



To:

Permanent Representatives of Member and Observer States of the United Nations Human Rights Council

Geneva, 3 March 2017

Re: UN-mandated international Commission of Inquiry or similar international mechanism to investigate serious human rights violations in Rakhine State, Myanmar.

Excellencies,

We, the undersigned organizations, write to urge your delegations to support calls by the UN High Commissioner for Human Rights and the UN Special Rapporteur on the situation of human rights in Myanmar, for the establishment by the UN Human Rights Council during its 34th session of a Commission of Inquiry or similar international mechanism to investigate, at a minimum, alleged and apparent serious human rights violations and abuses in Rakhine State, Myanmar.

Since 9 October 2016, Myanmar's security forces have carried out large-scale attacks against the Rohingya population in Rakhine State's Maungdaw, Buthidaung, and Rathedaung Townships as part of 'clearance operations' in response to attacks on three police border posts by armed assailants. These 'clearance operations' violate numerous provisions of international human rights law.

The 'clearance operations' involved human rights violations against women, men, and children, including: extrajudicial killings; enforced disappearances; torture and other ill-treatment, notably rape and other crimes of sexual violence; arbitrary arrests and detention; forced displacement; and destruction and looting of homes, food, and other property.

The Office of the UN High Commissioner for Human Rights (OHCHR) documented many such serious human rights violations in a 'flash report' released on 3 February 2017.¹ The report concluded that the attacks against the Rohingya population in Rakhine State during the prolonged crackdown could "very likely" amount to crimes against humanity. UN officials estimated that more than 1,000 Rohingya might have been killed in the crackdown.² Military and police operations resulted in the displacement of at least 97,000 Rohingya, including approximately 73,000 who fled to neighbouring Bangladesh.³

In June 2016, four months before the most recent attacks, the UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein submitted a report to the UN Human Rights Council highlighting the "possible commission of crimes against humanity" against Rohingya in Myanmar.⁴

A large number and overall patterns of human rights violations and abuses have already been well documented, while many more allegations require further investigation.

The Myanmar government's response to these documented violations has ranged from blanket denials of any wrongdoing by security forces to numerous attempts to discredit reports of abuses by Rohingya eyewitnesses and survivors.⁵ Myanmar's security forces have direct control over operations in Rakhine State (as in other conflict areas) and are granted effective independence from the country's civilian government and immunity from justice under the 2008 constitution. To date, no one is known to have been criminally investigated, charged, or tried for these offences. In February, three junior police officers were sentenced by an internal police tribunal to two months in police detention after a video surfaced in December showing officers kicking and beating Rohingya men in a village in Rathedaung Township. At least three senior police officers were also demoted.⁶

Since October 2016, four official commissions have been set up to investigate the situation in Rakhine State. Regrettably, all of them lack the independence, impartiality, human rights and technical expertise, and mandate necessary to conduct a credible and effective investigation:

- On 1 December 2016, Myanmar's President Htin Kyaw established a 13-member investigation commission led by Vice-President Myint Swe, a former army general, to probe "the truth" in relation to violent attacks that occurred on 9 October and 12-13 November 2016 in Maungdaw Township.⁷ Its members include the current Chief of Police and a number of former government officials. The commission's preliminary findings, published on 3 January 2017, dismissed claims of misconduct by Myanmar security forces, having found insufficient evidence to take legal action in response to alleged

¹ UNOHCHR, *Report of OHCHR mission to Bangladesh, Interviews with Rohingyas fleeing from Myanmar since 9 October 2016*, 3 February 2017, <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>

² Reuters, *More than 1,000 feared killed in Myanmar army crackdown on Rohingya - U.N. officials*, 8 February 2017.

³ UNOCHA, *Asia and the Pacific: Weekly Regional Humanitarian Snapshot (14 - 20 February 2017)*, 20 February 2017, <http://reliefweb.int/report/philippines/asia-and-pacific-weekly-regional-humanitarian-snapshot-14-20-february-2017>

⁴ UN Human Rights Council, 32nd session, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar, Report of the United Nations High Commissioner for Human Rights*, 28 June 2016, UN Doc. A/HRC/32/18.

⁵ State Counsellor Office, *Information committee refutes rumours of rape*, 26 December 2016; President's Office, *Fabricated stories, misleading pictures about Rakhine cause global criticism*, 2 January 2017; Reuters, *Aung San Suu Kyi criticised as Myanmar denies army killed Rohingya Muslims fleeing Rakhine*, 19 November 2016; Reuters, *Myanmar 'in denial' over Rohingya crimes*, 7 February 2017.

⁶ Agence France-Presse, *Police in Rohingya abuse video get reprimand, 'didn't intend to harm'*, 8 February 2017.

