

***An Update on the Rohingya Crisis:  
Why Now Is the Right Time to Issue an  
Atrocity Determination for Rohingya***

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## Introduction

Rajuma, a young Rohingya woman, clutched her baby boy as she fled the Burmese military's brutal treatment of her Muslim community.<sup>1</sup> It was then that her already fragile world shattered.

A soldier clubbed her on the head, while others tore her baby from her arms and threw him into the fire. The violence did not stop with her child's death. The soldiers then proceeded to gang-rape Rajuma. Before the day was through, she had seen her mother and three siblings killed as well.

Rajuma is far from the only Rohingya scarred by the Burmese military.

Countless women and girls faced sexual violence, including rape.<sup>2</sup>

At least 10,000 men, women and children perished at the hands of the Burmese military during August 2017 so-called "clearing operations".<sup>3</sup>

And now, over a million Rohingya remain displaced in the world's largest refugee camp settlement in Cox's Bazar, Bangladesh.

Salt is now being poured on the wounds of their suffering as Rohingya who endured these atrocities are now experiencing the global coronavirus pandemic. While thus far, the rate of COVID-19 infections is seemingly quite low – 62 cases according to the United Nations Refugee Agency, and only a handful of deaths<sup>4</sup> – social distancing is a near impossibility, access to testing is limited, and provision of

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<sup>1</sup> Jeffrey Gettleman, "Rohingya Recount Atrocities: 'They Threw My Baby Into a Fire'", *New York Times*, October 11, 2017, <https://www.nytimes.com/2017/10/11/world/asia/rohingya-myanmar-atrocities.html> (accessed July 30, 2020).

<sup>2</sup> Skye Wheeler, "Sexual Violence by the Burmese Military Against Ethnic Minorities", Testimony before the Tom Lantos Human Rights Commission, U.S. House of Representatives, *Human Rights Watch*, July 25, 2018, <https://www.hrw.org/news/2018/07/25/sexual-violence-burmese-military-against-ethnic-minorities> (accessed July 30, 2020).

<sup>3</sup> "Report on the independent international fact-finding mission on Myanmar," p. 8.

<sup>4</sup> UNHCR, "Refugee Health Workers Lead COVID-19 Battle in Bangladesh Camps", July 24, 2020, <https://www.unhcr.org/en-us/news/stories/2020/7/5f198f1f4/refugee-health-workers-lead-covid-19-battle-bangladesh-camps.html> (accessed July 30, 2020).

medical care is few and far between in the camps. Some called it a potential “tinderbox” for an outbreak.<sup>5</sup>

This makes the present an opportune moment for Secretary Pompeo to declare what the United Nations already said to be true<sup>6</sup> – that Rohingya endured genocide and crimes against humanity. On August 25, it will have been *three years* since atrocities took place. The Secretary should consider issuing an atrocity determination to commemorate the anniversary and to bring justice to Rohingya.

## **Why the U.S. Should Issue an Atrocity Determination for Rohingya**

There are five reasons why the U.S. government should issue an atrocity determination:

**1) A designation counters the narrative that the U.S. doesn’t care about human rights.** Some in the international community are questioning U.S. commitments to advancing human rights. Designating crimes committed against Rohingya as genocide and crimes against humanity counters that narrative by demonstrating that the U.S. actively responds to atrocities.

Atrocities committed against Rohingya are among the most significant human rights abuses committed during the Trump presidency. A strong U.S. response would telegraph to other countries that the U.S. continues to support freedom and human rights. Failure to do so has the potential to embolden bad actors who will believe that there are little-to-no negative consequences for their diplomatic relationship with the U.S. for violating human rights.

**2) A designation demonstrates U.S. commitment to preventing atrocities.** At the behest of Congress, the Obama administration designated ISIS actions against Yazidis, Christians and Shi’a Muslims as genocide. After Secretary Kerry issued the genocide determination in March 2016, the administration took minimal follow-on action.<sup>7</sup> However, the Trump administration, through its Genocide Recovery and Persecution Response Program, which allocated nearly \$350 million toward assisting victims of ISIS genocide in Iraq, acted on the Obama administration’s ISIS genocide determination.<sup>8</sup>

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<sup>5</sup> Timothy McLaughlin, “The Unseen Pandemic”, *The Atlantic*, April 2, 2020, <https://www.theatlantic.com/international/archive/2020/04/refugees-coronavirus-covid19-bangladesh/609259/> (accessed July 30, 2020).

