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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.

[03 June 2019]

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

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The Government of Myanmar must end its violence against Ethnic Groups, protect their Rights, and seek accountability for violations against Them

The deteriorating Human Rights situation in Myanmar

The disproportionate use of force by the Myanmar military (*Tatmadaw*) and security forces has caused serious human rights violations, and the government has failed to resolve the root causes of conflict and violations, most importantly by ensuring the protection of civilians' rights and freedoms. As a result, IDPs and refugees, particularly women and children, continue to face food insecurity and lack access to healthcare and primary education.

Human Rights Now, a Tokyo-based human rights NGO, is deeply concerned about the dire situation for displaced people, their lack of adequate support, and the lack of accountability for serious violations by security forces. We urge the government of Myanmar to cooperate with the Council and independent investigative mechanisms in facilitating the collection and preservation of evidence to bring perpetrators to justice. We further call on the government to stop present and future human rights violations, protect the civilian population in accordance with international humanitarian law and human rights law, and create the conditions for the safe and dignified return of all IDPs, Rohingya, and other refugees.

Disproportionate use of force in Rakhine and Chin States

Since December 2018, about 33,000 people have been displaced in Rakhine and Chin States due to violence between the Arakan Army (AA) and the Tatmadaw.¹ Episodes of collective punishment persist, and civilians are targets of indiscriminate attacks.² On May 2, Tatmadaw soldiers opened fire on 250 men and boys kept in arbitrary detention at the Kyauk Tan village school, killing six and wounding eight.³ Male villagers suspected of AA affiliation face arbitrary detention, extrajudicial killings, torture, and inhumane and degrading treatment.⁴ An increase in accidents involving landmines and other improvised explosive devices continues to prevent the safe and voluntary return of IDPs and refugees.

The Situation of Kachin Returnees

Since 2011, there have been over 100,000 IDPs and refugees from Kachin State, with more than 60,000 in areas controlled by the Kachin Independence Army. The government's National Reconciliation and Peace Centre and the Kachin Humanitarian Concern Committee have agreed to cooperate on resettling displaced people. Yet multiple challenges remain, including human rights abuses, *Tatmadaw* violence, landmines, and restitution for lost

¹ UNOCHA, "Myanmar: New Displacement in Rakhine and Chin states (as of 07 May 2019)", 13 May 2019, <https://reliefweb.int/map/myanmar/myanmar-new-displacement-rakhine-and-chin-states-07-may-2019>.

² The Irrawaddy, "5 Civilians Killed as Tatmadaw Troops Open Fire on Village in N. Rakhine: Witnesses", 22 Mar. 2019, <https://www.irrawaddy.com/news/burma/5-civilians-killed-tatmadaw-troops-open-fire-village-n-rakhine-witnesses.html>; E-Pao, "Chin Woman Dies after Tatmadaw Bomb Civilian Residences with Heavy Artillery", 14 Apr. 2019, http://e-pao.net/epSubPageExtractor.asp?src=news_section.Press_Release.Press_Release_2019.Chin_Woman_Dies_after_Tatmadaw_Bomb_Civilian_Residences_20190417.

³ OHCHR, Press Briefing Note, 10 May 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24592&LangID=E>; CSO Working Group on MNHRC Reform, "MNHRC Must Take Stand on Extrajudicial Killings of Rakhine Villagers", 14 May 2019, <https://progressivevoicemyanmar.org/2019/05/14/mnhrc-must-take-stand-on-extrajudicial-killings-of-rakhine-villagers/>.

⁴ The Irrawaddy, "Three Dead During Military Detention in N. Rakhine", 24 Apr. 2019, <https://www.irrawaddy.com/news/burma/three-dead-military-detention-n-rakhine.html>.

property.⁵ The absence of an adequate legal framework on land rights and customary tenure systems continues to facilitate land grabbing restitution claims, threatening Kachin IDPs' access to their land.⁶ Myanmar must ensure the safety of returnees and take measures, including cooperation with international agencies, to ensure the protection, rehabilitation, restitution, and access to livelihood opportunities of all victims and their families.⁷

Retrogressive measures on food and services

The government restrictions on freedom of movement and humanitarian aid for the 941,351 civilians in urgent need of humanitarian assistance and protection further hinders civilian enjoyment of adequate living standards, particularly access to food, shelter, and education.⁸ Due to limited livelihood opportunities, food and water security is largely dependent upon access to cash transfers or direct food aid.⁹ Formal and informal discriminatory practices restricting freedom of movement hinder access to food, WASH services, shelter, and formal education.¹⁰ IDPs in central Rakhine face conditions comparable to arbitrary detention, as village administrators and security forces demand personal payments to exit camps even in cases of medical emergency.¹¹

IDPs' access to food production is further restricted by the amended Vacant, Fallow and Virgin Lands Management Act which threatens IDPs' claims over land they were forced to abandon.¹² The amendments criminalize land users, facilitate third party land acquisition, and fail to establish a clear framework protecting customary tenure and restitution.

Discrimination against Rohingya refugees

Rohingya continue to face systematic institutionalized discrimination, statelessness, and targeted violence.¹³ The ongoing marginalization and denial of basic rights legitimized by the 1982 Citizenship Law render Rohingya stateless and vulnerable. At least 37,000 Rohingya children in northern Rakhine are unregistered and lack access to basic rights, particularly health and education services.¹⁴ UN reports and local representatives highlight

⁵ Nickerson, "The Kachin IDP crisis: Myanmar's other humanitarian disaster", Al Jazeera, 3 Dec. 2018, <https://www.aljazeera.com/indepth/features/kachin-idp-crisis-myanmar-humanitarian-disaster-181202225600024.html>.

