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Take Urgent Action to End Genocide, Crimes Against Humanity and War Crimes

FORUM-ASIA, Progressive Voice, and Karen Human Rights Group call on Member and Observer States to the UN Human Rights Council (“the Council”) to take concrete action to ensure justice and accountability for genocide, crimes against humanity and war crimes perpetrated against ethnic and religious minorities in Myanmar. We express deep concern regarding the escalation in conflict, particularly in Rakhine and Shan States and urge the Council to broaden the mandate of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on the situation of human rights in Myanmar to regularly document and report violations and abuses of human rights and violations of international humanitarian law in Myanmar.

Shan State has observed an escalation in conflict since the factions of the Northern Alliance’s Ta’ang National Liberation Army (TNLA), Arakan Army (AA) and Myanmar National Democratic Alliance Army (MNDAA) carried out attacks against the Myanmar military’s Defense Service Technological Academy at Pyin Oo Lwin in Mandalay Region, as well as a toll gate, customs house and police security outpost on 15 August 2019. The Myanmar military was quick to retaliate, with some of the worst fighting being observed in Lashio and Kutkai. In Lashio, the Myanmar military has used buddhist temples to fire shells into villages resulting in a death of a 52 year old farmer. In Kutkai, parents and family grieved the death of three Kachin children due to heavy shelling between the Northern Alliance and the Myanmar military.

Approximately 7,500 people have been displaced just in the last month alone in Shan State and 3,500 remain in temporary shelters. According to the UN, the renewed fighting has led to the killing of 17 civilians, many women and children and has injured 27. A statement issued by 346 civil organizations organizations from Myanmar called for an immediate end to hostilities and for all parties to abide by international humanitarian law and protect civilians in conflict. Infrastructure, including bridges have been destroyed and transportation between Mandalay-Lashio-Muse road have been severely affected by the conflict, leaving hundreds trapped unable to access humanitarian assistance and leaving them with shortages in food and medicine.

In Rakhine State, since conflict between the AA and the Myanmar military began in January 2019, 60,000 people - majority Buddhist Rakhine ethnic minorities - have been forced to flee their homes. According to media reports, at least six villages have been turned to ashes by the Myanmar military in recent weeks, most recently Ooyinthar village in Buthidaung Township, western Rakhine State.

The fighting has also spread to southern Chin State and as of August 2019, over 3,600 people have been displaced. Cases of enforced disappearance is also on the rise as at least 10 civilians have disappeared in southern Chin State’s conflict-hit Paletwa Township over the past year. In addition, new injuries due to landmine explosions threaten villagers, while also preventing internally displaced persons (IDPs) and refugees from a safe, dignified and sustainable return. As the Myanmar military becomes ever emboldened to act with impunity, deploying the same heinous tactics it used against the Rohingya and other ethnic and religious minorities for decades, it is no wonder that not a single Rohingya presented themselves for repatriation during the recent attempt by the Government of Myanmar and Bangladesh to return Rohingya to Rakhine State.

The peace process in Myanmar has failed. In Karen State, the Myanmar military is increasingly reinforcing its troops and supplying ammunition, weaponry and rations to its army camps, directly violating Section 5(c) of the Nationwide Ceasefire Agreement (NCA), which states that the signatories must “avoid troop reinforcements in the ceasefire areas”. This increase in militarisation has significant consequences on the civilian population. In addition to causing displacement and preventing IDP from returning to their homes, villagers have also expressed concerns about their livelihoods and security. They fear the increased militarization in the region may lead to a renewed armed conflict.

For far too long, the Myanmar military has used the alleged “ethnic” threat to national sovereignty and territorial integrity as a reason to wage brutal wars against entire ethnic communities and to ensure that Bamar-Buddhism remains the status quo in the country. Myanmar government’s efforts to co-opt ethnic minorities into the Bamar-Buddhist system, including through the centralized education and health system, is systematically destroying ethnic language, culture, tradition, religion, beliefs and the very social fabric upon which ethnic peoples’ identities are built.

Meanwhile, the valuable land belonging to the ethnic minorities that has been passed on from one generation to the next, keeping alive the stories and wisdom that links them with their past, present and future is being stolen through official policies and laws such as the Vacant, Fallow and Virgin Land Management Law, robbing them of their livelihood. Requiring those who follow customary land practices to register their land with the government, reduces the value of their land to a one-dimensional economic interest that serves the interest of the central government. Such approach to land management will only lead to further displacement and disenfranchisement of ethnic communities.

Arrests and cases brought against ethnic minorities have only increased in recent years, most recently on September 12, 2019, Naw Ohn Hla, a longtime Karen women human rights defender was charged under the Peaceful Assembly and Peaceful Processions law for organizing an event to commemorate the Karen martyrs. Such arrests, which are also taking place against Karenni, Rakhine and Kachin human rights defenders and activists, are a blatant display of oppression by the authorities and a clear message to all ethnic minorities who dare to celebrate their history and heroes. At the root of conflict and human rights violations in Myanmar is the prioritization of the Bamar-Buddhist identity, and the institutionalized regime of systematic oppression and domination of ethnic minorities that has emboldened the Myanmar military to continue to act with impunity. The Council and the international community must take concrete steps to address this problem in order for the rights of all ethnic and religious minorities in Myanmar to be respected and protected.

