

CENMUN 2019



UNITED NATIONS HUMAN RIGHTS COUNCIL

Human rights violation due to internal
conflicts with special emphasis on
Myanmar and Sudan.

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Centre Point School, Wardhaman Nagar
Nagpur
India*

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It is with immense pleasure that I welcome you all to the United Nations Human Rights Council at CENMUN. The committee seeks to address the Human rights violation due to internal conflicts with special emphasis on Myanmar and Sudan I greatly appreciate your preference for this committee.

Nevertheless, this year's simulation of UNHRC at CENMUN will give you an opportunity to voice your opinion about issues that are threatening human existence. Resolving these problems would require use of diplomacy, creativity and extensive knowledge of international relations. As far as I am concerned, I am looking forward to a disciplined and well researched committee. Brownie points will be given to first timers who read the rules of procedure beforehand and try to follow them. On the other hand, a hawk's eye will be kept at experienced speakers as he is famous for being pretty strict when it comes to following rules and maintaining decorum.

The CENMUN HRC is being convened with the vision to provide a cooperative platform to discuss, deliberate and devise a progressive and contemporary human rights framework for all with a view towards the developments taking place in the two contiguous regions today. With atrocities around the world become the veritable new normal in 2019, there is a pressing need to revisit the mandate and scope of the UNHRC, and to re-calibrate national governments towards securing human rights across the world.

The more information you have coupled with the greater employment of your critical thinking, the more you will be able to influence the committee's direction and resolution process, and CENMUN as a whole.

So, this is your chance to speak up and break the silence.

Lastly, please feel free to contact me if you have any questions. Looking forward to seeing you all at the conference.

Good luck with your research!

Ataullah Tahiri

Chairperson

CENMUN – Human Rights Council

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I would like to conclude in the words of Martin Luther King Jr., "Our lives begin to end the day we become silent about things that matter."

INDIA

Committee Overview

“All victims of human rights abuses should be able to look to the Human Rights Council as a forum and a springboard for action.”

Introduction

The Human Rights Council (HRC) is the main organ of the United Nations (UN) “responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations on them. Its duty entails responding to urgent human rights situations by addressing issues regarding accountability and liability for violations of international human rights and humanitarian law. HRC has a global scope, working to promote and protect all human rights; HRC currently focuses on several regions in Africa, Latin America, and the Middle East, with special attention placed on the ongoing conflict in Syria.

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the human rights agenda has expanded greatly. To facilitate the implementation of the UDHR, the UN Secretariat established a UN department responsible for overseeing its human rights program. This department, known as the Center for Human Rights, expanded its reach in the 1980s and moved from New York to Geneva.

In 1993, at the World Conference on Human Rights, Member States created the Office of the UN High Commissioner for Human Rights (OHCHR) with the responsibility of coordinating the human rights agenda across all intergovernmental agencies and departments within the UN. OHCHR is responsible for the substantive, logistical, and administrative needs of all UN human rights mechanisms, including core treaty-based bodies, thematic working groups, and the HRC. As international human rights law has evolved, specialized agencies within the UN system have also emerged due to the urgent need to respond to human rights violations. Among these was the Commission on Human Rights (CHR), which was an intergovernmental organization of the UN established in 1946 to address human rights challenges and concerns. Over time, the CHR met increasing criticism from the international community for “excessive politicization.” Persistent controversy led to the CHR’s loss of credibility, which severely damaged the UN’s reputation and work in human rights. Reform efforts culminated in the creation of the HRC in 2006. Pursuant to resolution 60/251, the General Assembly “decide[d] to establish the Human Rights Council, based in Geneva, in replacement of the [CHR].” The HRC had in essence the same responsibilities as CHR, but possessed an enhanced scope of action under its new mandate. As stipulated by the General Assembly, the HRC submitted to a five-year review in 2011. All areas of the HRC were subject to scrutiny and critical assessment to ensure mechanisms and frameworks were streamlined and efficient. The review identified only minor areas for improvement; the HRC’s “strong and largely well-functioning” nature led to its preservation as a subsidiary body of the General Assembly without significant changes to its structure or operations.

Governance, Structure, and Membership

Through a majority vote, the General Assembly elects the HRC's 47 Member States, which serve for a period of three years; these elections are staggered so that only one third of the seats are elected at a single time, creating continuity on the HRC. The 47 Member States are distributed in regional groups: 13 from Africa, 13 from Asia, six from Eastern Europe, eight from Latin America and the Caribbean, and seven from the Western European and Others Group. New members were elected in October 2017 during the General Assembly's 72nd session. The Member States elected to the HRC as of 1 January 2018 are: Afghanistan, Angola, Australia, Chile, Democratic Republic of the Congo, Mexico, Nepal, Nigeria, Pakistan, Peru, Senegal, Slovakia, Spain, and Ukraine; Qatar was re-elected for another term.

The General Assembly Third Committee, which is responsible for evaluating questions related to human rights, considers the annual reports of the HRC and works closely with the HRC's Special Procedures mandate holders.

