

INTERNATIONAL COURT OF JUSTICE

**APPLICATION OF THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE**

**THE GAMBIA
v.
MYANMAR**

MEMORIAL OF THE GAMBIA

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23 OCTOBER 2020

VOLUME X

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Supreme National Tribunal of Poland, *Trial of Obersturmbannführer Rudolf Franz
Ferdinand Hoess* (1948) 7 LRTWC 11

CASE NO. 38

TRIAL OF OBERSTURMBANNFÜHRER
 RUDOLF FRANZ FERDINAND HOESS
 COMMANDANT OF THE AUSCHWITZ CAMP

SUPREME NATIONAL TRIBUNAL OF POLAND

11TH-29TH MARCH, 1947

*Membership of the Nazi Party. Concentration Camp as a
 Criminal Organization. Genocide.*

A. OUTLINE OF THE PROCEEDINGS

1. THE INDICTMENT

The accused Rudolf Franz Ferdinand Hoess, a German subject, was charged with the following crimes :

(1) That from 1st September, 1939, till May, 1945, in the German Reich, and from 1st May, 1940, till September, 1944, on the occupied territory of the Polish State he was a member of the German National Socialist Workers' Party (NSDAP), a criminal organization, which aimed at the subjugation of other nations through planning, organizing and perpetrating crimes against peace, war crimes and crimes against humanity, and also was a member of the SS, a further criminal organization ;

(2) That from 1st May, 1940, till the end of October, 1943, as Commandant of the Auschwitz concentration camp set up by him, and thereafter from December, 1943, till May, 1945, as Head of the D.I. Department of the S.S. Central Economic and Administrative Office, as well as in June, July and August, 1944, as commander of the SS garrison at Auschwitz, in execution of the Nazi system of persecution and extermination of nations in concentration and death camps organized for the purpose, he supervised the application of that system in the Auschwitz concentration camp against the Polish and Jewish civilian population and against other nationals of the territories occupied by Germany, as well as to Soviet prisoners of war, and thereby acting either himself or through the subordinate camp personnel, he deliberately :

- (i) deprived of life : (a) about 300,000 camp registered inmates, (b) about 4,000,000 people mainly Jews brought to the camp from different European countries to be killed upon their arrival, and therefore not included in the register of the camp inmates, (c) about 12,000 Soviet prisoners of war confined in the camp in violation of the Geneva Convention on the treatment of Prisoners of War ; all this by asphyxiation in gas-chambers, shooting, hanging, lethal injections of phenol or by medical experiments causing death, systematic starvation, by creating special conditions in the camp which were causing a high rate of mortality, by excessive work of the inmates, and by other methods ;
- (ii) ill-treated and tortured the inmates physically and morally by various means ;

- (iii) supervised wholesale robbery of property, mostly jewels, clothes and other valuable articles taken from people on their arrival to the camp, and of gold teeth and fillings extracted from dead bodies of the victims.

2. THE CASE AND EVIDENCE FOR THE PROSECUTION

The Auschwitz camp occupied the most prominent position among the nine greatest concentration camps established by Nazi Germany. The most inhuman rule prevailed in the camp which caused the loss of life of nearly all inmates. Over four million people from all countries occupied by Germany met with death in the gas-chambers and crematoria installed in the camp. Soviet prisoners of war were the first victims of this extermination campaign. They were followed by Jews who perished in even larger numbers. Poles constituted the largest group of murdered from among the registered inmates of the camp. Among the victims of other nationalities there were: a few Americans and British, and large numbers of Austrian, Belgian, Bulgarian, Chinese, Czechoslovak, French, Greek, Dutch, Spanish, Yugoslav, Lithuanian, Latvian, German, Norwegian, Persian, Rumanian, Swiss, Turkish, Hungarian and Egyptian, and of other nationalities.

The camp was devised as a central concentration camp and was equipped with the largest and most efficient technical installations for the extermination of people. The highest capacity of its gas-chambers amounted to killing of 60,000 people per 24 hours and that of the crematoria to burning of 24,000 bodies per 24 hours.

The Auschwitz concentration camp was also used as a place of confinement of people considered as dangerous to the occupation authorities. Statistical sheets listing the causes of death in the camp contained nine different categories of "criminals" such as "political", "professional", etc., and among them one described "Poles". Thus the latter were considered criminals, merely because of their nationality. This explains why Poles arrested by accident during street raids and not connected with any political activities were nevertheless sent to concentration camps. Soviet prisoners of war constituted a separate group in the camp. They were eliminated from the general prisoners of war camps and brought as "criminals" to the Auschwitz camp.

In the camp, the kind of living quarters, of food and clothing, unsanitary conditions, excessive work, ill-treatment and penalties which prevailed contributed to the death-rate. Medical treatment was completely lacking and illness was the ground on which people were selected for extermination. Simultaneously various means aiming at breaking the moral resistance of the inmates were applied. Their personal dignity was abused. Only a small number of individuals survived owing to exceptional powers of endurance or to fortunate accidents.

The exploitation of the inmates as forced labour took place either in branch camps or in the branches of I.G. Farben Industrie producing synthetic petrol and of Krupp's works active under the firm "Weichsel-Union", and in other factories which had been built in the neighbourhood of Auschwitz by the inmates themselves.

RUDOLF FRANZ FERDINAND HOESS

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The system applied to the inmates was built on patterns established in other concentration camps, but was perfected by the accused Hoess. He underwent special training in camp duties and practised in this respect in the Dachau and Sachsenhausen concentration camps, before he took over the commandant's duties at Auschwitz.

The accused continued to be in control of all these activities even after he left the post of the camp's commandant. He fulfilled then the functions of Himmler's special plenipotentiary for extermination of Jews and in that capacity he either sent people to Auschwitz or supervised the extermination on the spot.

For his activities in the Auschwitz camp the accused was awarded the German Military Cross, first-class with Swords, and was promoted from the rank of Hauptsturmführer to that of SS Obersturmbannführer. The same decoration was also conferred on SS Hauptscharführer Otto Mohl, who was in charge of the Auschwitz crematoria.

The Indictment enumerated and described in great detail the activities of the accused in the camp and the criminal acts committed therein. It dealt, *inter alia*, with the following subjects: the establishment of the camp and its constant enlargement, its organization, various categories of the inmates, the living conditions, accommodation and food, insufficient medical treatment, exploitation of forced labour, generally inhuman treatment, heavy arbitrary punishment and medical experiments; and further with the methods of extermination, e.g., such as shooting, hanging, the so-called "*Sonderbehandlung*" (special treatment) and "*Sonderaktion*" (gassing and cremating), finally with the gas-chambers and crematoria, and the final "liquidation" of the camp. The Indictment also described in some detail the wholesale robbery of the inmates' possessions and valuables, the value of which amounted to many thousand millions of Reichsmarks at their rate of exchange at the time.

As already stated the people who fell victim of the Nazi extermination system carried out in the camp were Poles, Jews of various nationalities and Soviet prisoners of war. The extermination system applied against the latter was based on a special secret order of the *Amstgruppe D* dated 15th January, 1941, and issued upon directives given by the *Reichsführer S.S. und Chef der Deutschen Polizei*, Heinrich Himmler. According to these directives all Soviet prisoners were to be transferred to concentration camps for extermination, except those who were sufficiently strong to be used as forced labour in the quarries.

Apart from statements given by a large number of witnesses of Polish and other nationalities, former inmates of the camps, and other documentary evidence, the case for the Prosecution rested also on evidence submitted to the Tribunal by the following experts: Mr. Blumenthal Nahman, Director of the Central Jewish Historical Commission in Warsaw, who described the general Nazi policy and system of extermination of Jews and the organization of the concentration and death camps set up for the purpose by the German authorities in the occupied territories; Dr. J. Olbrycht, Professor in the University of Cracow, who described the general conditions in the

Auschwitz camp and in particular as regards health, food, hygienics and the system of treatment ; Dr. R. Dawidowski, Professor of the Mining Academy in Cracow, who submitted a detailed report on the organization and work of the gas-chambers and crematoria ; Dr. E. Kowalski, Assistant-Professor at the University of Cracow, who gave evidence on the medical experiments performed by German doctors on the camp's inmates. Finally, the Tribunal took note of the reports submitted by Professor Robel, expert in toxicology and Professor Romer, expert in geography.

As part of the evidence also a documentary film was projected in the court, showing the camp buildings and establishments.

3. MEDICAL WAR CRIMES

The evidence submitted by Professor Kowalski and other witnesses showed that numerous medical experiments were performed on men and women of non-German origin, mostly Jews, at the Auschwitz concentration camp. They were carried out on orders from the supreme German authorities. The experiments fall into the following groups :

- (a) castration experiments ;
- (b) experiments intended to produce sterilization ;
- (c) experiments causing premature termination of pregnancy and carried out on pregnant and child-bearing women ;
- (d) experiments of artificial semination ;
- (e) experiments aimed at cancer research ;
- (f) other experiments.

(A) *Castration experiments.* They were performed on healthy, normal individuals of both sexes, and of different ages and nationalities, mostly Jews, without their voluntary consent.

X-ray treatment was applied to male and female genital organs and in particular to ovaries and testes. Before or after the X-ray application both or only one of the ovaries and testes were removed. Different dosages, usually very large, of X-rays were applied. The results were checked by the histopathological method. This aimed at establishing the fertility or sterility of the persons subjected to the experiments. Also experiments in which small or minimal doses of X-rays were applied took place. These experiments brought about a temporary loss of fertility.

These experiments were carried out by Professor Schumann instructed to this purpose by Himmler. They caused undue suffering, permanent injuries or even death of the individuals concerned. The large dosage of X-rays caused not only complete castration, but also burns and necrosis of parts of the body subjected to X-rays.

Men who were subjected to intensive X-ray treatment and had severe burns of the scrotum and thighs often died. Even if they survived, they were in constant danger of death. They were temporarily or permanently deprived of their fertility and even of their potency. Women subjected to intense X-rays were showing climacteric symptoms related to the atrophy of the ovaries. They soon showed senile changes and died. Even if they survived a temporary or permanent loss of fertility followed. Burns and

necroses, the aftermath of X-ray treatment, made the use of genitalia impossible. Castration of women was also carried out by short waves, causing coagulation of the deeper layers of the tissue, severe burns and even death.

German personnel performing experiments often observed from hiding the behaviour of castrated Jewish men and women, who were especially accommodated in common. Thus they wanted to ascertain changes which may have occurred in their libido.

(B) *Experiments intended to produce sterilization.* Sterilization of women was carried out by the pumping of a thick white test fluid, consisting of contrast medium and some unknown chemical agents, into the uterus and tubes. Also sterilizing operations were performed, the uterus, tubes and even sometimes breasts being removed. Women experienced great suffering during test fluid experiments and after them. Usually salpingitis or peritonitis followed which often proved fatal.

These experiments were performed on young and healthy Jewish women of 20-30 years of age, who had regular periods, a not too narrow cervix and who had borne at least one child. After the experiments they often lost their periods. Experiments were repeated from two to six times at intervals of from three to four weeks. In their course an X-ray control was carried on by screening and an X-ray was taken afterwards. The experiments aimed at the obliteration of the tubes. This was to be achieved through the inflammation of the mucous membrane of the uterus and of the tubes. This, in conjunction with the inflammation of the internal genital organs and often of the peritoneum, caused widespread adhesions and fibrotic changes. Men were also sterilized through suture of the vas deferense.

The total number of sterilization experiments was estimated by witnesses at about 3,000 and of the test fluid experiments at about 1,000.

Test fluid sterilization experiments were performed by Professor Clauberg or under his control. He was an eminent German gynaecologist and acted under Himmler's orders. According to one of the witnesses Professor Clauberg admitted that his experiments were of no scientific value. Identical results were previously obtained on animals and were well known to the medical profession. Thus the experiments on women in the Auschwitz camp could not serve any scientific end. In addition they were performed in terrible conditions which often led to chronic illness, permanent injury or even death. Neither the doctors nor the assistant personnel were properly trained for the purpose. Unsterilized instruments and dressings were often used.

(C) *Premature termination of pregnancy and other experiments on pregnant or child-bearing women.* Premature termination of pregnancy was carried out by the emptying of the uterus, injections of Abortus Bangerum or by laparotomy and extirpation of the uterus. Women were ill several weeks after those experiments.

Delivery was provoked by artificially causing contracture of the uterus musculature or by the use of a balloon. About 50 pregnant women were subjected to those experiments. Frequently blood of people suffering from typhus was injected before labour.

(D) *Experiments of artificial insemination.* These were also carried out without the voluntary consent of the subjects concerned. Sperm obtained from Jewish men in the camp was used. In addition to the vaginal method, sperm was directly introduced in the uterus. Such a method was dangerous and caused infection of the female genital organs as sperm obtained through artificial ejaculation cannot be aseptic.

These experiments aimed in certain cases at the checking of results of X-ray castrations, in others on the effects of test fluid injections into the uterus and tubes.

Men and women previously subjected to castration and sterilization experiments were accommodated together. Four hundred men and 250 women were thus put into the same place and results of natural insemination were observed, while in other cases artificial insemination experiments were performed. Another camp for 3,500 of such human "guinea pigs" was also built.

(E) *Experiments aimed at cancer research.* These consisted in excising parts of the uterine body, and the wound was sutured and frozen sections with the excised material made. These experiments aimed at examining early stages of cancer. They were performed not only on older and sick women, but also on young girls. Excisions were also made on completely healthy persons with no suspicion of cancer of the genital organs. Incisions were in fact amputations of the cervical part of the uterus and in each case damage of the submucous layer of the uterine body occurred.

Incisions were carried out on about 120-130 women over 30 years of age, and on many very young girls. Each day about four such experiments were performed and in this connection the uterus was illuminated and photos taken. The material obtained was sent to Dr. Wirths in Hamburg and also examined on the spot. These incisions often caused bleeding, exudative parametritis and peritonitis. This was due to the circumstance that German doctors performing the operation did not have necessary qualifications and that the experiments were carried out in unclean conditions.

Owing to the removal of an excessive portion of the submucous membrane sexual intercourse was impossible for a certain time. Also the fibratic and scarifying changes caused the obliteration of the cervical channel and thereby relative sterility.

Experiments of transplanting cancerous bodies to the uterus and cervical channel were also carried out. After a certain time the uterus was removed and results of the transplanting observed. As in most cases these experiments were successful, however, victims usually died within one-and-a-half years, or at least temporary illness followed.

(F) *Other experiments.* Fifteen to twenty-one young girls were deprived of their virginity in a brutal manner by SS men, no noxious consequences having been known to follow. Injections of hormones to women were also made and results observed.

4. THE CASE FOR THE DEFENCE

During the preliminary investigation conducted by a *juge d'instruction* and during the trial the accused, who was defended by two counsels appointed by the Tribunal, admitted in substance all the facts preferred against him in the Indictment. In particular, he admitted that he was a member of the NSDAP and the SS, and that in his capacity as commandant of the concentration camp at Auschwitz and later as chief of D.I. Department of the Central Economic and Administrative Office of the SS he carried out and supervised the extermination of many million Jews and other people. He also admitted that in the course of this action the victims were robbed of all their possessions and valuables.

The accused denied, however, that he personally committed any acts of ill-treatment or cruelty, and questioned the accuracy of the total number of victims killed in the camp, which according to him was much lower than that of about four million submitted in the Indictment. All his questions put forward to witnesses were directed to this end in view. Neither he himself, nor his defence, introduced any evidence or witnesses on his behalf and he entirely relied on those put forward by the Prosecution. His whole defence rested solely on the submission that he was only carrying out orders received from his superiors, and he recognized his entire responsibility for everything that occurred in the camp whether he personally knew it at the time or not.

5. THE JUDGMENT OF THE TRIBUNAL

The Tribunal found the accused guilty of the alleged crimes and sentenced him to death. In addition, the Tribunal pronounced the loss of public and civic rights, and forfeiture of all property of the accused.

There are, however, some important differences between the Indictment and the Judgment, which should be noted. Apart from those which concern the findings of the Tribunal in regard to the accused's membership in the criminal organizations, and which will be described later, these differences are the following:

The Indictment charged the accused with "depriving of life", while the Tribunal described the corresponding offences as "participation in the murder of . . .". In the passage relating to the number of people exterminated in the Auschwitz camp, the Tribunal stated that "an undetermined number of people, at least 2,500,000, mainly Jews" were murdered.

The Indictment contained in para. (2) the charge accusing Hoess personally of "ill-treating inmates . . . physically by . . . and morally by . . .". The wording of the corresponding section of the sentence establishes that the accused "acted to the detriment of civilians, members of the armed forces and prisoners of war by maintaining them in a state of slavery, combined with their confinement in an enclosed camp and with various physical and moral ill-treatment and tortures such as . . ."

Para. (iii) of the Indictment alleged that the accused "supervised wholesale robbery of property", etc. The Tribunal stated in its Judgment that the accused acted to the detriment of persons mentioned above also "by taking part in the wholesale robbery of . . ."

Thus it appears that the Tribunal did not express any explicit view on the question whether the accused did personally ill-treat or tortured any of the inmates, a question which was highly controversial as far as the evidence given by witnesses is concerned, and in addition brought the corresponding charges within the wording of the relevant provisions in force at the time of the trial.

B. NOTES ON THE CASE

1. THE COURT AND THE LEGAL BASIS OF THE TRIAL

The Court was the Supreme National Tribunal for trial of War Criminals, the jurisdiction and powers of which have been defined in the Decrees of 22nd January and 17th October, 1946, and in the Decree of 11th April, 1947.⁽¹⁾ The case was tried in Warsaw. The substantive law applied was that laid down in the Decree of 31st August, 1944, *concerning the punishment of Fascist-Hitlerite criminals guilty of murder and ill-treatment of the civilian population and of prisoners of war, and the punishment of traitors to the Polish Nation*, as promulgated in the consolidated text of this Decree on 11th December, 1946.⁽²⁾

2. THE NATURE OF THE OFFENCES

The acts committed by the accused were crimes in violation of Article 1 para. 1, and Articles 2 and 4 of the Decree mentioned above, the text of which is given in the Annex to this volume.⁽³⁾ These acts were also in violation of the corresponding provisions of the Polish Civil Criminal Code of 1932 concerning murder, grievous bodily harm, torture and ill-treatment, infringement of personal liberty and appropriation of property (Articles 225, 235, 236, 246, 259 and 278). The Prosecution submitted that the crimes committed against the Soviet prisoners of war were also in violation of the Geneva Convention relative to prisoners of war.

Apart from the provisions of the above Decree already indicated, the Tribunal based its Judgment on Article 5 para. 1 of the said Decree concerning superior orders and duress, the plea of which the Tribunal rejected, and on Article 7 concerning additional penalties. The Tribunal also applied the relevant provisions of the Criminal Code dealing with the basic principles of responsibility for criminal acts.

3. CRIMINAL ORGANIZATIONS

(i) *Membership in the NSDAP*

1. The Indictment which, it is presumed, was drafted before the Polish law on membership of criminal organizations had been enacted, charged the accused Hoess with the membership of the German National Socialist Worker's Party (NSDAP) and of the SS, and described both these organizations as criminal, putting forward specified allegations against the NSDAP alone. The latter was described as an organization which was "planning,

⁽¹⁾ See The Annex Part II, Section 1, p. 82, of this volume.

⁽²⁾ *Ibid.*, Part I, pp. 82-91.

⁽³⁾ *Ibid.*

organizing and perpetrating crimes against peace, war crimes and crimes against humanity " as means leading to " the subjugation of other nations ".

The logical and legal construction of the corresponding passage of the Sentence pronounced by the Tribunal is different. It is stated therein that Hoess was a member of both organizations, but the SS is mentioned first and it alone is explicitly defined as a criminal organization. The activities of both organizations are, however, closely interlinked in the Sentence, and the SS is considered a tool of the NSDAP used for committing war crimes and crimes against humanity. Crimes against peace have thus been omitted in the Sentence but the NSDAP is considered as having had criminal aims of subjugating other nations, which are described as a crime in violation of Polish municipal law (Article 4 of the Decree of 31st August, 1944, as amended by the Decree of 11th December, 1946).⁽¹⁾

Thus the Tribunal has shifted the main emphasis from the NSDAP and put the emphasis on the accused's membership in the SS which alone was also mentioned in the closing speeches of the Prosecution. This was evidently done because the Tribunal could not consider the accused's membership in the NSDAP as criminal in view of the fact that Article 4, para. 3 of the Decree of 1944 lays down the rule that membership of this organization is considered criminal only as regards the leading positions, and the accused did not hold such a position in the Nazi Party.

The question of which leading positions in the NSDAP should be considered as criminal became for some time controversial in Polish legal literature and among the Polish judges. This was in consequence of a general wording of Article 4, para. 3 of the said Decree which says that membership of the NSDAP is considered criminal " as regards *all* leading positions ".⁽²⁾ Thus, for instance, the question arose whether or not the position of an *Ortsgruppenkassenleiter* (Chief Cashier of the NSDAP District Organization) should be considered criminal in the meaning of the above provision. However, the view finally prevailed that only such leading ranks and positions of the NSDAP should be considered as criminal as are enumerated in the Nuremberg Judgment, i.e., the Reichsleitung of the Party, the Gauleiters, the Kreisleiters, and the Ortsgruppenleiters, as well as the Amtsleiters who were heads of offices on the staffs of the Reichsleitung, Gauleitung and Kreisleitung.⁽³⁾

This view has been authoritatively upheld by a ruling of the Polish Supreme Court of 28th February, 1948. The Supreme Court gave the following reasons on which it based its decision, namely, that (a) the Polish legislation, by enacting the law concerning the membership of criminal organizations, wanted to bring Polish municipal law into line with the developments which have already taken place in international criminal law, in particular, in connection with the Judgment of the Nuremberg Tribunal which was pronounced prior to the Polish enactment in question; and therefore, (b) while formulating the provision dealing with the criminality of membership in the NSDAP, the Polish legislator had in view only such positions in that

⁽¹⁾ See the Annex, Part I, Section 3, p. 86 of this volume.

⁽²⁾ Italics introduced.

⁽³⁾ See the *Nuremberg Judgment*, British Command Paper 6964, pp. 70-71.

organization as have been recognized as leading by the International Military Tribunal.

(ii) *Concentration Camp as a Criminal Organization*

It will be of some interest, it is thought, to devote some space in this report to another Polish case concerning the Auschwitz concentration camp, in which a number of lesser members of its personnel was tried by the same Tribunal, and to discuss the problem indicated in the above heading.

When discussing the Polish law relating to the membership of criminal organizations,⁽¹⁾ it has been pointed out that from the law as laid down in Article 4, paras. 2 and 3 of the Decree of 1944 (the consolidated text of 11th December, 1946), it is clear that Polish courts are not bound by the fact that certain groups or organizations have not been indicted and adjudicated by the Nuremberg Tribunal as criminal within the meaning of the London Charter. It has also been stated there that consequently in such cases the Polish court may declare such groups or organizations to be criminal within the Polish jurisdiction. Such, for instance, was the case in regard to members of the concentration camp staff at Auschwitz.

In this second Auschwitz case, in which forty officials of that camp including Artur Liebehenschel, a successor of Hoess, were tried by the Supreme National Tribunal in Cracow separately and subsequently to the Hoess trial, the Tribunal declared the authorities, the administration and members of the garrison of the Auschwitz camp to be a criminal group, irrespective of whether or not the members of these administrative or military units were at the same time members of the SS or any other organization pronounced criminal by the Nuremberg Tribunal.

In its judgment of 22nd December, 1947, the Supreme National Tribunal gave a number of reasons that served as the basis for its declaration. The most important of them can be summarized as follows :

(1) The Nuremberg Judgment does not limit the right of the Polish legislator to decide those acts which were not a subject of the findings of the Nuremberg Tribunal and can be considered as liable to punishment within the Polish jurisdiction, unless they have been explicitly declared as not criminal, as, for instance, the acts of the organization of the SA.

(2) The provisions of the Polish law now in force are not in contradiction to the Nuremberg Judgment. The interpretation of the Polish law cannot be contrary to the explicit text of this Judgment, but on the other hand there is no legal obstacle in the way of supplementing the legal principles established in this Judgment by further principles, if in substance they are not in contradiction with the former.

(3) There is no doubt that the organization of the German concentration camps is a criminal group in the meaning both of the Nuremberg Judgment and of Article 4 of the Decree of 1944, as these camps had been set up with the aim of unlawfully depriving of freedom and health, property and life of individuals and groups of people because of their race (Jews and Gipsies), nationality (Poles and Czechs), religion (Jews) or political convictions

⁽¹⁾ See The Annex, Part I, Section 3, pp. 86-87, of this volume.

(socialists, communists and anti-Nazis). The organization of the German concentration camps thus aimed at committing crimes against humanity, which at the same time were crimes in violation of the penal law of all civilized nations, and also war crimes as regards the acts committed against the Soviet prisoners of war.

(4) By the description "organization of a concentration camp" should be understood the authorities, the administration and the personnel of a camp, with the exception of the inmates who under compulsion were performing various administrative functions. The latter can only be responsible for their personal deeds as they were not members of the criminal organization as it is understood by the Nuremberg Judgment, namely, they were not bound together by a common aim which was the commission of crimes against humanity. Those people had no ideological ties with the organization of the concentration camps, but had been simply used as tools for the perpetration of certain crimes. This does not protect them from punishment for their personal acts, but they cannot be declared guilty of membership of a criminal organization as of a separate offence.

(5) Article 9 of the Nuremberg Charter states that the International Military Tribunal has the power to declare at the trial of any individual member of any group or organization (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization. Thus, Article 9 gave to the Tribunal the power to declare criminal *any* group or organization, the members of which committed any of the crimes enumerated in Article 6 of the Charter, i.e. crimes against peace, war crimes and crimes against humanity.

(6) The law laid down in Article 9, according to which an international Tribunal may at any time at its discretion increase the number of organizations considered as criminal, has its application in international jurisdiction. As far as the municipal jurisdiction is concerned, the municipal law has priority, and international law is to be applied only subsidiarily. International law is based not only on codifications like the Charter, but also on the judgments of courts like the Nuremberg Judgment.

(7) If therefore, the Charter and the Nuremberg Judgment are both a source of law, of which the former permits any organization to be declared a criminal one, and the latter does not prevent this, there is no legal obstacle for declaring, in accordance with Article 4, para. 2, of the Decree of 1944, as criminal the organization of the concentration camps.

(8) As the Polish legislation and judgments of Polish courts are, of course, not binding outside the Polish territory, the recognition by a Polish court of the Central Administration of the Concentration Camps as a criminal organization in general could raise objections. There is, however, no objection for declaring as criminal the organizations of the concentration camps in Poland, and foremost the organization of the concentration camp at Auschwitz.

In connection with the above declaration of the Supreme National Tribunal, and especially with its paragraphs (3) and (7), it should be pointed out that the Nuremberg Judgment did not include the organization of the concentration camps as such among the organizations declared as criminal,

primarily because the Nuremberg Indictment did not ask the Tribunal to make such a declaration in this respect.⁽¹⁾ Nevertheless, the Tribunal did make in its Judgment many references to the concentration camps which it described as a means for systematic commission of war crimes and crimes against humanity.⁽²⁾ Moreover, the Tribunal expressly stated that "in the administration of the occupied territories the concentration camps were used to destroy all opposition groups".⁽³⁾ With specific reference to one of the ill-famed concentration camps the Tribunal, quoting the report of the War Crimes Branch of the Judge Advocate's Section of the 3rd U.S. Army, established, for instance, that:

"Flossenburg concentration camp can be described as a factory dealing in death. Although this camp had in view the primary object of putting to work the mass slave labour, another of its primary objects was the elimination of human lives by the methods employed in handling the prisoners. Hunger and starvation rations, sadism, inadequate clothing, medical neglect, disease, beatings, hangings, freezing, forced suicides, shooting, etc., all played a major role in obtaining their object. Prisoners were murdered at random; spite killings against Jews were common, injections of poison and shooting in the neck were everyday occurrences; epidemics of typhus and spotted fever were permitted to run rampant as a means of eliminating prisoners; life in this camp meant nothing. Killing became a common thing, so common that a quick death was welcomed by the unfortunate ones."⁽⁴⁾

One more passage may be quoted from the Nuremberg Judgment. It reads:

"A certain number of the concentration camps were equipped with gas-chambers for the wholesale destruction of the inmates, and with furnaces for the burning of the bodies. Some of them were in fact used for the *extermination of Jews* as part of the "final solution" of the Jewish problem. Most of the non-Jewish inmates were used for labour, although the conditions under which they worked made labour and death almost synonymous terms. Those inmates who became ill and were unable to work were either destroyed in the gas-chambers or sent to special infirmaries, where they were given entirely inadequate medical treatment, worse food if possible than the working inmates, and left to die".⁽⁵⁾

When dealing with the criminal aims of the SS, the Nuremberg Tribunal described in detail the activities of the RSHA (ReichsSicherheit Haupt-Ampt) and the WVHA (Wirtschafts Verwaltungs HauptAmpt). The Tribunal then stated that already since 1934 the SS through the medium of the RSHA was responsible for the central administration of concentration camps, and from 1942, when this administration was taken over under the control of the WVHA, the concentration camps were used as a source of

(1) See the *Nuremberg Judgment*, Cmd. 6964, p. 67, para. 3.

(2) *Ibid.*, Judgments against Kaltenbrunner, p. 93; against Funk, p. 103; and general parts of the Judgment, pp. 7 and 49.

(3) *Ibid.*, p. 50.

(4) *Ibid.*, p. 50.

(5) *Ibid.*, p. 50. Italics introduced.

slave labour, for the extermination of " anti-social elements ", experiments on human beings and extermination of Jews.⁽¹⁾

In this way the Nuremberg Judgment established that the concentration camps were an important part of the machinery for the criminal activities of the SS as a whole, and of the WVHA in particular, which was one of the central offices of the SS declared by the Tribunal as a criminal organization. If, in addition, we take into account that the concentration camps were in fact the constituent executive units of the WHVA and were serving its criminal aims in general, and the realization of the plan of exterminating other nations in particular, it may well be said that the Supreme National Tribunal was on strong ground in declaring the concentration camp as a criminal group.

In making the above declaration the Supreme National Tribunal not only based itself on Article 9 of the Nuremberg Charter, but also applied *per analogiam* the statement of principle made in this connection by the Nuremberg Tribunal which stated that according to Article 9 " the Tribunal is vested with discretion as to whether it will declare any organization criminal. This discretion is a judicial one and does not permit arbitrary action, but should be exercised in accordance with well settled legal principles . . . If satisfied of the criminal guilt of *any* organization or group, this Tribunal should not hesitate to declare it to be criminal because the theory of " group criminality " is new . . ." ⁽²⁾

The Supreme National Tribunal evidently considered that in regard to the concentration camps it is not sufficient, as did the Nuremberg Judgment, to have declared as criminal the three or four principal Nazi organizations, as in point of fact there were many Nazis employed in the administration of every single concentration camp, and responsible in a general sense for the mass criminality committed therein, sometimes in a higher degree than the actual perpetrators, and who were not members of any of the organizations declared as criminal by the Nuremberg Tribunal. Therefore, the Supreme National Tribunal declared the members of the authorities, of the administration and of the garrison of the German concentration camps in occupied Poland as criminal groups in the meaning of Article 4 of the Decree of 1944 (1946). It declared these members to be a criminal *group* and not *organization*, in view of the fact that the above Decree as well as the international enactments use both these descriptions, and the expression " group " is in this case more appropriate from the technical point of view, and because of the etymological character of the word " organization ".

It appears that a few words should finally be said as regards criminal knowledge on the part of the members of the concentration camps personnel. It should be recalled that the Nuremberg Tribunal declared criminal the membership of the four organizations (the Leadership Corps of the Nazi Party, the Gestapo, the SD and the SS) on the condition that the members " became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6

(1) See the *Nuremberg Judgment*, pp. 76-77.

(2) *Ibid.*, pp. 66-67. Italics introduced.

of the Charter, or who were personally implicated as members of the organization in the commission of such crimes".⁽¹⁾

Although the Supreme National Tribunal did not mention in its declaration this particular question, it must be presumed that this Tribunal, having based the declaration on the analysis of the Nuremberg Charter and Judgment, took this requirement as self-evident and did not see the necessity of pointing it out. It would also seem self-explanatory that the first part of the Nuremberg Tribunal's *proviso* is hardly of much importance in the case of concentration camps, as every member of their personnel must have known that these camps were being used for the commission of acts which any ordinary sensible person must have acknowledged as criminal.

4. GENOCIDE

As it is apparent from the outline of the proceedings the trial of Hoess was another case in which the crimes perpetrated in the Auschwitz camp come within the notion of the crime of genocide. We have already described briefly the concept of this notion in connection with the case of Amon Goeth.⁽²⁾ As regards the present case it may be mentioned that the Prosecution, after describing the German policy aiming at the extermination of Jews, pointed out that the mass crimes committed in concentration camps were part of the Nazi scheme of exterminating whole nations. In this connection the Prosecution recalled among others that General von dem Bach of the German Police, who was a witness in the trial against Governor Fisher, sentenced previously by the Supreme National Tribunal, had testified that during a conference held by Himmler some time before the outbreak of war, the latter explained a plan which aimed at the extermination of some thirty million of the Slav population.

The Supreme National Tribunal dealt in its Judgment only very generally with this type of the Nazi criminality. It stated that the Nazi Party had as one of its aims the biological and cultural extermination of subjugated nations, especially of the Jewish and Slav nations, in order to establish finally the German *Lebensraum* and the domination of the German race. This programme and practice of extermination of entire groups of people and of nations on specific grounds, described as the crime of genocide, the Tribunal defined as an attempt on the most organic bases of the human relationship such as the right to live and the right to existence.

One of the aspects and elements of the German system of extermination put into preliminary execution in the Auschwitz camp were the medical experiments described in some detail in the preceding part of this report.

Even if it could be assumed that the medical experiments carried out at Auschwitz concentration camp were not expected to serve any definite political aims, their criminal character is beyond any doubt. They violated all rules which must be observed when medical experiments are performed on human beings.⁽³⁾ Special circumstances in which they were performed

⁽¹⁾ See the *Nuremberg Judgment, op cit.*, pp. 71, 75 and 79.

⁽²⁾ See Case No. 37, pp. 7-9, of this volume.

⁽³⁾ Compare pages 48-53, of this volume.

constitute in addition elements which allow them to be classified as violations of the laws and customs of war and of laws of humanity.

Experiments were always carried out under compulsion and in many cases physical violence was used. They were often performed by unqualified doctors and in appalling conditions. They did not serve any scientific purpose. They were performed with unnecessary suffering and injury and without proper protection against the risks of disability or death. The subjects experienced extreme pain and torture, and permanent injury or death followed in many cases. The doctors and the personnel performing experiments did not show any care or give any assistance to persons frequently seriously ill in consequence of the experiments.

Thus all these experiments violated general principles of criminal law as derived from the criminal laws of all civilized nations.

But paramount importance should be attached to the political aspect of the crime. The general scheme of the wholesale experiments points out clearly to the real aim. They were obviously devised at finding the most appropriate means with which to lower or destroy the reproductive power of the Jews, Poles, Czechs and other non-German nations which were considered by the Nazi as standing in the way of the fulfilment of German plans of world domination. Thus, they were preparatory to the carrying out of the crime of genocide.

These conclusions seem justified not only by the experiments themselves. They were corroborated by the statements of the accused Hoess himself. He confirmed the existence of plans of wholesale destruction of the Slav nations, and of Poles and Czechs in particular. It is also known that Himmler entrusted Professor Clauberg with experiments which were nothing else but the application in reverse of his successes in the domain of the treatment of sterility. Clauberg himself recognized that his experiments could contribute very little to the progress of science.

The defendant Hoess declared that the experiments of wholesale castration and sterilization were carried out in accordance with Himmler's plans and orders. These aimed at the biological destruction of the Slav nations in such a way that outside appearance of a natural extinction would have been preserved.

The X-ray experiments, particularly in cases when small or minimal dosage of rays was applied, and the setting up of a special mixed camp for about 3,500 men and women in this connection seem to be particularly characteristic. Thus a special breeding place for individuals carrying supposedly hereditary "lethal" genes, which it was hoped could be artificially cultivated among the subjugated nations, seems to have been created. This contention seems, according to Professor Kowalski who gave expert evidence in this trial, to be justified by experiments on animals. It was known from them, said this witness, that X-rays applied in a certain dosage to germinative cells caused hereditary injuries to the latter. Progeny born from such cells either could not survive or would carry congenital anomalies. Also X-ray treatment of female genital organs and in particular of the uterus caused injuries, owing to which pregnancy ended in about 42 per cent of cases in miscarriage or premature delivery.

Thus it seems probable that the X-ray experiments aimed at checking on the results obtained on animals and at providing necessary statistical data. These experiments could have determined the X-ray dosage necessary for injuring human hereditary genes. They also aimed at creating conditions in which the injured genes could be multiplied and degenerated progeny observed, so that in the end those observations could have been used for political purposes.

Still more typical were Clauberg's sterilization experiments. They all aimed at causing sterility of non-German women. In the opinion of Professor Kowalski, they were of great importance because all other well-known methods of sterilization are difficult, require much time, complicated technique and skilled doctors, and because they could be easily noticed by the persons concerned. The aim of the German doctors of sterilizing in a wholesale manner non-German women could have been achieved by the discovery of a drug which would easily and surely obliterate the relatively narrow lumen of the tubes, without injuring the mucous membrane of the uterus. Thus periods would continue, internal female genital organs would remain healthy and damage inflicted to the reproductive power of women concerned would remain unobserved. The wholesale application of such a drug, the discovery of which cannot be ruled out, would have paved a way to a demographic policy aiming at a total extinction of nations.

Thus in view of the political directives, issued by the Supreme German authorities, and the character of the experiments performed in Auschwitz on their orders, it seems obvious that they constituted the preparatory stage of one of the forms of the crime of genocide, which was intended to be perpetrated by scientific means.

Annex 326

United States Military Tribunal, *United States v. Ulrich Greifelt et al.*, (1948) 13 LRTWC 1

LAW REPORTS
OF
TRIALS OF
WAR CRIMINALS

Selected and prepared by
THE UNITED NATIONS
WAR CRIMES COMMISSION

VOLUME XIII

LONDON
PUBLISHED FOR
THE UNITED NATIONS WAR CRIMES COMMISSION
BY HIS MAJESTY'S STATIONERY OFFICE

1949

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LAW REPORTS OF TRIALS OF WAR CRIMINALS

SELECTED AND PREPARED
BY THE UNITED NATIONS WAR CRIMES
COMMISSION

One of the aims of this series of Reports is to relate in summary form the course of the most important of the proceedings taken against persons accused of committing war crimes during the Second World War, apart from the major war criminals tried by the Nuremberg and Tokyo International Military Tribunals, but including those tried by United States Military Tribunals at Nuremberg. Of necessity, the trials reported in these volumes are examples only, since the trials conducted before the various Allied Courts, of which the United Nations War Crimes Commission has had records, number over 1,600. The trials selected for reporting, however, are those which are thought to be of the greatest interest legally and in which important points of municipal and international law arose and were settled.

Each report, however, contains not only the outline of the proceedings in the trial under review, but also, in a separate section headed "Notes on the Case," such comments of an explanatory nature on the legal matters arising in that trial as it has been thought useful to include. These notes provide also, at suitable points, general summaries and analyses of the decisions of the courts on specific points of law derived primarily from a study of relevant trials already reported upon in the series. Furthermore, the volumes include, where necessary, Annexes on municipal war crimes laws, their aim being to explain the law on such matters as the legal basis and jurisdiction, composition and rules of procedure on the war crime courts of those countries before whose courts the trials reported upon in the various volumes were held.

Finally, each volume includes a Foreword by Lord Wright of Durlay, Chairman of the United Nations War Crimes Commission.

continued inside back cover

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1949

CASE No. 73

TRIAL OF ULRICH GREIFELT AND OTHERS
UNITED STATES MILITARY TRIBUNAL, NUREMBERG,
10TH OCTOBER, 1947—10TH MARCH, 1948

Criminal nature of racial persecutions—Genocide—Membership of Criminal Organisations—Plea concerning annexed territory.

Ulrich Greifelt and the other accused in this trial were involved in various capacities in the carrying out of the Nazi racial policy in countries occupied by Germany, mainly in East and South-East European countries. They were leading members of four organisations to which racial tasks were assigned: the Main Staff Office (Stabshauptamt) of the Reichs Commissioner for the Strengthening of Germanism (*Reichskommissar fuer die Festigung des Deutschen Volkstums*), commonly known as "RKFDV"; the SS. Main Race and Settlement Office (*Rasse-und Siedlungshauptamt*) commonly known as "RUSHA"; the Repatriation Office for Ethnic Germans (*Volksdeutsche Mittelstelle*), commonly known as "VOMI" and the Well of Life Society (*Lebensborn*).

The accused were charged with committing, in pursuance of a systematic programme of genocide, crimes against humanity and also war crimes between September, 1939, and April, 1945, as individual perpetrators. All of them, but one, were also charged with membership of criminal organisations, as defined in the Judgment of the Nuremberg International Military Tribunal.

One accused was found not guilty and acquitted, and the remaining thirteen were held guilty of crimes against humanity, war crimes, membership of criminal organisations, or of one or more of the foregoing three counts. Sentences pronounced ranged from 25 years' down to several periods of less than 3 years' imprisonment.

The essence of the charges and convictions was that the above crimes were committed in furtherance of and as an integral part of the Nazi racial ideology and policy. The

“ After being investigated as to his nationality the party of foreign race is subject to a racial evaluation by the competent RuS Field Leader ; a potential suitability toward Germanization is to be explored.

“ When a case of sexual intercourse is detected, the Amtsarzt (official physician) has to ascertain whether the participating German woman is pregnant. It is to be stated how far the pregnancy is advanced and whether another and what person beside the one of foreign stock in question might have fathered the prospective child (this investigation to be made by the Youth Office). If the person of foreign stock is fit for Germanization and if both parties are evaluated favourably under the racial viewpoint, marriage is possible under certain conditions ; however, marriage between laborers from Serbia, or other Eastern labourers, and German girls are not permitted for the time being. A female worker of foreign stock, caused by the German man (in abuse of his position) to submit to sexual intercourse, will be taken into protective custody for a brief period, thereafter assigned to a different job. In other cases the female worker of foreign race is to be confined to a concentration camp for women. Pregnant women are to be sent to a concentration camp only after they have given birth and stilled the baby.”

Similar orders were issued by Hildebrandt.

(vii) *Impeding the Reproduction of Enemy Nationals*

Measures, concerning mainly inhabitants of Poland, were taken to prevent their reproduction and thus contribute to the destruction of non-German races. They took the form of various decrees, and were chiefly aimed at drastically curtailing marriages.

They were taken in close connection with yet another measure, the so-called German People's List (Deutsche Volksliste). This list was introduced for Poland and was later extended to other foreign nationals. It classified Polish citizens into four groups. Group 1 included so-called ethnic Germans who had taken an active part in the struggle for the Germanization of Poland ; Group 2 included those ethnic Germans who had not taken such an active part, but had “ preserved ” their German characteristics ; Group 3 comprised individuals of alleged German stock who had become “ Polonized,” but who it was believed, could be won back to Germany, and also persons of non-German descent married to Germans or members of non-Polish groups, who were considered desirable so far as their political attitude and racial characteristics were concerned. Finally, Group 4 comprised persons of German stock who had become politically merged with the Poles. After registration in the List, individuals from Groups 1 and 2 became automatically German citizens. Those from Group 3 acquired German citizenship subject to revocation, and those from Group 4 received German citizenship through naturalization proceedings. Persons ineligible for the List were classified as stateless, and all Poles from the occupied territory, that is from the Government General of Poland, as distinct from the incorporated territory, were classified as non-protected.

