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HUMAN RIGHTS COUNCIL MUST URGE MYANMAR TO COOPERATE FULLY WITH FACT-FINDING MISSION

WRITTEN STATEMENT

ITEM 4: INTERACTIVE DIALOGUE WITH THE FACT-FINDING MISSION ON MYANMAR

UN Human Rights Council
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Although the Human Rights Council (“the Council”) established the Fact-Finding Mission on Myanmar in March 2017, the human rights and security situation remain deeply concerning across much of the country. The situation in Rakhine State remains extremely volatile, while in northern Myanmar, fighting between the Myanmar Army and ethnic armed groups has escalated. Ongoing reports of serious human rights violations, coupled with the government’s failure to adequately investigate alleged abuses, underscore the importance of the Fact-Finding Mission being able to exercise its mandate fully, to “establish the truth, ensure full accountability for perpetrators of human rights abuses and justice for victims”.¹

The Government of Myanmar, however, continues to reject the establishment of the Fact-Finding Mission and has repeatedly stated that it will not allow investigators into the country.² Amnesty International urges the Council to call on the Government to cooperate fully with the Mission and allow it unfettered access to all parts of the country. The Council should further ensure that, in line with its mandate, the Fact-Finding Mission investigates human rights violations and abuses throughout Myanmar and is provided with the resources necessary to do so.

THE SITUATION IN RAKHINE STATE

Amnesty International has previously raised concerns about serious human rights violations and possible crimes against humanity committed by state security forces in Rakhine State³ following

¹ Resolution adopted by the Human Rights Council on 24 March 2017: Situation of human rights in Myanmar, UN Doc: A/HRC/RES/34/22, 3 April 2017, para 11.

² *The Irrawaddy*, “Govt Reiterates Rejection of UN Fact-Finding Mission”, 31 May 2017, <https://www.irrawaddy.com/news/burma/govt-reiterates-rejection-un-fact-finding-mission.html>; Reuters, “Myanmar says it will refuse entry to U.N. investigators probing Rohingya abuses”, 30 June 2017, <http://uk.reuters.com/article/uk-myanmar-rohingya-un-idUKKBN19LOCN>

³ *Myanmar: Urgent action needed to address deteriorating human rights situation*, Amnesty International’s written statement to the 34th session of the UN Human Rights Council (27 February-24 March 2017) (Index: ASA 16/5683/2017), 13

fatal attacks on three border police posts by Rohingya militants in October 2016. These include unlawful killings, torture, including rape and other sexual violence, arbitrary detention, enforced disappearances and destruction of property.

The Myanmar government has failed adequately to investigate these violations or hold perpetrators accountable. In May 2017, a military investigation team claimed to have found only two instances of abuse by security forces.⁴ In August 2017, an Investigation Commission established by the President of Myanmar published a summary of its findings,⁵ which did little to shed light on the circumstances of the October 2016 attacks and their aftermath. Although the Commission acknowledged casualties, destruction of buildings, loss of property and displacement during “clearance operations” by security forces, it failed to establish responsibility for these acts, or state whether any action has been taken to prosecute perpetrators. The Commission also claimed to have been unable to verify allegations of sexual violence, and stated that reports of torture were still being investigated. The Commission’s full report has yet to be made public.

Meanwhile, the overall security situation in Rakhine State remains fragile. A series of killings of suspected Rohingya informants and the killing and disappearance of ethnic Mro and Rakhine villagers, which authorities attribute to Rohingya militant groups, have led to increased inter-communal tensions. It is essential that these incidents are investigated and those responsible are brought to justice, in fair proceedings. Amnesty International encourages the Fact-Finding Mission to investigate these events.

The Myanmar government has also failed to address the long-standing, systematic racial and religious discrimination which provides the backdrop to the recent violence in Rakhine State. Rohingya and other Muslims continue to face multiple and wide-ranging violations of virtually all of their rights, including their rights to: freedom of movement; access to health; education; livelihood opportunities; food; freedom of thought, conscience and religion. Rohingya face additional violations of their right to a nationality and participation in public life. Amnesty International strongly recommends that the Fact-Finding Mission examine these broader violations and their root causes.

VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS IN NORTHERN MYANMAR

Despite the ongoing peace process, fighting in northern Myanmar has intensified in the past year, beginning with a Myanmar Army offensive in Kachin State in August 2016 and co-ordinated attacks by a coalition of four ethnic armed groups on security outposts in northern Shan State in November 2016.