Each year in March, June, and September, the HRC holds regular sessions to discuss issues under its purview. Combined, these sessions last a minimum of 10 weeks, and at any time, one third of the HRC's Member States can request a special session "to address human rights violations and emergencies [related to human rights]." There have been a total of 26 special sessions, the last of which was held in December 2016, focused on the human rights situation in South Sudan. Each annual series of regular sessions is referred to as a "cycle." At the start of each annual meeting, Member States elect a President and four Vice Presidents that make up the Bureau, which is responsible for all issues relating to the organization and procedures of the HRC and for leading the cycle. The President is responsible for convening and chairing organizational meetings and regular sessions, as well as proposing candidates to serve as Special Procedures mandate holders.

The current President is Joaquin Alexander Maza Martelli, a Permanent Representative to the UN from El Salvador. The Vice Presidents are Amr Ahmed Ramadan, Mouayed Saleh, Shalva Tsiskarashvili, and Valentin Zellweger from Egypt, Iraq, Georgia, and Switzerland, respectively. Partnerships. The HRC strengthens its efforts in upholding human rights by forming partnerships with non-governmental organizations (NGOs), National Human Rights Institutions (NHRIs), and other civil society actors. Partnerships facilitate many of the HRC's initiatives, including specific programs or frameworks targeting groups deprived of their access to fundamental human rights and freedoms. NGOs that have received Economic and Social Council (ECOSOC) consultative status and NHRIs can directly address HRC during discussions and debates and inform it of situations occurring in their home states. Groups and NGOs that have not achieved ECOSOC consultative status can also provide written documents on a Member State as part of the Universal Periodic Review (UPR) Process.

Mandate, Functions, and Powers

The HRC possesses a unique and comprehensive mandate outlined in General Assembly resolution 60/251 of 2006 on the “Human Rights Council” and guided by the principles of “universality, impartiality, objectivity and non-selectivity, constructive international dialogue, and cooperation.” The General Assembly mandates the HRC to promote universal respect for human rights and fundamental freedoms; to address and provide recommendations on all, and particularly grave and systematic violations of human rights; and to promote an effective system of coordination within the UN system with respect to human rights issues. Further, the General Assembly designate. the HRC as a forum for debate and dialogue on all human rights issues, including addressing violations and responding to emergencies, promoting cooperation and education on human rights, reviewing Member States’ history and performance, and preventing abuses from occurring.

Also crucial in informing the mandate and work of the HRC is the International Bill of Human Rights, which encompasses the UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), and the International Covenant on Civil and Political Rights (ICCPR) (1966) with its two Optional Protocols. These documents are the pillars that guide the HRC in its recommendations by outlining the fundamental obligations and commitments of Member States in international human rights law. Additionally, the 2030 Agenda for Sustainable Development (2015) and the 17 Sustainable Development Goals (SDGs) guide the work of the HRC. In 2007, the HRC adopted resolution 5/1 on “institution-building,” which established mechanisms and structures to guide its program of work, rules of procedure, and other operational functions. The resolution also established the format for the Special Procedures, the UPR, and the Complaint Procedure, which comprise the main powers of the HRC. Special Procedures are mechanisms that enable independent parties to report, monitor, and advise on country-specific or thematic situations for the HRC. Each investigation has a mandate and a mandate holder, who is typically a Special Rapporteur, an independent expert, or a working group, to carry out the investigation. Special Procedures are empowered to undertake country or field visits, with the support of OHCHR, and to bring specific cases and concerns to the attention of Member States. They can send communications detailing accusations of violations or abuses of human rights, engage in advocacy efforts, and offer technical assistance when possible.

The UPR is one of the most important functions of the HRC. Through the HRC, each Member State of the UN submits to a periodic review to assess the fulfillment of its human rights obligations. The full cycle of the UPR process takes around four years and includes several steps. The first and currently only process of its kind, the UPR is unique in both its approach and its universality. At the preparation stage, information is gathered that will form the basis of the review, including national reports from the state under review, stakeholder submissions, and information prepared by OHCHR. At the review stage, documents are presented at the regular sessions of the Working Group on the UPR, which is composed of all Member States of the HRC. At the adoption and considerations stage, each Member State provides comments and the state under review can offer reservations on specific issues. Finally, during the follow-up stage, each state under review demonstrates how effectively it has acted upon the recommendations received. The UPR has entered its third cycle (2017-2021) and will proceed with reviewing national reports for 42 Member States this year.

Topic: Human rights violation due to internal conflicts with special emphasis on Myanmar and Sudan

Introduction

Approximately 258 armed clashes were recorded over 2017, with the majority of clashes occurring between the military and ethnic armed organizations (EAOs) in northern Shan and Kachin states.¹ In these two states approximately 15,000 people became newly displaced as a result of fighting, with three quarters of those being in Shan State. Many of these IDPs have been able to go home, though at the end of 2017 there remained about 92,000 displaced people in Kachin State, 15,000 in Shan State, and 5,600 in Kayah State.

The military has been accused of using fighter jets, helicopter gunships, and unmanned drones as part of its campaign against EAOs. This has resulted in civilian casualties as fighting often takes place in or near villages and IDP camps.

Human rights violations documented by ND-Burma in conflict areas include arbitrary arrest, torture, and killing of ethnic nationality civilians, this includes the case of a 14-year-old boy who has become the youngest person to be jailed under the Unlawful Association Act, Civilians also continue to be killed by landmines.