By a decree of 25th April, 1943, classes protected under the List were allowed to marry among themselves subject to restrictive measures. Re-

28 TRIAL OF ULRICH GREIFELT AND OTHERS

The Tribunal dismissed this charge on the grounds that the administration of death under Nazi legislation against citizens of the Third Reich only, did not constitute a crime against humanity.⁽¹⁾

(xii) *Persecution and Extermination of the Jews*

The Tribunal decided that charges brought against the defendants under this count had been established and proved in the parts dealing with punishments for sexual intercourse with Germans, deportations of foreign nationals, and plunder of property, as the victims in all these instances included Jews.

3. THE JUDGMENT OF THE TRIBUNAL

(i) *Individual Guilt of the Accused*

Thirteen accused were found guilty on one or more counts, and one was acquitted. Some were found guilty of only membership in criminal organisations. The counts referred to by the Tribunal were the following: Count 1, crimes against humanity; Count 2, war crimes; Count 3, membership in a criminal organisation.

Those found guilty were the following and for the following reasons:

ULRICH GREIFELT

"The defendant Ulrich Greifelt, as Chief of the Main Staff Office and deputy to Himmler, was, with the exception of Himmler, the main driving force in the entire Germanization program. By an abundance of evidence it is established beyond a reasonable doubt, as heretofore detailed in this judgment, that the defendant Greifelt is criminally responsible for the following actions: kidnapping of alien children; hampering the reproduction of enemy nationals; forced evacuations and resettlement of populations; forced Germanization of enemy nationals; the utilisation of enemy nationals as slave labor; and the plunder of public and private property.

"The evidence submitted is insufficient to establish beyond a reasonable doubt the defendant Greifelt's guilt upon the following specific charges: Abortions on Eastern workers; taking away infants of Eastern workers; and the punishment of foreign nationals for sexual intercourse with Germans.

"The defendant Greifelt is found guilty upon Counts 1 and 2 of the indictment.

"The Tribunal finds that the defendant Greifelt was a member of a criminal organisation; that is, the SS, under the conditions defined and specified by the Judgment of the International Military Tribunal, and he is, therefore, guilty under Count 3 of the indictment."

RUDOLF CREUTZ

"Rudolf Creutz, as deputy to Greifelt, was an active participant in certain phases of the Germanization program, as has heretofore been set forth in detail in this judgment; and it has been established beyond any reasonable doubt that the defendant Creutz is criminally responsible for, and implicated

⁽¹⁾ For more details, see pp. 33-34, below. See also *Trial of Erhard Milch*, Vol. VII of this Series, pp. 51-52.

Annex 327

Court of Bosnia and Herzegovina, *Prosecutor v. Stupar et al.*, No. X-KR-05/24,
First Instance Verdict (29 July 2008)

SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ

COURT OF BOSNIA AND HERZEGOVINA

Case No.: X-KR-05/24
Date: Delivered 29 July 2008
Published 13 January 2009

Before: Judge Hilmo Vučinić, Presiding
Judge Paul Melchior Brilman
Judge Shireen Avis Fisher

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

**MILOŠ STUPAR, MILENKO TRIFUNOVIĆ, BRANO DŽINIĆ, ALEKSANDAR
RADOVANOVIĆ, SLOBODAN JAKOVLJEVIĆ, VELIBOR MAKSIMOVIĆ,
DRAGIŠA ŽIVANOVIĆ, BRANISLAV MEDAN and MILOVAN MATIĆ**

FIRST INSTANCE VERDICT

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13 July. They saw, as can anyone who views the Petrović video, that Bosnian Serbs dressed in UN helmets and driving UN vehicles went up and down the road; megaphones were used to call to the column of escaping people, promising that they would be safe if they surrendered and assuring them that the UN were present.²⁶⁰ Gen. Mladić came to the meadow and addressed the prisoners on the meadow, telling them they would be exchanged, although it was clear that no procedures to identify the prisoners for the purpose of processing for war crimes, exchange, or incarceration was undertaken, and in fact the identification papers necessary to process the prisoners were in the belongings the Detachment members were ordered to force the Bosniaks to discard.

These events conformed with the platoon's understanding of part of the eradication plan: that it's true purpose was not to be revealed. This would be obvious as well to the other members of the detachment.

C. The Genocidal Act

The five Accused (accused Milenko Trifunović, Aleksandar Radovanović, Brano Džinić, Slobodan Jakovljević, and Branislav Medan) are principal perpetrators of one of the genocidal acts committed against the Srebrenica Bosniaks during the period between 10 and 19 July 1995. That act was consistent with a larger genocidal plan, and committed within the genocidal context of the Srebrenica area during 12 and 13 July 1995. The Accused were not the architects of the plan, nor were they the tacticians or commanders who had responsibility for its overall accomplishment. Rather, they were the instruments by which the plan was carried out. Without people willing to carry out the genocidal plan by commission of the kinds of acts prohibited in Article 171, genocide could not be committed. As instruments for the commission of genocide, they are only criminally liable for commission of the underlying crimes, and not for genocide itself, *unless* they committed the underlying crimes with the specific genocidal intent to destroy the protected group. Tribunals have in a number of cases determined beyond doubt that principal perpetrators possess the required genocidal intent by examining both the context in which they committed the underlying acts, including the existence of a genocidal plan and their knowledge of it, and by examining the acts themselves. The crime of genocide is indisputably *not* limited in application to those who organize, plan, or order the perpetration of genocide. In particular, the Panel notes the ICTR Trial Chamber's conclusion in *Cyangugu* that soldiers who perpetrated the massacre of Tutsi civilians committed those killings with genocidal intent, as well as the Trial Chamber's conclusion in *Ndinabahizi* that the participants in the attack against Tutsi civilians on Gitwa Hill committed genocide.²⁶¹

It is not necessary that the perpetrator participated in multiple events or incidents in order to establish that the perpetrator had genocidal intent. For example, the Appeals Chamber of the ICTR in *Seromba* convicted the accused of genocide solely with respect to a single incident, concluding that "no reasonable trier of fact could have reached the conclusion that Athanase

²⁶⁰ E.H.; S1; S2; Predrag Čelić; Miloško Milovanović; Milenko Pepić.

²⁶¹ *Cyangugu* Trial Judgment, para. 690; *Ndinabahizi* Trial Judgment, para. 461. There are a number of other examples of implicit findings that principal perpetrators of killings committed genocide, particularly where the accused are found to have aided and abetted the principal perpetrators, such as *Ntakirutimana. Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana* ("Ntakirutimana"), ICTR-96-10 and ICTR-96-17-T, Judgment, 21 February 2003.

Seromba did not have genocidal intent” when he participated in the killing of 1500 people.²⁶² Similarly, in *Ndinibahizi*, the Appeals Chamber did not disturb the Trial Chamber’s finding that the accused possessed the necessary genocidal intent with respect to the single incident on which the accused’s conviction was upheld.²⁶³

Likewise, the number of victims, though relevant, is not dispositive. The Appeals Chamber in *Seromba* convicted the Accused of committing genocide with respect to the murder of 1,500 Tutsis; whereas the Trial Chamber of the ICTR in *Ndinibahizi* concluded the existence of genocidal intent in the killing of a single individual at a roadblock. In concluding that the principal perpetrators of that killing committed the killing with genocidal intent, the Trial Chamber specifically noted, “The fact that only a single person was killed on this occasion does not negate the perpetrators’ clear intent, which was to destroy the Tutsi population of Kibuye and of Rwanda, in whole or in part.”²⁶⁴ The Trial Chamber instead looked at all the facts, including the broader context of events, and concluded that the perpetrators of that single killing committed the killing with genocidal intent.²⁶⁵

The underlying criminal act of killing co-perpetrated by five of the Accused constitutes probative evidence from which the Accused’s genocidal intent can be inferred beyond doubt when viewed in light of their exposure to the broader context of the events of Srebrenica, and their basic knowledge of the genocidal plan. In considering the inferences that can be drawn from the act of killing, the following factors, *inter alia*, have been identified by other Tribunals as relevant to this analysis: the number of victims; the use of derogatory language toward members of the targeted group; the systematic and methodical manner of killing; the weapons employed and the extent of bodily injury; the methodical way of planning; the targeting of victims regardless of age; the targeting of survivors; and the manner and character of the perpetrator’s participation.²⁶⁶ The Panel addressed each of these factors as it applied to the five Accused.

1. The Number of Victims

Of all of the organized multiple killings that were planned and carried out during the operative period, the murders at the Kravica warehouse probably involved the largest number of victims. The approximation of “more than 1000” has been used in the Indictment and the operative part of this verdict, and the number actually killed by the Accused has been characterized as “the majority” of these. For the purpose of determining intent, it is not critical that the exact number of Bosniaks killed by the Accused be precisely calculated. What is important is that there were a great many people killed by the Accused in the warehouse that day. What is even more important is that the Accused made it clear by their actions that their intent was that *all* the Bosniaks in the warehouse be killed, no matter how large the number.

²⁶² *Prosecutor v. Athanese Seromba*, ICTR-2001-66-A, Judgment, 12 March 2008, para. 181.

²⁶³ *Prosecutor v. Emmanuel Ndinabahizi*, ICTR-01-71-A, Judgment, 16 January 2007.

²⁶⁴ *Ndinabahizi* Trial Judgment, para. 471.

²⁶⁵ *Id.*, para. 470. The Panel recognizes that this conclusion was not considered on appeal, as the Appeals Chamber quashed the conviction for this incident on other grounds. Nonetheless, the Panel considers that this discussion emphasizes the crucial point, namely that the number of victims must be considered with respect to all the facts and that there is no “magic number”.

²⁶⁶ See, e.g., *Kayishema and Ruzindana* Trial Judgment, paras. 93, 531-540; *Seromba* Trial Judgment, para. 320; *Jelisić* Appeal Judgment, paras. 47-49; *Akayesu* Trial Judgment, para. 523; *Rutaganda* Trial Judgment, para. 399; *Cyangugu* Trial Judgment, paras. 689-690.

2. Physical Targeting and Language

As established above, the Accused knew that the men on whom they opened fire were Bosniaks, and specifically Bosniaks who had been living in the Srebrenica safe area (see Section IV.E.1, *supra*). S4 testified that after the shooting began, verbal exchanges between the prisoners and the shooters contained ethnic and religious slurs and curses.

3. Systematic and Methodical Manner of Killing

The killing proceeded in a methodical manner. Three of the Accused were assigned to keep guard at the back of the warehouse to prevent any of the victims from escaping through the window openings along the back wall. Other Accused, along with other members of the Detachment who had marched the column to the warehouse, were ordered to make a semi-circle in front of the warehouse. The right section of the warehouse, where the column was deposited and which was not secured, was the side first targeted; while the left side, which was secured, was targeted second, after the Accused had “finished” with the first. Between the massacre in the right side and the massacre in the left, the Accused took a break. The manner in which they targeted the rooms was also organized. In the first room, the first to fire was the operator of the M84 machine gun, shooting from the side of the door opening. He was followed by the other shooters who cross-fired from both sides of the opening into and through the room of dying men. The shooters would change places at the doorways in order to reload their weapons. Clips were being refilled by one person designated for this task from additional ammunition supplies on the site.²⁶⁷ At the conclusion of the shooting, the Accused Džinić and at least one other man threw hand grenades into the room full of dead and dying men. The grenades came from two boxes that had been supplied to the site. After a break during which the men relaxed, the Accused resumed the killing and commenced firing on the Bosniaks held in the left side of the warehouse, in the same order and in the same manner. Throughout, the three Accused at the rear of the warehouse continued to ensure that no prisoner escaped death. The task was undertaken in a calculated and thorough way. The Accused remained at the warehouse until officially relieved by another unit sent for that purpose.

4. Weapons Employed

The weapons used against the unarmed men crowded into the two warehouse rooms included one M84 machine gun, which used ammunition belts fed into the weapon by one or two assistants. The weapon produced sound and explosions which sounded to S2, from his position inside the warehouse, like anti-aircraft fire. The M84 could be fired while hand held, but there is evidence that at least for the killings that occurred in the second room, it was assembled and positioned on a table at the side of the entrance and fired from its tripod.²⁶⁸ The weapons used by the shooters, including the Accused Trifunović and Radovanović, were automatic rifles that fired bullets in rapid succession from rifle magazines, or clips, that were on this day methodically refilled by a designated person, the rifles reloaded and repeatedly reused. The third type of weapon used was hand grenades, of which there were two boxes at the killing site. These produced explosions that were heard by witnesses several kilometers away and appeared to S2 within the enclosed space to be bombs, emitting incredible sound blasts.

²⁶⁷ S4.

²⁶⁸ Miladin Stevanović. Luka Marković also testified that a table was taken into the hangar prior to the killings.

5. Extent of Bodily Injury

The extent of the injury done by these weapons to the bodies of the men crammed into the spaces at the warehouse was horrendous. Unlike firing squads, where the victim can be cleanly and quickly killed, firing of this kind was completely indiscriminate. Men were multiply wounded and mutilated, surrounded by carnage created by their own wounds and the bodies of the others. Years after the incident, the Manning Reports (Exhibits O-236, O-239, and O-241) catalogued evidence of blood and human tissue remaining on the walls and ceiling. The screams of the men who were dying in agony were obvious to the Accused, as well as to the witnesses who were in the area, and were reported by Mitrović in his statement. S1 found the screams of the dying the most unbearable aspect of his horrendous experience. Yet the methodical killing continued for around one and one half hours.

6. Targeted Regardless of Age

The men surrendering along the road and taken to the Sandići meadow were of all ages. The Petrović video shows young boys and old men among those on the meadow and coming out of the woods. Likewise Hajra Čatić and Maj. Franken testified that young boys and old men were included among those separated at Potočari and placed on buses headed toward Bratunac. The males whose lives were ended at the Kravica warehouse on 13 July came from those collected on the meadow and those collected in the buses. There was no effort to segregate anyone on the basis of age or any other basis.²⁶⁹ The youngest victim so far connected with the Kravica killings was between the ages of 12 and 14 years old, although all of the bodies of those killed have not yet been found.²⁷⁰

7. Targeted Survivors

The very length of the initial massacre, in which the Accused were involved, and the fact that the killings in each room concluded with the use of grenades, speaks to the intended thoroughness of the undertaking. The evident purpose was to kill all of the men in the warehouse. The Accused carried out the purpose with a persistence and use of weaponry that evidenced obvious determination that there would be no survivors.

8. Methodical Planning

Genocidal intent can arise spontaneously without planning. The Kravica executions were, however, planned. The warehouse was intended to be a collection site as well as an execution site, and the executions were intended to take place at the point at which the warehouse was entirely full, that is, at the time when it did in fact take place. Evidence for this comes from the following facts:

a) The hand grenades and additional ammunition were already at the site when the shooting began. Witness Marko Aleksić and Mitrović confirmed that the men in the 2nd Detachment only carried the normal field kit during their duties at Sandići. Based on the testimony regarding how the killings were carried out and the amount of time the firing continued as

²⁶⁹ The Panel was not provided with up-to-date evidence of the exhumation results. However, even from the relatively small sample of the remains found by 2001, three of the bodies of victims recovered from the total killed in all locations were estimated to have been as young as 13 years. Baraybar Report.

²⁷⁰ 2nd Manning Report (Exhibit O-236).

well as the use of hand grenades, it is clear that the field kit was entirely insufficient to complete the killing on the scale undertaken. Mitrović corroborated this fact in his statement as well.

b) There were officers present and none took any action to stop the killings. Čturić, deputy commander of the detachment, was present when the shooting began and remained for about 10 minutes before leaving for Bratunac to seek treatment for his burned hand. Čturić did nothing to stop the killings. Trifunović was the platoon commander and was not only present but an active participant in the shooting. He obviously did nothing to stop the killings. Borovčanin arrived 10 to 15 minutes after the killings began and sat watching for a few minutes before turning his vehicle about and travelling down the road. He did nothing to stop the killings.

c) Milenko Pepić, a member of the 2nd Platoon controlling traffic along the road above Kravica, received an order over the Motorola to stop the traffic before the killings began, at the point at which the column was passing down the road. He was then ordered to keep the road around Kravica closed during the entire massacre. Stevanović stated that when he returned on foot from Bratunac, the road blockade was still in place. This was after the people in the first room had been shot but before the shooting began in the second room. It was not until the shooting finally stopped that Pepić was ordered to reopen the road.

d) The Accused stayed at the warehouse until they were officially relieved by another unit, which had been ordered to take over.

e) After the Accused left, the units that replaced them continued to kill any survivors who moved or made any sound and in fact called out to wounded survivors hiding under the bodies, claiming that they would get them medical treatment. Those who believed them and ventured out were then shot.

f) The warehouse was used the next morning as an execution site for additional prisoners who were brought there, lined up in front of the building, and shot.

g) An excavator and five to six trucks with the requisite fuel and operators were assembled before the final executions were completed on the morning of 14 July, and the bodies which were removed from the warehouse by that equipment on that day were taken to a mass gravesite in Glogova which had already been dug and was waiting.

9. Manner and Character of the Perpetrators' Participation

From the manner and character of their participation, it is apparent that the Accused did not simply intend to kill the victims; they intended to destroy them. The acts in which the Accused participated for around an hour and a half were the most physically destructive acts imaginable, committed and experienced at close range, within the sight and smell of the carnage and of the sounds of the dying. Trifunović and Radovanović stood at the entrance of the rooms and emptied one clip after another into the mutilated bodies of the dying men piled on the floor. Mitrović, Jakovljević, and Medan stood at their stations at the open windows at the other side of the rooms witnessing the slaughter, guns ready to prevent any attempts by the victims to escape. Džinić lobbed grenade after grenade at close range into the masses of dying human beings. All persisted in their task for a total of around an hour and a half, in a

systematic and methodical way, and even took a break after the first room, before starting all over again to reduce the living men in the second room to the condition of those in the first.

To persist in imposing this level of devastation for the length of time that they did manifests a determination to destroy that has few equals. Whether the Accused were in front of the warehouse shooting and throwing grenades through the open door and windows, or behind the warehouse with guns aimed at the open windows, they were submerged in the sounds, sights and smell of human destruction.

While not admitting that any of the accused took part in the massacre, the defense has attempted to link the killing of Krsto Dragičević with the ensuing massacre in order to exculpate the Accused, claiming that it was the killing of Krsto, rather than any preconceived genocidal plan, that led to the massacre that followed. The Panel finds any suggestion that the Accused were forced to shoot in self-defense, or out of uncontrollable fear, unconvincing and contrary to the evidence, for reasons discussed above (see Section IV.C.1, *supra*). However, the death of Krsto Dragičević is relevant to determining the intent of the Accused. The evidence establishes that immediately preceding the massacre, Krsto, who entered the warehouse against the orders of Trifunović, was killed, apparently by a Bosniak who had grabbed his rifle and commenced shooting. Within seconds, that Bosniak was dead, Čuturać had suffered burns to his hands, Krsto's gun was retrieved, and Krsto's body was dragged out from the doorway of the warehouse.

When this incident is taken together with all of the other evidence, it provides even stronger support for the inference of genocidal intent. The perpetrator of Krsto's killing was identified and already dead before the butchery began. None of the Bosniaks in the warehouse were in any way responsible for Krsto's death, nor could the Accused have any reason to believe that they were. It can therefore be inferred that the intention which drove the Accused to destroy those very Bosniaks, by inflicting on them death and unimaginable suffering that afternoon, was not the intent to destroy individuals who might have wronged them, or even individual Bosniaks who might have wronged them. The intent with which the Accused acted was the intent to destroy all Bosniaks – as a group – as such. The only limitation to their achieving the destruction of all Bosniaks as an entire group was the limitation imposed by the number of Bosniaks actually within their control.

D. Conclusion

“[T]he circumstances and facts surrounding the perpetrator's acts can, as a matter of law, establish genocidal intent beyond doubt”.²⁷¹ In this case, the Panel considered evidence of the acts of the principle perpetrators (Section VI.C) and analyzed that evidence together with the general context in which the acts occurred (Section V) and the perpetrators' knowledge of

²⁷¹ *Kayishema and Ruzindana* Trial Judgment, para. 93. See also *Rutaganda* Appeal Judgment, para. 525 (“In the absence of explicit, direct proof, the *dolus specialis* may therefore be inferred from the relevant facts and circumstances”); *Cyangugu* Trial Judgment, para. 663; *Semanza* Trial Judgment, para. 313; *Akayesu* Trial Judgment, para. 523; *Krstić* Appeal Judgment, para. 34 (“Where direct evidence of genocidal intent is absent, the intent may still be inferred from the factual circumstances of the crime”); *Jelisić* Appeal Judgment, para. 47 (“As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive discriminatory acts”).

that context (Sections VI.A and B).²⁷² Based on that analysis, the Panel concludes beyond doubt that the murder of the majority of the more than 1000 Bosniaks in the Kravica warehouse was co-perpetrated by the Accused with the aim to destroy Bosniaks, a protected group, in whole or in part.

²⁷² In accord with this analysis, see *Akayesu* Trial Judgment; *Ndindabahizi* Trial Judgment; *Cyangugu* Trial Judgment.

Annex 328

Extraordinary Chambers in the Courts of Cambodia, Case 002/02 Judgment
(16 November 2018)

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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007/ECCC/TC

Before: Judge NIL Nonn, President
 Judge Jean-Marc LAVERGNE
 Judge YA Sokhan
 Judge Claudia FENZ
 Judge YOU Ottara

Greffiers: LIM Suy-Hong, SE Kolvuthy, EM Hoy, CHEA Sivhoang,
 Elinor FRY, Milan JOVANČEVIĆ, Céline RIVAT

Duration of hearing: 17 October 2014 until 11 January 2017
Date: 16 November 2018
Original languages: Khmer/English/French
Classification: PUBLIC

CASE 002/02 JUDGEMENT

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reasonable grounds to believe that the security of the State is at risk.²³³⁴ The Chamber agrees with the Co-Prosecutors' submission that the mere fact that a person is a national, or aligned with the enemy cannot be considered as threatening the security of the country, nor can the fact that a person is of military age alone justify confinement of a civilian.²³³⁵ No other parties made any relevant submissions in this regard. The Chamber refers to its analysis of the NUON Chea submissions pertaining to imprisonment as a crime against humanity which are also relevant with respect to unlawful confinement as a grave breach. As set out in the law on imprisonment as a crime against humanity, the Chamber must assess whether the deprivation of liberty had a legal basis or was arbitrary because it was carried out or perpetuated without due process of law.²³³⁶

9.3. Genocide

782. As relevant to Case 002/02, the Closing Order charges the Accused with genocide through acts of killing in relation to the Cham and Vietnamese.²³³⁷

783. Article 4 of the ECCC Law provides that the Court has jurisdiction over "genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 ("Genocide Convention"), and which were committed during the period from 17 April 1975 to 6 January 1979". Article 4 lists "killing members of the group" as one of the acts which may constitute genocide when "committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group".

9.3.1. Principle of Legality

784. As a preliminary matter, the Chamber must determine whether genocide was established as a crime under customary international law by 17 April 1975.

²³³⁴ Case 001 Trial Judgement, para. 465.

²³³⁵ Co-Prosecutors' Closing Brief, para. 214 citing *Kordić and Čerkez* Trial Judgement, para. 284; *Delalić et al.* Appeal Judgement, para. 327; *Prlić et al.* Trial Judgement, Volume 1, para. 134; Commentary to Geneva Convention IV, p. 258.

²³³⁶ See above, Section 9.1.5: Crimes Against Humanity: Imprisonment.

²³³⁷ Closing Order, paras 1335-1349. See also, Case 002 Additional Severance Decision Annex, p. 3.

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785. In 1946, the UN General Assembly unanimously adopted a resolution affirming that “genocide is a crime under international law”.²³³⁸ The Genocide Convention, to which Cambodia acceded without reservation in 1950, entered into force in 1951.²³³⁹ The contracting parties to the Genocide Convention recognised that “genocide, whether committed in time of peace or time of war, is a crime under international law”.²³⁴⁰

786. The Genocide Convention calls on contracting parties to enact the necessary legislation to give effect to the provisions of the convention and to provide effective penalties for persons guilty of genocide.²³⁴¹ Consequently, and prior to 17 April 1975, there was extensive State practice recognising genocide as an international crime, based almost uniformly on the Genocide Convention definition.²³⁴²

787. In its answer to the UN General Assembly’s request for an advisory opinion on the impact of certain reservations to the Genocide Convention, the ICJ held in 1951 that:

[I]t was the intention of the United Nations to condemn and punish genocide as ‘a crime under international law’ involving a denial of the

²³³⁸ UNGA Res. 96 (I), 11 December 1946. At its second session in 1947, the UN General Assembly declared genocide was “an international crime entailing national and international responsibility on the part of individuals and States” and requested the Economic and Social Council to continue its work on a draft convention on genocide. See UNGA Res. 180 (II), 21 November 1947.

²³³⁹ The Chamber notes that 41 States signed the Convention and that 75 States were party to the Convention by 1975. See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-1&chapter=4&clang=en. The Chamber notes that the 1956 Cambodian Criminal Code did not expressly include the crime of genocide. Genocide is now expressly defined and criminalised under Article 183 of the 2009 Cambodian Criminal Code.

²³⁴⁰ Genocide Convention, Article I.

²³⁴¹ Genocide Convention, Article V.

²³⁴² See e.g., Antigua and Barbuda: *The Genocide Act 1975*, s. 3; Austria: *Strafgesetzbuch 1974*, § 321; Bangladesh: *The International Crimes (Tribunals) Act, 1973*, s. 3(2)(c); Bolivia: *Código Penal de Bolivia*, Article 138; Brazil: *Law No 2.889 of 1 October 1956*, Article 1; Bulgaria: *Penal Code 1968*, Article 416; Denmark: *Lov nr. 132 af 29.04.1955 om straf for folkedrab*, § 1; Ethiopia: *Penal Code of 1957*, Article 281; Fiji: *Penal Code 1969*, s. 69; Finland: s. 6-8 of the Penal Code (as amended by Act No. 987 of 1974); Germany: *Deutsche Strafgesetze*, § 220a (genocide was included in the penal code in 1955); Guatemala: Decreto No. 17-73, 27 July 1973, *Código Penal de Guatemala*, Article 376; Republic of Ireland: *Genocide Act 1973*, s. 2; Israel: *The Crime of Genocide (Prevention and Punishment) Law (1950)*, s. 1; Italy: *Law on Genocide 1967*, Articles 1-5; Mexico: *Código Penal Federal 1931*, Article 149-bis (as amended in 1967); The Netherlands: *Genocide Convention Implementation Act 1964*, Article 1; Romania: *Penal Code 1969*, Article 356; Seychelles: *Genocide Act of 1969*, s. 1; Tonga: *An Act to Give Effect to the Convention on the Prevention and Punishment of the Crime of Genocide 1969*, s. 2; United Kingdom: *Genocide Act 1969*, s. 1; Justice Judgement (the United States Military Tribunal stated that the UN General Assembly’s recognition of genocide as an international crime in Resolution 96(I) was “persuasive evidence of the fact” and entered convictions for genocide. See pp. 983, 1156). Some states, such as Belgium, France and Greece, which were parties to the Genocide Convention considered that the legislation in force was deemed sufficient to ensure the prevention and punishment of the crime of genocide. See UN Doc. E/CN.4/Sub.2/416, Study of the Question of the Prevention and Punishment of the Crime of Genocide, 4 July 1978, paras 497-498.

right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations.²³⁴³

788. The ICJ accordingly found that the principles underlying the Genocide Convention are “recognized by civilized nations as binding on States, even without any conventional obligation”.²³⁴⁴ The ICJ further found that the Genocide Convention is intended to be “definitely universal in scope”.²³⁴⁵ Subsequently, in 1970 the ICJ clarified that the *erga omnes* obligation of States to protect against genocide had “entered into the body of general international law”.²³⁴⁶ Further, in 1970 the General Assembly adopted a resolution noting that no statute of limitations shall apply to the crime of genocide “even if such acts do not constitute a violation of the domestic law of the country in which they were committed”.²³⁴⁷ The Chamber accordingly finds that genocide was established as a crime under customary international law by 1975.²³⁴⁸

789. With respect to the foreseeability and accessibility of genocide, the Chamber takes into account the customary status and gravity of the crime, the fact that Cambodia acceded to the Genocide Convention without reservation in 1950 and the positions held by the Accused as members of Cambodia’s governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that genocide was punishable as a crime by 1975.

9.3.2. *Constitutive Elements of Genocide*

9.3.2.1. *The targeted groups*

790. Article 4 of the ECCC Law and Article 2 of the Genocide Convention protect national, ethnical, racial and religious groups from acts committed with intent to destroy

²³⁴³ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ, Advisory Opinion, 28 May 1951 (ICJ Reports 1951), p. 12.

²³⁴⁴ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ, Advisory Opinion, 28 May 1951 (ICJ Reports 1951), p. 12.

²³⁴⁵ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ, Advisory Opinion, 28 May 1951 (ICJ Reports 1951), p. 12.

²³⁴⁶ *Belgium v. Spain*, ICJ, Judgement, 5 February 1970 (ICJ Reports 1970), p. 32.

²³⁴⁷ Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Preamble and Article 1 of 26 November 1968 (*entered into force* 11 November 1970).

²³⁴⁸ The Chamber notes that this finding is supported by the recent analysis of the customary status of genocide by the European Court of Human Rights, which, found that “the crime of genocide was clearly recognised as a crime under international law” by 1953. See *Vasiliaskas v. Lithuania*, ECtHR, Judgement, Application No. 35343/05, 20 October 2015, paras 168, 172.

the group in whole or in part.²³⁴⁹ In this case, the Closing Order identifies the Cham group as an “ethnic and religious group that distinguishes itself as such, and is identified as such by others” and the Vietnamese group as an “ethnic and national group, who may also have been considered as a racial group by the CPK”.²³⁵⁰

791. The Co-Prosecutors make detailed submissions on the definitions of national, ethnic, racial and religious groups respectively.²³⁵¹ They submit that attempting to differentiate each of the protected groups “on the basis of scientific criteria” would be inconsistent with the object and purpose of the Genocide Convention.²³⁵² The Co-Prosecutors further submit international courts have adopted a flexible approach to fitting targeted populations into four categories of protected groups.²³⁵³ No other Parties made any relevant submissions with respect to the precise definition of the four protected groups.²³⁵⁴

792. The Chamber notes that the 1948 Genocide Convention does not specifically define the four protected groups.²³⁵⁵ While some early jurisprudence of the *ad hoc* tribunals provided certain definitions of the specific features of each of the protected groups,²³⁵⁶ most cases have since focused on the object and purpose of the Genocide Convention and favoured a case-by-case assessment of whether a specific group was

²³⁴⁹ The Chamber notes that according to the *travaux préparatoires* there was discussion on including other groups such as political, linguistic and economic groups under Article II of the Genocide Convention. However, those groups were finally excluded from the protections found in the Genocide Convention. See UN Doc. E/447; UN Doc. A/C.6/214, 4 October 1948; UN Doc. A/C.6/SR.69; UN Doc. A/C.6/SR.75; UN Doc. A/C.6/SR.74; UN Doc. A/C.6/SR.128: The Genocide Convention – *The Travaux Préparatoires*, H. Abtahi and P. Webb, Martinus Nijhoff Publishers, 2008. See also, The UN Genocide Convention – A Commentary (Paola Gaeta ed., 2009), pp. 116-117.

²³⁵⁰ Closing Order, paras 1336, 1343.

²³⁵¹ Co-Prosecutors’ Closing Brief, paras 91-95.

²³⁵² Co-Prosecutors’ Closing Brief, para. 88.

²³⁵³ Co-Prosecutors’ Closing Brief, para. 91.

²³⁵⁴ The NUON Chea Defence acknowledges that the “Vietnamese group” in accordance with the Closing Order should be interpreted as “encompassing the ethnic, national and racial group”. See NUON Chea Closing Brief, para. 696.

²³⁵⁵ The Chamber notes that it is clear from the *travaux préparatoires* to the Genocide Convention, that as early as the Draft Convention on the Crime of Genocide in June 1947, racial, national and religious groups were intended to be included in the categories of protected groups without expressly defining the meaning of those terms. See Secretary General’s Draft Convention on the Crime of Genocide, UN Doc. E/447. These categories of protected persons were included in the final wording of the Genocide Convention. Furthermore, ethnic groups were also included following a vote without a clear definition of that term either. See UN Doc. A/C.6/SR.73; UN Doc. E/AC.25/SR.10; UN Doc. A/C.6/SR.74; UN Doc. A/C.6/SR.75; The Genocide Convention – *The Travaux Préparatoires*, H. Abtahi and P. Webb, Martinus Nijhoff Publishers, 2008. See also, The UN Genocide Convention – A Commentary (Paola Gaeta ed. 2009), pp. 114-116.

²³⁵⁶ *Akayesu* Trial Judgement, paras 512-515; *Kayishema and Ruzindana* Trial Judgement, para. 98.

protected.²³⁵⁷ In the absence of generally accepted and precise definitions of the protected groups, the *ad hoc* tribunals have concluded that “[e]ach of these concepts must be assessed in the light of a particular political, social and cultural context”.²³⁵⁸ The Trial Chamber finds that this approach accords with the object and purpose of the Genocide Convention, which concerned “the destruction of a race, tribe, nation, or other group with a particular positive identity” and the “denial of the right of existence of entire human groups”.²³⁵⁹ Accordingly, the Chamber will assess on the facts of the case whether the Cham and Vietnamese respectively fall within the four categories of protected groups under the Genocide Convention.

793. In the determination of what constitutes a protected group, the Chamber notes that the group must have a particular distinct identity and be defined “as such” by its common characteristics rather than a lack thereof. A protected group cannot be defined by negative criteria.²³⁶⁰

794. The NUON Chea Defence submits that there must be objectively verifiable elements to membership in a group and that a perpetrator’s subjective perception that an individual is a member of the protected group is insufficient on its own to establish membership of the group.²³⁶¹ The Co-Prosecutors similarly submit that both objective and subjective criteria are to be taken into account in determining what constitutes a protected group.²³⁶² The KHIEU Samphan Defence submits that the Chamber should adopt an objective approach to the determination of what constitutes a protected group,

²³⁵⁷ *Krstić* Trial Judgement, paras 555-556 (finding that the “preparatory work of the Convention shows that setting out such a list was designed to describe a single phenomenon, roughly corresponding to what was recognised, before the second world war, as “national minorities”, rather than to refer to several distinct prototypes of human groups. To attempt to differentiate each of the named groups on the basis of scientifically objective criteria would thus be inconsistent with the object and purpose of the Convention”); *Brđanin* Trial Judgement, para. 682. *See also*, *Karadžić* Trial Judgement, para. 541; *Popović et al.* Trial Judgement, para. 809; *Tolimir* Trial Judgement, para. 735; *Jelisić* Trial Judgement, para. 70; *Semanza* Trial Judgement, para. 317; *Muvunyi* Trial Judgement, para. 484.

²³⁵⁸ *Rutaganda* Trial Judgement, para. 56; *Krstić* Trial Judgement, para. 557 (finding that a “group’s cultural, religious, ethnical or national characteristics must be identified within the socio-historic context which it inhabits”).

²³⁵⁹ *Stakić* Appeal Judgement, paras 21-22.

²³⁶⁰ *Stakić* Appeal Judgement, paras 20-28; *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), paras 191-194. The Chamber notes that the phrase “as such” does not appear in the Khmer version of the applicable law.

²³⁶¹ NUON Chea Closing Brief, para. 708.

²³⁶² Co-Prosecutors’ Closing Brief, paras 90.

based on objective criteria and interpreting the Genocide Convention through its *travaux préparatoires*.²³⁶³

795. The Chamber notes that, in determining what constitutes a protected group, the *ad hoc* tribunals have taken into account subjective factors including the way in which the perpetrator stigmatises the victims or the way in which the victims perceive themselves.²³⁶⁴ The Trial Chamber finds that such factors are relevant and shall be taken into account. However, it considers that the subjective element alone is insufficient to establish membership of the protected group,²³⁶⁵ and finds that both objective and subjective criteria may be taken into account. An analysis which focuses on the objective criteria is consistent with the purpose of the Genocide Convention which was to protect relatively stable and permanent groups.²³⁶⁶

9.3.2.2. *Actus reus*

796. The *actus reus* of genocide, as relevant to the scope of the charges in Case 002/02, is limited to the killing members of the group.²³⁶⁷ The requisite elements of “killing” are equivalent to the elements of murder,²³⁶⁸ set out above.²³⁶⁹ The Chamber finds that in order to establish the *actus reus* for genocide it is not required for there to be a “numerical assessment of the number of people killed” nor does it have a “numeric threshold”.²³⁷⁰ The *actus reus* must in fact target a member or members of a group on the basis of their group membership.²³⁷¹

²³⁶³ KHIEU Samphan Closing Brief, paras 1825-1827.

²³⁶⁴ *Stakić* Appeal Judgement, para. 25; *Rutaganda* Trial Judgement, para. 56.

²³⁶⁵ *Stakić* Appeal Judgement, para. 25; *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), para. 191.

²³⁶⁶ *Akayesu* Trial Judgement, para. 511; *Rutaganda* Trial Judgement, para. 57. The Chamber notes that these cases had regard to the *travaux préparatoires* of the Genocide Convention, which noted that certain groups such as political and economic groups were excluded from protection because they were considered to be “mobile” which were joined through “individual voluntary commitment”.

²³⁶⁷ Closing Order, paras 1335-1349. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

²³⁶⁸ *Kayishema and Ruzindana* Appeal Judgement, paras 150-151; *Blagojević and Jokić* Trial Judgement, para. 642.

²³⁶⁹ *See above*, Section 9.1.1: Crimes Against Humanity: Murder.

²³⁷⁰ *Karadžić* Rule 98bis Appeal Judgement (AC), 11 July 2013, para. 23 citing *Karadžić* Trial Chamber Rule 98bis judgement of acquittal; *Karadžić* Trial Judgement, para. 542, fn. 1723 (noting that “the scale of atrocities is relevant to the assessment of the *mens rea* of genocide”).

²³⁷¹ Case 001 Appeal Judgement, para. 268. *See also*, *Kupreškić et al.* Trial Judgement, para. 636; *Jelisić* Trial Judgement, paras 67-68.

9.3.2.3. *Mens rea*

797. The *mens rea* of genocide is the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.²³⁷² Genocide requires not only proof of the intent to commit the underlying act, but also proof of the specific intent to destroy the group, in whole or in part.²³⁷³ This has been referred to as genocidal intent, *dolus specialis*, special intent or specific intent.²³⁷⁴ The Chamber shall refer to this as specific intent.

798. In accordance with the Genocide Convention definition, it must be established that the perpetrator had the intent to destroy a protected group “as such”.²³⁷⁵ The Co-Prosecutors submit that this phrase denotes a requirement that the group be destroyed as a separate and distinct entity and that while some individuals may live on, the “group identity” is destroyed.²³⁷⁶ No other parties made any relevant submissions in this regard. The Chamber finds that this is consistent with the object and purpose of the Genocide Convention, where the phrase “as such” emphasises that the victim of crime of genocide is not merely the person but the group itself,²³⁷⁷ and subsequent jurisprudence stating that the relevant intent is “to destroy a collection of people who have a particular group identity”.²³⁷⁸

²³⁷² Genocide Convention, Article 2. *See also*, Article 4 of the ECCC Law (the Court has jurisdiction over “the crimes of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 [...] with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group”).

²³⁷³ *Krstić* Appeal Judgement, para. 20; *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), paras 186-187.

²³⁷⁴ *Jelisić* Appeal Judgement, para. 45; *Karadžić* Trial Judgement, para. 549; *Karadžić*, Rule 98bis Appeal Judgement (AC), para. 22; *Akayesu* Trial Judgement, para. 498; *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), para. 187.

²³⁷⁵ The Chamber notes that the English and Khmer wording of Article 4 of the ECCC Law reads that “[t]he acts of genocide [...] mean any acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as: [...]”. The Chamber considers this to be a typographical error in the ECCC Law, given that Article II of the Genocide Convention refers to “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such” and that the French version of the ECCC reflects the precise wording of the French version of the Genocide Convention (« l’intention de détruire, en tout ou en partie, un groupe national, ethnique, racial ou religieux, comme tel »). *See* Genocide Convention, Article II. *See also*, Closing Order, para. 1311.

²³⁷⁶ Co-Prosecutors’ Closing Brief, para. 100; T. 15 June 2017 (Closing Statements), E1/522.1, pp. 71-72, 93.

²³⁷⁷ *Muvunyi* Trial Judgement, para. 485; *Niyitegeka* Trial Judgement, para. 410; *Akayesu* Trial Judgement, para. 521; *Brđanin* Trial Judgement, para. 698 *citing* *Sikirica et al.*, Rule 98bis Judgement, para. 89 (finding that “the ultimate victim of genocide is the group, although its destruction necessarily requires the commission of crimes against its members, that is, against individuals belonging to that group”); *Stakić* Trial Judgement, para. 521.

²³⁷⁸ *Stakić* Appeal Judgement, para. 20.

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799. The Co-Prosecutors submit that, contrary to some international jurisprudence, the intended destruction of a group need not be “physical or biological”.²³⁷⁹ They contend that a “group can be deprived of its existence through the destruction of its specific traits, or dispersal of its members, leading to the dissolution of its unity and/or collective identity in a fundamental and irremediable manner”.²³⁸⁰ By way of example, the Co-Prosecutors submit that forcibly transferring children to another group is an act of genocide that does not involve physical or biological destruction.²³⁸¹ Further, in connection with a religious group, they contend that if “you kill those who refuse to convert” and “[i]f you stop these people from practicing their religion the group [...] no longer exists”.²³⁸² In contrast, the KHIEU Samphan Defence submits that the Genocide Convention only envisages the physical and biological destruction of a group.²³⁸³ No other parties made any relevant submissions in this regard.

800. The Chamber concurs with the finding of the ICJ, based in part on the *travaux préparatoires* of the Genocide Convention, that the scope of that Convention was limited to the physical or biological destruction of the group to the exclusion of cultural genocide.²³⁸⁴ Even when underlying acts of genocide do not “directly concern the physical or biological destruction of members of the group [such as causing serious mental harm or forcible transfer of children]”, those acts must be carried out “with the intent of achieving the physical or biological destruction of the group, in whole or in part”.²³⁸⁵

801. While in the current case the *actus reus* of genocide is limited to killing members of the group, the possible combination of forced transfer and killings targeting members of the same group may be a relevant factor to take into account to assess the specific intent to destroy. In this regard the Chamber concurs with the approach taken by the ICTY “that the physical or biological destruction of a group is not necessarily the death of the group members” and “that the physical or biological destruction of the group is

²³⁷⁹ Co-Prosecutors’ Closing Brief, para. 102 referring to *Krstić* Appeal Judgement, para. 25; *Karadžić* Trial Judgement, para. 553; *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 136. See also, T. 15 June 2017 (Closing Statements), E1/522.1, pp. 93-94.

²³⁸⁰ Co-Prosecutors’ Closing Brief, para. 102.

²³⁸¹ Co-Prosecutors’ Closing Brief, para. 103.

²³⁸² T. 15 June 2017 (Closing Statements), E1/522.1, pp. 70-71.

²³⁸³ T. 23 June 2017 (Closing Statements), E1/528.1, p. 18.

