



**Fortify Rights Testimony Before the Tom Lantos Human Rights Commission**

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**“The Human Rights of the Rohingya People”**

Chairperson McGovern, Chairperson Hultgren, distinguished members of the commission, on behalf of Fortify Rights and our partners working for human rights in Southeast Asia, thank you for organizing this hearing on the human rights situation of Rohingya in Myanmar (Burma). We thank you for your continued attention and leadership on these and other grave human rights issues.

Fortify Rights is an independent, non-profit, non-governmental human rights organization working to ensure and defend human rights for all. We investigate human rights violations, engage stakeholders, and strengthen initiatives led by human rights defenders and affected communities. We have reported extensively on human rights in Myanmar.

This hearing comes at a critical time. A year ago, the U.S. and others praised political reforms in Myanmar and the election of a civilian government led by Aung San Suu Kyi and the National League for Democracy. Today, the human rights situation has worsened considerably in various parts of the country. Since October, Myanmar state security forces commenced a systematic attack on Rohingya men, women, and children in Rakhine State. Following allegations of mass atrocities, the government appointed a commission to investigate the situation, as did the military and police, but these bodies lacked independence and credibility and have been unwilling and unable to properly address the crimes that have taken place.

In recent days and weeks, the U.N. High Commissioner for Human Rights and the U.N. Special Rapporteur on human rights in Myanmar have each called for the establishment of a U.N.-mandated Commission of Inquiry to investigate possible

crimes against humanity in Rakhine State. U.N. Human Rights Council member states, Nobel laureates, civil-society organizations in Myanmar, ethnic Rohingya organizations, and international human rights organizations have echoed this call.

Yesterday, European Union member states in Geneva submitted an annual resolution on Myanmar to be voted on at the current 34<sup>th</sup> session of the Human Rights Council. It includes a call for the Human Rights Council to “dispatch urgently an independent international fact-finding mission” to Myanmar to investigate violations in Rakhine State “with a view to ensure full accountability for perpetrators and justice for victims.”

It is critical that the international community supports this resolution. There is still a risk that the resolution could fail to mandate a properly resourced body with sufficient liberty to conduct a comprehensive investigation into all potential violations of international criminal law in Rakhine State. That would be a profound failure.

The United States is a highly influential actor in Myanmar. We believe a Commission of Inquiry or similar mechanism will bolster stability in Aung San Suu Kyi’s still fledgling administration, strengthen the economic potential of Myanmar, stem refugee outflows, and help end military impunity. We believe that a robust commission would also deter additional atrocity crimes not only in Rakhine State but also in other ethnic states, such as Kachin and Shan states, where the military has perpetrated international crimes with impunity as well.

Distinguished members of the commission, it is imperative that the international community addresses the atrocity crimes taking place in Myanmar with urgency. To date, we have seen the same diplomatic maneuvering that has been the hallmark of past failures to respond to mass atrocities. We must not let such maneuvering undermine the process or the outcome with regard to the resolution at the Human Rights Council.

We sincerely hope this hearing will prompt timely and decisive action from members of Congress and President Trump’s administration to support calls for a UN-mandated inquiry with a strong mandate to address the grave violations in Rakhine State.

### **Recent Human Rights Violations in Northern Rakhine State**

On October 9, 2016, Rohingya militants, reportedly armed with mostly sticks and knives, attacked Myanmar border police outposts in northern Rakhine State, killing nine officers and capturing weapons and ammunition.<sup>1</sup> Further attacks occurred the

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<sup>1</sup> “Myanmar: Protect Civilians in Rakhine State, Investigate Fatal Shootings,” Fortify Rights, news release, October 12, 2016, <http://www.fortifyrights.org/publication-20161012.html> (accessed

following month.<sup>2</sup> Myanmar security forces responded by carrying out “clearance operations” in the region, ostensibly to capture, kill, or dislodge those responsible for the October attacks.<sup>3</sup>

Myanmar authorities promptly denied access to affected areas for aid workers, journalists, and monitors and effectively forced pre-existing aid programs to shut down while also denying emergency aid to the newly displaced.

An investigation team from Fortify Rights, including myself, traveled to the Myanmar-Bangladesh border area in late 2016. We conducted more than 70 interviews with Rohingya men and women—mostly new arrivals. We also spoke with U.N. agencies, Bangladeshi medical professionals, and international aid workers.

Our documentation focused primarily on human rights violations perpetrated by the Myanmar Army since October 9, 2016 in Maungdaw Township. We collected in-depth eyewitness testimony from several villages where the military has been operational since October 9, documenting what appears to have been a coordinated and systematic attack on the civilian population by the Myanmar Army and state security forces beginning on October 9.

Our findings are horrific. State security forces raped and killed Rohingya civilians, including infants and children, looted property, and razed entire villages, including religious structures and food stocks.<sup>4</sup> We documented situations of mass gang-rape of women and girls, and we have reason to believe that there are a significant number of unreported rape cases.<sup>5</sup> Army personnel opened fire on unarmed civilians with live ammunition from land and sky.<sup>6</sup> Soldiers slit men’s throats and burned people alive.<sup>7</sup> The military arrested men and boys en masse, and the well being and whereabouts of those arrested remains unknown.<sup>8</sup> The authorities also

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<sup>2</sup> International Crisis Group, *Myanmar: A New Muslim Insurgency in Rakhine State*, December 15, 2016, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state> (accessed March 14, 2017).

<sup>3</sup> “70 days since the outbreak of Maungdaw armed attacks,” *Global New Light of Myanmar*, December 28, 2016, <http://www.globalnewlightofmyanmar.com/70-days-since-the-outbreak-of-maungdaw-armed-attacks/> (accessed March 14, 2017).