The Myanmar Army has committed wide-ranging human rights violations against civilians from ethnic minorities during this period.⁶ These include extrajudicial executions, enforced disappearances, indiscriminate shelling, arbitrary detentions, torture and forced labour. Many of these violations amount to war crimes under international humanitarian law and appear to represent a pattern of collective punishment against civilians perceived to support ethnic armed groups. Investigations into such violations are rare and perpetrators are seldom held accountable.

Amnesty International documented the enforced disappearance and likely killing of 18 men from

February 2017, <https://www.amnesty.org/en/documents/asa16/5683/2017/en/>

⁴ *The Global New Light of Myanmar*, “Tatmadaw refutes accusations in Report Submitted to OHCHR”, 23 May 2017, <http://www.burmalibrary.org/docs23/GNLM2017-05-23-red.pdf>

⁵ Summary of the Report of the Investigation Commission for Maungdaw in Rakhine State, 6 August 2017, on file with Amnesty International.

⁶ Amnesty International, “*All the civilians suffer*”: Conflict, displacement and abuse in northern Myanmar (Index: ASA 16/6429/2017), 14 June 2017, <https://www.amnesty.org/en/documents/asa16/6429/2017/en/>

Nam Hkye Ho village in northern Shan State by the Myanmar Army.⁷ Eyewitnesses told Amnesty International that they saw the men being marched out of the village by soldiers in late November 2016. Several weeks later, villagers found charred human remains and possessions belonging to the missing men in two large holes close to the village. In another case, four Kachin men, who were forced to guide Myanmar Army soldiers, were beaten and three of them had their faces sliced open after soldiers accused them of signalling their position to an ethnic armed group operating in the area.⁸

Amnesty International's research found that ethnic armed groups have also committed violations of international humanitarian law against civilians, including enforced disappearances, forcible recruitment and extortion.⁹

The government and military have been severely and arbitrarily restricting the access of UN agencies and humanitarian organizations to displaced populations in northern Myanmar, especially to territories that are not under government control. In February 2017, the Myanmar Army turned back around 200 UN-stamped dignity kits – which included basic sanitary supplies – destined for displaced women and girls in areas controlled by the Kachin Independence Organization.

Given the mounting evidence of human rights abuses in Kachin and northern Shan States, and the entrenched impunity for such violations, it is important that the Fact-Finding Mission, in line with its mandate, investigates human rights and international humanitarian law violations and abuses by all parties to the conflicts.

THREATS, INTIMIDATION AND REPRISALS

Human rights defenders have long faced arrest and imprisonment in connection with their work and continue to report harassment, surveillance and threats by both state and non-state actors.

The prosecution of individuals who speak out about military abuses, such as Kachin pastors Dumdaw Nawng Lat and Langjaw Gam Seng and Rakhine activist Khaing Myo Tun,¹⁰ further contributes to a climate of fear among civil society. Meanwhile, the detention of three journalists who were reporting from northern Shan State in June¹¹ has reignited concerns about press freedom. In this context, the Fact-Finding Mission should make every effort to ensure the safety of all those who engage with it.

RECOMMENDATIONS

The establishment of the Fact-Finding Mission offers an opportunity to examine recent human rights violations within the wider context of long-standing abuses by Myanmar's security forces. The violations and abuses described above do not occur in isolation, but rather in the context of a decades-old pattern of discrimination and violence, in particular against ethnic and religious minorities. Most incidents have gone unpunished, due in large part to structural barriers which shield members of the armed forces from prosecution. Identifying the root causes of these problems, and making practicable recommendations towards remedying them, will be essential to ensuring the Mission's work is effective.

⁷ Ibid, p.17.

⁸ Ibid, p.20-21.

⁹ Ibid, p.37-42.

¹⁰ Amnesty International, *Myanmar: Pastors face imprisonment for trumped up charges*, (ASA 16/5790/2017), 1 March 2017.

¹¹ Amnesty International, *Myanmar: Three media workers detained and charged* (Index: ASA 16/6627/2017), 30 June 2017.

Amnesty International recommends that the Human Rights Council:

- Ensure that the Fact-Finding Mission investigates human rights violations and abuses across the country, including in Kachin and northern Shan States, and that it has sufficient resources to do so;
- Call on the Government of Myanmar to cooperate fully with the Fact-Finding Mission, including by allowing its members full and unfettered access to all parts of the country.

Amnesty International recommends that the Fact-Finding Mission:

- Investigate human rights violations and abuses across the whole country making effective recommendations towards ensuring accountability and addressing the root causes; and
- Establish a mechanism through which victims, witnesses and their families can submit information about violations securely and without fear of threats or reprisals. This should include secure digital means.