²³⁸⁴ *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 136.

²³⁸⁵ *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 136.

the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself – particularly when it involves the separation of its members”, because “[i]n such cases [...] the forcible transfer of individuals could lead to the material destruction of the group, since the group ceases to exist as a group, or at least as the group it was”.²³⁸⁶

802. Where a conviction for genocide relies on the intent to destroy a protected group “in part”, the part must be a substantial part of the protected group, and the part targeted must be significant enough to have an impact on the group as a whole.²³⁸⁷

803. In order to infer specific intent, the Chamber needs to consider “whether all of the evidence, taken together, demonstrated a genocidal mental state”.²³⁸⁸ Where an inference of specific intent is drawn, it must be the only reasonable inference available on the evidence.²³⁸⁹ Factors relevant to this analysis may include the general context, the perpetration of other culpable acts systematically directed at the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts.²³⁹⁰ A Chamber can have regard to speeches made in public or in meetings to support a finding of specific intent.²³⁹¹ The existence of a plan or policy, while not a requirement of the crime of genocide, may support the inference that the perpetrator has the requisite specific intent.²³⁹²

²³⁸⁶ *Blagojević and Jokić* Trial Judgement, para. 666. See also, UN Doc. S/1994/674, Final Report of the Commission of Experts, Established Pursuant to Security Council Resolution 780 (1992), 27 May 1994, para. 94 (finding that if a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example *deported on a large scale or forced to flee*, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose) (emphasis added).

²³⁸⁷ *Krstić* Appeal Judgement, paras 8, 12.

²³⁸⁸ *Stakić* Appeal Judgement, para. 55; *Tolimir* Appeal Judgement, paras 246-247; *Karadžić*, Rule 98bis Appeal Judgement (AC), para. 56.

²³⁸⁹ *Krstić* Appeal Judgement, para. 41; *Brđanin* Trial Judgement, para. 970.

²³⁹⁰ *Jelisić* Appeal Judgement, paras 47-48; *Tolimir* Appeal Judgement, para. 246; *Popović et al.* Appeal Judgement, para. 468; *Hategikimana* Appeal Judgement, para. 133; *Brđanin* Trial Judgement, paras 971-989; *Karadžić*, Rule 98bis Appeal Judgement (AC), paras 80, 99.

²³⁹¹ *Gacumbitsi* Appeal Judgement, para. 43; *Kamuhanda* Appeal Judgement, paras 81-82; *Karadžić* Trial Judgement, para. 550.

²³⁹² *Krstić* Appeal Judgement, para. 225; *Jelisić* Appeal Judgement, para. 48. See also, *Popović et al.* Appeal Judgement, paras 430, 440.

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804. The NUON Chea Defence submits that physical perpetrators must also possess the specific intent for the crime of genocide.²³⁹³ The Co-Prosecutors submit that physical perpetrators need not possess the specific intent in situations where they are used by members of a joint criminal enterprise to commit genocide.²³⁹⁴ No other parties made any relevant submissions in this regard. The Chamber notes that only one of the sources referenced by the NUON Chea Defence, the *Brđanin* Trial Judgement, supports its view that the person who physically carried out the crime must share the specific intent for genocide with the participants in a joint criminal enterprise.²³⁹⁵ The Chamber further notes that the ICTY Appeals Chamber subsequently clarified that the focus is on the mental state of the accused and the other alleged members of the JCE and held that it is not the intent of the “physical perpetrators of the underlying alleged genocidal acts, that is determinative”.²³⁹⁶ The Chamber concurs with this approach and finds that this is consistent with the object and purpose of the Genocide Convention.

²³⁹³ NUON Chea Closing Brief, paras 851, 854, 888.

²³⁹⁴ T. 15 June 2017 (Closing Statements), E1/522.1, pp. 46-47.

²³⁹⁵ NUON Chea Closing Brief, fn. 2909 referring to *Brđanin* Trial Judgement, para. 708. The NUON Chea Defence also refers to the *Kvočka et al.* Appeal Judgement, para. 110 where the Appeals Chamber found in general that the accused for the purposes of joint criminal enterprise needed to share the intent for the underlying crime.

²³⁹⁶ *Karadžić* Rule 98bis Appeal Judgement (AC), para. 79. See also, *Karadžić* Trial Judgement, paras 549, 2591.



in DK waters after April or May 1977 at Ou Chheu Teal port as evidenced by PAK Sok; in DK waters on 19 March 1978 as reported by Division 164; in Kampong Chhnang province in 1977 (limited to the killing of PRAK Doeun's wife, children and mother-in-law as well as Vietnamese members of six other families); at Wat Khsach late 1978; and in Kratie in September 1978 (including killings of the 13 Vietnamese relatives of UCH Sunlay, including his three children, his half-Vietnamese wife and her parents and sister, as well as the wives and children of three or four other Khmer men).

13.3.10.2. Extermination

3498. The Closing Order charges the Accused with the crime against humanity of extermination of Vietnamese nationwide and, beginning in April 1977, finding that the execution of members of this group "increased progressively until it reached such a scale as to qualify as extermination".¹¹⁷⁸⁵

3499. The Chamber has found above that murder as a crime against humanity was established in relation to the intentional killings of Vietnamese civilians in Svay Rieng in 1978, Vietnamese fishermen and refugees in DK waters after April or May 1977 at Ou Chheu Teal port as evidenced by PAK Sok and on 19 March 1978 as reported by Division 164, of PRAK Doeun's relatives and Vietnamese members of six other families in Kampong Chhnang province in 1977, UCH Sunlay's relatives and family members of three or four other Khmer men in Kratie in September 1978, and the mass killing of Vietnamese civilians at Wat Khsach in late 1978.¹¹⁷⁸⁶ The Chamber is satisfied that these specific instances of killings established beyond reasonable doubt total approximately 60 deaths;¹¹⁷⁸⁷ a number which, in light of the overall evidence, is almost certainly an underestimation of the actual situation. The Chamber also recalls having found specific instances of killings of Vietnamese at S-21 and Au Kanseng.¹¹⁷⁸⁸

¹¹⁷⁸⁵ Closing Order, para. 1386.

¹¹⁷⁸⁶ See above, para. 3497.

¹¹⁷⁸⁷ The Chamber considers it reasonable to estimate a minimal average number of two people per family when the evidence was not specific and a minimal average number of five people per boat as regards killings on DK waters, which amounts to the following estimates: eight in Svay Rieng, eight in DK waters, 14 in Kampong Chhnang, 19 in Kratie and 10 at the Wat Khsach Pagoda.

¹¹⁷⁸⁸ Section 12.4: Au Kanseng Security Centre, paras 2926, 2959 (murder of a group of six Vietnamese, which is also part of the basis for extermination finding at Au Kanseng); Section 12.2: S-21 Security Centre, paras 2571 (the extermination finding at S-21 encompass killings of the Vietnamese), 2621 (hundreds of Vietnamese soldiers and civilians were killed at S-21).

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3500. The Chamber recalls that there is no minimum number of victims required to establish extermination,¹¹⁷⁸⁹ and finds that these murders satisfy the requirement of killings on a massive scale. Further, there is overwhelming evidence that these killings were all part of the same murder operation. In this regard, the Chamber takes into account the general evidence of the CPK targeting Vietnamese and specifically the CPK calls to kill Vietnamese;¹¹⁷⁹⁰ the established facts that, in each case, the Vietnamese were targeted as being members of a collective group rather than victims in their individual capacity; the fact that they were specifically screened out and separated from non-Vietnamese individuals before being killed in Kampong Chhnang, Wat Khsach and Kratie; the manner in which the killings were carried out;¹¹⁷⁹¹ and the fact that witnesses and Civil Parties in Kampong Chhnang¹¹⁷⁹² and Wat Khsach¹¹⁷⁹³ consistently testified that all Vietnamese families were killed at the time and no Vietnamese individual remained in the area afterwards.¹¹⁷⁹⁴ The Chamber is therefore satisfied that the *actus reus* of the crime against humanity of extermination is established.

3501. In relation to the intent requirement, the evidence demonstrates that all of these killings were organised and deliberate, pursuant to CPK calls to identify, expel and/or kill the Vietnamese. This shows that the perpetrators acted with the intent to kill Vietnamese on a massive scale. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of extermination is established. Accordingly, the Chamber finds that the crime against humanity of extermination is established in relation to the above outlined killings in Svay Rieng in 1978, at Kampong Chhnang in 1977, at Wat Khsach in late 1978, in Kratie in September 1978, as well as on DK waters after April or May 1977 at Ou Chheu Teal port and on 19 March 1978.

¹¹⁷⁸⁹ Section 9.1.2: Applicable Law: Crimes Against Humanity: Extermination.

¹¹⁷⁹⁰ See above, Section 13.3.5: Targeting of the Vietnamese.

¹¹⁷⁹¹ Evidence of particularly brutal executions was shown in each individual location, such as the removing of the gallbladders of victims in Wat Khsach (see above, para. 3482); children being thrown into the air and pierced with a bayonet in Kampong Chhnang (see above, para. 3467); and the smashing of babies against tree trunks in Kratie (see above, para. 3488). Evidence of an attempt to conceal the executions was also shown: pretending to be sending victims to a study session in Wat Khsach (see above, para. 3479); sending Khmer husbands away while gathering up, taking away and killing their Vietnamese relatives in Kratie (see above, para. 3488).

¹¹⁷⁹² See above, paras 3466-3467 (all the seven mixed families of PRAK Doeun's unit were gathered, the Vietnamese were separated, taken away and killed).

¹¹⁷⁹³ See above, para. 3481 ("After the Wat Khsach execution there were no more Vietnamese in the village").

¹¹⁷⁹⁴ See *Lukić and Lukić* Appeal Judgement, para. 543 ("The Appeals Chamber notes that almost the entire Muslim population of Koritnik perished in the Pionirska Street Incident.").

13.3.10.3. Deportation

3502. The Closing Order charges the Accused with the crime against humanity of deportation of a large number of Vietnamese from Prey Veng, Svay Rieng and Tram Kak district in 1975 and 1976.¹¹⁷⁹⁵

3503. The Chamber has found that from 1975 until the end of 1976, there was a nationwide policy to expel people of Vietnamese ethnicity living in Cambodia. This policy was implemented following agreements with Vietnamese authorities. Khmer Rouge cadres organised and monitored the transportation of Vietnamese people including by boats and by trucks. Khmer spouses of mixed families had to stay in Cambodia.¹¹⁷⁹⁶ The Chamber has also found that the CPK upper echelon ordered the identification of Vietnamese, as a result of which, from April 1975, lists and biographies were prepared by the lower echelons and then communicated back to the upper echelons for further action.¹¹⁷⁹⁷ It has further established that, from 1975, the CPK considered the Vietnamese ethnicity to be matrilineal and, as a result, targeted in mixed families Vietnamese mothers and their children while sparing Khmer fathers, as well as targeting Vietnamese fathers while sparing Khmer mothers and children.¹¹⁷⁹⁸ The Chamber has found that the removal of Vietnamese was witnessed in Prey Veng and Svay Rieng in 1975 and 1976.¹¹⁷⁹⁹ The Chamber is satisfied that the CPK policy publicly targeting the Vietnamese, the preparation of lists and the implementation of a matrilineal policy created a coercive environment. The Chamber therefore finds that Vietnamese leaving Prey Veng and Svay Rieng in 1975 and 1976 were forced into doing so by this threatening environment, thereby lacking any genuine choice.

3504. The Chamber is satisfied that, prior to their forced displacement from Cambodia to Vietnam, these Vietnamese individuals were living in their respective communities, some for generations. The Chamber recalls that evidence regarding the legal status of deportation victims need not be presented.¹¹⁸⁰⁰

¹¹⁷⁹⁵ Closing Order, para. 1398. Regarding the deportation of the Vietnamese from the Tram Kak district, *see* Section 10.1.13.3: Tram Kak Cooperatives: Legal Findings: Deportation.

¹¹⁷⁹⁶ *See above*, paras 3382-3386, 3389, 3414, 3434.

¹¹⁷⁹⁷ *See above*, paras 3420-3423.

¹¹⁷⁹⁸ *See above*, paras 3424-3428.

¹¹⁷⁹⁹ *See above*, paras 3436, 3439.

¹¹⁸⁰⁰ Section 9.1.4: Applicable Law: Crimes Against Humanity: Deportation, para. 677.

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3505. The witnesses and Civil Parties gave accounts of having seen, or heard of, a number of Vietnamese being gathered and evacuated and never returning to their villages throughout Prey Veng province. Specific instances of families being gathered, removed and seen leaving by boats were found in Anlung Trea village, Preaek Chrey commune, Kampong Leav district, Pou Chentam village, Svay Antor commune, Prey Veng district and Angkor Yos village, Preaek Anteah, Prey Veng district.¹¹⁸⁰¹ The Chamber also found that it was very likely that some Vietnamese people were deported from Svay Rieng to Vietnam but that the available evidence did not meet the requisite standard to establish specific instances of forcible displacements of Vietnamese beyond reasonable doubt in Svay Rieng province from 1975. The Chamber is satisfied that the *actus reus* of the crime against humanity of deportation is established.

3506. Although the Chamber has found that a state of armed conflict existed between Cambodia and Vietnam from at least April 1975, this does not provide a lawful basis on which to coercively transfer civilians across the border.

3507. Recalling that there existed a policy from 1975 until the end of 1976 to expel people of Vietnamese ethnicity living in Cambodia,¹¹⁸⁰² the Chamber is satisfied that the displacements of the Vietnamese across the Cambodian border outlined above were intentional. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of deportation is established. Accordingly, the Chamber finds that the crime against humanity of deportation is established in relation to the large number of Vietnamese expelled from Prey Veng province in 1975 and 1976.

13.3.10.4. Persecution on racial grounds

3508. The Closing Order charges the Accused with the crime against humanity of persecution on racial grounds of Vietnamese in Prey Veng, Svay Rieng, Tram Kak Cooperatives, S-21, Kraing Ta Chan and Au Kanseng,¹¹⁸⁰³ throughout the DK period and on the basis that Vietnamese people were “deliberately and systematically identified and targeted due to their perceived race” as they were perceived by the CPK to be “racially distinct from Cambodian people, based on biological and particularly

¹¹⁸⁰¹ See above, paras 3430-3436.

¹¹⁸⁰² See above, para. 3503.

¹¹⁸⁰³ For the discussion of persecution on racial grounds in Tram Kak Cooperatives, S-21, Kraing Ta Chan and Au Kanseng, see Sections 10.1.13.8, 12.2.24.1.7, 12.3.12.7 and 12.4.7.6, respectively.

matrilineal descent".¹¹⁸⁰⁴ The particular acts amounting to persecution must be expressly charged.¹¹⁸⁰⁵ On the basis of the Closing Order and the Severance Decision, the acts charged with regard to the treatment of the Vietnamese are limited to expulsions from Cambodian territory to Vietnam, arrest, detention and killings of Vietnamese and, from April 1977, mass gathering and killings in Prey Veng and Svay Rieng.¹¹⁸⁰⁶

3509. The Chamber has already found that the crime against humanity of persecution on racial grounds was established in the Tram Kak Cooperatives in 1975 until mid-1976, based on acts of deportation of Vietnamese to Vietnam,¹¹⁸⁰⁷ at S-21 Security Centre based on acts of arrests, detention and killings of Vietnamese;¹¹⁸⁰⁸ and at Au Kanseng based on acts of arrest and execution of Vietnamese.¹¹⁸⁰⁹ It was not satisfied that persecution on racial grounds was established at Kraing Ta Chan.¹¹⁸¹⁰ It here considers the conduct charged as persecution on racial grounds of Vietnamese in Prey Veng and Svay Rieng.

3510. The Chamber has found that, from April 1975, the Vietnamese were identified by the CPK through the creation of lists,¹¹⁸¹¹ and that mixed families were targeted on the basis of matrilineal ethnicity.¹¹⁸¹² The Chamber has also found that the crime against humanity of deportation of a large number of Vietnamese from Prey Veng to Vietnam in 1975 and 1976 was proved beyond reasonable doubt and further established that displacements of Vietnamese, some of which were preceded by arrests, took place in Prey Veng between 1977 and 1979, and that the Vietnamese who were taken away never returned.¹¹⁸¹³ The Chamber has also found that Vietnamese civilians were killed in Svay Rieng in 1978.¹¹⁸¹⁴

3511. The Chamber is satisfied that the Vietnamese living in Cambodia were sufficiently discernible as a racial group to determine whether consequences occurred

¹¹⁸⁰⁴ Closing Order, para. 1422.

¹¹⁸⁰⁵ Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds.

¹¹⁸⁰⁶ Closing Order, para. 1422; Case 002 Additional Severance Decision Annex, para. 5(ii)(b).

¹¹⁸⁰⁷ Section 10.1.13.8: Tram Kak Cooperatives: Legal Findings: Persecution on Racial Grounds.

¹¹⁸⁰⁸ Section 12.2.24.1.7: S-21 Security Centre: Legal Findings: Persecution on Racial Grounds.

¹¹⁸⁰⁹ Section 12.4.7.6: Au Kanseng Security Centre; Legal Findings: Persecution on Racial Grounds.

¹¹⁸¹⁰ Section 12.3: Kraing Ta Chan Security Centre; Legal Findings: Persecution on Racial Grounds.

¹¹⁸¹¹ See above, para. 3423.

¹¹⁸¹² See above, para. 3428.

¹¹⁸¹³ See above, para. 3451.

¹¹⁸¹⁴ See above, paras 3452-3455.

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for this group, and that the victims of these acts were in fact Vietnamese.¹¹⁸¹⁵ The acts were accordingly discriminatory in fact. Acts committed against this group variously infringed upon and violated fundamental rights and freedoms pertaining to movement,¹¹⁸¹⁶ personal dignity,¹¹⁸¹⁷ liberty and security,¹¹⁸¹⁸ freedom from arbitrary or unlawful arrest,¹¹⁸¹⁹ a fair and public trial and equality before the law as enshrined in customary international law.¹¹⁸²⁰

3512. In determining whether these acts reach the level of seriousness required for the crime of persecution, the Chamber considers the deportation of a large number of Vietnamese from Prey Veng to Vietnam in 1975 and 1976 and the arrests of Vietnamese families in Prey Veng and Svay Rieng between 1977 and 1979, in the context that they were displaced from their homes and never returned, cumulatively with the killings of Vietnamese civilians in Svay Rieng in 1978, as well as all of the other acts of persecution already established at other crime sites. Together, these acts cumulatively rise to the requisite level of seriousness such as to constitute persecution. The Chamber is therefore satisfied that the *actus reus* of the crime against humanity of persecution on racial grounds is established.

3513. With respect to the *mens rea*, the Chamber notes the systematic targeting of Vietnamese individuals due to their perceived race, as evidenced by the preparation of lists, the matrilineal policy applied to mixed families, and contemporaneous publications in the *Revolutionary Flag* and speeches of leading CPK figures targeting the Vietnamese. The Chamber is satisfied on this basis that Vietnamese were intentionally targeted in Prey Veng and Svay Rieng on the basis of their race and finds that the specific intent to discriminate on racial grounds is established. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of persecution on racial grounds is established. Accordingly, the Chamber finds that the crime against

¹¹⁸¹⁵ Section 16.3.2.1.3.5: CIA, KGB and “*Yuan*” (Vietnamese) Agents.

¹¹⁸¹⁶ As evidence of the state of customary international law, *see* UDHR, Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5).

¹¹⁸¹⁷ As evidence of the state of customary international law, *see* UDHR, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Arts 5-6. *See also*, *Kordić and Čerkez* Appeal Judgement, para. 106.

¹¹⁸¹⁸ As evidence of the state of customary international law, *see* UDHR, Art. 3; ICCPR, Arts 6, 9(1); ECHR, Arts 2, 5; ACHR, Arts 4, 7.

¹¹⁸¹⁹ As evidence of the state of customary international law, *see* UDHR, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

¹¹⁸²⁰ As evidence of the state of customary international law, *see* UDHR, Arts 6, 10; ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

humanity of persecution on racial grounds is established in relation to Vietnamese in Prey Veng and Svay Rieng.

13.3.10.5. *Genocide*

3514. The Closing Order charges the Accused with the crime of genocide by systematically killing members of the Vietnamese group, qualified as “an ethnic and national group, who may also have been considered as a racial group by the CPK”, with the intent to destroy, in whole or in part, the Vietnamese group as such.¹¹⁸²¹ The Chamber is satisfied that the Vietnamese constituted a racial, national and ethnic group at the relevant time, and thus a protected group.¹¹⁸²²

3515. The Chamber has found that a number of Vietnamese were among the victims of the crimes against humanity of murder and extermination at Au Kanseng Security Centre¹¹⁸²³ and S-21 Security Centre.¹¹⁸²⁴ The Chamber has also found that the crimes against humanity of murder and extermination of Vietnamese are established in Svay Rieng in 1978, in Kampong Chhnang in 1977, Wat Khsach in late 1978 and Kratie in September 1978, as well as on DK waters after April or May 1977 at Ou Chheu Teal port and on 19 March 1978.¹¹⁸²⁵

3516. The Chamber finds that these killings were systematically organised and directed against the Vietnamese. The Chamber is satisfied that, in each case, Vietnamese were targeted not as individuals but on the basis of their membership in the group. Vietnamese were arrested and detained before disappearing in Svay Rieng because of their perceived ethnicity, boats were targeted on DK waters because they were identified as being Vietnamese, and as a result Vietnamese civilians were killed, and Vietnamese in Kampong Chhnang, Wat Khsach and Kratie, were specifically screened out and separated from non-Vietnamese individuals before being killed, thus showing that members of the group were deliberately killed on the basis of their group membership. The Chamber is therefore satisfied that the *actus reus* of the crime of genocide by killing is established.

¹¹⁸²¹ Closing Order, paras 1343, 1345.

¹¹⁸²² See above, para. 3419.

¹¹⁸²³ Section 12.4: Au Kanseng Security Centre, paras 2959, 2994-2999.

¹¹⁸²⁴ Section 12.2: S-21 Security Centre, paras 2560-2571.

¹¹⁸²⁵ See above, paras 3497, 3501.

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3517. Turning to the *mens rea*, the Chamber has found that the CPK specifically targeted Vietnamese as a group, including civilians, throughout the DK period.¹¹⁸²⁶ In particular, it has found that POL Pot's "One against 30 policy" specifically targeted Vietnamese armed forces as well as civilians.¹¹⁸²⁷ The Accused were found to have lectured at or attended political training sessions at which the Vietnamese or Vietnamese "agents" were labelled as enemies.¹¹⁸²⁸ KHIEU Samphan repeatedly and publicly referred to Vietnam in inflammatory terms,¹¹⁸²⁹ and NUON Chea publicly stated that the Cambodian people and RAK had "crushed the Vietnamese strategy of 'Indochina Federation' aiming at swallowing the Kampuchea's territory and exterminating the [*sic*] Kampuchea's race".¹¹⁸³⁰ The Chamber was further satisfied that the Vietnamese were identified by the CPK through the creation of lists,¹¹⁸³¹ and that mixed families were targeted on the basis of matrilineal ethnicity.¹¹⁸³²

3518. The Chamber finds that CPK internally and publicly targeted the Vietnamese as a group through contemporaneous documents and speeches identifying them as "poisonous foreigners" from the early stages of the DK regime and calling for their expulsion from Cambodia until late 1976, as well as, from April 1977, their destruction;¹¹⁸³³ through the creation of lists and following a matrilineal policy designed to "dig up the roots" of the Vietnamese,¹¹⁸³⁴ and that these instructions were disseminated widely. The Chamber is satisfied that the actions of the physical perpetrators in the above instances of killings demonstrate the specific intent to destroy the Vietnamese group, as such. The Chamber is therefore satisfied that the *mens rea* of the crime of genocide by killing is established.

3519. In light of the above, the Chamber finds that the crime of genocide by killing members of the Vietnamese group is established.

¹¹⁸²⁶ See above, para. 3416. See also, Section 12.1: S-21 Security Centre, paras 2167-2168, 2174-2175.

¹¹⁸²⁷ See above, paras 3377-3381.

¹¹⁸²⁸ See above, fn. 11436.

¹¹⁸²⁹ See above, paras 3385, 3390, 3391, 3396.

¹¹⁸³⁰ IENG Sary Speech, E3/199, 3 September 1978, p. 4, ERN (En) 00065915.

¹¹⁸³¹ See above, para. 3497.

¹¹⁸³² See above, para. 3501.

¹¹⁸³³ See above, para. 3416.

¹¹⁸³⁴ See above, paras 3425, 3428.

Annex 329

The Commission for Historical Clarification, *Guatemala Memory of Silence, Report of the Commission for Historical Clarification: Conclusions and Recommendations* (February 1999)

members of the Army or of Civil Patrols systematically committed acts of extreme cruelty, including torture and other cruel, inhuman and degrading actions, the effect of which was to terrorise the population and destroy the foundations of social cohesion, particularly when people were forced to witness or execute these acts themselves.

115. The CEH concludes that, among those acts perpetrated with the intent to destroy, in whole or in part, numerous Mayan groups, are included many actions committed which constituted “serious bodily or mental harm to members of the group” (Article II.b of the Convention). The resulting destruction of social cohesion of the group, typical of these acts, corresponds to the intent to annihilate the group, physically and spiritually.

116. The investigation has also proved that the killings, especially those that were indiscriminate massacres, were accompanied by the razing of villages. This was most significant in the Ixil region, where between 70% and 90% of villages were razed. Also, in the north of Huehuetenango, in Rabinal and in Zacualpa, whole villages were burnt, properties were destroyed and the collectively worked fields and harvests were also burnt, leaving the communities without food.

117. Furthermore, in the four regions which were the object of this special investigation, people were also persecuted during their displacement. The CEH has established that in the Ixil area, displaced persons were bombed. Similarly, those who were captured or gave themselves up voluntarily continued to be the object of violations, in spite of being under the Army’s absolute control.

118. The CEH concludes that some of the acts mentioned in the two previous paragraphs constitute the “deliberate infliction on the group of conditions of life” that could bring about, and in several cases did bring about, “its physical destruction in whole or in part” (Article II. c. of the Convention).

119. The CEH’s analysis demonstrates that in the execution of these acts, the national military structures were co-ordinated to allow for the “effective” action of soldiers and members of Civil Patrols in the four regions studied. Military plan *Victory 82*, for example, established that “the mission is to annihilate the guerrillas and parallel organisations”; the military plan *Firmness 83-1* determined that the Army should support “their operations with a maximum of PAC members, in order to raze all collective works...”

120. The above has convinced the CEH that acts committed with the intent to destroy, in whole or in part, numerous groups of Mayans were not isolated acts or excesses committed by soldiers who were out of control, nor were they the result of possible improvisation by mid-level Army command. With great consternation, the CEH concludes that many massacres and other human rights violations committed against these groups obeyed a higher, strategically planned policy, manifested in actions which had a logical and coherent sequence.

121. Faced with several options to combat the insurgency, the State chose the one that caused the greatest loss of human life among non-combatant civilians. Rejecting other options, such as a political effort to reach agreements with disaffected non-combatant civilians, moving of people away from the conflict areas, or the arrest of insurgents, the State opted for the annihilation of those they identified as their enemy.

Annex 330

Kadalan Press Network, *Refugee testimonies contradict Burmese government version of the August 25 “terrorist attacks”*: An Investigative Analysis by Kadalan Press Network
(31 October 2017)

October 31, 2017

Refugee testimonies contradict Burmese government version of the August 25 “terrorist attacks”

An investigative analysis by Kaladan Press Network

Since the start of the ongoing large-scale “clearance” operation against the Rohingya population by Burmese security forces, the Burmese government’s Information Committee and state media have consistently reported that the operation is a response to over 30 coordinated “extremist terrorist” attacks against police stations and outposts in northern Rakhine State on August 25, 2017.

The government version of these attacks, allegedly timed by the Arakan Rohingya Salvation Army (ARSA) to undermine the August 24 release of the final Kofi Annan Commission report, has been accepted unquestioningly by Burmese and international media. Foreign embassies have condemned the attacks and expressed sympathy with the Burmese government for losses sustained. Analysts have also been quick to conclude that the scale of the ARSA attacks, across the length of Maungdaw Township, as well as in Rathedaung and Buthidaung, is evidence of support from international Islamic terrorist groups.

However, interviews by Kaladan Press with new refugee arrivals in Bangladesh throw into serious doubt the government’s version of events. Their testimony provides evidence that the military clearance operation was carefully pre-planned, and that many, if not all, of the ARSA attacks may simply have been fabricated as a pretext for the assault.

Refugees described a state of extreme security lockdown in northern Rakhine prior to August 25, with thousands of Burmese troops deployed to reinforce Border Guard Police posts, each already guarded by up to a hundred armed, combat-ready police personnel. Naval vessels were also brought in along the coast, with troops patrolling the shore.

The security forces’ immediate, coordinated response on August 25 in attacking and destroying Rohingya villages in a similar pattern throughout the length of northern Rakhine, suggests strongly that the operation was planned in advance and authorized at the highest levels. Even villages where no alleged ARSA attacks took place were invaded and razed by security forces early on August 25.

All refugees testified there was absolutely no attempt to identify “terrorists” during the clearance operations. Heavy weapons were fired at villages, including from navy ships off the Rathedaung coast. Civilians were shot at indiscriminately, elderly and children slaughtered, women raped, and villages deliberately emptied and burned down.

Kaladan Press interviewed refugees from fifteen locations allegedly attacked by ARSA, and none had seen any sign of ARSA militants carrying out attacks. Most said they had simply heard gunfire from the direction of police posts early in the morning of August 25, and then security forces began indiscriminately attacking their communities. Some had heard no sound at all from the police posts allegedly attacked.

Refugees were incredulous that groups of militants could have approached any of the police posts supposedly attacked, given the level of military security, and the existing severe restrictions on Rohingya movements at the village level. Refugees from Ale Than Kyaw, Udaung and Myinlut, south of Maungdaw - where thousands of ARSA militants are alleged to have attacked police posts – said this was impossible, given the hundreds of troops on security

alert around their villages, and the proximity of the large new Udaung military base at the foot of the Mayu mountain range, housing over 1,000 troops.

The testimony of over 60 new refugee arrivals has been compiled in this analysis paper, laying out evidence that challenges the Burmese government's version of the events of August 25 and their portrayal of ARSA as a dangerous terrorist threat. With the entire brutal clearance operation predicated upon the alleged ARSA attacks, it is time to start asking questions about what really happened on August 25.

Large-scale Burmese military build-up in northern Rakhine prior to August 25

The reports that ARSA attacked 30 "police posts" on August 25 give the misleading impression that ARSA targeted poorly defended public security outposts. In fact, these were posts of the Border Guard Police (BGP), a military-trained force comprising thousands of armed, combat-ready personnel (who wear blue uniforms, usually camouflaged, distinct from the plain green uniforms of the Burma Army). The posts allegedly attacked included larger well-fortified BGP police stations, manned by up to 100 BGP members, as well as smaller, but also well-defended, BGP outposts.

The BGP posts were not only guarded by their own armed personnel, but also by regular Burma Army troops, thousands of which had been deployed throughout the northern Rakhine border area shortly before August 25. Naval forces were also deployed along the Rathedaung coast.

Refugees interviewed by Kaladan Press provided information about existing troop strength and increased troop deployment in and near areas allegedly attacked by ARSA in Buthidaung, Maungdaw and Rathedaung on August 25.

Thousands of troops deployed to Buthidaung

There are numerous permanent army bases around Buthidaung township, but the two bases closest to alleged ARSA attack sites on August 25, are Battalion 552 (about 2 miles east of the Taung Bazar BGP post allegedly attacked), and 564 (about a mile southeast of the Phaungtawpyin BGP post allegedly attacked). The 552 camp itself was also allegedly attacked by ARSA.

In the weeks leading up to August 25, according to a Rohingya dock worker from the town of Buthidaung, thousands of Burma Army troops arrived by boat from the south along the Mayu River. They arrived at night, in boatloads of hundreds at a time. He thought they were coming from the Burma Army base in Nyaung Chaung (southern Buthidaung) as well as from Rathedaung, and other areas of Rakhine State via Sittwe. Some of them were likely mobile strike forces of Infantry Divisions 33 and 99 (based in Sagaing and Meiktila respectively, and notorious for rights violations in northern Burma), which according to media reports had been flown to Sittwe on August 10, and which were seen by Kaladan Press sources arriving by road – From Sittwe through Rathedaung crossing the ferry to Maungdaw - in Maungdaw in mid-August.

Villagers from Taung Bazar said there were usually about 200 troops at the nearby 552 army camp (allegedly attacked by ARSA) and that five trucks of reinforcements had arrived from Buthidaung to the camp early in the morning of August 23. The same day, about 70 troops had walked from the 552 camp to the Taung Bazar middle school, and set up camp there. Some had also installed themselves in the local madrassa. This was in addition to the existing large BGP camp at Taung Bazar market, where about 100 BGP members were permanently stationed.

A villager living near Phaungtawpyin said there were usually about 200 soldiers at the Battalion 564 camp. He said that after the October 2016 violence, a new BGP camp had been set up in the Phaungtawpyin high school, where about 15 BGP troops stayed. On August 24, about 15 Burma Army troops had come from Battalion 564 to reinforce this BGP camp, and the same evening, about 30 more Burma Army troops had come from Battalion 552 to join the camp, thereby increasing fourfold the usual troop strength guarding the Phaungtawpyin BGP camp.

The two police posts in Buthidaung allegedly attacked by ARSA had thus been significantly reinforced from the nearby Burma Army camps just days before August 25.

In the morning of August 25, about 100 troops walked from the direction of the large Tactical Operations Command (TOC), west of Buthidaung, and laid land mines near Sin Oo Pyin – one mile north of the Buthidaung town - and began shooting villagers, showing that troops in the TOC were already in place to launch operations.

Troop and naval deployment on the Rathedaung coast

Kaladan Press has interviewed several refugees from Basara village, near Cheinkali, on the western Rathedaung coast, about two miles south of the Koetankauk police post allegedly attacked by ARSA on August 25.

The refugees said that there was a BGP post at Cheinkali, where Burma Army troops were stationed, and where more were deployed about five days before August 25, at the same time that about five large Navy boats were seen arriving from the south, off the shore close to their village. Villagers were forbidden from accessing the shore to fish, and naval and army personnel were seen patrolling on foot along the shore. The naval vessels remained until August 25 (when they were seen firing shells towards the shore).

Troop deployment throughout Maungdaw

There are two permanent military camps in Maungdaw: Waesali Natala village near the “3-Mile” post, east of Maungdaw on the road to Buthidaung, and one at Udaung, about 10 miles south of Maungdaw. Several thousand troops are based at these two camps. In the town of Maungdaw, a temporary army camp had been set up in 2016 in the Dhamma Yone monastery compound, housing over 100 troops and same number are stationed at State Middle School, near Clock tower of Maungdaw- LIBs 345.

A refugee from Udaung reported being told by a local administration officer that the new army camp at Udaung, set up about four years ago but still under construction, housed 2,500 troops. He said he had seen about 1,000 troops there. He had once delivered food to workers inside the camp, and said it was heavily fortified, with a large concrete lined “cave” built into the Mayu mountainside. Although the Udaung military camp was not listed by the government as having been attacked by ARSA on August 25, a police post in Udaung “Natala” village (housing non-Rohingya villagers) only half a mile away was listed, raising questions about why a target so close to a huge military installation should have been chosen.

Refugees from northern and southern Maungdaw described how hundreds of troops had been deployed to reinforce BGP camps in their areas before August 25, many on August 24 itself. This included areas allegedly attacked by ARSA, as well as those where no attacks were alleged to have taken place.



The new military camp at Udaung, south of Maungdaw

The BGP Region 7 headquarter camp in Ale Than Kyaw, about 10 miles south of Maungdaw town, usually manned by about 25 police, had been reinforced with about 200 Burma Army troops by August 25. About 100 of these troops had arrived by truck and on foot from Maungdaw on August 24. Nearby at Myinlut, villagers said that over 100 troops from the Udaung Army camp had reinforced the BGP camp by August 25.

Further south, at Inn Din, refugees described how on August 24 about 200 combat-ready Burmese troops had arrived on foot at the BGP post in their village, usually manned by about 50 BGP personnel. A further 60 troops were also seen arriving on foot from the hills in the east in the morning of August 25.

In northern Maungdaw, refugees from Kyein Chaung said that the BGP post in their village, already housing about 100 Burma Army troops, was reinforced by another 100 troops in the evening of August 24, who arrived by truck from Maungdaw.

About eight miles further north, the BGP post in Tamantha, usually staffed by about 10 police, was reinforced by about 100 Burma Army troops on August 24.

Refugees from Kuntheepin, about two miles south of Taungpyo (on the Bangladesh border only two miles east of Kutupalong refugee camp), said that about 5 trucks of army troops came from Taungpyo came to their village early on August 25, and began shelling and shooting at them. This means that at least 100 troops were ready and waiting in Taungpyo (the location of the BGP Region 3 headquarters) by August 25.

Existing security lockdown for Rohingya in northern Rakhine

The movement and daily activity of Rohingya in northern Rakhine was already severely restricted even before the recent troop reinforcement. For years, restrictions had been in place, requiring Rohingya to get written permission and pass multiple checkpoints to travel between village tracts (any Rohingya riding vehicles had to get down from the vehicles and walk past the checkpoints), and even to get permission to visit neighbours' houses in their own villages in the evenings (in case they were reported by informers as plotting unrest). Rohingya men were also forbidden from going out into the sea in fishing boats to exercise their traditional fishing livelihoods.

After the first brutal clearance operations by the Burmese security forces in October 2016, restrictions had worsened. Fences around house compounds were torn down, so that security forces could more easily monitor villagers' activities and quickly access their houses.

A village elder from Ngayanchaung in northern Maungdaw said that after October 2016, all long knives and long-handled farming tools (which could be used as weapons) had to be handed in to the local Border Guard Police, on penalty of fines. This had caused great difficulty for local farmers and woodcutters in carrying out their daily livelihoods.

In recent months villagers had been subjected to increased searches and spot checks by security personnel. A refugee from Laungdon in northern Maungdaw, said her husband and thirteen other villagers had been arrested by soldiers during a spot check on the road in early August 2017. He had since disappeared.

Pressure on Rohingya to apply for National Verification Cards (NVC), which designate them as foreigners, had also been increased shortly before the August 25 attacks. Villagers living outside Maungdaw and trying to travel into the town to go to market were told at the checkpoints that they could only pass if they had NVC cards.

Burmese military and naval attacks launched early on August 25 against villages where there was no pretext of ARSA attacks

The ARSA attacks early on August 25 were the supposed pretext for the subsequent Burmese military operation against the "terrorists." However, Kaladan Press has interviewed refugees from eight villages who said Burmese security forces launched attacks against them in the morning of August 25, even though the government did not allege there were ARSA attacks in their villages.

One such village was Inn Din, in southern Maungdaw, where 200 Burmese Army troops had arrived at the local BGP outpost on August 24. Refugees described hearing gunshots from the BGP post firing at their village at about 3 am on August 25. BGP and Burma Army troops then came into the village, together with local non-Rohingya villagers, shooting and burning houses, causing everyone to flee. Villagers were shot and killed as they fled.

One refugee interviewed from Inn Din was a 25-year-old woman, who was 7 months pregnant and unable to run away in time. She was holding her 18-month-old baby when she ran into a BGP soldier, who pushed her over, pulled the baby from her arms, knifed it to death, and then stamped on her stomach. She crawled to the jungle and miscarried there.

Another refugee, a truck driver, who was sleeping in his truck by the roadside in Inn Din on the night of August 24, said he woke up to hear a whistle being blown at the Inn Din BGP camp at about 3 am, after which shooting began. This suggests that the whistle was a pre-arranged signal to begin the attack on the village.

Another village attacked in the morning of August 25 was Done Baik, in northern Maungdaw, where the nearby BGP post in Kyein Chaung had been reinforced by about 200 Burma Army troops. There was no ARSA attack alleged against this BGP post, but at about 10 am, security forces and local non-Rohingya villagers armed with knives surrounded Done Baik village and began setting fire to houses. As people began running away, they were shot or killed with knives. A group of about 300 villagers who had run into an empty field were cornered, and made to sit down with their hands behind their heads. About 20 young women were separated from the group and taken into empty houses by some of the troops. An hour later, these women were taken to one of the houses, locked in and then burned alive. Other villagers could hear their screams. Then they started burning the other houses, spraying the people in the field with gunfire. Out of those in the field, only about a quarter – mostly young men and boys - could run away. It is estimated that over 200 of the others, mainly women and children, died.

A villager from Nga Yan Chaung, said that the BGP at the Let Ya BGP post near their village began shooting without provocation at people coming to market in the morning of August 25. He knew of seven young men who had been killed on that day.

Other villages in northern Maungdaw where refugees described attacks by Burmese security forces early on August 25, even though the military had not alleged there were ARSA attacks in their villages, were Me Te, Thinguja Para, and Ludaing.

In Buthidaung, a refugee from Sin Oo Pyin, a mile north of Buthidaung town (and four miles south of Phaungtawpyin, where an ARSA attack was alleged by the government to have taken place), said that a column of about 100 troops approached his village from the south, at 10 am on August 25. They were seen laying land mines along the road close to their village. They then surrounded the village, and arrested four farmers coming back from their fields. When the farmers' relatives and other villagers came out to oppose this, saying "If you are going to arrest these men, then arrest all of us," the soldiers opened fire. 16 people were killed, and 24 injured.

On the Rathedaung sea coast, a woman from Basara (about one mile south of Koetankauk, alleged by the government to have been attacked by ARSA on August 25) described how guns and shells began being fired at her village at 5:15 am on August 25. She said she looked out to the sea and saw several big Navy boats firing shells ("like fireballs") in the direction of her village. She said the shells exploded and burst into flame. A shell landed near her house and her 10-year-old son was injured by shrapnel in the leg. She thinks about 20 people were killed in her village. When they ran out to the mountains, army and BGP soldiers (from the nearby Cheinkali BGP post) shot at them, and non-Rohingya villagers attacked people with knives.

No sign of ARSA members in villages where police posts were allegedly attacked

In "Breaking News" releases no. 1 and 2, dated August 25, 2017, the government's Information Committee listed details of 32 attacks on police posts and one army base, which had taken place early on August 25. (See Appendix for the full list).

Kaladan Press has spoken to refugees from fifteen of the villages or town quarters where the alleged attacks took place and none had seen any sign of ARSA members carrying out attacks. Most said they had heard sounds of gunfire coming one-sidedly from police posts early in the morning of August 25, after which their villages were attacked by Burmese security forces. Some did not even hear any sound of gunfire at the police posts before their villages were attacked.

For example, the alleged ARSA attack on the BGP's police post at Tamantha, northern Maungdaw township, was described by the government's Information Committee as follows:

“At 4:30 am (on August 25, 2017), an unidentified number of extremist terrorists attacked Tamantha police outpost in Region-2.”

According to a refugee who fled from Tamantha, there was no sign or sound of an ARSA attack early in the morning of August 25. He said that on August 24, about 100 Burmese Army troops had reinforced the BGP post, and in the morning of August 25, at 8.30 am, these troops, together with BGP forces and local militia, began breaking into and looting Rohingya shops in the market. In response, a group of about 100 local Rohingya men came out to defend their property, but they were not armed. The troops fired at them, killing at least one man, and wounding another. They then started setting fire to Rohingya houses, and large numbers of villagers started fleeing to the mountains west of the village. At least four villagers were shot and killed as they fled. That day, over 50 houses near the market section of the village were burned down. On August 28, the remaining estimated 600 Rohingya houses in the other sections of the village were burned down (even though all the Rohingya residents had already fled).