<sup>4</sup> Fortify Rights interviews with survivors and eyewitnesses, Cox’s Bazar, Bangladesh, December 2016. See, also, “Myanmar: Protect Civilians in Rakhine State, Investigate Fatal Shootings,” *Fortify Rights*; Matthew Smith, “Bringing Burma Back From the Brink,” *Wall Street Journal*, February 15, 2017, <https://www.wsj.com/articles/bringing-burma-back-from-the-brink-1487181031> (accessed March 14, 2017); Puttanee Kangkun, “The Rohingya Are Ready to Talk About the Atrocities in Burma,” *Wall Street Journal*, January 9, 2017, <https://www.wsj.com/articles/the-rohingya-are-ready-to-talk-about-the-atrocities-in-burma-1483983264> (accessed March 14, 2017).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

denied directly affected civilian populations, including internally displaced persons, access to humanitarian aid.<sup>9</sup> Free and unfettered access is denied to date.

State security forces carried out these violations in a consistent manner in disparate locations, indicating the systematic nature of the attacks. Fortify Rights believes this indicates that the soldiers' actions were not spontaneous and were likely based on guidance or orders.

Human Rights Watch analyzed satellite imagery of the region and reported that more than 1,500 Rohingya homes and other structures were systematically destroyed in the two months following the October attacks.<sup>10</sup> The images place the military at the scene of systematic arson attacks and indicate its westward advancement, debunking the government's implausible claim that the Rohingya burned down their own homes.<sup>11</sup> Fortify Rights documented consistent eyewitness testimony detailing the systematic manner in which the army razed villages.

According to the U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA), an estimated 94,500 people have been displaced in northern Rakhine State since October, including more than 74,500 men, women, and children who fled to neighboring Bangladesh.<sup>12</sup> In December, Fortify Rights located communities of new arrivals in Bangladesh seeking refuge in forested enclaves along the border with no access to emergency humanitarian aid.

On February 3, the U.N. Office of the High Commissioner for Human Rights (OHCHR) published a detailed "flash report," describing human rights violations perpetrated since October 9 by Myanmar Army soldiers, police officers, border guard police officers, and ethnic Rakhine civilians operating alongside security forces.<sup>13</sup> The report was based on 220 interviews conducted in Bangladesh with Rohingya survivors and witnesses of human rights violations in Myanmar. OHCHR's findings are consistent with those of Fortify Rights. Forty-seven percent of the interviewees

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<sup>9</sup> Ibid.

<sup>10</sup> See "Burma: Military Burned Villages in Rakhine State," Human Rights Watch, news release, December 13, 2016, <https://www.hrw.org/news/2016/12/13/burma-military-burned-villages-rakhine-state> (accessed March 14, 2017). Amnesty International conducted a similar analysis, identifying 1,250 structures that had been destroyed across 125 square kilometers. Amnesty International, "We Are at the Breaking Point" Rohingya: Persecuted in Myanmar, Neglected in Bangladesh, December 16, 2016, [https://www.amnestyusa.org/sites/default/files/amnesty\\_myanmar\\_bangladesh\\_report.pdf](https://www.amnestyusa.org/sites/default/files/amnesty_myanmar_bangladesh_report.pdf) (accessed March 16, 2017), p. 51-60.

<sup>11</sup> Ibid. "Burma: Military Burned Villages in Rakhine State," Human Rights Watch.

<sup>12</sup> U.N. Office for the Coordination of Humanitarian Affairs, "Asia and the Pacific: Weekly Regional Humanitarian Snapshot, February 28 – March 6, 2017," March 6, 2017, [http://reliefweb.int/sites/reliefweb.int/files/resources/ROAP\\_Snapshot\\_170306.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/ROAP_Snapshot_170306.pdf) (accessed March 14, 2017).

<sup>13</sup> U.N. Office of the High Commissioner for Human Rights, *Flash Report: Report of OHCHR Mission to Bangladesh*, February 3, 2017, <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf> (accessed March 14, 2017).

reported that security forces killed a family member, and 52 percent of female interviewees reported being raped or sexually assaulted by security forces.<sup>14</sup> OHCHR concluded that attacks against the Rohingya were widespread and systematic and likely constitute crimes against humanity.<sup>15</sup>

Reporting to the U.N. Human Rights Council on March 13, U.N. Special Rapporteur Yanghee Lee reported her own findings, describing grave violations by state security forces, including the “slitting of throats, indiscriminate shootings, setting alight houses with people tied up inside and throwing very young children into the fire, as well as gang rapes and other sexual violence.”<sup>16</sup>

### **Myanmar’s Failure to Investigate and Remedy Human Rights Violations in Rakhine State**

Since the October 2016 attacks in Rakhine State, the Myanmar military and civilian government have roundly denied allegations of human rights violations. Myanmar state-run media claimed international journalists and human rights groups were working “hand in glove” with terrorists and alluded to Rohingya as a “thorn” that “has to be removed,” and as “detestable human fleas.”<sup>17</sup> This is unarguably a genocidal discourse.<sup>18</sup> Moreover, offices led by Aung San Suu Kyi alleged “Fake Rape” and routinely denied allegations of rights violations.<sup>19</sup>

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<sup>14</sup> Ibid. at p. 9-10.

<sup>15</sup> Ibid. at p. 42

<sup>16</sup> Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar at the 34<sup>th</sup> session of the Human Rights Council, March 13, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21355&LangID=E#sthash.WGHiMccm.3CqOAc0N.dpuf> (accessed March 14, 2017); See, also, the Special Rapporteur’s full report. Report of the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/34/67, March 1, 2017, p. 18, [http://yangon.sites.unicnetwork.org/files/2017/03/A\\_HRC\\_34\\_67\\_EN.pdf](http://yangon.sites.unicnetwork.org/files/2017/03/A_HRC_34_67_EN.pdf) (accessed March 14, 2017).

