



General Assembly

Distr.: General
7 September 2017

English only

Human Rights Council

Thirty-sixth session

11-29 September 2017

Agenda item 9

Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), International-Lawyers.Org, 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.

[18 August 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.17-15583(E)



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THE PLIGHT OF ROHINGYA IN MYANMAR IS IGNORED*

The deterioration of the humanitarian situation in Myanmar – with a particular focus on widespread and systematic human rights violations against Rohingya – remains a priority in the agenda of the international community. Myanmar has repeatedly been condemned for grave breaches of international humanitarian and human rights law. However, such violations are not adequately investigated, perpetrators enjoy impunity, and, consequently, victims are denied the right to effective remedy and reparation. To make matters worse, the Burmese government has provided weak and unacceptable excuses, blaming the complexity of the situation and the recent transition to democracy for the failure to ensure justice and accountability. Therefore, it is high time that the international community takes bold actions based on Chapter VII of the UN Charter to stop genocide and to ensure protection of civilians in the world's longest civil war – which started in 1948 and has been running for almost 60 years.

GRAVE VIOLATIONS OF INTERNATIONAL LAW

It is well-known that the humanitarian catastrophe in Myanmar has led to serious violations of international humanitarian law. All parties are responsible for indiscriminate killings, enforced disappearance, rape and sexual violence, forced labour and trafficking of human beings, recruitment of child soldiers, use of human shields, forced displacement and restrictions of humanitarian access. Moreover, this abusive and chaotic environment coupled with the inadequate legal framework fails short to protect local communities and the environment from damaging activities of transnational corporations that often violate human rights and are directly complicit in human rights abuses, especially in the areas of armed conflict¹.

The government of Myanmar is failing to ensure the halt of violence and of serious abuses against ethnic minorities, particularly the Rohingya religious minority. The incitement to discrimination and violence based on national, racial and religious hatred is widespread and systematic. Within the general context of an anti-Muslim rhetoric, the government and security forces have implemented persecution policies for decades. Ethnic minorities are targeted by the so-called “Burmanization” policy and the most shocking case concerns the group of Rohingya. The Rohingya community – which comprises approximately 1.3 million members – is mainly located in the Rakhine State and has historical roots in Myanmar. Nevertheless, the government refuses to give them nationality and, instead, it uses the term “Bengali” to refer to Rohingya as foreigners. Over 100,000 Rohingya have embarked in a perilous journey to leave the country by sea to escape horrific Apartheid-like conditions, which see 140,000 of them confined in what many describe as “concentration camps”.² The UNHCR estimated that some 350,000 Rohingya have fled Myanmar in search of protection in Bangladesh, including an estimated 74,000 who arrived in late 2016 as a result of a security crackdown in northern Rakhine state.³

Whilst the national and local government authorities implement discriminatory policies, the security forces continue to conduct the so called “clearance operations”. The Burmese armed forces (Tatmadaw) and the Border Guard Police Force of Myanmar deliberately kill Rohingya civilians using grenades, random and targeted shootings, stabbings, or beating them up to death and burning them inside their houses. The most disturbing reports note the killings of babies and small children, in many cases in front of the eyes of their raped mothers. Rohingya children, pregnant women, persons with disabilities and others are subjected to torture and ill-treatment in public, in their houses and in make-shift

1 Human rights abuses committed by transnational corporations include infringement of the rights to life, liberty, security of person, freedom of assembly and association, freedom of movement, freedom from torture, cruel and inhuman treatment and punishment, sexual and gender-based violence, arbitrary arrest and detention, unjust labour practices, piracy, slavery and slave trading.

2 “The Rohingya: Not Just a Name, A People at Risk of Genocide”, United to End Genocide at <http://endgenocide.org/conflict-areas/burma/>

3 “Give the Rohingya hope for a future” urges UNHCR chief, 11 July 2017 at <http://www.refworld.org/docid/5964c3a24.html>

detention locations⁴. Furthermore, it is reported that hundreds of Rohingya boys and men are randomly “rounded up” by the Myanmar security forces while women and girls are separated from them and taken away; their whereabouts are unknown. Women and girls, including pregnant ones, are raped and sexually abused either at home in front of their family members or in places of displacement. Moreover, Rakhine villagers – dressed either in military uniform or in civilian clothing – joined the abuses against the Rohingya community members. There are recounts of cases where fire brigades poured petrol on Rohingya’s houses before setting them on fire.

The widespread, systemic and organised abuse of the Rohingya minority in Myanmar with an obvious intent to destroy this group amounts to the international crime of genocide. The persecution of this ethnic group since 1982 in combination with the widespread criminal acts committed against them since 2012 includes all elements of genocide as defined by the Rome Statute of the International Criminal Court and the Genocide Convention⁵.

