

***Fact Sheet***

***16 Sept. 2019***

**ENDING IMPUNITY: STEPS TOWARDS HOLDING MYANMAR**

**OFFICIALS ACCOUNTABLE FOR INTERNATIONAL CRIMES**

**THE UN INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON MYANMAR**

The Human Rights Council asked the Mission to “ensure that the large and continually increasing amount of evidence of human rights violations and abuses it has collected is fully documented, verified, consolidated and preserved in order for the material to be effectively shared, accessed and used by the mechanism”. (A/HRC/42/50, Section II A 6) \*. Beginning on 6 September 2019, the Mission began handing over its files to the Independent Investigative Mechanism for Myanmar (IIMM).

The Mission’s approach was to ensure that to the fullest extent possible, its materials were shared with the IIMM and that the organization and presentation of the material was accessible and useful particularly for potential future criminal prosecution. (A/HRC/42/50, Section III, paragraph 14)

**What accountability has there been since the Fact-Finding Mission first reported to the Human Rights Council in September 2018?**

The Mission found a near complete absence of accountability at the domestic level for gross violations of international human rights law and serious violations of international humanitarian law. The Prosecutor of the International Criminal Court (ICC), in her *Request for authorisation of an investigation pursuant to article 15*, concluded much the same. The Myanmar Government is simply unwilling to end impunity for these violations, especially where committed by security forces. Impunity is also structural. It is built into the legal framework and the system of governance, including the Constitution. Article 343(b) of the Constitution makes decisions of the Commander-in-Chief concerning military justice matters “final and conclusive”, with no right to appeal. The Government’s outright rejection of the Mission’s findings is also indicative of its unwillingness to pursue accountability at the domestic level. (A/HRC/42/50 Section VIII, paragraph 94)

**What avenues are there for victims of grave international crimes to find justice?**

Perpetrators in Myanmar may be held accountable anywhere in the world under the legal concept of **universal jurisdiction**. Universal jurisdiction is a principle in international law that countries can prosecute genocide, war crimes, crimes against humanity and other serious international crimes that took place outside their borders. Since World War II, more than 15 countries have used the concept of universal jurisdiction to criminally prosecute individuals for crimes that took place outside their

The International Criminal Court (ICC) could be another avenue for accountability, even though Myanmar in not a State Party to the ICC. The ICC has ruled that is has jurisdiction for crimes against humanity (deportation and other inhumane acts) as part of the crime took place on the territory of Bangladesh, which is a State Party to the ICC. This investigation is limited to the Rohingya people in northern Rakhine state.

**Aside from individuals, can Myanmar as a country be prosecuted?**

A country cannot be prosecuted in the same way an individual can. However, the International Court of Justice is an avenue for state accountability. The International Court of Justice (ICJ) hears complaints by one state against another. The 1948 Genocide Convention is one of the few international human rights instruments that Myanmar has signed and ratified. The Mission welcomes the efforts of States, in particular Bangladesh and the Gambia, and the Organization of Islamic Cooperation to encourage and pursue a case against Myanmar before the ICJ. Elected officials in Canada and the Netherlands have also called on their Governments to pursue such a case. Again, this only applies to Rohingya victims from northern Rakhine state.

**How can evidence collected by the Fact-Finding Mission contribute to accountability?**

All of these avenues for justice may be supported and advanced by the UN’s new Independent Investigative Mechanism for Myanmar, the IIMM, to whom the Fact-Finding Mission has handed over its evidence. Material provided by the Mission, combined with its own investigations, could provide the evidence that contributes to cases against individual perpetrators or the State of Myanmar.

**ENDS**