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**PROCEDURES SPECIALES DU CONSEIL DES  
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**UNITED NATIONS  
OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE HUMAN  
RIGHTS COUNCIL**



Address:  
Palais des Nations  
CH-1211 GENEVE 10

19 April 2018

REFERENCE:

Excellency,

I have the honour to write you in my capacity as the Special Rapporteur on the situation of human rights in Myanmar of which the mandate was renewed in March 2018, pursuant to the Human Rights Council Resolution A/HRC/37/L.43.

As you may recall, resolution 37/L.43, *inter alia* requires that I submit a report to the General Assembly on its 73rd session as well as to continue to monitor the situation of human rights in Myanmar and to measure progress on the implementation of my recommendations.

In line with my mandate, I would like to conduct an official visit to India from 29 June to 5 July, arriving in New Delhi on 29 June 2018 and departing from New Delhi on 5 July 2018. The visit will include travelling to the State of Jammu and Kashmir and the State of Mizoram from New Delhi.

The focus of my visit will be to meet the refugees from Myanmar currently living on the outskirts of Jammu city, and in the State of Mizoram. I would also like to meet relevant stakeholders including civil society organisations whose work relates to the situation of human rights in Myanmar and members of the refugee community in New Delhi, and the States of Jammu and Kashmir and Mizoram. In addition to travelling to the State of Jammu and Kashmir and the State of Mizoram I will be holding meetings with United Nations agencies in New Delhi. I would be grateful for your Government's support in discharging my mandate on Myanmar, by facilitating my visit to New Delhi, the State of Jammu and Kashmir and the State of Mizoram.

../cont...

His Excellency Mr. Rajiv K. Chander  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative  
Permanent Mission of India to the United Nations Office  
and other international organizations in Geneva  
9, Rue du Valais  
1202, Geneva



I look forward to receiving confirmation on the dates and visits to the aforementioned locations from your Excellency's Government. For any clarification regarding the mandate and plan of the visit, please contact Mr. Pradeep Wagle through email [pwagle@ohchr.org](mailto:pwagle@ohchr.org) or by telephone +41229179866.

Please accept, the Excellency, the assurances of my highest consideration.

A handwritten signature in cursive script that reads "Yanghee Lee".

Yanghee Lee

United Nations Special Rapporteur on the situation of human rights in Myanmar



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Address:  
Palais des Nations  
CH-1211 GENEVE 10

18 July 2018

Excellency,

As stated in my oral update to the Human Rights Council in June, constructive engagement with the government of Myanmar is my utmost priority. I am committed to continue to avail my assistance and advice to the Government of Myanmar.

Reiterating all the previous questions sent to your Excellency's Government on 12 February 2018 and in the spirit of cooperation, transparency, and engagement, I attach a list of additional questions to the Government of Myanmar. I would appreciate your response by 10 August 2018, as answers to these questions will contribute to my upcoming report to the General Assembly.

Please accept the assurances of my highest consideration.

A handwritten signature in black ink that reads "Yanghee Lee".

Yanghee Lee

United Nations Special Rapporteur on the situation of human rights in Myanmar

His Excellency Mr. Htin Lynn  
Permanent Representative of the  
Republic of the Union of Myanmar  
to the United Nations Office in Geneva  
Avenue Blanc 47  
1202 Geneva

Please provide information on your plans to implement the recommendations in my report to the Human Rights Council of March 2018.

## **QUESTIONS FOR GOVERNMENT OF MYANMAR FROM UN SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN MYANMAR**

### **Law and judicial reform**

1. Please provide information on developments regarding the proposed Land Acquisition Law
2. Please provide an update on the proposed amendments to the Peaceful Assembly and Peaceful Procession Law.

### **Administration of justice**

3. What are the barriers that prevent the release of 36 reported political prisoners? What steps are needed to address these barriers?
4. Please provide information about the reported conviction of the following people, including the proceedings that were commenced against them, any trial that took place and whether they had legal representation:
  - a. Ma Hla Phyu, also known as Ma Raw Mie (reportedly convicted under section 6(c) of the 1949 Residents of Burma Registrations Act);
  - b. Aung San Lin and six other Muslims from Yangon (reportedly sentenced to three months in prison in May 2018); and
  - c. Aung Khant Zaw, Myat Thu Htet and seven other students in Patheingyi (reportedly convicted under section 500 of the Penal Code in relation to an anti-war play).