August also saw clashes in northern Rakhine State following an attack by Muslim militants on police posts and an army base, which saw violent reprisals on the local Muslim population by government security forces as well as Buddhist civilians. Some 688,000 Muslims fled to Bangladesh in what has become the world's fastest growing refugee crisis.

The government continues to block access to international humanitarian agencies trying to deliver aid to IDPs living in EAO-controlled territory and further reduced access to government-controlled areas. According to the Special Rapporteur on Human Rights in Myanmar, humanitarian access in 2017 was at its lowest in four years.⁵ These IDPs have faced food shortages and a lack of access to basic services such as medical care. National humanitarian organizations have tried to fill the gap but are unable to satisfy demand and also regularly face access restrictions.

A statement released by ND- Burma member KWAT in August said the blocking of aid coupled with the violations committed by soldiers during offensives amounted to "war crimes". Some 6,200 Shan IDPs displaced on the Thai- Burma border also had their international aid cut as a result of the Restoration Council of Shan State/Shan State Army (RCSS/SSA) EAO signing the Nationwide Ceasefire Agreement (NCA). However, the IDPs have said they do not feel it is safe to return because of ongoing armed clashes between the RCSS/SSA and military, as well as increased militarization of this area. Like Kachin IDPs, they have suffered from food shortages and a lack of medical care.

Human rights in Myanmar under its military regime have long been regarded as among the worst in the world. International human rights organizations including Human Rights Watch, Amnesty International, and the American Association for the Advancement of Science have repeatedly documented and condemned widespread human rights violations in Myanmar. The Freedom in the World 2011 report by House notes that "The military junta has suppressed nearly all basic rights; and committed human rights abuses with impunity." In 2011 the "country's more than 2,100 political prisoners included about 429 members of the NLD, the victors in the 1990 elections. "As of July 2013, according to the Assistance Association for Political Prisoners, there were about 100 political prisoners in Burmese prisons.

1990s

In a landmark legal case, some human rights groups sued the Unocal corporation, previously known as Union Oil of California and now part of the Chevron Corporation. They charged that since the early 1990s, Unocal has joined hands with dictators in Burma to turn thousands of its citizens into virtual slaves. Unocal, before being purchased, stated that they had no knowledge or connection to these alleged actions although it continued working in Burma. This was believed to be the first time an American corporation has been sued in a US court on the grounds that the company violated human rights in another country

2000s

The Freedom in the World 2004 report by Freedom House notes that "The junta rules by decree, controls the judiciary, suppresses all basic rights, and commits human rights abuses with impunity. Military officers hold all cabinet positions, and active or retired officers hold all top posts in all ministries. Official corruption is reportedly rampant both at the higher and local levels.

Brad Adams, director of Human Rights Watch's Asia division, in a 2004 address described the human rights situation in the country as appalling: "Burma is the textbook example of a police state. Government informants and spies are omnipresent. Average Burmese people are afraid to speak to foreigners except in most superficial of manners for fear of being hauled in later for questioning or worse. There is no freedom of speech, assembly or association.

From 2005-2007 NGOs found that violations of human rights included the absence of an independent judiciary, restrictions on Internet access through software-based censorship, that forced labour, human trafficking, and child labour were common, and that sexual violence was abundantly used as an instrument of control, including systematic rapes and taking of sex slaves as porters for the military. A strong women's pro-democracy movement has formed in exile, largely along the Thai border and in Chiang Mai. There was also said to be a growing international movement to defend women's human rights issues.

In a press release on 16 December 2005 the US State Department said UN involvement in Burma was essential and listed illicit narcotics, human rights abuses and political repression as serious problems that the UN needed to address.

According to Human Rights Defenders and Promoters (HRDP), on 18 April 2007, several of its members (Myint Aye, Maung Maung Lay, Tin Maung Oo and Yin Kyi) were met by approximately a hundred people led by a local official, U Nyunt Oo, and beaten up. Due to the attack, Myint Hlaing and Maung Maung Lay were badly injured and subsequently hospitalised. The HRDP alleged that this attack was condoned by the authorities and vowed to take legal action. Human Rights Defenders and Promoters was formed in 2002 to raise awareness among the people of Burma about their human rights.

In April 2019, the UN appointed an American prosecutor as head of an independent team that will probe human rights violations in Myanmar's volatile Rakhine state, focusing on atrocities committed against Rohingya Muslims. However, Myanmar's ruling political party National League for Democracy disapproved of the new UN investigative mechanism

Persecution of Muslims

The Muslim Rohingya have consistently faced human rights abuses by the Burmese regime which has refused to acknowledge them as citizens (despite generations of habitation in the country) and attempted to forcibly expel Rohingya and bring in non-Rohingyas to replace them. This policy has resulted in the expulsion of approximately half of the Rohingya population from Burma. An estimated 90,000 people have been displaced in the recent sectarian violence between Rohingya Muslims and Buddhists in Burma's western Rakhine State. As a result of this policy Rohingya people have been described as "among the world's least wanted" and "one of the world's most persecuted minorities".

