

INTERNATIONAL COURT OF JUSTICE

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

THE GAMBIA

v.

MYANMAR

**COUNTER-MEMORIAL OF
THE REPUBLIC OF THE UNION OF MYANMAR**

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24 AUGUST 2023

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Arakan Muslim Conference, “Cha[r]ter of the Constitutional Demands Of the Arakani Muslims”, June 1951

Location of original unknown, English version available online at:

<https://www.burmalibrary.org/en/charter-of-constitutional-demands-of-arakani-muslims>

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Allah - O - Akbar

Tract No. 1

OPEN LETTER

TO

THE LEADERS OF THE BURMESE GOVERNMENT AND THE DEMOCRATS

STOP GENOCIDE.

Of the Muslims Who Alone Stand In - Between

" COMMUNISM " and " DEMOCRACY "

IN ARAKAN

Charter of the Constitutional Demands
Of the Arakeni Muslims

Published By

ARAKAN MUSLIM CONFERENCE
ETHANGYAW DISTRICT ARYAB ARAKAN BURMA.

June 1951.

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Importance of keeping balance of power between the Muslims and the Maghs the two major races of Arakan.

PRINCIPLE OF PARITY OR FIFTY-FIFTY SHARES IN DEFENCE AND PORT ADMINISTRATION.

The Muslims and the Maghs are the two Major and Main Races of Arakan. The Maghs predominate in number but the Muslims are second in number but much superior in fighting qualities, political and economic strength, with great historical past and traditions. Arakan prosperity before the war was mainly the work of the Muslims who developed agriculture and commerce.

The Maghs and the Muslims should be given their own areas of Self-Government but at the same time united under the sovereignty of the Union as the two High Contracting Parties and Races of Arakan for:-

- (1) The Common Defence of Arakan as One Defence Unit and
- (2) The Common Administration of Akyab Port, which concerns both Races Equally.

So far as these two common and collective subjects of (1) Common Defence and (2) Common Port are concerned, to which the parity should apply and each of the two Races should have fifty-fifty (50-50) share in the Administration of the Defence of Arakan and Akyab Port.

PRINCIPLE OF PARITY UNIVERSALLY RECOGNIZED IN ALL FEDERATIONS LIKE U.S.A. AND SWITZERLAND.

It is the Commonly accepted principle of International Law and International Relationship that various nations in matters of inter peoples relations irrespective of their numbers are regarded not as Majority and Minority but as Equals and have equal representation.

The principle of the Equality of peoples and Nations and of the different Federal Units, irrespective of number is universal-recognized in all Federations. The different Units of Federations as in the U.S.A. are accorded Equal Representation on the Upper Chamber of the Federal Parliament. The 48 States of U.S.A. for instance have equal representation the U.S.A. Senate (The Upper Federal Chamber) which has got equal power with the lower chamber-the House of Representatives. But still each of the 48 States elects equal number of Senators to the Senate of the U.S.A. irrespective of the great disparities in the populations of the various states. The Lower Chamber the House of Representatives-however represents the generality of the people and its quantum of representation is based on the ratio of populations of the various States. The Senate represents not the people but the Units.

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PARITY OF THEIR NATIONS IN SWISS FEDERATION.

This principle of parity of people is universally recognized in all federations e.g. the U.S.A. and the Union of Switzerland. For instance in the Federation of Switzerland, the Italians, the Germans, the French peoples have equal Representation and Rights in the Federal Cabinet and Legislature although the Germans are the most numerous and form a majority. This should apply of the Various Race-Units on the Senate and the Union of Burma.

MERE ARITHMETICAL POPULATION-RATIO ABSURD IN SUCH INTER-RACIAL MATTERS.

The thing in terms of majority of arithmetical population ratios in such vital and basis matters as the common concerns of the collective Security and Defence, the Administration of the Common Port and Representation on the Constituent Assembly and the Upper Chamber of the Union Federal Legislature shall be utterly absurd and untenable. The principle of parity and equality of Race-Units and States should be the rule in such vital matters.

The demands of the Arakan Muslims are based on the principle that the Muslims and the Maghs are the Major and Main Races of Arakan and while they should have their separate zones of autonomy and Self-rule they should be united under the sovereignty of Burma Union on the principle of parity for (1) The Common Defence of Arakan and (2) The Common Administration of the City and Port of Akyab.

THE DEMANDS

The Demands in brief are:-

(1) That North Arakan should be immediately formed a free Muslim State as equal constituent Member of the Union of Burma like the the Shan State and the Kareni State, the Chin Hills, and the Kachin Zones with its own local Militia, Police and Security Forces under the General Command of the Union.

(2) That for the purposes of Defence of the Union, Arakan as a whole may be treated as a single Defence Unit, provided the following conditions Nos. 3 & 4 are fulfilled.

PRINCIPLE OF MUSLIM PARITY FOR THE ARMED FORCES AND THE POLICE OF ARAKAN.

(3) That for creating a genuine sense of Collective Security Mutuality and Confidence and in view of the great importance of the strategic position the Muslim occupy, the principle of Muslim parity of 50 percent Muslim representation on the Armed Forces and the

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...the Reg... whole should be recognized and implemented.

PRINCIPLE OF CONDOMINIUM FOR AKYAB PORT.

(4) That Akyab should be recognized as the Common Port and City of the North Arakan Free Muslim State and South Arakan with the principle of Condominium of the North Arakan Unit and South Arakan Unit in the City. The Muslims and the Non-Muslims should have joint administration of the City and the Port with 50 percent Muslim Representation of the City administration police and Security Force of Arakan. The Mayor and Deputy Mayor, the Commissioner and the Deputy Commissioners of Akyab should be Muslim and Non-Muslim by rotation, the first Mayor should be Muslim and the Deputy-Mayor a Non-Muslim and the Commissioner should be a Muslim and the Deputy-Commissioner a Non-Muslim for a period of two years. For the next term, the Racial Order should be reversed.

MINISTER FOR MUSLIM AFFAIRS ON CENTRAL GOVERNMENT.

(5) That the representative of the Muslims of North Arakan Zone should be appointed as Minister for Muslim Affairs on the Burma Union Central Government just as Minister for Chin Affairs, Minister for Kachins Affairs, Minister for Karen Affairs have already been appointed on the Central Government of Burma.

CONSTITUENT ASSEMBLY AND THE ARAKAN MUSLIMS.

(6) That the North Arakan Muslims should get as a right equal representation on the Constituent Assembly of the Union with other Units which shall be formed for framing the Constitution of the Union and the Muslim Demands should be made integral parts of the Constitution.

UNION LEGISLATURE.

(7) That the North Arakan Muslims should get equal representation of the Upper Chamber of the Federal Legislature of the Union of Burma with other Units and proportionate Representation on the Lower Chamber of the Union Legislature.

CONGRESS OF PEOPLE.

(8) That a Congress of People and Races should be instituted for the looking after the cultural and social welfare of the various Race-Units communities and peoples of the Union of Burma and specially to promote amity goodwill and co-operation among them.

All communities should get equal Representation on the Congress of Peoples on the Principle of parity.

REPRESENTATION IN SERVICES.

(9) That the Muslims should be guaranteed fair and adequate share in the Central Services of the Union including the Armed Forces, the Militia, the irregulars and the Police, the Educational Services and the Judiciary.

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AND CIVIL RIGHTS.

(10) That complete Religious Freedom and Equality, Culture and Educational Autonomy as a distinct Community and equal Civil and Economic Rights and Liberties should be guaranteed by the constitution of the Union of Burma for the Muslims as a recognized Minority according to the principle of the Government of the U.N.O. Commission on Human Rights and the Protection of Minorities. These Rights and Safeguards should be made Justiceable in the Court Law.

(11) That Muslim properties and business shops destroyed or looted or unjustly confiscated should be restored, compensated for and the economic development and welfare of the Muslims should be guaranteed and secured
QAZI COURTS UNDER A GRAND MUFTY.

(12) That Qazi Courts under a Grand Mufti should be established in Burma with powers to administer Islamic personal Laws concerning the personal life, family matrimony inheritance, succession, wakfs etc. of the Muslims according to the principle of the Holy Shariat.

MAJLIS ISLAMIA

(13) That a Statutory Muslim Council (Majlis Islamia) for the proper management of the Religious Social, Educational and Cultural Affairs and the Administration of the Charitable Institutions, Wakfs, Religious Trusts, Mosques, Madrasahs, Graveyards, Tombs, Monuments and Cultural foundations of the Muslims representatives and the Ulama, to be selected according to the rules of the special Statute of the Majlis which the Muslim members of the Constituent Assembly and the Central Union Legislature and the Muslim Conference shall adopt.

(14) (A) The Islamic Schools and Colleges should be established with provision for the teaching in Arabic Institutions. Islamic History and Culture and the Muslims should get fair share of the State Aid and Grants to Educational, Cultural and charitable Institutions.

(B) That provision for the teaching of Urdu and Arabic and Diniyat (Islamic Religious Instruction) should be made in all public Government schools where the Muslim Students are considerable in number and Urdu Schools should not be abolished but further developed.

(C) That the Muslims shall have complete freedom to found and run their own educational, religious and Cultural Institutions.

(D) That Urdu should be retained as the medium of instruction for the Muslims in primary and the Secondary Schools and no language should be forced on the Muslims against their will or to the detriment of Muslim Culture and integrity.

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Arakan Rohingya Salvation Army, ARSA Press Release, ARSA/PR/01/2017,
29 March 2017



ARAKAN ROHINGYA SALVATION ARMY

အာရ်ကန် ရှိုဟင်ဂျာ ကယ်တင်ရေး တပ်မတော်

"In the name of Allah, the Most Gracious, the Most Merciful"

Date : 29 March 2017

Ref No: ARSA/PR/01/2017

PRESS RELEASE

Rohingya is an ethnic, indigenous and native race to Arakan (Rakhine), has been there for several thousand years even before the nation called modern day Burma (Myanmar) came to exist in the world map.

Arakan takes pride of several independent kingdoms which had nothing to do whatsoever with the Burmese colonial empire from the first day of the world until 1784 in which the Burmese king, Bo Daw Phaya Maung Waing, invaded and colonized Arakan with brutal, offensive military attacks.

Rohingyas have always been subjected to **genocide and crimes against humanity** committed stage by stage by the successive Burmese regimes and governments for decades since 1970s in attempting to exterminate them totally from their native land, Arakan.

Nowadays, the international community begins to witness that the successive Burmese regimes and governments have been committing genocide and crimes against humanity against Rohingya community for decades.

In view of that, the United Nations recognizes Rohingya community as the most persecuted people in the world and also acknowledges that persecutions of Rohingya community by the successive Burmese regimes and governments amount to crimes against humanity.

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We were hoping that situations of Rohingya community would improve to a certain degree of satisfaction when Aung San Su Kyi-led National League for Democracy (NLD) party formed the government in the early 2016.

It becomes clear that Aung San Su Kyi-led government is not in any capacity to change the situation in any way while they themselves are being held as political hostages by the Burmese brutal Junta to bargain political leverage at the international arena especially with UN, US, EU and etc.

Therefore, in current Burmese political landscape, it is also essential to deal with commander-in-chief Ming Aung Hlaing (constitutionally installed King of Burma) who is the mastermind of on-going atrocities faced by Rohingyas.

We were also hoping that international community would take necessary measures including sending peacekeeping forces into Arakan State, as it is morally responsible, to protect Rohingya community from being subjected to genocide as well as crimes against humanity which are recognized as international crimes in the Statute of the International Criminal Court.

We would like to express our sincere thanks wholeheartedly to international organizations (namely, the UN, OIC, EU, ASEAN) and recent numerous international delegations to Arakan State (especially to Ms. Yanghee Lee, the UN Special Rapporteur) for their tireless efforts to save humanity, and welcome more international initiatives in various sectors inside Arakan adequately in the future.

Nevertheless, it is very unfortunate that Rohingyas are still locked up in various concentration camps across Arakan without any proper access to essential needs for survival as humans and endless persecutions continue as usual against Rohingya community and destructions to their ancestral villages, places of worship, properties of public importance and private properties.

Therefore, We [ARAKAN ROHINGYA SALVATION ARMY (ARSA), which was initially known as the FAITH MOVEMENT] came forward to defend, salvage and

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protect Rohingya community in Arakan with our best capacities as we have the legitimate right under international law to defend ourselves in line with the principle of self-defense.

We, in doing so, declare loud and clear that our defensive attacks have only been aimed at the oppressive Burmese regime in accordance with international norms and principles until our demands are fulfilled.

We do not associate with any terrorist group across the world.

We do not commit any form of terrorism against any civilian regardless of their religious and ethnic origin as we do not subscribe to the notion of committing terrorism for our legitimate cause.

We, as it has been proven, assure the safety and well being of all ethnic communities, their places of worship and properties in Arakan State.

We also seek political, financial, technical and logistics supports and assistances from any member of legitimate international community to strengthen our legitimate cause in accordance with international norms and principles.

We hereby demand, in accordance with international human rights norms and principles, that the Burmese Junta regime and the government must:

- 1) reinstate the indigenous native ethnic status of Rohingyas;
- 2) issue them the citizenship identity cards;
- 3) allow immediately to resume international humanitarian relief works in all affected areas;
- 4) initiate and expedite the UN-led international independent investigation and enquiry team into Arakan;
- 5) hold all the perpetrators of acts of violence accountable for the crimes that they have committed;

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- 6) allow all *bona fide* Rohingya refugees and diasporas around the world to return safely to their native land, Arakan;
- 7) restore their rights to freedom of movement, freedom of assembly and freedom of association;
- 8) remove all restrictions to form political parties and participate in politics;
- 9) allow them to practice their religious rites and cultural ceremonies;
- 10) allow all Rohingyas from IDP camps across Arakan to return to their places of origin immediately under the supervision of international observation;
- 11) release all the Rohingya arbitrary detainees nationwide without delay;
- 12) stop using Rohingyas as forced laborers and human shields at all time;
- 13) rebuild their places of worship and other public as well as private buildings which were destroyed throughout the violence at the expense of the Burmese government;
- 14) return all ancestral lands and titles that were unlawfully confiscated and grabbed from Rohingyas;
- 15) allow Rohingyas to participate in trade and commercial activities;
- 16) allow their children to have full access to proper education without any let or hindrance;
- 17) allow them to serve in public services proportionately;
- 18) refrain from interfering in marriages and family planning of Rohingyas;
- 19) restore their rights to enjoy other rights and privileges that are accorded to all indigenous natives of Burma;
- 20) take adequate legal and administrative measures to accomplish all the above mentioned demands.



COMMANDER-IN-CHIEF

ARAKAN ROHINGYA SALVATION ARMY (ARSA)



.....► END ◀.....

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Arakan Rohingya Salvation Army, ARSA Press Release, ARSA/PR/02/2017,
30 May 2017



ARAKAN ROHINGYA SALVATION ARMY

အာရ်ကန် ရိုဟင်ဂျာ ကယ်တင်ရေး တပ်မတော်

"In the name of Allah, the Most Gracious, the Most Merciful"

Date : 30 May 2017

Ref No : ARSA/PR/02/2017

PRESS RELEASE

This statement is issued especially to dismiss all kinds of false, fabricated and fake news as well as information circulated by the Burmese State Counsellor Office, other branches of the Burmese government and the oppressive Burmese military regime against the dignity and decency of 'ARAKAN ROHINGYA SALVATION ARMY' (ARSA).

We recall the previous statement which visibly expresses the prime objective of the establishment of ARSA as "to defend, salvage and protect Rohingya community in Arakan with our best capacities as we have the legitimate right under international law to defend ourselves in line with the principle of self-defence".

It, loudly and clearly, declares that "our defensive attacks have only been aimed at the oppressive Burmese regime in accordance with international norms and principles until our demands are fulfilled".

It confirms that "we do not commit any form of terrorism against any civilian regardless of their religious and ethnic origin as we do not subscribe to the notion of committing terrorism for our legitimate cause".

It guarantees that "we assure the safety and well being of all ethnic communities, their places of worship and properties in Arakan State".

We reiterate that ARSA has no link with any terrorist group around the world.

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In line with the abovementioned founding principles of ARSA, we have never attacked or killed 'any civilian' as it is claimed in numerous false, fabricated and fake news as well as information circulated by the Burmese State Counsellor Office, other branches of the Burmese government and the oppressive Burmese military regime.

We are well aware and conscious that both the Burmese government and the oppressive Burmese military regime are trying their best to tarnish the noble image of ARSA in order to create obstacles for us in seeking political, financial, technical and logistics supports and assistances from the members of legitimate international community to strengthen our legitimate cause in accordance with international norms and principles.

Therefore, only the Burmese State Counsellor Office, other branches of the Burmese government and the oppressive Burmese military regime are exclusively responsible for circulating their own false, fabricated and fake news as well as information against ARSA to the international community, diplomatic corps from various countries, citizens of the world at large and the Burmese local public.



COMMANDER-IN-CHIEF

ARAKAN ROHINGYA SALVATION ARMY (ARSA)



END

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Arakan Rohingya Salvation Army, ARSA Press Release, ARSA/PR/10/2017,
10 September 2017



ARAKAN ROHINGYA SALVATION ARMY

အာရှ်ကန် ရှိုဟင်ဂျာ ကယ်တင်ရေး တပ်မတော်

"In the name of Allah, the Most Gracious, the Most Merciful"

Date: 10 September 2017
Ref No: ARSA/PR/10/2017

PRESS RELEASE

DECLARATION OF HUMANITARIAN PAUSE CESSATION OF OFFENSIVE MILITARY OPERATIONS IN ARAKAN STATE- FOR HUMANITARIAN ACCESS

The ARAKAN ROHINGYA SALVATION ARMY (ARSA) hereby declares a temporary cessation of offensive military operations in Maungdaw, Buthidaung and Rathedaung Townships for a one-month period (10 September 2017 - 09 October 2017) in order to enable humanitarian actors to assess and respond to the humanitarian crisis in Arakan State.

ARSA strongly encourages all concerned humanitarian actors resume their humanitarian assistance to all victims of the humanitarian crisis irrespective of ethnic or religious background during the ceasefire period in all conflict affected areas of Arakan State.

ARSA urges the International Fact-Finding Mission (IFFM) established by the United Nations Human Rights Council (UNHRC) on 24 March 2017 to carry out its duties in Arakan State as soon as possible.

ARSA strongly urges the Burmese government to reciprocate this humanitarian pause by ceasing military offensive operations and participate in assisting the victims regardless of their ethnic or religious backgrounds in all conflict affected areas of Arakan State.



COMMANDER-IN-CHIEF
ARAKAN ROHINGYA SALVATION ARMY(ARSA)

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Arakan Rohingya Salvation Army, ARSA Press Release, ARSA/PR/27/2018,
31 January 2018



ARAKAN ROHINGYA SALVATION ARMY

အာရ်ကန် ရှိဟင်ဂျာ ကယ်တင်ရေး တပ်မတော်

"In the name of Allah, the Most Gracious, the Most Merciful"

Date: 31 January 2018
Ref No: ARSA/PR/27/2018

PRESS STATEMENT

NOTICE TO OTHER ARMED GROUPS, DACOIT GROUPS, HUMAN TRAFFICKING GROUPS, DRUG TRAFFICKING GROUPS AND SOME OTHER GROUPS COMMISSIONED BY THE BURMESE TERRORIST GOVERNMENT OPERATING IN DISGUISE AS ARSA

ARAKAN ROHINGYA SALVATION ARMY (ARSA) would like to draw the special attention of the parties concerned that there are other armed groups, dacoit groups, human trafficking groups, drug trafficking groups and some other groups commissioned by the Burmese terrorist government that have been operating various activities inside Arakan State as well as inside Rohingya refugee camps in Bangladesh by disguising as the members of ARSA with the intention to tarnish the noble image of ARSA in the eyes of international community - including Bangladeshi Government.

ARSA has already declared, loud and clear, that our sole objective is to defend, salvage and protect the innocent Rohingya indigenous native ethnic community of Arakan State with our best capacities as we have the legitimate right under international law to defend ourselves in line with the principle of self-defense.

In doing so, our defensive attacks have been aimed only at the Burmese terrorist government and its terrorist military regime in accordance with international norms and principles until our demands are fulfilled.

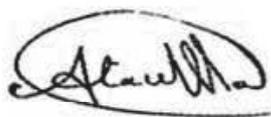
ARSA, in principle, strictly does not allow any of our member to attack civilians, their places of worship and properties regardless of their religious and ethnic background.

ARSA also guarantees that we do not carry out any attack whatsoever inside Rohingya refugee camps in Bangladesh as we do respect the sovereignty of Bangladesh which is assisting millions of Rohingyas on humanitarian grounds.

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We strongly warn those groups operating by masquerading as ARSA to refrain from doing so.

Otherwise, we will have no choice but to declare the names of those groups and their leaders publicly.



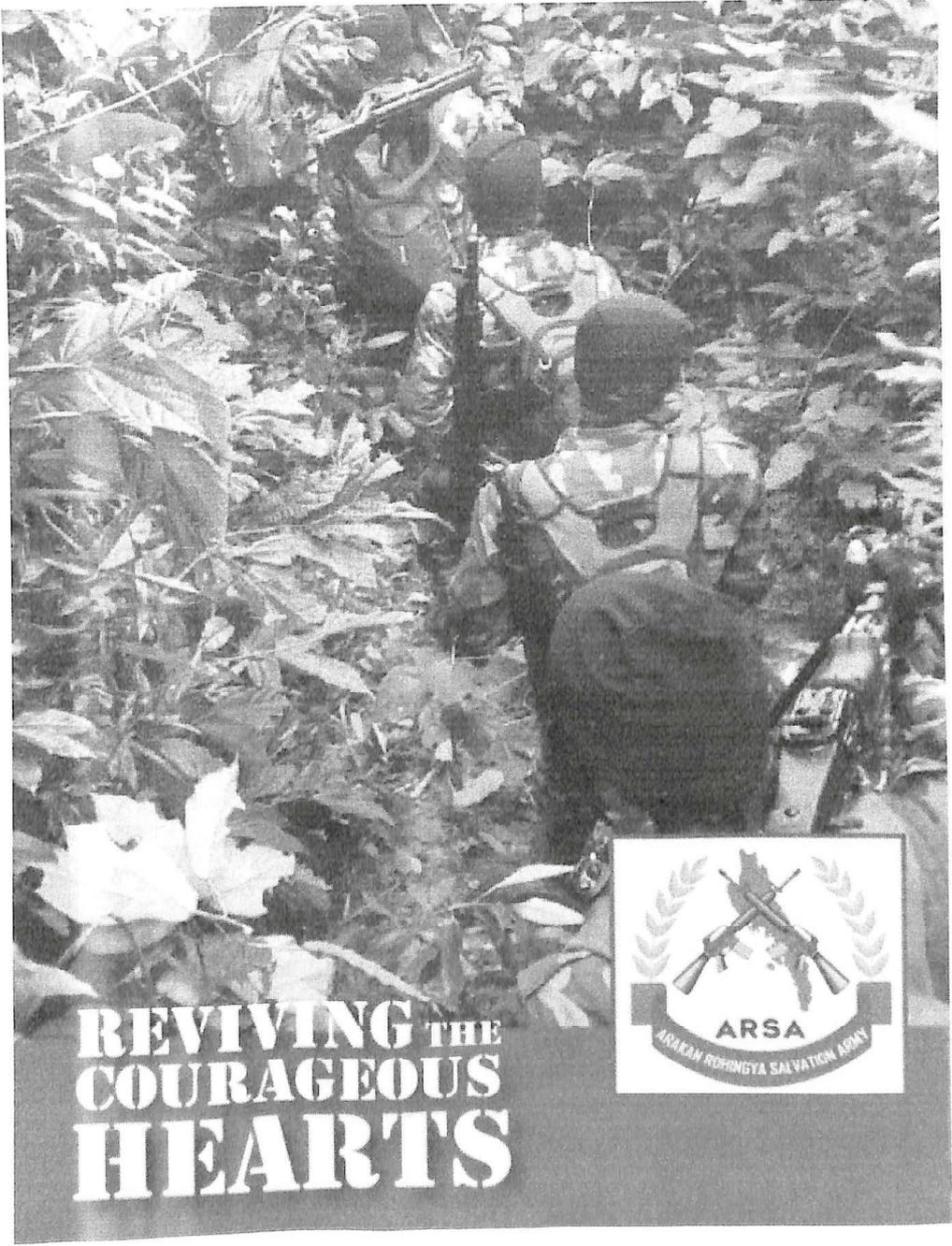
COMMANDER-IN-CHIEF
ARAKAN ROHINGYA SALVATION ARMY (ARSA)

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Arakan Rohingya Salvation Army, *Reviving the Courageous Hearts: A Report by the Arakan Rohingya Salvation Army*, 2019

Available at:

[https://repository.lboro.ac.uk/articles/journal_contribution/Myanmar s
Arakan Rohingya Salvation Army ARSA an analysis of a new
Muslim militant group and its strategic communications/
19213317/1/files/34134099.pdf](https://repository.lboro.ac.uk/articles/journal_contribution/Myanmar_s_Arakan_Rohingya_Salvation_Army_ARSA_an_analysis_of_a_new_Muslim_militant_group_and_its_strategic_communications/19213317/1/files/34134099.pdf)



Being put to serious task of maintaining their existence since Burmese independence, the Rohingyas were compelled to put up resistances to the brutal Burmese. As such, their human rights and existence were (are) not protected by laws in Burma (Myanmar), the Rohingya people have sporadically chosen to rebel against the Burmese tyrants as endorsed in the Universal Declaration of Human Rights *whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.*

Post 2000 CE, almost all Rohingya armed resistance movements that operated along International border chose a different paths of struggles for freedom, ethnic rights and other human rights of Rohingya, while some remnants of RSO were declared defunct. Armed resistance movement leaders such as Mr. Nurul Islam, Dr. Mohamed Yunus, Prof. Mohamed Zakaria and others embraced non-armed political movements and activism especially in the western countries. Though their concerted efforts through activism and political lobbyism created some awareness of the decades-long sufferings of Rohingya around the world, which is laudable, nothing has really improved when it came to the plight of the Rohingya people back at home. Call it inaction or failure by the United Nations or other powerful international bodies, the condition of Rohingya was rather getting worse at home.

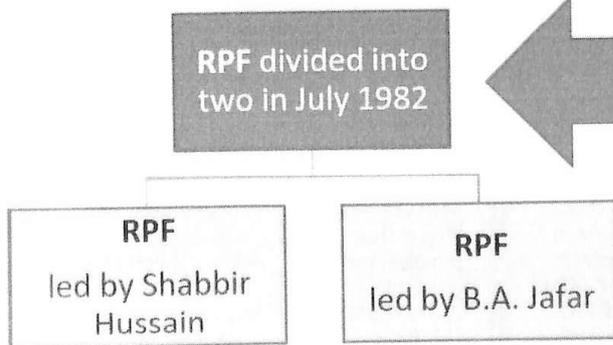
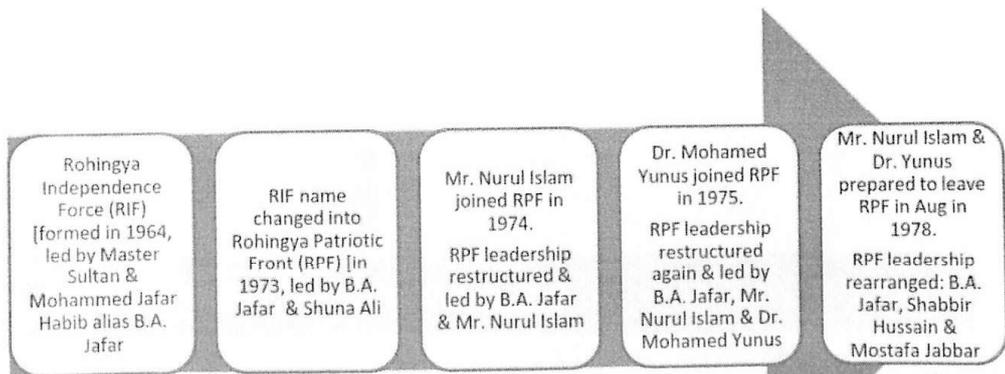
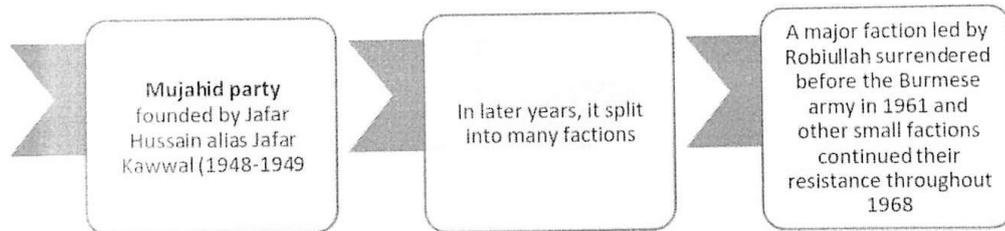
The Burmese oppressive and genocidal apparatus such as NaSaKa, Police, Hlon Hteinn (paramilitary force) and Military Intelligence (MI) [abolished in Oct 2004 and later replaced with *Sayapha* (Military Intelligence Service)] have been silently and yet effectively destroying the very existence of Rohingya. They carried out all sorts of cruelties and oppressions against the Rohingya: from imposing restrictions on freedom of education, movement, worship, expression; restrictions on livelihoods; restrictions on marriages; imposing population control measures; and committing arbitrary arrests, unlawful detentions, money extortions, forced labors, enforced disappearances, tortures to sometimes extrajudicial killings. In short, the Burmese armed apparatuses unleashed reigns of terror and continued to commit most of the elements of Genocide against the Rohingya population between the period of 2000 and 2012. Thousands of Rohingyas have fled their homeland to escape from atrocities.

Some of the known armed revolutionery/resistance groups of the Rohingyas against the Burmese tyranny since Independence of Burma are as follows:³³

33. Jilani A. 1999. *The Rohingyas of Arakan: Their Quest for Justice, 1st Edition, Taj Library*

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Annex 276bis

Centre for Research and Information, “10 things you need to know about 1971 Bangladesh Genocide”, Centre for Research and Information website

Available at:

<https://cri.org.bd/2023/03/24/10-things-you-need-to-know-about-1971-bangladesh-genocide/>



10 things you need to know about 1971 Bangladesh Genocide

Mar 24 - Clickety



The Bangladesh genocide was the genocide of Bengalis in East Pakistan by Pakistan army and their local agents in 1971. In Bangladesh it is popularly known as the “Gonohotta.” It is a lesser-known genocide in the international humanitarian discourse. Here are 10 things you need to know about the genocide.

1. It was a fast-paced genocide conducted in just 9 months. Bangladesh emerged as a free independent country after a nine-month long war against Pakistani army on 16 December 1971. It all started on the night of 25 March 1971, when the

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10 things you need to know about 1971 Bangladesh Genocide

Pakistan authority launched military crackdown called “Operation Searchlight.” The aim of the crackdown was to neutralize the independence movement of Bengalis in the then East Pakistan.

2. It was a planned crackdown by Pakistani authorities and their agents in East Pakistan. The Pakistani military junta mobilized their soldiers and local collaborators on a killing spree. At the outbreak, the junta imposed a media blackout. But the news of the junta’s genocidal acts was dispatched by some international journalists, who took the risk to cover the war.

3. The genocide evidences were out as soon as the war ended. After the war, evidences of torture sites, detention centers, mass graves and rape camps started to emerge. Testimonials of survivors and victims’ families, along with media reports of war crimes against the Bengalis, pointed towards a genocide. Incidences of mass-killing, torture, mutilation, rape and sexual violence, slavery and destructions were systematically documented by international fact-finding commissions, including from the United Nations and the War Crimes Facts Finding Committee, Bangladesh.

4. Rape was systematically used by Pakistani army and their local agents to silence the freedom movement. Pakistani army used rape as a weapon of war, one of the first times in warzones. In her 1975 ground-breaking book, *Against Our Will: Men, Women and Rape*, Susan Brownmiller likened the 1971 events in Bangladesh to the Japanese rapes in Nanjing and German rapes in Russia during World War II. Her research found that “200,000, 300,000 or possibly 400,000 women were raped.”

5. It was an ethnic cleansing. Pakistani army followed all the processes of a genocide against ethnic Bengalis in 1971. It was textbook example of UN’s Genocide Convention-defined genocide. Unfortunately, 1971 genocide history is lesser known to people outside Bangladesh. Its widespread recognition is long due.

6. Immediately after war, the war crime trials started, but it soon stopped. After independence, the administration, led by Bangabandhu Sheikh Mujibur Rahman, set up a process to try the perpetrators of the genocide. Mujib-administration also made efforts to highlight the Pakistani junta’s war crimes to the international community. Shortly after the initiation of the trial process, Mujib was assassinated in 1975. Then after, the vested ideological quarters of the Pakistan-era took charge of Bangladesh. Soon talks about Pakistani junta’s genocide became a hush hush topic, and remained so for two decades.

7. War crime trials and the genocide recognition efforts jumpstarted from 2010. Since 2010, some efforts for international recognition of Bangladesh genocide of 1971 have been taken by civil society platforms and diaspora groups. In 2017, Bangladesh declared March 25 as Genocide Day. Since then, March 25 is observed as Genocide Day in Bangladesh, marking the brutalities carried out by Pakistani Army in 1971. Bangladesh’s Foreign Ministry has made advocacy of international recognition of 1971 genocide as part of its policy. Bangladesh has a Ministry for ‘Liberation War Affairs,’ which is playing an important role in pushing the agenda of genocide recognition through research.

8. Bangladesh’s civil society is leading the charge of genocide recognition. A number of advocacy initiatives have been taken by civil society and diaspora groups in support of genocide recognition. Forum for Secular Bangladesh, Liberation War Museum, and Genocide-Torture Archive and Museum have been making continuous efforts to achieve international

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10 things you need to know about 1971 Bangladesh Genocide

recognition of the genocide. In 2022, a Netherlands-based diaspora organization, Bangladesh Support Group (BASUG), along with two Bangladeshi platforms, Projonmo '71 (an organization of children of 1971 martyrs) and Aamra Ekattor (an organization working on the values and spirit of the Liberation War), formally appealed to the UN Human Rights Council to recognize the Bangladesh genocide.

9. Research organizations are joining on Bangladesh genocide recognition efforts. Global genocide research organizations – Lemkin Institute for Genocide Prevention, Genocide Watch, the International Coalition of Sites of Conscience and International Association of Genocide Scholars (IASG) have already recognized Bangladesh genocide. They called upon international community, including the UN, to immediately recognise the Bengali genocide as a way to pay tribute to the victims and to hold perpetrators accountable.

10. The reconciliation and genocide recognition are at the soul of Bangladesh – a long way to go. Global recognition for 1971 genocide, especially from the UN, is significant for Bangladesh in multifarious ways. It will be a boost for young generations in Bangladesh to be sensitized about historical context of the country's genesis and the brutalities carried by Pakistani junta and their local agents.

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Fortify Rights, “About”, Fortify Rights Website

Available at:

<https://www.fortifyrights.org/about/>



Our Mission

Fortify Rights works to ensure human rights for all.

#Rights4All

We are a team of human rights defenders that believes in the influence of evidence-based research, the power of strategic truth-telling, and the importance of working with individuals, communities, and movements pushing for change.

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Fortify Rights, “First-hand Testimonies from August-September ‘Clearance Operations’ in Myanmar”, August-September 2017

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██████████, my wife, 45 years old.

There were around 90 soldiers. No one was fighting back. [Denied anything about militants]

The BGB blocked us for two nights on the border. It took two days to come here. There were around 1,200 people gathering on the border and the BGB blocked us. After two nights it was getting difficult. The children were crying for food. The women were crying. The BGB told us to go anywhere we like.

Our village was only fifteen minutes walk to the border. We could see the army was firing. We were sitting on the embankment of the small dam. We could see the military shooting. We couldn't see but we could hear.

No one tried to take photos We were running.

Some young people hold phones.

They attack us because we are Rohingya, because we claim our identity. This happened before but in another place. I had to leave everything. We have no shelter. No food. And it's the rainy season. It is so difficult here. I cannot. Rohingya have no way of defending ourselves. There is no way to return.

I'm staying now with a family in ██████████. In a refugee house.

ENDS

#9

Name: ██████████

Age: 40

Gender: Female

Ethnicity: Rohingya

Religion: Islam

Occupation:

Village: Kun Thi Pyin

Date: August 30, 2017

Note:

My name is ██████████. I am from Kun Thi Pyin. I lost two sons. ██████████ age 22. He was shot dead. ██████████ was 12-years old. When the military was shooting, ██████████ 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.

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There is no information about my son. When we were about to run away, my son was sleeping inside the house. And so was my husband. So I could only take my my seven and four years old.

How could we take a photo. Everyone was saving their lives.

The same violence took place last year. Many people came to the camp because of the violence. We did not come, hoping the situation would be calm and peaceful. The last time, the military locked people in houses and set fire to them. The women were raped and men were shot. I know because they seized our kitchen supplies saying we were providing food to RSO.

Some people tried to attack the military. Not last time, this time. When the military were coming into the village, we heard some people were trying to attack the military. The people from different villages had a discussion to attack the military. I heard about this. The night the military came, some people had meetings to disvuss fighting back against the military. People said we will die either way. I don't have any information about my husband and son.

I heard that the people were blocked from coming here.

We are in a difficult situation here. I couldnt bring anything with me. These clothes were donated. The BGB fromBangladesh said they had to block and warn us, but they told us not to listen to them ,and to just go. They said for us just to go. One of the police even provided some snack yo my sons.

ENDS

#12

Name: [REDACTED]

Age: 22

Gender: Female

Ethnicity: Rohingya

Religion: Islam

Occupation:

Village: Lar Gwa Para, near Khun Thi Pyin, Maungdaw

Date: August 30, 2017

Note:

I have been here two days. The military were killing us and setting fire to houses. I was at home. When the military came and started firing, we fled to Mehdi Para, the neighboring village. When they were shooting, they also touched and abused the women [Late she says "I heard people saying this."]. The people couldn't escape and just tried to attack against them. They were persecuting, and they couldn't escape any more, so they just tried to attack. Five people were killed from a bomb blast in the village we went to, Mehdi Para. Around ten to 12 people were injured. When the military was abussing the women, the men tried to attack them, and when they tried, they stepped on mines. The military set the mine on the road. I saw them setting the mines on the road. It was on Saturday.

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They didn't have any weapons. They just tried to attack them. That's when the army started firing. They started shooting before then. I didn't see it but the people were shouting that they would go fight.

When the military left the village, that's when we left the village. The military also came to Mehdi Para. When we were in Mehdi Para, we gathered in one house. The military couldn't attack us because some villagers prevented them. When the military heard people shouting back, they just left the village. When the military went back to the village, we went to the border. Then we saw a helicopter. They shot from the

I have two children. My eldest child was lost at the border. I didn't see the helicopter drop any weapons. It just fled overhead. When the military were shooting towards us, some jumped into the river. My eldest son jumped in the water. He was three years old. I couldn't find him. There were five or six hundred by the river. The army was shooting. We heard that people also

I saw a dead body floating on the water. It was in the middle of the river. We had no problems crossing into Bangladesh.

No [Havent heard of ARSA]. I heard some people saying that people from outside the country were coming to fight. If it were true the military couldnt abuse us so much.

ENDS

#13

Name: [REDACTED]

Age: 13

Gender: Female

Ethnicity: Rohingya

Religion: Islam

Occupation:

Village: Diyol Toli, northern Maungdaw, near Ching Chong village

Date: August 30, 2017

Note:

We just crossed the river around 2am the night before last [Monday August 28].

There were some narrow places through the mountains, so we passed through to come here. It took one day and one night.

My village was burned down and we were being killed. The military were killing and burning and we had to leave.

Some injured who were known as Al Yaqin were brought from Buthidaung to our village, to bury them. There were three injured people. They were going to bring them to Bangladesh for medical treatments. I heard there were many Al Yaqin people there, bringing Rohingya people.

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one after one. This is really sad to see and people are really afraid here. There are lots of people trying to cross the border but they can't cross yet because Bangladesh won't allow them in, and from this side, only women are allowed. There are people who can cross from Maungdaw North. From Maungdaw south people can't cross the border now. People are at high risk of their lives. We hope the situation gets better. Unless it gets better, more people are going to die here.

Now in Maungdaw we calculated the afternoon 25 villages already burned down. We estimate around 6,000 houses. That is just Maungdaw Township. I will need to collect the data from Buthidaung also.

I can check a contact from Buthidaung. I will send the contact to you.

One more thing I would like to share, from Buthidaung, Taung Bazaar village tract, around 80,000 people started walking to the border. It will take them around 4 days to reach the border. They started walking and it will take them four days. Many will die. There will be more people coming in the next few days. It's a village tract, there are so many hamlets. All of their houses have been burned down and they don't want to stay there. I spoke to them yesterday evening and they said they will walk to the border.

ENDS

#18

Name: [REDACTED]

Age: 36

Gender: Male

Family: 3 children, one wife

Ethnicity: Rohingya

Religion: Islam

Occupation: [REDACTED]

Village: Yay Nauk Nga Thar (home village) and Ta Man Thar villages

Date: August 31, 2017

Note: In [REDACTED]

I am from Yay Nauk Nga Thar in northern Maungdaw. I do [REDACTED]. On the night of the 25th, we heard the noise of shooting around 3 a.m. When dawn came [August 26], I saw some young men in black uniforms moving around and holding sticks. The people from the village couldn't move anywhere. We couldn't stay in our own village. We formed some small groups to watch over the village. The small children and women were in the village and the young men were watching over the village.

All of a sudden, two people were hit, maybe a gun or a launcher, I don't know. Two people were hit. One person was hit behind their head and the other on their shoulder. I am not sure if they died or not. His name is [REDACTED], age 45, son of [REDACTED]. [REDACTED], not sure his age. They were on the top of the hill and I was on the bottom of the hill. I saw myself. The people who were running around with the uniforms put some [herbal medicine] on them. They had some bandages and some alcohol. When I saw this incident, we started to flee.

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Everyone started to leave the village. Those who were injured, the uniformed people didn't let them come with us.

The villagers were asking them, with what are you going to attack the military? They said, we don't have anything, but we have god and sticks and knives. Just before the firing took place, a big mullah was arrested and accused of being a member of this group. Three more people were arrested with this mullah and there is no information about them. They were from this village. Later, after some day [before the violence] more people were arrested and they were beaten badly. Three people were arrested. This mullah and six others were arrested but only four were taken. The BGP came on motorbike with the help of Daignet ethnicity people, the informer. He informed the BGP where the mullah was at that time. And then he was arrested by the BGP and badly beaten.

When villagers tried to save the mullah and couldn't do anything. The mullah asked for help, shouting, "help me! help me!" but the villagers couldn't do anything because the BGP shot four times in the sky.

Another one, I didn't see with my eyes, I heard some people were crossing the river in Ta Man Thar village. There was a small stream they were crossing and were shot. Three died.

[On August 26] The military surrounded the whole village, on every side. Since the 25th, the military kept surrounding the village. We couldn't go to the market, the forest, or walk anywhere. The cattle were released to the forest. One cow was cut on the leg.

Two days before the military surrounded the village, these [two] people were shot. There were two cars sent from Maundaw to Ta Man Thar for the immunization camp, from [redacted]. The drivers were [redacted] and [redacted]. The BGP came to the field base of [redacted] and took these two drivers away. When we came to know this, we felt there was no way for us to save our lives. That's why we fled. After we left, the two cars were bombed. People who arrived yesterday told us. There is one security guard who was on duty at that time. They were taken by the BGP, not the military.

When the BGP could come and arrested them, we felt we could be arrested anytime.

After that, the next day the men were better and in ok health, but they were swollen where the gunshot them. The uniformed people treated their wounds. They tried to block the people, saying, "why are you running away? What's wrong with you?" I spoke to them and they didn't want me to leave. I am a well-off person in my village, so if I leave, everyone will follow me. "Don't leave, god will solve our problem," they said. They were all under 30 years old. Maybe 18 to 30.

When we were coming here, some of these people stopped some and said not to come here. They also beat some women and children. All the people were along the riverside. Some of the boat people came to the people, saying that if you leave the country, then the whole community will leave. When we came here, the al Yaqin, they announced to the villages to send the women and the children to here. They said for the women and children, and told the rest of us to be alert because the military will come soon to burn the village. They told the men and boys to stay. I

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heard this. They had bottles they filled half with petrol, and then they put cloth inside, and they made a bomb out of this. They also had slingshots. And they had some sticks. And they had one knife. There were 12 to 13 people. These people are from the village. They all wore the same uniform. A black uniform. They wore black shirts, short sleeve and long sleeve, and black pants. They all wore this.

These people spoke strongly but they had no weapons.

I didn't see them use the bomb [molotov]. When they were walking around the village, some of the people were holding the bottles.

I think they would light the fire and throw them somewhere.

I was in the village when the military surrounded it. The military surrounded the village, and we tried to escape, running from one house to another. When we were there, the military didn't come into the village. We moved from my home village to the forest for two days, hoping the situation would improve. When we moved to the forest and stayed for two nights, but when we saw the [redacted] staff were arrested from the field base, we feared and fled.

My family, together with my children, moved to Ta Man Thar village. I have three children two boys and one girl. There were mountains and forests, and we moved there with the other villagers. There were about 3000 of us. Some of the Al Yqin people in black uniforms came to us and said, don't leave the country. If you leave the country, the community will be destroyed. They said they would protect us. They only had sticks and small knives. When they were talking like this, the people had to be quiet and listen, otherwise they'd get beaten. I didn't see them beat anyone but I heard they did.

I just heard that those people working with the government as informants, they were beaten. Since the violence started, they haven't killed anyone. They just try to warn and threaten people now. I heard some informants were killed. There are some people who were beaten by these people, and if someone asks, who beat you, they'd say, I don't know them, they were in the black uniform.

I know two or three people were warned and beaten by these people. They were informants who were beaten. It happened in the village. Those three people were just informing the government with false allegations, making trouble for innocent people. That's why they beat them. They had a bruise on their arm. When the people asked them who beat them, they wouldn't say. One person complained to the village chair, saying they were beaten by these people. This person told everything to the chairman. He said many others had been beaten.

No killings [by militants].

Those five Mro people who were killed in southern Maungdaw in Kan Pyin. One of the Rakhine people was jailed and he was doing yaba business. He usually crosses through the Mro village with the tablets. The Mro people realized this is a very valuable tablet. They tried to attack him and seize the tablet from him. All the tablets were taken by the Mro. He tried to convince them to

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give them back, but they didn't give them back. Then he went and killed these Mro people but the government announced that the Al Yaqin people killed them. I think if it was really Al Yaqin killed them, they'd have killed all the villagers. I went to Maungdaw to our main office. People there were saying it.

It was only temporarily that they blocked the villagers.

When we arrived at this border, we were robbed and looted by some Bangladeshi people. There were many people, but we chased them and caught two of them. We beat them and tied their hands. The people handed them over to the BGP. We had a group in the forest. They came and disturbed one group and stole some property. Then we recognize what they were doing. One villager was stabbed in the back. She had some gold and it was stolen.

It took three three nights from ta Man Thar to here. There were no major problems but the BGP stopped us for a while before coming.

I want to know whether the world recognize the Rohingya people as a human in the word. We don't want to deal with such persecution anymore. We want to die. If there is any opportunity for a job, then we can also work here. I'm not sure what my office will think because we fled here. There is an urgent need for food.

Many people died on the way while coming. Whatever the problem is, we can fix later. The urgent need is to provide aid for the situation here now.

#19

Name:

Age:

Gender: Male

Family:

Ethnicity: Rohingya

Religion: Islam

Occupation: [REDACTED]

Village: Kha Maung Seik

Date: August 31, 2017

Note: In Kutapalong

I am from Kha Maung Seik. In Rohingya, it is called Faw Kira Baza. It is northern Maungdaw. I am a [REDACTED].

There is a group called Al Yaqin. Those who are members of this group, they are all illiterate people. None of the members are educated. Those who try to convince them that this is not a good job—they tried to kill them. This happened in my village.

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His name is [REDACTED], son of [REDACTED]. [REDACTED] was released from prison three months ago. The reason why this group killed him is that he went to the BGP sector two or three times, so the group thinks he is an informant. That's why they killed him.

He was taken from the village to the forest, and we think they killed him there. The incident was on the day the violence started, on Friday. We saw him on the road, and then we heard he was taken and killed by these people. The villagers said it. One of my brothers also told me about this. My brother saw him with his own eyes that these people took him. He was taken to the forest—they tied his hands together and took him away. He was also blindfolded.

Many of these people [Al Yaqin] are already here. But they won't say anything because they will be killed here. The Al Yaqin are here. Nobody will disclose these things because they are very afraid. I have to find out who these people are. I am not sure where he is now. Even some of the air workers don't want to share because they are really afraid now.

Would you like to speak to one of these men?

[REDACTED] was charged with burning another person's house, and that's why he was in prison. He was sentenced to five years, but they let him out after three and a half years.

We were stopped when we were trying to come here. They said: "Don't leave the country. We are ready to die to save these people."

[Before we fled] I told one guy, this is not good work, just wait for the Kofi Annan recommendations. We have to follow the law. They said "no, no." When we were coming, a guide was showing us the way. They didn't beat us but they beat our guide who was showing us the way. They said we all had to go back and fight against the government. I said, "how can you fight back against the military. If you bring the guns, we will fight, if not, don't speak like this."

It happened in front of me. We were blocked for two hours there. As a weapon, they had only sticks and knives. They had some bombs with some positive and negative wires. It was maybe this size. [motions about 12 inches wide; IED land mine]. They tried to blast it—they went some distance and blasted it, and then the military started firing on the village. They set some bombs on the road, near the bridge or on the road. I saw this. It was for the military. When they set the bomb on the road, they hid some distance and watched it. The villages were warned, "there are bombs don't go there," they said.

The violence started at 1:20 a.m. On that night, all the Al Yaqin group split in different groups and moved around the villages. They were requesting people to come out of the villages to join with them. The people were afraid and going into the forest.

I was looking at Facebook inside my house. They were blasting some bombs loudly. It was very loud. Some hit my village. If they blast one bomb, the military would start shooting. They [military] also threw the launcher onto the houses. My house was burned. They aimed at the big houses. There were also Rakhine people together with the military. They were from the neighboring village, called Min Kha Maung. It's a model village. A natala village. These

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Rakhine people instructed the military to target the village. When they used to come to the market, the Rakhine would say: "what are you doing here? You can't stay in this country. This is ours."

The military surrounded three sides of the village. The person [who was injured] was from another village, but he was brought to my village. He was being brought to Bangladesh for medical treatment but he died in my village. He was shot in the stomach and it went out his back. It was on Saturday. He was hit on Friday and was brought on Saturday. His relatives brought him.

The violence didn't take place in my village but in a neighboring village. They blasted one bomb and the military started firing continuously. It was on Friday. They started firing around 1:20am on Thursday and it went to 12noon on Friday. It was very close to my village. I saw two injured people. One was hit by a bullet in his arm, and the other was burned all over his body. Both are elderly people, both men. They were brought here for medical treatment. They are from East Kha Maung Seik.

When the violence started, the Al Yaqin are claiming for freedom of movement for the people, citizenship, and rights and the government got angry and burned the villages and we realized we couldn't stay. The military doesn't differentiate between the good people and the bad people. They just fight everyone. So we had to leave.

We left with 300 people, all Rohingya.

On Friday morning, they [Al Yaqin] were carrying these bombs in front of us. The Al Yaqin couldn't persuade the people of the village, but they could persuade the wayward people, the goons, to participate in their mission. There were around seven fighters. I saw only one bomb. They wore the same clothes as villagers. They are useless people from the village.

They may die but they would never burn their own homes.

The Al Yaqin people disturbed us on our way to Bangladesh. On the way, we were in the forest, and around 12 of them blocked us from coming here. They blocked us for two hours in the mountain. They said: "Don't go there. To get justice, we are here for you."

With the group, me and three other people and the ex-village administrator were trying to convince them that they can't win anything with a stick and knife. "You can see the army coming," we said, "they will burn down everything. Don't you see the helicopter dropping bombs?"

At that time there were another 300 who arrived. We became a big group. They [fighters] became afraid and ran away.

I also convinced them that I am a [REDACTED]. The other was a village headmaster. We said, don't block us. The situation is very bad. We convinced them. There were some people who even had citizenship cards. Even they had to flee.

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The border guard police blocked us at the border. We were warned and told to go back to our country. It was around 2 a.m. when the BGB fell asleep and we went another direction. We crossed at milepost 41. It was a very high mountain.

When we crossed, on the Myanmar side there was a check post close by. We had to crawl on the ground, under a barbed wire fence.

Later, we heard the security force shot some people from my village. This happened yesterday. They shot many times but only hit one person. [REDACTED] is his name. He is over 50 years old.

Only my house was burned down. The big houses, the better-off people, were burned down. Some others from my village came later and told me. They said my house was burned down.

There are a lot of people coming here. We are like refugees now. If you can provide food and some shelter for us... Many more are coming. I am sleeping with a familiar family.

There were some Hindu people near our village. They also came here. Around 300 Hindus, from Gwa Son village.

ENDS

#20

Name:

Age:

Gender:

Family:

Ethnicity: Rohingya

Religion: Islam

Occupation: Air

Village:

Date: August 31, 2017

Note: [REDACTED]

I come from Ta Man Thar village [Shaab Bazar in Rohingya]. I was a [REDACTED]. The military were firing at the village. I saw some people who were shot dead. First time, we heard that the BGB checkpoint was attacked. After hearing that, we moved out of the village and went to the forest, expecting the military would retaliate on us. We went to the mountain to escape. It was on the way to Bangladesh. We stayed three days in the mountain forest. We also cooked and ate. Not only me, but many people.

I was close to them when they were shot. When the check post was attacked, people were frightened and fleeing, and on the way there was a small river. We were crossing in a small row boat. There were four people on the boat. Some military came to the location and they aimed and

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#24

Name: [REDACTED]

Age: 43

Gender: Male

Family: 2, killed

Ethnicity: Rohingya

Religion: Islam

Occupation: [REDACTED]

Village: Hlaing Thi

Date: September 1, 2017

Note: [REDACTED]

I come from Hlaing Thi village, northern Maungdaw Township. I have three family members [including himself]. I have only a wife and one son. They were killed. They were killed on Sunday. The villagers together with me went into the forest and when I arrived there, they told me my son and wife were killed. The military killed them. [REDACTED] was my wife and [REDACTED] was my son. He was six-years old. When my wife and son were crossing the passage of the mountain when they were killed by the military.

On August 25, the violence didn't take place in my village, but we heard about two bomb blasts in other villages. We didn't know which village but later found out it was Mizali Para.

It [the explosion] was due to the wires touching. The bombs were Al Yaqin's. I was with them for one month and two days only. I had to recruit. They threatened to kill me if I didn't join. The head of the group, Atta Ullah, threatened us. The lower ranking people threatened me, communicating the message from Ata Ullah. I didn't see the lower ranking people but there was a person in charge from Al Yaqin in my village. He handled the management of the group in the village. He threatened me to join. His name is [REDACTED]. He is 28-years old. He is also from my village. We were shown incentives. We were told we would receive some money. I was given 20,000 Kyat. I was provided with a stick and a knife. The person in charge gave them to me.

We have been persecuted for a long time. We have not been acknowledged as Rohingya people. And the Rakhine also persecute us.

He [REDACTED] said I would be beheaded if I didn't join. "If you join us, we will give you money, but if you don't, we will kill you," he said. He said he would behead me.

Yes, it is true [Al Yaqin killed government informants]. I know about one person who they killed. He wasn't beheaded but they cut his neck. His name is [REDACTED]. He was sentenced to jail for many years for burning a house. He came out of jail and was working as an informer of the government. This person, they thought, was informing the authorities about the Rohingya people with false allegations. He is from Leikya Para. He was killed in front of me. He was brought to the mountainside, at the edge of the mountain. There were six or seven members of the group

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there. It wasn't last Friday but the Friday before [August 18]. It was around 3 p.m. His hands were tied. Another group tied him and took him away.

They tied his hands behind his back and blindfolded him. He didn't struggle to get away. He knew he would be killed.

I was not with them. I was maybe 100 feet away. They cut his neck. I didn't hear what they were saying to him. There were six or seven members around him. I don't know. He was buried there after after they killed him. It was not a religious burial—they just dug a hole. They dug the hole.

█ had a family. I don't know [how many kids]. He was taken from his home during the daytime. He was taken from Leikya Para.

He was warned two times before he was killed. The group members told me. Long ago, the country was peaceful. Even then he was working as an informant.

The group leader decided who gets killed. When we heard of an informer, we informed Ata Ullah and then we took instruction about what to do. Ata Ullah instructs the groups. He decided █ should be killed.

This is the only person we killed. Other than him, our group did not kill anyone else. Other groups killed other people. Many people were beaten up.

In my area, there is no person apart from him who was killed, but those who drink alcohol or do bad things were beaten up badly. For not praying, for using drugs, these sorts of things. I was helping with that. After they were beaten up, they changed their behavior. We would go as a group but only one member would beat them. We watched. Before we beat them up, we'd tied them so they couldn't move.

We would find them at home or on the roads of the village.

I didn't participate in the attacks on August 25. The whole of my group did not participate. It was very far—the camp was very far. Another group attacked. Not our group. Our group was not informed that this would happen. We were divided by areas—the camp in our area was not attacked. The Kha Maung Seik camp was not attacked. Our group, where we stayed, was very far from the camp. We didn't know it would be attacked.

Only the head of our group held the mobile phone and communicated on behalf of us to Atta Ullah. He communicates to the upper level and then he shared the instructions with us.

No, I didn't received training. We didn't receive any training so far but we were told we would be trained soon, but then the violence happened. We were told we would be trained with guns. We were told the guns would come soon. We also had a communication system, radios, so we could communicate within [two miles]. The head of the group had one.

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We used material out of engines. Out of pistons, we made them. We weren't shown how to make bombs but we saw them. We heard there was one member who came from Pakistan who could make the bombs. He made all the bombs. There was only one bomb in my village. The head of our group brought the bomb to the village. They set off that bomb on the road. The head of the group did it by himself. He asked for help.

You dig a hole and put the bomb in the hole, he said. Others did it. I wanted to stay away from that. There are two cables, red and blue, and they lay the wires along the ground to someplace far away and then it can be detonated from there. I didn't hear about any other types of bombs. They were all like this.

We had no guns. Not even the head of our group had guns. We were told the guns would be coming soon.

I never met him [the bombmaker from Pakistan]. He is also Rohingya. Atta Ullah is also Rohingya. I heard he was born in Myanmar. I can't recall the village. He went to Pakistan and learned these things from Pakistan.

The head, Atta Ullah, picked the date and he instructed the groups about which date we would attack.

One man mistakenly touched the two wires and blasted the bomb. It happened in Mizzali Para [Maungdaw Township]. It happened on Thursday night. They had the bombs in front of a house and mistakenly detonated one. I heard about it around 4:30 a.m. on Thursday [August 24]. As soon as it was blasted, we came to know, because they were making noise [calling by telephone]. That group called us and told us what happened. At 4:30 a.m. they just marched to the BGP camp—the other attack hadn't happened. When they marched closer to the camp, the BGP fired in the air. And they moved back. And then the situation became stable.

The person in charge had communication with Atta Ullah, and I heard from him. On Thursday morning, we came to know that a mass attack would take place. We were instructed to get ready. We were told that there would be some more members coming from outside the country with guns, and that we had to go with them and support them. I don't know why they didn't come. I didn't see anyone with guns.

None of our group was killed. The military arrived at our village only on Sunday [August 27]. They came once to the village. The helicopter came once and unloaded some weapons and then left and then came again. It came to Kha Maung Seik BGP camp. The helicopter arrived around 4 p.m., and then we moved to Kha Maung Seik village. We went to see what the helicopter brought. Ten of our members came. Yes, we carried our sticks and knives.

We want justice. We want peace. We want to make our land Rohingya land. It should be a liberated land for Rohingya people. We were always under the gun and abuse, and we had to get out of this situation and liberate the Rohingya people.

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We had 50 members in my village. I can say in Maungdaw there might be 10,000 members. If there are 50 per village, you can calculate it. There weren't many in Buthidaung. There weren't many in Rathedaung. None in Sittwe. Mostly we were active in Maungdaw Township.

We can't communicate with each other now. Some of them came here and some are still hiding over there. They are still hiding in the forest. I don't know how they are surviving. I don't think there will be another attack [by Al Yaqin]. I think that with the power and strength we are not in a position to attack now. They would need external support to do it. If they received guns from outside then they can do it.

We were the first to come here so we didn't see the army kill people. When we saw the helicopter unloading the weapons, we left.

When our leader left, we just followed him. There were about 20 or 25 people in our group. Some stayed behind.

Yes it is true [some are telling the men and boys to stay]. They were stopping the people so they would join the group. The head of my group instructed that we should not let people come here [Bangladesh]. I don't know who commanded this order.

I don't feel safe here. There is no problem terms of safety. Only problem is shelter and food.

ENDS

#25

Name: N/A

Age:

Gender: Male

Family:

Ethnicity: Rohingya

Religion: Islam

Occupation:

Village: Done Pike, Taung Bazar, northern Buthidaung

Date: September 1, 2017

Note: [REDACTED]

I am from Done Pike, Taung Bazar, northern Buthidaung. We left the village on Monday [August 28]. The Wednesday before last [before the August 25 violence], the Al Yaqin group blasted a bomb in Thin Ga Nat village. It was around 4 p.m. in the daytime. When it exploded it made a lot of noise and the other villagers went to see what happened there. At that time, the military came and arrested and beat people. They took away some people. When some military were taking the people to the camp, some of the military set fire to houses. I was working in the village at the time as a day laborer. My father in law is in that village. I was constructing a wall at a house.

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They started to set fire to houses with a lighter and they were arrested and killing young people. Some ran away and entered into the forest. It happened very close to me. There was only a small creek between us. Some were arrested and some young children were killed. I saw my own children killed. My whole family came with me there. My three children and my mother were killed. They made them lie down on the ground and they cut the backs of their necks.

[His children]: A 10-year-old boy, a seven-year-old girl, and a six-year-old girl. Two girls and one boy. My wife was killed by beating with a stick. There were others lying on the ground, including the family of my father in law. I saw my three kids and three family members from my father in law's family, and two people from my sister in laws' family. And also one more old man from another house.

There were five or six military soldiers. They held [batons] and guns. They took the knives from our houses. They were big knives, three or four knives taken from the house and one military held a stick. It was taken from the ground somewhere. I couldn't understand what they were saying. I don't understand the language. My wife was also killed and my mother. I didn't see them take their lives, we ran away, but we came back two days later and all the bodies were there. We couldn't do anything with the bodies. We couldn't perform a funeral. We just came here. There were no people who took pictures. All the people fled. No no, I don't have a mobile. To use the mobile we would have to pay the government. Many people have them. Even my own uncle.