In Ale Than Kyaw, about ten miles south of Maungdaw town, the government claimed that “At 4:50 am, an unidentified number of extremist terrorists attacked Ale Than Kyaw police station in Region-8, leaving Deputy Township Immigration Officer Zar MOUNG dead. The policemen repulsed the terrorists who retreated from the scene.” According to a Burmese police lieutenant interviewed by BBC about the Ale Than Kyaw incident, “two groups of around 500 men each stormed up from the beach...but were easily driven off by police officers firing automatic weapons. Seventeen bodies were left behind.” (<http://www.bbc.com/news/world-asia-41521268>)

However, refugees from Ale Than Kyaw said there was no sign of the alleged 1,000 attackers. They said the local BGP post had been reinforced by 200 Burma Army troops, and the whole village was in security lockdown. At 11 pm on the night of August 24, one BGP and one Army officer had visited the house of the village administrative officer and demanded that “bad people” sheltering in the village be handed over, but the administrative officer had replied, “Our village is next to your camp, how can those men be here?” Early in the morning, shots were heard from the BGP post, but according to one refugee, an elderly fishing broker, the only people coming from the beach were 12 fishermen who had gone out early to fish along the shore (as fishing by boat in the sea was banned). They were shot and killed on the road from the beach, near the BGP post. After this, the troops began firing directly at the village and burning houses. Refugees estimate that about 100 people were killed.

About one and a half miles east of Ale Than Kyaw, another ARSA attack was alleged to have taken place on August 25 at Udaung (Natala) village. According to the government, “At 5:10 am, about 100 extremist terrorists attacked Udaung (Natala) outpost in Region-8, where they were met with a police repulse, prompting them to retreat at 6 am.” Refugees from Ale Than Kyaw were incredulous that a large group of ARSA could have got inside the Natala village (inhabited by Rakhine Buddhists and completely off-limits for Rohingya) and staged an attack right next to the large Udaung military base, where over a thousand troops were based.

Precisely at the time when the ARSA attack was alleged to have taken place at Udaung (Natala) village, at 5 am on August 25, residents of the Rohingya section of Udaung said that they were attacked without warning. Gunfire and shells began raining on their houses. “People were hiding, trying to make their own bunkers. I saw people being hit by bullets around me,” said an 18-year-old villager from Udaung. He said he hid in the jungle nearby until September 4th, when his house was burned down.

Another large ARSA attack allegedly took place at Myinlut, just four miles south of the Udaung military base, where the Information Committee reported that “At 4:45 am, about 1,000 extremist terrorists attacked Myinlut police station in Region-8, leaving Police Major Hein Htet Kaw and police constable Win Htike dead and one BA-94 and one .38 revolver taken.”

However, refugees from Myinlut said they had seen no sign of the 1,000 ARSA attackers. Several villagers said they heard gunshots at about 3.30 am from the direction of the BGP camp (already reinforced by over 100 troops), then at about 7 am the army (refugees said they saw only green uniforms) began sweeping through the village, shooting at villagers. Those living near the BGP camp fled to other parts of the village, or to nearby fields and mountainside. They said most of the houses in the village were burned down over the course of the next four days.

Similarly in Laungdon, northern Maungdaw, where the BGP post was allegedly attacked at 3.25 am by “extremist terrorists,” villagers said they heard some gunfire early in the morning of August 25 from the Laungdon post, but saw no sign of ARSA attackers. However, at midday on August 25, hundreds of troops arrived by truck and on foot, and together with the BGP and local non-Rohingya villagers began attacking their village. People fled for their lives, hiding in fields and jumping into the Purma river. One refugee estimated that 10 villagers had been shot and wounded when running away.

Five ARSA attacks were alleged to have taken place in and around the town of Maungdaw early on August 25, three of which involved grenades or bombs. However town residents living nearby said they heard no explosions. They said they heard gunfire early in the morning of August 25 coming from the Dhamma Yone monastery (where 100 troops were stationed), and also from near the entrance to the town, but there was no sign of the “mob” of extremist terrorists that supposedly surrounded the police post in Ward 5. They said they saw the army and local non-Rohingya villagers burning houses in Maungdaw starting on August 26.

In Buthidaung, refugees from the Taung Bazar and Phaungtawpyin areas, where two BGP posts and one army camp were allegedly attacked by ARSA on August 25, said they had seen no sign of any ARSA attackers. The Information Committee stated that “At 3:40 am, 10 extremist terrorists attacked Taung Bazar outpost in Region 10 where they were met with a police repulse, leaving five terrorists dead. The extremist terrorists retreated at 5:15 am.” This was the outpost already guarded by 100 BGP troops, and where reinforcements of 70 Burma Army soldiers had installed themselves in the local school and madrasa, raising questions about how 10 men could have got close enough to launch any attack.

A madrasa student from Taung Bazar said he had heard gunshots and shelling in and near his village starting at about 4 am, before the morning prayer call. When it became light, at about 6 am, he joined other villagers trying to run for cover outside the village, but was shot in the back. Fortunately, he was helped by family members, and was able to flee towards the border. He said many people were shot and killed that day when they were running away, including his 17 year old cousin. He said Army, BGP and local non-Rohingya villagers were doing the shooting. He had heard that the madrasa he studied at in Taung Bazar, with 12 teachers and nearly 500 students, was burned down after he ran away.

A madrasa teacher from Taung Bazar was shot while trying to help his paralyzed father and elderly mother escape at about 4.40 am on August 25. He was injured by bullets coming through the wall of his house, which killed his younger brother. He was forced to abandon his parents to save himself. He ran to the other side of the river, and saw his village being set on fire, including his own house, with his parents inside it.

The other police outpost allegedly attacked by ARSA in Buthidaung on August 25, was at Phaungtawpyin, about four miles south of Taung Bazar. According to the Information Committee, “At 4:25 am, an unidentified number of extremist terrorists launched an attack on Phaungtawpyin police outpost in Region 10, leaving Police Sub-inspect Aung Myint Oo and police lance-corporal Soe Win dead. Two extremist terrorists died by the police repulse.” Similar to the Taung Bazar post, the BGP post in Phaungtawpyin had been significantly reinforced by the Army on August 24, raising questions about how such an attack could have taken place, and two police officers killed.

A teacher from the nearby village of Maung Nu described how he heard gunshots from the direction of Phaungtawpyin early in the morning of August 25, which went on till about 8 am. That day, most of the Phaungtawpyin residents fled to Maung Nu. On August 26, about 50 Burma Army troops came from the direction of Phaungtawpyin and began attacking the local villagers. The massacre of dozens of local civilians in Maung Nu has been documented by Human Rights Watch

(<https://www.hrw.org/news/2017/10/03/burma-military-massacres-dozens-rohingya-village>).

Systematic targeting of civilians and destruction of entire Rohingya villages – no attempt to identify “terrorists”

During the clearance operations beginning on August 25, refugees from numerous villages in Maungdaw described a similar pattern of attack by Burmese security forces. Troops first shelled or opened fire on villages, then entered them, indiscriminately shooting at civilians or deliberately executing them, and burned down houses. There was no attempt at all to identify and capture so-called terrorists. The target of the attacks was clearly the entire civilian population of the villages, with the intent to drive them from their homes.

Almost all refugees interviewed by Kaladan Press recounted killings of civilians as they fled, but the levels of brutality appear worst in the villages of Done Paik (described above) and Tula Toli in northern Maungdaw, which are about three kilometers apart. The attack on Done Paik took place on August 25 and on Tula Toli took place on August 30. The similar pattern of atrocities, involving slaughter of hundreds of civilians, including women and children, and gang-rape and burning of rape victims alive, indicates that the same security forces were responsible.

A 17-year-old boy from Tula Toli, with bullet wounds in the chest, back and arm, told Kaladan Press how he had lost his entire family – his brother, 3 sisters and mother - in the attack. He was shot while hiding at the bank of the Purma river. His siblings were shot and knifed to death, and his mother beaten to death.

Another villager from Tula Toli, a 25-year-old man, described how his wife and three young daughters were shot and killed as they fled. His 20-year-old sister was raped, beaten, and set on fire. She miraculously survived and is receiving treatment for critical injuries in Kutupalong refugee camp

Questions also needed about the October 2016 attacks

The testimonies of the refugees not only throw into serious doubt the government’s narrative about what happened on August 25, 2017, they also beg questions about the first alleged “terrorist” attacks against BGP posts on October 9, 2016 - the pretext for the previous brutal clearance campaign that drove over 70,000 Rohingya into Bangladesh last year.

The government claimed that early on October 9, “around 400 attackers” attacked three BGP posts – including the main BGP headquarters at Kyikanpyin - and stole “51 weapons of various types and 101,300 rounds of assorted ammunition, 47 bayonets and 164 magazines.” In fact, the Kyikanpyin headquarters is a large, tightly-guarded installation – reinforced with artillery and housing hundreds of armed personnel. Yet no one questioned how the poorly armed attackers could have got past all the layers of security, broken into the armoury, and escaped with so many weapons.

It is time to start asking these questions.



The BGP HQ at Kyikanpyin allegedly attacked by ARSA on October 9, 2017

Appendix

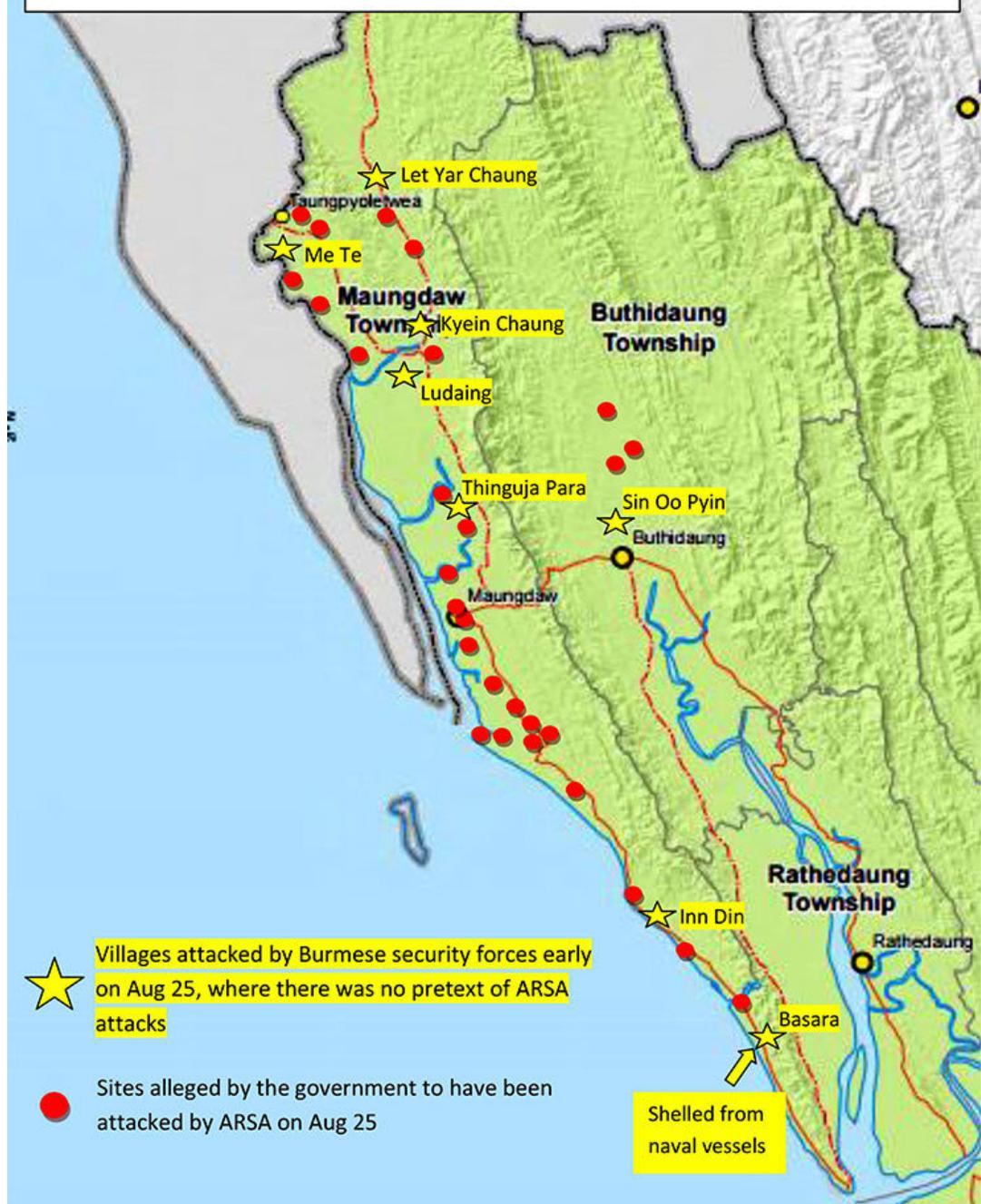
Myanmar Government Information Committee – list of police posts attacked on August 25, 2017

No.	Description by Myanmar Government Information Committee
Breaking News 2	
1	At 4:30 am, an unidentified number of extremist terrorists attacked Tamantha police outpost in Region-2.
2	At 3:35 am, they attacked Nantthataung police outpost in Region-3, leaving a police constable identified as Nyi Nyi Lwin dead and one terrorist dead.
3	At 3:45 am, about 100 extremist terrorists attacked Thinbawgwe police outpost in Region-3, leaving one terrorist dead.
4	At 5:25 am, an unidentified number of extremist terrorists came and attacked Kyigyun police outpost in Region-3, leaving five policemen including camp commander injured. The terrorists retreated at 5:50 am.
5	At 4:20 am, an unidentified number of extremist terrorists attacked Meetaik-Chaungwa outpost in region-3. In the incident, police corporal Ye Myint, lance-corporal Thet Naing Tun died of sword wounds and three arms taken. The terrorists retreated at 4:45 am
6	At 3:35 am, unidentified number of extremist terrorists attacked Natchaung outpost in Region-4.
7	At 4:30 am, about 150 extremist terrorists attacked Zeepinchaung outpost. In the incident, police constable Min Thura Naing died of sword injuries and one walkie-talkie and one arm were taken.
8	At 3:25 am, extremist terrorists attacked Laungdon outpost in Region-5 where they were repulsed by the policemen.
9	At 1 am, extremist terrorists attacked Maungni outpost in Region-6.
10	At 4:05am, about 100 extremist terrorists attacked Thiho outpost in Region-6 where they were met with a police repulse, prompting the terrorists to retreat in a minute.
11	At 4:10 am, an unidentified number of extremist terrorists attacked Zinpaingnyar outpost in Region-6 where they were met with a police repulse, prompting the terrorists to retreat at 4:35am.
12	At 7:35 am, an unidentified number of extremist terrorists attacked Kyaukpyinseik outpost in Region-6.
13	At 00:50 am, an unidentified number of extremist terrorists attacked Padingaung Takar outpost in Region-7.
14	At 1:20 am, an unidentified number of extremist terrorists attacked Panyaungbingyi outpost in Region-7 where were met with a police repulse.
15	It was learnt that a mob encircled Shweyinaye outpost in Region-7 at 4 am.
16	According to information that about 100 extremist terrorists approached Thayay Konbaung outpost in Region-7 at 5:15 am, men and arms were moved to the village.
17	At 4 am, an unidentified number of extremist terrorists attacked Cheinkhali outpost in Region-8 where they were met with a police repulse, leaving one terrorist dead.
18	At 4:45 am, about 1000 extremist terrorists attacked Myinlut police station in Region-8, leaving Police Major Hein Htet Kyaw and police constable Win Htike dead and one BA-94 and one .38 revolver taken.
19	At 4:50 am, an unidentified number of extremist terrorists attacked Ale Thankyaw police station in Region-8, leaving Deputy Township Immigration

	Officer Zar MOUNG dead. The policemen repulsed the terrorists who retreated from the scene.
20	At 5:10 am, about 100 extremist terrorists attacked Udaung (Natala) outpost in Region-8 where they were met with a police repulse, prompting them to retreat at 6 am.
21	At 7:25 am, an unidentified number of extremist terrorists attacked Hnakhaungto-Chaungwa outpost in Region-8.
22	At 4:50 am, about 100 extremist terrorists attacked Thawunchaung outpost in Region-9.
23	At 4:50 am, an unidentified number of extremist terrorists attacked Koetankauk police station in Region-9. The military columns arrived at the scene at 5:15 am and returned fires, leaving six terrorists dead.
24	At 3:40 am, 10 extremist terrorists attacked Taung Bazaar outpost in Region-10 where they were met with a police repulse, leaving five terrorists dead. The extremist terrorists retreated at 5:15 am.
25	At 4:25 am, an unidentified number of extremist terrorists launched an attack on Phaungtawpyin police outpost in Region-10, leaving Police Sub-inspector Aung Myint Oo and police lance-corporal Soe Win dead. Two extremist terrorists died by the police repulse.
Maungdaw	Police stations and police outposts nearby Maungtaw being attacked by extremist terrorists are as follows:
1 (26)	At 3:30 am, extremist terrorists attacked a police outpost in Ward-5 with hand grenades. At 3:35 am, a mob of extremist terrorists encircled the police outpost where they were met with police fires.
2 (27)	At 3:30 am, five extremist terrorists attacked Ywathitkay outpost with hand grenades.
3 (28)	At 3:30 am, five extremist terrorists attacked a police outpost at the entrance to Maungtaw with arms.
4 (29)	At 3:30 am, extremist terrorists attacked Natala police outposts and they were repulsed by the police.
5 (30)	At 3:30 am, extremist terrorists attacked a traffic police office and anti-drug squad office with hand-made bombs.
6 (31)	At 8:5 am, extremist terrorists blew out a small old-concrete bridge near Kyaukpandu Village.
Breaking News 1	
(32)	At about 3 am, about 150 extremist terrorists divided themselves into two groups and were attempting to entre No (552) Light Infantry Regiment where they were driven out by the Tatmadaw members.

Source – Information Committee Breaking News Releases 1 and 2
<http://www.statecounsellor.gov.mm/en/node/959>,
<http://www.statecounsellor.gov.mm/en/node/960>

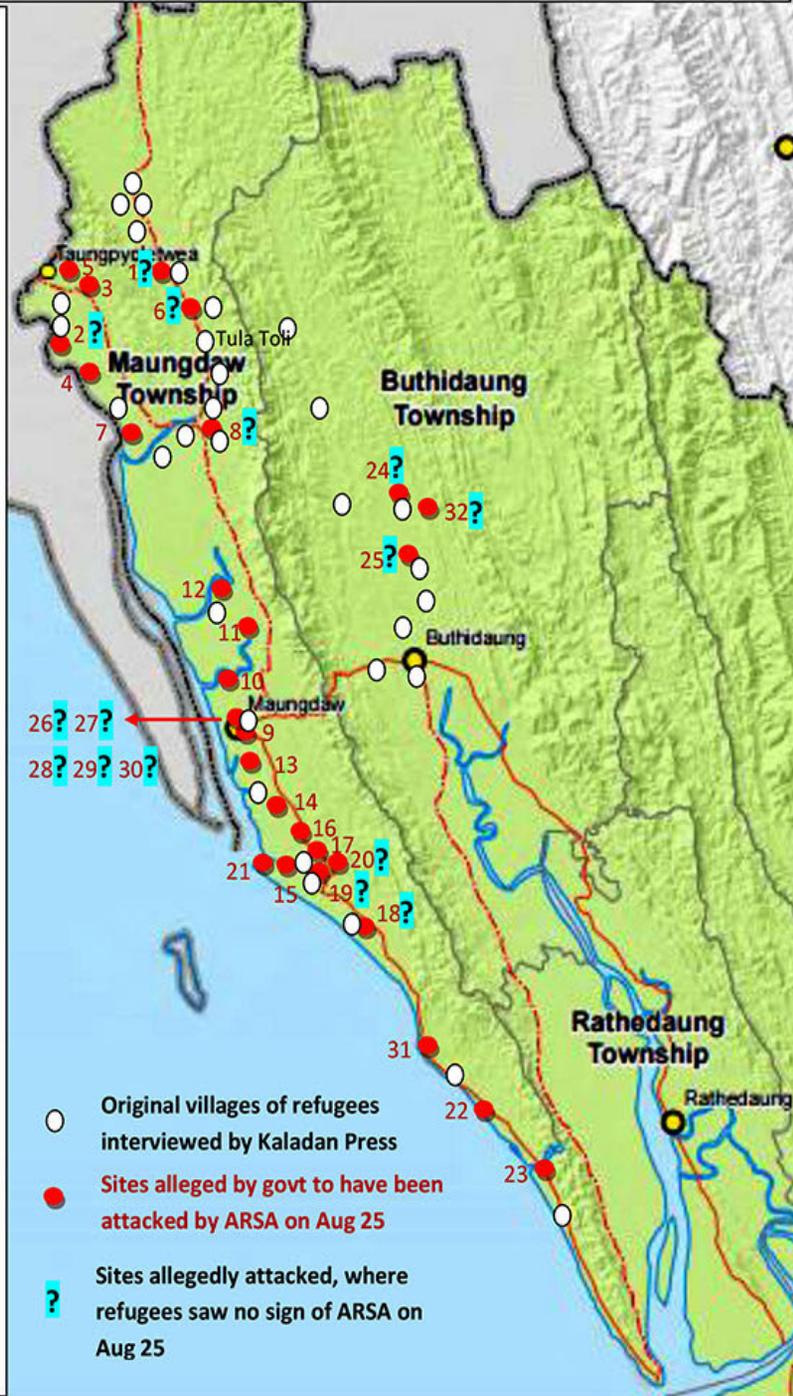
Villages attacked by Burmese security forces early on August 25, 2017, where there was no pretext of ARSA attacks



Original villages of refugees interviewed by Kaladan Press and sites alleged by government to have been attacked by ARSA on Aug 25, 2017

Names of sites alleged by govt. to have been attacked by ARSA

1. Tamantha
2. Nanthataung
3. Thinbawgwe
4. Kyigyun
5. Meetaik-Chaungwa
6. Natchaung
7. Zeepinchaung
8. Laungdon
9. Maungni
10. Thiho
11. Zinpaingnyar
12. Kyaukpyinseik
13. Padingaung Takar
14. Panyaungbingyi
15. Shweyinaye
16. Thayay Konbaung
17. Cheinkali (BGP Region 8)
18. Myinlut
19. Ale Thankyaw
20. Udaung (Natala)
21. Hnakhaungto-Chaungwa
22. Thawunchaung
23. Koetankauk
24. Taung Bazar
25. Phaungtawpyin
26. Ward-5
27. Ywathitkay
28. Maungdaw entrance
29. Natala police outposts
30. Traffic police, anti-drug office
31. Kyaukpandu
32. Batt. 552



Burma Army troop reinforcement described by refugees shortly before and on August 25, 2017



Annex 331

VKontakte, *VK Terms of Service*

VK Terms of Service

Welcome to the **VK** site, a web resource that helps you stay in touch with your old and new friends. The **VK** site (vk.com) (herein after – the **Site**) is a network project uniting people on the basis of education or employment places.

You can view [VK.com privacy policy here](#) »

The Site administration offers you the Site services on the conditions being the subject of these **VK** Terms of Service. In this connection, you should familiarize yourself carefully with the conditions of these Terms which the Site Administration regards as a public offer in accordance with Article 437 of the Russian Federation Civil Code.

1. Glossary of Terms

- **1.1. The VK site (or the Site)** is the internet resource consisting of a set of (a) computer programs (software code running on a computer) and (b) the information (content) placed in them by the Administration and / or users. The VK Site is maintained in an information system that provides the access to the aforesaid information in Internet when addressed by the domain name <http://vk.com> (including all levels of the specified domain functioning on the moment of adoption of these Terms by the User as well as added after that).
- **1.2. Non-activated data and commands** are data and commands and generated audiovisual displays allowing to increase the amount of virtual property used in the framework of the functionality of the Site. The conditions the User is granted the rights to use non-activated data and commands by Administration are defined by the License Agreement, the current version of which is freely available on the Internet at: <http://vk.com/licence>, and which is concluded by the Site Administration with the User.

2. Status of the VK Terms of Service

- **2.1.** These VK Terms of Service (hereinbefore and hereinafter the Terms) have been developed by the Site Administration and determine the terms of Site use and development conditions as well as the rights and obligations of its Users and Administration. The Terms cover also the relations regarding rights and interests of the third parties which are not Site Users but whose rights and interests may be affected as the result of Site Users' actions.
- **2.2.** These Terms are the legally binding agreement between the User and the Site Administration whereby the Site Administration provides services for the User regarding the use of the Site and its services (hereinafter the Services). In addition to these Terms, the agreement between the User and the Site Administration includes all special documents that regulate the provision of individual Site services and are posted in the relevant Site sections on the Internet.
- **2.3.** The User is obliged to be fully aware of these Terms before registering at the Site. The User's registration at the Site means full and unconditional acceptance of these Terms by the User in accordance with Article 438 of the Russian Federation Civil Code.
- **2.4.** The Site Administration may make changes and/or additions to these Terms unilaterally without any special notification. These Terms are an open document accessible to the general public. The current version of the Terms is available on the Internet at <http://vk.com/help.php?page=terms>. The Site Administration recommends that the Users check the conditions of these Terms regularly for changes and/or additions. The continuation of use of the Site by the User after changes and/or additions are made to these Terms will mean the User's agreement with and acceptance of such changes and/or additions.

3. Status of the VK Site

- **3.1.** The Site Administration is the owner of all rights in the Site on the whole and all rights to use the web address (domain name) <http://vk.com>. The Site Administration makes the Site available to all persons concerned in accordance with these Terms and effective Russian legislation.
- **3.2.** These Terms establish conditions in accordance with which the rights to use information and intellectual activity results (including, without limitation, literary, musical, audio and visual works and sound records, graphic and design works, photo works, software) within individual sections of the Site may belong to the Site Users and other persons which have independently created and/or posted these items on the Site without direct participation of the Site Administration.

4. VK Site Administration

- **4.1.** In these Terms and other special documents, the VK Site Administration (hereinafter the Site Administration, Administration) is understood as LLC "V Kontakte", a legal entity created under the laws of the Russian Federation and registered at prem. 1-N, bld. 12-14, Lit. A, Khersonskaya st., St. Petersburg, Russia, 191024.
- **4.2.** The applications, suggestions and claims of individuals and legal entities to the Site Administration in connection with these Terms and all issues regarding the Site operation, infringement of rights and interests of third parties in the process of its use as well as the inquiries of the persons authorized by Russian legislation may be sent to the mailing address of LLC "V Kontakte" specified in clause 4.1 hereof.
- **4.3.** As regards the Site operation and development, the Administration abides by effective Russian legislation, other applicable/relevant legislation, these Terms and other special documents which were or may be developed and adopted by the Site Administration in order to regulate the provision of individual Site services to the Users.
- **4.4.** No provisions of these Terms grant the User the right to use the brand name, trademarks, domain name or other distinctive marks of the Site Administration. The right to use the brand name, trademarks, domain names and other distinctive marks of the Site Administration may be granted only as agreed in writing with the Site Administration.

5. Registration at the VK Site and the User's Status

- **5.1.** VKontakte Website is a Service contained in the VK Ecosystem. User registration on the Website is free, voluntary and is done using the VK Connect tool. Registration and/or authorization on the Website using VK Connect means acceptance of the VK Ecosystem Rules, which are publicly available at https://vk.com/vk_ecosystem_terms, as well as the VK Connect User Agreement, which is publicly available at <https://connect.vk.com/terms>, and the VK Connect User Information Protection Rules, which are publicly available at <https://connect.vk.com/privacy>.
- **5.2.** The Site User is the individual which is registered at the Site according to the procedure set by these Terms, reached the sufficient age for such registration under the applicable laws and/or has all necessary consents (e.g. parental consents) in full compliance with the applicable laws, including for purposes of data protection laws and has the relevant powers (hereinbefore and hereinafter the User).
- **5.3.** When registering at the Site the User must provide the Site Administration with the necessary true and updated information to form the User's personal page, including the User's unique login and the password for access to the Site as well as the User's first and last names. The User may be requested to provide additional information in the Site registration form.
- **5.4.** The User bears liability for ensuring that the information provided at the time of registration is true, up to date, complete, consistent with Russian legislation, other applicable/relevant legislation and free from third parties' claims.
- **5.5.** After submitting the information specified in clause 5.3 hereof, the User has to complete a number of authentication procedures, namely: (a) confirm the registration by recognizing an automated text to tell computers and humans apart (CAPTCHA); (b) confirm his/her registration by entering a code in a special Site form, the code is sent via SMS by the Site Administration to the User's mobile phone number provided by the User. In case the whole sequence of the registration actions is completed successfully, the User's personal page with the network address: [http://vk.com/id\[number\]](http://vk.com/id[number]) is created at the Site. The User has the right to assign to its personal page a short (sub-domain) name replacing the id ordinal number for web addressing purposes. The sub-domain name cannot be selected from the words and names the use of which is prohibited in accordance with these Terms, effective Russian legislation and international legal acts, including without limitation obscene words, names registered as trademarks (regardless of the MKTU class), brand names and commercial designations, unless the User is their exclusive owner. In case a breach of these conditions is detected, the Site Administration has the right to prohibit the User from using his/her sub-domain name and, among other things, transfer the right of its use to the appropriate person (representative of the right owner), if applicable. The User may register a maximum of one personal page at the Site.

- **5.6.** By registering at the Site the Site User confirms that his age is sufficient for such registration under the applicable laws and/or he has all necessary consents (e.g. parental consents) in full compliance with the applicable laws, including for purposes of data protection laws, otherwise the registration at the Site and its using is prohibited. By registering the User accepts these Terms and assumes the rights and obligations thereunder regarding the use and operation of the Site. The User understands the necessity of receiving from the Site Administration some technical information in connection with the use of the Site by means of services of the Site, electronic mails, sms and confirms his/her approval for such possible technical notifications. The User also approves to receive different types of informational mailings, including advertising and informational content, including from the Site Administration and third-partners by means of the internal Site's functionality. The User gets full access to the use of the Site functionality (its data and commands), except for the non-activated data and commands, provided that the personal page is more than thirty per cent filled. The right to use the Site non-activated data and commands is granted to the User providing that the User meets the provisions of the License Agreement mentioned above (see 1.2. of these Terms).
- **5.7.** After the successful registration of the User at the Site the Site Administration assumes the rights and obligations to the User as provided in these Terms.
- **5.8.** The User's personal data are processed according to the applicable/relevant legislation. The Administration of the Site processes the User's personal data in order to provide to the latter access to the services of the Site, including targeted advertisements to the User; checking, examining and analyzing such data in order to maintain and improve the Site services and sections as well as to develop new Site services and sections. The Site Administration takes all necessary measures to protect the User's personal data from unauthorized access, modification, disclosure or destruction. The Site Administration makes the User's personal data available only to those employees, contractors and agents of the Site Administration which need this information to ensure the Site operation and provision of Services to the User. The information provided by the User, including personal data, may be used by the Site Administration to ensure compliance with the requirements of effective Russian legislation, other applicable/relevant legislation, as well as to transfer it to the third-parties in order to protect right and interests of the Users, the Site Administration and third-parties (including in order to prevent, control/investigate and/or suppress illegal actions). The information provided by the User may be disclosed only in accordance with effective Russian legislation on the demand of the court, law-enforcement bodies as well as in other cases as provided by Russian legislation. As the Administration of the Site processes the User's personal data for the performance of these Terms, no User's consent to the processing of his/her personal data is required according to the legislative provisions on personal data.
- **5.9.** The login and password chosen by the User are the necessary and sufficient information for the User's access to the Site. The User does not have the right to transfer his/her login and password to third parties and bears full responsibility for their confidentiality, choosing himself / herself the method of their storage. Using his / her hardware and software the User may permit storage of the login and password (through cookies) for subsequent automatic authorization on the Site.
- **5.10.** Unless the User proves otherwise, any actions taken with the use of his/her login and password are deemed to have been taken by the User. In case of unauthorized access to the User's login and password and/or personal page or dissemination of the User's login and password, the User is obliged to notify the Site Administration immediately according to the established procedure.
- **5.11.** After registration the User obtains the right to create, use and determine independently for personal purposes the content of his/her own personal page and conditions for other Users' access to its content as well as the ability to access and post information on the personal pages of other Users (subject to obtaining relevant access rights from their owners), use the VK social widgets on third-party sites without additional authorization. When the User uses social widgets, the User's login and password as well as his/her data protected by the privacy settings are not transferred to third-party sites.
- **5.12.** As the owner of the information posted on his/her own personal page, the User understands that, except as provided by these Terms and effective Russian legislation, the Site Administration does not participate in forming and using the content and controlling other users' access to the User's personal page. Publishing any content on his / her own personal page including personal information the User understands and accepts that this information may be available to other Internet users taking into account the architecture and functionality of the Site.

- **5.13. Creation and use of Communities**
 - **5.13.1.** The User has the right to create Communities (groups, public pages and meetings) to inform other Users about events, meetings, commercial and non-profit organizations (as charitable organizations), its creation and activities, other interesting content to Users (hereinafter Discussion items) and/or possible further discussion of them with other Users (including creation of fan clubs, exchange of opinions, references and etc.). While informing and discussing the Discussion items in the Communities Users must observe current Russian and international legislation, publish the information that meets the requirements of these terms, esthetic norms and moral principles related to those at the opinion of the Site Administration.
 - **5.13.2.** When creating and administering the Community, including in case of registration of the sub-domain name used for directing to the Community page, the User confirms that he/she acts on lawful grounds (e.g., on the basis of the power of attorney), has all necessary rights and his/her actions do not infringe the lawful rights and interests of third parties and effective Russian legislation, including legislation on competition and rights to intellectual property results and means of individualization.
 - **5.13.3.** In case the User infringes the lawful rights and interests of third parties, effective Russian legislation as well as the provisions hereof when creating and administering the Community, the Site Administration has the right to block the User's access to the Community and/or transfer the administration rights for the Community as well as the right to use the registered sub-domain name to the lawful right owner which duly confirmed its rights in the Community Content, including the right in the means of individualization confusingly similar to the sub-domain name used in the Community.
 - **5.13.4. Placing Advertisements in Communities:**
 - **5.13.4.1.** No outside commercial or political advertising is permitted in the Community, including in the Community description, profile photo, albums, published content, pinned wall posts, discussions, polls, cover image, messages, Community stories, etc. A maximum of five outside advertisements may be posted on a Community's wall each day outside the VK Advertising Network (excluding pinned posts where all advertisements are prohibited), and no more than three of these outside advertisements may be outside the VK Marketplace each day. Outside advertising is understood to be any information, excluding native integrations, that does not directly relate to a Community and its subject, which is distributed in any form on behalf of the Community or any other community or user and is designed to attract users' attention to the advertised item to generate or maintain interest. It is the responsibility of the user in charge of the Community's administration to monitor and prevent non-compliant outside advertising in the Community. A Community may be included into the VK search system only when the Community adheres to the requirements provided in this clause. The process of connecting to the VK Advertising Network is completed through the special Community management interface with the requirement to indicate the number of outside advertisements and dismiss the right to post them. When placing outside in the Community connected to the VK Advertising Network, it is necessary to indicate the advertising nature of the information within the existing special functionality of the Site (option "This is an ad"). The rules of advertising within the Advertising Network of VK are regulated by special documents.
 - **5.13.4.2.** The placement of native integration to a Community must comply with these Rules. Integration that does not comply with these Rules is considered outside advertising. Native integration means the organic implementation of a promoted product (goods/services/work, means of individualization of a legal entity and/or goods/services/work, the manufacturer or seller of goods/services/work, the results of intellectual activities or the activities of a third party (including sports competitions, concerts, competitions and festivals)) without explicit emphasis regarding the connection to Community informational material, in which the Community's informational material corresponds to a common theme and style while possessing independent semantic value.
 - **5.13.4.2.1.** When placing native integrations, the following requirements must be met:
 - **(a)** implementation of the promoted object on the cover, the Community's main photo and pinned posts is permitted so long as the general style of the Community remains unchanged and the integration does not dominate Community informational material.
 - **(b)** native integration of promoted objects that violate these rules is strictly prohibited.

- (c) for native integration of third party activity implementation to be recognized, among the mandatory conditions there are the following actions that must be included in the instructions for implementation: subscribing to a community, making a purchase, liking and sharing posts.
- **5.13.4.2.2.** The content of native integrations must meet the following requirements:
 - (a) native integrations must not be solely advertising in nature, i.e. focus on Community informational material.
 - (b) the informational material, including native integration, of the Community must fully correspond to the Community theme, possess independent semantic value and harmoniously embody the Community style.
 - (c) native integration may contain hyperlinks to external resources for obtaining additional information, but transferring to an external site for such information cannot be required to obtain basic information.
 - (d) native integration in video includes mentioning the promoted object (both orally and visually), involving the object in the creative nature of the video and fitting the object harmoniously into the plot.
- **5.13.5.** All third-party advertisements and the corresponding integration must comply with clauses 1 and 3 of the [VK Advertising Placement Rules](#).
- **5.13.6.** The Site Administration may at its own discretion form and post the list of recommended Communities according to their information value for the users and other criteria. The recommended Communities are subject to additional limitations, maximum 1 (one) outside advertisement a week. In case this limitation is not complied with, the Site Administration has the right to exclude the Community from the list of recommended Communities.
- **5.13.7.** The User bears full liability for his/her actions connected with the creation and administration of Communities in accordance with effective Russian legislation, international legal acts and these Terms.
- **5.13.8.** In case of the violation of third parties' legitimate rights and interests provided by Russian legislation or these Terms in the Community, the Site Administration has the right to take the following measures at its opinion: (a) delete Content or other information the Community uploads and/or block the access to it; (b) block the access to the Community page for certain users; (c) block the access to the Community for the User that administrates Community; (d) transfer the Community administration rights and the use of sub-domain to the legal right holder that has confirmed their right for the Community Content according to the established procedure, including the right to the objects of copyright and related rights, the right to means of individualization, confusingly similar to those used in the Community sub-domain names; (e) exclude the Community from the search and/or block the Community; (f) temporary ban the publication of any links in the Community.
- **5.13.9.** In the event that the Community violates the procedures for placing advertisements (those, which have been indicated in clauses 5.13.4 and 5.13.5 of these Terms), the Site Administration maintains the right to restrict the advertising activities of the Community by prohibiting the publication of any links in the Community for any duration, the length of which may be determined at the discretion of the Administration, and/or disabling the Community's privilege to access the VK Marketplace, and/or disabling the Community's privilege to access the VK Advertising Network. In the event that the Community attempts to bypass technical restrictions prohibiting the publication of links (including, but not limited to, hiding links using additional symbols, displaying links in images) during the period of the ban, the Administration has the right to block the Community without allowing the possibility of restoration.
- **5.13.10.** The Community's administrators and moderators bear liability for moderation and blocking of Content uploaded to the pages that are under control of their communities. If Content uploaded to these pages does not meet the Site Terms requirements or Russian Legislation, the communities administrators and moderators must take the measures and delete the respective Content.
- **5.14.** In accordance with effective Russian legislation the User has the right to revoke his/her consent for processing his/her personal data by: (a) removing independently the information posted previously by the User on the Site; (b) removing independently the User's personal page using the "Remove Your Page" functionality available to the User in the "My Settings" section.

6. Obligations of the VK User

- **6.1.** When using the Site Services the User is obliged:
 - to comply with the provisions of effective Russian legislation, other applicable/relevant legislation, these Terms and other special documents of the Site Administration;
 - to provide true, complete and up-to-date data at the time of registration and keep these data updated;
 - to inform the Site Administration of unauthorized access to the personal page and/or unauthorized access to and/or use of the User's password and login;
 - not to provide other users with access to his/her own personal page or individual pieces of information on it, if it can involve breach of the Russian legislation and/or these Terms, special documents of the Site Administration;
 - not to post on his/her personal page such information and objects (including links thereto) which may infringe the rights and interests of other persons;
 - before posting information and objects (including but limited to other people's images, texts of various content, audio records and videos), to assess in advance whether such posting is lawful;
 - to keep confidential and not to disclose to other Users and third parties the personal data which became known to him/her as the result of communication with other Users and other use of the Site (including but not limited to home addresses, phone numbers, email, ICQ addresses, passport details, banking information) and information on the private life of other users and third parties without the appropriate prior permission of the latter;
 - to make back-up copies of the information important for the User which is stored on his/her personal page.
- **6.2.** In case of doubts as to whether it is legal to take any actions, including posting of information or provision of access, the Site Administration recommends desisting from such actions.
- **6.3.** When using the Site the User is prohibited from:
 - **6.3.1.** registering as the User on behalf of or instead of another person ("false account") or registering a group (association) of persons or a legal entity as the User; however, the registration on behalf of another individual or legal entity is possible, if necessary powers are granted according to such procedure and form as provided by Russian legislation and/or other applicable/relevant legislation;
 - **6.3.2.** misleading other Users as to his/her identity, using the login and password of another registered User;
 - **6.3.3.** distorting information on his/her identity, age or relations with other persons or entities;
 - **6.3.4.** loading, storing, publishing, disseminating, making available or otherwise using any information which:
 - **(a)** contains threats or calls to violence, including ones made implicitly; praises or encourages violent actions; discredits; insults; defiles one's honor, dignity or business reputation; or violates the privacy of other Users or third parties;
 - **(b)** infringes on the rights of minors;
 - **(c)** is vulgar or obscene, contains pornographic images and texts or sexual scenes with the participation of minors;
 - **(d)** contains scenes of inhumane treatment of animals;
 - **(e)** propagates and/or incites racial, religious, or ethnic hatred or hostility, including hatred or hostility towards a specific gender, orientation, or any other individual attributes or characteristics of a person (including those concerning a person's health);
 - **(f)** propagandizes and/or contributes to racial, religious, ethnic hatred or hostility, propagandizes fascism or racial superiority;
 - **(g)** contains extremist materials;
 - **(h)** propagandizes criminal activity or contains advices, instructions or guides for criminal activities;

- (i) contains restricted information including but not limited to government and trade secrets, information on the private life of third persons;
- (j) advertises or describes the attractiveness of using drugs, including "digital drugs" (audio files affecting the human brain through binaural rhythms), contains information on drug trafficking, drug recipes and drug consumption recommendations;
- (k) is of fraudulent nature;
- (l) or infringes other rights and interests of individuals and legal entities or requirements of Russian legislation;
- 6.3.5. illegally loading, storing, publishing, distributing, making available or otherwise using the intellectual property of other Users and third parties;
- 6.3.6. carrying out the mass mailing of messages without the Site Users' consent;
- 6.3.7. using software and taking actions aimed at disrupting the normal operation of the Site and its services or the Users' personal pages;
- 6.3.8. loading, storing, publishing, distributing, making available or otherwise using viruses, trojans and other malicious software;
- 6.3.9. using automated scripts (programs) for collecting information on the Site and/or interacting with the Site and its services without specific permission of the Site Administration and its services;
- 6.3.10. attempting to get access to another User's login and passwords by any means including, without limitation, by means of fraud, abuse of confidence, cracking;
- 6.3.11. illegally collecting and processing the personal data of other persons;
- 6.3.12. accessing (attempting to access) any Services otherwise than via the interface provided by the Site Administration, unless such actions are expressly permitted for the User in accordance with a separate agreement with the Site Administration;
- 6.3.13. reproducing, duplicating, copying, selling, dealing in and reselling the access to the use of the Site, including its non-activated data and commands for any purposes, unless such actions are expressly permitted for the User in accordance with a separate agreement with the Site Administration;
- 6.3.14. posting commercial and political advertisements outside the special Site sections as determined by the Site Administration;
- 6.3.15. posting any other information which in the personal opinion of the Site Administration is undesirable, does not meet the Site purposes, infringes on the Users' rights or is otherwise undesirable for posting on the Site;
- 6.3.16. providing independently or on behalf of other Users using the functionality of their accounts, inter alia by misrepresentation or by promising of an award, including usage of any programs, automated scripts, mass single-type actions in order to increase the numbers of the Site's counters rates (number of friends, marks "like", events "Share with friends" etc.).
- 6.4. The User bears personal responsibility for any information he/she posts on the Site or communicates to other Users as well as for any contacts with other Users on his/her own risk.
- 6.5. In case the User disagrees with these Terms or their updates, the User must give up using the Site with a due notice to the Site Administration.
- 6.6. The User acquires the right to use non-activated data and commands of the Site in accordance with the License Agreement available at: <http://vk.com/licence>, and which is concluded by the Site Administration with the User.

