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Dear High Representative Mogherini,

MYANMAR: TIME FOR EU ACTION ON ACCOUNTABILITY FOR CRIMES AGAINST HUMANITY

We are writing to urge the European Union (EU) and its member states to ensure accountability for crimes against humanity in Myanmar, and in particular to take the lead in the creation of an international accountability mechanism during the upcoming session on Myanmar at the United Nations (UN) Human Rights Council (HRC) in September.

As you know, from late August 2017, the Myanmar security forces embarked on a devastating campaign of violence against the Rohingya population in northern Rakhine State. The so-called clearance operations were launched in response to attacks on security forces posts by the armed Rohingya group the Arakan Rohingya Salvation Army (ARSA), and were marked by serious human rights violations, during which thousands of women, men, and children were killed, women and girls raped, hundreds of villages burned to the ground and more than 700,000 Rohingya forced to flee to Bangladesh. These violations amount to crimes against humanity under international law.

As a new Amnesty International report shows in detail, responsibility for these crimes against humanity extends to the very top of the Myanmar's military chain of command.¹ However, there are no prospects for accountability at the national level. While we note the establishment of an "Independent Commission of Enquiry" on 31 May, we do not believe that this Commission will be capable of independently and effectively investigating crimes under international law in Rakhine State and bringing those responsible – including those with command responsibility – to justice. It is also unlikely to deliver truth, justice and other reparations to the victims of human rights violations and abuses in other parts of Myanmar, in particular

¹ "We will destroy everything": Military responsibility for crimes against humanity in Rakhine State (Index: ASA 16/8630/2018), 27 June 2018, <https://www.amnesty.org/en/documents/asa16/8630/2018/en/>.

in Kachin and northern Shan States, where we have documented war crimes and serious human rights violations in recent years.

Myanmar has a history of establishing ineffective commissions and other investigative bodies in response to allegations of human rights violations, in particular as a way to deflect international attention and delay possible international action on accountability. This cannot be allowed to happen again, and we are concerned that vital evidence risks being lost or damaged if there is no immediate international action to collect and preserve it.

Like the UN Special Rapporteur on the situation of human rights in Myanmar, we “firmly believe that accountability for the crimes committed is the only way to end the cycles of violence faced by the people of Myanmar.”² Accountability is essential not just for the safety and security of those who live in Myanmar, including Rakhine, Kachin and northern Shan states, but for the hundreds of thousands of Rohingya refugees in Bangladesh, it will be an essential part of creating conditions which would allow them to voluntarily return to Myanmar safely and with dignity.

In line with long-standing EU engagement for accountability for human rights violations in Myanmar, including the creation of the UN Fact-Finding Mission itself, we call on the EU and its member states to:

- Develop a unified EU and member state strategy for engagement on accountability for crimes against humanity and other human rights violations in Myanmar. This must include:
 - Securing the establishment of an international accountability mechanism at the UN HRC in September
 - Following up with a clear and pro-active stance on Myanmar at the 73rd session of the UN General Assembly
 - Maintaining pressure on Myanmar at the UN Security Council, including with regard to accountability; full and unfettered humanitarian access; dismantling institutional discrimination; and creating conditions conducive to safe, voluntary and dignified returns
 - Sustained engagement with the Myanmar authorities on accountability, up to highest level and across all areas of relations with Myanmar, including political, trade and development cooperation

² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23268&LangID=E>

- Making full use of all opportunities to keep human rights in Myanmar on the agenda and to further accountability, including at the forthcoming Asia-Europe Meeting (ASEM) and the 22nd ASEAN-EU Ministerial Meeting
- Build on and strengthen the work of the UN Fact-Finding Mission by introducing and securing the adoption of a resolution at the 39th session of the UN Human Rights Council which establishes an international mechanism mandated to collect and preserve evidence and identify individuals responsible for crimes under international law – including in Rakhine, Kachin and Shan States – with a view to bringing them to justice
- Ensure sustained political, financial, technical and all other relevant backing to such a mechanism
- Fully support the referral of the situation in Myanmar by the UN Security Council to the International Criminal Court (ICC)
- Exercise universal and other forms of jurisdiction to investigate any person who may reasonably be suspected of committing crimes against humanity or other crimes under international law in Myanmar, and where sufficient, admissible evidence is obtained, either prosecute such persons in fair trials or else extradite them to similarly be prosecuted elsewhere.

In addition, the EU and its member states should:

- Impose further targeted sanctions against senior Myanmar officials suspected of responsibility for crimes under international law
- Use all bilateral, multilateral, and regional platforms at your disposal to urge the Myanmar authorities to immediately end crimes under international law and other human rights violations; to allow humanitarian agencies and independent investigators unfettered access to Rakhine State; and to establish the conditions necessary for Rohingya refugees to return to their homes voluntarily, safely, and with dignity, including by dismantling the system of discrimination and segregation
- Ensure that any international aid, development projects, or financial assistance in Rakhine State are explicitly and specifically conditioned on non-discrimination, non-segregation, and equality. Conduct rigorous and ongoing assessments of all projects and assistance to ensure they are implemented in a way that does not entrench, support, or perpetuate discrimination and segregation or would be detrimental to the safe, voluntary, and dignified return of Rohingya refugees

- Provide international cooperation and assistance to the government of Bangladesh to help meet the humanitarian needs of Rohingya and other refugees from Myanmar
- Call on the governments of Myanmar and Bangladesh to ensure that Rohingya are included in and consulted on decisions about their future, and that no organised returns take place until the conditions are in place to allow refugees to do so voluntarily, safely and with dignity.

We look forward to your strong leadership in ensuring sustained and strategic EU engagement with Myanmar on accountability for crimes under international law and other human rights violations, and stand ready to provide any further information you may require.

Yours sincerely,



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