Since a 1982 citizenship law Rohingya have been stripped of their Burmese citizenship. In 2012, a riot broke out between ethnic Rakhine Buddhists and Rohingya Muslims, which left 78 people dead, 87 injured, and thousands of homes destroyed. It also displaced more than 52,000 people. As of July 2012, the Myanmar Government did not include the Rohingya minority group—classified as stateless Bengali Muslims from Bangladesh since 1982—on the government's list of more than 130 ethnic races and therefore the government says that they have no claim to Myanmar citizenship.

Sudan

The reforms aimed at strengthening human rights protection and the rule of law set out in Sudan's 2005 Comprehensive Peace Agreement and the Interim National Constitution have largely remained unfulfilled. Developments following the separation and independence of Sudan in 2011 demonstrate the persistence of deep-seated structural problems. These developments have been characterized by a deepening political and economic crisis, multiple conflicts on both sides of the border and ongoing human rights violations. The need for respect for human rights and the rule of law in Sudan is therefore as strong as ever. The current constitutional review and legal and institutional reforms are at the heart of this process.

The Project for Criminal Law Reform, a joint initiative by REDRESS and the Sudanese Human Rights Monitor, has identified a series of shortcomings in Sudan's legal system, particularly in respect of Sudan's international human rights obligations, and advocated reforms over the last seven years. This Compilation of Advocacy Briefings, which covers four briefings published in the period May 2013 to January 2014, highlights a number of key areas of concern. These includes torture, immunities as a barrier to justice and the right to protest, which have been the subject of concerns and debates in the period covered. In addition, this Compilation draws together the multiple recommendations made by regional and international human rights bodies, which serve as a yardstick for any measures taken by Sudan and advocacy tool for civil society actors. Many of these recommendations reflect the suggestions made in various publications and submissions by the Project over the years, most of which are referenced when discussing specific recommendations, the implementation of these recommendations remains an imperative and prerequisite for a state committed to respect for human rights, justice and accountability.

Some human rights organizations have documented a variety of abuses and atrocities carried out by the Sudanese government over the past several years. The 2009 Human Rights Report by the United States Department of State noted serious concerns over human rights violations by the government and militia groups. Capital punishment, including crucifixion, is used for many crimes.

Incidents documented by UNMISS HRD indicate that hundreds of civilians and soldiers were killed during the clashes which took place in Juba from 8 to 12 July and in the immediate aftermath of the fighting. In a letter dated 12 July addressed to the JMEC Chair, President Kiir stated that more than 300 soldiers had been killed during the clashes³⁷ but authorities did not mention that civilians were killed. The exact number of civilians who were killed during the fighting and in its aftermath cannot be confirmed for various reasons: some were hastily buried by their family members, and some bodies were removed from the streets by humanitarian organizations and buried, while the Government prevented access to some of the heaviest-hit areas of Juba several days following the violence.

Two other witnesses recounted that on 9 July, two civilian men were summarily executed by SPLA soldiers while they were trying to access the UNMISS Tamping compound. They explained that themselves were able to reach the UNMISS base, where they received medical treatment. On 11 July, a group of Internally Displaced Persons (IDPs) were allegedly fired upon by SPLA soldiers while leaving the Tamping compound. Only the intervention of UNMISS peace-keepers enabled them to return to a safer area at the compound, where some received treatment for gunshot injuries.

In total, 53 people were reported killed, inside the PoC 1 and PoC 3 sites including 11 women and 17 children. At least 18 bodies were buried within the PoC 3 site during the fighting. In addition, 234 were reported injured, including 49 women and 50 children. From 8 to 11 July, health facilities at the UN House treated at least 141 persons injured during the fighting.

UNMISS documented 217 victims of sexual violence that included rape and gang-rape that were committed in various areas across Juba between 8 and 25 July, including at SPLA checkpoints. In most of these cases, victims and witnesses reported that the alleged perpetrators were SPLA soldiers, police officers and NSS members. Witnesses and victims interviewed by UNMISS reported that the victims were also often robbed, beaten up, harassed and verbally abused by SPLA soldiers and other security officers at these check-points and at other locations in the city.

During the July 2016 violence and in the aftermath of the fighting, serious violations of the rights of children were committed by both parties to the conflict. Children were killed, wounded, raped or gang-raped, or forced to flee and live as refugees or IDPs, sometimes separated from their families. The fighting also impacted children's access to education and to medical facilities.

Legal framework

Several legal regimes apply to the current situation in South Sudan namely international human rights law, international humanitarian law and international criminal law. The Government of South Sudan is obligated at all times to respect, protect and fulfil the human rights of all persons within its territory and subject to its jurisdiction. Human rights standards must be respected by armed groups that control territory and exercise government like functions, when their conduct affects the human rights of persons under their control.

In the context of an armed conflict, the conduct of all parties is governed by the relevant provisions of international humanitarian law. Under international law, the conflict between South Sudan's Government forces and the SPLM/A-in-Opposition (SPLM/A-IO) is a non-international armed conflict in which both parties are bound by international humanitarian law. Government forces the Sudan People's Liberation Army (SPLA) and pro-government militias and the opposition forces, the SPLM/A-IO are obligated to observe Common Article 3 to the four Geneva Conventions of 1949, which sets forth minimum standards for the proper treatment of non-combatants, as well as Additional Protocol II relating to the protection of

victims of non- international armed conflicts.