- **6.7.** API applications created by the Users should only use API methods published on the Site, as well as the ID, secure key and service token specified in these applications' settings. The use of other API methods, as well as the ID, secure key and service token of the third-party applications, including the Site Administration API application, is strictly prohibited. The User agrees to regularly check the list of allowed methods and immediately make necessary adjustments to their API applications in accordance with the list of changes. In case of violation of this paragraph, the User bears liability in accordance with the applicable law, these Terms and other documents of the Site Administration. The Site Administration at the same time reserves the right to protect its own rights and legitimate interests.

7. Intellectual Rights

- **7.1. Exclusive rights in the Site Content**
 - **7.1.1.** All objects placed on the Site, including design elements, text, graphic images, illustrations, videos, scripts, software, music, sounds and other objects and their collections (hereinafter the Content) are subject to exclusive rights of the Site Administration, Users and other rights holders, all rights in these objects being reserved.
 - **7.1.2.** Except as provided by these Terms as well as by effective Russian legislation, no Content may be copied (reproduced), processed, distributed, displayed in the frame, published, downloaded, transferred, sold or otherwise used in full or in part without the prior permission of the right owner, unless the right owner has expressly agreed to free use of the Content by any person. Reproducing, copying, collecting, systemizing, storing and transferring the Content in order to create a database whether for commercial and/or non-commercial purpose and/or using the Content in whole or its part regardless of the way of use is not allowed without the Administration's consent.
 - **7.1.3.** By posting on the Site his/her lawfully owned Content, the User grants the other Users a non-exclusive right to use it in the framework of the functional provided by the Site by viewing, reproducing (including copying) and other rights exclusively for the purpose of personal non-commercial use, except where such use infringes or may infringe the right owner's interests protected by law.
 - **7.1.4.** The Content made available exclusively for the purpose of personal non-commercial use may be used by the User on the condition that all copyright marks or other authorship notices, name of the author and the work remain unchanged.
 - **7.1.5.** The User grants to the Site Administration a non-exclusive right to use on a free of charge basis the Content published on the Site and which lawfully belongs to him/her, so that the Administration of the Site may maintain the operation of the Site in the amount established by its architecture and functionality, and to use this Content for the Site Administration promotional content, including images of the Site interface, including without limitation making this promotional content public. The said non-exclusive right is granted for the period when the Content is placed on the Site and extends to the territory of the countries all over the world. The end of the period when the Content is placed on the Site and / or the end of the non-exclusive right duration do not carry a necessity of deletion by the Site Administration of this promotional content with the said Content (including its removal from the Internet). The Site Administration has a right to transfer these rights described in this clause to the third-parties. The User accepts that the Site Administration has a right to use functional and technical capabilities of the Site that provide displaying of the published Content by the User, including player, meant to display the Content at its own discretion, including for the purpose of showing the advertising information.
 - **7.1.6.** If the User deletes his/her Content from the Site, the non-exclusive right mentioned in clause 7.1.5. hereof will be automatically revoked, however, the Administration reserves the right to keep backup copies of the user Content during the required period of time, if needed due to technical peculiarities of the Site operation.
 - **7.1.7.** Except his/her own Content, the User does not have the right to upload or otherwise make available to the public (publish on the Site) the content of other sites, databases and other intellectual activity results without the express consent of the right owner.
 - **7.1.8.** Any use of the Site or Content, except as permitted herein or except the right owner consents to such use in writing, without the prior written permission of the right owner is categorically prohibited.

- **7.1.9.** Unless otherwise expressly provided in these Terms, nothing in these Terms may be considered as the grant of exclusive rights in the Content.
- **7.2. Liability for the infringement of exclusive rights.**
 - **7.2.1.** The User bears personal liability for any Content or other information he/she uploads or otherwise makes publicly available (publishes) on or via the Site. The User does not have the right to upload, transfer or publish Content on the Site unless he/she has appropriate rights to do so, such rights being acquired by or transferred to him/her in accordance with Russian legislation. Upon detection of the rights violations, please use [http://vk.com/help?act=cc_terms](Regulations for Investigating Complaints concerning users' content) to complain.
 - **7.2.2.** The Site Administration has the right but is not obliged to check the Site for prohibited Content and can delete or remove (without giving advance notice) any Content or Users at its own discretion for any reason or without reason, including, without limitation, removal or deletion of the Content which, in the personal opinion of the Site Administration, infringes these Terms, Russian legislation and/or may infringe the rights of, cause damage to, or threaten the security of other Users or third parties.
 - **7.2.3.** By posting his/her Content on the Site, the User grants the Site Administration the right to copy his/her Content in order to streamline and facilitate the publication and storage of the user Content on the Site.
 - **7.2.4.** By posting his/her Content in any part of the Site, the User automatically grants the Site Administration free of charge the non-exclusive right to use it by copying, public performance, reproduction, processing, translation and distribution for or in connection with the purposes of the Site, including for the purpose of increasing its popularity. For these purposes, the Site Administration may produce derivative works or insert the User's Content as components in relevant collections or take other actions for these purposes.
 - **7.2.5.** In case the User removes his/her Content from the Site, the rights mentioned in clauses 7.2.3 – 7.2.4 hereof will be automatically cancelled; however, the Site Administration has the right to keep archive copies of the user Content for an indefinite period.
- **7.3. Third parties' sites and content**
 - **7.3.1.** The Site contains (or may contain) links to other web-sites (third parties' sites) as well as articles, photos, illustrations, graphic images, music, sound, video, information, applications, software and other Content belonging to or originating from third parties (Third Parties' Content), which is the result of intellectual activity and is protected in accordance with Russian legislation.
 - **7.3.2.** The Site Administration does not check these third parties and their Content for conformity to any requirements (truthfulness, completeness, good faith etc.). The Site Administration does not bear liability for any information on third parties' sites to which the User gains access via the Site or Third Parties' Content, including any opinions or statements expressed on the Third Parties' Sites or in their Content.
 - **7.3.3.** The fact that the Site contains links or instructions for downloading files and/or installing software of third parties does not mean that the Site Administration supports and approves of these actions.
 - **7.3.4.** The fact that the Site contains a link or reference to any site, product, service, information of commercial or non-commercial nature does not mean that the Site Administration approves of or recommends the above.
 - **7.3.5.** If the User decides to leave the Site for the sites of third parties or use or install third parties' software, he/she does it at his/her own risk and from this time these Terms do not apply to the User any longer. When taking further actions the User should follow the applicable standards and policies, including business practices of the persons whose Content he/she is going to use.

8. VK Operation and Liability Regarding Use of the Site

- **8.1.** The users bear liability for their own actions in connection with the creation and posting of information on their own personal page on the Site as well as in connection with the posting of information on the personal pages of other users and other sections of the Site in accordance with effective Russian legislation. The breach of these Terms and effective Russian legislation involves civil, administrative and criminal liability.
- **8.2.** The Site Administration makes it technically possible for the Users to use the Site, does not participate in forming the content of the Users' personal pages, does not control and does not bear liability for the actions or omissions of any persons regarding use of the Site or formation and use of the content of the Users' personal pages on the Site.
- **8.3.** The information system of the Site and its software do not contain any technical solutions for the automatic censorship and control of actions and information relations of the users regarding use of the Site except for the special technical solutions the Administration might implement in order to prevent and suppress violations of third party intellectual property rights.
- **8.4.** The Site Administration reserves the right to change at any time the Site design, content, list of services, modify or supplement scripts, software and other objects used or stored on the Site, any server applications at any time with or without advance notice.
- **8.5.** The Site Administration does not carry out preliminary moderation or censorship of the Users' information and takes actions to protect the rights and interests of persons and ensure compliance with the requirements of Russian legislation only after the person concerned applies duly to the Site Administration.
- **8.6.** The Site Administration does not bear liability for the User's breach of these Terms and reserves the right, at its own discretion as well as upon receipt of information from other Users or third parties on the User's breach of these Terms, to modify (moderate), block or remove any information published by the User in breach of the prohibitions set by these Terms, suspend, limit or terminate the User's access to all or any sections or services of the Site at any time for any reason or without explaining the reason, with or without advance notice. The Site Administration reserves the right to remove the User's personal page and/or suspend, limit or terminate the User's access to any of the Site services, if the Site Administration believes that the User poses a threat to the Site and/or its Users. Along with the stated in the paragraph above the Site Administration has the right to block and/or remove API Applications, limit the User's access to API Applications, websites, third-party applications, other third-party resources, block and/or remove links to them, in case the Site Administration has a reason to believe that such API Applications, websites, third-party applications, and other third-party resources pose or may pose a threat to the normal operation of the Site and its Users. The Site Administration implements the measures described above in accordance with applicable law and does not bear liability for any negative consequences of such measures for the User or third parties.
- **8.7.** After the personal page is removed, the User has no longer the right of access to the Site. The removal of the User's personal page means an automatic removal of all information posted on it as well as of all information entered by the User at the time of registration at the Site.
- **8.8.** The Site Administration ensures operation and serviceability of the Site and undertakes to restore its serviceability promptly in case of technical failures and interruptions. The Site Administration does not bear liability for temporary failures and interruptions in the Site operation and resultant losses of information. The Site Administration does not bear liability for any damage to the computer of the User or any third party, mobile devices, any other equipment or software caused by or connected with the download of materials from the Site or via the links available on the Site.
- **8.9.** The Site Administration has the right to dispose of the statistical information relating to the Site operation as well as of the Users' information to ensure the targeted display of advertising information to different audiences of Site users. For the purposes of operation and technical support of the Site and compliance with these Terms the Site Administration has the technical ability to access the Users' personal pages but does it only in the cases specified herein.
- **8.10.** The Site Administration has the right to send information on the development of the Site and its services to the User as well as to advertise its own activity and services.

- **8.11. Limitation of the Site Administration's liability:**
 - THE SITE AND ITS SERVICES, INCLUDING ALL SCRIPTS, APPLICATIONS, CONTENT AND THE SITE DESIGN ARE MADE AVAILABLE ON THE "AS IS" BASIS. THE SITE ADMINISTRATION DISCLAIMS ALL WARRANTIES THAT THE SITE OR ITS SERVICES MAY BE SUITABLE OR UNSUITABLE FOR ANY SPECIFIC PURPOSES OF USE. THE SITE ADMINISTRATION CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS OF USE OF THE SITE AND/OR ITS SERVICES.
 - FOR THE AVOIDANCE OF MISUNDERSTANDINGS, THE USER SHOULD BE CAREFUL WHEN DOWNLOADING FROM THE SITE OR VIA THE LINKS ON IT AND USING ANY FILES, INCLUDING SOFTWARE. THE SITE ADMINISTRATION STRONGLY RECOMMENDS USING ONLY LICENSED SOFTWARE, INCLUDING ANTIVIRUS SOFTWARE.
 - BY USING THE SITE THE USER AGREES THAT HE/SHE DOWNLOADS ANY MATERIALS FROM OR VIA THE SITE ON HIS/HER PERSONAL RISK AND BEARS PERSONAL LIABILITY FOR THE POSSIBLE CONSEQUENCES OF USING THESE MATERIALS, INCLUDING THE DAMAGE IT CAN CAUSE TO THE USER'S COMPUTER OR THIRD PARTIES, FOR DATA LOSS OR ANY OTHER DAMAGE.
 - UNDER NO CIRCUMSTANCES THE SITE ADMINISTRATION OR ITS REPRESENTATIVES BEAR LIABILITY TO THE USER OR ANY THIRD PARTIES FOR ANY INDIRECT, ACCIDENTAL, UNINTENTIONAL DAMAGE, INCLUDING LOST PROFIT OR LOST DATA, DAMAGE TO THE HONOR, DIGNITY OR BUSINESS REPUTATION IN CONNECTION WITH THE USE OF THE SITE, ITS CONTENT OR OTHER MATERIALS WHICH BECAME AVAILABLE TO THE USER OR OTHER PERSONS THROUGH THE SITE, EVEN IF THE SITE ADMINISTRATION HAS WARNED OF, OR INDICATED TO THE POSSIBILITY OF SUCH DAMAGE.

9. Closing provisions

- **9.1.** These Terms constitute the agreement between the User and the Site Administration concerning use of the Site and its services and supersede all previous agreements between the User and the Site Administration.
- **9.2.** These Terms are governed and construed in accordance with Russian legislation. Those issues which are not settled by these Terms are subject to Russian legislation. The issues concerning data protection of EU-based users are subject to the applicable/relevant legislation.
- **9.3.** In case any disputes or differences arise in connection with the fulfillment of these Terms, the User and the Site Administration will make every effort to resolve these by negotiations. Those disputes which are not resolved by negotiations are to be resolved according to the procedure established by effective Russian legislation.
- **9.4.** These Terms become binding upon the User from the time of his/her accession and are valid during an indefinite period.
- **9.5.** These Terms are made in Russian and may be provided to the User for familiarization in another language. In case of discrepancies between the Russian and the foreign language versions of the Terms, the Russian language version will prevail.
- **9.6.** In the event that one or more provisions hereof become invalid or unenforceable for any reason, this will not affect the validity or applicability of the remaining provisions.
- **Date of Last Revision:** May 21, 2018

Annex 332

International Criminal Court, *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar: Request for authorisation of an investigation pursuant to article 15*
ICC Doc. ICC-01/19 (4 July 2019)

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/19

Date: 4 July 2019

PRE-TRIAL CHAMBER III

Before: Judge Olga Herrera Carbuccion, Presiding Judge
Judge Robert Fremr
Judge Geoffrey Henderson

**SITUATION IN THE PEOPLE'S REPUBLIC OF BANGLADESH / REPUBLIC OF
THE UNION OF MYANMAR**

PUBLIC

**With Confidential *EX PARTE* Annexes 1, 5, 7 and 8, and Public Annexes 2, 3, 4, 6, 9
and 10**

Request for authorisation of an investigation pursuant to article 15

Source:

Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the*

Court to:

The Office of the Prosecutor
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Mr James Stewart

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Section**

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2. Relevant national proceedings in Myanmar

233. The admissibility provisions of the Statute are founded on the complementary relationship between the Court and “national criminal jurisdictions”.⁵⁸⁶ In principle, it is only the criminal investigations and/or prosecutions of a State that can trigger the application of article 17(1)(a)-(b). As held by Pre-Trial Chamber III in the context of commissions of inquiry, “a national investigation merely aimed at the gathering of evidence does not lead, in principle, to the inadmissibility of any cases before the Court, considering that, for the purposes of complementarity, an investigation must be carried out with a view to conducting criminal prosecutions.”⁵⁸⁷ Out of an abundance of caution and to ensure the completeness of its analysis, the Prosecution has previously considered in its admissibility assessment the findings of commissions of inquiry and other fact-finding initiatives to the extent that they had the capacity and relevant powers to trigger full-scale criminal investigations and prosecutions.⁵⁸⁸ Pre-Trial Chamber III, in its decision concerning Burundi, similarly examined a number of national fact-finding mechanisms to the extent that, in the circumstances, they appeared to exercise certain judicial and investigative powers and/or were authorised to refer persons to the competent authorities.⁵⁸⁹ The present admissibility assessment examines such initiatives in line with this past practice.

234. The Prosecution has identified two specific developments at the domestic level that are potentially relevant to its admissibility assessment: i) the investigation by the *Tatmadaw* Investigation Team into alleged misconduct of the *Tatmadaw* and other Security Forces in Rakhine State in 2017 and ii) the setting up of the ICOE to investigate allegations of human rights violations following the

⁵⁸⁶ Article 1 of the [Rome Statute](#). See also [Burundi Article 15 Decision](#), para. 152.

⁵⁸⁷ [Burundi Article 15 Decision](#), para. 152.

⁵⁸⁸ See for e.g. [Burundi Article 15 Request](#), para. 153.

⁵⁸⁹ [Burundi Article 15 Decision](#), para. 153.

ARSA attacks, with the *caveat* noted above.⁵⁹⁰ In addition, the inquiry by the *Tatmadaw* Investigation Team appears to have led to the conviction and sentence of seven members of the *Tatmadaw* for participating in the execution of ten Rohingya individuals in the village of Inn Din in September 2017. It also appears to have resulted in the recent formation of a military investigation court. These developments are examined in more detail below.

235. The information currently available indicates that the legal proceedings that followed the *Tatmadaw* Investigation Team's inquiry did not concern the potential case(s) identified in this Request and accompanying Annexes. In addition, the ICOE does not, at present, appear to have the capacity to result in criminal investigations and prosecutions. To the extent that the work of the ICOE is ongoing, and with respect to any activity of the recently-formed military investigation court, the Prosecution will continue to review its assessment in light of new information. On the information presently available, however, the Prosecution concludes that the potential case(s) against senior members of the *Tatmadaw*, other Security Forces and other Myanmar authorities would be admissible under the complementarity criterion.

(a) *Investigation by the Tatmadaw and subsequent prosecution, and formation of military investigation court*

236. The available information indicates that the *Tatmadaw* may have conducted some kind of investigation into the conduct of the *Tatmadaw* and other Security Forces during the 2017 "clearance operations". However, the findings of the *Tatmadaw* Investigation Team and the outcome of subsequent proceedings do not show that the Myanmar authorities have taken steps "directed at ascertaining" whether those whose conduct forms the basis of the potential case(s) are

⁵⁹⁰ See para. 233 above.

responsible for that conduct.⁵⁹¹ Rather, the Investigation Team generally discounted the alleged responsibility of the *Tatmadaw* and other Security Forces for the commission of crimes. To the extent that members of the *Tatmadaw* and other Security Forces were cleared of wrongdoing as physical perpetrators, it appears that the inquiry into these allegations was not conducted genuinely, but for the purpose of shielding them from criminal responsibility within the meaning of article 17(2)(a) and (c). The limited proceedings initiated into the involvement of the *Tatmadaw* in the killing of ten Rohingya victims in Inn Din appear to have focused on a discrete number of individuals related to a single incident. Neither the investigation nor subsequent proceedings reveal any past criminal process seeking to establish the criminal responsibility of those who appear to bear the greatest responsibility for the alleged crimes set out in this Request and accompanying Annexes. Accordingly, the *Tatmadaw* investigation and subsequent proceedings do not lead to the inadmissibility before the Court pursuant to the principle of complementarity of the potential case(s) identified. The Prosecution will continue to review its assessment as information becomes available particularly regarding any activity of the recently-formed military investigation court.

237. The *Tatmadaw* reportedly formed an Investigation Team led by the Inspector-General of the *Tatmadaw*, Lieutenant-General Aye Win in October 2017.⁵⁹² On 13 November 2017, the *Tatmadaw* True News Information Team released the Investigation Team's findings.⁵⁹³ As explained further below,⁵⁹⁴ Lieutenant-

⁵⁹¹ See [Burundi Article 15 Decision](#), para. 148.

⁵⁹² See Office of the Commander-in-Chief of Defence Services press release, [BGD-OTP-0002-1421](#), para. 3.

⁵⁹³ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#) (title). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1612.

⁵⁹⁴ See para. 268 below.

General Aye Win appears to also have led an earlier *Tatmadaw* investigation into allegations of human rights violations during the 2016 wave of violence.⁵⁹⁵

238. With respect to the 2017 wave of violence, the Investigation Team led by Lieutenant-General Aye Win was reportedly assigned to find out “the true situation in connection with terrorist attacks of the ARSA Bengali terrorists on 30 police outposts and an army battalion headquarters” in Buthidaung, Maungdaw and Rathedaung townships on 25 August 2017, and “to ascertain whether security troops conducted the military operations in accord with their duty assignments”.⁵⁹⁶ For the purpose of this investigation, between 13 October and 7 November 2017 the Investigation Team reportedly interviewed 3,217 villagers in 58 villages in Rakhine State and collected the account of 804 witnesses.⁵⁹⁷ However, it appears that the Investigation Team did not seek the views of members of the Rohingya population who had fled to Bangladesh.⁵⁹⁸

239. In its findings, the Investigation Team reportedly found that on 25 August 2017 “ARSA Bengali terrorists” with an estimated strength of between 6,200 to 10,000 individuals attacked the *Tatmadaw* and other Security Forces.⁵⁹⁹ In the fighting in Rakhine State “from 25 August 2017 to 5 September”, “376 bodies of ARSA Bengali terrorists” were found, while 13 members of “security forces” were killed, 15 members injured and 1 went missing.⁶⁰⁰ The Investigation Team concluded that the “security forces abided by laws related to the wars in conducting clearance operations”, and “did not perform the use of excessive

⁵⁹⁵ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537-0538, para. 1612.

⁵⁹⁶ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 1.

⁵⁹⁷ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 2. *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1612.

⁵⁹⁸ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1612. *See also* HRW statement of September 2018, [BGD-OTP-0002-0245](#) at 0249.

⁵⁹⁹ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), paras. 4-5.

⁶⁰⁰ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 8.

force”.⁶⁰¹ It reportedly found that “the security troops including Tatmadaw columns which were accompanied by members of Border Guard Police [...] were only fighting against the ARSA Bengali terrorists”⁶⁰² and “never shot” at those who it referred to as “the innocent Bengalis.”⁶⁰³ On the basis of interviews conducted with “Bengali” villagers, it reportedly found that:

“security forces did not commit shooting at innocent villagers and sexual violence and rape cases against women. They did not arrest, beat and kill the villagers. They did not totally destroy, rob and take property, gold and silver wares, vehicles and animals of villagers from the villages and displaced villagers. They did not set fire to the mosques in Bengali villages. They allow the Bengali villagers to perform their faiths in freedom without banning them to attend the mosques and join prayers. They did not threaten, bully and drive out the villagers not to be able to live in the villages and they did not set fire to the houses. They are joining hands with relevant administrative bodies in systematically supervising the tasks to protect the remaining houses in villages against destruction and stealing [...]”.⁶⁰⁴

240. Specifically in the context of arrests of “Bengali terrorists and their supporters”, the Investigation Team reportedly found that those arrested “were systematically handed over in good situations to the local police stations” and members of the “security forces did not commit persecution” against them but

⁶⁰¹ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 5. *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1612.

⁶⁰² Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 4. *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1612.

⁶⁰³ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 4. *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1612.

⁶⁰⁴ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 9.

acted in accordance with IHL.⁶⁰⁵ It found that “ARSA Bengali terrorists torched houses and fled to Bangladesh”, and that the “flocks of Bengalis” fled into Bangladesh because they had lost their houses and had no place to live, out of fear following ARSA threats, or for fear of being punished for not having revealed their relatives’ participation in the terrorist attacks.⁶⁰⁶ The *Tatmadaw* announced that “arrests of the remaining ARSA Bengali terrorists will continue”⁶⁰⁷ and that action would be taken against those officials responsible for “weaknesses in doing management and acquiring security information”.⁶⁰⁸

241. The Investigation Team’s initial conclusion denying any wrongdoing by the “security forces”⁶⁰⁹ was subsequently refuted. This casts doubt on the Investigation Team’s willingness to genuinely investigate the allegations against the *Tatmadaw* and other Security Forces. On 10 January 2018, around two months after the release of the Investigation Team’s initial findings, the Office of the Commander-in-Chief stated that an investigation team led by the same Lieutenant-General Aye Win — indicating it was the same Investigation Team⁶¹⁰ — had conducted an additional investigation.⁶¹¹ This was an investigation into “information sent by an unidentified person that slain human bodies were buried in Innidin [Inn Din] Village cemetery in Maung[daw] Township [...] to investigate

⁶⁰⁵ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 6 (referring to the “provisions of the Geneva Convention and the law of wars”). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1612.

⁶⁰⁶ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 10

⁶⁰⁷ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 14.

⁶⁰⁸ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 14. See also para. 13 (“Despite the extended terrorist group, the issue including atrocities committed by the terrorists could not be exposed as officials in the concerned region were weak in acquiring information.”)

⁶⁰⁹ Myanmar Office of President press release of 13 November 2017, [BGD-OTP-0002-0017](#), para. 3.

⁶¹⁰ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1614 (“from the same Investigation Team, still headed by Lieutenant-General Aye Win”). See Office of the Commander-in-Chief of Defence Services press release, [BGD-OTP-0002-1421](#), para. 3 (“With regard to the incidents [of 25 August 2017], the investigation team led by Lt-Gen Aye Win was formed in October 2017 to carry out investigation”).

⁶¹¹ See Office of the Commander-in-Chief of Defence Services press release of 10 January 2018, [BGD-OTP-0002-0035](#). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1614 (dating the release of the statement as 11 January 2018).

whether or not security forces were involved in the case.”⁶¹² The available information suggests that this subsequent investigation may have been triggered by “the imminent publication by Reuters of an investigative piece on the mass grave in Inn Din”,⁶¹³ casting further doubt on the genuineness of the Investigation Team’s efforts.

242. During the additional investigation, the Investigation Team reportedly questioned witnesses — including members of the *Tatmadaw* and other Security Forces.⁶¹⁴ It found that “security forces” conducting a security operation were attacked “by about 200 Bengalis with sticks and swords” on 1 September 2017. After arresting 10 of them, “[t]he security forces questioned the 10 arrestees”,⁶¹⁵ and later made the decision to kill them.⁶¹⁶ The following day, detainees were cut with swords by villagers and “four members of the security forces [...] shot them with the use of guns” inside the pit into which they had been ordered to

⁶¹² Office of the Commander-in-Chief of Defence Services press release of 10 January 2018, [BGD-OTP-0002-0035](#). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1614. See further ICJ “Achieving justice” report, [BGD-OTP-0001-3836](#) at 3840 (dating the publication of the summary report as 10 January 2018), 3874.

⁶¹³ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538-0539, para. 1616 (“in all likelihood”); AI “We will destroy everything” report, [BGD-OTP-0001-2649](#) at 2798 (“as Reuters was preparing to publish a detailed account of the incident”). See also Reuters article of 18 December 2017, [BGD-OTP-0002-1395](#) at 1395 (in a statement posted on the Facebook page of the *Tatmadaw*’s Commander-in-Chief, the army said that unidentified bodies had been found at the Inn Din village cemetery following information by an unidentified source). See further Reuters article of 8 February 2018 (text), [BGD-OTP-0001-0861](#) at 0865; Reuters article of 8 February 2018 (containing video and graphics), [BGD-OTP-0001-5168](#) at 00:00:44-00:00:56 (stating that the Reuters investigation of the Inn Din massacre is what prompted Myanmar police authorities to arrest two Reuters reporters on 12 December 2017, for allegedly obtaining confidential documents relating to Rakhine); UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0447-0448, para. 1296 (the two Reuters journalists were arrested and detained in December 2017 “ostensibly for alleged violations of the Official Secrets Act, but in reality in an attempt to prevent or punish them from publishing a story about serious violations committed by the Myanmar security forces”); AI “We will destroy everything” report, [BGD-OTP-0001-2649](#) at 2732. Compare with Reuters article of 10 April 2018, [BGD-OTP-0001-1141](#) at 1143 (“The [Myanmar] authorities told Reuters in February the military opened an internal investigation independently and that it is unrelated to the Reuters reporters who are accused of obtaining unrelated secret government papers.”)

⁶¹⁴ Office of the Commander-in-Chief of Defence Services press release of 10 January 2018, [BGD-OTP-0002-0035](#). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1614.

⁶¹⁵ Office of the Commander-in-Chief of Defence Services press release of 10 January 2018, [BGD-OTP-0002-0035](#).

⁶¹⁶ Office of the Commander-in-Chief of Defence Services press release of 10 January 2018, [BGD-OTP-0002-0035](#). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1614 (citing Facebook post on file with the FFM).

descend.⁶¹⁷ The Investigation Team “found that the incident was not submitted to superior levels.”⁶¹⁸ The *Tatmadaw* reported that “action will be taken against the villagers who participated in the case and the members of security forces who broke the Rules of Engagement under the law” and, once identified, against “the officials who needed to control subordinates despite no direct relation to the incident”.⁶¹⁹

243. On 10 April 2018, it was reported that the *Tatmadaw* announced that “[s]even Myanmar soldiers” — “[f]our officers” and “three soldiers” — had been permanently dismissed from the army and sentenced to “10 years in prison with hard labo[u]r in a remote area” for participating in the massacre of ten Rohingya Muslim men in the village of Inn Din in September 2017. Proceedings against the police personnel and civilians “involved in the crime” were reportedly still under way.⁶²⁰ There was, until recently, limited information available on the steps taken to execute these sentences of imprisonment.⁶²¹ At the end of May 2019, however, Reuters reported that the seven soldiers had been granted early release, and that they may have been released as early as November 2018.⁶²² Reuters also reported that “an ethnic Rakhine Buddhist villager also jailed over the Inn Din killings was

⁶¹⁷ Office of the Commander-in-Chief of Defence Services press release of 10 January 2018, [BGD-OTP-0002-0035](#). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1615.

⁶¹⁸ Office of the Commander-in-Chief of Defence Services press release of 10 January 2018, [BGD-OTP-0002-0035](#). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1615.

⁶¹⁹ Office of the Commander-in-Chief of Defence Services press release of 10 January 2018, [BGD-OTP-0002-0035](#). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1615.

⁶²⁰ Reuters article of 10 April 2018, [BGD-OTP-0001-1141](#) at 1141, 1143. See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1615. See further Myanmar Office of President press release, undated “News release on the act of British MPs”, [BGD-OTP-0002-0021](#), para. 13.

⁶²¹ See UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1615, noting that “State media reported that these prisoners had been released in the context of the Presidential pardon [...] The same day the Government denied these reports”, citing New York Times article of 18 April 2018, [BGD-OTP-0002-0515](#). See also AI “We will destroy everything” report, [BGD-OTP-0001-2649](#) at 2798; UN High Commissioner for Human Rights report of 11 March 2019, [BGD-OTP-0002-0599](#) at 0610, para. 55 (“No information is available, however, on the identity of the perpetrators or the actual execution of the sentences other than an announcement made by the Tatmadaw Commander-in-Chief on his Facebook page”).

⁶²² Reuters article of 27 May 2019, [BGD-OTP-0001-5176](#). The article reportedly named one of the soldiers.

still in prison [...] serving a five-year sentence for murder.”⁶²³ A military spokesperson reportedly confirmed that Commander-in-Chief Senior General Min Aung Hlaing had reduced the prison sentence of the seven soldiers “from 10 years to one year with hard labour” and they were released in November 2018,⁶²⁴ apparently because of their “dutifulness during their time in the Army, and in consideration of the petition” submitted on their behalf to Senior General Min Aung Hlaing.⁶²⁵

244. It does not seem that these proceedings examined the conduct of those who appear most responsible for the crimes identified in this Request, namely the crimes of deportation, persecution and other inhumane acts. It appears that the proceedings were of limited scope, involving allegations against a limited number of individuals concerning one particular incident. Proceedings appear to have focused on seven *Tatmadaw* officers and soldiers of other rank⁶²⁶ — and maybe some police personnel and non-Rohingya civilians — involved in the commission of execution-style killings during a single incident.

245. Information issued subsequently indicates that senior *Tatmadaw* members allegedly connected to the 2017 wave of violence were removed from their posts, but this information — including on the nature of the purported sanction — does not allow for the conclusion that their removal stems from an investigation or prosecution into their conduct in relation to the alleged crimes. The Myanmar President’s Office indicated that “[t]he duties of the commander of Western Command, who took charge of Rakhine security affairs, were terminated as he

⁶²³ Reuters article of 27 May 2019, [BGD-OTP-0001-5176](#) (reportedly providing the name of this individual). But see Irrawaddy article of 29 May 2019, [BGD-OTP-0001-5182](#) (“The fates of three policemen and six villagers arrested along with the soldiers are unknown”).

⁶²⁴ Irrawaddy article of 29 May 2019, [BGD-OTP-0001-5182](#).

⁶²⁵ Irrawaddy article of 29 May 2019, [BGD-OTP-0001-5182](#) (in addition, the Office of the Judge Advocate General reportedly submitted to the Commander-in-Chief that “the soldiers were found not to have had any intention to kill, but their actions were simply not in line with procedures while serving in a time of conflict.”)

⁶²⁶ Reuters article of 10 April 2018, [BGD-OTP-0001-1141](#) at 1143 (referring to four officers and three soldiers of other rank). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0538, para. 1615 (referring to “seven ‘officials and other ranks of the Tatmadaw’”).

had weaknesses in his actions over the issue.”⁶²⁷ According to Human Rights Watch (“HRW”), the *Tatmadaw* announced on 25 June 2018 (i) the dismissal, following transfer to reserve duty, of commander of the Western Command Major General Maung Maung Soe;⁶²⁸ and (ii) the belated resignation, following transfer partly on health grounds, of his superior and commander of the Bureau of Special Operations Lieutenant General Aung Kyaw Zaw.⁶²⁹ On that same day of 25 June 2018, the European Union and Canada announced new sanctions against these individuals,⁶³⁰ among others, for their alleged responsibility for crimes against Rohingya in Rakhine State.⁶³¹ HRW reported that the *Tatmadaw*’s announcement made no reference to allegations of crimes, but instead focused on these individuals’ weakness of administration and performance in relation to the ARSA attacks, such as in gaining advance information and preparing for them.⁶³² In her March 2019 report, the UN High Commissioner for Human Rights similarly stated that the OHCHR “received unconfirmed information on the reported demotion, reassignment and forced retirement of Tatmadaw officers involved in the violence in Rakhine after August 2017. While further corroboration would be required from the Tatmadaw, these actions remain inadequate in light of the gravity of the crimes alleged.”⁶³³

246. The Office of the *Tatmadaw* Commander-in-Chief announced the establishment, starting from 18 March 2019, of an investigation court,⁶³⁴ “[d]ue to assessments and suggestions of the Office of the Judge Advocate-General” over the Investigation Team’s reports, and over reports compiled by HRW, AI and the

⁶²⁷ Myanmar Office of President press release, undated “News release on the act of British MPs”, [BGD-OTP-0002-0021](#), para. 13. See also AI “We will destroy everything” report, [BGD-OTP-0001-2649](#) at 2798.

⁶²⁸ HRW article of 29 June 2018, [BGD-OTP-0002-1349](#) at 1349-1350; AI “We will destroy everything” report, [BGD-OTP-0001-2649](#) at 2798.

⁶²⁹ HRW article of 29 June 2018, [BGD-OTP-0002-1349](#) at 1349-1350.

⁶³⁰ EU Council Decision of 25 June 2018, [BGD-OTP-0001-0781](#) at 0781, 0782; Canada Special Economic Measures, [BGD-OTP-0001-1247](#) at 1247-1249.

⁶³¹ See also HRW article of 29 June 2018, [BGD-OTP-0002-1349](#) at 1350.

⁶³² HRW article of 29 June 2018, [BGD-OTP-0002-1349](#) at 1349-1350.

⁶³³ UN High Commissioner for Human Rights report of 11 March 2019, [BGD-OTP-0002-0599](#) at 0610, para. 55.

⁶³⁴ Office of the Commander-in-Chief of Defence Services press release, [BGD-OTP-0002-1421](#), para. 5.

UN FFM, requiring further scrutiny by the Office.⁶³⁵ The investigation court is reportedly composed of three *Tatmadaw* officers (Chairperson Major-General Myat Kyaw, and two Colonels) and mandated “to further scrutinize and approve the respective incidents.”⁶³⁶ The *Tatmadaw* reported that this court “was set up in conformity with” *Tatmadaw* (Defence Services) rules,⁶³⁷ and that on 2 April 2019 it had invited submissions.⁶³⁸ On 18 April 2019, the Judge Advocate General reportedly formed and assigned a “Legal Advisory Team” to the court “in accordance with the directive of the Office of the Commander-in-Chief (Army)”, and that it was composed of five members of the armed forces.⁶³⁹ At present there does not appear to be significant additional information available regarding the court or its activities. Its establishment does not affect, for the time being, the conclusion regarding the complementarity determination. However, the Prosecution will continue to review its assessment in light of new information as it becomes available.

(b) *The Independent Commission of Enquiry (“ICOE”)*

247. On 30 July 2018, the Government of Myanmar established the ICOE.⁶⁴⁰ The ICOE’s establishment, mandate and powers do not show that it meets the admissibility requirements under article 17(1)(a) of the Statute demonstrating that the potential cases are being investigated or prosecuted. To the extent that the ICOE is considered relevant to the complementarity determination, there is

⁶³⁵ Office of the Commander-in-Chief of Defence Services press release, [BGD-OTP-0002-1421](#), para. 4

⁶³⁶ Office of the Commander-in-Chief of Defence Services press release, [BGD-OTP-0002-1421](#), para. 5.

⁶³⁷ Office of the Commander-in-Chief of Defence Services press release on formation and assignment of legal advisory team, [BGD-OTP-0001-5180](#), para. 1.

⁶³⁸ Office of the Commander-in-Chief of Defence Services press release on formation and assignment of legal advisory team, [BGD-OTP-0001-5180](#), para. 2.

⁶³⁹ Office of the Commander-in-Chief of Defence Services press release on formation and assignment of legal advisory team, [BGD-OTP-0001-5180](#), para. 3 (referring to Major-General Thuang Naing, Deputy Judge Advocate General, chairman of the team, and four members: Lieutenant-Colonel Myint Thein, Assistant Judge Advocate General, Major Myint San, Deputy Assistant Judge Advocate General, Captain Kyaw Kyaw Lin, Deputy Assistant Judge Advocate General (Captain) and Captain Daw Thazin Swe, Judge Advocate.”) *See also* Office of the Commander-in-Chief of Defence Services press release regarding Court of Enquiry call for submissions, [BGD-OTP-0001-5181](#).

⁶⁴⁰ Myanmar Office of President press release of 30 July 2018, [BGD-OTP-0002-0016](#). *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0539, para. 1619.

insufficient indication that it has taken “tangible, concrete and progressive investigative steps”⁶⁴¹ since its establishment. Finally, a number of statements made by Myanmar officials point to Myanmar authorities’ unwillingness to genuinely carry out the investigation with which the ICOE has been tasked. The ICOE appears to be a recent example of several domestic initiatives which have not resulted in effective investigations leading to criminal accountability. For these reasons, the ICOE does not lead to the inadmissibility before the Court, pursuant to the principle of complementarity, of the potential case(s) identified in this Request and accompanying Annexes. Given that it appears that the ICOE’s activity is ongoing, the Prosecution will continue to review its assessment as new information becomes available.

(i) The ICOE’s establishment, mandate and powers

248. The ICOE’s establishment, mandate and powers do not show that its investigation is designed to result in criminal prosecutions, so that it does not meet the admissibility requirements under article 17(1) of the Statute.⁶⁴² By way of comparison, in the *Burundi* Article 15 Decision, Pre-Trial Chamber III went on to assess the findings of commissions of inquiry for the purposes of the complementarity determination. This was because, according to the information available at the time, these commissions (i) had been established by a quasi-judicial authority (the Prosecutor General); (ii) had certain judicial and investigative powers; and (iii) at least some of the commissions were explicitly authorised to refer persons to the competent authorities, to such an extent that arrests had been made and charges brought in connection with their inquiries.⁶⁴³

⁶⁴¹ [Burundi Article 15 Decision](#), para. 148.

⁶⁴² See [Burundi Article 15 Decision](#), para. 152.

⁶⁴³ [Burundi Article 15 Decision](#), para. 153. See also [UN Doc E/CN.4/2005/102/Add.1](#), Principle 19 (“States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and IHL and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished. [...]”)

In contrast, on the information currently available, it does not appear that the ICOE fulfills those conditions.

249. Regarding the authority behind its establishment, the Myanmar Government established the ICOE.⁶⁴⁴ The Myanmar Government appointed four members, namely two international commissioners, Ambassadors Rosario Manalo (Chairperson) and Kenzo Oshima, and two domestic commissioners, U Mya Thein and Professor Dr Aung Tun Thet.⁶⁴⁵

250. As for the ICOE's mandate, when it announced its establishment the Office of the President of Myanmar stated that the ICOE was tasked with "investigat[ing] the allegations of human rights violations and related issues, following the terrorist attacks by ARSA".⁶⁴⁶ Reporting on the ICOE's 16 August 2018 press conference taking place about two weeks after its establishment, "Government newspaper" the GNLM⁶⁴⁷ noted that the ICOE was to discharge its mandate "with a view to seeking accountability and to formulate recommendations on steps to be taken to ensure peace and stability in Rakhine State."⁶⁴⁸

251. In a 24 May 2019 press release, the ICOE clarified that by virtue of "Myanmar's Investigation Committees Act 1950", "investigations of the committee shall be deemed to be a 'criminal case proceeding' [...] [t]hereby entrenching it as part of the criminal justice system of Myanmar."⁶⁴⁹ Under the ICOE terms, "the Investigation Committees Act 1950 will apply to the ICOE."⁶⁵⁰ Nevertheless, the ICOE terms also prescribe that it shall submit its "reports with

⁶⁴⁴ Myanmar Office of President press release of 30 July 2018, [BGD-OTP-0002-0016](#).

⁶⁴⁵ Myanmar Office of President press release of 30 July 2018, [BGD-OTP-0002-0016](#). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0539, para. 1619.

⁶⁴⁶ Myanmar Office of President press release of 30 July 2018, [BGD-OTP-0002-0016](#).

⁶⁴⁷ See e.g. UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0379, para. 1053, at 0397, para. 1137 (describing the GNLM as a "government newspaper").

⁶⁴⁸ GNLM article of 17 August 2018, [BGD-OTP-0002-1133](#). See also ICOE, Key Terms, [BGD-OTP-0002-1135](#).

⁶⁴⁹ ICOE press release of 24 May 2019, [BGD-OTP-0001-5178](#).

⁶⁵⁰ "In the discharge of its mandate, ICOE will be guided by the laws of Myanmar. In this regard, the Investigation Committees Act 1950 will apply to ICOE. ICOE will have reference to international human rights law and international humanitarian law, where applicable", ICOE, Key Terms, [BGD-OTP-0002-1135](#).

its recommendations” to the President of Myanmar,⁶⁵¹ but do not indicate what measures should follow from this. In any case, it remains unclear if and how it is envisaged the ICOE’s investigation will lead to criminal proceedings. There are indications to the contrary. For instance, during the 16 August 2018 press conference, the ICOE’s Chairperson reportedly stated that while the ICOE will seek accountability, it “will not ‘blame or finger-point’ at anyone but seek ‘to cooperate’ for peace in the region.”⁶⁵²

252. At present the ICOE’s activity appears to be ongoing, as the ICOE anticipated submitting an interim report to the President’s Office,⁶⁵³ but has not yet publicly announced having done so. Its relationship, if any, to the recently established *Tatmadaw* military investigation court is also unclear.⁶⁵⁴

253. As for its powers, the ICOE has been characterised by the UN High Commissioner for Human Rights as a “non-judicial” body.⁶⁵⁵ The ICOE is reported to have certain investigative powers but these appear to be limited. Reportedly, the ICOE “shall have the cooperation” of Government, region and State authorities, which “shall include complying with requests for information”.⁶⁵⁶ It “will take into account all available sources of information that it considers to be relevant and reliable”, “may undertake study/investigative

⁶⁵¹ ICOE, Key Terms, [BGD-OTP-0002-1135](#).

