights in Myanmar concluded that patterns of human rights violations were widespread and systematic, linked to State and military policy. Allegations of gross human rights violations have continued since 2011 and are the focus of this report.

## IV. Emblematic situations

15. The Mission focused on three emblematic situations: the crisis in Rakhine State; the hostilities in Kachin and Shan States; and the infringement on the exercise of fundamental freedoms, focusing on hate speech.

### A. Rakhine State

16. Rakhine State has a poverty rate nearly double the national average. All communities in Rakhine suffer from poor social services and a scarcity of livelihood opportunities. The state’s two largest groups are the Rakhine Buddhists and Rohingya Muslims. The former constitutes the majority; the latter is the majority in the north. There are several other ethnic minorities, including the Kaman Muslims. The problems in Rakhine State are often ascribed to poor relations between the Rohingya and the Rakhine, reflective of deeply-rooted grievances and prejudices. Yet, the majority of Rohingya and Rakhine interviewed indicated that relationships with the other community were good prior to 2012, citing examples of business dealings and friendships.

#### 1. Violations against ethnic Rakhine

*I want to share my story with the whole world because the world does not know what is happening in our place.*<sup>5</sup>

17. The Mission spoke to many ethnic Rakhine, who highlighted serious human rights violations perpetrated by the Myanmar security forces against them. These violations are similar to those experienced by other ethnic groups in Myanmar.

<sup>3</sup> The Mission is conscious of the sensitivity concerning the term “Rohingya” in Myanmar, where the group is generally referred to as “Bengali”. Use of the term comports with the right to self-identify.

<sup>4</sup> Tatmadaw, Directorate of the Public Relations and Psychological Warfare, “Myanmar Politics and the Tatmadaw” (2018), p.115.

<sup>5</sup> Quotes are from victim interviews, unless stated otherwise.

18. The Tatmadaw used Rakhine men, women and children for forced or compulsory labour, mostly for “portering”. Other violations included forced evictions through land confiscation, arbitrary arrest and detention, as well as violations of the rights to life, to physical and mental integrity, and to property. Tatmadaw soldiers also subjected Rakhine women to sexual violence, often in the context of forced labour. For example, one victim explained how in 2017, she was taken to a military base, beaten, and raped by a Tatmadaw captain.

19. The Mission also received reports of repressive action against the assertion of Rakhine identity. For example, in January 2018, the police used excessive force in relation to a demonstration in Mrauk-U against the cancellation of an annual ethnic Rakhine event, killing seven protestors.

## **2. Systemic oppression and persecution of the Rohingya**

*In Rakhine State, Muslims are like in a cage, they cannot travel outside. There are no human rights for the Muslims of Rakhine. I don't know why God sent us there.*

20. The process of “othering” the Rohingya and their discriminatory treatment started long before 2012. Their extreme vulnerability is a consequence of State policies and practices implemented over decades, steadily marginalising the Rohingya. The result is a continuing situation of severe, systemic and institutionalised oppression from birth to death.

21. The cornerstone of this system is the lack of legal status. Successive laws and policies regulating citizenship and political rights have become increasingly exclusionary in their formulation, and arbitrary and discriminatory in their application. Most Rohingya have become *de facto* stateless, arbitrarily deprived of nationality. This cannot be resolved through the 1982 Citizenship Law – applied as proposed by the Government through a citizenship verification process. The core issue is the prominence of the concept of “national races” and the accompanying exclusionary rhetoric, originating under Ne Win’s dictatorship in the 1960s. The link between “national races” and citizenship has had devastating consequences for the Rohingya.

22. The expulsions of Rohingya in the 1970s and 1990s, in the context of the military regime’s implementation of this exclusionary vision, were earlier markers. Observers, including United Nations human rights mechanisms and civil society, have alerted the Myanmar authorities and the international community to a catastrophe looming for decades.

23. Travel of Rohingya between villages, townships and outside Rakhine State has long been restricted based on a discriminatory travel authorisation system. This has had serious consequences on economic, social and cultural rights, including the right to food, health and education. Levels of malnutrition in northern Rakhine State have been alarmingly high. Other discriminatory restrictions include procedures for marriage authorisation, restrictions on the number and spacing of children, and denial of equal access to birth registration for Rohingya children. For decades, security forces have subjected Rohingya to widespread theft and extortion. Arbitrary arrest, forced labour, ill-treatment, and sexual violence have been prevalent.

## **3. 2012 violence**

*We cried when we left. 25 years of hard work was lost. My time is almost finished, but what will happen to my children and my grandchildren?*

24. In this context, two waves of violence swept Rakhine State in June and October 2012, affecting 12 townships. The murder and alleged rape of a Rakhine woman and the killing of 10 Muslim pilgrims are commonly presented as key triggers. According to the Government Inquiry Commission, the violence left 192 people dead, 265 injured and 8,614 houses destroyed. Actual numbers are likely much higher. Further violence took place in Thandwe in 2013.

25. The Government’s portrayal of the violence as “intercommunal” between the Rohingya and Rakhine has prevailed but is inaccurate. While there certainly was violence between Rohingya and Rakhine groups, resulting in killing and destruction of property,

these attacks were not spontaneous outbursts of hostility. They resulted from a plan to instigate violence and amplify tensions. A campaign of hate and dehumanisation of the Rohingya had been underway for months and escalated after 8 June 2012, led by the Rakhine Nationalities Development Party (RNDP), various Rakhine organizations, radical Buddhist monk organizations, several officials and influential figures. It was spread through anti-Rohingya or anti-Muslim publications, public statements, rallies, and boycotts of Muslim shops. The Rohingya were labelled “illegal immigrants”, “terrorists”, and portrayed as an existential threat that might “swallow other races” with their “incontrollable birth rates.” In November 2012 the RNDP cited Hitler, arguing that “inhuman acts” were sometimes necessary to “maintain a race”.<sup>6</sup>

26. Myanmar security forces were at least complicit. They often failed to intervene to stop the violence, or actively participated. They injured, killed and tortured Rohingya and destroyed their properties. Witnesses from Sittwe and Kyaukpyu described security forces preventing Rohingya or Kaman from extinguishing houses set on fire by Rakhine, including by gunfire. Witnesses from Maungdaw described security forces shooting indiscriminately at Rohingya and conducting mass arbitrary arrests, including of Rohingya NGO workers. Large groups were transferred to Buthidaung prison, where they faced inhuman conditions and torture. Prisoners were beaten by prison guards and fellow Rakhine detainees, some fatally.

