UN Report on Myanmar’s human rights violations on the Rohingya and the next steps towards accountability and justice.

By Barrister Muhammad Abu Baker Molla, London

After the release of a full scathing report on Myanmar’s human rights violations, next steps to achieve accountability and justice still need yet to be clearly spelled out.

A year after the re-escalation of violence that forced almost a million people to flee to neighbouring countries, a UN fact-finding mission found a “human rights catastrophe” in Myanmar.

“The gross human rights violations and abuses committed in Kachin, Rakhine and Shan States are shocking for their horrifying nature and ubiquity,” the full report published by the UN on 18 September states.

The UN has concluded based on the independent verified information that the following grave international crimes have been committed by Myanmar security forces against minority Muslims in norther Myanmar-Kachin, Rakhain and Shan state:

1. Genocide
2. Crimes against humanity
3. War crimes

Triggered by insurgent attacks on security forces, the report pointed a finger to Myanmar’s military, known as the Tatmadaw, for committing the gravest of crimes including indiscriminate killing, burning of houses, and sexual violence.

The investigators identified six generals, including the commander in chief of the Tatmadaw Senior General Min Aung Hlaing, and recommended that they be prosecuted at the international criminal court or at an alternative tribunal.

“There needs to be an unequivocal message sent that Myanmar’s military cannot act with impunity against ethnic minorities in Myanmar again,” Amnesty international’s Asia Advocacy Manager Francisco Bencosme
Like Bencosme, Human Rights Watch’s U.N. Director Louis Charbonneau told that the Security Council should refer the situation in Myanmar to the ICC or create a special criminal tribunal for prosecution.

But how did we get here?

Years of systematic oppression against Myanmar’s ethnic minorities made the crisis “foreseeable”—so what happened?

**What were the Fact-Finding Mission’s findings?**

The Fact-Finding Mission found that Myanmar security forces committed serious crimes under international law “that warrant criminal investigation and prosecution,” namely **crimes against humanity**, **war crimes**, and **genocide**.

**Crimes against humanity** by Myanmar security forces, committed as part of a widespread or systematic attack on a civilian population, include murder; imprisonment; enforced disappearance; torture; rape, sexual slavery, and other forms of sexual violence; persecution; and enslavement. Elements of the crimes of extermination and deportation were also present. The mission concluded that the systematic oppression and discrimination against the Rohingya might also amount to the crime of apartheid.

**War crimes** are serious violations of international humanitarian law committed by individuals with criminal intent. War crimes committed by the military in Rakhine State since at least August 2017 include murder; torture; cruel treatment; outrages upon personal dignity; attacking civilians; displacing civilians; pillaging; attacking protected objects; taking hostages; sentencing or execution without due process; and rape, sexual slavery, and sexual violence.

**Genocide** refers to certain criminal acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.

The mission found that Myanmar security forces carried out genocidal acts against the Rohingya: killing; serious bodily or mental harm; conditions of life calculated to bring about the group’s physical destruction; and measures to prevent births.
The mission concluded that there was “sufficient information to warrant the investigation and prosecution of senior [military] officials” to determine liability for genocide. Six senior commanders were named for investigation and prosecution, including the military commander-in-chief, Sr. Gen. Min Aung Hlaing.

The mission highlighted relevant factors to show “genocidal intent,” a necessary element of genocide, including the broader oppressive context and hate rhetoric; statements of individual commanders and perpetrators; exclusionary policies, including altering the makeup of Rakhine State; a level of organization suggesting a plan for destruction; and the extreme scale and brutality of the violence.

The mission reported that certain acts committed by ARSA in Rakhine State “may also constitute war crimes.” It also found that the Myanmar military committed crimes against humanity and war crimes in Shan and Kachin States since 2011, while ethnic armed groups in those states committed war crimes and crimes against humanity under international law.

A System-Wide Failure of the UN, which led us there

In 2008, the U.N. failed to heed warnings of increasing violence between the Sri Lankan military and the Liberation Tigers of Tamil Eelam (LTTE) and did not report evidence of widespread government violations and casualties.

A 2012 internal review found that various U.N. agencies including the Security Council failed at every level to protect civilians and meet their responsibilities in the last months of the civil war in the South Asian nation.

In the wake of the fiasco, the U.N. implemented the Human Rights Up Front Initiative to ensure a better system of monitoring and responding to international crises. Though Myanmar was identified as a situation requiring the Action Plan’s human rights response to crises, the approach was rarely, if ever, used, the report stated.

Instead, U.N. agencies continued to prioritise development goals, humanitarian access, and quiet diplomacy—an approach which “demonstrably failed.”