### **Democratic space**

5. I have received information about alleged excessive use of force by police during anti-war protests in Yangon in May and Loikaw, Kayah State in July. Please provide information about this, including any investigation that took place.
6. Please provide information about the reported prosecution of anti-war protestors across the country, including the status of proceedings and whether the defendants have legal representation. This includes:
  - a. 22 people charged under section 19 of the Peaceful Assembly and Peaceful Procession Act
  - b. 18 people were charged under section 20 of the Peaceful Assembly and Peaceful Procession Act
  - c. Two people charged under section 500 of the Penal Code for alleged defamation of the military
  - d. One man charged under both section 19 of the Peaceful Assembly and Peaceful Procession Act and section 500 of the Penal Code
7. Please provide information about the reported prosecution of 16 Karenni activists under the Peaceful Assembly and Peaceful Procession Act and the Penal Code, including the status of proceedings and whether the defendants have legal representation.

## **Citizenship**

8. I have received information that members of religious and ethnic minorities face difficulty obtaining citizenship documentation. What is being done to address this?

## **Business and human rights and natural resources**

9. Please provide information about any new mining and natural resource extraction activities in northern Rakhine State.
10. Please provide information about the reported new economic cooperation zones in Kanpiketi town, Kachin State, Chinshwehaw, Shan State, and Muse Township, Shan State.
11. Please provide information about gold mining in Shan State, in particular the mine in Monghpyak, and what you are doing to ensure that the environment, local communities and their land are protected.
12. Please provide information about the recent decision by the Ministry of Natural Resources and Environmental Conservation to allow local and foreign investment in mining following environmental impact assessment.
13. Please provide information about the status of the proposed dams on the Salween river, including the Myitsone dam and the Mong Ton dam.
14. What is the government doing to ensure local and international businesses respect human rights?
15. Please provide an update on the process for EITI report submission.
16. I have received information about the death of at least 18 and injury of at least 45 jade prospectors in July 2018 in the Lone Khin mining area. Please provide information about this, any investigation that is taking place and what will be done to prevent similar occurrences in the future.
17. Please provide information about 33 farmers who were convicted of criminal trespass on 7 May 2018 in Yangon in relation to land at Thilawa.

## **Peace process and conflict**

18. Please provide information about the Third Union Peace Conference that just concluded.
19. Please provide information about the reports that villagers in conflict affected areas were blocked from leaving for safety by the military, and that people were trapped in the forest without assistance.
20. Please provide information about the allegations that villagers were used as human shields and mine sweepers by the military in Kachin State.
21. Please provide information about the “National Strategy for the closure of the IDP camps in Myanmar” and how it will be carried out. Do you plan to consult IDPs? Will they be able to return to their place of origin or choosing?
22. Please comment on the Secretary General’s report on sexual violence in Myanmar dated 23 March 2018.
23. Does the Tatmadaw continue to recruit child soldiers? What is being done to ensure children are not recruited?
24. Please provide information about any investigation that has taken place regarding the alleged killing of Hpaugan Yaw and Nhkum Naw San of Maing Hkawng village, Kachin State.

25. Please provide information about any investigation that has taken place or is proposed in relation to the alleged killing of Saw O Moo in Kayin State.
26. Please provide an update on what is being done to address the problem of violence against women, including domestic violence and sexual violence.
27. I have received information about churches being demolished in Kachin State. Please provide information about this.
28. I have received information that civilians were displaced by conflict in Paletwa Township, Chin State in May and June 2018. Please provide information about this and any assistance being provided to the displaced people.
29. I have received information about landmines being placed on the Myanmar border with India. Please provide information about this.
30. I have received information that civilians have been displaced by conflict in Hpapun District, Kayin State. Please provide information about this and any assistance being provided to the displaced people.