27. The 2012 violence marked a turning point in Rakhine State; the relationship between the Rakhine and Rohingya deteriorated; fear and mistrust grew. Although the Kaman are a recognized ethnic group, they were targeted alongside the Rohingya as Muslims, and have since suffered increasing discrimination and marginalisation.

28. The Government responded to the violence by an increased presence of security forces and enforced segregation of communities. A state of emergency declared on 10 June 2012 was lifted only in March 2016. Township authorities in Rakhine State imposed a curfew and prohibited public gatherings of more than five people. These restrictions remain in force today in Maungdaw and Buthidaung and have been applied in a discriminatory manner against the Rohingya. They impact on freedom of religion, as people are prevented from praying collectively in mosques.

29. The violence displaced more than 140,000 people, mostly Rohingya. The few thousand displaced ethnic Rakhine were able to return or were resettled by the Government. Six years after the violence, 128,000 Rohingya and Kaman remain segregated, confined in camps and displacement sites, without freedom of movement, access to sufficient food, adequate health care, education and livelihoods. The displaced are prevented from returning to their place of origin. Such confinement exceeds any justifiable security measure and constitutes arbitrary deprivation of liberty. Other Rohingya in central Rakhine, including those resettled, also face severe restrictions, including on freedom of movement impacting on daily life.

30. The 2012 violence exacerbated the oppression of the Rohingya. Movements outside Rakhine State became even more difficult. Rohingya students have not been able to enrol at Sittwe University since 2012, effectively removing access to higher education. It is a violation of the right to education and a powerful tool to ensure cross-generational marginalisation. Although Rohingya were allowed to vote in 2010, this right was revoked prior to the 2015 elections. This oppressive climate led to an increase in Rohingya leaving Rakhine State by boat in the following years.

#### 4. 25 August 2017 and “clearance operations”

*That day felt like the last day of this world, as if the whole world was collapsing. I thought judgment day had arrived.*

31. What happened on 25 August 2017 and the following days and weeks was the realisation of a disaster long in the making. It resulted from the systemic oppression of the

<sup>6</sup> RNDP, *Toe Thet Yay* Journal, vol.2(12), November 2012.

Rohingya, the 2012 violence, and the Government's actions and omissions since then. It caused the disintegration of a community.

32. In the early hours of 25 August, ARSA launched coordinated attacks on a military base and up to 30 security force outposts across northern Rakhine State, in an apparent response to increased pressure on Rohingya communities and with the goal of global attention. A small number of minimally-trained leaders had some arms, and a significant number of untrained villagers wielded sticks and knives. Some had improvised explosive devices. Twelve security personnel were killed.

33. The security forces' response, starting within hours, was immediate, brutal and grossly disproportionate. Ostensibly to eliminate the "terrorist threat" posed by ARSA, in the days and weeks that followed, it encompassed hundreds of villages across Maungdaw, Buthidaung and Rathedaung. The operations targeted and terrorised the entire Rohingya population. The authorities called them "clearance operations". As a result, nearly 725,000 Rohingya had fled to Bangladesh by mid-August 2018.

34. Despite the operations covering a broad geographic area, they were strikingly similar. Tatmadaw soldiers would attack a village in the early hours, frequently joined by other security forces, often by Rakhine men and sometimes men from other ethnic minorities. The operations were designed to instil immediate terror, with people woken by intense rapid weapons fire, explosions, or the shouts and screams of villagers. Structures were set ablaze and Tatmadaw soldiers fired their guns indiscriminately into houses and fields, and at villagers.

35. The nature, scale and organization of the operations suggests a level of preplanning and design on the part of the Tatmadaw leadership consistent with the vision of the Commander-in-Chief, Senior-General Min Aung Hlaing, who stated at the height of the operations, "The Bengali problem was a long-standing one which has become an unfinished job despite the efforts of the previous governments to solve it. The government in office is taking great care in solving the problem."<sup>7</sup>

**(a) Human rights catastrophe**

*Everyone was just running for their lives. I was not even able to carry my children.*

36. The "clearance operations" constituted a human rights catastrophe. Thousands of Rohingya were killed or injured. Information collected by the Mission suggests that the estimate of up to 10,000 deaths<sup>8</sup> is conservative. Mass killings were perpetrated in Min Gyi (Tula Toli), Maung Nu, Chut Pyin, Gudar Pyin, and villages in Koe Tan Kauk village tract. In some cases hundreds of people died. In both Min Gyi and Maung Nu, villagers were gathered together, before men and boys were separated and killed. In Min Gyi, women and girls were taken to nearby houses, gang raped, then killed or severely injured. Houses were locked and set on fire. Few survived. In numerous other villages the number of casualties was also markedly high. Bodies were transported in military vehicles, burned and disposed of in mass graves.

37. People were killed or injured by gunshot, targeted or indiscriminate, often while fleeing. Villagers were killed by soldiers, and sometimes Rakhine men, using large bladed weapons. Others were killed in arson attacks, burned to death in their own houses. This disproportionately affected the elderly, persons with disabilities and young children, unable to escape. In some cases, people were forced into burning houses, or locked into buildings set on fire.

38. Rape and other forms of sexual violence were perpetrated on a massive scale. Large-scale gang rape by Tatmadaw soldiers occurred in at least ten village tracts of

<sup>7</sup> Senior General Min Aung Hlaing, "Entire government institutions and people must defend the country with strong patriotism" (Facebook post, 2 September 2017), <https://www.facebook.com/seniorgeneralminaulhlaing/posts/1698274643540350>

<sup>8</sup> *Médecins Sans Frontières*, "No one was left – Death and violence against the Rohingya in Rakhine State, Myanmar" (March 2018).



northern Rakhine State. Sometimes up to 40 women and girls were raped or gang raped together. One survivor stated, “I was lucky, I was only raped by three men”. Rapes were often in public spaces and in front of families and the community, maximising humiliation and trauma. Mothers were gang raped in front of young children, who were severely injured and in some instances killed. Women and girls 13 to 25 years of age were targeted, including pregnant women. Rapes were accompanied by derogatory language and threats to life like, “We are going to kill you this way, by raping you.” Women and girls were systematically abducted, detained and raped in military and police compounds, often amounting to sexual slavery. Victims were severely injured before and during rape, often marked by deep bites. They suffered serious injuries to reproductive organs, including from rape with knives and sticks. Many victims were killed or died from injuries. Survivors displayed signs of deep trauma and face immense stigma in their community. There are credible reports of men and boys also being subjected to rape, genital mutilation and sexualised torture.