There were 800 Al Yaqin gathered near the forest, near the mountainside. There were more than 250 Al Yaqin members in the village when the bomb blasted. I didn't know they were Al Yaqin but they were introduced to me as Al Yaqin. They were making a plan. Almost each person had a bomb. I saw more than 200 people, each with one knife and one bomb. It was around 4pm when the explosion happened. When we heard that, we just went to see it. No one was injured.

It was nearby the village. Everyone went to see what happened. Then we saw the military was coming out of the barracks and everyone ran away. It is very close. It's ten-minutes walk to the barrack. The fighters took everything with them when they ran.

Then they [Myanmar Army soldiers] started beating and killing the people. Hundreds of the military came to the village. They just beat them. When they came out of the barrack they just beat people, but after one or two hours, they started killing people. The high officials came out and that's when the killing happened. They had stars on their shoulders.

They killed around ten people. I couldn't have any contact with anyone. My children were killed. My wife was killed. My mother was killed.

Some beautiful women were taken away by the military. Around eight to 10 military took four women—my relatives. [REDACTED], 18 years old. [REDACTED], age 20. [REDACTED], age 18. [REDACTED], 20. No, I didn't see what the soldiers did to them. They were taken to the forest.

I left and came here [Bangladesh]. I have been here three days. I had to stay in the forest for three days. There were around 400 or 500 people and I had my father with me in the forest.

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That's when I saw the Al Yaqin members. They didn't say anything, they just left. I could see them in groups and then they left. They were in a circle. We couldn't see any weapons. They wore longyi and shirts, like normal people. I didn't see any black clothing.

I went into the deep forest so didn't encounter the military. Some of the people took their cows with them. When they were bringing the cows, some people on the Bangladesh side of the border seized the cows. They were people from Foliya Para [in Bangladesh] who seized the cows, near Ukhiah.

I didn't have any trouble coming here. Nobody stopped or blocked us.

I was afraid of them [Al Yaqin]. I didn't know who they are. No one asked me to join.

ENDS

#26

Name: [REDACTED]

Age: 38

Gender: Male

Family: Eight

Ethnicity: Rohingya

Religion: Islam

Occupation: [REDACTED]

Village: Thit Tona

Date: September 1, 2017

Note: [REDACTED]; Will be great for documentation project; lived with [REDACTED] in Maungdaw in the past

I am from Thit Tona in northern Maungdaw. The Myanmar military was shooting launchers at the houses and burning the houses. Eight people were killed from my village. Five others were injured from the bullets and they are still here in the camp. They are men. I can take you to them. Three children under five years old were killed.

On the first day, I heard the sound of firing. The BGP station was close to my house. When I heard them firing guns I just ran away from my house and crossed the river. The violence took place on Friday [August 25] but this happened on Monday [August 28]. On the night of Friday, at 3 a.m., they started shooting wherever, but during the day time they targeted the people.

At dawn, one of the mullahs was going to pray and the BGP shot him. He was the first person shot. It was Friday [August 25] morning. When [the mullah] was going to the mosque to pray, the BGP thought he was going towards them to fight and they shot him. When the villagers learned of his killing, everyone came out and gathered together. The Al Yaqin group also came out of the village and tried to fight with the BGP. They had homemade bombs but they couldn't explode them. They hid them under the ground and that probably affected them. We were about to run away. We were watching from a short distance. The Al Yaqin group was trying to blast

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the bombs, and the BGP got really angry and they started shooting directly into the people. These BGP were in a formation, with their backs to each other, shooting, and then they went to the Rakhine village. They brought some bombs in plastic bags. They were throwing them with their hands. But no bomb blasted. They didn't harm anyone.

The BGP were shooting and they went to the Rakhine villages. When they went to the Rakhine village, the villagers went to burn down the BGP camps. The camp was empty and they burned it. They just used lighters. It was small, holding about eight people. It was a wooden house with a thatch roof.

Eight people died and three more young children died at the time. One was six and the other two were under five. This was all on Friday morning. The soldiers were 30 yards from the people and I was behind the people, in the back. We were about to run away.

They were scattered and left the village. We went to the forest with our family and spent three nights. The next day the military arrived. They were shooting launchers on the houses and burning them. At the same time, the neighboring Rakhine villagers were taking property from our houses. The Rakhine village is Min Galar Nyunt. It's a natala village [model village]. When the Rakhine people were looting, the military was shooting launchers. We were watching from the forest.

No one was left. [the village was empty]. When they were shooting everywhere and then went to the Rakhine village, some went back and picked up the dead bodies. I saw them go. We conducted a funeral for those dead bodies.

Victims:

1. Mullah Abdu Shukur, around 40 years old.
2. Ali Huson, 30 years old.
3. Eliyas, 35 years old.
4. Nozir Ahmed, 35 years old.

I don't know the children's names. Among the children and men killed, one was a father and one was a son. One of the children was the son of the Mullah. Their house was close to the BGP camp.

In terms of the activities by Al Yaqin, they had some bombs and tried to throw some bombs. They tried to make some guns out of wood and painted them black. This was just to trick the people. "If you people are not on our side, you will be killed," they said.

They didn't ask me to join. I disliked their activities, but we still had to praise them, otherwise we'd be harmed. The other villagers asked us why we didn't take the side of Al Yaqin, and I said they didn't have the capacity to fight the government.

I am a [REDACTED] for [REDACTED].

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Some of the villagers came to us. Most were uneducated. People came and said to us, "Why aren't you supporting Al Yaqin?" We said we couldn't support them because they have no capacity to fight the government. We said many had already lost their lives. We didn't accept it. And then some people informed about me and others saying that. They beat whomever they wanted to beat. They'd blindfold people at nighttime. The first time, they tried to warn us. They'd try to warn first by words. They said, be careful, if you don't do the right thing it will be more difficult next time.

I was respected in the village but those joining Al Yaqin are the useless people.

They beat some people up. Afterwards, we could see the wounds and bruises. In the daytime, they all sleep. When the night comes, they'd move around holding sticks. They'd beat people up with their sticks. They didn't kill anybody.

They [Al Yaqin] killed in some villages. In That Kha Ngyar, they killed [REDACTED], son of [REDACTED]. He was around 32-years old. It was around four months ago he was killed. He was accused of being an informer. He was taken to the forest and killed there. The dead body was never returned to the village. Some Al Yaqin villagers are normal young villagers who took sides with Al Yaqin, and they explained how he was killed. After they killed him, they warned other people, saying, "Don't end up like him." There was another case in Kyein Chaung [pronounced "Chin Chaung"]. The people told us. His name was [REDACTED]. He was 38 years old. He was killed the same way, accused of being an informant. But the body wasn't returned. After they were taken from the house, the family members told us who took them.

I have eight family members—including one girl and two boys. The eldest is a six-year old girl. The second is four and the third is two.

We had so many difficulties. We had to walk for three days to get to Bangladesh. The border guards from Bangladesh also stopped us for half a day, saying, "Why are you people coming into our country?" We said, "We would rather die here rather than go back to our country right now."

In the mountainous side, there is a narrow passage, and 49 people were killed last night. In the entrance of the narrow passage, the military and Rakhine people were waiting for them. They [displaced residents] were carrying as much as they could. The military shot first and the Rakhine grabbed them. Those who escaped took photos. It is called La Ba Wa passage [La Boi Dalaa in Rohingya].

It was a huge group coming together. Some people took photos while running away. One woman, after raping her, they cut her leg off and hung it on the fence. We have a photo. One photo is from Ng Yant Chaung. I think there will be more footage coming.

I will take footage from new arrivals.

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No, my village is a bit close to the camp, so I didn't see the fighters [Al Yaqin]. I heard about them, that there are some people like that in other villages.

Not a young men joined. Even when Rakhine people killed Rakhine people, they accused Al Yaqin. Now the attack is going between the Myanmar Army and the AA.

We faced no difficulties but the border guards stopped us from entering. We had to go another way because we couldn't go to the border guards, otherwise we couldn't come. It took 8 hours. There were around 500 people in our group.

We just heard all the villages were burning down.

Right now we can't think anything but Rakhine people causing us problems. We were citizens of the country before. Now the government is trying to say we are from Bangladesh, if the UN and other countries can apply pressure on them to let us go back, then we think the situation will be better for us .

In coordination with the UN and the international community, so the Myanmar will acknowledge the Rohingya people so we can return to the country as Rohingya.

Please keep my identity confidential. I know this lesson. Some who tried to speak with the foreigners, and when they tried to explain their situation, the government has killed people. Whenever the UN and human rights people come, they arrest people when they leave. That is why the people are afraid to communicate with outside people. They have committed violence and abuses, and if the people expose what they did, they'd face trouble. I have heard also this in the radio and the news.

ENDS

#39

Name: [REDACTED]
Age: 43
Gender: Male
Family:
Ethnicity: Rohingya
Religion: Islam
Occupation:
Village: Min Gyi
Date: September 4, 2017
Note: [REDACTED]

I come from Min Gyi, [Tulatoli], northern Maungdaw township. I left my village eight days ago. We left the village on Thursday [August 24 (25th?)] and went into the forest—we stayed for four hours and then went back to the village. There's a Rakhine village nearby, and we heard from them that on Friday they would burn down the Muslim villages. They started shooting from the

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northern and southern side of the village. It was the military. We could see them. We have 22 family members. I ran away from the village while the military was shooting the people. Six members of my family fled with me.

We were taken to the sandy shore by the military. We were taken to the sandy shore of the river. The Purma River. The military took us all away from the village and they started burning all the houses. They gathered six to seven hundred people on the sandy shore. Most of the old men and old people were killed by shooting. Eight old men were shot dead inside the village. When we were running away, they couldn't run and they were shot and killed. There are two sides of the village—they shot us on one side, so we fled to the other side but the old men fled to empty houses. We saw they were killed. Then we ran on top of the hill and watched what was going on in the village.

There were 27 of us on top of the hill, including me. The military took six to seven hundred people to the sandy shore. After they burned down the houses, then they shot them dead. They poured petrol on the bodies and lit it on fire. In the group of people, the military together with the neighboring Rakhine people. They came to the group and they shot and beat with big sticks and cut some people. They threw children into the river. At least 480 people were killed. Some could escape. They acted like they were dead. There are five people injured here in the hospital. They arrived yesterday.

When we ran away, we counted how many people were on the sandy shore. Not all people were gunned down. Some were cut into pieces. Some were burned.

They [injured survivors] are in Kutupalong hospital. The hospital is beside the main road. Six people are already in this hospital. The other people are in the camp. One has a bullet on the back, one has a bullet in the thigh. Another was beaten badly and half his body is burned. Both the men were hit with bullets. Four women were cut and burned.

We have no food.

It was around 3 a.m. when we ran to the forest. Before then, the military came in groups and groups, and we were afraid they'd harm us. The Al Yaqin people told us to escape. We were told the situation seems bad and we should hide. They told me Wednesday evening [before the first attack by Al Yaqin] that we should plan to hide. The Al Yaqin people from my village told us it is better for us to escape because there will be an attack on the military. On Friday, around 8 a.m. the military started shooting the people. Those who could run away were ok. Those who couldn't were killed. At 3 a.m. we just went to the forest, and then when the sun came up we went back. The Al Yaqin people again sent a message, after the attack when the sun came up. They said no military came and they said we could come back to the village. There were 40 Al Yaqin in the village. There were 250 households in the village. 800 to 900 people.

There are about 180 Rakhine households. There are about 350 people. We had a good relationship. The land was seized long ago and provided to the Rakhine people. Now they possess many lands. Now they rent the land to us and we grow paddy on the land. The relationship is ok.

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The Rakhine village is on the northern side of the Muslim village. It's an old village but there is a Rakhine natala village on the southern side called Maw Rawaddi. It was settled ten years ago. The people from Maw Rawaddi were more aggressive and killed people.

Al Yaqin instructed us not to rent the Rakhine peoples' land [from the Natala village] or to grow paddy on it because it originally was ours. We heard the other villages also didn't rent the land from the Rakhine.

The military was shooting at us.

I was at home and one of the Al Yaqin people informed me the military was coming. They called me. They had some sentry people in position to know. Then I saw for myself that the military arrived and was shooting and we ran. I saw them shooting people. When we saw some people were hit, we started running away. When we got to our hiding place we counted 93 soldiers. Yes, the Rakhine weren't holding guns but had long sticks and swords. I could see the military because they were in uniform. The Rakhine were in normal clothes but they held long swords.

When the military started shooting, even the Al Yaqin people ran away. They realized they couldn't beat the military and just ran away. Two of the [Al Yaqin] members were with me. The two members with me—one was holding a long sword and one was carrying something that was wrapped with a longyi, a circular thing.

When they [Army soldiers] got close to houses, when they were shooting, they used their lighters [to raze homes]. And sometimes they used launchers [RPGs]. Out of 22 people of my family, we could only save eight.

After the military left, we went to see the dead bodies. I could've brought my father but he couldn't walk. He stayed on the sandy shore.

My brother, my mother in law, my nephew. 14 people [in my family] were killed.

[Victims:

1. [REDACTED], my father.
2. [REDACTED], my mother.
3. [REDACTED], my sister in law.
4. [REDACTED], 10 years old, my nephew
5. [REDACTED], 6 years old, boy
6. [REDACTED], 4 years old, boy
7. [REDACTED], 2 years old, boy
8. [REDACTED], mother in law of my brother, 45
9. [REDACTED], 55 years, father in law of my brother.]

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I have two brothers also—they are missing. I was including them [among his count of dead family members]. I heard they were alive but I didn't see them yet.

They didn't surround them [on the sandy shore], they just opened fire. These people were gathered by the military. The military [and the village administrator] said they wouldn't be harmed. I could hear them. Some of the people who jumped into the river were shot. Those who could escape, we heard from them.

We could see the people were shot and the Rakhine people were beating them with a big stick, and cutting also. It took one hour. Two of the military piled the bodies in one place. Then they poured petrol on them and burned it. We could see the flames and smoke. They made three or four piles and set them on fire. We couldn't see the exact piles because there was paddy around the shore. We could see them carrying bodies and dragging them into piles.

I didn't see them take the women away. We were in a rush. We heard rape took place but I didn't see it myself.

They entered the village at 8 a.m., and at 1:30 p.m. they started killing the people on the shore, and they finished burning by around 3 p.m. I couldn't see everything they were doing.

The whole village was burned down. All the houses were burned. After the village burned down, I don't know what they were doing.

It took us a half hour to go to the sandy shore. We stood there for a half hour, watching and crying and then went to the forest and then came here.

Some family we couldn't find. We just went to where the dead bodies were burned. We could see eight piles. We also saw some graves [holes with burnt bodies].

My wife is pregnant and I had to carry her for four days. And now her leg is very swollen. The children stayed with me while I was running—that's how they escaped. I told them, if you die, I will die together with you. I wouldn't leave them.

No [Al Yaqin didn't ask me to be in the group]. They couldn't fight because they didn't have any weapons. I want to fight back against the [Myanmar Army]. I have so much anger and bitterness.

When we were coming [to Bangladesh], we were under the rain. We were staying under the roofs of the shops and market in Kutupalong.

When I was crossing the fence, the Myanmar military beat me on my back. The Lon Tein don't have the red scarf on their forehead. The military has red on. The guns held by the military are smaller and the Lon Tein have longer weapons.

We were running anywhere we could [to escape the military at the border]. One of the women was shot in her thigh. When I was beaten I just fell in the water. Luckily it was shallow. It was

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the Naf river. There were 42 soldiers. Before we crossed the river, we were taking refuge in the border village. Al Yaqin told us not to leave and to stay alert because the military were coming. But the military came and beat us. Some said there were 100 military were there. I was in Lar Gwa Para, under Taung Pyo village tract.

I heard that it happened [some Al Yaqin killed informants]. One informer was killed from my village. That person met with the village administrator [ethnic Rakhine] and he didn't come back again. It was last month. He was called by the village administrator after Al Yaqin was formed. That person usually worked for the administrator, so the administrator asked him during the night to come to his house. When he went to see him and never came back. Before the village was calm and peaceful and the relationship was good between the Rakhine and Rohingya people.

The village administrator is [REDACTED]. He is Rakhine. After he was taken. I didn't see with my own eyes. The village administrator said it was Al Yaqin. The villagers blamed the administrator.

This happened in my village. I didn't see Al Yaqin beat people, but they warned people not to steal things, not to do adultery and have affairs with the women. They warned them. I am a day worker so I am usually gone all day.

No [I didn't see any heads separated from bodies]. Some were totally burned. I could see the bones. The piles were smoking.

There are some other people who went to see the bodies with me, and those whose families didn't get killed, they can share more.

We are really facing difficulties so if there is any support for us, we need shelter and food and kitchen wares.

ENDS

#40

Name: [REDACTED]

Age: 45

Gender: Male

Family:

Ethnicity: Rohingya

Religion: Islam

Occupation: [REDACTED]

Village: Nwa Yon Taung

Date: September 4, 2017

Note: [REDACTED]

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. [REDACTED]

[REDACTED] They

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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. [REDACTED] 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

#41

Name: [REDACTED] (husband's name is [REDACTED])

Age: 23

Gender: Female

Family: 3 girls

Ethnicity: Rohingya

Religion: Islam

Village: Maungdaw Ward 5

Date: September 4, 2017

Note: [REDACTED] (see photo)

I am from Ward 5 in Maungdaw city. We have five members—only I am hurt. Around 12 days ago I was cut by the military while running away from my house. I am from Ward 5 but I got married in Kyein Thaug village, but I went back to Ward 5 to visit my father's family. Around eight or nine days. It was around 3 days after the attacks [Al Yaqin].

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All the houses in Ward 5 were burned down. Some people survived and ran away anywhere they could, and some came here. Some were killed. It was on Monday after the attacks, and the military was chasing us and shooting and cutting people. It was around 1 p.m. I was at home and started running when the military started shooting. A bullet hit a woman beside me. I was out of the house and running on the main road—the Rakhine and military and Hindu were mixed. The Hindu were taking properties of people. They weren't shooting at those people. Before the attack, this group of people—Rakhine and Hindu—were moving around and holding sticks everyday. They used to come in the daytime. It was happening for four days.

As soon as a soldier cut my leg, I fell down one of my brothers carried me away. I couldn't come here. I had to give my earring to someone to bring me here.

I can't feed breastmilk to the children because I myself can't eat. My children are crying for food. I have three children, all girls.

He had on a military uniform. It was [camouflage]. They spoke in Burmese. I could've been killed but i was taken away. Others around me were shot to death. I already came here but i heard one person went back to the village on Eid and he was shot dead.

He chased me. He took a knife from another house and chased me and cut me. He didn't have his own knife. The Hindu people had their own knives. I saw two women shot dead [by BGP]. I don't know their names but one is the sister of our village elder—the head of 10 households. They were shot in the back while they were running. My mother told me they didn't survive. The other one is my relative. Her mother's name is [REDACTED]. Her house is near the mosque.

I didn't hear about that [Hindus being killed].

The Hindus were all men holding knives and sticks and shovels. They were destroying the houses to finish us. They were saying, "you Muslim people are doing so many bad things." The Hindu people were saying that we were Al Yaqin, and that's why they were doing this to us. We had never had problems with the Hindus before.

When the Al Yaqin group was there in the village, the military came with the Hindu and Rakhine people. I didn't see myself but I heard they were coming to the village. They were fighting with them. I was told that the military fired the guns and that the fighters were throwing something with their hands. When they threw it, it spread fires. The other villagers told me. My mother and other relatives saw this. I don't know how.

The military were watching and the Hindu and Rakhine set fires. I think it was a piece of tire with petrol poured on it, and they threw them onto the roofs of the houses. Both Rakhine and Hindu were throwing them. All of Ward 5 was burned down in this way. If we go back one day, we can see it was all burned down.

There were around 150 households.

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When the Muslims have dealings with the Rakhine people, the Rakhine people who stay as a guard outside their village, those people hold guns. They don't sleep during the night. When they fall asleep, they lay their guns down. They had been doing this since the last violence.

ENDS

#43

Name: [REDACTED]

Age: 51

Gender: Male

Family: Six children

Ethnicity: Rohingya

Religion: Islam

Occupation: [REDACTED] [REDACTED]

Village: Padagah Ywa Thit and Min Gyi

Date: September 4, 2017

Note: [REDACTED]

I am [REDACTED]. I used to work [REDACTED]. I am from Padagah Ywa Thit. Before the violence took place, on August 25, our village was surrounded by the military together with the BGP. They just opened fire into the village. Two people were killed and 12 more were injured. Since then, we spent more time hiding in the forest. There is a BGP camp in the village. That night [Agist 25], the BGP camp was attacked.

I took some photos of some bodies but my mobile fell into the water when coming here. All of the villagers went to the forest after they opened fire. After spending one night in the forest, we came back to the village to assess the situation. Nothing happened between the 25th and 28th. On the 28th, the military and the BGP shot heavy weapons. We were shocked. They kept firing smaller guns at other villages. It was a bit far. They kept firing and moving toward the village. We were preparing to leave. They stopped moving forward. We were thinking the military already left. From the southern side of the village suddenly they opened fire again. There was another group firing at us, from Wat Kyein. It is a Muslim village. A Rohingya village. Some went to see if villagers were still there and they were shot at. There were eight of them. They were killed. I couldn't see that. There were 30 people people who tried to get from the village to the forest, in order to see where the military was located. Eight were killed and 12 were injured. They brought the dead bodies back to me to show me.

It was between the two villages [the BGP camp], but we couldn't hear it. Seven members tried to attack the BGP post. They had some bombs and long swords and sticks. The real members were only seven, but the villagers supported them with their activities. There were around 50 people together with the villagers.

Yes [Al Yaqin killed some informants]. Two were killed in my village. One of the people who helped the BGP camp soldiers, he washed the laundry of the officers. He was killed. The other was a mullah and a brother of the other guy. He was killed. The mullah's brother was killed and

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then the mullah spoke ill of the group, and that's why he was killed. One was in March and one was in June. They are: Romis, 27 years old. His brother was Nur Kamal, about 42 years old.

We don't know how they were killed. We know they were taken. They took them away in the daytime. I heard from other people that those taken by the members were cut into pieces and then packed in a bag and buried. Some of the members who committed these things shared it with others.

No [they never talked about joining the group].

I heard the Mro people were participating in the violence.

Our houses were burned down on the 29th of August—more than half the village. I was in a nearby village on the top of the hill, hiding, and I could see what was going on. First, the military shot the launchers on some houses, and when it was burning, they took flaming wood and touched it on houses, house to house. There were no people in the village. All had run away.

They opened fire and there were dead bodies. We had to escape. For a long time they have abused us.

Now we can't think. Our minds aren't working. We cannot think about the future.

From the mountain side, we were crossing on the 19th [confused about the date], we were crossing a river, the Purma River, and two children went missing. We found one but one was lost. When the mother and the child were crossing the river, the water current took the child away from the mother.

I moved to another village together with my family. While I was staying there i could see that Tolatoli village [Min Gyi] was being burned. It was the other side of the stream. We were watching to see if the military would come to where we were as well. They kept burning the houses. First they tried to shoot the launcher in the village and then they tried to light the roofs by hand. They took some burning thatch and would toss it to other houses.

The military started shooting from the northern side and we all moved to the eastern side, to cross the Purma River.

When the military started shooting from the northern part of the village, then the villagers ran and gathered near the bank of the river. It was around 1,000 people. We couldn't count them. There were so many. While the military was burning the houses, one group of soldiers went to the village and were burning it down. The other group went to the river bank. Most of them went into the village. Two soldiers came to the group and then they called for something loudly, and then many military came to them. Maybe they were in charge. I don't know what he instructed. They suddenly started shooting the men. They were hiding in the bank of the river, sitting down. Whoever moved was shot. If they looked up or moved their heads, they were shot. Most of the young men were shot dead. There were up to 1,000 killed.

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This was the first round. They tried to kill the men. They selectively killed them. The military was watching the people and some joined the military in the village but then they came back. They came again from the village and they opened fire again, regardless, women and children.

I was just on the other side of a creek. There was a big mango tree. I was hiding there, watching. Some survived. At that point they were just shooting. Those who still survived they let them swim across the river, and then they shot them. Small children were thrown away in the water.

Other people, they tried to bury those who were still a little alive. They cut people and stabbed them.

There is another ethnicity called Kamwe. They live in the mountains with the Mro people. They were stabbing and cutting people.

After the first shot the men and boys, they selected some women from the group and put the women on the top of the hill. Of the women taken to the cliff, while the soldiers were killing and cutting the others, these women were taken to the river bank. Groups of around ten soldiers took about six women three times. They took them to the bushes of the bank. And then they came again and took six more. I couldn't see what happened to them but they never came back.

I believe they were raped and killed.

Small children who were half alive, they cut them. They were breastfeeding-age children, two years, three years, five years.

There are two people watching with me.

The military then set fire to the dead bodies and that is when i left. It was raining and they couldn't easily burn them. I think they must have poured some gasoline on them. I can't tell you whether they were fully burned or not but we could see smoke and fire. They dragged some of the bodies. When they were dragging the people to the hole they dug. When someone moved around, they would cut them.

The Kamwe [Kum-yo] people dug the holes in the ground. I could see a big hole. Most of the people were cut by them. These are the people from the Natala village. We know them well. They are our neighboring village. No, no, no [we had never had problems with them before]. They had long swords and the military had guns. Their uniforms were all wet so it was hard to tell who was BGP and who was military.

I could see the flames coming from the grave. That's when I ran away. There was one big hole. They were throwing the bodies in one place.

I myself took photos but it sunk in the river. I worked for [REDACTED] from 1994-2004.

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This massacre place took place because the former village administrator gave hope to the Muslim people, saying they would not get harmed. They had hope. I don't recall his name. He promised the people that they would not be harmed. That's why they got killed. He wants to eliminate all the Rohingya.

Long ago, he used to say these types of things. The people who escaped this massacre were discussing that, saying how he used to say those things before.

I work with [REDACTED] as a [REDACTED]. I cannot get my salary. Is there a way to get it?

[REDACTED] was killed in Hpaung Daw Pyin. Both son and father were killed. [REDACTED]. The military went to his house, took them out of the house, and shot them. A friend from Maungdaw informed me. [REDACTED].

ENDS

#44

Name: N/A

Age:

Gender: Male

Family:

Ethnicity: Rohingya

Religion: Islam

Occupation: [REDACTED]

Village:

Date: September 4, 2017

Note: [REDACTED]

I come from Thit Tona Gwa Son, Daung hamlet, northern Maungdaw township. In my village, the senior member of the Al Yaqin group was telling me, "we have the same rights in this country and so you have to fight back against the government." To regain our rights, as we are trying to defend the people, you must also join us to get th rights back—this is what he told. We were encouraged to join. I joined around four months ago. When I was recruited by the senior members, we had to guard the village so that nobody could enter and so nobody did anything bad.

We weren't given anything. The Friday before last Friday [August 25], in the night, around 3:30 a.m. we were awoken by the senior members. These members told us we have to join in the attack. They said it already had started and we had to join. We asked them, with what will we join? They said, whatever you have, sticks or knives, whatever you have. It was the night of August 24 [morning of August 25]. We were ordered to safeguard our village in case the Rakhine people came to march to our village, and the senior members went to fight the BGP camp. But we didn't see what they had in their hands.

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They didn't have any guns. In my village there was only one senior member. I heard about Al Yaqin since the last violence happened. But I first saw them four months. No [we received no training].

We never saw him [senior member] talking with Atta Ullah but our senior member told us he talked to him over the phone.

It wasn't in my village, but i heard they killed [informants] in other villages. I heard that those who inform about Al Yaqin to the government, they were taken in the nighttime and cut. I heard six to seven informants were killed.

I asked them about the killings and he replied: "We are working for our people to get our rights back and these people are informing against us—that's why we killed them."

The senior member is [REDACTED]. He is 25 years old. I am not sure if he has another name. Sometimes they have different names than than the ones on the family list. He came here as a refuge long ago and then went back from the camp. Both his parents died. His wife also stayed there but he sent his wife to Bangladesh before the fighting, around one month before the violence. Only he was there. We never discussed the fixed date of the attack. We only came to know the night of it.

He had a mobile phone. Apart from that, I didn't see anything.

I did not see what they brought, but when the sun came up we could hear many gunshots happening in the BGP camps. When the Rakhine were not coming to the village, I went to see the situation closer to the camp, and I saw that the BGP were firing. They were shooting toward the village in case the villager would march toward the camps.

At that time, the Al Yaqin members couldn't approach the BGP camp, so they announced to the villagers to march toward the camps, and when we were trying to march, they would be afraid, and they said that at that time they would go and kill all the BGP in their camp. They wanted their guns. But we couldn't approach because the BGP was continuously firing. When we were marching to the camp, we got closer, and one of my brothers was in the front and he was shot in the shoulder. He had a stick in his hand when he was shot.

[We view footage showing his brother's lifeless body]

He was brought here and died after crossing the mountain. He died on the way. He was buried in the camp.

When my brother was shot, I was behind him. I dragged him back to the village. We were preparing to send him here but the Al Yaqin senior member said, "no need to go there, he can be treated here." But there were no doctors, so finally they let us take him. When the villagers were hit, we didn't move forward. They just came back.

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On the spot, three men died while marching toward the camp, and two of the men died while on the way here for treatment. The Lon Tein were shooting at everyone and then they retreated to the Rakhine village. The Rakhine villagers came to pick them up.

The Rakhine were given guns. I couldn't see if they were holding guns but I heard the government provided them with guns. Around eight Lon Tein came and one Rakhine came to take the fighting Lon Tein back to the village. There are two groups of Lon Tein, some are in the camp and some are in the village. There are ten usually in the village camp. They weren't provided any guns.

All the knives were seized by the government. It was around seven or eight months ago, Lon Tein ordered everyone to hand over their knives. It was around the same time they ordered everyone to remove any fences from the compound.

When the villagers were shot, the villagers did not move forward. I didn't go join them again. The senior members requested us to take my brother to the Al Yaqin member's house. After seeing my brother's condition, I was told to take him to Bangladesh for treatment. And then I came together with my brother but when I arrived at the border, my brother passed away.

After I came here, I went back again and knew the situation was getting worse. I called my parents and knew the villagers were fleeing the village. I told my parents to come here. I went to get them in the forest. I just got them and came back. I left at 11:30 a.m. and arrived here at 3:30 a.m. when the sun was coming up. And that's when he passed away.

My mother got so angry because of the pain of the passing of my brother. We have no shelter and no food. We want to get the rights and justice for the people.

The senior member [of ARSA] already came here. I have seen him here. When I saw the other members here, I didn't talk with them because I am upset with them. When we were encouraged to join, we thought they had guns and were well equipped. After the attack, we realized they had nothing. Because of them, we lost many lives. I don't want to speak with them. I don't want to see them. We didn't realize this many people would suffer. Now we have to leave our native land because of this. On my way back to pick up my parents in the narrow passage of the mountain, I found the senior member of my village coming here. I think he is here.

The whole village is gone. The neighboring village was already burned down, Ta Man Thar village, and everyone left my village. It was burned down on Sunday [August 27].

I think it [ARSA] will be smaller now. When they couldn't succeed, there is no way it will get bigger now.

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#45

Name: [REDACTED]

Age: 50

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village those fires started in that area. I can still see some smoke. These people already left and are on their way to Maungdaw now.

No one was killed in this village now.

Two people [I didn't mention] are missing still. One is [REDACTED] and is [REDACTED]. They are from Maung Nu Ywa. Their families are crying right now. They are with me.

ENDS

#49

Name: [REDACTED]

Age: 30

Gender: Male

Family:

Ethnicity: Rohingya

Religion: Islam

Occupation:

Village: Mee Kyang Gaung Swa, northern Buthidaung

Date: September 5, 2017

Note: By telephone: +95 (0)

Two informants were killed in Mee Kyang Gaung Swa in northern Buthidaung township. On the very first day of the fasting month, [REDACTED] was killed [in June]. And [REDACTED] was killed 15 days before the fasting started. Because of false information that these two men gave to the authorities, seven innocent villagers were arrested. Five were released and they [BGP] kept two. After six or seven days, the five people were released but then one of them was arrested again.

The two arrested are [REDACTED] and [REDACTED] from Maung Hla Ma hamlet in Mee Kyang Gaung Swa village tract.

Seven were arrested at the same time, they released five and two remained locked up, but one who was released was later arrested again, but I'm not sure who.

I have a sister living in this village.

[REDACTED] was killed while he was coming from the BGP camp near a bridge on the road near Uria Para. He was coming on a motorbike from the BGP camp in Taung Bazar and six or seven people with masks and knives slit his throat. I heard from other people.

[REDACTED] was killed and then thrown into the river. I saw [REDACTED] floating on the Nga Kyi Tauk River [small river]. [I am the house owner of where [REDACTED] [#48] is staying]. I have not seen [Al Yaqin fighters]. I only saw them on my mobile phone.

One one of her [REDACTED] children, a boy, was hiding under the rice container. We still can't find her husband and son.

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These two men [husband and son of ██████████], they came to my house after crossing the Mayu River. I am her son in law. When we heard that ██████████ was looking for these two men, they went to Bangladesh. I heard they are already near the border. I haven't heard from them since. My father in law told me that ██████████ was looking for him.

Yesterday there was a meeting by the township administration office. They are going to send two of the influential Rohingya, ██████████ and ██████████, to northern Buthidaung township to call people back to their villages. Two of the teachers—██████████ and ██████████—were sent by these two men to Maung Nu Ywa village to persuade people to come back. One of the villagers named ██████████ heard this and went back to the village, and then he was chased by the military. They are calling people to come back but they are still chasing them when they come. ██████████ saw him running from the military. They didn't shoot at him. They just chased him. He is 45 years old. This is happening right now. This happened today.

When the military surrounded the village [Paung Daw Pyin], then some of the Al Yaqin attacked them. That's why they are killing the people. This was in Paung Daw Pyin. I asked them [residents], "Why are you running away?" They told me that Al Yaqin attacked the military in the village. I don't know what weapons they [Al Yaqin] hold. They had only sticks and knives. I don't think they killed any soldiers [in Maung Daw Pyin].

I am the son-in-law of her [██████████] and before the attack took place, I was staying in my father in law's house with my five children and wife.

My wife was about to deliver a baby, that's why I brought her to my father-in-law's house. I want to visit to see my elder aunt in the same village.

There are no Al Yaqin in my village. I don't know whether BGP was attacked by Al Yaqin or someone else. We only heard the loud noise of the gunfire. It was around 3 a.m. The next day, the violence started. I just heard Al Yaqin attacked. The next day the village was burned down.

ENDS

#50, Villages affected August-September as reflected in our documentation; non-exhaustive

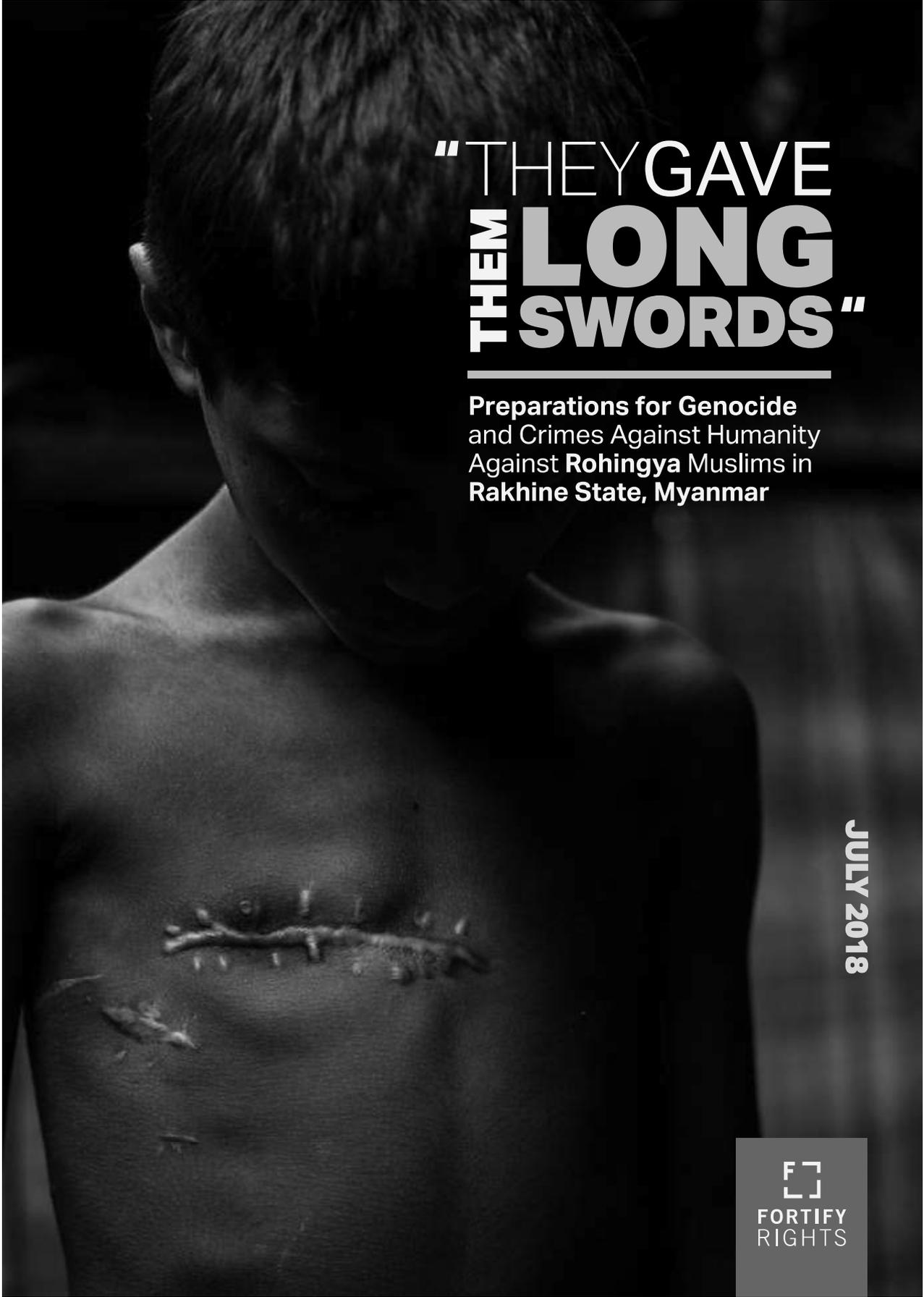
1. Kun Thi Pyin
2. Lilam Ba Para
3. Lwar Gar Para
4. Yet Yoe Pyin
5. Diya Toli
6. Tone Chaung
7. Nyaung Chaung
8. Yae Khet Chang Gwa Son
9. Maungdaw town
10. Yin May Kyaung Taung

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Fortify Rights, *They Gave Them Long Swords*, 19 July 2018

Available at:

[http://www.fortifyrights.org/downloads/Fortify Rights Long Swords July 2018.pdf](http://www.fortifyrights.org/downloads/Fortify_Rights_Long_Swords_July_2018.pdf)



**“THEY GAVE
THEM LONG
SWORDS”**

**Preparations for Genocide
and Crimes Against Humanity
Against Rohingya Muslims in
Rakhine State, Myanmar**

JULY 2018


**FORTIFY
RIGHTS**

“THEY GAVE
THEM LONG
SWORDS”

**Preparations for Genocide
and Crimes Against Humanity
Against Rohingya Muslims in
Rakhine State, Myanmar**

Cover:

Myanmar soldiers shot Mohammed, 7, in the chest as he fled attacks in his village. Physicians at Cox's Bazar General Hospital in Bangladesh operated on him to remove the bullet and fragments. He now lives in a refugee camp in Cox's Bazar District.

Patrick Brown © Panos/UNICEF 2018



**FORTIFY
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Fortify Rights works to ensure human rights for all. We investigate human rights violations, engage people with power on solutions, and strengthen the work of human rights defenders, affected communities, and civil society. We believe in the influence of evidence-based research, the power of strategic truth-telling, and the importance of working closely with individuals, communities, and movements pushing for change. We are an independent, nonprofit organization based in Southeast Asia and registered in the United States and Switzerland.

“They Gave Them Long Swords”

METHODOLOGY

THE FINDINGS OF this report are based primarily on 254 interviews conducted by Fortify Rights from October 2016 to June 2018 with eyewitnesses and survivors of human rights violations as well as with Myanmar military and police sources, Myanmar military analysts, members of ARSA, Bangladesh military and government officials, a Rakhine Buddhist monk, and international and local humanitarian aid workers. These interviews include 242 Rohingya men and women from 31 villages in Maungdaw, Buthidaung, and Rathedaung townships in Rakhine State. Fortify Rights interviewed 88 Rohingya—46 women and 42 men—and conducted a qualitative survey of 71 Rohingya—58 women and 23 men—who survived the military-led attacks in Maungdaw Township starting in October 2016. Fortify Rights also conducted 83 interviews—22 women and 61 men, including four Hindus, and six male members or former members of ARSA—with information on the military-led “clearance operations” in Maungdaw, Buthidaung, and Rathedaung Townships starting in August 2017. Fortify Rights interviewed most survivors and eyewitnesses of the 2017 “clearance operations” hours or days after attacks, which assisted in ensuring accuracy.

Fortify Rights also reviewed visual evidence, including films and photographs from northern Rakhine State, acquired from original sources as well as open-source media. Information that could not be adequately corroborated or triangulated was not included in this report.

Fortify Rights conducted interviews with survivors and eyewitnesses in the Rohingya language with English interpretation and in private and secure settings, often for appropriately long durations of time at the discretion of the interviewee. Some interviews occurred after multiple meetings. With the consent of the interviewee, Fortify Rights recorded interviews and worked with a third party to review the audio recordings to check the interpretation for accuracy. No one interviewed for this report received compensation, and all were informed of the purpose of the interview, its voluntary nature, and the ways that the information might be used. All provided informed consent. The specific dates and locations of some interviews are withheld and the names of victims, eyewitnesses, and others as well as other identifying details are withheld or changed for security reasons.

This report primarily refers to names of villages and towns as recognized by Rohingya. In some cases, the report also references the names of villages and towns as well as states and divisions as used by the Government of Myanmar.

METHODOLOGY



CHRONOLOGY OF EVENTS:

AUGUST 2016 - JULY 2018

AUGUST 23 ○

The Government of Myanmar announces the establishment of a nine-member advisory commission chaired by former U.N. Secretary General Kofi Annan to address the situation in Rakhine State.

OCTOBER 9 !

Rohingya militants attack three police outposts in Maungdaw and Rathedaung townships in Rakhine State, allegedly killing nine police officers. Myanmar Army begins "clearance operations" in Maungdaw Township, razing dozens of villages, killing, raping, and arresting Rohingya *en masse*, forcing the displacement of more than 90,000 during the next two months.

OCTOBER 31 ○

Rakhine State Member of Parliament Aung Win declares, "All Bengali villages are like military strongholds."

NOVEMBER 1 ○

State-run media alludes to Rohingya as a "thorn" that "has to be removed as it pierces."

NOVEMBER 2 ○

Rakhine State Police Chief Colonel Sein Lwin tells *Reuters* that the authorities will train non-Rohingya local residents in Rakhine State and provide them with weapons and "other equipment."

NOVEMBER 26 ○

The state-run *Global New Light of Myanmar* alludes to Rohingya as "detestable human fleas" and warns that "[w]e should not underestimate this enemy."

NOVEMBER-AUGUST 2017 !

Myanmar authorities begin systematically training and arming non-Rohingya residents in northern Rakhine State while also confiscating sharp and blunt objects from Rohingya civilians and evicting humanitarian agencies from northern Rakhine State.

DECEMBER 1 ○

The President of Myanmar establishes the Rakhine Investigation Commission, led by former Myanmar military general Vice President Myint Swe to investigate violent attacks by Rohingya militants against police outposts.

DECEMBER 8 ○

In an exclusive interview with *Channel News Asia*, State Counselor Aung San Suu Kyi says it is a "fact" that the Rakhine Buddhist population is "shrinking as a Rakhine population, percentage wise" and the international community is "exaggerating [the difficulties], so everything seems worse than it really is."

DECEMBER 26 ○

State Counselor Suu Kyi's office describes allegations of rape by security forces as "rumours," "fabricated stories," and "one-sided accusations."

JANUARY 3 ○

Following a three-day investigation, the government-appointed Rakhine Investigation Commission claims that evidence was insufficient to address allegations of rape and cites the existence of mosques as "proof that there were no cases of genocide and religious persecution in the region."

JANUARY 18 ○

Forty Myanmar-based civil society organizations call for a "truly independent" international investigation into the situation in Rakhine State "to fully assess the totality of the situation in Rakhine State and provide clear recommendations for the current government to effectively address and prevent further problems."

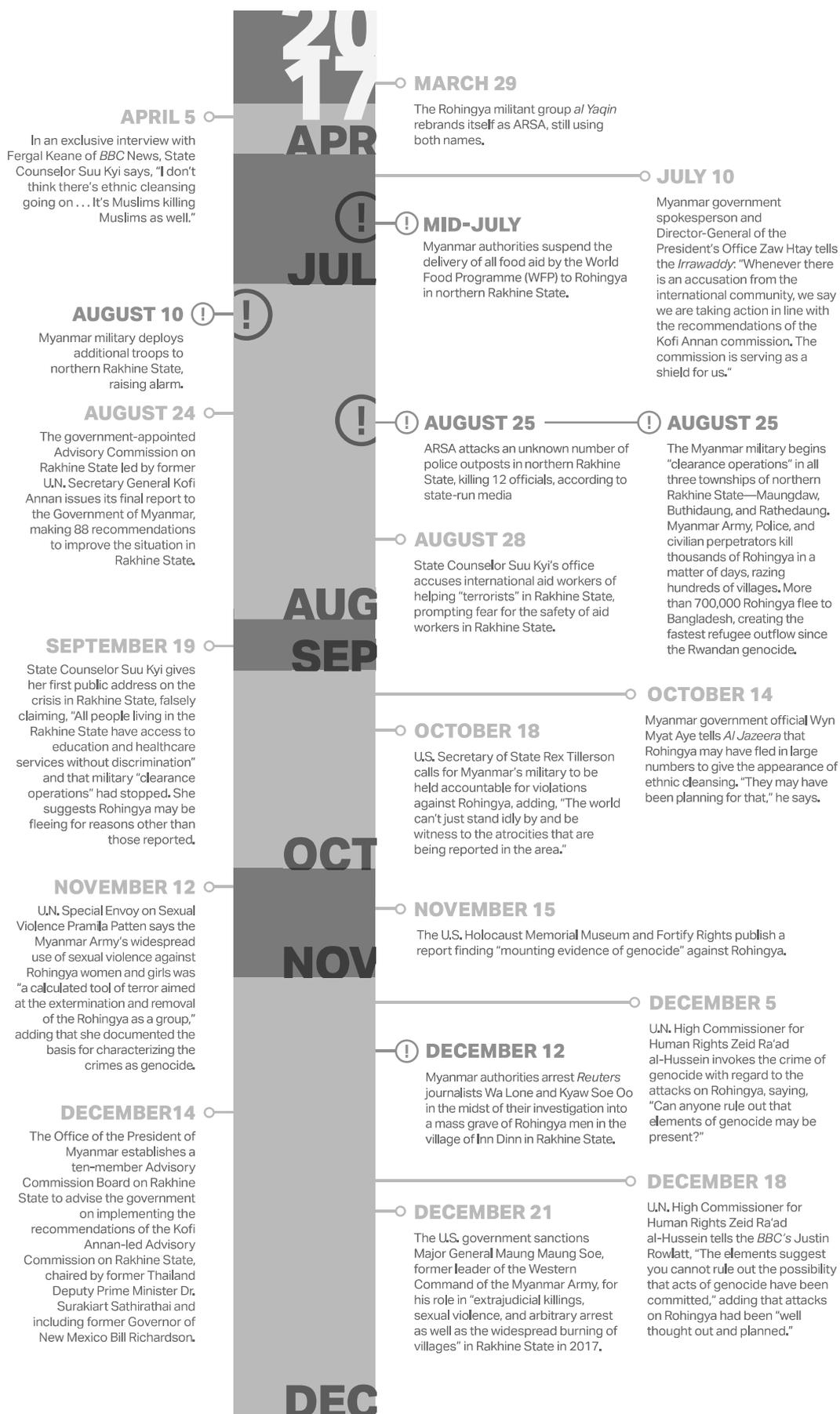
FEBRUARY 3 ○

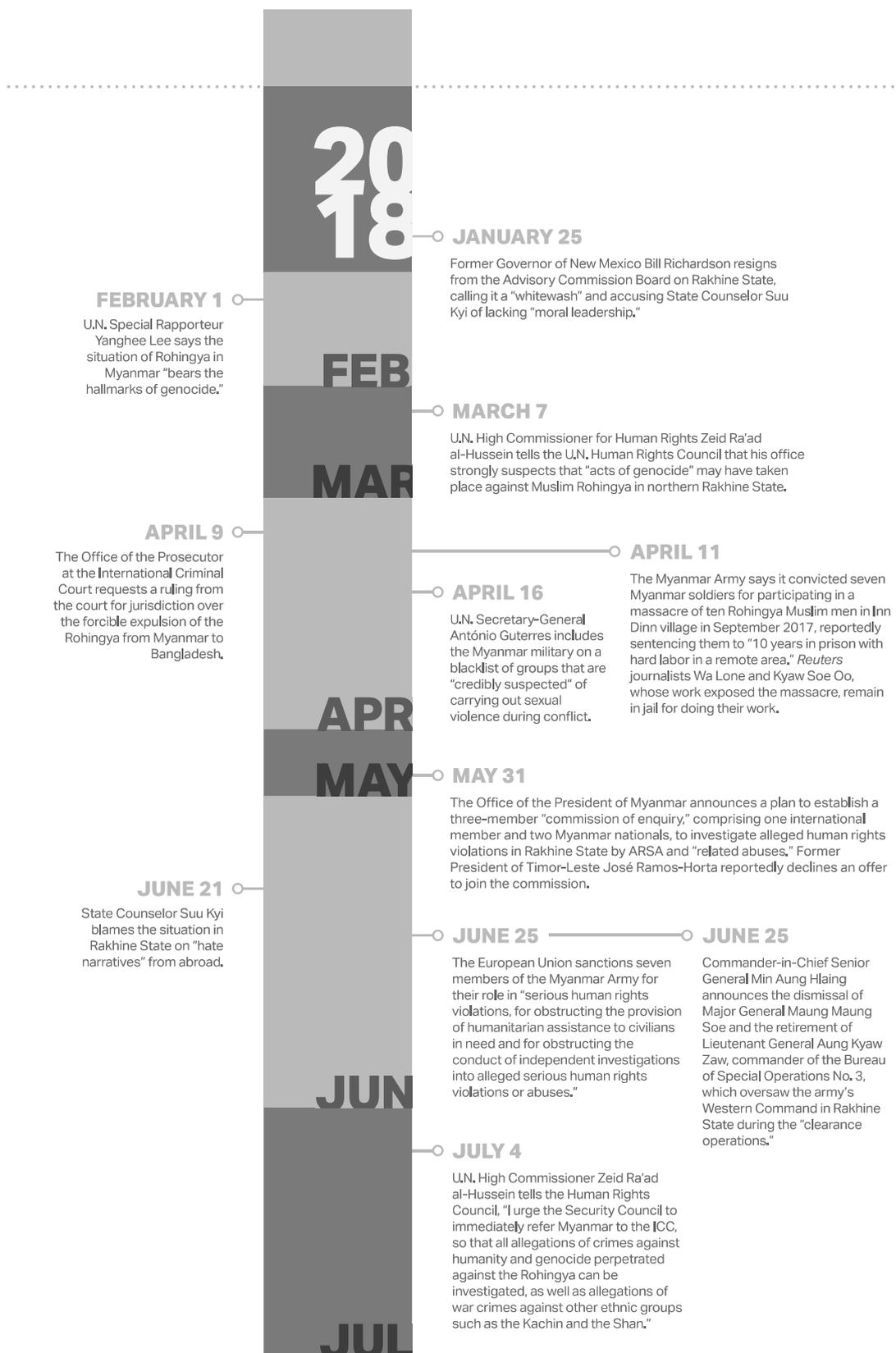
The Office of the U.N. High Commissioner for Human Rights (OHCHR) issues a "Flash Report" alleging that attacks against Rohingya in October and November 2016 appeared to be "widespread as well as systematic, indicating the very likely commission of crimes against humanity."

MARCH 24 ○

The U.N. Human Rights Council passes a resolution establishing the Independent International Fact-Finding Mission on Myanmar to "establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, particularly in Rakhine State." The Government of Myanmar immediately "disassociates" itself from the resolution and refuses to cooperate.

Annex 279





“They Gave Them Long Swords”

II. ROHINGYA MILITANT ATTACKS ON AUGUST 25, 2017

THE GOVERNMENT OF Myanmar released limited details about coordinated attacks by Rohingya militants on August 25.¹²⁸ However, members of ARSA, or *al Yaqin*, as well as local eyewitnesses described to Fortify Rights how groups of men and boys, purportedly affiliated with ARSA, descended on police outposts in multiple townships in the early morning hours of August 25.¹²⁹

A member of ARSA from northern Maungdaw Township told Fortify Rights:

The head of ARSA, Atta Ullah, picked the date [of the August 25 attack], and he instructed the groups about which date we would attack . . . The person in charge had communication with Atta Ullah, and I heard from him. On Thursday morning [August 24], we came to know that a mass attack would take place [on August 25]. We were instructed to get ready. We were told that there would be some more members coming from outside the country with guns and that we had to go with them and support them. I don’t know why they didn’t come. I didn’t see anyone with guns.¹³⁰

“Abdul Ghani” another member of ARSA, told Fortify Rights what happened during the early morning of August 25 near his village in Maungdaw Township. He said:

We weren’t given anything. Senior members [of ARSA] woke us up around 3:30 a.m. on the Friday before last [August 25]. These members told us we had to join in the attack. They said it had already started, and we had to join. We asked them, ‘With what will we join?’ They said, ‘Whatever you have, sticks or knives, whatever you have.’ It was the night of August 24 [morning of August 25]. We were ordered to safeguard our village in case the Rakhine people came to our village, and the senior members went to fight the [Lon Htein] camp. But we didn’t see what they had in their hands. They didn’t have any guns. In my village, there was only one senior member.¹³¹

When the sun rose, “Abdul Ghani” said he heard “many gunshots happening near the [Lon Htein] camps” surrounding his area, so he walked closer to one camp. He said:

¹²⁸ See, “Extremist terrorists attack on police outposts in N-Rakhine,” *The Global New Light of Myanmar*, August 26, 2017, http://www.moi.gov.mm/npe/nlm/sites/default/files/newspaper-pdf/2017/08/26/26_Aug_17_gnlm.pdf (accessed July 10, 2018).

¹²⁹ Fortify Rights interview with #24-2, #19-2, #13-2, #15-2, #26-2, #27-2, #31-2, #44-2, #35-2, #36-2, #39-2, #43-2, #44-2, and #49-2, Cox’s Bazar District, Bangladesh, August–September 2017.

¹³⁰ Fortify Rights interview with #24-2, Cox’s Bazar District, Bangladesh, September 1, 2017.

¹³¹ Fortify Rights interview with #44-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

II. ROHINGYA MILITANT
ATTACKS ON AUGUST 25, 2017

I saw that the border guard police were firing. They were shooting toward the village to prevent the villagers from marching toward the camps. At that time, the *al Yaqin* members couldn't approach the [*Lon Htein*] camp, so they instructed the villagers to march to the camps, and they would be afraid when we tried to march. They said that they would go and kill all the [*Lon Htein*] in their camp. They wanted their guns. But we couldn't approach [the camp], because the [*Lon Htein*] was continuously firing. As we marched to the camp, one of my brothers was in the front, and he was shot in the shoulder. He had a stick in his hand when he was shot. He's dead . . . Three men died on the spot while marching toward the camp, and two of the men died while on the way [to Bangladesh] for treatment. The *Lon Htein* were shooting at everyone, and then they retreated to the Rakhine village. The Rakhine villagers came to pick them up.¹³²

"Yunus," a prominent Rohingya member of the community in Kha Maung Seik village in Maungdaw Township, described how ARSA tried to recruit fighters in their village during the early morning on August 25. He said:

The violence started at 1:20 a.m. On that night [August 25], the *al Yaqin* group split in different groups and moved around the area. They were requesting people to come out of the villages to join with them. The people were afraid and going into the forest . . . [*al Yaqin*] showed us a bomb, but they couldn't persuade the people of the village. They could persuade only the wayward people, the goons, to participate in their mission. There were around seven fighters.¹³³

A resident from a village in Buthidaung Township told Fortify Rights he saw a large group of men armed with knives and homemade explosives assembled in his village on August 25. He said: "I didn't know they were *al Yaqin*, but they were introduced to me as *al Yaqin*. They were making a plan."¹³⁴

"Than Win," 31, from Thit Tone Gwa Son village in northern Maungdaw Township witnessed local Rohingya burn down a border guard post on August 25 after soldiers opened fire toward the village and then retreated to a nearby Rakhine village:

The [*Lon Htein*] were shooting and then they went to the Rakhine village. When they went to the Rakhine village, the villagers went to burn down the [*Lon Htein*] camp. The camp was empty, and they burned it. They just used lighters. It was small, holding about eight people. It was a wooden house with a thatch roof.¹³⁵

The next day, the Myanmar Army and other state security forces reportedly razed Thit Tone Gwa Son village, killing civilians, including at least three children below the age of five.¹³⁶

A 32-year-old Rohingya teacher from Maung Nu—also known as Monu Fara—in Buthidaung Township, the site of a Myanmar Army-led massacre that began on August 27, recalled: "There is one border guard camp in Hpawng Daw Pyin village [nearby Maung Nu], and some ARSA came and threatened the camps on the 25th. It started from this."¹³⁷

132 Fortify Rights interview with #44-2, Cox's Bazar District, Bangladesh, September 4, 2017.

133 Fortify Rights interview with #19-2, Cox's Bazar District, Bangladesh, August 31, 2017.

134 Fortify Rights interview with #25-2, Cox's Bazar District, Bangladesh, September 1, 2017.

135 Fortify Rights interview with #26-2, Cox's Bazar District, Bangladesh, September 1, 2017.

136 *Ibid.*

137 Fortify Rights interview with #62-2, Cox's Bazar District, Bangladesh, February 23, 2017.

the border.²²⁸ Human Rights Watch also reported that Myanmar Army soldiers laid mines “at key crossing points” on the border with Bangladesh and “on roads inside northern Rakhine State prior to their attacks on predominantly Rohingya villages.”²²⁹

Fortify Rights interviewed members of ARSA who said the organization’s capacity with respect to explosives was limited to improvised explosive devices.²³⁰ None of the fighters or former fighters described ARSA’s use or possession of pressure–detonated landmines.

FORCED DISPLACEMENT

In August and September 2017, Myanmar Army soldiers forced the displacement of several hundred thousand Rohingya civilians from several hundred villages throughout northern Rakhine State during systematic arson attacks on civilian homes and structures, mosques and religious structures, and by destroying food stocks and means of subsistence.

Destruction of Homes, Civilian Structures, and Means of Subsistence

“They used heavy weapons. They shot them on the houses, and the houses burned.”

—“Abdul Hussein,” 58, Khun Thi Pyin village, Maungdaw Township, August 30, 2017

“All the houses were burned down. Not even a single house is left standing.”

—“Abdul Rahman,” 41, Chut Pyin village, Rathedaung Township, August 30, 2017

“All the houses located near the road were burned down. They used a weapon to burn to the houses. When they were launching the weapon, we all ran into the jungle on the western side of the village.”

—“Tasmina,” 13, Ziyol Toli village, Maungdaw Township, August 30, 2017

In August and September 2017, Myanmar Army soldiers systematically razed civilian homes and structures in hundreds of villages throughout northern Rakhine State, forcing the displacement of more than 700,000 civilians who escaped to Bangladesh. Fortify Rights documented and analyzed testimony from 35 Rohingya men and women who witnessed Myanmar Army soldiers destroying civilian homes and structures, most commonly with shoulder–fired RPGs, in 26 villages in Maungdaw, Buthidaung, and Rathedaung townships in August and September 2017.²³¹ Dozens of Rohingya interviewed by Fortify Rights returned to their villages soon after attacks to assess and document damage. They described smoking heaps of ash in razed villages and charred bodies and animals. Satellite imagery released by Human Rights Watch showed the partial or complete destruction of 362 Rohingya villages since August 25, 2017.²³²

²²⁸ Krishna N. Das, “Exclusive: Bangladesh Protests Over Myanmar’s Suspected Landmine Use Near Border,” *Reuters*, September 6, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-landmines/exclusive-bangladesh-protests-over-myanmars-suspected-landmine-use-near-border-idUSKCN1BHo4F> (accessed July 11, 2018); “Bangladesh PM Accuses Myanmar of Laying Mines,” *U.S. News*, September 21, 2017, <https://www.usnews.com/news/world/articles/2017-09-20/the-latest-un-head-opens-signing-for-1st-nuclear-ban-treaty> (accessed July 11, 2018).

²²⁹ “Burma: Landmines Deadly for Fleeing Rohingya,” Human Rights Watch, September 23, 2017, <https://www.hrw.org/news/2017/09/23/burma-landmines-deadly-fleeing-rohingya> (accessed July 11, 2018).

²³⁰ Fortify Rights interview with #24-2, #31-2, and #44-2, Cox’s Bazar District, Bangladesh, August–September 2017.

²³¹ Fortify Rights collected eyewitness testimony of the Myanmar Army burning civilian structures in the following villages in Maungdaw Township in October and November 2016: Pwint Hpyu Chaung, Yae Khat Chaung Gwa Son, Kyet Yoe Pyin, Nag Pura, Dar Gyi Zar, Ywet Nyo Taung, Hpar Wut Chaung, Sin Thay Pyin, Myaw Taung, Wapeik, and Kyar Goung Taung.

²³² “Burma: 40 Rohingya Villages Burned Since October,” Human Rights Watch, press release, December 17, 2017, <https://www.hrw.org/news/2017/12/17/burma-40-rohingya-villages-burned-october> (accessed July 11, 2018).

Destruction of Food Sources and Avoidable Deprivations in Aid

“People are dying. They are going to starve. There is no food available.”

