



FORTIFY
RIGHTS

Policies of Persecution

**Ending Abusive State Policies Against
Rohingya Muslims in Myanmar**

February 2014

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We provide technical support to human rights defenders and conduct independent monitoring and strategic advocacy. By independently documenting and exposing human rights violations while teaming with activists to advocate for change at local, national, and international levels, we aim to fortify the human rights movement.

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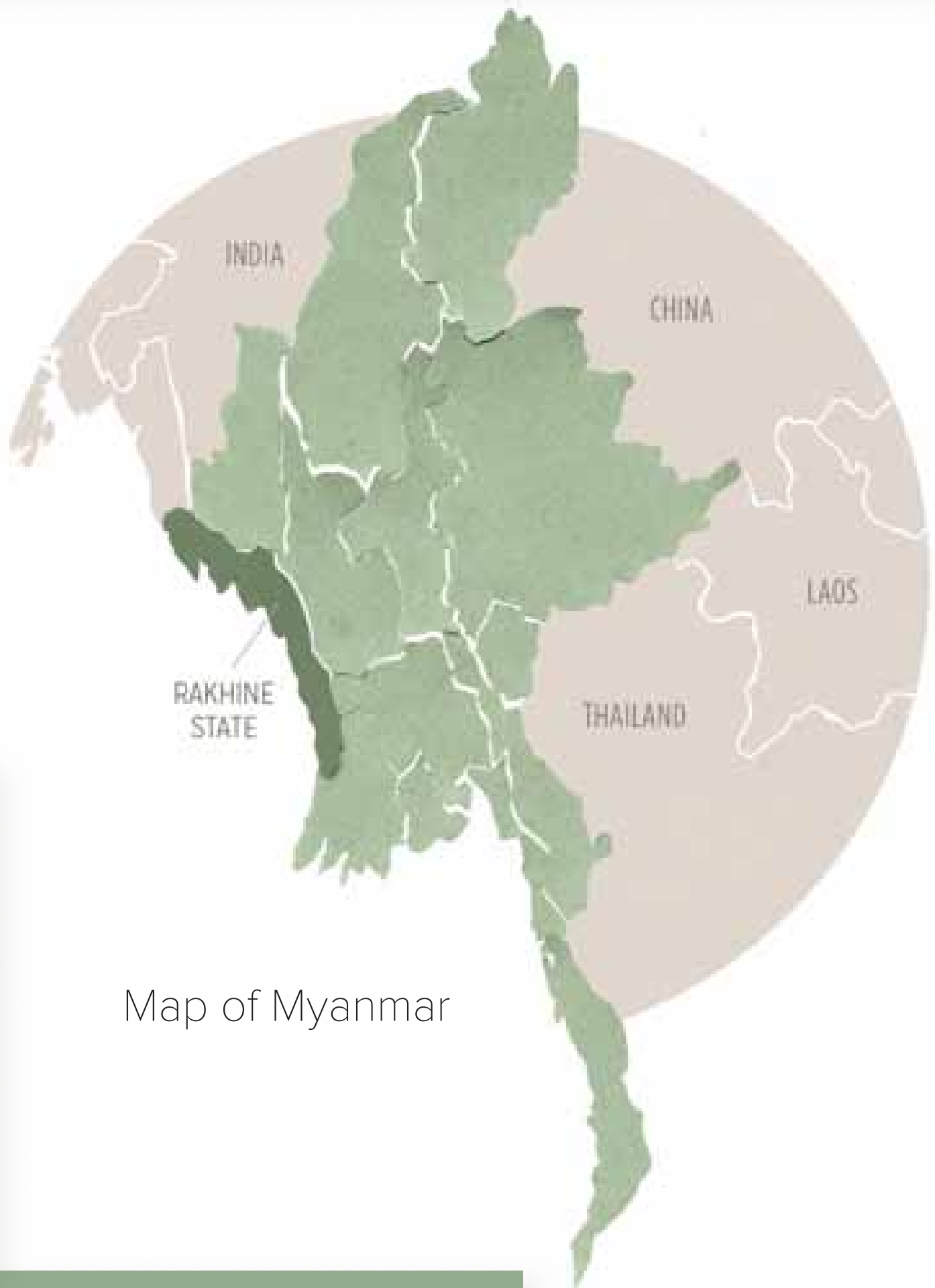
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Map of Rakhine State
Myanmar



Map of Myanmar



Buddhist monks hold an anti-Muslim rally, Yangon, Myanmar, April 15, 2012. A rising tide of anti-Muslim Buddhist-nationalism in Myanmar imperils Muslim human rights. Monks demand tighter restrictions on Rohingya in Rakhine State.

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Summary

Leaked official documents obtained by Fortify Rights reveal explicit government policies imposing extensive restrictions on the basic freedoms of Rohingya Muslims in Myanmar's Rakhine State. The never-before published orders and guidelines outline discriminatory policies and abusive enforcement methods plainly designed to control the Rohingya population in the predominantly Rohingya townships of northern Rakhine State. This report provides evidence that protracted human rights violations against Rohingya result from official state policies and could amount to the crime against humanity of persecution.

The documents obtained by Fortify Rights detail restrictions on movement, marriage, childbirth, home repairs and construction of houses of worship, and other aspects of everyday life. Confidential enforcement guidelines empower security forces to use abusive methods to implement these "population control" measures. The evidence presented in this report indicates the involvement of Rakhine State and central government authorities in the formulation and implementation of these policies.

For nearly 50 years, the population in Rakhine State struggled under repressive military rule, and ethno-religious tensions between Rakhine Buddhists and Rohingya Muslims have persisted for generations. Many Rakhine claim to feel threatened by the Muslim population and oppressed by the central government, and they have been intent on forcing Rohingya out of what they regard as their exclusive ancestral homeland. These tensions have fueled significant waves of violence and well-coordinated arson attacks in Rakhine State since 2012, targeting the Rohingya population and other Muslim communities. While Buddhists and Muslims have sustained casualties, in some cases state security forces participated in violence against Rohingya or failed to protect Rohingya communities under attack. Several hundred men, women, and children have been killed and entire Muslim neighborhoods and villages have been razed.

While the outbreaks of violence have commanded global attention, the insidious abuses exposed in this report stay under the radar, cutting to the core of Rohingya daily life and ensuring northern Rakhine State remains vulnerable to serious unrest.

Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar is based primarily on 12 internal government documents, eight of which outline official policies targeting Rohingya in Rakhine State. This includes three Rakhine State "regional orders," five addenda to the regional orders, and four additional government documents relating specifically to Muslim citizens in areas outside Rakhine State. This

report also draws on interviews with Rohingya in Myanmar and Rohingya asylum-seekers in Thailand, and discussions with aid workers, scholars, journalists, and others.

The three regional orders obtained by Fortify Rights date from 1993 to 2008, and the five addenda date from 2007 or earlier. These eight documents are published for the first time as appendices in this report. The four additional internal government documents considered for this report are dated March 2013 and remain unpublished here due to security concerns.

UN Special Rapporteurs and agencies, international organizations and news media, and increasingly Rohingya themselves have documented for decades the adverse impacts of the policies explained in this report. The actual policies, however, have never been published.



Since 2005, Myanmar has imposed a strict two-child policy for Rohingya in the townships of Maungdaw and Buthidaung in northern Rakhine State, in violation of human rights law. “Regional Order 1/2005” appears to lay the foundation for the two-child policy, requiring Rohingya “who have permission to marry” to “limit the number of children, in order to control the birth rate so that there is enough food and shelter.” This order also prohibits Rohingya from having children out of wedlock. As a result of the two-child policy, women have undergone illegal and unsafe abortions, leading to serious health consequences and even death. These restrictions violate the right to marry and found a family, in addition to other rights that are protected under treaty-based and customary international law.

A document obtained by Fortify Rights explaining enforcement methods for these “population control” policies instructs officials to force Rohingya women to breastfeed infants in the presence of soldiers “if there is suspicion of someone being substituted [in the family registry],” in order to confirm the women are the birth mothers and to accurately record the number of children in each family.

Official orders issued by Rakhine State authorities from 1993 to 2008 outline a consistent state policy of restrictions on marriage imposed against Rohingya in Rakhine State. A document entitled “Requirements for Bengalis [Rohingya] who apply for Permission to Marry,” details ten requirements for the authorities to approve a marriage between Rohingya. The process is often humiliating and financially prohibitive for Rohingya and it violates the right to marriage as articulated by Article 23 of the International Covenant on Civil and Political Rights and Article 16 of the Universal Declaration of Human Rights. Other ethnic groups in Myanmar are not required to ask the state for permission to marry, making the requirements on Rohingya discriminatory.

Policies of Persecution

Other documents obtained by Fortify Rights outline policies related to restrictions on freedom of movement. Rohingya in Rakhine State cannot travel within or between townships without authorization and can only travel outside the state in rare circumstances with additional, difficult-to-obtain authorizations. The restrictions imposed upon Rohingya freedom of movement are not in line with international human rights standards, as they are not narrowly tailored “to protect national security, public order, public health or morals, or the rights and freedoms of others.” Restrictions on movement also interfere with other human rights for Rohingya, such as the right to health—Rohingya are prevented from travelling freely to neighboring village tracts or townships for medical treatment.

Several documents obtained by Fortify Rights explicitly provide criminal punishments for Rohingya who violate the restrictions, with penalties including up to several years in prison, fines, or both.

There are at least 1.33 million Rohingya in Myanmar. All but 40,000 are stateless due to the country’s 1982 Citizenship Law, which denies Rohingya equal access to citizenship and the rights it entails. The government openly denies the existence of the Rohingya ethnicity, refers to its members instead as “Bengali,” and regards them as “illegal immigrants” from Bangladesh, despite the fact that they have lived in Myanmar for generations. The restrictions imposed on Rohingya are ostensibly framed by the government of Myanmar as a response to an “illegal immigration” problem and threats to “national security.”

All of the restrictions and enforcement methods described in this report appear to remain in effect at the time of writing. Senior government officials and ministers of the central government have openly discussed several of them, privately and on record, both before and after violence erupted in Rakhine State in 2012.

In parliament in 2011, for instance, the Minister of Defense at the time, Lieutenant-General Hla Min, approvingly referenced and explained the restrictive policies against Rohingya, and on July 31, 2012, Myanmar’s Minister of Home Affairs Lieutenant-General Ko Ko told 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 right to construct building [sic] of Bengalis [Rohingya] under the law.”

The policies explained in this report appear to be designed to make life so intolerable for Rohingya that they will leave the country, and indeed many have. Hundreds of thousands of Rohingya have fled to Bangladesh, Thailand, Malaysia, and elsewhere over the last two decades, in many cases risking death at sea and abuses by human traffickers, including killings and ill treatment.



This report supports a prima facie finding that Rohingya are victims of the crime against humanity of persecution, and it implicates Myanmar government officials as perpetrators of that crime.

Currently, no competent legal system has jurisdiction over the grave crimes underway in Rakhine State. To analyze these serious offenses in the framework of international criminal law, this report looks to the Rome Statute of the International Criminal Court and examines the actions of the government of Myanmar with respect to Rohingya and considers their severe impact on Rohingya human rights.

Through discriminatory policies exposed in this report, the government of Myanmar intentionally strips Rohingya of fundamental rights, simply because they are Rohingya. Policies target Rohingya on the basis of their ethnicity, religion, and at times gender. The resulting deprivation is so severe as to include widespread displacement, endemic maternal mortality, and statelessness, among other serious consequences.

The Rome Statute requires that certain elements be fulfilled in order for criminal acts to rise to the threshold of crimes against humanity. In Rakhine State, each of the necessary pieces appears to be in place. There is an ongoing “attack”—which need not involve violent force— against Rohingya, stemming from state policy, thus satisfying the criteria established by the Rome Statute. The attack appears both “widespread” and “systematic,” exceeding the statutory requirement that it be one or the other. Additionally, government officials have demonstrated their knowledge of the attack and of the ways their actions contribute to it, fulfilling the mental element for crimes against humanity.

The crime of persecution cannot be perpetrated in isolation under the Rome Statute; it must be committed “in connection with” another crime proscribed by the Statute. Over the past two decades, there have been numerous accounts of serious abuses perpetrated against the Rohingya population in northern Rakhine State, as documented by United Nations officials and human rights organizations, including rape, torture, killings, and forced population transfers. These incidents are clearly connected to the discriminatory and persecutory policies described in this report and some could likely support a finding that the crime of persecution is underway in northern Rakhine State.

The current government of Myanmar has made public and private commitments to prevent further outbreaks of violence in Rakhine State and to improve the plight of Rohingya in Myanmar, but it has failed to act decisively. Likewise, members of the international community have paid considerable attention to the acts of violence and forced displacement in Rakhine State since June 2012, but have failed to address adequately the devastating systematic abuses perpetrated against the Rohingya on a daily basis.

State policies of persecution against Rohingya remain under enforcement in northern Rakhine State and should be abolished without delay.



KEY RECOMMENDATIONS TO THE GOVERNMENT OF MYANMAR

- Abolish all local orders and cease practices that restrict basic human rights of Rohingya, including the rights to nondiscrimination, nationality, movement, marriage, family, health, and privacy without delay. Communicate to central, state, and local governments and the general public that authorities are to cease all official and unofficial practices related to these restrictions against Rohingya in Rakhine State.
- Support an independent investigation by international and Myanmar partners into human rights violations in Rakhine State from 2012 to present, including into restrictions imposed on Rohingya in northern Rakhine State.
- Amend the 1982 Citizenship Law to reduce statelessness and ensure Rohingya have equal access to citizenship rights.
- Ensure legislation and policies are publicly available and in line with international human rights laws and standards.

METHODOLOGY

This report is based largely on 12 internal Myanmar government documents, comprising three regional orders, five addenda to the regional orders, and four other internal government documents.

The regional orders and addenda were produced between 1993 and 2008 and the policies they describe remain in effect today. The three orders are signed by state-level government officials and copied to various departments falling under state and union-level jurisdictions. The five addenda are undated but were produced in 2007 or earlier. These documents articulate state policies and enforcement methods relating to restrictions on freedoms of Rohingya in northern Rakhine State. The original documents are in the Myanmar language and were unofficially translated into English. The four other internal government documents relate to Muslim citizens in Myanmar, in areas outside Rakhine State, and are dated in 2013. They were instructive as background to the findings of this report.

The unofficial English translations of the three regional orders and five addenda are published as appendices to this report. The four additional documents are not published in the appendices for security reasons but are on file with Fortify Rights. Fortify Rights received information from credible sources regarding other regional orders, which was considered for the report.

For security purposes, the sources of these documents have been kept confidential.

In late 2013, Fortify Rights conducted seven interviews with Rohingya in Myanmar and five interviews with Rohingya asylum-seekers in Thailand. Most interviews were conducted in the Rohingya and Myanmar languages, with English interpretation; some were conducted directly in English. All persons interviewed for this report provided informed consent and none were compensated. Fortify Rights also engaged in discussions with a variety of actors in Myanmar, including humanitarian aid workers, journalists, and others representing a variety of ethnic backgrounds and faith-traditions.

Fortify Rights conducted a thorough literature review of private and public documents and reports from United Nations officials and agencies, nongovernmental organizations, and the news-media, as well as academic studies and scholarly books and articles.



I. Background



A camp for displaced Rohingya outside Sittwe, Rakhine State, April 2013. Since June 2012, targeted attacks have displaced over 140,000 Rohingya throughout Rakhine State, strict restrictions on movement remain imposed, which is devastating to livelihoods.

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Anti-Muslim Violence: 2012-present

Muslims from numerous ethnic backgrounds comprise an estimated five percent of Myanmar's population.¹ Severe anti-Muslim violence in Myanmar since 2012 has particularly targeted Myanmar's Rohingya population, the largest Muslim minority in the country. The government estimates there are 1.33 million Rohingya in Myanmar, including 1.08 million in Rakhine State.² The total population of Rakhine State is approximately 3.33 million, including 2.2 million Rakhine Buddhists.³ The area of northern Rakhine State is predominantly Rohingya, comprising the townships of Maungdaw, Buthidaung, and Rathedaung.

A controversial 1982 citizenship law effectively stripped Rohingya of equal access to citizenship, rendering them stateless.⁴ Only an estimated 40,000 Rohingya have citizenship.⁵ Myanmar's government and many within Myanmar's populace regard Rohingya as "illegal migrants" from Bangladesh with no rightful claims to stay in Rakhine State or Myanmar. Government "reformers" have privately claimed to the diplomatic community that a "pathway to citizenship" would be made available to Rohingya, an option that would appear to fall short of full citizenship rights. There are no discernable changes underway to create such a pathway let alone provide equal access to full citizenship rights for Rohingya.

At the time of writing, there is little political will within Myanmar to grant official recognition to the Rohingya ethnicity. The government of Myanmar openly and vehemently denies the existence of a Rohingya ethnicity. In official and unofficial communications, authorities still commonly refer to Rohingya as "Bengali," "so-called Rohingya," or the derogatory "kalar."⁶ On July 15, 2013, for instance, President Thein Sein told Chatham House in London, "We don't have the term 'Rohingya.'"⁷ The government's official report on violence that occurred in Rakhine State in 2012 denies both the Rohingya ethnicity and name, concluding, "Ro-

1 Estimates vary and the government has not conducted a national census in over two decades. In his September 2013 report to the UN General Assembly, the UN Special Rapporteur on the Situation of Human Rights in Myanmar Tomás Ojea Quintana refers to the Muslim population as comprising 5 percent of the population. Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, UN General Assembly, September 23, 2013, A/68/397, p. 15.

2 Jason Szep and Andrew Marshall, "Myanmar minister backs two-child policy for Rohingya minority," *Reuters*, June 11, 2013, <http://www.reuters.com/article/2013/06/11/us-myanmar-rohingya-idUSBRE95A04B20130611> (accessed January 7, 2014).

3 Rakhine Inquiry Commission, *Final Report of Inquiry Commission on Sectarian Violence in Rakhine State*, The Republic of the Union of Myanmar, July 8, 2013, pp. 3 and 78. Note the official English-language version is dated July 8, 2013, but the original Myanmar-language report was released April 29, 2013.

4 See Human Rights Watch, *"The Government Could Have Stopped This": Sectarian Violence and Ensuing Abuses in Burma's Arakan State*, August 1, 2012, Chapter V, "Denial of Citizenship Rights to Rohingya," at <http://www.hrw.org/node/109177/section/8> (accessed December 30, 2013).

5 Jason Szep and Andrew Marshall, "Myanmar minister backs two-child policy for Rohingya minority," *Reuters*, <http://www.reuters.com/article/2013/06/11/us-myanmar-rohingya-idUSBRE95A04B20130611>.

6 Government press releases and other official publications refer to "Bengalis" and in practice Myanmar government officials do not acknowledge the name "Rohingya." See for example "The Government of the Republic of the Union of Myanmar Ministry of Foreign Affairs Press Release," Ministry of Foreign Affairs press release, December 6, 2012, <http://www.president-office.gov.mm/en/issues/foreign-policy/id-1202> (accessed January 15, 2014).