<sup>17</sup> Khin Maung Oo, “A Flea Cannot Make a Whirl of Dust, But—,” *Global New Light of Myanmar*, November 26, 2016, <http://www.globalnewlightofmyanmar.com/a-flea-cannot-make-a-whirl-of-dust-but/> (accessed March 14, 2017); State-run media and the Myanmar Ministry of Information also said that the media “intentionally fabricated” allegations of human rights violations “in collusion with terrorist groups.” “Commentary: Shwe Maung Fails to Confess the Truth About Rakhine,” Myanmar Ministry of Information, November 3, 2016, <http://www.moi.gov.mm/moi:eng/?q=news/4/11/2016/id-9039> (accessed March 14, 2017).

<sup>18</sup> Matthew Smith, “Is Genocide Unfolding in Myanmar?,” *CNN*, December 6, 2016, <http://www.cnn.com/2016/12/05/opinions/rakhine-state-rohingya-genocide-opinion/> (accessed March 14, 2017).

<sup>19</sup> See Patrick Winn, “Myanmar’s Army is Tormenting Muslims with a Brutal Rape Campaign,” *PRI*, February 7, 2017, <https://www.pri.org/stories/2017-02-07/myanmar-s-army-tormenting-muslims-brutal-rape-campaign> (accessed March 15, 2017); State Counselor Office Information Committee, “Fake Rape,” December 26, 2016, <https://www.facebook.com/MyanmarSCOInfoCom/photos/a.639477959558647.1073741828.639456206227489/660386870801089/?type=3&theater> (accessed March 15, 2017).

Since October, the government established four commissions tasked with investigating the situation in Rakhine State. None are sufficiently independent and their work to date lacks credibility. This compounds the government's failure to properly investigate violence and attacks in 2012 in Rakhine State as well as its failure to properly address widespread and systematic human rights violations perpetrated against Rohingya for decades as a matter of state policy.

On December 1, President Htin Kyaw established an "Investigation Committee" with a mandate to "probe into the background situations . . . and the truth about" the October attacks and "to investigate whether existing laws, rules and regulations were observed in taking measures to avoid similar incidents in the future."<sup>20</sup> The Commission is chaired by Myint Swe, a retired Myanmar Army Lieutenant General who is currently Myanmar's First Vice President after being selected by the military as its nominee for the presidency.<sup>21</sup> The membership of the 13-person commission is dominated by current and former military and government officials and includes the current Chief of the Myanmar Police Force.<sup>22</sup>

Two high-level U.N. Special Advisors raised concerns about the composition, mandate, and credibility of the Myint Swe Commission.<sup>23</sup> Human rights organizations, including Fortify Rights, also roundly panned its independence and methodology.<sup>24</sup> The performance of the commission to date underscores these concerns.

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<sup>20</sup> President's Office, Republic of the Union of Myanmar, "Formation of Investigation Commission," Notification 89/2016, December 1, 2016, <http://www.president-office.gov.mm/en/?q=briefing-room/news/2016/12/05/id-6883> (accessed March 14, 2017).

<sup>21</sup> Hnin Yadana Zaw and Antoni Slodkowski, "Myanmar Military Chooses Hardliner to Work with Suu Kyi's Proxy President," *Reuters*, March 11, 2016, <http://www.reuters.com/article/us-myanmar-politics-idUSKCN0WD0BS> (accessed March 14, 2017). Myint Swe was reportedly involved in the bloody crackdown on peaceful protesters during the 2007 "Saffron Revolution." See "Myint Swe Nominated as New Vice-President," *The Irrawaddy*, July 10, 2012, <https://www.irrawaddy.com/news/burma/myint-swe-nominated-as-new-vice-president.html> (accessed March 14, 2017).

<sup>22</sup> President's Office, Republic of the Union of Myanmar, "Formation of Investigation Commission."

<sup>23</sup> "Note to Correspondents: Statement by Mr. Vijay Nambiar, Special Adviser of the United Nations Secretary-General on Myanmar," United Nations Secretary-General, statement, December 8, 2016, <https://www.un.org/sg/en/content/sg/note-correspondents/2016-12-08/note-correspondents-statement-mr-vijay-nambiar-special> (accessed March 14, 2017); "Statement by Adama Dieng, United Nations Special Adviser on the Prevention of Genocide Following OHCHR's Report on the Situation in Northern Rakhine State, Myanmar," United Nations, press release, February 6, 2017, [http://www.un.org/en/genocideprevention/documents/20170206%20Statement\\_Myanmar\\_reactio%20to%20OHCHR%20report\\_Final.pdf](http://www.un.org/en/genocideprevention/documents/20170206%20Statement_Myanmar_reactio%20to%20OHCHR%20report_Final.pdf) (accessed March 14, 2017).

<sup>24</sup> "Myanmar: National Efforts to Investigate Rakhine State Violence are Inadequate," Amnesty International, public statement, February 21, 2017, <https://www.amnesty.org/en/documents/asa16/5758/2017/en/> (accessed March ); "Activists Reject New Commission as Annan Visits," *Agence France Presse*, December 02, 2016, <http://frontiermyanmar.net/en/activists-reject-new-rakhine-commission-as-annan-visits> (quoting Fortify Rights: "We've got little faith in another homegrown commission, particularly if it's headed by a military man.") (accessed March 14, 2017); Libby Hogan, "Arakan Probe Faces Added Scrutiny After UN Report of Rohingya Abuses," *Democratic Voice of Burma*, February 7, 2017,

On January 3, the commission released an “Interim Report” based on a three-day visit to Rakhine State.<sup>25</sup> The report cited ongoing investigations into allegations of rape, illegal arrests, torture, and destruction of property, but failed to present any findings concerning these violations.<sup>26</sup> Instead, the report cited the presence of “Bengalis” and mosques in the region as evidence that persecution and “genocide” were not occurring.<sup>27</sup> It repeated the claims of security forces that they were “ready to take legal action against those who committed crimes if there was sufficient evidence” and cast doubts on the claims of survivors by citing “potential conditions of fabricated rumors and news regarding the events.”<sup>28</sup>

The Myint Swe Commission was due to submit its final report on January 31, but the government extended the deadline indefinitely after the commission requested additional time to conduct its investigation.<sup>29</sup> Fortify Rights received credible information that suggests the delay was intended to prevent the establishment of a Commission of Inquiry or similar mechanism at the 34<sup>th</sup> session of the Human Rights Council this month. Members of U.S. Congress, the Trump Administration, and the international community must ensure that this strategy does not prevail.

