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Human rights situations that require the Council's attention

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Association Ma'onah for Human Rights and Immigration, Indian Movement "Tupaj Amaru", International-Lawyers.Org, United Towns Agency for North-South Cooperation, Union of Arab Jurists, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

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

[21 August 2019]

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



The Human Rights violations and abuses are worsening in Myanmar

Introduction

Myanmar's stalled democratic transition has given way to a massive human rights and humanitarian crisis. Armed conflict between the military and ethnic armed groups in northern Myanmar has intensified, forcing several hundred thousands to flee to Bangladesh and other places.

Over 800,000 Rohingya fled Myanmar between 2016 and 2017 as the military waged a genocidal campaign, veiled as counterinsurgency, against the civilian population. The UN fact-finding mission determined that the military's actions in Shan and Kachin States since 2011 amounted to genocide, war crimes and crimes against humanity.

This statement specifically raises concerns about escalating violence and deteriorating security in certain areas of the country, where civilians are facing internet shutdown and Muslim women and girls are suffering sexual violence, and further analyses of the Myanmar-Bangladesh plan for the repatriation of Rohingya refugees.

Internet shutdown in Rakhine and Chin States

On 20 June 2019, the government took the unprecedented step of ordering mobile phone operators to shut down all internet data across at least eight townships in Rakhine and one in neighbouring Chin State. There is no access to mobile internet in any of those townships. For instance, people are not adequately prepared for or warned of the floods that have been occurring since the beginning of the monsoon season. Houses are being destroyed with largescale displacement as a result.

Myanmar authorities rely on a directive under article 77 of the 2013 Telecommunications Law, which permits the suspension of a telecommunications service "when an emergency situation arises." However, the official order did not establish a date for the shutdown to end. Telenor, which is the telecommunications provider, stated that it "has been asking for further clarification on the rationale for the shut down and emphasized that freedom of expression through access to telecoms services should be maintained for humanitarian purposes, especially during times of conflict." The provider also reported the "continuous dialogue with the authorities to seek further clarity and ensure that human rights aspects as well as proportionality in terms of scope of the shutdown are being considered."¹

It is condemnable that the government is disallowing its people to have access to communication and information. Moreover, under international human rights law, the Government of Myanmar has an obligation to ensure that internet-based restrictions are provided by law and are a necessary and proportionate response to a specific security concern. This restriction appears not be justified by any public imperative; therefore, officials should not use broad indiscriminate internet bans to curtail the flow of life-saving information in a dire humanitarian crisis.

We finally highlight that in July 2016, the United Nations Human Rights Council condemned, by its resolution A/HRC/32/L.20, measures that intentionally prevent or disrupt access to or dissemination of information online, in violation of international human rights law, and asserted that all countries should refrain from and cease such measures.

¹ Telenor Group. *Network shutdown in Myanmar, 21 June 2019*, <https://www.telenor.com/network-shutdown-in-myanmar-21-june-2019/>.

Repatriation of the Rohingya population

Legal conditions for repatriation seem to be far from acceptable. In the framework of the agreement signed between Bangladesh and Myanmar, many Rohingyas have refused the repatriation conditions offered by the government of Myanmar. Particularly, they deeply despised the flawed process of the National Verification Card (NVC), considering they view it as a perpetuation of the discriminatory 1982 Citizenship Law,² which has effectively left them stateless in their own country. Given the atrocities they survived, the refugees understandably first want Myanmar authorities to assure them that they and their families will be safe if they return home, before they discuss terms of their repatriation.

As already documented by us during the 41st session of the Human Rights Council,³ regarding government's move to amend the constitution, it must be seized as an opportunity to put an end to every form of discrimination against minorities in order to guarantee the same fundamental rights and freedoms to every human being living on the territory of Myanmar regardless of their religion or ethnicity.

In the context of these democratic reform efforts, it is imperative to grant citizenship to Rohingyas and not simple residence cards or identification cards. Rohingyas should receive passports under the same conditions as the citizens of Myanmar, and they must fully enjoy freedom of religion, freedom of movement, access to education and healthcare, protection from all forms of discrimination. Efforts and measures short of this would likely imply relocating the Rohingya against their will, amounting to refoulement, which is against International Law.