⁶⁵² Irrawaddy article of 16 August 2018, [BGD-OTP-0001-0768](#) at 0769. See also ICJ “New commission of inquiry” report, [BGD-OTP-0001-2908](#) at 2908. See further UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0539, para. 1619.

⁶⁵³ ICOE Press release of 1 February 2019, [BGD-OTP-0002-1139](#) (interim report to be submitted in mid-March 2019). But see ICOE press release of 6 April 2019, [BGD-OTP-0001-5177](#) (ICOE reviewed the framework of its preliminary report); ICOE press release of 4 May 2019, [BGD-OTP-0001-5183](#) (preliminary report in the process of being prepared for submission); ICOE press release of 26 May 2019, [BGD-OTP-0001-5179](#) (ICOE had intensive discussions on its preliminary report).

⁶⁵⁴ See e.g. ICOE press release of 4 May 2019, [BGD-OTP-0001-5183](#) (reporting meeting Senior General Min Aung Hlaing Commander-in-Chief of the *Tatmadaw*, during which they exchanged views “on the events that brought about the evolution” of the military investigation court including “the creation of the ICOE.” Also during this meeting the ICOE expressed appreciation on the reassurance of full cooperation by the *Tatmadaw* with respect to “outcomes of [military investigation court’s] deliberations”).

⁶⁵⁵ UN High Commissioner for Human Rights report of 11 March 2019, [BGD-OTP-0002-0599](#) at 0610-0611, para. 56.

⁶⁵⁶ ICOE, Key Terms, [BGD-OTP-0002-1135](#). See also GNLM article of 17 August 2018, [BGD-OTP-0002-1133](#).

visits to relevant areas”, “may [...] make a call for written submissions [...] to any interested person or group” and “will be guided [...] by the principles of independence, impartiality, objectivity, discretion, transparency, confidentiality, integrity and professionalism.”⁶⁵⁷ The ICOE stated in a recent press release that “Myanmar’s Investigation Committees Act 1950”, applying to the ICOE, “provides a robust hybrid of powers” among others “to compel production of documents and seek the attendance of witnesses.”⁶⁵⁸ Nevertheless, in relation to the scope of the ICOE’s powers, the Myanmar Special Rapporteur expressed concern over the ICOE’s assurance that those in contact with it in connection with the investigation shall not, as a result of such cooperation, suffer any “prejudicial treatment”. This concern stemmed from the fact that, according to the Special Rapporteur, the ICOE “does not have the power to protect witnesses and victims.”⁶⁵⁹

254. To the extent that the Chamber considers that the ICOE’s investigation is relevant under the complementarity determination, the Prosecution submits that on the information currently available there is insufficient indication that the ICOE has taken “tangible, concrete and progressive investigative steps”⁶⁶⁰ since its establishment in July 2018.

(ii) Steps undertaken by the ICOE

255. The press releases issued so far report several meetings of the ICOE, including with Myanmar authorities, among them the team leader of the *Tatmadaw* Investigation Team — referred to above⁶⁶¹ — and several members of the Investigation Commission for Maungdaw in Rakhine State, discussed further

⁶⁵⁷ ICOE, Key Terms, [BGD-OTP-0002-1135](#). See also GNLM article of 17 August 2018, [BGD-OTP-0002-1133](#).

⁶⁵⁸ ICOE press release of 24 May 2019, [BGD-OTP-0001-5178](#).

⁶⁵⁹ UN Special Rapporteur report of 5 March 2019, [BGD-OTP-0002-0456](#) at 0468, para. 62. See also ICOE, Key Terms, [BGD-OTP-0002-1135](#).

⁶⁶⁰ [Burundi Article 15 Decision](#), para. 148.

⁶⁶¹ See paras. 237 above, 268 below.

below.⁶⁶² During its second meeting, the ICOE also reportedly conducted “a day trip to the affected areas in Northern Rakhine” in the course of which it met with relevant authorities, inspected a reception centre, engaged in dialogue with the different communities “living in mixed villages” and “also spoke to some survivors and their family-members of the terrorists’ attacks” and with “a family [...] who had returned to Myanmar of their own volition.”⁶⁶³ In a recent press release dated 26 May 2019, the ICOE indicated that it had discussed a plan for its second visit to Rakhine State, and also a “proposed programme in Cox’s Bazar, Bangladesh” for its evidence collection and verification team.⁶⁶⁴ According to one of its press releases, the ICOE has also collected 36 depositions in Rakhine, during which the witnesses were interviewed, and were assured of their protection. It also reportedly received 43 submissions through its call for submissions.⁶⁶⁵

256. Reflecting the limited steps undertaken up until that point, the ICOE Chairperson reportedly stated on 12 December 2018 that the ICOE had found no evidence so far to prove the allegations of human rights abuses in northern parts of the state against the “government security forces”.⁶⁶⁶ The ICOE’s Chairperson did not explain the methodology and steps that had led to this conclusion but reportedly stated that they “will clarify how [they] collected the evidence later”.⁶⁶⁷

⁶⁶² ICOE press release of 7 October 2018, [BGD-OTP-0002-1137](#); ICOE press release of 10 January 2019, [BGD-OTP-0002-1141](#). See also ICJ “New commission of inquiry” report, [BGD-OTP-0001-2908](#) at 2911. See further paras. 261-266 below.

⁶⁶³ ICOE press release of 31 August 2018, [BGD-OTP-0002-1136](#). See also GNLM article of 1 September 2018, [BGD-OTP-0002-1134](#); ICJ “New commission of inquiry” report, [BGD-OTP-0001-2908](#) at 2911.

⁶⁶⁴ ICOE press release of 26 May 2019, [BGD-OTP-0001-5179](#). See also ICOE press release of 1 February 2019, [BGD-OTP-0002-1139](#) (discussing preparations for second visit to Rakhine State); ICOE press release of 6 April 2019, [BGD-OTP-0001-5177](#) (discussing proposed visit to Bangladesh and Cox’s Bazar).

⁶⁶⁵ ICOE press release of 1 February 2019, [BGD-OTP-0002-1139](#).

⁶⁶⁶ Irrawaddy article of 12 December 2018, [BGD-OTP-0001-0765](#) at 0765-0766 (reportedly stating that “for the time being, allegations are still allegations. There is no conclusive evidence.”) See also HRW article of 19 December 2018, [BGD-OTP-0001-3519](#) at 3520.

⁶⁶⁷ Irrawaddy article of 12 December 2018, [BGD-OTP-0001-0765](#) at 0766.

(iii) Statements by officials relevant to the ICOE

257. In addition to the limited steps undertaken by the ICOE, there are further indications that point to the Myanmar authorities' unwillingness to genuinely carry out the investigation within the meaning of article 17(2)(a) and (c). Statements from inquiry members and government officials that appear to predetermine outcomes of the investigation are relevant to such an assessment. It was reported by Government newspaper GNLM that the spokesperson for Myanmar's Office of the President had stated that the ICOE's purpose was "to respon[d] to false allegations made by the UN Agencies and other international communities."⁶⁶⁸ Prior to his appointment as one of the ICOE's domestic commissioners, Dr Aung Tun Thet reportedly stated that Myanmar has a "clear conscience" and that "there is no such thing in our country, in our society, as ethnic cleansing, and no genocide."⁶⁶⁹ Dr Aung Tun Thet reportedly stated that "[t]ortures happened" but that "[w]hatever has happened in Rakhine is not systematic, and that Myanmar is now working for their repatriation clearly demonstrates that there was no intention for ethnic cleansing".⁶⁷⁰ This same commissioner is the Chief Coordinator of the UEHRD, described above.⁶⁷¹ He was also a member of the Investigation Commission for Maungdaw in Rakhine State⁶⁷² carrying out an investigation into the 2016 wave of violence, as discussed further below.

⁶⁶⁸ GNLM article of 29 August 2018, [BGD-OTP-0002-0023](#) at 0023. *See also* ICJ "New commission of inquiry" report, [BGD-OTP-0001-2908](#) at 2908.

⁶⁶⁹ Reuters article of 14 March 2018, [BGD-OTP-0001-1160](#) at 1163; HRW article of 19 December 2018, [BGD-OTP-0001-3519](#) at 3522-3523. *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0539-0540, para. 1619.

⁶⁷⁰ *See* ICJ "New commission of inquiry" report, [BGD-OTP-0001-2908](#) at 2912 citing Daily Star article of 25 March 2019, [BGD-OTP-0002-0495](#) at 0496.

⁶⁷¹ Union Enterprise website page of 4 March 2019, [BGD-OTP-0002-0031](#); UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0539-0540, para. 1619, citing Reuters article of 26 February 2018, [BGD-OTP-0001-1201](#); ICJ "New commission of inquiry" report, [BGD-OTP-0001-2908](#) at 2911-2912. *See also* paras. 83, 161-162 above.

⁶⁷² HRW statement of September 2018, [BGD-OTP-0002-0245](#) at 0252. *See also* ICOE, About, [BGD-OTP-0002-1140](#). *See further* Myanmar Office of President press release of 1 December 2016, [BGD-OTP-0002-1161](#).

258. In its assessment, the UN FFM “concluded on reasonable grounds” that the ICOE “will not and cannot provide a real avenue for accountability, even with some international involvement.”⁶⁷³ Rather, the ICOE appears to be a recent example of a number of domestic initiatives which have not resulted in effective investigations leading to criminal accountability.

(iv) Other previous domestic initiatives

259. Regarding the domestic initiatives set up following the 2016 wave of violence, publicly available information indicates that domestic authorities established at least four inquiries. These were: (1) Investigation Commission for Maungdaw in Rakhine State (at the national or Union-level); (2) Rakhine State Investigation Committee (at the State-level); (3) *Tatmadaw* Investigation Team; and (4) Ministry of Home Affairs Investigation Committee.⁶⁷⁴

260. While these initiatives are reviewed in more detail below, in the assessment of the UN FFM⁶⁷⁵ and Myanmar Special Rapporteur⁶⁷⁶ and of several NGOs

⁶⁷³ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0540, para. 1619. *See also* UN Special Rapporteur report of 5 March 2019, [BGD-OTP-0002-0456](#) at 0468, para. 62. *See further* UN High Commissioner for Human Rights report of 11 March 2019, [BGD-OTP-0002-0599](#) at 0610-0611, para. 56.

⁶⁷⁴ *See* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0535, para. 1605; HRW statement of September 2018, [BGD-OTP-0002-0245](#) at 0246-0248. *See further* Myanmar Office of President press release, undated “Tatmadaw ends clearance operation”, [BGD-OTP-0002-0020](#), outlining these and other efforts, including “the Advisory Commission on Rakhine [State] led by former UN Secretary-General Mr Kofi Annan”. Regarding the latter, its Final Report released in August 2017 stated that the Commission was “not mandated to investigate specific cases of alleged human rights violations”, Advisory Commission on Rakhine State report, [BGD-OTP-0001-5031](#) at 5043. The accusations against “security forces” of serious human rights violations during the 2016 wave of violence led the Commission to recommend in its interim report that “an impartial and independent investigation should be carried out.” In its Final Report, it reiterated this recommendation “that the Government should ensure – based on independent and impartial investigation – that perpetrators of serious human rights violations are held accountable.” Advisory Commission on Rakhine State report, [BGD-OTP-0001-5031](#) at 5085.

⁶⁷⁵ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0534, para. 1602 (referring to domestic inquiries into Rakhine State since 2012). *See also* UNFFM summary report, [BGD-OTP-0001-0108](#) at 0125, para. 96.

⁶⁷⁶ UN Special Rapporteur statement of 27 June 2018, [BGD-OTP-0002-0489](#) at 0493 (referring to domestic inquiries into Rakhine State since 2012). *See also* UN High Commissioner for Human Rights report of 11 March 2019, [BGD-OTP-0002-0599](#) at 0611, para. 57.

(HRW,⁶⁷⁷ AI,⁶⁷⁸ and the International Commission of Jurists (“ICJ”))⁶⁷⁹ none resulted in effective investigations leading to criminal accountability.

a. Investigation Commission for Maungdaw in Rakhine State

261. At the national or Union-level, the Office of the President of Myanmar established the Investigation Commission for Maungdaw in Rakhine State on 1 December 2016.⁶⁸⁰ The commission was composed of 13 domestic appointees, among them the military appointed Vice-President Senior General U Myint Swe (Chairperson) and the then-serving MPF Chief Major-General Zaw Win.⁶⁸¹ According to the Myanmar Special Rapporteur, “the inclusion of some members call[ed] into question the Commission’s impartiality”.⁶⁸² As previously mentioned, Dr Aung Tun Thet was among those appointed.⁶⁸³ According to the Office of the President, the Commission’s mandate was to “probe into the background” of the “9 October and 12-13 of November” attacks in Maungdaw and “the truth about the incidents”, and “to investigate whether existing laws, rules and regulations were observed [...] before making recommendations”.⁶⁸⁴ However, it was unclear whether and how these recommendations were designed to achieve accountability.

262. According to the UN FFM, this commission’s “methodology and skills regarding sensitive human rights investigations have been called into

⁶⁷⁷ HRW statement of September 2018, [BGD-OTP-0002-0245](#) at 0245; HRW article of 24 May 2017, [BGD-OTP-0002-0263](#) at 0264.

⁶⁷⁸ AI public statement of 21 February 2017, [BGD-OTP-0002-0091](#) at 0091.

⁶⁷⁹ ICJ “Achieving justice” report, [BGD-OTP-0001-3836](#) at 3843 (citing UN Special Rapporteur statement of 13 March 2017, [BGD-OTP-0002-0483](#)), 3852-3853, 3857. *See also* 3860, 3871; ICJ “New commission of inquiry” report, [BGD-OTP-0001-2908](#) at 2908.

⁶⁸⁰ Myanmar Office of President press release of 1 December 2016, [BGD-OTP-0002-1161](#). *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536, para. 1606.

⁶⁸¹ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536, para. 1606. *See also* Myanmar Office of President press release of 1 December 2016, [BGD-OTP-0002-1161](#). *See further* UN Special Rapporteur report of 14 March 2017, [BGD-OTP-0002-0432](#) at 0446, para. 78.

⁶⁸² UN Special Rapporteur report of 14 March 2017, [BGD-OTP-0002-0432](#) at 0446, para. 78.

⁶⁸³ Myanmar Office of President press release of 1 December 2016, [BGD-OTP-0002-1161](#).

⁶⁸⁴ Myanmar Office of President press release of 1 December 2016, [BGD-OTP-0002-1161](#).

question.”⁶⁸⁵ It was reported to have power to “conduct the investigation in accordance with the Criminal Procedure and the Evidence Act”, and “to question necessary individuals, ask for necessary documents and [...] visit necessary places.”⁶⁸⁶ Regarding its methodology, the UN FFM noted that before the Investigation Commission issued its interim or final reports, the State Counsellor’s Office released a statement casting doubt on the allegations of rape committed by the *Tatmadaw* or other Security Forces during the 2016 wave of violence. This was specifically in reference to an alleged victim of sexual violence interviewed by the Investigation Commission whose name, village of residency and photograph were publicly released.⁶⁸⁷

263. On 3 January 2017, the Office of the President released the commission’s interim report which stated that the commission “held three meetings, went on a field trip [...] to the 10 villages and 4 Security Camps, and interviewed Security Police, Government Staff, Administrative Organisations, villagers from different community based organisations, and community elders.”⁶⁸⁸ According to the Myanmar Special Rapporteur, the commission’s “interim report appears to contain blanket statements that do not seem to have been based on assessing available information and evidence, raising serious doubts about its credibility.”⁶⁸⁹ The report focused on attacks committed against the *Tatmadaw* and other Security Forces and the casualties suffered as a result of those attacks,

⁶⁸⁵ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536, para. 1607. See also UN Special Rapporteur statement of 13 March 2017, [BGD-OTP-0002-0483](#) at 0487. See further HRW article of 24 May 2017, [BGD-OTP-0002-0263](#) at 0264.

⁶⁸⁶ Myanmar Office of President press release of 1 December 2016, [BGD-OTP-0002-1161](#).

⁶⁸⁷ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0533-0534, paras. 1599-1600 (and citations therein), and at 0536, para. 1607. See also Myanmar State Counsellor Office press release of 26 December 2016, [BGD-OTP-0002-1165](#). See further AI public statement of 21 February 2017, [BGD-OTP-0002-0091](#) at 0092 (“the Investigation Commission has allowed details of some survivors and eyewitnesses they interviewed-including their names and pictures-to be published by the media [...] Amnesty International is aware of two rape survivors whose personal details were published in state media after speaking to the Commission”). *Contra* Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1143, para. 3 (“The names and addresses of the interviewees were kept confidential where the interviewees so wished.”), at 1149, para. 35 (referring to alleged victims “who presented their cases directly to the commission”).

⁶⁸⁸ Myanmar Office of President Interim Investigation Report, [BGD-OTP-0002-1162](#), para. 2.

⁶⁸⁹ UN Special Rapporteur report of 14 March 2017, [BGD-OTP-0002-0432](#) at 0446, para. 78.

including the casualties among attackers when “security forces returned fire”.⁶⁹⁰ The interim report identified the group purportedly responsible for the attacks as “Aqa Mul Mujahidin” supposedly linked to the “Rohingya Solidarity Organisation”.⁶⁹¹ The interim report also noted that upon arriving at villages, the “security forces found that some houses were on fire” or found “burnt” or “burning” houses.”⁶⁹² It found “that there were no cases of genocide and religious persecution in the region”,⁶⁹³ as “purportedly proven by the continued presence of Rohingya and the presence of mosques and religious edifices in Maungdaw.”⁶⁹⁴ It said that arsons, illegal arrests and torture were being investigated but concerning rape, “the Commission interviewed local villagers and women [...] and didn’t find sufficient evidence to take legal action” up until that point.⁶⁹⁵ While it mentioned legal proceedings against those “committing crimes in the violent attacks”, these did not appear to refer to members of the *Tatmadaw* and other Security Forces.⁶⁹⁶

264. The Investigation Commission for Maungdaw in Rakhine State released a summary of its final report on 6 August 2017.⁶⁹⁷ As for the steps taken by the commission, the summary of the final report mentioned: “investigations

⁶⁹⁰ Myanmar Office of President Interim Investigation Report, [BGD-OTP-0002-1162](#), para. 5. *See also* paras. 3-4.

⁶⁹¹ Myanmar Office of President Interim Investigation Report, [BGD-OTP-0002-1162](#), para. 6. According to the summary of the final report, “[t]he group changed its name to Arakan Rohingya Salvation Army (ARSA), according to its ‘official’ statement released on 29 March 2017.” Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1145, para. 13. *See also* ICG “A new Muslim insurgency” report, [BGD-OTP-0001-3802](#) at 3817 (explaining *Harakah al-Yaqin* is called “Aqa Mul Mujahidin” by the Myanmar Government).

⁶⁹² Myanmar Office of President Interim Investigation Report, [BGD-OTP-0002-1162](#), paras. 4-5.

⁶⁹³ Myanmar Office of President Interim Investigation Report, [BGD-OTP-0002-1162](#), para. 10.

⁶⁹⁴ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536, para. 1606. *See also* Myanmar Office of President Interim Investigation Report, [BGD-OTP-0002-1162](#), para. 10 (referring to “[t]he Bengali population residing in Maung[daw] region, the increasing population of Mawlawi, mosques and religious edifices”).

⁶⁹⁵ Myanmar Office of President Interim Investigation Report, [BGD-OTP-0002-1162](#), para. 11. *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536, para. 1606.

⁶⁹⁶ Myanmar Office of President Interim Investigation Report, [BGD-OTP-0002-1162](#), para. 15 (“Ten detainees who were found to be innocent of committing crimes in the violence attacks have already been released [...] legal action was taken against 485 suspects in 49 cases. Of them, 28 cases have been put on trial with 3 coming to a final conviction.”)

⁶⁹⁷ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536, para. 1607. *See also* GLNM article of 28 September 2018, [BGD-OTP-0002-1157](#) (“The Investigation Commission’s final report was released on 4 August 2017”).

conducted by the Commission in Bangladesh” at three refugee camps where they spoke to refugees, “personally interview[ing] men and women of different ages and from different social classes”, “field investigations in villages reported to be affected”, and reviewing “statements made by some of those who have been arrested”.⁶⁹⁸

265. In its final report, the commission for Maungdaw reiterated the alleged responsibility of the group “Aqa Mul Mujahidin,” supposedly linked to the “Rohingya Solidarity Organisation,” for the attacks carried out between October and November 2016.⁶⁹⁹ It concluded that during October-November 2016 and after,⁷⁰⁰ the “members of the Armed Forces and the Police”⁷⁰¹ “generally followed the rules and regulations of the unit”, but that “there could have been cases of violations in areas of weak command”.⁷⁰² It stated that action had been taken and was being taken in relation to these violations, with no further detail given.⁷⁰³ It maintained that villagers moved to Bangladesh as a result of threats from the “terrorist groups”, concern at having been involved with or aware of the activities of those groups, and propaganda giving “rise to misconceptions of the activities of the security forces among Muslim villagers.”⁷⁰⁴ In relation to specific

⁶⁹⁸ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1142, para. 2, at 1149-1154, paras. 35-36, 40-42, 45. *See also* GLNM article of 28 September 2018, [BGD-OTP-0002-1157](#) (stating that the Commission held 11 meetings and conducted four field trips to the villages and camps in Maungdaw District where it interviewed 2,240 local residents, in addition to 10 prisoners, people from interfaith groups, personnel from international NGOs, “officials from the respective departments and the security forces”, and also “visited the refugee camps in Bangladesh.”)

⁶⁹⁹ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1145, paras. 13-14, at 1155, para. 51. *See also* at 1145, para. 13 (“[t]he group changed its name to Arakan Rohingya Salvation Army (ARSA), according to its ‘official’ statement released on 29 March 2017.”) *See further* ICG “A new Muslim insurgency” report, [BGD-OTP-0001-3802](#) at 3817 (explaining *Harakah al-Yaqin* is called “Aqa Mul Mujahidin” by the Myanmar government).

⁷⁰⁰ *See* Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1155-1156, paras. 51-53 (referring to a broader period beyond October and November 2016).

⁷⁰¹ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1146, para. 17.

⁷⁰² Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1153, para. 41. *See also* at 1154, para. 47 (“In securing local area tranquility and stability, some violations of rules and regulations were found to have occurred where supervision was lax in the security units or where there were individual weaknesses in compliance with rules and regulations.”)

⁷⁰³ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1151-1153, para. 41. *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536-0537, paras. 1607, 1611.

⁷⁰⁴ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1146, paras. 16-18.

allegations of human rights violations, including killings, torture, rape and arson, the commission indicated that there had been cases where action was taken, again with no further detail.⁷⁰⁵ Specifically in connection with allegations of rape against two named victims “who presented their cases directly to the commission [...] as the allegations could not be confirmed, [it] concluded that the cases require further investigation.”⁷⁰⁶ Regarding “[a]llegations of disproportionate use of force by security personnel [...] [t]here have also been such cases where action was taken.”⁷⁰⁷ As for allegations contained in the OHCHR Flash Report, it concluded that most of them had not been made out.⁷⁰⁸ In particular, it was difficult to “identify who set fire to buildings with any level of certainty, whether it was security forces or villagers or members of terrorist organisations.”⁷⁰⁹ While it noted that between mid-February and the beginning of March 2017, 21 cases were filed for “murder, rape, arson, destruction of evidence, loss of money/ property and deaths”, it gave no further indication of any outcome or any explanation except to note that for some cases there were “mismatches between the complaint and the results of the investigations and in some other cases, the complaints were fabricated”.⁷¹⁰

266. From the summary of the Commission’s final report it appears that it “made no specific findings regarding the role and responsibility of the security forces.”⁷¹¹ Its recommendations do not appear to have proposed or led to specific accountability outcomes.⁷¹² “Less than three weeks” after the Commission issued

⁷⁰⁵ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1150, para. 37.

⁷⁰⁶ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1149, para. 35.

⁷⁰⁷ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1150, para. 38.

⁷⁰⁸ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1151-1153, para. 41.

⁷⁰⁹ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1151-1153, para. 41.

See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536, para. 1607.

⁷¹⁰ Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1151-1153, para. 41.

See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536, para. 1607.

⁷¹¹ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536, para. 1607.

⁷¹² Investigation Commission for Maungdaw Summary Report, [BGD-OTP-0002-1142](#) at 1156, paras. 57-58. *See also* ICJ “New commission of inquiry” report, [BGD-OTP-0001-2908](#) at 2911.

its final report, the *Tatmadaw* and other Security Forces carried out further “clearance operations” following new ARSA attacks on 25 August 2017.⁷¹³

b. Rakhine State Investigation Committee

267. It was announced on 26 October 2016 that the Rakhine State Parliament formed a State-level committee made up of 11 state legislators, none of whom were Rohingya.⁷¹⁴ Its chairperson was state legislator U Aung Win.⁷¹⁵ Reportedly, the committee submitted interim and final reports to the Rakhine State Parliament in December 2016 and March 2017 respectively.⁷¹⁶ According to a media report, the committee undertook two investigation trips to villages in northern and southern Maungdaw Township during which the committee “met some Bengalis.”⁷¹⁷ On the basis of an account by the Myanmar media regarding the committee’s final report, it does not appear to have addressed the alleged responsibility of the *Tatmadaw* or other Security Forces or made any recommendations regarding accountability.⁷¹⁸ In addition, its chairperson reportedly made a public statement on 7 November 2016, before any of the committee’s reports were issued, drawing into question his impartiality by appearing to predetermine the outcome of the investigation.⁷¹⁹ In this statement the chairperson appeared to dismiss in an extremely derogatory way allegations that members of the *Tatmadaw* had raped Rohingya women.⁷²⁰

⁷¹³ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1611.

⁷¹⁴ HRW statement of September 2018, [BGD-OTP-0002-0245](#) at 0246. *See also* Irrawaddy article of 26 October 2016, [BGD-OTP-0002-0512](#) at 0512.

⁷¹⁵ *See* Myanmar Times article of 22 March 2017, [BGD-OTP-0002-1158](#). *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1610.

⁷¹⁶ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1610 (stating that the UNFFM saw a copy of the interim report but only news reports about the final report).

⁷¹⁷ *See* Myanmar Times article of 22 March 2017, [BGD-OTP-0002-1158](#).

⁷¹⁸ *See* Myanmar Times article of 22 March 2017, [BGD-OTP-0002-1158](#). *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1610; HRW statement of September 2018, [BGD-OTP-0002-0245](#) at 0247.

⁷¹⁹ *See* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1610, at 0533, para. 1599.

⁷²⁰ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0533, para. 1599, citing BBC broadcast of 7 November 2016, [BGD-OTP-0002-0288](#).

c. Tatmadaw Investigation Team

268. According to AI, “[a]mid increased international attention in the wake of” the OHCHR Flash Report released on 3 February 2017, two internal commissions were established, led by the *Tatmadaw* and the police respectively. “According to state media, both commissions were established at the request of the Investigation Commission” for Maungdaw in Rakhine State.⁷²¹

269. On 9 February 2017, the *Tatmadaw* announced the composition of its five-member — all from the armed forces — investigation team “to investigate whether there have been unlawful acts including violations of human rights,” with Lieutenant-General Aye Win as Chairperson.⁷²² According to the UN FFM, on 23 May 2017 the *Tatmadaw* True News Information Team released the findings of the investigation, stating that 12 out of 18 allegations in the OHCHR Flash Report were “totally wrong” and 6 were false accusations or exaggerated.⁷²³ HRW reported that the *Tatmadaw* announced that its investigation into alleged abuses in Rakhine State “uncovered no wrongdoing except in two minor incidents.”⁷²⁴ The investigation team reportedly “interviewed approximately 2,875 villagers in 29 villages” in Maungdaw Township from 10 February to 4 March 2017.⁷²⁵ According to HRW, the two cases of abuse identified amounted to: (1) “the theft of a motorbike, for which a soldier was sentenced to one year in jail and received a fine”; and (2) “military personnel who beat villagers for allegedly not helping to

⁷²¹ AI public statement of 21 February 2017, [BGD-OTP-0002-0091](#) at 0092. See also Myanmar Office of President press release of 20 February 2017, [BGD-OTP-0002-1164](#) (“At the request of the commission, the Ministry of Defence and Ministry of Home Affairs also formed commissions investigating the accusations”); UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536-0537, para. 1608.

⁷²² Myanmar Ministry of Information press release of 10 February 2017, [BGD-OTP-0002-1166](#). See also UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536-0537, para. 1608. See further Irrawaddy article of 10 February 2017, [BGD-OTP-0002-0505](#) at 0506.

⁷²³ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536-0537, para. 1608. See also HRW article of 24 May 2017, [BGD-OTP-0002-0263](#) at 0264.

⁷²⁴ HRW article of 24 May 2017, [BGD-OTP-0002-0263](#) at 0263.

⁷²⁵ HRW article of 24 May 2017, [BGD-OTP-0002-0263](#) at 0263.

extinguish a fire, for which one officer was ‘penalized and warned’ and two soldiers were sentenced to a year in jail.”⁷²⁶

d. Ministry of Home Affairs Investigation Committee

270. Also in February 2017, the Ministry of Home Affairs reportedly established its own five-member investigation committee chaired by Police Brigadier-General Win Tun to investigate the allegations of human rights violations during the 2016 wave of violence.⁷²⁷ According to HRW, the 12 February 2017 announcement of its establishment stated that the investigative team would act “in accordance with the Criminal Codes and police manual” to assess whether any members of the police had violated human rights, in which event they would be charged under police disciplinary law.⁷²⁸

271. The UN FFM relied on a Reuters media report indicating that five policemen seen beating a group of Rohingya, in a widely viewed video, were sentenced to two months of imprisonment.⁷²⁹ In addition, Reuters reported that the police had stated that “three senior police officers involved in the case have been demoted.”⁷³⁰ The UNFFM noted that media reports also suggested three BGP officers were sentenced to imprisonment for negligence “reportedly not for excessive use of force or ill-treatment of Rohingya but for failing to protect the

⁷²⁶ HRW article of 24 May 2017, [BGD-OTP-0002-0263](#) at 0264. *See also* UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0536-0537, para. 1608. *See further* ICJ “Achieving justice” report, [BGD-OTP-0001-3836](#) at 3852.

⁷²⁷ Reuters article of 13 February 2017, [BGD-OTP-0002-0412](#) at 0413-0414; UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1609; Myanmar Office of President press release, undated “Tatmadaw ends clearance operation”, [BGD-OTP-0002-0020](#). *See also* AI public statement of 21 February 2017, [BGD-OTP-0002-0091](#) at 0092 (“The army commission is composed solely of members of the military and the police commission will be conducted by an internal departmental enquiry composed solely of police personnel”); HRW statement of September 2018, [BGD-OTP-0002-0245](#) at 0248 (“the Ministry of Home Affairs announced that a team of five high-ranking police officials would investigate allegations of abuses”).

⁷²⁸ HRW statement of September 2018, [BGD-OTP-0002-0245](#) at 0248.

⁷²⁹ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1609, citing Reuters article of 13 February 2017, [BGD-OTP-0002-0412](#) at 0414. *See also* ICJ “Achieving justice” report, [BGD-OTP-0001-3836](#) at 3849.

⁷³⁰ Reuters article of 13 February 2017, [BGD-OTP-0002-0412](#) at 0414.

security post against the attack in the first place.”⁷³¹ The UN FFM was unable to tell whether these actions were undertaken as a result of the Ministry of Home Affairs Investigative Committee.⁷³² To date, it is unclear, based on publicly available information, how this investigation concluded or what was its outcome.⁷³³

3. Limited domestic accountability prospects

272. In addition, a number of concerns have been raised more generally with respect to the willingness of the Myanmar authorities to genuinely investigate and prosecute the alleged criminal responsibility of senior members of the *Tatmadaw* and other Security Forces. Further supporting the admissibility of the potential case(s), the information currently available suggests that there are extremely limited prospects that senior officials of the *Tatmadaw* and other Security Forces will be held accountable for the crimes in the Request and accompanying confidential *ex parte* annexes 5 and 7.

273. With respect to accountability for crimes by the *Tatmadaw*, the UN FFM found that, “[t]he military’s involvement in all levels of government and the legal and judicial deficiencies [...] mean that criminal accountability at the domestic level, in particular for those who bear the greatest responsibility, is unattainable and will remain so for the foreseeable future.”⁷³⁴ It further found that “[t]he Constitution and other laws provide for immunities and place the *Tatmadaw*

⁷³¹ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1609. *See also* Irrawaddy article of 4 October 2017, [BGD-OTP-0001-0762](#) at 0762 (in the aftermath of attacks on BGP outposts in Maungdaw in October 2016, Police Brigadier General Maung Maung Khin was replaced as the chief of the local board guard police force. Police Brigadier General Maung Maung Khin and two other police officers were imprisoned for negligence.)

⁷³² UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1609 (“Earlier the State Counsellor’s Information Committee had already issued a statement that action was being undertaken against those identified in the video”). *See also* Myanmar Information Committee Facebook post of 1 January 2017, [BGD-OTP-0002-1159](#).

⁷³³ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0537, para. 1609 (“had not seen a final report of this inquiry.”) *See also* HRW statement of September 2018, [BGD-OTP-0002-0245](#) at 0248 (stating that to HRW’s knowledge, the results of this investigation have not been publicly released).

⁷³⁴ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0545, para. 1648.

beyond civilian oversight. The Tatmadaw can independently adjudicate its own matters, with the Commander-in-Chief having the final word. The rare cases, brought mostly before military courts without transparency, are wholly insufficient to counter the overall trend of impunity.”⁷³⁵

274. According to the UN FFM, similar considerations apply to other Security Forces because the “police and its administration fall under the Ministry of Home Affairs, which is ultimately answerable to the Tatmadaw Commander-in-Chief”,⁷³⁶ and “[d]uring joint security operations, the police fall under the command of the Tatmadaw [...] There can be no expectation that the police will conduct credible, independent investigations into alleged gross human rights violations by the military or other security forces.”⁷³⁷

275. ICJ found that “[m]embers of the military and police force enjoy impunity largely through the use of military courts or special police courts as mechanisms of investigation and prosecution concerning the conduct of military and police personnel.”⁷³⁸ Rather than the criminal justice system, “security forces and ad hoc government committees tend to hold responsibility for undertaking these investigations [into allegations of human rights violations], which rarely lead to successful prosecution of perpetrators.”⁷³⁹ In addition, “[b]oth the executive and the military continue to wield significant influence over the judiciary [...] The courts rarely review acts carried out by the State’s security personnel.”⁷⁴⁰ In sum, “[b]y law and in practice the security forces have blocked and remain capable of

⁷³⁵ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0540, para. 1621.

⁷³⁶ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0528-0529, para. 1582

⁷³⁷ UNFFM detailed report, [BGD-OTP-0001-0129](#) at 0530, para. 1589.

⁷³⁸ ICJ “Achieving justice” report, [BGD-OTP-0001-3836](#) at 3840 (“Convictions are rare and penalties are relatively weak, often times not commensurate with the gravity of the acts in question.”)

⁷³⁹ ICJ “Achieving justice” report, [BGD-OTP-0001-3836](#) at 3840 (“Within this framework, there is no apparent logic to the State’s selective investigation of alleged human rights violations”).

⁷⁴⁰ ICJ “Achieving justice” report, [BGD-OTP-0001-3836](#) at 3841.

Annex 333

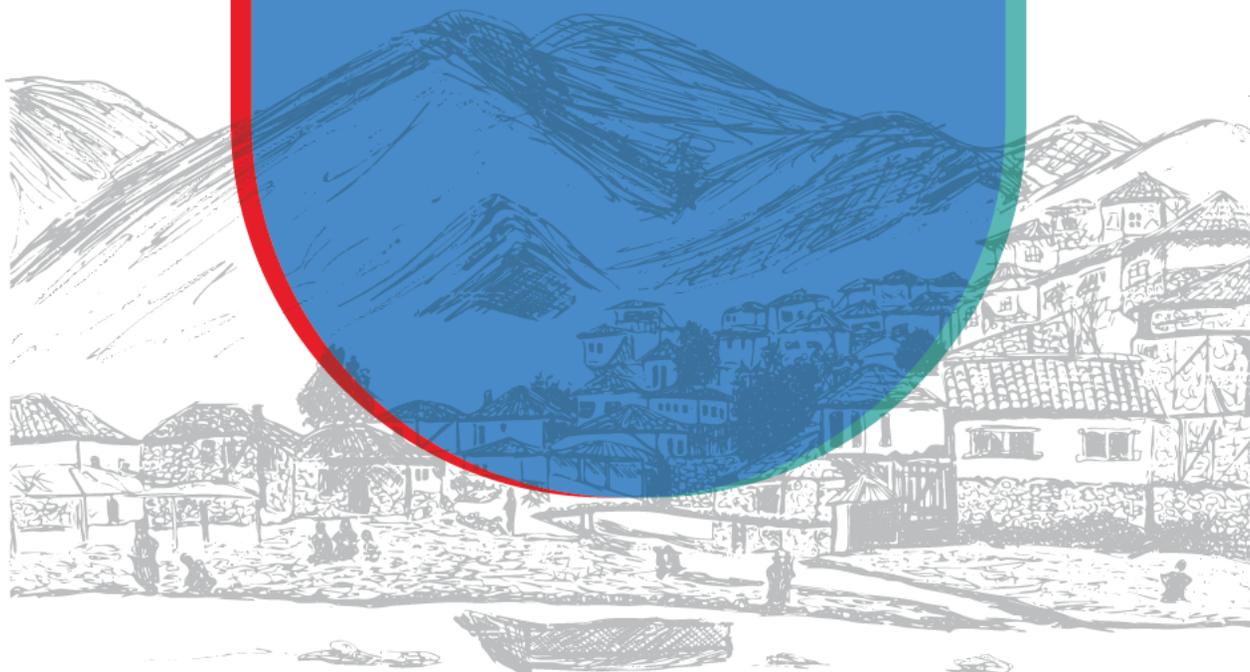
Daniel Coyle, Abdul-Kadar (AK) Rahim & Mohammed Abdullah Jainul, 'Clan, Community, Nation: Belonging Among Rohingya Living in Makeshift Camps' (2020) Bangladesh International Organization for Migration

āarar dilor hota

VOICES OF OUR HEARTS

CLAN, COMMUNITY, NATION:

Belonging among Rohingya living in makeshift camps



DANIEL COYLE, ABDUL-KADAR (AK) RAHIM, MOHAMMED ABDULLAH JAINUL

GUSSHI (CLAN) IN RAKHINE

Like other traditional South Asian communities, the Rohingya are highly collectivist and place a heavy emphasis on family and communal identities over the individuals living within them. The most basic social unit among the Rohingya people is the *ghor*, which means “a house” or “a household”. *Ghor* does not carry the same connotation, nor the same level of importance, as the English term “family.” The term is used to refer both to a physical household and the people living in it, even if they are from different “families.” In this, ghors are the smallest collective unit but don’t bear much social significance, authority, or identity within the larger community. Rather, the smallest unit of organization for Rohingya was found to be *gusshi*⁷ - the clan, lineage, or extended family of a person. This word and social structure is found in other neighboring Indo-Aryan languages like Chittagonian, Bengali, and Assamese.⁸ In all of these languages, including Rohingya, *gusshi* means “clan” or “lineage.” In contrast to *ghor*, the term *gusshi* captures both the abstract and concrete concepts of the English term “family”, but also includes the extended family members, either living or deceased. Rohingya people seldom use *gusshi* on its own in conversation, but rather say *egana-gusshi* to refer to an extended *gusshi* that includes the matrilineal side of the families.⁹

Gusshi are patrilineal, meaning clans claim descent through the father’s lineage from an important male ancestor.¹⁰ The ancestor who founded the clan can be a recent, traceable ancestor or can be a historical or fictitious figure. Rohingya households are also patrilocal, meaning women move into their husband’s house after marriage, which means wives will live alongside her husband’s family. Some of the Rohingya described their *gusshi* as being small enough that they knew all the members within their *gusshi*, whereas others were as large as several hundred distant relatives. Wealthier groups within a *gusshi* may eventually form their own *gusshi* by purchasing or settling a new area away from their original *gusshi*.¹¹ This is possibly how many Rohingya *gusshi* were formed through the historical processes of migration across Rakhine in the 18th and 19th centuries.¹²

Several households from the same *gusshi* or even unrelated *gusshi* come together to form a *fara*,¹³ a geographic “neighborhood” or cluster of homes. Depending on the size of the *gusshi*,

⁷ The concept of *gushti* exists in other Indic communities, however they do not use the word *gushti*. For example, in Hindi, they say *vansh* and in Nepali, *bangsha*. Bengali also has a similarly derived word *bongsho*, used interchangeably with *gushti*.

⁸ Rohingya borrows heavily from Arabic and Persian terminology in lieu of using indigenous terms because of Islamic religious influences. *Egana* is derived from Persian *yeganeh* used to mean both “unity” and “kinsmen,” and highlights again the importance of “unity of kinship” within Rohingya communities; this is discussed more later.

⁹ Khan (2015)

¹⁰ FGD with men with higher education

¹¹ See Charney (1999) Chapter 8 for a discussion of historical migration patterns in these periods.

¹² See Charney (1999) Chapter 8 for a discussion of historical migration patterns in these periods.

¹³ Equivalent to *para* in Bengali

one gusshi may be limited to one fara or spread across several or even entire villages. Gusshi are therefore both known and imagined social networks with paternal male cousins, uncles, and great-uncles usually fulfilling similar social roles as a brothers, fathers, and grandfathers would do in nuclear families. As reported in interviews, gusshi were important social support structures for members within it during difficult times: “when someone is sick, your gusshi members will take you to the doctor and even carry you there. Your gusshi doesn’t ask for money to support you.”¹⁴ Respondents also explained that gusshi were critical in arranging funerals, marriages, land purchase, and other social functions. Funerals, in particular, were important events wherein a deceased members’ gusshi would ensure their burial on family land within the same physical grave to the side of the last gusshi member who passed away. A Rohingya person’s gusshi therefore is vital in ensuring their last rights and their belief in the afterlife.¹⁵

A fara’s identity is often linked to a particular trade or profession of the gusshi members. If the gusshis in a fara are mostly involved in fishing, the fara will usually be known as “fisherman’s fara.” If the fara was settled by a gusshi whose clan originator was a qazi (Islamic judge), the fara may then be known as Qazi Fara. Another example that was encountered was the “Democracy gusshi” which was more modern in origin and formed around contemporary Rohingya civil servants who served as Ukkatta (chairman) in the local government of Rakhine. However, fara are not always clearly defined, and not all faras are associated with a trade or a singular gusshi; some faras for example may have generic geographic names, like “west fara.” These faras may have multiple gusshis living in the same locality and internal hierarchies between gusshis. On the same note, members of a particular gusshi can live in separate faras and eventually separate from each other to form new gusshis over generations depending on how much contact they have.