“The U.N. system really failed the people of Myanmar particularly the Rohingya by treading softly,” Charbonneau told IPS.
“Now instead of us saying ‘never again’ after Sri Lanka, Rwanda, Srebrenica—here we are saying well yet again it happened. The U.N. didn’t do what it was supposed to be doing. It didn’t raise the alarm bells to the extent that they could have,” he continued.

The Security Council’s response, or lack thereof, has been equally disappointing. The U.N. organ has had only a handful of meetings on Myanmar and none have resulted in any resolution.

In contrast, Syria has received special attention over the last seven years with numerous meetings in the “triple digits.”

“Given the scale of the crisis in Myanmar, it is difficult to reconcile the different responses of the Security Council particularly given a situation where the U.N. for sometime has been warning about the possibility of the ‘g’ word that is genocide,” Charbonneau said.

“It would be good to see an attempt to really push the Council to try something. We haven’t seen that yet and I don’t know if we will see it,” he continued.

China and Russia, Security Council members with veto power, have consistently pushed back on efforts to act on Myanmar’s crisis, stating that the crisis should only be resolved by the parties directly affected including Bangladesh where over 700,000 Rohingya refugees have fled to.

In the Security Council’s first open meeting on Myanmar in eight years, Russia’s ambassador Vasily Nebenzya warned against claims of ethnic cleansing and blaming Myanmar’s authorities as it “will make it more difficult to achieve lasting interethnic peace inside the country.”

Whether it is genocide or crimes against humanity, Bencosme highlighted the need for the international community to act with respect to Myanmar.

“We don’t need a legal diagnosis to understand that something desperately tragic and clearly unlawful has been happening in Myanmar. What matters most is that a civilian population is under attack because of its race or religion, and that these violations must stop immediately,” he told IPS.
Myanmar has repeatedly denied accusations of violations including those most recently published through the fact-finding mission’s report.

“Myanmar authorities have shown themselves to be both unable and unwilling to investigate and prosecute those responsible. As a result, the ICC is the appropriate route to deliver justice,” Bencosme said.

However, since Myanmar is not a member of the ICC, only a member of the Security Council can bring the case to the tribunal.

“The time for rhetoric is over – there needs to be action. There needs to be genuine accountability and justice. There needs to be an honest conversation about referring the situation to the International Criminal Court. We need to pursue all avenues of justice for these victims and their families who are the heart of the crisis,” Bencosme concluded.

**Urgent Action Needed**

While Charbonneau expressed hope that the new report would “reenergise” the U.N., he noted that we should not idly wait.

“I don’t think we should be waiting around for the Security Council—too often the Council doesn’t move on issues and it’s more deadlock than ever these days. We may have to keep using these work-arounds like the General Assembly and the Human Rights Council,”

Among the alternative avenues for action is the establishment of an impartial mechanism by the Human Rights Council or General Assembly to collect, analyse, and preserve evidence for future potential criminal proceedings in the ICC or another criminal tribunal.

The report also recommends that the U.N. urgently adopt a common strategy to address human rights concerns in Myanmar in line with the Human Rights Up Front Action Plan, as well as a comprehensive inquiry into whether the U.N. did everything possible to prevent or mitigate Myanmar’s crisis.

“The time has passed for these feeble condemnations or expressions of concern that we are so used to from the U.N.—we just really need action,” Charbonneau said.

We can endorse and adopt the following recommendations by the UN Human Rights Council:
(a) The international community, through the United Nations, should use all diplomatic, humanitarian and other peaceful means to assist Myanmar in meeting its responsibility to protect its people from genocide, crimes against humanity and war crimes. It should take collective action in accordance with the United Nations Charter, as necessary;

(b) The Security Council should ensure accountability for crimes under international law committed in Myanmar, preferably by referring the situation to the International Criminal Court or alternatively by creating an ad hoc international criminal tribunal. Further, the Security Council should adopt targeted individual sanctions, including travel bans and asset freezes, against those who appear most responsible for serious crimes under international law. It should also impose an arms embargo on Myanmar;

(c) Until the Security Council acts, the General Assembly, or alternatively the Human Rights Council, should create an independent, impartial mechanism to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts or tribunals;

The UN Human Rights Council should act to preserve evidence and create a path to justice for victims of atrocities in Myanmar. Human Rights Watch said on 10th September. The Human Rights Council is expected to adopt a resolution on the human rights situation in Myanmar as part of its 39th session, which starts on September 10, 2018.