<sup>6</sup> Office of the High Commissioner for Human Rights, *Independent International Fact-Finding Mission Myanmar*, <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/Index.aspx> (accessed July 30, 2020).

<sup>7</sup> U.S. Department of State, “Remarks on Daesh and Genocide”, March 17, 2016, <https://2009-2017.state.gov/secretary/remarks/2016/03/254782.htm> (accessed July 30, 2020).

<sup>8</sup> USAID, “Genocide Recovery and Persecution Response”, <https://www.usaid.gov/iraq/genocide-recovery-and-persecution-response> (accessed July 30, 2020).

Atrocity determinations transcend administrations and ensure that survivors receive the help they need. Should the Trump administration issue a determination of its own on the Rohingya, it would demonstrate moral and political leadership and serve as an opportunity for the administration to highlight its burgeoning atrocity prevention policy. It is also an opportunity to recast the \$820 million the U.S. already provided to the Rohingya as direct assistance to victims of atrocity crimes.<sup>9</sup>

**3) A designation is likely to increase burden-sharing among countries.** Credit should be given where credit is due. The U.S. is the top single-country donor to Rohingya displaced in Bangladesh since the atrocities began.<sup>10</sup> This is clearly a policy priority for the U.S. government, but the U.S. has also borne the primary responsibility for providing assistance. Now, more than three years since the crisis escalated, donor fatigue is setting in.<sup>11</sup> This is being compounded by the COVID-19 era where countries' attentions are drawn inward as they battle their own COVID-19 crises. With the emergence of COVID-19, the U.S. has also made an effort to prioritize assistance to vulnerable populations in need of an increasing amount of humanitarian assistance. Secretary Pompeo announced an infusion of \$274 million worldwide in emergency funding.<sup>12</sup>

This is not even scratching the surface of the immense needs of displaced Rohingya. The United Nations' Joint Response Plan for January to December 2020 requested an estimated \$877 million in assistance to Rohingya and host communities in Bangladesh just for this year.<sup>13</sup> The report was issued prior to the onset of the COVID-19 pandemic, so needs are only compounding. The U.S. pledged an additional \$59 million in assistance on March 3, 2020.<sup>14</sup> The needs are great, and they cannot be met by a single (albeit highly generous) donor country. An atrocity determination now may serve as a catalyst for other countries to provide aid.

**4) A designation will put the U.S. "free and open Indo-Pacific" strategy into action.** The Trump administration's Asia strategy is predicated on promoting a free

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<sup>9</sup> U.S. Department of State, "United States Announces New Humanitarian Assistance for Displaced Rohingya and Members of Other Affected Communities in Bangladesh and Burma", March 5, 2020, <https://www.state.gov/united-states-announces-new-humanitarian-assistance-for-displaced-rohingya-and-members-of-other-affected-communities-in-bangladesh-and-burma-2/> (accessed July 30, 2020).

<sup>10</sup> Ibid.,

<sup>11</sup> UNHCR, "Rohingya Emergency", July 31, 2019, <https://www.unhcr.org/en-us/rohingya-emergency.html> (accessed July 30, 2020)., United Nations Office for the Coordination of Humanitarian Affairs, "Rohingya Refugee Crisis", 2019, <https://www.unocha.org/rohingya-refugee-crisis> (accessed July 30, 2020).

<sup>12</sup> U.S. Department of State, "The United States is the Leading Humanitarian and Health Assistance Response to COVID-19", March 27, 2020, <https://www.state.gov/the-united-states-is-leading-the-humanitarian-and-health-assistance-response-to-covid-19/> (accessed July 31, 2020).

<sup>13</sup> United Nations "2020 Joint Response Plan: Rohingya Humanitarian Crisis – January-December 2020", 2020, [https://reliefweb.int/sites/reliefweb.int/files/resources/jrp\\_2020\\_final\\_in-design\\_280220.2mb\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/jrp_2020_final_in-design_280220.2mb_0.pdf) (accessed July 31, 2020).