7 Maung Zarni, "British Aid for Myanmar Ethnic Cleansing," *Asia Times Online*, July 19, 2013, http://www.atimes.com/atimes/Southeast_Asia/SEA-01-190713.html (accessed December 30, 2013). See also David Mephram, "Dispatches: Burma—'Excuse me, Mr. President...,'" Human Rights Watch, July 19, 2013, <http://www.hrw.org/news/2013/07/19/excuse-me-mr-president> (accessed December 30, 2013).

hingya' was not the name of a distinct race or people.”⁸ In September 2013, Myanmar's Minister of Foreign Affairs Wunna Maung Lwin likewise told the UN Human Rights Council that the term Rohingya “has never existed in the country's history.”⁹

Certain members of the international community might also be implicated in denying the Rohingya ethnicity or at least attempting to placate to Myanmar authorities on the issue. On February 3, 2014, the European Union Heads of Mission in Myanmar issued a communiqué following a four-day mission to northern Rakhine State, failing to mention the word “Rohingya.” The document mentioned “Rakhine Buddhists” and “Muslim communities.”¹⁰

Written records indicate the Rohingya presence in modern Myanmar predates the turn of the 19th century.¹¹ Both Rohingya and Rakhine are ethnic minorities with long-established roots in what is now known as Rakhine State. Historically, members of each group have inflicted violence on the other, and each has been subject to serious human rights violations by previous military juntas as well as the current government of Myanmar, which is dominated by members of the military and the ethnic-majority Burman population.

In June 2012, violence between Rakhine and Rohingya erupted in four townships in Rakhine State following reports of the rape and killing of a Rakhine Buddhist woman by three Muslim men. Individuals from both communities committed killings, arson, and property destruction; both communities suffered casualties and displacement.¹² The violence soon morphed, however, into sustained and targeted attacks by Rakhine civilians and state security forces against Muslims, predominantly Rohingya Muslims.¹³ Initial attacks in Rakhine State displaced upwards of 100,000 people, most of whom were Rohingya.¹⁴

Following the initial wave of violence, between June and October 2012, local Buddhist monks' associations, political parties, and Rakhine citizens organized throughout the state, planning to drive Rohingya from areas the Rakhine people regard as their rightful home-

8 Rakhine Inquiry Commission, *Final Report*, p. 54.

9 Statement by H.E. U Wunna Maung Lwin, Union Minister for Foreign Affairs of the Republic of the Union of Myanmar at the 24th Session of the Human Rights Council, Geneva, September 13, 2013.

10 Communiqué by the Heads of Missions of the European Union, February 5, 2014, http://eeas.europa.eu/delegations/myanmar/documents/press_corner/2014/20140205_en.pdf (accessed February 10, 2014).

11 The earliest-known recorded use of the term Rohingya with regard to Myanmar dates back to an academic study of languages in Myanmar published in English in 1799. See Francis Buchanan, “A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire,” *Asiatic Researches*, vol. 5 (1799), www.soas.ac.uk/sbbr/editions/file64276.pdf (accessed December 30, 2013), p. 234. Francis Buchanan, M.D. wrote of a dialect in western Myanmar “spoken by the [Muslims], who have long settled in Arakan [Rakhine], and who call themselves *Rooinga*, or natives of Arakan.” The British colonial records did not refer to “Rohingya” and that omission is used to “confirm” an exclusive interpretation of history, denying the Rohingya exist as a people. Many ethnic and religious nationalists in Myanmar fear that if the government of Myanmar recognizes the Rohingya name, then the Rohingya will demand a separate state within the union of Myanmar. Likewise, unreasonable fears abound that the Rohingya are plotting to gain economic and political power and turn Myanmar into an Islamic state, or that the Rohingya will eventually attempt to secede northern Rakhine State from Myanmar, establishing an independent Islamic nation. In private discussions with Fortify Rights, some ethnic-Burman and Rakhine political leaders have argued that Myanmar is the last Buddhist bastion in the region and must be protected from Islamic influence.

12 Human Rights Watch, “*The Government Could Have Stopped This*,” <http://www.hrw.org/reports/2012/07/31/government-could-have-stopped>.

13 Ibid.

14 Ibid.

land.¹⁵ Predictably, in October, a more carefully planned and targeted wave of violence against Rohingya commenced in Rakhine State, spreading through nine additional townships. In some areas, thousands of armed ethnic Rakhine waged coordinated pre-dawn raids, surrounded and razed Muslim villages, and forcibly displaced tens of thousands more Muslims. In 2013, Fortify Rights interviewed several Rohingya who fled these attacks and described witnessing violence, abuse, and killings by Rakhine people and state security forces.¹⁶

Compelling reports of grave rights abuses in Rakhine State have been published since June 2012, including evidence of killings and the international crimes of forced deportation, forced population transfer, and persecution.¹⁷ Evidence of four mass graves containing Rohingya bodies and satellite images revealing the scorched-earth destruction of thousands of Rohingya-owned homes and businesses were published in June and October 2012.¹⁸ The government of Myanmar has consistently denied any wrongdoing; there have been no prosecutions of members of Myanmar's state security forces for abuses committed in Rakhine State.

At least 200,000 of Myanmar's Rohingya have fled their homes since June 2012. Conservative estimates from November 2013 indicate that more than 138,000 Rohingya and Kaman Muslims—another religious and ethnic minority in Myanmar—remain internally displaced in Rakhine State.¹⁹ They are relegated to squalid camps and are unable to return home or receive restitution for lost property.

The UN and several embassies in Myanmar have described the humanitarian conditions endured by internally displaced Rohingya as among the world's worst and pronounced the situation as “dire.”²⁰ A year and a half after the initial violence in Rakhine State, some communities of displaced Rohingya still lack adequate shelter, drinking water, latrines, and health care, leading to “avoidable deaths,” according to humanitarian aid workers operating in the state.²¹ At least 36,000 additional Rohingya are isolated in remote villages sur-

15 See 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, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray> (accessed December 30, 2013), Chapter I, “Promoting Ethnic Cleansing,” pp. 24-46.

16 Fortify Rights interviews with Rohingya asylum seekers in Thailand, September 2013.

17 Human Rights Watch, *All You Can Do Is Pray*, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray>. See also “Burma: New Violence in Arakan State,” Human Rights Watch press release, October 27, 2012, <http://www.hrw.org/news/2012/10/26/burma-new-violence-arakan-state> (accessed December 30, 2013); “Burma: Satellite Images Show Widespread Attacks on Rohingya,” Human Rights Watch press release, November 17, 2012, <http://www.hrw.org/news/2012/11/17/burma-satellite-images-show-widespread-attacks-rohingya> (accessed December 30, 2013).

18 Ibid.

19 UN Office for the Coordination of Humanitarian Affairs (UNOCHA), “Myanmar: Internal Displacement in Rakhine State as of November 30, 2013,” http://reliefweb.int/sites/reliefweb.int/files/resources/IDPMap_OCHA_MMR_0131_Rakhine_IDP_locations_A3_30Nov2013.pdf (accessed February 12, 2014).

20 See “Top UN relief official calls on Myanmar's leaders to support humanitarian efforts,” UN News Centre, December 5, 2012, www.un.org/apps/news/story.asp?NewsID=43686&Cr=myanmar&Cr1=#.UMBNyrYY1K5 (accessed January 14, 2014); Embassy of the United States of America, Embassy of Switzerland, Embassy of the Republic of Turkey, Delegation of the European Union, “Myebon Joint Mission Statement,” December 30, 2013, http://photos.state.gov/libraries/burma/328671/press-releases_001/12-13-myebon-joint-mission-statement.pdf (accessed January 14, 2014). The statement stressed the failures of the Myanmar government, emphasizing “Union-level and local officials alike have publicly vowed to enforce [full and unimpeded humanitarian access] without delay. Despite these promises, we have yet to see effective action.”

21 Lauren Cooney of Medecins Sans Frontieres writes: “This situation has generated significant humanitarian needs amongst Muslim communities, who suffer from inadequate provision of shelters and latrines, shortages of drinking water, and intermittent health services that result in avoidable deaths and

rounded by hostile Rakhine communities, which block Rohingya access to humanitarian aid agencies and adequate means of subsistence.²² Tens of thousands more have fled by sea to seek asylum in Malaysia, Thailand, and other destinations, confronting serious risks at sea and potential abuse by hostile authorities and human traffickers.²³

At the time of writing, the violence in Rakhine State has not yet ceased. Killings of displaced Rohingya men and women by state security forces have been committed with impunity since the October 2012 violence.²⁴ A January 2014 incident in Maungdaw Township involved mass arrests of Rohingya men and boys, arson, violence, and killings of Rohingya and a local police sergeant.²⁵

The National Census and Government Perceptions of Excessive Population Growth of Rohingya

British colonial records from Myanmar, which include annual population figures, are often cited as grounds to deny Rohingya citizenship and ethnicity. These archives do not mention Rohingya and show a marked annual growth in the Muslim population of what is now Rakhine State.²⁶ The perceived “population explosion” of Muslims in Rakhine State is a principal concern among ethnic Rakhine and government officials in Myanmar. Some Buddhists in Myanmar harbor existential fears that a growing population of Muslims—particularly Rohingya—will gain economic and political power and threaten Buddhist culture.

an increased likelihood of epidemics.” Lauren Cooney, “Patients Not Politics,” post to “The Humanitarian Space” (blog), *Humanitarian Practice Network*, December 2013, <http://www.odihpn.org/the-humanitarian-space/news/announcements/blog/patients-not-politics> (accessed December 24, 2013).

22 See UNOCHA, “Humanitarian Bulletin: Myanmar,” June 2013.

23 See for example Jason Szep and Andrew Marshall, “Special Report: Thailand Secretly Dumps Myanmar Refugees Into Trafficking Rings,” *Reuters*, December 4, 2013, <http://www.reuters.com/article/2013/12/04/thailand-rohingya-idUSL4N0JH0GX20131204> (accessed January 14, 2014); John Sparks, “Nightmare Island Where Traffickers Imprison Burma’s Rohingya,” *Channel 4 News*, August 8, 2013, <http://www.channel4.com/news/nightmare-island-where-traffickers-imprison-burmas-muslims> (accessed January 14, 2014); “Thailand: Protect Rohingya ‘Boat Children’: End Collusion With Traffickers; Shelter Families,” Human Rights Watch press release, January 6, 2014, <http://www.hrw.org/news/2014/01/06/thailand-protect-rohingya-boat-children> (accessed January 14, 2014).

24 For example, three displaced Muslim women were shot and killed on June 4 by security forces in Mrauk-U Township while resisting involuntary relocations, and two more displaced Rohingya men were killed on June 27 by security forces in Pauktaw township, also while resisting relocations. See Matthew Smith, “Tour of Shame for Thein Sein,” *Asia Times Online*, July 16, 2013, http://www.atimes.com/atimes/Southeast_Asia/SEA-01-160713.html (accessed December 30, 2013).

25 “Myanmar: End Mass Arrests of Muslim Men and Boys in Rakhine State, Protect At-Risk Communities,” Fortify Rights press release, January 23, 2014, <http://www.fortifyrights.org/publications.html> (accessed February 5, 2014); UN Office of the High Commissioner for Human Rights, “Pillay calls for killings in northern Rakhine State to be investigated,” January 23, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14194&LangID=E> (accessed February 5, 2014); Myanmar’s Ministry of Foreign Affairs categorically denied these accounts. See “Government, authorities taking every step for security, rule of law, justice, humanitarian access, reconciliation in Rakhine State,” Myanmar Ministry of Foreign Affairs press release, January 24, 2014, <http://www.mofa.gov.mm/?p=1903> (accessed February 16, 2014). Following international pressure, the government decided to conduct an investigation into recent events in Du Char Yar Tan village, but it said it would limit the investigation to the killing of the police officer. The authorities refused to allow any international participants to be involved in the investigation. See Simon Roughneen, “Second Arakan Probe to Focus on Missing Policeman,” *Irrawaddy*, February 7, 2014, <http://www.irrawaddy.org/burma/second-arakan-probe-skirt-alleged-rohingya-killings.html> (accessed February 10, 2014).

26 During British colonial rule, the Muslim population of Rakhine State grew from approximately 58,000 in 1871 to 179,000 in 1911, according to British colonial records. See Aye Chan, “The Development of a Muslim Enclave in Arakan (Rakhine) State of Burma (Myanmar),” *SOAS Bulletin of Burma Research*, vol. 3, no. 2 (Autumn 2005), p. 401.

Senior government officials have gone so far as to blame violence in Rakhine State on rapid population growth of Rohingya.²⁷

Official records from Myanmar's second session of parliament on September 1, 2011 reflect comments by the Minister of Defense at the time, Lieutenant-General Hla Min, noting the Rohingya population of northern Rakhine State is becoming "denser" and "the birth rate outnumbers [the] international standard at a breakneck speed."²⁸ Likewise, Rakhine State spokesperson Win Myaing said, "The population growth of Rohingya Muslims is 10 times higher than that of the Rakhine [Buddhists]. Overpopulation [of Muslims] is one of the causes of tension."²⁹ With no citation to empirical data, the government-appointed Rakhine Inquiry Commission report likewise notes:

The extremely rapid growth rate of the Bengali [Rohingya] population in Rakhine State also contributed to fear and insecurity amongst the Rakhine people. The growth was not only due to high birth rates, but also to a steady increase of illegal immigration from neighboring Bangladesh.³⁰

In July 2012, Myanmar's Minister of Home Affairs Lieutenant-General Ko Ko told parliament, "Originally, only Rakhine nationals lived in Rakhine State, but later the ratio of Bengali [Rohingya] to Rakhine nationals in Maungdaw and Buthidaung has become 94 to six percent due to illegal immigration of Bengali and long-term settlement in the region."³¹

In a 2013 report analyzing existing population data—data that was acknowledged as not entirely reliable—Harvard University's Ash Center found Myanmar's Muslim population is not growing at a rate that exceeds that of the rest of the population.³² Notably, the report finds "a slightly lower population growth rate in Rakhine compared to all of Myanmar for the 1955-2010 period."³³ The Ash Center further determined that the Muslim share of the national population "was no higher in 1983 than in 1953"—in fact, it was lower in 1983.³⁴ The report concludes that, "this data is completely inconsistent with widely circulated fears that the rapidly growing Muslim share of population is threatening Myanmar's Buddhists."³⁵

27 See "One Region in Myanmar Limits Births of Muslims," *New York Times*, May 25, 2013, http://www.nytimes.com/2013/05/26/world/asia/a-region-in-myanmar-limits-births-of-muslims.html?_r=0 (accessed January 2, 2014).

28 "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 February 16, 2014).

29 "Burmese Muslims Given Two-Child Limit," *Associated Press*, May 25, 2013, <http://www.theguardian.com/world/2013/may/25/burma-muslims-two-child-limit> (accessed January 2, 2013). Note, if correct, this appears to be a rare instance of a government official using the term "Rohingya."

30 Rakhine Inquiry Commission, *Final Report*, July 8, 2013, p. 5.

31 "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*, August 1, 2012, <http://www.burmalibrary.org/docs13/NLM2012-08-01.pdf> (accessed April 10, 2010).

32 The Ash Center for Democratic Governance and Innovation at the John F. Kennedy School of Government, Harvard University, *Creating a Future: Using Natural Resources for New Federalism and Unity*, prepared for Proximity Designs, July 2013, p. 24-27.

33 *Ibid.*, p. 25.

34 *Ibid.*

35 *Ibid.*

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Moreover, the Rakhine Inquiry Commission reports that according to 2011 government data, the population of Rakhine State is 69.9% Buddhist and 29% Muslim—hardly an indication of a population takeover.³⁶

The government of Myanmar and the UN Population Fund (UNFPA) are currently conducting a national census, which stands to shed light on population figures in Rakhine State. However, this process could further marginalize Rohingya. At the time of writing, the census will require Rohingya to self-identify as “other” under a column designated for “foreigners.”³⁷ The ethnic option of “Rohingya” appears nowhere on the coding list of ethnic nationalities to be employed for the census.³⁸ In light of this, Rohingya political and community leaders fear the census will be used as a repressive tool.³⁹ Other ethnic groups of Myanmar excluded from the census coding have likewise voiced concern and opposition to the census.⁴⁰



A young Rohingya girl in the rain outside Sittwe, Rakhine State, Myanmar, April 2013. Denied freedom of movement, Rohingya families typically cannot travel outside their camps or residential quarters. This interferes with rights to health and subsistence, leads to avoidable deaths, and leaves families in need of basic provisions. ©PRAD Steve Gumaer

36 See Rakhine Inquiry Commission, *Final Report*, p. 3.

37 Nationwide census coding document, January 2013, on file with Fortify Rights.

38 Ibid.

39 Fortify Rights communications with Rohingya in Rakhine State and Yangon Region, December 2013 and January 2014. See also Tim McLaughlin, “Rohingya parties call for change to census categories,” *The Myanmar Times*, January 11, 2014, <http://www.mmtimes.com/index.php/national-news/9207-rohingya-parties-call-for-change-to-census-categories.html> (accessed January 12, 2014).

40 Yen Snaing, “Burma’s Ethnic Minorities Decry Census, Jostle for Advantage,” *Irrawaddy*, February 10, 2014, <http://www.irrawaddy.org/burma/burmas-ethnic-minorities-decry-census-jostle-advantage.html> (accessed February 10, 2014).

II. Policies of Abusive Restrictions Against Rohingya in Rakhine State

“The usual way should be that everyone is free to travel from one place to another. This does not exist in our country for us. For the Rakhine, it’s no problem; for the Hindu, no problem; Bengali-Hindu, no problem; but we are particularly targeted. Freedom of movement, freedom of speech, freedom of writing, freedom of social affairs, healthcare, business, education— all are restricted.”

—Rohingya man, 48, October 2013

“Through international media, Bengali [Rohingya] groups are widely publicizing the extent of government controls over them. Whilst the Government deems such measures as necessary in the context of the country’s situation and the non-citizen status of this group, the international community condemns these measures as violations of fundamental rights. This...has undermined the country’s reputation and affected its international relations.”

—The Rakhine Inquiry Commission, final report, July 8, 2013

Leaked internal orders obtained by Fortify Rights provide evidence of discriminatory and abusive state policies designed to control the Rohingya population in northern Rakhine State. The policies have resulted in years of widespread and systematic human rights violations against Rohingya in Rakhine State. All of the restrictions appear to be enforced at the time of writing.

The orders made available to Fortify Rights are dated from 1993 to 2008. They are signed by government officials and copied to various departments falling under state and union-level jurisdictions, detailing restrictions on movement, marriage, childbirth, and other aspects of everyday life.¹ The orders and subsequent addenda instruct law enforcement agencies to impose abusive action on Rohingya, including enforced birth control, coercive limits on childbirth, restrictions on marriage and private relationships, and restrictions on movement. Fortify Rights has also obtained information regarding similar orders issued in 2009.