The session follows the report in August by the UN fact-finding mission on Myanmar which detailed crimes against humanity, war crimes, and genocide by Myanmar’s security forces in Rakhine State. The council created the panel in March 2017 to document violations by Myanmar’s security forces and non-state armed groups “with a view to ensuring full accountability for perpetrators and justice for victims.” The report also examined abuses in Shan and Kachin States.

“The Human Rights Council should demonstrate its resolve to bring Myanmar’s generals to justice for their heinous crimes,” said John Fisher, Geneva director. “The council should underline the UN Security
Council’s responsibility to refer Myanmar to the International Criminal Court and create an evidence-gathering body to prepare case files for future trials.”

The Fact-Finding Mission recommended that either the Human Rights Council or the UN General Assembly should create as a matter of urgency an international, independent, impartial mechanism, similar to the one on Syria. As an appendix to its recent report, the Fact-Finding Mission will provide a detailed compilation of its findings and conclusions to the Human Rights Council on September 18.

The question and answer document analyzes the Fact-Finding Mission’s report, the role of the Human Rights Council in addressing its findings, the need for a Security Council referral of Myanmar to the International Criminal Court (ICC), and the recent decision by ICC judges to extend the court’s jurisdiction for the crime of deportation.

**Justice for International Crimes in Myanmar**

In March 2017, the United Nations Human Rights Council established the Independent International Fact-Finding Mission on Myanmar to “establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar … with a view to ensuring full accountability for perpetrators and justice for victims.” The three members appointed to the Fact-Finding Mission were Marzuki Darusman (chair), Radhika Coomaraswamy, and Christopher Dominic Sidoti.

The Fact-Finding Mission’s mandate was extended after Myanmar security forces carried out a campaign of ethnic cleansing, including killings, rape, and mass arson, against the Rohingya population in northern Rakhine State following attacks by the Arakan Rohingya Salvation Army (ARSA) on August 25, 2017. Human Rights Watch found that security force abuses amounted to crimes against humanity.

More than 720,000 Rohingya fled to Bangladesh, where nearly one million refugees now live in precarious, crowded, flood-prone camps. Agreements between UN agencies and Myanmar to facilitate the return of Rohingya refugees would require conditions conducive to voluntary, safe, dignified, and sustainable returns, and protections to ensure Rohingya’s basic rights – criteria unlikely to be met in the foreseeable future. Human Rights Watch documented the torture in Myanmar of several Rohingya who had returned.
The Myanmar government did not cooperate with the Fact-Finding Mission and denied access to its experts and its staff. It has also banned Yanghee Lee, the UN special rapporteur on the situation of human rights in Myanmar.

The Fact-Finding Mission released its 20-page report on August 27, 2018 and then 440-page report on 18 September, 2018. While it focused primarily on Rakhine State, the Fact-Finding Mission also documented serious violations of international law primarily by government security forces, but also by ethnic armed groups, in Shan and Kachin States. The Myanmar government summarily rejected the reported.

The mission’s report with a 400+ page appendix is presented to the Human Rights Council on September 18.

The observations of HRW:

“The basis for the Fact-Finding Mission’s conclusions

The Fact-Finding Mission stated that it only relied on verified and corroborated information for its findings. It conducted 875 in-depth interviews with victims and eyewitnesses. It used satellite imagery and authenticated documents, photographs, and video. Since the mission did not have access to Myanmar, despite repeated requests to the government, its members traveled to Bangladesh, Indonesia, Malaysia, Thailand, and the United Kingdom to collect information.

The Fact-Finding Mission’s main recommendations to bring perpetrators to justice

To address the “gross human rights violations and abuses committed in Kachin, Rakhine and Shan States,” which are “shocking for their horrifying nature and ubiquity,” the mission urged the UN Security Council to refer the situation to the International Criminal Court (ICC) or create an ad hoc international criminal tribunal similar to those established for the former Yugoslavia and Rwanda. Since Myanmar is not a party to the Rome Statute, the treaty that created the ICC, a Security Council referral is the only way for the entire situation in Myanmar to come under ICC jurisdiction.

The mission also urged the UN General Assembly or the Human Rights Council to create “an independent, impartial mechanism to collect,
consolidate, preserve and analyze evidence” of serious violations of international human rights and humanitarian law, and “to prepare files to facilitate and expedite fair and independent criminal proceedings.

It is absolutely impossible for perpetrators to be held accountable in Myanmar

The Fact-Finding Mission concluded that the Myanmar government has demonstrated that it is “unable and unwilling” to investigate and prosecute crimes under international law. This is an important conclusion since the ICC, as a court of last resort, can only step in when justice in national courts is not possible. The mission found that Myanmar’s political and legal system effectively placed the military above the law. Myanmar’s military courts have long failed to deal with massive human rights violations committed by the military, while the civilian criminal justice system lacks independence and the capacity to respect fair trial standards.