—Aid worker, Maungdaw Township, August 28, 2017

At the time of writing, Myanmar authorities continue to be responsible for avoidable deprivations of humanitarian aid in northern Rakhine State. Only a limited number of national staff of aid agencies are reportedly permitted access to affected areas.²³³ Moreover, many pre-existing aid projects in northern Rakhine State remain suspended at the time of writing, and relevant ministries under the control of the civilian government continue to fail to issue and renew travel authorizations for aid workers.

During the attacks, state-security forces destroyed civilians’ means of subsistence, making access to northern Rakhine State for humanitarian aid organizations all the more critical. State security forces razed markets and food stocks and prevented Rohingya from fishing and traveling to rice paddies. Following both rounds of attacks—in 2016 and 2017—tens of thousands of Rohingya were internally displaced for weeks or even months without adequate food sources before arriving to Bangladesh.

For example, a 38-year-old father of six children from Taung Bazar, Buthidaung Township, told Fortify Rights:

Since October 9, we haven’t been safe. We had to stay in the forest. We were in the forest for almost eight months. We built a small house in the forest and stayed there, and then when August 25 happened, we left and came to Bangladesh. We had no food for many weeks. We weren’t able to go to our village to get food. There were a lot of military.²³⁴

“Yunus,” 32, from Kyet Yoe Pyin village in Maungdaw Township, similarly said:

By the time the market was burned down, there were no vehicles moving around, and we couldn’t bring anything from one village to another. We didn’t have anything to eat. We couldn’t go to the paddy field to harvest. If anyone went there, they were arrested and killed or taken to the [Lon Htein] headquarter by the military.²³⁵

²³³ U.N. Office of the Coordinator of Humanitarian Affairs (UNOCHA), “Myanmar: Humanitarian Snapshot,” March 3, 2017, http://reliefweb.int/sites/reliefweb.int/files/resources/MMR_humanitarian_snapshot_mar17.pdf (accessed June 6, 2017).

²³⁴ Fortify Rights interview with #50-2, Cox’s Bazar District, Bangladesh, November 3, 2017.

²³⁵ Fortify Rights interview with #9-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

“They Gave Them Long Swords”

V. HUMAN RIGHTS ABUSES BY ROHINGYA MILITANTS

“There is a group called *al Yaqin*. The members of this group are mostly illiterate people. None of the members are educated. Anyone who tried to convince them that this was not a good idea, they’d try to kill them. This happened in my village.”

—“Yunus,” 31, from Kha Maung Seik village, Maungdaw Township, August 31, 2017

A **RSA PERPETRATED HUMAN** rights abuses, including the murder of civilians, since the group first appeared in October 2016. Fortify Rights documented how ARSA members killed Rohingya civilians in compliance with orders directly from Atta Ullah, the head of ARSA.

Calling itself *Harakh al Yaqin* or “the Faith Movement,” the group attacked three police outposts in Maungdaw and Rathedaung townships on October 9, 2016, reportedly killing nine police officers.²³⁶ Rebranded as ARSA, the group struck again on August 25, 2017, reportedly attacking several police outposts and killing 12, according to the government.²³⁷ Each of these attacks ostensibly triggered a massive, disproportionate response by the Myanmar Army, targeting Rohingya civilians.

MURDER

The Government of Myanmar alleged that Rohingya militants killed 59 civilians in 2016 and 2017 who allegedly cooperated with Myanmar authorities or spoke to news media in northern Rakhine State.²³⁸ On May 30, 2017, ARSA

²³⁶ “Security Tightened: Nine Policemen Killed, Five Injured, One Missing in Border Attacks,” *Global New Light of Myanmar*, p. 1, 3.

²³⁷ See, Chapter II of this report, “Rohingya Militant Attacks on August 25, 2017.” For government accounts, see “Extremists Terrorists Attack on Police Outposts in N-Rakhine,” *Global New Light of Myanmar*, August 26, 2017 <http://www.globalnewlightofmyanmar.com/extremist-terrorists-attack-on-police-outposts-in-n-rakhine/> (accessed July 11, 2018).

²³⁸ See, Kayleigh Long, “Rohingya Insurgency Takes Lethal Form,” *Asia Times*, June 20, 2017, <http://www.atimes.com/article/rohingya-insurgency-takes-lethal-form-myanmar/> (accessed July 11, 2018); International Crisis Group, *Myanmar: A New Muslim Insurgency in Rakhine State*, December 15, 2016, <https://d2071andvipowj.cloudfront.net/283-myanmar-a-new-muslim-insurgency-in-rakhine-state.pdf> (accessed July 11, 2018). For instance, in December 2016, the Myanmar police reported finding a 41-year-old Rohingya man beheaded days after the

V. HUMAN RIGHTS ABUSES BY ROHINGYA MILITANTS

denied in a press statement that it was responsible for killing civilians.²³⁹ On June 26, 2017, a video surfaced online showing 11 men wearing black masks and armed with swords and handguns. A single speaker in the video identifies himself as “Abdol Hoq,” the leader the group. In the video, he says in the Rohingya language that the group is responsible for killing “informants.”²⁴⁰ The group called itself the “Arakan Action Group” and claimed to have “killed most of the government informants to date.”²⁴¹ This group made no further public statements, and there has been no subsequent information about the group.

Fortify Rights interviewed six members of ARSA and 11 Rohingya refugees in Bangladesh, who provided credible firsthand information about ARSA killings of six Rohingya civilians in 2017 during the weeks and days leading up to the August 25 attacks.²⁴² This is the first documentation of ARSA killings based on first-hand testimony from members of ARSA and eyewitnesses.²⁴³

For instance, on August 18, 2017 around 3 p.m., members of ARSA reportedly apprehended a Rohingya man—name and identifying details withheld for security purposes—in a village in northern Maungdaw Township, bound his hands, and took him out of the village. According to “Abdul Hassan,” a former member of ARSA in the same village in Maungdaw Township, the group suspected the man of “informing” on ARSA’s activities to the local Myanmar authorities. Abdul Hassan participated in the killing. He told Fortify Rights:

He was killed in front of me. We tied his hands behind his back and blindfolded him. He didn’t struggle to get away. He knew he would be killed. They cut his neck . . . He was buried after they killed him. It was not a religious burial—they just dug a hole. He was warned two times before he was killed. Long ago, the country was peaceful. Even then, he was working as an informant.²⁴⁴

Another member of ARSA who witnessed the same killing told Fortify Rights: “He wasn’t beheaded, but they cut his neck. His name was [redacted] . . . This person was informing the authorities about the Rohingya people with false allegations.”²⁴⁵

“Yunus,” a Rohingya man from northern Maungdaw Township, witnessed ARSA members take the same man out of the village. He told Fortify Rights on August 31, 2017:

They tied his hands together and took him away. He was also blindfolded . . . His name is [redacted], son of [redacted] . . . The reason why this group killed him is that he went to the

man told journalists traveling on a military-guided tour of Maungdaw Township that there were “no cases of arson by the military and police forces, no rape and no unjust arrests.” Carole Oudot and Matthew Baudey, “Muslim Found Beheaded After Talking to Myanmar Journalists,” *Asia Times*, December 24, 2016, <http://www.atimes.com/article/muslim-found-beheaded-talking-journalists/> (accessed July 11, 2018). See also, “Myanmar Unrest: Rohingya Muslim Man Found Decapitated in River,” *BBC*, December 23, 2016, <http://www.bbc.com/news/world-asia-38418881> (accessed July 11, 2018). In June 2017, the Office of State Counsellor Suu Kyi claimed “terrorists” had killed 34 civilians “in various ways” since October 2016 and that 22 others had disappeared. “Terrorist Training Camps, Guns Uncovered in Mayu Mountains,” *Global New Light of Myanmar*, June 22, 2017, <http://www.globalnewlightofmyanmar.com/terrorist-training-camps-guns-uncovered-in-mayu-mountains/> (accessed July 11, 2018).

²³⁹ “Press Release,” Arakan Rohingya Salvation Army, May 30, 2017, https://twitter.com/ARSA_Official/status/869458081737916417 (accessed June 20, 2017).

²⁴⁰ Arakan Action Group, online video, June 26, 2017, <https://www.facebook.com/newscollectionn/videos/447333925638423/> (accessed June 26, 2017).

²⁴¹ *Ibid.*

²⁴² Fortify Rights interview with #24-2, #19-2, #13-2, #15-2, #26-2, #27-2, #31-2, #44-2, #35-2, #36-2, #39-2, #43-2, #44-2, and #49-2, Cox’s Bazar District, Bangladesh, August–September 2017.

²⁴³ Human rights reports published by international organizations as of the time of writing did not include testimony from members of ARSA or eyewitnesses to ARSA murders of Rohingya civilians.

²⁴⁴ Fortify Rights interview with #24-2 and others, Cox’s Bazar District, Bangladesh, September 1, 2017.

²⁴⁵ *Ibid.*

[*Lon Htein*] sector two or three times, so the group thinks he is an informant. That's why they killed him. He was taken from the village to the forest, and we think they killed him there.²⁴⁶

A Rohingya girl from Diyol Toli village, Maungdaw Township told Fortify Rights that at least three men were killed in her village ahead of the August 25 attacks, and residents believed ARSA committed the crimes: "Some people were beheaded in the village. I saw this. I did not see the cutting, but after they cut them, the bodies were lying around. I saw three men [killed]—a father and [his two] sons."²⁴⁷ A member of ARSA provided Fortify Rights with additional information about this killing.²⁴⁸

"Than Win," a 38-year-old Rohingya aid worker from Maungdaw Township, attempted to collect information about killings by ARSA. He told Fortify Rights:

In That Kha Ngyar [village in Maungdaw Township], [ARSA members] killed Shomshu Lom, son of Nurul Hosan. He was around 32-years old. He was killed around four months ago. He was accused of being an informer. He was taken to the forest and killed there. The dead body was never returned to the village. Some *al Yaqin* villagers are normal, young villagers who took sides with *al Yaqin*, and they explained how he was killed. After they killed him, they warned other people, saying, 'Don't end up like him.' There was another case in Kyein Chaung [village Maungdaw Township]. His name was Madu. He was 38-years old. He was killed the same way after being accused of being an informant. But the body wasn't returned.²⁴⁹

A member of ARSA, 25, from Maungdaw Township provided information to Fortify Rights about the above-mentioned killings and told Fortify Rights that he raised concerns about these and other killings with the local ARSA leader. He said:

Those who informed about *al Yaqin* to the government were taken in the nighttime and cut. I know of six to seven informants who were killed. I asked [the local ARSA cell leader] about the killings and he replied, 'We are working for our people to get our rights back, and these people are informing against us. That's why we killed them.' The senior member is [name redacted] . . . He came here as a refugee long ago and then went back from the camp . . . We never discussed the fixed date of the [August 25] attack. We only came to know the night of it.²⁵⁰

Many Rohingya civilians reported that they believed ARSA members perpetrated disappearances.²⁵¹ However, Fortify Rights was unable to corroborate their accounts.

The killings gave brutal credence and credibility to ARSA's threats against Rohingya civilians, enabling the group to coerce local residents to join their cause and maintain clandestine operations as indicated by Yunus, who told Fortify Rights: "Many of these *al Yaqin* people are already here [in Bangladesh]. But most people won't say anything, because they will be killed here. The *al Yaqin* are here. Nobody will disclose these things because they are very afraid."²⁵²

Criminal Responsibility

Fortify Rights documented details of ARSA's simple command structure and means of communication with respect to the commission of murder and other abuses. Interviews with members of ARSA reveal that, in at least some cases, Atta Ullah, the head of ARSA, issued orders

²⁴⁶ Fortify Rights interview with #19-2, Cox's Bazar District, Bangladesh, August 31, 2017.

²⁴⁷ She said she was unaware of the victims' names and ages or other identifying details. Fortify Rights interview with #13-2, Cox's Bazar District, Bangladesh, August 30, 2017.

²⁴⁸ Fortify Rights interview with #44-2, Cox's Bazar District, Bangladesh, September 4, 2017.

²⁴⁹ Fortify Rights interview with #26-2, Cox's Bazar District, Bangladesh, September 1, 2017.

²⁵⁰ Fortify Rights interview with #44-2, Cox's Bazar District, Bangladesh, September 4, 2017.

²⁵¹ See, for example, Fortify Rights interview with #39-2, Cox's Bazar District, Bangladesh, September 4, 2017.

²⁵² Fortify Rights interview with #19-2, Cox's Bazar District, Bangladesh, August 31, 2017.

to kill civilians.²⁵³ For example, “Abdul Hassan,” a member of ARSA who was involved in a killing of a Rohingya civilian in Maungdaw Township in August 2017, told Fortify Rights:

When we heard of an informer, we informed Atta Ullah, and then we received instructions about what to do. Atta Ullah instructs the groups. He decided [name redacted] should be killed . . . This is the only person we killed. Other than him, our group did not kill anyone else. Other [ARSA] groups [in other villages] killed other people. Many people were beaten up.²⁵⁴

Other members of ARSA and others with additional information helped confirm this aspect of the organization’s command structure.²⁵⁵ Members of ARSA at the village level had limited knowledge of the organization otherwise, including financing, personnel, weapons procurement or lack thereof, and other matters.²⁵⁶

THREATS AND INTIMIDATION

“[The local ARSA cell leader] said I would be beheaded if I didn’t join. ‘If you join us, we will give you money, but if you don’t, we will kill you,’ he said. He said he would behead me.”

—“Abdul M.,” 43, September 1, 2017

Members and former members of ARSA told Fortify Rights that members of the group coerced them to join the group with threats of death. For instance, “Abdul M.,” 43, a former member of ARSA in a village in northern Maungdaw Township, told Fortify Rights:

I was with [ARSA] for one month and two days only. I had to recruit [new members]. They threatened to kill me if I didn’t join. The head of the group, Atta Ullah, threatened us. The lower-ranking people threatened me, communicating the message from Atta Ullah. There was a person-in-charge from *al Yaqin* in my village. He handled the management of the group in the village. He threatened me to join. His name is [redacted]. He is 28-years old. He is also from my village.²⁵⁷

A 38-year-old Rohingya man from Thit Tone Gwa Son village in Maungdaw Township similarly told Fortify Rights:

Some village residents came to us—most were uneducated. They said to us, ‘Why aren’t you supporting *al Yaqin*?’ We said we couldn’t support them, because they have no capacity to fight the government. We said many had already lost their lives . . . Then some people informed about me [to *al Yaqin*]. They beat whomever they wanted to beat. They blindfolded people at nighttime. The first time we rejected them, they warned us. They’d warn first by words. They said, ‘Be careful, if you don’t do the right thing, it will be more difficult next time.’ They said, ‘If you people are not on our side, you will be killed.’²⁵⁸

Other residents told Fortify Rights that members of ARSA threatened and warned residents to conduct their daily lives according to a moral code interpreted through the lens of Islam. ARSA members warned male residents against adultery, theft, and other behavior perceived to be immoral.²⁵⁹ Armed mostly with sticks, ARSA leaders reportedly instructed members to “guard”

²⁵³ See, Fortify Rights interview with ARSA member, Cox’s Bazar District, Bangladesh, September 1, 2017.

²⁵⁴ Fortify Rights interview with ARSA member, Cox’s Bazar District, Bangladesh, September 1, 2017.

²⁵⁵ Fortify Rights interview with #24-2, #19-2, #13-2, #15-2, #26-2, #27-2, #31-2, #44-2, #35-2, #36-2, #39-2, #43-2, #44-2, and #49-2, Cox’s Bazar District, Bangladesh, August–September 2017.

²⁵⁶ *Ibid.*

²⁵⁷ Fortify Rights interview with #24-2, Cox’s Bazar District, Bangladesh, September 1, 2017.

²⁵⁸ Fortify Rights interview with #26-2, Cox’s Bazar District, Bangladesh, September 1, 2017.

²⁵⁹ Fortify Rights interview with #39-2, Cox’s Bazar District, Bangladesh, September 4, 2017; Fortify Rights interview with #18-2, Cox’s Bazar District, Bangladesh, August 31, 2017.

their villages at nighttime and beat local residents deemed to be morally unfit. For example, a 35-year-old Rohingya man from Ta Man Thar village in Maungdaw Township who briefly joined ARSA told Fortify Rights:

I had some dealings with the *al Yaqin* group. The members with whom I spoke are from my village. I spoke with two people. They warned us not to do bad things, not to participate in bad things, to pray regularly. They would say things like that. They only used to tell us to do the good things because doing the bad things is a sin.²⁶⁰

A resident of Thit Tone Gwa Son village in Maungdaw Township told Fortify Rights: “In terms of the activities by *al Yaqin*, they had some bombs and tried to throw some bombs. They tried to make some guns out of wood and painted them black. This was just to trick the people. ‘If you people are not on our side, you will be killed,’ they said.”²⁶¹

RESTRICTIONS ON FREEDOM OF MOVEMENT

During the height of the Myanmar Army-led attacks on Rohingya civilians that began August 25, 2017, members of ARSA attempted to block Rohingya civilians from fleeing to Bangladesh, infringing on their right to freedom of movement. “Abdul M.,” 43, a former member of ARSA in a village in northern Maungdaw, confirmed these actions to Fortify Rights: “Yes, it is true. We were stopping people, so they would join the group. The head of my group instructed us to not let people come [to Bangladesh].”²⁶² These orders reportedly and ultimately came from Atta Ullah.²⁶³

A resident of Maungdaw Township told Fortify Rights on August 28, 2017: “This group [*al Yaqin*] is blocking the people. They just are letting the women and small kids pass and not the youth and men who are strong.”²⁶⁴

On August 30, 2017, Fortify Rights spoke with Rohingya whom ARSA effectively trapped near Kan Yin Tan village in Maungdaw Township. A local resident said:

There are a lot of people who are waiting to cross the border. Some militants won’t let the men go. They only let the women cross. This is happening here now. [ARSA] threaten people and say that if they try to cross the border, they will kill them . . . They don’t let the men leave, because they want people to join them.²⁶⁵

A 36-year-old Rohingya aid worker from Ta Man Thar village in Maungdaw Township encountered ARSA as he fled to Bangladesh with an estimated 3,000 other Rohingya. He told Fortify Rights:

[When we were fleeing to Bangladesh], some of the *al Yaqin* people in black uniforms came to us and said, ‘Don’t leave the country. If you leave the country, the community will be destroyed.’ They said they would protect us. They only had sticks and small knives. When they were talking like this, the people had to be quiet and listen, otherwise they’d get beaten . . . They said for the women and children to leave and told the rest of us to be alert because the military will come soon to burn the village. They told the men and boys to stay. I heard this.²⁶⁶

²⁶⁰ Fortify Rights interview with #31-2, Cox’s Bazar District, Bangladesh, September 2, 2017.

²⁶¹ Fortify Rights interview with #26-2, Cox’s Bazar District, Bangladesh, September 1, 2017.

²⁶² Fortify Rights interview with #24-2, Cox’s Bazar District, Bangladesh, September 1, 2017.

²⁶³ *Ibid.*

²⁶⁴ Fortify Rights interview with #1-2, Cox’s Bazar District, Bangladesh, August 27, 2017.

²⁶⁵ Fortify Rights interview with #17-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

²⁶⁶ Fortify Rights interview with #18-2, Cox’s Bazar District, Bangladesh, August 31, 2017.

ARSA members dressed in black clothing similarly stopped “Yunus” and his family as they fled Kha Maung Seik village in Maungdaw Township along with a large group of Rohingya civilians. He told Fortify Rights:

We were stopped when we were trying to come [to Bangladesh]. [ARSA members] said: “Don’t leave the country. We are ready to die to save these people.” . . . Before we fled, I told one [ARSA] guy, ‘This is not good work. Just wait for the Kofi Annan recommendations. We have to follow the law.’ He said, ‘No, no.’ They didn’t beat us, but they beat our guide who was showing us the way [to Bangladesh]. They said we all had to go back and fight against the government . . . It happened in front of me. We were blocked for two hours there.²⁶⁷

²⁶⁷ Fortify Rights interview with #19-2, Cox’s Bazar District, Bangladesh, August 31, 2017.

Who is ARSA?

ARSA is the first operational Rohingya armed group in decades.²⁶⁸ In November 2017, Fortify Rights and the United States Holocaust Memorial Museum reported on abuses by ARSA, called for members of the group to be held accountable, and reported that there was no evidence that ARSA was well-organized, well-funded, or well-trained despite sensational claims otherwise.²⁶⁹ Eyewitness and survivor testimony as well as video footage suggests that ARSA was, at the time, a ragtag group of loosely connected “cells” controlled remotely by Attah Ullah.²⁷⁰

Video footage and testimony from members of ARSA reveal that the group had few weapons—mostly sticks, knives, some homemade explosives, and few firearms.²⁷¹ Few members received training, and some new “recruits” were offered 20,000 Myanmar Kyat (USD\$20) and a knife or stick to join the group; some were threatened to join.²⁷² For example, “Abdul M.,” a 43-year-old member of ARSA from northern Maungdaw Township, told Fortify Rights:

²⁶⁸ A Muslim armed group formed in northern Rakhine State around the time of Myanmar’s independence from Britain to demand an autonomous Muslim Sate. However, the group had limited military capacity and was short lived. See, Bertil Lintner, *Burma in Revolt: Opium and Insurgency Since 1948* (Silkworm Books, 2000), p.110. In response to ongoing human rights violations, Rohingya militants formed the Rohingya Solidarity Organization (RSO), a non-state ethnic army, in 1982 and the Arakan Rohingya Islamic Front (ARIF) in 1987. Neither group waged a meaningful armed resistance, and by the 2000s, both groups were inactive. See, Martin Smith, *Burma: Insurgency and the Politics of Ethnicity*, pp. 194–195, 241; Human Rights Watch, *Burma: Rohingya Muslims*, p. 14; Human Rights Watch, “All You Can Do Is Pray,” Appendix I.

²⁶⁹ Fortify Rights et. al., “They Tried To Kill Us All”: *Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar*. See also Matthew Smith, “Fortify Rights Testimony Before the Tom Lantos Human Rights Commission,” March 17, 2017, http://www.fortifyrights.org/downloads/Fortify_Rights_Testimony_Before_the_Tom_Lantos_Human_Rights_Commission_March_17_2017.pdf (accessed July 12, 2018); The International Crisis Group reported in 2016 that the group was “well-organised,” “apparently well-funded” and “well trained.” The International Crisis Group, *Myanmar: A New Muslim Insurgency in Rakhine State*.

²⁷⁰ Fortify Rights interviews with members of ARSA and eyewitnesses, August–September 2017, Cox’s Bazar District, Bangladesh.

²⁷¹ *Ibid.*

²⁷² Fortify Rights interview with #24-2, Cox’s Bazar District, Bangladesh, September 1, 2017.

We didn't receive any training, but we were told we would be trained soon. Then the violence happened. We were told we would be trained with guns. We were told the guns would come soon. We also had a radio communication system, so we could communicate within [two miles] of each.²⁷³

Members of ARSA told Fortify Rights that the local-cell leaders were the only ones who communicated directly with Atta Ullah, who commanded them from undisclosed locations in Maungdaw Township.²⁷⁴

A member of ARSA from Maungdaw Township reported that the communication structure had broken down since the August 2017 attacks. He said:

We can't communicate with each other now. Some members came [to Bangladesh, and some are still hiding over [in Myanmar]. They are still hiding in the forest. I don't know how they are surviving. I don't think there will be another attack [by ARSA]. I think that with [our current] power and strength, we are not in a position to attack now. [ARSA] would need external support to do it. If they received guns from outside, then they can [attack].²⁷⁵

Despite the Myanmar government's claims that ARSA has links to international terror networks, international security analysts agree that the group is neither jihadist nor separatist.²⁷⁶ Likewise, Fortify Rights documented no evidence that ARSA had jihadist or separatist aims. Following the October 2016 attacks, ARSA issued at least 28 written press releases from March 2017 to May 2018 as well as several videos and dozens of messages on Twitter, mostly in the English language.²⁷⁷ In its public messaging, the group stated that it does not associate with international extremist organizations and that its objectives revolve around the restoration of Rohingya rights.

Some Rohingya believe the Myanmar military had a hand in creating ARSA and suggest the military was using ARSA as a pretext to rally nationalist sentiment and support for the military and to destroy the Rohingya population in Rakhine State.²⁷⁸ This speculation stems from the fact that few Rohingya from northern Rakhine State or Rohingya refugees in the camps in Bangladesh know of or are familiar with the individuals who founded ARSA.²⁷⁹ For example, a Rohingya elder told Fortify Rights in 2017: "We have no idea who these people are. Where did they come from? We have no idea."²⁸⁰

²⁷³ *Ibid.*

²⁷⁴ See, Fortify Rights interview with #24-2, #19-2, #13-2, #15-2, #26-2, #27-2, #31-2, #44-2, #35-2, #36-2, #39-2, #43-2, #44-2, and #49-2, Cox's Bazar District, Bangladesh, August–September 2017.

²⁷⁵ Fortify Rights interview with #24-2, Cox's Bazar District, Bangladesh, September 1, 2017.

²⁷⁶ Security analyst Anthony Davis told the *BBC*: "They do not have any substantive links with international jihadism, IS [Islamic State group] or al-Qaeda. They see their struggle as regaining rights for Rohingya inside Rakhine State. They are neither separatists, nor jihadists." Jonathan Head, "Rohingya Crisis: Finding out the truth about ARSA militants?" *BBC*, October 11, 2017, <http://www.bbc.com/news/world-asia-41521268> (accessed July 11, 2018).

²⁷⁷ ARSA is on Twitter @ARSA_Official.

²⁷⁸ Fortify Rights interviews with Rohingya in Myanmar, Bangladesh, Thailand, and Malaysia, 2016–2018.

²⁷⁹ Local Rohingya know of the militant group as *al-Yaqin*, the group's founding name, rather than ARSA.

²⁸⁰ Fortify Rights interview with "Abu Maria", Cox's Bazar District, Bangladesh, September 1, 2017.

As mentioned above in this report, several Rohingya residents of northern Rakhine State told Fortify Rights that members of ARSA wore black “uniforms” or black shirts and pants. A resident of Kha Maung Seik village in Maungdaw Township said he saw ARSA members in the village days before the August 25 attack. He said: “They were wearing long boots and long pants and black-color uniforms, and they had on black masks. We could only see their eyes.”²⁸¹ “Allam,” 36, from Yay Nauk Nga Thar village in northern Maungdaw, similarly recalled:

On the night of the 25th, we heard the noise of shooting around 3 a.m. When dawn came [on August 26], I saw some young men in black uniforms moving around and holding sticks . . . They had [homemade explosives]. They also had slingshots, and they had some sticks. They also had one knife. There were 12 to 13 people. They were from the village. They all wore the same uniform, a black uniform. They wore black shirts with both short sleeves and long sleeves, and black pants.²⁸²

²⁸¹ Fortify Rights interview with #35-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

²⁸² Fortify Rights interview with #18-2, Cox’s Bazar District, Bangladesh, August 31, 2017.

“They Gave Them Long Swords”

VI. INTERNATIONAL LEGAL FRAMEWORK: GENOCIDE AND CRIMES AGAINST HUMANITY

THIS REPORT EMPLOYS treaty-based and customary law frameworks of international human rights law and international criminal law to examine the legal implications of the violence perpetrated against the Rohingya in Rakhine State as potential crimes of genocide and crimes against humanity.²⁸³ The criminal dimensions are evaluated based on standards set forth in the Rome Statute of the ICC as well as ad hoc tribunals established by the U.N. Security Council, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).²⁸⁴

In accordance with the standard required for the ICC to issue an arrest warrant, this report finds that there are “reasonable grounds” to believe the Myanmar Army, Myanmar Police Force, border guards, and non-Rohingya civilian perpetrators committed atrocities that constitute genocide and crimes against humanity and should be held liable for those crimes.

GENOCIDE

Under Article 6 of the Rome Statute, the crime of genocide involves three essential elements: (1) the commission of one or more of the five prohibited criminal acts enumerated by the Statute (2) against a national, ethnic, racial or religious group (3) with the intent to destroy the group in whole or in part.²⁸⁵

²⁸³ Notably, Myanmar is a party to the Convention on the Rights of the Child (CRC), adopted September 2, 1990, G.A. Res. 44/25, U.N. Doc. A/44/49 (1990), ratified by Myanmar July 15, 1991 and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted September 3, 1981, G.A. Res. 34/180, U.N. Doc. A/34/46 (1981), ratified by Myanmar July 22, 1997. Other international instruments, including International Covenant on Civil and Political Rights (ICCPR), to which Myanmar is not a party, are considered part of customary international law and binding on all states. ICCPR, adopted March 23, 1976, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966).

²⁸⁴ The scope of ICC jurisdiction is limited to when a crime is committed within a country or by a national of a country that is a party to the Rome Statute, when a state agrees to ICC jurisdiction, or when a situation is referred to the Office of the Prosecutor by the U.N. Security Council. While the ICC does not have jurisdiction over Myanmar, its governing statute is the most persuasive source of international criminal law, in part because the U.N. Security Council has the power to refer to the Court situations that would otherwise be outside its jurisdiction. See, Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 1998, 2187 U.N.T.S. 90, U.N. Doc. A/CONF.183/9, (2002), arts. 5(2), 12(b), 12(3), 13(b).

²⁸⁵ Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), adopted January 12, 1951, 78 U.N.T.S. 277, U.N. Doc. E/447, art. 2; Rome Statute, art 6.

VI. INTERNATIONAL LEGAL FRAMEWORK: GENOCIDE

Criminal liability extends not only to the perpetration of genocide, but also conspiracy to commit genocide, the direct and public incitement to commit genocide, the attempt to commit genocide, and complicity in genocide.²⁸⁶

This report finds reason to believe that the elements required to prove genocide under the legal framework set out in international criminal law have been met. Specifically, under the legal framework set out in international criminal law, this report establishes that (1) the Rohingya are a distinct ethnic group for the purposes of a genocide analysis, (2) Myanmar state security forces and non-Rohingya citizens acting under the control of Myanmar security forces killed Rohingya, likely inflicted serious bodily and mental harm on the Rohingya, and inflicted conditions of life calculated to bring about the physical destruction of the Rohingya, and (3) Myanmar state security forces and non-Rohingya citizens conducted these acts with the special intent to destroy the Rohingya in whole or in part.

Prohibited Acts of Genocide

The crime of genocide involves the commission of one or more of the following prohibited criminal acts:

- Killing members of the identified protected group;
- Causing serious bodily or mental harm to members of the protected group;
- Deliberately inflicting on the protected group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the protected group;
- Forcibly transferring children of the protected group to another group.²⁸⁷

Any one of the five acts is sufficient to establish an act of genocide, provided that the other elements of the crime are satisfied. This section will examine the legal elements of the first three acts of genocide—killing, serious harm, and conditions of life—and analyze whether Myanmar state security forces and their proxies committed such acts in Rakhine State based on the facts documented in this report.

Killing as a Prohibited Act of Genocide

In the context of genocide, a “killing” must be intentional, meaning that the perpetrator intended to cause death.²⁸⁸ However, the killing does not need to be premeditated.²⁸⁹ The individual killed must be a member of the specified national, ethnic, racial, or religious protected group.²⁹⁰

This report documents numerous intentional killings of Rohingya civilians beginning on August 25, 2017 as well as in October and November 2016. The killings took the form of shootings, both from land and helicopters; knife and sword attacks; beatings; and burnings. Eyewitnesses also described the military setting fire to structures with the knowledge that Rohingya were inside.

²⁸⁶ Genocide Convention, art. 3; Rome Statute, art. 25.

²⁸⁷ Rome Statute, art. 6.

²⁸⁸ *Prosecutor v. Akayesu*, International Criminal Tribunal for Rwanda (ICTR), Case No. ICTR-96-4-T, Judgment (Trial), September 2, 1998, para. 501.

²⁸⁹ *Prosecutor v. Stakic*, International Criminal Tribunal for the Former Yugoslavia (ICTY), Case No. IT-97-24-T, Judgment, July 31, 2003, para. 515 (citing *Prosecutor v. Kayishema and Ruzindana*, ICTR, Case No. ICTR-95-1-A, Judgment (Appeal), June 1, 2001, para. 151; *Akayesu*, Case No. ICTR-96-4-T, para. 500-01.

²⁹⁰ *Prosecutor v. Brdanin*, ICTY, Case No. IT-99-36-T, Judgment (Trial), September 1, 2004, para. 689.

Fortify Rights spoke to survivors from dozens of villages in Maungdaw, Buthidaung, and Rathedaung townships who witnessed Myanmar security forces and armed civilians killing Rohingya through targeted and indiscriminate shootings or had seen bodies with gunshot wounds during the 2016 and 2017 attacks.²⁹¹ The Myanmar Army and Police, with non-Rohingya civilian support, committed one of the largest massacres in Tula Toli village in Maungdaw Township, where dozens of soldiers shot, slashed, and burned to death hundreds of Rohingya residents on the banks of the Purma River. One eyewitness stated that he counted 340 bodies after this attack. Soldiers also killed Rohingya through gunfire as they attempted to cross the Naf River into Bangladesh.

Eyewitnesses in at least 11 villages in the three townships of northern Rakhine State, including in the villages of Chut Pyin, Tula Toli, and Maung Nu, also described to Fortify Rights how state security forces and civilians killed and mutilated Rohingya with swords and knives and, in some cases beheaded their victims.

State security forces also used other means to kill Rohingya. For example, in Chut Pyin village, soldiers moved a group of Rohingya into a hut and then set it on fire. Soldiers threw children into the Purma River in Tula Toli village. Landmines planted by the Myanmar Army along exit routes killed several Rohingya as they fled their villages.²⁹²

These killings are similar to acts described in numerous genocide cases considered by the ICC and ad hoc tribunals established by the U.N. Security Council. For example, the *Akayesu* tribunal cited witness descriptions of seeing bodies and persons with machete wounds when it found that both killings and serious bodily harm had occurred.²⁹³ In *Stakic*, the ICTY “conclu[ded] that killings were committed” at several camps and detention facilities, based on a variety of evidence, including testimony by eyewitnesses who heard gunshots and later saw bodies as well as forensic evidence related to the victims’ bodies and burial sites.²⁹⁴ The acts described in this report, which are documented with similar evidence, qualify as “killings” for the purposes of genocide.

Causing Serious Bodily or Mental Harm as a Prohibited Act of Genocide

As with the prohibited criminal act of “killing,” for an act or omission to qualify as serious bodily or mental harm for the purposes of establishing genocide, the harm must be intentionally inflicted.²⁹⁵ Bodily harm refers to “harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses.”²⁹⁶ Tribunals have found it more difficult to precisely define serious mental harm, though they have consistently held that the term denotes “more than minor or temporary impairment of mental faculties.”²⁹⁷

²⁹¹ Survivors reported killings in dozens of other villages in addition to killings witnessed by survivors.

²⁹² Although there it is difficult to establish that the Myanmar military planted the landmines that later killed Rohingya civilians, it is a plausible conclusion to draw from the overall context of the widespread attacks on Rohingya in Rakhine State. Fortify Rights also documented testimony from an eyewitness who saw soldiers planting mines on a main road leading to a Rohingya village before the attacks in that village started and testimony from eyewitnesses who saw Rohingya killed or injured by landmines while using this road to flee. The Myanmar military also acknowledges its continued use of landmines. Moreover, on September 6, the Government of Bangladesh protested Myanmar’s use of landmines near the border, and on September 21, Bangladesh Prime Minister Sheikh Hasina addressed the U.N. General Assembly in New York and accused the Myanmar authorities of laying landmines along the border. Das, “Exclusive: Bangladesh Protests Over Myanmar’s Suspected Landmine Use Near Border, *Reuters*”; “Bangladesh PM Accuses Myanmar of Laying Mines” *U.S. News*.

²⁹³ *Akayesu*, Case No. ICTR-96-4-T, para. 113–16.

²⁹⁴ *Stakic*, Case No. ICTY-97-24-T, para. 201–27, 251–74.

²⁹⁵ *Brdanin*, Case No. IT-99-36-T, para. 690.

²⁹⁶ *Prosecutor v. Kayishema and Ruzindana*, ICTR, Case No. ICTR-95-1-T, Judgment (Trial), May 21, 1999, para. 109.

²⁹⁷ See, e.g., *Prosecutor v. Semanza*, ICTR, Case No. ICTR-97-20-T, Judgment (Trial), May 15, 2003, para. 321.

Both types of harm must result “in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life;” however, the harm does not need to be permanent or irremediable.²⁹⁸ Tribunals undertake this assessment on a case-by-case basis, with particular regard to the circumstances of each situation.²⁹⁹ The International Criminal Tribunals for both Rwanda and the former Yugoslavia have interpreted serious bodily or mental harm to encompass “acts of torture, inhuman or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and deportation.”³⁰⁰

The acts documented in this report—massacres involving knife attacks, shootings, and other types of killings—necessarily involved acts of serious bodily harm. State security forces and civilians mutilated Rohingya with knives and swords and caused significant physical harm through gunshot wounds, even where the victims managed to survive. Sometimes, such as in the villages of Done Pike and Maung Nu in Buthidaung Township, perpetrators beat their victims for hours with sticks and other blunt objects before ultimately killing them with knives and guns. In some instances, victims were beaten for lengthy periods of time but were not killed.³⁰¹ The *Akayesu* tribunal found that similar acts qualified as serious bodily harm.³⁰² Other cases pointed to evidence of bullet and machete wounds of persons who survived mass killings when holding that serious bodily harm occurred.³⁰³

Acts of sexual violence perpetrated against Rohingya women and girls also qualify as serious harm. State security forces engaged in systematic rapes and gang-rapes in several villages throughout Maungdaw, Buthidaung, and Rathedaung townships during the military-led “clearance operations.” U.N. humanitarian reports indicate a cumulative total of 6,097 incidents of gender-based violence against Rohingya women and girls reported from late August 2017 through late March 2018, including, but not limited to, sexual violence.³⁰⁴ In the earlier operations starting in October 2016, Fortify Rights documented how soldiers raped and gang-raped Rohingya women and girls in at least seven villages in Maungdaw Township. These rapes occurred on a large scale: one doctor testified that he had treated 63 rape survivors, and one aid worker knew of approximately 30 survivors, all during the first “clearance operations” that began in October 2016. The ICTR has issued several convictions for genocide based on serious harm caused by similar acts of rape and sexual assault.³⁰⁵

In at least six villages beginning on August 25, 2017, Fortify Rights documented how soldiers and civilians working with the Myanmar Army killed children and infants through shootings, knife and sword attacks, burnings, and even by stomping on them and throwing them into rivers. Similar acts also occurred in October and November 2016 in at least eight villages in Maungdaw

²⁹⁸ *Prosecutor v. Radislav Krstić*, ICTY, Case No. IT-98-33-T, Judgment (Trial), August 2, 2001, para. 513 (citing *Akayesu*, Case No. ICTR-96-4-T, para. 502).

²⁹⁹ *Ibid.*

³⁰⁰ *Prosecutor v. Blagojevic and Jokic*, ICTY, Case No. IT-02-60-T, Judgment (Trial), January 17, 2005, para. 646 (citing ICTY and ICTR cases).

³⁰¹ As noted above, these kinds of attacks occurred not only during the August 2017 operations, but also in the October to November 2016 operations.

³⁰² *Akayesu*, Case No. ICTR-96-4-T, para. 113-16.

³⁰³ See, e.g., *Krstić*, Case No. ICTY-98-33-T, para. 514; *Kayishema and Ruzindana*, Case No. ICTR-95-1-T, para. 547.

³⁰⁴ Inter Sector Coordination Group, *Situation Report: Rohingya Refugee Crisis*, March 25, 2018, https://reliefweb.int/sites/reliefweb.int/files/resources/180325_iscg_sitrep.final_.pdf (accessed July 11, 2018). See also, Human Rights Watch and Fortify Rights, *Submission to CEDAW regarding Myanmar’s Exceptional Report on the Situation of Women and Girls from Northern Rakhine State*, May 2018, http://www.fortifyrights.org/downloads/Myanmar_Cedaw_Submission_HRW_FR_May_24_2018.pdf (accessed July 11, 2018).

³⁰⁵ See, e.g., *Prosecutor v. Muhimana*, ICTR, Case No. ICTR-95-1B-T, Judgment (Trial), April 28, 2005, para. 269-75, 513; *Prosecutor v. Gacumbitsi*, ICTR, Case No. ICTR-01-64-T, Judgment (Trial), June 17, 2004, para. 291-93.

Township, as documented in Annex A of this report. As noted earlier in this report, witnesses to these events showed signs of severe traumatic stress. In addition to the killings and beatings of both adults and children, survivors also witnessed mass graves, the burning of bodies, and the mutilation of corpses prior to burial. Others buried bodies that perpetrators left scattered.

It is likely that some, if not all, of these acts have impaired the mental faculties and severely hampered the ability of survivors to lead normal lives in the future. The ICTR has noted that both serious bodily and mental harm is “[i]nherent in the act of mass killing.”³⁰⁶ Moreover, the ICTY has held that psychological trauma caused to the survivors of the Srebrenica massacre constituted serious mental harm.³⁰⁷ The acts described in this report similarly involved large-scale mass killings, which inevitably scar those who witness and survive them. It is thus likely that the mental impairment inflicted by those acts qualifies as serious mental harm.

Inflicting Conditions of Life Calculated to Bring about Physical Destruction as a Prohibited Act of Genocide

The infliction of conditions of life calculated to bring about the physical destruction of a group as a prohibited criminal act of genocide refers to methods of destruction that do not immediately kill members of the group but ultimately seek the group’s obliteration.³⁰⁸ The conditions must be inflicted deliberately, but the group does not need to be destroyed in whole or in part for it to be a prohibited act.³⁰⁹

International criminal tribunals have interpreted this crime to include: subjecting a group to a subsistence diet, denial of access to basic medical services, and systematic expulsion from homes.³¹⁰ The act also encompasses “the creation of circumstances that would lead to a slow death,” such as denying access to appropriate clothing, hygiene, and housing as well as forcing members of the group to perform “excessive work or physical exertion.”³¹¹ The International Commission of Inquiry on Darfur pointed to “systematically destroying [the protected groups’] villages and crops, . . . expelling them from their homes, and . . . looting their cattle.”³¹²

Measures intended to destroy the cultural identity of a group, including its linguistic or religious characteristics, do not fit within the parameters; rather, only measures intended to physically or biologically destroy the group suffice.³¹³ The case law also indicates that displacement or deportation alone does not necessarily amount to the imposition of conditions of life calculated to destroy a group, as the intention of such measures is typically to dissolve or remove a group from a particular area, rather than to destroy it.³¹⁴ In fact, the drafters of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) did not accept a proposal to include in the Convention displacement due to the need to escape ill-treatment.³¹⁵

³⁰⁶ *Kayishema and Ruzindana*, Case No. ICTR-95-1-T, para. 547.

³⁰⁷ *Blagojevic and Jokic*, Case No. IT-02-60-T, para. 647, 650-52 (describing persons who survived mass executions).

³⁰⁸ *Akayesu*, Case No. ICTR-96-4-T, para. 505.

³⁰⁹ *Brdanin*, Case No. IT-99-36-T, para. 691-92.

³¹⁰ *See, e.g., Akayesu*, Case No. ICTR-96-4-T, para. 506; *see also Kayishema and Ruzindana*, Case No. ICTR-95-1-T, para. 116 (also including rape).

³¹¹ *Stakic*, Case No. ICTY-97-24-T, para. 517.

³¹² International Commission of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, January 22, 2005, http://www.un.org/news/dh/sudan/com_inq_darfur.pdf (accessed July 11, 2018), para. 507.

³¹³ International Law Commission, *Report of the International Law Commission on the Work of its Forty-Eighth Session (6 May-26 July 1996)*, U.N. Doc. A/51/10, 1996, p. 45-46.

³¹⁴ *Stakic*, Case No. ICTY-97-24-T, para. 519, 557.

³¹⁵ *Ibid.* at para. 519.

However, if the deportation is carried out in order to physically destroy the group, rather than merely to displace or dissolve it, the acts would qualify.³¹⁶

Certain actions taken by Myanmar authorities and civilians may constitute an intentional infliction of conditions of life calculated to bring about the physical destruction of the Rohingya. During the “clearance operations,” state security forces and civilians systematically engaged in arson attacks that destroyed several hundred Rohingya villages, or Rohingya areas within “mixed” villages, in Maungdaw, Buthidaung, and Rathedaung townships. These attacks often destroyed food stocks and other means of subsistence, such as markets and means of transportation.

Further, beginning in October 2016 and continuing into the present, the Myanmar government expelled humanitarian aid organizations in northern Rakhine State and suspended food aid and healthcare—including lifesaving aid—that served Rohingya populations in northern Rakhine State. These expulsions affected only Rohingya, denying lifesaving aid to tens of thousands of people, which in some cases resulted in death. The WFP confirmed in 2017 that approximately 80,500 children below the age of five in northern Rakhine State would require treatment for severe acute malnutrition due to government-imposed restrictions on movement and aid. Moreover, the Government of Myanmar continues to confine more than 120,000 Muslims—mostly Rohingya—to more than 20 internment camps in five townships of Rakhine State, all survivors of anti-Rohingya violence in 2012. The authorities impose restrictions on Rohingya confined to these camps, including restrictions on the right to freedom of movement, access to livelihoods, and humanitarian aid.

Taken together, these acts—the destruction of food stocks, livestock, means of transportation, and homes, and the withholding of medical services and food aid—may qualify as the infliction of measures intended to destroy a protected group. State security forces, along with civilians, have destroyed and withheld items and services that are essential for human survival. These measures arguably have created “circumstances that would lead to a slow death.”³¹⁷ For example, in the *Brdanin* case, the ICTY found that perpetrators inflicted conditions of life calculated to bring about physical destruction on victims in detention camps that had limited water, insufficient food, lice infestations, restricted or no access to medical care, and requirements to perform heavy physical labor.³¹⁸

Protected Groups

The crime of genocide is distinguished from other international crimes by its focus on the protection of a group, rather than an individual.³¹⁹ The Genocide Convention lists four types of protected groups: national, ethnic, racial, and religious.³²⁰ These same four groups are recognized and protected under the Rome Statute of the ICC, the Statute of the ICTY, and the Statute of the ICTR.³²¹ However, these instruments do not provide further guidance as to the definition of such groups and the qualifications for membership.

³¹⁶ See, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, International Court of Justice, I.C.J. Reports 2007, Judgment, February 26, 2007, para. 190 (noting that deportation or displacement does not necessarily qualify, unless the actions are taken “with a view to the destruction of the group, as distinct from its removal from the region”); International Law Commission, *Report of the International Law Commission*, p. 46 (“The Commission [] considered that [the subparagraph describing conditions of life] covered deportation when carried out with the intent to destroy the group in whole or part.”)

³¹⁷ *Stakic*, Case No. ICTY-97-24-T, para. 517. But see, *Kayishema and Ruzindana*, Case No. ICTR-95-1-T, para. 548 (deprivations in food, water, and sanitary and medical facilities “were a result of the persecution of the Tutsis, with the intent to exterminate them . . . These deprivations were not the deliberate creation of conditions of life.”)

³¹⁸ *Brdanin*, Case No. IT-99-36-T, para. 909-62 (concluding, however, in para 989, that the acts were not taken with the specific intent required for genocide).

³¹⁹ International Law Commission, *Report of the International Law Commission*, p. 45.

³²⁰ Genocide Convention, art. 2.

³²¹ Rome Statute, art. 6; Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring

International tribunals interpreting these instruments have generally concluded that genocide protects “stable,” rather than “mobile” groups.³²² Whereas persons can choose to join mobile groups, such as political parties or ideological movements, membership in stable, protected groups is largely unalterable, unchallengeable, and determined at birth.³²³

Another key question is whether to define groups objectively—with reference to facts that exist in the world—or subjectively—by looking to the perceptions of various actors. In the case of *Akayesu*, the ICTR focused on objective elements. As such, it defined a national group by its members’ common citizenship or national origin; an ethnic group by common language or culture; a religious group by common religion, denomination, or mode of worship; and a racial group by “hereditary physical traits often identified with a geographical region.”³²⁴ However, international jurisprudence increasingly looks to subjective understandings of groups, albeit in conjunction with an analysis of objective elements.³²⁵ Tribunals typically refer to the subjective perceptions of the perpetrators, though some have left room for perceptions of the survivors or others in society.³²⁶

There is some support in the case law and academic literature for the idea that the four enumerated groups are not separate and distinct categories but rather overlap and help define each other to describe a single phenomenon: “national minorities.”³²⁷ In this view, the analysis of whether certain individuals comprise a protected group is a more holistic exercise, taking into account characteristics of each enumerated category without necessarily finding that the group fits squarely within one or another. Similarly, there is some movement towards analyzing national, ethnic, and racial groups together as the categories are difficult to distinguish in practice.³²⁸

The Rohingya likely constitute a protected group for the purposes of the crime of genocide. Objective factors support this conclusion, particularly in regard to the ethnic category. The Rohingya speak their own language, which is distinct from other languages spoken in the

States, Between 1 January 1994 and 31 December 1994, adopted November 8, 1994, U.N.S.C. Res. 955, U.N. Doc. S/RES/955, November 8, 1994; Statute of the International Criminal Tribunal for the Former Yugoslavia, adopted May 25, 1993, U.N.S.C. Res. 827, U.N. Doc. S/RES/827, art. 4.

³²² *Akayesu*, Case No. ICTR-96-4-T, para 511; *Prosecutor v. Goran Jelisić*, ICTR, Case No. ICTR-95-10-T, Judgment (Trial), December 14, 1999, para 69.

³²³ *Akayesu*, Case No. ICTR-96-4-T, para. 511.

³²⁴ *Id.* para. 512–15.

³²⁵ As expressed by the ICTY in the case of *Jelisić*, there is increasing skepticism of the accuracy of objective definitions of the four groups, particularly the ethnic, racial, and national categories. *Jelisić*, Case No. ICTR-95-10-T, para. 70. See also, *Prosecutor v. Rutaganda*, ICTR, ICTR-96-3-T, Judgment (Trial), December 6, 1999, para. 56 (“[M]embership of a group is, in essence, a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction. In some instances, the victim may perceive himself/herself as belonging to the said group.”); *Stakić*, Case No. ICTY-97-24-T, para. 25 (noting that the jurisprudence does not allow for the consideration of subjective definitions alone without reference to objective elements).

³²⁶ See, e.g., *Jelisić*, Case No. ICTR-95-10-T, para. 70 (referring to the “stigmatisation of the group as a distinct national, ethnical or racial unit” and the propriety of evaluating groups “from the point of view of those persons who wish to single that group out from the rest of the community”); *Kayishema and Ruzindana*, Case No. ICTR-95-1-T, para. 98 (defining an ethnic group as “one whose members share a common language and culture; or, a group which distinguishes itself, as such (self identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others)”)

³²⁷ *Krstić*, Case No. ICTY-98-33-T, para. 555–66 (stating that the list of groups “was designed more to describe a single phenomenon ... rather than to refer to several distinct prototypes of human groups”); William A. Schabas, *Groups Protected by the Genocide Convention: Conflicting Interpretations from the International Criminal Tribunal for Rwanda*, LSA Journal of International and Comparative Law, Vol. 6 Iss. 2, Art. 10, 2000, <https://nsuworks.nova.edu/ilsajournal/vol6/iss2/10> (accessed July 11, 2018), pp. 375, 385–87.

³²⁸ International Commission of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, para. 494 (noting that the notions “national” and “ethnical” may overlap); Andreas Henriksson, *The Interpretation of the Genocide Convention’s Protected Groups Definition*, Master’s Thesis, University of Lund Faculty of Law, 2003, <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1558257&fileId=1564593> (accessed July 11, 2018), pp. 1–2.

region.³²⁹ They generally live in a concentrated region—Rakhine State—within the country, and they typically reside in Rohingya-only villages or Rohingya-only areas within mixed villages.³³⁰ The Rohingya are indigenous to the area known today as Rakhine State; the group itself asserts that they are descended from Arab traders who arrived in Myanmar centuries ago, though the Myanmar government contends that they do not exist as an ethnic group and are instead more recent immigrants from Bangladesh.³³¹ On May 13, 2016, Myanmar’s military Commander-in-Chief Min Aung Hlaing stated that there were no Rohingya in Myanmar, only “Bengalis . . . the term Rohingya does not exist and we will not accept it.”³³² There is, however, historical support for the position that the Rohingya are a distinct ethnicity and have lived in Myanmar for centuries.³³³ The Rohingya practice a Sufi-influenced version of Sunni Islam and represent a majority of Muslims within Myanmar, which is largely Buddhist.³³⁴ There is also at least a perception that Rohingya have a distinct appearance, with darker skin than ethnic Burmese.³³⁵

The government, others in Myanmar society, and the Rohingya themselves also view and treat the Rohingya as a distinct group. Although the government now denies the Rohingya the status of a recognized ethnic group, it previously recognized the Rohingya ethnicity.³³⁶ For example, former President Sao Shwe Thaik, the country’s first president, said in 1959: “Muslims of [Rakhine] certainly belong to the indigenous races of Burma. If they do not belong to the indigenous races, we also cannot be taken as indigenous races.”³³⁷

Moreover, the evidence shows that the group is treated as an “other” in Myanmar society, on ethnic, racial, religious, and even quasi-national lines.³³⁸ The Rohingya are systematically denied

³²⁹ In a 1799 study of languages in Myanmar (then Burma), Francis Buchanan recorded three dialects derived from India: “The first is that spoken by the Mohammedans, who have long settled in Arakan, and who call themselves *Rooinga*, or natives of Arakan.” Buchanan, *A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire*.

³³⁰ This point is unarguable. Most Rakhine Buddhists allege Rohingya-populated villages were previously Rakhine, and the government created a program to change the ethnic demographics of northern Rakhine State through *natala* villages. See, Wade, “The West Bank of the East,” *Los Angeles Review of Books*. See also, Fortify Rights interviews with Rohingya Muslims and Rakhine Buddhists, 2014–2018, Rakhine State, Myanmar, and Cox’s Bazar District, Bangladesh.

³³¹ Fortify Rights interviews with Rohingya elders, Cox’s Bazar District, January 2018; For history see also, Moshe Yegar, *The Muslims of Burma: A Study of a Minority Group*, Schriftenreihe des Sudasien-Instituts der Universitat Heidelberg, 1972. For denials of Rohingya existence, see for example, “Burma: Military Chief Denies Existence of ‘Rohingya’ Term,” *Asian Correspondent*, May 16, 2016, <https://asiancorrespondent.com/2016/05/burma-military-chief-denies-existence-of-rohingya-term/#YXCi4rEgQttidDCU.99> (accessed July 11, 2018).

³³² “Burma: Military Chief Denies Existence of ‘Rohingya’ Term,” *Asian Correspondent*.

³³³ Maung Zarni and Alice Cowley, *The Slow-Burning Genocide of Myanmar’s Rohingya*, Pacific Rim Law and Policy Journal, Vol. 23, No. 3, June 2014 (listing several historical sources, including Buchanan, *A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire* (noting in 1799 that the “Rooinga” had “long settled” in Rakhine State).

³³⁴ Myanmar is approximately 89.8 percent Buddhist according to the 2014 national census. Myanmar Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census*. See also, Eleanor Albert, “The Rohingya Crisis,” *Council on Foreign Relations*, April 20, 2018, <https://www.cfr.org/backgrounder/rohingya-crisis> (accessed July 11, 2018).

³³⁵ Tasnima Uddin, “What Created the Blueprint for Rohingya Genocide in Myanmar? Western Colonialism,” *The Independent*, September 6, 2007, <https://www.independent.co.uk/voices/rohingya-genocide-myanmar-aung-sun-suu-kyi-colonialism-bangladesh-a7932876.html> (accessed July 11, 2018); Kyaw Zwa Moe, “Skin Color and Prejudice Endangers Rohingya,” *The Irrawaddy*, February 13, 2009, http://www2.irrawaddy.com/opinion_story.php?art_id=15110 (accessed July 11, 2018).

³³⁶ Zarni et. al., *The Slow-Burning Genocide of Myanmar’s Rohingya* (also noting other examples of government recognition of the Rohingya).

³³⁷ Benedict Rogers, “A Friend’s Appeal to Burma,” *Mizzima News*, June 19, 2012, <http://archive-1.mizzima.com/opinion/commentary/7349-a-friends-appeal-to-burma> (accessed July 12, 2018).

³³⁸ See, “Government and People of Myanmar Do Not Recognize the Term “Rohingya” as it is an Invented Terminology,” *Global New Light of Myanmar*, November 9, 2015, <http://www.burmalibrary.org/docs21/GNLM2015-11-09-red.pdf> (accessed July 11, 2018).

citizenship in Myanmar, such that they are stateless and have no affirmative nationality.³³⁹ Pursuant to the 1982 Citizenship Law, the government denies Rohingya equal access to full citizenship rights and regards them as “Bengali” interlopers from Bangladesh.³⁴⁰ Even Rohingya whose families have lived in Myanmar for hundreds of years are restricted to classification as “Bengali,” a term used pejoratively to denote the Rohingya in Myanmar.³⁴¹ In practice, the government provides only temporary resident identity cards to Rohingya, but even those were recently cancelled.³⁴² The government also refused to count Rohingya during a U.N.-supported census unless they identified themselves as “Bengali.”³⁴³ The government has also placed other kinds of restrictions on the Rohingya that do not apply to others in Myanmar, including restrictions on marriage, childbearing, and movement.³⁴⁴

Government officials and others in Myanmar society often speak out against the Rohingya, calling them “Bengali” or “*kalar*,” a derogatory term used in reference to Rohingya. For example, as noted earlier in this report, a Rakhine State Member of Parliament stated that “[a]ll Bengali villages are like military strongholds.”³⁴⁵ Wirathu, an extremist monk, accused the “Bengalis” of destroying Myanmar’s religion and people.³⁴⁶ Human Rights Watch has identified inflammatory anti-Rohingya public statements and pamphlets put forth by “Arakanese political parties, monks’ associations, and community groups.”³⁴⁷ For example, in 2012, a group of monks issued a statement calling for cleansing Rakhine State of “bad pagan Bengali (*kalar*).”³⁴⁸

The Rohingya also view themselves as a distinct group. Eyewitnesses and survivors interviewed for this report consistently identified themselves as Rohingya, a factor pointed out by the *Akayesu* tribunal when it determined that the Tutsis were an ethnic group.³⁴⁹ The mere fact that the group call themselves by one unifying name, the “Rohingya,” is telling. Further, the existence of Rohingya-led organizations—including both human rights organizations, such as the Burmese Rohingya Organization UK, and armed groups, such as ARSA and the earlier Rohingya Solidarity Organization (RSO)—indicate a level of self-identification as a people.³⁵⁰

Taken as a whole, this objective and subjective evidence is sufficient to demonstrate that the Rohingya constitute a protected group, primarily—though not necessarily exclusively—on ethnic grounds. This conclusion is based not only on the Rohingyas’ culture and language, but also on subjective perceptions of the Rohingya as evidenced by policies that single out the Rohingya, inflammatory statements made against the group, and the views of the members of the group themselves. The Rohingya may also be considered a religious group due to their adherence to Islam; however, if the existence of other oppressed Muslims in Myanmar precludes this, the Muslim faith of the Rohingya is still yet another element of the group’s cultural identity. Finally,

³³⁹ Yale Law School Allard K. Lowenstein International Human Rights Clinic and Fortify Rights, *Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar’s Rakhine State?*, October 2015, http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf (accessed July 11, 2018).

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² The *Akayesu* tribunal discussed the identity cards that indicated whether a person was Tutsis or Hutus when the tribunal found that the Tutsis constituted a protected group. *Akayesu*, Case No. ICTR-96-4-T, para 702. *See also*, “The Rohingya Crisis,” *Council on Foreign Relations*.

³⁴³ The Rohingya were subsequently not counted in the 2014 census. “The Rohingya Crisis,” *Council on Foreign Relations*.

³⁴⁴ Fortify Rights, *Policies of Persecution*.

³⁴⁵ “Amid News Blackout, Myanmar Politician Blames Muslims for Torched Villages,” *Radio Free Asia*.

³⁴⁶ *See, e.g.*, “Wirathu Speech,” *YouTube*, April 21, 2018, <https://www.youtube.com/watch?v=IEJ57pUmz9U&feature=youtu.be> (accessed July 11, 2018).

³⁴⁷ Human Rights Watch, “*All You Can Do Is Pray*,” pp. 12, 24–30.

³⁴⁸ *Id.* at 25–26.

³⁴⁹ *Akayesu*, Case No. ICTR-96-4-T, para 702.

³⁵⁰ *See*, Human Rights Watch, *All You Can Do Is Pray*, p. 28.

the Rohingya may also constitute a national group based on the Myanmar government's treatment of the Rohingya as "Bengali" rather than Myanmar citizens or a racial group due to differences in heritage and physical appearance between Rohingya and ethnic Burmans. Overall, whether analyzed holistically or in reference to particular categories, the Rohingya qualify as a "national minority" of the sort intended for genocide protection.

Intent to Destroy

In order for the crime of genocide to exist, the perpetrator's actions must have been motivated by two separate mental elements, namely a "general intent" to commit the prohibited act(s) and a special intent to bring about, through those acts, the destruction of the protected group in whole or in part.³⁵¹ This special intent to destroy, otherwise referred to as genocidal intent, distinguishes the crime of genocide from other international crimes, such as crimes against humanity, and reflects the gravity of the crime. Genocidal intent can only be the result of a deliberate and conscious aim, meaning prohibited acts must be done with a clear purpose or design to destroy or exterminate a group in whole or in part.³⁵²

In order to convict under genocide, as in all crimes before the ICC, the court must be convinced beyond a reasonable doubt.³⁵³ Critically, for the purposes of issuing a warrant for the arrest of an individual for alleged criminal responsibility in the commission of genocide, the prosecutor need only show that "evidence provides reasonable (not conclusive or definitive) grounds to believe that the person committed a crime within the jurisdiction of the Court."³⁵⁴ Similarly, the standard of proof required with respect to genocidal intent at the pre-trial, arrest-warrant stage is met if the evidence provides "reasonable grounds" to believe that genocidal intent is met.³⁵⁵ Put another way, genocidal intent would not need to "be the only reasonable conclusion to be drawn from the evidence" at the pre-trial stage.³⁵⁶

While charges of genocide are brought against individual suspected perpetrators, as an initial matter, tribunals must necessarily evaluate whether broad-based or collective intent existed to destroy a protected group in whole or in part. As such, genocidal intent analysis functions akin to a determination of whether a "genocidal campaign" occurred. In the cases considering liability for acts of genocide, this collective intent analysis is performed prior to examining individual liability.³⁵⁷

Additionally, in determining intent, the *Akayesu* tribunal noted that "it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were

³⁵¹ International Law Commission, *Report of the International Law Commission*, pp. 45-46.