39. Children were subjected to, and witnessed, serious human rights violations including killing, maiming and sexual violence. Children were killed in front of their parents, and young girls were targeted for sexual violence. Of approximately 500,000 Rohingya children in Bangladesh, many fled alone after their parents were killed or after being separated from their families. The Mission met many children with visible injuries matching accounts of being shot, stabbed or burned.

40. Numerous men and boys were rounded up, marched into the forest by security forces, or taken away in military vehicles. While some families hope their fathers and brothers were imprisoned, others suspect they were killed.

41. Hundreds of thousands of Rohingya fled, without shelter, food or water. They walked for days or weeks through forests and over mountains. People died on the way, some succumbing to injuries sustained during the attacks. Women gave birth; some babies and infants died. An unknown number of people drowned from capsized boats, or crossing rivers. The Tatmadaw also killed Rohingya during the journey and at border crossings. Landmines planted in border areas by the Tatmadaw in early September 2017, apparently to prevent or dissuade Rohingya from returning, led to further loss of life and severe injuries.

42. Satellite imagery and first-hand accounts corroborate widespread, systematic, deliberate and targeted destruction, mainly by fire, of Rohingya-populated areas across the three townships. At least 392 villages (40 per cent of all settlements in northern Rakhine) were partially or totally destroyed, encompassing at least 37,700 individual structures. Approximately 80 per cent were burned in the initial three weeks of the operations; a significant portion of which after the Government’s official end date of the “clearance operations”. Over 70 per cent of the destroyed villages were in Maungdaw, where the majority of Rohingya lived. Most destroyed structures were homes. Schools, marketplaces and mosques were also burned. Rohingya-populated areas were specifically targeted, with adjacent or nearby Rakhine settlements left unscathed.

**(b) A foreseeable and planned catastrophe**

*My Rakhine neighbour warned me: “You cannot stay here and we cannot control the bad behaviour of our own people. The government is planning to drive away your people.”*

43. The 2017 ARSA attacks and ensuing “clearance operations” did not occur in a vacuum. They were foreseeable and planned.

44. ARSA emerged as a Rohingya resistance organization in response to the 2012 violence and increased State oppression over all aspects of life.<sup>9</sup> On 9 October 2016, it launched a small first offensive against three Border Guard Police posts in northern Rakhine State. Nine police officers were killed and ARSA obtained some arms. The security forces, led by the Tatmadaw, responded with “clearance operations”. 87,000

<sup>9</sup> The name ARSA came into existence later, but is used for ease of reference.

Rohingya fled to Bangladesh. The same tactics and violations were seen in this operation as later in 2017, albeit on a smaller scale. A Government Investigation Commission led by the Vice-President, and the security forces' own inquiries, cleared the security forces of wrongdoing, endorsing the lawfulness and appropriateness of the response.

45. As in 2012, the 2016 violence resulted in a further intensification of oppressive measures against the Rohingya. Security forces, camps and checkpoints were increased. Daily life for the Rohingya became untenable, with extreme movement restrictions. Protective fences around Rohingya houses were removed, knives and other sharp implements were confiscated. Security patrols, house searches, beatings, theft and extortion increased. Hundreds of men and boys were arrested, with the most educated and influential frequently targeted. Many were subjected to ill-treatment or torture in detention. Some were later released on payment of bribes; others have not been seen since. Women and girls were subjected to sexual violence, including gang rape.

46. In parallel, the authorities embarked on a renewed effort to impose the National Verification Card (NVC) on the Rohingya, a card they had refused as symbol of a discriminatory system that would entrench their status as "Bengali immigrants". The NVC increasingly became a pre-requisite to passing checkpoints, accessing farmland, and fishing. Intimidation and force were used, including at community meetings in the presence of the police and military, during which threats were made at gunpoint. At these meetings, villagers were told to "take the card or leave the country". Others, for example in Chut Pyin, were told by soldiers to accept it or be killed. Most Rohingya still refused.

47. In May-July 2017, ultranationalist monk Wirathu visited northern Rakhine twice, conducting mass public sermons. The village of Zay Di Pyin (Rathedaung Township) was blockaded by Rakhine villagers and security forces throughout August. Amid heightened tension immediately before 25 August 2017, Myanmar media increasingly reported on alleged ARSA activity in an inflammatory manner; State-sponsored hate speech towards the Rohingya continued.

48. A large build-up of troops and other military assets across northern Rakhine began in early August 2017, following a meeting between Rakhine politicians and the Tatmadaw Commander-in-Chief. Soldiers from the 33<sup>rd</sup> and 99<sup>th</sup> Light Infantry Divisions were airlifted into Rakhine State, with additional deliveries of military equipment. The increased presence was evident. Soldiers took over Border Guard Police posts. Rakhine men were recruited into the security forces, including "fast track" recruitment into the police. Other local Rakhine men were mobilised and armed. This build-up was significant, requiring logistical planning and time to implement, indicating that the subsequent operations were foreseen and planned.

**(c) An enduring catastrophe**

*I will not go back until they recognize our rights like others in Myanmar. I would rather prefer to die here.*

49. While the Government claimed that "clearance operations" ended on 5 September 2017<sup>10</sup>, military engagement continued well into October. Freedom of movement was further constrained, restricting remaining Rohingya to their houses, with limited access to markets and livelihoods and exacerbating malnutrition. Humanitarian access was severely restricted or blocked. Conversely, no protection was provided to Rohingya against vigilante attacks and the theft of property, livestock and other possessions by civilians of other ethnic groups. Sporadic attacks, including sexual violence, continued. These factors forced more Rohingya to Bangladesh, an average rate of 1,733 per month since the beginning of 2018.

