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## Human Rights Council

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Agenda item 4

### Human rights situations that require the Council's attention

## **Written statement\* submitted by Human Rights Now, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2019]

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\* Issued as received, in the language(s) of submission only.

## **The Government of Myanmar Must End the Grave Human Rights Violations against Minorities and Ensure Accountability.**

### **1. The Dire Human Rights Situation in Myanmar**

Serious human rights problems remain unresolved in Myanmar despite widespread calls among UN bodies and the international community to the government. This includes meeting the humanitarian needs of displaced populations, ensuring a safe and rights-respecting environment in Rakhine state for repatriated Rohingya refugees, ensuring accountability for violations by the Myanmar military (Tatmadaw) and persons acting under its direction, and ending the punishment of journalists and activists which silence their legitimate activities.

Human Rights Now (HRN), a Tokyo-based international human rights NGO, shares the deep concern of the international community towards the culture of impunity and attacks on civic space currently displayed in Myanmar, and we call on the government of Myanmar to protect displaced populations, hold perpetrators accountable for serious violations, and respect the freedom of expression of journalist and activists.

### **2. The Vulnerable Situation for Displaced Rohingya and Kachin**

#### **a) Urgent Needs of Rohingya Refugees**

Since August 2017, over 725,000 Rohingya have fled into Bangladesh from violence in Rakhine state under the Tatmadaw's clearance operations, which led to at least 6,700 Rohingya deaths (the most conservative estimate) in the first month of the operation according to refugee interviews.<sup>1</sup> Refugees in Cox's Bazar camps, which currently hold over 900,000 Rohingya refugees suffer from significant funding shortfalls, remain vulnerable to poor conditions, overcrowding, restrictions on free movement, lack of access to justice, gaps in education programs and protection services, and unequal distribution of health services.<sup>2</sup>

The UN High Commissioner for Refugees has called for voluntary repatriations and warned against forced returns, which camp authorities state they are respecting.<sup>3</sup> Rohingya refugees have consistently called for assurances of security and respect of their rights before agreeing to repatriation.<sup>4</sup> Despite government statements, interviews with Rohingya residents still in Rakhine state indicate that effective measures to protect Rohingya rights and safety are not being implemented yet.<sup>5</sup>

#### **b) The Needs of IDPs and Civilians in Conflict Zones**

Over 244,000 IDPs remain in camps or camp-like situations in Kachin, Shan, Rakhine, and Kayin states, at least half of which are children.<sup>6</sup> A further 696,000 non-displaced persons in Myanmar

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1 MSF, 12 Dec 2017, <https://www.msf.org/myanmarbangladesh-msf-surveys-estimate-least-6700-rohingya-were-killed-during-attacks-myanmar>.

2 Humanitarian Response, 10 Jan. 2019, <https://www.humanitarianresponse.info/en/operations/bangladesh>.

3 UN News, 16 Nov. 2018, <https://news.un.org/en/story/2018/11/1025901>.

4 Id.

5 Beake, 28 Dec. 2018, <https://www.bbc.com/news/world-asia-46312889>

6 MHCT, Dec. 2018,

[https://reliefweb.int/sites/reliefweb.int/files/resources/2019%20Myanmar%20HNO\\_FINAL.PDF](https://reliefweb.int/sites/reliefweb.int/files/resources/2019%20Myanmar%20HNO_FINAL.PDF).

(470,000 in Rakhine state) need humanitarian assistance.<sup>7</sup> An estimated 600,000 Rohingya also remain in Rakhine state and are vulnerable to restrictions on movement, continuing discrimination, and potential outbreaks of new violence.<sup>8</sup>

In January 2019, around 6,000 people were newly displaced in Rakhine state due to a Tatmadaw crackdown against the Arakan Army, a Buddhist ethnic Arakan group, after it attacked police forces on January 4.<sup>9</sup> On January 10 the government of Myanmar closed some conflict areas in Rakhine State to humanitarian access, leading the Special Rapporteur for Myanmar Yanghee Lee to respond that “it is vital that assistance is able to reach those who have fled violence, and the Government must immediately reverse its decision not to allow access to all humanitarian organisations,” reminding authorities that “blocking humanitarian access is a serious violation of international humanitarian law.”<sup>10</sup>

From 18 to 29 January, the UN Special Envoy to Myanmar, Christine Schraner Burgener, visited Myanmar and visited several Rohingya, Hindu, and Arakan IDP camps in Rakhine state.<sup>11</sup> Her visit focused on ending camp restrictions on free movement stating, “Freedom of movement is key for all people and their access to livelihoods.”<sup>12</sup>

In Kachin state, despite a recent ceasefire, 168,000 people are in need of humanitarian aid, including 97,000 IDPs, as well as 48,000 in need in northern Shan state due to past conflict in these areas.<sup>13</sup>

### 3. Continuing Impunity and the Need for Accountability for Tatmadaw Violations

The Independent FFM report,<sup>14</sup> consistent with journalist and other sources including HRN’s own investigative report,<sup>15</sup> reported credible testimony of widespread and systematic violations committed against Rohingya civilians by the Tatmadaw since August 2017.