¹ Regional Order 1/2005, marked for “Internal Circulation,” was sent from the “chief officer” of immigration to “All of the Ward/ Village Tract Peace and Development Councils” as well as the Chairman, Township Peace and Development Council, Rakhine State, Sittwe; Chief Military Strategist, Military Strategy Group (Base), Buthidaung; Chairman, District Peace and Development Council, Maungdaw District; Maungdaw Chief Supervisor, Border Immigration Supervision Headquarters, Kyee Gan Byin; Township Head of Department, Department of Immigration and National Registration, Maungdaw; Township Judge, Township Courthouse; and Maungdaw Township Legal Officer, Township Legal Office, Maungdaw.

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The restrictions outlined by these documents have been discussed, approvingly and in detail, in parliament by senior government officials, including by the former Minister of Defense Lieutenant-General Hla Min in 2011 and the Minister of Home Affairs Lieutenant-General Ko Ko in 2012.²

The harmful impacts that these policies have had on Rohingya men, women, and children have been well-documented over the years. The policies have adversely affected Rohingya access to public health and the local economy in Rohingya-majority areas—for example, through restrictions on freedom of movement— while also fueling a worsening refugee crisis in the region. The consequences of these policies have led hundreds of thousands of Rohingya to flee to Bangladesh, Thailand, Malaysia, and elsewhere.

This report finds the cumulative impact of these policies is the severe deprivation of the Rohingya population's fundamental human rights, rising to the threshold of persecution as a crime against humanity.³

Since 1996, independent UN Special Rapporteurs have at times described abuses against Rohingya as “systematic” and a part of state policy.⁴ However, the actual state policies underpinning long-documented abuses against Rohingya in Rakhine State have never been published. The documents obtained by Fortify Rights confirm these abuses have been a part of state policy for decades.

2 See “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>; “Second Regular Session of First Amyotha Hluttaw Continues for Ninth Day,” *New Light of Myanmar*, <http://www.burmalibrary.org/docs11/NLM2011-09-02.pdf>, p. 16, 8.

3 See Chapter III in this report, “Legal Analysis and Framework.”

4 See Human Rights Watch, *All You Can Do Is Pray*, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray>, Appendix I. “History of Violence and Abuse Against Rohingya,” pp. 137-144. See also UN Human Rights Council, “Progress Report of the Special Rapporteur on the situation of human rights in Myanmar,” A/HRC/19/67, March 7, 2012; UN General Assembly, “Situation of human rights in Myanmar,” A/66/365, September 16, 2011; UN Human Rights Council, “Progress report of the Special Rapporteur on the situation of human rights in Myanmar,” A/HRC/16/59, March 7, 2011; UN General Assembly, “Situation of human rights in Myanmar,” A/65/368, September 15, 2010; UN General Assembly “Progress report of the Special Rapporteur on the situation of human rights in Myanmar,” A/HRC/13/48, vMarch 10, 2010; UN General Assembly, “Situation of human rights in Myanmar,” A/64/318, August 24, 2009; UN General Assembly, “Human rights situations that require the council’s attention,” A/HRC/10/19, March 11, 2009; UN General Assembly, “Human rights situations that require the council’s attention,” A/HRC/7/18, March 7, 2008; UN Human Rights Council, “Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled ‘Human Rights Council,’” A/HRC/4/14, February 12, 2007; UN Economic and Social Council, “Question of the violation of human rights and fundamental freedoms in any part of the world,” E/CN.4/2006/34, February 7, 2006; UN General Assembly, “Situation of human rights in Myanmar,” A/60/221, August 12, 2005; UN Economic and Social Council, “Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World,” E/CN.4/2005/36, December 2, 2004; UN Economic and Social Council, “Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World,” E/CN.4/2003/41, December 27, 2002; UN Economic and Social Council, “Question of the violation of human rights and fundamental freedoms in any part of the world,” E/CN.4/2002/45, January 10, 2002; UN General Assembly, “Situation of human rights in Myanmar,” A/56/312, August 20, 2001; “Situation of human rights in Myanmar,” UN General Assembly, A/55/359, August 22, 2000; UN Economic and Social Council, “Question of the violation of human rights and fundamental freedoms in any part of the world,” E/CN.4/2000/38, January 24, 2000; UN General Assembly, “Situation of human rights in Myanmar,” A/54/440, October 4, 1999; UN General Assembly, “Human rights questions: Human rights situations and reports of the special rapporteurs and representatives,” A/52/484, October 16, 1997; UN Economic and Social Council, “Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories,” E/CN.4/1996/65, February 6, 1996; UN General Assembly, “Human rights questions, human rights situations and reports of special rapporteurs and representatives,” A/51/466, October 8, 1996; UN Economic and Social Council, “Report on the situation of Human Rights in Myanmar, prepared by Mr. Yozo Yokota, Special Rapporteur on the Commission on Human Rights, in accordance with Commission resolution 1995/72,” E/CN.4/1996/65, February 5, 1996.

Two-Child Policy

For at least nine years, Myanmar has imposed a strict two-child policy for Rohingya in the townships of Maungdaw and Buthidaung in northern Rakhine State, in violation of international human rights law. This policy violates the rights of Rohingya to determine the number and spacing of their children and deprives Rohingya women of the full spectrum of reproductive health rights that they are entitled under international law.⁵

Fortify Rights has obtained “Regional Order 1/2005” that appears to have established the foundation of the two-child policy. It states, “Starting the date of this regional order, those who have permission to marry must limit the number of children, in order to control the birth rate so that there is enough food and shelter.”⁶ This order applies only to Rohingya.

While the order does not specify the number of children that legally-married Rohingya couples are authorized to have, it became a strict two-child policy in practice, whereby newly-married couples—once they satisfy the odious and abusive process to get permission to marry (see below)—are forced to sign a statement saying they will not have more than two children.⁷ Authorities have also required women to take pregnancy tests before issuing marriage permission.⁸

Apart from imposing a restriction on the number of children married couples can legally have, this policy also effectively prohibits Rohingya from having children out of wedlock.

Another addendum advises law enforcement officials on “Taking family pictures” for the purpose of “Checking members of households in villages against family pictures to see if the number of people is correct.”⁹ The addendum instructs officials to force Rohingya women to breastfeed infants in the presence of soldiers in order to determine whether the women are the birth mothers—presumably to determine if households have violated the two-child policy. The instruction states:

If there is suspicion of someone being substituted [in the family registry], children in the household will be compared in age and in appearance. If the child is an infant, the mother will be made to breastfeed the child. Young children will be questioned separately.¹⁰

⁵ See Chapter III in this report, “Legal Analysis and Framework.”

⁶ Township Peace and Development Council, Maungdaw, Regional Order 1/2005, 8th Day of the Waning Moon of Dagoo 1367, May 1, 2005.

⁷ Fortify Rights communications with Rohingya in Rakhine State and Yangon Region as well as representatives of an international humanitarian organization. See also “Burma: Revoke ‘Two-Child Policy’ for Rohingya,” Human Rights Watch press release, May 28, 2013, <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya> (accessed January 3, 2013); Aruna Kashyap, “Burma’s Bluff on the Two-Child Policy for Rohingya,” *Irrawaddy*, June 21, 2013, <http://www.hrw.org/news/2013/06/21/burma-s-bluff-two-child-policy-rohingyas> (accessed January 3, 2014); Chris Lewa, “Two child policy in Myanmar will increase bloodshed,” *CNN*, June 6, 2013, <http://edition.cnn.com/2013/06/06/opinion/myanmar-two-child-policy-opinion/> (accessed January 6, 2014).

⁸ Ibid.

⁹ Addendum to internal order 1/2005, “Drawing Maps, Making a Record of Buildings, and Reviewing Household Registrations,” Letter No.: 3/24-1/U 6 (1057), May 1, 2005, number 5, on file with Fortify Rights.

¹⁰ Ibid.

Government Support for the Two-Child Policy

State- and union-level government officials have approvingly acknowledged the existence of these policies for some time. Confidential documents obtained by Fortify Rights, marked “restricted” and signed by the Chief Officer of Immigration in Rakhine State at the time, outline the state policy restricting Rohingya childbirths.¹¹ The documents show that the 2005 policy was produced and circulated on May 1, 2005 by the Township Peace and Development Council of Maungdaw, and circulated again on November 2, 2008 by the Chief Officer of Immigration at the Border Region Immigration Control Headquarters (BRICH) located in Kyeegan Pyin, Maungdaw, Rakhine State.¹² In July 2013, BRICH was taken over by the Myanmar Police Force, which is now responsible for implementing regional orders.¹³

The restriction on Rohingya childbirths is a state-level “regional order.” It does not appear as though the policy is backed by national legislation, but our findings indicate central government officials have been involved in the formulation and implementation of the policy.

On June 3, 2013, following announcements of the long-enforced two-child policy, presidential spokesperson Ye Htut disavowed the role of the central government in the policy, but stopped short of condemning it: “The central government did not announce that policy. We will look into it. ... The population in that area is much higher than in other regions so there are some social and economic problems within each family.”¹⁴

On June 11, 2013, union-level Immigration Minister Khin Yi affirmed the policy existed, lent his support to it, but likewise denied that it came from the central or state governments, saying, “The order is not issued by the central government. It is not issued by the state government.”¹⁵ He claimed it appeared to have been implemented at the grassroots level by the local authorities.¹⁶

In October 2013, Myanmar’s representative at the United Nations claimed the policy never existed, in contradiction to the findings of Fortify Rights:

11 2008 order from Immigration Chief Officer Aung Than Win, “Regional Order and Processes for Controlling Bengali Population,” Kyeegan Pyin, Maungdaw, November 2, 2008; Township Peace and Development Council, Maungdaw, Regional Order 1/2005, 8th Day of the Waning Moon of Dagoo 1367, May 1, 2005.

12 Ibid.

13 “Security Police Force to Take Over Border Immigration Forces’ Duties,” *Eleven Media*, July 14, 2013, <http://elevenmyanmar.com/national/2775-security-police-force-to-take-over-border-immigration-forces-duties> (accessed January 7, 2014). See also Hannah Hindstrom, “Burma disbands notorious NaSaKa border guard force,” *Democratic Voice of Burma*, <http://www.dvb.no/news/burma-disbands-notorious-nasaka-border-guard-force/29916>.

14 “Government to examine two-child policy targeting Rohingya,” *Agence France-Presse*, June 3, 2013, available at <http://www.dvb.no/news/govt-to-examine-two-child-policy-targeting-rohingya/28598> (accessed January 7, 2014).

15 Jason Szep and Andrew Marshall, “Myanmar minister backs two-child policy for Rohingya minority,” *Reuters*, <http://www.reuters.com/article/2013/06/11/us-myanmar-rohingya-idUSBRE95A04B20130611>.

16 Ibid.

My delegation rejects the allegation relating to two-child policy. It was publicly stated by both the Union Minister for Population and the Chief Minister of the Rakhine State that it had never been their policy and there is no such official order or instructions issued at both the Union and State level.¹⁷

The former Minister of Defense Lieutenant-General Hla Min specifically referenced Regional Order 1/2005 when asked in parliament on September 1, 2011 about household registration and other matters related to the population in Maungdaw and Buthidaung townships in Rakhine State. Hla Min approvingly outlined in parliament a number of abusive restrictions employed against Rohingya in northern Rakhine State, including restrictions on childbirth. The transcript of his remarks was published in English by the state-run *New Light of Myanmar* and was made publicly available through other government channels.¹⁸

Likewise, on July 31, 2012, Myanmar's Minister of Home Affairs Lieutenant-General Ko Ko told parliament the government would strengthen many of the existing restrictions against Rohingya, including restrictions on birth, as a result of the influx of "illegal immigration" of Rohingya and their "long-term settlement." He said the authorities were "tightening the regulations in order to handle travelling, birth, death, immigration, migration, marriage, construction of new religious buildings, repairing and land ownership and right to construct building of Bengalis [Rohingya] under the law."¹⁹

In May 2013, Rakhine State Government spokesperson Win Myaing referred to the two-child policy as "family planning" and approvingly acknowledged it was discriminatory:

Regarding family planning, they [Rohingya] can only [have] two children. ... The rule is only for certain groups... For Buddhist people, we don't need that rule, because Buddhist people only have one wife. ... It's being implemented to control the population growth, because it's becoming too crowded there.²⁰

17 Response by U Kyaw Tin, Permanent Representative of the Republic of the Union of Myanmar to the United Nations, to the Oral Presentation on the Report of Mr. Tomás Ojea Quintana, Special Rapporteur on the Situation of Human Rights in Myanmar (Agenda Item 69c, Human rights situations and reports of special rapporteurs and representatives) at the Third Committee of the 68th Session of the United Nations General Assembly, New York, October 24, 2013.

18 See "Second Regular Session of First Amyotha Hluttaw Continues for Ninth Day," *New Light of Myanmar*, <http://www.burmalibrary.org/docs11/NLM2011-09-02.pdf>, p. 16, 8. Lieutenant-General Hla Min said: "[R]egional orders including migration, birth and child mortality, illegal border passage, making changes in census and construction of buildings were issued yearly with the permission of superior departments; Maungdaw Township Peace and Development Council also issued Regional Order No. (1/2005) in 2005; nine regions and 26 stations for population control were established and monitor illegal border passages, conduct surprise checks, block sea and Nat River entrances and patrol hill route; checking household registration certificate, rendering map and recording the buildings annually take three months; household registration certificate, citizen scrutiny card and travel form (4) are used for investigation; if the illegal acts are found, they will be charged with Immigration Act."

19 "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>.

20 Paul Vrieze and Zarni Mann, "Gov't Sets Two-Child Limit for Rohingyas in Northern Arakan," *Irrawaddy*, May 20, 2013, http://www.irrawaddy.org/z_arakan/govt-sets-two-child-limit-for-rohingyas-in-northern-arakan.html (accessed January 14, 2014).

Following international criticism, Win Myaing later reiterated that he considered the policy to be “family planning” and dismissed allegations that it violated human rights, adding, “The local authorities do it for socio-economic reasons of the Bengali [Rohingya] people.”²¹

Khin Maung Shwe, a member of the government-appointed Rakhine Inquiry Commission, likewise defended the policy, saying: “This policy is part of a plan to provide more development for everyone. We also should look at this from a political point of view—how will other nationalities be affected if the Rakhine State government allows [Rohingya] to have as many children as they want?”²²

On June 11, Myanmar’s Immigration Minister Khin Yi affirmed the policy, saying it “will benefit the Bengali women.” Further couching it in humanitarian pretenses, he added:

The Bengali [Rohingya] women living in the Rakhine State have a lot of children. In some areas, one family has 10 or 12 children. It’s not good for child nutrition. It’s not very easy for schooling. It is not very easy to take care of the children. ... Almost all of the Bengali [Rohingya] women are very poor, uneducated. It is not easy to take care of the children. The two-child policy or three-child policy is enough for these people. That is my point of view.²³

These and similar statements in May 2013—described by an aid worker in Myanmar as “a public reinforcement of policies that have already been in place for decades”²⁴—caused a short-lived period of international outrage. The UN, the United States government, and even Aung San Suu Kyi, who has otherwise remained silent on the plight of Rohingya in Rakhine State, issued unequivocal statements opposing the policy as a clear violation of human rights.²⁵

21 Daniel Ten Kate and Kyaw Thu, “Myanmar Rejects Criticism of Two-Child Rule for Minority,” *Bloomberg News*, May 29, 2013, available at <http://www.bloomberg.com/news/2013-05-28/myanmar-rejects-criticism-of-two-child-rule-for-minority.html> (accessed January 14, 2014).

22 “Myanmar’s Opposition Parties Split on Contentious Two-Child Policy,” *Radio Free Asia*, June 3, 2013, available at <http://www.rfa.org/english/news/myanmar/debate-06032013182340.html> (accessed January 7, 2014).

23 Jason Szep and Andrew Marshall, “Myanmar minister backs two-child policy for Rohingya minority,” *Reuters*, <http://www.reuters.com/article/2013/06/11/us-myanmar-rohingya-idUSBRE95A04B20130611>.

24 *Ibid.*

25 Tomás Ojea Quintana, the independent UN Special Rapporteur on the human rights situation in Myanmar, stated that the government of Myanmar had an obligation to review and revoke all orders violating international human rights standards. He said: “This local order is one of many that have been introduced by local Rakhine state authorities that violate the basic human rights of Rohingya Muslims, including with regard to freedom of movement, marriage, and registration of newborn children. These orders provide further ammunition to local authorities, including the border security force Nasaka, to discriminate against and persecute the most vulnerable and marginalized group in Myanmar.” “Two-Child policy violates the human rights of Myanmar’s Rohingya Muslims—UN expert,” UN News Centre, May 31, 2013, http://www.un.org/apps/news/story.asp?h%3Cspan+class=%27pull-me%27%3EIn+short,+when+you+empower+a+woman,+you+change+the+world%3C/span%3Ehttp://www.unfpa.org/www.unicef.org/html/html/story.asp?News-ID=45055&Cr=myanmar&Cr1=#.UszX__a6mOR (accessed January 7, 2014). See also “Myanmar’s Suu Kyi Condemns Two-Child Policy,” *Al Jazeera*, May 27, 2013, <http://www.aljazeera.com/news/asia/2013/05/2013527152913459624.html> (accessed January 7, 2014); “Burma Urged by US to Eliminate 2-Child Policy,” *Associated Press*, May 28, 2013, <http://www.cbsnews.com/news/burma-urged-by-us-to-eliminate-2-child-policy/> (accessed January 7, 2014); “Burma: Revoke ‘Two-Child Policy’ for Rohingya,” Human Rights Watch press release, May 28, 2013, <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya> (accessed January 7, 2014).

Impacts of the Two-Child Policy

An addendum to the order placing restrictions on Rohingya childbirth stipulates that Rohingya found to have violated any of the restrictions on childbirth will be prosecuted “according to Criminal Law Section 188,” which can result in imprisonment for up to 10 years, fines, or both.²⁶

Fear of repercussions from authorities for unauthorized childbirth leaves Rohingya women terrified to give birth to third children or children out of wedlock. Compounded by lack of access to safe, modern birth control options to prevent unwanted pregnancies, this fear pushes some pregnant Rohingya women flee to squalid refugee camps in Bangladesh or take their chances at sea with the hope of finding safety in Thailand, Malaysia, or other destinations.²⁷ Fear also drives many Rohingya women to resort to illegal and unsafe abortions. These clandestine efforts to terminate pregnancies rather than face government abuses for unsanctioned childbirth have resulted in death and harmful medical repercussions.²⁸

A 2011 assessment shared with Fortify Rights by a reliable and credible source revealed 14.3 percent of Rohingya women in northern Rakhine State had undergone at least one abortion and 26 percent of those had multiple abortions, due to the restriction on childbirth.²⁹ It is worth noting that these statistics are in regard to women who reported resorting to abortion. The statistics do not account for underreporting, which is likely high considering risks involved for unauthorized pregnancies, or for women who did not survive the procedure and its consequences. There are no known statistics pertaining to the death rate as a result of unsafe abortion in Rakhine State.