<sup>10</sup> "Speech delivered by Her Excellency Daw Aung San Suu Kyi, State Counsellor of the Republic of the Union of Myanmar on Government's efforts with regard to National Reconciliation and Peace" (Facebook post, 19 September 2017), <https://www.facebook.com/state.counsellor/posts/speech-delivered-by-her-excellency-daw-aung-san-suu-kyi-state-counsellor-of-the-/1121130291354519/>.

50. The mass displacement and burning of Rohingya villages was followed by systematic appropriation of emptied land. Bulldozers flattened burned, damaged and even surviving structures and vegetation, erasing every trace of the Rohingya communities – while destroying criminal evidence. Dozens of Rohingya villages have vanished. New structures include posts for security forces and new housing for other ethnic groups. Government “resettlement” plans suggest that almost all houses to be constructed for displaced communities are designated for non-Rohingya. Other infrastructure projects appropriating Rohingya lands, including new roads and mines, are underway.

51. While the Government has, in principle, committed to Rohingya repatriation, nothing thus far indicates this will be in a manner ensuring respect for human rights, essential for a safe, dignified and sustainable return. The repatriation procedure requires acceptance of NVCs and processing in barbed-wired reception centres. The root causes of the exodus, including State-sanctioned oppression and an exclusionary and divisive rhetoric, are denied and continue unabated. The security forces who perpetrated gross human rights violations, with impunity, would be responsible for ensuring the security of returnees.

**(d) Perpetrators**

52. “Clearance operations” were led by the Tatmadaw, with other security forces, mainly Myanmar Police Force and Border Guard Police. Units of the Western Command were actively engaged, together with the 33<sup>rd</sup> and 99<sup>th</sup> Light Infantry Divisions (LIDs), which report directly to the Deputy Commander-in-Chief, General Soe Win. The LIDs were responsible for some of the most serious violations. Almost all instances of sexual violence are attributable to the Tatmadaw.

53. In some villages, Rakhine men participated in the operations, mostly looting and burning, but also killing and injuring Rohingya. Civilians from other minority ethnic groups were also involved in some places. The recurrent and organized involvement of civilian groups in the operations, and the consistent way in which they were equipped, tasked and executed their roles across the three townships, demonstrate orchestration by the Tatmadaw.

54. ARSA also committed serious human rights abuses, including the killing of dozens of suspected informants and the burning of the Rakhine village of Ah Htet Pyu Ma on 25 August 2017. Although the Government has stated that ARSA burned Rohingya villages, the Mission found no such indication. Other abuses allegedly perpetrated by ARSA, including several incidents where Rakhine and members of other ethnic groups, including the Mro, were killed, require further investigation, as does the killing of up to 100 Hindu men and women from Kha Maung Seik. The Mission’s primary source information on the latter incident corroborates the killing, but is inconclusive as to the perpetrator. Other militant or criminal groups were also active in the region and may also have been responsible for abuses.

**B. Kachin and Shan States**

*The Tatmadaw soldiers don’t treat us like humans, they treat us like animals. They look at us like we shouldn’t even exist.*

55. Similar patterns of conduct by security forces, particularly the Tatmadaw, occur elsewhere. The Mission focused on the situation in northern Myanmar (Kachin and Shan States) where interlocutors considered their plight ignored.

56. Successive governments have signed bilateral ceasefire agreements and a Nationwide Ceasefire Agreement (NCA) with various “ethnic armed organizations” (“EAOs”). In parallel, since 2011, northern Myanmar has seen a sharp increase in fighting between the Tatmadaw and armed groups, in particular those excluded from, or not signatory to, the NCA. These include the Kachin Independence Army (KIA), after a 17-year ceasefire broke down in 2011, the Shan State Army-North, the Myanmar National Democratic Alliance Army (MNDAA), and the Ta’ang National Liberation Army (TNLA). Clashes also erupted between the TNLA and the Shan State Army-South (SSA-S).

57. These conflicts have complex histories and are fuelled by various grievances, including regarding land use, development projects, exploitation of natural resources, and illegal narcotics trading. The underlying factors, however, are demands for greater autonomy, self-determination, and elimination of ethnic or religious discrimination, as well as resentment about Tatmadaw tactics targeting civilians and violating human rights.

58. The Mission verified a number of incidents in the context of these armed conflicts, and confirmed consistent patterns of violations of international law. With continuing hostilities and prevailing insecurity, these violations persist.

## **1. Violations by the Tatmadaw**

*There were no rebels in my village. But the army just came and attacked the people.*

59. The Tatmadaw operations in northern Myanmar are characterized by systematic attacks directed at civilians and civilian objects, and indiscriminate attacks. Attacks often occur in civilian-populated residential areas, in the absence of an apparent military objective, and in flagrant disregard for life, property and well-being of civilians. Tatmadaw soldiers have shot directly at and shelled civilians fleeing or seeking shelter. Attacks routinely resulted in civilian deaths and injuries. Widespread looting and the destruction and burning of homes were commonplace. This conduct was observed in most conflict-affected areas in northern Myanmar, especially in or around territory under the control of EAOs.

60. This *modus operandi* is a catalyst for other violations. Civilians are targeted because they belong to the same ethnic group, or because they are considered to be of “fighting age”, seemingly in an effort to dissuade civilians from involvement with EAOs. The Mission established a pattern of violations of the right to life, with numerous unlawful killings, mostly occurring in the context of military operations, as a consequence of indiscriminate attacks, attacks targeting civilians, or the murder or extrajudicial execution of persons in Tatmadaw custody. Unlawful killings also occur in other contexts, without an immediate or apparent link to hostilities, for example in the context of forced labour.

61. Similar patterns emerge for cases of torture and other forms of ill-treatment, often against men, women and children to obtain information or confessions regarding the activities of EAOs, or as punishment for perceived sympathy for the Tatmadaw’s opponents. Torture and ill-treatment are used to coerce individuals into forced labour, and conditions of detention often amounted to ill-treatment; civilians are forced to precede military units on patrol in conflict areas, sometimes in Tatmadaw uniforms, thereby exposing them to attacks, death and injury.