### **Rakhine State**

31. Please provide information about any people who have returned to Myanmar from Bangladesh, including where they are currently located and any assistance being provided to them.
32. Please provide an update on the repatriation process that is ongoing with Bangladesh, including the number of people who you have verified for return and the basis on which that verification was made.
33. I have received information that paddy land that has been left by Rohingya who fled to Bangladesh will be leased to the private sector. Please provide information about this.
34. Please provide information about the activities and priorities of the Advisory Board to the Implementation Committee of the Recommendations of the Rakhine Advisory Commission.
35. Please provide information about the “National Strategy for the closure of the IDP camps in Myanmar” and how it will be carried out in Rakhine State. Will the closure be carried out in line with the recommendations of the Rakhine Advisory Commission, including consulting the communities? Will they be able to return to their place of origin or choosing?
36. Please provide information about the recently announced “Independent Commission of Enquiry” including its mandate, terms of reference, composition and the legal and investigative methodology it will use.
37. Please provide a copy of the Memorandum of Understanding that you have entered into with UNHCR and UNDP.

## Concept note

### Accountability mechanism for Myanmar

#### Background

In December 2017, the High Commissioner urged the Human Rights Council to consider making a recommendation to the UN General Assembly to establish a new impartial and independent mechanism (IIM), complementary to the work of the Fact-Finding Mission into violations and abuses and to assist individual criminal investigations of those responsible. In her report presented at the 37th session of the Human Rights Council (HRC), the Special Rapporteur on the human rights situation in Myanmar recommended to establish a structure based in Cox's Bazar, Bangladesh under the auspices of the United Nations, supported by various necessary expertise for a duration of three years to investigate, document, collect, consolidate, map, and analyse evidence of human rights violations and abuses; and to maintain and prepare evidence in a master database to support and facilitate impartial, fair and independent international criminal proceedings in national or international courts or tribunals in accordance with international criminal law standards.

The HRC through its March 2018 resolution on Myanmar took note of the Special Rapporteur's recommendation for a field based structure (FBS) based in Cox's Bazar. It further called for, a full and independent investigation of the reports of systematic human rights violations and abuses committed, as reported by various United Nations bodies, including the Human Rights Council independent international fact-finding mission [FFM]. The HRC through the resolution also expressed the urgent need to ensure that all those responsible for crimes related to violations and abuses of international human rights law are held to account through credible and independent national or international criminal justice mechanisms, and stressed the need to pursue practical steps towards this goal while acknowledging the authority of the Security Council under the Charter of the United Nations, including the authority to refer the situation in Myanmar to the International Criminal Court (ICC).

#### Justification for international accountability mechanism

*Failure to hold those responsible for violations to account:* The limited and insufficient steps that the Government of Myanmar has taken so far to establish accountability demonstrate that it is unable and unwilling to discharge its obligation to conduct credible, prompt, thorough, independent and impartial investigation into alleged human rights violations and violations of international humanitarian law. The extrajudicial killing of 10 Rohingya villagers in Inn Din village, northern Rakhine State is one among rare cases where Myanmar's military has taken some soldiers to account for alleged violations. The Government and military usually deny that human rights violations and abuses have been committed by the military and other security forces across the country, claiming that they will take action where there is evidence. Under international pressure, the Government established an investigation commission following reports of serious human rights violations allegedly committed during the clearance operations in the aftermath of the 9 October 2016 ARSA attacks that was headed by Vice President (Lt. Gen. ret.) Myint Swe and composed of government officials, a number of whom are former-military. It was not independent or impartial, used flawed methodology and did not make any findings of human rights violations. A military-led investigation conducted in 2017, with regard to the post-25 August 2017 clearance operations in Rakhine, concluded that security forces had not committed any violations of human rights and that there were no deaths of innocent civilians. Most recently, the Government of Myanmar has announced that it has formed an "independent commission of enquiry" which will "investigate the violation of human rights and related issues following the terrorist attacks by ARSA" and will be comprised of three members including an international personality and assisted by national and international legal and technical experts. Given the Myanmar Government's track record, it is highly unlikely that this body will carry out a credible, prompt, thorough, independent and impartial investigation. Myanmar is not a party to the Rome Statute and given the current circumstances

