

20 November 2017

To: Member and observer states of the UN Human Rights Council

Open Letter

Excellencies,

Re: Call for a special session of the UN Human Rights Council on the deteriorating human rights situation in Myanmar

We, the undersigned human rights organizations, strongly support calls for a UN Human Rights Council special session on the deteriorating human rights situation in Myanmar and urge your delegations to support holding such a session as soon as possible. In light of serious reports of human rights violations, including crimes against humanity, committed by Myanmar security forces – including unlawful killings, rape and other crimes of sexual violence, widespread burning and destruction of Rohingya homes and property, mass deportations and the unlawful use of antipersonnel landmines – and given the unprecedented exodus of over half a million Rohingya refugees from Myanmar into Bangladesh, we believe that a special session is imperative to launch decisive action and ensure international scrutiny and monitoring of the situation.

While the Council must pay particular attention to the situation of the Rohingya and to Rakhine State, it should not restrict itself to addressing one region, in keeping with past resolutions on this issue. It is important that the Council acknowledge and express concern over the deterioration of the human rights situation in other parts of the country, including over reports of violations and abuses of international human rights and humanitarian law in Kachin and Shan States – which in some cases have implicated the same military units as in Rakhine State. These have included torture, enforced disappearance, extrajudicial executions and killing civilians through indiscriminate use of force by the Myanmar military.

Such a comprehensive approach would contextualize larger patterns of violations and address more effectively structural issues in Myanmar that have contributed to the current crisis and overall deterioration of the situation in Myanmar. Therefore, in keeping with past resolutions on the situation in Myanmar under Item 4 and item 2, the Council should pass a resolution that covers serious human rights concerns in Myanmar as a whole, or at minimum the human rights of the Rohingya, Kachin, Shan, T'ang and other minorities across the whole country.¹ Failure to do so would not only overlook the situation of other people in Myanmar including other ethnic and religious minorities but also risk further isolating the Rohingya within Myanmar and further jeopardizing them.

In light of the above, our organisations call for the special session resolution to:

- Recognise serious concerns expressed by: the High Commissioner for Human Rights in his address to the 36th session of the UN Human Rights Council; the UN Secretary General in his September statement to the UN Security Council; the UN Special Rapporteur on the situation of human rights in Myanmar in her October report to the UN General Assembly; the October rapid response report of the Office of the High Commissioner for Human Rights; and the Presidential

statement of the UN Security Council on 6 November. In doing so, the resolution should also acknowledge the likelihood of the commission of crimes against humanity, consistent with recent findings by UN bodies and human rights organisations;

- Call on the Fact Finding Mission on Myanmar – established by this Council – to offer its expert advice to relevant UN bodies seized of the situation in the country including to the UN Security Council for consideration of appropriate action and further invite the UN Fact Finding Mission to include recommendations on an appropriate accountability mechanism for alleged perpetrators of crimes under international law in its final report;
- Recognise the 1Dth October joint statement by the UN Special Advisor on the Prevention of Genocide and the UN Special Advisor on the Responsibility to Protect – which calls on Myanmar to “take immediate action to stop and address the commission of atrocity crimes that are reportedly taking place.t The resolution should call on the UN Secretary General to update the Council on the follow up to this statement at the Council’s 37th session; and
- Call on the UN High Commissioner for Human Rights to update the Council on Myanmar’s cooperation with UN human rights mechanisms at the 37th, 38th, and 3Dth sessions of the Council.

The resolution should also call on the Government of Myanmar to:

1. Immediately cease all human rights violations, including crimes against humanity, in Rakhine, Kachin and Shan States as well as other parts of the country; and call on all parties to refrain from further abuses;
2. Immediately allow full and unfettered access to all parts of the country for international and local humanitarian organisations;
3. Fully cooperate with the Special Rapporteur on the situation of human rights in Myanmar, the Office of the High Commissioner for Human Rights and the UN Fact Finding Mission, including by allowing them full and unhindered access to all areas of the country, including Rakhine State, and to all individuals and relevant documents they deems necessary for their work; and to prevent and seek accountability for any threats, retaliations or reprisals against individuals for engaging with the UN, including the Fact Finding Mission;
4. Ensure all refugees and internally displaced persons are able to return to their homes voluntarily, in safety and with dignity; without discrimination of any kind and in accordance with international human rights law, and with full access to international observation and government support in rebuilding homes and destroyed infrastructure;
5. Postpone economic and infrastructure projects – including the setting up of any new special economic, industrial or trade zones – until necessary safeguards are put in place to ensure that they are for the benefit of all communities without discrimination, and in particular do not prejudice the land and

property rights of Rohingya and other communities that have been displaced from their habitation as refugees or as internally displaced populations;