62. Women have been subjected to rape and other forms of sexual violence. Some have been abducted by soldiers and then raped, including gang raped, before being killed. Women and girls have been selected for forced marriage, and targeted in their homes for sexual violence. In many cases, sexual violence was accompanied by degrading behaviour, including insults and spitting. When women did escape, Tatmadaw soldiers would frequently search for them, threaten and physically abuse their family, and destroy or steal their property. Sexual violence against men has been inflicted as a means of torture, including to obtain information or confessions from detainees.

63. The Tatmadaw has engaged in arbitrary arrest and deprivation of liberty, in many cases amounting to enforced disappearance. Men and women, and in some cases children, were taken from their villages and detained for forced labour or because of suspected links to EAOs. Victims have been held incommunicado in unofficial places of detention for periods between a day and two years. Most were not informed of the reason for arrest, nor brought before a judge. In one incident in Monekoe, Shan State, over 100 individuals were arrested and detained in November 2016.

64. As in other areas of Myanmar, forced labour was a common feature of life for many in northern Myanmar. The Mission verified a pattern of systematic use by the Tatmadaw of forced labour, including portering, digging trenches, or as guides or cooks. Soldiers routinely arrived in villages without warning and took people for forced labour for up to weeks at a time. Some of those taken were required to fight for the Tatmadaw. The

Tatmadaw recruited children throughout the reporting period, although it has undertaken some efforts to address this issue.

65. Violations against ethnic and religious minorities in northern Myanmar are often committed with persecutory intent, in a context of severe discrimination on ethnic or religious grounds. This manifests, for example, in the destruction or ransacking of churches and religious objects during military operations (and sometimes subsequent erecting of Buddhist pagodas), but also in the use of insulting language during the acts.

## 2. Violations and abuses by “ethnic armed organizations”

*Since my son was forcibly recruited in 2016, I have not heard from him. I always check Facebook to see if I will recognise him in a post, either dead or alive.*

66. EAOs committed international humanitarian law violations and human rights abuses. Many occurred in the context of hostilities between the TNLA and SSA-S, including abduction and detention, ill-treatment and destruction or appropriation of civilian land and property. There have been instances where these groups, as well as the KIA and MNDAA, have failed to take precautionary measures to protect civilians in attacks and forcibly recruited adults and children. Some put immense economic pressure on civilians through arbitrary “taxation”. The extent to which rape, torture and killings were committed requires further investigation.

67. While the Mission’s information on violations and abuses by EAOs may not be representative, accounts would indicate that these are frequent but generally not systematic. This warrants further investigation.

## 3. Devastating humanitarian impact

68. Poverty levels in Kachin and Shan are high. The hostilities in northern Myanmar have compounded the humanitarian situation. People trapped in conflict-affected areas have been denied safe passage to leave. Others are unable to return because their homes were looted and destroyed, because of continuing fighting, the presence of landmines, or because their land was appropriated after they fled, including by the Tatmadaw and corporations. This has resulted in protracted situations of internal displacement.

69. An estimated 100,000 people in Kachin and Shan have been living in displacement camps or camp-like situations since 2011. They live in overcrowded conditions with inadequate shelter. Access to food and healthcare is limited, with the rate of chronic malnutrition well above the national average. Outbreaks of preventable diseases are reported. Access to education at all levels is inadequate. Additionally, there continues to be a cycle of temporary displacements. Among non-displaced populations, access to education and health care is often disrupted by fighting.

70. Humanitarian assistance has been frequently and arbitrarily denied, with the movement of relief personnel restricted for long periods despite clear needs. Access has significantly deteriorated since June 2016, to a point where international humanitarian actors are unable to assess needs or provide assistance to the majority of displaced persons, exacerbating dire conditions. Local organizations are also increasingly restricted.

## C. Fundamental freedoms

*The Bengali population exploded and the aliens tried to seize the land of local ethnics. [...] Race cannot be swallowed by the ground but only by another race. All must be loyal to the State in serving their duties, so that such cases will never happen again.<sup>11</sup>*

<sup>11</sup> Senior General Min Aung Hlaing, “Gallant efforts to defend the HQ against terrorist attacks and brilliant efforts to restore regional peace, security are honoured” (Facebook post, 21 September 2017), <https://www.facebook.com/seniorgeneralminaunghlaing/posts/gallant-efforts-to-defend-the/1716465351721279/>.

71. The Mission examined the issue of democratic space and the enjoyment of the rights to freedom of expression, association and peaceful assembly. While Myanmar made significant strides on this front, especially between 2011 and 2015, disturbing trends emerged. Violence and human rights violations, including in Kachin, Rakhine, and Shan States, are fuelled by the silencing of critical voices by the Myanmar authorities, who at the same time amplify a hateful rhetoric that emboldens perpetrators.

72. The Myanmar authorities, in particular the Tatmadaw, do not tolerate scrutiny or criticism. They use various laws to arrest, detain or harass civil society actors, journalists, lawyers and human rights defenders who express critical views. The case against two Reuters journalists for their investigative work into the Inn Din massacre and the prosecution of persons peacefully protesting the conflicts in northern Myanmar, including in Yangon, are recent examples. The Mission verified instances of reprisals for engagement with the United Nations, and excessive use of force in managing demonstrations.

73. The Government's response to hate speech has been inadequate. The Mission is deeply disturbed by the prevalence of hate speech, offline and online, often including advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence. This has accompanied outbreaks of violence, especially in Rakhine State. Dehumanising and stigmatising language against the Rohingya, and Muslims in general, has for many years been a key component of the campaign to "protect race and religion", spearheaded by extremist Buddhist groups like MaBaTha. Hate narratives are common. The Myanmar authorities have condoned these developments and, although generally using less inflammatory language, their rhetoric has mirrored and promoted the narratives espoused. This includes the insistence that "Rohingya" do not exist or belong in Myanmar, even denying use of the term; denial of the Rohingya's suffering; an association of Rohingya identity with terrorism; and the repeated allusions to illegal immigration and uncontrollable birth rates. The impact of this rhetoric is compounded by the stream of false or incomplete information and explicit calls for patriotic action (for example, "every citizen has the duty to safeguard race, religion, cultural identities and national interest"). The Myanmar authorities, including the Government and the Tatmadaw, have fostered a climate in which hate speech thrives, human rights violations are legitimised, and incitement to discrimination and violence facilitated.