³⁵² *Prosecutor v. Milos Stupar et al.*, ICTY, Case No. X-KR-05/24, First Instance Verdict, July 29, 2008, para. 56; *Jelisić*, Case No. ICTR-95-10-T, para. 108; *Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, Judgment, June 1, 2000, para. 21 (with reference to *Kupreskic et al.*)

³⁵³ Rome Statute, art. 66(3).

³⁵⁴ *Prosecutor v. Omar Hassan Ahmad Al-Bashir*, ICC, Case No. ICC-02/05-01/09-OA, Decision (Appeal) February 3, 2010, para. 17 (finding that, "at this preliminary [pre-trial, warrant seeking] stage, it does not have to be certain that that person committed the alleged offence. Certainty as to the commission of the crime is required only at the trial stage of the proceedings (see article 66 (3) of the Statute), when the Prosecutor has had a chance to submit more evidence.")

³⁵⁵ *Id.* at para. 18.

³⁵⁶ *Ibid.*

³⁵⁷ For example, in evaluating Radislav Krstic liability for genocide in Srebrenica, the ICTY explained that "[t]he gravity and the scale of the crime of genocide ordinarily presume that several protagonists were involved in its perpetration. Although the motive of each participant may differ, the objective of the criminal enterprise remains the same. In such cases of joint participation, the intent to destroy, in whole or in part, a group as such must be discernible in the criminal act itself, apart from the intent of particular perpetrators." *Krstić*, Case No. ICTY-98-33-T, para. 549. See also, Claus Kress, *The International Court of Justice and the Elements of the Crime of Genocide*, 18 *European Journal of International Law*, Vol 18, 2007, pp. 622-2.

committed by the same offender or others.”³⁵⁸ In that vein, the tribunal evaluated Akayesu’s crimes in the context of the broader Rwandan genocide, holding that its past determination that genocide occurred in Rwanda helped support its finding that Akayesu acted with genocidal intent when he committed his crimes.³⁵⁹ Additionally, the *Stanić* tribunal held that courts may consider “whether the apparent intentions of others . . . could provide indirect evidence of the accused’s ‘own intentions’ in addition to any ‘direct evidence’ of the defendant’s ‘genocidal intent.’”³⁶⁰

International tribunals would ideally have at their disposal direct and explicit evidence of genocidal intent, such as public statements or confessions indicating unequivocally that the perpetrator committed relevant prohibited acts with genocidal intent. However, in most cases, direct evidence of genocidal intent is often not present or difficult to find. As a result, international jurisprudence accepts that genocidal intent can be inferred from the 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 in a particular group, or the repetition of destructive and discriminatory acts.”³⁶¹

In effect, it is possible to infer the genocidal intention from the acts or utterances of the accused or from the general context in which other culpable acts were perpetrated systematically against the same group, regardless of whether such other acts were committed by the same or different perpetrators.³⁶² This is further confirmed by the ICTY, which found that genocidal intent can be derived “from the combined effect of speeches or projects laying the groundwork for and justifying the acts, from the massive scale of their destructive effect and from their specific nature, which aims at undermining what is considered to be the foundation of the group.”³⁶³

While no single factor is dispositive in proving genocidal intent, common factors considered and weighed by the ad hoc tribunals and the ICC have included: (1) the general political doctrine that gave rise to the acts; (2) the use of derogatory language toward members of the targeted group; (3) the scale of atrocities committed; (4) the systematic nature and their atrociousness; (5) the deliberate and systematic targeting of victims on account of their membership in a particular group; and (6) targeting all members of the group.

When applying the factors used to examine genocidal intent in the ICC, the ICTY, and the ICTR to the crimes perpetrated by Myanmar’s security forces and their proxies against the Rohingya, the findings strongly indicate that the perpetrators committed prohibited acts with the intent of destroying the Rohingya in whole or in part.

The General Political Doctrine

“Political doctrine” has been succinctly defined as, “A policy, position or principle advocated, taught or put into effect concerning the acquisition and exercise of the power to govern or

³⁵⁸ *Akayesu*, Case No. ICTR-96-4-T, para. 523.

³⁵⁹ The tribunal also stated that “Owing to the very high number of atrocities committed against the Tutsi, their widespread nature not only in the commune of Taba, but also throughout Rwanda, and to the fact that the victims were systematically and deliberately selected because they belonged to the Tutsi group, with persons belonging to other groups being excluded, the Chamber is also able to infer, beyond reasonable doubt, the genocidal intent of [Akayesu] in the commission of the above-mentioned crimes.” *Id.* at para. 728-30.

³⁶⁰ *Stakić*, Case No. IT-97-24-T, para. 40.

³⁶¹ See, *Prosecutor v. Goran Jelisić*, ICTR, Case No. ICTR-95-10-A, (Appeal), para. 47 (July 5, 2001); International Commission of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, para. 502.

³⁶² *Akayesu*, Case No. ICTR-96-4-T, para. 728.

³⁶³ *Prosecutor v. Radovan Karadžić*, ICTY, Case No. IT-95-5/18-T, Judgment (Trial), March 24, 2016, para. 95.

administrate in society.”³⁶⁴ In the trials of Serbian leaders Radovan Karadžić and Ratko Mladic, the ICTY described the political doctrine prevailing in Bosnia and Herzegovina in the lead up to atrocity crimes as one pursuing a “project of an ethnically [Serbian] homogeneous State [e.g., 'Greater Serbia'] formulated against a backdrop of mixed populations.”³⁶⁵ The tribunal found that this policy “necessarily envisages the exclusion of any group not identified with the Serbian one” and “does not exclude the use of force against civilian populations.”³⁶⁶

Against this backdrop, Bosnian Serb military and police engaged in unlawful confinement of Bosnian Muslims and Croats, appropriated and plundered their personal property, destroyed places of worship, and “unlawfully expelled or deported” thousands of civilians.³⁶⁷ The tribunal stressed that given the targeted group could not claim any other territory as its own, the “massive deportations” done under the guise of this policy “may be construed as the first step in a process of elimination” and the goals of the policy “would lead to the destruction of the non-Serbian groups.”³⁶⁸

The political doctrine, or policy, in Myanmar vis-à-vis the Rohingya appears to similarly be one where the Rohingya are to be excluded from Myanmar society and removed from the country as an unwanted, “illegal” group. Indeed, on May 13, 2016, Myanmar’s military Commander-in-Chief Senior General Min Aung Hlaing stated that there were no Rohingya in Myanmar, only “Bengalis . . . the term Rohingya does not exist and we will not accept it.”³⁶⁹ Further in October 2016, Myanmar state media referred to Rohingya as “foreigners who profess other religions” and in relation to the Rohingya stressed that “[t]he government is responsible for solving any problems of offending the country’s sovereignty, threatening its populace’s lives and property, violating rule of law and causing instability.” The article concluded by equating the Rohingya with a “thorn” that “has to be removed as it pierces.”³⁷⁰ Moreover, following the 2017 attacks, Senior General Min Aung Hlaing stated that the Rohingya “do not have any characteristics or culture in common with the ethnicities of Myanmar” and went on to state that the current conflict was “fueled because the Bengalis demanded citizenship.”³⁷¹

Soldiers in Rakhine State also threatened Rohingya with violence ahead of the attacks. For example, in October 2016, soldiers in Tula Toli village who had conscripted forced labor from Rohingya residents issued a chilling threat to the laborers months before the military attacked the village: “A soldier said, ‘If there is violence again, we’ll destroy you all.’ They said they would finish and kill all of us.”³⁷² Similarly, Amnesty International obtained an audio recording of a Myanmar Army soldier speaking with a Rohingya resident of Inn Dinn village in Maungdaw Township—the site of a massacre documented initially by *Reuters* journalists Wa Lone and Kyaw Soe Oo. The soldier said: “We got an order to burn down the entire village if there is any disturbance. If you villagers aren’t living peacefully, we will destroy everything.”³⁷³ Within days, the Myanmar Army razed Rohingya areas of Inn Din, killed residents and discarded their bodies in a mass grave.³⁷⁴

³⁶⁴ Random House, *Webster’s Unabridged Dictionary*, 2nd Ed. (Random House, Inc.: New York, 1997).

³⁶⁵ *Karadžić and Mladić*, ICTY, Case Nos. IT-95-5-R61 and IT-95-18-R61, para. 2.

³⁶⁶ *Bosnia and Herzegovina*, I.C.J. Reports 2007, para. 2.

³⁶⁷ *Id.* at para. 13–16.

³⁶⁸ *Ibid.*

³⁶⁹ “Burma: Military Chief Denies Existence of ‘Rohingya’ Term,” *Asian Correspondent*.

³⁷⁰ Khin Maung Oo, “The Thorn Needs Removing as It Pierces!” *Global New Light of Myanmar*.

³⁷¹ Poppy Elena McPherson and Simon Lewis, “Exclusive: Myanmar Rejects Citizenship Reform at Private Rohingya Talks,” *Reuters*, June 26, 2018, <https://www.reuters.com/article/us-myanmar-rohingya-meeting-exclusive/exclusive-myanmar-rejects-citizenship-reform-at-private-rohingya-talks-idUSKBN1jNoD7> (accessed July 11, 2018).

³⁷² Fortify Rights interview with #33-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

³⁷³ Amnesty International, *We Will Destroy Everything*.

³⁷⁴ *Ibid.*

While remarks and rhetoric help show the political doctrine, ultimately it is the policies that demonstrate the doctrine in action. As in Bosnia, the political doctrine prevailing in Myanmar in the years leading to the 2017 violence laid “the first step in a process of elimination.” The *Karadžić* opinion spends over a dozen pages detailing the actions the Serbian nationalists took over a course of years in furtherance of its political doctrine. A similar, albeit truncated discussion of the actions and policies the Myanmar government and military took over the years in furtherance of its political doctrine of excluding the Rohingya and seeking their removal from the country is warranted here.

Beginning in 1977, the military undertook Operation *Naga Min* (Dragon King), which was ostensibly to scrutinize and register residents of three states and two divisions in the country as either citizens or foreigners.³⁷⁵ It began in Rakhine State in February 1978.³⁷⁶ During the operation, the Myanmar Army reportedly razed Rohingya villages and committed severe human rights violations, forcing more than 200,000 Rohingya into Bangladesh.³⁷⁷ Rohingya refugees in Bangladesh alleged Myanmar Army soldiers burned down their homes while committing killings, rape, and other abuses.³⁷⁸ Myanmar authorities at the time blamed the situation on “wild Muslim extremists” and “rampaging Bengali mobs.”³⁷⁹ After being forcibly returned to Myanmar, many Rohingya allegedly faced rape, imprisonment, and torture.³⁸⁰ Just four years later, pursuant to the 1982 Citizenship Law, Myanmar authorities designated Rohingya as “foreign residents” or “non-nationals,” rendering them effectively stateless.³⁸¹ These policy actions both further the goal of excluding the Rohingya from society and removing them from the country.

Myanmar’s repressive and violent policies seemingly aimed at stripping away Rohingya identity and cleansing the region of Rohingya continued throughout the 1990s and 2000s. In 1991, under the chilling names, “Operation Clean” and “Beautiful Nation,” the Myanmar Army embarked on additional clearance operations against the Rohingya. These operations ultimately forced 200,000 Rohingya or approximately one-fifth of the Rohingya population to once again flee to Bangladesh.³⁸² Also in the 1990s, Myanmar enforced an order that required all people in Rakhine State to gain permission before obtaining marriage licenses; however, the authorities enforced this law only against the Muslim populations of the area.³⁸³ To obtain marriage licenses, men and women must get permission from the state and adhere to rules that conflict with Rohingya religious beliefs.³⁸⁴ The rules require that men shave their beards for their license photographs. Similarly, the rules prohibit women from wearing religious head and face coverings.³⁸⁵

³⁷⁵ The *Naga Min* operation took place in three states and two divisions in Myanmar, including Rakhine State. See, Scully et al., *Burma 1978*, pp. 147–156.

³⁷⁶ *Ibid.*

³⁷⁷ See, *Ibid.* Statement by the Myanmar Ministry for Home and Religious Affairs, November 16, 1977, quoted in Human Rights Watch, *Burma: Rohingya Muslims*, p. 12; Human Rights Watch, *Malaysia/Burma: Living in Limbo*; Scully et al., *Burma 1978*, pp. 147–156.

³⁷⁸ The documentary film, *The Venerable W*, 2017, directed by Barbet Schroeder, includes historical footage of the exodus.

³⁷⁹ Quoted in Smith, *Burma: Insurgency and the Politics of Ethnicity*, p. 241. See also, Human Rights Watch, “All You Can Do Is Pray,” Appendix I; Irish Center for Human Rights, *Crimes Against Humanity in Western Burma*, pp. 91–92.

³⁸⁰ Akbar Ahmed and Harrison Akins, “Aung San Suu Kyi, the Rohingya of Burma and the Challenge of Faith,” *Brookings Institute*, October 24, 2012, <https://www.brookings.edu/opinions/aung-san-suu-kyi-the-rohingya-of-burma-and-the-challenge-of-faith/> (accessed July 11, 2018).

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ Fortify Rights, *Policies of Persecution*; “The Rohingya Crisis,” *Council on Foreign Relations*.

³⁸⁴ Fortify Rights, *Policies of Persecution*, p. 30.

³⁸⁵ *Ibid.*

As highlighted above, successive Myanmar governments instituted official policies severely restricting fundamental aspects of the Rohingya's daily lives, including limitations on marriage, childbearing, and movement. Speaking in July 2012, Myanmar's then Minister of Home Affairs, Lieutenant General Ko Ko, explained that authorities were further "tightening the regulations [against Rohingya] in order to handle travelling, birth, death, immigration, migration, marriage, construction of new religious buildings, repairing and land ownership and right to construct building [sic] of Bengalis [Rohingya] under the law."³⁸⁶ That is to say, essentially all aspects of daily life were restricted.

As explained above, Myanmar's Ministry for Development of Border Areas and National Races established *natala* villages in northern Rakhine State, transplanting Buddhist communities to predominantly Rohingya Muslim populated areas.³⁸⁷ The architect of the plan, Colonel Tha Kyaw, wrote in his 1988 directive that the *natala* project was: "To strive for the increase in Buddhist population to be more than the number of Muslim people by way of establishing Natala villages in Arakan [Rakhine] with Buddhist settlers from different townships and from out of the country."³⁸⁸

As of 2012 approximately 1.33 million Rohingya were believed to be living in Rakhine State out of a population of 3.33 million.³⁸⁹ The same year, reports of the rape and murder of Buddhist woman Thida Htwe by three Rohingya men sparked violence in June 2012 between the Rakhine Buddhist and Rohingya Muslim community in Rakhine State.³⁹⁰ The situation escalated into targeted attacks against Muslims in 13 of 17 townships in Rakhine State involving state security forces.³⁹¹ Perpetrators killed with impunity unknown masses of Rohingya, discarded bodies in mass graves, and razed whole villages in 13 of 17 townships of Rakhine State.³⁹² All told, the violence forced an estimated 200,000 Rohingya out of the country and more than 140,000 Rohingya into internment camps, where the government continues to confine them today.³⁹³

In the *Karadžić* opinion, the tribunal quoted an academic who stated, "the notion of Greater Serbia does not necessarily imply 'ethnic cleansing,' but the example of what happened during the war in Croatia demonstrates that it did, in fact, imply just that."³⁹⁴ Ultimately, the *Karadžić* tribunal found not only ethnic cleansing occurred under the influence of Serbian nationalists' political doctrine, but also genocide. Similarly, the political doctrine of effecting the complete exclusion of Rohingya from Myanmar society and pursuing their removal from the country, may not necessarily imply ethnic cleansing or genocide, but in the aftermath of the 2016 operations against the Rohingya, a precursor to the 2017 large-scale operations, a U.N. official described the Myanmar government's "ultimate goal" as the "ethnic cleansing of the Muslim minority in Myanmar."³⁹⁵

³⁸⁶ Fortify Rights, *Policies of Persecution*, p. 11.

³⁸⁷ See, Wade, "The West Bank of the East."

³⁸⁸ *Ibid.*

³⁸⁹ Jason Szep and Andrew Marshall, "Myanmar Minister Backs Two-Child Policy for Rohingya Minority," *Reuters*, June 11, 2013, <http://www.reuters.com/article/2013/06/11/us-myanmar-rohingya-idUSBRE95A04B20130611> (accessed July 11, 2018).

³⁹⁰ Human Rights Watch, "All You Can Do Is Pray," FN 39.

³⁹¹ *Ibid.* Fortify Rights interviews with Rohingya asylum seekers, Thailand, September 2013.

³⁹² Human Rights Watch, "All You Can Do Is Pray," FN 39.

³⁹³ UNOCHA, "Myanmar: Internal Displacement in Rakhine State as of November 30, 2013," November 30, 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/IDPMap_OCHA_MMR_0131_Rakhine_IDP_locations_A3_30Nov2013.pdf (accessed July 11, 2018). As of this writing, there are more than 120,000 Rohingya confined to more than 20 internment camps in five townships of Rakhine State.

³⁹⁴ *Karadžić and Mladić*, Case Nos. IT-95-5-R61 and IT-95-18-R61, para. 48.

³⁹⁵ "Myanmar Wants Ethnic Cleansing of Rohingya – UN Official," *BBC*, November 24, 2016, <https://www.bbc.com/news/world-asia-38091816> (accessed July 11, 2018).

A tribunal would likely find that the political doctrine and the policies supporting that political doctrine vis-à-vis the Rohingya demonstrates that not only was ethnic cleansing a goal, but that genocidal intent is a reasonable, but perhaps not the only, conclusion to be drawn from the evidence.

The Use of Derogatory Language

Tribunals have also examined the use of “divisive” or “derogatory” language towards the targeted group to evaluate whether special intent to commit genocide exists. In the *Akayesu* case, the ICTR tribunal detailed the extensive propaganda campaign and derogatory language used against the Tutsi.³⁹⁶ Additionally, military documents labeled the Tutsi as the “enemy,” and leaders like Akayesu made specific statements “on several occasions...calling, more or less explicitly, for the commission of genocide.”³⁹⁷

In Myanmar, derogatory and divisive rhetoric in the lead up to the military-led “clearance operations” in 2016 and 2017 provides further indication of genocidal intent. For example, in October 2012, Buddhist monks made public statements and organizations distributed pamphlets that “explicitly or implicitly deny the existence of the Rohingya ethnicity, demoniz[ing] them, and call[ing] for their removal from the country, even sometimes using the phrase ‘ethnic cleansing.’”³⁹⁸

Disturbing rhetoric increased after the onset of the October 2016 violence. On November 1, 2016, state-run media alluded to Rohingya as a “thorn” that “has to be removed as it pierces.”³⁹⁹ Further, on November 26, 2016, state-run media alluded to the Rohingya as “human fleas.”⁴⁰⁰ The article further stated: “We should not underestimate this enemy. At such a time when the country is moving toward a federal democratic nation, with destructive elements in all surroundings, we need to constantly be wary of the dangers of detestable human fleas.”⁴⁰¹ The *Akayesu* tribunal similarly highlighted the fact that Hutus who “wanted to exterminate the Tutsi in whole or in part” referred to the Tutsi ethnic group as “*Inyenzî*,” meaning “cockroaches.”⁴⁰²

In addition to traditional forms of media, Burmese individuals and groups have disseminated vitriolic Facebook posts dehumanizing and calling for widespread attacks against the Rohingya.⁴⁰³ For example, the widely-followed monk Ashin Wirathu, head of the ultranationalist group formerly known as *Ma Ba Tha*, posted a reference to the Rohingya in 2014, saying “You can be full of kindness and love, but you cannot sleep next to a mad dog. If we are weak, our land will become Muslim.”⁴⁰⁴ Representative posts from other individuals have included: “We should kill every Muslim. No Muslims should be in Myanmar,” with a response: “Why can’t we kick out the Muslim dogs?”⁴⁰⁵

³⁹⁶ *Akayesu*, Case No. ICTR-96-4-T, para. 123.

³⁹⁷ *Id.* at para. 123, 729.

³⁹⁸ Human Rights Watch, “*All You Can Do Is Pray*,” FN 39.

³⁹⁹ Khin Maung Oo, “The Thorn Needs Removing as It Pierces!” *Global New Light of Myanmar*.

⁴⁰⁰ Khin Maung Oo, “A Flea Cannot Make a Whirl of Dust,” *Global New Light of Myanmar*, November 26, 2016, <http://www.globalnewlightofmyanmar.com/a-flea-cannot-make-a-whirl-of-dust-but/> (accessed July 11, 2018).

⁴⁰¹ *Ibid.*

⁴⁰² *Akayesu*, Case No. ICTR-96-4-T, para. 149.

⁴⁰³ Facebook is a particularly influential medium in Myanmar. More than 14 million people out of a total population of 53 million utilize Facebook in Myanmar, and according to a 2016 survey of internet users in Myanmar, “reading news on the internet” often meant “news they had seen on their Facebook newsfeed, and [they] did not seem aware of other news sources online.” GSMA, *Mobile Phones, Internet, and Gender in Myanmar*, February 2016, <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/02/Mobile-phones-internet-and-gender-in-Myanmar.pdf> (accessed July 11, 2018), p. 55. Libby Hogan and Michael Safi, “Revealed: Facebook Hate Speech Exploded in Myanmar During Rohingya crisis,” *The Guardian*, April 2, 2018, <https://www.theguardian.com/world/2018/apr/03/revealed-facebook-hate-speech-exploded-in-myanmar-during-rohingya-crisis> (accessed July 11, 2018).

⁴⁰⁴ “Facebook Defends Track Record on Fighting Myanmar Hate Speech,” *Agence France Presse*, March 13, 2018, <http://openews24.com/facebook-defends-track-record-on-fighting-myanmar-hate-speech/> (accessed July 12, 2018)

⁴⁰⁵ Hereward Holland, “Facebook in Myanmar: Amplifying Hate Speech?,” *Al Jazeera*, June 14, 2014, <https://www.aljazeera.com>

The Institute for War and Peace Reporting, which conducted a two-year study of hate speech in Myanmar, stated that in the months prior to the 2017 violence, posts on Facebook vis-à-vis the Rohingya became “more organised and odious, and more militarised.”⁴⁰⁶ In reviewing the derogatory and divisive nature of Facebook posts in the lead up to the 2017 attacks, independent U.N.-appointed experts characterized Facebook as having “substantively contributed to the level of acrimony and dissension and conflict” in Myanmar and noted that “Facebook has become a beast . . . inciting a lot of violence and a lot of hatred against the Rohingya.”⁴⁰⁷

The dehumanizing and divisive language has continued in Myanmar even after the most recent attacks. On October 30, 2017, the prominent Buddhist monk Sitagu Sayadaw delivered a sermon to Myanmar Army soldiers at a training school in Karen State, in which he provided religious justification for the mass killing of non-Buddhists.⁴⁰⁸ A source in Myanmar—details withheld for security purposes—explained to Fortify Rights that Brigadier General Soe Tint Naing, former head of the military-officer training academy in Thandaung, Karen State, organized the speech.⁴⁰⁹ Sitagu Sayadaw delivered the speech on Brigadier General Soe Tint Naing’s last day at the academy; the next day, he was promoted to a position based in Rakhine State.⁴¹⁰

In another example, in April 2018, Wirathu posted a sermon on YouTube, in which he states:

[The] Bengalis are always blood thirsty. They have killed people of Rakhine State. They have burned Rakhine villages. They have destroyed religion of Rakhine. When these Bengalis come into the country without any restrictions, they are going to destroy religion of Myanmar. They are going to kill people of Myanmar. They are going to destroy the lives, shelters and properties of people of Myanmar . . . They are going to rape the girls of Myanmar. They will marry girls of Myanmar and will make them convert to their religion by force. Myanmar will soon become a land without rule of law.⁴¹¹

Taken as a whole, genocidal intent may be found in the extensive propaganda disseminated over several years in Myanmar to dehumanize the Rohingya and paint them as an existential threat to the country.

The Scale of Atrocities Committed

The scale of the atrocities committed is an important consideration examined by international tribunals when evaluating whether genocidal intent exists. While there is no number at which point mass murder tips to genocidal intent, the intention to destroy must target “a substantial part” of the group.⁴¹² Tribunals have also taken into account the span of time in which the atrocities took place, indicating that a combination of large numbers of individuals killed over a relatively short period of time may have a higher likelihood of supporting genocidal intent.⁴¹³

com/indepth/features/2014/06/facebook-myanmar-rohingya-amplifying-hate-speech-2014612112834290144.html (accessed July 11, 2018).

406 Hogan *et. al.*, “Revealed: Facebook Hate Speech Exploded in Myanmar During Rohingya crisis,” *The Guardian*.

407 Tom Miles, “UN Investigators Cite Facebook Role in Myanmar Crisis,” *Reuters*, March 13, 2018, <https://www.reuters.com/article/us-myanmar-rohingya-facebook/u-n-investigators-cite-facebook-role-in-myanmar-crisis-idUSKCN1GO2PN> (accessed July 12, 2018).

408 Matthew J. Walton, “Religion and Violence in Myanmar: Sitagu Sayadaw’s Case for Mass Killing,” *Foreign Affairs*, November 6, 2017, <https://www.foreignaffairs.com/articles/burma-myanmar/2017-11-06/religion-and-violence-myanmar> (accessed July 12, 2018).

409 Fortify Rights interview with source in Yangon, Myanmar, May 2018, details withheld for security purposes.

410 *Ibid.*

411 “Wirathu Speech,” *YouTube*.

412 *Krstić*, Case No. ICTY-98-33-T, para. 634.

413 *See e.g., Akayesu*, Case No. ICTR-96-4-T.

In the former Yugoslavia, the *Karadžić* tribunal cited the “massive scale of the destruction” by the Serbian forces as support for a finding of genocidal intent.⁴¹⁴ Specifically, the tribunal highlighted the “thousands of [Bosnian] Muslims summarily executed” at multiple sites, Bosnian Muslims and Croats being interned in camps, and Serbian forces appropriating personal property and destroying buildings to prevent the return of the group to their homes.⁴¹⁵ Separately, the *Krstić* tribunal stressed that “within a period of no more than seven days, as many as 7,000–8,000 men of military age were systematically massacred while the remainder of the Bosnian Muslim population present at Srebrenica, some 25,000 people, were forcibly transferred.”⁴¹⁶

The exact scope of the violence in Rakhine State beginning August 25, 2017 remains unclear as the Myanmar authorities have not allowed independent and impartial investigators to examine crime scenes. The Myanmar military also bulldozed at least 55 villages allegedly affected by the violence, destroying potential evidence in those locations.⁴¹⁷ However, testimony from survivors reporting attacks throughout northern Rakhine State suggests the vast nature of the violence. Aerial imagery analyzed by Human Rights Watch, showing the complete or partial destruction of at least 362 villages in all three townships of northern Rakhine State since August 25, 2017, corroborates this conclusion.⁴¹⁸ The vast scale of geographic destruction portends an equally high number of deaths.

According to *Médecins Sans Frontières* (MSF), in the span of less than one month, between August 25, 2017 and September 24, 2017, at least 6,700 Rohingya were killed “by violence” during the Myanmar military’s “clearance operations.”⁴¹⁹ MSF stresses that these are “the most conservative estimations.” MSF notes, “The numbers of deaths are likely to be an underestimation as we have not surveyed all refugee settlements in Bangladesh and because the surveys don’t account for the families who never made it out of Myanmar . . . We heard reports of entire families who perished after they were locked inside their homes, while they were set alight.”⁴²⁰ As of January 24, 2018, the Government of Bangladesh estimated 43,700 Rohingya children displaced by the 2017 violence had “lost” one or both parents, suggesting the possibility of considerably higher death tolls.⁴²¹ The indication that the death toll could be in the tens of thousands is in keeping with conversations Fortify Rights has had with public health and statistical experts operating in Rohingya refugee camps in Bangladesh.⁴²²

In addition to the substantial number of individuals killed, the attacks also caused an estimated 717,000 Rohingya to flee to Bangladesh since August 2017, according to U.N. estimates.⁴²³

Figures from the most recent violence of course do not include deaths and displacement from the 2016 attacks against the Rohingya. Those attacks targeted at least 40 villages, displaced approximately 94,500 Rohingya in northern Rakhine State, and at least 74,500 ultimately escaped

⁴¹⁴ *Karadžić*, Case No. IT-95-5/18-T, para. 94.

⁴¹⁵ *Id.* at para. 13–49 (detailing the scale of the crimes committed against the Bosnian Muslims).

⁴¹⁶ *Krstić*, Case No. ICTY-98-33-T, para 594

⁴¹⁷ “Burma: Scores of Rohingya Villages Bulldozed,” Human Rights Watch, news release, February 23, 2018, <https://www.hrw.org/news/2018/02/23/burma-scores-rohingya-villages-bulldozed> (accessed July 12, 2018).

⁴¹⁸ *Ibid.*

⁴¹⁹ “Myanmar/Bangladesh: MSF Surveys Estimate That at Least 6,700 Rohingya Were Killed During the Attacks in Myanmar,” *Médecins Sans Frontières*, December 12, 2017, <http://www.msf.org/en/article/myanmarbangladesh-msf-surveys-estimate-least-6700-rohingya-were-killed-during-attacks> (accessed July 12, 2018).

⁴²⁰ *Ibid.*

⁴²¹ ASEAN Parliamentarians for Human Rights, *The Rohingya Crisis: Past, Present, and Future: Summary Report of Findings from Fact-Finding Mission to Bangladesh 21–24 January 2018*, 2018, https://aseanmp.org/wp-content/uploads/2018/03/APHR_Bangladesh-Fact-Finding-Mission-Report_Mar-2018.pdf (accessed July 12, 2018), p. 3.

⁴²² Fortify Rights discussions with public health and statistical experts, Cox’s Bazar District, Bangladesh, December 2017.

⁴²³ UNHCR, “Refugee Response in Bangladesh,” May 15, 2018, https://data2.unhcr.org/en/situations/myanmar_refugees (accessed July 12, 2018).

to Bangladesh.⁴²⁴ Untold numbers were killed.⁴²⁵ Due to violence in the last few years, there are currently nearly one million Rohingya living in refugee camps in Bangladesh.⁴²⁶

The violence in Bosnia that formed the basis for the *Karadžić* case consisted of summary executions of Bosnian Muslims totaling an estimated 5,175 individuals plus “thousands” more.⁴²⁷ These attacks all occurred within a handful of days in mid-July 1995.⁴²⁸ On these facts, the *Karadžić* tribunal ultimately held that, “[t]he number of the victims selected only because of their membership in a group would lead one to the conclusion that an intent to destroy the group, at least in part, was present.”⁴²⁹ Similarly, the scale of violence and the speed with which it was inflicted across a large swath of the Rohingya population would likely lead to the conclusion that the perpetrators had the genocidal intent to destroy a substantial part of the Rohingya in Myanmar.

The Myanmar authorities may argue that, even accepting as accurate the numbers cited in this report, the number of Rohingya killed do not rise to the level of being a substantial part of the group. However, the *Krstić* tribunal clarifies:

[T]he cardinal question is whether the intent to commit genocide existed. While this intent must be supported by the factual matrix, the offence of genocide does not require proof that the perpetrator chose the most efficient method to accomplish his objective of destroying the targeted part. Even where the method selected will not implement the perpetrator’s intent to the fullest, leaving that destruction incomplete, this ineffectiveness alone does not preclude a finding of genocidal intent.⁴³⁰

In this case, the tribunal found that genocide occurred when perpetrators killed approximately 7,000 Muslim men because the tribunal considered the target group of genocide to be the “Bosnian Muslim population of Srebrenica” versus, for example, the Bosnian Muslim population in all of Bosnia.⁴³¹

The Systematic Nature of the Attacks and their Atrociousness

The ICC has defined “systematic” in the context of attacks as “pertain[ing] to the organised nature of the acts of violence and to the improbability of their random occurrence.”⁴³² The *Akayesu* tribunal explained that the Rwandan genocide “was systematic,” as “evidenced by the unusually large shipments of machetes into the country before it occurred,” “the training of militiamen by the Rwandan Armed Forces” and by “the structured manner in which the attack took place . . . Through the media and other propaganda, Hutu were encouraged to systematically attack Tutsi.”⁴³³

Similarly, the extensive eyewitness testimony described in this report highlights the preparations the Myanmar military took in the lead up to the attacks, including—much like the evidence in the

⁴²⁴ UNOCHA, “Asia and the Pacific: Weekly Regional Humanitarian Snapshot, February 28–March 6, 2017,” March 6, 2017, http://reliefweb.int/sites/reliefweb.int/files/resources/ROAP_Snapshot_170306.pdf (accessed July 12, 2018).

⁴²⁵ The Government of Myanmar restricted access to Rakhine State immediately upon commencing “clearance operations” in October 2016, preventing any systematic casualty recording.

⁴²⁶ “Dangers Persist for Nearly a Million Rohingya Refugees in Bangladesh: WHO,” *UN News*, May 8, 2018, <https://news.un.org/en/story/2018/05/1009112> (accessed July 12, 2018).

⁴²⁷ *Karadžić*, Case No. IT-95-5/18-T, para. 26–34 (The opinion cites the following massacres as evidence of specific intent: (1) “thousands of Muslims” along the Bratunac–Nova Kasaba road; (2) 500 to 1,000 at Kravica; (3) an estimated 2,500 at Karakaj; (4) 1,200 at Branjevo; (5) 75 at Konjevic Polje; (6) 150 at Udric; (7) 250 presumably near Udric; and (8) “several hundred” at Potocari).

⁴²⁸ *Ibid.*

⁴²⁹ *Id.* at para 94.

⁴³⁰ *Ibid.*

⁴³¹ *Id.* at para 32.

⁴³² *Al-Bashir*, Case No. ICC-02/05-01/09-OA, para. 81.

⁴³³ *Akayesu*, Case No. ICTR-96-4-T, para. 173.

Akayesu case—the arming and training of non-Rohingya citizens. In addition, between October 2016 and August 2017, the Myanmar authorities: systematically disarmed Rohingya civilians by confiscating household items that might be used as weapons or in self-defense; ordered the removal of fencing and other structures that blocked the line-of-sight on civilians; suspended all food and other humanitarian aid to Rohingya civilians, systematically weakening the population and removing monitors on the ground; and increased the military presence in northern Rakhine State.

The actual attacks on villages and subsequent rape, murder, pillaging, and destruction of villages in northern Rakhine State also occurred in a systematic manner. In *Al-Bashir*, the ICC trial court found that attacks against ethnic minorities in South Sudan were systematic, stressing that they were “coordinated ground attacks in which the attackers had previously encircled the targeted village or came to such village with tens or hundreds of vehicles and camels;” “were often preceded by aerial bombings;” and that “Janjaweed Militia arrived on horse or camel-back along with, or shortly followed by, members of the Sudanese Armed Forces in motor vehicles.”⁴³⁴

In northern Rakhine State, the attacks against the Rohingya similarly involved a coordinated effort between official state security forces and armed civilians. According to eyewitnesses, Myanmar soldiers entered villages prior to attacks accompanied by armed Rakhine Buddhists from nearby *natala* villages as well as other ethnic citizens and harassed and beat villagers.⁴³⁵ Once the attacks began, coordination of the sort seen in South Sudan between militia and state security also occurred. Survivors from various villages and townships reported that the Myanmar military shot and killed Rohingya civilians, burned homes, killed infants and children, and committed rape while Rakhine and other ethnic citizens followed with sticks and swords and, alongside the Myanmar military, beat, stabbed, beheaded, burned, and drowned men, women, and children.⁴³⁶

Similarly, the *Krstić* tribunal found that perpetrators “systematically executed” Muslim men in Srebrenica as a result of the Serbian security forces’ “screening process, the gathering of those men at detention sites, their transportation to execution sites, [and] the opportunistic killings of members of the column . . . as they were apprehended.”⁴³⁷ Multiple examples exist of Myanmar security forces systematically executing Rohingya in the same methodical process described in the *Krstić* case, with the military targeting men, moving them to killing sites, and summarily executing them.⁴³⁸ These attacks, which occurred in more than 350 villages throughout northern Rakhine State, demonstrate the “organized nature” of the attacks and “the improbability of their random occurrence.”⁴³⁹

The attacks against the Rohingya also exhibited atrociousness, which is generally defined as, “extremely brutal, cruel, or wicked.”⁴⁴⁰ The *Akeyesu* tribunal stressed that in addition to the scale, and systematic nature, the “atrociousness” of the attacks helped show that there was “no doubt . . . the massacres were aimed at exterminating the group that was targeted.” *Akayesu* stressed that the killing of “even newborn babies” and “even pregnant women” evinced the atrocious nature of the killings.⁴⁴¹ In addition, the *Akayesu* tribunal highlighted killing Tutsis by using “little hoes and clubs” purposively to inflict greater pain instead of “a bullet or grenade” was

⁴³⁴ *Al-Bashir*, Case No. ICC-02/05-01/09-OA.

⁴³⁵ See e.g., Fortify Rights interview with #47-2, Cox’s Bazar District, Bangladesh, September 4, 2017

⁴³⁶ See e.g., Fortify Rights interview with #5-2, Cox’s Bazar District, Bangladesh, August 30, 2017; Fortify Rights interview with #39-2 and #42-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

⁴³⁷ *Krstić*, Case No. ICTY-98-33-T, para. 504.

⁴³⁸ Fortify Rights interview with #61-2, Cox’s Bazar District, Bangladesh, February 23, 2018; Fortify Rights interview with #43-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

⁴³⁹ *Al-Bashir*, Case No. ICC-02/05-01/09-OA.

⁴⁴⁰ Random House, *Webster’s Unabridged Dictionary*.

⁴⁴¹ *Akayesu*, Case No. ICTR-96-4-T, para. 121.

another sign of the atrociousness of the attacks.⁴⁴² *Krstić* found attacks that included mutilation and where “a woman watched helplessly as her baby was executed by stabbing with a bayonet” as examples of atrocious attacks.⁴⁴³

There are numerous examples of Myanmar security forces committing similar atrocious acts. Eyewitnesses throughout the three townships in northern Rakhine State highlighted Rohingya infants being ripped from their mother’s arms and thrown into rivers to drown or into fires to burn to death.⁴⁴⁴ Moreover, security forces and non-Rohingya citizens also shot and killed babies and, in at least one case, beheaded children.⁴⁴⁵ Fortify Rights further documented the killing of pregnant women. The security forces and non-Rohingya citizens killed with brutality that included beheadings, burning victims alive—including one instance of soldiers burning an estimated 50 men alive—and mutilations.⁴⁴⁶

The systematic and atrocious nature of the attacks against the Rohingya weighs heavily in finding reasonable grounds to believe the genocidal intent existed.

Targeting victims on account of their membership of a particular group

International tribunals may also infer genocidal intent when perpetrators target victims merely because of the victim’s membership in a protected group. The *Akayesu* tribunal held that “the act must have been committed against one or several individuals, because such individual or individuals were members of a specific group, and specifically because they belonged to this group.”⁴⁴⁷ The ICC affirmed that “what matters is the intent to discriminate: to attack persons on account of their ethnic, racial, or religious characteristics.”⁴⁴⁸ When this is met, “the victim of the crime of genocide is the group itself and not only the individual.”⁴⁴⁹

Pertinent evidence to demonstrate the deliberate and systematic targeting of a victim on account of their membership in a particular group includes: (1) statements by the perpetrator implying an intent to destroy; (2) evidence of widespread systematic violence against the targeted group; (3) evidence of a general campaign of persecution against the targeted group; and (4) evidence of members of the targeted group being separated or classified according to their membership in the targeted group prior to the commission of the crime.⁴⁵⁰

Some of the statements implying an intent to destroy are highlighted above and include: state-run media alluding to Rohingya as a “thorn” that “has to be removed as it pierces” and references to the Rohingya as “detestable human fleas” and the “enemy.”⁴⁵¹ Moreover, Facebook postings by Myanmar Army soldiers who engaged in the August 2017 “clearance operations” in northern Rakhine State also provide further poignant examples of “perpetrators implying an intent to destroy.” For example, on August 11, 2017, two weeks prior to the beginning of the attacks, a Lieutenant in the 33rd Light Infantry Division upon deploying to Rakhine State and discussing

⁴⁴² *Id.* at para 288

⁴⁴³ *Karadžić*, Case No. IT-95-5/18-T, para. 27.

⁴⁴⁴ Fortify Rights interview with #46, Cox’s Bazar District, Bangladesh, December 11, 2016.

⁴⁴⁵ Fortify Rights interview with #34-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

⁴⁴⁶ See e.g., Fortify Rights interview with #23-2, Cox’s Bazar District, Bangladesh, September 1, 2017; Fortify Rights interview with #9-2 and #5-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

⁴⁴⁷ *Akayesu*, Case No. ICTR-96-4-T, para. 521.

⁴⁴⁸ *Al-Bashir*, Case No. ICC-02/05-01/09-OA, para. 142.

⁴⁴⁹ *Akayesu*, Case No. ICTR-96-4-T, para. 521.

⁴⁵⁰ *Al-Bashir*, Case No. ICC-02/05-01/09-OA, para. 73.

⁴⁵¹ Khin Maung Oo, A Flea Cannot Make a Whirl of Dust, But—, *Global New Light of Myanmar*.

the Rohingya said, “If they’re Bengali, they’ll be killed.”⁴⁵² Moreover, a commander of the 99th Infantry Division told a group of Rohingya in mid-August, “If we find any terrorists, we’ll burn your village to ashes. Your future generations won’t last.”⁴⁵³ In a separate village, a 33rd Light Infantry Division commander reportedly stated just prior to the attacks, “Before we came here, we were on the Kachin State frontline. We behaved very badly in Kachin, and they’re citizens. You’re not citizens, so you can only imagine how we’ll be.”⁴⁵⁴

The ICC considers violence to be “widespread” based on “the large-scale nature of the attack and the number of targeted persons.”⁴⁵⁵ Analysis of whether an attack is widespread is neither exclusively quantitative nor exclusively geographical.⁴⁵⁶ That said, widespread attacks are generally “massive, frequent, carried out collectively” against many people.⁴⁵⁷ An attack that takes place over time and across geographical space may also be considered “widespread.” Under that definition, Myanmar authorities have subjected Rohingya to widespread violence for decades, with “clearing operations” or “clearance operations” directed at the group in at least 1978, 1991, 2012, 2016, and now 2017, resulting in the displacement of hundreds of thousands of people and untold killings. As elaborated above, the violence against the Rohingya would be considered “systematic.” Deprivations in food and basic medical treatment as well as discriminatory laws focused on restricting Rohingya’s freedom of movement, education, employment, childbirth, and daily life provides support of a general campaign of persecution against the Rohingya.

Evidence of members of the targeted group being separated or classified further demonstrates the deliberate and systematic targeting of a victim. In the *Akayesu* case, the tribunal cited the fact that perpetrators systematically separated Tutsi from Hutu prior to killing the Tutsi.⁴⁵⁸ A similar separation occurred in the 2017 and 2016 attacks against the Rohingya. Many attacks occurred in villages that contained Rakhine Buddhists and Rohingya. In these villages, Rakhine individuals did not have sharp and blunt objects confiscated nor were their fences torn down nor were they the subject of attacks by Myanmar security forces. In some cases, Myanmar authorities evacuated and provided humanitarian aid to Rakhine and other non-Muslim residents in advance of attacks against Rohingya Muslims.

Myanmar authorities may argue that genocidal intent is lacking because the Myanmar security forces were targeting Rohingya militants. However, the ICC has clarified that a group may be targeted not solely because of its ethnicity, but also because of a perceived support for rebel groups and that this does not legitimize the targeting of the protected group. According to the ICC:

[T]he victims’ membership in the protected group need not be the only reason for which they were targeted . . . the term ‘as such’ clarifies the specific intent requirement. It does not prohibit a conviction for genocide in a case in which the perpetrator was also driven by other motivations that are legally irrelevant in this context.⁴⁵⁹

The *Akeyesu* tribunal also highlighted that the killing of Tutsi children and pregnant women signaled that victims “were targeted especially because of their Tutsi origin and not because they

⁴⁵² Simon Lewis, Zeba Siddiqui, *et al.*, “The Shock Troops Who Expelled the Rohingya From Myanmar: Tip of the Spear,” *Reuters*, June 26, 2018, <https://www.reuters.com/investigates/special-report/myanmar-rohingya-battalions/> (accessed July 12, 2018).

⁴⁵³ *Ibid.*

⁴⁵⁴ *Ibid.*

⁴⁵⁵ *Prosecutor v. Germain Katanga*, ICC, Case No. ICC-01/04-01/07, Judgment, March 7, 2014, para. 1113.

⁴⁵⁶ See *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC, Case No. ICC-01/05-01/08, Judgment, March 21, 2016, para. 163.

⁴⁵⁷ *Id.* at para. 83.

⁴⁵⁸ *Akayesu*, Case No. ICTR-96-4-T, para. 730.

⁴⁵⁹ *Al-Bashir*, Case No. ICC-02/05-01/09-OA, para. 72.

Imprisonment and Other Severe Deprivations of Physical Liberty

The ICTY has explained that imprisonments violate international law when they are “arbitrary,” meaning that they are imposed “without due process of law” such that there is “no legal basis . . . to justify the initial deprivation of liberty.”⁵⁰⁹ Further, even an initially justified arrest may later become a prohibited act if “the initial legal basis ceases to apply.”⁵¹⁰

This report describes the mass arrest of Rohingya civilians in both the lead-up to the attacks that began on August 25, 2017—including the arrest of ten people in Ta Man Thar village, Maungdaw Township; the arrest of several people in Tone Chaung village, Maungdaw Township; and a report from an international aid worker of “huge examples of arbitrary arrest in Buthidaung”—and during attacks that occurred for several subsequent weeks in all three townships of northern Rakhine State—including the arrest of 40 people in Hathi Para village; the arrest and later killing of 50 people in Chut Pyin village; and the arrest of persons who ventured out to a prohibited paddy field to harvest in Kyet Yoe Pyin village. Further, in the earlier attacks that began in October 2016 in Maungdaw Township, state security forces arrested and detained untold numbers of Rohingya in at least seven villages documented by Fortify Rights. Eyewitnesses described the arrest of 80 men and boys—including children as young as ten—in Chaung Gwa Son village and the arrest of more than 150 men and boys within the span of one day in Pwint Hpyu Chaung village. In many of these cases, family members have not heard from the people who were arrested.

Myanmar authorities conducted these mass arrests without valid arrest warrants, providing reasons for the arrest and detention, or lodging charges against those arrested—all factors discussed by the ICTY in the *Krnjelac* case as indicative of a valid arrest that complies with the standards of international law.⁵¹¹ Instead, it appears that these mass arrests, which often involved hundreds of persons at a time, lacked any legal justification. Further, while perpetrators may argue that the detentions were necessary for state security, the ICTY rejected similar arguments in the *Krnjelac* case that Muslim detainees were being held as prisoners of war, noting that only a “small number of detainees had been combatants.”⁵¹² The sheer numbers of persons arrested, along with the fact that young children were among those detained, suggests that the authorities did not make these arrests on the basis of security concerns.

Enforced Disappearance

The crime of enforced disappearance entails the arrest, detainment, or abduction of a person and an accompanying refusal to acknowledge the situation or give information about the person.⁵¹³ “A country” or “political organization” must be responsible for or authorize the disappearance.⁵¹⁴ Finally, the perpetrator must have intended to remove the victim “from the protection of the law for a prolonged period of time.”⁵¹⁵ In the case of *Gotovina*, the ICTY discussed the meaning of enforced disappearances as an act of persecution, finding—along the lines of the Rome Statute—that the crime involves the deprivation of liberty followed by a refusal to disclose information about, or to acknowledge, the deprivation, ultimately “denying the individual recourse to the applicable legal remedies and procedural guarantees.”⁵¹⁶

⁵⁰⁹ *Krnjelac*, Case No. IT-97-25-T, para. 111-15 (noting that if national law is put forward as the basis, that law is a valid defense only if it is consistent with international law). Note that *Krnjelac* disagreed with *Prosecutor v. Kordic*, ICTY, Case No. ICTY-95-14/2-T, Judgment (Trial), February 26, 2001, para. 303, which had earlier held that only detentions that constituted grave breaches of the Geneva Conventions qualify.

⁵¹⁰ *Id.* at para. 114; see also *Kordic*, Case No. ICTY-95-14/2-T, para. 286-91 (discussing the procedural safeguards that must be adhered to during an imprisonment).

⁵¹¹ *Krnjelac*, Case No. IT-97-25-T, para. 119-21.

⁵¹² *Id.* at para. 117.

⁵¹³ Rome Statute art. 7(2)(i); ICC, *Elements of Crimes*, art. 7(1)(i)(1)-(3).

⁵¹⁴ Rome Statute art. 7(2)(i); ICC, *Elements of Crimes*, art. 7(1)(i)(4).

⁵¹⁵ Rome Statute art. 7(2)(i); ICC, *Elements of Crimes*, art. 7(1)(i)(6).

⁵¹⁶ *Prosecutor v. Gotovina*, ICTY, Case No. IT-06-90-T, Judgment (Trial), April 15, 2011, para. 1831-39 (discussing Inter-American Court of Human Rights and European Court of Human Rights analyses of disappearances).

Many witnesses interviewed for this report described state security forces arresting persons whose whereabouts and status remain unknown. Further, although the Myanmar government acknowledged that it had arrested and detained 406 Rohingya suspects as of November 2016, the government still has yet to identify those persons. In any case, eyewitness testimony indicates that security forces arrested hundreds, perhaps thousands, more Rohingya beyond the 406 figure. Indeed, two eyewitnesses alone testified to the arrest of more than 200 persons during the attacks that started in October 2016.⁵¹⁷ Given the authorities' refusal to identify persons arrested or report the accurate number of arrestees, the elements of enforced disappearance are likely met.

Persecution

Persecution is the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”⁵¹⁸ Unlike other crimes against humanity, persecution entails the targeting of victims based on political, racial, national, ethnic, cultural, religious, or gender grounds, or “other grounds that are universally recognized as impermissible under international law.”⁵¹⁹

Persecution can involve a number of acts that inflict either physical or mental harm, including those that by themselves may constitute other crimes against humanity—such as murder, deportation, and rape—as well as others that might not qualify, including the destruction of property and acts of harassment and humiliation.⁵²⁰ Tribunals evaluate discriminatory acts in their wider contexts, so acts that might not qualify in isolation may constitute persecution when considered cumulatively.⁵²¹ The Rome Statute requires that the conduct be committed in connection with another prohibited act or any other crime within the ICC's jurisdiction.⁵²²

The acts described in other sections of this analysis, particularly murder, rape, and torture, are persecutory acts because they involved the severe deprivation of fundamental rights to life and liberty. Moreover, the widespread destruction of Rohingya property likely also qualifies as persecution. As the *Kupreskic* tribunal found, “the comprehensive destruction of homes and property” can constitute persecution as those acts destroy “the livelihood of a certain population.”⁵²³ State security forces, during the “clearance operations” starting both in October 2016 and in August 2017, engaged in widespread attacks on hundreds of Rohingya villages, typically setting fire to homes, food stocks, cultural institutions, and other buildings and destroying means of subsistence and livelihoods for Rohingya.

The perpetrators committed these persecutory acts with the requisite intent. Eyewitnesses of the atrocities consistently described actions taken by Myanmar security forces against Rohingya but not against persons of other ethnicities who lived nearby. Eyewitnesses have also relayed statements by Myanmar soldiers threatening to kill and eliminate the Rohingya, telling them they do not belong in Myanmar and do not exist as an ethnic group. Moreover, the Myanmar security forces undertook these acts within an environment where Rohingya face discriminatory policies and official government rhetoric demonizing the Rohingya.

⁵¹⁷ This figure includes the 80 persons seen arrested by “Sol” in Yae Khat Chaung Gwa Son village and the 150 persons seen arrested by residents of Pwint Hpyu Chaung village.

⁵¹⁸ Rome Statute, art. 7(2)(g).

⁵¹⁹ ICC, *Elements of Crimes*, art. 7(1)(h).

⁵²⁰ See *Kordic*, Case No. ICTY-95-14/2-T, para. 198; *Kvočka*, Case No. IT-98-30/1-T, para. 186, 190.

⁵²¹ *Kupreskic*, Case No. IT-95-16-T, para. 622.

⁵²² *Id.* at para. 580-81. Rome Statute, art. 7(1)(h). The Statutes of the ICTY and the ICTR do not contain this requirement, and the ICTY has found that it is not part of customary international law.

⁵²³ *Kupreskic*, Case No. IT-95-16-T, para. 631. See also, *Kordic*, Case No. ICTY-95-14/2-T, para. 203, 205 (finding that attacks on villages and “wanton destruction and plundering” may constitute persecution).

For example, prior to fleeing her village, “S. Begum,” a 22-year-old mother of four, witnessed Myanmar Army soldiers kill her husband in Hpar Wut Chaung village—also known as Faw Khali—in November. She said: “My daughter was with my husband, sitting on his lap. Five soldiers caught him and held him. They cut him across the throat. I saw it happen in front of me.”⁷⁴⁶

“Mohammed Naeem,” 58, from Sin Thay Pyi village—also known as Hati Fara—recalled, “The military came during the dark hours.”⁷⁴⁷ His 19-year-old son left their home in the early morning to use the toilet when the Myanmar Army arrived unannounced: “We heard noises. It was the military. People ran out, and the soldiers started shooting.”⁷⁴⁸ He recalled what he saw as the sun rose:

I saw two people dead and two injured. They were just 20 feet from my home, all four of them. They had nothing in their hands. They were villagers and one was my son . . . I saw the military soldiers take knives and cut their necks. There were many military. [My nephew] was wounded and laying on the ground. One soldier went to him and cut his throat.⁷⁴⁹

Other survivors provided detailed testimony of soldiers slashing women’s breasts, hacking bodies into pieces, and seeing people with arms, legs, and hands cut off.⁷⁵⁰

“Nu Ra” described how the military hacked her father, a village elder in Hpar Wut Chaung village, after they arrested him in front of their home. She said:

He was going to the mosque for morning prayers when the military stopped him at the front of the house. I saw my father when he was taken away. There were about 20 soldiers. They kicked him and hit him with their fists. They were talking to each other, but I couldn’t understand them. They beat him for about one hour [before they took him away] . . . The next morning, people came and told us that they found his body in the paddy field. We went and saw that he had been hacked. His head and body had been separated.⁷⁵¹

Three survivors described how Myanmar Army soldiers killed a Rohingya woman who was giving birth and two others assisting her with the birth in Kyet Yoe Pyin village on October 15.⁷⁵² “Hafez,” a 25-year-old Rohingya man found the bodies after returning to the village. He said: “We saw three bodies. The body of the woman who was giving birth was outside . . . They had cut open her stomach.”⁷⁵³

Burned to Death

Other survivors recounted seeing Myanmar Army soldiers burn their family members and neighbors to death. For example, in mid-November, “Jaffar,” a 33-year-old Rohingya man from Pwint Hpyu Chaung village, witnessed Myanmar Army soldiers burn alive nine of his family members, including three children aged five, seven, and 13 as well as a 92-year-old elderly man. He told Fortify Rights:

⁷⁴⁶ Fortify Rights interview with #75, Cox’s Bazar, Bangladesh, December 13, 2016.

⁷⁴⁷ Fortify Rights interview with #19, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁷⁴⁸ *Ibid.*

⁷⁴⁹ *Ibid.*

⁷⁵⁰ Two Rohingya men from Nga Khu Ya village reported seeing soldiers cut women’s breasts. Fortify Rights interview with #10 and #11, Cox’s Bazar District, Bangladesh, December 11, 2016. Victims’ names are on file with Fortify Rights.

⁷⁵¹ Fortify Rights interview with #72, Cox’s Bazar, Bangladesh, December 15, 2016.

⁷⁵² Fortify Rights interview with #07 and #09, Cox’s Bazar District, Bangladesh, December 10, 2016; Fortify Rights interview with #38, Cox’s Bazar District, Bangladesh, December 11, 2016.

⁷⁵³ Fortify Rights interview with #07, Cox’s Bazar District, Bangladesh, December 10, 2016.

Fortify Rights documented and analyzed testimony from 29 Rohingya eyewitnesses of mass arbitrary detention of Rohingya men and boys in October and November in seven villages.⁸⁰⁸

In a January 23, 2017 communication to the U.N., the Government of Myanmar acknowledged that as of November 21, 2016 it had arrested and detained 406 suspects in 36 criminal cases involving charges ranging from murder to illegal possession of weapons.⁸⁰⁹ In October 2016, the Myanmar authorities halted visits by international monitors and humanitarian workers to places of detention in Rakhine State. Visits resumed in March 2017—a full six months after “clearance operations” began.

Testimonies documented and analyzed by Fortify Rights suggest the Myanmar Army arrested several hundred men and boys beyond the 406 acknowledged in January. The vast majority of those interviewed have not heard from family members or neighbors who were detained by state security forces, nor have they received any information about them since the time of their arrest.

For instance, “Sol,” a 50-year-old Rohingya woman, said she counted the arrest of approximately 80 men and boys, including children as young as 10-years old from Yae Khat Chaung Gwa Son village. She said:

Our house is on the side of the road, so we could see peak through the bamboo fence and see the men being taken out of the village. They were marching by foot but were then taken by truck somewhere . . . The people who they arrested were all fastened by a rope and put in a long queue with their hands behind their back.⁸¹⁰

Sol added that she had not heard from any of the detained men or boys since that time.⁸¹¹

Residents of Pwint Hpyu Chaung village told Fortify Rights that, in the course of one day in November 2016, the Myanmar Army arrested and drove away in trucks more than 150 men and boys from the village.⁸¹² “Rahman,” a 33-year-old Rohingya man recalled the mass arrest of men and boys from Pwint Hpyu Chaung village. He said: “[The soldiers] tied their hands behind their back and put tape on their eyes.”⁸¹³ He avoided arrest because he was hiding at a nearby vantage point.⁸¹⁴

“Anwara,” whose 18-year-old son was among those arrested from Pwint Hpyu Chaung village, speculated that those arrested were taken to the nearby *Lon Htein* headquarters. She said: “We don’t know what happened to them, whether they have been killed or if they are still alive. We heard that they were shot dead. But we didn’t see it.”⁸¹⁵

Forced Displacement

“I refused to accept Government arguments that the Rohingya people were willing to burn down their own houses...”

—U.N. Special Rapporteur Yanghee Lee, February 24, 2017

⁸⁰⁸ Those seven villages are Pwint Hpyu Chaung, Yae Khat Chaung Gwa Son, Kyet Yoe Pyin, Dar Gyi Zar, Ywet Nyo Taung, Hpar Wut Chaung, and Kyaw Goung Taung. Fortify Rights interviews with #03, #04, #05, #06, #07, #09, #12, #13, #17, #18, #21, #30, #31, #32, #39, #43, #46, #47, #48, #49, #50, #53, #63, #64, #67, #70, #73, #82, and #84, Cox’s Bazar District, December 2016 and March, June, and July 2017.

⁸⁰⁹ Response from the Government of Myanmar to U.N. Special Rapporteurs, No. 30/3-27/91, January 23, 2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=49046> (accessed August 6, 2017).

⁸¹⁰ Fortify Rights interview with #63, Cox’s Bazar District, Bangladesh, December 16, 2016.

⁸¹¹ *Ibid.*

⁸¹² Fortify Rights interview with #17, Cox’s Bazar District, Bangladesh, December 12, 2016; Fortify Rights interview with #04, Cox’s Bazar District, Bangladesh, December 10, 2016.

⁸¹³ Fortify Rights interview with #17, Cox’s Bazar District, Bangladesh, December 12, 2016.

⁸¹⁴ Rahman told Fortify Rights: “There is a mountain nearby the village and we were hiding there. We didn’t sleep the whole night. We were looking at vehicles coming and going. We were watching everything.” *Ibid.*

⁸¹⁵ See also, Fortify Rights interview with #04, Cox’s Bazar District, Bangladesh, December 10, 2016.

“Na Na,” a 51-year-old woman told Fortify Rights how she lost everything during the attack on Kyet Yoe Pyin village. She said:

I had a very big house. The other villagers said that when they burned my house, it took seven days to burn because it was such a big house. I had so much stocked rice. Everything was mine. I had cows. I had domestic animals. But they took everything from me. I had a paddy field. I had a fish pond. I didn’t need to work. I didn’t need to depend on other people. Now, I’m a beggar. I lost everything.⁸³⁵

Multiple Internal Displacement and Refugee Flight

“Every day, they came to our village. They tortured us. They burned our house. They took my son. They took my husband. Why should I live there? I also saw so many young girls being raped. I’m so afraid so I left.”

—Rohingya woman, 51, from Kyet Yoe Pyin village, December 2016

Many residents explained how they fled from village to village and returned to their homes only to flee again when the Army returned. In some cases, Myanmar Army soldiers explicitly told civilians who did not flee to leave and not return. For instance, an 18-year-old Rohingya woman from Wapeik village explained how, after an initial arson attack, soldiers corralled residents into a local field. She recalled:

In the field, they announced, ‘This is not your country. You have to leave this country. Then we will not do anything. We will not attack you. You can leave this country. Get out from this land.’ They let us know that we dare not to return to our home. No one returned to their home.⁸³⁶

“Diljam,” 20, from Yae Khat Chaung Gwa Son village recalled: “They told us, ‘This is our country. This land is not for Muslims. You have to leave this country.’”⁸³⁷

Nearly all displaced Rohingya interviewed since October 2016 explained humanitarian needs in a context of forced displacement. Families traveled from their homes to the jungle, and then back to their village, and then from village to village to evade the Myanmar Army.⁸³⁸ Families traveled on foot for miles with infants and small children through jungle and mountainous terrain with little to no belongings and no food, water, medicine, or other necessities.⁸³⁹

The Myanmar Army displaced “Samsa,” 22, multiple times, beginning when soldiers forced him out of his home village of Dar Gyi Zar in October 2016. He described where he went from there, saying:

When the military came, we ran away and didn’t go back. We stayed in different villages, hiding from place-to-place. The military came every day and left in the evening. I was staying in Kula Biln village, and the military stayed at the school. Some [soldiers] also stayed nearby a bridge. They burned houses and looted shops. If they burned the village, we went to another village.⁸⁴⁰

⁸³⁵ Fortify Rights interview with #64, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁸³⁶ Fortify Rights interview with #65, Cox’s Bazar District, December 13, 2016.

⁸³⁷ Fortify Rights interview with #76, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁸³⁸ See for example Fortify Rights interviews with #08 and #12, Cox’s Bazar District, Bangladesh, December 2016.