it is unlikely that the Government of Myanmar will accept the jurisdiction of the ICC in near future. The ICC Prosecutor has sought a ruling, pursuant to Article 19(3) and 42 of the Statute on deportation of Rohingya from Myanmar to Bangladesh which is a positive development however, it addresses one specific issue of deportation. In view of the scale and gravity of the allegations of human rights violations and abuses and violations of international humanitarian law around Myanmar, it is imperative to consider a new impartial and independent mechanism going beyond the original Special Rapporteur recommendation of a FBS in Cox's Bazar, complementary to the work of the FFM and the push by the High Commissioner for Human Rights for a IIM-type mechanism. Unless those individuals who perpetrated the crimes under international law are held accountable, violations and abuses will continue to take place.

*Credible findings:* The High Commissioner for Human Rights and the Special Rapporteur on Myanmar have repeatedly reported to the Human Rights Council that the pattern of gross violations of the human rights of the Rohingya suggest a widespread or systematic attack against the community, possibly amounting to crimes against humanity, and warranting the attention of the International Criminal Court. OHCHR, the Special Rapporteur and the FFM have consistently been raising concerns over possible commission of war crimes and crimes against humanity in Kachin and Shan states where a protracted conflict has been taking place since 1961. Accountability must also be established for the widely reported serious violations of international human rights and humanitarian law including extrajudicial killings, enforced disappearances, destruction of property, torture and inhuman treatment, rape and other forms of sexual violence, forced labour, recruitment of children into armed forces, and indiscriminate or disproportionate attacks in Kachin and Shan. In its interim report to the HRC in March 2018, the FFM reported a systematic and very clear pattern of violations of international humanitarian law in Kachin and Shan States. Since 1992, the successive Special Rapporteurs on Myanmar have been reporting consistent and systematic patterns of violations and abuses against minority communities throughout Myanmar. The 2018 report by the UN Secretary-General on conflict-related sexual violence included Myanmar's Armed Forces on an annual list of groups that are "credibly suspected of committing or being responsible for rape or other forms of sexual violence."

*Fill the accountability gap:* The FFM, mandated by the HRC in March 2017 to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses committed by non-state actors and armed groups, in Myanmar will submit its final report in September 2018. There is no certainty as to whether the mandate of the FFM will be renewed. Non-renewal of the FFM and no introduction of a new mandate would mean that there will be a lack of fully equipped documentation effort and reporting of the alleged human rights violations and abuses as well as violations of international humanitarian law in Myanmar. As the FFM did not have access to Myanmar and has only been able to undertake approximately 600 interviews, there is a need for continuation of documentation of allegations of violations and abuses in Rakhine and violations of international humanitarian law in Kachin and Shan as the number and nature of interviews conducted by the FFM and other OHCHR mechanisms represent only a small fraction of the unprecedented level and complexity of crimes that were committed in Myanmar. Continuation of information collection through interviews and verification will eventually serve the purpose of justice in the future. There is an equal need to consolidate, map, and analyse evidence of human rights violations and abuses; and to maintain and prepare evidence in a master database in order to support the future accountability mechanisms.

### **Main functions of the accountability mechanism**

The concept note does not intend to design the mandate and function of the accountability mechanism it shall be the member states and the United Nations to determine, however it is recommended that the accountability mechanism shall aim to bring justice for the victims of violations and abuses of human



rights and violations of international law committed in Myanmar since the military coup from 1962<sup>1</sup>. It is suggested that the accountability mechanism consist of the following elements:

*Monitoring, documenting and reporting:* For a period of three years, the mechanism will continue to carry out human rights monitoring and document allegations of violations and abuses arising from the various clearance operations in Rakhine and violations of international humanitarian law in Kachin and Shan States. Prior to commencing the monitoring and documentation work, a mapping exercise should be conducted to understand existing efforts made by various stakeholders in information collection, verification and documentation, including the work of the FFM and resume interviews with victims and witnesses who suffered violations and abuses of human rights and violations of international humanitarian law.