The publication of the OHCHR report in early February 2017 put the Myanmar government under significant pressure to address the situation in Rakhine State. The government quickly affirmed that it was investigating the allegations through the Myint Swe Commission.<sup>30</sup> In the weeks that followed, both the Myanmar Army and Police Force initiated separate investigations into the allegations in the OHCHR report.<sup>31</sup> The two investigation teams are staffed entirely by active duty military and police officers, respectively, leaving no doubt that they lack the independence and credibility necessary to carry out impartial investigations.<sup>32</sup> Beyond the composition

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<http://www.dvb.no/news/arakan-probe-faces-added-scrutiny-un-report-rohingya-abuses/73998> (quoting Phil Robertson, Human Rights Watch Deputy Director, Asia Division: “From its chair on down, it’s problematic because it’s full of military and government insiders who have no real incentive to become truth tellers to a government that so far has been denying facts and holding its hands firmly over its ears.”) (accessed March 14, 2017).

<sup>25</sup> Investigation Commission of Maungtau, Interim Report of the Investigation Commission on Maungtau, January 3, 2017, <http://www.statecounsellor.gov.mm/en/node/581> (accessed March 14, 2017).

<sup>26</sup> Ibid., paras. 10-11.

<sup>27</sup> Ibid., para. 10.

<sup>28</sup> Ibid., para. 11 and 16.

<sup>29</sup> Nyan Lynn Aung, “Rakhine Commission Requests Extension for Final Report,” *Myanmar Times*, February 1, 2017, <http://www.mmtimes.com/index.php/national-news/24771-rakhine-commission-requests-extension-for-final-report.html> (accessed March 14, 2017).

<sup>30</sup> “Press Release,” Ministry of Foreign Affairs, press release, February 9, 2017, <http://www.mofa.gov.mm/?p=8002> (accessed March 14, 2017).

<sup>31</sup> “Tatmadaw Releases Reaction to OHCHR Report,” *Global New Light of Myanmar*, February 10, 2017, <http://www.burmalibrary.org/docs23/GNLM2017-02-10-red.pdf> (accessed March 14, 2017); “Ministry of Home Affairs Issues Press Release,” *Global New Light of Myanmar*, February 12, 2017, <http://www.burmalibrary.org/docs23/GNLM2017-02-12-red.pdf> (accessed March 14, 2017).

<sup>32</sup> Ibid.

of the investigation teams, little else is known about the mandate or methodology of the military and police investigations.

The Rakhine State Parliament also established an investigation commission, but its mandate focused only on investigating the attacks on the border police outposts.<sup>33</sup> To our knowledge, it has not publicly reported on its findings.

In August 2016, prior to the attacks in Rakhine State and the latest round of violence, the Myanmar government established an “Advisory Commission on Rakhine State” chaired by former U.N. Secretary General Kofi Annan.<sup>34</sup> The government mandated the Advisory Commission to “consider humanitarian and development issues, access to basic services, the assurance of basic rights, and the security of the people of Rakhine” and to submit a report of its findings and recommendations within one year.<sup>35</sup> The commission is focused on “challenges identified jointly by the Commission and the Government of Myanmar” with regard to Rakhine State. It comprises six Myanmar nationals and three foreigners, including Mr. Annan.

In September 2016, Mr. Annan publicly clarified that his commission would not investigate alleged human rights violations in Rakhine State, stating, “We are not here to do a human rights investigation or to write a human rights report.”<sup>36</sup> Fortify Rights confirmed that the Annan Commission is not collecting evidence of human rights violations in Rakhine State.<sup>37</sup>

On March 15, the Annan Commission released interim recommendations, including a recommendation “that perpetrators of serious human rights violations are held accountable.”<sup>38</sup>

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<sup>33</sup> “Arakan State Parliament Forms Commission to Investigate Maungdaw Attacks,” *The Irrawaddy*, October 26, 2016. The commission’s chairperson stated in an interview that rape of Rohingya women could not have taken place because they are “very dirty” and “they are not attractive so neither the local Buddhist men or the soldiers are interested in them.” “Muslim Civilians ‘Killed by Burmese Army,’” *BBC*, November 7, 2016, <http://www.bbc.com/news/world-asia-37892512> (accessed March 14, 2017).

<sup>34</sup> “Establishment of the Advisory Commission on Rakhine State,” Office of the State Counselor, press release, August 23, 2016, <http://www.globalnewlightofmyanmar.com/establishment-of-the-advisory-commission-on-rakhine-state/> (accessed March 14, 2017).

<sup>35</sup> *Ibid.*

<sup>36</sup> Moe Myint, “Kofi Annan: Commission Will Not Do ‘Human Rights Investigation’ in Arakan State,” *The Irrawaddy*, September 8, 2016, <https://www.irrawaddy.com/news/burma/kofi-annan-commission-will-not-do-human-rights-investigation-in-arakan-state.html> (accessed March 14, 2017).

<sup>37</sup> “Myanmar: Civil Society Calls for International Investigation in Rakhine State,” Fortify Rights, news release, January 18, 2017, <http://www.fortifyrights.org/publication-20170118.html> (accessed March 14, 2017).

<sup>38</sup> Advisory Commission on Rakhine State, *Interim Report and Recommendations*, March 15, 2017, <http://www.rakhinecommission.org/app/uploads/2017/03/Advisory-Commission-Interim-Report.pdf> (accessed March 15, 2017).