In addition, domestic laws are also applicable, including provisions of the Transitional Constitution of South Sudan and relevant national criminal laws. The SPLA is specifically bound by the rules set forth in the SPLA Act of 2009, and in the SPLA Code of Conduct.

International Humanitarian Law

international humanitarian law regulates the conduct of parties to the armed conflict by protecting those who do not or no longer directly participate in hostilities and by regulating the means and methods of warfare with the aim of restricting the use of armed force “to the amount necessary to achieve the aim of the conflict, which – independently of the causes fought for – can only be to weaken the military potential of the enemy.

Each party to a non-international armed conflict, including armed opposition groups, is responsible for ensuring the full respect of applicable international humanitarian law.

Alongside applicable treaty provisions, the parties to South Sudan’s non-international armed conflict are also bound to comply with applicable customary international humanitarian law, including with the overarching IHL principles of distinction, proportionality, precaution, as well as the prohibition on unnecessary suffering.

Previous UN Action

Myanmar

World Food Program

The WFP supplies food to more than 85,000 people in the state of Rakhine (ongoing) as well as to those in IDP camps and refugee camps outside the country.

United Nations High Commissioner for Refugees

The UNHCR cares for an estimated 200,000 - 800,000 Rohingya living either as IDP’s or Refugees in other countries, mostly in Bangladesh. It rejected a plan proposed by Myanmar in 2012 to resettle the entire Rohingya population (IDP’s and non-displaced people) abroad. UNHCR aid workers were detained in Myanmar in June 2012 for “inciting riots”.

UN Human Rights Council (HRC)

The main UN treaty-based body dedicated to the protection of human rights has been constantly addressing the situation of human rights in Myanmar. In March 2017, before the rise of the tensions in Rakhine state, the Human Rights Council adopted Resolution 34/22. The most important provision of the latter is the creation of an Independent International Fact-Finding Mission on Myanmar, which has already started its work.

Fact-Finding Mission in Myanmar

Pursuant to Resolution 34/22 of the UN Human Rights Council, the mandate of that specialized mission encompasses the research and reporting on facts and circumstances regarding the alleged encroachment of human rights of ethnic and religious minorities residing in Rakhine state by officers of the Myanmar military and security forces. Among other, the Mission shall examine allegations on torture, cruel and inhumane treaty, arbitrary deprivation of life, enforced disappearances, rapes and other forms of sexual assaults, forced displacement and arbitrary detention. It has proceeded to an oral update during the 36th

session of HRC and to the submission of a comprehensive report during its 37th session. The Mission has already concluded visits in Bangladesh and Malaysia and, according to press releases issued, its findings are more than alarming. In the meantime, Myanmar has not yet granted permission to the Mission in order that the latter visit and conduct investigations in its territory.

Myanmar's Efforts

Since the violent attacks of 2012, Myanmar has been more willing to take action on the Rohingya issue. In this sense, two initiatives deserve attention:

- (i) creation of a national committee to investigate human rights violations;
- (ii) the Rakhine State Action Plan.

In an attempt to respond to international pressure on the 2012 and 2016 episodes, Myanmar established a “national level committee”, the Central Committee for Rakhine State Peace, Stability, and Development Implementation, to investigate conditions and allegations of human rights abuse in northern Rakhine state, the Rakhine Conflict Investigation Commission. Moreover, the government has also established the Myanmar National Human Rights Commission as an attempt to seek solutions.

As one of the Rakhine Conflict Investigation Commission's recommendations, the Rakhine State Action Plan is a comprehensive proposal to deal with this crisis. This action plan intends to achieve peace and security in Rakhine state, while addressing Rakhine Buddhists concerns and reducing foreign pressure. The draft is composed of six parts, covering the following issues:

- (1) Security, stability and rule of law;
- (2) Rehabilitation and reconstruction;
- (3) Permanent resettlement;
- (4) Citizenship verification;
- (5) Socio-economic development; and
- (6) Peaceful coexistence.

Sudan

Sudan hosted peace talks on conflicts in the Central Africa Republic and South Sudan, and continued participation in the Arab coalition fighting in Yemen. The US, which lifted economic sanctions in 2017, continued counter-terrorism cooperation and granted visas to the current and former heads of Sudan's draconian national security agency, responsible for torture and other abuses.

The EU continued to support controversial migration programs, widely criticized for encouraging abuses by security forces.

In July, the UN security council adopted plans to dramatically downsize UNAMID and limit the area of operations to Jebel Mara region. The downsizing limits the mission's operational area, but does not extinguish its responsibility for human rights monitoring and protection of civilians in the whole of Darfur. The mission is expected to draw down its presence and has yet to test the Sudanese government's willingness to allow it to return to its former areas of operation to try to fulfill these duties.

In September, the UN Human Rights Council adopted a resolution to continue the work of the Independent Expert on human rights in Sudan for another year, or until a country office of the Office of the High Commissioner for Human Rights is operational.

The UN Security Council failed to press Sudan to cooperate with the ICC in the surrender of the five fugitives sought on alleged Darfur crimes, despite having referred the situation to the ICC in 2005. The ICC first announced charges in 2007.