⁸³⁹ See for example Fortify Rights interviews with #39, #41, #42, #43, #44, and #46 Cox’s Bazar District, Bangladesh, December 2016. For instance, “Fatina” told Fortify Rights: “I did not bring clothes or money. I had only four children in my hands. I was separated from my husband for some days. After two days some people gave me some biscuits. I was senseless. People in another village helped me. Now, I’m with my husband and four children.” Fortify Rights interview with #42, Cox’s Bazar District, Bangladesh, December 10, 2016.

⁸⁴⁰ Fortify Rights interview with #12, Cox’s Bazar District, Bangladesh, December 11, 2016.

Annex 280

Fortify Rights and United States Holocaust Memorial Museum, *“They Tried to Kill Us All”: Atrocity Crimes against the Rohingya Muslims in Rakhine State, Myanmar*, November 2017

Available at:

<https://www.ushmm.org/m/pdfs/201711-atrocity-crimes-rohingya-muslims.pdf>

BEARING WITNESS REPORT NOVEMBER 2017

“THEY TRIED TO KILL US ALL”

Atrocity Crimes against
Rohingya Muslims in Rakhine State, Myanmar




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The United States Holocaust Museum's work on genocide and related crimes against humanity is conducted by the Simon-Skjodt Center for the Prevention of Genocide. The Simon-Skjodt Center is dedicated to stimulating timely global action to prevent genocide and to catalyze an international response when it occurs. Our goal is to make the prevention of genocide a core foreign policy priority for leaders around the world through a multipronged program of research, education, and public outreach. We work to equip decision makers, starting with officials in the United States but also extending to other governments and institutions, with the knowledge, tools, and institutional support required to prevent—or, if necessary, halt—genocide and related crimes against humanity.

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Fortify Rights works to ensure and defend human rights for all. We investigate human rights violations, engage policy makers and others, and strengthen initiatives led by human rights defenders, affected communities, and civil society. We believe in the influence of evidence-based research, the power of strategic truth-telling, and the importance of working closely with individuals, communities, and movements pushing for change. We are an independent, nonprofit organization based in Southeast Asia and registered in the United States and Switzerland.

The United State Holocaust Memorial Museum uses the name “Burma” and Fortify Rights uses the name “Myanmar” to describe the same country. For the purposes of this joint report, the country will be referred to as “Myanmar.”

Cover: Abu Jafar prays next to a long line of Rohingya refugees who are waiting to be admitted to camps on October 16, 2017, after crossing the Naf River from Myanmar into Anjumanpara, Bangladesh. Abu Jafar made the same crossing in 1992 and said the border guards had mistaken him for a new arrival, forcing him to pray in the rice field instead of at the mosque across the road. *Photo by Andre Malerba*

Annex 280

BEARING WITNESS REPORT: Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar

Although these shifts in narrative and policy conversations demonstrate an appreciation for positive changes under the leadership of the NLD, the Myanmar military remains unreformed and responsible for severe human rights violations against civilians, including Myanmar's Rohingya. Under the constitution, military-led ministries exert considerable control over the situation in Rakhine State and are therefore necessary players in ensuring civilian protection in the affected areas. Even if it had the political will to ensure the rights of the Rohingya population, the NLD at the national level cannot fully implement reforms at the state or local level without cooperation from these authorities.

International law imposes the primary responsibility for protecting civilians on the national government, whether civilian, military, or jointly led. Although Myanmar's civilian leadership may not have complete political freedom or political will to enact the sweeping reforms necessary to end the persecution of minorities throughout the country, including Rohingya, it must act to the full extent of its capacity to protect civilians at risk of mass atrocities.

Rohingya Militancy

The Rohingya militant group responsible for deadly attacks on multiple police outposts in Maungdaw, Buthidaung, and Rathedaung Townships in northern Rakhine State in October 2016 and August 2017 initially called itself Harakah al-Yaqin, or Faith Movement, and later identified itself as the Arakan Rohingya Salvation Army (ARSA).¹⁴ Rohingya residents of Rakhine State refer to the group as al-Yaqin.¹⁵ According to the Government of Myanmar, ARSA killed nine police officers during the October 9 attack and 12 state security officers during the August 25 attack.¹⁶ On August 25, the Government of Myanmar declared ARSA a terrorist organization under Myanmar law.¹⁷

ARSA is the first operational Rohingya armed force in Myanmar in decades.¹⁸ Following its initial attack on October 9, 2016, the group released several propaganda videos online in which an apparent leader—later identified as Ata Ullah—calls for volunteers to engage in armed conflict in Rakhine State.¹⁹ Interviews with Rohingya suggest that ARSA is not well organized, well funded,

or well trained.²⁰ Some members said they received sticks, knives, and small sums of money—approximately 20,000 kyats (US\$20)—in exchange for joining the group.²¹ Other members received nothing.²² Nevertheless, the group has proved itself capable of deadly violence.

The group stated that it does not associate with international extremist organizations and that its objectives are social and political, revolving mostly around the restoration of Rohingya rights. Yet since the most recent attacks on Rohingya, international extremist organizations such as al-Qaeda have publicly called for violence against Myanmar authorities.²³ Those calls appear to have been unsolicited.

The Government of Myanmar has alleged that Rohingya militants killed 59 civilians who supposedly cooperated with Myanmar authorities or spoke to news media in northern Rakhine State during the clearance operations.²⁴ Fortify Rights documented ARSA killings of Rohingya civilians in the weeks and days leading up to the August 25 attacks.²⁵

Several Rohingya expressed concern to Fortify Rights and the Simon-Skjoldt Center about the existence of a Rohingya armed group, and most Rohingya interviewed by Fortify Rights in December 2016 and March 2017 had never heard of any active Rohingya militia in Rakhine State or elsewhere; very few expressed explicit moral or other support for the group.²⁶ In the weeks leading up to the August 25 attacks, Fortify Rights documented a sharp rise in ARSA's recruitment of young men in several villages throughout northern Rakhine State.²⁷ Residents and members of ARSA cited the Myanmar Army's attacks on the civilian population in October and November 2016 as a driver of recruitment, as well as intimidation tactics by ARSA, including death threats against local residents.²⁸

One member of ARSA also told Fortify Rights how the group attempted to forcibly recruit Rohingya men and boys by preventing them from fleeing the country: "Yes, it's true. We were stopping the people so they would join the group [ARSA]. The head of my group instructed us to not let people come here [to Bangladesh]."²⁹

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Rohingya board a military vehicle for transport to a refugee camp near Cox's Bazar, Bangladesh, on October 14, 2017. *Photo by Lauren DeCicca*

In the span of one year, ARSA demonstrated its ability to recruit willing “fighters,” attack government installations, and commit human rights violations against civilians, including murder. The Myanmar authorities have used the advent of ARSA to attack Rohingya civilians and shape

public opinion against them. These factors and the lack of accountability for atrocities committed by the military may aid ARSA’s recruitment efforts and contribute to future conflict and cycles of atrocities.

Annex 281

Freedom House, “Freedom on the Internet 2017—Myanmar”, Document #1418337, 14 November 2017

Available at:

<https://www.ecoi.net/en/document/1418337.html>

eci.net



Document #1418337

Freedom House

Freedom on the Net 2017 - Myanmar

Country:

Myanmar

Year:

2017

Status:

Not Free

Total Score:

63

(0 = Best, 100 = Worst)

Obstacles to Access:

17

(0 = Best, 25 = Worst)

Limits on Content:

17

(0 = Best, 35 = Worst)

Violations of User Rights:

29

(0 = Best, 40 = Worst)

Population:

52.9 million

Internet Penetration:

25.1 %

Social Media/ICT Apps Blocked:

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3/27/23, 6:44 PM

Freedom House: "Freedom on the Net 2017 - Myanmar", Document #1418337 - eci.net

Limits on Content:

During the coverage period, both military and self-styled pro-democracy activists actively pressured online media practitioners and outlets they perceived as critical, keeping levels of self-censorship high. Tactics included reporting rival Facebook users for violating the site's community standards—resulting in their accounts being temporarily disabled—and manipulative political commentary. While digital content was not subject to censorship, sensitive political and social topics were nevertheless underrepresented online.

Blocking and Filtering

The government lifted systematic state censorship of traditional and electronic media in 2012. Since then, political content appeared to be almost universally available, and even social content, such as pornography, was not blocked as of mid-2017.³⁶

Content Removal

While new readers are more likely to encounter a range of content than they were in the past, authorities have made a concerted effort to exclude certain topics from mainstream discourse in ways that lack transparency and due process. Notably, since censorship was officially lifted the military has pressured individuals and media outlets to remove posts or images perceived to hurt the public image of the armed forces. Content subject to prosecution is also generally removed (see Prosecutions and Detentions for Online Activities).

Content removal decisions by international companies attracted controversy during the reporting period. In May 2017, Facebook apparently restricted posts containing the word *kala* and sanctioned users who posted it for violating the platform's terms of service.³⁷ The word, originally used to describe foreigners, has increasingly been used as a derogatory term for Muslims, who face widespread discrimination in Myanmar. Observers noted that the blocking was inconsistent across all posts mentioning *kala*, which also forms parts of many benign Burmese words and phrases. The restrictions were lifted after netizens protested.³⁸

Facebook users periodically misuse the mechanism for reporting offensive content in order to disable rival pages. Activists with different political agendas allege their opponents have violated Facebook's community standards in order to have their content removed. Owners must appeal to Facebook to have it reinstated.

Several campaigners who protest against hate speech, however, welcomed reports from the ultranationalist Buddhist monk U Wirathu that Facebook had temporarily shut down two of his accounts on May 31.³⁹ The monk is known for his extreme anti-Muslim rhetoric; a local Buddhist authority had banned him from giving sermons in March.⁴⁰

Media, Diversity and Content Manipulation

Self-censorship with regard to military and related issues is common online, especially after military officials issued warnings in response to news articles and cartoons they said harmed the dignity and spirit of the military during the Kokang conflict in 2015. At the same time, journalists are becoming more cautious when reporting on the NLD government. Although the media was relieved from "government censorship" in 2012, they increasingly fear "public censorship" in the form of social media abuse, according to one of the country's largest weeklies.⁴¹

Annex 282

Friedrich-Ebert-Stiftung, “The Role of Monkhood in Contemporary Myanmar Society”, by S. Gil, September 2008

Available at:

<https://library.fes.de/pdf-files/iez/05699.pdf>

The Role of Monkhood in Contemporary Myanmar Society

By Sylwia Gil, Specialist on South East Asia and Theravada Buddhism, Warsaw, Poland,
September 2008,
(on behalf of Friedrich-Ebert-Stiftung)

Introduction

Recent events in Myanmar, particularly the "Saffron Revolution" in 2007 and cyclone Nargis in 2008 placed Myanmar monks in the focus of the international community. Not for the first time in history, the Myanmar *sangha*¹ took a leading role in times of emergency, and was able to mobilise rapidly their forces in order to help and represent the people of Myanmar. In 1988 they went to the streets with other citizens to call for democratic and economic reforms in the country. Similarly, in 2007, monks participated in the nation-wide protests against rising fuel and commodity prices.² The visible and silent support of the monks provided encouragement and moral guidance for the predominantly Buddhist nation. Facing the post-Nargis devastation and indecisiveness related to access of international humanitarian aid, Myanmar monks became the only organised group able to respond promptly with aid for traumatised victims, providing them with shelter and distributing basic commodities in their communities.

The saffron revolution did not succeed. However, for some analysts it was not the end but rather the beginning of a new chapter in Myanmar's contemporary history, marking the emergence of a new potential social and political force, nourishing hopes of the opposition and

for all who expect general changes in Myanmar. Monks, particularly the younger generation, became more aware of their strength and responsibility for the country. In Myanmar most independent activity is suppressed or under strict control of the state. The monkhood, in contrast, enjoys a high level of immunity and freedom, for instance, with regard to freedom of movement (within the country and abroad)³ or various social activities, mostly in the local area. The recent events showed that their role in the society is not limited to the preservation of religion and rituals.

Although there is a developed *sangha* administration, the dependence of an ordinary monk on the administrative hierarchy is minimal. The Sangha *Mahanayaka* State Committee, the highest administrative body of the Burmese *sangha*, is regarded by the new generation of monks rather as a care-taker of the government's religious activities and maintenance of its *status quo*, than as the body of moral authority for ordinary monks. Most of the members of the Committee are elderly, traditional monks enjoying high privileges and material welfare. They have no real power on community matters, because this lies in hands of the Ministry of Religious Affairs.

The Myanmar *sangha* is not homogenous and the scope of monks' activities is complex. As a monk is perceived as a renouncer of the world, the question arises to what extent he should be engaged in the social and political life of the country? The purpose of this work is to introduce the reader to Myanmar Buddhist society and to give some ideas about the role of the monks in contemporary Myanmar.

¹ *Sangha* - community of monks.

² It is difficult to estimate the proportion of monks who participated in the protest. According to Government only 2 %, in opinion of my interlocutors, monks from Yangon - 60 %. About 2% were strictly against, due to religious conviction, or strong relations with the government. Both estimations seem to be not adequate, to get it more precisely one should know the approximate number of adult novices and monks, as sangha includes novices children as well the number of temporary monks. The media's estimation is up to 30 thousand in Yangon.

³ Regarding monks' opportunities, monastic connections in the whole country and abroad as well financial situation comparatively better than any average Myanmar layman.

often claim that the *parami* (the perfections¹⁵) are also important on the way to *nibbana*, so first they should fulfil them. They try to explain that they are just human beings and they should be perceived as such. Educated monks stress their duty as religious teachers. A monk may live in a comfortable monastery, using computer and mobile phone, but he still is a renouncer as long as he does not break any of the four *parajjikas*. On the other hand, monks are in the middle of mundane life and they do participate in it. The most active and educated monks believe that they should adapt to the times, they are no relics and as teachers and moral guides they have the right to represent the community they live in and to work on behalf of their people.

3. Mutual exchange between *sangha* and lay society

The formally organised and numerous *sangha* certainly cannot exist without the material support of the lay people in the field of basic needs such as food, habitat or clothing. This obvious material dependence on the lay society from the very beginning seems to have created a need for a religious option for the lay supporters, since the Buddha's doctrine was based on the renunciation of the material world. The moral code for laity is simple and embodied in five precepts, also known as *pancasila*: not to kill, not to steal, not to commit adultery, not to lie and not to use intoxicants. There are also a few Buddhist *suttas* concerned with the life of a layman and the most important of them is the *Mingala-sutta* (*Sutta* of Blessings). It is composed of 38 so-called "blessings" or moral guidance notes related to various aspects of life, for instance social association, good living, education and skills, meditation practice, avoidance of sin, nobility, mental maturity, achievement of *nibbana*.

But the main religious offer for the laity is the cultivation of the *dana*: donations for the monks and worship of sacred relics. Through the act of donation lay followers can acquire the highest religious merit, which accumulates and brings fruits in one of their next lives and will eventually bring them closer to salvation. They can also achieve the so-called "five great benefits" in present life by offering alms food, such as longevity, beauty, happiness in mind and body, bodily strength, great wisdom and insight.

¹⁵ The ten perfections include: generosity, morality, freedom from lust, wisdom, effort, peace, truthfulness, resolution, universal love, equanimity. The Buddha had to fulfill all of them in his various, previous lives, before he had become enlightened.

Without practicing *dana* one is not able to make any religious progress. That is why important events in the life of a layman cannot be celebrated without the act of donation. Monks are the vessel through which laity can aspire to the better here and after. The most generous donors deserve also the highest respect and prestige in society. Monkhood, due to the vows, is also a kind of sacrum. In this way, both sides are living in symbiosis and depend on each other, materially and spiritually.

4. The monastery as the centre of cultural and social life in the village

The monastery in a village is a centre of social life. It is supported through the joint effort of the whole village community. Monasteries in Burma have always been centres for education for the people. In pre-colonial times, Burmese society was, like few other Asian societies, literate. During colonial rule (1886- 1948), the role of monasteries was partly weakened due to Christian missionary schools and educational reform, but since independence in 1948 and through the turbulent modern history of an independent state, they are still fulfilling the educational role. In contemporary Myanmar, the state is not able to guarantee access to free education for all and rather tries to adapt existing monastic centres. If they can secure the basic standards, they are registered as self-reliance schools within the state education system and their pupils can sit for state examinations. Monastic schools not only educate a new generation of novices, but they also widen the curriculum for other children. They usually accept all village children who cannot afford to go to a state school or who have difficult access regarding distance. The education in a monastic school is free, often accompanied by free meals and lodging.

Myanmar monasteries are also a place for preservation and transmission of Myanmar cultural heritage. The children are taught basic morals and civics, social rights and duties towards the others.

What is also stunning is that Myanmar's temples are a place of rest and enjoyment. It is indeed a place of refuge for villagers. People come to the monastery to take a rest after work, to give offerings to the monks, meditate or seek for religious or mundane advice. Monastery buildings are usually of better quality and provided with better equipment than any of the village houses. It is possible that the monastery is the only place in the village with electricity, and, what is more,

Annex 283

Human Rights Watch, “Germany: Flawed Social Media Law: NetzDG is Wrong Response to Online Abuse”, 14 February 2018

Available at:

<https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>



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Session of the German lower house of Parliament, Bundestag, in Berlin, February 1, 2018. © 2018 Reuters/Axel Schmidt

(Berlin) – The new German law that compels social media companies to remove hate speech and other illegal content can lead to unaccountable, overbroad censorship and should be promptly reversed, Human Rights Watch said today. The law sets a dangerous precedent for other governments looking to restrict speech online by forcing companies to censor on the government’s behalf.

“Governments and the public have valid concerns about the proliferation of illegal or abusive content online, but the new German law is fundamentally flawed,” said Wenzel Michalski, Germany director at Human Rights Watch. “It is vague, overbroad, and turns private companies into overzealous censors to avoid steep fines, leaving users with no judicial oversight or right to appeal.”

Parliament approved the Network Enforcement Act, commonly known as NetzDG, on June 30, 2017, and it took full effect on January 1, 2018.

The law requires large social media platforms, such as Facebook, Instagram, Twitter, and YouTube, to promptly remove “illegal content,” as defined in 22 provisions of the criminal code, ranging widely from insult of public office to actual threats of violence. Faced with fines up to 50 million euro, companies are already removing content to comply with the law.

At least three countries – Russia, Singapore, and the Philippines – have directly cited the German law as a positive example as they contemplate or propose legislation to remove “illegal” content online. The Russian draft law, currently before the Duma, could apply to larger social media platforms as well as online messaging services.

Two key aspects of the law violate Germany’s obligation to respect free speech, Human Rights Watch said. First, the law places the burden on companies that host third-party content to make difficult determinations of when user speech violates the law, under conditions that encourage suppression of arguably lawful speech. Even courts can find these determinations challenging, as they require a nuanced understanding of context, culture, and law. Faced with short review periods and the risk of steep fines, companies have little incentive to err on the side of free expression.

Second, the law fails to provide either judicial oversight or a judicial remedy should a cautious corporate decision violate a person’s right to speak or access information. In this way, the largest platforms for online expression become “no accountability” zones, where government pressure to censor evades judicial scrutiny.



At the same time, social media companies operating in Germany and elsewhere have human rights responsibilities toward their users, and they should act to protect them from abuse by others, Human Rights Watch said. This includes stating in user agreements what content the company will prohibit, providing a mechanism to report objectionable content, investing adequate resources to conduct reviews with relevant regional and language expertise, and offering an appeals process for users who believe their content was improperly blocked or removed. Threats of violence, invasions of privacy, and severe harassment are often directed against women and minorities and can drive people off the internet or lead to physical attacks.

Criticism of the new law has intensified over the past six weeks after content from some high-profile users was blocked or their accounts were temporarily suspended, even though some of those actions were due to violations of the company’s user rules rather than NetzDG.

Annex 284

Human Rights Watch, “Bangladesh: Refugee Camp Fencing Cost Lives in Blaze”, 25 March 2021

Available at:

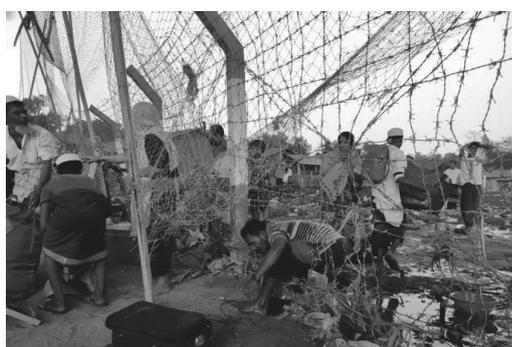
<https://www.hrw.org/news/2021/03/25/bangladesh-refugee-camp-fencing-cost-lives-blaze>

MARCH 25, 2021

Bangladesh: Refugee Camp Fencing Cost Lives in Blaze

Security Measures Should Be Proportionate, Not Cause Harm
Published in

(New York) – Barbed wire fencing trapped thousands of refugees while a massive fire spread through Rohingya refugee camps in Bangladesh on March 22, 2021, Human Rights Watch said today. The Bangladesh government should immediately remove the fencing surrounding the camps in Cox’s Bazar and promptly issue the results of its investigation into the deadly fire.



A man climbs through barbed wire fencing at a Rohingya refugee camp in Cox’s Bazar, Bangladesh, as a massive fire swept through the camps on March 22, 2021.

© 2021 Private

At least 15 people, including 6 children, were killed in the fire, and over 50,000 people were displaced. However, with nearly 400 people reported missing, the actual number of fatalities is yet unknown. Hundreds were injured, some while trying to escape the blaze by climbing over or cutting through barbed wire fencing.

“Refugees have horrifying accounts of being trapped inside barbed wire fencing as the fire swept through the Rohingya refugee camps,” said Brad Adams, Asia director at Human Rights Watch. “The authorities should immediately take down all fencing around the camps and make public the outcome of its investigation into the fire’s cause.”

Human Rights Watch interviewed 17 witnesses and refugees who lost family members during the fire who said that they were unable to quickly escape because of the barbed wire fencing that authorities built around the camps.

The blaze erupted in camp 8W and rapidly spread to three adjacent camps – 8E, 9, and 10. Satellite imagery recorded on March 23 showed the destruction of roughly 61 hectares and at least 10,000 shelters in the camps. It was the biggest fire in the camps since refugees fled to Bangladesh from arson attacks and other crimes against humanity by the Myanmar military in 2017. This was the third fire in the camps in

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5/8/23, 10:06 AM

Bangladesh: Refugee Camp Fencing Cost Lives in Blaze

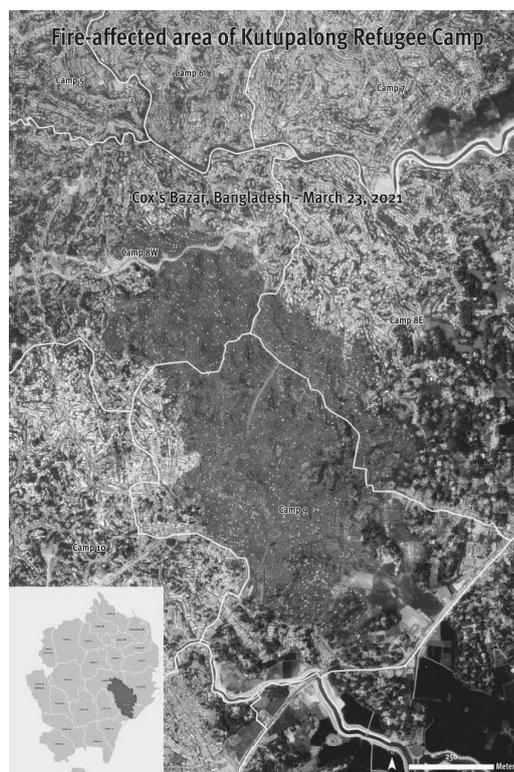
just four days.

A father who lost his 5-year-old son in the fire told Human Rights Watch that the fencing left refugees with only one option to escape through the camp's main entrance. "My wife and I lost our son when everyone rushed to escape from the fire in camp 9," he said. "Everyone was rushing to the main entrance of the camps, which is the only exit route. Other sides are surrounded by fencing.

"When my son got lost, he tried to go back to our shelter searching for us. This is where we found his burned body. We were able to identify him only by his red pants. If there had been no fence, people could have escaped using different routes."

In 2019 the Bangladesh Parliamentary Standing Committee on Defense had recommended building a security fence around the camps "so that no one can come out of the camps and no one can enter inside the camps." Soon after, the authorities started fencing the camps. Rapid progress was made even during the months of severe restrictions on humanitarian access to contain the spread of Covid-19. However, instead of making the refugees safe, the fencing denied them freedom of movement and placed them at serious risk when they needed to evacuate in an emergency or if they needed to obtain emergency medical and other humanitarian services.

During the recent fires, the fencing in particular limited the ability of older people, children, and people with disabilities to flee. "People were frantically trying to escape the fire by climbing over or cutting through the barbed wire fence," one refugee said. "I saw some of them were injured by the barbed wire. Especially the children and older people were the most affected. With so many people trying to escape, it was often children and older people who got trapped."



Human Rights Watch analyzed satellite imagery collected after the fire in Kutupalong Refugee Camp on March 22, 2021. Imagery recorded the next day shows a fire-affected area of approximately 61 hectares. The majority of the destruction is concentrated in Camp 9, Camp 8E, and Camp 8W, including the estimated destruction of at least 10,000 shelters.

Satellite imagery courtesy of Planet Labs Inc. 2021.

Damage analysis and graphic © 2021 Human Rights Watch

Annex 284

5/8/23, 10:06 AM

Bangladesh: Refugee Camp Fencing Cost Lives in Blaze

A refugee who was visiting camp 9 at the time said that because of the fencing it took him nearly an hour to get out of the camp. “People were trying to escape using this one exit point,” he said. “If there had been no fencing, we could have escaped more quickly but people could not get out in time.”



Fire sweeps through the Rohingya refugee camps in Cox’s Bazar, Bangladesh, March 22, 2021.

© 2021 Private

Witnesses reported that the fencing blocked fire trucks and other emergency vehicles. As one refugee said, “We saw that firefighters were delayed due to the fencing because they needed to use different routes to reach to the fire.”

Bangladesh is a party to the International Covenant on Civil and Political Rights, which guarantees the right to freedom of movement. Governments may restrict movement under certain circumstances, but such limits must be enacted in law, necessary to protect national security or public order, and be a proportionate response to a specific security concern.

While the authorities have a duty to protect camp residents, security measures should not infringe upon basic rights and humanitarian needs. The fencing at the Cox’s Bazar refugee camps did not meet the international law standards of necessity and proportionality for restricting free movement. Restrictions on freedom of movement and other rights cannot be imposed on a discriminatory basis, including by nationality.

“Bangladesh authorities are failing in their obligation to protect the lives of refugees by dangerously fencing them inside camps,” Adams said. “The authorities should work with humanitarian agencies and remove the fences, and respect the refugees’ freedom of movement.”

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5/8/23, 10:06 AM

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Annex 285

Human Rights Watch, “Bangladesh: New Restrictions on Rohingya Camps”, 4 April 2022

Available at:

<https://www.hrw.org/news/2022/04/04/bangladesh-new-restrictions-rohingya-camps>



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April 4, 2022 8:00AM EDT

Bangladesh: New Restrictions on Rohingya Camps

Authorities Demolish Shops, Close Schools, Curb Movement



Rohingya refugees lie on a razed shop demolished by authorities in the Kutupalong camp in Ukhia, Bangladesh, December 10, 2021. © 2021 Tanbir Miraj/AFP via Getty

(New York) – Bangladesh authorities have, in recent months, intensified their restrictions on Rohingya refugees’ livelihoods, movement, and education, Human Rights Watch said today. Officials have arbitrarily destroyed thousands of shops while imposing new obstacles on travel within the camps in Cox’s Bazar, denying the Rohingya the ability to live freely and independently.

Bangladesh authorities should lift the new restrictions, allow markets and schools to reopen, and facilitate donors’ efforts to improve refugees’ access to livelihoods, health care, and education.

Annex 285

5/4/23, 2:42 PM

Bangladesh: New Restrictions on Rohingya Camps | Human Rights Watch

“Bangladesh is understandably burdened with hosting nearly one million Rohingya refugees, but cutting them off from opportunities to work and study is only compounding their vulnerability and dependence on aid,” said Meenakshi Ganguly, South Asia director at Human Rights Watch. “The Bangladesh government should formalize and expand employment opportunities to bolster the Rohingya’s self-reliance and enable them to support their families and communities.”

Human Rights Watch, in February and March 2022, spoke with 13 Rohingya refugees who described how the new restrictions have prevented them from being able to provide for their families, give their children an education, or build communities. At the same time, Bangladesh officials have pressured the refugees to relocate to Bhasan Char island or return to Myanmar. The worsening conditions in the camps raises concerns that authorities are acting deliberately to coerce refugees to leave, Human Rights Watch said.

Even prior to the shop demolitions, Rohingya reported that access to employment was their greatest concern in the camps, according to a 2021 survey by the United Nations High Commissioner for Refugees (UNHCR). Although refugees are not officially permitted to work, over half the Rohingya and 30 percent of children ages 15 to 17 reported doing informal work, putting them at risk of exploitation and arrest.

The informal marketplaces set up by Rohingya became vital sources of income for covering basic needs and supplementing aid rations. But beginning in October 2021, officials began bulldozing shops in several camps, often without notice. More than 3,000 shops have been destroyed, affecting tens of thousands of refugees.

Mohammed Ali, 37 (all refugees are identified by pseudonyms), ran a clothing shop that was demolished without notice, destroying 300,000 BDT (US\$3,500) worth of clothes and leaving him in debt. “I had to take loans to build up the products in my store,” he said. “Now it’s become impossible for me to pay them back.”

A shopkeeper, Abdul Amin, 28, said that shop owners had tried to negotiate with the Camp-in-Charge (CiC, a Bangladesh official) when they heard other markets were being demolished. “They didn’t hear our requests,” he said. “They didn’t even allow us to take the remaining products from our shops. They just came and demolished with bulldozers. My loss is worth about a million BDT (\$11,600).”

Abdul Amin said that 40 refugees depended on his business, including his 15 family members and the families of his four employees. “Now I cannot buy extra food needed for my family,” he said. “I cannot afford medicine needed for my mother. I cannot give my children education.... My workers have been continually telling me how tough it has become for them also to support their families.”

Refugees said that the income from the shops helped them supplement the limited food rations of oil, rice, and lentils. “The ration we get as aid isn’t enough for a whole family,” said Mohammed Ali, who had earned about 30,000 BDT (\$350) a month at his clothing shop to support his family of 10.

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Amir, 37, ran a mobile phone repair shop earning about 500 BDT (\$6) a day, which allowed him to buy vegetables, fish, and necessary supplies for his six-person family. “Now the authorities won’t even allow me to run my business from my shelter,” he said. “I really don’t understand how our simple initiative to live slightly better lives in the camps harms Bangladesh.”

A grocery shop owner, 35, said his family of 11 and the families of his two employees were dependent on the store income. “The demolition of the marketplace destroyed my shop and so many like mine,” he said. “Now we’ve turned into beggars again.”

Bangladesh’s deputy refugee commissioner, Shamsud Douza, said the shops were demolished because they were “illegal.” A senior government official told the UN special rapporteur on Myanmar, “Livelihood opportunity is not the responsibility of Bangladesh.”

Many refugees said their attempts to continue operating their businesses from their shelters had also been shut down. “Since the demolition, authorities won’t allow us to run another business,” Mohammed Ali said. “They said it’s prohibited, and that we are not living in our own country, we are living in another country, and we cannot earn money in another territory.”

The nearly one million Rohingya refugees in Bangladesh lack recognized legal status, which puts them on precarious footing under domestic law and makes them vulnerable to rights violations. However, as a party to core international human rights treaties, Bangladesh is obligated to ensure everyone in its jurisdiction, including refugees, has access to fundamental rights, including freedom of movement, livelihoods, education, and health care, Human Rights Watch said.

Rohingya also described new arbitrary restrictions on movement within the camps in recent months, including threats, frequent curfews, and harassment at checkpoints. “Before, we used to move freely around the camps to visit friends and families,” Amir said. “But now we face a lot of questioning by the authorities whenever we’re outside our shelter.”

One refugee, 43, said that in the past, he had been able to travel freely within the camps, but in December, officers of the armed police battalion (APBn) stopped him at a checkpoint on his way to visit family in another camp, claiming he did not have the camp official’s permission. “This time, they made me wait at their checkpoint until my family members bribed the APBn officials,” he said. “Since then, I stopped going outside of my shelter.”

Another refugee, 22, said that *majhis* (Rohingya community leaders) told his block that camp officials had ordered Rohingya not to leave their shelters at night. In February, two police officers stopped him at a checkpoint in the late afternoon while he was returning to his shelter after visiting relatives. “One of them started slapping me, saying that I was lying,” he said. “They took me to the APBn police barrack in Camp 12 and kept me there overnight.” He was released the next day after paying a 30,000 BDT (\$350) bribe.

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The authorities began building fencing in the camps in 2019, ostensibly to ensure the refugees' safety. Instead, the fencing denies them freedom of movement while placing them at serious risk during emergencies, such as fires, which has led to preventable deaths. Six fires have broken out in 2022 thus far, which Save the Children called "avoidable," urging officials to create additional openings in the fencing.

New restrictions have also been placed on education, depriving Rohingya children of the opportunity to learn and build self-reliant futures. In December, Bangladesh authorities banned Rohingya-led community schools, affecting about 60,000 students.

Refugees and humanitarian groups fear the recent dire restrictions are part of the government's efforts to coerce refugees to relocate to Bhasan Char or repatriate to Myanmar. Bangladesh authorities have already moved about 22,000 Rohingya to the remote, flood-prone island, where they face severe movement restrictions, food and medicine shortages, and abuses by security forces. Many have been transferred without full, informed consent, and have been prevented from returning to the mainland.

The Bangladesh government has also renewed efforts to repatriate the Rohingya, declaring its top priority "is immediate repatriation of the Rohingyas to their homeland Myanmar." In January, Bangladesh officials held the first meeting of a new task force formed with Myanmar junta officials, announcing joint plans to "expeditiously complete the verification process."

Two prior repatriation attempts failed, with Rohingya refugees unwilling to return due to the ongoing risk of persecution and abuse in Myanmar. In December, the special rapporteur on Myanmar reported that "conditions for the safe, sustainable, dignified return of the Rohingya to their homeland currently do not exist," given the frequent atrocities by the Myanmar junta and ongoing crimes against humanity of apartheid and persecution faced by the Rohingya.

Refoulement, the forcible return of refugees to places where their lives, physical integrity, or freedom would be threatened, occurs not only when the authorities directly expel refugees, but also when indirect pressure is so intense that it leads people to believe they have no option but to return to a country where they face a serious risk of harm.

The 2022 Joint Response Plan for the Rohingya humanitarian crisis, which is requesting US\$875 million, is thus far unfunded. Donors, including the United States, United Kingdom, European Union, and Australia, should increase funding to meet the massive needs of the Rohingya refugee population while urging Bangladesh to reverse its restrictions on livelihoods, movement, and education, Human Rights Watch said.

"The US, UK, and other donors should help ensure that Rohingya refugees have access to education, employment, and other necessary tools for rebuilding their lives," Ganguly said. "It's critical for governments to work together to address these issues and show solidarity with the Rohingya in the face of the Myanmar junta's mounting crimes."

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Human Rights Watch, “Bangladesh: Spiraling Violence Against Rohingya Refugees”, 13 July 2023

Available at:

<https://www.hrw.org/news/2023/07/13/bangladesh-spiraling-violence-against-rohingya-refugees>

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JULY 13, 2023

Bangladesh: Spiraling Violence Against Rohingya Refugees

Protect Community From Killings, Abductions, Torture
Published in

Shayna Bauchner

Researcher, Asia Division

- Bangladesh authorities are failing to adequately protect Rohingya refugees from surging violence by armed groups and criminal gangs, with layers of barriers to police, legal, and medical assistance.
- Authorities have been forcing Rohingya leaders to serve as informants, putting them at grave risk of being abducted or killed, without access to protection.
- The government should create a rights-respecting security policy in consultation with refugees and the United Nations. Donor governments should press Bangladesh to remove barriers to justice.



Security force officers stand guard after the killing of Rohingya community leader Mohib Ullah in the Kutupalong refugee camp, Bangladesh, October 2021.

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(Bangkok) – **Bangladesh** authorities are taking inadequate measures to protect Rohingya refugees in camps from surging violence by armed groups and criminal gangs, Human Rights Watch said today. The authorities should assist refugees by establishing accessible systems to report crimes and promptly investigate complaints.

Human Rights Watch documented 26 cases of violence against Rohingya, including murder, kidnapping, torture, rape and sexual assault, and forced marriage, drawing on interviews with 45 Rohingya refugees between January and April 2023 and supporting evidence including police and medical reports. Victims report facing layers of barriers to police, legal, and medical assistance, with the authorities failing to provide protection, improve security, or prosecute those responsible.

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Bangladesh: Spiraling Violence Against Rohingya Refugees

“Prime Minister Sheikh Hasina’s past pledges to protect Rohingya refugees are now threatened by violent groups and an indifferent justice system,” said Meenakshi Ganguly, deputy Asia director at Human Rights Watch. “The Bangladesh authorities’ increasingly evident intention to repatriate the Rohingya does not absolve the government of its responsibility to ensure their protection.”

Bangladesh authorities have reported that armed groups killed over 40 Rohingya refugees in the camps in 2022, while at least 48 refugees were killed in the first half of 2023. Rohingya say the totals are much higher. Seven refugees were reportedly killed in three incidents on July 6 and 7, including a sub-*majhi* (camp community leader) and alleged members of militant groups.

Many of those killed have been Rohingya community leaders or their family members. Scores of refugees have been abducted for ransom and threatened or tortured. Several Rohingya reported the involvement of armed groups in sexual assault, forced marriage, and child recruitment.

Refugees describe an environment of escalating brutality and fear, with growing concerns of being targeted by criminal gangs and claimed affiliates of Islamist armed groups. “Every night we hear gunshots,” a Rohingya refugee told Human Rights Watch. “When the shooting starts, we hug each other tightly and wait, fearing it is our turn next.”

Victims of attacks named members of various groups as being responsible, including the Arakan Rohingya Salvation Army (ARSA), the Rohingya Solidarity Organization (RSO), Munna gang, Islami Mahaz, and several others. The Bangladesh Ministry of Defence reported that at least 11 armed groups are operating in the camps. Several criminal gangs involved in drug smuggling and human trafficking have been vying for greater control in the camps, with the refugees caught in the middle. Activists, educated people, and majhis are common targets, which has had a chilling effect on Rohingya civil society. At least 16 majhis were killed in the first half of 2023.

No criminal justice system is available to the refugees; they cannot go to the police to file a complaint. Instead, they must approach Bangladesh administrative authorities or security forces in the camps. Several families said they could not get the required approval from the camp-in-charge (CiC), a Bangladesh official, to file a report with the police. Others said they obtained permission to bring a complaint to the Armed Police Battalion (APBn) but could go no further, as the force has no civilian investigative function. Refugees who did manage to register their case at a local police station said there was no follow-up, often because they could not cover the bribes and legal fees demanded.

Several majhis who were killed or attacked over the past year were targeted by alleged ARSA members who considered them informants for Bangladesh authorities. Majhis said that authorities forced them to take part in nighttime watches, to join police raids, and to identify members of armed groups, at times in front of the suspects. Family members of killed majhis said they had previously requested help from the camp-in-charge and APBn, some even providing lists of those who were threatening them, but were ignored.

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Of the 26 cases Human Rights Watch documented, only 3 led to arrests. Most victims interviewed said that gangs or armed groups threatened and harassed them after the initial assault, intimidating them into staying silent.

Many victims alleged collusion between security force officers and criminals. The APBn, which has overseen security in the camps since July 2020, is itself responsible for widespread abuses against refugees, including extortion, arbitrary arrests, and harassment.

The police response to the growing violence has been marked by abuse, with indiscriminate raids and violent crackdowns. Refugees allege that APBn corruption has allowed criminal activity to proliferate, while Rohingya not responsible for crimes have ended up under arrest.

“There were so many killings that happened in broad daylight, near the APBn police camp,” said an international aid agency volunteer. “Even after hearing the gunshots, they took no action. When there are killings or violence, the police arrest innocent people, not the real perpetrators. The real ones are given license to do the same thing again.”

Rohingya who sought protection were told to move to other shelters or camps, without any support. Some parents said they sent their children to Malaysia, risking dangerous boat journeys, to protect them from attack. Victims and their family members described ongoing fear and injuries following the attacks, without access to adequate physical and mental health care.

Bangladesh authorities contend that repatriation of Rohingya to Myanmar is the only solution for the dangerous situation in the refugee settlements. However, conditions for the safe, sustainable, and dignified return of Rohingya do not currently exist. The Bangladesh government should develop and carry out a rights-respecting security policy to protect the camp population, in consultation with the refugees and United Nations agencies, including the UN Refugee Agency (UNHCR), the International Organization for Migration, the UN Children’s Fund (UNICEF), UN Women, and the UN Population Fund.

UN agencies should task and train personnel to receive complaints filed by refugees, with streamlined, confidential reporting and referral procedures for legal, medical, and protection services, including survivor-centered care. Resources such as safe houses and UNHCR’s protection hotline should be expanded.

Donor governments and UN agencies should press Bangladesh to lift the bureaucratic barriers to accessing local police and courts, as well as all restrictions on access to education and livelihoods to reduce illegal and dangerous economic activity in the camps. The authorities should also end APBn’s use of refugees for compulsory night patrols.

“The Bangladesh government needs to protect Rohingya refugees, rather than let criminal elements drive them out,” Ganguly said. “Donor governments should be helping to meet the humanitarian needs of Rohingya refugees in Bangladesh while pressing for the establishment of rights-respecting civilian rule in

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Myanmar so they can one day go home.”

Violence and Denial of Justice, Protection for Rohingya Refugees

About one million ethnic Rohingya refugees are in Bangladesh, living in the sprawling, overcrowded camps in Cox’s Bazar or the isolated silt island of Bhasan Char. Most of them fled Myanmar military atrocities in 2017. The violence in the camps has escalated amid Bangladesh’s increasingly coercive restrictions on livelihoods, movement, and education in the camps, including harassment at checkpoints and closing community schools and markets.

In September 2021, the community leader and rights advocate Mohib Ullah was shot and killed in Kutupalong camp after receiving death threats that the authorities failed to address. “The armed groups target activists because of power,” an activist said. “They want the camps under their control. If activists and educated people become stronger leaders, common Rohingya won’t fear the armed groups anymore, and they’ll lose their control and their profits.”

Refugees said that armed groups recruit boys age 13 and older with bribes. “Whenever armed group members see youth wandering around, they’ll approach them and say, ‘Look, I can give you something that’ll make you powerful,’” an activist said. “And they give them guns and sometimes money too.”

Rohingya refugees in Bangladesh lack recognized legal status, which puts them on a precarious footing under domestic law and makes them vulnerable to rights violations. The Bangladesh government has an obligation under international human rights law to ensure that the rights of everyone in its jurisdiction, including refugees, are protected, and to investigate allegations of abuses and hold those responsible to account.

In one of the three documented cases that led to arrests, in which a woman was stabbed, her family said that the police freed the suspect after he paid a bribe. In another, the police detained three people who were not involved in the killing, the victim’s family said. In the third, the police detained several men implicated in the murder, but the family has been threatened by others they say were involved but not arrested.

By mid-year, the 2023 UN Joint Response Plan for the Rohingya humanitarian crisis had received only a quarter of the required US\$876 million in donor contributions. The funding shortfall has led the World Food Programme to cut Rohingya food rations by a third since February, down from \$12 to only \$8 a month, increasing desperation and the spread of illicit activities like drug smuggling, extortion, and human trafficking in the camps. Donors, including the United States, United Kingdom, European Union, and Australia, should act to meet the massive protection needs of the Rohingya refugee population.

Names and other details have been withheld to protect the refugees’ identities.

Killings

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Human Rights Watch documented nine killings of majhis, who have been major targets of armed groups and criminal gangs.

“These armed groups decided to increase violence in the camps, killing people, targeting majhis and activists, to create an environment of fear so that they can operate in the camps without interruption by Bangladesh authorities,” an activist said. “They are recruiting a lot of children and teenagers, forcing them to join or offering money.”

Several family members said that their majhi relatives were killed after the authorities insisted that they identify members of armed groups. The brother of a head majhi who was killed in February said his brother had tried to resign after being previously abducted and tortured, but authorities refused to let him step down:

He became a target after the government used him against ARSA. He had to comply with orders of the CiCs and the law enforcers in the camp. ARSA also wanted to control him because he was a head majhi and they wanted him to allow their free movement and inform them about raids. He wanted to resign from his position as head majhi since it was risky, but Bangladesh authorities wouldn't let him.

Family members said that the majhis are caught between the authorities and the armed groups. The widow of a majhi who was killed in March said:

The authorities forced the majhis to give all sorts of information, warning that they would otherwise be sent to jail as ARSA collaborators. My husband told me he was so confused about what to do. If the majhis didn't help the authorities, they became ARSA's collaborator, but when they went against ARSA, they became a collaborator of the authorities.

Not one of the eight family members who said that they had reported threats to Bangladesh authorities were granted protection. The brother of a slain majhi said that authorities had insisted on his help in cracking down on ARSA, then denied his pleas for protection:

The authorities always try to show that they have a zero-tolerance policy against ARSA. But with ARSA committing crimes and killings in the camps, it shows that in reality, the authorities are putting the majhis in danger, while the criminals remain untouched. [My brother] was tasked by APBn to mobilize the majhis under him to inform police about ARSA whereabouts. Just one week later, he was killed.

The widow of a slain sub-majhi said:

Before he was killed, [my husband] submitted a list of people who threatened him to the CiC and APBn, but they didn't do anything. If they had, he could have been saved. The APBn didn't

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take any measures to help, they just asked him to put more effort into guarding the camp at night.

Several majhis attempted to go into hiding but were required to continue assisting camp authorities in monitoring duties. Another widow said:

[My husband] was facing threats, so he didn't come to the shelter that much. But at that time, it was mandatory for the majhis to guard the camps at night, as instructed by APBn. That night after he was on duty, he went back to our shelter at around 4 a.m. Around 20 to 30 armed men surrounded the shelter and opened fire. He tried to flee but was caught. He was shouting and begging for his life. I heard two gunshots, then he tried to flee, then they shot again.

Armed groups have also killed family members of people considered informants as retribution. One refugee said that ARSA members killed his younger brother in March due to the interviewee's work with police:

When ARSA started killing respected people in the community and demanding ransom, I began working with law enforcement to identify ARSA members. I became a target, but I never thought they would kill my brother. The day he was abducted, I told the police and military. I know I am responsible for my brother's death. But I will keep helping the police whenever I can because ARSA is criminal. They kill people, and they should be arrested.

Others have been targeted because of gang rivalries. An alleged ARSA supporter was reportedly shot and stabbed in April by members of the militant group Islami Mahaz. He died the next day. A family member said that Islami Mahaz has been allowed to operate freely in their camp because it helps security forces identify ARSA members. "The police never came to help me even after they heard the shooting," the family member said. "I didn't file any case since there will be no justice. The group operates freely in the camp. They are on good terms with the police."

In all but one case, those responsible for the killings remain free in the camps, according to the victims' families. Several family members said that they declined to file a case out of fear of collusion between police and the killers, or they withdrew their complaint due to threats. "ARSA had a good relationship with APBn at that time," one widow said. She had tried informing police about suspects in her husband's killing but said the case has not moved forward. "ARSA members were having tea with APBn at the shops. They were even hanging out in several places with the accused. I was also threatened to drop the case."

Many families who have been threatened have been forced to relocate, particularly those who tried to pursue justice. Some have been unable to move to another camp because they lack the resources or support they need.

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“My husband used to work for the CiC and the authorities,” a widow said. “If they wanted, they could have provided protection to him. They never did, so he was killed. Now I can’t live in my shelter. If I ask the CiC for help, they say there’s nothing they can do.”

She left the camp after her husband’s death, but still lives in fear:

I feel afraid that the killers could come again. I have five children. They also live in fear. Every night I used to hear gunshots. I never realized they would target my husband. My husband used to maintain relationships with everyone because he feared for his life.

One woman said she has been unable to return home due to constant death threats. As a community leader, she had faced years of threats and violence from gangs, culminating in a recent attack that left her sister dead and her and her daughter seriously injured. She said they have ongoing medical issues from the shooting: “My daughter and I aren’t getting proper treatment, but we can’t afford a private hospital. We are refugees, but we are human. The police don’t even treat us like humans. They think of us as garbage, so even if our people are killed, they don’t care.”

Abduction, Torture, Extortion

Armed groups in the camps have been increasingly kidnapping Rohingya refugees for ransom, forced recruitment, or human trafficking. Human Rights Watch documented 10 cases of abduction.

Six victims described being tortured during their abductions. “I was fed only bread and water,” said a teenage boy who was kidnapped in February and held for a week, until his family paid ransom. “They beat me with thick electric wire. They tried to kill me and threatened they were going to. I was so scared. One of them tried to rape me. I still feel so worried when I think about that.”

“I was confined for four days,” another refugee said of his March abduction. “I was blindfolded and my hands and legs were tied with a rope. I was given very little food and water. I was beaten and asked how much money my mother could pay. I felt so helpless.” He said he was tortured so badly he could not walk.

Family members said they received little to no help after reporting missing relatives to the authorities. “We didn’t get much cooperation from the police,” a victim’s brother said. “They only said they were trying to find the mobile phone number the ransom call had been made on, which we also had. They charged us two bribes for the mobile number. They didn’t conduct any operation on their own to rescue my brother.”

Two families said that APBn took credit for rescuing their family members after providing little to no support. “After my brother was rescued, APBn interviewed him and took photos with him to claim credit for rescuing him,” a victim’s brother said. “We were so shocked seeing their circus. We had been continually asking for help from the police to rescue our brother, but they didn’t do anything. We had to pay a huge ransom and rescue him ourselves.”

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The mother of a victim who had been abducted and tortured said:

The APBn had done nothing, but they came to take credit for rescuing my son. We took him to a hospital nearby where he was treated for three days. I tried to contact the police and UNHCR protection team to get justice. But they both said that if I didn't recognize the kidnapper, there was nothing to do. I gave them the kidnapper's phone number. No case was filed. The police didn't care about filing a case. Maybe they expected that he would come back as a body, not alive. If they wanted to, they could have rescued him.

Majhis and community leaders have also been targeted for abduction by ARSA. A teacher said alleged ARSA members had abducted and severely beaten him three times because he opposed their criminal activities, most recently in March:

I was blindfolded, and they put a cloth in my mouth so I couldn't talk or shout. They accused me of helping the police against ARSA. They started beating me with rods and logs on my back, my legs. They asked me for my last wish, like they were going to kill me. I heard them talking about how they would disappear my body after killing me. They said they would hide my body in the latrine like they did to others.

The teacher said they kept torturing him and interrogating him about why he did not leave the camp when they told him to. He stayed, he said, because of his family and students.

"The problem is Bangladesh authorities can't ensure our protection," said a majhi who was abducted in 2022 and threatened with death if he continued to provide information to security forces. "Authorities take all this information from us but then watch us being killed by ARSA for helping them. We are being targeted by the militant groups and the authorities. So many of my colleagues are being killed."

A gang abducted a former majhi in March and beat him with rods until his family paid 100,000 taka (US\$925) for his release. His family never reported the attack out of fear of the attackers' ties to the police. "The group is based in our camp," one of his sons said. "They move around freely and have a good relationship with the authorities, so we never dared to complain to the police about the abduction."

Several family members said that the accused roam freely in the camp, while the police ignore the families' reports. Others said they did not attempt to file complaints due to threats or because they did not expect a fair investigation. Refugees who were tortured said they feel constant fear, with no access to mental health services in the camps.

"I still have scars from the torture on my back, legs, everywhere," said one man who had to leave his home due to ongoing harassment. "Since the kidnapping, I don't live in my shelter. I refused to file a case because I was worried about my family's safety, and I didn't have money to fight the case anyway. ARSA

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members keep threatening my family even though I didn't file a case. Their leader recently called me and threatened to kill my brothers.”

Sexual Violence and Forced Marriage

In early 2023, a woman found her 6-year-old daughter unconscious in front of their shelter. She took her to the hospital, where a doctor examined her and found she had been raped, according to medical documents reviewed by Human Rights Watch. The girl's mother tried to file a report with both APBn and the camp-in-charge but struggled to get assistance:

The APBn told me that since it's a “sensitive case,” I could only file a complaint with the CiC. I was determined to take legal action, but I need the support of the CiC or Bangladesh authorities to do so, since I'm Rohingya. It's not like I can just go to the police station like Bangladeshi people can. But unfortunately, the CiC didn't give me permission or even meet me again for another five days.

When she was eventually able to meet with the local police, the officers accused her of falsifying medical documents to file the case. She began receiving threats from the man that her daughter had identified as the attacker and had to move her family to another camp, without any support to build a new shelter. “I haven't been able to take any legal action against those people because the authorities don't want to ensure our justice,” she said. “They have little sympathy for what happened to my daughter.”

She spent 400,000 taka (\$3,700) to send two of her older daughters to Malaysia for their safety. “My [6-year-old] daughter is living in constant fear,” she said.

Several women or their family members described armed group members sexually assaulting married women and girls whose husbands had gone to Malaysia for work. One woman whose husband had left the camps was reportedly raped by a member of a militant group, who filmed the attack and posted it on social media.

Several Rohingya refugees reported cases of forced marriage to Human Rights Watch. “It is really dangerous to live in the camps, especially with girls in your house,” one mother said.

Alleged militants have threatened to kill family members who resisted forced marriage of their young daughters. One 16-year-old said that she was forced to marry an ARSA member when she was only 14. Alleged ARSA members had abducted her father and brother, threatening to kill them unless they agreed to her marrying a 28-year-old man who already had another wife. The two men were only released after they consented to the marriage. The girl reported that the man she was forced to marry subjects her to physical violence.

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5^{ème} commission

Les obligations et les droits *erga omnes* en
droit international

*Obligations and Rights Erga Omnes in
International Law*

Rapporteur : **Giorgio Gaja**

La commission était composée de MM. Cançado Trindade, Degan, Dimitrijević, Dugard, Lady Fox, M. Frowein, Sir Kenneth Keith, MM. Meron, Nieto Navia, Owada, Schermers, Skubiszewski, Suy, Weil, Zemanek.

I. First Report (March 2002)

1. Introduction

The emergence in the second part of the 20th Century of the category of obligations *erga omnes* under international law and later of that of rights *erga omnes* reflects what has been termed as the emergence of public interests in the international community¹: the growing concern for the protection of interests that States perceive as common and the consequent building of rules and institutions that are designed to protect those interests. Norms that establish obligations and rights *erga omnes* are one of the main aspects of that concern.

The purpose of the present report is to examine obligations and rights *erga omnes* and their various implications in the light of current developments. I do not believe that the fact of my being also a member of the International Law Commission makes me biased in identifying the final adoption by the Commission of the Articles on the responsibility of States for internationally wrongful acts² as the most important development that has recently taken place with regard to our subject. Although the ILC Articles are not the final step in the process for the codification and progressive development of the law of State responsibility, it is noteworthy that the General Assembly has commended them to the attention of Governments and annexed them to a Resolution adopted without vote.³ Even if the Articles do not expressly mention obligations and

¹ See J.A. Frowein, « Das Staatengemeinschaftsinteresse - Probleme bei Formulierung und Durchsetzung », in K. Hailbronner, G. Ress and T. Stein (eds.), *Staat und Völkerrechtsordnung. Festschrift für Karl Doehring* (1989) p. 219. P. Picone, « Interventi delle Nazioni Unite e obblighi *erga omnes* », in P. Picone (ed.), *Interventi delle Nazioni Unite e diritto internazionale* (1995), p. 517 referred to public management of values and interests of the international community. The element of « 'public interest' of the international community as a whole » that characterizes norms that impose obligations *erga omnes* was emphasized by J. Delbrück, « 'Laws in the Public Interest' - Some Observations on the Foundations and Identification of *erga omnes* Norms in International Law », in V. Goetz, P. Selmer and R. Wolfrum (eds.), *Liber amicorum Günther Jaenicke - Zum 85. Geburtstag* (1998), p. 17.

² The text of the Articles and their commentary are reproduced in UN doc. A/56/10 and in J. Crawford (ed.), *The International Law Commission's Articles on State Responsibility* (2002), pp. 61 ff.

³ GA Res. 56/83, adopted on 12 December 2001.

be entitled to make a claim. Logical and practical reasons militate in favour of the proposition included in Article 48(2)(b).

Should one deny States, to which an obligation is due, but which are not injured, the entitlement to claim reparation, the infringement of the obligation would not entail any international responsibility and the very existence of the obligation would become theoretical.⁶² For instance, in the case of unlawful damage to the ozone layer or massive pollution of the high seas, there may not be any injured State and thus no State would be entitled to claim reparation. On the other hand, if States other than injured States are regarded as entitled to bring a claim for reparation in this type of case, there does not seem to be a convincing reason for denying them a similar entitlement when there is an injured State or when an entity other than a State is injured. Particularly in the latter type of case, the possibility for States to bring a claim for reparation would be highly important in order to give practical meaning to the obligation.

12. Concurrent Invocations of Responsibility with Regard to Breaches of Obligations *Erga Omnes*

Article 48(3) of the ILC Articles on State responsibility identifies the « requirements for the invocation of responsibility » by any State to which an obligation *erga omnes* is due by referring to those applying to an injured State.⁶³ As stated in the ILC commentary, the purpose of this reference is that of subjecting « the invocation of State responsibility by States other than the injured State to the conditions that govern invocation by an injured State ».⁶⁴ Thus, for instance, a waiver by any State that had brought a claim would come under the same rule. Clearly, nationality of claim - as may be required under Article 44 - would not be relevant in the case of breach of an obligation *erga omnes*; however, the reference also to Article 44 in Article 48(3) is not out of place, because Article 44 also concerns the requirement of exhaustion of local remedies which may have a role with regard to obligations for the protection of human rights.⁶⁵

⁶² The idea that there may be an objective infringement of international law « irrespective of whether any other State is qualified to take the matter up » was thus expressed by Judge Fitzmaurice in his individual opinion in the *Barcelona Traction* case, ICJ Reports (1970), p. 66.

⁶³ UN doc. A/56/10, p. 319.

⁶⁴ *Ibid.*, p. 324.

⁶⁵ *Ibid.*, p. 304. The ILC commentary noted that the local remedies rule applies « in spheres not necessarily limited to diplomatic protection ». *Ibid.*, p. 305.

The ILC Articles do not address the question of how the different claims for reparation that States may make in case of a breach of an obligation *erga omnes* combine with each other. Nor is it said how they relate to a claim that an injured State or other entity may also prefer. Requests for cessation of a continuing breach may well come from different sources and would not conflict with one another. Other types of request made by different subjects may not be coherent. For instance, one State may request restitution, while another State may insist on compensation for the same injury. Even if, also in a totally bilateral situation, an injured State does not possess an absolute right to choose the form of reparation, it seems reasonable to give weight to the preference expressed by the injured State. Similar weight should be given to the preference shown by an injured entity, other than a State, which may be considered, under the circumstances, as « beneficiary » of the obligation.⁶⁶

Absence of a claim by other States and even by the injured State does not raise similar problems. Should the injured State refrain from putting forward a claim or waive a claim originally made, the other States to which the obligation is due are not deprived of their entitlement to invoke responsibility. The injured State may have its own political reasons for acquiescing, but cannot dispose of the general interest in compliance with the obligation. This interest could be jeopardized if all the States refrained from responding to a breach. At any event, the position of States other than the injured State is not dependent on the latter State's attitude.

⁶⁶ J. Crawford, « Third Report on State Responsibility », UN doc. A/CN.4/507, p. 42 (para. 94) wrote : « [...] the particular beneficiary of a substantive obligation (e.g., the individual whose right has been violated contrary to a human rights obligation, the people whose right to self-determination has been denied or even the State actually harmed by a breach of an obligation *erga omnes*) may validly prefer compensation to restitution. By what right could others, even with a recognized interest in compliance, countermand that preference? ». The previous Special Rapporteur, G. Arangio-Ruiz, had expressed the view that « [w]hensoever *restitutio* was due by the author State for a violation of an imperative rule or, more generally, of a rule setting forth an *erga omnes* obligation, it could not be renounced (in favour of pecuniary compensation) by the directly injured State or States » (« Preliminary Report on State Responsibility », UN doc. A/CN.4/416/Add.1, p. 26 (para. 113)). While the latter view would be persuasive with regard to cessation of a continuing breach, it is less convincing when the question concerns the choice between restitution and compensation. Moreover, what applies to *jus cogens* does not necessarily extend to rules establishing obligations *erga omnes*.

Annex 287

Institute of International Law, “Obligations and Rights *Erga Omnes* in International Law”, Rapporteur: Giorgio Gaja, Replies and Observations of the Commission, *Annuaire de l'Institut de Droit International*, vol. 71-I (2005), pp. 153-187

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famous formula coined by ECOSOC Resolution 1503 (XLVIII) : « consistent pattern of gross and reliably attested violations of human rights ».

Reply of Mr Theodor Meron (22 July 2002)

... International practice concerning rights and obligations *erga omnes* lags behind the extremely rich international law literature on the subject. The primary object of our study should therefore be to survey the international practice on *erga omnes*.

I agree that it should not be our goal to prepare a catalogue of *erga omnes* rights, as this would require a detailed study of many areas of international law. It may nevertheless be useful to attempt to clarify the criteria by which human rights come to be characterized as rights *erga omnes*. This need arises from the statement of the International Court of Justice in the *Barcelona Traction* case that only basic rights of the human person qualify as such rights, in contrast to human rights created by treaties.

I also agree that our study should focus on *erga omnes* under general international law. Nevertheless, considerable attention has been paid in the literature to obligations arising under such universally accepted conventions as the Geneva Conventions for the Protection of Victims of War of 12 August 1949. Although conceptually the problem of *erga omnes contractantes* is different from that of *erga omnes*, many important issues overlap both categories. It probably would be preferable to devote some time to the study of implications for *erga omnes* of, at least, the Geneva Conventions.

Questions requiring special attention concern the invocation of responsibility for breaches of obligations *erga omnes* by States, which are not specially affected, including counter-measures by such States.

Reply of Mr Karl Zemanek (26 July 2002)

The following remarks are arranged in accordance with the numbering of the headings in the report.

Ad 1 : I fully agree that the most fruitful approach to rights and obligations *erga omnes* is through the law of State responsibility, which makes the Report of the ILC on the matter an authoritative reference for the analysis. The text of the respective draft Articles is, however, the result of compromises within the Commission with a view of enhancing its acceptability by the greatest possible number of States. I wonder, therefore, whether the Institute, which does not work under a similar constraint, needs necessarily adhere to and concur with the

draft Articles in all their aspects. As it happens, in some points related to *erga omnes* obligations, points to which you also refer in your report, the ILC has had to tread lightly in formulating the text. The result is not always felicitous. Why should we not be so bold as to go beyond the ILC text in these cases ? I therefore welcome your suggestion of a discussion without the objective of adopting a Resolution in Bruges, which will spare us the need of searching for the lowest common denominator among ourselves.