The mission noted that it examined eight ad hoc inquiry commissions and boards created to address abuses in Rakhine State since 2012. It concluded that “none meets the standard of an impartial, independent, effective and thorough human rights investigation.” It said that the government’s new Commission of Enquiry with international members “will not and cannot provide a real avenue for accountability.” In fact, in August, the commission’s chair, Rosario Manalo, told the media that “there will be no blaming of anybody, no finger pointing at anybody, because we don’t achieve anything by that procedure.”

UN Human Rights Council’s role in carrying out the Fact-Finding Mission’s recommendations:

The Human Rights Council, as the UN’s primary human rights body, has the first responsibility to substantively address the concerns raised in the Fact-Finding Mission report and act on the recommendations of the body it created in its upcoming resolution on Myanmar. This should include pressing the Security Council to fulfill its responsibility to refer the entire situation in Myanmar to the ICC and establishing an International, Independent, Impartial Mechanism as the mission called for.
An International, Independent, Impartial Mechanism is very urgent and important now

An International, Independent, Impartial Mechanism, modeled on a similar mechanism established for Syria by the UN General Assembly, is urgently needed to collect, consolidate, preserve, and analyze evidence of possible crimes to support criminal proceedings in the future. The Myanmar mechanism should have a similar title to convey the seriousness of the crimes, the standard for gathering evidence, the scale of the task, and the need for commensurate staffing and resources.

The urgency reflects the realities on the ground. Since the military operations began in August 2017, 362 predominantly Rohingya villages in northern Rakhine State were completely or partially destroyed by arson. Human Rights Watch has documented the complete or partial destruction since November 2017 of at least 60 villages formerly occupied by Rohingya, destroying evidence of crimes.

And while thousands of Rohingya victims and witnesses are in Myanmar and Bangladesh, as more time passes, memories will fade and key witnesses may no longer be available or easily located. These challenges highlight the urgency of concrete action to support eventual criminal investigations and prosecutions before the ICC or other competent courts.

An International, Independent, Impartial Mechanism would also play a critical role in centralizing the documentation and fact-finding efforts that are ongoing across the country by nongovernmental organizations, journalists, and others, and ensure that evidence is collected according to international standards and best practices. This can help minimize risks and further trauma to victims and witnesses and safeguard the confidentiality and integrity of potential evidence shared with investigators.

Analysis of evidence and preparation of case files would also send a message to perpetrators that there could be justice for atrocity crimes and act as a deterrent to further abuses. Evidence gathered could also be used by other countries to prosecute cases under the principle of universal jurisdiction.

The mechanism should have the expertise and budget to effectively document violations and abuses. At a minimum, the mechanism should have staff with expertise in the following areas: building case files and indictments for serious international crimes, including command
responsibility; investigating sexual and gender-based violence, and interviewing children; analyzing military operations, weapons, and command structure; forensics; Myanmar criminal law; and investigating serious international crimes. Sufficient funds should be allocated for translation and interpretation.

Once operational, the mechanism should develop protocols for managing evidence, including preserving the chain of custody, managing information and security, and protecting witnesses and victims, finding a secure place for preserving that evidence among other areas.

The Human Rights Council can create an International, Independent, and Impartial Mechanism

The Human Rights Council regularly creates mechanisms in response to reports of international crimes to carry out a variety of functions, including gathering and preserving evidence and identifying perpetrators. For example, the Commission on Human Rights in South Sudan has the mandate “to determine and report the facts and circumstances of, to collect and preserve evidence of, and to clarify responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence, with a view to ending impunity and providing accountability.” Human Rights Council resolutions on North Korea have set up a field-based structure in Seoul and strengthened its monitoring and documentation capacity by “establishing a central information and evidence repository,” and appointing “experts in legal accountability [to] assess all information and testimonies” with a view to advancing accountability.

The UN General Assembly, in its upcoming resolution on Myanmar, should welcome and endorse the creation of this mechanism, and strengthen it as needed. The mechanism should report both to the Human Rights Council and the General Assembly and to the Security Council.

The realistic possibility of UN Security Council referral of Myanmar to the International Criminal Court:

A Security Council referral to the ICC would underline the international community’s responsibility to help bring those responsible for grave
crimes in Myanmar to account. However, China and Russia have previously blocked an ICC referral for grave crimes in Syria, and Russia has made it clear that it will continue to block referrals in the foreseeable future.

