

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

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Minister of the President's Office  
of the Republic of the Union of Myanmar  
State Counsellor Office No. 8  
Naypyitaw, Myanmar

**Re: Violence, Persecution, and Discrimination against the Rohingya People in Myanmar**

Dear State Counsellor:

We write on behalf of the New York City Bar Association to express our grave concerns regarding the escalation of violence, persecution, and discrimination against the Rohingya population in Myanmar, and the ongoing obstruction of humanitarian assistance in northern Rakhine State—all of which stand in violation of international law. Given your longstanding reputation as a leading voice against oppression, we are particularly troubled that your government has failed to speak out against the violence or take remedial action to alleviate the systemic mistreatment of the Rohingya, but has instead presided over renewed attacks by security forces that have resulted in mass displacement.

While we recognize the government's interest in addressing militant threats, counterterrorism operations must not be used as a pretext for perpetrating targeted violence against civilians or seeking to eliminate an unwanted ethnic group. We urge the government of Myanmar to act swiftly to condemn the attacks against the Rohingya population, to work with the military to undertake meaningful efforts to comply with Myanmar's international legal obligations, to end the targeted violence against the Rohingya population, to restore humanitarian access to affected Rohingya communities, and to take steps to fully safeguard the rights of the Rohingya people in Myanmar. As your administration works with the government of Bangladesh to implement the recent repatriation agreement, we also urge you to carry out that implementation process in a manner that ensures the safe and sustainable return of the displaced Rohingya population, so that those returning are not subjected to renewed violence and persecution.

The Association is an independent, nongovernmental organization of over 24,000 lawyers, judges, law professors, and government officials from the United States and over 50 other countries. Throughout its 148-year history, the Association has consistently maintained that respect for the rule of law and human rights is essential in all jurisdictions and has a history of investigating and reporting on human rights concerns around the world, including within the United States. Through the work of its International Human Rights Committee, the Association has long been dedicated to advocating on behalf of and preserving the rights of the most vulnerable populations—including ethnic and religious minorities and individuals subject to arbitrary or discriminatory deprivation of nationality.<sup>1</sup> We believe that advancing these rights is essential to a fair and just society.

## Escalation of Violence and Persecution of the Rohingya People

As part of this work, the Association has been monitoring the persecution of minorities in Myanmar, and we are troubled by the recent escalation of attacks against the Rohingya people, particularly in light of the government’s longstanding discriminatory practices against members of Rohingya communities. Over one million Rohingya people, a predominantly Muslim ethnic minority in Burma, consider Myanmar their home and have resided in the country for generations.<sup>2</sup> However, in response to an attack on security forces, the Myanmar government initiated a counteroffensive or “clearing operation” on August 25, 2017, that has involved village-wide massacres; extrajudicial and summary executions; mass rapes; torture; the destruction of over 200 villages and the deliberate destruction of property, crops and food sources.<sup>3</sup> These actions have resulted in a mass displacement of over 600,000 civilians—an alarming number above and beyond the large number of individuals who have been internally displaced and the populations displaced prior to this recent escalation of violence.<sup>4</sup>

The onslaught of violence since August 2017 has also resulted in a severe humanitarian and refugee crisis. Almost half of the Rohingya population in Myanmar has been displaced and is facing overcrowded and unsanitary conditions in established and make-shift camps in Bangladesh.<sup>5</sup> UN and

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<sup>1</sup> See, e.g., Letter from John S. Kiernan and Anil Kalhan, New York City Bar Association, to Hon. Rex Tillerson, Secretary of State, *Denationalization and Discriminatory Mistreatment of Dominican Individuals of Haitian Descent*, Feb. 23, 2018, <http://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/denationalization-and-discriminatory-mistreatment-of-dominican-individuals-of-haitian-descent-letter-to-secretary-of-state-tillerson>; Letter from Barry M. Kamins, New York City Bar Association, to Ong Keng Yong, Secretary General, Association of Southeast Asian Nations, Nov. 6, 2007, <http://www.nycbar.org/pdf/report/Burma%20Letter%20Nov.%206.pdf> (expressing concern over crackdown on peaceful protestors and ongoing detention of activists and monks in Myanmar); Letter from Barry M. Kamins, New York City Bar Association, to Senior General Than Shwe, State Peace and Development Council, Union of Myanmar, Oct. 25, 2007 (same). (All websites last visited July 24, 2018)

<sup>2</sup> Rebecca Ratcliffe, *Who Are the Rohingya and What is Happening in Myanmar*, GUARDIAN (Sept. 5, 2017), <https://www.theguardian.com/global-development/2017/sep/06/who-are-the-rohingya-and-what-is-happening-in-myanmar>.