Treaties, Resolutions and Reports and Suggested Readings

Myanmar

In a resolution ([A/HRC/40/L.19](#)) on the **situation of human rights in Myanmar**, adopted by a vote of 37 in favor, three against and seven abstentions, the Council expresses grave concern at continuing reports of serious human rights violations and abuses in Myanmar, including sexual and gender-based violence and violations and abuses against children, in particular in Rakhine, Kachin and Shan States, and calls upon the Myanmar authorities, in particular the Myanmar military and security forces, to end immediately violence and all violations of international law in Myanmar, in particular in Rakhine, Kachin and Shan States.

International and regional human rights instruments to refugee rights:

Migrants, refugees and asylum-seekers' rights are protected by international law, regardless of how and why they arrive in a country. They have the same rights as all other human beings, plus special protections including:

- The Universal Declaration of Human Rights (Article 14), which states that everyone has the right to seek and enjoy asylum from persecution in other countries.
- The 1951 UN Refugee Convention, which protects refugees from being returned to countries where they risk being persecuted.
- The 1990 Migrant Workers Convention, which protects migrants and their families.

Regional human rights instruments to refugee rights:

- The OAU Convention, governing the specific aspects of refugee problems in Africa
- The Cartagena Declaration on Refugees.
- European Council Directive on Minimum Standards.

Universal Periodic Review <https://www.ohchr.org/EN/HRBodies/UPR/Pages/MMindex.aspx>

UN Fact-Finding Mission on Myanmar https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.docx

Special Procedures, Country-specific procedure

<https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/MM/Pages/SRMyanmar.aspx>

<http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=MMR>

Most recent Special Procedures' reports

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/72/382

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/67

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/361

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/71

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/70/412

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/28/72

<http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/69/398&Lang=E>
https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-64_en.doc

Most recent reports by the UN Secretary-General, the UN High Commissioner for Human Rights and Secretariat

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/18
<https://www.ohchr.org/Documents/Countries/MM/A-66-267.pdf>
<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/65/367&Lang=E>
<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/63/356&Lang=E>
<http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2006/117&Lang=E>

Most recent concluding observations, Committee on the Elimination of Discrimination against Women
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MMR/EP/CO/1&Lang=En

Committee on the Rights of the

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/MMR/CO/3-4&Lang=En

Sudan

In September 2018, the Human Rights Council adopted resolution [39/22](#), on ‘Technical assistance and capacity-building to improve human rights in the Sudan.’

Universal Periodic Review

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/SDindex.aspx>

Special Procedures, Country-specific procedure

<https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/SD/Pages/IESudan.aspx>
http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=SDN

Most recent Special Procedures' reports

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/71
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/63
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/65
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/48/Add.1
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/42/Add.1

Most recent reports by the UN Secretary-General, the UN High Commissioner for Human Rights and Secretariat

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/4/80&Lang=E>

Most recent concluding observations, Human Rights Committee

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SDN/CO/5&Lang=En

Committee on the Rights of Persons with Disabilities

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Committee on the Rights of the Child

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Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

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Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography

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Current Situation

Myanmar

Currently, there are approximately 1.1 million Rohingya residing within Myanmar's Rakhine State. This is an extremely impoverished region of the country where 78% of residents live below the poverty line. Following the 2012 violence that left Myanmar's Rohingya stateless, the government has neither allowed or facilitated the return of Rohingya to their homes, but has forced them to remain in poorly equipped and highly guarded IDP camps. As of November 2013, 140,000 Rohingya are estimated to reside within these camps. The conditions of these camps pose a humanitarian crisis. After a visit to the Rakhine State, the U.N Undersecretary General for Humanitarian Affairs stated : "I have seen many camps during my time as the (U.N. emergency relief coordinator), but the conditions in this camp rank among the worst". The Rohingya in these camps are unable to move freely and lack access to healthcare, food, education, employment, latrines, and clean drinking water. To compound this problem, many of these camps are built in areas prone to flooding.

The government routinely fails to deliver food rations and ignores pleas for additional assistance. Additionally, security forces restrict the access of humanitarian aid workers to these camps. As a result, many Rohingya are denied access to lifesaving medical treatment. For a period, Myanmar's government banned Doctors Without Borders from the country in retaliation for publicly speaking about treating Rohingya who were attacked. Many NGOs have received threats that have endangered the safety of aid workers. It should be noted, that IDP camps for displaced Rakhine individuals have working sanitation systems and stable food supplies.

To escape these conditions, tens of thousands of Rohingya take treacherous journeys by sea to neighboring countries such as Thailand, Bangladesh, and Malaysia where they are subject to human trafficking. The UNHCR reported that 150,000 Rohingya have fled the Rakhine state to the aforementioned countries since 2012.

The Rohingya also currently face discriminatory language in internal government reports that have been obtained by Fortify Rights. Furthermore, a leaked policy proposal suggested an assessment of the citizenship of Rohingya under the 1982 Citizenship Law; however, this would be restricted to only those Rohingya that registered themselves as Bengali. Those who refused would remain without citizenship and

moved to "temporary camps". This was seen as an affront to the cultural identity of the Rohingya, who view themselves as distinct from the Bengali.