Security Council members of Sweden and the Netherlands have been vocal in calling for a referral of the situation in Myanmar to the ICC. Voices outside of the council are also making themselves heard. For example, a group of more than 130 sitting members of parliament from Indonesia, Malaysia, Timor-Leste, Singapore, and the Philippines have called for an ICC referral. Malaysia’s foreign minister emphasized the Security Council’s responsibility to step in to address the crimes in Myanmar if the government “proves to be unwilling or incapable of ensuring justice.”

Current political dynamics in the Security Council add to the obstacles to achieving an ICC referral in the near term. To date, the UK, the “penholder” on Myanmar resolutions at the Security Council, has not put forward a draft resolution on any element of the country situation, even on issues like refugee return, on which council members are largely in agreement.

To change the political climate in the Security Council so that a resolution can be adopted, UN member countries, especially those on the council, will need to persistently make accountability in Myanmar a priority. That approach would help raise the political cost on China, Russia, and other countries opposed to an ICC referral.

A concrete step in this direction would be for the Security Council to invite the Fact-Finding Mission to brief members on its findings and recommendations. Any council member could also formally circulate the Fact-Finding Mission’s report as a Security Council document, which could further pressure the council to address its findings.

**Can the ICC deliver the Justice as it is already looking at crimes in Myanmar?**

On September 6, a panel of ICC judges confirmed the court could assert jurisdiction over Myanmar officials who forced Rohingya to flee to Bangladesh as the crime against humanity of deportation. This is because an element of the crime occurred in Bangladesh, which, unlike Myanmar, is an ICC member. The judges also said that the court could have jurisdiction over the crime against humanity of persecution if the
prosecutor shows that the deportation of the Rohingya was based on discriminatory grounds, such as ethnicity or religion. Additionally, Myanmar’s efforts to prevent the return of the Rohingya could be examined by the court as “other inhumane acts” causing “great suffering or serious injury.” Myanmar has rejected the court’s ruling.

However, there is not yet an ICC investigation, and the judges’ ruling should not be used as an excuse to stall action at either the Human Rights Council or the Security Council. The crimes linked to the mass flight of several hundred thousand Rohingya into Bangladesh represent only a fraction of the crimes committed during the Myanmar security forces’ ethnic cleansing campaign. A Security Council referral is needed for an ICC investigation to cover the full scope of criminality in Myanmar, including the war crimes and crimes against humanity in Kachin and Shan States. Likewise, the need remains for the Human Rights Council to create a mechanism to urgently collect evidence of crimes outside of any limited ICC investigation.”

The issue of ICC’s jurisdiction and the prospect of prosecution:

Following the Prosecutor’s request under Article 19(3) of the ICC Statute, the Court decided this on the basis that although the coercive acts underlying the alleged deportation of members of the Rohingya people occurred on the territory of Myanmar (which is not a party to the Statute), the Court may nonetheless exercise its jurisdiction, since an element of this crime (the crossing of a border) occurred on the territory of Bangladesh (which is a State party to the Statute), as well as pursuant to the principle of la compétence de la compétence or Kompetenz Kompetenz – a well-established principle of international law according to which any international tribunal has the power to determine the extent of its own jurisdiction.

In relation to the central question contained in the Prosecutor’s request, the Chamber decided, first, that Article 7(1)(d) of the Statute contains two separate crimes (namely forcible transfer and deportation) and, second, that the Court may exercise its jurisdiction if either an element of a crime mentioned in Article 5 of the Statute or part of such a crime is
committed on the territory of a State that is party to the Statute, under Article 12(2)(a) of the Statute.
However, there was a dissenting opinion by Judge Perrin de Brichambaut on procedural grounds. In his opinion, rendering the ruling requested by the Prosecutor would amount to an advisory opinion, which the Court is not allowed to do. For these reasons, Judge Perrin de Brichambaut believes that the Court cannot rule on its jurisdiction in relation to the alleged deportation of members of the Rohingya people from Myanmar to Bangladesh at this stage, but that it remains open to the Prosecutor to present a request for authorisation of an investigation to a Pre-Trial Chamber under Article 15 of the Statute.
In response, the office of Myanmar's President Win Myint on September 07 dismissed the ICC ruling, calling it “the result of faulty procedure and of dubious legal merit” and said that as the country is not a State party to the Statute, the country is “under no obligation” to respect it.

The international community has often proven incapable of dealing with state led crimes against humanity, and Myanmar could prove another missed milestone.

The International Criminal Court (ICC) issued a decision in early September this year ruling that it had jurisdiction over the deportations (ethnic cleansing) of the Rohingya people from Myanmar to Bangladesh.