Violence against Muslim women and girls denied by Myanmar

Rohingya women and girls have been victims, in recent decades, of grave and repugnant violence committed by the security forces in Myanmar. Arrests, torture, rape, widespread killings, forced labour, and other severe abuses are resulting in waves of mass displacement.

Particularly in Kachin and Shan States, some women have been abducted by Tatmadaw soldiers, raped, or gang-raped, before being killed. Women and girls have been appointed for forced marriage and targeted in their homes for sexual violence. In several cases, sexual violence was followed by humiliating behaviour, including insults and spitting.

Reports issued by the Office of the High Commissioner for Human Rights, the International Fact Finding Mission on Myanmar, the Special Representative of the Secretary General for Children and Armed Conflict, the Special Representative of the Secretary General for Sexual Violence in Conflict, and the Committee on the Elimination of Discrimination against Women (CEDAW), have documented a pattern of repulsive atrocities against Rohingya women and girls.

We welcome the opening by the International Criminal Court (ICC) of a preliminary examination into Myanmar's alleged crimes against its Rohingya minority, however; the ICC can only exercise its jurisdiction over conduct that occurred on the territory of Bangladesh. Consequently, there is an elevated risk that justice will not be delivered. The international community cannot simply turn a blind eye to the persons accountable for the gravest crimes under international law, for this will set a very dangerous precedent. The UN Security Council should immediately refer the Myanmar case to the ICC.

Regrettably, evidence demonstrates that such violence was orchestrated and perpetrated by the Myanmar armed forces, alongside with the Border Guard Police and militias. However, the government of Myanmar has denied the existence of evidence of such crimes without conducting independent preliminary investigations despite the abundant evidence.

² A/RES/69/247.

³ Myanmar: Continuing Violence, Impunity and Discrimination against Minorities (A/HRC/41/NGO/70).

In a recent CEDAW review of the Myanmar situation in February 2019, Myanmar authorities on several occasions denied allegations of violence concerning rape and other forms of sexual violence against Rohingya women and girls, denying photographic evidence and testimony of a large number of witnesses – collected by UN human rights bodies and others.⁴

According to UN Women, mothers raising children born from rape often live in extreme poverty and are banished from their family. We are therefore deeply concerned about their future, and we recommend to the government to provide to women and girls, who have experienced such trauma, adequate psychological support including a dialogue with their families and the communities they live in once resettled in Myanmar.

Recommendations

Internet shutdown:

- Immediately lift the shutdown on mobile phone Internet in Rakhine and Chin States
- Repeal Article 77 of the 2013 Telecommunications Law.

Shutting down Internet access from people should no longer be an alternative available to authorities under the law, as condemned by the Human Rights Council Resolution A/HRC/32/L.20. Any restrictions on information online service in times of emergency should be thoroughly defined, subject to prior judicial approval, and reserved for exceptional circumstances.

Repatriation:

- We call upon the international community to speak out against the Myanmar-Bangladesh plan for the repatriation of Rohingya refugees scheduled to begin on 22 August 2019.
- Create adequate conditions for the safe return of Rohingyas, granting them full citizenship, full enjoyment of fundamental rights and liberties, including freedom of religion, freedom of movement, access to education and healthcare.

Finally, instead of this offensive approach to repatriation, Myanmar should be dismantling the systematic and institutionalized discrimination against the Rohingya that has caused mass displacement to Bangladesh and other places for years.

Violence against Muslim women and girls:

- Establish an effective, accessible and safe mechanism to report incidents of rape and other forms of sexual and gender-based violence to appropriate authorities for investigation.
- Conduct community education programs aimed at empowering women who want to report violence in a manner that does not jeopardize their safety.
- We would like to reiterate that the international community should interrupt all financial and economic relations and any other form of support to Myanmar's military to isolate its commanders and bring them before the ICC to answer charges of war crimes, crimes against humanity and genocide, including prosecute security personnel, inter alia senior officials in the Tatmadaw chain of command, for crimes against humanity, war crimes and conflict-related sexual violence.

Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.

⁴ CEDAW, Concluding Observations on the Exceptional Report of Myanmar, UN Doc. No. CEDAW/C/MMR/EP/CO/1 (8 March 2019).