Abortions in Rakhine State are illegal, unsafe, and are typically conducted using the “stick method,” whereby a stick is inserted into the uterus to terminate the pregnancy. When subsequent health complications arise, women report being afraid to seek necessary medical attention, fearful they will be exposed as having had an abortion or for living with their partner without marriage permission.³⁰

Hundreds of Rohingya women have been treated in recent years for infections and other

26 Addendum to Regional Order 1/2005, “Population Control Activities,” point number 3, original on file with Fortify Rights. See also Chris Lewa, “Two-Child Policy in Myanmar Will Increase Bloodshed,” *CNN*, June 6, 2013, <http://edition.cnn.com/2013/06/06/opinion/myanmar-two-child-policy-opinion/> (accessed February 14, 2014).

27 Ibid.

28 Fortify Rights communications with health workers, undisclosed locations, January 2014.

29 Fortify Rights communications with health workers, undisclosed locations, 2013-2014. For disaggregated 2007 data on the comparably lower nationwide abortion rate, see UNFPA Myanmar, “Report on Situation Analysis of Population and Development, Reproductive Health and Gender in Myanmar,” July 16, 2010, http://countryoffice.unfpa.org/myanmar/2010/08/03/2561/executive_summary/ (accessed February 16, 2014).

30 Fortify Rights communications with health workers, Rakhine State, 2013-2014. See also M. Hobstetter et al., *Separated by Borders, United in Need: An Assessment of Reproductive Health on the Thailand-Burma Border* (Cambridge, MA: Ibis Reproductive Health, 2012), p. 5, noting “[t]here is virtually no access to safe and legal abortion in Burma.”

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health complications due to unsafe abortions resulting from the restrictive two-child policy.³¹ Compounding matters, however, is the lack of health care in northern Rakhine State. UN sources reveal there is one health care physician per 75,000 persons and just one physician per 83,000 persons in Rohingya-majority townships of Buthidaung and Maungdaw, respectively. In the Buddhist-majority Sittwe Township, Rakhine State, there is one physician for every 681 persons.³²

Unpermitted pregnancies that are carried to term result in births of children that are officially unregistered, or “blacklisted,” and are not recorded in the home registry. The official Rakhine Inquiry Commission report estimates that there are currently 60,000 unregistered children in Rakhine State.³³ The UN Committee on the Rights of the Child has noted concern:

... that a large number of children, including Rohingya children, remains unregistered as a result of insufficient awareness-raising on the importance of birth registration; a non-user-friendly system; a lengthy process to obtain birth certificates at the township level; unofficial fees associated with the birth registration system; the existence of the local order restricting marriages for Rohingya people; and the practice aimed at reducing the number of their children.³⁴

The unregistered status of these children triggers a cascade of human rights violations. “Blacklisted” children have no legal or social status and are restricted from access to citizenship and education, and later in life, to marriage and employment.³⁵

Each of these effects violates the human rights of Rohingya families. Their cumulative impact rises to the level of severe deprivation and would likely be considered persecution on the basis of gender, ethnicity, and religion, a crime against humanity under international law.³⁶

Policy of Enforced Birth Control

An addendum to a 2005 regional order, circulated in 2008 and titled “Population Control Activities,” instructs law enforcement agencies in northern Rakhine State on: “Making people [Rohingya] use pills, injections, and condoms for birth control at every regional clinic, township hospitals, and their own regional hospitals.”³⁷

31 Fortify Rights communications with humanitarian aid workers, Rakhine State, 2013-2014.

32 Rakhine Inquiry Commission, *Final Report*, citing “UN reports,” p. 41.

33 Ibid., p. 67.

34 Concluding Observations of the Committee on the Rights of the Child, Myanmar, March 14, 2012, UN Doc. CRC/C/MMR/CO/3-4, http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_MMR_CO_3-4.pdf (accessed February 16, 2014), p. 9.

35 With regard to education, most higher education opportunities are only available to “full citizens,” according to Ministry of Education’s 2012 admission guide (on file with Fortify Rights), and madrassas in Rakhine State have been closed since June 2012, further interfering with the right to education.

36 For further discussion on this point, see Chapter III of this report, “Legal Analysis and Frameworks.”

37 “Population Control Activities,” addendum to regional order 1/2005, Rakhine State, on file with Fortify Rights, ninth directive.

While Fortify Rights has not documented the enforcement of this policy, its existence would impinge on the autonomy of Rohingya men and women, violating their rights to health and nondiscrimination while triggering a wide spectrum of gender-based violations for Rohingya women, including their right to determine the number and spacing of children as enshrined in international human rights law.³⁸

Policy of Marriage Restrictions and Restrictions on Private Relationships

Rohingya in Rakhine State have long faced restrictions imposed by the government of Myanmar on marriage and private relationships, and it has been argued that these restrictions have been a matter of state policy. The state policies, however, have never been published.

Official orders issued by Myanmar authorities on January 31, 1993, May 1, 2005, and November 2, 2008 and additional information about an order issued on August 11, 2009 outline a consistent state policy of restrictions on marriage imposed against Rohingya in Rakhine State.

An undated addendum to the 2005 regional order refers to Rohingya as “Bengali” and is titled “Requirements for Bengalis who apply for Permission to Marry.” It details ten requirements for the authorities to approve a marriage.³⁹ Both the written policy and well-documented practice require Rohingya couples to present themselves to law enforcement officials multiple times, alongside their parents and other witnesses—a process that Rohingya have described as humiliating and abusive.⁴⁰ The official government order notes the application for marriage requires a photograph of the couple, in which men are required to appear cleanly shaven. This requirement conflicts with religious customs of most Rohingya men.⁴¹ In practice, women are required to appear in the photo without a hijab or headscarf, which also conflicts with commonly-practiced religious customs. Likewise, in practice, when couples physically present themselves to the authorities, they are required to appear without hijab or beard, respectively.⁴² It is unclear at the time of writing the extent to which these requirements remain enforced.

Authorities typically demand large, unofficial payments for marriage permissions, and cou-

38 International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, not ratified by Myanmar, art. 23(2). See Chapter III of this report, “Legal Analysis and Framework.”

39 “Requirements for Bengalis who apply for Permission to Marry,” document on file with Fortify Rights. Order No 1/2009 likewise requires the authorities to be informed of all movements “from one place to another” within seven days. The order includes the same restrictions on marriage as the documents obtained by Fortify Rights. Fortify Rights communications with a confidential source.

40 Fortify Rights communications with Rohingya in Rakhine State, humanitarian aid and health workers, and confidential sources, redacted here for security purposes, Nov.-Dec. 2013, Jan. 2014.

41 “Requirements for Bengalis Who Apply for Permission to Marry,” concluding note, on file with Fortify Rights.

42 Fortify Rights communications with Rohingya and humanitarian aid workers, December 2013-January 2014.

ples often wait up to two years for approval.⁴³ The unofficial costs for permission to marry are prohibitively expensive to most Rohingya, in some cases as high as 100,000 kyat (US \$100).⁴⁴ Moreover, if a Rohingya wants to marry someone from another township, further approval is required and can cost an additional 100,000 kyat (US \$100).⁴⁵

Rohingya asylum-seekers in Malaysia and Bangladesh have cited a desire to marry as a reason for leaving Rakhine State.⁴⁶

Any defiance of marriage-permission requirements is considered a criminal act. An undated addendum to the regional orders produced in 2008 outlines guidelines for “spot checking”—a practice whereby law enforcement officials visit Rohingya homes unannounced to scrutinize the residents against official home registries.⁴⁷ A vaguely-worded guideline for “spot checking” states: “Action must be taken against those who are married unofficially and live together.”⁴⁸ Another undated addendum to the 2005 order titled “Population Control Activities” stipulates that people found to have violated marriage restrictions will be prosecuted “according to Criminal Law Section 188” and Section 417. Violation of these laws can result in imprisonment up to 10 years, fines, or both.⁴⁹ At the time of writing, this still appears to be in effect.

Regional Order 1/2009 further outlaws: “illicit relationships, unauthorized marriages, underage marriages, divorce without permission, re-marriage by widows, widowers, divorcees without observing the specified order, and marrying two wives.”⁵⁰ Directive number seven in the undated addendum instructs law enforcement that Rohingya can be charged under Section 417 of Myanmar’s Penal Code, which provides for imprisonment up to one year for having pre-marital relationships or “fraudulently having a relationship with another person without marrying.”⁵¹ Order number three in the document requires that “widows, widowers, and divorced people wait at least one year before remarriage,” however Regional Order 1/2005, which appears to supersede the orders in the addendum “Population Control Activities,” requires a period of three years before remarriage.⁵²

43 Ibid. See also “Burma: Revoke ‘Two-Child Policy’ for Rohingya,” Human Rights Watch press release, May 28, 2013, <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya> (accessed January 3, 2013); UN Human Rights Council, Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, A/HRC13/48, March 10, 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13ses-sion/A-HRC-13-48.pdf> (accessed February 15, 2014), p. 22.

44 Fortify Rights communications with Rohingya and humanitarian aid workers, December 2013-January 2014.

45 Fortify Rights communications with confidential source, May 2013.

46 Fortify Rights communications with Rohingya in Myanmar and Malaysia, and with humanitarian aid workers, September 2013-January 2014. See also Kyaw Hla, “Rohingya Young People Fleeing From Arakan To Get Married,” *Kaladan Press*, January 17, 2010, <http://www.bnionline.net/index.php/feature/kaladan/7691-rohingya-young-people-fleeing-from-arakan-to-get-married.html> (accessed February 12, 2014).

47 “Spot Checking,” document on file with Fortify Rights, Appendix IV of this report. See also the section of this report, “Spot Checking.”

48 Regional Order and Processes for Controlling Bengali Population, “Spot Checking,” November 2, 2008.

49 Addendum to Regional Order 1/2005, “Population Control Activities,” point three, on file with Fortify Rights; Chris Lewa, “Two child policy in Myanmar will increase bloodshed,” *CNN*, <http://edition.cnn.com/2013/06/06/opinion/myanmar-two-child-policy-opinion/>.

50 Fortify Rights does not have the full text of this order but has received unofficial translations of certain sections of the order, on file with Fortify Rights.

51 Myanmar Penal Code section 417 states, “Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

52 Regional order 1/2005, which appears to supersede the orders under “Population Control Activities,” states: “(g) Those who have previous marriages can apply for permission to remarry only after three years from the date of their legal divorce. (h) Those who have previous marriages can apply for permission

Order number four in the same addendum stipulates that any violation of the restriction against Rohingya remarriage is considered a criminal offense, punishable by a prison sentence, a fine, or both.⁵³ Order number eight in the addendum vaguely instructs law enforcement to take action “against people who knowingly help and fail to give information on those who disobey the restrictions; the action taken will be according to the punishment by the [authorities] concerned.”⁵⁴

Over the last several years, an unknown number of men were imprisoned in northern Rakhine State for violating various policies related to marriage.⁵⁵ In 2010, the UN Special Rapporteur Tomás Ojea Quintana noted:

[M]any Muslims are arrested and sentenced up to five years in prison for offenses relating to these [marriage] requirements. The majority of the prison population of Buthidaung were Muslim, most of them for charges related to immigration or marriage offenses.⁵⁶

In March 2012, the UN Committee on the Rights of the Child, which monitors state compliance with the Convention on the Rights of the Child, recommended that Myanmar “abolish the local order restricting marriages for Rohingya people and cease practices which restrict the number of children of Rohingya people.”⁵⁷

In practice, the marriage restrictions appear to have been eased slightly in recent months. At the time of writing, nongovernmental organizations and aid agencies operational in Rakhine State report to Fortify Rights that this restriction is not currently enforced as strictly and applicants are required to clear fewer administrative hurdles than previously. This is a positive development, but even if the restrictions are eased, they remain in place.⁵⁸ These policies deprive Rohingya individuals of their rights to equality before the law, marriage, and nondiscrimination as protected under international human rights law.⁵⁹

to remarry only after three years from the date of the death of their husbands or wives.”

53 “Population Control Activities,” point four, available in Appendix III of this report.

54 Ibid., point eight.

55 UN Human Rights Council, Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, March 10, 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-48.pdf>, p. 16.

56 Ibid.

57 Concluding Observations of the Committee on the Rights of the Child, Myanmar, March 14, 2012, UN Doc. CRC/C/MMR/CO/3-4, http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_MMR_CO_3-4.pdf, p. 9.

58 Fortify Rights communications with Rohingya, 2013-2014. See also M.S. Anwar, “Marriage Restriction Against Rohingya Community Still Exists,” *Rohingya Vision*, September 16, 2013, <http://www.rvisiontv.com/marriage-restrictions-against-rohingya-community-still-exists/> (accessed February 12, 2014).

59 See Chapter III of this report, “Legal Analysis and Framework.”

Policy Restrictions on Freedom of Movement

The government of Myanmar has long restricted movement of Rohingya in northern Rakhine State, in violation of their human rights to liberty of movement, nondiscrimination, and equality before the law.⁶⁰ Rohingya in Rakhine State cannot travel within or between townships without authorization and can only travel outside the state in rare circumstances and with additional, difficult-to-obtain authorizations.⁶¹ Since June 2012, restrictions on travel have also been imposed on Muslim Kaman, a legally recognized “national race” afforded full citizenship under Myanmar law and residing primarily in Rakhine State.⁶²

Documents obtained by Fortify Rights outline policies related to the restrictions on freedom of movement in northern Rakhine State. A government document marked for “internal circulation” and dated May 1, 2005—circulated again November 2, 2008— includes six discriminatory requirements for Rohingya married couples to obtain “permission” from the authorities for “moving in the same territory,” seven requirements for “moving to a different territory,” and five requirements for “moving out.”⁶³ The internal communication, the legal basis of which is unclear, clarifies that married persons attempting to move to a new house, a new township, or elsewhere, must first fill out an application to be reviewed by local authorities. Other requirements include presentation of their original marriage certificate and respective household registrations.⁶⁴

Regional Order No. 1/2009 requires that Rohingya inform authorities within seven days of all movements “from one place to another.”⁶⁵ Other internal government orders detail the documentation required for travel by “foreigners and Bengali races residing in Rakhine State,” which includes Rohingya.⁶⁶ A June 1997 order issued by the State Head of the Immigration Office in Sittwe specifies requirements for “temporary travel permits to travel outside of their township” as well as other documentation for travel beyond Rakhine State.

Rohingya travelling with authorization are required to report to immigration authorities upon arrival at their destinations.⁶⁷ Failure to do so is considered a criminal act, according to documents obtained by Fortify Rights.

Violation of these orders restricting travel is punishable by Section 188 of the Penal Code, which brings prison time, a fine, or both.⁶⁸ The regional orders circulated in 2008 on “spot

60 Ibid.

61 In order to travel, Rohingya are required to obtain travel-authorization Form No. 4 from township authorities, the legal basis of which is unclear.

62 The government recognizes 135 “national races,” or ethnic nationalities; Rohingya are not included on the controversial list.

63 Addendum to Regional Order 1/2005.

64 Ibid.

65 Confidential internal memo made available to Fortify Rights, April 2013.

66 Ibid.

67 Ibid.

68 Ibid.

checking” Rohingya homes include an ominous provision noting, “Action must be taken against those who travel without the travel certificate (certificate to leave the village).”⁶⁹ Lastly, travel authorizations to Yangon require the signature of two guarantors, who face prosecution if the traveler does not return to Rakhine State.⁷⁰ Rohingya have told Fortify Rights that permission to travel to Yangon is rare and is now only granted on medical grounds, if at all.⁷¹

None of these travel restrictions are imposed on ethnic Rakhine or other citizens of Myanmar; all remain in effect at the time of writing.

Myanmar government officials have discussed on record the policy underpinning violations of Muslim freedom of movement. On July 31, 2012, Myanmar’s Minister of Home Affairs Lieutenant-General Ko Ko told parliament the government was “tightening the regulations [against Rohingya] in order to handle travelling” and other aspects of the everyday lives of Rohingya.⁷² Such measures are viewed by the Rakhine State and central governments as “population control” measures.

Rohingya interviewed in Rakhine State, Yangon Region, and various locations in Thailand told Fortify Rights that restrictions on movement are still in effect and that unofficial payments to local officials—either directly or often through Rohingya “middlemen”—are typically required to gain permission for movement.⁷³ The July 2013 disbandment of NaSaKa—a notorious border guard force comprising the army, police, customs, and immigration officials—did not affect the policy.

The policies particularly infringe on the Rohingya’s right to health. For example, in some cases, Rohingya in need of medical care in Maungdaw Township must travel to Buthidaung Township due to the lack of healthcare facilities in Maungdaw Township. To travel to Buthidaung Township, Rohingya are required to obtain permission, which can be denied or come at great financial expense.⁷⁴

Restrictions on movement are also imposed on the population of Rohingya who were internally displaced by violence in 2012 and 2013. State security forces prevent internally displaced Rohingya from moving outside the internally displaced person (IDP) camps where they are living. Some of the camps are generally inadequately resourced, and confinement to the IDP camps particularly limits Rohingya access to basic provisions, healthcare, education, and livelihoods. The government of Myanmar has obligations under international law

69 Regional Order and Processes for Controlling Bengali Population, “Spot Checking,” circulated November 2, 2008.

70 The form states: “If you overstay, do not return to the place of origin, or go beyond the authorized place to visit, the traveler and the two guarantors will be punished in accordance with the existing Myanmar law.” Unofficial translation obtained by Fortify Rights, on file with Fortify Rights.

71 Fortify Rights interviews with Rohingya Muslims, undisclosed location, January 2014.

72 “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>.

73 Fortify Rights communications with displaced Rohingya in Rakhine State, Rohingya in Yangon Region, and asylum-seekers in Thailand and Malaysia, 2013-2014.

74 Fortify Rights communications with humanitarian aid workers, 2013-2014.

to ensure that all displaced persons have access to adequate humanitarian aid, and that would include ensuring that displaced Rohingya have liberty of movement to improve their livelihoods. The government has failed to meet these obligations by restricting the freedom of movement of displaced Rohingya.⁷⁵

A February 3 communiqué from the heads of mission of the European Union, following a four-day mission to northern Rakhine State, noted that freedom of movement is a problem for the “displaced” Rohingya community. The statement said nothing, however, about the restrictions on freedom of movement imposed on Rohingya in northern Rakhine State—the site of their mission—as a matter of state policy.⁷⁶

Moreover, Myanmar authorities have frequently failed to protect Rohingya moving through hostile Rakhine communities, effectively preventing them from travelling beyond their strict and present confines.⁷⁷ This lack of protection has interfered with a variety of human rights, including access to adequate means of subsistence.