The landmark decision by the ICC was based on the prosecution’s request dated for a ruling on jurisdiction for the crime of deportation under the Rome Statute, the founding document of the Court.

The prosecutor Fatou Bensouda filed that the coercive acts relevant to the deportations occurred on the territory of Myanmar, which is not a party to the Rome Statute. However, Bensouda considered that the court may nonetheless exercise jurisdiction under the statute, but on another ground. Since the Rohingya people crossed an international border to Bangladesh, the court can establish a jurisdiction through Bangladesh, which is a signatory state to the Rome Statute.

On the other hand, the UN fact-finding mission has called for the prosecution of Myanmarese officials to the full extent of the law. The mission recommended that the United Nations Security Council (UNSC)
either should refer the situation to the ICC or to establish a court similar to the one for Rwanda and former Yugoslavia.

In addition, the UN fact-finding mission further urged that the UNSC should impose targeted sanctions such as travel bans, asset freezes and an arms embargo.

As for the UNSC referrals to the ICC, the path for this seems to be blocked by China, Russia and the United States.

During a briefing of the report in a UNSC meeting, the representatives of China and Russia claimed that Myanmar has been put under pressure and the settlement of this issue needs to be through diplomatic efforts instead of seeking individual criminal responsibility. Hence, a UNSC referral is unlikely to happen unless a radical change in the policy of primarily China, and additionally, Russia and the US occurs.

The same applies for establishing an ad hoc court for Myanmar, as it requires the consent of the permanent members of the UNSC.

A new court requires; new statutes, new rules of procedure and evidence; new buildings, staff and resources. This would take a very long time. Instead of forming a new court, referring the ethnic cleansing in Myanmar to the ICC is more practical in terms of time and efficiency.

By the same token, the inclusion of the Myanmarese officials to the sanction list is also not an entirely appropriate way to establish accountability. Sanctions are not a coercive instrument to prevent the perpetrators from wrongdoing. The inefficiency of targeted sanctions can be clearly seen by looking at the 30-year-old US targeted sanctions aimed at

‘’The international community needs to change the voting behaviour of the permanent members of the UNSC, so they do not use their veto power for Myanmar, in order to open an avenue for accountability’’

An alternative direction is asserting universal jurisdiction through national courts. However, even this path has its shortcomings. First, the
states should criminalise international crimes in their domestic codes and prosecution depends on the physical presence of the accused on the territory of relevant state. In addition, the immunity that a head of state has from foreign criminal prosecution is another obstacle.

The good news is that the ICC has established that it has jurisdiction over the crimes because of their trans-border nature. Furthermore it allowed the prosecution to examine any other crimes and other inhumane acts. Hence, now there is no need for a referral from the UNSC to initiate an investigation against the alleged direct perpetrators in the report.

In addition, the prosecution is not limited with the six chief commanders and prosecution can affect the Nobel Prize holder Aung San Suu Kyi.

The member states of the UN should make an effort to refer the situation to the UN General Assembly to establish an independent commission, to collect, preserve and analyse evidence of violations for prosecution on the national, regional and international levels.

Last but not least, states and regional organisations such as the EU and ASEAN should impose sanctions and an arms embargo regardless of a UNSC decision. It should be kept in mind that genuine success can only come with successful implementation of the sanctions - only that can change Myanmar's behavior.

**International urges for accountability and Justice:**

1. Canada declares Myanmar Rohingya killings 'genocide'

*Canadian Parliament unanimously adopts motion branding crimes committed against Rohingya Muslims in Myanmar as genocide.*

Rights organisations have accused Myanmar military of committing extrajudicial killings, gang rape, and arson during their bloody campaign launched in August last year after army posts came under attack from Rohingya rebels.
They also urged the UN Security Council to refer the case to the International Criminal Court, while also calling for Myanmar's generals to be investigated and prosecuted "for the crime of genocide".

"I want to underscore how tragic, how horrific the crimes against the Rohingya are," Foreign Minister Chrystia Freeland said. "We are leading an international effort for justice and accountability for the Rohingya."

2. Jeremy Hunt British foreign minister on 20 September, 2018 says Rohingya need justice

British Foreign Secretary Jeremy Hunt warned that the world would not rest until the persecuted minority received justice.

Britain may back the referral of Burma to the International Criminal Court in the Hague, Mr Hunt confirmed, after returning from a visit to Rakhine state, the centre of a brutal military campaign of murder, mass rape and arson that drove more than 700,000 Rohingya Muslims to flee to Bangladesh.