Ad 2 : I share your view. I have, however, doubts that an examination of the ways in which States react to a breach of an obligation will provide a conclusive test of the latter's *erga omnes* character. Theoretically you are, of course, right and in an ideal international community State practice should prove you so. However, as you deplore in the last paragraph of your concluding remarks, States, being what they are, act primarily in self-interest (or what they perceive as such) and only exceptionally in the interest of community values. Which means that they may not react to the violations of an *erga omnes* obligation due to them if there is insufficient self-interest to do so or even self-interest not to do so. Hence I would hesitate to apply the test in some cases. As you point out in No. 18 of your report, State practice is, in this respect, limited. I fear that even in case of a violation of the prohibition of the use of force a painstaking examination of State reactions to it may reveal them to be so contradictory (think of a possible attack of the US on Iraq) as to put the *jus cogens* character of the norm itself in jeopardy, since it may become doubtful whether the norm was still « accepted by the international community of States as a whole ».

Ad 3 (and, incidentally, ad 6) : I defer to your view that to include obligations *erga omnes partes* (of a multilateral treaty) in the study would complicate the latter and possibly blur the *essential* features of *erga omnes* obligations. Since nearly all conventions which establish obligations *erga omnes partes* establish also some sort of primary law mechanism for the supervision of their observance, their inclusion might indeed complicate the analogy with *erga omnes* obligations under general international law. But I do this only for the sake of convenience and not on principle, because I do not share the opinion of the ICJ in the *Nicaragua* case that « where human rights are protected by international conventions, that protection takes the form of such arrangements for monitoring or ensuring respect for human rights as are provided for in the conventions themselves » (Reports 1986, para. 267), which makes them self-contained regimes. I firmly believe that if the primary law machinery is unsuited for ending a violation or does not bring it about, the law of State responsibility applies.

However, if one accepts the distinction and the limitation of the study to *erga omnes* obligations under general international law, even as a mere convenience, one must be aware of two resulting problems :

The first is that authoritative references to *erga omnes* obligations do not necessarily distinguish between the two categories, which makes it doubtful whether they may be used in regard of both types. Thus, I assume that the *dictum* of the ICJ in the case of the *Application of the Genocide Convention* which you quote in No. 6 refers to obligations *erga omnes partes*, though one can never be sure that the verb « enshrined » was not deliberately chosen to convey the impression of an obligation under general international law which happens also to be embodied in an international convention.

That leads to the second problem. While it is one thing for the ICJ to hold that a conventional norm has been transformed into one of general international law, which it did with the non-use of force in the *Nicaragua* case for establishing its jurisdiction, it becomes a different matter when the pronouncement is academic. I am aware of only very few in-depth studies, which establish the generally binding force of a norm of customary international law beyond reasonable doubt by proving the *opinis juris* through confirming State practice on a wide scale. In most cases this is done superficially (even by courts or tribunals), with a few convenient examples, or even with a mere assertion. Thus, for example, only an international court or tribunal could deal adequately with a phrase like « basic rights of the human person » because it can interpret it authoritatively. Scholars will presumably quarrel along the lines of their ideological or religious beliefs as to which rights are « basic ». This raises the question of which norms of general international law, besides those belonging to *jus cogens* (I shall come back to this while commenting on your No. 5), establish obligations *erga omnes*. In other words : which are the substantive norms of general international law to which our considerations apply ? Can we name them ? I understand your reluctance (last para. of No. 6) to suggest a survey. But do the examples given in the literature you mention in note 36, besides those taken from the Court (and they are sometimes ambiguous [viz the quote from the *Application* case], if not to say Delphic), satisfy the requirement of an in-depth analysis of State practice ? (I can, unfortunately, not verify it at the moment, being in the countryside).

Ad 4 : No specific comment; I agree with your assessment. Only a word, and that only as an aside, on the EU. Since in the CFSP the EU is acting as an inter-State body, and given the still doubtful legal personality of the EU in international law (as distinguished from the EC), I concur with your opinion expressed in the last sentence of No. 4.

Ad 5 : I share your view that all norms of *jus cogens* establish obligations *erga omnes* but that not all obligations *erga omnes* derive from norms which have *jus cogens* character. This is theoretically correct but, in my opinion, the second group consists mostly of obligations *erga omnes partes*, deriving from conventions. As far as general international law is concerned, I rather tend towards the opinion of Bruno Simma, which you cite in note 28.

As I have mentioned in my comment on No. 3 (and 6), I sympathize with your reluctance to include in your report a survey of norms of general international law that do not have *jus cogens* character but establish nevertheless obligations *erga omnes*. Yet such a survey will have to be undertaken, at some appropriate moment, if we wish to breathe life into a rather abstract concept. It would be an impossible task for the ILC, given the constraints under which it works, and might moreover be out of place there, since States seem to prefer the codification of norms regulating the procedural side of relations to that of substantive norms, at least to judge by the different success of codification conventions. It seems thus to be a task for the Institute or, if it cannot undertake it under its present method of working, for it to interest a research institution in undertaking it.

Ad 7 : No specific comment.

Ad 8 : I agree with your criticism of the wording of Article 40 para.1 of the ILC's draft Articles. But only the survey suggested in my comment on No. 5 would show whether the working really excludes major *erga omnes* obligations under general international law from its application, or whether the « substantial overlap between them » is, maybe, a concurrence.

Ad 9 : No specific comment.

Ad 10 : No specific comment.

Ad 11 : It is regrettable that the ILC's draft Articles do not deal more precisely with a plurality of States invoking responsibility with respect to breaches of *erga omnes* obligations. You justly mention the problem of assurances/guarantees of non-repetition, but a similar problem may also emerge in respect of reparation (see my comment on No. 12) or of the proportionality of counter-measures (see my comment on No. 17).

As far as the assurances/guarantees of non-repetition are concerned, I am not fully convinced by your optimistic forecast that « one may assume that, circumstances may then not require further assurances and guarantees » (last sentence of para. 3). If one takes the *LaGrand* case as example and supposes, for argument's sake, that in similar circumstances assurances would have to be

negotiated between a plurality of States (and not decided by a court), the negotiators would have to do with two conflicting positions : one, as taken by Germany, demanding a change in US law, and the offer by the United States to educate its law officers. In the actual case, the ICJ found the US offer a sufficient guarantee. But what would happen in the supposed negotiations, when one State entitled to invoke responsibility for the violation of an *erga omnes* obligation would be satisfied with the US offer, whereas another would insist on a change in the law ? Could the United States defend themselves against the more extensive demand with the argument that one claimant had been satisfied by the proffered guarantee ? I do not have a ready answer and hence my regret that the ILC did not see fit to propose a rule.

As concerns satisfaction, I follow in my paper, which you cite in note 58, the concept of Roberto Ago, according to which the violation of the international right of another State causes moral damage by itself. Under normal circumstances, moral damage entitles to satisfaction. I am not aware of any convincing argument - and the commentary to Article 48, para. 2 of the ILC draft gives none at all - why this normal course should not apply in regard to breaches of *erga omnes* obligations. All the more so as an « acknowledgement of the breach », which is one form of satisfaction, is implied in the assurance or guarantee of non-repetition. Why not make it explicit ?

In my opinion, Article 48, para. 2 of the ILC draft is the minimum of what the law should provide if the concept of *erga omnes* obligations is to be taken seriously. I find your example of massive pollution of the high seas illuminating, since in that case all States are evidently beneficiaries of the obligation breached. It is, however, obvious that a proposition of this kind attracts criticism by States, which adhere to all sorts of multilateral conventions for appearances' sake but intend to honour them only at their own whim. Hence I do not think that one should be overly impressed by the criticism.

Ad 12 : Unlike yourself, I find the formulation of the references in para. 3 of Article 48 of the ILC draft misleading. Since Article 48 deals only with breaches of *erga omnes* obligations, Article 44(a) should not have been mentioned at all, since it cannot be relevant with regard to *erga omnes* obligations, as you justly observe. The reference to Article 44(b) makes sense in the case you mention, but the conditions established by Article 48, para. 3 apply also to the invocation of responsibility in cases envisaged by Article 40, and the exhaustion of local remedies does not seem an appropriate requirement when massive violations of human rights take place. I do not argue that this cannot be elucidated by interpretation, but a possible confusion could have been averted had the references been formulated more clearly.

I agree with you that requests for cessation by more than one entitled party will not conflict with each other, but other types of requests may. I have already alluded to this situation in my comment on No. 11 and repeat my regret that it was not possible to formulate a rule dealing with that situation. Let me add a further problem to that which you mention : since a claim going beyond the request for cessation or assurances of non-repetition, may be raised « in the interest of the beneficiaries of the obligation breached », how does the claimant establish his legitimacy to settle the claim in relation to the other entitled parties ? Is one to follow the « first come » rule ? If we elaborate on the example of massive pollution of the high seas, the first claimant may be satisfied with certain measures of reparation proposed by the author of the breach. But what happens, if other entitled States are not, because they consider the measures ineffective or insufficient ? Do they have a remedy, and if so, against whom ?

Ad 13 : It would seem that, as concerns the invocation of responsibility and the submission of eventually resulting legal disputes to a procedure for peaceful settlement, the commentary to Article 42 of the ILC draft Articles contradicts itself. Para. 1 of the commentary excepts Article 48 as *lex specialis*. But para. 2 then contains the categorical assertion that you quote (text at note 69). Perhaps the key words are « on its own account », but I am not sure. In any case, the quoted passage rather appears as an oversight in drafting the commentary, since a commentary cannot revoke the right expressly established by Article 48. And if a State other than the injured State is entitled to invoke responsibility under certain circumstances, it would be absurd to deny it the right to submit an eventually ensuing legal dispute to a procedure for peaceful settlement if the necessary jurisdictional link exists.

Ad 14 : As regards the « indispensable party » problem which might arise if a breach by several States of the same *erga omnes* obligation occurred in a specific case, the following distinction could be helpful : when the (allegedly) unlawful conduct of one State is the condition of the (allegedly) unlawful conduct of another (*East Timor* case), the participation of both in the same judicial proceedings is presumably indispensable. When, however, the connection of the breaches is only the identity of the object and their simultaneity, they are not conditional upon each other. Thus, when forces of two States commit atrocities against the civilian population of a third State, each could be made the subject of a separate legal claim for its conduct without the other becoming necessarily a party to the proceedings, because the Court need not evaluate the lawfulness of the conduct of the absentee for passing judgment on the conduct of the State participating in the proceedings. The

judgment may *politically* affect the absentee party, because of a possible analogy of the circumstances, but it does not *legally* affect it. Thus the absentee is not an « indispensable party ».

Ad 15 : No specific comment. The suggestion in the last sentence of this section merits further consideration and should, therefore, be made a subject of our discussions.

Ad 16 : No specific comment.

Ad 17 : I admit that I have hitherto not understood the text of Article 54 of the ILC's draft Articles in the sense which you suggest and which I find *highly* interesting. Do you think that this understanding is also valid for Article 41 para. 1 of the draft Articles ? I had assumed that the word « lawful » excluded counter-measures, which are by nature a breach of the law and, therefore, unlawful, although justified by the preceding conduct of the addressee. Your interpretation puts a new complexion on the formulation and makes my previously critical attitude towards it less applicable.

This brings me, however, to your qualification that « States other than those injured are allowed to take counter-measures only in case of grave breaches of obligations *erga omnes* ». Are these « grave » breaches meant to be the same as the « serious » breaches, defined in Article 40, para. 2 of the draft Articles ? Moreover, it is all very well for a court to state in retrospect that a breach was or was not « grave », but is this a reliable criterion for the State which has to take the actual decision without the benefit of foresight or hindsight ? You suggest as yardstick « the widespread acknowledgement within the international community of the existence of a breach ». What is meant by « international community » : the United Nations, the totality of sovereign States or a substantial number of them, the world media, public opinion ? And to what conclusion would one come when the « international community » chose to look the other way, like it did in Rwanda ?

I do appreciate the dilemma of the ILC when faced with the two conflicting risks which you mention. The risks are indeed real. But to my mind the ILC was too much influenced by objections of States, which only sought to protect their own current or future wrongdoings. Many of the gallant champions of sovereignty have serious human rights problems at home. However, while one may sympathize with the ILC's caution since its product must, in one way or the other, be accepted by States, I do not feel that the same caution is required from the Institute. It should confirm the position which it took in Santiago de Compostela. I do not think that the proviso that measures must be « permitted under international law » weakens that Resolution more than the

use of the term « lawful measures » in Articles 41, para and 54 does the ILC's draft Articles.

Your remark about the proportionality of counter-measures undertaken by a plurality of States is entirely logical, but can it be inferred from the text of Article 51 of the draft Articles when read in conjunction with Article 46 ? And how should this overall proportionality be established and operated in practice ? While I concur with your view that the problem is not limited to counter-measures in case of breach of an *erga omnes* obligation, I suspect that, if it should arise at all, it will most likely in such cases. I suggest, therefore, that we deal with it, at least in the discussion of your report.

Ad 18 : No specific comment.

Ad 19 : It should be apparent from the foregoing comments that, except for the doubts voiced in the comment on No. 17, I concur with your concluding remarks, particularly with the ideas expressed in the last paragraph.

Reply of Mr Vladimir-Djuro Degan (23 August 2002)

... Under rules of general international law - including rights and obligations *erga omnes* resulting from them - I understand first of all customary rules of that law. Some very broad general principles of law such as *pacta sunt servanda*, or *nemo plus juris in alium transferre potest quam ipse habet*, or basic principles of judicial procedure, which are very important in all legal relations, are also principles of general international law. But for the purpose of our research they can be neglected.

Most of customary rules of this character originate from, or were codified in conventions such as the 1948 Genocide Convention. Some of them originate from the General Assembly Resolutions such as the Definition of Aggression of 1974, or even from judicial statements. But only in customary process accompanied by the *communis opinio juris* the respective provisions become new rules of general international law. The overwhelming majority of States (and through them intergovernmental organizations as well) must have the conviction that these rules became their legal obligations, and that serious violations of them as customary rules involve their responsibility under international law.

In order to be successful, this customary process should not be opposed by important States, such as any of the five permanent members of the UN Security Council. For instance, « grave breaches » of the 1977 Protocol I to the 1949 Geneva Conventions cannot transform into the body of general customary international law so far as some of these States refuse to become its parties and

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must, however, realize that for many years there has been a growing tendency on the part of the Institute of avoiding the adoption of Resolutions. The Institute was thus abdicating its « purpose [...] to promote the progress of international law », in particular « by striving to formulate the general principles of the subject », « by lending its cooperation [...] [to the] codification of international law » and « by seeking official endorsement » of certain « principles » (Article 1, para. 2, of the Statute). The said tendency not only boils down to non-fulfilment of our statutory tasks, but it also deprives the Institute of its particular mission by comparison to various scholarly associations. The latter contribute to the development of the science of international law, in some respects more quickly and more topically than the Institute, which has its own different purpose. That purpose should be preserved and not be diluted in the present vast sea of scholarly research.

Conclusion

17. I wish to repeat here what I wrote to the Rapporteur, *viz.* that his « First Report » is very good and is thought-provoking. It constitutes an excellent basis for our work.

Reply of Sir Kenneth Keith (3 October 2002)

1. The nature of the Obligations

The distinction between obligations which are by their very character owed to the whole world community and cannot be divided into bilateral State to State obligations, on the one side, and, on the other, those which do not have that indivisible character appear to me to be helpful in this area as in others : in addition to relevant provisions of the State responsibility text prepared by the International Law Commission, see *e.g.* Articles 58(1)(b)(i), concerning suspension by agreement, and 60(2)(b) and (c) and (5), concerning breach, of the Vienna Convention on the Law of Treaties and also Article 21(1) and (2) regulating reservations. (On that final matter, our confrère Rosenne valuably distinguished between normative and contractual provisions in his statement to the International Court in the *Reservations* case over fifty years ago.)

The list in Article 50(1) of the State responsibility text makes the point well, as do the examples of *erga omnes* in *Barcelona Traction*, and the earlier non-exhaustive list of international crimes in the ILC first reading text. Many fundamental human rights obligations looked at on a State - State basis are owed by each State to all other States collectively (by contrast to those individuals who may be particularly affected by their breach). That is so even if

a certain State or group of States has particular reasons, for instance of history, race or religion to be concerned about the alleged breach. The reservation and breach provisions of the Vienna Convention cannot of course apply in a regular reciprocal way in respect of obligations with that indivisible character.

By contrast, prohibitions on reprisals in humanitarian law, to take that example, could, if only the form were considered, be subject to bilateral or reciprocal destruction. But that formal answer has been largely rejected by the decisions to ban that course, in the interests of the basic humanitarian values underlying the obligations, taken by the international community at diplomatic conferences adopting the Geneva Conventions of 1949 and first additional Protocol of 1977 and in Article 60(5) of the Vienna Convention and their later acceptances of those conventions. The continued repetition of the de Martens clause in those texts also marks the international community's recognition of the fundamental principle of humanity.

Not all indivisible obligations do of course have that fundamental character that might justify their being seen as *jus cogens* - consider many, but I would not say all, of the provisions of the 150 or more International Labour Conventions. (I notice that Rosenne suggested they might be seen as « social » norms.) But their very indivisibility (with often a corresponding lack of State interest in compliance) does highlight important questions about monitoring and enforcement, as appears of course from International Labour Organisation and human rights treaty bodies and from regional mechanisms which in practice are much more frequently invoked by the individuals or organisations directly affected than States, to the extent that they are available to States.

2. *Obligations Erga Omnes Arising Under Treaties (your para. 3)*

As that first comment indicates, I consider that treaty based obligations should have a central role in the present topic, particularly when the treaties are very widely accepted and are considered as declaratory of international law (either at the outset or through subsequent practice and *opinio iuris*) and are accepted by almost every State in the world community. So the United Nations Charter, now accepted by 191 States (with the very recent admission of one of the very oldest States, Switzerland, and, the newest, East Timor, emphasising the organisation's universality), contains fundamental use of force and human rights provisions; the Geneva Conventions have 190 parties; and all 175 members of the International Labour Organisation accept its fundamental principles, first stated in its Constitution in 1919 and developed at Philadelphia in 1944 and Geneva in 1998.

Furthermore, such very widely accepted texts, and the process of their adoption and application in practice, provide the world community and individual States in major conferences and in other ways with critical opportunities to characterise the norms as fundamental or not, and to draw consequences from that characterisation, for instance in terms of implementation. To repeat the reference, the Geneva Red Cross and Red Crescent process can now draw on almost 140 years of international and national experience. The ILC in its State responsibility text understandably reserves *lex specialis* and the position of the Charter (although see Article 26), but I do not think that the Institute necessarily has to do the same.

3. *Circumstances Precluding Wrongfulness (your para. 7)*

The indivisible character of many obligations *erga omnes* (in the sense discussed in 1 above) itself precludes the operation of some of the precluding circumstances for those obligations : consent (unless all States in the world community consent) (Article 20 of the ILC draft), self-defence (Article 21), permitted counter-measures (Article 22) and necessity (Article 25). The ILC commentary recognises such limits for instance in respect of self-defence, necessity and counter-measures. It is also important to recall that international humanitarian law is written in such a way that preclusion by reference to « necessity » has to find that limit in the very texts of the Conventions and Protocols. In that area of law, « necessity » is not a freestanding limit on apparently complete, sometimes generally stated proscriptions. The absolute character of those obligations (to return to the impossibility of preclusion by consent) appears as well in the non-renunciation of rights provisions in the Geneva Conventions and their bars on absolution of responsibility in respect of grave breaches.

So far as peremptory norms of international humanitarian law are concerned, Article 26 of the ILC text of course prevents the operation of any of the preclusive circumstances.

4. *A Duty to React ?*

In an increasingly interdependent world, the duty of solidarity to which you refer in your para. 18 should, I think, receive real emphasis. The formulations in each of the paragraphs of Article 41 of the State responsibility text are very important. The UN Charter, and in particular Articles 1, 2, 55 and 56, provide early and real support for them (and consider as well the major debates over Article 10 of the Covenant of the League of Nations). So also do

common Article 1 of the four Geneva Conventions and Article 1 of the first Protocol :

« The High Contracting Parties undertake to respect and to ensure respect for the present Convention [this Protocol] in all circumstances. »

The commentary and practice bearing on those provisions may be related to adjectives such as « serious », included in Article 41 qualifying the obligation to react. Not every breach should be seen as potentially leading to an obligation to react or to other consequences. The word « serious » has something of the same function and quality as « material » in Article 60 and « radically » and « fundamental » in Article 62 of the Vienna Convention on the Law of Treaties and the references to « grave » and « serious » breaches in the Geneva Conventions and Protocols.

5. *The Relationship Between Peremptory Norms and Obligations Owed to the International Community as a Whole*

It is interesting that in its State responsibility work, the ILC, almost at the last, moved from « obligations owed to the international community as a whole » to « peremptory norms » (2001 Report, paras. 45-49). What should we make of that or of « intransgressible » rules ? What is the role now of the possibly related concepts of « the common heritage of mankind » and objective regimes ? Should there be a further attempt to elaborate the relationships or is there real value in having several overlapping, similar concepts ? That leads to a final matter.

6. *The Procedural and Remedial Incidents of Rights Erga Omnes (your paras. 4 and 11-18)*

In this context there are the various statements about « the concern of all States » in the obligations; « all States can be held to have a legal interest in [the] protection [of those obligations] »; a claim can be brought only by the party to which an international obligation is due; and « the corresponding rights of protection ».

I do not think that the absence of a remedy of reparation for a State not specially affected would lead to the denial of international responsibility and would make the very existence of the obligation theoretical (your para. 11). Significant international judicial and arbitral decisions and diplomatic practice provide support for the proposition that declarations of breach and apologies may, depending on the circumstances, be adequate satisfaction for breach. Those remedies are to be related to cessation and undertakings of non-repetition, to end with a reference to the ILC text.

Annex 288

Institute of International Law, “Obligations and Rights *Erga Omnes* in International Law”, Second Report (August 2004), Rapporteur: Giorgio Gaja, *Annuaire de l'Institut de Droit International*, vol. 71-I (2005), pp. 189-202

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Travaux préparatoires

Justitia et Pace

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III. Second Report (*August 2004*)

Introduction

In presenting my first report in March 2002 I expressed the wish that that report, « together with the comments to be made by members of the 5th Commission and a brief summing up », would lead to a wide-ranging discussion on substantial issues in a plenary meeting at Bruges. As this discussion could not take place, the 5th Commission met in Bruges and decided that a certain number of propositions should be drafted in view of the Institute's discussion in Krakow. The present report, which is based on my previous report, the ten valuable comments on the report, the discussion in Bruges and further reflections, contains the draft of seven propositions, each with a brief commentary. According to the Commission's guidelines, the propositions concentrate on questions relating to the consequences of infringements of obligations *erga omnes* and on related remedies; obligations established under treaties have also been considered. Several issues referred to in my first report or in some of the comments could not be included.

Proposition A

« For the purposes of the present propositions, an obligation *erga omnes* is :

- (a) an obligation under general international law that a State owes in any given case to all the other States, in view of their common values and concern for compliance; or
- (b) an obligation under a treaty that a State party to the treaty owes in any given case to all the other States parties to the same treaty, in view of their common values and concern for compliance. »

(1) There is no widely accepted definition of obligations *erga omnes*. The International Court of Justice has often referred to this type of obligation, but has not elaborated on the elements briefly described in its pioneering judgment in the *Barcelona Traction* case. The Court then mentioned « obligations towards the international community as a whole » and said they were « the

(2) Proposition D uses a different terminology when identifying States entitled to claim. The distinction in the ILC Articles between States that may invoke responsibility as injured States and States that may do so according to Article 48 is probably not felicitous and has received criticism;¹¹⁷ there is no need to adopt it here. The proposition above does not include an explicit reference to assurances and guarantees of non-repetition, mainly because the existence of an obligation to provide such assurances and guarantees is controversial.¹¹⁸ However, the words « in particular » have been added in order not to exclude that a claim may have objects other than cessation or reparation. These objects may also include further consequences of the internationally wrongful act that could be entailed for the responsible State by serious infringements of obligations *erga omnes*.

(3) Cessation of a continuing breach is likely to be the main, and often the only, object that a State to whom the obligation *erga omnes* is owed would pursue. By requesting cessation, that State would seek to ensure compliance with the obligation that is breached.

(4) A State to whom an obligation *erga omnes* is owed is also entitled to claim reparation. In his « Fifth report on State responsibility » R. Ago drew from the *Barcelona Traction* judgment the conclusion that « [e]very State, even if it is not immediately and directly affected by the breach, should [...] be considered justified in invoking the responsibility of the State committing the internationally wrongful act ».¹¹⁹ This entitlement is designed to ensure that infringements are not condoned.

(5) With regard to infringements of obligations *erga omnes* restitution seems the preferable form of reparation. Restitution implies the direct protection of the common values, which underlie the obligations. The pivotal role of restitution was stressed by the Inter-American Court of Human Rights in relation to the breach of obligations under the Inter-American Convention in parallel judgments in the *Velásquez Rodríguez* and *Godínez Cruz* cases.¹²⁰ It would thus

¹¹⁷ See in particular P.M. Dupuy, « Quarante ans de codification du droit de la responsabilité internationale des Etats. Un bilan », 107 *RGDIP* (2003), p. 305 at pp. 333-336.

¹¹⁸ Article 30 of the ILC Articles on Responsibility of States for internationally wrongful acts limits this obligation to the case in which « circumstances so require ». UN doc. A/56/10, p. 216.

¹¹⁹ *Yearbook of the International Law Commission* vol. II, Part One, p. 29 (1976).

¹²⁰ Judgments of 17 August 1990, reproduced in T. Buergenthal and R.E. Norris (eds.), *Human Rights : The Interamerican System* booklet 25.7, pp. 90 and 115 (para. 27 of each judgment).

Annex 289

Institute of International Law, “Obligations and Rights *Erga Omnes* in International Law”, Deliberations, Plenary Sessions, *Annuaire de l'Institut de Droit International*, vol. 71-II (2006), pp. 83-137

Institut de droit international

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Délibérations de l'Institut

L'Institut de droit international : origines et organisation

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Cinquième commission*

Les obligations et les droits *erga omnes*
en droit international

*Obligations and Rights erga omnes in
International Law*

Rapporteur : M. Giorgio Gaja

* La commission était composée de MM. Cançado Trindade, Degan, Dimitrijevic, Dugard, Lady Fox, M. Frowein, Sir Kenneth Keith, MM. Meron, Nieto Navia, Owada, Schermers, Skubiszewski, Suy, Weil, Zemanek.

Cinquième séance plénière

Mardi 23 août 2005 (matin)

La séance est ouverte à 10 h 10 sous la présidence de M. *Dominicé*, Deuxième Vice-Président. Le Président invite M. Gaja à faire rapport sur les travaux de la 5^{ème} Commission.

The Plenary Meeting had before it the Draft Articles that read as follows:

Draft Resolution

The *Institute of International Law*,

Noting that international law imposes on all subjects of international law obligations designed to maintain the fundamental values of the international community;

Considering that a wide consensus exists to the effect that the outlawing of acts of aggression, the prohibition of genocide, obligations concerning the protection of basic human rights and obligations relating to the environment of common spaces are examples of obligations reflecting those fundamental values;

Desiring to take a first step in clarifying certain aspects of inter-State relations created by these obligations, especially the consequences of their infringements and the related remedies;

Adopts the following Resolution:

Article A

For the purposes of the present Articles, an obligation *erga omnes* is:

- (a) an obligation under general international law that a State owes in any given case to all the other States, in view of their common values and concern for compliance; or
- (b) an obligation under a multilateral treaty that a State party to the treaty owes in any given case to all the other States parties to the same treaty, in view of their common values and concern for compliance.

Article B

When a State is under an obligation *erga omnes*, all the States to whom the obligation *erga omnes* is owed have a corresponding right. A right *erga omnes* belongs to the State, entity or individual to whom the obligation is

with a claim arising from being specially affected, and those who were generally affected because they had an interest in the operation of the relevant regime. There may be good public policy reasons for the International Court of Justice recognising such claims on, for instance, the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, 1948, as between a violating State and a State that was in no way specially affected, but it must be considered in terms of its potential effect on the practice of the court. In effect, when speaking of *erga omnes*, we were facing questions of admissibility, and evidence of what a non-specifically affected party had to demonstrate in terms of its interest in a regime that had been damaged. That raised the idea of a global commons where every State had an interest in particular projects of law. Those were radical notions, but should be what the Institute should be discussing, rather than trying to draft a Resolution that reflected the present reality (which was, in fact, nothing).

Mr *Sucharitkul* noted that the Draft Resolution reflected the approach of the Italian school of international law. If the obligation was *erga omnes*, the corresponding right (the *jus*) was not *erga omnes*, it was *omnium* because everyone had a right against that party. *Jus omnium* could be seen in Roman law through *jus in rem* (a right against anyone in relation to a particular object), which was not the issue here. Agreement was expressed with the view that the United Nations and its specialised agencies, and other international entities were subject to obligations *erga omnes*, and it must be considered how those obligations could be discharged. However, Article H went too far in that regard. International law should not reflect the idea of *ubi jus ibi remedium*, since it was not appropriate to speak in terms of a “remedy” in international law. In that sense, the French translation of the original English (“*facultés*”) was to be preferred since it referred more generally to any measures that might be available to the State. The Draft Resolution should be seen as a positive first step, but there was a long way to go.

Mr *Ko* questioned the nature of Institute Resolutions in general. While they did not require the high degree of technicality needed in treaty drafting, it must be asked if a conscious effort was being made merely to reflect *lex lata*, or to propose rules that would be desirable but were not yet part of international law. The latter was not objectionable, but the border between the two must be clearly drawn. Further, a considerable part of discussions on Resolutions took place on the issue of wording and the meaning of wording. It was questioned why the Institute had not hitherto felt the need to attach a

conference, because it was felt that States would not be prepared to accept its provisions on dispute settlement. It would be helpful for the development of international law if the Institute endorsed the Draft Resolution. The Resolution should follow the language of the International Law Commission, but when it went further (for instance in Article G on counter-measures which went further than Article 54 of the ILC Articles permitting only "lawful" counter-measures), it was to be welcomed because it was more progressive.

Mr *Shahabuddeen* noted that there must be internal consistency in defining terms. In a multilateral treaty, it was possible to adopt a construction which allowed any party to complain in respect of a breach of that treaty by any other party. This could be labelled an *erga omnes* situation. However, for internal consistency, that might pose a problem. The preamble and parts of the Draft Resolution seemed to point towards obligations that flowed from the duty to maintain the fundamental values of the international community and therefore seemed to point in the direction of obligations due by a State to all members of the international community. However, Articles A and B referred to *erga omnes* obligations only as between States. It was also pointed out that, while international law recognised the consensual basis on which parties settled disputes, Article F gave a third party a mandatory right to participate in any case pending before the International Court of Justice or other international judicial bodies where an *erga omnes* obligation was owed to this party. There might exist a conflict here with the consensual basis of international litigation.

Mr *Pinto* noted that the Draft Resolution was a first step on a long road and agreed with Mr Franck that thought needed to be given to how to proceed. It was noted that the frequency with which reference was made to the "common values" of States did not reflect the fact that States were usually motivated by other values. It was questioned whether that was meaningful, and whether there had not been a blurring between State values and universal human values. In that context, there was a difficulty with the fact that the ICJ had recognised that the rule of self-determination disclosed an obligation *erga omnes*. It was noted that with regard to Article F, where an obligation *erga omnes* owed towards individuals had been violated, presumably such individuals would have to seek the exercise of the function of diplomatic protection by a State. It was asked whether the Rapporteur had considered the obligations and rights arising from the concept of the "common heritage of mankind" expressed in the 1982 Law of the Sea

Convention, and the fact that Law of the Sea Authority had an obligation to act on behalf of all mankind.

Mr *Weeramantry* submitted that the preamble should stress the importance of obligations *erga omnes*. International law was moving away from a system of passive coexistence to a system of active cooperation. International law formerly operated as a system of minimum rules, but had now moved away from that limited function. The concept of *erga omnes* reflected that better than any other concept and so required that extra attention. It was possible to see the obverse of that movement from individual rights to collective rights among national jurisdictions. Thus the former emphasis in, for instance, African societies, aboriginal Australian societies, Christianity, Buddhism and Islam on collective rights was gradually giving way to the idea of individual rights.

Mr *Mensah* noted the complexity of the subject and the helpfulness of the Draft Resolution. The purpose of the Resolution was to clarify that obligations *erga omnes* did in fact exist and that they did entail consequences. It was clear from Article E that the Resolution was not attempting to deal with the jurisdiction of international courts. It also clarified the question of standing and the obligation of states to cooperate to ensure compliance with obligations *erga omnes*. In relation to the question of standing, Article B and the preamble gave the impression that the Draft was dealing with relations between non-State entities. It should be clarified that the Draft was purporting to deal only with the rights and obligations of States. Also, it should be clarified that an obligation *erga omnes* gave rise to a right *erga omnes* only to the parties inter se. The reference to the "common values" of States was problematic because not all States shared such common values. In view of the first preambular paragraph's assertion that international law was "designed to maintain the fundamental values of the international community", it might be possible to omit any further reference to "common values" in Articles A and B.

M. *Suy* voudrait faire quelques remarques générales pour permettre aux Confrères de situer la notion de normes *erga omnes*. Le contenu de ces normes n'est pas essentiel ; ce qui l'est bien davantage, c'est la sanction qui s'y attache. On retrouve ici un phénomène analogue à celui du *jus cogens*. Pour comprendre la signification de l'expression *erga omnes*, l'accent devrait être mis non sur le terme *omnes*, mais sur le terme *erga*. C'est-à-dire qu'il s'agit d'une norme dont la violation par un Etat permet à tout autre Etat de présenter une réclamation. Or, le droit international ne connaît pas encore

distinction between international regimes where everyone was entitled to have a general use of the territorial sea or waterway and *erga omnes* obligations. Causes of actions arising from the performance of obligations were already difficult to argue, but this seemed to suggest a move away from the common interest in the perpetuation of good conduct. There was avoidance of the question of grave human rights violations, but the draft articles purported to state an interest not in the obligation itself but in the failure of a remedy having been provided by the violating State to another State. The basis for this in international law was oblique. She questioned whether States had the right of action against a State which had not provided a remedy for a grave human rights violation, e.g. by proceedings before a tribunal, financial compensation awarded by a court, or striking down an offending law with regard to human rights. Any such right would seem to go beyond the jurisprudence of the European Court of Human Rights or the Inter-American Court of Human Rights. Therefore, she requested more information about where such a right was drawn from.

The *Rapporteur*, commenting on the amendment proposal submitted by Mr Morin, recalled that the ILC had not accepted in its Articles on State Responsibility an unqualified right for States other than directly injured to invoke responsibility. Further, the fact that all States were affected did not mean that they were directly injured. The *Rapporteur* explained that the text of Article 2 of the Draft Resolution was similar to that of paragraph 2 of Article 48 of the ILC Articles on State Responsibility, which stated as follows:

“Any State entitled to invoke responsibility under paragraph 1 [of this Article] may claim from the responsible State to: (a) Cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with Article 30; (b) Performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.” The *Rapporteur* considered that that Article reflected international law as it stood. In his view, questions such as violations of basic human rights needed to be included in the text of the Draft Articles. For example, in the cases of torture by a State towards its own nationals and self-determination, no other specially affected State existed. Therefore, unless some status was conferred to the other States, the provision would be meaningless. Yet, enlarging the group of States as proposed by Mr Morin went too far. He therefore considered that the text should not be modified as proposed in the amendment.

Annex 290

Institute of International Law, Obligations *erga omnes* in International Law, Resolution adopted on 27 August 2005, *Annuaire de l'Institut de Droit International*, vol. 71-II (2006), pp. 287-289

Institut de droit international

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Délibérations de l'Institut

L'Institut de droit international : origines et organisation

Justitia et Pace

Editions A. Pedone – 13, rue Soufflot – Paris

A. RÉSOLUTIONS

I. Les obligations *erga omnes* en droit international

(Cinquième commission : rapporteur, M. Giorgio Gaja)

Résolution

L'Institut de droit international,

Considérant qu'en vertu du droit international, certaines obligations s'imposent à tous les sujets du droit international dans le but de préserver les valeurs fondamentales de la communauté internationale ;

Considérant qu'il existe un large consensus pour admettre que l'interdiction des actes d'agression, la prohibition du génocide, les obligations concernant la protection des droits fondamentaux de la personne humaine, les obligations liées au droit à l'autodétermination et les obligations relatives à l'environnement des espaces communs, constituent des exemples d'obligations qui reflètent lesdites valeurs fondamentales ;

Désirant entamer une première réflexion en la matière, en clarifiant certains aspects des rapports interétatiques créés par ces obligations, en particulier les conséquences de leur violation et les moyens d'y porter remède, tout en reconnaissant que certaines de ces obligations existent également à l'égard de sujets de droit international autres que les Etats ;

Adopte la Résolution suivante :

Article 1

Aux fins des présents articles, une obligation *erga omnes* est :

- a) une obligation relevant du droit international général à laquelle un Etat est tenu en toutes circonstances envers la communauté internationale, en raison de ses valeurs communes et de son intérêt à ce que cette obligation soit respectée, de telle sorte que sa violation autorise tous les Etats à réagir ; ou
- b) une obligation relevant d'un traité multilatéral à laquelle un Etat partie à ce traité est tenu en toutes circonstances envers tous les autres Etats parties au traité, en raison des valeurs qui leur sont communes et de leur intérêt à ce que cette obligation soit respectée, de telle sorte que sa violation autorise tous ces autres Etats à réagir.

Article 2

Lorsqu'un Etat viole une obligation *erga omnes*, tous les Etats auxquels l'obligation est due ont le droit, même s'ils ne sont pas spécialement atteints par la violation, d'exiger de l'Etat responsable en particulier :

- a) la cessation du fait internationalement illicite ;

A. RESOLUTIONS

I. **Obligations *erga omnes* in International Law**
(Fifth Commission: rapporteur, Mr Giorgio Gaja)**Resolution**

The *Institute of International Law*,

Considering that under international law, certain obligations bind all subjects of international law for the purposes of maintaining the fundamental values of the international community;

Considering that a wide consensus exists to the effect that the prohibition of acts of aggression, the prohibition of genocide, obligations concerning the protection of basic human rights, obligations relating to self-determination and obligations relating to the environment of common spaces are examples of obligations reflecting those fundamental values;

Desiring to take a first step in clarifying certain aspects of inter-State relations created by these obligations, especially the consequences of their breach and the related remedies, while acknowledging that some of these obligations also exist towards subjects of international law other than States;

Adopts the following Resolution:

Article 1

For the purposes of the present articles, an obligation *erga omnes* is:

- (a) an obligation under general international law that a State owes in any given case to the international community, in view of its common values and its concern for compliance, so that a breach of that obligation enables all States to take action; or
- (b) an obligation under a multilateral treaty that a State party to the treaty owes in any given case to all the other States parties to the same treaty, in view of their common values and concern for compliance, so that a breach of that obligation enables all these States to take action.

Article 2

When a State commits a breach of an obligation *erga omnes*, all the States to which the obligation is owed are entitled, even if they are not specially affected by the breach, to claim from the responsible State in particular:

- (a) cessation of the internationally wrongful act ;

- b) l'exécution de l'obligation de réparation dans l'intérêt de l'Etat, de l'entité ou de l'individu qui est spécialement atteint par la violation. La restitution devrait être effectuée si elle n'est pas matériellement impossible.

Article 3

S'il existe un lien juridictionnel entre l'Etat prétendument responsable de la violation d'une obligation *erga omnes* et un autre Etat auquel cette obligation est due, ce dernier Etat a qualité pour soumettre à la Cour internationale de Justice ou à un autre tribunal international une demande relative à un différend portant sur le respect de cette obligation.

Article 4

La Cour internationale de Justice ou un autre tribunal international devrait donner à un Etat auquel une obligation *erga omnes* est due la possibilité de participer à une procédure pendante devant la Cour ou devant ce tribunal, qui est relative à cette obligation. Des règles spécifiques devraient régir une telle participation.

Article 5

Si une violation grave, largement reconnue, d'une obligation *erga omnes* a lieu, tous les Etats auxquels l'obligation est due :

- a) doivent s'efforcer de mettre un terme à cette violation en recourant à des moyens licites conformément à la Charte des Nations Unies ;
- b) doivent ne pas reconnaître comme licite une situation créée par cette violation ;
- c) ont la faculté de prendre des contre-mesures n'impliquant pas le recours à la force dans des conditions analogues à celles qui s'appliquent à un Etat spécialement atteint par la violation.

Article 6

Les articles précédents sont sans préjudice :

- a) des droits et des facultés appartenant à un Etat qui est spécialement atteint par la violation d'une obligation *erga omnes* ;
- b) de l'application des règles qui concernent spécifiquement la violation de certaines obligations *erga omnes* ;
- c) des droits dont un Etat partie à un traité multilatéral dispose, en vertu du droit des traités, par suite de la violation de celui-ci.

Adoptée le 27 août 2005.

- (b) performance of the obligation of reparation in the interest of the State, entity or individual which is specially affected by the breach. Restitution should be effected unless materially impossible.

Article 3

In the event of there being a jurisdictional link between a State alleged to have committed a breach of an obligation *erga omnes* and a State to which the obligation is owed, the latter State has standing to bring a claim to the International Court of Justice or other international judicial institution in relation to a dispute concerning compliance with that obligation.

Article 4

The International Court of Justice or other international judicial institution should give a State to which an obligation *erga omnes* is owed the possibility to participate in proceedings pending before the Court or that institution and relating to that obligation. Specific rules should govern this participation.

Article 5

Should a widely acknowledged grave breach of an *erga omnes* obligation occur, all the States to which the obligation is owed:

- (a) shall endeavour to bring the breach to an end through lawful means in accordance with the Charter of the United Nations;
- (b) shall not recognize as lawful a situation created by the breach;
- (c) are entitled to take non-forcible counter-measures under conditions analogous to those applying to a State specially affected by the breach.

Article 6

The preceding articles are without prejudice:

- (a) to the rights and remedies pertaining to a State which is specially affected by the breach of an obligation *erga omnes*;
- (b) to the application of special rules to the breach of certain obligations *erga omnes*;
- (c) to the rights that a State party to a multilateral treaty has, under the law of treaties, as a consequence of a breach concerning the same treaty.

Adopted on August 27, 2005.

Annex 291

Internal Displacement Monitoring Centre, *INDIA: Countrywide response urgently required to address chronic internal displacement*, 20 April 2015

Available at:

<https://www.internal-displacement.org/sites/default/files/publications/documents/201504-ap-india-overview-en.pdf>

20 April 2015

INDIA

Countrywide response urgently required to address chronic internal displacement

As of April 2015 an estimated 616,140 people were displaced in India as a result of armed conflict and inter-communal violence. Over half, or 364,100, are concentrated in two areas: the northern state of Jammu and Kashmir, where there are 251,000 internally displaced people (IDPs), most of them since 1990, and the north-eastern state of Assam, which is hosting some 113,000 IDPs, the majority of whom fled inter-communal violence in late 2014. Some 252,000 IDPs are found in the capital, Delhi, and in the states of Andhra Pradesh, Chhattisgarh, Gujarat, Nagaland, Telangana, Tripura and Uttar Pradesh. At least 346,000 were newly displaced by conflict and violence between January 2014 and March 2015, most fleeing inter-communal violence in Western Assam.



Adavasi tribal villagers along with their belongings move to a safe place after their family members were killed by the National Democratic Front of Boroland (Songbijit faction) militants in Tenganala village in Sonitpur district of Assam state, India, 24 December 2014. Photo: Ritu Raj Konwar/The Hindu

Many IDPs live in protracted displacement, having been displaced for up to 25 years and having failed to return or successfully find other durable solutions. The majority live in camps, including informal ones, where they often have only limited access to food, clean water and adequate sanitary facilities and little opportunity to secure sustainable livelihoods. Relief assistance provided by local authorities in government-run camps has included food, water and shelter but has tended to be temporary, only lasting a few weeks or months, after which camps are officially closed and IDPs are expected to either return or find alternative solutions on their own. Those who fail to do so often end up in nearby informal makeshift camps where they are left to fend for themselves. There is little information on IDPs living outside camps, including in urban areas.

The main obstacles to return are linked to ongoing insecurity, including hostility from former neighbours and unresolved disputes around demarcations of state boundaries. Insufficient state assistance to support IDPs' local integration or settlement elsewhere is preventing nearly half a million IDPs from achieving durable solutions, in particular in the states of Assam and Jammu and Kashmir. In Gujarat and Tripura return has been hindered by a failure to restore their enjoyment of housing, land and property (HLP) rights.

States, not the central government, are charged with assisting IDPs. In the absence of any national policies and procedures, the response is often ad-hoc and focused only on meeting immediate humanitarian needs. International humanitarian agencies continue to face barriers to assisting IDPs, including a number of government restrictions and insecurity in conflict-affected areas.

www.internal-displacement.org

Annex 292

Internal Displacement Monitoring Centre, *GRID 2022: Children and youth in internal displacement* (2022)

Available at:

https://www.internal-displacement.org/sites/default/files/publications/documents/IDMC_GRID_2022_LR.pdf

GRID 2022

Children and youth in internal displacement

iDMC internal
displacement
monitoring
centre

NORWEGIAN
REFUGEE COUNCIL **NRC**

After her school in Yemen was hit by a missile, Emtinan and her family took shelter wherever they could, moving from one place to the next only steps ahead of the violence. She was out of school for an entire year and feared for her own future.

As conflicts and crises multiply around the world and more people than ever are internally displaced, the lives and futures of a growing number of children and adolescents like Emtinan are at risk.

This year's Global Report on Internal Displacement shows the magnitude of the problem: over 59.1 million people worldwide were living in internal displacement across 59 countries and territories at the end of 2021. More than half of these internally displaced persons were children and young people.

This problem is particularly acute in sub-Saharan Africa, East Asia, and the Pacific regions – and, with ongoing and emerging crises in countries such as Afghanistan, Yemen, and more recently Ukraine, these numbers may be set to rise even further.

That is why this Global Report's focus on children and youth is both important and timely. It underscores the critical importance of understanding the immediate and long-term impacts of the ongoing global displacement crisis on children - and their societies.

The evidence presented here shows that internal displacement can delay development, eroding and reversing gains made through long-term investments - affecting not only this generation of children, but generations to come. Indeed, internal displacement affects every facet of children's lives, with cascading impacts on their security, nutrition, health, education, and aspirations for the future.

For instance, educational disruptions can result in learning losses and reduced social interactions with peers. Lack of access to safe spaces heightens vulnerability to risks, like child marriage, violence and abuse, with consequences for children's physical wellbeing and mental health.

These disruptions can have long-term impacts, including disengagement from school, fewer educational and professional opportunities, and reduced future income - in turn, deepening intergenerational poverty. Conversely, protecting children and youth, and ensuring their contin-

ued learning and health, can contribute to their future individual development, positively shaping sustainable and peaceful societies.

To meet the needs of internally displaced children, we need to learn more about the challenges they face. Indeed, robust evidence is the best foundation for effective displacement prevention and response, and it is essential for developing durable solutions.

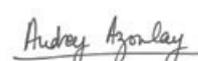
Yet around the world, millions of internally displaced children continue to be invisible in the data. We join the Internal Displacement Monitoring Centre in calling for better data on internally displaced children and youth to inform timely and effective decision-making.

UNESCO and UNICEF are already taking steps to improve the availability of quality data in this field. But more investment is needed in local and innovative data collection methods. Most importantly, information must be collected and used in ways that respect children's best interests, recognising their hopes and dreams and making them the starting point for action.

Whether the world's displaced children flourish or fall behind depends on our commitment to them and to their communities' wellbeing. As we work to implement the UN Secretary-General's Action Agenda on Internal Displacement, we call on our partners to join our collective efforts to leave no internally displaced child behind.



Catherine Russell
Executive Director
UNICEF



Audrey Azouley
Director-General
UNESCO



Global figures at a glance

Internal displacements in 2021

38 million* Internal displacements | **14.4m** by conflict and violence | **23.7m** by disasters

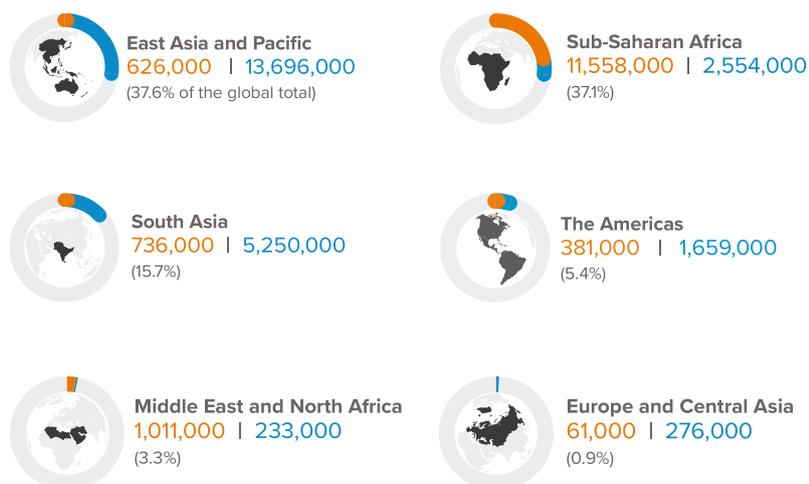


Figure 1: Internal displacements by conflict, violence and disasters per region



Figure 2: Internal displacements by conflict, violence and disasters worldwide (2012-2021)

* Due to rounding, some totals may not correspond with the sum of the separate figures.

Total number of IDPs as of end of 2021



Figure 3: Conflict and disasters: Ten countries with the highest number of IDPs worldwide as of the end of 2021



Figure 4: Total number of IDPs worldwide as of end 2021, by age group

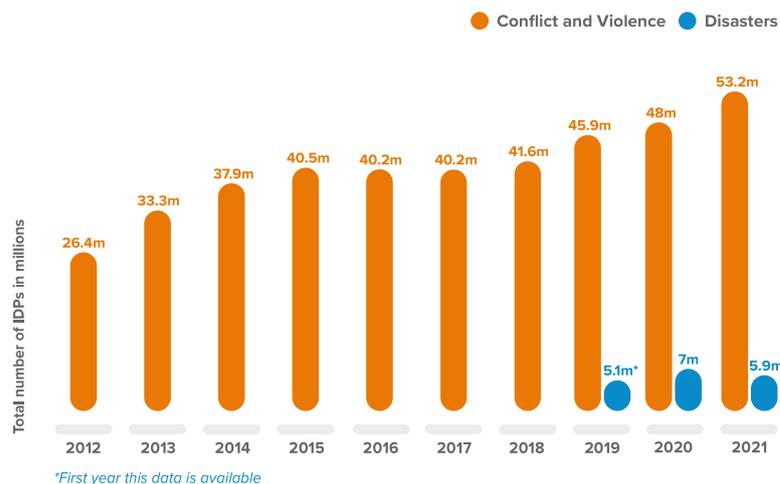


Figure 5: Total number of IDPs worldwide at year end (2012-2021)

Due to rounding, some totals may not correspond with the sum of the separate figures.

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International Centre for Counter-Terrorism, *Right-Wing Extremists' Persistent Online Presence: History and Contemporary Trends*, by M. Conway, R. Scrivens, and L. Macnair, October 2019

Available at:

<https://www.icct.nl/sites/default/files/import/publication/Right-Wing-Extremists-Persistent-Online-Presence.pdf>

ICCT Policy Brief
October 2019
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Right-Wing Extremists' Persistent Online Presence: History and Contemporary Trends

Authors: Maura Conway, Ryan Scrivens, Logan Macnair

This policy brief traces how Western right-wing extremists have exploited the power of the internet from early dial-up bulletin board systems to contemporary social media and messaging apps. It demonstrates how the extreme right has been quick to adopt a variety of emerging online tools, not only to connect with the like-minded, but to radicalise some audiences while intimidating others, and ultimately to recruit new members, some of whom have engaged in hate crimes and/or terrorism. Highlighted throughout is the fast pace of change of both the internet and its associated platforms and technologies, on the one hand, and the extreme right, on the other, as well as how these have interacted and evolved over time. Underlined too is the persistence, despite these changes, of right-wing extremists' online presence, which poses challenges for effectively responding to this activity moving forward.

Keywords: right-wing extremism, online tools, history, contemporary trends, online forums, social media, messaging applications, Web 2.0, policy challenges

Introduction

Close attention by journalists and policymakers to the widespread use of the internet by violent Western (i.e. American, Australian, and European)¹ right-wing extremists (RWEs) and terrorists is relatively recent.² It was a reaction, at least in part, to an eruption of hateful content online in 2015 and 2016, which arose out of the US presidential campaign and subsequent election of President Trump, the Brexit referendum, a spate of Islamic State (IS)-inspired or directed terrorist attacks, and the arrival of large numbers of refugees to Europe from war torn Syria, Iraq, and Afghanistan. The extreme right sought to capitalise on the fear and anger generated by the terrorist attacks and the refugee crisis and the elation generated by the other events to increase its political power and recruit new followers, including via the internet. They were aided in their efforts by foreign influence campaigns spreading disinformation on many of the same talking points. In 2017, more focused attention was drawn to the role of the internet in extreme right activity in the wake of events at the mid-August ‘Unite the Right’ rally in Charlottesville, Virginia, USA. Concerns about the political fallout of online extreme right activity, including disinformation and radicalisation, continued to receive attention throughout 2018—at least partially due to a series of attacks and failed attacks in the US that appeared to have significant online components.³ The 15 March, 2019 Christchurch terrorist attack mainstreamed these concerns. The New Zealand mosque attack, in which 51 people died, was peculiarly internet-centric, including a pre-planned online manifesto distribution strategy and Facebook Live video stream, which has ensured that the threat posed by contemporary extreme right online activity is now under greater scrutiny than ever before. The April 2019 Poway synagogue attack, the August 2019 El Paso Walmart shooting, the October 2019 Halle shootings, and a series of similar attacks only heightened attention to RWEs’ use of the internet further.

However, the RWE-internet nexus has a much lengthier history than this. RWEs were some of the very first users to engage in online politics and were the earliest adopters of internet technology for violent extremist purposes.⁴ This Policy Brief traces how Western RWEs have exploited the power of the internet from early dial-up bulletin board systems to contemporary social media and messaging apps. It demonstrates how RWEs have been quick to adopt a variety of emerging online tools, not only to connect with the like-minded, but to radicalise some audiences while intimidating others—and ultimately, to recruit new members, some of which have gone on to have commit hate crimes and terrorism. Highlighted throughout is, on the one hand, the fast pace of change of both the internet and its associated platforms and technologies, and on the other, the nature and workings of the extreme right, as well as how these two elements have interacted and evolved over time. In our conclusion, we underline the persistence, despite these changes, of right-wing extremists’ online presence and the challenges for practitioners and policymakers of effectively responding to this activity moving forward.

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¹ It is worth noting here that there are large and growing RWE constituencies outside of the West, including in, for example, Brazil, India, and the Philippines, that also have substantial online presences and that insufficient attention has been paid to by researchers to-date.

² The New York Times. “The New Radicalization of the Internet.” *The New York Times*, November 24, 2018, <https://www.nytimes.com/2018/11/24/opinion/sunday/facebook-twitter-terrorism-extremism.html>.

³ These included the US mail bomb scare, the shooting dead of two African-Americans in a Kentucky supermarket, and the Pittsburgh synagogue attack, all of which took place within days of each other in October 2018.

⁴ See Jessie Daniels, *Cyber Racism: White Supremacy Online and the New Attack on Civil Rights*. Lanham: Rowman and Littlefield, 2009.

Worth noting here is that, following J.M. Berger, we take the view that RWEs—like all extremists—structure their beliefs on the basis that the success and survival of the in-group is inseparable from the negative acts of an out-group and, in turn, they are willing to assume both an offensive and defensive stance in the name of the success and survival of the in-group.⁵ We thus conceptualise Western right-wing extremism as a racially, ethnically, and/or sexually defined nationalism, which is typically framed in terms of white power and/or white identity (i.e. the in-group) that is grounded in xenophobic and exclusionary understandings of the perceived threats posed by some combination of non-whites, Jews, Muslims, immigrants, refugees, members of the LGBTQI+ community,⁶ and feminists (i.e. the out-group(s)).⁷

Pre-Web Bulletin Board Systems

Along with a history of violence, the extreme right has a very long online history dating to the earliest days of the public internet. To illustrate, American white supremacist Louis Beam, an early advocate of 'leaderless resistance,' established and ran a bulletin board system (BBS) known as Aryan Nation Liberty Net from at least 1984.⁸ Accessible via telephone numbers in the US states of Idaho, Texas, and North Carolina, the Liberty Net BBS allowed anyone with a computer and a modem to gain 'dial-up' access to a variety of hate propaganda as well as information about Aryan Nation meetings and details about other RWE groups, as well as—in perhaps the world's first instance of doxing⁹—the names and addresses of those who were perceived as "enemies." Users could also leave their own messages on the system.¹⁰ Beam's service, however, was not the only such BBS operating at around this time. Another US-based service, Info International, was established and run by George Dietz, the owner of a conspicuously extreme right publishing company, Liberty Bell Publications. Tom Metzger, founder of the White Aryan Resistance (WAR), also utilised a BBS—known as WAR Computer Terminal—for propaganda purposes.¹¹ In an early example of what has since been termed "convergence culture,"¹² Metzger promoted this new medium via his WAR newspaper, with one of the first messages disseminated on the BBS directing viewers to his cable-access television show.¹³ In addition to aiding in recruitment and communication efficiency, BBSs marked "a new departure for hate groups" and represented "an effort to give RWE a modern look", wrote Lowe in 1985.¹⁴

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⁵ J. M. Berger, *Extremism*. Cambridge: The MIT Press, 2018a.

⁶ 'LGBTQI+' is a shorthand reference to describe the lesbian, gay, bi-sexual, transgender, queer, inter-sex, and other sexual identity-based communities.

⁷ Barbara Perry, and Ryan Scrivens. "Uneasy Alliances: A Look at the Right-Wing Extremist Movement in Canada." *Studies in Conflict & Terrorism* 39, no. 9 (2016): 819-841.

⁸ See David Lowe, *Computerized Networks of Hate: An ADL Fact Finding Report*. New York: Anti-Defamation League, 1985, <https://archive.org/details/ComputerizedNetworksOfHate/page/n5>; see also J. M. Berger, "The Strategy of Violent White Supremacy is Evolving." *The Atlantic*, August 7, 2019, <https://www.theatlantic.com/ideas/archive/2019/08/the-new-strategy-of-violent-white-supremacy/595648>.

⁹ 'Doxxing' is the internet-based practice of finding and posting online private or identifying information about an individual or organisation oftentimes accompanied by implicit or explicit requests to the use the information for online and/or 'real world' harassment purposes.

¹⁰ Lowe, *Computerized Networks of Hate*.

¹¹ Berlet, *When Hate Went Online*.

¹² Henry Jenkins, *Convergence Culture: Where Old and New Media Collide*. New York and London: New York University Press, 2006.

¹³ *Ibid.*

¹⁴ *Ibid.*, p. 1.

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agreed upon norms,⁷¹ oftentimes in ways similar to offline reinforcement (e.g. laughter, voicing agreement, etc.).⁷²

An example of one such RWE subreddit is *r/The_Donald*, a popular pro-Trump space. In the immediate aftermath of the Christchurch attacks, many *r/The_Donald* posts justified the shootings and/or displayed anti-Muslim hate.⁷³ It has been quarantined since June 2019 for “threats of violence against police and public officials.”⁷⁴ Quarantining means that links to *r/The_Donald* no longer appear on Reddit’s ‘front page,’ it is not returned in Reddit search results, and users must be logged-in in order to contribute to it.⁷⁵ While Reddit has a relatively laissez faire attitude to content moderation, the quarantining of *r/The_Donald* was not the first such action taken by Reddit administrators. In 2015, Reddit closed several subreddits due to violations of Reddit’s anti-harassment policy, including *r/CoonTown*. *r/CoonTown* was a virulently racist subreddit and the first of its type to be removed by Reddit administrators, but was later joined by a variety of subreddits with RWE connections, including *r/incels*, *r/The_GreatAwakening*, and *r/Pizzagate*. This caused some Redditors to migrate to its “censorship-free” alternative *Voat*, while others showed a preference for *4chan*.

Like Reddit, *4chan*’s (established in 2003) original purposes were non-RWE in their orientation; instead, the site largely focused on Japanese anime and manga.⁷⁶ Today, it hosts 70 topic-specific image boards, including those devoted to ‘Photography,’ ‘Food & Cooking,’ ‘Science & Math,’ and a variety of ‘Adult’ themes. It claims to have “over 22 million monthly visitors,”⁷⁷—the majority of whom are assumed to be young men—known as ‘anons’ (dubbed as such due to the site being wholly anonymous).⁷⁸ On *4chan*, no logins are required, usernames are optional, and threads expire after a certain time.⁷⁹ *4chan* became more widely known in 2014 as a central node—along with Reddit—in the online harassment campaign against women in computer gaming known as ‘Gamergate,’ which had both RWE and misogynist elements.⁸⁰ The RWE QAnon conspiracy was also initiated by *4chan* posts. Its */pol/* (‘politically incorrect’) board, in particular, continues to serve the extreme right, largely outside of mainstream scrutiny. That is where the strategies and goals of a younger and ‘hipper’ version of RWE are developed and eventually packaged for more mainstream consumption and appeal, often in the form of memes.⁸¹

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⁷¹ Ryan M Milner, “FCJ-156 Hacking the Social: Internet Memes, Identity Antagonism, and the Logic of Lulz.” *The Fibreculture Journal* 22 (2013): 62-92.

⁷² Pete Simi, Kathleen Blee, Matthew DeMichele, and Steven Windisch. “Addicted to Hate: Identity Residual Among Former White Supremacists.” *American Sociological Review* 82, no. 6 (2017): 1167-1187.

⁷³ Jacob Shamsian, “Reddit is Allowing a Major Trump-Supporting Community to Flourish Despite Members Defending the New Zealand Mosque Shooter.” *Business Insider*, March 22, 2019, <https://www.businessinsider.com/reddit-the-donald-cringe-anarchy-new-zealand-shooting-mosque-muslims-2019-3?r=US&IR=T>.