In recent years, discriminatory laws that existed at the local level, such as the two-child policy and marriage restrictions, have been enacted at the national level. Laws have also been enforced to require local boards to approve any religious conversions and to ban interfaith marriages. The practice of polygamy, not uncommon amongst the Rohingya, was also forbidden. These series of laws, signed by President Thein Sein, represent a package called the "Race and Religion Protection Laws".

With violence occurring periodically in various townships, local police refuse to intervene and protect the Rohingya. The international media has had extremely limited access to IDP camps, while state sponsored news outlets continue to deny any evidence of violence against the Rohingya.

As stated above, the dire condition of the IDP camps coupled with systemic persecution have encouraged tens of thousands to flee. This has led to many Rohingya being forced into human trafficking and the global slave trade. Even if they resist being sold into slavery, the Rohingya that manage to flee usually are not granted legal rights and are not permitted to seek work. This situation has led to growing concerns that the Rohingya may fall under the influence of radical Islamic terror organizations; however, there have presently been no proven connections to validate this fear.

Relief seemed to be close for the Rohingya, when in 2015 the NLD won a landslide election in parliament. Aung San Suu Kyi headed this new coalition government and appointed a cabinet with ethnic representatives. However, in order to consolidate support amongst Buddhist nationals, the NLD has preferred to not take any decisive action regarding the Rohingya. In August 2016, a commission led by former UN Secretary-General Kofi Annan was created, to discuss options for resolving ethnic strife in Rakhine state. The advisory committee, whose final report is yet to come out, is intended to make recommendations to reduce communal tension and support much-needed development efforts in Rakhine state.

2017 Insurgency Attacks and Reactionary Violence

In August 2017, an insurgency group called the Arakan Rohingya Salvation Army (or ARSA) launched a series of coordinated attacks on a number of police and border security outposts in western Myanmar. 71 were reported dead in the fighting, including more than a dozen members of Myanmar's violent response of Myanmar military operations in the wake of previous attacks in 2016, the insurgency attacks demonstrated the escalation of tensions and radicalization on both sides of the conflict. Despite international urges to practice restraint in response to the attacks, the government under current leader and Nobel Laureate Aung San Suu Kyi announced the beginning of "clearance operations" in the Rakhine state. Suu Kyi also claimed that the attacks were meant to punctuate the final report of Annan's Advisory Commission on the Rakhine state.

Sudan

The Sudanese people have been protesting since December 2018 when they took to the streets to express their anger over rising costs of living and the decline of political freedom. Their pressure worked and on 11 April, Sudan's military overthrew the National Congress Party (NCP) government, arresting President Omar al-Bashir and other senior party leaders.

But while al-Bashir's 30-year rule has come to an end, the human rights situation in Sudan, which has deteriorated dramatically since the beginning of the protests, continues to worsen. Many of the protestors calling for peace, justice, rule of law and economic reforms have paid the price of change with their lives and liberty.

The Sudanese security forces brutally suppressed the protests by unlawfully killing protestors, mercilessly beating them in the streets, and unlawfully detaining and subjecting them to torture and other ill-treatment. Security forces stormed hospitals firing live ammunition and tear gas at patients and medical staff attempting to arrest injured protestors, in an outrageous violation of international law.

Al-Bashir's ousting offers an unprecedented opportunity to entrench human rights in Sudan's transition.

So far, Sudan's authorities have terminated the state of emergency announced on 22 February, released protestors from jail, and promised to try security officers who killed protestors. But much more must be done to facilitate a peaceful transition, accountability and a future Sudan that protects, respects and fulfils human rights.

Future Priorities

Myanmar

Deal signed on the return of Rohingya Muslims

With at least 623,000 Rohingya being now refugees in Bangladesh, since the last violence wave that stroke the West of Myanmar in August, the agreement signed between the two involving states raises questions. According to the agreement the two countries are to work together in order to achieve a viable resolution of the refugee crisis that has galloped in the region.

The deal was signed on the 23rd of November and the repatriation was scheduled to take place in two months. It was signed after the meeting of Aung San Suu Kwi, the de facto leader of Myanmar and Abul Hassan Mahmood, the foreign minister of Bangladesh in Naypyidaw. As it was stated, the deal was based on a 1992/1993 repatriation pact between Myanmar and Bangladesh that was signed after a previous violence outbreak that had taken place.

Regarding the deal, Myanmar agreed that there should be no restriction regarding the repatriation number. There should be no limit in the number of Rohingya that will be allowed to come back to Myanmar. Everyone that wishes to, can return and as the agreement describes, there should be no prosecution of refugees unless they had been involved with terrorists before leaving the country. Myanmar is supposed to work towards incorporating the refugees. For that to happen, the government has claimed that the temporary camps will be an "as short as possible" solution towards a repatriation. But this repatriation will always need to take place considering the existing laws and regulations of the state. Furthermore, the two countries agreed on accepting assistance by the UNHCR regarding the repatriation process.

Stabilization of the area

Myanmar has a long history of communal distrust. Until today the government does not seem to take active steps towards resolving the deep causes of the problems. On the contrary it seems like often the tension has been supported and built up by the state. How many refugees would willingly choose to return after the experience of the atrocities that drove them away in the first place?