## Restrictions in Rakhine State

Human rights violations against the Rohingya are not a new phenomenon and did not begin in October 2016. For decades, Rohingya Muslims in Rakhine State have suffered severe discrimination and human rights violations and abuses. In 2014, Fortify Rights published a 79-page report based in part on official government documents and public records revealing widespread and systematic “population control” restrictions that deny Rohingya basic human rights, including the rights to nondiscrimination, freedom of movement, marriage, family, health, and privacy.<sup>39</sup> To this day, these discriminatory restrictions remain in effect and affect more than one million people.

Fortify Rights believes the restrictions imposed on Rohingya in Rakhine State rise at least to the level of persecution as a crime against humanity, implicating the involvement of state and central government authorities. Three “regional orders” from Rakhine State obtained by Fortify Rights—dated 1993, 2005, and 2008—were signed by state-level government officials and copied to various departments falling under state and central government jurisdictions.

Rakhine State government officials and ministers of the central government also discussed on record the restrictions against Rohingya since at least 2011 and as recently as this week.<sup>40</sup> For example, last week Maungdaw District Administrator Ye Htut told *The Irrawaddy* that government policy regulates freedom of movement even for Rohingya holders of National Verification Cards (NVCs)—an identity document the authorities are coercing Rohingya to accept in Rakhine State. NVC holders are required to obtain travel permits from the state in order to travel to different townships within Rakhine State.<sup>41</sup>

In 2011, the Minister of Defense at the time, Lieutenant-General Hla Min, also approvingly explained in Myanmar Parliament the restrictive policies against Rohingya.<sup>42</sup> On July 31, 2012, Myanmar’s Minister of Home Affairs Lieutenant-General Ko Ko likewise told Myanmar Parliament that the authorities were “tightening the regulations [against Rohingya] in order to handle travelling, birth, death, immigration, migration, marriage, construction of new religious buildings, repairing and land ownership and [the] right to construct building[s]...”<sup>43</sup>

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<sup>39</sup> Fortify Rights, *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*.

<sup>40</sup> Moe Myint, “NVC Holders Granted Limited Freedom of Movement in Northern Arakan State,” *The Irrawaddy*, March 14, 2017, <https://www.irrawaddy.com/news/burma/nvc-holders-granted-limited-freedom-of-movement-in-northern-arakan-state.html> (accessed March 14, 2017).

<sup>41</sup> Ibid.

<sup>42</sup> “Second Regular Session of First Amyotha Hluttaw Continues for Ninth Day,” *New Light of Myanmar*, September 1, 2011, <http://www.burmalibrary.org/docs11/NLM2011-09-02.pdf> (accessed March 14, 2017).

<sup>43</sup> “Reforms Must be Undertaken for Financial and Legal Institutional Development During the Drafting Process of Monetary and Capital Market Law: MPs,” *New Light of Myanmar*, <http://www.burmalibrary.org/docs13/NLM2012-08-01.pdf> (accessed March 14, 2017).

These restrictions should be part of the focus of a Commission of Inquiry or similar independent, international investigation.

### **Denial of Citizenship and Restrictions on Freedom of Movement**

The Myanmar government also denies Rohingya equal access to citizenship rights through the application of the 1982 Citizenship Act. This law is discriminatory and has created the world's largest stateless population within the borders of a single country.<sup>44</sup>

In turn, the authorities use Rohingya statelessness to deny Rohingya freedom of movement. The government prevents Rohingya from traveling freely between villages, townships, and beyond through a series of orders that remain in effect.

The authorities consider any violation of the restrictions on movement to be a criminal act, punishable under the Registration of Residents Act as well as section 188 of the Penal Code, which brings prison time, a fine, or both. Rohingya who dare to travel without official permission face violence from state security forces.

Testimonies collected by Fortify Rights since 2013 document how restrictions on freedom of movement infringe on the rights to health, education, and livelihood as well as religious rights.<sup>45</sup> For several years, Rohingya refugees have explained to Fortify Rights that they fled the country in part due to restrictions on freedom of movement.<sup>46</sup>

These restrictions are discriminatory and unlawful. They are not time-bound, established in law, or proportionate to a specific and justifiable aim, making the restrictions inconsistent with international human rights law. Moreover, no such restrictions are imposed on the nearby displaced and non-displaced Rakhine Buddhist population, making the measures discriminatory. They serve no security function.

These restrictions should be part of the focus of a Commission of Inquiry or similar independent, international investigation.

### **Anti-Muslim Violence in 2012**

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<sup>44</sup> In 2013, UNHCR listed 810,000 people in Myanmar under its statelessness mandate—more than any other country in the world. See UNHCR, “UNHCR Global Trends: Stateless Persons,” 2013, <http://www.unhcr.org/en-us/protection/statelessness/546e01319/statistics-stateless-persons.html> (accessed March 14, 2017).

<sup>45</sup> See, for example, Fortify Rights interview with A.C.C., Aung Mingalar, Rakhine State, Myanmar, August 2015; Fortify Rights interview with A.C.F. and A.C.E, Sittwe Township, Rakhine State, Myanmar, September 2, 2015.

<sup>46</sup> See, for example, Fortify Rights interview with E.D., Kuala Lumpur, Malaysia, September 27, 2014.

In 2012, a series of clashes between Muslim and Buddhist communities in Rakhine State led to a systematic campaign of violence against Rohingya and Kaman Muslims, abetted by state security forces.<sup>47</sup> State security forces and Rakhine civilians perpetrated attacks on Rohingya in 13 of 17 townships in Rakhine State. Entire villages were razed.

I was in Rakhine State shortly after the onset of initial attacks in June 2012 and subsequent attacks in October 2012.