74. The role of social media is significant. Facebook has been a useful instrument for those seeking to spread hate, in a context where for most users Facebook *is* the Internet. Although improved in recent months, Facebook's response has been slow and ineffective. The extent to which Facebook posts and messages have led to real-world discrimination and violence must be independently and thoroughly examined. The Mission regrets that Facebook is unable to provide country-specific data about the spread of hate speech on its platform, which is imperative to assess the adequacy of its response.

## **V. Hallmarks of Tatmadaw operations**

75. The Mission highlights four key common characteristics of Tatmadaw operations in Kachin, Rakhine and Shan States.

### **A. Targeting civilians**

76. The military has consistently failed to respect international human rights law and the international humanitarian law principles of distinction, proportionality and precaution. The deliberate targeting of civilians has formed part of Tatmadaw policies, tactics and conduct for decades. The "Four Cuts" counterinsurgency policy, initiated in the 1960s and still implemented, seeks to cut off non-State armed groups from access to food, finances, intelligence, and recruits from the local civilian population. This has been implemented through "clearance operations", essentially scorched earth campaigns in which civilians are killed and entire villages destroyed, leading to mass displacement.

77. These policies and practices violate Myanmar's obligations under international law and amount to criminal conduct. They are also unwarranted; military necessity would never

justify killing indiscriminately, gang raping women, assaulting children, and burning entire villages. The Tatmadaw's tactics are consistently and grossly disproportionate to actual security threats, especially in Rakhine State, but also in northern Myanmar.

78. While this report outlines violations against civilians from many ethnic groups in Kachin, Rakhine, and Shan States, the Tatmadaw's contempt for human life, integrity and freedom, and for international law generally, should be of concern to the entire population. The number of refugees from areas outside these three states attests to the existence of similar human rights concerns elsewhere in the country.

## **B. Sexual violence**

79. Rape and sexual violence have been a particularly egregious and recurrent feature of the targeting of the civilian population in Rakhine, Kachin and Shan States since 2011. Similar patterns of rape and sexual violence have been reported for at least three decades. Rape, gang-rape, sexual slavery, forced nudity, sexual humiliation, mutilation and sexual assault are frequently followed by the killing of victims. The scale, brutality and systematic nature of these violations indicate that rape and sexual violence are part of a deliberate strategy to intimidate, terrorise or punish a civilian population, and are used as a tactic of war. This level of normalisation is only possible in a climate of long-standing impunity.

## **C. Exclusionary rhetoric**

80. The Tatmadaw has historically cast itself as the protector of the nation, preserving "national unity in the face of ethnic diversity", while prioritising Bamar-Buddhist identity and interests. Discrimination against ethnic and religious minority groups has been well-documented for decades. Military operations are often accompanied by deeply insulting slurs and outright threats linked to ethnicity and religion.

81. For the Rohingya, this is aggravated by their gradually increasing exclusion from the Myanmar nation since the 1960s, amid decades of State-sponsored stigmatisation. This led to their *de facto* statelessness, and being reviled by much of the population. The Mission was struck by the normalcy of deeply exclusionary and dehumanising rhetoric in Myanmar society, actively nurtured by the Tatmadaw. While other ethnic and religious minorities are, at least in theory, accepted as belonging to the nation under their "national race" status, the Rohingya's lack of status has dramatically increased their vulnerability. This contributes to the extreme scale and intensity of the violence against them.

## **D. Impunity**

82. The Tatmadaw acts with complete impunity and has never been held accountable. Its standard response is to deny, dismiss and obstruct. It publicly lauds the discipline of troops and operations conducted "in full accordance with the law". It promotes perpetrators. Occasional superficial investigations have only been undertaken when faced with public exposure of undeniable evidence. It consistently fails to attribute responsibility, reinforcing to troops that they face no consequences. This pattern is a result of the political and legal construct of the country, whereby the Tatmadaw is removed from all civilian oversight and is given the constitutional right to adjudicate its own affairs. The Commander-in-Chief makes "final and conclusive" decisions in matters of military justice. The Tatmadaw's documented history of crimes demonstrates an absence of responsible command, or measures to prevent or repress crimes.

## **VI. Crimes under international law**

83. Based on the body of information collected, the Mission concludes on reasonable grounds that serious crimes under international law have been committed that warrant criminal investigation and prosecution. The Mission's full analysis is presented in document A/HRC/39/CRP.2.

## **A. Genocide**

84. Genocide occurs when a person commits a prohibited act with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such. The Rohingya are a protected group under this definition. Their treatment by the Myanmar security forces, acting in concert with certain civilians, includes conduct which amounts to four of the five defined prohibited acts; (a) killing, (b) causing serious bodily or mental harm, (c) inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part, and (d) imposing measures intending to prevent births.

85. The critical element of the crime is “genocidal intent”. The Mission assessed its body of information in light of the jurisprudence of international tribunals regarding the reasonable inference of such intent. The crimes in Rakhine State, and the manner in which they were perpetrated, are similar in nature, gravity and scope to those that have allowed genocidal intent to be established in other contexts. Factors pointing at such intent include the broader oppressive context and hate rhetoric; specific utterances of commanders and direct perpetrators; exclusionary policies, including to alter the demographic composition of Rakhine State; the level of organization indicating a plan for destruction; and the extreme scale and brutality of the violence.

86. Having given careful consideration to other possible inferences regarding intent, the Mission considers that these can be discounted as unreasonable. In this regard, the Mission notes the Tatmadaw Commander-in-Chief’s statement highlighted in paragraph 35, revealing that the “clearance operations” were not a response to a concrete threat from ARSA, but to the “unfinished job” of “solv(ing) the long-standing Bengali problem.”

87. The Mission concluded, given these considerations on the inference of genocidal intent, that there is sufficient information to warrant the investigation and prosecution of senior officials in the Tatmadaw chain of command, so that a competent court can determine their liability for genocide in relation to the situation in Rakhine State.

