

Myanmar: Report of fact-finding Mission on Rohingya: Its Aftermath

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Towards the end of last month, the fact-finding Mission of OHCHR of UN released its formal report on the situation in Rohingya that is to be submitted to the UN Security Council next month. The Reports strongly indicts the Myanmar Army (Tatmadaw), naming many of its officers including the Army Chief and indirectly blaming Suu Kyi herself for not using her moral authority. Significantly the Report unusually uses very strong words like Genocide, Crimes Against Humanity and War Crimes against Myanmar and equally significant is that it lets off the ARSA that triggered the turmoil with passing mention of the outfit here and there. Worse still, there is a hint of justification of the ARSA's strike last August as it is supposed to have been triggered by 2012 incidents against Rohingyas and Repression of the State that continued there after. The Mission has gone beyond the Rohingya issue and examined the situation in Kachin and Shan states where the ethnic conflict has existed even before the Rohingya issue had come to the fore!

The fact-finding Mission consisted of three members constituted under Human Rights Council Resolution 34/22 with Marzuki Darusman of Indonesia as Chairman and Radhika Coomaraswamy of Sri Lanka and Christopher Dominic Sidoti as members. The Mission had in depth interviews with 875 persons and travelled to Bangladesh, Indonesia, Malaysia, Thailand and United Kingdom. The Mission claimed that they could not visit Myanmar despite repeated requests to the Myanmar Government. The Mission appeared to be upset over the failure of Myanmar Government to respond to their requests.

The Mission focussed on three issues- 1. Crisis in Rakhine State 2. Hostilities in Kachin and Shan States. 3. Infringement on the exercise of fundamental freedoms, focussing on hate speech.

The events that occurred on 25th August 2017 including that of attacks of ARSA have strangely been attributed to the "realisation of a disaster long in the making . . . that resulted from the systematic oppression of the Rohingya, the 2012 violence and the Government's

actions and omissions.” The ARSA’s attack has been attributed as an “apparent response to increased pressure on Rohingya communities and with the goal of international attention.” (Also mentioned in points 32 and 44)

Under Human Rights Catastrophe the Reports lists the following:

- * In a conservative estimate, over 10,000 deaths have occurred.
- * Men and Boys were separated and shot and the homes were set fire.
- * Women and Girls were separated, gang raped, killed and injured.
- * There were incidents of rape and other forms of sexual violence.
- * Satellite Images and first hand accounts corroborate widespread, systematic, deliberate targeted destruction by Security Forces.
- * Displacement and burning of Rohingya villages were followed by systematic appropriation of emptied lands.

On the situation in the North- the Kachin and Shan Areas, the Tatmadaw is accused of arbitrary arrests, deprivation of liberty and enforced disappearances.

In describing the actions of the Tatmadaw (Myanmar Army) the report lists the following as the hall marks of their operations.

1. Targeting Civilians
2. Sexual Violence
3. Exclusionary Rhetoric
4. Impunity

In Chapter VI under conclusion, the Report says- “Based on the body of information collected, the Mission concludes on reasonable grounds that serious crimes under international law have been committed that warrant criminal investigation and prosecution.”

Other Points Mentioned-

1. A “genocidal intent” was noted on the attacks on Rohingyas.
2. Crimes against humanity have been committed in Kachin, Rakhine and Shan States principally by the Tatmadaw.
3. Given the situation that non international armed Conflicts existed in Kachin and Shan States, much of the crimes will “satisfy” the war crime elements of murder, torture, cruel treatment, outrage on personal dignity, attacking civilians, pillaging, rape and sexual slavery.

Given the mandate to primarily investigate the Rohingya issue and the fact that ethnic wars have been going on since independence, the Mission appears to have outreached itself and without adequate investigation in calling the incidents in Kachin and Shan States as “War Crimes.”

The Mission has specifically named a number of military officers including the Army Chief himself as responsible for the crimes.

One other recommendation of the Mission which appears to be beyond their brief is to recommend that other States should not transfer arms to the Tatmadaw!

The Aftermath:

1. The first to react was the Myanmar Government itself. Zaw Htay its Spokes person said that the country did not agree with or accept “any resolution made by the Human Rights Council. We did not allow the fact-finding Mission to enter into Myanmar and that is why we don’t agree and accept resolutions made by the Human Rights Council”
2. China had even before described the developments- as “very complex” given the historic, religious and ethnic background of the Rakhine Issue. China is certain to use its veto if any action against Myanmar is contemplated by the Security Council. The matter will also be taken to the International Criminal Court, where Myanmar is not a signatory but Bangladesh is. The term “War Crimes” has been used rather lightly and should not have been mentioned at all. War Crimes is a very serious matter not to be used even in ethnic conflicts.
3. The Face Book for the first time in its history banned the accounts of the Head of the Army and 19 others all belonging to Security Services for “engaging in coordinated inauthentic behaviour.” Is the Face Book making up for the bad publicity it got on the Cambridge Analytica Controversy? Why is it that it is in a great hurry now to announce punitive measures against those named in the Report?
4. In a commentary, the Irrawady has said that the controversy and action of the Face book has further aggravated the growing mistrust between the Civil administration and the Army. Though there is no evidence, it said that the Army suspects that Suu Kyi had prior knowledge and that the developments coincided with the four-day visit of Suu Kyi to Singapore. In her address to various entities in Singapore, Suu Kyi had reiterated her commitment to Constitutional amendments and is prepared to achieve it through negotiation and evolution. In one of the meetings, She had urged the ASEAN and the international community to listen with empathy, understanding and putting themselves in their place of ordinary people and the citizens.
5. While the Report accuses Suu Kyi for not using her defacto position as Head of the Government and her moral authority to prevent the unfolding events, the outgoing UN Human Rights Chief Zeid Ra’ad Ali Hussein has gone further and said that Suu Kyi should have

resigned. We do not know what transpired between Suu Kyi and the Army when the atrocities of the Army came into public domain. Surely, keeping in mind to prevent a reversal of the progress made in the journey towards democracy she would have made attempts to get the Army to go slow. One does not know.. Suu Kyi should be given the benefit of doubt. But the statement of the outgoing Chief calling for Suu Kyi's resignation is outlandish. We have in the past more than once mentioned about lack of objectivity in the observations of the UN Human Rights Chief whose sole aim was to denigrate Suu Kyi and nothing else. Was he for snuffing out democracy in Myanmar and return to the Myanmar of the nineties?

6. The Report will however have an adverse impact on Myanmar Economy. The Economic Adviser to the State Councillor, Sean Tunnel has admitted of such a development and had said that Myanmar needs to resolve the Rakhine Crisis to attract international investments and financial sector assistance from the West.

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