However, there has been no serious accountability for these violations. Only a few low-ranking soldiers received short sentences for indisputable crimes, such as the execution of 10 Rohingya reported by Reuters, creating significant impunity generally.

Due to the demonstrated inability or unwillingness of the Myanmar government to ensure serious accountability for these violations, the FFM stated that the international community must take the initiative to ensure accountability. It recommended the Security Council refer the situation to the International Criminal Court or create an ad hoc international criminal tribunal.<sup>16</sup>

7 Id.

8 UN News, 9 Jan. 2019, <https://news.un.org/en/story/2019/01/1030072>

9 RFA, 23 Jan. 2019, <https://www.rfa.org/english/news/myanmar/un-myanmar-envoy-hears-plaint-of-rohingya-01232019162916.html>

10 OHCHR, 18 Jan. 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24089>.

11 UNIC Yangon, 30 Jan 2019, <http://yangon.sites.unicnetwork.org/2019/01/30/on-behalf-of-the-office-of-the-secretary-generals-special-envoy-on-myanmar/>.

12 Id.

13 MHCT, *above*, note 6.

14 IIFFM on Myanmar, 18 Sept. 2018,

<https://www.ohchr.org/en/hrbodies/hrc/myanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>.

15 HRN, 18 Apr. 2018, <http://hrm.or.jp/eng/news/2018/04/12/rohingya-camps-report/>

16 IIFFM on Myanmar, *above*, note 14, para. 105.

#### 4. Threats to Myanmar's Civic Space

Activists and journalists in Myanmar have been subjected to criminal punishment for their statements regarding Tatmadaw violations, which violates their right to freedom of expression, silences legitimate criticism, and threatens civic space in Myanmar.

##### a) Three Kachin Activists Imprisoned for Defamation

On 7 December 2018, Nang Pu, Zau Jet, and Lum Zawng, a former student of Peace Law Academy which HRN supported from 2007 to 2013, were convicted of criminal defamation against the Tatmadaw and received six month sentences after calling on it in April 2018 to end the Kachin conflict and allow safe passage out for about 2000 Kachin civilians trapped in a conflict zone at the time.<sup>17</sup> Special Rapporteur Lee stated that it is “wholly unacceptable” that the three were “sent to jail merely for making statements about the military’s actions” and that she is “seriously concerned by the continual shrinking of the civic space in Myanmar, and the culture of fear that now exists.”<sup>18</sup>

##### b) Convicted Myanmar Journalists Have Lost Their Latest Appeal

On 11 January 2019, the Reuters journalists Wa Lone and Kyaw Soe Oo lost their appeal to their September 2018 conviction to a seven year sentence for allegedly handling state secrets, despite evidence of a police set-up and the burden of proof being inappropriately placed on the defendants.<sup>19</sup> At the time of their arrest, the journalists had just reported on Rohingya executions under the Tatmadaw’s direction, establishing a link between their report and punishment. The case may still be appealed to the Supreme Court.

Cases such as these indicate a shrinking civic space in Myanmar as activists and journalists are silenced and intimidated out of fear of criminal punishment.

#### 5. The Government of Myanmar Must End the Grave Human Rights Violations and Impunity in Myanmar

HRN shares the grave concern of the international community with the serious human rights abuses that have occurred and continue to occur due to actions of the Myanmar government and Tatmadaw. We call for immediate and effective measures to protect displaced Rohingya, Kachin, and other persons; ensure accountability for gross violations of international criminal law; and defend civic space in Myanmar. To these ends, HRN makes the following recommendations.

To the government of Myanmar:

- Respect the freedom of movement and other rights of IDPs.
- Ensure access to humanitarian assistance to all IDPs.
- Follow the recommendations of the Independent FFM report, the Advisory Commission on Rakhine State’s report,<sup>20</sup> and reports by special rapporteurs to Myanmar.
- Take necessary reforms to ensure that members of the Tatmadaw and persons acting under its direction may be held accountable for serious violations.

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17 Myanmar Times, 9 Dec. 2018, <https://www.mmtimes.com/news/kachin-activists-imprisoned-peaceful-protest.html>

18 OHCHR, 11 Dec. 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24007>.

19 Thu Thu Aung & McPherson, Reuters, 11 Jan. 2019, <https://www.reuters.com/article/us-myanmar-journalists/myanmar-court-rejects-appeal-by-jailed-reuters-reporters-idUSKCN1P50HL>.

20 ACRS, Aug. 2017, <http://www.rakhinecommission.org/>.

- Release activists and journalists improperly arrested for their statements against the Tatmadaw, and take measures to prevent the use of defamation laws, the Official Secrets Act, or other laws to punish activist and journalist speech.

To the Security Council:

- Refer the human rights situation in Rakhine, Kachin, and other states where serious violations have occurred to the International Criminal Court or establish an ad hoc court to ensure accountability.

To this Council:

- Continue to support the independent mechanism to facilitate accountability and future prosecutions for serious violations in Rakhine, Kachin, and other states.

To the international community:

- Increase humanitarian assistance to IDPs in Myanmar and Rohingya and other refugees in camps in Cox's Bazar and other locations.
- Apply arms sanctions and diplomatic and other forms of pressure on the Myanmar government to persuade it to ensure accountability for gross human rights violations, and support the independent accountability mechanism.

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