While the situation is being escalatory for long, the deal between Myanmar and Bangladesh puts another pin on the future map of Rohingya. Many have argued that the deal is essentially deriving from the need to ease the international pressure that has been put on Myanmar regarding the recent crisis outburst. Meanwhile, in late November the Burmese authorities deny the allegations of atrocities that drove more than 600,000 Rohingya to flee their homes.

Violations of Human Rights in Myanmar

There are systematic violations of civil, political, economic, social, and cultural of human rights in the Rakhine State of Myanmar are as follows:

- rape and other forms of sexual violence,
- extra-judicial killings,
- forced labor and child labor,
- destruction of livelihoods,
- confiscations of land,
- the continuing use of torture,
- renewed instances of political arrests and continuing detentions,
- forced relocation,
- discrimination and persecution,
- human trafficking,
- denial of freedom of assembly, association, expression, and movement,
- lack of independence of the judiciary,
- unsatisfactory conditions of detention,
- systematic use of child soldiers,
- violations of the right to an adequate standard of living, etc.

Sudan

Human Rights Benchmarks for Sudan:

1. Respect for the Right to Life by Ending Attacks on Civilians and Indiscriminate Bombing

Sudan should cease all unlawful attacks on civilians, and permit independent monitoring and reporting by relevant agencies, including international human rights organizations and independent media.

2. Steps toward Accountability for the Gravest Crimes

Sudan should take steps to cooperate with the ICC, including through the surrender of suspects, and make efforts to genuinely investigate and prosecute those responsible for human rights abuses in conflict and non-conflict settings.

3. Allow Sustained, Unimpeded Humanitarian Access to All Conflict-Affected Areas

Sudan should grant sustained and unimpeded access to all conflict locations in Darfur, Southern Kordofan, and Blue Nile and allow independent impartial humanitarian organizations to operate without arbitrary restrictions and onerous bureaucratic requirements.

4. Release Arbitrarily Held Detainees, and End Torture and Ill-Treatment

The National Intelligence and Security Service (NISS) regularly detains activists, students, lawyers, doctors, community leaders, human rights defenders, and perceived government critics. It often holds detainees for long periods, without access to a lawyer or family visits.

5. End Excessive Force against Peaceful Protesters

Sudanese forces continue to use excessive force – beatings, tear-gas, rubber bullets, and live ammunition – to disperse peaceful protests over a range of social grievances. This has resulted in hundreds of deaths and injuries in recent years. In September 2013 alone, more than 170 protesters were killed, mostly by bullets to the head or torso by men believed to be security forces. In 2005, government forces killed 21 protesters in Port Sudan.

6. Respect for Freedoms of Association and Expression

Authorities restrict civil society by targeting activists who criticize the government or support international justice, and by leveling bogus charges of espionage and crimes against the state against them. These practices should end immediately

7. Allow Human Rights Monitoring, Cooperate with International Bodies and Institutions

A key test will be whether the government facilitates the African Union/UN Hybrid operation in Darfur, UNAMID's operations, in particular by granting human rights monitors' access to conflict-affected areas, and responding positively to requests from other international organizations for access to Sudan.

8. Legislative Reforms

Sudan should take steps to reform its most repressive laws. The National Security Act of 2010 allows national security agents to detain individuals for more than four-and-a-half months without judicial review, well beyond the international standard, which requires detainees be brought promptly before a judicial authority. Even in conflict or a state of emergency, 'prompt' should be no more than a matter of days. A patchwork of immunities in various laws shields security forces from prosecution for human rights violations and all such immunities should be repealed. Immunity for the Rapid Support Forces is particularly problematic in light of their documented record of abuse, including sexual violence.

Conclusion

For several decades, Rohingya Muslims and other minorities have seen discrimination and violence directed at them, preventing them from fully enjoying their human rights and fundamental freedoms. It is critical to examine the variety of solutions and answers that could possibly be proposed and implemented. Nonetheless, as it has been thoroughly presented in the previous pages, the threats posed to the very essence of fundamental principles of humanity and international community by the situations in Myanmar and Sudan are immense and they spread out in a long period of time.

Guiding Questions

- Q1. In tracing back the history of violence in Burma, when is there a clear distinction between violence and ethnic-based violence?
- Q2. Do the actions against the Rohingya constitute genocide?
- Q3. How can Myanmar be held accountable under ICC for the mass genocide since they didn't sign the Rome Charter?
- Q4. How to prevent Myanmar from humanitarian access and media access to ensure future safety of Rohingya citizen without interfering with the current government legislation of Myanmar?

- Q5. What are the various steps that can be taken to prevent The Arakan Rohingya Salvation Army (ARSA) from becoming an extremist organization and going rogue?
- Q6. What are the possible methods to dissuade Sudan from committing further human rights violations against its people?
- Q7. What are the possible methods to encourage peaceful co-existence in the future between the Rohingya and Myanmar's government?
- Q8. What immediate actions can be undertaken with regard to the dreadful humanitarian situation of the Sudanese people, with raging famine and massive displacements?
- Q9. In a post-conflict situation, how can the UN help Sudan to keep a sustainable political environment?
- Q10. What can be done to coordinate UNMISS and RPF actions without overlapping mandates to effectively achieve peace in Sudan?

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