<sup>3</sup> *Id.*

<sup>4</sup> See Office of the United Nations High Commissioner for Human Rights, FLASH REPORT OF OHCHR MISSION TO BANGLADESH: INTERVIEWS WITH ROHINGYAS FLEEING FROM MYANMAR SINCE 9 OCTOBER 2016 (Feb. 3, 2017), [hereinafter UN Flash Report]; <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>; Human Rights Watch, *Myanmar: Global Appeal for UN Action* (Sept. 28, 2017), <https://www.hrw.org/news/2017/09/28/myanmar-global-appeal-un-action> [hereinafter HRW, *Myanmar Global Appeal*].

<sup>5</sup> Rick Gladstone & Megan Specia, *Pressure Rises at U.N. on Myanmar Over Rohingya Crisis*, N.Y. TIMES (Sept. 28, 2017), <https://www.nytimes.com/2017/09/28/world/asia/myanmar-un-rohingya-drown.html>.

other aid agencies have reported being blocked from delivering life-saving supplies to northern Rakhine State, leaving individuals who remain without access to basic humanitarian assistance, including food, water, and medical supplies.<sup>6</sup> As a result, the Rohingya people, both in Bangladesh and at home, are suffering from widespread hunger, malnutrition, and deprivation, impacting over 80,000 children.

This current escalation of violence and mistreatment is part of a long-standing pattern of violent crackdowns directed at the Rohingya minority community that have resulted in its systemic persecution over the past decades. It is now well documented that these attacks—the most recent of which has also been the most severe— have served as a pretext for targeting a long-persecuted ethnic minority with the aim of eliminating or reducing their presence in Myanmar.<sup>7</sup> Despite their presence in the country for generations, the Rohingya people have come to be considered “illegal migrants” by the government and they have been subjected to systemic and institutional persecution—including the arbitrary deprivation of nationality that has rendered most of them effectively stateless. Through state-sponsored and state-sanctioned discriminatory laws and policies implemented over decades, the Rohingya people have increasingly been effectively stripped of legal status and protection through efforts aimed at encouraging them to leave the country altogether. As a result, they have been denied access to education and health care, among other basic services, and have been subjected to restrictions on movement and birth rates.<sup>8</sup>

### **Atrocities Rising to the Level of Crimes against Humanity**

It is also now well documented by the United Nations and reputable human rights organizations that the atrocities being committed in northern Rakhine State constitute crimes against humanity and are part of a broader campaign of ethnic cleansing. Both UN Secretary General Antonio Guterres and UN High Commissioner for Human Rights Zeid Ra’ad al Hussein have characterized the Myanmar government’s ongoing campaign as ethnic cleansing.<sup>9</sup> The UN Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee—who has been permanently barred from accessing the country—stated that the atrocities “bear the hallmarks of genocide” and has called for the creation of an independent investigative body.<sup>10</sup> The UN’s fact-finding mission in Myanmar has collected evidence that suggest that serious human rights violations have been committed that likely amount to crimes under international law.<sup>11</sup> A coalition of 96 nongovernmental organizations has concluded that the atrocities amount to crimes against humanity.<sup>12</sup>

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<sup>6</sup> Ratcliffe, *supra* note 2; Gladstone & Specia, *supra* note 5.

<sup>7</sup> See UN Flash Report, *supra* note 4; HRW, *Myanmar Global Appeal*, *supra* note 4.

<sup>8</sup> Ratcliffe, *supra* note 2.