<sup>14</sup> Ibid., "United States Announces New Humanitarian Assistance for Displaced Rohingya and Members of Other Affected Communities in Bangladesh and Burma".

and open Indo-Pacific; it is cast as an inherently values-based strategy. The U.S. has similarly long-sought to establish a foundation for a free and open Burma – principally through its support for a democratic reform process that is currently stalled. An authentic democratic reform process requires the acknowledgement of atrocities and a commitment to remedy wrongs committed. Perhaps most fundamentally, a country cannot be democratic if it fails to protect the basic rights of its citizens, which includes the Rohingya who are denied voting rights, among other essential civil and political liberties.<sup>15</sup> Those who promote democracy in Burma should also support issuing an atrocity determination because it is an essential step toward reform.

We have seen the free and open Indo-Pacific strategy in action in other areas of U.S. policy toward Burma as the U.S. response to the Rohingya crisis strengthened over time. In 2018, Treasury designated the 33<sup>rd</sup> and 99<sup>th</sup> Light Infantry Divisions – the military units directly responsible for perpetrating August 2017 crimes.<sup>16</sup> However, the 2018 designations stopped short of designating Senior-General Min Aung Hlaing, the general who ordered so-called clearing operations to commence. In July 2019, Min Aung Hlaing and other senior officials faced visa bans instituted by State Department under Section 7031(c) provisions, sanctions with travel restrictions, but no financial implications.<sup>17</sup> Finally, in December 2019, Min Aung Hlaing and other accomplices faced Global Magnitsky sanctions<sup>18</sup> – a bi-partisan and highly popular move. While it was a long time coming, it was the type of leadership emblematic of historic U.S. policy in Asia.

**5) A designation is an opportunity for the U.S to reset its policy toward Burma.** The Trump administration has yet to establish a comprehensive strategy toward Burma. Sanctions provide the basis for a policy, but there is no clear strategy behind them. Issuing an atrocity determination is an opportunity to both revisit and recast U.S. strategy toward Burma in a way that acknowledges that the threats to freedom faced by one group – the Rohingya – is representative of the lack of freedom enjoyed by many inside the country (e.g. persons in Shan and Kachin states, among other persecuted and marginalized minorities).

The administration has so far stopped short of undertaking a comprehensive overhaul of U.S. policy toward Burma. The events of August 2017 were a turning

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<sup>15</sup> Matthew Smith, “For Myanmar’s Elections to Be Free and Fair Rohingya Must Get the Right to Vote”, *TIME*, July 27, 2020, <https://time.com/5872096/myanmar-2020-national-election-rohingya-vote/> (July 31, 2020).

<sup>16</sup> Office of Foreign Assets Control, *Global Magnitsky Designations*’ U.S. Department of the Treasury, August 17, 2018, <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180817.aspx> (accessed July 31, 2020).

<sup>17</sup> U.S. Department of State, “Public Designation Due to Gross Violations of Human Rights, of Burmese military Officials”, July 16, 2019, <https://www.state.gov/public-designation-due-to-gross-violations-of-human-rights-of-burmese-military-officials/> (accessed July 31, 2020).

<sup>18</sup> U.S. Department of Treasury, “Treasury Sanctions Individuals for Roles in Atrocities and Other Abuses”, December 10, 2019, <https://home.treasury.gov/news/press-releases/sm852> (accessed July 31, 2020).

point which should trigger a reevaluation of overarching Burma policy.<sup>19</sup> Many geostrategists express concern over China's influence in Burma, but few have suggested a comprehensive U.S. policy toward Burma, one that frames U.S. strategy in a way that addresses the root of the problem: the Burmese military's disproportionate control over the day-to-day governance. Holding the Burmese military accountable through an ever-more robust sanctions policy has the potential to hamstring the military while granting greater authority and legitimacy to the civilian government. A determination by the U.S. that corroborates the UN's findings on genocide and crimes against humanity, will discredit the military further and contribute to a policy that supports political reform and transformation.