6. Initiate prompt, impartial, independent and effective investigations into all credible allegations of violations and abuses of international human rights law and crimes under international law. Where sufficient, admissible evidence is found of individuals (including those with command and other superior responsibility) committing offences involving such violations, and in particular those constituting crimes against humanity, ensure that such individuals are prosecuted, in fair proceedings before independent civilian courts and without the imposition of the death penalty – while acknowledging that currently no investigation by the Myanmar military and security forces could reasonably be seen as independent or impartial. Myanmar should further be urged to cooperate fully with all international efforts to ensure accountability including through investigations and prosecutions by international tribunals or foreign jurisdictions ;

7. Ensure that such prompt, impartial, independent and effective investigations duly address allegations of rape and other forms of sexual violence including gang-rape by multiple soldiers, forced public nudity and humiliation, and sexual slavery in military captivity. Furthermore, ensure that the survivors of gender-based violence have immediate access to health services and psychosocial support;

8. Take immediate action to address the long-standing and systematic discrimination and segregation of the Rohingya and other Muslims in Myanmar; including by ensuring that the right to a nationality is granted free of any discrimination; and removing arbitrary and discriminatory restrictions on freedom of movement; access to healthcare, education and other services;

9. Condemn unequivocally all advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and to take effective measures to tackle and counter it, in line with international human rights law; and

10. Immediately and unconditionally release all individuals deprived of liberty solely for the peaceful exercise of their human rights, and revoke all pending criminal proceedings against such peaceful activists. Review and amend laws which arbitrarily restrict the peaceful exercise of these rights and take appropriate steps to ensure the safety and security of journalists, civil society activists and human rights defenders and their freedom to pursue their activities without fear.

The resolution should further:

1. Call on all States to exercise universal jurisdiction in investigating, prosecuting or extraditing any person under their jurisdiction who may reasonably be suspected of committing crimes against humanity or other crimes under international law in Myanmar, while ensuring that all proceedings meet international standards of fairness and do not involve seeking or imposing the death penalty;

2. Call on all States to use all their influence and all diplomatic tools at their disposal to urge Myanmar to immediately work to implement the recommendations listed above;

3. Call on all States to assist with meeting the humanitarian needs of persons displaced within Myanmar and in other countries including Bangladesh, including as regards protecting women, children, and others at risk of sexual violence, trafficking, and similar abuses.

4. Call on all business enterprises, including transnational corporations and domestic enterprises, to ensure they are not, intentionally or otherwise, contributing to violations or abuses of human rights addressed by the resolution, and call upon home States of business companies operating in Myanmar to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction are to respect human rights throughout their operations, highlighting the need for particular scrutiny of any operations or commercial relationships that could prejudice the rights of Rohingya or other displaced communities.

Please accept, Excellencies, the assurances of our highest consideration,

1. Action Birmanie, Belgium
2. ALTSEAN-Burma
3. Amnesty International
4. Asian Forum for Human Rights and Development (FORUM-ASIA)
5. Article 1D
6. Banglar Manabadhikar Suraksha Mancha (MASUM), India
7. Burma Acton Ireland
8. Burma Campaign UK
9. Bytes for All, Pakistan
10. Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
11. Centre for Human Rights, University of Pretoria
12. CIVICUS: World Alliance for Citizenship Participation
13. Commission for the Disappeared and Victims of Violence (kontraS), Indonesia
14. Commonwealth Human rights Initiative
15. Conectas Direitos Humanos, Brazil
16. European Rohingya Council
17. Global Centre for the Responsibility to Protect
18. Info Birmanie
19. INFORM Human Rights Documentation Centre, Sri Lanka
20. International Commission of Jurists (ICJ)
21. International Bar Association's Human Rights Institute (IBAHRI)
22. International Federation for Human Rights (FIDH)
23. International Service for Human Rights (ISHR)
24. Korean House for international Solidarity
25. Maldivian Democracy Network (MDN)
26. Odhikar, Bangladesh
27. Partnership for Justice, Nigeria
28. Peoples' Vigilance Committee on Human Rights (PVCHR), India
29. People's Watch, India

30. Programme Against Custodial Torture & Impunity (PACTI), India
31. Progressive Voice
32. Pusat KOMAS, Malaysia
33. Rohingya Community Ireland
34. Savitri Bai Phule Women Forum (SWF), India
35. Stefanus Alliance International
36. Swedish Burma Committee