<sup>9</sup> HRW, *Myanmar Global Appeal*, *supra* note 4; Nick Cumming-Bruce, *Rohingya Crisis in Myanmar Is ‘Ethnic Cleansing,’ U.N. Rights Chief Says*, N.Y. TIMES (Sept. 11, 2017), <https://www.nytimes.com/2017/09/11/world/asia/myanmar-rohingya-ethnic-cleansing.html>; Edith Lederer, *UN Chief Calls for End to ‘Ethnic Cleansing’ of Rohingya Muslims as Security Council Condemns Violence*, INDEPENDENT (Sept. 13, 2017), <http://www.independent.co.uk/news/world/asia/rohingya-ethnic-cleansing-genocide-latest-aung-san-su-kyi-refugees-burma-myanmar-un-bangladesh-a7945806.html>.

<sup>10</sup> Tom Miles, *UN Expert Says Myanmar Government Employs Starvation Policy in Rakhine*, REUTERS (Mar. 12, 2018), <https://www.reuters.com/article/us-myanmar-rohingya-un/u-n-expert-says-myanmar-government-employs-starvation-policy-in-rakhine-idUSKCN1G01G5>.

<sup>11</sup> UN Flash Report, *supra* note 4; Hanna Ellis-Petersen, *UN Officials Point Finger at Myanmar for Crimes Under International Law*, THE GUARDIAN (Mar. 13, 2018), <https://www.theguardian.com/world/2018/mar/13/un-officials-point-finger-at-myanmar-for-crimes-under-international-law>.

<sup>12</sup> HRW, *Myanmar Global Appeal*, *supra* note 4.

## Violations of Myanmar’s Constitution

The involvement of the government of Myanmar itself in these actions against members of the Rohingya community violates Myanmar’s Constitution and international law. Myanmar’s Constitution provides that “[n]othing shall . . . be detrimental to the life and personal freedom of any person.”<sup>13</sup> This provision clearly has been violated during the current crisis, which has involved widespread killings, enforced disappearances, sexual violence against women and girls, torture, arbitrary detention, deliberate burning of homes and villages, destruction of food sources, and lack of access to humanitarian assistance, including food, water, medical supplies, and emergency medical care—all of which are deeply detrimental to the life and personal freedoms of the Rohingya people. Myanmar’s Constitution also requires the government to ensure that all persons be “equally provide[d] legal protection” by the state and guarantees that the government will not discriminate against its citizens on the basis of “race, birth, religion, official position, status, culture, sex [or] wealth,”<sup>14</sup> With the government failing to prevent systemic ethnic, religious, and cultural discrimination and systemic mass violence against the Rohingya population, both provisions clearly have been violated in the current crisis.

These provisions also must be read to apply to all persons. Accordingly, Myanmar’s 1982 Citizenship Law violates these nondiscrimination principles by creating tiered classes of citizens, providing “full” citizenship only to members of certain named “national races”—a list that excludes the Rohingya—or to those who settled in the country before 1823.<sup>15</sup> While the government has invoked a second classification of “associate citizen” to effectively deny citizenship rights to the Rohingya and render many of them effectively stateless, legislative citizenship classifications that inject arbitrary ethnically based distinctions in citizenship violate the spirit of the constitutional provision and are not a valid means of denying the Rohingya people rights under the constitution, and should be repealed.

## Violations of Myanmar’s International Law Obligations

The government’s discriminatory laws, combined with its ongoing security operations, violate Myanmar’s treaty obligations as well as its obligations under customary international law. Myanmar is party to four of the core international human rights conventions: the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child (CRC), including its Optional Protocol; the Convention on the Rights of Persons with Disabilities (CRPD); and most recently, the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The government thus has explicit mandates under international law to protect the rights of women, children, and persons with disabilities and to safeguard economic, social and cultural rights of all individuals. Although Myanmar is not yet a party to the International Covenant on Civil and Political Rights (ICCPR), it remains bound by key provisions under the ICCPR and the Universal Declaration of Human Rights (UDHR) insofar as they are recognized as binding principles of customary international law. Moreover, Myanmar is also party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and is subject to clear obligations under international humanitarian law as a party to the four 1949 Geneva Conventions.

The right to nationality is recognized in the Universal Declaration of Human Rights and reiterated and codified in five international treaties, including the CRC, which imposes binding obligations on

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<sup>13</sup> MYANMAR CONST., Ch. VIII, §§ 347, 353 (2008), *available at* [http://www.burmalibrary.org/docs5/Myanmar\\_Constitution-2008-en.pdf](http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf).

