



General Assembly

Distr.: General
21 June 2019

English only

Human Rights Council

Forty-first session

24 June–12 July 2019

Agenda item 4

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), International-Lawyers.Org, Union of Arab Jurists, United Towns Agency for North-South Cooperation, 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.

[02 June 2019]

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



Myanmar: continuing violence, impunity and discrimination against Minorities

Introduction

This statement depicts the dramatic situation faced by Rohingyas and other persecuted ethnic minorities in Myanmar, where no serious effort has been deployed to grant citizenship and fundamental rights and liberties to the minorities living on its territory. Concerning the desperate exodus of Rohingya fleeing from appalling acts of violence, the statement intends to highlight the high risk of impunity for those who committed despicable crimes under international criminal law including genocide. The statement further raises concerns of escalating violence and deteriorating security situation in certain areas of the country, the imperative of delivering justice to victims and the urgent need to build democratic institutions to grant a peaceful coexistence among various ethnic and religious groups living on the territory of Myanmar.

Continuing violence and discrimination against minorities

Despite the readiness of repatriation centres to receive returnees from Bangladesh as indicated on the official website of the President of the Republic of Myanmar, clear and adequate conditions of repatriation are not in place yet.

During a press briefing held on 8 February 2019, UNHCR spokesperson Andrej Mahecic evoked reports of escalating violence and a deteriorating security situation in southern Chin State and Rakhine State. The government of Myanmar has not undertaken any measure to stop the vicious cycle of fighting and violence between the military and ethnic armed organizations with a view to initiating a genuine political dialogue. In a context of escalating fighting, it is furthermore condemnable that the government disallowed humanitarian access. This persisting climate of confrontation and violence between ethnic groups and the military is not at all conducive to a political dialogue and peaceful coexistence in the country. Considering the heavy humanitarian impact of continuing violence in Myanmar, together with the desire expressed by Rohingya to go back to the place they call home where they have been living for centuries, repatriation clearly seems not to be possible on the ground.

Furthermore, not only conditions on the ground, but also legal conditions for repatriation seem to be far from acceptable. In the framework of the agreement signed between Bangladesh and Myanmar, many Rohingyas have so far refused the repatriation conditions offered by the government of Myanmar. In particular, many Rohingyas have refused the National Identification Card issued by Myanmar in exchange for very limited freedoms. In her statement delivered on 25 January 2019, Ms. Yanghee Lee, UN Special Rapporteur on the situation of human rights in Myanmar, clearly points out that “the government of Myanmar is not working to create the conditions for the return of the Rohingyas”. She also welcomed the government’s move to amend the constitution on 7 February 2019 while stating that “the current constitution of Myanmar is not democratic, and Myanmar cannot be considered a democracy without it being amended”. The recent government’s decision to amend the constitution 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 irrespective of 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 must receive passports under the same conditions as the citizens of Myanmar, and they have to fully enjoy freedom of religion, freedom of movement, access to education and healthcare, protection from discrimination and hate speech, and equality of opportunity.

Accountability for serious crimes, including genocide

The crimes committed against the Rohingyas from the outbreak of violent confrontations between the Tathmadaw (the military) and the Arakan Rohingya Salvation Army can

amount to the gravest crimes under international law, including genocide. On accountability for such crimes, genuine justice for victims cannot be delivered as long as the military shields itself behind laws providing for immunity and therefore total impunity. Considering the lack of independence of the domestic justice system and its inability to conduct fair trials in full observance of fundamental legal guarantees, it is not at all conceivable to leave in Myanmar's hands the responsibility to conduct effective investigations and independent trials in a very fragile political and legal framework. As the UN experts clearly pointed out, accountability for the military inside Myanmar is impossible.

For these reasons, 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 a high risk that justice will not be delivered for the alleged gravest crimes committed on the territory of Myanmar. The international community cannot just stand idly by and 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 must immediately refer the case to the ICC. In the past, international *ad hoc* criminal tribunals have been established by Security Council resolution to investigate serious criminal abuses (such as those that took place in Yugoslavia, Rwanda, Lebanon and Sierra Leone). However, the creation of a special mechanism through a resolution by General Assembly with the necessary consent by the State concerned is not the best option to deliver justice to the victims. As it is the core mandate of the Security Council to deal with peace and security issues, the responsibility to seize the ICC for the most despicable crimes rests on the Security Council so that the ICC will be granted full jurisdiction to carry out comprehensive investigations into all criminal acts committed against the Rohingya minority in both Myanmar and Bangladesh. In this context, the government of Myanmar must fully cooperate with international institutions by granting unrestricted access for international experts to all areas of the country the experts may deem relevant. As Myanmar is not able to deliver justice itself, the international community has an obligation towards the victims and their families to deliver justice as the most effective deterrent against future abuses.

Violence against Muslim women and girls

The scale of sexual violence, including rape, against Muslim women and girls living in Rakhine, Kachin and Shan States by State security forces is simply appalling and may amount to war crimes under international criminal law. In its Committee on the Elimination of Discrimination against Women (CEDAW) extraordinary report submitted on 6 February 2019, the government of Myanmar denied the existence of evidence of such crimes without even carrying out independent preliminary investigations and despite abundant evidence. We express deep concern over the future of those Muslim women and girls who bravely decided to bear children born of rape as they may face discrimination and stigma in their communities. According to UN Women, mothers raising children born as a result of rape often live in extreme poverty and are ostracized by their relatives. The children too are stigmatized and face severe social, psychological and socioeconomic consequences. To avoid this scenario, the government of Myanmar has to put at the disposal of women and girls having experienced such trauma adequate psychological support including a dialogue with their families and the communities they live in once resettled in Myanmar. It is also of vital importance to carry out independent and impartial investigations and bring perpetrators of such abhorrent abuses to justice.

Recommendations

The NGOs signatories to this statement are deeply concerned about the political instability of the country, the atrocities committed against minorities and the high risk of impunity for such acts. We therefore call upon the government of Myanmar and the international community to:

- Allow humanitarian access, put an immediate end to the fighting and the targeting of civilians;

- As a matter of urgency, amend the constitution, eliminate immunities for the military, reform the justice system;
- Fully cooperate with international mechanisms and organizations with a view to facilitating the documentation of crimes committed against Rohingya and other ethnic minorities;
- As a matter of urgency, eliminate every form of discrimination – in law and in practice – against Muslims and ethnic minorities, and effectively sanction hate speech and anti-Rohingya propaganda;
- Create adequate conditions for the safe return of Rohingyas, grant them full citizenship, full enjoyment of fundamental rights and liberties, in particular freedom of religion, freedom of movement, access to education and healthcare;
- Investigate and punish the perpetrators of sexual violence committed against Muslim women and girls living in Rakhine, Kachin and Shan States, and put psychological and medical support at the disposal of women and girls who have suffered sexual violence;
- If the above joint efforts fail, refer the case to the International Criminal Court.

Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Euro-Mediterranean Human Rights Monitor, Association Maonah for Human Rights and Immigration, 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), NGO(s) without consultative status, also share the views expressed in this statement.