In Yan Thei, Mrauk-U Township, attackers killed 70 Rohingya on October 23, 2012, including 28 children—13 under the age of five.<sup>48</sup> Children were hacked to death and some were thrown into fires. Entire villages were razed. I documented the existence of several mass-grave sites in Rakhine State with Human Rights Watch.<sup>49</sup> Despite the publication of this information, the Myanmar authorities failed to properly investigate or send forensics experts to assess the situation.<sup>50</sup>

An unpublished U.N. investigation in 2013 obtained by *Al Jazeera's* investigative unit found that state security forces raped more than 100 Rohingya women and girls in the aftermath of the 2012 violence, among other grave human rights violations.<sup>51</sup> These crimes and others were the subject of an award-winning documentary.<sup>52</sup> The Myanmar government has failed to hold anyone to account.

The violence in 2012 left more than 100,000 people internally displaced and subsequently forced at least as many to flee the country. From 2012 to 2015, masses of Rohingya refugees fell victim to transnational human trafficking syndicates—a deadly fate in which Myanmar authorities were, in some cases, complicit.<sup>53</sup>

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<sup>47</sup> Human Rights Watch, “*All You Can Do Is Pray*”: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State, April 22, 2013, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims> (accessed March 14, 2017).

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> United Nations Office of the High Commissioner for Human Rights, *Internal Report on the Findings of OHCHR’s Rapid Response Deployment in Support of the Humanitarian Response in Rakhine State: Human Rights Issues*, April 2013, <http://www.aljazeera.com/indepth/features/2015/10/genocide-agenda-documents-presented-evidence-151025142655214.html> (accessed March 14, 2017).

<sup>52</sup> “Genocide Agenda,” *Al Jazeera Investigative Unit*, October 26, 2015, <http://www.aljazeera.com/investigations/genocideagenda.html> (accessed March 14, 2017).

<sup>53</sup> “Myanmar: Authorities Complicit in Human Trafficking, Smuggling,” Fortify Rights, news release, November 7, 2014, <http://www.fortifyrights.org/publication-20141107.html> (accessed March 14, 2017). See also Fortify Rights, “Testimony of Fortify Rights to the U.S. House Committee on Foreign Affairs, delivered by Matthew Smith, March 22, 2016,” [http://www.fortifyrights.org/downloads/Testimony\\_20160322.pdf](http://www.fortifyrights.org/downloads/Testimony_20160322.pdf) (accessed March 14, 2017); “Left for Dead: Myanmar’s Muslim Minority,” *Vice News*, November 11, 2016, [https://www.vice.com/en\\_id/article/left-for-dead-myanmars-muslim-minority-full-length](https://www.vice.com/en_id/article/left-for-dead-myanmars-muslim-minority-full-length) (accessed March 14, 2017).

Today, the Government of Myanmar continues to confine approximately 120,000 Rohingya—displaced since the 2012 violence—to at least 40 internment camps in eight townships in Rakhine State. The authorities deny them adequate humanitarian aid, freedom of movement, the right to livelihood, and other basic freedoms.<sup>54</sup> Nearly five years after their initial displacement, the government continues to enforce avoidable deprivations in food aid, denying basic assistance to thousands of people who are confined to the camps.

Displaced Rohingya women face particular challenges, including gender-based violence as well as restrictions on access to maternal health care, protection, and livelihood. It is not uncommon for Rohingya women confined to internment camps to pawn their food ration cards in exchange for access to some form of maternal health care, medications, or other necessities.

In 2015, a 78-page legal analysis prepared for Fortify Rights by the Allard K. Lowenstein International Human Rights Clinic at Yale Law School concluded that strong evidence exists to establish the elements of the crime of genocide against Rohingya.<sup>55</sup> The analysis found that Rohingya are a protected group as defined under the Genocide Convention; that Rohingya suffered acts of genocide as enumerated by the Convention; and that those acts were committed with the intent to destroy Rohingya as a group, in whole or in part.<sup>56</sup>

Fortify Rights and the team from Yale Law School, led by Professor Jim Silk, recommended that the U.N. Human Rights Council urgently adopt a resolution mandating a Commission of Inquiry to fully assess the totality of the situation in Rakhine State, including human rights violations against Rohingya Muslims as well as Rakhine Buddhists.<sup>57</sup>

## **Rohingya Militancy**

The militant group behind the coordinated attacks on police posts in northern Rakhine State on October 9 calls itself *Harakah al-Yaqin*, or Faith Movement in Arabic. Following the attacks, the group released several amateur propaganda videos online.<sup>58</sup> One video shows a small group of young men with a few assault

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<sup>54</sup> For demographic figures, see U.N. Office for the Coordination of Humanitarian Affairs, “Humanitarian Bulletin: Myanmar,” April – June 2016, Issue 2 (2016), [http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA\\_Myanmar\\_Humanitarian%20Bulletin\\_April-June\\_2016.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_Myanmar_Humanitarian%20Bulletin_April-June_2016.pdf) (accessed March 14, 2017).

<sup>55</sup> The Allard K. Lowenstein International Human Rights Clinic at Yale Law School, prepared for Fortify Rights, *Is Genocide Occuring in Myanmar’s Rakhine State? A Legal Analysis*, October 2015, [http://www.fortifyrights.org/downloads/Yale\\_Persecution\\_of\\_the\\_Rohingya\\_October\\_2015.pdf](http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf) (accessed March 14, 2017).