The trade-basis of many faras suggest that the origination of gusshi system lies in ancient Hindu caste-based societies of South Asia, where nuclear families unite to form larger trade-based castes that are also sometimes derived from Hindu deities and ancestors. Indeed, the gusshi structure helped maintain many caste norms and functions according to the interactions and hierarchies of these gusshi. However, as a vast majority of the Rohingya are Muslims, their social units of fara and gusshi were adapted to Islamic principles and social norms. For example, the Muslim Rohingya gusshi does not formally maintain any caste hierarchy, mostly like because Islam traditionally forbids casteism.¹⁶ Muslim Rohingya gusshi also forego the many social restrictions still present in Hindu Rohingya gusshis, such as the prohibition of intra-clan marriages. They also appear to have fewer restrictions on who they marry – meaning that they often marry with other members of their gusshi.¹⁷

Among and between gusshis there exists a social hierarchy on the basis of a gusshi’s izzot (honour).¹⁸ In Rohingya, izzot is perhaps better understood as “social standing” or “social reputation.” To this effect, izzot can refer both to an individual or collectives’ social reputation

¹⁴ *KII with Mosque Committee*

¹⁵ *FGD with mosque committee and Murobbis*

¹⁶ *However, South Asian Muslims did go through a historical phase where Muslims in the subcontinent were categorized into “Ashraf” (foreign descent or noble), “Ajlaf” (‘clean’ native converts), and “Arzal” (converts from formerly Hindu untouchable communities). This categorization is largely defunct in modern Muslim South Asian societies, however remnants of it can be seen in concepts like handani and still found in social structures of Pakistan’s Punjab and Sindh provinces (Falahi 2015, p 4).*

¹⁷ *Hindu social norms dictating gushti put a strict taboo on intra clan marriage, treating it akin to incest taboo. On the contrary, Muslim gushti encourages intra clan marriages to strengthen familial ties and manage resources.*

¹⁸ *FGD with men with higher education levels*

and the two are often intertwined across South Asian and Rohingya communities. From interviews, historical sources on the Rohingya, and understanding of other South Asian communities, Rohingya communities largely seem to similarly understand izzot as being derived from three sources: religious piety and observation of religious practices, financial wealth, and educational achievements.

The first basis of izzot, religious piety, for Rohingya men, is accumulated by following the model and Sunnah (tradition) of Prophet Mohammed. The Sunnah clearly dictates many details of life, from what clothes to wear, to how to shave one's facial hair, and how many fingers to use when eating food, and people who follow the Sunnah are seen as more pious.¹⁹ Attendance at congregational prayers (jummah) at mosques is also important in displaying piety to fellow community members and a lack of attendance at congregational prayers was noted by many Rohingya as a sign of people's lack of faith. The ultimate source of religious izzot is achieved through the completion of pilgrimage to Mecca (hajj), where he or she is given the esteemed title haaji. Though the Rohingya community traditionally did not follow a strict shariah-based social governance system, elements of it were observed, particularly relating to women. A woman's izzot was linked to her adherence to purdah²⁰ a social practice of women's seclusion to "private" spaces. However, there is still unclarity as to how strictly Rohingya communities adhered to purdah in Myanmar across different contexts and their understanding of the value. This is perhaps because many Rohingya were historically largely agrarian and maintaining purdah was difficult for both men and women working together in fields. How much of the purdah system was a recent adoption from globalized Islamic culture is uncertain, especially given various reformist trends within Islam. Regardless, there was still a sense of gender segregation or prohibition in areas deemed sacred, such as mosques and graveyards. A Rohingya woman's izzot was also linked to her paternal gusshi's izzot and is an important factor in marriage negotiations. For men, a woman's dishonor may "stain" the family's social standing and diminish her marriage prospects as a result.

The second source of izzot, financial status, is often interlinked with more public displays of wealth based on Islamic traditions. Historically, wealth was contained in the hands of a few landed elites and urban merchants, which were known as the handani gusshis.²¹ These gusshi were wealthy and generally expected to display their wealth by supporting religious traditions and social functions - by giving zakat during Ramadan, distributing Qurbani meat and ensuring mosques were properly maintained. Ironically, the redistribution of wealth to obtain izzot simultaneously established people as patrons but also limited their accumulation of capital - those with more wealth were expected to redistribute and support the community more to maintain their standing. Interestingly, both Muslim Rohingya and Buddhist Rakhine communities stress the importance of "merit earning" activities, known as kudo in Buddhism and sawab in Islam.²² Historically, Charney's work stresses "the importance of mosque building in seventeenth and eighteenth-century Arakan because the mosque serves not only as the place of worship for Muslims, but also as a potential center... for the formation of a Muslim community. In other words, the mosque has social as well as religious functions."²³ Wealthier gusshi were literally expected to "construct" the institutions around which Muslim's societies were and still are socially organized. However, the ability and act of such a construction is intertwined with the socio-economic capacity to do so and the status that is accumulated through such an act.

¹⁹ General field observations and FGD with mosque committees

²⁰ Pronounced or referred to as "forda" within Rohingya

²¹ Handan is derived from the Persian word khandan, also meaning clan. Though the word handan and gushti are at times used interchangeably, there is a tendency to use the word handan for families with a higher social standing. This tendency may allude to the historical usage of the term for those Muslim families that were perceived to have more izzot. Thus, handan became an adjective, handani, and is used to mean reputable for either an individual or group.

²² Munsoor (2013), p 234 and Charney (1999)

²³ Charney (1999), p 239

Finally, education is greatly valued in Rohingya society especially given their historical deprivation of access to various forms of education. The educated can be divided into two groups: those educated through traditional Islamic education and those through the Myanmar state curriculum. Both groups were usually from families with pre-existing financial or social capital.²⁴ Secular or Myanmar state education was also valued, especially because it enabled Rohingya to better communicate with Myanmar's governance structures and because it also signified a certain social reputation or place within the larger Myanmar nation. However, the value of Myanmar State education was also limited in the sense that many Rohingya were prohibited from obtaining higher levels of education and capitalizing on better forms of employment that would coincide from being educated.²⁵

Other authors exploring izzot within the Rohingya population have noted similar observations and patterns regarding izzot even if their translation of the term differs.²⁶ Izzot is something to be acquired through public performance of various actions, cultivation of specific qualities, and general adherence to religious and social norms. In this way, personal and collective forms of izzot play an orienting and anchoring role for Rohingya - they place individuals within larger collectives, like gusshi, and give them social standing and purpose. The ways in which izzot is gained and accumulated are intangible and often imperceivable to outsiders; izzot can only exist and operate within tightly knit communities that are based on intimate social networks where people know each other, their clans, and their collective histories. It is only through this knowledge that a person's or group's izzot can be properly interpreted. Hence, izzot allows community members to develop and maintain standings within their larger collective identities and acquire a sense of belonging; however, the same processes that construct value also have implicit implications for how such standing can be lost.

²⁴ Rohingya use the term *fonna ola* to refer to educated persons. Sometimes it is suggested the term *elamdar* also means "educated person" but this is actually better translated as "wise person," which can be held by someone who does not necessarily have a formal religious or secular education.

²⁵ FGD with men with higher education levels

²⁶ Holloway and Fan (2019) translate izzot as "dignity" but this translation seems to have been partially informed by their research approach to Rohingya's understanding of dignity instead of an exploration of izzot as a broader social value. In other research on izzot, "honor" or "social reputation" is a more commonly used translation than dignity. Regardless, the findings are similar in that there are both personal and collective elements to the term and a basis in social, economic, and religious values.

SHOMAZ (COMMUNITY) IN RAKHINE STATE

The majority of conversations and discussions with Rohingya across the camps began with and focused on the concept of “community,” or Shomaz, a shared term across South Asia. For Rohingya in particular, the term can have several distinct applications and meanings:

- a) Shomaz as an immediate community historically based on highly localized settlements, such as *fara*.
- b) Shomaz as a committee or council of individuals with *izzot* from within the community that oversee various social functions; hereafter referred to specifically as *shomaz* committees.
- c) Shomaz as a more general term referring to a broader imagined community better translated in English as “society” than community. This definition occasionally blurs with the first definition above.

For Rohingya historically in Rakhine, *shomaz* were made up of groupings of *gusshis* rather than individual members or households. Often socially isolated from each other, it is important to understand Rohingya “communities” as existing within a longer historical perspective of Muslim and Buddhist communities living alongside each other within Rakhine.

Charney’s work on the history of Muslim and Buddhist community interactions is particularly useful in understanding how religious based communalism developed within Rohingya communities. In particular, he points to the fact that from the late sixteenth to early seventeenth centuries there is “little evidence of inter-religious confrontation between Buddhist and Muslims” in Arakan.²⁷ However, by the 19th century new sentiments within the Buddhist lay community began to arise: “to be Muslim no longer simply meant to worship another god or partake in a different system of religious belief; it additionally meant to be part of another social group which should be excluded rather than included in the local community.”²⁸ The development of religious and hyper-local communal groups arose in a period Charney describes as “chaotic, as the kingdom, quite literally fell apart.”²⁹ During this time, the Arakan kingdom succumbed to the conquest of the Burmese King Bodawphaya in 1784.³⁰ Muslim and Buddhist residents during this time were threatened by internal political destabilization and conflict between rural gentry and central courts where villages were repeatedly fought over by local strongmen, natural chaos from droughts, earthquakes and other natural disasters, the introduction of Christian missionaries who attempted to convert local patrons, and raids from slavers.³¹ These challenges necessitated communities turn towards their faith as a coping

²⁷ Charney (1999), p 219

²⁸ Charney (1999), p 221

²⁹ Charney (1999), p 247

³⁰ See Leider (2008) for an extended discussion.

³¹ Charney discusses how this shift arose from increasing power within the rural gentry and a general destabilization of the region. For further discussion of this history see Charney (1999), Chapter 8 “When things all apart.”

mechanisms in order for both Buddhist and Muslim communities to survive; however, “a turn to religion for safety [also] meant increased religious devotion.”³² The possible origination for religious communalism therefore may have arisen out of a tumultuous period where hyperlocal affiliation to religiously organized communities provided safety and security for Arakanese Muslims.³³

These schisms continued to develop over time. Charney argues that in the 18th century while “religious identities existed, weaker for some and stronger for others, there is not a good deal of evidence to suggest that most groups in Arakanese society linked community membership to religious identity.”³⁴ It wasn’t until the 19th century that religious communalism fully developed in Northern Arakan, arising from mutually interlinked dynamics of population growth, over cultivation within the Arakan region, migration, and land competition between Muslim and Buddhist communities. Within this dynamic the British Empire favored Muslim cultivators because they were believed to be superior to Buddhist cultivators who were “overly fond of finding comfort in opium and indolence.”³⁵ Land competition drove a turn towards local communities and religious leaders in order to cope with the challenges of surviving on limited cultivatable land. Religion and religious leaders began to provide the primary means of collective action and social organization. Religious and social projects became a part of supporting both the immediate communities’ needs and the development of a wider imagined Muslim community. Much of this was encouraged and facilitated through changes in British colonial administration policy which sought to increase revenue through new taxation schemes. Religion, centered around community mosques and monasteries, therefore became the primary socio-political institution for Muslim and Buddhist communities, and effectively drew clear lines between the two.³⁶

There is a significant and serious gap in the historical record and scholarship regarding the early 20th century developments of Arakanese Muslims in terms of social and organizational identities. The Rohingya shomaz was largely described by respondents as being a Muslim community organized around a mosque or group of mosques and comprised from various local gusshis that largely resembled the broad historical characteristics of Muslims living in historical Rakhine.³⁷ Even if other households or religious communities lived nearby, it seems they were not imagined as belonging to the same shomaz. This is perhaps because shomaz membership seems to have largely been determined through active participation within the Mosques as the central organizing social and religious institution.³⁸ Gusshi, particularly handani gusshi, most likely led the formation and creation of shomaz in Arakan as a part of both historical migration across the region and through izzot and merit-accumulation systems that encouraged the construction of Mosques and social infrastructures. Shomaz leaders and handani gusshi members therefore could be the descendants of the original settlers of a fara, meaning they

³² Charney (1999), p 248

³³ The term Arakanese Muslims is used instead of Rohingya to refer to Muslim communities living historically within Arakan because the word “Rohingya” has unclear and disputed origins within the historical record and was not in popular use during this time. See Leider (2013) for further discussion of this.

³⁴ Charney (1999), p 269

³⁵ Charney (1999), p 283

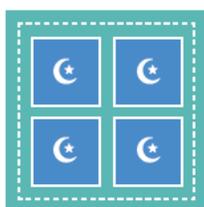
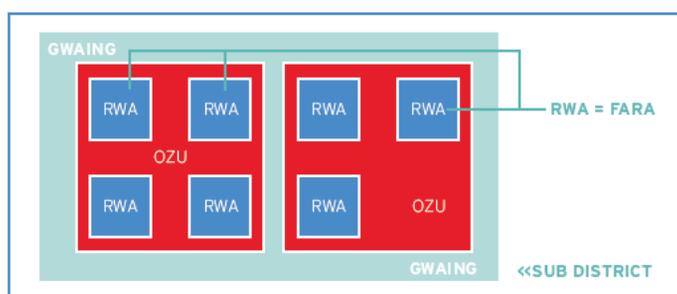
³⁶ Charney (1999), p 302-306

³⁷ FGDs with imams and men

³⁸ This largely can be linked to Charney’s observation of historical communalism in Rakhine: “Villagers thus relied upon the ‘community’ which arose from village Buddhism (and in the case of Muslims, rural Islam) with the rural monastery and the rural sangha as its center (as in the case of the mosque and the mullahs in rural Islam in Arakan).” (Charney 1999, p 306)

were the original builders of the mosques around which shomaz were constructed. Interview participants often mentioned the presence of “schools, ponds, Mosques and Madrassas,” as well as key important social stakeholders, such as Imams, Muezzin, traders, and representatives as central to their definitions of shomaz. The physical structures designating wealth and status along with the presence of wealthy and pious members within shomaz highlight how “honor” or social-reputation systems become central to belonging within Rohingya communities.

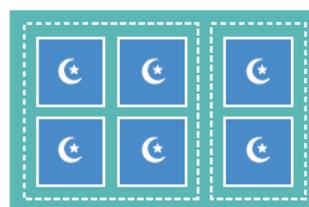
The organization and composition of shomaz was dependent on the particular demographics of an area. As discussed, a fara may consist of several sub-clans of a gusshi or multiple, unrelated gusshi within its borders. Depending on the size of the fara and relationships between gusshi, a fara may be further subdivided into different maldas or “congregations.”³⁹ Each malda contained a mosque that was presided over by the mosque committee required for its maintenance and the management of traditions and ceremonies that characterize Muslim communal life. If a fara was small enough, then it was not subdivided, and there were then no distinctions between fara and a malda. There was often a single mosque in these small faras that had a mosque committee, which by extension, acted as the shomaz committee. People from these faras still use the word shomaz and malda interchangeably; for others, there are notable connotations between the terms “mosque committee” and shomaz based on the size and dynamics of the communities that they represented. In most cases, faras were large and contained many people and were thus subdivided into maldas; therefore, larger faras had multiple mosque committees. While these mosque committees operated with a certain level of autonomy, many faras had a larger socially representative structure also called a shomaz. Some faras may have one united shomaz or it may have had multiple shomaz within its borders. The latter often happened if gusshis and their maldas separated from a larger shomaz (or were excommunicated) and formed a new shomaz within the same fara. Whichever the case, each malda often sent one or two representatives from its mosque committees to their respective shomaz committees in a larger fara.⁴⁰



Multiple malda within one combined fara + shomaj



One combined malda, fara, shomaj



Multiple malda and shomaj within one fara

³⁹ The term is reportedly derived from the Arabic mahallah, for neighbourhood but this point was only known by Rohingya with stronger Arabic language education.

⁴⁰ FGDs with mosque committees, previous shomaz members, and educated men.

Shomaz committees were largely comprised of elderly men (murobbi) with higher levels of social capital and izzot within the community that represented different sizes of community groups across various gusshi, fara, and malda. Women were largely excluded from these spaces because they were seen to generally lack sufficient “qualifications” to serve in leadership roles within the community; though some women notably did obtain both religious or non-religious education. This is important to note because while terms may be interchangeable in certain cases, they connotate different representational structures and levels from within the community. While imams can be understood as religious leaders of the mosque, they were often hired from outside of the community from larger madrassas within the region, and thus had a unique position within the shomaz, being religiously significant but also socially distant because they came from “outside” the community. Shomaz committees were often comprised of members of different prominent handani gusshis who were responsible within the shomaz. To this extent, many of the shomaz committees were comprised of wealthier members of the wider community who had more izzot because of their ability to provide zakat and support Mosque maintenance. However, Munsoor notes in his findings that this was not always the case and found one case in Rakhine where people identified a “poor” committee member who was chosen to be on the shomaz committee because of his “respected” status. This essentially reaffirms the point that social status and izzot are not solely equivalent to class and wealth.⁴¹ However, women are largely excluded from shomaz committees even though Munsoor did find one woman on a shomaz on the basis that she had educated herself and could act as an important link between the committee and other women in the village.⁴² There were no reports of women serving on shomaz committees within this consultation.

Shomaz committees play an incredibly important role as the social leaders and representatives of their communities. In this they perform a diverse set of functions that are both religious and non-religious in nature:

In the case of Gone Nar, the 'Shomaz' groups have their own mosque, trusteeships and are responsible for its operation and up-keep. They perform an important function of arbitrating in civil disputes, within their respective Shomaz groups. One of their central functions revolves around the 'sacrifice' of animals and the distribution of the meat to the poor and family during the Eid or Islamic festival times. The Shomaz is governed by an Islamic ideology and is pro-poor as demonstrated by some of the functions that it carries out. As one of the poor member of the community points out 'If poor people pass away the Shomaz takes care of the funeral expenses. The Shomaz has been supporting the Madarrasa and the teaching of religion to the poor. The main benefits to the poor is that we can hire Mullahs (religious leaders) from the funds we have collected from the community and pay the Mullah...' The Shomaz is seen to enforce a 'moral code'. It takes action on those who are not following the Islamic code or not consulting its members on important issues.⁴³

Ripoll further explains that the role of the shomaz “is to enact community members’ obligation to each other” in order to “reinforce the ‘social bonds’ of the community,” actualizing the imagined Ummah (community of all practitioners of Islam) within an immediate locale. In this definition, their role is to help construct the imagined society through an immediate community of shared religious beliefs and practices, maintaining social harmony and serving as a safety net for poorer members of the community.

⁴¹ Munsoor (2013), p 293

⁴² Munsoor (2013), p 301

⁴³ Munsoor (2013), p 296

This was reaffirmed many times within interviews with the Rohingya in the camps, who repeatedly described their shomaz committees as fulfilling similar functions in Rakhine; of particular note was the ritual sharing of meat during Qurban Eid, provision of zakat, and maintenance of social harmony and unity between rich and poor.⁴⁴ Emphasis on the shomaz as a “unified society” where rich and poor came together was a theme within our discussions:⁴⁵

In Myanmar, Shomaz was formed based on masjid and madrasha. If there is any ceremony (mela), communal feast (fatiya), Islamic lecture (waaz), or during Qurban (ritual sharing of meat and food), then the somaz was usually involved in the process. Somaz means to be the children of same mother but it is not only your relatives (gusshi) that are included. You have to take all, whether they are your relatives or not. Rich or poor, all the people of shomaz have to visit me whether I have money or not. They have to pray in one mosque. They have to be united in their opinions.⁴⁶

Unity was affirmed many times as an important quality and value within shomaz across all interviews with different Rohingya from all social backgrounds in the camps. For Rohingya, unity of shomaz in beliefs, actions, and opinions is the basis on which the strength of a shomaz can even be derived. For one male respondent, shomaz was literally defined as “working together with unity and living together with unity.”⁴⁷ This heavy emphasis on the importance of unity was elaborated in a discussion with a hafez⁴⁸ who was also a member of a Rohingya civil society organization: “How can the fingers of a hand accomplish anything if they are not united? How can we accomplish anything if our voices are not the same?”⁴⁹ It is of interest to note anxiety surrounding unity and Rohingya’s unwillingness to dissent from a publicly stated opinion when speaking together as groups. This is elaborated by explanations in Munsoor’s work that Rohingya in his research dissented in their opinions over a school committee nomination through their “tone of voice,” using either low or high pitch tones to show interest in candidacy or support for a candidate. In the event of disagreement candidates were asked to leave while the disagreement was discussed so as not to cause disunity or factionalism within the group.⁵⁰

Shomaz committees’ role in socially policing and overseeing members in their community was frequently mentioned as a part of process through which unity, and thereby strength, was maintained. Their authority on conflict resolution largely stems from their ability to exert social influence on various people within their shomaz because of their own social reputations. In Myanmar, social exclusion and banishment from participation within one’s gusshi or shomaz seemed to be the primary means of social control and a way of maintaining “Islamic teachings and a code of ethics based on religion:”

There are some people, who are not following the religious rules, who are not really working with the Shomaz or giving their contributions, they are kept out of the Shomaz’. Further, those who are drunkards, alcoholics, [and] gamblers...are also excluded.⁵¹

⁴⁴ FGDs with men and women

⁴⁵ See Charney (1999, p 297), who finds this dynamic arising within 17th and 18th centuries within Muslim communities, Ripoll who briefly mentions zakat or donations to the poor (2017, p 23), and Munsoor who refers to the “pro poor” mentality of shomaz (2013, p 225)

⁴⁶ FGD with women

⁴⁷ FGD with men

⁴⁸ Someone who has memorized the entire Quran, a hafez is generally well respected by religiously educated people within Rohingya communities.

⁴⁹ Fieldnotes, May 2019

⁵⁰ Munsoor (2013), p 302

⁵¹ Munsoor (2013), p 296 297

This was repeatedly reconfirmed within interviews with Rohingya who identified and equated the shomaz committees and structures as the main source of control, religious and social, that was recognized and supported by Rohingya themselves. Participants often described the shomaz as generally enforcing the religious adherence of shomaz and gusshi members, encouraging households who were less active in attending Mosque functions to attend.⁵² Keeping in mind the fact that social reputation, izzot, was derived from being perceived as pious, anyone with social standing was therefore more or less forced to also display their piety in order to obtain social reputation regardless of their actual devotion.

It is important to distinguish between social and political governance systems in Rakhine, noting that shomaz committees were not officially recognized governing bodies. Rohingya people in the camps largely explained that political authority to govern rested with the Village Administration of Myanmar's local governments. Briefly, Myanmar's local governance system similarly revolves around villages as the central units of organization with two key institutions:

The first is, what was then still called the Village Peace and Development Committee (VPDC), locally known as the Ya Ya Ka. The second is the set of formal recognized elders in the village, locally known as the NaYaKa, also known as Village Elders and Respected Persons (ERPs). Though both of these committees were formally recognized, both locally and in the eyes of the administration, there was little in the way of formal guidelines... The VPDC was the only formal institution that is found in every village. At the village level, the VPDC included three main types of position holders, 10-household leaders, 100-household leaders and the tract level representatives, also known as the president, chairman or 'member one'. Ten-household leaders were recognized but had relatively limited standing within the village, and their role was limited to participating in village meetings. The importance of the 100-household leaders varied according to their number in the village, which generally ranged from one to three, and whether the village was home to 'member one' or the tract chairman. The role of the VPDC extended far beyond enacting official township orders. As the formally recognized village leaders, the senior Ya Ya Ka [VPDC] supported villagers in various ways: helping them resolve conflicts, mobilizing and managing funds for community development, and mediating between the village and township officials. The importance of the VPDC was largely a reflection of the fact that important and powerful social leaders tended to occupy these positions, and that there was a strong interface between the VPDC and embedded local relations and structures more generally.⁵³

However the reality within Rakhine was reportedly different than what was officially mandated between the NaYaKa and the VPDC. Most interviewees in the consultation describe a two-Ukatta (chairman) system that operated under the NaYaKa administration: one Rakhine and one Rohingya. Though Maungdaw and Buthidaung districts were majority Muslim, most village tracts had at least one area that was Rakhine not Rohingya. The NaYaKa often appointed an Ukatta from the Rakhine communities as the administrator regardless of their numerical insignificance in Maungdaw and Buthidaung townships. Elected or selected Muslim Ukkattas were always subservient to the Rakhine Ukatta. However, both Ukkattas were perceived more as informants or "messengers" of the Myanmar government, rather than governors, by the Rohingya community.⁵⁴

⁵² FGD with Imams, FGDs with men

⁵³ UNDP (2015), p36 37

⁵⁴ KII with former Ukkatta

Annex 334

Facebook, *April 2020 Coordinated Inauthentic Behavior Report* (April 2020)

APRIL 2020

DETAILED REPORT

April 2020 Coordinated Inauthentic Behavior Report

FACEBOOK



We're constantly working to find and stop coordinated campaigns that seek to manipulate public debate across our apps. In 2019 alone, we took down over 50 networks worldwide for engaging in coordinated inauthentic behavior (CIB), including ahead of major democratic elections.

These efforts are led by a cross-disciplinary team focused on finding and disrupting both the most sophisticated influence operations aimed to manipulate public debate as well as high volume inauthentic behaviors like spam and fake engagement. Over the past several years, our team has grown to over 200 people with expertise ranging from open source research, to threat investigations, cyber security, law enforcement and national security, investigative journalism, engineering, product development, data science and academic studies in disinformation.

You can find more information about our previous enforcement actions [here](#).

PURPOSE OF THIS REPORT

Over the past three years, we've shared our findings about coordinated inauthentic behavior we detect and remove from our platforms. As part of regular CIB reports, we're sharing information about all networks we take down over the course of a month to make it easier for people to see progress we're making in one place.

WHAT IS CIB?

While we investigate and enforce against any type of inauthentic behavior — including fake engagement, spam and artificial amplification — we approach enforcement against these mostly financially-motivated activities differently from how we counter foreign interference or domestic influence operations. We routinely take down less sophisticated, high-volume inauthentic behaviors like spam and we do not announce these enforcement actions when we take them.

We view influence operations as coordinated efforts to manipulate public debate for a strategic goal where fake accounts are central to the operation. There are two tiers of these activities that we work to stop: 1) coordinated inauthentic behavior in the context of domestic, non-state campaigns (CIB) and 2) coordinated inauthentic behavior on behalf of a foreign or government actor (FGI).

COORDINATED INAUTHENTIC BEHAVIOR (CIB)

When we find domestic, non-government campaigns that include groups of accounts and Pages seeking to mislead people about who they are and what they are doing while relying on fake accounts, we remove both inauthentic and authentic accounts, Pages and Groups directly involved in this activity.

FOREIGN OR GOVERNMENT INTERFERENCE (FGI)

If we find any instances of CIB conducted on behalf of a government entity or by a foreign actor, we apply the broadest enforcement measures including the removal of every on-platform property connected to the operation itself and the people and organizations behind it.

CONTINUOUS ENFORCEMENT

We keep to monitor for efforts to re-establish a presence on Facebook by networks we previously removed for CIB. Using both automated and manual detection, we continuously remove accounts and Pages connected to networks we took down in the past.

SUMMARY OF APRIL 2020 FINDINGS

This month, we removed eight networks of accounts, Pages and Groups. Two of them — from Russia and Iran — focused internationally (FGI), and the remaining six — in the US, Georgia, Myanmar and Mauritania — targeted domestic audiences in their respective countries (CIB). We have shared information about our findings with law enforcement, policymakers and industry partners.

We know that people looking to mislead others — whether through phishing, scams, or influence operations — try to leverage crises to advance their goals, and the coronavirus pandemic is no different. All of the networks we took down for CIB in April were created before

the COVID-19 pandemic began, however, we've seen people behind these campaigns opportunistically use coronavirus-related posts among many other topics to build an audience and drive people to their Pages or off-platform sites. The majority of the networks we took down this month were still trying to grow their audience or had a large portion of engagement on their Pages generated by their own accounts.

- **Total number of Facebook accounts removed:** 732
- **Total number of Instagram accounts removed:** 162
- **Total number of Pages removed:** 793
- **Total number of Groups removed:** 200

NETWORKS REMOVED IN APRIL, 2020:

1. **Russia:** We removed 46 Pages, 91 Facebook accounts, 2 Groups, and 1 Instagram account. This network posted in Russian, English, German, Spanish, French, Hungarian, Serbian, Georgian, Indonesian and Farsi, focusing on a wide range of regions around the world. Our investigation linked this activity to individuals in Russia, the Donbass region in Ukraine and two media organizations in Crimea — NewsFront and SouthFront. We found this network as part of our internal investigation into suspected coordinated inauthentic behavior in the region.
2. **Iran:** We removed 118 Pages, 389 Facebook accounts, 27 Groups, and 6 Instagram accounts. This activity originated in Iran and focused on a wide range of countries globally including Algeria, Bangladesh, Bosnia, Egypt, Ghana, Libya, Mauritania, Morocco, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Tunisia, the US, UK and Zimbabwe. Our investigation linked this activity to the Islamic Republic of Iran Broadcasting Corporation. We found this network as part of our internal investigations into suspected coordinated inauthentic behavior, based in part on some links to our past takedowns.
3. **US:** We removed 5 Pages, 20 Facebook accounts, and 6 Groups that originated in the US and focused domestically. Our investigation linked this activity to individuals associated with the QAnon network known to spread fringe conspiracy theories. We found this activity as part of our internal investigations into suspected coordinated inauthentic behavior ahead of the 2020 election in the US.

4. **US:** We removed 19 Pages, 15 Facebook accounts, and 1 Group that originated in the US and focused domestically. Our investigation linked this network to VDARE, a website known for posting anti-immigration content, and individuals associated with a similar website The Unz Review. We found this activity as part of our internal investigations into suspected coordinated inauthentic behavior ahead of the 2020 election in the US.
5. **Mauritania:** We removed 11 Pages, 75 Facebook accounts, and 90 Instagram accounts. This network originated in Mauritania and focused on domestic audiences. We detected this operation as a result of our internal investigation into suspected coordinated inauthentic behavior linked to our past takedowns.
6. **Myanmar:** We removed 3 Pages, 18 Facebook accounts, and 1 Group. This domestic-focused network originated in Myanmar. Our investigation linked this activity to members of the Myanmar Police Force. We found this network as part of our internal investigation into suspected coordinated inauthentic behavior in the region.
7. **Georgia:** We removed 511 Pages, 101 Facebook accounts, and 122 Groups, and 56 Instagram accounts. This domestic-focused activity originated in Georgia. Our investigation linked this network to Espersona, a media firm in Georgia. This organization is now banned from our platforms. We found this activity as part of our investigation into suspected coordinated inauthentic behavior publicly reported by a local fact-checking organization in Georgia with some links to our past takedown.
8. **Georgia:** Finally, we removed 23 Facebook accounts, 80 Pages, 41 Groups, and 9 Instagram accounts. This domestic-focused activity originated in Georgia. Our investigation linked this network to individuals associated with United National Movement, a political party. We found this activity as part of our investigation into suspected coordinated inauthentic behavior in the region. Our assessment benefited from local public reporting in Georgia.

We are making progress rooting out this abuse, but as we've said before, it's an ongoing effort. We're committed to continually improving to stay ahead. That means building better technology, hiring more people and working more closely with law enforcement, security experts and other companies.

01

We removed 46 Pages, 91 Facebook accounts, 2 Groups, and 1 Instagram account for violating our policy against [foreign interference](#) which is [coordinated inauthentic behavior](#) on behalf of a foreign entity. This activity originated in Russia, the Donbass region in Ukraine and the Crimean Peninsula. The people behind it posted in Russian, English, German, Spanish, French, Hungarian, Serbian, Georgian, Indonesian and Farsi, focusing on a wide range of regions around the world.

The individuals behind this activity relied on a combination of authentic, duplicate and fake accounts — many of which had been previously detected and disabled by our automated systems. They used fake accounts to post their content and manage Groups and Pages posing as independent news entities in the regions they targeted. This network posted about geopolitical and local news including topics such as the military conflict in Ukraine, the Syrian civil war, the annexation of Crimea, NATO, US elections, and more recently the coronavirus pandemic. Our investigation linked this activity to individuals in Russia and Donbass, and two media organizations in Crimea — NewsFront and SouthFront.

We found this network as part of our internal investigation into suspected coordinated inauthentic behavior in the region.

- *Presence on Facebook and Instagram:* 46 Pages, 91 accounts, 2 Groups, and 1 Instagram account
- *Followers:* About 267,300 accounts followed one or more of these Pages, about 2,100 accounts joined one or more of these Groups, and around 800 people followed this Instagram account

- *Advertising:* About \$3,150 in spending for ads on Facebook and Instagram paid for primarily in US dollars, Russian rubles, and Euros.

Below is a sample of the content posted by some of these Pages:

 News-Front - News of the DPR / LPR / Russia / Syria / World ***
19h

200 people became victims of the "Death Laboratory" in Georgia
We have to admit the fact that the whole territory of Georgia and its citizens are used by the USA for criminal experimental purposes ...
MORE: <https://news-front.info/.../zhertvami-laboratorii-smerti-vg.../>
See Translation



NEWS-FRONT.INFO
200 people became victims of the "Death Laboratory" in Georgia

 News Front / News / Politics ***
April 7

Polish opposition sabotages remote elections
There is no logic in quarantining even forests, but at the same time holding presidential elections.
<https://en.news-front.info/.../polish-opposition-sabotages-r.../>



EN.NEWS-FRONT.INFO
Polish opposition sabotages remote elections
There is no logic in quarantining even forests, but at the same time...


 От Советского Информбюро/Oficina de la Información Soviética ***
 December 18, 2019 · 🌐

La agresividad del Gobierno de Trump atenta contra las relaciones EE.UU.-Cuba

La agresividad del actual gobierno de Estados Unidos amenaza con revertir el proceso de acercamiento con Cuba, iniciado hace hoy cinco años con el restablecimiento de las relaciones diplomáticas entre los dos países.

Incluso, dentro del propio Estados Unidos, los sondeos de opinión reflejan que gran parte de su población se muestra favorable a la existencia de las relaciones diplomáticas y a la eliminación del bloqueo.

<https://es.news-front.info/.../la-agresividad-del-gobierno-d.../>
 See Translation



ES.NEWS-FRONT.INFO
La agresividad del Gobierno de Trump atenta contra las relaciones EE.UU.-Cuba

Page name: Office of Soviet Information

Post: Trump Government's aggression violates US-Cuban relations.

The aggression of the current US government threatens to reverse the process of rapprochement with Cuba, which began five years ago today with the restoration of diplomatic relations between the two countries.

Even within the United States itself, opinion polls reflect that much of its population favors the existence of diplomatic relations and the removal of the blockade.”

02

We also removed 118 Pages, 389 Facebook accounts, 27 Groups, and 6 Instagram accounts that were involved in [foreign interference](#) which is [coordinated inauthentic behavior](#) on behalf of a foreign entity. This activity originated in Iran and focused on a wide range of countries globally including Algeria, Bangladesh, Bosnia, Egypt, Ghana, Libya, Mauritania, Morocco, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Tunisia, the United States, United Kingdom, and Zimbabwe.

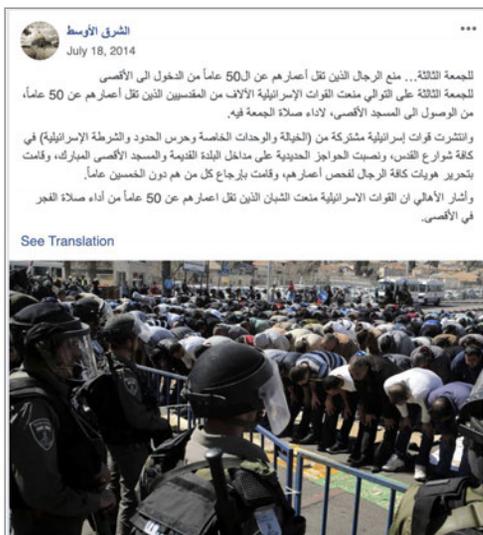
The individuals behind this network relied on a combination of authentic and fake accounts — some of which had been previously detected and disabled by our automated systems — to post in Groups, manage Pages, and drive people to off-platform sites. These accounts typically had fake names common in the region they targeted. Some of these Pages merged with one another over time and posed as local NGOs and independent news entities located in the country they focused on. They sometimes repurposed Iranian state media content and posted primarily in Arabic, Bengali, Bosnian, and English about geopolitical and local news relevant to each region including topics like the civil war in Syria, the Arab Spring protests, the tensions between Libya and Turkey, criticism of Saudi involvement in the Middle East and Africa, Al Qaeda's actions in Africa, the Occupy movement in the US, criticism of US policies in the Middle East and the 2012 US elections.

Although the people behind this activity attempted to conceal their identities and coordination, our investigation found links to the Islamic Republic of Iran Broadcasting Corporation. We found this activity as part of our internal investigations into Iran-linked, suspected coordinated inauthentic behavior, which exhibited some links to the networks we had removed in [August 2018](#), [January 2019](#), and [March 2019](#).

- *Presence on Facebook and Instagram:* 118 Pages, 389 Facebook accounts, 27 Groups, and 6 Instagram accounts

- *Followers:* About 318,000 accounts followed one or more of these Pages, around 67,000 accounts joined one or more of these Groups, and about 135,000 people followed one or more of these Instagram accounts
- *Advertising:* Around \$1,600 in spending for ads on Facebook paid for primarily in US dollars, Euros and Canadian dollars.

Below is a sample of the content posted by some of these Pages:



Page name: Middle East

Post: For the 3rd Friday in a row, men below the age of 50 were not allowed to enter Al Aqsa Mosque. For the 3rd Friday in a row, the Israeli Forces prevented thousands of religion practitioners below the age of 50 years from arriving to perform Friday prayers at Al Aqsa Mosque. Israeli Forces consisting of cavalry, special units, border guards and police were placed across streets of Jerusalem, with barricades on the entry points for the old city and the holy mosque. The forces checked IDs of all men to confirm their age, sending home those who were below the age of 50. The community around pointed out that the Israeli forces also prevented youngsters below the age of 50 from performing Al Fajer prayers in Al Aqsa Mosque.



Balkan Anti-imperialist Movement April 9 at 12:58 AM 🌐 ...

Dva francuska znanstvenika predložila su testiranje cjepiva protiv koronavirusa SARS-CoV-2 u Africi, što je izazvalo veliki skandal.
[See Translation](#)



LOGICNO.COM i

Francuski stručnjaci predložili testiranje cjepiva za Covid u Africi: „Pa to smo već radili s AIDS-om“

03

We removed 5 Pages, 20 Facebook accounts, and 6 Groups for [coordinated inauthentic behavior](#) as part of a small domestic-focused network in the United States.

The people behind this activity used fake accounts — some of which had already been detected and disabled by our automated systems — to create fictitious personas, like and comment on their own content making it appear more popular than it is, manage Pages and Groups, and evade detection and enforcement. They frequently posted about news and topics including the upcoming presidential election and candidates, the current US administration, anti-Semitic and anti-Asian conspiracies, and COVID-19. While it did not appear to be the focus of this campaign, some of the individuals behind this effort attempted to monetize their clickbait content by selling t-shirts and other merchandise.

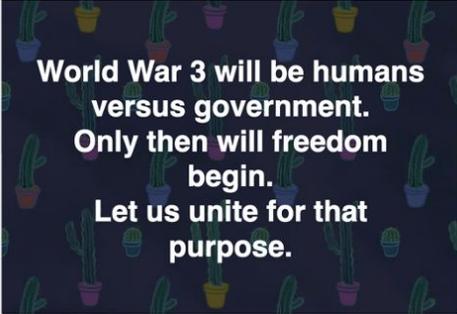
We found this activity as part of our proactive investigations into suspected coordinated inauthentic behavior in the US ahead of the 2020 election. Although the people behind this operation attempted to conceal their identities and coordination, our investigation found links to individuals associated with QAnon, a network known to spread fringe conspiracy theories. We continue to monitor and will take additional action if we see other violations of our Community Standards.

- *Presence on Facebook:* 5 Pages, 20 accounts, and 6 Groups
- *Followers:* About 133,000 accounts followed one or more of these Pages and about 30,000 accounts joined one of more of these Groups
- *Advertising:* Less than \$1 in spending for ads on Facebook paid for in US dollars.

Below is a sample of the content posted by some of these Pages:

QAnon shared a post.
7 April

QAnon Tees updated their status.
7 April



World War 3 will be humans versus government. Only then will freedom begin. Let us unite for that purpose.

QAnon Tees
4 April

President Trump speaking with the media.



QAnon shared a post.
10 April



1st Documentary Movie On The Origin Of CCP Virus

Media Isn't Showing You This

via The Epoch Times -55:50

825 Views

QAnon Tees
10 April

Documentary About COVID-19 That Will Knock Your Socks Off. There is nothing out there about COVID-19 like this. You need to take a few minutes to watch, your ja...
See more

04

We removed 19 Pages, 15 Facebook accounts, and 1 Group engaged in [coordinated inauthentic behavior](#) on our platform. This domestic-focused activity originated in the United States.

The people behind this network used fake accounts to create fictitious personas, post in Groups, manage Pages, drive traffic to off-platform sites, and evade enforcement. They frequently posted about US news and topics including the US President, ideologies recognized as far-right, and anti-immigration content. Most recently, this network shared COVID-19-related conspiracies and hate speech about Asian Americans.

We found this activity as part of our proactive investigations into suspected coordinated inauthentic behavior in the US ahead of the 2020 election. Although the people behind this operation attempted to conceal their coordination, our investigation linked this network to VDARE, a website known for posting anti-immigration content, and to individuals associated with a similar website The Unz Review. We continue to monitor and will take additional action if we see other violations of our Community Standards.

- *Presence on Facebook:* 19 Pages, 15 Facebook accounts, and 1 Group
- *Followers:* About 207,700 accounts followed one or more of these Pages and about 20 accounts joined this Group.
- *Advertising:* Around \$114,000 in spending for ads on Facebook paid for in US dollars.

Below is a sample of the content posted by some of these Pages:

The Right Wing Savages
December 26, 2019

Non-White Democrats in Virginia Seek to Outlaw White Flight and Creation of White Suburbs



UNZ.COM

Non-White Democrats in Virginia Seek to Outlaw White Flight and Creation of White Suburbs

VDARE.com shared a link.
January 1

Starting In 2020 Public Schools Across California Will No Longer Suspend Students For Disobeying Teachers, Because Too Many Students Of Color (Non-Whites) Get Suspended

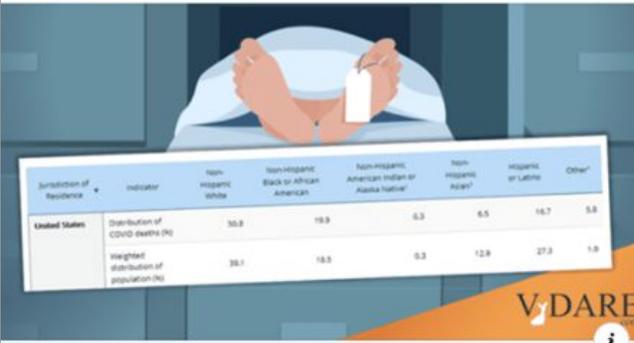


VDARE.COM

Starting In 2020 Public Schools Across California Will No Longer Suspend Students For Disobeying Teachers, Becau...

VDARE.com
1d · 🌐

"White people in California, New Jersey, Pennsylvania and Washington state have been hit very hard... Many media sources claim that minorities are dying at higher rates than whites. That is not true."
#Coronavirus #ChinaVirus



Jurisdiction of Residence	Indicator	Non-Hispanic White	Non-Hispanic Black or African American	Non-Hispanic American Indian or Alaska Native	Non-Hispanic Asian*	Hispanic or Latino	Other**
United States	Distribution of COVID deaths (%)	30.8	19.9	0.3	6.5	16.7	5.8
	Weighted distribution of population (%)	39.7	13.5	0.3	12.9	27.3	1.9

VDARE.COM

Covid-19 Deaths: Non-Hispanic Whites, Not Minorities, "Hardest Hit"—According To CDC Death Certificates | Blog...