*Mechanism for consolidation, analysis, preservation, and repository:* The mechanism shall consolidate information collected by various mechanisms including the FFM, OHCHR rapid response teams and undertake broader and comprehensive information/evidence collection related to the allegations of human rights violations and abuses and violations of international humanitarian law in Myanmar. It shall further undertake to establish modes and liability of crimes under international law that occurred in the past in Myanmar; patterns of violations; structure, participation, command responsibility of the perpetrators; establish evidence management system; and build cases consistent to criminal law standards that can be used by future prosecutorial and judicial mechanisms.

*Victims support, reconciliation and reintegration:* It is important to collect information about the violations and abuses, however utmost care should be given to the victims to prevent from re-victimisation and provide basic support including psychosocial, livelihood and other support at the minimum so that they are able to pursue justice in national and international mechanisms without compromising their basic needs and ensure that they are not harmed. Together with other UN agencies the mechanism shall further develop a framework of reconciliation and reintegration, as well as appropriate mechanisms for inter-communal harmony, livelihood support, and restitution for victims of human rights violations and abuses in Myanmar.

### **Relationship of the mechanism with the United Nations**

The proposed accountability mechanism shall be an independent mechanism, established under the auspices of the United Nations. The mechanism shall be provided with adequate resources in order to operate independently including in the recruitment of staff required to fulfil its mandate. The founding resolution shall stipulate the relationship between the mechanism with United Nations bodies, offices, agencies, funds and programmes, in particular issues related to cooperation, coordination and information sharing.

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<sup>1</sup> Noting that it may be difficult to obtain information related to the allegations of violations that took place in the early years, the Mechanism may look into options including non-retributive forms of justice to address the accountability gap.

## **Supplementary information about the concept note on the accountability mechanism for Myanmar proposed by the Special Rapporteur on the situation of human rights in Myanmar**

This note provides further clarifications to questions and inquiries that the Special Rapporteur has received since the presentation of the concept note on the accountability mechanism<sup>1</sup> for Myanmar.

### **1. Why does the proposed mechanism not have an adjudication or judicial component?**

Under international law, Myanmar has a legal duty to exercise its criminal jurisdiction over those responsible for international crimes that were committed within its territory. It is clear that the Government of Myanmar is unwilling and incapable of holding the perpetrators who were involved in serious crimes under international law to account. The Special Rapporteur has said that the situation of Myanmar clearly warrants the attention of the International Criminal Court (ICC).<sup>2</sup> The Special Rapporteur has recommended to refer the situation of Myanmar to the ICC primarily because the Government of Myanmar has been unable and unwilling to address the most serious international crimes, which have been and continue to be perpetrated in Myanmar. Also, the ICC is designed to deal with the most serious international crimes and to put an end to impunity for their perpetrators. The Special Rapporteur considers the ICC as the most appropriate forum for adjudication not only because of the overwhelming credible allegations of commission of international crimes in Myanmar by various duty bearers, but also because the Government of Myanmar, despite these credible allegations, continues to deny that violations and abuses have taken place.

As Myanmar is not a party to the ICC Statute, and is unlikely to accept the court's jurisdiction of its own violation, a referral by the Security Council is necessary for the Court to have jurisdiction. The Special Rapporteur is concerned about the Council's lack of political will to so far to refer the situation. The ICC prosecutor has requested a ruling on jurisdiction under Article 19(3) of the Rome Statute over the alleged deportation of the Rohingya people from Myanmar to Bangladesh; while this is welcome, it is only one crime among allegations of many to have been committed against the Rohingya. Additionally, the request excludes the possibility of the Court to investigate the alleged commission of crimes in other areas of Myanmar, and is insufficient to achieve justice for all in Myanmar.

### **2. What is a credible mechanism?**

The term "credible mechanism" refers to a mechanism that is impartial, prompt, thorough and consistent with the principles of international law. It must guarantee that it is free from political affiliation and influence both nationally and internationally, and should have clarity in its mandate, jurisdiction and other functional aspects. The mechanism must be inclusive and must have the trust of the victims for which it seeks to achieve justice.

