



Legal Analysis Statement Regarding the Meeting to Mark the Three-year Anniversary of the Ceasefire Agreement

1. Currently, Burma is in a dilemma over how to tackle the peace related issues, including the meeting – to be attended by Senior General Min Aung Hlaing, State Counsellor Mrs. Aung San Suu Kyi and leaders of the 10 ceasefire signatory groups – which has been scheduled to be held in Nay Pyi Daw on October 15. Unless the accountability issue, arisen out of the commission of heinous crimes committed against Rohingyas peoples and other ethnic nationalities in Rakhine, Kachin, Shan and Karenni States,¹ is addressed in those so-called ‘deadlock-breaking’ peace talks, now and in future, genuine peace will never be achieved.

2. In the World Economic Forum, being convened in Hanoi, Vietnam, Oct 11 to 13, 2018, Mrs. Aung San Suu Kyi didn’t answer directly to the moderator’s question on Rohingyas’ plight whether the military had handled that issue well. She, nevertheless, responded indirectly by dividing the accountabilities between the military and her elected civilian government: for the former, she used the term, ‘military aspect of operation’; and, for the latter, she highlighted by saying, “from political aspect, the government has to take responsibility.”²

3. According to that explication, it implies that Mrs. Aung San Suu and her government will not take any accountability for the military which launched military operation from military aspect. It is also conspicuous that in regard to accountability of the abovementioned heinous crimes Mrs. Aung San Suu Kyi has kept a distance from the military. Only when she stands so, however, accountability issue cannot be circumvented.

4. The problems of the commission of heinous crimes, are neither military nor political. But, they are primarily legal issues, to be resolved, in seeking criminal justice. On behalf of the State, the incumbent President U Win Myint and Mrs. Aung San Suu Kyi³ – who are in the position of superiors within the National Defense and Security Council, the most powerful institution under

¹ <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/Index.aspx>

² <https://coconuts.co/yangon/news/suu-kyi-not-remember-criticized-military-month-ago/>

³ Mrs. Aung San Suu Kyi publicly announced that she would be above the President.

the 2008 Constitution⁴ – are accountable to take legal action on the military perpetrators who allegedly committed war crimes, crimes against humanity and genocide. As far as those heinous crimes are concerned, State responsibility extends the protection of peremptory norms, cited as jus cogen, in accordance with the Article 53 of the Vienna Convention of the Law of Treaties and erga omnes obligations.

5. Since Sept 18, 2018, the ICC Prosecutor Mrs. Fatou Bensouda has already commenced preliminary examination. In conformity with the complementarity principle under the Rome Statute, her Office will be engaging with the national authorities, led by Mrs. Aung San Suu Kyi, concerned with a view to discussing and assessing any relevant investigation and prosecution at the national level.⁵ President U Win Myint and Mrs. Aung San Suu Kyi should cooperate with her and attempt to prosecute the perpetrators. If so, they will be able to reform the entire judicial system, which is the cornerstone of the Rule of Law, thereby effectively promoting economic development, in addition to seeking peace. Unfortunately, however, it is highly unlikely. Unless they cooperate with her, they will overtly turn to abettors⁶, and be accused of being complicit in those heinous crimes – war crimes, crimes against humanity and genocide – unavoidably.

6. Simultaneously, in this regard, all Ethnic Armed Organizations (EAOs), signatories or non-signatories, in terms of non-state actors are also responsible. If non-state actors would like to enjoy substantial rights, including the right to self-determination, under international law, then they shall in principle surely be subjected to duties under international law.⁷ It is of paramount importance particularly at the present time when State sovereignty has become contentious issue and sovereign rights of Ethnic States/Provinces have come to the fore.

7. The EAOs should not ignore the accountability issue, arising out of the serious violations of human rights, nor do they keep silent in such formal or informal meetings, while rhetorically articulating peace. If so, it will lead to violation of their international obligation under customary international law. In addition, it will imply that they acquiesce in the planning of the Myanmar military, which has turned to a terrorist organization in accordance with the Section 3 (b) (10) of the 2014 Counter-Terrorism law of Burma, to continue committing more serious human rights violations in one Ethnic State/Province after another in exerting their efforts to disarm the EAOs one step after another by imposing military and other pressures.

Our Legal Aid Network (LAN) recommends as follows:

1. Only when the perpetrators, who committed heinous crimes, are taken into legal actions and criminal justice be sought for victims, the Rule of Law will become a reality; only after upholding the Rule of Law, will genuine peace come into existence; as such, all stakeholders should strive for the Rule of Law and, to this end, accountability must be sought.

⁴ Article 201 of the 2008 Constitution

⁵ <https://www.icc-cpi.int/Pages/item.aspx?name=180918-otp-stat-Rohingya>

⁶ Penal Code Section 108

⁷ https://law.unimelb.edu.au/___data/assets/pdf_file/0011/1683182/Green.pdf

2. Myanmar military leaders must immediately stop their ploy to make use of all EAOs as a shield to prevent legal and other actions to be taken by the international community, including the International Criminal Court (ICC). Until the accountability issue has been solved, all so-called peace related meetings – in which emergence of the concrete agreements cannot be expected – should be ceased. Unless the accountability issue is resolved legally, validity of those agreements to be reached with the military perpetrators, who have accustomed to commit heinous crimes, from the Myanmar Army is questionable.

3. If a genuine Federal Democratic Union, in which Ethnic States/Provinces exercise popular sovereignty and provincial sovereignty, is to be established, any pivotal decision should not be made merely by summit leaders. Rather, by holding referendums in each and every Ethnic State/Province, the will of the various ethnic nationalities residing therein must be collected, and primary decisions be made based on their will. It is the practice, adhering to the doctrine that sovereign power is vested in the people. In so doing, in all genuine peace seeking processes which may emerge in future, democratic foundation would have been laid down with the underpinning of federalism.

Legal Aid Network

Oct 14, 2018

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