05

We removed 11 Pages, 75 Facebook accounts, and 90 Instagram accounts for engaging in [coordinated inauthentic behavior](#). This network originated in Mauritania and focused largely on domestic audiences.

The people behind this network used a combination of authentic, compromised and fake accounts — some of which had gone through name changes and already been disabled by our automated systems — to amplify their own content, manage Pages and post in Groups. The majority of engagement on these Pages was generated by this network itself. They posted primarily in Arabic and some in English and French about domestic and regional news and topics including the civil wars in Libya and Yemen, criticism of Qatar, Turkey and Iran, Qatar's treatment of migrant workers, as well as support for the president of Mauritania and the United Arab Emirates. Most recently, this network also posted about COVID-19 and various countries' response to the pandemic.

We detected this operation as a result of our internal investigation into suspected coordinated inauthentic behavior linked to the activity we had removed in [August 2019](#) and [March 2020](#).

- *Presence on Facebook and Instagram:* 11 Pages, 75 accounts, and 90 Instagram accounts
- *Followers:* About 62,500 accounts followed one or more of these Pages and less than 25,000 people followed one or more of these Instagram accounts
- *Advertising:* Less than \$190 in spending for ads on Facebook and Instagram paid for in US dollars.

Below is a sample of the content posted by some of these Pages:



Post: Thank you to the generous Emirates for this valuable aid: 18 tons of medical and food supplies to help us fight against the coronavirus



Post: Mining company Snim, at the direction of President Ghazouani, dedicates 813 million for local development in Nouadhibou #Accomplishments_of_the_Mauritanian_nation



Page name: Mauritania Events

Post: Under directives from President of the Republic Mohammed Ould Al-Sheikh Al-Ghazouani to fight the novel #coronavirus, a program has started to distribute aid to poor prisoners in #Nouakchott #Mauritania_Fights_Coronavirus #Mauritania_Events

Text over photo: Government measures to distribute aid to poor prisoners in Nouakchott.

06

We removed 3 Pages, 18 Facebook accounts, and 1 Group for violating our policy against [coordinated inauthentic behavior](#). This domestic-focused activity originated in Myanmar.

The individuals behind this network used fake and duplicate accounts to post in Groups and manage Pages posing as news entities. The Page admins and account owners shared content primarily in Burmese about local news and events such as the successes of the national police and military, stories about police officers providing assistance to local families, arrests and police raids, criticism of the Arakan Army and anti-Rohingya content. Most recently, some of these Pages posted about COVID-19. Although the people behind this activity attempted to conceal their identities and coordination, our investigation found links to members of the Myanmar Police Force. We found this activity as part of our internal investigation into suspected coordinated inauthentic behavior in the region.

- *Presence on Facebook:* 3 Pages, 18 accounts, and 1 Group.
- *Followers:* About 19,000 accounts followed one or more of these Pages and around 30 accounts followed this Group.
- *Advertising:* Around \$20 in spending for ads on Facebook paid for in US dollars.

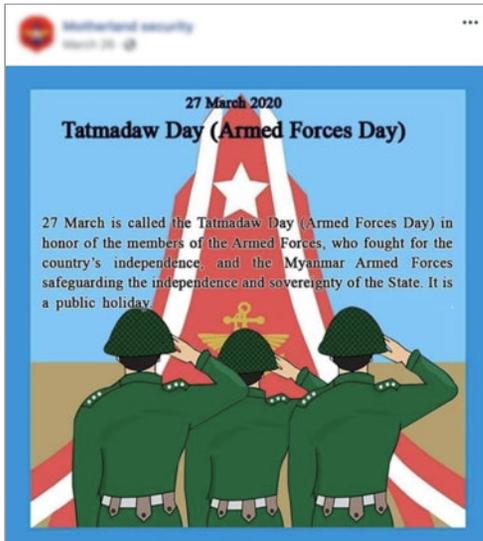
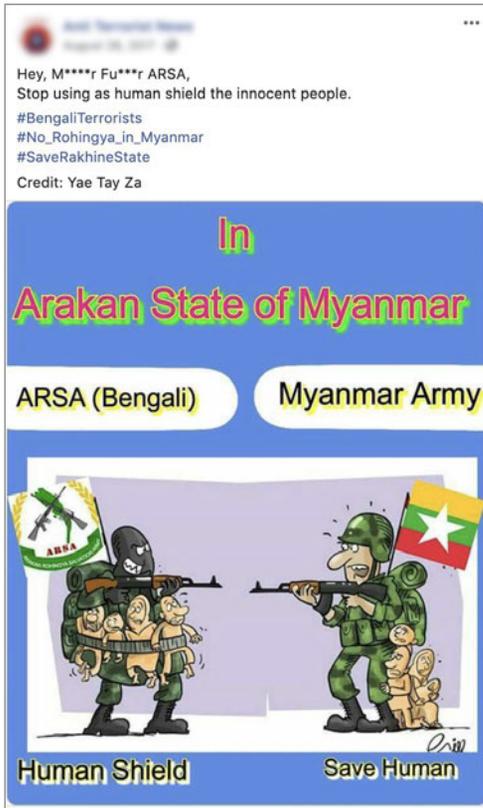
Below is a sample of the content posted by some of these Pages:



Post: 19060 ecstasy pills and 6 grams of ICE, worth of 481.3 Lakh seized at Tamwe

At 3:50 am on February 19, in front of No.5, Basic Education High School, Natmauk Ward, Tamwe Township, Yangon Division, the inspection was conducted on Honda Accord vehicle, driven by Aung Myint Myat (aka) Aung Lay from 10 Ward and Mazda Demio vehicle, driven by Nay Hein Lat (aka) Villa. Altogether, a total of 19060 ecstasy pills (worth of 476.5 Lakh) were seized, in break down, from the vehicle driven by Aung Myint Myat (aka) Aung Lay, there were 2 swords which at the length of 2 by 8 inch and 1 inch respectively, 6 g of ICE under white bag under the back seat (worth 4.8 lakh), 19000 WY ecstasy pills, 44 plastic pipce, 1 phone; from the vehicle driven by Nay Hein Lat (aka) Villa, 60 WY ecstasy pills in plastic bags. From investigation on Aung Myint Myat (aka) Aung Lay regarding the drugs, it is stated that 10 days ago, he bought from Saw Naung who he met near 44th mile at Yangon-Mandalay highway. For Hein Lat (aka) Villa, he bought from Aung Myint Myat (aka) Aunglay to consume and sell.

Two of them have been charged under the Narcotics and Psychotropic Stances Act at Tamwe police station and are trying to surface and arrest their links.



07

We removed 511 Pages, 101 Facebook accounts, and 122 Groups and 56 Instagram accounts for violating our policy against [coordinated inauthentic behavior](#). This domestic-focused activity originated in Georgia.

The individuals behind this activity used fake accounts — some of which had been previously detected and disabled by our automated systems — to create fictitious personas, impersonate opposition leaders and local health officials, manage Groups and Pages, and make their content appear more popular than it is. Some of these Groups went through name and admin changes over time and appear to have been purchased. The people behind this network also ran Pages designed to look like user profiles — using false names and stock profile images — to post and amplify their content, as well as to avoid detection and removal. Some of these Pages posed as independent news outlets. The Page admins and account owners typically posted about domestic news and political issues such as elections, government policies and officials, as well as criticism of the opposition, journalists and local activists. Most recently, this network shared some content about COVID-19, including posts which was removed for violating our policies against harmful health misinformation.

Although the people behind this operation attempted to conceal their identities, our investigation linked them to Espersona, a media firm in Georgia. This organization is now banned from our platforms. We found this activity as part of our investigation into suspected coordinated inauthentic behavior publicly reported by a local fact-checking organization in Georgia with some links to the network we took down in [December 2019](#).

- *Presence on Facebook:* 511 Pages, 101 Facebook accounts, and 122 Groups and 56 Instagram accounts
- *Followers:* About 973,000 accounts followed one or more of these Pages, around 1,508, 000 accounts followed one or more of these Groups, and about 26,000 people followed one or more of these Instagram accounts.
- *Advertising:* Around \$30,000 in spending for ads on Facebook paid for in US dollars.

Below is a sample of the content posted by some of these Pages:

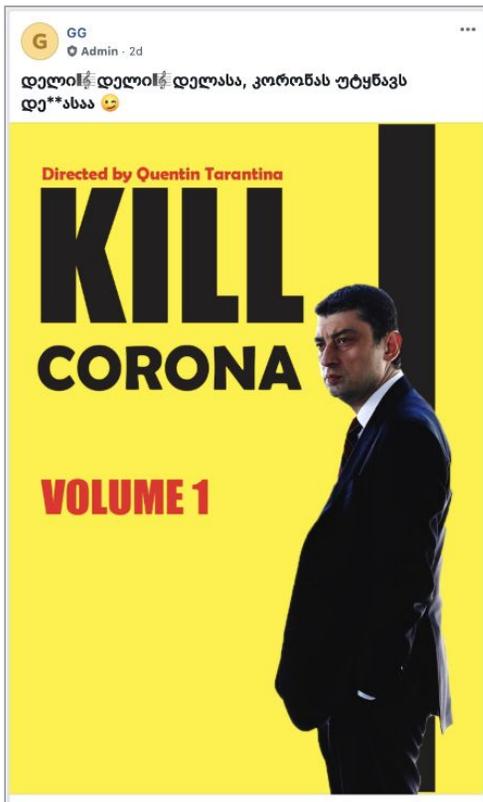


Post: I go crazy about Gakharia's facial expressions

Text over image: Do you like Gakharia:
Yes/No



Post: We are one team



Post: He is killing Corona

08

Finally we removed 23 Facebook accounts, 80 Pages, 41 Groups, and 9 Instagram accounts for engaging in [coordinated inauthentic behavior](#). This domestic-focused activity originated in Georgia.

The individuals behind this activity used a combination of authentic and fake accounts to comment on content, evade detection and removal, and manage Groups and Pages — some of which posed as news entities. They frequently posted about local news and political topics like the 2018 Georgian elections and candidates, Georgian Orthodox Church, criticism of the ruling party and the government's handling of the coronavirus pandemic. Many of these Pages have not been active since 2018.

Although the people behind this campaign attempted to conceal their identities, our investigation linked this network to individuals associated with United National Movement, a political party in Georgia. We found this activity as part of our investigation into suspected coordinated inauthentic behavior in the region. Our assessment benefited from local public reporting in Georgia.

- *Presence on Facebook:* 23 Facebook accounts, 80 Pages, 41 Groups, and 9 Instagram accounts
- *Followers:* About 785,000 accounts followed one or more of these Pages, around 6,300 accounts followed one or more of these Groups, and around 6,400 people followed one of more of these Instagram accounts
- *Advertising:* Around \$23,800 in spending for ads on Facebook paid for primarily in US dollars
- *Events:* 22 events were hosted by these accounts and Pages. Up to 11,600 people expressed interest in at least one of these events. We cannot confirm whether any of these events actually occurred.

Below is a sample of the content posted by some of these Pages:



Translation:

Page name: Official agency of making fun of Georgian dreamers

Post: Is it possible that angry people attacked these murderers and Russian agents?



Page name: Patriarchate's gang of black hundreds

Text in image: What I requested / What arrived



Page name: Stop Bidzina

Text in image: Profane cursing at the member of Georgian dream

Annex 335

Annex not reproduced

Annex 336

Annex not reproduced

Annex 337

Fortify Rights, Witness Statement of Mohammadul Hassan (23 February 2018)

Name: Mohammadul Hassan

Age: 19

Gender: Male

Ethnicity: Rohingya

Occupation:

Village: Maung Nu

Fled Village: August 27, 2017

Arrived Bangla: 14 days later

Date: Feb 23, 2018

Filmed?: Photos.

Note: Jamtoli camp; He was also interviewed by AP and HRW.

I am Mohammadul Hassan and I from Khin Ta Ma village tract, Maung Nu hamlet. I am 19 years old. I have been here for six months. It was on Sunday. On the 27th. I was inside my house and the military came and surrounded the house. My house was adjacent to the road. There were five of us in the house, my brothers and me, and some women. Three of my brothers stayed with the women downstairs. Two of my elder brothers went to hide in the ceiling [in the bamboo]. We were asked to open the door but we didn't. They threatened us that if we didn't open the door, they would fire the launcher and burn the house down. When they were threatening us, one of the women came and opened the door. The military came inside and they fastened three of us from the women, using one rope. They tied our hands behind our backs. There were around ten police and they were kicking us and threatening us. Ten to 15 soldiers were watching over us and beating us and threatening us. It was around 8:30 in the morning.

When we were tied up on the sand in front of the house, the military went into the house. They didn't return for two hours. I don't know what happened to the women in the house.

We were taken out of the house and tied up and we were then taken to an area near the dirty water [pond]. Then they took us to the road. We were being beaten then, too. We asked, "what did we do? Why are we beaten so badly?" And the soldier kicked me in the face [shows deep scar on left eyebrow].

Then they took us to a field and then they brought us to a hill in the village. Beside my house is a hill, and that's where they took us.

When we were taken to the hill, I saw another house and many people were tied up the same as us. There were hundreds of people, maybe 500. They were laying down, piled on each other. We were also taken to the same pile of the people. There were soldiers on all sides of the pile. While they were beating us for two hours, then there was a phone call to the soldier named Ba Kyaw, and then he went outside and talked for awhile, and then he returned and said, "We will kill them."

The soldiers took away people in groups of two and three, and one by one hacked on the back of their necks. The three of us were taken to another place, near a pond. And we were made to sit down with our heads down. Six or seven military surrounded us and then they shot us. We fell down and they unfasten our hands. It was military and police together but the military shot us.

Before we were shot, I was at the house compound of Zahid Hussein. All the people were tied there. There were three to four hundred people. They were not only from my village but also from Hpawng Daw Pyin village. The people from there came to my village, beginning on Friday. There were some gunshots, that's why they moved. There was a BGP camp in Hpawng Daw Pyin.

Three soldiers shot the three of us at the same time. They shot me twice. When we fell down after being shot, they unfastened our hands. We were pretending as if we were dead. [Shows deep scars on back of neck/head, back, chest]. I was still conscious but I was pretending like I was dead. After about 30 minutes, I opened my eyes and there was a soldier still there with a gun. I saw him and then he realized I was alive and he walked up to me, saying "*Kalar*, didn't you die yet?" And he shot me again in the chest. I fell down again and I was bleeding.

My two brothers weren't moving. They were dead. I tried to move them but they weren't moving. I felt that if I was still laying there, I'd be taken like a dead body and definitely killed, so I ran away. I crawled away to my house.

I stayed there [where the soldier shot me] around ten minutes before crawling away. The soldier went up the hill. I crawled through house compounds so they couldn't see me. When I arrived at my house after crawling I saw the military in the front of the house so I entered through the back door.

When I entered my house, I sat on a chair but I couldn't lay down. I just leaned on a chair. My other two brothers were still hiding on the ceiling. We stayed for the whole night in the house. I couldn't stop the bleeding. The next day in the morning, all the military left.

All the people who were still alive ran away from the village. The next day, I thought that if I was still there, the military would burn down the houses and I could be killed. I crawled to the river bank—the Mayu river. One of the men there helped me cross the river in a small boat. My father was already in another village. The man who helped me cross informed my father, and they [family] came and got me and carried me away. They hired some day laborers to carry me. It took me 14 days to arrive in Bangladesh. One laborer and one of my brothers carried me to Bangladesh. We had to pay 1.4 million kyats for the transportation to come here.

Then we came to Kutupalong and went to the MSF clinic. We stayed one night at the clinic and then we were referred to Dulazar hospital. I stayed there for one and half months, and then I was released. I was asked to return after one month, and I did that. I did follow-up visits every 15 days. Even though I came back from the hospital, I couldn't speak or move. Now I am told that I have to take an x-ray because some problems are happening inside, so I have to go for surgery. It is Dr. Kelly. He is a foreign doctor. There are many doctors there.

It wasn't just us, they were also killing other people in areas near us. They'd take two people to one place and kill them, and then take two more to another place.

Most of the military, we know them. Ba Kyaw, Aung Kyaw Myu, Than Oo was the commander.

I didn't hear what Ba Kyaw said on the call, but right after the call he said, "OK, lets eat," meaning "let's kill them." Then they started taking people and killing them.

It was battalion 564.

ENDS

Annex 338

Fortify Rights, “Firsthand Testimonies from August-September ‘Clearance Operations’ in Myanmar”

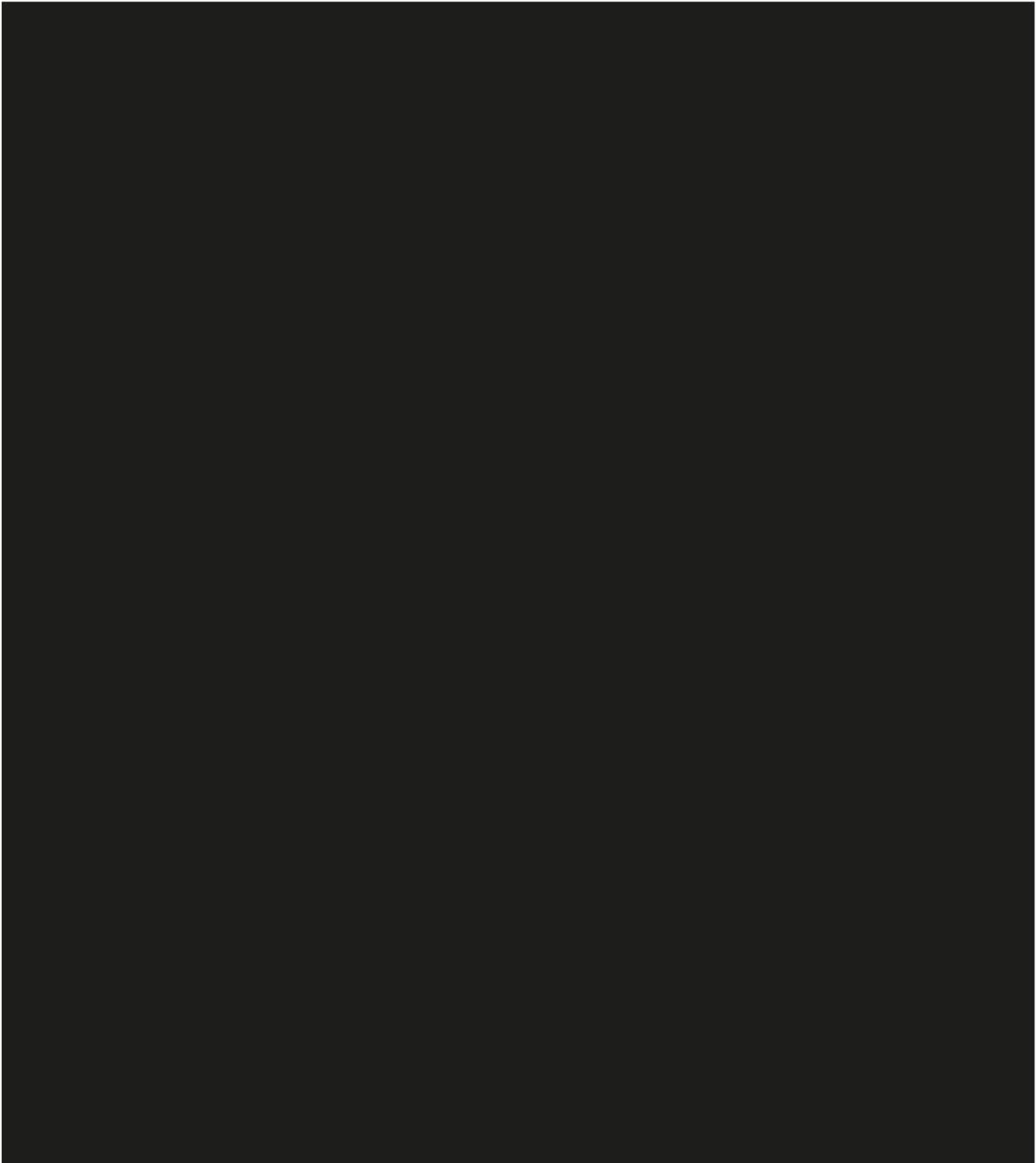
To: Arsalan Suleman, Foley Hoag

From: [REDACTED] Fortify Rights

Re: Firsthand testimonies from August-September “clearance operations” in Myanmar

Date: April 14, 2020

#1





#9

Name: [REDACTED]

Age: 40

Gender: Female

Ethnicity: Rohingya

Religion: Islam

Occupation:

Village: Kun Thi Pyin

Date: August 30, 2017

Note:

My name is [REDACTED] I am from Kun Thi Pyin. I lost two sons. [REDACTED] age 22. He was shot dead. [REDACTED] was 12-years old. When the military was shooting, [REDACTED] jumped into the river and was taken away. It was the day before yesterday.

We were sitting on the [Naf river] embankment and the military shot toward where we were sitting. My elder son was hit with a bullet and my other son jumped into the water. There were eight of us—three daughters, I have six sons and three daughters. Two of my sons are gone. The rest of my family is here.

It was the Naf river.

They weren't that far away. Many people died. All the people came out of the villages and we were standing on the bank of the river, and the military was shooting at us. People were falling down. Around 20 people were shot. There were many soldiers shooting. They threw a bomb with their hand and when it hit the ground, there was a large explosion. Even small children died from that bomb. One more person from my village, he had bomb pieces in his leg. He is still alive. He is here now.

Among four hit with the bomb, one was my son. I saw the bomb. I can't say what hit him exactly, the bomb pieces or the gun, but I saw him fall down. [weeping].

There were some small bushes along the bank of the river. We sat behind the bushes. Many people were killed. I didn't have time to see my son [after he was killed], I just had to move. The dead bodies were lying there. Nobody could give them a funeral.

People were running out of fear from the military. We were sitting in groups. There was a fence. Everyone came to cross the river, and at the same time the army was shooting.

When we were coming out of our house, I saw one young man. The military caught him and cut his ears and nose and they sliced his body with knives. Sahad is his name. The young man was holding his young sister. When the military came, he was going toward the fence. They caught him.

I knew already the military was coming. Then we just ran toward the river bank. There were eight military and three ladies. We could see them raping the women. We could hear their screaming, crying for help. It was on the same day. When the helicopter came over our village, the people from our village said not to be in groups in case the helicopter throws a bomb. We already crossed into the Bangladesh border and we saw another heavy weapon fall on another village.

There are around 250 households in the village. I don't know how many people. On the day I was crossing the border, many were left behind. People were being shot and cut. I don't know what is left.

It was on Saturday [August 26]. On the first day when the military came into the village, we went into the forest and held the children. We spent one day hiding in the forest. No we didn't go to the village.

Right now, people are still coming in. They say there is still firing happening.

I want to go back to conduct my sons funeral but I cannot go back. If I go back, I would be killed.

The first day we stayed in the forest, and the second day, when the military went to eat their food, we walked around the forest and came to the riverside. We were saved by the jungle. If there was no jungle, we'd all be gone.

In the camp, many were crying. No, no. If we could fight back, they wouldn't have killed so many people. We had some knives but the government came and seized them two months ago. I don't want to tell a lie. The government came to take the knives. They ordered the village authority to hand over the knives. They want to create violence against us. This was about one month ago. They were knives to cut the fish and chicken. If the government found any long knives or swords, the people would be killed. We could only keep very small knives. They took all the long ones. The military used to come in groups in front of the houses, and some would enter the house and check the cupboard or boxes. They would demand the keys and check. This happened about every week or ten days.

We are very close to Bangladesh and our children go for fishing and when they come to sell the fish, sometimes the customer gives taka instead of kyats. If we have some left and if the military finds it, then we would be badly beaten and pay fines. Like 100k or 200k kyat. It didn't happen to me but happened to my close neighbor.

I was inside the house when the army first arrived. We knew that when the military comes, they rape the women. So when the military comes, we take all the girls and put them in a group in front of the houses. When the military came and started firing, people were running everywhere. Some were hiding in the jungle, some in the bushes. It was around 10 or 11 am on Saturday [August 26].

The first day, they just shot into the village and then left. And then they left. They didn't burn anything on the first day. On the next day [August 27], they started burning the houses. The next day, my son was shot. When we crossed into the border, we could see a small sentry house made of bamboo. The soldiers set fire to it so they could say we did it.

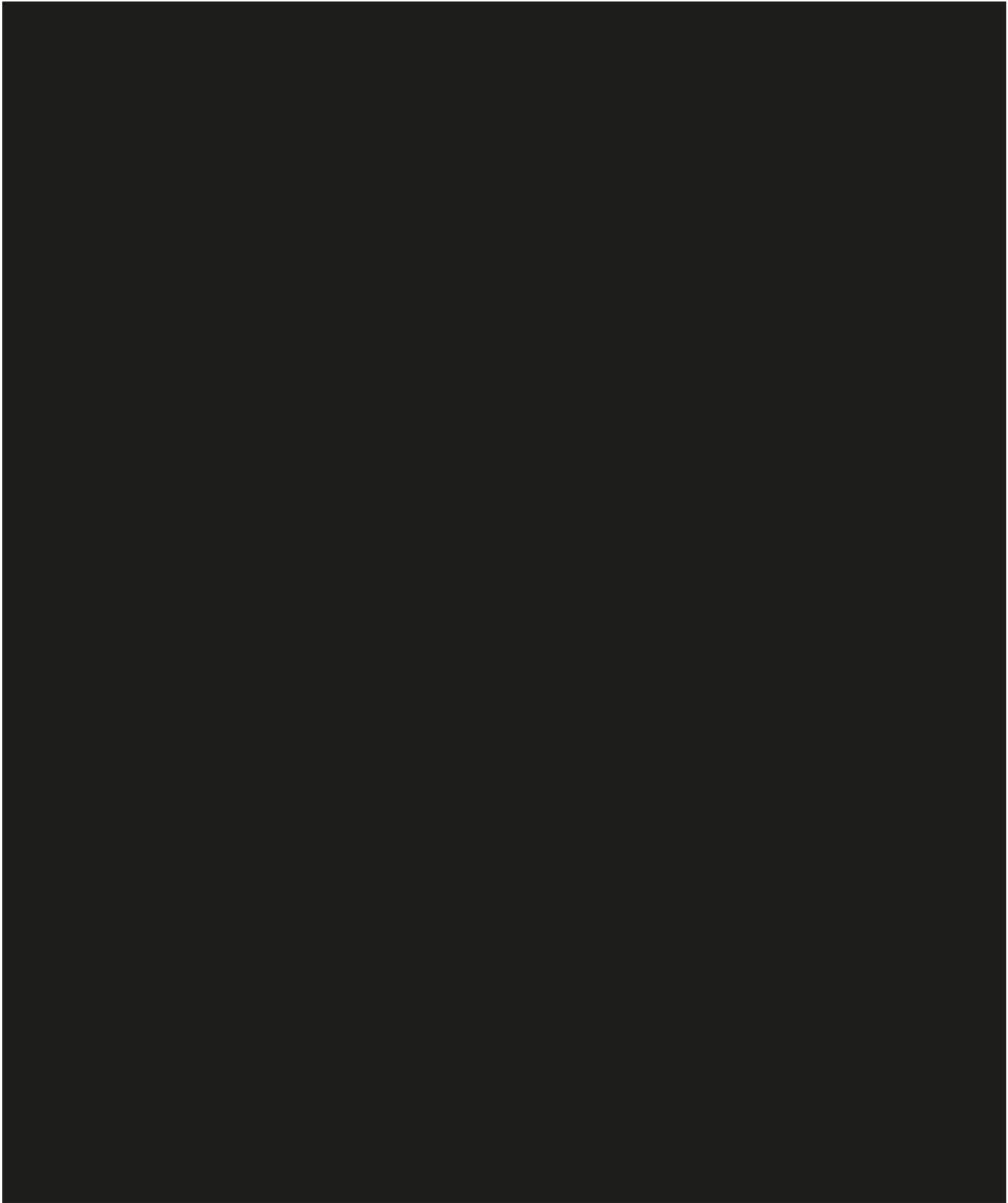
I am Rohingya. Everyone in my village is Rohingya. I am 40. I have been in my village since my birth. I don't know how long my parents lived there. I was old my parents lived there since before independence. My mother had the citizenship card, same as Burmese people.

Some people supported us with tarpaulin. We are staying on the roadside. Some women were kept in the madrassa. The men are by the roadside.

ENDS

#10





ENDS

#30

Name: [REDACTED] brother of [REDACTED]

Age: 37

Gender: Male
Family: 7 (1 child)
Ethnicity: Rohingya
Religion: Islam
Occupation: WFP worker
Village: Buthidaung, downtown
Date: September 2, 2017
Note: via telephone: in contacts as [REDACTED] Call back Sept 4.

The total is 7 members of my family. I have only one child. My family is safe. I am in Buthidaung in the downtown area. There were two attacks on August 25 in two different places in northern Buthidaung. One is in Thin Ga Nat, the military battalion 552, and another BGP check post in Maung Daw Pyin village, by the armed group. It is around 15 miles from where I am now.

I was in downtown Buthidaung. We have some friends in those villages, and were in touch with them. On August 26 or 27, in another place called Maung Gyi Taung in northern Buthidaung, an attack took place. We could see the flames and smoke coming out of the village, and we could hear the gunfire.

The military went to that village and tried to arrest four or five people from the village, and when they arrested them, all the villagers tried to march to the military to take them back. This is not what I saw myself but we have been calling and finding out what the situation was, and they told me over the phone.

The military withdrew from the village and two hours later, they attacked the people with guns and heavy weapons. No one was killed but at least ten people were injured. The total number of 70 houses were burned down.

The people from this village moved out of the village and went to the very northern part of Buthidaung. From the violence on the 25th, there has been no major problem in the downtown area. We can't go to the market to get things. The market is closed. We can't bring a whole bag of rice, but only like 10kg, not a whole bag. The market is only open from 8 to 11 a.m. It's not open the full day. It's not that the government is restricting, it's mainly because of fear from the people, that they could be harmed.

Not a single organization is able to help people since the violence took place. All the organizations, Malteser, WFP, ACF, and CARE have been closed and all the foreigners were evacuated. The people evacuated from the affected areas, they ran out of rations already. They are suffering many hardships. They can't get rations.

Since October, the same problem, we have been restricted. Only after January and February were we able to resume activities. WFP was able to work freely but not the other INGOs. They couldn't provide aid. Before the violence took place, the government banned the delivery of food for the whole month of July. It started in early July. They reduced their activities because the government didn't provide the approval letter to deliver aid support. Some INGOs could provide

aid support because they already had approval letters. But after WFP's letter expired, it couldn't do anything. World Vision could do some support in ten to 12 villages, but that's it. Those are the villages affected by last October and November violence.

This is because of the military administration and the Rakhine parties. They were trying to suffocate the people by denying the UN and INGOs access. They were trying to create a crisis. We think this was well-planned by the military. Also the district commissioner from Maungdaw disseminated a message saying we don't know when the attack will break out in the region, basically suggesting there would be an attack. They were giving hints. He is the district commissioner. He called meetings, suggesting the idea that attacks would take place. Many people heard him say it. Not all the people would know this—it was in separate discussion. He is a Burmese guy. I think his name is Ye Htut.

The curfew is still in effect from 6 p.m. to 6 a.m. It mostly applies on the Rohingya people but not on Rakhine. We can see after 6 p.m. some people are moving around on motorbikes. We can see them moving around the city. There are seven wards in Buthidaung. Ward one is purely Muslim and ward six is purely Rakhine, and the others are mixed.

Most of the killings took place in Gu Dar Pyin. Violence happened there on August 26 and 27. Some armed groups attacked the BGP camps in Gu Dar Pyin village and while the BGP was coming on the road, the group attacked them. Some BGP got injured and then they withdrew. Then they came back later. The attack took place on the daytime. It was around 10 a.m. in the morning. Around 2 or 3 p.m. the military came to the village and surrounded it by all sides. They started shooting into the village and burned it down completely. At least 300 people were shot dead, according to what the people are telling me.

The military were trying to shoot the armed group but they opened fire on everyone. There are some villagers who were eyewitnesses of this. If we need, there could be some eyewitnesses. They already moved to other villages. I will try to find someone. I have to see. They scattered.

I've only heard from other people [about Al Yaqin]. The weapons they use are handmade bombs, some sticks and swords. Those are the weapons of ARSA people. Those who attacked in Gu Dar Pyin didn't have any guns. They didn't kill any military; they just harmed them by the hand bombs.

The killing by the ARSA is false. The government hasn't shown any proof. We know many Hindu people are trying to take side with the military. There are some Hindus here trying to take part with the military. Some Hindus homes were burned but it wasn't by ARSA. Their face resembles the Muslim people, and when he military shoots and fires, they can't differentiate, so sometimes by mistake they get killed. ARSA made a statement that they wouldn't harm civilians. The people think the informants are being killed by ARSA, but the head of ARSA never said they committed such killings.

They've trained some militias. I don't have any recent information but after the 2012 violence, they were trained. The leaders of the Rakhine community asked the government to form a militia

and arm and train them. After the 2012 violence they started forming these militias and arming people.

I saw them once in Zin Kha Ma village in southern Buthudang and I saw the military training them. I was passing by the village and I saw them training them. It was in 2013. They were showing them how to hold guns, how to shoot them, and how to march. I could tell they had real guns but they were empty. When I was passing by, the training was very close and we waited and watched. The military saw us and told us to leave and not to watch. It was the military. The village is mixed. There are Muslim people and the western side is solely Rakhine people. The training was happening there.

I have a death-toll and casualty list and a list of the houses burned. I can share it with you. From Taung Bazar to Gu Da Pyin village, I know the population list and the demographic data. We have the data by the government. I traveled to the affected areas and got the casualties. We know the affected areas. The villages were already burned, but some houses that remained were dismantled by the people. We know how many houses used to be in the villages. We have data of how men and women are in each village. From that profile, we can get the death. We confirmed the deaths over phone calls. We would ask how many people died in each village.

There are people trapped in northern Buthidaung. They can't pass the narrow passage along the mountain. They heard some people have been killed. Today they are trying to pass. They ran out of food. They have no choice. [REDACTED]; It is called Da La, the narrow passageway]. Within two or three days they will arrive in Bangladesh; they will stop halfway, otherwise they'd arrive within one day.

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[Call on September 4]

The township administrator and the tactical commander of the army and another official held a meeting today [September 4] about how they will disseminate the message to the village level. They plan to tell the groups they don't have to flee the village. This is a conspiracy against the international community. The international community is putting pressure on the government, so Min Aung Hlaing is trying to make a show for the international community. I don't think it will be helpful—it will be problem because this is a well-rooted problem from long ago. They are trying ethnically cleanse these people and will do so unless the international community takes strong action against this government. The international community expressing worry and condemning won't work. They must take string actions. They've already said this is a war zone and they've applied curfews. Even if the situation becomes stable, people will still be arrested arbitrarily, accused of supporting an insurgent group and it will continue.

The meeting was open. Everybody knows they are going to do this. If they go out to disseminate the real message, then it is better wait... Call me at 12noon tomorrow.

[NOTE: We agreed to only call him from my number].

ENDS



ENDS

#40

Name: [REDACTED]

Age: 45

Gender: Male

Family:

Ethnicity: Rohingya

Religion: Islam

Occupation: Village "person in-charge"

Village: Nwa Yon Taung

Date: September 4, 2017

Note: HELP Office

I come from Nwa Yon Taung in Maungdaw Township, northern. There are two types of village administrator. The real one is Rakhine. The lower one is Rohingya. They call us "village in-charge." [REDACTED] They

have to submit the selection process to the township administrator, and he assigns the winner as the person in-charge.

The violence started in southern Mayngdaw on Thursday night. Around 12 midnight, we heard the attack took place in the southern part of Maungdaw. We heard over the phone. We were alert and staying in our homes at that time. Some other people came to my house and waited with us. The next morning, we heard gunshots from other villages. We could see the military and lon twin trucks moving on the road. They started shooting the people. When they were passing on the road, they were shooting at the houses. If they saw anybody, they shot them. My house is beside the road and I had to escape. There were about 100 military in four trucks and one Lon Tein truck. The police truck was a bit bigger, the military trucks were a bit smaller. When I first saw them, I saw only small trucks, Later I saw big truck arrive.

There are three villages nearby. One is Ye Myat Taung and Nwa Yon Taung and the Rakhine village called Pyat Thar Yaw. These three hamlets are all under our village tract, our administration. Around 11 a.m. on Friday, they were shooting in ye Myat Taung, and after the military left, I went there to see what happened. I saw 18 people were shot dead and three villagers were missing. We think maybe they jumped into the river. The river is the Pyat Thar River.

It takes five minutes to walk there through a small field. When our village was being shot at, we just escaped. The village where the people were killed is beside the edge of mountain.

First the military opened fire on our village, and then we fled to Ye Myat Taung, which is by the hillside. There were already some military in the camp in our village. The military came from outside and joined them, and they opened fire on our village.. So we fled to Ye Myat Taung, hoping our village wouldn't be shot at. On the first day, when the military shot, two people were injured. When they started shooting, some people gathered, and the they shot at that group. Some people ran away—two were hit with bullets. When the military opened fire, all the villagers jumped into the river and cross to the other side of the bank. After shooting at the village, they just went back to they camp.

Normally the camp is a Lon Tein camp with 12 soldiers. But at least 40 military arrived from outside.

The two shot and injured were lying down, injured. And then the people enough them to another village. They are: 1) [REDACTED], 45, man and 2) [REDACTED], around 18.

The villagers, when they came to enter, they warned us not to enter. So I went to another village. After the military came, some young people went to Ye Myat Taung and saw 18 people had been killed. Those young people came back to the village after the military left. They found 18 were shot dead and three were missing. The villages were already empty. They didn't burn them at that time.

They couldn't bring the dead bodies but they told us. We already crossed the Pyat Thaug River. Some villagers went back to our village to collect belongings. On Sunday, we tried to go back to

get our belongings and some young people still had not left. They warned us not to come. We saw the military was shooting and firing at another village, called Koilabanga [‘Broken Hut’] in Burmese Phiho Chaung. There was a market and the military was shooting and setting fires. Some young people were still on the village and when they saw me, they warned me, don’t come here, you will lose your life. At that time, the military started burning the village. They used a launcher. We dared not get close. At the same time, the other village was getting burned as well. At the bank of the river was a nippy palm garden. We hid there. Both villages were burned down on Sunday [August 27].

My village is very close to the main road so there are no Al Yaqin there, but they were in other villages. The village administrator is Rakhine so they were afraid to stay there. The other village burned down, the administrator was Rohingya Muslim.

The government says we are Bengali but we are Rohingya.

We stayed in a village called Havi Ywa village. We stayed for three days. When the village was burned down, there was nothing to go back to, so we just left and came here. As my village was located near the road, the military suspected Al Yaqin was there. SO they burned it down. They just think that if they burn the villages down, then Al Yaqin will run away.

It didn’t take place in my village but we heard from the southern and northern areas, we heard it happened. I heard the people who had close relationships with the government were being killed but I don’t know who they were.

The Rakhine villagers did not come to our village but we heard that in other villages, Rakhine went and took property and killed and cut people. All the Rakhine people were provided guns by the military. They brought the guns to the Rakhine village. I saw this myself. As a village -in charge person, I know that our Rakhine village was provided ten guns. I heard that later, everyone was provided guns. In case any violence arises, they were given guns to kill Muslims.

I was the “village-in-charge” and because of that I always go around on the motorbike to see the villages. I saw the Rakhine people taking care of the guns—they had become rusty and the people are trying to wipe them down take care of them. I have a good relationship the Rakhine people because I would visit them. It was around two months ago. After I came back here, I heard that now the Rakhine were killing and shooting people with guns.

Only the Rakhine people were there, cleaning the rust off the guns. My Rakhine friends told me the guns were received from the government, from the military. Some Bangladeshi Rakhine people were also there. They were provided some houses by the government and they know how to shoot guns. They trained them. Some retired military, Rakhine people, who know gun shooting, they were brought from lower townships. They were Rakhine people. They were formerly with a Rakhine insurgent group. The government brought them to train. The police brought them, but it was the township administrator arranged it. His name is Myat Khine. He is Burmese.

It is the AA peace party. Some of the members of AA were settled to my village. In this village, there are Rakhine people from Bangladesh, old Rakhine people, and the AA surrenders who came to light. It is Pyat Thar village. I didn't see them how to shoot guns but I saw them training them how to clean and take care of their guns. As a village head, I would move around, and they had alcohol and beer shop in the village. In one place, they did it openly. I could see them. They jokingly aimed the gun at me.

After I came here I heard some houses remained but my own administrator said now the military burned the entire village down. I heard from the villagers of Havi Ywa. I still have contact with them. They are still there and some are hiding. Some people are coming slowly. They are worried they will be attacked.

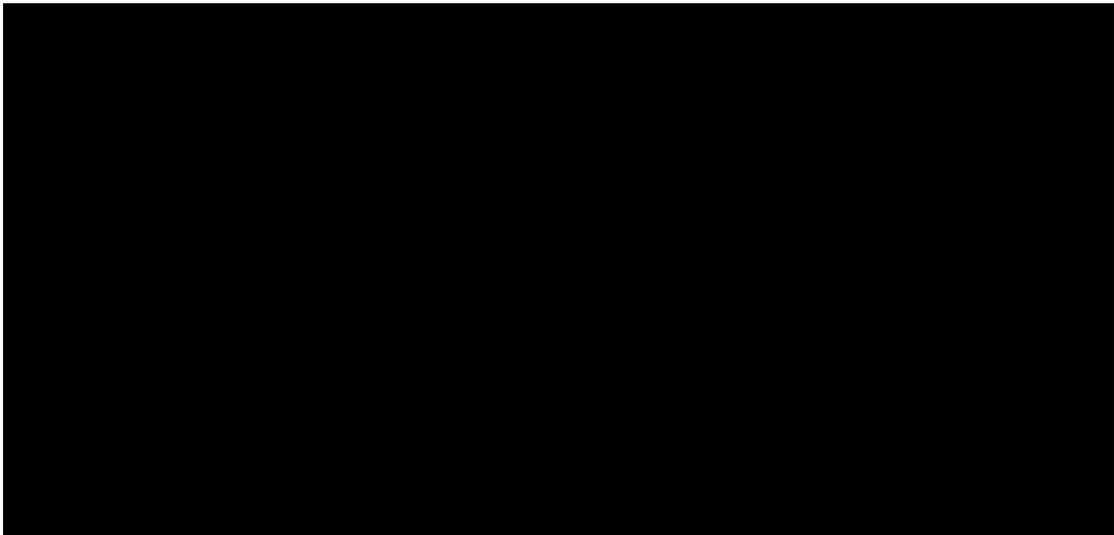
I heard only and didn't see that when the Al Yaqin went with villagers to attack the camps, some people died. But they weren't from my village. I heard the Al Yaqin took villagers to attack the camps holding sticks and knives. But they had only two or three guns in the whole group. They couldn't do it. The people from the camp, the government, had hundreds of guns. How could they attack them?

No [they didn't kill Hindus]. I heard they killed Muslim people but not Hindus.

I have been hearing now that the military went to burn houses and that they are taking beautiful women and taking them into the forests and raping and cutting them. The southern side of Maungdaw Township, in Myint Hlut. I heard hundreds of women were taken to the forest yesterday.

In that village, they gathered all the people in the field and some people were killed, and some women were taken to the forest, It was the military. I heard this today, this morning.

ENDS



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