Describing an ongoing “climate of fear” in the state, he stated that “Burma needs to know that the international community won’t let it rest.”

The country is facing increasing international pressure to face accountability for crimes committed against the Rohingya, including a call from United Nations investigators for Burma’s top generals to be tried for genocide.

"If we don't see that process happening, we will use all the tools at our disposal to make sure there is justice... the world is watching’

The full, stomach-churning details of the UN’s 440-page report were unveiled in Geneva on Tuesday, outlining depraved acts of inhumanity that included massacres of entire villages, children being burned alive and women tied to trees then raped.

The evidence warrants the charges of genocide, crimes against humanity and war crimes, UN investigators said.

If ICC referral does not receive approval of UN Security Council, prosecutions could proceed through a specialised criminal tribunal or an individual country exercising its rights to universal jurisdiction, he said.
Throughout his visit, Mr Hunt stressed that Rohingya refugees sheltering in Bangladesh could not safely return home until they saw “a proper judicial process, accountability and justice for the perpetrators of atrocities.”

3. **Australia** added its voice to the building global outrage this week, condemning the crimes described in the UN report in the “strongest terms” and announcing that it was considering “targeted sanctions.”

4. **The US House of Representatives** also said that it was examining action needed to stop the violence. “Evidence of Burma’s genocide against the Rohingya continues to grow,” said Ed Royce, chairman of the House foreign affairs committee.

5. **ASEAN foreign ministers express concern over 'man-made humanitarian disaster' in Myanmar's Rakhine, and call for probe.**

Singapore Foreign Minister Vivian Balakrishnan said Myanmar's government needs to 'do the right thing'

Southeast Asian foreign ministers have urged Myanmar to give a full mandate to an inquiry commission to hold accountable those responsible for the violence in Rakhine State, according to Singapore’s top diplomat.

The ministers, who met informally on the side-lines of the UN General Assembly last week, expressed grave concern over the violence, Singapore Foreign Minister Vivian Balakrishnan told his country's parliament on Tuesday.

"We expressed our grave concern with these alleged acts of violence ... This is a man-made humanitarian disaster and something which should not be happening on this day and age," Balakrishnan said, referring to the meeting of the 10-member Association of Southeast Asian Nations, which includes Myanmar.

"The foreign ministers urged the Myanmar government that ... an independent commission of inquiry ... should be given a full mandate to investigate and to hold all those responsible fully accountable."

Myanmar has denied most of the allegations in the report, blaming Rohingya rebels for most accounts of atrocities.

'Do the right thing' urged by the ASEAN
6. In a recent interview, Malaysia’s Prime Minister Mahathir Mohamad criticised Myanmar's de facto leader Suu Kyi over her handling of the Rohingya crisis, saying, "We don't really support her anymore."

7. International Criminal Court has initiated a preliminary investigation into alleged crimes against the Rohingya.

The International Criminal Court has launched a preliminary investigation into Myanmar’s crackdown on the Muslim-majority Rohingya that forced hundreds of thousands to flee across the border to Bangladesh.

The examination will look at a range of allegations against Myanmar's security forces that could include the killing of Rohingya civilians, sexual violence, forced disappearance, destruction and looting, ICC prosecutor Fatou Bensouda said in a written statement on 18 September 2018.

"A preliminary examination is not an investigation but a process of examining the information available in order to reach a fully informed determination on whether there is a reasonable basis to proceed with an investigation," Bensouda added.

**UN calls for genocide tribunal over Rohingya crisis**

"Peace will not be achieved while the Tatmadaw remains above the law," Marzuki Darusman, chair of the UN fact-finding mission said in a statement Tuesday referring to the Myanmar military by its Burmese name.

"The Tatmadaw is the greatest impediment to Myanmar’s development as a modern democratic nation. The Commander-in-Chief of the Tatmadaw, Min Aung Hlaing, and all the current leadership must be replaced, and a complete restructuring must be undertaken to place the Tatmadaw under full civilian control. Myanmar’s democratic transition depends on it."

"During their operations the Tatmadaw has systematically targeted civilians, including women and children, committed sexual violence, voiced and promoted exclusionary and discriminatory rhetoric against
minorities, and established a climate of impunity for its soldiers," Darusman said.

"I have never been confronted by crimes as horrendous and on such a scale as these," he said, adding "top generals should be investigated and prosecuted for genocide in Rakhine State."

The report also had some criticism for the UN itself, saying the international body did not take significant action during the initial burst of violence triggering the Rohingya crisis.