RESPONSE OF THE INTERNATIONAL COMMUNITY THROUGH THE UNITED NATIONS

The international community and the United Nations seem to be neglecting the 60-years-long Burmese conflict. Since 1948, the United Nations Security Council has adopted only one resolution recommending Myanmar (Burma) for the UN membership. In 2007 and 2008, the UN Security Council (SC) issued two presidential statements “*strongly deploring the use of violence against demonstrations and emphasising the importance of early release of prisoners*” and “*noting the commitment of the Myanmar government that the referendum would be free and fair and underlining the need for the government of Myanmar to establish the conditions and create an atmosphere conducive to an inclusive and credible process*”.⁶ In addition, the SC has issued several press releases in 2007-2008 on the release of all political prisoners and expressing serious concern on the conviction and sentencing of Aung San Suu Kyi. In 2007, the draft resolution presented by United Kingdom, United States of America and Northern Ireland “*expressing deep concern at the slow pace of tangible progress in the process towards national reconciliation in Myanmar and at the continuing detention of political prisoners, including the prolonged house arrest of Daw Aung San Suu Kyi, and emphasizing that an inclusive National Convention offers an opportunity for effective dialogue*” was vetoed by China and Russian Federation.⁷

The UN Secretary-General on Children and Armed Conflict submitted several reports on children and conflict in Myanmar (in 2007, 2009, and 2013). In 2006 and 2010, the UN General Assembly (GA) reviewed reports of the Special Rapporteur on the situation of human rights in Myanmar. Similarly, the UN Human Rights Council (HRC) reviewed several reports of the Special Rapporteur and continued to extend her mandate that was originally established in 1992. The Special Rapporteur on Myanmar has conducted field missions and has submitted numerous reports to the HRC. Several HRC special mandates requested official visits. The UN Secretary-General and High Commissioner for Human Rights issued various reports and alarmed statements, denouncing widespread and recurrent crimes against humanity.

CHAPTER VII OF THE UNITED NATIONS CHARTER

Civil society is doubtful that the government of Myanmar will take firm actions to end the atrocities taking place against the Rohingya minority. In fact, the government failed to ensure independent investigations and trials of the alleged perpetrators of large-scale crimes. The National Commission was established by the Burmese government following the international pressure on State Counsellor Aung San Suu Kyi to investigate the army’s military response to border clashes in 2016. However, the Commission’s interim report released in January 2017 denied the persecution and

⁴ The horrific methods of torture include brutal physical assaults, death threats, forcing to sit in so called ‘stress positions’ for hours up to 3 days, and psychological torture by forcing victims, even children, to watch the suffering of their relatives

⁵ The Convention defines genocide as killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part and imposing measures intended to prevent births within the group.

⁶ SC Presidential Statements S/PRST/2007/37 (11 October 2007) and S/PRST/2008/13 (2 May 2008).

⁷ SC draft resolution, S/2007/14 (12 January 2007).

genocide of Rohingya in Myanmar.⁸ Moreover, the Commission justified the response of security forces as legal and adequate.⁹

Our organizations submitted several appeals calling on the Human Rights Council to take action concerning the widespread and systematic violations against the Rohingya Muslim community – which clearly amount to genocide – and to ensure protection of civilians as well as corporate accountability of transnational corporations. We reiterate our call for UN action on the basis of Chapter VII of the Charter to restore peace and security in Myanmar and to protect Rohingya from genocide. In her October report to the UN General Assembly, the UN Special Rapporteur on the human rights situation in Myanmar should analyse the genocidal intent and alarm the GA members.

RECOMMENDATIONS

- The situation in Myanmar should be referred to the International Criminal Court.
- All parties to the conflict should ensure compliance with international humanitarian law, particularly as far as the protection of civilians and civilian objects are concerned.
- The government of Myanmar should grant full access to the UN fact-finding mission and international humanitarian aid workers, observers and journalists to conflict areas, especially in the Rakhine State.
- The Government should repeal discriminatory legislative and policy measures targeting religious and ethnic minorities; lift restrictions of movement that impede access to health and education services; intensify its efforts to address discrimination and counter incitement to hatred and hate speech leading to violence; and enact legislations and implement policies to grant Rohingya the Burmese nationality.
- The government should adopt a comprehensive policy framework – in line with international standards – to prevent multinationals from committing human rights abuses and to ensure that corporate activity on its territory, especially within the context of extractive industries, follows international norms.
- The government of Myanmar should enhance cooperation with UN agencies and special-mandate holders to coordinate strategies to address the current situation and prevent future mass atrocities.
- Home states of transnational corporations should issue instructions to businesses prohibiting any activity in foreign countries that may contribute to existing human rights abuses or that may further exacerbate the situation on the ground.

*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, The Brussels Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), Alliance to Renew Co-operation among Humankind, General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGOs without consultative status, also share the views expressed in this statement.

⁸ Interim Report of the Investigation Commission on Maungta, Republic of the Union of Myanmar, Ministry of Information, 3 January 2017 at: <http://www.moi.gov.mm/moi:eng/?q=news/4/01/2017/id-9542>

⁹ “Myanmar government ‘following the law’ in Rakhine, probe panel says”, Reuters, Yangon, 14 December 2016 at: <http://www.reuters.com/article/us-myanmar-rohingya-idUSKBN1430SU>