## The Way Forward

Congress has long played a critical role in crafting and shaping U.S. policy toward Burma. Longstanding U.S. policy toward Burma prior to the Obama administration was dictated by a comprehensive extensive sanctions regime going back to the 1990s. Congress now has the opportunity to reset U.S. policy by pressing the Trump administration to call a spade a spade and issue an atrocity determination.

Congress already did so during the Obama administration with ISIS genocide; it can do so again during the Trump administration with Rohingya genocide.

Here's how it worked in the ISIS genocide determination: In March 2016, Congress unanimously condemned Islamic State genocide with a vote of 393-0.<sup>20</sup> It also put the Obama administration on notice, requiring a deadline of March 17, 2016, to issue a determination.<sup>21</sup> While Congress couldn't force the administration to say that what took place against Yazidis, Christians and Muslims was genocide, it gave the administration no choice in saying whether it did or did not take place.

Critically an atrocity determination can be issued at any point in time. Secretary Pompeo has the authority and discretion to issue such a determination at whim. But should he choose not to, Congress also has the option to press the administration to do so as it did in the case of the ISIS genocide determination.

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<sup>19</sup> Olivia Enos, "Crafting a Successful U.S. Strategy toward Burma: Beyond the Rohingya Crisis", *The Heritage Foundation*, March 8, 2018, <https://www.heritage.org/global-politics/report/crafting-successful-us-strategy-toward-burma-beyond-the-rohingya-crisis> (accessed July 31, 2020).

<sup>20</sup> Amber Phillips, "The House just said unanimously that ISIS is committing genocide, Why hasn't the White House?" *Washington Post*, March 15, 2016, <https://www.washingtonpost.com/news/the-fix/wp/2016/03/15/the-house-just-said-unanimously-that-the-islamic-state-is-committing-genocide-why-hasnt-the-white-house/> (accessed July 31, 2020).

<sup>21</sup> Michelle Boorstein, "Kerry to Issue Statement on ISIS Genocide", *Washington Post*, March 17, 2016, [https://www.washingtonpost.com/news/acts-of-faith/wp/2016/03/17/kerry-to-issue-statement-on-isis-and-genocide/?itid=lk\\_inline\\_manual\\_27](https://www.washingtonpost.com/news/acts-of-faith/wp/2016/03/17/kerry-to-issue-statement-on-isis-and-genocide/?itid=lk_inline_manual_27) (accessed July 31, 2020).

Issuing a genocide determination is a win for the administration.<sup>22</sup>

It would build upon efforts the Trump administration put into place as a follow-on to the Obama administration's Islamic State genocide determination, as well as the current administration's robust humanitarian efforts to alleviate suffering against the Rohingya.<sup>23</sup> It also has the potential to diversify the donor base of countries giving to support Rohingya, especially as donations have slowed nearly three years after atrocities took place. The galvanizing effects of such a determination would be, no doubt, significant.

Therefore, I recommend that Congress and the executive branch pursue the following:

- **Make an official, public legal determination on crimes committed against Rohingya.** Refusal to issue a legal determination calls into question the sincerity of the Administration in responding to crimes committed. If the U.S. intends to continue to lead, not just in provision of humanitarian assistance, it should issue a determination.
- **Pursue alternative legal and judicial mechanisms for holding the Burmese military accountable in light of the Administration's objections to bringing a case before the ICC.**
- **Congress and the Executive Branch should evaluate relevant financial tools to craft an over-arching sanctions policy toward Burma.** The Obama Administration's approach toward the country sacrificed much-needed leverage with Burma at a moment of critical change. That leverage needs to be regained and that is best accomplished through the re-implementation of financial measures targeted at the Burmese military and others posing obstacles to political reform. A few things should be born in mind as Congress crafts legislative measures to hold the Burmese military accountable.
  - **Financially sanction Burmese military-owned enterprises.** The Myanmar Economic Corporation (MEC) and Myanmar Economic Holdings Limited (MEHL) are notorious for providing funding to the Burmese military. The United Nation's Fact-Finding Mission's second report makes these concerns undeniable.<sup>24</sup> When coupled

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<sup>22</sup> Olivia Enos, "5 Reasons the U.S. Should Issue a Determination on Crimes Committed Against Rohingya", *Forbes*, November 27, 2018, <https://www.forbes.com/sites/oliviaenos/2018/11/27/5-reasons-the-u-s-should-issue-a-determination-on-crimes-committed-against-rohingya/#71f134c660c9> (accessed July 31, 2020).