⁷⁴ BBC News. “Reddit Places Pro-Donald-Trump Forum in Quarantine.” *BBC News*, June 27, 2019, <https://www.bbc.com/news/technology-48783866>.

⁷⁵ *Ibid.*

⁷⁶ For an alternative view, see Fujioka, Brett. “Japan’s Cynical Romantics, Precursors to the Alt-Right.” *Tablet*, August 8, 2019, <https://www.tabletmag.com/jewish-news-and-politics/288999/japans-cynical-romantics>.

⁷⁷ See <http://www.4chan.org/advertise>.

⁷⁸ Anonymity is the default position on *4chan*, but users can generate a unique “tripcode” that makes their posts pseudonymous rather than anonymous. For more, see *4chan*’s FAQ at <http://www.4chan.org/faq#trip>.

⁷⁹ James Palmer, “How Does Online Racism Spawn Mass Shooters?” *Foreign Policy*, August 4, 2019, <https://foreignpolicy.com/2019/08/04/online-racism-4chan-8chan-shootings-el-paso-dayton-texas-ohio>.

⁸⁰ Andrea Braithwaite, “It’s About Ethics in Games Journalism? Gamergaters and Geek Masculinity.” *Social Media + Society* 2, no. 4 (2016): 1-10.

⁸¹ Dillon Ludemann, “/pol/emics: Ambiguity, Scales, and Digital Discourse on *4chan*.” *Discourse, Context & Media* 24 (2018): 92-98.

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International Crisis Group, *Myanmar's Military: Back to the Barracks?*, Asia Briefing No 143, 22 April 2014

Available at:

<https://web.archive.org/web/20150103190417/http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-myanmar/b143-myanmar-s-military-back-to-the-barracks.pdf>

Update Briefing

Asia Briefing N°143
Yangon/Brussels, 22 April 2014

Myanmar's Military: Back to the Barracks?

I. Overview

Myanmar's military, the Tatmadaw, has been the dominant institution in the country for most of its post-independence history. After decades of military rule, it began the shift to a semi-civilian government. A new generation of leaders in the military and in government pushed the transition far further and much faster than anyone could have imagined. Major questions remain, however, about the Tatmadaw's intentions, its ongoing involvement in politics and the economy, and whether and within what timeframe it will accept to be brought under civilian control. Transforming from an all-powerful military to one that accepts democratic constraints on its power will be an enormous challenge.

The Tatmadaw's institutional perspective is heavily influenced by its role in Myanmar's anti-colonial struggle – the leaders of which founded the military – and its early post-independence experience. The new country was almost torn apart by communist insurrection in the centre and ethnic insurgency in the periphery. The early years of parliamentary democracy were characterised by factionalism and infighting, which many in the Tatmadaw saw as driven by self-serving politicians having little regard for the national interest. The upshot is that many in the military remain distrustful of civilian politics. This, together with fears about instability at a time of major political change, mean that the Tatmadaw is not yet ready to give up constitutional prerogatives that ensure, through guaranteed legislative representation, that it has a veto on changes to the charter, as well as control of key security ministries, among other things.

Those guarantees, far from entrenching stasis, are what have given the Tatmadaw the confidence to allow – and in many cases support – a major liberalisation of politics and the economy, even when many of the changes impact on its interests. Its proportion of the government budget has been significantly reduced, the huge military-owned conglomerates have lost lucrative monopolies and other economic privileges, and the Tatmadaw is subject to increasing scrutiny, including from the recently unshackled media, on issues such as land confiscation and the way it operates in ethnic areas.

Many observers have assumed that the Tatmadaw would be a spoiler on issues of key interest such as the peace process and economic reform. Yet, this has generally not been the case – although the military's actions in Kachin State, including current deadly clashes, have been deeply troubling. The Tatmadaw's support for progress in these areas stems from its broader concerns about protecting Myanmar's sovereignty and geo-strategic interests. Military leaders were deeply concerned in recent years

mander – General Hla Htay Win, the joint chief of staff and third-ranking officer in the Tatmadaw – was sent to oversee the security operation.⁵¹

The army also provided security in parts of Rakhine for the census enumeration that took place a few days later, and also – much more problematically – in Kachin State. There is a sense that this more proactive approach may be driven in part by that fact that the Tatmadaw has always prided itself on its capacity to restore and maintain security.⁵² During the state of emergency in Rakhine in 2012, the military was far more effective than the police had been in restoring order and protecting Muslim Rohingya villages, and those communities generally saw its role as positive.⁵³ In some instances, particularly Rakhine State, it may be the best option in the short term for preventing the situation escalating to widespread insecurity and violence.

The role of the Tatmadaw in Myanmar's borderlands is also shifting. The cease-fires in place in most of these areas mean that it has less need for patrols and security operations, and units are spending more time in barracks. The new political and security context implies a radical shift in the nature of its interactions with civilians in border areas – a shift that is far from being fully realised, with abuses still taking place. But ending abusive practices is only a part of the transition that the Tatmadaw must make. If Myanmar is to be successful in building a genuine union based on respect for diversity and greater autonomy, the Tatmadaw will have to find a way to change from being seen as the enemy by many ethnic communities (which it has been for multiple generations) to a national security force that reflects the diversity of the country and its peoples.

B. *A New Military Doctrine*

Improving the Tatmadaw's reputation in the country, particularly in ethnic communities, will be an enormous challenge. It requires a major effort to address abuses of civilians – which have been documented in detail over decades – including through training and changes in military culture, as well as steps to end impunity.⁵⁴ At a broader level, it must be addressed through the elaboration of a new military doctrine. Since independence, in developing its doctrine the Tatmadaw has felt the need to balance the competing demands of perceived external threats (which required heavy weapons systems for conventional operations) and active insurgencies (which required a large, lightly-equipped force).⁵⁵ The initial focus after independence was on the former, although the country lacked the resources necessary to follow this through. Given the large-scale insurgencies of the 1950s, when the military took power in 1962 it shifted focus mainly to the latter, in the form of a “people's war” concept – a counter-insurgency doctrine that involved the establishment of local militias and ultimately the brutal four-cuts strategy.

⁵¹ “General Hla Htay Win inspects riot-affected areas in Rakhine State”, *New Light of Myanmar*, 29 March 2014, p. 3.

⁵² Crisis Group interview, international analyst who had recent discussions with the authorities on the issue, Yangon, April 2014.

⁵³ See Crisis Group Report, *Storm Clouds on the Horizon*, op. cit., Section I.E.

⁵⁴ These have included serious violations in the context of counter-insurgency operations, as well as more systemic abuses including forced labour, arbitrary detention, illegal taxation and sexual violence, among others.

⁵⁵ For detailed discussion, see Selth, *Burma's Armed Forces*, op. cit., Section 4.3; and Maung Aung Myoe, op. cit., chapter 2.

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International Crisis Group, *Myanmar: The Politics of Rakhine State*, Asia
Report No 261, 22 October 2014

Available at:

<https://icg-prod.s3.amazonaws.com/myanmar-the-politics-of-rakhine-state.pdf>

Myanmar: The Politics of Rakhine State

Asia Report N°261 | 22 October 2014

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cess. Even if sufficient trust could be built, the deal that is on offer – Bengali identity for (naturalised) citizenship – is unacceptable for most, out of principle or due to fears that naturalised citizenship confers limited rights, can be revoked and implies that an individual or their parents migrated from Bangladesh in recent times.⁹⁴

This raises the question of how the authorities will proceed. The draft Rakhine State Action Plan (see Section VII.C below) envisages a compulsory verification process – different from the Myebon pilot – whereby anyone who refused to take part in the process or declined to identify as “Bengali” would be classified as an illegal immigrant. If the verification process proceeded in this way, this would effectively be a ultimatum not only to IDPs, but also those in non-displaced communities: register as “Bengali” or be permanently denied citizenship. This would carry a high risk of sparking major tensions and potential violence.

C. *Rohingya Political Identity and Hopes for the Future*

The etymology and date of origin of the term “Rohingya” are highly contested. What does seem clear is that it was not widely used in written records from the colonial or pre-colonial periods.⁹⁵ It became more widespread in the 1950s, including by the elected government of the time, with President Shwe Thaik, Prime Minister Nu and senior military officer Aung Gyi using it in speeches. In the 1960s, the official Burma Broadcasting Service relayed a “Rohingya language” program three times per week as part of its minority language programming. The word was used in encyclopaedias, journals and school text books until the late 1970s to describe one of the groups living in Rakhine State. And the “Rangoon University Rohingya Students Association” was officially registered by the authorities in the late 1950s and early 1960s.⁹⁶

The systematic denial of their rights by successive governments has produced awareness among the Rohingya of the commonality of their experiences, particularly around the 2012 violence. This has helped to forge a much stronger Rohingya political identity than existed in the past. Prior to 2012, many Muslims with the same ethno-linguistic background as the Rohingya declined to identify as such, particularly those in Sittwe and further south. These communities were more socially and economically integrated into Rakhine society than those living in northern Rakhine State, and they were disinclined to highlight their difference by associating with what was seen as an activist political identity. This changed rapidly after 2012, when the violence affected even those communities who were well integrated, and the term “Bengali” came to be applied to all Muslims in the state (including, on occasion, the Kaman).⁹⁷

Now, there is an overwhelming sense among Rakhine Muslim communities and their leaders that with the current pressures and threats they face, it is vital to have a strong and unified political identity.⁹⁸ More and more Muslims in Rakhine State,

⁹⁴ Crisis Group interviews, Rohingya political leaders and IDP camp residents, Yangon and Sittwe, July–September 2014. Rohingya refugees in Bangladesh conveyed very similar sentiments to Crisis Group researchers in Cox’s Bazaar in July and August 2014.

⁹⁵ See, for example, “A note on the origins of the ‘Rohingya’”, Network Myanmar, 11 November 2012.

⁹⁶ For further details on these references to “Rohingya”, see Nay San Lwin, “Making Rohingya statelessness”, *New Mandala*, 29 October 2012.

⁹⁷ Crisis Group interview, analyst, Yangon, October 2012.

⁹⁸ Crisis Group interviews, Yangon, Sittwe, Cox’s Bazaar, Dhaka, July and August 2014.

with the exception of the Kaman, are identifying as Rohingya. As a Rohingya elder said: “The violence in 2012 changed the situation. Before the violence our Rohingya name was not something we thought about every day. Since the violence, everything has been stolen from us – now all we have left is our Rohingya identity. All of us are united on this”.⁹⁹ Rohingya leaders see defending their political identity as vital to gain Myanmar citizenship and ease discrimination and denial of rights. They see international use of the term as an important source of legitimacy and support for their rights.

D. *The Kaman Perspective*

The Kaman continue to highlight their distinct identity. They have also been impacted by the communal tensions, with several killed in 2012 and hundreds displaced. In October 2013, Rakhine Buddhists killed five Kaman in targeted violence in Thandwe in the southern part of the state; several hundred were made homeless.¹⁰⁰

Kaman leaders and their community fear that growing influence of Buddhist nationalism over Rakhine State politics has transformed the conflict between Rakhine and Rohingya into a broader anti-Muslim crisis, in which they are more likely to be targeted. In fact, radical monk Wirathu’s visit to Thandwe ahead of the October attacks is partly credited by local people for stoking anti-Muslim violence there.¹⁰¹ They are also targeted because of a widely-held perception – probably correct – that many Rohingya have obtained citizenship cards by bribing government officials to register them as Kaman.¹⁰²

The Kaman feel caught in the middle of a conflict between the Rakhine and the Rohingya. “The Kaman are hostage to the communal tensions. We share our ethnicity with the Rakhine but our religion with the Bengalis”.¹⁰³ As a result, the Kaman leaders have to walk a fine political line: they support citizenship for Rohingya, but do not endorse the Rohingya identity, distrusting the motives behind it – which they suspect may be aimed at achieving a self-administered area or separate state carved out of Rakhine.¹⁰⁴

Not all Kaman subscribe to this view. Kaman leaders in the Sittwe IDP camps are sympathetic to Rohingya since many now find themselves in a similar situation. Even those Kaman with full citizenship cards require special permission to travel, because of their religion and the risk of violence that authorities say this exposes them to. This means that they are subject to the same de facto restrictions on movement as unregistered Rohingya, and are unable to leave the IDP camps even though most have the means and desire to do so.¹⁰⁵

⁹⁹ Crisis Group interview, Sittwe, July 2014.

¹⁰⁰ Crisis Group interviews, aid workers and Kaman leaders, Yangon and Sittwe, July 2014.

¹⁰¹ Internal Office of the UN High Commissioner for Human Rights report on the Thandwe violence, October 2013, copy on file with Crisis Group. See also “The silence of the muezzin”, *The Economist*, 2 November 2013. Wirathu is the influential leader of the radical “969” Buddhist nationalist group, which often preaches intolerance about Muslims.

¹⁰² Crisis Group interviews, Rohingya and Kaman leaders, July 2014. See also “Final Report of Inquiry Commission”, op. cit., p. 17.

¹⁰³ Crisis Group interview, Kaman leader, July 2014.

¹⁰⁴ Ibid.

¹⁰⁵ Crisis Group interviews, Kaman living in IDP camps in Rakhine State, July and August 2014.

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International Crisis Group, *Myanmar: A New Muslim Insurgency in Rakhine State*, Asia Report No. 283, 15 December 2016

Available at:

<https://icg-prod.s3.amazonaws.com/283-myanmar-a-new-muslim-insurgency-in-rakhine-state.pdf>



Myanmar: A New Muslim Insurgency in Rakhine State

Asia Report N°283 | 15 December 2016

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Executive Summary

The deadly attacks on Border Guard Police (BGP) bases in Myanmar's northern Rakhine State on 9 October 2016 and the days following, and a serious escalation on 12 November when a senior army officer was killed, signify the emergence of a new Muslim insurgency there. The current violence is qualitatively different from anything in recent decades, seriously threatens the prospects of stability and development in the state and has serious implications for Myanmar as a whole. The government faces a huge challenge in calibrating and integrating its political, policy and security responses to ensure that violence does not escalate and intercommunal tensions are kept under control. It requires also taking due account of the grievances and fears of Rakhine Buddhists.

Failure to get this right would carry enormous risks. While the government has a clear duty to maintain security and take action against the attackers, it needs, if its response is to be effective, to make more judicious use of force and focus on a political and policy approach that addresses the sense of hopelessness and despair underlying the anger of many Muslims in Rakhine State. Complicating this is that Aung San Suu Kyi has some influence, but under the constitution no direct control over the military.

The insurgent group, which refers to itself as Harakah al-Yaqin (Faith Movement, HaY), is led by a committee of Rohingya émigrés in Saudi Arabia and is commanded on the ground by Rohingya with international training and experience in modern guerrilla war tactics. It benefits from the legitimacy provided by local and international *fatwas* (religious judicial opinions) in support of its cause and enjoys considerable sympathy and backing from Muslims in northern Rakhine State, including several hundred locally trained recruits.

The emergence of this well-organised, apparently well-funded group is a game-changer in the Myanmar government's efforts to address the complex challenges in Rakhine State, which include longstanding discrimination against its Muslim population, denial of rights and lack of citizenship. The current use of disproportionate military force in response to the attacks, which fails to adequately distinguish militants from civilians, together with denial of humanitarian assistance to an extremely vulnerable population and the lack of an overarching political strategy that would offer them some hope for the future, is unlikely to dislodge the group and risks generating a spiral of violence and potential mass displacement.

HaY would not have been able to establish itself and make detailed preparations without the buy-in of some local leaders and communities. Yet, this has never been a radicalised population, and the majority of the community, its elders and religious leaders have previously eschewed violence as counterproductive. The fact that more people are now embracing violence reflects deep policy failures over many years rather than any sort of inevitability.

It is important for the government's response to start from an appreciation of why a violent reaction from some Muslims in Rakhine State has emerged. The population has seen its rights progressively eroded, its gradual marginalisation from social and political life, and rights abuses. This has become particularly acute since the 2012 anti-Muslim violence in Rakhine. Disenfranchisement prior to the 2015

IV. Emergence of a New Organised Violent Resistance

A. *The 9 October Attacks*

In the early hours of 9 October, several hundred local Muslim men, armed mostly with knives and slingshots and about 30 firearms, launched simultaneous attacks on three BGP posts in Maungdaw and Rathedaung townships near the north-western border with Bangladesh. According to the authorities, nine police were killed; and the attackers, eight of whom were killed and two captured, made off with 62 firearms and more than 10,000 rounds of ammunition.¹⁸

One of the targets was BGP headquarters, a major installation in Kyee Kan Pyin (just north of Maungdaw town) that was overrun in a multi-phase attack, and from where the majority of weapons were looted. In another indication of the preparation level, the group planted an improvised explosive device (IED) and set an ambush on the approach road to the headquarters, delaying reinforcements and damaging vehicles. The two other targets were a BGP sector headquarters at Nga Khu Ya in north Maungdaw and a BGP outpost at Koe Dan Kauk in Rathedaung, just south of Maungdaw township. The government estimated the total attackers at 400.¹⁹ Several further clashes occurred 10-12 October, including one on 11 October in which four soldiers were killed.²⁰ Two attacks on 3 November that state media reported as linked to the attackers are more uncertain.²¹

The attacks marked a major escalation of violence in Rakhine and reflected an unprecedented level of planning in a conflict that had seen little organised violent resistance from the Muslim population. They caused widespread fear in both communities, particularly among Buddhist Rakhine villagers, who are the minority in the northern part of the state; some 3,000 of them fled to towns.²²

B. *Response from Government and Security Forces*

The military and BGP launched a major operation aimed at recovering the looted weapons, capturing those involved and arresting their helpers. Its intensity likely reflected both the exigencies of the security situation and that the initial attacks and subsequent deadly clashes were seen as a major affront to security forces' dignity.

¹⁸ Government press conference, Naypyitaw, 9 October, reported in *Global New Light of Myanmar (GNLM)*, 10 October 2016, pp. 1, 3.

¹⁹ Ibid; Crisis Group interview, individual briefed on the attacks, Yangon, October 2016. See also "Operation Backdoor", Yehtun Blog (<http://yehtunblog.blogspot.com>), 20 October 2010.

²⁰ "Troops fight back violent armed attackers, kill four", *GNLM*, 11 October 2016, p. 1; "Tatmadaw attacked by 300 armed men, four soldiers killed", *GNLM*, 12 October 2016, p. 1; "Troops kill 10 violent armed attackers in area clearance operation in Maungdaw tsp" and "Armed men violently attack Kyikanpyin border outpost, set fire to 25 houses in Warpaik Village", *GNLM*, 13 October 2016, p. 3.

²¹ As reported in *GNLM*, 5 November 2016, p. 2, the incidents occurred in south rather than north Maungdaw where the other attacks and subsequent clashes took place. One was the burning down of a disused BGP post, the other allegedly on a BGP base. There are competing narratives about the latter incident: village sources said it was a shooting between two police officers, not an attack. Crisis Group interviews, November 2016, and information from a non-government source with contacts in the area.

²² "Myanmar - New displacement in Rakhine State", European Civil Protection and Humanitarian Aid Operations, Daily Flash, 21 October 2016.

The BGP commander, Police Brigadier-General Maung Maung Khaing, was removed for “poor performance”, probably due to both intelligence failures (see Section IV.C) and losing his headquarters and its armoury during the attacks; his replacement is a brigadier-general transferred from the regular police.²³

The Myanmar authorities have consistently referred to “joint operations”, usually indicating that the military is supporting BGP operations. This language began to be used in particular following a “special meeting on national defence and security” on 14 October that brought together the president, Aung San Suu Kyi, the commander-in-chief and others. The normal constitutional mechanism for activating military involvement in such a situation would be declaration of a state of emergency by the president, with National Defence and Security Council approval, as happened three times under the Thein Sein administration. However, Aung San Suu Kyi appears to regard the Council as politically illegitimate, and it has not met under her government, so no state of emergency can be declared.²⁴ In practice, though joint BGP-army patrols take place, the army has authority over the security response, under its western commander.²⁵

The military has indicated it is conducting “area clearance operations” across a section of northern Maungdaw township, which it has sealed off. On the basis of reports from the authorities and non-government sources, it appears to be using something akin to its standard counter-insurgency “four cuts” strategy developed in the 1960s to cut off rebel forces from their four main support sources (food, funds, intelligence, recruits) and largely unchanged since. It involves cordoning off territory for concentrated operations, a “calculated policy of terror” to force populations to move, destruction of villages in sensitive areas and confiscation or destruction of food stocks that could support insurgents.²⁶

Operations in the sealed-off area bear many hallmarks of that strategy. After the 9 October attacks, there were multiple reports of suspects shot on sight, burning of many houses, looting of property and seizure or destruction of food stocks – as well as of women and girls raped.²⁷ Humanitarian agencies have been denied access to some 30,000 people in the sealed-off area, displaced as a result of the attacks and their aftermath, as well as 130,000 previously receiving life-saving aid, with the exception of a one-time food delivery to four villages (6,500 people) on 6 November and the following days by the World Food Programme (WFP); and a food delivery by

²³ Government press conference, 17 October, reported in *GNLM*, 18 October 2016, p. 2.

²⁴ Ibid; see also “Special meeting on national defence and security”, *GNLM*, 15 October 2016, p. 1. Under Section 413(a) of the constitution, a state of emergency in a state/region empowers local civilian authorities and civil service bodies to obtain military help in carrying out their duties. The reason for Suu Kyi’s view is that the military has the majority of the Council’s eleven seats (five uniformed officers plus the military-nominated vice president, a retired senior officer), so can out-vote civilian government representatives. She may also have protocol concerns: it is chaired by the president; her membership is as foreign minister, not state counsellor.

²⁵ Crisis Group interview, individual briefed on the response, Yangon, November 2016.

²⁶ For details, see Smith, *Insurgency*, op. cit. p. 288 ff.; Andrew Selth, *Burma’s Armed Forces* (Norwalk, 2001), pp. 91-91; and Maung Aung Myoe, “Military Doctrine and Strategy in Myanmar” Strategic and Defence Studies Centre, working paper 339, 1999, p. 10.

²⁷ Crisis Group telephone interviews, villagers and community leaders in the operations area, October 2016. Also, Arakan Project, internal notes nos. 1 and 2, October and November 2016.

Some villages were systematically destroyed over days, rather than isolated, geographically dispersed events as would be expected from individuals or small-group hit-and-run attacks. Moreover, much arson took place during military operations when many troops were present – not only at the time of attacks, but also over subsequent days. Troops also have security motivation (denial of access to villages in insecure areas is a standard counter-insurgency tactic, often achieved in the past in other parts of Myanmar by burning villages), while the armed group is reliant on at least some local civilian support.³⁴

Journalists questioning the official narrative have been accused in the state media of working “hand in glove” with the attackers. The government reportedly interceded with the *Myanmar Times* when one of its experienced foreign journalists reported on allegations of rapes by military personnel. She was fired shortly thereafter, and the paper’s owner put a moratorium on reporting on the Rakhine State conflict. An opinion piece in state media called the reporting “an act of gross unethical journalism” but added that “credit should be given to the media group for ... immediately firing that journalist”.³⁵ Such intimidation has a chilling effect on reporting by other journalists and publications. For example, a reporter from a prominent local English-language publication interviewed a member of the BGP who admitted burning down Muslim homes in the operations area but self-censored the account.³⁶

Potentially even more serious is that the repeated blanket government denials, widely disseminated via the state media in English and Burmese, reinforce a climate of impunity for troops that is particularly dangerous in a context of widespread negative sentiments toward the Muslim population at all levels of the military and in society as a whole. The state media has published disturbing opinion pieces, for example one that referred to the Rakhine State situation as caused by “detestable human fleas” that “we greatly loathe for their stench”.³⁷

C. *A Spiral of Violence*

A further serious escalation on 12 November made clear that the attacks on security forces were not one-off and that the armed group was still operational despite a month of intensive military operations.

Government accounts and Crisis Group interviews with villagers, other local sources and members of the armed group paint a broadly consistent picture.³⁸ At 6:45am, an army column clashed with some 60 members of the armed group in a valley near Pwint Hpyu Chaung village; one soldier died and several were wounded; six attackers were reportedly killed. There were several other skirmishes as the attackers retreated to Gwa Son village. When troops approached the village, the armed

³⁴ Crisis Group interview, senior Human Rights Watch staffer, November 2016. Selth, *op. cit.*, p. 163.

³⁵ “Fourth estate must abide by ‘code of ethics’: minister for information”, *Myanmar Times*, 9 November 2016. “Myanmar journalist says she was fired over story on military rape allegations”, *The Guardian*, 4 November 2016; “Reporter’s sacking followed MoI [Ministry of Information] phone call, sparking press freedom fears”, *Frontier Myanmar*, 4 November 2016. “Myanmar press under pressure as paper bans Rakhine reports”, Agence France-Presse, 8 November 2016. Khin Maung Myint, “Morality and ethics”, *GNLM*, 24 November 2016, p. 8.

³⁶ Crisis Group interview, individual with direct knowledge of the incident, October 2016.

³⁷ “A flea cannot make a whirl of dust, but ...”, *GNLM*, 27 November 2016, p. 8.

³⁸ A government account is given in “One officer, one soldier dead, several injured [as] fighting continuously erupts in Rakhine”, *GNLM*, 13 November 2016, p. 1.

group shot at them. Several hundred villagers, armed with whatever they had to hand (knives and farming implements), supported the attackers, seemingly spontaneously. A lieutenant-colonel was shot dead, and the troops retreated, calling in air support from two attack helicopters with mounted machine guns.³⁹ The helicopters allegedly fired indiscriminately, including at villagers fleeing across paddy fields; videos taken by villagers show several bodies in fields, including women and children.⁴⁰

The same day, there were at least two IED attacks on government forces in the area. A BGP convoy was struck as it crossed a bridge, then came under attack by armed combatants; the authorities report the attackers were repelled and that there were no casualties. In the second incident, an army column was struck by an IED, reportedly damaging a vehicle but without casualties.⁴¹ The authorities have reported several other IED incidents and said that explosives/IEDs were also used tactically in the initial attack on the BGP headquarters.⁴²

Following the 12 November clashes, the military considerably stepped up its operations. In addition to using attack helicopters in areas with many civilian non-combatants, ground troops became much more aggressive. Troops entered Gwa Son and surrounding villages on 13 November, shooting at villagers who fled. Videos taken by villagers show several charred bodies discovered the next day in the remains of a house, in circumstances that remain unclear.⁴³ Many villages were also partially or completely destroyed by arson.

The impact of a “four cuts” operation on civilians is far greater in Maungdaw than in the mountains of the eastern border, where it has been used in the past. Those areas are sparsely populated, communities often have decades of conflict experience, well-developed coping mechanisms and generally better food security. Even there, the toll is heavy. But Maungdaw is densely populated predominantly lowland, communities have almost no experience of armed conflict, and there is pre-existing malnutrition and food insecurity well above critical emergency thresholds.⁴⁴ The population was already living on the edge; fear of conflict and abuses combined with a serious livelihoods shock – humanitarian support is almost completely blocked, and food imports from Bangladesh have been disrupted – have led many to flee across the border. At least 27,000 are known to have done so in recent weeks; it would not take much for this to become a mass exodus like 1978 (200,000) or 1991 (250,000).⁴⁵

Violence and abuses are likely to boost support for the armed group. People pushed to desperation and anger, with no hope for the future, are more likely to embrace extremist responses, however counterproductive. With an armed militant group in place and ready to capitalise, the current security response is likely to drive

³⁹ “Government refutes rights group report on Rakhine”, *GNLM*, 17 November 2016, p.1.

⁴⁰ Crisis Group interview, Arakan Project researcher, Yangon, November 2016.

⁴¹ “Violent armed attackers ambush convoy of border guards and government staffs, explode a bridge in Rakhine”, *GNLM*, 13 November 2016, p. 1. “Government troops attacked with improvised mines in Maungdaw”, *GNLM*, 14 November 2016, p. 3.

⁴² Crisis Group interview, analyst specialising on Rakhine State, Yangon, November 2016; also, for example, “IED discovered on village road in Maungdaw”, *GNLM*, 17 November 2016, p. 1.

⁴³ Crisis Group interview, Arakan Project researcher, Yangon, November 2016.

⁴⁴ According to UN 2015 data, the global acute malnutrition rate (measured in children under five) in Maungdaw is 19 per cent, by far the worst in Myanmar and well above the World Health Organisation’s emergency critical threshold of 15 per cent. See also “Myanmar aid curbs hit children in Muslim-majority region: U.N.”, Reuters, 9 November 2016.

⁴⁵ “Asia and the Pacific: Weekly Regional Humanitarian Snapshot”, UNOCHA, 12 December 2016.

V. The Armed Group and its Motivations

A. *The Group and its Objectives*

Crisis Group has interviewed six persons linked to the armed group: four members in northern Maungdaw and two outside Myanmar. Separate discussions with them, as well as others involved in chat groups on secure messaging applications and analysis of videos released by the group have revealed a partial picture of its origins, structure and objectives.

The group refers to itself as Harakah al-Yaqin (HaY, “Faith Movement” in Arabic). The government calls it Aqa Mul Mujahidin, a generic Arabic phrase meaning “communities of fighters” that it gleaned from interrogations of suspects. Prior to the attacks, even members and supporters at village level were not aware of the real name and referred to it by this generic phrase (and perhaps also “RSO”, which may be why the government claimed that old group’s involvement). After the 9 October attacks, Rohingya communities in Saudi Arabia, other Middle Eastern countries and Malaysia began to ask who carried them out. According to HaY, people associated with the RSO began to falsely claim responsibility and to collect donations on this basis from the Rohingya diaspora and large private donors in Saudi Arabia and the Middle East. This, they say, was what prompted the group to reveal its name, show some of its faces on camera and prove that it was on the ground.

The first video, circulated to Rohingya networks on 11 October and leaked on YouTube the next day, has the name Harakah al-Yaqin overlaid in Arabic script. In the second, uploaded to YouTube on 14 October, the group used this name and warned donors not to trust other groups claiming to be behind the attacks, saying that “some people tried to sell our movement and our community”, a reference to the RSO. Further videos were subsequently released, showing their continued actions in north Maungdaw and stating their demands.⁴⁶

HaY was established and is overseen by a committee of some twenty senior leaders headquartered in Mecca, with at least one member based in Medina. All are Rohingya émigrés or have Rohingya heritage. They are well connected in Bangladesh, Pakistan and possibly India. Some or all have visited Bangladesh and northern Rakhine State at different times in the last two years.

The main speaker in the videos is Ata Ullah (alias Ameer Abu Amar, and, within the armed group, Abu Amar Jununi, the name mentioned in a number of the videos); the government identifies him as Hafiz Tohar, presumably another alias. His father, a Muslim from northern Rakhine State, went to Karachi, where Ata Ullah was born. The family then moved to Saudi Arabia, and he grew up in Mecca, receiving a madrasa education. This is consistent with the fact that on the videos he shows fluent command of both the Bengali dialect spoken in northern Rakhine State and Peninsular Arabic. He disappeared from Saudi Arabia in 2012 shortly after violence erupted in Rakhine State. Though not confirmed, there are indications he went to Pakistan and possibly elsewhere, and that he received practical training in modern guerrilla

⁴⁶ The first video is “Islamic terrorist asked Rohingya to join them for jihad to Myanmar Burma Rakhine Arakan”, video, YouTube, 12 October 2016, www.youtube.com/watch?v=SqTqCzLveSs, an unofficial translation of the second’s transcript: “Rohingya mujahideen call for weapons”, video, YouTube, 14 October 2016, www.youtube.com/watch?v=xpCBPZlcBE0. There have been nine so far, the latest filmed after the 12 November escalation and uploaded to YouTube 20 November.

warfare.⁴⁷ Some twenty Rohingya from Saudi Arabia (separate from the leadership committee), including Ata Ullah, are leading operations on the ground. Like him, they are thought to have experience from other conflicts, possibly Afghanistan and Pakistan. Some Rohingya returned from the camps (official and informal) in Bangladesh before 9 October to join the group. A registered refugee from Nayapara camp in Bangladesh stood beside Ata Ullah in the first video; he disappeared from the camp the night of a 13 May attack on its guard post in which a commander was killed and eleven weapons stolen.⁴⁸ Since 9 October, several hundred young Rohingya men from Bangladesh have joined the fight. However, the main fighting force is made up of Muslim villagers in northern Rakhine State who have been given basic training and organised into village-level cells to limit risks of compromise. These are mostly led by young Islamic clerics (known as “Mullahs” or “Maulvis”) or scholars (“Hafiz”) from those villages.

Though it does not appear to have religious motivations, HaY has sought religious legitimacy for its attacks. At its prompting, senior Rohingya clerics and several foreign clerics have ruled that, given the persecution Muslim communities face in Rakhine State, the campaign against the security forces is legal in Islam, and anyone opposing it is in opposition to Islam. *Fatwas* (religious rulings) to this effect were apparently obtained shortly after 9 October in several countries with a significant Rohingya diaspora, including Saudi Arabia, Dubai, Pakistan, India and Bangladesh. These have significantly influenced many Muslim religious leaders in northern Rakhine State to endorse HaY despite earlier feeling violence to be counterproductive. The group also has a senior Islamic scholar with it in Maungdaw, a Rohingya from Saudi Arabia, Mufti Ziabur Rahman, who brings religious legitimacy to operations and has authority to issue *fatwas*.⁴⁹

Information from members and analysis of its methods indicate that its approach and objective are not transnational jihadist terrorism.⁵⁰ It has only attacked security

⁴⁷ In Arabic, Abu Amar Jununi means “mad father of Amar”, perhaps an indication his eldest son is named Amar. The government spells Hafiz Tohar as Havistoohar. It said he attended a six-month Taliban training course in Pakistan (government press release, Naypyitaw, 14 October 2016, reproduced in *GNLM*, 15 October 2016, pp. 1, 3); In Crisis Group interviews, HaY members suggested he went from Saudi Arabia to Pakistan and from there to other countries (possibly including Libya) for training, but no further details or confirmation were obtained.

⁴⁸ “Attackers kill guard at Bangladesh Rohingya refugee camp”, Agence France-Presse, 13 May 2016.

⁴⁹ The foreign clerics are from Saudi Arabia and the United Arab Emirates, among other places. The mufti is the main speaker in the third video and identifies himself: “Islamic terrorist Rohingya act like villagers”, video, YouTube, 12 October 2016, www.youtube.com/watch?v=36tRkOr-WDg.

⁵⁰ This report uses “international jihadist” to refer to groups such as al-Qaeda, Islamic State (IS) and their affiliates. The Arabic root of “jihad” refers to striving in God’s service. Many Muslims find its use in the political violence context imprecise and offensive, reducing a complex religious concept, which over centuries has had many, often peaceful forms, to war-making. Even when used in the organised violence context, it can refer to insurgency and guerrilla war, not only terrorism. For the vast majority of Muslims, today’s “jihadists” pervert Islam’s tenets. But it is hard to escape the term. Groups such as al-Qaeda and IS self-identify as “jihadist”; and while jihad has long been an element of virtually all schools of Islam, a nascent “jihadist” ideology has emerged that is more than a reflection of this; ideologues borrow from other traditions and at times show frustration with Salafi doctrinal rigidity that could constrain fighting tactics. Though big differences exist, “jihadist” groups share some tenets: fighting to return society to a purer Islam; violence against rulers whose policies they deem in conflict with Islamic imperatives as they understand them; and belief in duty to use violence if Muslim rulers abandon those imperatives. This report’s use of “jihadist” is not

forces (and perceived threats in its own community), not religious targets, Buddhist villagers or civilians and family members at the BGP bases it hit on 9 October. It has called for jihad in some videos, but there are no indications this means terrorism.⁵¹ Unlike all previous such insurgent groups (see above) and for unclear reasons, it does not include “Rohingya” in its name. Its stated aim is not to impose Sharia (Islamic law), but rather to stop persecution of Rohingya and secure their rights and greater autonomy as Myanmar citizens, notwithstanding that its approach is likely to harden attitudes in the country and seriously set back those goals. It is possible, however, that its objectives could evolve, given its appeals to religious legitimacy and links to international jihadist groups, so it is essential that government efforts do not focus only or primarily on military approaches, but also address underlying community grievances and suffering.

HaY’s modus operandi is similar to the now-defunct RSO as well as many ethnic armed groups in Myanmar – but it faces much greater hurdles than the latter given rejection of Rohingya identity by the government and most of the country. Though the government has claimed close links with RSO, it is a distinct group that is more a reaction to perceived RSO failures than an evolution of that group (see Section IV.C below) – hence Ata Ullah’s RSO criticism in the second video. As the RSO has become something of a brand associated with Rohingya militancy by both Muslims and the authorities, it is not surprising that the government has identified the attackers as linked to it.⁵² But institutional ties do not appear to exist, though there are some efforts to recruit around 200 Rohingya in Bangladesh trained since 2012 by an ex-RSO military commander, but never deployed due to lack of an organisational structure that HaY may potentially now offer.⁵³

B. *Communications and Social Media Environment*

Much of HaY’s communications and planning was over encrypted messaging applications such as WhatsApp and Viber, as well as WeChat (which does not have end-to-end encryption).⁵⁴ Use of these has become widespread across Myanmar over the last few years, as mobile voice and data connectivity have been rolled out along with \$20 smartphones (people close to the border have had access to these opportunities for much longer, by connecting to Bangladeshi networks). Myanmar is one of the only

meant to add legitimacy to this interpretation or detract from efforts to promote alternative interpretations. It uses “terrorism” and “terrorist” only to describe non-state actors’ attempt to use violence or intimidation, especially of civilians, to achieve political goals by manipulating fear. See Crisis Group Special Report N°1, *Exploiting Disorder: al-Qaeda and the Islamic State*, 14 March 2016.

⁵¹ Crisis Group interview, individual briefed on the attacks, Yangon, October 2016.

⁵² Government press release, Naypyitaw, 14 October 2016, reproduced in *GNLM*, 15 October 2016, pp. 1, 3.

⁵³ There is also information that some former RSO members acting on their own have been providing very basic training to Rohingya refugees interested in joining HaY. This started only after the first attacks. All indications are it is not linked institutionally to either the RSO or HaY. Crisis Group interviews, Rohingya refugees, Cox’s Bazar (Bangladesh), November 2016.

⁵⁴ Crisis Group observation of Rohingya WhatsApp groups, October–November 2016. On Viber use, see “Sender of fake news in Rakhine linked to int’l extremist groups”, *GNLM*, 19 November 2016, pp. 1, 3. A Myanmar Muslim has been warning members of the diplomatic and aid communities about the use of WeChat to promote extremism in the country since the 9 October attacks. Crisis Group interview, diplomat, Yangon, October 2016.

countries where Viber is the dominant messaging app: the company claims 25 million unique users as of October 2016, out of a 51.5 million population. Such tools have significantly lowered communication and organisation barriers for communities in northern Rakhine State, something that the draconian movement restrictions in place for decades can no longer prevent.⁵⁵

The preferred messaging app among Rohingya is WhatsApp. This is probably due to its much greater popularity internationally and the fact that Rohingya use these apps to keep in touch with family overseas and the diaspora more generally. Crisis Group identified more than 50 WhatsApp groups in use in northern Rakhine State, each with as many as 250 members, and including diaspora Rohingya around the world. These are mainly used for social interaction and information sharing, not nefarious purposes. Some individuals are members of ten to twenty WhatsApp groups and can also easily share information from group chats with their individual contacts. In the wake of the 9 October attacks, these have been used to quickly disseminate information about security threats and other urgent issues. They are likely also an important source of HaY operational intelligence.

Since the Rohingya dialect of Bengali does not have a written form, much of the communication over these applications uses audio files or voice messages.

C. *Planning and Operational Strategy for the Attacks*

Crisis Group interviews with HaY members and other well-informed sources in Myanmar, Bangladesh and the Middle East, cross-referenced with additional information, including Myanmar government reports based on interrogations of captured HaY and from regional diplomats and security analysts, have revealed a fairly detailed picture of the planning and operational strategy behind the attacks.

HaY's formation and planning for operations were initiated in the wake of the 2012 violence. Active recruitment of local leaders began in 2013, then training of hundreds of villagers they recruited, mainly from Maungdaw township, since 2014, initially in Bangladesh and then more intensively in northern Rakhine State. Training was in small batches to avoid attention, a village at a time, so members would not know the identities of other trainees, and primarily in the hills of the Mayu range along the border of Maungdaw and Buthidaung townships, as well as possibly in the compounds of some large houses in villages. It included weapons use, guerrilla tactics and, HaY members and trainees report, a particular focus on explosives and IEDs. It was given by Rohingya veterans and Pakistanis or Afghans with experience of recent operations in those countries and possibly elsewhere and took more than two years to complete.⁵⁶

⁵⁵ Buddhist nationalists also use messaging applications to organise and disseminate views; Viber has long been their preferred application, but recently WhatsApp has been gaining popularity. Crisis Group interview, technology industry source, Yangon, November 2016.

⁵⁶ For a map with village tracts in Maungdaw township, see "Village Tracts of Maungdaw Township, Rakhine State", Myanmar Information Management Unit, 22 November 2011, www.themimu.info/sites/themimu.info/files/documents/VT%20Map_Maungdaw%20Tsp_Rakhine_MIMU250v01_22Nov11_A3.pdf. Some RSO veterans have explosives expertise, from training by Bangladeshi militants in the early 2000s in an exchange program. Crisis Group Report, *The Threat from Jamaat-ul Mujahideen Bangladesh*, op. cit.

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During this period, the group apparently killed several informers among the Muslim villages of north and south Maungdaw and others they feared might reveal their plans. It also paid significant hush money to potential informers. Following the training, two Saudi-based senior leaders spent a month in northern Rakhine State, around August 2016, selecting targets and determining how and when the attacks would take place.⁵⁷ Once they left, the intention was to obtain weapons and ammunition for the hundreds of trainees. Plans were also made to deploy at least four experienced doctors with medicines and supplies and to train locals as medics to assist them. From roughly late August, there was an increase in the killing of known informers within the Rohingya community.⁵⁸

The claimed objective of the operation was to take complete control of Maungdaw township, cut off communications with Buthidaung to the east and establish military posts on the ridges of the Mayu range between Maungdaw and Buthidaung, creating a defensible liberated area in the same manner as the larger ethnic armed groups in Myanmar's eastern borderlands. After this, the intent was to attack the northern part of Buthidaung – a very ambitious plan that would give complete control of the Bangladesh border – as well as parts of Rathedaung.

This plan had to be changed. In early September, after the two senior leaders left, two informers in U Shey Kya village-tract, close to Nga Khu Ya where one of the 9 October attacks occurred, revealed the identities of eight local HaY members to the BGP, which arrested them on 12 September. They were interrogated and allegedly tortured (including electric shocks and denailing). HaY arranged a bribe to the BGP of 3 million kyat (about \$2,300), and five were released on 16 September. The remaining three were freed on 28 September, after a bribe of more than 40 million kyat (over \$30,000).⁵⁹ On 30 September, HaY reportedly killed the two informants, leading to BGP night raids and arrests in the area that prompted several families to flee to Bangladesh. The authorities subsequently began large payments to informers in north Maungdaw to draw up lists of villagers in their area engaged in illegal activity, some of whom fled.

Additionally, local people say, an IED that accidentally exploded in Ngar Sar Kyu village-tract around 7 October while it was being prepared drew the attention of the security forces. According to members of the group, HaY saw that the net was closing and decided that though its preparations were not yet complete, it had to make an emergency plan and launch its operation on 9 October, ahead of schedule.

Though done hastily, the attacks showed some sophistication, including diversionary tactics; blocking reinforcements with a complex attack (IEDs plus armed assault) on a convoy some distance away; and felling of trees across roads to halt military vehicles. It is unclear where the explosives came from, but a foreign expert described the IEDs as crude but not completely amateurish.⁶⁰

The group was able to organise widely, pay numerous potential informers in northern Rakhine State prior to the attacks to keep them quiet and large bribes to the security forces to free detained militants. Now that it has established its legitimacy

⁵⁷ A different source claims that only one of the men was a Rohingya from Saudi Arabia, and the other was a foreigner.

⁵⁸ Crisis Group interview, human rights monitor, Bangladesh, November 2016.

⁵⁹ This is the highest known bribe ever paid to the BGP to release a detainee. Crisis Group interviews, local researcher, well-informed locals, Maungdaw, September-November 2016.

⁶⁰ Crisis Group interview, individual briefed on the matter, Yangon, November 2016.

and capability with attacks, it is unlikely to face funding constraints. It seems to be receiving funds from the Rohingya diaspora and major private donors in Saudi Arabia and the Middle East.⁶¹ It may also attract the attention of international groups interested in more than funding (see Section IV.E below).

D. *Level of Local Support*

It would not have been possible for HaY to establish itself and make detailed preparations without the buy-in of some local, particularly religious leaders and local communities in northern Rakhine State. Yet, this has never been a radicalised population; that some now embrace violence reflects deep policy failures over many years.

The community follows a conservative Islam, but not in general a radicalised one, and even as people saw their rights, livelihoods and hopes eroded, the vast majority of religious leaders and the population as a whole continued to eschew violence, which they considered likely to prompt further discrimination and undermine the objective of achieving recognition and rights within Myanmar. But in the wake of the 2012 violence, a segment of the population began more active consideration of organised violent responses. While a minority view, it was driven by influential individuals, including some of the younger generation of religious leaders in northern Rakhine State, who began to break with the views of community elders and older clerics. It was these people and their followers who started the organisational and training activities on the ground that were well under way by mid-2014.⁶²

With the 9 October attacks, views began to shift. Initially, there were intense debates within the community, which played out on WhatsApp group chats. Some felt they were “dying slowly day by day”, and that after years of desperation and hopelessness, someone was standing up for them.⁶³ But there was considerable criticism of the group in WhatsApp for not consulting or warning the community before the attacks and not considering the very serious consequences. It appears to have been the issuance of *fatwas* shortly after the attacks that was decisive in convincing many throughout Maungdaw to support HaY’s approach.

HaY leaders also seem to have been effective in this regard. The local commanders, about twenty Rohingya from Saudi Arabia including Ata Ullah, had been working on the ground with the trainees and local leaders for a long time, living with local people unlike the leaders of Rohingya armed groups in the past.⁶⁴ Several village leaders who have observed the activities of HaY’s leaders say they were impressed by their dedication, sincerity and strong commitment to their cause; as a result, they gained increasing trust and support from villagers. Following the success of the

⁶¹ Crisis Group interviews, members of the group and sources in the Rohingya diaspora, October–November 2016.

⁶² See Crisis Group report, *The Politics of Rakhine State*, op. cit., Section VI.A.

⁶³ The group chats were monitored by Crisis Group researchers since mid-2016. Crisis Group interview, villager in Maungdaw, October 2016.

⁶⁴ Crisis Group interviews, villagers in several villages in north and south Maungdaw, recent arrivals in Cox’s Bazar (Bangladesh) and observation of discussions on WhatsApp groups, October–November 2016. These are not the same twenty as the approximately twenty-member leadership committee based in Mecca, mentioned in Section IV.A above.

attacks, some youths take the view that the group has achieved what their fathers and grandfathers could not.

An important part of HaY's success, local community members say, is that these twenty or so leaders had good, secure lives in Saudi Arabia, the dream of many Rohingya, but were seen to have sacrificed comfort and prosperity to live beside impoverished villagers, without wearing shoes or good clothes and eating the same meagre food. That persons with so many other options were willing to take such risks convinced many locals the group was sincere and committed. This overcame doubts about joining or supporting an armed insurgency. Now, after two rounds of attacks and a brutal security response, it appears that a sizeable proportion of the area's Muslim population and the diaspora support or are sympathetic to HaY, even if the ferocity of the military's response causes some to flee.

At the same time, HaY also relied on threats and intimidation to ensure its survival. It has killed some suspected informers and drawn up a hit list of others. In addition to the killings in the lead up to the 9 October attacks, a Muslim man who used to work as a BGP cook was abducted by fellow villagers in Laungdon village-tract and found in a paddy field on 31 October with his throat cut; on 3 November, a former U Shey Kya village administrator was similarly found dead, as was a 100-household leader in south Maungdaw on 17 November.⁶⁵ These killings were done in the same gruesome way, presumably to inspire fear, while there have been no attacks on Buddhist civilians.

E. *Links with International Jihadist Groups*

There is some limited information on links between HaY and international jihadist groups. It is not surprising that such links exist, given the recruitment over several decades of vulnerable and marginalised Rohingya refugees and migrants by militant groups, initially mostly in Bangladesh, for deployment there and elsewhere.⁶⁶ However, HaY's public statements and modus operandi, as well as interviews with its members, all point to this being an insurgent group targeting Myanmar security forces and aiming – albeit in a way likely to be counterproductive – to obtain rights for the Rohingya in Myanmar, along the lines of previous mujahidin groups in Myanmar (see Section II above).

With that important caveat, the information on connections with international groups is as follows. First, members of HaY say Ata Ullah and the non-local fighters with him are well trained and experienced in guerrilla warfare; their tactics and operational success appear to confirm this, particularly their use of asymmetric methods and weapons such as IEDs, albeit crude ones. Such training and experience imply at least some links with international extremist groups. HaY members confirm that

⁶⁵ Arakan Project, internal note no. 2, op. cit.; "54-year old man found dead in Maungdaw", *GNLM*, 6 November 2016, p. 2; and "Elder village leader murdered in Maungdaw", *GNLM*, 19 November 2016, p. 2.

⁶⁶ For example, it is known that Muslims from Myanmar were fighting with the Taliban in Afghanistan, 1999-2001, Crisis Group Report, *The Politics of Rakhine State*, op. cit., Section VI.A; that Rohingya fighters have been operating, and one was killed, in Indian Kashmir, "Killing of Burmese militant ups ante of intelligence agencies", *The Tribune*, 13 November 2015; and that there is information ISIS has been recruiting among the Rohingya diaspora for Iraq and Syria, "ISIS look to recruit Rohingya Muslims fleeing Myanmar", *Newsweek*, 6 February 2015.

their leaders are well connected in Bangladesh, Pakistan and, to a lesser extent, India; the Myanmar government says its interrogations reveal that training was provided in Bangladesh and Pakistan. HaY recruits have also been instructed in Rakhine State by both Rohingya and Pakistani or Afghan trainers, according to members of the group and local people.⁶⁷

Secondly, the Rohingya cause has been used propagandistically by international jihadist groups for several years. Examples include threats against Myanmar by Tehreek-e-Taliban Pakistan (2012); calls by an Indonesian extremist leader for Muslims to wage jihad in Myanmar (2013); threats by the IS leader to take revenge on Myanmar and several other countries for abuses against their Muslims; promises to rescue Muslims in Myanmar and elsewhere from “injustice and oppression” in the formation announcement of “al-Qaeda in the Indian Subcontinent”; frequent citations in speeches as recently as 2015 by Hafiz Muhammad Saeed, head of Pakistan’s Lashkar-e-Taiba militants, to the “atrocities on Rohingya Muslims” and calls for revenge; offers of resources and training facilities by Tehreek-e-Taliban Pakistan in June 2015 to help Myanmar Muslims “take up the sword”; and a call in the April 2016 issue of IS’s *Dabiq* magazine by Bangladeshi militant Abu Ibrahim to help oppressed Muslims in Myanmar in every possible way, but stating that it was not a current operational focus.⁶⁸

Beyond these statements of solidarity and calls for support, there has been little evidence that Myanmar is an operational priority for such groups. There appear to be some other forms of cooperation or assistance, including training (discussed above) and funding, as well, potentially, as provision of weapons and explosives, which HaY currently seeks in Bangladesh. According to security analysts, small arms and military-grade explosives are available there, and procuring them should not be too difficult if the group has connections with regional arms traffickers or Bangladeshi or

⁶⁷ Crisis Group interviews and Myanmar government press release, 14 October 2016, *op. cit.* There are unconfirmed indications that the group may have a leader in Syria. Based on the profiles of other leaders and their connections, if this is true it might be a Rohingya fighter with a jihadist group rather than implying non-Rohingya leadership. Others have noted the raised index finger gesture, commonly associated with IS, displayed by Ata Ullah and some other fighters in several videos; however, this is a common gesture in South Asia and does not in itself imply any such links. See Jasminder Singh and Muhammad Haziq Jani, “Myanmar’s Rohingya Conflict: Foreign Jihadi Brewing”, RSIS Commentary no. 259, 18 October 2016.

⁶⁸ “Tehreek-e-Taliban Pakistan threaten Myanmar over Rohingya”, Agence France-Presse, 26 July 2012; a 23 April 2013 call by Abu Bakar Ba’asyir from his prison cell in Indonesia, mentioned in Crisis Group interview, security analyst, Jakarta, July 2014; “ISIS leader calls on Muslims to ‘build Islamic state’”, BBC, 1 July 2014; “Pakistani terror group active on Myanmar-Bangladesh border”, *Mizzima News*, 28 July 2015; “Pakistani Taliban attempts to recruit Rohingyas to kill Myanmar’s rulers”, Agence France-Presse, 9 June 2015; and *Dabiq* Magazine (English edition), issue 14, April 2016, p. 62.

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regional militant entities.⁶⁹ There are no indications of any significant presence of non-Rohingya fighters.⁷⁰

Such links appear driven by *umma* (Islamic community) solidarity and do not imply convergence between HaY and international jihadist groups on ideology, strategy or tactics. HaY's objectives and tactics and its focus on security targets suggest that it is Rohingya rather than transnationally focused. It is necessary to be careful not to over-interpret the significance of the international links noted above or leave unchallenged efforts by some Myanmar officials, politicians and other leaders to portray HaY as part of the global jihadist movement. Nevertheless, the longer violence continues, the greater the risks become of such links deepening and potentially becoming operational.

Recent minor explosions in Yangon do not appear directly linked to Rakhine State. Crude homemade devices were set off on 17, 20, 24 and 26 November at two shopping centres and two immigration offices, one inside the fairly secure regional government office. There were no casualties, only minor damage. The location of the devices in bins and toilets and the timing of blasts (after work hours or on public holidays) appeared designed to avoid casualties. Police arrested several suspects said to be Muslims on 26 November, but no further details have been released.⁷¹ Targeting of immigration offices, which are also responsible for citizenship verification, suggests a possible link to the Rakhine situation. If so, however, it more plausibly was an unsolicited expression of solidarity or anger at the security response than a direct attack, which might be expected to have been more dramatic. However, it does perhaps indicate existence of individuals with an intent and capability to access (semi-)secure locations that potentially could be utilised by those with the technical expertise and materials for a major attack.

⁶⁹ Crisis Group interviews, HaY members, November 2016; security analysts, Yangon, Dhaka, November 2016. Illegal shipments of small arms are regularly intercepted in Bangladesh; their use in domestic crimes has increased markedly in recent years. "Use of illegal firearms on rise", *Dhaka Tribune*, 13 November 2016; and "New JMB planned big attack for Dhaka", *Dhaka Tribune*, 15 November 2016.

⁷⁰ There is unconfirmed information from a credible source that about a dozen Patani Malays went to Maungdaw before 9 October to fight with HaY, apparently in solidarity and on their own initiative. Crisis Group correspondence, analyst, December 2016.

⁷¹ "Mayangone bomb intended to scare, not hurt, say police", *Frontier Myanmar*, 21 November 2016; "Myanmar police arrest Muslims over Yangon bombings", Agence France-Presse, 28 November 2016.

VI. How Should the Government Respond?

Emergence of a new Muslim armed group in Rakhine State is a serious threat to prospects for stability and development there. The government faces a big challenge in calibrating its political, policy and security responses to ensure that violence does not escalate and intercommunal tensions are not inflamed. It also requires taking due account of the grievances and fears of Rakhine Buddhists.⁷²

Failure to get this right carries enormous risks, so it is important that any response starts from an appreciation of why a violent reaction from some in the Muslim population of Rakhine State has emerged now. For many years, this population has seen its rights eroded and its progressive marginalisation from social and political life. This became particularly acute at the time of the 2012 anti-Muslim violence in Rakhine. In the wake of that violence, and seeing no likelihood of improvement, some Rohingya in northern Rakhine State and the diaspora began contemplating taking up arms and made initial preparations to launch a new insurgency (see Section IV.C above). A leader of this initiative with whom Crisis Group met in Bangladesh in 2014 described the group's plans and made clear the objective was for the community to live as Myanmar citizens with rights respected by the state, and was not separatist, anti-Buddhist or transnational jihadist.⁷³

Three key developments in 2015 are likely to have cemented the group's resolve to launch an insurgency and created a much more fertile recruiting ground for it: disenfranchisement of Muslim voters, lack of hope of a political solution and the shutting down of migration routes to Malaysia (see Section III above). The authorities have a responsibility to respond to the deadly attacks on BGP bases. At the same time, an effective security response must be set within an overarching policy that addresses the sense of hopelessness of Muslims in Rakhine State. This is not yet a radicalised population; community members, elders and religious leaders have previously eschewed violence as counterproductive. While increasing despair has driven more to consider violence, it is not too late for the government to reverse this if it recognises that the population has lived in the area for generations and will continue to do so and resolves to give them a place in the nation's life.

All indications are that HaY is preparing further attacks on security forces and retains the capability to do so. Heavy-handed security measures would directly contradict the above objectives, likely creating more despair and animosity among local Muslims, increasing support for HaY and provoking a deepening cycle of violence. There is likewise a very real prospect of even larger population displacements to Bangladesh. In this respect, it is also vital to open up the conflict-affected part of north Maungdaw for aid workers and independent media.

⁷² Crisis Group Report, *The Politics of Rakhine State*, op. cit., Section IV. See also Aung San Suu Kyi's comments in "Focus on resolving difficulties in Rakhine rather than exaggerating them, says Suu Kyi", Channel NewsAsia, 2 December 2016. As regards the risk of intercommunal violence, monitors report a significant increase in hate speech posts after 9 October and their spread to pages and networks where that had not previously been observed. Crisis Group interview, Yangon, November 2016.

⁷³ Crisis Group Report, *The Politics of Rakhine State*, op. cit., Section VI.A. At the time, he described the group as a "new RSO", with a generation of younger leaders based in Rakhine State. It is now clear that he was describing HaY.

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International Crisis Group, *Myanmar's Rohingya Crisis Enters a Dangerous New Phase*, Asia Report No. 292, 7 December 2017

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Myanmar's Rohingya Crisis Enters a Dangerous New Phase

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Preventing War. Shaping Peace.

II. Build-up to the Crisis

In the months before the August 2017 ARSA attacks, a series of incidents suggested an uptick in ARSA training and preparation, putting Rakhine Buddhist villagers and the security forces on edge:

- On 4 May, the accidental detonation of an IED during an ARSA explosives training course in Kyaung Taung village tract (north Buthidaung) killed seven men including the instructor, and injured at least five others. According to a reliable source close to the events, the instructor was Pakistani, not Rohingya. He was badly injured and died in Padakar Ywar Thit village tract (Maungdaw) while being carried to Bangladesh for treatment.⁸ The people carrying him asked a village head to arrange his burial in a local cemetery but after being informed of the situation, security officials arrested the village head and took the body to Buthidaung hospital. These officials were the source of domestic Myanmar media reports some days later about the death of a foreign militant.
- On 7 May, security forces investigating the IED detonation discovered the training camp and bomb-making materials. Six days later, the government announced it had found the bodies of five victims buried nearby, which they said included two foreigners. This prompted security forces to undertake violent evictions and clearance operations in the area (particularly around adjacent Tin May village tract), killing several people and prompting some families to flee to Bangladesh in May and June.⁹
- On June 20-21, the government reported that security forces had killed three men while clearing a likely ARSA training camp in the mountains near Sein Hnyin Pyar village tract (south Buthidaung).¹⁰
- On 24 June, four Rakhine Buddhist villagers came across bomb-making material while foraging in Kyun Pauk Pyu Su village tract (north Maungdaw). ARSA members shot two of them dead; the two others, one of whom was injured, fled and alerted authorities. However, ARSA members apparently removed the incriminating material before the security forces reached the spot. This was the first known case of ARSA killing non-Rohingya civilians, and significantly increased anxiety

⁸ Crisis Group interviews, local villagers with direct knowledge of the events, Rakhine State, May 2017. It appears there was a subsequent – possibly related – mass killing by the army of “at least scores” of Rohingya in an adjacent village (Min Gyi, or Tula Toli) on 30 August. “My World Is Finished”: Rohingya Targeted in Crimes Against Humanity in Myanmar”, Amnesty International, 18 October 2017, p. 21.

⁹ While the government says two foreigners were killed in the 4 May incident, ARSA sources say there was only one, the Pakistani trainer who died. Six other people died, four on the spot and one later at a medical facility in Bangladesh. Five injured people received treatment at different medical facilities in Bangladesh; three were reportedly arrested by the Bangladeshi authorities. Crisis Group interviews, medical staff, Bangladesh, May 2017; refugees from Tin May, Bangladesh, May-July 2017. See also “Five Bodies Found in Buthidaung”, *The Irrawaddy*, 15 May 2017; “Five bodies unearthed near 5 May explosion site in Buthidaung”, *GNLM*, 16 May 2017.

¹⁰ Crisis Group interviews, local villagers, June 2017; “Terrorist training camps, guns uncovered in Mayu Mountains”, *GNLM*, 22 June 2017.

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among Rakhine Buddhist villagers; some 200 fled to Maungdaw town, fearing ARSA attacks. On 27 June, security forces in the area were placed on high alert; on 30 June, senior government officials in Naypyitaw discussed the situation at a “special meeting on Rakhine State”.¹¹

- On 1 August, authorities reported that an IED accidentally exploded at an ARSA safe house in Pan Taw Pyin village tract (Maungdaw) and that they found explosives and other bomb-making material at the house.¹² Two days later, eight members of the Mro ethnic group, both men and women, were killed in the hills of Maungdaw township. The government immediately blamed ARSA, although some local villagers say the killings were related to the illicit methamphetamine trade.¹³
- On 4 August, BGP clashed with a group of villagers in Auk Nan Yar village tract, Rathedaung township, firing a dozen or more shots while trying to disperse a 300-strong crowd angry over the arrest of villagers suspected of being associated with ARSA, including a prominent local imam. During the clash, one of the suspected militants escaped; local villagers reported several injuries from gunshots, including four people taken to Bangladesh for treatment.