The UN Special Rapporteur on the Situation of Human Rights in Myanmar Tomás Ojea Quintana reported to the UN General Assembly in September 2013 that he was concerned “about the disproportionate and discriminatory restrictions on freedom of movement that remain in place for Muslim populations [in Rakhine State] and that have a severe impact on their human rights, including their access to livelihoods, food, water and sanitation, health care and education.”⁷⁸

In 2001, the UN Special Rapporteur on the Situation of Human Rights in Myanmar Sergio Pinheiro (2000-2008), likewise reported on restrictions on movement:

Reportedly, as non-citizens they [Rohingya] are subjected to a rule according to which they are required to obtain authorization to travel outside their township. The implementation of this rule is said to have been tightened, especially after reported clashes between Rakhine Buddhists and Muslims in Sittwe, the State capital, in February 2001. ... Allegedly, at present only a few rich people can afford a travel authorization. ... Such restrictions would affect the livelihood of common Muslims and Hindus, compelling some of them eventually to leave the country.⁷⁹

75 UN Office for the Coordination of Humanitarian Aid (UNOCHA), “Guiding Principles on Internal Displacement,” principle 24(2), <http://reliefweb.int/sites/reliefweb.int/files/resources/AB752ABEA5C1EFFCC1256C33002A8510-idp.html> (accessed February 15, 2014).

76 Communiqué by the Heads of Missions of the European Union, February 5, 2014, http://eeas.europa.eu/delegations/myanmar/documents/press_corner/2014/20140205_en.pdf (accessed February 10, 2014). The statement refers to “Rakhine Buddhists” but fails to mention the word “Rohingya,” referring only to “Muslims” and “Muslim communities.”

77 See “Burma camp for Rohingyas ‘dire’ – Valerie Amos,” *BBC News*, December 5, 2012, http://www.bbc.co.uk/news/world-asia-20615778#story_continues_1 (accessed January 15, 2014); Hannah Hindtsrom, “Arakan Segregation Takes Toll on Local Communities,” *Democratic Voice of Burma*, January 25, 2013, <http://www.dvb.no/uncategorized/arakan-segregation-takes-toll-on-local-communities/26007>. See also Human Rights Watch, *The Government Could Have Stopped This*, <http://www.hrw.org/reports/2012/07/31/government-could-have-stopped>, pp. 34-35; Human Rights Watch, *All You Can Do Is Pray*, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray>, pp. 87-108.

78 Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, UN General Assembly, September 23, 2013, A/68/397, p. 13.

79 UN General Assembly, “Situation of human rights in Myanmar,” A/56/312, August 20, 2001, <http://www.unhcr.org/refworld/type,COUNTRYREP,UNGA,M-MR,3c7cb0d94,0.html> (accessed February 15, 2014), pp. 13-14.

Government Rationale for Discriminatory Population Control

A 1993 order issued by the Border Region Immigration Control Headquarters—which was taken over by the police force in 2013 by executive order—and a 2005 order issued by the Township Peace and Development Council of Maungdaw relating to population control for Rohingya are nearly verbatim copies of one another. The similarities between these two orders indicate that the abusive policies against Rohingya in northern Rakhine State have gone unchanged for the past 12 years and were shared between issuing departments.⁸⁰

In their opening paragraphs, the 1993 and 2005 orders both express fear of a “population explosion” in Maungdaw Township. Citing no empirical data, both orders claim the population is increasing at a rate that far exceeds “international standards.”⁸¹ Senior government officials have consistently reiterated this idea. For instance, in 2011, in defense of abusive population-control measures, the Union Minister of Defense at the time, Lieutenant-General Hla Min, told parliament “the birth rate [in Maungdaw Township] outnumbers the international standard at a breakneck speed.”⁸² These types of public statements reinforce the dominant view of Rohingya as outsiders who threaten national security, rather than as members of the ethnically diverse population. The statements also demonstrate continuity between previous military regimes and the current government, with respect to having identical perspectives on the Rohingya community.

Both of these orders express concern about resources and land becoming scarce due to population increases. Both mention risk of food shortages and comment on “a class of stray, bad [Rohingya] youth” who will “create problems for the human environment.”⁸³ Lieutenant-General Hla Min reiterated the latter sentiment in parliament, almost verbatim, on September 1, 2011.⁸⁴

The 1993 order says the population control restrictions are “issued for the good of the region and the race, and [we] instruct that it be followed exactly.”⁸⁵ The 2005 memo says the population control restrictions are “issued for the good of those who reside in Maung-

80 Both orders and addenda were circulated in a 2008 communication from Aung Than Win, Immigration Chief Officer, “Regional Order and Processes for Controlling Bengali Population,” Kyeegan Pyin, Maungdaw, November 2, 2008; Township Peace and Development Council, Maungdaw, Regional Order 1/2005, 8th Day of the Waning Moon of Dagoo 1367, May 1, 2005; Border Region Immigration Control Headquarters, “Issuing Temporary Regional Order,” Letter No. NaSaKa/56/U4, January 31, 1993.

81 Ibid.

82 “Second Regular Session of First Amyotha Hluttaw Continues for Ninth Day,” *New Light of Myanmar*, <http://www.burmalibrary.org/docs11/NLM2011-09-02.pdf>, p. 16.

83 Both orders and addenda were circulated in a 2008 communication from Aung Than Win, Immigration Chief Officer, “Regional Order and Processes for Controlling Bengali Population,” Kyeegan Pyin, Maungdaw, November 2, 2008; Township Peace and Development Council, Maungdaw, Regional Order 1/2005, 8th Day of the Waning Moon of Dagoo 1367, May 1, 2005; Border Region Immigration Control Headquarters, “Issuing Temporary Regional Order,” Letter No. NaSaKa/56/U4, January 31, 1993.

84 “Second Regular Session of First Amyotha Hluttaw Continues for Ninth Day,” *New Light of Myanmar*, <http://www.burmalibrary.org/docs11/NLM2011-09-02.pdf>, p. 16.

85 Border Region Immigration Control Headquarters, Maungdaw, Letter No.: NaSaKa/56/U4, January 31, 1993, on file with Fortify Rights.

daw region, and all of those residing in Maungdaw region are instructed to follow this order exactly.”⁸⁶

Like the content of these internal orders, senior government officials have consistently couched abusive population control policies in Rakhine State in paternalistic humanitarian terms.⁸⁷ Some have suggested restrictions such as the two-child policy are in the interest of Rohingya women because an abundance of children are difficult to provide for.⁸⁸ Others suggest policies should abandon human rights entirely, such as Member of Parliament Thein Nyunt, who said to parliament, “Frankly speaking, we should not prioritize human rights when dealing with this issue.”⁸⁹

Invasive Monitoring and Additional Official Policy Guidance

Five addenda to two internal regional orders obtained by Fortify Rights provide instructions—some detailed, some vague—to law enforcement officials in Rakhine State in their work to “control” the population of Rohingya. The instructions reflect the deeply discriminatory and abusive state policies against Rohingya that continue at the time of writing. These orders are effectively endorsed by Naypyidaw and the Rakhine State government by virtue of the oversight powers granted to the Union ministries of Home Affairs and Defense in Rakhine State.⁹⁰ Like the other state policies discussed in this report, these measures violate the human rights of the Rohingya population in Rakhine State.⁹¹

Invasive Household “Spot Checks”

An undated addendum to a regional order produced sometime during or after 2007⁹² is entitled “Spot Checking.” It provides law enforcement agents in Rakhine State—formerly NaSaKa and now the police force and army—guidance on conducting unannounced “visits,” or “spot checks,” to Rohingya homes in northern Rakhine State to scrutinize the residents against official home registry records.⁹³

86 Township Peace and Development Council, Maungdaw, Regional Order 1/2005, 8th Day of the Waning Moon of Dagoo 1367, May 1, 2005.

87 See for example Jason Szep and Andrew Marshall, “Myanmar minister backs two-child policy for Rohingya minority,” *Reuters*, <http://www.reuters.com/article/2013/06/11/us-myanmar-rohingya-idUSBRE95A04B20130611>.

88 Ibid.

89 Soe Than Lynn, “MP calls for census during debate on Rakhine State,” *Myanmar Times*, vol. 32, no. 637, July 30 – August 05, 2012, <http://www.mmtimes.com/2012/news/637/news63734.html> (accessed January 12, 2014).

90 Lieutenant-General Ko Ko told parliament, “The President Office assigned a team comprising the Western Command Commander, Deputy Minister of Home Affairs and Security and Border Affairs Minister of the state government headed by the Union Minister for Home Affairs to undertake stability-restoration and rehabilitation tasks in Rakhine State on 22 June 2012.” See “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>.

91 See Chapter III of this report, “Legal Analysis and Framework.”

92 The addendum refers to making use of Rohingya family photographs taken in 2007, indicating the addendum was produced in 2007 or later.

93 In 2013, Human Rights Watch reported on the continued practice of spot checks, or “night checks.” Human Rights Watch, *All You Can Do Is Pray*, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray>, p. 81.

In vague, ominous language, the “spot checking” addendum instructs officials to “take action” against “illegal entrants,” “illegal children,” “illegal immigrants,” and “against those who come to live in a house without reporting them as guests.” It instructs officials to “take action” against “those who travel without the travel certificate (certificate to leave the village)” and “against those who are married unofficially and live together.” Moreover, it instructs officials to take action “against people who fix, expand, or build a house without a permit,” and against those “who fix, expand, or build a religious building without a permit.”⁹⁴

Spot-checks typically occur in the evening, ostensibly to “check” for “illegal Bengalis [Rohingya],” though the practice has been reported as violent, insidious, and a pretext for law enforcement officials to commit violent abuses against Rohingya and extort money from Rohingya families. Reports have emerged of “spot checks” resulting in the rape of Rohingya women by security forces.⁹⁵

Spot checks typically lead to arrest and detention of Rohingya men, who in turn have to pay bribes for their freedom. In 2012, between 2,000 and 2,500 Rohingya in northern Rakhine State were arbitrarily detained during “spot checks” for “offenses” such as repairing their homes without permission.⁹⁶ Those who were detained faced beatings and torture and had to buy their freedom.⁹⁷ Some men died in detention and their families were given no explanation or access to justice.⁹⁸

Population-Control Record Keeping

An undated addendum to a regional order obtained by Fortify Rights provides additional guidance to law enforcement officials in northern Rakhine State on population control through record keeping. The addendum is entitled “Drawing Maps, Making a Record of Buildings, and Reviewing Household Registrations.” It reflects a state policy of invasive discriminatory monitoring of Rohingya, which continues at the time of writing.

The addendum instructs officials to draw maps of Rohingya wards, villages, and village tracts and to make a detailed “record of buildings.”⁹⁹ It is implied that this should take place because the residents are Rohingya, or “Bengali.”

The addendum also instructs officials to take photographs of all Rohingya families and individuals for the purposes of population control. The instructions state that these photos

⁹⁴ Regional Order and Processes for Controlling Bengali Population, “Spot Checking,” circulated November 2, 2008.

⁹⁵ See for example Francis Wade, “Rape by security forces ‘may cause more strife’ in troubled region,” *Guardian*, February 26, 2013, www.guardian.co.uk/world/2013/feb/26/burma-security-forces-rape-arakan (accessed January 12, 2014); Lawi Weng and Paul Vrieze, “Buddhist Mob, Police Raid Rohingya Village, Many Left Dead: Rights Group,” *Irrawaddy*, January 17, 2014.

⁹⁶ Human Rights Watch, *All You Can Do Is Pray*, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray>, p. 143.

⁹⁷ *Ibid.*

⁹⁸ Robin McDowell, “When Mob Was Rohingya, Myanmar’s Response Ruthless,” *Associated Press*, November 24, 2012, <http://bigstory.ap.org/article/when-mob-was-rohingya-myanmars-response-ruthless> (accessed February 5, 2014).

⁹⁹ Regional Order and Processes for Controlling Bengali Population, “Drawing Maps, Making a Record of Buildings, and Reviewing Household Registrations,” circulated November 2, 2008.

should be used to check members of families against the official family registry. In these photos, the head of household is required to physically hold the “household registration” and family members’ names are to be written on the back. Law enforcement officials are instructed to determine if someone has been “substituted.”

The document states, as previously mentioned: “If there is suspicion of someone being substituted, children in the household will be compared in age and in appearance. If the child is an infant, the mother will be made to breastfeed the child. Young children will be questioned separately.”¹⁰⁰

In its official report on the situation in Rakhine State, the government-appointed Rakhine Inquiry Commission recommended that the government double the size of “intelligence services” in Rakhine State.¹⁰¹ This recommendation may result in an increase in the frequency of these abusive “spot checks.”

Status of Abusive Policies Against Rohingya in Northern Rakhine State

President Thein Sein abolished the Rakhine State-based border guard force NaSaKa on July 12, 2013 with notification No. 59/2013. NaSaKa appeared to be the issuing authority of some of the abusive restrictions in place, and it enforced the orders with notorious brutality.¹⁰² However, the disbandment of NaSaKa did not abolish regional orders in Rakhine State or restrictions imposed on Rohingya.¹⁰³ Indeed, Rohingya report to Fortify Rights that violations continue unabated in Rakhine State, perpetrated by the “same men in different clothes.”¹⁰⁴

The Myanmar Police Force, Lon Thein riot police, the Immigration Department, and the Myanmar Army now implement restrictions on Rohingya movement, marriage, childbirth, construction and repair of homes and religious structures, and other activities. Reports indicate that “a new security force made up of police and immigration officers, operating out of the old Nasaka camp, has assumed many of the responsibilities” formerly within the mandate of NaSaKa.¹⁰⁵ A Rakhine Buddhist administrator in northern Rakhine State claims the current security force is “no different than Nasaka.”¹⁰⁶

¹⁰⁰ Addendum to internal order 1/2005, “Drawing Maps, Making a Record of Buildings, and Reviewing Household Registrations,” Letter No.: 3/24-1/U 6 (1057), May 1, 2005, number 5, on file with Fortify Rights.

¹⁰¹ Rakhine Inquiry Commission, *Final Report*, p. 52.

¹⁰² Hannah Hindstrom, “Burma disbands notorious NaSaKa border guard force,” *Democratic Voice of Burma*, <http://www.dvb.no/news/burma-disbands-notorious-nasaka-border-guard-force/29916>.

¹⁰³ Regional Order 1/2005, for example, was issued by the Maungdaw Township Peace and Development Council, available in Appendix III of this report.

¹⁰⁴ Fortify Rights interview with Rohingya, Yangon, Myanmar, December 2013. See also Robin McDowell, “When Mob Was Rohingya, Myanmar’s Response Ruthless,” *Associated Press*, <http://bigstory.ap.org/article/when-mob-was-rohingya-myanmars-response-ruthless>.

¹⁰⁵ Robin McDowell, “When Mob Was Rohingya, Myanmar’s Response Ruthless,” <http://bigstory.ap.org/article/when-mob-was-rohingya-myanmars-response-ruthless>.

¹⁰⁶ *Ibid*.

A task force, comprised of the army's Western Command, the Rakhine State Department of Security and Border Affairs, and the Union Ministry of Home Affairs, was assigned by President Thein Sein to oversee "stability" in Rakhine State.¹⁰⁷ The Ministry of Home Affairs—which by law is led by an unelected member of the Myanmar military—has ultimate authority over security and stability in the state, as determined by the President's office.

The restrictions explained in this report have been discussed openly in parliament and their impacts have been widely documented for many years. State and central government authorities have publicly backed the policies of persecution. For instance, on September 1, 2011, during the second session of Myanmar's Parliament under the present government, the Union Minister of Defense Lieutenant-General Hla Min referenced in detail Regional Order 1/2005, an internal document Fortify Rights obtained.¹⁰⁸ This document introduced the foundation of the restriction on the number of children Rohingya people can have, as mentioned in this report. In 2012, Union Minister of Home Affairs Lieutenant-General Ko Ko likewise approvingly explained to parliament the state policies of restrictions against Rohingya in Rakhine State, which amount to invasive monitoring and abusive restrictions.¹⁰⁹

The official report by the president-appointed Rakhine Inquiry Commission also noted that controls were placed on the "movement, marriage, and population growth" of "Bengalis" [Rohingya], but the commission fell short of condemning the restrictions as violations of basic human rights. The commission's report states:

The reasons given for the control were the inability of Bengalis [Rohingya] to fit in culturally with the country's other inhabitants, their large family size and high birth rates, all deemed to pose a heavy burden for the country. The international community views these restrictions as violations of the human rights of Bengalis [Rohingya]. Through international media, Bengali [Rohingya] groups are widely publicizing the extent of government controls over them. Whilst the Government deems such measures as necessary in the context of the country's situation and the non-citizen status of this group, the international community condemns these measures as violations of fundamental rights. This...has undermined the country's reputation and affected its international relations.¹¹⁰

107 Lieutenant-General Ko Ko told parliament, "The President Office assigned a team comprising the Western Command commander, deputy minister of Home Affairs and security and border affairs minister of the state government headed by the Union Minister for Home Affairs to undertake stability-restoration and rehabilitation tasks in Rakhine State on 22 June 2012." See "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>.

108 See official notes from the "Second Regular Session of First Amyotha Hluttaw continued for ninth day at Amyotha Hluttaw Hall of Hluttaw Building," Naypyidaw, September 1, 2011, available at <http://www.myanmargeneva.org/11nlm/sep/n110902.htm> (accessed January 2, 2014).

109 See "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>.

110 Rakhine Inquiry Commission, *Final Report*, p. 26.

The Government of Myanmar's Response to Abuse and Instability in Rakhine State

Myanmar's President Thein Sein deserves credit for repeatedly stressing the need to end the violence in Rakhine State and to protect the human rights of Buddhists and Muslims.¹¹¹ For instance, he condemned what he referred to as “senseless, irrational, reactionary and extremist behavior and action” that could “lead to the failure of the reform process.”¹¹² Condemning the violence in Rakhine State, President Thein Sein's office claimed “persons and organizations” were responsible for “conducting manipulation in the incidents ... behind the scene,” adding that they “will be exposed and legal actions will be taken against them.”¹¹³ Thein Sein's close advisors have blamed violence in Rakhine State on “dark forces” and anti-reform businessmen who do not stand to benefit from democratic transition.¹¹⁴

The president's office has not, however, condemned the systematic policies of abuse against Rohingya in northern Rakhine State nor acted to remove the policies or put an end to the abusive enforcement methods detailed in this report.¹¹⁵ No government official has expressed concern or even awareness that these root policies contribute to large-scale rights deprivations throughout northern Rakhine State, fueling tensions and rendering the region ripe for future violence and instability.

After the first wave of recent violence in Rakhine State in June 2012, the Myanmar National Human Rights Commission reported no government abuses and declared all humanitarian needs in the state were being met.¹¹⁶ The commission did not address the restrictions imposed on Rohingya regarding movement, marriage, childbirth, and other areas of daily life.