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> “Myanmar: Protect Civilians in Rakhine State, Investigate Fatal Shootings,” Fortify Rights, news release, October 12, 2016, <http://www.fortifyrights.org/publication-20161012.html> (accessed March 14, 2017).

rifles and handguns while an apparent leader—later identified as Ata Ullah, a Pakistan-born Rohingya man raised in Mecca—calls for volunteers to engage in armed conflict in Rakhine State.<sup>59</sup> Another video shows a larger, bedraggled group of Rohingya men and boys walking single-file through a field in flip-flops and civilian clothes, mostly armed with sticks, knives, and farming equipment.<sup>60</sup>

In a December report, the International Crisis Group alleged that *al-Yaqin* was established in 2012 following anti-Muslim violence in Rakhine State.<sup>61</sup> Crisis Group reported that *al-Yaqin* is well-organized, well-funded, and well-trained and that it has “considerable sympathy and backing from the local Muslim population.”<sup>62</sup> The group was sensationally dubbed “the world’s newest Muslim insurgency.”<sup>63</sup>

Since December, Fortify Rights has yet to find evidence that *al-Yaqin* is well-organized, well-funded, or well-trained. Most Rohingya interviewed by Fortify Rights had never heard of *al-Yaqin* or any active Rohingya militia; very few expressed any moral or other support for the group.<sup>64</sup>

This is not to say that *al-Yaqin* does not pose a threat—it does. However, the Myanmar military’s heavy-handed response and ongoing human rights violations against civilians will likely do more than anything else to attract militants and effectively heighten the threat of violent extremism from non-state actors.

Any failure by the international community to properly address the human rights situation may drive disaffected Rohingya youth to armed resistance. Moreover, if the international community grants Myanmar its wish to avoid a Commission of Inquiry, then the festering situation is likely to have serious security implications.

### **The Right to a Remedy and the Responsibility to Investigate**

The right to a remedy for human rights violations is a well-established norm of international law.<sup>65</sup> Numerous human rights treaties, including conventions to

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> International Crisis Group, *Myanmar: A New Muslim Insurgency in Rakhine State*, December 15, 2016, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state> (accessed March 14, 2017).

<sup>62</sup> Ibid.

<sup>63</sup> Tim Johnston and Anagha Neelakantan, “The World’s Newest Muslim Insurgency is Being Waged in Burma,” *TIME*, December 14, 2016, <http://time.com/4601203/burma-myanmar-muslim-insurgency-rohingya/> (accessed March 14, 2017).

<sup>64</sup> Fortify Rights interviews with survivors and eyewitnesses, Cox’s Bazar, Bangladesh, December 2016.

<sup>65</sup> See, for example, Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 8. (“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights guaranteed him by the constitution or law.”); International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), art. 2(3) (“Each State Party to the present Covenant undertakes: (a)

which Myanmar is a state party, protect it.<sup>66</sup> It is also protected by customary international law, which binds all parties regardless of their treaty commitments.<sup>67</sup> The right to a remedy imposes an obligation on states to investigate credible allegations of human rights violations.<sup>68</sup> The primary responsibility for investigating reports of human rights violations in Myanmar therefore lies with the Government of Myanmar.

However, international law assigns the international community a role in addressing human rights violations when a country is unwilling or unable to meet its own obligations to ensure that such violations are investigated and remedied. Treaties and other binding international instruments establish the authority of various U.N. bodies and inter-governmental organizations to act on situations involving grave human rights abuses in certain specified contexts.<sup>69</sup> In particular, the U.N. Human Rights Council was established in 2006 with a mandate to “address situations of violations of human rights, including gross and systematic violations” and “respond promptly to human rights emergencies.”<sup>70</sup>

Members of U.S. Congress and the Trump Administration must ensure the Human Rights Council responds promptly to the emergency in Rakhine State.

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To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.”)

<sup>66</sup> See, for example, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted July 22, 1979, G.A. Res. 34/180, U.N. Doc. A/34/46 (1979), art. 2; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. Doc. CEDAW/C/2010/47/GC.2, para. 32; Convention on the Rights of the Child (CRC), adopted July 15, 1989, G.A. Res. 44/25, U.N. Doc. A/44/49 (1989), art. 4; Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/5, November 27, 2003, art. 24.

<sup>67</sup> U.N. General Assembly, *Resolution Adopted by the General Assembly: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, U.N. Doc. A/RES/60/147, March 21, 2006, para. 1.

<sup>68</sup> *Ibid.* at para. 3(b); Human Rights Committee, *General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add. 13, May 26, 2004, para. 8 and 15.

<sup>69</sup> See, for example, Charter of the United Nations, 1 UNTS XVI, October 24, 1945, Chapter VI (empowering the General Assembly to “discuss any questions or any matters within the scope of the present Charter” and make recommendations on such matters) and Chapter VII (empowering the Security Council to act concerning “threats to the peace”); ICCPR, Part IV (establishing the Committee on Human Rights to promote human rights enshrined in the ICCPR).

<sup>70</sup> U.N. General Assembly, *Resolution Adopted by the General Assembly: Human Rights Council*, U.N. Doc. A/RES/60/251, April 3, 2006, paras. 3 and 5(f).

## Establishing a UN-Mandated Commission of Inquiry or Similar Mechanism

In a written response to Senator Ben Cardin of the Senate Foreign Relations Committee regarding human rights violations against Rohingya, U.S. Secretary of State Rex Tillerson correctly warned that the mistreatment of Rohingya in Myanmar “threatens to radicalize a generation of young Rohingya.”<sup>71</sup> Secretary Tillerson called upon the U.S. “to support regional and international efforts to investigate abuses and pressure the Burmese [Myanmar] government and military.”<sup>72</sup>

A United Nations-mandated Commission of Inquiry or similar mechanism would do just that.

Myanmar’s failure to credibly investigate human rights violations in Rakhine State despite the numerous highly detailed reports of widespread and grave violations unequivocally establishes the need for a U.N. mandated Commission of Inquiry or a similar international mechanism. In recent months, numerous other individuals and organizations have called for the U.N. to establish an international body to conduct such an investigation, including the U.N. High Commissioner for Human Rights, the U.N. Special Rapporteur on the situation of human rights in Myanmar, Nobel Laureates and global leaders, global Rohingya groups, 40 Myanmar-based civil society organizations, and international human rights organizations.<sup>73</sup>

In recent years, the Human Rights Council has become the primary mandating authority for commissions of inquiry focused on situations involving grave human rights violations. Since 2010, the Human Rights Council has established eight

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<sup>71</sup> “Bringing Burma Back From the Brink,” *Wall Street Journal*.