<sup>14</sup> *Id.* § 347.

<sup>15</sup> Human Rights Watch, Letter to President Thein Sein Re: Amending the 1982 Citizenship Law (Jan. 13, 2015), <https://www.hrw.org/news/2015/01/13/letter-president-thein-sein-re-amending-1982-citizenship-law>.

Myanmar.<sup>16</sup> The UDHR and International Covenant on Civil and Political Rights also guarantee to everyone the right to life, liberty and security of person; freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to be free from arbitrary arrest, detention or exile; the right to residence within the borders of each state; and the right to a nationality.<sup>17</sup> The UDHR and the major international human rights conventions also expressly prohibit discrimination based on race, religion, or language, providing that governments must provide equal protection under the law to all persons within their territories, including religious and ethnic minorities.<sup>18</sup>

The reports and documentation of arbitrary detentions and killings; torture; systemic ethnic and religious discrimination; and denial of citizenship to the Rohingya run afoul of these international law guarantees. Denial of equal citizenship and authorization of religious discrimination have permitted officials to deny minority groups equal rights and access to government services. Myanmar also has an obligation under the Genocide Convention to prevent and punish acts of genocide, which constitute crimes under international law. To uphold its obligations under this convention, the government must refrain from targeting, killing, and causing serious harm to the Rohingya population and must actively take measures to eliminate conditions calculated towards eradicating the Rohingya population from northern Rakhine State.

The government's denial of food, water, and humanitarian assistance violates its obligations under the ICESCR, which requires parties to safeguard the right to an adequate standard of living, including access to food, clothing, housing, and water.<sup>19</sup> Myanmar has a clear obligation to guarantee these rights without discrimination.<sup>20</sup> Nonetheless, the Special Rapporteur has raised alarming concerns that the government is using starvation tactics to push out the remaining Rohingya population.<sup>21</sup> The government's policies have also resulted in state-sanctioned religious persecution through restrictions on ability to congregate in places of worship, engage in religious practices and dress, and imposition of travel restrictions or specialized requirements to establish identity. Consequently, the government's laws and practices have created an environment of widespread discrimination and denied the Rohingya their rights to equal treatment under the law in violation of established customary international human rights standards.

Moreover, under the Convention on the Rights of the Child, Myanmar is required to take "all appropriate measures" to ensure that every child "is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."<sup>22</sup> The state also must ensure to the maximum extent possible the survival

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<sup>16</sup> Universal Declaration on Human Rights, G.A. Res. 217A, art. 15, U.N. GAOR, 3d Sess., 1st Plen. Mtg, U.N. Doc. A/810 (Dec. 12, 1948) (hereinafter UDHR); International Covenant on Civil and Political Rights, art. 24(3), Dec. 16, 1966, 999 U.N.T.S. 171 (hereinafter ICCPR); International Convention on the Elimination of All Forms of Racism, art. 5(d)(iii), Mar. 7, 1966, 660 U.N.T.S. 19; Convention on the Rights of the Child, arts. 7-8, Nov. 20, 1989, 1577 U.N.T.S. 3 (hereinafter CRC); Convention on the Elimination of All Forms of Discrimination Against Women, art. 9, Dec. 18, 1979, 1249 U.N.T.S. 13 (hereinafter CEDAW); Convention on the Right of Persons with Disabilities, art. 18, Dec. 27, 2009, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49.

<sup>17</sup> UDHR, arts. 3, 5, 7, 9, 13, 15; ICCPR, arts. 7, 9, 12, 24.

<sup>18</sup> UDHR, arts. 2, 7; ICCPR, art. 26.

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights, art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>20</sup> *Id.* art. 2(2).

<sup>21</sup> Miles, *supra* note 10.