111 The Republic of the Union of Myanmar President's Office, “President U Thein Sein delivered a remark on the Report of the Rakhine Investigation Commission,” Naypyidaw, May 6, 2013, <http://www.president-office.gov.mm/en/?q=briefing-room/speeches-and-remarks/2013/05/07/id-1989> (accessed December 30, 2013); Gwen Robinson, “The Listener-In-Chief: On the road with Burma's reformist president,” *Foreign Policy*, November 27, 2013, http://www.foreignpolicy.com/articles/2013/11/19/the_listener_in_chief#sthash.1MACTP2Y.dpbs (accessed December 30, 2013).

112 The Republic of the Union of Myanmar President's Office, “President U Thein Sein delivered a remark on the Report of the Rakhine Investigation Commission,” Nay Pyi Taw, May 6, 2013, <http://www.president-office.gov.mm/en/?q=briefing-room/speeches-and-remarks/2013/05/07/id-1989> (accessed December 30, 2013).

113 “Statement with Regard to Conflict in Rakhine State,” Republic of the Union of Myanmar, President's Office, Statement no. 1/2012, October 25, 2012, http://www.mofa.gov.mm/news/2012/Sept_Oct2012/President%20Office%20Statemen%20on%20Conflict%20in%20Rakhine%20State_25-10-2012.pdf (accessed January 2, 2014). The President's office has provided the public with no further information about alleged perpetrators.

114 Gwen Robinson, “The Listener-In-Chief: On the road with Burma's reformist president,” *Foreign Policy*, http://www.foreignpolicy.com/articles/2013/11/19/the_listener_in_chief#sthash.1MACTP2Y.dpbs. See also Andrew Marshall, “Special Report: Myanmar gives official blessing to anti-Muslim monks,” Reuters, June 27, 2013, <http://www.reuters.com/article/2013/06/27/us-myanmar-969-specialreport-idUSBRE95Q04720130627> (accessed January 1, 2014).

115 The government has also failed to act to end anti-Rohingya violence in Rakhine State. See Benjamin Zawacki, “Defining Myanmar's Rohingya Problem,” Human Rights Brief, vol. 20, no. 2 (2013), p. 18-25. The author states that despite progressive rhetoric from the government, “the actions, developments, and facts on the ground still support the conclusion that ethnic cleansing is underway in Rakhine State.”

116 See Matthew Smith, “Tour of Shame for Thein Sein,” *Asia Times Online*, http://www.atimes.com/atimes/Southeast_Asia/SEA-01160713.html.

In August 2012, Thein Sein established a 27-member “investigative commission” to “reveal the truth behind the unrest” and “find solutions for communities with different religious beliefs to live together in harmony.” The commission’s final report failed to address abuses by state authorities or the need for accountability for human rights violations, effectively denying any wrongdoing by the state per the standard response from government officials.¹¹⁷ The report acknowledges but fails to condemn the restrictions imposed on the basic freedoms of Rohingya.¹¹⁸

In a December 6, 2012 press release, Myanmar’s Ministry of Foreign Affairs categorically denied wrongdoing by government security forces and local authorities in Rakhine State:

The Ministry reaffirmed that the government security forces and local authorities have never [been] involved in the communal violence or racial and religious discrimination in Rakhine State as accused by some media and organizations. The Head of State and other responsible officials have also declared this to the world at the UN General Assembly, ASEAN Summit and the Non-Aligned Summit.¹¹⁹

On February 3, 2014, Fortify Rights sent a letter to President Thein Sein explaining the subject of this report and asking 15 questions about the government’s positions, policies, and practices with respect to the Rohingya. At the time of writing, no response was received.¹²⁰



¹¹⁷ This glaring omission would be grounds for the United Nations to commission an independent international investigation into human rights violations in Rakhine State. See Rakhine Inquiry Commission, *Final Report*, July 8, 2013.

¹¹⁸ Rakhine Inquiry Commission, *Final Report*, p. 26.

¹¹⁹ “The Government of the Republic of the Union of Myanmar Ministry of Foreign Affairs Press Release,” Ministry of Foreign Affairs press release, <http://www.president-office.gov.mm/en/issues/foreign-policy/id-1202>.

¹²⁰ Letter from Fortify Rights to Thein Sein, President of Myanmar, “Letter with Questions from Fortify Rights to President Thein Sein,” February 3, 2014, Appendix V of this report. The letter was sent in English and Myanmar languages.



Displaced by anti-Rohingya violence, a Rohingya man walks alone outside Sittwe, Rakhine State, Myanmar, October 2012. Successive Myanmar governments have engaged in systemic abuse of Rohingya over the last two decades. Hundreds of thousands of Rohingya have been driven to flee Myanmar, risking death at sea for a chance at freedom.

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III. LEGAL FRAMEWORK & ANALYSIS

This report employs treaty-based and customary law frameworks of international human rights law and international criminal law to examine the legal implications of restrictions placed on Rohingya in Rakhine State.¹

The criminal dimensions of ongoing human rights violations in Rakhine State are evaluated based on standards set forth in the Rome Statute of the International Criminal Court (ICC). Although the ICC does not have jurisdiction over Myanmar,² its governing statute is the most persuasive source of international criminal law,³ in part because the UN Security Council has the power to refer to the Court situations that would otherwise lie outside its jurisdiction.⁴ The Rome Statute offers an authoritative lens to consider the gravity of human rights violations perpetrated against Rohingya in Myanmar, particularly those committed by government officials who operate beyond the reach of Myanmar's domestic law.

For government actors to be held accountable for serious crimes against Rohingya, there must be a full investigation into these abuses and perpetrators must be tried in a manner that meets international standards. Any judicial mechanism used to address violations in Rakhine State would require a mandate to address grave international crimes, similar to that of the ICC.

Persecution as a Crime Against Humanity

This report supports a *prima facie* finding that Rohingya in Rakhine State are victims of the crime against humanity of persecution, perpetrated by Myanmar government officials.

The government policies exposed in this report systematically single-out Rohingya as a group on the basis of their ethnicity, religion, and at times gender, stripping them of a range of human rights, including the rights to nondiscrimination, health, nationality, and freedom

1 Notably, Myanmar is a party to the Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Myanmar July 15, 1991.) and the Convention on the Elimination of all Forms of Discrimination against Women (Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Myanmar July 22, 1997. UN actors, international NGOs, and foreign governments routinely call upon Myanmar to accede to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Rome Statute of the International Criminal Court. See for example Human Rights Watch, *All You Can Do Is Pray*. Although Myanmar has ratified few treaties that make up either body of international law, certain instruments, including ICCPR, have been so widely adopted that some or all of their provisions are considered part of customary international law, a force that is binding upon all nations.

2 The scope of ICC jurisdiction is limited to when a crime is committed within a country or by a national of a country that is a State Party to the Rome Statute, when a state agrees to ICC jurisdiction, or when a situation is referred to the Office of the Prosecutor by the UN Security Council. See Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, arts. 5(2), 12(b), 12(3), 13(b).

3 Although Myanmar is not a state party to the Rome Statute, the Statute provides authoritative definitions of the most serious crimes, particularly because 122 countries have acceded to its terms, making it the most persuasive current source of international criminal law. For a complete record of states parties, see International Criminal Court, "States Parties," http://icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (accessed Feb. 16, 2014).

4 Rome Statute, art. 13(b).

of movement.⁵ The degree of deprivation is so severe that it would qualify as “persecution” as a crime against humanity under international law.

Under the Rome Statute, crimes against humanity consist of certain acts committed in the context of a widespread or systematic attack against a civilian population by perpetrators with knowledge of the attack.⁶

To satisfy the elements of crimes against humanity, an attack must be “widespread” or “systematic.” The attack underway in Rakhine State is widespread as evidenced by the sheer number of Rohingya victims,⁷ and its systematic nature is revealed in leaked documents obtained by Fortify Rights and in parliamentary records.⁸ While either would have satisfied the Rome Statute requirement for crimes against humanity, government persecution of Rohingya appears both widespread and systematic.⁹

For the purposes of the Rome Statute, an “attack” must arise from a state or “organizational” policy.¹⁰ There is no requirement that the attack “involve military forces or armed hostilities, or any violent force at all.”¹¹ Here, the attack consists of discrimination and restrictions on basic freedoms of Rohingya. The documents leaked to Fortify Rights and parliament transcripts documenting discussion by Myanmar government officials reveal that a state policy of discrimination against Rohingya has been in place for years.

The Rome Statute also requires “knowledge” of the attack. State actors in Myanmar wrote, circulated, and discussed memoranda detailing policies of discrimination against Rohingya, which would have required them to have knowledge of those policies. In the framework of international criminal law, this means they had knowledge of the attack as the Rome Statute requires. Open discussion of the policies indicates state actors knew these policies contributed to the deprivation of Rohingya rights, showing that they had knowledge of the criminal act as required by the law.¹²

5 See below in this section for further discussion; for one source of these rights, see for example ICCPR, arts. 4, 12, 16, 24(3).

6 Rome Statute, art. 7(f).

7 The term “widespread” is not defined in the Rome Statute and case law has established

8 there is no benchmark requirement for number of victims, but the high number of victims in Rakhine State is persuasive that the “widespread” prong of the Rome Statute would be met here. To consider how tribunals have construed “widespread” in the context crimes against humanity, see for example *Prosecutor v. Akayesu*, International Criminal Tribunal for Rwanda, Case No. ICTR-96-4-T, Judgment, September 2, 1998, <http://www.unict.org/Portals/0/Case/English/Akayesu/Judgement/akay001.pdf> (accessed February 17, 2014), para. 580; *Prosecutor v. Mkaeli Muhimana*, ICTR, Case No. ICTR-95-1B-T, Judgment and Sentence, April 28, 2005, <http://www.unict.org/Portals/0/Case/English/Muhimana/decisions/muhimana280505.pdf> (accessed February 17, 2014), para. 257; *Prosecutor v. Juvénal Kajelijeli*, ICTR, Case No. ICTR-99-44A-T, Judgment (Appeals Chamber), December 1, 2003, <http://www.refworld.org/docid/404466007.html> (accessed February 17, 2014), para. 87; *Prosecutor v. Dario Kordic, Mario Cerkez*, International Criminal Tribunal for the former Yugoslavia, IT-95-14/2-A, Judgment (Appeals Chamber), Dec. 17 2004, <http://www.refworld.org/docid/47fdb53d.html> (accessed February 17, 2014), para. 94.

9 “Systematic” is read as a qualitative requirement indicating “the organized nature of the acts of violence and the improbability of their random occurrence,” *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Foca case), ICTY, Case No. IT-96-23 and IT-96-23/1, Judgment (Appeals Chamber), June 12, 2002, para. 94. For analysis of the terms “widespread” and “systematic” as they pertain to crimes against humanity in the Rome Statute, see Leila N. Sadat, “Crimes Against Humanity in the Modern Age,” *American Journal of International Law*, vol. 107 (2013), <http://law.wustl.edu/scholarship-spotlight/documents/sadat-AJIL.pdf> (accessed Feb. 16, 2014), p. 352-355.

10 Rome Statute, art. 7(2)a.

11 Rodney Dixon in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Baden-Baden: Nomos Verlagsgesellschaft, 1999), p. 124. While evidence of government complicity in violence against Muslims discussed in this report merits thorough, immediate, and impartial investigation, the government need not have been involved in any violence to bear criminal responsibility for crimes against humanity through its policies.

12 See Rome Statute of the International Criminal Court, Elements of Crimes (2011). Available at: <http://icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B->

The Criminal Act: Persecution

In the context of such a widespread and systematic attack, the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group” is considered “persecution” as a crime against humanity.¹³ Abuses inflicted upon Rohingya in northern Rakhine State represent a severe deprivation of rights due to the discriminatory scope and widespread impact of the policies explained in this report, reaching the statutory threshold of severity. The policies explained in this report have contributed to death – including endemic maternal mortality—and the constructive displacement of hundreds of thousands of people who have fled Myanmar over the last two decades in response to denials of fundamental freedoms.

The restrictions placed on Rohingya target fundamental rights since they deprive Rohingya of rights considered non-derogable under international human rights law, including freedom of religion,¹⁴ and other basic rights such as nationality, nondiscrimination, and health.¹⁵

To fit the crime of persecution under the Rome Statute, this deprivation must be based on one of several particular identifying characteristics provided in the statute.¹⁶ Persecution of Rohingya is conducted on the basis of three of these enumerated grounds: ethnicity, religion, and gender.¹⁷

Persecution of Rohingya is based on their identity as a distinct religious and ethnic group. The policies are applied to a Rohingya Muslim population that the government refers to as “Bengali,” and not to the ethnically similar minority population of “Bengali” Buddhists or Rakhine Buddhists in northern Rakhine State, so it follows that the government specifically targets Rohingya based on the intersection of their ethnic and religious identities. In documents and oral presentations discussed in this report, government actors refer to the discriminatory policies targeting Rohingya in approving terms, stressing that the measures

45BF9DE73D56/0/ElementsOfCrimesEng.pdf (accessed Feb. 13, 2014) (hereinafter *Elements of Crimes*), *Elements of Crimes*, art. 7(1)h(6).

¹³ Rome Statute, arts. 7(1)h, 7(2)g.

¹⁴ Freedom of religion is expressly noted as a non-derogable right under the ICCPR, see arts. 4(2), 18.

¹⁵ For discussion of the wide variety of rights international tribunals have construed as “fundamental rights” to meet the threshold of persecution as a crime against humanity when violated by particular acts, see for example Valerie Oosterveld, “Gender, Persecution, and the International Criminal Court: Refugee Law’s Relevance to the Crime Against Humanity of Gender-Based Persecution,” *Duke Journal of Comparative & International Law*, vol. 17 (2006), <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1093&context=djcil> (accessed February 17, 2014), p. 64. Oosterveld notes that courts have at times framed “attacks on political, social, or economic rights” as fundamental rights in the context of persecution. The inclusion of economic rights, in particular, demonstrates the range of judicial discretion exercised in past determinations of “fundamental rights” and indicates a likelihood that the range of Rohingya rights implicated in northern Rakhine State would indeed qualify as “fundamental.” While not expressly noted as non-derogable in Article 4 of ICCPR, the UN Human Rights Committee has acknowledged the principle of nondiscrimination as non-derogable. See General Comment on Article 4 of the ICCPR, stating: “Even though article 26 or the other Covenant provisions related to non-discrimination ... have not been listed among the non-derogable provisions in article 4, paragraph 2, there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances.”

¹⁶ Rome Statute, 7(1)h.

¹⁷ *Ibid.* For discussion of gender-based persecution as a crime against humanity under customary international law prior to the ratification of the Rome Statute, see generally A. Widney Brown & Lauren Grenfell, “The International Crime of Gender-based Persecution and the Taliban,” *Melbourne Journal of International Law*, vol. 4 (2003).

are necessary for “Bengalis” (Rohingya), but not for Buddhists.¹⁸ In one instance, discussed above, the Rakhine State spokesperson referred to birth restrictions as “family planning,” insisting they are “only for certain groups” and are necessary for “the Bengali (Rohingya) people.”¹⁹

Many discriminatory measures disproportionately target Rohingya women because they are Rohingya women, stripping them of rights without impinging upon the same rights as they pertain to Rohingya men or other women. Just as restrictions on Rohingya men hinge on the intersection of their ethnic and religious identities, these discriminatory measures single-out Rohingya women on the basis of the overlap of their ethnic, religious, and gendered identities. This violates their fundamental human right to nondiscrimination on the basis of sex and triggers a cumulative impact of severe deprivation that constitutes persecution on the basis of gender, combined with ethno-religious identity as Rohingya Muslims.

To fulfill the elements of persecution under the Rome Statute, a perpetrator must either target a group “by reason of [its] identity” or “target[] the group or collectivity *as such*.”²⁰ Because only one, not both, of these bases must be met, it is sufficient that a group of women be targeted as women for persecution to be committed on the basis of gender. It satisfies the Statute to show Rohingya women are targeted as Rohingya women, in ways neither Rohingya men nor other women are targeted. As a result, even if the government policies were not formulated to single-out Rohingya women “by reason of the[ir] identity” as women, the restrictions in northern Rakhine State do target Rohingya women as women, and this would likely meet the statutory requirements for persecution on the basis of gender.²¹

The Rome Statute requires that persecution occur “in connection with” at least one other act enumerated in its list of crimes against humanity, or another crime within the ICC’s jurisdiction.²² This contextual element would be fulfilled by even a single listed act, such as one murder, rape, arbitrary imprisonment or act of torture, committed in the context of the “attack” discussed here.²³ Allegations of serious crimes committed in Rakhine State against the Rohingya, including other crimes against humanity, are well documented and have been particularly abundant in recent years, before and after the violence that began in June 2012.²⁴ This includes reports by the Irish Center for Human Rights (2010) and

18 Paul Vrieze and Zarni Mann, “Gov’t Sets Two-Child Limit for Rohingyas in Northern Arakan,” *Irrawaddy*, http://www.irrawaddy.org/z_arakan/govt-sets-two-child-limit-for-rohingyas-in-northern-arakan.html.

19 See the section in Chapter II. of this report, “The Two-Child Policy.”

20 Rome Statute, Elements of Crimes, art. 7(1)(h)(2), emphasis added.

21 The concept of intersectionality of ethnicity, religion, and gender has arisen repeatedly in the context of international criminal law. For discussion of the evolution of this concept, see for example Valerie Oosterveld, “Gender, Persecution, and the International Criminal Court: Refugee Law’s Relevance to the Crime Against Humanity of Gender-Based Persecution,” v. <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1093&context=djcl> pp. 60-62; Doris E. Buss, “The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law,” *Windsor Yearbook of Access to Justice*, vol. 25 (2007), p. 3; Kelly D. Askin, “Gender Crimes Jurisprudence in the ICTR: Positive Developments,” *Journal of International Criminal Justice*, vol. 3 (Sept. 2005), pp. 1007-1018.

22 Rome Statute, Elements of Crimes, art. 7(1)(h)(4).

23 The Elements require only “any act referred to in article 7, paragraph 1 of the Statute,” thus a single act of torture or any other enumerated offense could suffice. For the complete list of acts, see Rome Statute art. 7(1).

24 See for example Irish Centre for Human Rights, *Crimes Against Humanity in Western Burma: The Situation of the Rohingyas* (2010), <http://burmaactioni->

Human Rights Watch (2013).²⁵ Considering the presence of substantial evidence of abuse against the Rohingya, this contextual requirement is likely to be satisfied for the purposes of demonstrating persecution as a crime against humanity.

Citizenship and the Right to Nationality

Article 24 of the ICCPR affirms “[e]very child shall be registered immediately after birth” and “has the right to acquire a nationality.”²⁶ Current policies in Rakhine State prevent Rohingya children from realizing their right to nationality. Rohingya children, like Rohingya adults, do not have equal access to citizenship under the 1982 Citizenship Law, effectively denying them the right to nationality. Restrictions on Rohingya marriage compound this violation with respect to children born outside officially recognized marriages. Likewise, children born in contravention to the two-child policy are not able to register with the government and are not recorded in the household registry lists. As a result they are denied their right to be registered at birth.