## **B. Crimes against humanity**

88. On the basis of information gathered, the Mission finds that crimes against humanity have been committed in Kachin, Rakhine and Shan States, principally by the Tatmadaw. For Kachin and Shan States, these include crimes against humanity of murder; imprisonment; enforced disappearance; torture; rape, sexual slavery and other forms of sexual violence; persecution; and enslavement. In Rakhine State, these and additional crimes against humanity were committed. The elements of extermination and deportation are also present, and the systematic oppression and discrimination not only supports a finding of persecution, but may also amount to the crime of apartheid. For both northern Myanmar and Rakhine State, the acts were committed as part of a widespread and systematic attack on a civilian population.

## **C. War crimes**

89. Given the Mission’s consideration that non-international armed conflicts existed in Kachin and Shan States (for the entire period under review) and in Rakhine State at least since August 2017, much of the conduct which gives rise to crimes against humanity will also satisfy the war crime elements of murder; torture; cruel treatment; outrages upon personal dignity; attacking civilians; displacing civilians; pillaging; attacking protected objects; taking hostages; sentencing or execution without due process; as well as rape, sexual slavery, and sexual violence. Certain acts committed by EAOs and ARSA may also constitute war crimes.

## **VII. Responsibility**

90. Non-State armed groups have committed crimes against civilians, for which they should be held accountable. During the period under review, the Tatmadaw was the main



perpetrator of serious human rights violations and crimes under international law in Kachin, Rakhine and Shan States. Additionally, in Rakhine State, the Myanmar Police Force, NaSaKa<sup>12</sup> and Border Guard Police were also perpetrators. Local authorities, militias, militant “civilian” groups, politicians and monks participated or assisted in violations, to varying degrees.

91. The Tatmadaw command exercises effective control over its own soldiers, as well as other armed actors deployed in military operations. The consistent tactical formula employed by the Tatmadaw exhibits a level of coordination only possible when all troops are acting under the effective control of a single unified command. This effective control, combined with knowledge of crimes committed by subordinates, a failure to take necessary and reasonable measures to prevent and punish crimes, and a causal link between these failures and the atrocities committed, indicate that individual criminal liability would extend beyond individual perpetrators, to their hierarchical commanders.

92. The Mission has drawn up a non-exhaustive list of alleged perpetrators of crimes under international law, indicating priority subjects for investigation and prosecution. The list includes the names of alleged direct perpetrators, but focuses on those exercising effective control over them. In relation to the recent events in Rakhine State, this includes the Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing, as well as:

- Deputy Commander-in-Chief, Vice Senior-General Soe Win;
- Commander, Bureau of Special Operations-3, Lieutenant-General Aung Kyaw Zaw;
- Commander, Western Regional Military Command, Major-General Maung Maung Soe;
- Commander, 33<sup>rd</sup> Light Infantry Division, Brigadier-General Aung Aung;
- Commander, 99<sup>th</sup> Light Infantry Division, Brigadier-General Than Oo.

The full list will form part of the Mission’s archives, kept in the custody of the High Commissioner for Human Rights, and can be shared with any competent and credible body pursuing accountability in line with recognised international norms and standards.

93. The constitutional powers of the civilian authorities afford little scope for controlling the actions of the Tatmadaw. Nor is there any indication that they directly participated in planning or implementing security operations or were part of the command structure. Nevertheless, nothing indicates that civilian authorities used their limited powers to influence the situation in Rakhine State where crimes were being perpetrated. The State Counsellor, Daw Aung San Suu Kyi, has not used her *de facto* position as Head of Government, nor her moral authority, to stem or prevent the unfolding events, or seek alternative avenues to meet a responsibility to protect the civilian population. On the contrary, the civilian authorities have spread false narratives; denied the Tatmadaw’s wrongdoing; blocked independent investigations, including of the Fact-Finding Mission; and overseen destruction of evidence. Through their acts and omissions, the civilian authorities have contributed to the commission of atrocity crimes.

94. Systemic discrimination and crimes under international law occurred during a period of significant international engagement in Myanmar, and while the United Nations was supposed to be implementing its Human Rights Up Front Action Plan. While Myanmar was repeatedly identified as a situation requiring the Action Plan’s “whole of UN” human rights driven response to crises, this approach was rarely, if ever, pursued. Rather, many United Nations agencies continued to prioritise development goals, humanitarian access and quiet diplomacy alone. That approach has demonstrably failed; the United Nations as a whole failed to adequately address human rights concerns. Even now the approach displays few signs of any lessons learned, with human rights missing from agreements recently signed with the Government. While thanking those United Nations entities that have provided it with valuable assistance and information, the Mission regrets the lack of cooperation from others.

<sup>12</sup> Border Area Immigration Control Headquarters, disbanded in 2013.

## VIII. Accountability

*I am not a very educated person but I hope the United Nations has the ability to get us justice by making sure that the Government of Myanmar can be questioned about what they did to us.*

95. Justice has remained elusive for victims in Myanmar for decades, with the authorities systematically failing to condemn, investigate and prosecute perpetrators. Impunity for gross human rights violations has significantly and demonstrably contributed to the validation of deeply oppressive and discriminatory conduct, enabled recurrence of human rights violations and atrocity crimes, and emboldened perpetrators and silenced victims. Unless impunity is addressed, and all ranks within the security forces are held accountable for their past, current and future actions, similar outbreaks of violence and associated atrocity crimes can be expected to continue, with further devastating domestic and regional impact.

96. In the face of the Rakhine crisis, the Myanmar authorities have created *ad hoc* inquiry commissions and boards. The Mission has examined eight such efforts since 2012. None meets the standard of an impartial, independent, effective and thorough human rights investigation. To the Mission's knowledge, none has led to any prosecution for gross human rights violations and redress for victims. The reason is simple: this is not possible in Myanmar.

97. Impunity is deeply entrenched in Myanmar's political and legal system, effectively placing the Tatmadaw above the law. The Constitution and other laws provide for immunities and place the Tatmadaw beyond civilian oversight. The Tatmadaw can independently adjudicate its own matters, with the Commander-in-Chief having the final word. The rare cases, brought mostly before military courts without transparency, are wholly insufficient to counter the overall trend of impunity. Additionally, military courts are inadequate forums to deal with large-scale human rights violations perpetrated by the military. Nor are civilian courts the answer; the domestic justice system is not independent and lacks capacity to respect fair trial standards. Nor does it have the capacity to deal with the breadth and gravity of the violations perpetrated by high-level officials, especially crimes under international law. Those who file complaints often face intimidation and reprisals. In short, accountability at the domestic level is currently unattainable.