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<sup>1</sup> The concept note is available at <https://www.ohchr.org/Documents/Countries/MM/ConceptNoteAccountabilityFramework.pdf>

<sup>2</sup> Oral update by Ms. Yanghee Lee, Special Rapporteur on the situation of human rights in Myanmar at the 38th session of the Human Rights Council, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23268&LangID=E>

### **3. Why is the proposal not to work towards justice in Myanmar's domestic courts or through a domestic investigation?**

The concept note provides a detailed analysis of the justification for an international accountability mechanism. Suffice to say here that it is manifestly clear that the national courts in Myanmar are not independent and impartial, and are not capable of delivering justice for international crimes. Currently, domestic legislation does not criminalise international crimes, most importantly war crimes, crimes against humanity and genocide. The military and the executive government influence the judiciary. Victims do not trust the justice system, and fear to approach the police and courts partly due to the risk of reprisals against them or their families. Even assuming a complaint could be made and reached the courts, court proceedings are extremely lengthy. It is therefore not possible for Myanmar's justice system to effectively hold perpetrators of international crimes to account and deliver justice and redress for all the victims.

The Government of Myanmar has established many different investigatory bodies in recent years, none of which obtained impartial, credible, and independent findings or effectively held perpetrators to account. It has recently established "an independent commission of enquiry" in order to "address reconciliation, peace, stability and developments in Rakhine." However, its composition, methodology and terms of reference are still unknown. Given this, the continued denial of possible wrongdoing, lack of strong political will and weak investigative and prosecutorial capacity make it highly unlikely that a domestic body would be capable of ensuring accountability. Additionally, the investigative bodies in the past have included members who were from the military or were ex-military officers, for example, the commission led by Vice President Myint Swe formed after the October 2016 violence in Rakhine State.

### **4. Is an international court or tribunal intended to be established after the accountability mechanism?**

Establishing the proposed accountability mechanism does not exclude the possibility of an international court or tribunal being established in addition to it. The Special Rapporteur does not wish to preclude the possibility of a judicial mechanism including the establishment of an international *ad hoc* tribunal or a credible international judicial mechanism under the auspices of the United Nations or a Regional organisation, or the creation of such with the support of United Nations and regional organisations, or United Nations, regional organisations and Myanmar Government. In fact, should the ICC continue not to have jurisdiction in relation to the situation in Myanmar, an *ad hoc* international judicial mechanism may be required. Further, she encourages member states to use universal jurisdiction and prosecute the perpetrators who have allegedly committed the crimes in Myanmar when they are inside their jurisdiction. The Special Rapporteur is aware that establishment of any new a judicial mechanism would endure a lengthy process, enormous resources, political complications, as well as challenges of legitimacy if it is not established by the United Nations. She firmly believes that justice needs to be served to the people in Myanmar and that the onus lies on international community to bring it about.

### **5. Does it mirror the International Impartial and Independent Mechanism (IIIM) on Syria?**

The Special Rapporteur is aware that the second component of the proposed accountability mechanism may appear similar to the mandate of the IIIM on Syria established in December

2016 by the UNGA pursuant to resolution 71/248. The second component envisages that the accountability mechanism will collect, consolidate and preserve evidence in addition to building up cases in accordance with an international criminal law standard for prosecution. However, it must be noted that the proposed accountability mechanism has two additional components: continuation of documenting allegations of human rights violation and abuses, and supporting victims in their pursuance of justice. The IIIM is not mandated for either of these components. Given the horrible experiences that victims have gone through for example in Syria, Nepal, Palestine, Sudan and Sri Lanka, and that their search of justice continues as a result of lack of support from their respective governments and the international community, it is a high time that international community learns lessons from these experiences. Therefore, the mechanism for Myanmar should ensure that justice does not operate in vacuum and victims are able to seek justice and an effective remedy with continuous support from international community into the future.

## **6. Why the focus on supporting victims?**

Since the beginning of conflict in Myanmar in 1948, victims have suffered violations and abuses with no redress and support, and this continues today. Throughout these decades, many thousands of members of communities around the country were affected. This includes members of ethnic, religious or national minority groups both in Rakhine State and other ethnic States of Myanmar, as well as the majority Bamar or Burman population.