Under international law, no one should be rendered stateless by being “arbitrarily deprived of his nationality.”²⁷ UN treaty monitoring bodies have stressed that states have a positive obligation to “undertake... to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in ... the right to nationality.”²⁸ The 1982 Citizenship law effectively denies Myanmar’s Rohingya population of its right to citizenship on the basis of their ethnic origin, in violation of international law.

Right to Health | Reproductive Rights

In 1994, states defined “reproductive rights” in setting the Programme of Action for the UN International Conference on Population and Development (ICPD). Finding that reproductive rights encompass a core set of human rights “already recognized in national laws, international human rights documents and other consensus documents,”²⁹ states determined:

reland.org/images/uploads/ICHR_Rohingya_Report_2010.pdf (accessed Feb. 13, 2014); Human Rights Watch, *All You Can Do Is Pray*, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray>; Benjamin Zawacki, “Defining Myanmar’s Rohingya Problem,” Human Rights Brief, pp. 18-25.

²⁵ Ibid.

²⁶ ICCPR, art. 24, (2), (3).

²⁷ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), <http://www.un.org/en/documents/udhr/index.shtml#a21>, (accessed February 16, 2014), art. 15(2).

²⁸ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, <http://www.refworld.org/docid/3ae6b3940.html> (accessed 16 February 2014), art. 5(d)3.

²⁹ Programme of Action of the International Conference on Population and Development (ICPD Programme of Action), Cairo, Egypt, Sept. 5-13, 1994, U.N. Doc. A/CONF.171/13/Rev.1 (1995), http://www.unfpa.org/webdav/site/global/shared/documents/publications/2004/icpd_eng.pdf, (accessed February 17, 2014), para. 7.3; see Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, October 27, 1995, <http://www.refworld.org/docid/3dde04324.html> (accessed February 16, 2014), paras. 96, 223.

These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.³⁰

The government of Myanmar actively deprives Rohingya women in Rakhine State of each of these rights through discriminatory policies exposed in this report. The cumulative effect is the complete vitiation of reproductive health rights and the fundamental human rights at their core as they apply to Rohingya women, the totality of which constitutes persecution on the basis of gender, as discussed above.

Both the Beijing Platform for Action and UN Committee on Economic, Social, and Cultural Rights further recognize that the right to reproductive health entails full access to comprehensive reproductive health care.³¹ States must ensure “reproductive health care goods and services, as well as programmes, are widely available, economically and physically accessible, culturally acceptable, and of high quality.”³² None of these conditions is met in northern Rakhine State. The discrepancy between availability of these goods and services in Rakhine Buddhist and Rohingya Muslim areas indicates religious and ethnic discrimination act as a bar to realization of reproductive health rights for Rohingya women.

Right to Health I Maternal Mortality

No longer framed as an isolated health care problem, maternal mortality is cast as a human rights issue in the context of international law and policy.³³ For decades now, “international human rights treaties and their respective monitoring bodies recognize ... that maternal mortality violates the rights to life, health, equality, and non-discrimination.”³⁴

30 ICPD Programme of Action, para 7.3. See also Center for Reproductive Rights, Human Rights Watch, Latin American and Caribbean Committee for the Defense of Women's Rights, *Defenders of Sexual Rights and Reproductive Rights: a Briefing Paper to the Special Rapporteur on Human Rights Defenders*, 2009, <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/CRR-HRW-CLADEM-BriefingPaper-SRHRD.pdf> (accessed February 5, 2014), p. 5; Beijing Declaration and Platform for Action, paras. 106(f), 107(e); CEDAW, arts. 10(h), 16(l)(e); CRC, art. 17; Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development, 33rd Sess., 26-33, U.N. Doc. CRC/GC/2003/4 (2003) paras. 10-11; ICPD Programme of Action, Principle 8, paras. 7.2, 7.3, 7.45.

31 See Center for Reproductive Rights, *Beijing +15: No Equality Without Full Enjoyment of Women's Sexual and Reproductive Rights*, 2010, <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/beijing+15%20factsheet.pdf> (accessed January 27, 2014); UN Committee on Economic, Social, and Cultural Rights (CESCR), General Comment No. 14: the Right to the Highest Attainable Standard of Health (Art. 12), U.N. Doc. E/C.12/2000/4 (July 4, 2000), para. 12.

32 Center for Reproductive Rights, Human Rights Watch, Latin American and Caribbean Committee for the Defense of Women's Rights, *Briefing Paper to the Special Rapporteur*, p. 5 (citing CESCR Gen. Comment 14; CEDAW, art. 12; ICPD Programme of Action, Principle 8.)

33 Center for Reproductive Rights & United Nations Population Fund (UNFPA), *ICPD and Human Rights: 20 Years of Advancing Reproductive Rights through UN Treaty Bodies and Legal Reform*, June 2013, http://www.unfpa.org/webdav/site/global/shared/documents/publications/2013/icpd_and_human_rights_20_years.pdf (accessed February 17, 2014), p. 1.

34 Ibid. (internal citations omitted).

Consensus that maternal mortality fits squarely within the framework of international human rights has been coupled with the understanding that it is “generally preventable and that states have an affirmative obligation to prevent it.”³⁵ To this end, “[t]he UN Human Rights

Council has passed multiple resolutions declaring maternal mortality a human rights violation and urged states to renew their emphasis on its prevention.”³⁶ This report suggests the government of Myanmar places insufficient emphasis on the prevention of maternal mortality in Rakhine State and pursues a set of policies that contribute to preventable deaths among pregnant Rohingya women.

Data suggesting higher rates of maternal mortality in Rohingya communities in Rakhine State indicates that the discriminatory policies discussed in this report constitute a failure on the part of the government of Myanmar to meet its responsibilities under international human rights law.³⁷ In particular, the government of Myanmar is in clear violation of its obligation to “take all appropriate measures to eliminate discrimination both in law and in practice”³⁸ with respect to maternal mortality. As the Center for Reproductive Rights and United Nations Population Fund have noted:

This obligation is non-derogable and subject to immediate application; even in circumstances where states face extreme resource constraints, low-cost, targeted programs must be adopted in order to protect vulnerable members of society. Measures should be taken to eradicate stereotypes and discrimination against these groups, including through awareness-raising campaigns on diversity and tolerance; and instituting disciplinary, administrative, and penal sanctions when violations occur. Treaty monitoring bodies have advised states to adopt comprehensive strategies to address multiple discrimination against women belonging to marginalized groups.³⁹

Myanmar is not meeting any of these obligations with respect to Rohingya women in Rakhine State. Failure “to address multiple discrimination” here rises to the level of active persecution on the basis of ethnicity, religion, and gender.⁴⁰

35 Ibid., citing *ICPD Programme of Action*, para. 7.2.

36 Ibid., citing generally Human Rights Council Res. 11/8 Preventable maternal mortality and morbidity and human rights, Rep. of the Human Rights Council, 11th Sess., June 2-19, 2009, U.N. Doc. A/HRC/11/37, at 44 (Oct. 16, 2009).

37 In 2010, for example, the UN Special Rapporteur on the Situation of Human Rights in Myanmar Tomás Ojea Quintana reported, “The maternal mortality rate [in Rakhine State] is much higher than in the rest of Myanmar (380 women per 100,000 births).” Human Rights Council, Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, March 10, 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-48.pdf>, p. 23.

38 Center for Reproductive Rights & UNFPA, ICPD and Human Rights, http://www.unfpa.org/webdav/site/global/shared/documents/publications/2013/icpd_and_human_rights_20_years.pdf, Chapter VI. “Individuals Belonging to Marginalized and Underserved Populations,” p. 2, citing ICPD Programme of Action, Preamble, Principle 10 and para. 3.18.

39 Ibid., internal citations omitted.

40 For discussion of state obligations to address multiple discrimination, see for example CRC Committee, Concluding Observations: Philippines, U.N. Doc. CRC/C/PHL/CO/3-4 (2009) para. 30(a).

Freedom of Movement

International human rights law requires states to respect, protect, and fulfill the rights of individuals legally present in their territory to exercise “liberty of movement and freedom to choose [their] residence.”⁴¹ States reserve the right to restrict the movements of those who are not lawfully within the territory.⁴² However, people whose “status [in the country] has been regularized, must be considered to be lawfully within the territory” and granted freedom of movement under international human rights law.⁴³

The government of Myanmar regards all Rohingya as “illegal” immigrants from what is now Bangladesh, and nearly all Rohingya in Rakhine State are stateless. The status of Rohingya in Rakhine State, however, has been “regularized”: Rohingya have been permitted to form political parties and vote in multiparty elections in 1990 and 2010, as well as the constitutional referendum in 2008. Myanmar participated in the repatriation of 250,000 Rohingya refugees from Bangladesh in 1992, alongside the UN Office of the High Commissioner for Refugees, and in 1994 Myanmar began issuing Temporary Resident Cards to repatriated Rohingya. The authorities have also maintained lists of Rohingya families for several decades, as Myanmar does for all residents.⁴⁴

The government of Myanmar not only denies Rohingya in Rakhine State the right to exercise freedom of movement and freedom to choose a residence, but it does so on an overtly discriminatory basis, guided by policies that target Rohingya on the basis of their ethno-religious identity.

This targeted violation of freedom of movement with respect to the Rohingya does not constitute a restriction that is “provided by law, [and] necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and [is] consistent with the other rights recognized in the [ICCPR].”⁴⁵ In consequence, the law curtailing Rohingya movement is not a permissible restriction on their rights as enshrined in international law.

41 ICCPR, art. 12(1).

42 UN Human Rights Committee, General Comment No. 27, Freedom of Movement (Art.12),

U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999), <http://www.refworld.org/docid/45139c394.html> (accessed February 16, 2014).

43 Ibid.

44 See Benjamin Zawacki, “Defining Myanmar’s Rohingya Problem,” Human Rights Brief, p. 18-25.

45 ICCPR, art. 12(3).

Right to Nondiscrimination

An extensive body of customary and codified international law obliges the government of Myanmar to respect, protect, and fulfill the human rights of ethnic and religious minority groups living within its borders.⁴⁶ States have a non-derogable obligation to “undertake ... to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the International Covenant on Civil and Political Rights (ICCPR), without distinction of any kind, such as race, ... sex [or] religion.....”⁴⁷

The right to equality before the law is expressed in Article 26 of ICCPR with specific language noting:

[A]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, ... sex [or] religion....⁴⁸

The set of government policies exposed in this report that serve to deprive Rohingya in Rakhine State of fundamental rights on the basis of their race, sex, and religion violates their core right to nondiscrimination on these bases as enshrined in international human rights law.

Right to Marry

International human rights instruments require states to recognize “[t]he right of men and women of marriageable age to marry and to found a family.”⁴⁹ Like all provisions of the ICCPR, this right must be interpreted in tandem with the rights to nondiscrimination and equality before the law, requirements emphasized in the language of the marriage provision of the Universal Declaration of Human Rights (UDHR). The UDHR explicitly recognizes adults’ right to marry and stresses that men and women of appropriate age are entitled to marry “without any limitation due to race, nationality or religion.”⁵⁰

46 See for example UDHR, art. 18; ICCPR, art. 18(1-2); ICERD, art. 5 (affirming “equality before the law, notably in the enjoyment of the following rights ... (d) Other civil rights, in particular: ... (vii) The right to freedom of thought, conscience and religion”). See also United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, November 25, 1981, G.A. res. 36/55, 36 U.N. GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/684 (1981), <http://www.un.org/documents/ga/res/36/a36r055.htm> (accessed February 17, 2014), para. 3. While not a binding legal instrument, this Declaration reflects global consensus on standards for freedom from discrimination on the basis of religion and notes the legal burden on states to prevent discrimination on the basis of religion and reaffirming, inter alia, such discrimination “constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations and shall be condemned as a violation of the human rights.”

47 ICCPR, art. 2(1), emphasis added.

48 ICCPR, art. 26.

49 ICCPR, art. 23(2).

50 UDHR, art. 16(1).

Policies that impinge upon the right of Rohingya to marry and found a family while leaving intact those rights as they pertain to other ethnic groups have a compound effect whereby they violate simultaneously the Rohingya population's rights to marry, to be free from discrimination, and to equality before the law.

Right to Privacy

Core provisions of international human rights law require states to respect individuals' privacy. A two-pronged provision in the ICCPR states that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence"⁵¹ and that "[e]veryone has the right to the protection of the law against such interference or attacks."⁵² Like all provisions of the ICCPR, this article is to be read in tandem with the treaty's core nondiscrimination principle.⁵³

The privacy provision thus requires the government of Myanmar not to subject anyone within its borders to invasive monitoring and further obliges the government to provide equal protection from rights violations—including violations of privacy—to all individuals within its jurisdiction. These basic provisions of international human rights law make clear the responsibility of the Myanmar government not to single-out Rohingya on the basis of religion or other minority status. The well-documented policy and practice of "spot checking" Rohingya households by Myanmar state security forces, as discussed in this report, represent clear violations of the right to privacy.



⁵¹ ICCPR, art. 17.

⁵² Ibid.

⁵³ See above section, "Nondiscrimination."



A young Rohingya boy, one of thousands of unregistered displaced children, outside Sit-twe, Rakhine State, April 2013. Most Rohingya children are born stateless, or “blacklisted,” in Rakhine State. With no legal or social status, young Rohingya are barred from education, and later in life from marriage, employment, and land ownership.

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IV. Recommendations To the Government of Myanmar

- Abolish all local orders and cease practices that restrict basic human rights of Rohingya, including the rights to nondiscrimination, nationality, movement, marriage, family, health, and privacy without delay. Communicate to central, state, and local governments and the general public that authorities are to cease all official and unofficial practices related to these restrictions against Rohingya in Rakhine State.
- Ensure national legislation and policies are publicly available and in line with international human rights laws and standards.
- Support an independent investigation by international and Myanmar partners into human rights violations in Rakhine State from 2012 to present, including into restrictions imposed on Rohingya in northern Rakhine State.
- Immediately lift travel restrictions on Rohingya, including on internally displaced Rohingya.
- Implement policies and procedures and allocate resources to facilitate access to adequate health care for all Rohingya in Rakhine State, with an emphasis on ensuring equal access to reproductive healthcare, supplies, and services for Rohingya women.
- Remove indications of ethnic origin and religious affiliation on national identification cards, further to the 2012 recommendation of the UN Committee on the Rights of the Child.
- Ensure all perpetrators of human rights violations and discriminatory acts, regardless of rank, are held accountable and are provided with due process rights and trials that meet international fair trial standards.
- Provide equal protection under the law to all ethnic nationalities in Myanmar, including Rohingya in Rakhine State.
- Publicize information about the status of all Rohingya and Rakhine detained since June 2012 in Rakhine State. Ensure that anyone in detention has access to legal counsel of their choosing and to family members, and ensure that legal counsel can conduct their work freely and safely.

- Immediately release all detainees in Rakhine State that have not been charged with a cognizable criminal offense, and release all people charged for “crimes” that infringe on their basic human rights.
- Immediately release Kyaw Hla Aung, Dr. Tun Aung, and other political prisoners arrested in Rakhine State since June 2012.

Preventing Statelessness

- Amend the 1982 Citizenship Law to reduce statelessness and ensure Rohingya have equal access to citizenship rights.
- Amend the 1982 Citizenship Law in accordance with article 7 of the Convention on the Rights of the Child to ensure that Rohingya children can exercise the right to acquire a nationality where otherwise they would be stateless because they have no relevant links to another state.
- Allow for the registration of all children born in Myanmar, regardless of their origin and without any discrimination, and ensure they are provided with birth certificates, identity cards, and other government-issued documents. Strengthen existing plans to provide birth registration to all unregistered children up to 18 years of age.

The National Census

- Postpone the national census currently underway, directed by the Ministry of Immigration and Population and supported by the UN Population Fund (UNFPA), until reasonable safeguards are in place to ensure it is conducted in a manner fully compliant with international standards, does not discriminate against minorities, covers all populations of Myanmar, and is unlikely to create discord or disunity among Myanmar’s ethnic populations.

Engagement with the International Human Rights System

- Support an extension of the mandate of the UN Special Rapporteur on the Situation of Human Rights in Myanmar.
- Provide unfettered access to Rakhine State for the UN Special Rapporteur on the Situation of Human Rights in Myanmar, representatives of the UN Office of the High Commissioner for Human Rights (OHCHR), humanitarian organizations, independent observers, and national and international media.
- Implement the recommendations relating to Rakhine State and anti-Muslim violence made by the UN Special Rapporteur on the Situation of Human Rights in Myanmar, by the Committee on the Elimination of Discrimination Against Women, by the Committee on the Rights of the Child, and by the Universal Periodic Review of the Human Rights Council.
- Finalize without delay an agreement with the UN Office of the High Commissioner for Human Rights to establish a Country Office in Myanmar with a full mandate for human rights protection, promotion, and technical support.
- Ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the Optional Protocols, further to the June 2013 recommendation of the Myanmar National Human Rights Commission. Support the ratification of other key international human rights treaties, including the Convention against Torture, the Convention on the Elimination of Racial Discrimination, the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, and the Rome Statute of the International Criminal Court.

To Concerned Governments and the International Community

- Urge the government of Myanmar to abolish all local orders and cease practices that restrict basic human rights of Rohingya, including the rights to nondiscrimination, nationality, movement, marriage, family, health, and privacy without delay. Urge the government of Myanmar to communicate to central, state, and local governments and the general public that authorities are to cease all official and unofficial practices related to these restrictions against Rohingya in Rakhine State.
- Advocate for an independent investigation by international and Myanmar partners into human rights violations in Rakhine State from 2012 to present, including into restrictions imposed on Rohingya in northern Rakhine State.
- Support an extension of the mandate of the UN Special Rapporteur on the Situation of Human Rights in Myanmar.
- Provide financial, technical, and advocacy support to human rights defenders in Myanmar in order to strengthen local responses to human rights violations.
- Advocate for the full realization of recommendations relating to the situation in Rakhine State and the situation of anti-Muslim violence made by: the UN Special Rapporteur on the situation of human rights in Myanmar; the UN High Commissioner for Human Rights; the Committee on the Elimination of Discrimination Against Women; the Committee on the Rights of the Child; the Universal Periodic Review of the Human Rights Council; Fortify Rights, and other human rights organizations.