The extensive documentation and reporting conducted by the Independent International Fact-finding Mission on Myanmar (IIFMM) has established significant building blocks towards criminal accountability for serious international crimes committed by the Myanmar military, in particular as it led to the establishment and operationalization of the International Independent Mechanism for Myanmar. However, the end of the IIFMM’s mission this month comes at a critical time for human rights in Myanmar. As conflict continues to escalate in ethnic areas, it is vital that the Council broaden the mandate of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on the situation of human rights in Myanmar to document and regularly report on the ongoing violations and abuses as well as violations of humanitarian law. Regular and robust reporting is crucial in ensuring that the Council continue to be appraised on the situation of human rights in Myanmar as genocide, war crimes and crimes against humanity continue unabated.

As recommended by the IIFMM, it is time that the lifeline of the Myanmar military’s operations be cut off by the international community ending relationships with businesses, enterprises, and subsidiaries owned or controlled by the Myanmar military. Human rights violations, particularly systemic and institutionalized oppression and persecution against ethnic and religious minorities, will continue as long as the military is able to enjoy the economic monopoly and receives the necessary funds and resources to carryout its heinous attacks against these communities. The international community must heed the recommendations of the IIFMM and divest from military owned businesses and companies, particularly those associated with the two military conglomerates - Myanmar Economic Holdings Limited (MEHL) and Myanmar Economic Cooperation (MEC). Priority should focus on investing in certain segments of the private sector that have refrained from conducting businesses with the Myanmar military.

Neither the Myanmar government established Independent Commission of Enquiry (ICOE) nor inquiry by the Myanmar military into serious International crimes are viable pathways to justice and accountability for the victims. Lending legitimacy to commissions that lack impartiality and neutrality with its flawed methodology is only delaying justice and genuine, concrete steps to addressing accountability. Domestic mechanisms are unwilling or unable to address crimes of this magnitude. The impetus for accountability must come from the international community.

The end of the IIFMM’s mandate is only an end of a chapter. We must remain vigilant in holding perpetrators to account for the crimes they have committed. Now is the time to pursue all possible pathways towards accounta-

bility, including a referral of Myanmar to the International Criminal Court or an independent tribunal, exercising universal jurisdiction, as well as divesting from military owned businesses and companies, imposing targeted sanctions and arms embargoes. Victims of the worst crimes, including genocide, deserve nothing less.

To this end, we urge the following actions:

1. The Human Rights Council must provide mandate to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Special Rapporteur on the situation of human rights in Myanmar, in particular to document and report violations and abuses of human rights and violations of international humanitarian law as a result of conflict between the Arakan Army and the Myanmar military and ongoing hostilities in Shan State. The reporting gap after the end of the IIFFMM's mandate must be filled by a regular reporting by the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights;
2. There must be a proper follow up on the recommendations provided by the UN-mandated International Independent Fact-Finding Mission on Myanmar and the Special Rapporteur by the United Nations mechanisms globally and locally in Myanmar;
3. Ensure regular monitoring and reporting to the Human Rights Council with dedicated interactive dialogue on the situation of the human rights in Myanmar at the Human Rights Council and the General Assembly;
4. The Human Rights Council must not afford legitimacy to the Independent Commission of Enquiry or the Court of Inquiry, as its mandate does not address the issue of accountability and the methodology that have been employed by the Independent Commission of Enquiry and the Court of Inquiry are deeply flawed;
5. UN-mandated bodies should not cooperate with any mechanism involving a Myanmar court, the Myanmar judiciary is not independent and cannot guarantee the safety of victims and witnesses;
6. Hold a special session or form a Panel of Experts to address accountability in all parts of Myanmar where genocide, crimes against humanity and war crimes have taken place. These must include Kachin, Chin, Shan and Karen States, in addition to Rakhine State;
7. UN and the international community should use all appropriate measures, including by adopting a new resolution, to ensure the protection of human rights defenders, witnesses, victims, and those who have engaged regularly with human rights mechanisms against reprisal;
8. We note the UN's Secretary General's brief investigation on Myanmar found systemic failure in preventing the Rohingya genocide. The Secretary General must now conduct a full and independent inquiry into the UN's failures, including recommendations for action to ensure individual accountability, including:
 - promptly implementing reforms to prevent the recurrence of the "systematic" failures and "obvious dysfunctional performance" outlined in the report, and ensuring accountability for those failures as required;
 - taking practical steps to hold accountable those UN officials responsible for failures before, during, and since the 2017 ethnic cleansing campaign;
9. Call on the Myanmar government to:
 - Ensure the safe, dignified, and voluntary return of IDPs and refugees;
 - Immediately cease hostilities between the Myanmar military and ethnic armed organizations.
 - Immediately stop implementing the national strategy on camp closure which is against the international standard and norms/ violating the rights of the IDPs and ensure the unfettered and swift provision of humanitarian aid and support to IDPs.

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