Often ignored by the international community, the trauma of the victims in Myanmar is immense as a result of the scale of violence. Therefore, victims should not be taken merely as witnesses; there should rather be a strong focus on supporting victims throughout the accountability process and they should be considered as an integral element to it. Prosecution of serious international crimes is an obligation under international law, which the Special Rapporteur has constantly been emphasising. However, the reason that she suggested supporting victims together with promoting reconciliation and reintegration is for the international community to consider restorative justice, which involves looking into or combining punitive justice with non-punitive measures to promote accountability in line with the norms and standards of international law.<sup>3</sup> Reintegration and reconciliation will be crucial for those displaced when they return to home and in the repatriation of refugees from Myanmar and other countries.

Meaningful justice for victims will not be achieved in Myanmar if victims are not able to enjoy their rights in the long run, and do not also receive redress for what they have suffered. This includes ensuring all their rights are fulfilled, especially their rights to live in dignity, without fear, with access to livelihoods and education, and services. The victim support part of the mechanism aims to provide livelihood support, healthcare, and psychosocial and trauma assistance. Victims must be afforded compensation or reparations for what they have suffered and restitution of their lost property, as well as legal assistance to pursue individual or collective justice should they wish to do so. These elements will assist in the victims achieving long-term reintegration and reconciliation. The mechanism does not preclude the possibility of introduction of a comprehensive transitional justice measures introduced in the future.

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<sup>3</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147 of 16 December 2005

**7. Why is the collection and preservation of information crucial if no judicial mechanism will be established immediately?**

The immediate collection, consolidation, and preservation of information is crucial in order for the information related to the allegations of violations and abuses to be used in the future. It must be noted that many victims have been interviewed multiple times by numerous actors (particularly those in Cox's Bazar, Bangladesh). It is not clear whether all the information collected so far by various organisations and individuals can be used for evidentiary purposes and whether the information is properly analysed and securely preserved. Experiences from similar situations elsewhere have shown that memories will be lost and forgotten if information is not documented and adequately preserved in a timely manner. There will also be mix ups and errors in stories that will only increase as time goes on and collective memories develop. Additionally, the violations in Myanmar continue and must be continually properly documented for future use.

Given that the UN Security Council has not so far been able to refer Myanmar to the ICC, there does not seem to be any realistic possibility for the international community to come together and establish an independent and credible and *ad hoc* mechanism or a special court to deal with the crimes in Myanmar in near future. Until the international community considers referring the situation to a credible prosecutorial judicial mechanism, it is important that information is gathered, preserved, analysed and corroborated, that modes, liability and participation of individual perpetrators are identified, and that evidence is prepared and continues to be prepared for prosecution. Evidence that is collected immediately may also be used by national criminal proceedings, such as those commenced under universal jurisdiction.

**8. Given the current situation facing the Rohingya and other minorities in Myanmar and Cox's Bazar, is this the appropriate time to focus on accountability?**

Ensuring accountability for past and more recent human rights violations is a critical aspect of breaking the very longstanding cycle of appalling violence, injustice and discrimination that has been the experience of the entire population of Myanmar for decades and continues today. It is also critical as one important means of providing justice, acknowledgement and relief to victims of those human rights violations and their families. The full ambit of the challenges facing Myanmar and all its peoples today must be faced head on. Justice and accountability cannot be shelved or put aside, but will play a critical role in helping the country confront its problems, and to move forward. The responsibility for doing this lies, first and foremost, with the Myanmar Government. Given the current intractability of the situation and the unwillingness of the Government to take action, the international community must step in now. As time goes on and the international community remains inactive, human rights violations will continue around the country. Taking action for accountability is the only way to stop the violence that continues, and to prevent future violations from occurring.