<sup>23</sup> Josh Lederman, "U.S. to Give e\$32 Million for Myanmar's Rohingya Refugees", *PBS*, September 20, 2017, <https://www.pbs.org/newshour/world/u-s-give-32-million-myanmars-rohingya-refugees> (accessed July 31, 2020).

<sup>24</sup> United Nations Human Rights Council, "Economic Interests of the Myanmar Military," Full Report, September 16, 2019, <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx> (accessed September 24, 2019).

with the fact that the MEC and MEHL were previously sanctioned, they should be obvious sanctions targets. Presumably, a designation of the MEC and MEHL would substantially impact their subsidiaries; if necessary, however, especially egregious subsidiaries should be explicitly named and targeted either under authorities that exist under the JADE Act or under the Global Magnitsky Act.

- Legislative and executive branch efforts to craft sanctions legislation should be broad enough to encompass scenarios beyond the violence that has already been perpetrated against Rohingya *and* expect that additional similar (or even worse) human rights abuses may be carried out in the future. Sanctions authorities should also be broad enough to encompass entities that materially or financially paved the way for the Burmese military to commit atrocities against Rohingya.
- Congress should require the State Department to issue a report every six months identifying key entities or individuals in Burma who are either directly responsible for human rights abuses or who enable them, including atrocities committed against Rohingya. This would serve as a useful benchmark against which to measure the executive branch's response.
- Just as sanctions should include a clear "on-ramp," or directive, for designating individuals and entities for their role in atrocities, there should be an equally clear "off-ramp." Current legislation lays out criteria under which sanctions could be removed. This is essential to any effective sanctions' regime.
- **Condemn efforts to prematurely repatriate Rohingya refugees and reiterate that repatriation must be voluntary for it to be viewed as legitimate by the international community.** At this point, Bangladesh should reconsider its commitment to the repatriation agreement it agreed to with Burma. It is too premature to consider repatriation as a viable option for Rohingya. If Rohingya return to Burma, they void their refugee status, ceding the protections that status affords.<sup>25</sup> Given how receptive Bangladesh has been to sheltering those in need, the U.S. should work closely with the Bangladeshi government, UNHCR, and other relevant humanitarian actors to ensure that refugees receive the assistance and care they need.

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<sup>25</sup> U.S. Citizenship and Immigration Services, "Can I Travel Back to the Country from Which I Claimed Persecution Once I Have Been Granted Permanent Residence Based on a Grant of Asylum?" <https://my.uscis.gov/helpcenter/article/can-i-travel-back-to-the-country-from-which-i-claimed-persecution-once-i-have-been-granted-permanent-residence-based-on-a-grant-of-asylum> (accessed February 2, 2018).



- **Grant Priority 2 (P-2) refugee status to Rohingya refugees.** Refugee resettlement is one of the few ways that the U.S. can meaningfully support countries in the midst of intractable crises. The U.S. Refugee Admissions Program is a useful humanitarian initiative with which the U.S. engages the world and provides relief for a select few during international crises. It supports U.S. interests by enabling the U.S. to assert leadership in foreign crises, assist in the midst of intractable crises, and help allies and partners in need. It also strengthens U.S. public diplomacy and tangibly alleviates human suffering. P-2 status holders do not need to prove “individualized” persecution or be referred by the United Nations Commissioner for Human Rights. They are processed on the basis that they belong to a group with known, established grounds of persecution, like genocide.<sup>26</sup> Refugees granted P-2 status are included, not in addition to, the quota set by the President. Subsequently, the same number of refugees would be admitted on an annual basis, regardless of whether or not they are processed through P-2 status. Current P-2s include Iraqis who have worked for the U.S., Burmese refugees in Thailand and Malaysia, and politically persecuted Cubans, among others.<sup>27</sup> P-2 status has been granted to individuals previously subject to genocide, including Congolese in Rwanda.<sup>28</sup>
- **Burma should continue to be listed as a “country of particular concern” (CPC) in the International Religious Freedom report for its persecution of Rohingya and other religious minorities in the country. Critically, it should also receive *unique* sanctions for violating religious freedom.** CPCs are guilty of severe forms of persecution including torture, discrimination, and denial of religious freedom. Despite Burma’s designation as a CPC, sanctions under the International Religious Freedom Act (IRFA) have been waived and subsumed under sanctions that have been imposed pursuant to the Jackson–Vanik Amendment, meaning that they are subsumed under Jackson-Vanik sanctions authorities rather than given new, additional punitive measures for religious freedom violations. This strategy has failed to garner compliance. Due to Burma’s ongoing violations of religious freedom, it should remain a country of particular concern and face sanctions under the IRFA specifically for its violations of religious freedom.