98. While the primary responsibility for investigating and prosecuting crimes under international law lies with the Government of Myanmar, it has demonstrated that it is unable and unwilling. Accountability would require an overhaul of the entire domestic justice and security sectors. The Mission has concluded on reasonable grounds that the Government's recently-created Commission of Inquiry will not and cannot provide a real avenue for accountability, even with some international involvement. The impetus for accountability must come from the international community.

99. In its detailed report, the Mission proposes an accountability process that is transformative, victim-centred, comprehensive, and inclusive. It should contribute to three fundamental shifts: breaking the climate of impunity; ensuring that all State institutions, including the security forces, are answerable to the people; and promoting a concept of the State and Nation of Myanmar that is inclusive, based on equality and respect for the human rights of all. These considerations should permeate all measures adopted, in the areas of truth, justice, reparations and guarantees of non-recurrence.

## IX. Main conclusions and recommendations

100. **The gross human rights violations and abuses committed in Kachin, Rakhine and Shan States are shocking for their horrifying nature and ubiquity. Many of these violations undoubtedly amount to the gravest crimes under international law. They are also shocking because they stem from deep fractures in society and structural problems that have been apparent and unaddressed for decades. They are shocking for the level of denial, normalcy and impunity that is attached to them. The Mission**

concludes that these abusive patterns are reflective of the situation in Myanmar as a whole.

101. Myanmar has a heavy responsibility to remedy the situation as a matter of the utmost urgency, or risk destroying its democratic reform process. The international community also bears responsibility and must take a united stand to both condemn the violations and assist Myanmar in addressing the root causes of its recurrent problems. This begins by ensuring that the perpetrators of crimes are held to account, and by giving hope to victims of a future without the fear and insecurity that have characterized their existence.

102. The steps required to address the human rights crises in Myanmar are well known. For nearly three decades, five consecutive Special Rapporteurs on the situation of human rights in Myanmar have presented annual reports to the General Assembly and the Human Rights Council, with detailed recommendations to all stakeholders. Similarly, the United Nations High Commissioner for Human Rights has formulated concrete recommendations, as have many international and national civil society organizations. The Advisory Commission on Rakhine State also presented a detailed report. These recommendations should be implemented immediately.

103. The Mission's detailed report provides comprehensive recommendations. Here, it draws particular attention to the following priority areas for action by the international community:

(a) The international community, through the United Nations, should use all diplomatic, humanitarian and other peaceful means to assist Myanmar in meeting its responsibility to protect its people from genocide, crimes against humanity and war crimes. It should take collective action in accordance with the United Nations Charter, as necessary;

(b) The Security Council should ensure accountability for crimes under international law committed in Myanmar, preferably by referring the situation to the International Criminal Court or alternatively by creating an *ad hoc* international criminal tribunal. Further, the Security Council should adopt targeted individual sanctions, including travel bans and asset freezes, against those who appear most responsible for serious crimes under international law. It should also impose an arms embargo on Myanmar;

(c) Until the Security Council acts, the General Assembly, or alternatively the Human Rights Council, should create an independent, impartial mechanism to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts or tribunals;

(d) The Human Rights Council should continue to support the mandates of the Special Rapporteur on Myanmar and the High Commissioner for Human Rights, and ensure they have adequate resources to maintain a strong focus on the human rights crisis in Myanmar;

(e) The Human Rights Council should specifically request OHCHR to focus on ensuring accountability for human rights violations and abuses in Myanmar, including by enhanced monitoring, documentation, analysis and public reporting on the human rights situation; raising awareness among civil society and other actors engaged in documenting human rights violations about relevant international standards; working with victim communities to raise awareness about justice options; and supporting comprehensive rule of law and security sector reform in Myanmar in line with international human rights norms and standards. Appropriate resources must be allocated;

(f) The Human Rights Council should establish a second fact-finding mission for a limited period to build on the work undertaken by the Mission, until either one of the mechanisms outlined in (b) or (c) are operational, or the reinforced work of OHCHR set out in (e) is in place;

(g) The United Nations should urgently adopt a common strategy to ensure that all engagement with Myanmar takes into account, and addresses, human rights concerns, in line with the Human Rights Up Front Action Plan. This should guide all UN engagement in Myanmar, particularly in relation to Rakhine State, and include policies and public advocacy stances. All United Nations support to Myanmar authorities should undergo a full Human Rights Due Diligence analysis;

(h) As a matter of urgency, there must be a comprehensive, independent inquiry into the United Nation's involvement in Myanmar since 2011, with a view to establishing whether everything possible to prevent or mitigate the unfolding crises was done; identifying lessons learned and good practice; making recommendations as appropriate, including on accountability; and enabling more effective work in future;

(i) The United Nations and international community must ensure that the repatriation of refugees and return of internally displaced persons only occurs when safe, voluntary and dignified, with explicit human rights protections in place, including citizenship. In the current circumstances, returns are not possible;

(j) All Member States should ensure that engagement with Myanmar, and support for aid, development and reform projects, take into account and address human rights concerns, and explicitly conform to the principles of non-discrimination and equality. They should ensure that humanitarian organizations working on Myanmar are appropriately funded. States should cease operational support to the Tatmadaw and other security forces until there is (1) demonstrable commitment to genuine reform, (2) international assistance in implementing reform and (3) acceptance of and cooperation with international mechanisms to hold those responsible accountable for crimes under international law;

(k) Regardless of the imposition of an arms embargo by the Security Council, States should not authorize the transfer of arms to Myanmar, considering the overriding risk that they would be used to undermine peace and security and in the commission of serious crimes under international law;

(l) Relevant regional organizations, including the European Union and ASEAN, should develop strategies to ensure accountability for perpetrators of crimes under international law in Myanmar, including through sustained engagement with Myanmar and support for an international justice mechanism;

(m) Member States should exercise jurisdiction to investigate and prosecute alleged perpetrators of serious crimes under international law committed in Myanmar;

(n) The United Nations should establish a trust fund for victim support, through which victims can receive psychosocial support, legal aid, livelihood support, and others means of assistance. All trust fund projects should be designed in consultations with victims.

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