<sup>22</sup> CRC, art. 2.

of each child,<sup>23</sup> that “[n]o child shall be subjected to arbitrary or unlawful interference with his or her . . . family [or] home,”<sup>24</sup> and that all children are protected from “all forms of physical or mental violence, injury or abuse . . . .”<sup>25</sup> The ongoing denial of citizenship to Rohingya children born in the country violates Myanmar’s obligations under the Convention on the Rights of the Child, which guarantees the right of children to acquire and have their nationality registered at birth to prevent statelessness.<sup>26</sup> The government of Myanmar has not taken necessary steps to guarantee any of these rights for Rohingya children who systematically face discrimination on account of their ethnic and religious identity, including through the denial of citizenship, forcible removal from their homes, and subjugation to sexual abuse, and murder.

Under CEDAW, Myanmar has clear obligations to safeguard the rights of women in the country, and the CEDAW Committee has specifically recognized that gender based violence constitutes discrimination under the convention.<sup>27</sup> Despite the government’s clear duty to protect women against such violence, it has been credibly documented by the UN fact-finding mission and NGOs that security forces have engaged in targeted sexual violence against Rohingya women.<sup>28</sup>

## Conclusion and Recommendations

The protracted nature of the crisis does not diminish the government’s obligation to act promptly and aggressively to protect its entire population and speak out against this well documented campaign. While we recognize that addressing and eliminating systemic discrimination and persecution can be a complex and long-term process, speaking out against discrimination and stemming ongoing atrocities cannot be. Accordingly, we respectfully urge the government of Myanmar to:

- take immediate steps to condemn the violence and atrocities committed against the Rohingya population in northern Rakhine State, call for directives to eliminate the excessive use of military force against the Rohingya, and mobilize your political capital to engage in a constructive dialogue with the military on how to end violence and persecution against the Rohingya population;
- provide unhindered humanitarian and media access, and basic services, to all areas of northern Rakhine State;
- safeguard the right to return for all who have been displaced by the violence, including effective oversight of the November 23, 2017 repatriation agreement to ensure that the return is voluntary, sustainable, and carried out in a manner that preserves the safety and dignity of the Rohingya. The repatriation process must avoid long-term placement in camps or restrictions on their freedom of movement, and

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<sup>23</sup> *Id.* art. 6.

<sup>24</sup> *Id.* art. 16.

<sup>25</sup> *Id.* art. 19.

<sup>26</sup> *Id.* art. 7.

<sup>27</sup> UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 (11th session, 1992).

<sup>28</sup> UN Flash Report, *supra* note 4, at 9–10, 20-25; HUMAN RIGHTS WATCH, “ALL OF MY BODY WAS PAIN”: SEXUAL VIOLENCE AGAINST ROHINGYA WOMEN AND GIRLS IN BURMA (2017), <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma>.

temporary camps must be safe and temporary. Notably, the repatriation process must be carried out in a way that ensures that those returning are not subjected to renewed violence and persecution;

- provide unfettered access for the Special Rapporteur on the Situation of Human Rights in Myanmar and the UN Fact-Finding Mission that has been authorized by the UN Human Rights Council to investigate and establish an institutional process to ensure accountability and bring perpetrators to justice;
- address the legal status of Myanmar's Rohingya population by initiating a process to bring the necessary government arms together to revoke the 1982 citizenship law and work towards implementing procedures to grant equal citizenship status;
- strengthen Myanmar's legal commitment to fundamental rights, including by signing and ratifying the ICCPR; and
- commit and take steps to dismantle legal and institutional discrimination and segregation against the Rohingya and other ethnic minorities and restore basic rights and equal access to basic services, free movement, employment, education, and health care.

As a Nobel Laureate and state leader, you have a unique opportunity and obligation to harness your stature and moral authority to deploy every tool in your arsenal to speak out to address this crisis. As a result of the government's campaign and its reticence in the wake of the startling atrocities, the Rohingya continue to suffer deeply. It is time for the government of Myanmar to heed your own previous words: "Wherever suffering is ignored, there will be the seeds of conflict, for suffering degrades and embitters and enrages."<sup>29</sup>

Respectfully,



Roger Juan Maldonado  
President



Anil Kalhan  
International Human Rights Committee  
Chair

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<sup>29</sup> Aung San Suu Kyi, Nobel Lecture (June 16, 2012),  
[https://www.nobelprize.org/nobel\\_prizes/peace/laureates/1991/kyi-lecture\\_en.html](https://www.nobelprize.org/nobel_prizes/peace/laureates/1991/kyi-lecture_en.html).

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