

Statement: On the Dismissal of the Criminal Complaint Filed in Germany against Myanmar Generals and Others for Genocide, War Crimes, and Crimes Against Humanity

November 30, 2023

In January 2023, Fortify Rights and 16 individual complainants from Myanmar filed a criminal complaint with the Federal Public Prosecutor General of Germany under the principle of universal jurisdiction against senior Myanmar military generals and others for genocide, war crimes, and crimes against humanity. The 215-page complaint and more than 1,000 pages of annexes provided evidence to assist the Office of the Federal Prosecutor to investigate and prosecute those responsible for committing genocide, crimes against humanity, and war crimes against the Rohingya in 2016 and 2017, as well as crimes against humanity related to the military junta's *coup d'état* launched on February 1, 2021.

On October 11, 2023, the Federal Public Prosecutor informed Fortify Rights that it would not be initiating an investigation into the crimes alleged in the complaint. Fortify Rights respects the Federal Public Prosecutor's decision but also underscores the urgent need for greater accountability for ongoing genocide, crimes against humanity, and war crimes in Myanmar.

The Federal Public Prosecutor's notice identified two main reasons for not initiating the investigation, neither of which relate to the strength of the evidence submitted. The Federal Public Prosecutor primarily referred to its discretion over prosecuting offenses under the German Code of Crimes Against International Law. Specifically, under the German Code of Criminal Procedure, section 153f, paragraph 1, the Prosecutor may decline to move forward if the accused is not present in Germany and is not expected to be present in Germany, which the Federal Public Prosecutor found to be the case here. Furthermore, the Federal Public Prosecutor stated that an investigation by German law enforcement agencies would not provide any additional benefit beyond investigations that are already underway, noting in particular the extensive activities of the Independent Investigative Mechanism for Myanmar ("IIMM") in investigating and collecting evidence of crimes against the Rohingya and against the rest of the civilian population in Myanmar.

The Public Prosecutor General noted that Germany currently assists the IIMM's investigations by implementing requests from the IIMM for assistance by, among other things, questioning witnesses and that Germany thereby contributes to the IIMM's efforts to secure evidence.

In its complaint, Fortify Rights and 16 individual survivors of atrocity crimes provided evidence of crimes committed during the [Rohingya genocide and Myanmar military-led “clearance operations” in Rakhine State in 2016 and 2017](#), and [post-coup atrocities](#) in states and regions throughout the country in 2021 and 2022. The crimes include killings, rape, torture, imprisonment, disappearances, persecution, and other acts amounting to genocide, crimes against humanity, and war crimes. The complaint included substantial evidence showing that senior Myanmar military officials exercised superior responsibility over subordinates who committed crimes, knew about their subordinates’ crimes, and failed to act to prevent the crimes from happening and punish the perpetrators.

With respect to the substantive allegations in the complaint, the Federal Public Prosecutor refrained from examining whether the evidence in the complaint established the requisite elements of genocide, war crimes, and crimes against humanity. Moreover, the Federal Public Prosecutor did not consider whether the named Myanmar officials did or would enjoy comprehensive personal immunity, which would preclude prosecution by national courts.

Fortify Rights and the complainants, who represented several of Myanmar’s diverse ethnic groups, requested the Federal Public Prosecutor to open an investigation into specific military officials and others who, according to evidence, are liable for mass atrocity crimes. The complaint also requested that the German authorities open a “structural investigation” into the situation in Myanmar, which would uncover numerous other suspects and crimes in various locations and affecting other ethnic groups not otherwise covered by the complaint.

If the Federal Public Prosecutor had opened an investigation and ultimately brought a case, the proceeding would have been the first prosecution of the crimes committed by the military against the Rohingya in 2016 and 2017 and against civilians nationwide following the *coup d’état* on February 1, 2021. These crimes continue today.

There are limited means of appealing the Federal Public Prosecutor’s decision not to open an investigation, and, under the circumstances, Fortify Rights respects the discretion of the German Prosecutor in this regard. Fortify Rights appreciates the Federal Public Prosecutor’s attention to the complaint and its measured response. Fortify Rights is grateful for the German government’s continued efforts to assist the IIMM’s efforts to collect, develop, and preserve evidence of the Myanmar military junta’s ongoing atrocity crimes so that the perpetrators of these crimes will eventually be held to account. We remain confident that, if and when circumstances change such that Germany is in a position to apprehend and prosecute these criminals, it will do so.

Since its founding in 2013, Fortify Rights has been at the forefront of drawing attention to the Myanmar military’s longstanding impunity for international crimes, including genocide, war crimes, and crimes against humanity. The junta’s crimes have victimized millions of innocent civilians, and atrocities to this day continue to be perpetrated at its hands. Thus, U.N. Member States must take active measures, including through intergovernmental coordination, to stop these brutal crimes, apprehend those responsible, and hold them to account. Fortify Rights is determined to pursue every means possible to ensure this happens swiftly and efficiently.

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