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<sup>26</sup> Office of U.S. Senator Tom Cotton, “Fact Sheet: Religious Persecution Relief Act of 2016,” March 17, 2016, <http://www.cotton.senate.gov/files/documents/160316FactSheetonReligiousPersecutionReliefAct.pdf> (accessed April 4, 2016), and Refugee Council USA, “Priority Categories,” <http://www.rcusa.org/priority-categories> (accessed April 4, 2016).

<sup>27</sup> Jie Zong and Jeanne Batalova, “Refugees and Asylees in the United States,” Migration Policy Institute, October 28, 2015, <http://www.migrationpolicy.org/article/refugees-and-asylees-united-states> (accessed April 4, 2016).

<sup>28</sup> Refugee Council USA, “Priority Categories.”

### **COVID-19 Recommendations:**

- **Continuously re-evaluate the need for aid in the midst of the crisis and consider creative ways to repurpose existing aid portfolios to assist the most vulnerable.**<sup>29</sup> Since the start of the outbreak, the U.S. has provided \$18.3 million in assistance to ASEAN member states for a range of activities, including training and assistance for responders, funding for the development of test kits, and emergency response preparedness efforts.<sup>30</sup> Part of this aid includes training to certain ASEAN member states for “case-finding and event-based surveillance for influenza-like illnesses.”<sup>31</sup> The U.S. should be careful to ensure that any assistance during COVID-19 does not perpetuate improper uses of surveillance technology, especially in some of the more authoritarian-leaning countries in Southeast Asia.<sup>32</sup> In addition to this aid and training, the U.S. has aid packages that pre-date COVID-19 to countries in Southeast Asia. The U.S. government should consider whether this funding can be redirected to coronavirus preventions while still advancing other U.S. priorities in the region. In distributing aid, the U.S. should ensure that the most vulnerable are prioritized—this likely means actively seeking to ensure that the first fruits of aid are going to those in refugee or IDP camps and to the countries whose medical systems are least equipped to handle an outbreak.
- **Press the Bangladeshi government to lift restrictions on access to information.** Refugees in Cox’s Bazar are being denied access to the Internet due to the Internet blackout instituted by the government of Bangladesh. The U.S. should press the Bangladeshi government to lift this ban.<sup>33</sup>

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<sup>29</sup> U.S. Department of State, “The United States Is Leading the Humanitarian and Health Assistance Response to COVID-19,” Fact Sheet, March 27, 2020, <https://www.state.gov/the-united-states-is-leading-the-humanitarian-and-health-assistance-response-to-covid-19/> (accessed April 8, 2020).

<sup>30</sup> U.S. Department of State, “U.S. Support for ASEAN in Fighting COVID-19,” Fact Sheet, March 31, 2020, <https://www.state.gov/u-s-support-for-asean-in-fighting-covid-19/> (accessed April 8, 2020).

<sup>31</sup> *Ibid.*,

<sup>32</sup> “Governments Should Respect Rights in COVID-19 Surveillance,” Human Rights Watch, April 2, 2020, <https://www.hrw.org/news/2020/04/02/governments-should-respect-rights-covid-19-surveillance> (accessed April 8, 2020).

<sup>33</sup> Hillary Leung, “Rights Group Calls for Moratorium on Internet Shutdowns Amid Coronavirus Outbreak,” *Time*, March 31, 2020, <https://time.com/5812921/human-rights-watch-internet-shutdown-coronavirus/> (accessed April 8, 2020).

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