<sup>72</sup> *Ibid.*

<sup>73</sup> “Myanmar: UN #HumanRights Chief says there must be commission of inquiry on violations in northern #Rakhine, possibly referral to #ICC,” U.N. Office of the High Commissioner for Human Rights, twitter post, February 7, 2017, <https://twitter.com/OHCHRAsia/status/829178607616421888> (accessed March 14, 2017); Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, U.N. Doc. A/HRC/34/67, March 1, 2017, para. 88(a); The Yunnus Centre, “Open letter to the President of the Security Council and Member Countries of the Council to End the Human Crisis of Rohingyas in Myanmar,” December 30, 2016, <http://www.muhammadyunus.org/index.php/news-media/news/1630-open-letter-to-the-president-of-the-security-council-and-member-countries-of-the-council-to-end-the-human-crisis-of-rohingyas-in-myanmar> (accessed March 14, 2017); “Statement from Rohingya Communities Worldwide: Request OIC to support UN Commission of Inquiry,” January 17, 2017, <http://brouk.org.uk/?p=1225> (accessed March 14, 2017); “Call for a Truly Independent Investigation into the Situation in Rakhine State,” Fortify Rights et al, joint statement, January 18, 2017, [http://www.fortifyrights.org/downloads/Joint-COI-Statement-\(Burmese+English\)-18-Jan-2017.pdf](http://www.fortifyrights.org/downloads/Joint-COI-Statement-(Burmese+English)-18-Jan-2017.pdf) (accessed March 14, 2017); “Joint letter to Permanent Representatives of Member and Observer States of the United Nations Human Rights Council,” Fortify Rights et al, open letter, March 3, 2017, [http://www.fortifyrights.org/downloads/Myanmar\\_Joint\\_open\\_letter\\_to\\_UNHRC\\_members.pdf](http://www.fortifyrights.org/downloads/Myanmar_Joint_open_letter_to_UNHRC_members.pdf) (accessed March 14, 2017).

commissions.<sup>74</sup> None of the Human Rights Council's members possess veto powers and decisions are made by a simple majority vote.<sup>75</sup>

The U.N. Commission on Human Rights passed a resolution on the human rights situation in Myanmar every year since 1992, and its successor, the U.N. Human Rights Council, has continued that tradition without interruption since it formed in 2006.

The establishment of a Commission of Inquiry or similar mechanism should not be perceived as an inevitable confrontation with the Myanmar government as a whole. Rather, a Commission of Inquiry would help clarify which institutions are primarily responsible for human rights violations in Rakhine State and empower other institutions and political actors who support transparent governance and a human rights agenda.

## **Recommendations**

Now is a critical time for Myanmar, the Rohingya, and other ethnic nationalities in the country. Barring a credible, independent, international investigation, there is a risk that the situation of the Rohingya will worsen. We may see more outbreaks of deadly attacks on Rohingya civilians and, at present, there are no indications that those responsible for ongoing human rights violations will be held accountable or that systematic human rights violations will cease. The potential for domestic remedies has been exhausted.

The United States has significant influence in Myanmar and with the Myanmar authorities. We fully encourage members of Congress from both parties to work with the Trump Administration to adopt an urgent, clear, and outcome-oriented human rights-focused approach to support Rohingya communities and end impunity as well as ongoing violations.

Specifically, members of Congress should work closely with the Trump administration to press for the establishment of a U.N.-mandated Commission of Inquiry or similar mechanism to investigate possible crimes against humanity in Rakhine State from at least 2012 to the present day. Members of Congress should also work closely with the Trump administration to ensure the Government of Myanmar:

- Provides free and unfettered humanitarian access to all populations in need in Rakhine State and other ethnic areas in Myanmar.

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<sup>74</sup> The Human Rights Council established commissions of inquiry or similar bodies for Palestine/Israel, Libya, Côte d'Ivoire, Syria, North Korea, Eritrea, South Sudan and Burundi.

<sup>75</sup> U.N. General Assembly, *Resolution Adopted by the General Assembly: Human Rights Council*, para. 11; U.N., *Rules of Procedure of the General Assembly*, U.N. Doc. A/520/Rev.17, 2008, Rule 125, "Majority required."



- Amends the 1982 Citizenship Act to restore equal access to full citizenship rights for Rohingya and other stateless populations in the country.
- Ensures the right of displaced populations to return home safely and with dignity.
- Immediately repeals all local orders and ceases practices that restrict the marriage, movement, childbirth, and livelihoods of Rohingya. Naypyidaw should communicate to central, state, and local governments and the general public that the relevant authorities should immediately cease all official and unofficial practices related to restrictions against Rohingya and other Muslims in Rakhine State.
- Immediately lifts all restrictions on freedom of movement in Rakhine State, including on internally displaced Rohingya and other Muslims and those confined to internment camps.
- Implements policies and procedures and allocates resources to facilitate access to adequate health care for all people in need in Rakhine State, particularly for Rohingya women and with an emphasis on ensuring equal access to reproductive healthcare, supplies, and services.
- Provides equal protection under the law to all ethnic nationalities in Myanmar, including Rohingya and other Muslims in Rakhine State.
- Publishes information about the fate of the hundreds of Rohingya and Rakhine detained since June 2012 in Rakhine State.
- Ensures that anyone in detention has access to legal counsel of their choosing and to family members, and ensures that legal counsel can conduct their work freely and safely.
- Immediately releases all detainees in Rakhine State that have not been charged with a cognizable criminal offense, and releases all people charged for “crimes” that infringe on their basic human rights.

Thank you very much.