⁶ FrontierMyanmar, "Kachin's plantation curse", 17 Jan. 2019, <https://frontiermyanmar.net/en/kachins-plantation-curse>; Jason Gelbort, "Implementation of Burma's Vacant, Fallow and Virgin Land Management Law", 10 Dec. 2018, <https://www.tni.org/my/node/24477>.

⁷ UNHRC, Handbook for the Protection of IDPs, pp. 33-34, <https://www.unhcr.org/4c2355229.pdf>.

⁸ UNOCHA, "All people affected by conflict in Myanmar need assistance, protection and long-term solutions", 14 May 2019, <https://reliefweb.int/report/myanmar/all-people-affected-conflict-myanmar-need-assistance-protection-and-long-term>.

⁹ ASG Ursula Mueller, "Press Release", 14 May 2019, <https://www.unocha.org/story/myanmar-protection-and-long-term-solutions-all-people-affected-conflict-deputy-humanitarian>.

¹⁰ UNICEF Myanmar Situation Report, 23 Apr. 2019; UNOCHA, above note 8; UNOCHA, "Humanitarian access in central Rakhine", 11 May 2019, <https://reliefweb.int/report/myanmar/myanmar-humanitarian-access-central-rakhine-march-2019>; The Irrawaddy, "Rakhine CSOs Feel Overlooked in UN Envoy Visit", 15 May 2019, <https://www.irrawaddy.com/news/burma/rakhine-csos-feel-overlooked-un-envoy-visit.html>.

¹¹ HRC, "Situation of human rights of Rohingya in Rakhine State", 11 Mar. 2019, A/HRC/40/37, para. 35.

¹² Letter by Seven Special Rapporteurs, OL MMR 5/2018, <http://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24275>.

¹³ UNHCR, "2019 Joint Response Action Plan for Rohingya Humanitarian Crisis", 15 Feb. 2019, http://reporting.unhcr.org/sites/default/files/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.comp_.pdf

¹⁴ HRC, "Situation of human rights of Rohingya in Rakhine State, Myanmar", 11 Mar. 2019, A/HRC/40/37, para.28.

the lack of Rohingya consultation and participation in decision-making concerning resettlement and repatriation under the Memorandum between Myanmar and Bangladesh.¹⁵

Gender-based violations

Refugee women are subject to harassment, sexual violence, forced prostitution, and rape by Tatmadaw and members of other ethnic groups, and they face government denial of responsibility and lack of accountability.¹⁶ The government of Myanmar has an obligation to adequately investigate all crimes against women. The 1861 Penal Code must be amended to adequately penalize sexual violence and ensure that civilian courts have jurisdiction over the military for violence against women.¹⁷ The government must implement and strengthen rights-based and gender-responsive support to victims and witnesses of sexual violence. This includes guarantees of inclusive and accessible sexual and reproductive health care, psychological counseling, and access to education, entrepreneurship, and livelihood opportunities.¹⁸

The need for accountability

The lack of accountability for violations identified in the IFFM Report prevents the safe and voluntary return of refugees and IDPs. The Myanmar government's failure to effectively ascertain individual criminal responsibility fosters impunity and violates victims' right to see justice for their violations. Restrictions on journalists and independent experts to investigate and report on conflict areas, including travel restrictions, defamation claims, and criminalization, obstruct independent evidence-gathering and accountability and must be removed. We also encourage the continued progress of the Independent Investigative Mechanism and call on states, including Myanmar, to support and cooperate with it.

The Government of Myanmar must ensure accountability for Human Rights violations and protect IDPs and Refugees

HRN is deeply concerned by the grave human rights violations in Myanmar and urges the government of Myanmar to:

Ensure accountability for alleged genocide, crimes against humanity and war crimes by following the IFFM recommendations and cooperating with the Independent Investigative Mechanism;

Ensure access to humanitarian aid in conflict-related areas;

Facilitate the voluntary, sustainable, dignified, and safe return of refugees and IDPs;

Implement the Rakhine Advisory Commission Recommendations calling for the social, economic, and political inclusion of the Muslim community in northern Rakhine State;

Remove movement restrictions to improve access to public services and livelihood opportunities.

HRN further requests the international community to:

Support the safety, security, and rights of Myanmar IDPs and refugees through greater financial aid and by respecting the principle of non-refoulement;

Support the Independent Investigative Mechanism and other efforts to gather facts and facilitate accountability in Myanmar;

¹⁵ A/HRC/40/37, paras. 29 – 30.

¹⁶ UNHCHR, "Culture, Context and Mental Health of Rohingya Refugees", 2018, p. 18, <https://www.unhcr.org/5bbc6f014.pdf>.

¹⁷ CEDAW, "Myanmar Concluding observations", 18 Mar. 2019, CEDAW/C/MMR/CO/EP/1, para. 5.

¹⁸ ICESCR, art 12; CESCR General Comment 14, para. 51.

Implement effective measures for the Myanmar government to meet its international obligations, including the IFFM recommendations to financially isolate the Myanmar military through targeted sanctions against individuals responsible for serious violations.