**9. Could focusing on accountability threaten Myanmar's transition to democracy?**

Populations around Myanmar have experienced decades of serious violations of human rights and international humanitarian law at the hands of successive military juntas since 1962. These violations have continued into the transitional period both under the quasi-civilian government led by President Thein Sein and the National League of Democracy government. The obscene violence levelled against the Rohingya population in 2016 and 2017 was followed by the same

types of violations against ethnic populations in Kachin and Shan States, alleged to have been committed by the some of the same Tatmadaw battalions. The Tatmadaw continues to commit violations of human rights and international humanitarian law in Myanmar's ethnic states, and will continue to do so into the future unless action is taken to ensure perpetrators are held accountable. The people of Myanmar have not ever received any form of justice or redress for the violations they have suffered. Ensuring accountability now will assist the government to consolidate a real democracy that embraces and enforces the rule of law, and respects, protects and fulfils the rights of its people.

#### **10. Is this mechanism focused on getting justice for the Rohingya?**

This mechanism would cover violations of human rights and international humanitarian law around the whole of Myanmar, including Rakhine, Kachin and Shan States. The Special Rapporteur since 1992 and international and national human rights organisations have documented and reported allegations of the involvement of Myanmar's senior military officers in serious crimes in Rakhine State and other locations around the country for decades.<sup>4</sup> Additionally, the International Labour Organisation's commission of inquiry in 1997 made significant findings of systematic forced labour and related human rights violations across the country.

The mechanism would cover past violations experienced by various different ethnic minority groups as well as the majority Bamar or Burman population. The monitoring and documenting component of the mechanism would look at violations that may occur in the future around the country. This is necessary, as for example in March 2018, there was a resumption of conflict between the Tatmadaw and the Karen National Liberation Army, a party to the Nationwide Ceasefire Agreement, that led to a civilian death and displacement of thousands of people.

#### **11. What is the relationship of this mechanism to the already-existing Fact Finding Mission (FFM) and other UN mechanisms?**

The current FFM is due to present its final findings to the Human Rights Council in September, which will probably mark the end of its mandate. The FFM has documented hundreds of allegations of violations and abuses of human rights and violations of international humanitarian law. The proposed accountability mechanism will continue documenting and reporting allegations of violations and abuses in Myanmar for a period of three years; this partly resembles the work of the FFM. However, the proposed accountability mechanism will be a step forward as it includes the preparation of cases in accordance with international criminal justice standards so that any courts and judicial mechanisms, national or international, may initiate criminal proceedings.

The proposed accountability mechanism is an independent mechanism to be established under the auspices of the United Nations. The mechanism does not replace any existing UN office or mandate. It may or may not necessarily complement the work of any of the existing UN entities, organisations and mandate holders. It is also different than the work of the Special Rapporteur

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<sup>4</sup> See for example, Report of the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/37/70, Amnesty International, Atrocities against the Rohingya: How we built the case to implicate Myanmar military officials in crimes against humanity, 29 June 2018, available at <https://www.amnesty.org/en/latest/news/2018/06/atrocities-against-the-rohingya-how-we-built-the-case-to-implicate-myanmar-military-officials-in-crimes-against-humanity/>

on the situation of human rights who is mandated by the Human Rights Council to monitor and report the situation of human rights in Myanmar.

## **12. How will the mechanism be established?**

The Special Rapporteur has presented the concept and elements to member states to provide them with her reasoning and plans for the accountability mechanism. The type, modality and formation of the accountability mechanism largely depends on the willingness of the member states and commitment to advance accountability in Myanmar.

Since the FFM will be presenting its final report in September 2018, the Special Rapporteur reiterates the calls that she has been making since March 2018 that (1) the situation of Myanmar must be discussed, (2) the mechanism proposed should be established by the HRC immediately and (3) the international community must join hands together before it is too late, as violations continue in Myanmar.

In order to give effect to the proposal and depending on the willingness of the international community as well as the extent of cooperation by the Government of Myanmar, a resolution by the Human Rights Council is required to establish the mechanism. The Special Rapporteur expects that the HRC will request the GA to endorse the resolution.

## **13. What will be the tenure of the accountability mechanism?**

Given the high volume of allegations and high level of violations and abuses, the Special Rapporteur considers that the first component (human rights monitoring and reporting) shall have the mandate for an initial period of three years, whereas the two other components of the mechanism (building cases and victim support) shall have a longer mandate.