'Textbook example of ethnic cleansing'

While the Myanmar military -- which still retains massive amounts of power in the country despite the transition to limited democracy -- bears primary responsibility for security operations in Rakhine, the UN previously said Myanmar's civilian government had "contributed to the commission of atrocity crimes" through their "acts and omissions."

"The State Counsellor, Daw Aung San Suu Kyi, has not used her de facto position as Head of Government, nor her moral authority, to stem or prevent the unfolding events in Rakhine State," the report said.

Last August, hundreds of thousands of Rohingya Muslims started fleeing across the border into Bangladesh into what's since become the world's biggest refugee camp. Many of those who crossed the border have recounted horrific stories of being driven from their homes under threat of death.

The UN report said that "rape and sexual violence are part of a deliberate strategy to intimidate, terrorize or punish a civilian population, and are used as a tactic of war."

Despite being barred access to the affected regions, investigators conducted 875 interviews with victims and eyewitnesses, and examined satellite images and forensic and other documentary evidence.

In the past, the United Nations has called the alleged campaign of violence, including mass killings, rape and the burning of Rohingya villages by Myanmar government forces a "textbook example of ethnic cleansing," while UN Special Rapporteur Yanghee Lee has said that the attacks bear the "hallmarks of genocide."

While Rakhine was the primary focus and has attracted widespread media coverage around the world, the UN report also highlighted
ongoing conflicts between the Myanmar military and ethnic armed groups in Kachin and Shan state, where civilians have suffered similar abuses.

"As in Rakhine, civilians are targeted for killings, rape, arbitrary arrest and detention, enforced disappearance, forced labour, torture and ill-treatment, and persecution based on ethnic or religious grounds," said mission member Chris Sidoti.

"To date, the long-standing conflicts in the north of Myanmar have received inadequate international attention. We hope our report will raise awareness of the critical situation in Kachin and Shan. We are seriously concerned that fighting is continuing in these regions, with new allegations of serious violations against civilians continuing to emerge."

"The Tatmadaw acts with complete impunity and has never been held accountable for the violations of international law it is consistently involved in," the report said.

*It called on the UN Security Council to refer Myanmar to the International Criminal Court (ICC) or establish an ad hoc international criminal tribunal, as well as implement targeted individual sanctions, travel bans and asset freezes against senior military commanders, and an arms embargo on the country."

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The International Community has a Duty to

Prevent Genocide in Rakhine State
In conclusion, the international community is called upon to prevent the ethnic cleansing of the Rohingya in the Rakhine State of Burma/Myanmar.

The plight and subsequent persecution of the ethnic Rohingya is nothing new.

Having seized power in 1962, the army introduced discriminatory laws which in effect deemed the Rohingya as ‘unwanted intruders’, and identified as illegal immigrants from Bangladesh.

The discrimination continued up until 1982 when a new military law removed citizenship from the Rohingya on the false premise that the peoples had only come to Myanmar after the 1823 British occupation of the Rakhine State.

It is therefore arguable, that it was from here that the discrimination was increased, and it turned into something altogether more sinister, resulting the position faced today which is on the verge of, if not already, a Genocide.

Hundreds, perhaps thousands, of ethnic Rohingya, have been tortured, forcibly disappeared, and murdered.

Entire villages have been burned, men, women, and children have all become victim, many of whom have lost their lives in the most violent of circumstances.

Those fortunate enough to survive the attacks find themselves as refugees with nowhere to go to escape the atrocities perpetrated at the hands of the Myanmar Government, and its supporters, to which the Government is prepared to turn a blind eye.

Tens of Thousands have crossed the border into Bangladesh, yet their suffering does not end, being forced to reside in makeshift refugee camps in a country that has made it plain that their presence isn’t welcome, restrict their movements, and on occasion, forcing them back over the border into Myanmar.

The world is watching though, and yet despite the mass of media coverage, there appears to be a reluctance to take definitive action.

The burning issue is that a Genocide is being perpetrated before our very eyes, and one which Myanmar’s own Government refuses to address.
To exacerbate the position even further Aung San Su Kyi has sought to blame ‘misinformation’, for the reports emanating from Myanmar, and therefore an inferred denial. She has also sought to blame the international community for fanning the flames of internal conflict.

International crimes are being committed, and the world is watching what amounts to ethnic cleansing.

The denials and misinformation being perpetuated by the Myanmar Government ought to be seen for what they are, and thus the international community is called upon to take action to prevent further loss of life, and to prevent the Rohingya from being removed from their homes.

After the holocaust came Bosnia and Rwanda and we said ‘never again’. We have stood by helpless and watched the extermination of civilians in Syria, Uighur and Iraq. We cannot sit by and watch an entire population massacred. The time to act is now.