

Criminal Complaint Filed in Germany Against Burma Army Generals for Crimes Committed Against the Karen and Other Ethnic Groups

31st of January 2023

On January 20th 2023, sixteen individuals from Burma, along with Fortify Rights, filed a criminal complaint in Germany under the principle of universal jurisdiction against Burma military generals for genocide, war crimes, and crimes against humanity. Although not the only accountability initiative currently under way, it is the first to include crimes against the Karen and other ethnic minorities, as well as crimes committed since the 2021 military coup. The Karen Human Rights Group (KHRG) welcomes this new initiative and has already agreed, as have the Chin Human Rights Organization (CHRO), the Karen Human Rights Group (KnHRG) and the Human Rights Foundation of Monland (HURFOM), to cooperate with the German authorities to provide further evidence of the commission of international crimes by the Burma military.

The complainants include six women and ten men belonging to seven different ethnicities in Burma, including a former Karen village head, survivor and witness of crimes committed by the Burma military in Karen State. *"In Burma, especially in ethnic regions, there are many human rights violations. And the main perpetrator is the Burma Army"*, explained the Karen complainant to Fortify Rights. *"There was never prosecution for the Burma Army's crimes. I have never seen the Tatmadaw [Burma Army] authorities held accountable for their actions."* He adds, *"I hope this [criminal complaint] will take action against the Tatmadaw with the help, support, and cooperation of the international community. I hope there will be justice."*

In the complaint, Fortify Rights and the complainants request that the German Prosecutor open an investigation into specific military officials and others who, according to evidence, are liable for mass atrocity crimes. In addition, the complainants have requested a structural investigation that would permit the gathering of additional evidence of crimes, in which the particular suspects have not yet been identified. Structural investigations allow for a broad and flexible approach to investigations, particularly when crimes are committed on a large scale. They help identify patterns of criminal activity and structures of power, and may facilitate the ability of prosecutors to identify additional suspects and to swiftly seek extradition when suspects' locations are known. The documentation of human rights organisations like KHRG, as well as civil society and NGOs, can play a critical role in these investigations.

In Karen State, serious crimes committed by the Burma military, such as arbitrary killing, torture, burning of entire villages and destruction of villagers' property, forced labour, and sexual violence have been occurring for decades, primarily during periods of heavy armed conflict. KHRG has

documented these crimes over the past 30 years. Yet the perpetrators have enjoyed complete impunity, leaving victims and survivors unable to obtain justice. KHRG stands ready to support these investigations in whatever means possible in order to end this impunity, hold the perpetrators accountable for their crimes and bring justice for all victims/survivors.

The possibility of an investigation and subsequent prosecutions through courts in Germany is particularly significant. While two other universal jurisdiction cases have been filed in national courts against the Burma military, one in Argentina and the other in Turkey, the German legal system is currently more robust in prosecuting international crimes than in some other countries. Universal jurisdiction holds that some crimes are so heinous they transcend national borders and that they and their perpetrators can be tried anywhere. However, national legal systems vary in their ability to prosecute international crimes. Unlike German law, Argentine law does not prescribe a punishment for the crime of genocide, so there is no applicable penalty for the offense. Rather, a perpetrator can be convicted in Argentina in the context of genocide but would be punished for other crimes committed, such as homicide, rape, or unlawful detention. According to Matthew Smith, Executive Director of Fortify Rights, “Germany is in a unique position to help thwart impunity in Myanmar. [...] An investigation now will help ensure that those responsible for these heinous crimes are held to account and punished, whether in Germany or elsewhere.”

Other international accountability efforts to hold Burma military leaders accountable include the investigation by the International Criminal Court (ICC), considering the crime against humanity of forcible deportation of Rohingya to Bangladesh; and the case brought by The Gambia at the International Court of Justice (ICJ), for crimes of genocide committed by the State against the Rohingya. While all of these accountability initiatives are promising, the possibility of justice for other ethnic peoples who have long endured the Burma military’s violence and oppression merits full attention. KHRG encourages widespread support for this filing to ensure that the federal prosecutor’s office in Germany accepts to pursue this case and that the case is brought to trial.

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