⁷ State Counsellor Office, *Formation of Investigation Commission*, 2 December 2016.

violations, religious persecution, and allegations of genocide.⁸ As the UN Special Adviser on the Prevention of Genocide Adama Dieng noted on 6 February, this commission “is not a credible option” to investigate abuses against Rohingya.⁹

- Two commissions, formed by the army and the Ministry of Home Affairs (also controlled by the military) on 9 February and 11 February 2017 respectively, have been tasked with investigating human rights violations committed by military and police personnel during the ‘clearance operations’.¹⁰ These commissions, made up of military and police officers, lack the independence and impartiality necessary to investigate violations committed by security forces.
- An 11-member commission appointed by the Rakhine State Parliament on 24 October 2016, composed predominantly of ethnic Rakhine members from the Arakan National Party (ANP), was tasked with investigating the 9 October attacks on the three police border post but excluded any probe into human rights violations against the Rohingya population.¹¹ The commission’s chairman, ANP MP Aung Win, claimed in an interview with the BBC that rape of Rohingya women could not have occurred because they are “very dirty” and “they are not attractive so neither the local Buddhist men or the soldiers are interested in them.”¹²

An advisory commission was also established by Myanmar State Counsellor Aung San Suu Kyi on 24 August 2016. The commission consists of nine members, including three international experts with former UN Secretary-General Kofi Annan as its chair. However, its mandate is limited to making general recommendations to the government to “resolve protracted issues” in Rakhine State and both Annan and the Myanmar government have affirmed the commission will not investigate reports of human rights violations.¹³

Finally, another earlier commission, set up by then-President Thein Sein in August 2012 to investigate unrest in Rakhine State, failed to lead to accountability for human rights violations committed during successive waves of violence between June and October 2012. Approximately 140,000 people, predominantly Rohingya, were internally displaced and at least 200 were killed during the unrest.

Given the inability or unwillingness of these commissions to establish facts and hold perpetrators accountable, and the fact that national judicial and law enforcement authorities lack the both the independence and technical capacity to deal with such situations, we see no credible or effective alternative to a Commission of Inquiry, or similar international mechanism, to address and begin the process of effectively finding and verifying the truth of what has happened, and ensuring justice and accountability for human rights violations and abuses committed. At its March 2017 session, the Human Rights Council should adopt a resolution establishing such an international independent investigation tasked with

⁸ Global New Light of Myanmar, *Interim Report of the Investigation Commission on Maungdaw*, 3 January 2017.

⁹ UN News Centre, *Violence in Myanmar's Rakhine state could amount to crimes against humanity – UN special adviser*, 6 February 2017.

¹⁰ Global New Light of Myanmar, *Tatmadaw releases reaction to OHCHR Report*, 10 February 2017; Global New Light of Myanmar, *Ministry of Home Affairs issues press release*, 12 February 2017.

¹¹ Irrawaddy, *Arakan State Parliament Forms Commission to Investigate Maungdaw Attacks*, 26 October 2016

¹² BBC, *Muslim civilians ‘killed by Burmese army’*, 7 November 2016, available at: <http://www.bbc.com/news/world-asia-37892512>

¹³ Irrawaddy, *Kofi Annan: Commission Will Not Do ‘Human Rights Investigation’ in Arakan State*, 8 September 2016; President’s Office, *Kofi Annan calls for cooperation among neighbouring countries to address Rakhine issue*, 8 September 2016.

determining facts, identifying causes and alleged perpetrators, and making recommendations for next steps, including appropriate remedies for the victims.

The UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein and the UN Special Rapporteur on the situation of human rights in Myanmar Yanghee Lee both recently recommended the establishment of a Commission of Inquiry into the situation in Rakhine State.¹⁴ The signatories to this letter support this recommendation.

We strongly believe that at such a critical juncture in Myanmar's history, the establishment of a UN-mandated international Commission of Inquiry or similar international mechanism is a minimum requirement for ensuring justice and accountability, and can also significantly contribute to preventing further atrocities being committed against Rohingya and other minorities at risk in Myanmar. The commission's findings will play a crucial role in assisting the Myanmar government in promoting accountability for grave crimes committed by its security forces.

Please accept, Excellencies, the assurance of our highest consideration.

Alternative ASEAN Network on Burma (ALTSEAN-Burma)
Amnesty International
ASEAN Parliamentarians for Human Rights
Asian Forum for Human Rights and Development (FORUM-ASIA)
Burma Campaign UK
Christian Solidarity Worldwide
FIDH – International Federation for Human Rights
Fortify Rights
Human Rights Watch
International Campaign for the Rohingya
International Commission of Jurists
Odhikar
Unitarian Universalist Service Committee

¹⁴ IRIN, *UN rights envoy urges inquiry into abuses of Rohingya in Myanmar*, 9 February 2017; UNOHCHR, *Myanmar: UN #HumanRights Chief says there must be commission of inquiry on violations in northern #Rakhine, possibly referral to #ICC*, 7 February 2017, <https://twitter.com/OHCHRAsia/status/829178607616421888>