

# International Accountability Mechanisms for Myanmar At a Glance

## International Independent Fact-Finding Mission on Myanmar (IFFM)

- Created in March 2017 and ended in September 2019.
- Mandate: Collect information on human rights violations in Myanmar since 2011, in particular in Rakhine, Kachin, and northern Shan States.
- Not a tribunal, so cannot prosecute or punish perpetrators.
- Released a 444-page report, finding genocide in Rakhine State, and crimes against humanity and war crimes in Rakhine, Shan, and Kachin States (public report).
- Collected evidence on those crimes, and handed it over to IIMM.
- Identified by name six senior commanders as most responsible.
- Called on the Security Council to refer Myanmar to the ICC, or to establish an ad hoc tribunal.
- Looked at the Tatmadaw as an institution. Highlighted patterns of violations.
- Released a report on the military's business ties and called for sanctions

## Independent Investigative Mechanism for Myanmar (IIMM)

- Created in September 2018 and became operational in August 2019.
- Mandate:
  - Collect and analyze evidence of the most serious crimes and violations of international law committed in Myanmar since 2011
  - Prepare files to facilitate prosecution of perpetrators in the future
- It received the information collected by the IFFM.
- The evidence can be used at the ICC and other tribunals including under the principle of universal jurisdiction. It might also be used at the ICJ.
- Will focus on individual perpetrators, the form of their criminal responsibility (e.g. command or superior responsibility) and linkage evidence (connection between crimes and persons responsible).
- Not a tribunal. Cannot prosecute or punish perpetrators. Only prepares evidence for the future.
- It will probably not publish reports with detailed findings about human rights violations (different than IFFM).
- Is also documenting violations committed since the February 2021 coup. Preliminary analysis indicates crimes against humanity.

## International Criminal Court (ICC)

- Prosecutes individuals for crimes.
- Myanmar has not yet joined the ICC. Currently, the ICC has no jurisdiction over Myanmar. It would require UNSC referral, or Myanmar becoming State Party, or acceptance of NUG's declaration by ICC.
- Bangladesh has joined the ICC.
- The ICC has jurisdiction over the deportation of the Rohingya from Myanmar to Bangladesh and other related crimes where a part of the crime took place in Bangladesh.
- The judges authorized the Prosecutor to open an investigation in November 2019.
- The ICC has no power to arrest people, and there will be no trial if the suspects are not arrested.
- There will be a trial only if Myanmar hands over the suspects or if they travel to a State that is party to the ICC and get arrested, which is unlikely

## International Court of Justice (ICJ)

- Settles legal disputes between countries (i.e. governments, not individuals); for example about an international treaty.
- Another country can ask the ICJ to decide about Myanmar's responsibility for genocide because Myanmar is a party to the Genocide Convention.
- On 11 November 2019, The Gambia filed an application at the ICJ against Myanmar for violating its obligations under the Genocide Convention.
- 23 January 2020: ICJ order on provisional measures: required Myanmar to prevent acts of genocide against the Rohingya, preserve evidence, and report regularly to the ICJ.
- January 2021: NLD government filed "preliminary objections" on the question of jurisdiction, requesting the judges to dismiss the case. The proceedings on the main case are suspended.
- Early 2022: ICJ will probably decide on the preliminary objections and whether they continue the case.
- In the future, the ICJ could also order Myanmar to ensure the punishment of perpetrators, guarantee non-repetition, and provide reparations to victims.
- It may be difficult to implement an ICJ decision because the ICJ has no direct way to enforce it.

## Universal Jurisdiction (UJ)

- In some countries, national courts can prosecute certain very serious crimes even if the crimes did not take place in their country and even if the perpetrator is not a national of their country.
- Argentina has included universal jurisdiction in its Constitution.
- A criminal lawsuit was filed in a court in Argentina on 13 November 2019, alleging that the government and military of Myanmar have committed crimes against humanity and genocide against the Rohingya. The court must decide whether to proceed with the lawsuit.
- On 26 November 2021, the court in Argentina confirmed that it would launch the case.
- The case is about the individual criminal responsibility of top military and civilian leaders (different than ICJ).
- The case deals with crimes against the Rohingya committed on the territory of Myanmar (different than ICC).
- If the court decides to proceed, it will be difficult to get the suspects to appear before the court in Argentina (e.g. obtain extradition), and therefore it might not be possible to hold a trial.