To United Nations Agencies and the Donor Community

- Urge the government of Myanmar to abolish all local orders and cease practices that restrict basic human rights of Rohingya, including the rights to nondiscrimination, nationality, movement, marriage, family, health, and privacy without delay. Urge the government of Myanmar to communicate to central, state, and local governments and the general public that authorities are to cease all official and unofficial practices related to these restrictions against Rohingya in Rakhine State.
- Continue to ensure that humanitarian aid is delivered impartially to all populations in need in Rakhine State.
- Provide financial, technical, and advocacy support to human rights defenders in Myanmar in order to strengthen local responses to human rights violations.
- Advocate for an independent investigation by international and Myanmar partners into human rights violations in Rakhine State from 2012 to present, including into restrictions imposed on Rohingya in northern Rakhine State.
- Support an extension of the mandate of the UN Special Rapporteur on the Situation of Human Rights in Myanmar.
- Advocate for postponement of the national census currently underway, directed by the Ministry of Immigration and Population and supported by the UN Population Fund (UNFPA), until reasonable safeguards are in place to ensure it is conducted in a manner fully compliant with international standards, does not discriminate against minorities, covers all populations of Myanmar, and is unlikely to create discord or disunity among Myanmar's ethnic populations.
- Advocate for the full realization of recommendations relating to the situation in Rakhine State and the situation of anti-Muslim violence made by: the UN Special Rapporteur on the situation of human rights in Myanmar; the UN High Commissioner for Human Rights; the Committee on the Elimination of Discrimination Against Women; the Committee on the Rights of the Child; the Universal Periodic Review of the Human Rights Council; Fortify Rights, and other human rights organizations

To the United Nations Special Rapporteur on the Situation of Human Rights in Myanmar

- Urge the government of Myanmar to abolish all local orders and cease practices that restrict basic human rights of Rohingya, including the rights to nondiscrimination, nationality, movement, marriage, family, health, and privacy without delay. Urge the government of Myanmar to communicate to central, state, and local governments and the general public that authorities are to cease all official and unofficial practices related to these restrictions against Rohingya in Rakhine State.
- Continue to advocate for an independent investigation by international and Myanmar partners into human rights violations in Rakhine State from 2012 to present, including into restrictions imposed on Rohingya in northern Rakhine State.
- Advocate for postponement of the national census currently underway, directed by the Ministry of Immigration and Population and supported by the UN Population Fund (UNFPA), until reasonable safeguards are in place to ensure it is conducted in a manner fully compliant with international standards, does not discriminate against minorities, covers all populations of Myanmar, and is unlikely to create discord or disunity among Myanmar's ethnic populations.



A young man sleeps on a pile of cow dung in a camp for internally displaced Rohingya, Ohn Taw Gyi, Rakhine State, Myanmar, November 1, 2012. Ethnic Rakhine and government officials routinely refuse to acknowledge Rohingya exist, labelling them “Bengali” and speaking openly about the need for the government to “control” the population.

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Appendix I: Regional order, 2008, circulating previous orders
and addenda

Restricted

[Signature]

Aung Than Win

Immigration – 3852 Chief Officer

Border Region Immigration Control Headquarters

Subject: Regional Order and Processes for Controlling Bengali Population

Location: Kyeegan Pyin, Maungdaw Date: 11-2-2008

Restricted

[Fortify Rights Note: This order cover page was circulated with regional orders from 1993 and 2005, as well as addenda on restrictions, guidelines, and enforcement methods for population control, available in subsequent appendices in this report.]

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Appendix II: Regional Order, 1993

Border Region Immigration Control Headquarters

Maungdaw

Letter No.: Na-Sa-Ka/ 56/ U 4

Date: 31st January 1993

Subject: Issuing Temporary Regional Order

1. Population increase in Maungdaw Township is extremely high, considering the current population, space, production of regional goods, and the yield of rice. The population density and the increase in population there are found to be extremely high, beyond the international standard of population increase. The population is increasing day-by-day, but at the same time, the area is not going to expand and the rate of crop cultivation is not likely to increase. Therefore, someday, Maungdaw is going to encounter food shortages. Furthermore, children who are not controlled and systematically taken care of by the parents can become stray kids, turning into a class of bad youth. Some of the bad youth will create problems for the human environment. Due to this situation, we have issued the following regional order:

- a. Since the majority of residents in Maungdaw are Muslims, they will have to follow the tradition of the Muslims. Furthermore, they will also have to respect and follow the orders and instructions issued for the benefit of the region and the entire people.
- b. Couples married according to the Islamic religion must be registered with Mawlawi [translator's note: transliterated spelling] leaders and must have Nika marriage certificates. Currently, some Muslims do not follow the religious procedures for marriage and divorce, and there is failure to do so.
- c. Due to these unofficial marriages and divorces, people have to get involved legally or village officials have to resolve dissatisfactions, and there have even been criminal cases.

Policies of Persecution

- d. Therefore, Islamic marriages must be officially registered in Islamic temples and with Mawlawis with Nika agreements. Similarly, they must register with village-level Illegal Entry Prevention People's Group, and regional chiefs and station chiefs from Border Region Control Headquarters.
 - e. This temporary regional order is not for Muslims only. People from other religions will be allowed to marry only after being registered at the office of the chief of the region and the office of the chief of station, and only after that will a household registration will be issued.
 - f. Due to the above-mentioned population increase, in Maungdaw region, second marriages, without the dissolution of the first, will temporarily be suspended and will not be allowed.
2. This temporary regional order is issued for the good of the region and the race, and it is instructed to be followed exactly. You must report to the regional chiefs that you have understood this.

xxxxxxxxxxxxxx

Temporary Supervising Chief

Copies sent to:

Regional chiefs in regions 1, 2, 3, 4, 5, 6, 7, and 8. (The regions concerned are to follow the above-mentioned instructions.)

Appendix III: Regional Order 1/2005

Township Peace and Development Council

Maungdaw

Regional Order No. (1/2005)

8th Day of the Waning Moon of Dagoo 1367 1st of May 2005

1. There is not enough food in Maungdaw Township due to the number of people and the production of rice in the available space in the township. The population is dense and the birth rate is extremely high, beyond the international standard of population increase. Therefore, someday, there is likely to be starvation. The rate of population increase and the space in the region are not balanced, and some day, there is likely to be population explosion. Also, children who are not controlled and systematically taken care of by the parents can become a class of stray, bad youth in the future, creating problems for the human environment. Therefore, Maungdaw Township Peace and Development Council has issued the following order to prevent these problems and to control marriages in Maungdaw Township and to practice monogamy.
 - a. Since Maungdaw is part of Myanmar, everyone who lives in Maungdaw Township must respect and follow the laws of Myanmar. Similarly, they will have to follow exactly the orders and instructions that regional authorities issue occasionally for the good of the people living in the region.
 - b. Due to the increase in childbirth and population, from the date of this order, everyone living in Maungdaw must practice monogamy only.
 - c. When wanting to have an Islamic marriage, the Ya-Ya-Ka and NaSa-Ka regions must review, and only with permission from the Township Peace and Development Council should there be a marriage.
 - d. Those who marry must be legal residents of Maungdaw Township, and both must have citizenship scrutinization cards or temporary certificates issued by the immigration and must be 18 years of age.
 - e. Starting the date of this order, effective actions will be taken against those who marry or divorce unofficially, according to this

Policies of Persecution

regional order.

- f. Starting the date of this regional order, those who have permission to marry must limit the number of children, in order to control the birth rate so that there is enough food and shelter.
 - g. Those who have previous marriages can apply for permission to remarry only after 3 years from the date of their legal divorce.
 - h. Those who have previous marriages can apply for permission to remarry only after 3 years from the date of the death of their husbands or wives.
 - i. When those who are not yet 18 years of age are married or those who are under 18 are presented as people of age in order to apply for permission to marry, an action will be taken against parents from both sides according to this regional order.
2. This regional order is issued for the good of those who reside in Maungdaw region, and all of those residing in Maungdaw region are instructed to follow this order exactly.

From, xxxxx Chairman Township Peace and Development Council
Letter No.: 3/24-1/U 6 (1057) Date: 1 May 2005

Distributed to:

All of the Ward/ Village Tract Peace and Development Councils

Copies sent to:

Chairman, Township Peace and Development Council, Rakhine State, Sittwe;
Chief Military Strategist, Military Strategy Group (Base), Buthidaung;
Chairman, District Peace and Development Council, Maungdaw District, Maungdaw
Chief Supervisor, Border Immigration Supervision Headquarters, Kyee Gan Byin
Township Head of Department, Department of Immigration and National Registration,
Maungdaw Township Judge, Township Courthouse, Maungdaw
Township Legal Officer, Township Legal Office, Maungdaw

Office File
Internal Circulation File

Appendix IV: Various Addenda to Regional Orders: Restrictions, Guidelines, and Enforcement Methods

Addendum 1: Population Control Activities

- 1) Practicing monogamy;
- 2) Allowing people to marry only after turning 18;
- 3) Making widows, widowers, and divorced people wait at least one year before remarriage;
- 4) Taking an action according to Criminal Law Section (188) (Second) when disobeying the above-mentioned regional order;
- 5) Taking an action according to Criminal Law Section (493), punishable by up to 10 years in prison, when seducing a girl under age 18 to have sex with her and marry her;
- 6) Taking an action according to Criminal law Section (494), punishable by up to 7 years in prison, when marrying another wife, while still married;
- 7) Taking an action according to Criminal Law Section (417), punishable by up to one year in prison, when fraudulently having a relationship with another person without marrying;
- 8) Taking an action against people who knowingly help and fail to give information on those who disobey the restrictions; the action taken will be according to the punishment by the (Ya- Ya-Ka) and (Ma-Ka-Hpa) concerned;
- 9) Making people use pills, injections, and condoms for birth control at every (NaSaKa) regional clinics, township hospitals, and their own regional hospitals;
- 10) To form Mothers and Children Care Sub-Associations and campaigns in order to educate women to increase their knowledge in health and birth control and for their participation in these matters;

Policies of Persecution

Addendum 2: Spot Checking

- 1) Household registration of a person, the office copy of the household registration, and 2007 checked photographs accepted by the office of Drawing Maps, Recording Buildings, and Reviewing Household Registration will be checked against people found in the house;
- 2) Reports on spot checking will have to be filed;
- 3) If illegal entrants are found, action will be taken so that they could be sued legally;
- 4) People who left the country illegally must be recorded;
- 5) Action must be taken against those who left illegally and re-entered the country;
- 6) Action must be taken against those who come to live in a house without reporting them as guests;
- 7) Action must be taken against those who travel without the travel certificate (certificate to leave the village);
- 8) Action must be taken against those who are married unofficially and live together;
- 9) Action must be taken against illegal children;
- 10) Action must be taken against illegal immigrants;
- 11) Action must be taken against people who fix, expand, or build a house without a permit;
- 12) Action must be taken against those who fix, expand, or build a religious building without a permit;
- 13) Action must be taken against fugitives, criminals avoiding punishment, and those who have disobeyed regional orders;
- 14) Action must be taken against those who bring in goods without customs duty.

Addendum 3:
Requirements for Bengalis who apply for Permission to Marry

1. Application from the bride and the groom;
2. Original and copies of household registrations with the names of the bride and the groom;
3. Original and copies of temporary certificates of the bride and the groom;
4. A photograph of the bride and the groom together;
5. An agreement by the bride and the groom;
6. An approval from the parents of both the parties;
7. Ya-Ya-Ka's certificate that they are single;
8. Camp/Regional certificate that they are 18 years old;
9. Ya-Ya-Ka certificate and death certificate or divorce certificate for widows, widowers, and divorced people; (Note: permission to be given only after 3 years)
10. Two original copies of the agreement with 25 kyat stamp; and (k) Self undertaking.

Note: Photographs must be without a beard. For a Mawlawi, a beard is approved only with proof of being a Mawlawi.

In the Matter of Birth

1. Application by the person concerned;
2. Ya-Ya-Ka's Certification;
3. Proof of birth general-1(a);
4. Original household registration with the names of the parents;

Policies of Persecution

In the Matter of Death

1. Application by the person concerned;
2. Ya-Ya-Ka's Certification;
3. Proof of death general-1(a);
4. Original household registration;

Moving in the Same Territory

1. Application by the person concerned;
2. Ya-Ya-Ka's Certification;
3. Original/copy of Marriage Certificate;
4. Original/copy of Household Registration;
5. Approval from the head of household in the household registration for the move in;
6. Original/Copy of Temporary Certificate

Moving out

1. Application by the person concerned;
2. Ya-Ya-Ka's Certification;
3. Original/copy of Marriage Certificate;
4. Original/copy of Household Registration;
5. Original/copy of Temporary Certificate;

Moving from a Different Territory

1. Application by the person concerned;
2. Ya-Ya-Ka's Certification;
3. Original/copy of Marriage Certificate;
4. Original/copy of Household Registration;
5. Approval from the head of household in the household registration for the move in;
6. Original copy of the move from a different territory;
7. Original/Copy of Temporary Certificate

Addendum 4: Drawing Maps, Making a Record of Buildings, and Reviewing Household Registrations

Drawing (Drawing Maps)

1. Maps of wards;
2. Maps of villages;
3. Maps of village tracts;

Making a Record (Making a Record of Buildings)

1. Making a record of buildings on the village maps;
2. Numbering buildings;
3. Making lists of buildings;

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Reviewing (Reviewing Household Registrations)

1. Reviewing data on moving in, moving out, birth, and death;
2. Information on household population;
3. Checking those who enter/exit illegally; checking to see if there are people who come and live in villages not according to the rules;
4. Checking to see if there are illegal immigrants;
5. Making a record of those who left the country illegally.
6. People who break regional orders are recorded in the special list of illegal immigrants;

Addendum 5: Taking Family Pictures

1. Checking members of households in villages against family pictures to see if the number of people is correct;
2. Checking the household registration at the office against the family's household registration in villages;
3. Family pictures will be done according to the household registration, and head of the household will have to hold it. The rest of the family members should line up according to the list in the household registration, and their names must be written on the back of the picture.
4. It will save time to gather people in one place and take their pictures instead of going from one house to another to take the family pictures. Also, since the pictures are taken in the presence of the Ya-Ya-Ka and villagers, Ya-Ya-Ka will know right away if someone is being substituted.
5. If there is suspicion of someone being substituted, children in the household will be compared in age and in appearance. If the child is an infant, the mother will be made to breastfeed the child. Young children will be questioned separately.

Appendix V: Letter with Questions from Fortify Rights to President Thein Sein

President U Thein Sein
Office of the President
Nay Pi Taw, Myanmar

February 3, 2014

Dear President U Thein Sein,

Fortify Rights is a nongovernmental organization based in Southeast Asia that works to prevent and remedy human rights violations through technical support for human rights defenders, independent investigations, and strategic advocacy.

Fortify Rights is monitoring the situation of Muslim citizens of Myanmar and the Muslim population in Rakhine State and will soon publish our findings. Our research examines the restrictions governing the lives, livelihoods, and movement of Rohingya individuals, as well as surveillance of Muslim citizens. Our findings are based on first-person testimony, expert analysis, and documents obtained by Fortify Rights.

We are writing to make certain our publications accurately represent the situation of Muslim citizens of Myanmar and stateless Muslims in Rakhine State as well as the current views, policies, and practices of the government of the Union of Myanmar.

Fortify Rights endeavors to produce objective human rights reports based on all available information. We hope your Office will respond at your earliest opportunity to the attached questions so that your position is accurately included or reflected in our work. To incorporate your views in our forthcoming publications, we would appreciate a reply by February 17, 2014.

Please feel free to include any additional information that you think would be beneficial to our work on these issues.

We look forward to engaging with the government of Myanmar to address human rights issues.

Thank you for your time and attention on this matter.

Sincerely,



Matthew Smith
Executive Director, Fortify Rights
matthew.smith@fortifyrights.org

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Cc:

Lieutenant General Ko Ko, Minister of Home Affairs

U Khin Yi, Minister of Immigration and Population,

U Wanna Maung Lwin, Minister of Foreign Affairs

Lieutenant General Thet Naing Win, Minister of Border Affairs

U Ko Ko Hlaing, Chief Political Advisor to the President's Office

U Ye Htut, Deputy Minister for the Ministry of Information

Enclosures.

Questions from Fortify Rights to the Government of the Republic of the Union of Myanmar

1. Would you please explain any practices or policies at the union or state/region-level governments to monitor the whereabouts and movements of Muslim citizens of Myanmar?
2. What government agencies in Myanmar are currently responsible for the collection of government intelligence and to whom do they report?
3. Are there currently legal restrictions issued by the Union or state-level government to govern the lives, livelihoods, and movement of the Muslim population in Rakhine State?
4. Is the Union government aware of any such restrictions issued by any subnational government department? If so, please explain.
5. Would you please share any past or present written directives or policies, from any level or branch of government, concerning the lives, livelihoods and movement of the Muslim population in Rakhine State?
6. Would you please clarify and explain the official position of your government with respect to the ethnic identity and citizenship status of Muslims living in Rakhine State?
7. Would you please explain the extent to which the upcoming national census will account for Rohingya Muslims in Rakhine State?

8. What is the role of the Union-level government, or offices falling under the jurisdiction of the Union-level government, with respect to oversight, security, and administration of the situation in Rakhine State and the camps for internally displaced persons in Rakhine State?
9. Would you please share the documents that legally establish the state of emergency in Rakhine State, and please clarify what that means in terms of effective administrative control over policies affecting the lives of Muslims in northern Rakhine State?
10. Would you please share your administration's position on the incidence of human trafficking and human smuggling in Rakhine State? What specific interventions have been considered or implemented by the national and/or state-level authorities?
11. Would you please share any recent data that documents rates of maternal mortality, abortion, or pregnancy-related illness among Rohingya Muslim women in Rakhine State?
12. Would you please describe any policies your government may have issued with respect to ongoing violence in Rakhine State and against Muslims throughout Myanmar?
13. What are the unmet humanitarian needs in Rakhine State, and what are the primary obstacles to meeting all humanitarian needs?
14. Would you please describe any measures undertaken to investigate or pursue accountability for documented incidents of violence in Rakhine State as well as other locations of violence between Buddhists and Muslims?
15. Have there been any investigations or prosecutions against government officials at any level for alleged involvement in offenses against the civilian population of Rakhine State? If so, please explain.

Thank you for your time.

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Acknowledgements

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We extend special thanks to Myanmar’s human rights defenders and everyone who took time to speak to us, particularly those who provided Fortify Rights with information about the persecution of Rohingya in Rakhine State.



Cover Photo | Rohingya woman in the rain outside Sittwe, Rakhine State, April 2013. The government imposes restrictions on Rohingya marriage and enforces a two-child policy in northern Rakhine State, violating the human right to marry and found a family. Violation of the two-child policy can bring jail time, fines, or both

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FORTIFY RIGHTS

Policies of Persecution

Ending Abusive State Policies Against Rohingya Muslims in Myanmar

February 2014

While the international community has roundly condemned ongoing violent attacks against Rohingya Muslims in Rakhine State, systematic restrictions on the freedoms of Rohingya communities threaten fundamental human rights and remain largely ignored.

Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar is based on leaked official documents revealing explicit government policies that restrict the basic freedoms of Rohingya Muslims in Rakhine State. The documents obtained by Fortify Rights detail restrictions on movement, marriage, childbirth, home repairs and construction of houses of worship, and other aspects of everyday life. Confidential enforcement guidelines empower security forces to use abusive methods to implement these “population control” measures.

The evidence presented in this report indicates the involvement of Rakhine State and central government authorities in the formulation and implementation of these policies. It finds that protracted abuses against Rohingya have been the result of official state policies and could amount to the crime against humanity of persecution. Fortify Rights calls on the government of Myanmar to abolish these policies of persecution against Rohingya without delay.