There were already significant tensions in the area. On 27 July 2017, a Rakhine villager had gone missing while foraging in nearby Chut Pyin village tract. Three days later, while searching in the surrounding hills, security forces and villagers discovered a stash of tarpaulins and food, including World Food Programme (WFP)-branded energy biscuits (see section V.A below), which they took to be an ARSA camp. Believing militants killed the missing person, Rakhine villagers declared a boycott of Muslims in the area. In the nearby village of Zay Di Pyin, Buddhist villagers blocked all access roads with barbed wire and prevented residents from going to work or accessing the mosque, food markets and water sources.¹⁴ According to various sources, on 27 August, security forces and local vigilantes perpetrated a mass killing of “at least scores” of Rohingya villagers in Chut Pyin.¹⁵

¹¹ Crisis Group interview, ARSA member with knowledge of the events, June 2017. See also, “Four local ethnic people were attacked by swords and killed two”, *GNLM*, 26 June 2017; “Troops in Myanmar’s Rakhine on high alert after killings of Rohingya”, Reuters, 27 June 2017; “Special meeting on Rakhine issue held”, *GNLM*, 1 July 2017. The “special meeting” comprised the president, State Counsellor Aung San Suu Kyi, vice presidents one and two, the legislative speakers, deputy commander-in-chief, relevant ministers, and national security adviser.

¹² Crisis Group interviews, local Rohingya villagers, August 2017; “IED explodes in Maungdaw”, *GNLM*, 2 August 2017.

¹³ According to local sources, the area is on a methamphetamine smuggling route from Buthidaung to Bangladesh, and there had been previous tensions between the Mro village and a nearby NaTaLa (Buddhist resettlement) village, but generally good relations with nearby Rohingya villages; the method of killing of the Mro was not consistent with ARSA assassinations, which normally involve a machete cut to the neck. Crisis Group interviews, Rohingya villagers in the area, August 2017.

¹⁴ Crisis Group interviews, local villagers, August 2017. See also “Tents of violent attackers discovered in Mayu Mountain”, *GNLM*, 1 August 2017; “Attack on police force arresting financial supporter of violent attackers in Yathedaung”, *GNLM*, 5 August 2017; “Rohingya villagers blockaded amid fresh tensions in Myanmar’s Rakhine – residents”, Reuters, 22 August 2017.

¹⁵ Amnesty International, *op. cit.*, p. 13.

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These events provoked heightened nervousness. On 9 August 2017, the commander-in-chief and other senior military officers met with leaders of the Arakan National Party, the largest party in Rakhine State – a rare meeting between the top brass and a political party. The party expressed concerns about the security situation in northern Rakhine and requested the arming of local Rakhine Buddhist militias. That same day, State Counsellor Aung San Suu Kyi convened a ministerial meeting on the security situation in Rakhine to discuss the recent killings and rising tensions. The following day, the government highlighted its deployment of some 500 troops to northern Rakhine to reassure local non-Muslim villagers and conduct patrols in the mountains between Maungdaw and Buthidaung where militants were suspected of having established training camps.¹⁶

The escalatory dynamic was well under way. On 16 August, ARSA uploaded a video of its commander, Ata Ullah, flanked by armed fighters and warning the Myanmar military to demilitarise northern Rakhine State and end abuses of Rohingya; he specifically cited the blockade of Rohingya villagers in Zay Di Pyin. He reiterated that the group had no relation with international jihadist groups and said that, contrary to government assertions, it did not target Rakhine civilians.¹⁷

¹⁶ See Senior General Min Aung Hlaing, Facebook post, 10 August 2017, <http://bit.ly/2yqQYSA>; “State Counsellor, Union Ministers hold talks on security in Rakhine State”, *GNLM*, 10 August 2017; “Myanmar Army Deployed in Maungdaw”, *The Irrawaddy*, 11 August 2017.

¹⁷ “ARSA Commander Addresses Rohingya diaspora & the world; Warns Myanmar military”, video, YouTube, 16 August 2017, <http://bit.ly/2AhDSHX>.

III. ARSA Attacks and Military Response

A. ARSA Attacks

In the early hours of 25 August 2017, from 1am until dawn, ARSA launched attacks on some 30 BGP posts and an army base.¹⁸ Their human wave attacks in some cases involved hundreds of people, mostly untrained local villagers armed with farm tools as well as some hand-held and remote-detonated IEDs. A small number of further clashes occurred over the next several days. The official death toll was fourteen members of the security forces, one government official and 371 people the government characterised as militants.¹⁹

ARSA initiated the attacks via a WhatsApp audio message delivered shortly after 8pm on 24 August. It instructed cell leaders to mobilise all male villagers over the age of fifteen, assemble in pre-planned locations with whatever sharp objects were available and attack designated targets. Many ordinary villagers apparently responded to the call, which was often conveyed by respected local Islamic clerics (known as “Mullahs” or “Maulvis”) or scholars (“Hafiz”) who seemingly made up most cell leaders and who enjoy considerable religious and community authority. Many untrained villagers were provided with IEDs for use in the attacks.

The targets were mostly small police posts and checkpoints, except for the army base in Chin Tha Mar village (near Nga Yant Chaung or Taung Bazar), Buthidaung township, though not many villagers appear to have joined this attack, which was quickly overpowered. ARSA members claim they planned to attack additional targets but that some police posts were deserted when militants reached them. Other targets were more heavily defended than expected and the attackers suffered heavy casualties. The security forces assert that they had several hours advance warning; whether accurate or not, they clearly were expecting attacks at some point.

On 25 August, ARSA issued a series of messages apparently intended both to instil confidence and resolve among its members and followers and to promote and glorify martyrdom, the goal being to encourage lightly armed male villagers to participate in highly risky attacks. Some messages falsely claimed that ARSA was taking control of the areas it attacked. Members were also reassured that armed reinforcements had been dispatched; they never arrived.

On 28 August, Ata Ullah issued WhatsApp audio messages instructing his followers to burn down Rakhine Buddhist villages with Molotov cocktails. This was in direct contradiction to the group’s repeatedly stated policy and prior approach, which was to refrain from attacking non-security targets. The reason for this change is not clear, though it may have been because non-Rohingya vigilantes from nearby villages were helping the military burn Rohingya villages during clearance operations. ARSA might have concluded that Rakhine and other non-Rohingya villagers therefore were

¹⁸ The information in this sub-section comes from Crisis Group interviews with ARSA members, Rohingya in Rakhine State and refugees in Bangladesh, August-October 2017; and from analysis of WhatsApp audio messages sent by Ata Ullah and others.

¹⁹ Death toll listed in “Humanitarian aid provided to displaced people without segregation”, *GNLM*, 6 September 2017.

a fair target.²⁰ In the event, the order does not appear to have been widely acted upon as only three non-Rohingya villages are known to have been attacked or burned down by Rohingya.²¹

One particularly high-profile case is the alleged massacre by ARSA of dozens of Hindu men and women in Kha Maung Seik (also known as Fakira Bazar) in Maungdaw township. Conflicting accounts of the incident and of who was responsible have surfaced. Survivors who fled to Bangladesh initially told Bangladeshi journalists in late-August that the killers were Rakhine militants; others said later that they wore masks, preventing identification. The first report of the incident by Myanmar media on 5 September 2017 attributed the killings to ARSA, based on interviews with survivors in Myanmar. A more detailed account reaching the same conclusion was posted on Facebook on 13 September by a Rakhine nationalist parliament member who investigated the incident. The security forces reported finding and exhuming a mass grave containing the victims' bodies on 24 September; these subsequently were cremated. It is not clear what forensic evidence remains.²²

B. Catastrophic Military Response

A brutal military response that failed to discriminate between militants and the general population, followed by continued insecurity and restrictions that have imperilled livelihoods, has driven more than 624,000 Rohingya into Bangladesh. This is one of the fastest refugee exoduses in modern times and has created the largest refugee camp in the world. A large proportion of Rohingya villages in the area have been systematically reduced to ashes by both troops and local Rakhine vigilante groups that were equipped and supported by the military following the 25 August ARSA attacks.

Grim details of the military and local vigilante campaign of violence, described by the UN as "a textbook example of ethnic cleansing" (a characterisation that has now been echoed by the United States) and by human rights groups as crimes against humanity, have been set out in a series of detailed reports by these organisations. They document widespread, unlawful killings by the security forces and vigilantes, including several massacres; rape and other forms of sexual violence against women and children; the widespread, systematic, pre-planned burning of tens of thousands of Rohingya homes and other structures by the military, BGP and vigilantes across

²⁰ The Rakhine, a predominantly Buddhist ethnic group, make up the majority of the non-Rohingya population in northern Rakhine State, but numerous other ethnic groups live in the area and some have also reportedly been involved in vigilante attacks. See Amnesty International, *op. cit.*

²¹ On 28 August 2017, there were deadly attacks on the Rakhine Buddhist village of Auk Pyu Ma and the Mro village of Khon Taing (Pa Da Kar Ywar Thit village tract), as well as an earlier attack on the Daingnet village of Aung Zan (all in Maungdaw township). ARSA's involvement in attacks on two Hindu villages (Myo Thu Gyi and Kha Maung Seik) is alleged, but not confirmed.

²² "Hindus too fleeing persecution in Myanmar", *The Daily Star* (Bangladesh), 31 August 2017; "Mystery surrounds deaths of Hindu villagers in Myanmar mass graves", *The Guardian*, 12 October 2017; "Dozens of Hindus Killed in Maungdaw: Relatives", *The Irrawaddy*, 5 September 2017; Kyaw Zaw Oo (Arakan National Party, Sittwe-2 constituency), Facebook post, 12 September 2017, <http://bit.ly/2ApcMzo>; See "45 Hindu corpses cremated", *GNLM*, 29 September 2017.

northern Rakhine State from 25 August until at least October 2017; and severe, ongoing restrictions on humanitarian assistance for remaining Rohingya villagers.²³

Crisis Group's analysis of population data for northern Rakhine State from various sources suggests that around 85 per cent of the Rohingya population in these three townships has fled to Bangladesh over the last twelve months, leaving behind only 100,000-150,000. There are also some 320,000 Muslims in central Rakhine State, many but not all of whom identify as Rohingya; 120,000 of these have been confined to displacement camps since communal violence in 2012.²⁴

The three northern townships were impacted in somewhat different ways:

- *Maungdaw township* was the focus of ARSA attacks on 25 August 2017 and in October 2016. It had the largest Rohingya population and shares the longest border with Bangladesh (river and land, as well as adjacent seaboard). It bore the brunt of the military response and it appears that almost the entire township has been depopulated of Rohingya, apart from some parts of Maungdaw town and a small number of villages.²⁵
- *Buthidaung township* has historically been less affected by violence and displacement than Maungdaw. It also shares a land border with Bangladesh, along the hilly and hard to access northern part of the township; most of the population lives in the south. There were no ARSA attacks here in October 2016, only a small number in August 2017, to which the initial military response appears to have been more localised and limited. Far fewer Rohingya villages were initially burned here compared to Maungdaw. While the military response and burnings triggered some immediate departures to Bangladesh, the vast majority left later to escape untenable living conditions: continued burning of villages and attacks or threats by Rakhine vigilantes plus new, severe movement restrictions that deprived people of their normal means of survival from farming, fishing, foraging and trading. With humanitarian assistance also heavily restricted, communities came to the decision in late September 2017 that they had no choice but to make the long and dangerous journey in large groups, over the mountains to Maungdaw and on to Bangladesh.²⁶
- *Rathedaung township*, unlike Maungdaw and Buthidaung, is a Rakhine Buddhist-majority area that does not share a border with Bangladesh. One of the three October 2016 ARSA attacks was here, in Koe Tan Kauk (close to the boundary

²³ See, in particular, Amnesty International, *op. cit.*, as well as "Destroyed areas in Buthidaung, Maungdaw, and Rathedaung Townships of Rakhine State", UN Institute for Training and Research (UNITAR)/UNITAR's Operational Satellite Applications Programme (UNOSAT) imagery analysis, 16 November 2017, <http://bit.ly/2iR4YPW>; "Burma: New Satellite Images Confirm Mass Destruction", Human Rights Watch, 17 October 2017; "Mission report of OHCHR rapid response mission to Cox's Bazar, Bangladesh, 13-24 September 2017", OHCHR, October 2017; "U.N. sees 'textbook example of ethnic cleansing' in Myanmar", Reuters, 11 September 2017.

²⁴ Analysis based on 2014 census estimates of non-enumerated (Rohingya) population; government 2016 General Administration Department figures; UN figures for camp populations; and community estimates of Rohingya population by township, all broadly consistent. There are 20,000-plus Muslims in southern Rakhine, where communal relations tend to be better.

²⁵ UNITAR/UNOSAT imagery analysis, *op. cit.*

²⁶ Crisis Group interviews, villagers, Buthidaung and Bangladesh, August-November 2017.

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Myanmar's Rohingya Crisis Enters a Dangerous New Phase

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with Maungdaw); the government claimed an ARSA attack in this area on 25 August 2017. Subsequent anti-Rohingya violence and threats had a much greater communal component. Nearly all Rohingya in the township have now fled to Bangladesh, apart from five villages with no viable escape route and only very limited access to food or humanitarian support.²⁷

In addition to the massive Rohingya exodus, the crisis also led to the displacement of some 27,000 non-Rohingya villagers and government employees in northern Rakhine, most of whom fled the initial ARSA attacks and subsequent clashes. Nearly all moved or were evacuated inland, to the main towns of Maungdaw, Buthidaung and Sittwe. The government is now strongly encouraging them to return and begin rebuilding their damaged or destroyed houses.²⁸

Since 25 August 2017, the government has blocked access to northern Rakhine State by the UN and most other humanitarian actors. The Red Cross movement (the International Committee, International Federation, and Myanmar Red Cross Society) have been permitted to work, although they face delays and restrictions as well as enormous logistical challenges in reaching populations in need; they have called for other humanitarian actors to be granted access. On 6 November, the World Food Programme was able to resume food aid to Rohingya and non-Rohingya communities through the government but with no staff access to monitor distribution directly.²⁹

²⁷ “‘We will kill you all’ – Rohingya villagers in Myanmar beg for safe passage”, Reuters, 17 September 2017.

²⁸ “Ethnic IDPs who fled homes due to terrorist attacks”, *GNLM*, 6 September 2017; “Rakhine State Govt to Close Hindu, Ethnic Arakanese Displaced Person Camps”, *The Irrawaddy*, 30 October 2017.

²⁹ Crisis Group interviews, international humanitarian staff, Yangon, September-November 2017.

of thousands of traumatised Rohingya confined to squalid camps in Bangladesh, with no obvious way out or hope for the future. That would not only be a human tragedy, but also a grave security threat. Such a context would be ripe for mobilising further violent responses and potential transnational jihadist recruitment.

B. *Security Risks*

ARSA may still be reeling from the enormity of the crisis that its attacks triggered; tellingly, no videos of Ata Ullah have been released since 28 August 2017. Still, it appears determined to regroup and remain relevant. A Twitter account that likely represents the group remains active. It issued a statement on 7 October 2017 announcing the end of its unilateral ceasefire two days later, putting pressure on the group to demonstrate its continued capabilities. ARSA has not launched any new attack since then, but will undoubtedly strive to do so.³²

Given how ARSA is organised, this will require a significant departure from its previous way of operating. Rather than basing uniformed, armed militants in camps, ARSA has, to date, organised cells within hundreds of villages, led by a network of respected local leaders, including young Mullahs. It attempted to incite a general uprising among the population, overrunning police posts using overwhelming numbers of ordinary villagers with farm tools, rather than military might. Yet operating under cover of the civilian population is no longer possible given that few Rohingya villages remain. Most of the group's organisers and fighters are now in the Bangladesh camps, having fled along with the rest of the population.³³

The group may thus shift to cross-border attacks, which would require different training, access to weapons as well as operating space in Bangladesh. Acquiring that space might now be more realistic given Bangladesh's anger and frustration toward Myanmar. If ARSA launches cross-border attacks, it could aim at opportunistic security targets in northern Rakhine or turn to attacking any non-Muslim villagers resettled on Rohingya lands, an easier target.

Inevitably, such attacks would have profoundly negative consequences. They would escalate tensions between Bangladesh and Myanmar and could potentially lead to clashes between the two countries' militaries. New ARSA attacks would reinforce anti-Rohingya sentiment within Myanmar and prompt heightened security measures that would further diminish prospects for an eventual refugee return. Moreover, attacks against Rakhine Buddhist villagers would inflame anti-Muslim sentiment in general and could tip central Rakhine State, so far untouched by the recent violence, into crisis. Intercommunal relations are now on a knife-edge, which further constrains the ability of Muslims in the area to move freely and access services and livelihoods. Communal attacks there are a very real threat, and unlike their coreligionists in northern Rakhine, these communities have no viable escape routes.

³² "Assessment of the humanitarian pause", ARSA press statement, 7 October 2017. The Twitter handle is @ARSA_Official; the 28 August video is available at <http://bit.ly/2hn2V5a>.

³³ Crisis Group interviews, ARSA members and well-placed individuals in the camps, Bangladesh, September-November 2017. For details on ARSA organisation, see Crisis Group Report, *Myanmar: A New Muslim Insurgency in Rakhine State*, op. cit.

V. Government and International Response

A. Government Position

On the day of the attacks, the government declared ARSA a terrorist group under domestic law. It issued a warning to the media to refer to ARSA as “extremist terrorists” rather than use terms such as “insurgents”. It claimed that international NGOs may have been collaborating with ARSA and that World Food Programme (WFP) and United States Agency for International Development (USAID) food aid had been diverted to the group. The government also stated that ammonia and tubes provided by development agencies for construction had been turned into IEDs. These statements set the tone for Myanmar’s escalatory response to the attacks and uncompromising attitude toward the UN and humanitarian agencies.³⁹

Allegations of aid agency collusion were condemned by the U.S. ambassador to Myanmar as “absurd” and by the UN Human Rights chief as “irresponsible”, as they placed humanitarian staff “in danger and may make it impossible for them to deliver essential aid”. The accusations resulted in a boycott of aid agencies by their local contractors in Rakhine State and shipments came under mob attack. The government blocked access to northern Rakhine for all organisations (except the Red Cross) and most media.⁴⁰

On 19 September and 12 October 2017, Aung San Suu Kyi addressed the Rakhine crisis in speeches that were criticised internationally, but gained strong local support. She questioned why Rohingya were fleeing, saying there were “allegations and counter-allegations” and claiming many Muslim villages were untouched and peaceful. She also announced the creation of a national fund for Rakhine State under her direction – the Union Enterprise for Humanitarian Assistance, Resettlement and Development – and lobbied for Myanmar conglomerates and the general population to contribute cash; it has so far received some \$20 million. Nine taskforces were established, all related to development.

The risk is that if, as seems likely, repatriation does not proceed quickly or at scale, and there is no dramatic progress on desegregation or citizenship for Muslim communities across Rakhine State, this fund will end up supporting development initiatives that increase inequality and exacerbate conflict.⁴¹ As we have noted in

³⁹ “Anti-Terrorism Central Committee Order No. 1/2017”, 25 August 2017, under 2014 Anti-Terrorism Law, §72(B); “Warning in relation with extremist terrorists”, *GNLM*, 28 August 2017; “Terrorist hideouts discovered, items provided by int’l organisations found”, *GNLM*, 30 August 2017.

⁴⁰ “US Ambassador Rejects Govt Implication of Aid Agencies in Rakhine Attacks”, *The Irrawaddy*, 31 August 2017; “‘Humanitarian catastrophe’ unfolding as Myanmar takes over aid efforts in Rakhine state”, *The Guardian*, 15 September 2017; “Myanmar police fire warning shots in Rakhine as mob attacks aid boat”, *Agence France-Presse*, 21 September 2017.

⁴¹ “State Counsellor: ‘Myanmar does not fear world scrutiny’”, *GNLM*, 20 September 2017; “Join hands for peace in Rakhine”, *GNLM*, 13 October 2017. The taskforces are: infrastructure, agriculture and livestock, economic zone development, information and public relations, job creation and vocational training, healthcare, microfinance, crowdfunding, tourism promotion; “Nine private sector task forces formed to participate in UEHRD programme”, *GNLM*, 22 October 2017.

tions. Congress is currently vetting draft legislation that would re-impose some of the sanctions lifted in 2016.

Canadian Prime Minister Justin Trudeau appointed a Special Envoy to spearhead diplomatic efforts to address the crisis, but the envoy, Bob Rae, was unable to secure any meetings with government officials during his visit to Myanmar in early November 2017.⁴⁴

Myanmar set its political direction early in the crisis, and, so far, international scrutiny, pressure and diplomatic engagement has brought about no meaningful change – not even seemingly minor concessions such as allowing UN humanitarian access to the area or signalling openness to international support or advice. Extremely strong domestic political consensus on this issue has united the government, military and vast majority of the population as never before in Myanmar's modern history.

The international community thus faces a major challenge. In the face of ethnic cleansing and crimes against humanity, the political and moral imperative to take action has become overwhelming. The huge reservoir of international good-will for Myanmar and for Suu Kyi personally that existed prior to the crisis is rapidly drying up. Many countries wish to support Myanmar's transition away from military rule, and have no desire to undermine its first democratically elected government in more than 50 years. But given the strong perception that the diplomatic channel is not producing results, and with public views hardening in many countries in the West and the Muslim world, the imposition of sanctions by Europe and the U.S. seems inevitable. Over time, the drumbeat for holding those most responsible criminally accountable will also likely increase.

Yet policymakers should be under no illusions: sanctions are very unlikely to prompt positive change in Myanmar. Indeed, – depending on specifics – they could make matters worse. Unlike in the past, there is no domestic debate on different policy approaches that sanctions might be thought to influence. Their most likely effect will thus be to push the government, military and population even closer together and to reinforce current narratives in Myanmar that the West is a fickle friend and unreliable partner. Government leaders have explicitly warned that criticism and punitive actions from the West will only push them closer to China.⁴⁵

History also is a guide. Until 2012, Myanmar was under some of the most stringent bilateral sanctions of any country; contemporaneous Crisis Group research indicates that these did almost nothing to influence the military regime and had very little tangible impact on it. Although termed "targeted", they had little impact on the regime and its leaders, but caused significant damage to the general economy and the fortunes of ordinary people – something acknowledged for example by then-Secretary-of-

⁴⁴ "UK suspends aid for Myanmar military", BBC News, 19 September 2017; "Myanmar/Burma: Council adopts conclusions", European Council Press Release, 16 October 2017; "Accountability for Human Rights Abuses in Rakhine State, Burma", U.S. Department of State Press Statement, 23 October 2017; "Efforts To Address Burma's Rakhine State Crisis", U.S. Secretary of State Press Statement, 22 November 2017; Crisis Group interviews, diplomats, Yangon, November 2017.

⁴⁵ Crisis Group interviews, Western diplomats, Yangon, September-November 2017. See also "U.S. Pressure on Aung San Suu Kyi Only Helps China, Aides Warn", *Wall Street Journal*, 13 November 2017.

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International Crisis Group, *Building a Better Future for Rohingya Refugees in Bangladesh*, Asia Report No. 155, 25 April 2019

Available at:

<https://www.crisisgroup.org/asia/south-east-asia/myanmar/b155-building-better-future-rohingya-refugees-bangladesh>



BRIEFING 155 / ASIA 25 APRIL 2019

Building a Better Future for Rohingya Refugees in Bangladesh

Bangladesh is hosting nearly a million Rohingya refugees who have little hope of going home any time soon. The government should move to improve camp living conditions, in particular by lifting the education ban and fighting crime. Donors should support such steps.



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HUMANITARIAN FALLOUT OF CONFLICT

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What's new? With no near-term prospect of returning to Myanmar, almost a million Rohingya refugees in camps in Bangladesh face an uncertain future. An impressive aid operation has stabilised the humanitarian situation; attention must now turn to refugees' lives and future prospects, in particular improved law and order and education for children.

Why does it matter? A lack of security and hope creates major risks. Militants and gangs increasingly operate with impunity in the camps, consolidating control to the detriment of non-violent political leaders. Without education opportunities, children will be left ill equipped to thrive wherever they live in the future.

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Building a Better Future for Rohingya Refugees in Bangladesh | Crisis Group

What should be done? Bangladesh should institute an effective police presence in the camps and bring the perpetrators of crimes to justice. It should also lift its ban on formal education in the camps. If it does, donors should help meet the costs of these and other measures to improve refugees' lives.

I. Overview

Eighteen months on from the mass expulsion of 740,000 Rohingya from Myanmar to Bangladesh, no sustainable solution for the refugees is in sight. Repatriation to Myanmar should remain the long-term goal – not only to relieve the huge burden on Bangladesh but also because that is the strong preference of the refugees themselves. But the unfortunate reality is that Rohingya refugees in Bangladesh will be unable to return home to Myanmar for the foreseeable future. Systems are now largely in place to provide for their essential humanitarian needs in the sprawling refugee camps. It is now time to move beyond the emergency phase of managing this crisis. Shifting focus in this way requires Bangladesh to ease its restrictions on longer-term assistance. Specifically:

- The Bangladesh government should lift its ban on the provision of formal education in the camps; local and international organisations are ready to provide such education.
- It should also improve law and order in the camps, where militants and gangs increasingly operate with impunity and are consolidating control to the detriment of non-violent political voices and leaders. This requires instituting a regular and effective Bangladeshi police presence in the camps and investigating crimes and bringing perpetrators to justice.
- For their part, donors should help Bangladesh not only to meet the refugees' immediate humanitarian needs but also to cover the costs of measures that improve their lives and prospects for the future.

II. Slim Prospects for Return

The Myanmar security forces' mass expulsion of Rohingya starting in August 2017 created a major humanitarian emergency in neighbouring Bangladesh and the largest refugee settlement in the world. ¹ Around one million Rohingya, from this and previous exoduses, live in a cluster of densely populated camps in Cox's Bazar district, as well as some in the Chittagong Hill Tracts.

Some eighteen months on from the main exodus, a major humanitarian operation by local and international aid groups has successfully addressed the immediate priorities. Life-saving essentials – food, water, sanitation, shelter and basic health services – are now in place. As the monsoon season looms, the camps are much better prepared this year than before: drainage has been improved and roads through the camps have been surfaced. But there are limits to what can be done to mitigate risk in such densely packed camps carved out of former forest and where there are almost no flat areas. A heavy monsoon (unlike last year's unusually mild one) could still take a serious toll, and a cyclone – a relatively frequent event in this region – would be devastating.

The likelihood that the refugees will remain in Bangladesh for years requires that attention now turn to their medium-term prospects.

There is no prospect that the refugees will be able to return home to Myanmar's Rakhine State any time soon. The Myanmar authorities still have not addressed the fundamental issues of Rohingyas being denied citizenship, freedom of movement, security and other basic rights. Fighting between the Myanmar military and the Arakan Army – a militant outfit that draws its support mainly from the ethnic Rakhine population (a mostly Buddhist group distinct from the Rohingya Muslims) – has escalated sharply since January. ² The fighting has affected remaining Rohingya communities, both because they are caught between the warring parties and sometimes find themselves in the crossfire, and because of the uncertainty and fear that fighting brings. This creates a further impediment to the refugees' return. The conflict also has pushed repatriation down the list of priorities in Naypyitaw, which is currently focused on the Arakan Army insurgency and national elections in 2020.

III. Fraught Conditions in the Camps

The likelihood that the refugees will remain in Bangladesh for years requires that attention now turn to their medium-term prospects. A key priority is education. The Bangladesh government currently prohibits the provision of formal education to the refugees. This restriction robs families of their hope for a more economically secure future and ensures that a generation of children will be deprived of the skills they will need to flourish, wherever they ultimately live.

Informal private “tuitions” held in private dwellings and networks of madrassas that only teach the Koran do not adequately fill the formal education gap. ³ No evidence has emerged of these madrassas promoting violence or intolerance among children, or of indoctrination or recruitment by local or transnational jihadists. However, a policy of denying young people formal education and leaving them reliant on unregulated madrassas almost certainly increases the risks of such groups gaining a foothold in the camps. ⁴ Already, the Chittagong-based Islamist movement Hefazat-e-Islam – which has publicly called for jihad against Myanmar – has considerable influence over the madrassa network in the camps, through the funding and religious scholars that it provides. ⁵

Equally concerning is the lack of law and order. One prominent refugee leader described the security situation as “very serious”, saying he was “unable to sleep at night” for fear of attack. ⁶ A determined and often violent struggle is currently underway for de facto control of the camps. At stake is informal political authority over a huge population and access to lucrative economic rents from the camp economy – both licit and illicit – through corruption and extortion. The groups vying for control include the Arakan Rohingya Salvation Army (ARSA) militant group, which has shown that it is willing to deploy deadly violence to further its aims; informal networks of religious leaders; non-violent political and civil society groups; and a random assortment of criminal gangs.

Violent groups operate freely in the camps. As evening draws in and humanitarian workers withdraw to their bases in Cox’s Bazar town, security is in the hands of untrained and unarmed night watchmen appointed from among the refugees. Overstretched Bangladeshi police are focused on perimeter security and protection of local Bangladeshi communities and remain mostly outside the camps at night. Refugees express serious concerns about their personal security, and militants and gangs are intimidating, kidnapping and killing with impunity. ⁷

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Murders and other forms of violence are an almost nightly occurrence; the police rarely investigate, and perpetrators have almost never been brought to justice. ⁸

Allowing formal education in the camps is a first priority. This creates a toxic political environment within the camps. Without basic security, non-violent political actors face intimidation or worse. For example, ARSA was likely responsible for the grisly murder of Arif Ullah, a camp leader, in June 2018 – based on the manner of his killing which is typical of ARSA (a deep knife cut to the throat) and the fact that death threats typical of ARSA had been circulating against him on WhatsApp, accusing him of being too close to the Bangladesh army.

⁹ Some refugee leaders to whom Crisis Group spoke in April 2019 had received credible death threats, they believe from ARSA, and fear for their lives. ¹⁰ Amid the lawlessness, violent actors are likely to further consolidate control, which will stifle peaceful political organisation among the refugees and constructive debate about how to shape their own futures. Effective control of the camps will pass to those who prioritise accumulation of power or wealth, or militant agendas, over the future well-being of the community.

The burden of ameliorating these problems disproportionately falls on Bangladesh. Understandably, Dhaka's policy response is focused on repatriation, which it sees as the only viable durable solution for the refugees. Making life better for the Rohingya where they are now would not only impose financial strain on Bangladesh but might be perceived as working at cross-purposes with Bangladesh's interest in Rohingya returns to Myanmar.

IV. Improving Refugees' Medium-term Prospects

Returns to Myanmar should remain the long-term goal – not only to relieve the hardship visited on Bangladesh and avoid consolidating what a UN investigation called ethnic cleansing, but also because that is the preference of the refugees themselves. ¹¹ International pressure on Myanmar through the UN and by countries having influence in Naypyitaw should continue to focus on improving the situation of Rohingya remaining in Rakhine State, a prerequisite for any sustainable return. This pressure should include insistence on implementing the Kofi Annan Commission recommendations of August 2017, in particular its detailed suggestions on addressing discrimination and ensuring freedom of movement and a credible pathway to restoring Rohingyas' citizenship rights. It is only by demonstrably improving conditions in Rakhine that any refugees would consider returning home.

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At the same time, Bangladesh should recognise – even if it does not want to state this publicly – that no major repatriation is on the horizon. In this context, policies that restrict the Rohingya refugees’ ability to prepare for an uncertain future should be eased. Allowing formal education in the camps is a first priority, and there exist local and international groups with the ability and willingness to do so. ¹² Measures to improve law and order would include instituting a regular Bangladeshi police presence in the camps, investigating crimes and bringing perpetrators to justice. Failure to address these issues now will do significant long-term harm to the refugees, and potentially fuel insecurity and instability in this part of Bangladesh.

Though some of the burdens to be borne by Bangladesh are unavoidable, donors can and should, at least, lessen the financial impact on Dhaka. If the implications of the Rohingya refugee crisis for regional peace and security are not to worsen, donor countries need to be generous in their support not only to the annual humanitarian appeal but, if Dhaka’s restrictions are eased, also to longer-term assistance to the refugees.

Brussels, 25 April 2019

Appendix A: Map of Rakhine State



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International Crisis Group, *Identity Crisis: Ethnicity and Conflict in Myanmar*, Asia Report No 312, 28 August 2020

Available at:

https://icg-prod.s3.amazonaws.com/312-identity-crisis-myanmar-ethnicity_0.pdf



Identity Crisis: Ethnicity and Conflict in Myanmar

Asia Report N°312 | 28 August 2020

Headquarters

International Crisis Group

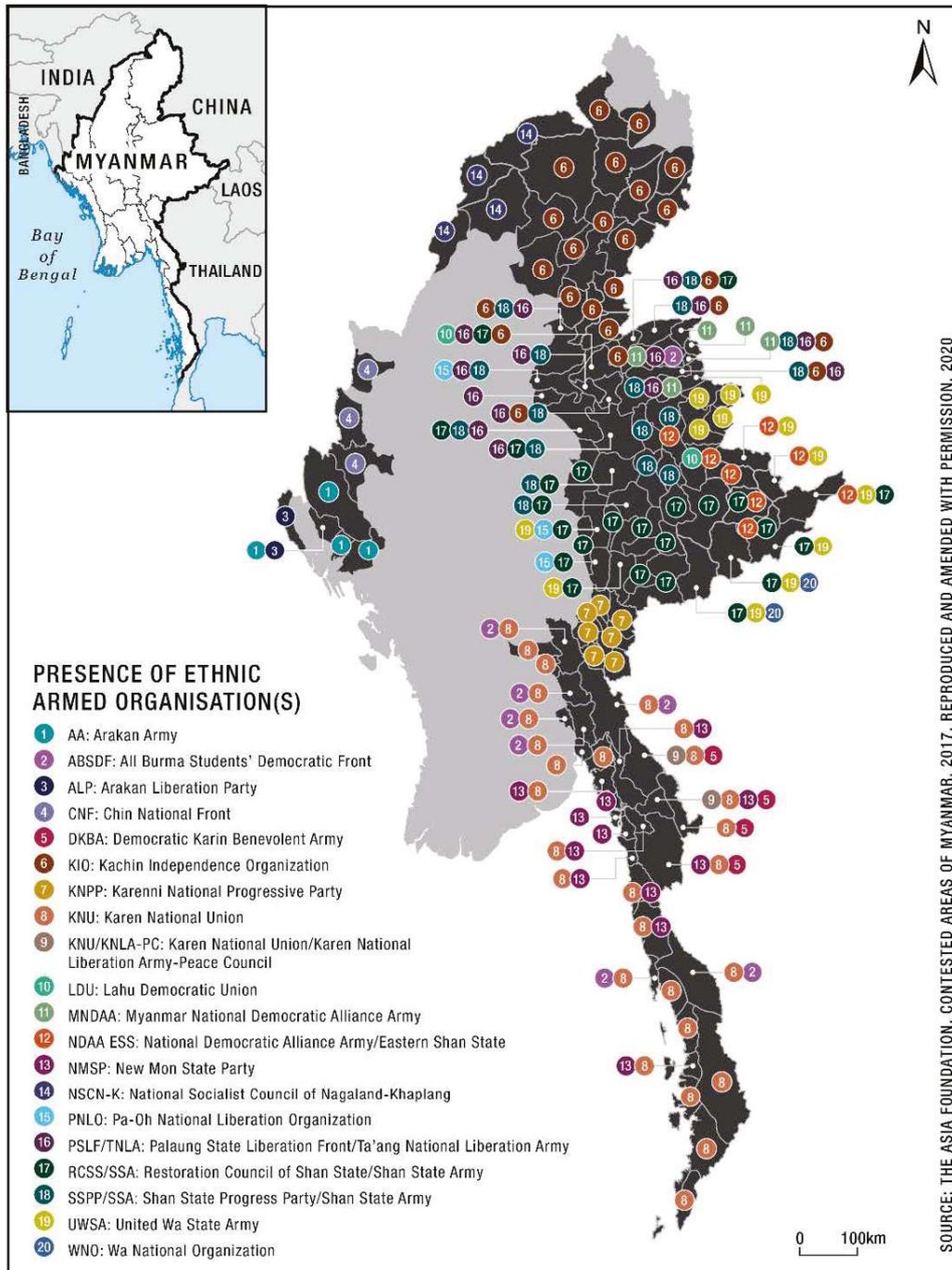
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Annex 300

International Crisis Group, “Five Years on Rohingya Refugees Face Dire Conditions and a Long Road Ahead”, by T. Kean, 22 August 2022

Available at:

<https://www.crisisgroup.org/asia/south-east-asia/myanmar/five-years-rohingya-refugees-face-dire-conditions-and-long-road-ahead>

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Five Years On, Rohingya Refugees Face Dire Conditions and a Long Road Ahead | Crisis Group

Q&A / ASIA 22 AUGUST 2022

Five Years On, Rohingya Refugees Face Dire Conditions and a Long Road Ahead

In August 2017, the Myanmar military launched a brutal crackdown on Rohingya Muslims in Rakhine State. Hundreds of thousands fled and are now living in refugee camps in Bangladesh. In this Q&A, Crisis Group expert Thomas Kean explains why prospects for near-term repatriation remain low.



Thomas Kean

Senior Consultant, Myanmar & Bangladesh

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What is the situation of the Rohingya who fled to Bangladesh five years ago?

Nearly all of the approximately 730,000 Rohingya who fled Myanmar in the second half of 2017 remain in sprawling refugee camps in southern Bangladesh's Cox's Bazar. The total number of Rohingya refugees in Bangladesh – including both those displaced by the 2017 atrocities and the several hundred thousand who sought refuge earlier – is close to one million. To date, not a single refugee has returned to Rakhine State through the formal repatriation mechanism that Myanmar and Bangladesh set up in November 2017, soon after the exodus started. There were two failed attempts, in 2018 and 2019, to convince several thousand refugees to return, but those selected were unwilling to join the process absent sufficient Myanmar government assurances about their security, access to citizenship and livelihood opportunities upon return. The two countries have not yet been able to restart the process, and prospects for returns have only grown dimmer following the Myanmar coup in February 2021.

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5/10/23, 1:57 AM

Five Years On, Rohingya Refugees Face Dire Conditions and a Long Road Ahead | Crisis Group

Living conditions for the refugees are **poor and worsening**. Most live in Kutupalong, the largest refugee camp in the world. They have few job opportunities and little access to formal education, while crime and violence, including killings of Rohingya community leaders, are **on the rise**. Factions within the Arakan Rohingya Salvation Army (ARSA), which **launched attacks** in Rakhine State in 2016 and 2017 that the Myanmar military used to justify its crackdown on the Muslim minority, have been fighting with rival groups for control of the camps. Bangladesh has **blamed ARSA** for the killing of a prominent Rohingya leader, Mohib Ullah, in September 2021. On the night of 9 August, two more community leaders were **shot dead** in the Jamtali camp. Partly in response to this violence, Bangladesh has been **imposing tighter restrictions** on the refugees, including limiting their ability to come and go from the camps, gain access to the internet and mix with locals.

The combination of prolonged displacement and deteriorating camp conditions has prompted some refugees to take difficult decisions about where their future lies. An unknown number – almost certainly in the hundreds, but possibly in the thousands – have returned to Myanmar informally. Others have paid hefty sums to traffickers to embark on dangerous boat journeys to Malaysia, which hosts the largest Rohingya refugee population after Bangladesh, while a smaller number seek passage to Indonesia.

Almost 30,000 Rohingya have also relocated to Bhasan Char, a small silt island in the Bay of Bengal that the Bangladesh government has spent hundreds of millions of dollars developing specifically to host up to 100,000 refugees. Prime Minister Sheikh Hasina has been pushing Bhasan Char as a “temporary solution”, insisting that it offers refugees better facilities than the overcrowded camps where most still reside. Humanitarian organisations long lobbied against this plan, primarily out of concern about the island’s exposure to cyclones and flooding, as well as about limitations on freedom of movement and lack of access to livelihoods. The Bangladeshi government eventually went ahead with the plan, anyway, moving the first group of Rohingya to the island in May 2020. From December of that year, it began sending thousands each month and it became fairly clear that Dhaka planned to continue relocations with or without international support. In October 2021, the UN high commissioner for refugees, on behalf of UN agencies working on the Rohingya refugee response, **signed a memorandum** of understanding with the Bangladeshi government to cooperate on service delivery to the island. The memorandum could be a positive development as it commits Dhaka to ensuring that **relocations are voluntary** and refugees have accurate information on living conditions awaiting them on the island. (There were **allegations of coercive** relocations when the first refugees arrived there.) For those who do choose to relocate to Bhasan Char, escaping the worsening situation in the Cox’s Bazar camps is likely to be the major motivation.

The rise in crime and violence in and around the camps has heightened public pressure on the Bangladeshi government to adopt a tougher stance.

The Bangladeshi government’s decision to press on with relocating Rohingya to Bhasan Char reflects a hardening of its position toward the refugee population. Although it opened its borders to the desperate refugees in 2017, Bangladesh made clear from the beginning that it would not allow them to stay indefinitely and that it expected international support to both host the Rohingya and facilitate their return to Myanmar. Now, the lack of progress on repatriation has left both the Bangladeshi people and the government increasingly frustrated – at Myanmar, outside actors and the refugees themselves. This development was foreseeable: for a country that still has high levels of poverty and

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International Institute for Strategic Studies (IISS), 17th Asia Security Summit, “The Security and Humanitarian Crisis in Myanmar’s Rakhine State”, 2 June 2018

Available at:

<https://www.iri.edu.ar/wp-content/uploads/2018/06/Security-and-humanitarian-crisis-in-Myanmars-Rakhine-State-SLD18.pdf>

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International Institute for Strategic Studies (IISS)

The 17th Shangri-La Dialogue

17TH ASIA SECURITY SUMMIT THE IISS SHANGRI-LA DIALOGUE

SPECIAL SESSION 3

THE SECURITY AND HUMANITARIAN CRISIS IN MYANMAR'S

RAKHINE STATE

SATURDAY 2 JUNE 2018

CHAIR: SARAH RAINE,
CONSULTING SENIOR FELLOW FOR GEOPOLITICS AND STRATEGY, IISS

U THAUNG TUN,
UNION MINISTER FOR THE OFFICE OF THE UNION GOVERNMENT AND NATIONAL SECURITY
ADVISOR, MYANMAR

PETER MAURER,
PRESIDENT, INTERNATIONAL COMMITTEE OF THE RED CROSS

JEAN-CHRISTOPHE BELLIARD,
DEPUTY SECRETARY GENERAL, POLITICAL AFFAIRS; POLITICAL DIRECTOR, EUROPEAN
EXTERNAL ACTION SERVICE, EUROPEAN UNION

2 June 2018

PROVISIONAL TRANSCRIPT

Annex 301

International Institute for Strategic Studies (IISS)

The 17th Shangri-La Dialogue

Sarah Raine, Consulting Senior Fellow for Geopolitics and Strategy, IISS

Ladies and gentlemen, I think we will start this session on time, not least because I am under very strict instructions that we need to finish on time. With that, I would like to welcome you all to Special Session 3, which is going to look at the Security and Humanitarian Crisis in Myanmar's Rakhine State, a state long troubled by conflict but from which in the latest wave of violence nearly 700,000 mainly Rohingya refugees have fled in response to the military operations undertaken by the Myanmar government – themselves, of course, a response to the deadly attacks by a Rohingya insurgency group on their number. The scale and intensity of these latest military operations have been variously described, but their effects are clear and evidenced in the sprawling camps of Cox's Bazar in neighbouring Bangladesh.

Alongside the humanitarian crisis there is of course, as was briefly referred to in this morning's session, a geopolitical one, with concerns that the situation there risks inflaming ethnic and religious tensions across the region, straining diplomatic ties, draining precious resources of already stretched nations and all whilst breeding further publicity and recruitment opportunity for terrorist groups. This is not to underestimate the extraordinary complexity and sensitivity of this particular issue and the partnerships that will be important in addressing them.

It is in that spirit that we are all meeting this afternoon. Prime Minister Modi, who of course opened the Shangri-La Dialogue yesterday, has for example referred to Myanmar as a key pillar in India's Act East policy. Furthermore, amidst all these concerns, on Thursday we all welcomed the signing of the long-discussed Memorandum of Understanding (MoU) between the government of Myanmar and two UN organisations, the United Nations Development Programme (UNDP) and the UN Refugee Agency (UNHCR), to work together on the repatriation process of refugees that might allow the voluntary safe and dignified return of those who have been forced to flee.

The aim of this session is to assess both the security and humanitarian dimensions of the crisis, but it is also to consider what concrete steps are being taken and might still be taken further to ameliorate the crisis, looking for the common ground between key stakeholders in this complex set of dynamics. To help us do that, I am delighted that we are able to host the distinguished panellists that you see alongside me: Union Minister and National Security Advisor U Thaung Tun, President of the International Committee of the Red Cross (ICRC) Peter Maurer and Political Director of the European External Action Service Jean-Christophe Belliard. Thank you all in advance for your time and your insights. Sadly, you will notice that we are one panellist down after the Director-General of Forces Intelligence from Bangladesh was sadly rushed to hospital last night. That presents a fairly reasonable excuse for a no-show today. We are of course sorry that he is not here and wish him a speedy recovery.

Before we start, remember please that these special sessions remain on the record but they are distinguished from the plenary sessions in part by their size and the intent to promote a more open, free-flowing debate. After the panellists have made their opening remarks I will of course be looking forward to hearing from all of you on your thoughts, insights, questions and comments. If you could

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do so in the usual way, I will do my best to attract your attention and get you speaking as soon as possible. Thank you very much indeed, and without further ado I would ask U Thaung Tun please to open the comments.

U Thaung Tun, Union Minister for the Office of the Union Government and National Security Advisor, Myanmar

Thank you very much, Madam Chairperson. Thank you for the introductory remarks, and I am sorry to hear that my distinguished colleague from Bangladesh has been hospitalised. My thoughts are with him and I wish him a very speedy recovery.

Madam Chairperson, my fellow panellists, ladies and gentlemen, I am delighted to be back in Singapore at this year's Shangri-La Dialogue and to join the distinguished members of this panel to discuss the Security and Humanitarian Dimensions of the Situation in Myanmar's Rakhine State. I believe these discussions are timely. The reasons are twofold.

First, unless the security challenges are properly addressed, the risk of renewed inter-communal violence will remain. The security situation in northern Rakhine deteriorated sharply following the attacks on police outposts in Maungdaw Township by the self-styled Arakan Rohingya Salvation Army, or ARSA. The subsequent clashes between the security forces and the tourists with the inevitable consequences of conflict led to a significant number of Muslims seeking shelter in Bangladesh and other communities in Rakhine moving to the south. The root cause of this tragedy is terrorism and terrorism cannot be condoned under any circumstance. It must be nipped in the bud.

Second, with the onset of the monsoon season there is a real danger that floods and landslides will have a disastrous effect on the camps of displaced persons. I see many in the room who are familiar with Bangladesh. My good friend the former Foreign Minister of Bangladesh is in the room and he knows how difficult the situation is in these camps during the monsoon season. There is an urgent need to provide humanitarian assistance to all and to expedite the repatriation process agreed to by Myanmar and Bangladesh last November.

While the situation in northern Rakhine has been the focus of much international attention, the narrative related to it has very sadly been incomplete and misleading. Unverified allegations have been reported as facts or gospel truth, resulting in precipitations that aggravated the whole situation. I am here with you this afternoon to share my perspective based on front-line experience and observations on the ground. In the past year I have visited the Rakhine State and the border with Bangladesh several times and have talked to various ethnic groups living over there.

Myanmar has deep sympathy and concern for all the displaced persons, especially the young, the weak and the defenceless, whoever they may be, who have been and continue to be exploited for the pernicious and ruthless strategy of terrorists. We in Myanmar are doing our utmost to repatriate the displaced people expeditiously in order to avoid yet another humanitarian disaster. Myanmar does not deny that what is unfolding in northern Rakhine is a humanitarian crisis, but it is a crisis which

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affects more than just one community. It presents a serious national-security threat, and as a national-security advisor I am concerned with the challenge to our national security, not just for Myanmar but for Bangladesh as well and for the whole region. It is a complex challenge of enormous dimensions involving issues including but not limited to sovereignty, territorial integrity, rule of law, human rights, terrorism, development issues and mass migration.

The situation underscores the need for cooperation. We should have a forward-looking strategy. We must cooperate. We want to cooperate with our neighbour Bangladesh and with the international community as a whole. Myanmar signed an agreement with Bangladesh on 23rd November 2017 regarding the repatriation of displaced people. We have done it before and there is no reason why we cannot do it again. My good friends here who know this situation can tell us that in 1978/79 we were able to overcome a similar situation; in 1992, we had another similar situation. We were able to resolve it and we can do it again.

It is important to note that Myanmar for its part has fully abided by the terms of this agreement with Bangladesh and will continue to do so. Despite all efforts on the part of Myanmar to facilitate the repatriation process, it has been stalled. However, there is hope. The day before yesterday there was an agreement reached between UNHCR, UNDP and Myanmar, and we have now agreed on the text of a Memorandum of Understanding. It will allow for UNHCR and UNDP to take part in various stages of return and resettlement and to support access to livelihoods through the design and implementation of community-based projects. The cooperation will create conditions conducive to the voluntary, safe, dignified and sustainable repatriation of all returnees. There will be no cap on how many people can return to Myanmar.

It has also been announced that Myanmar, just as you heard from the chair, has decided to set up an independent Commission of Enquiry to address the issues of reconciliation, peace, stability and development in Rakhine. The commission will look into various aspects of the situation in Rakhine, including the allegations of human-rights violations.

Unhelpful pressures are inflaming the discourse and detracting from the essential pursuit of a peaceful and diplomatic solution. Worse still, a prejudiced propaganda campaign and exploitation of the plight of refugees are being used by terrorists to achieve their aims.

The current round of violence in Rakhine started in 2012, rapidly morphing from communal tensions to an issue of terrorism threatening Myanmar's national security. On 25th August last year, 30 police outposts and one regiment in Maungdaw were deliberately and systematically attacked by ARSA terrorists. We are the aggrieved party. ARSA has claimed responsibility for the attacks. They launch attacks to instil fear in the hearts and minds of villagers and had no qualms about using women and children as human shields. They risked the lives of thousands of villagers entitled to protection as innocent civilians. Many members of the Muslim community themselves have become victims and targets of the extremists. The premeditated and brutal killing of village heads and innocent civilians by ARSA caused ethnic minorities to flee the area – not just the Muslims, but those ethnic groups

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from Mro to Kamein and everyone else have fled the area. The situation was exacerbated as a result of an unscrupulous propaganda campaign by ARSA.

There is no denying that the Muslim community in Rakhine has suffered; the Buddhist Rakhines, Hindus and other ethnic minorities have suffered no less. As you are aware, I am sure, Amnesty International last week released a report detailing the massacre of 99 Hindus by the ARSA terrorists.

Myanmar calls on the international community to see the situation in Rakhine more objectively. Naming and shaming cannot help resolve the situation; it can only further inflame the current tensions in Rakhine. It is antithetical to a peaceful and durable solution of the crisis. Myanmar, in protecting its people and territory from terrorist attacks, has been severely criticised. Yet Myanmar deserves to have the same right adopted by all sovereign nations to protect citizens and communities in its own territory. We must allow the security forces of Myanmar to protect the country, but they must act within the bounds of law. They do not have carte blanche and rule of law must prevail. We want to ensure the rule of law prevails in Myanmar.

I will stop there for now and will take your questions at a later stage. Thank you.

Sarah Raine, Consulting Senior Fellow for Geopolitics and Strategy, IISS

Thank you very much, Minister. It was very good to hear your comments on the humanitarian and national-security aspects to the crisis and to have your perspective, not least of course because it is not always easy for others to access the area that is under discussion in the verification procedures that you rightly point out are very important. It was good to hear your commitment to the physical return of these civilians of all ethnicities, and perhaps in the Q&A we could talk a little bit as well about, beyond the physical security, some of the other conditions that we might also be looking at following on the implementation of the recommendations of the Annan Report.

However, for the moment now I turn from one former experienced diplomat to another with decades of experience serving their country around the world: Peter Maurer, now President of the International Committee of the Red Cross, an organisation that is of course playing a critical role in alleviating the impact of this crisis, including through the provision of food and medical services.

Peter Maurer, President, International Committee of the Red Cross

Ladies and gentlemen, dear colleagues, for me as well it is a great privilege to share this panel this afternoon and to bring a humanitarian perspective to the table this afternoon as well as some of our experiences with the crisis in Myanmar. Thanks also to IISS for inviting us to this panel.

From a humanitarian perspective, the situation in Rakhine features similar characteristics to what we have seen in many other conflicts these days worldwide: mass displacements due to multiple expressions of violence – political, military, inter-community and other sources – and violations of international humanitarian law and international human-rights law; an increasingly long-term crisis in which political solutions seem elusive and humanitarian organisations are assisting a large number

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International State Crime Initiative, *Countdown to Annihilation: Genocide in Myanmar*, by P. Green, T. MacManus and A. de la Cour Venning, 2015

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COUNTDOWN TO ANNIHILATION:
GENOCIDE IN MYANMAR

Penny Green / Thomas MacManus / Alicia de la Cour Venning

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Front page image:

After violence erupted in June 2012, tens of thousands of Rohingya were forced into isolated camps for internally displaced people.

Thet Kay PyinYwar Ma is a mosque and madrassa outside of Sittwe. Some 2,200 Rohingya fled to the madrassa after their homes in

Sittwe were destroyed. © Greg Constantine

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1. INTRODUCTION

| Feierstein's stages of genocide (adapted by ISCI) | | |
|---------------------------------------------------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Genocidal stage | Detail |
| 1 | Stigmatisation | The construction of a 'negative otherness', through dehumanisation and scapegoating, including denial of citizenship. |
| 2 | Harassment, violence and terror | Physical and psychological harassment, violence, arbitrary arrests and detentions, disenfranchisement and deprivation of civil rights. |
| 3 | Isolation and segregation | Forced demarcation of separate and isolated social, geographical, economic, political, cultural and ideological space designed to sever previously existing relations with the broader community. |
| 4 | Systematic weakening | Includes strategies of physical destruction of the target group through overcrowding, malnutrition, epidemics, lack of health care, torture and sporadic killings; and psychological destruction through humiliation, abuse, persistent violence and the undermining of solidarity. |
| 5 | Extermination | The organised physical disappearance through mass killing of those who once embodied certain types of social relations. |
| 6 | Symbolic enactment | The reconstruction of a new society in which the victims of genocide are physically and symbolically 'gone'. |

Through the stages and processes outlined above, social relations are constructed, destroyed and reorganised until the 'symbolic destruction' of the victim group has been achieved. In the case of the Rohingya, this will mean their physical and symbolic removal from life in Myanmar.

ISCI's findings suggest strongly that we are witnessing Feierstein's fourth stage of genocide – the stage prior to mass extermination.

Methodology

This report is based on a 12-month study funded under the UK Economic and Social Research Council's 'Pilot Urgency Grants Mechanism'. Led by Professor Penny Green (Director of ISCI and Chair in Law and Globalisation at Queen Mary University of London), the ISCI team of three Queen Mary University researchers (Green, Thomas MacManus and Alicia de la Cour Venning) spent over four months in the field (primarily in Rakhine State but also in Yangon, Myanmar) investigating whether or not the Myanmar State's persecution of the Rohingya constitutes genocide.

The team conducted 176 formal interviews³⁰ with key participants. These included: individuals who identified as being of Rohingya, Rakhine, Kaman, Bamar and Maramagyi ethnicity;³¹ INGO staff; Rakhine state government officials; Rakhine civil society leaders and politicians; Rakhine and Rohingya activists; senior

³⁰ Together with many more informal conversations in the field.

³¹ The Rakhine are an indigenous Buddhist ethnic minority and form the largest population in Rakhine state; the Kaman are a smaller Muslim minority who speak Rakhine and are the only group of Muslims recognized as a 'national race' by the government; the Maramagyi are a Buddhist minority who speak the Rohingya language.

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foreign diplomats; local and international journalists; lawyers; monks; imams; business people; local and international photographers; and academics.³² Fieldwork also involved ethnographic observation in some 40 Rohingya, Kaman and Rakhine villages and camps for IDPs (within Sittwe, Thandwe and Mrauk U districts), and in Aung Mingalar, the one Rohingya ghetto in Sittwe. The ethnographic fieldwork, which combined interviews with observation, provided the opportunity to analyse social relations in Rakhine state.

The interviews were designed to elicit the experiences and perceptions of both perpetrator and victim communities and to document the state of genocidal persecution. An important goal was to penetrate and understand the sense of grievance that animates hostility against the Rohingya within the Rakhine community – many of whom we interviewed had engaged in the violence of 2012 against their long-standing neighbours. An understanding of the Rakhine sources of insecurity, which underpin nationalist and racist ideologies, is crucial to understanding underlying tensions and animosity between Buddhists and Muslims within the region.

The first interviews in Rohingya, Rakhine and Kaman villages were normally conducted with the formal or informal village administrators, who granted permission to interview residents and provided basic information about the village. The less structured nature of the camps tended to mean that interviews began immediately upon entering the camps, with researchers randomly selecting those willing to speak. Women in the camps were far more reticent to speak than men, but as strong a representation of women's voices as possible was achieved.

ISCI researchers faced hostility twice: once in a Rakhine camp during an interview with a group of elders who vented their anger at the international community for discriminating in favour of the Rohingya; and once in a Rakhine village when an elder asked the researchers to leave during an interview with two young perpetrators of the 2012 violence.

Informed consent was secured in every case and confidentiality assured. Most of those interviewed are not named in order to protect their identities and safety.

The fieldwork was supplemented by documentary searches in Burmese and British archives, media searches and academic literature surveys. In addition, leaked documents and interview data were made available by Al Jazeera, Wikileaks, journalist Francis Wade and Fortify Rights, and are referenced as such.

When ISCI researchers attempted to secure approval to visit northern Rakhine state it was denied. A translation of the pertinent discussions revealed that the team was denied access on the basis that it would most certainly speak to 'kalar' (a pejorative term used to refer to Muslims), though the official reason given was that the team's security could not be guaranteed. As a result, much of what ISCI learned about northern Rakhine comes from the testimony of Rohingya who have fled the area.

³² Interviews were conducted in 6 Rohingya villages, 10 Rohingya camps; 17 Rakhine villages, the 2 existing Rakhine camps; the one existing Maramagyi camp; and the 3 existing Kaman villages in Sittwe and in the Rohingya ghetto of Aung Mingalar. The interviewees comprised 71 Rakhine (57 male and 14 female), 53 Rohingya (45 male and 8 female), 13 Kaman (9 male and 4 female), and 11 Maramagyi (6 male and 5 female). In addition, 18 international journalists, photographers, international NGO workers and diplomats, 10 monks (the transcripts of 5 acquired through Al Jazeera), and a number of state officials, business people, developers, politicians, civil society and political activists and local journalists were also interviewed.

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International State Crime Initiative, *Genocide Achieved, Genocide Continues: Myanmar's Annihilation of the Rohingya*, by P. Green, T. MacManus and A. de la Cour Venning, 2018

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**GENOCIDE ACHIEVED, GENOCIDE CONTINUES:
MYANMAR'S ANNIHILATION OF THE ROHINGYA**

Penny Green / Thomas MacManus / Alicia de la Cour Venning

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Front page image:
A group of Rohingya refugees, who had recently arrived in the Bangladesh camp of Kutupalong, waiting for humanitarian assistance, October 2017

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The architect of the concept of genocide, Raphael Lemkin, makes clear that genocide or the extermination of an ethnic, racial, national or religious group, can be accomplished not solely by mass murder, but also by social, cultural, religious and economic destruction for example, through processes of forced mass exodus, population fragmentation and the social reconstruction of an ethnic identity.⁷ With this in mind, it is clear that by the end of 2017, genocide of the Rohingya had been achieved: the Myanmar identity of its Rohingya people had been destroyed and the reshaping of society in Rakhine state was well under way. Of an estimated 1.2 to 1.4 million Rohingya living in Rakhine state in 2014:

- tens of thousands had been killed (an estimated 22,000 since 25 August 2017);⁸
- approximately 800,000 have fled to camps in Bangladesh;⁹
- over 350 (or 75%) Rohingya villages in northern Rakhine state had been torched and bulldozed, with many completely destroyed;¹⁰
- the vast majority of the estimated 150,000-200,000 Rohingya remaining in Myanmar were confined to 'no-man's land' on the Bangladesh/Myanmar border, prison villages, and concentrated in detention camps in central Rakhine state, and Sittwe's Aung Mingalar ghetto.

However, genocide is a process with no clearly defined end – and the genocide of the Rohingya continues:

- death stalks the Rohingya trapped in Myanmar as a result of violent intimidation, enforced starvation and untreated illnesses;
- Rohingya are still fleeing terror and enforced destitution in Myanmar;
- the mass expulsion of Rohingya to makeshift camps in one of the world's poorest countries, where the refugees face ongoing systematic weakening, including death, is part of Myanmar's strategy of genocide;
- the Myanmar state is erasing historical evidence of Rohingya culture and identity as it reshapes Rakhine society.

The genocidal 'clearance' of Rohingya from Myanmar in 2017 was both predictable and predicted. In 2015, the authors of this report issued *Countdown to Annihilation: Genocide in Myanmar*, which showed that a genocidal process was well under way. The report presented evidence of ongoing genocidal processes, their historical genesis and the political, social and economic conditions in which genocide had emerged. ISCI researchers identified the architects of the genocide as Myanmar state officials and security forces, Rakhine nationalist civil society leaders and Buddhist monks, pointing to a significant degree of coordination between those agencies in the pursuit of eliminating the Rohingya from Myanmar's political landscape. Leading genocide scholar Daniel Feierstein identified six stages of genocide: stigmatisation (and dehumanisation); harassment, violence and terror; isolation and segregation; systematic weakening; mass annihilation; and

7 Lemkin, R, 'Genocide - A Modern Crime', *Free World*, (4 April 1945), pp.39-43.

8 This estimate of Rohingya deaths is based on our own interviews and calculations combined with Médecins Sans Frontières' (MSF) six retrospective household mortality surveys covering the period 25 August to 24 September 2017. The MSF estimation of between 9,425 and 13,759 Rohingya deaths is equivalent to the death of 2.26% (between 1.87% and 2.73%) of the sampled population. MSF makes clear that its figures are likely to be an underestimate as the sampling focused on deaths resulting in just a one-month period (and we know killings continued in the months that followed), that not all refugee settlements in Bangladesh were surveyed, and that those instances where whole families were killed were not accounted for. Our own estimations suggest a final death toll of 22,000 to 25,000. There have been significant numbers of Rohingya deaths on the flight to Bangladesh as well as in the camps in Bangladesh. See, Médecins Sans Frontières, 'Myanmar/Bangladesh: MSF surveys estimate that at least 6,700 Rohingya were killed during the attacks in Myanmar', 12 December 2017: <http://www.msf.org/en/article/myanmarbangladesh-msf-surveys-estimate-least-6700-rohingya-were-killed-during-attacks>. Accessed 9 April 2018.

9 Bangladesh does not recognise the Rohingya as refugees; it designates them as 'forcibly displaced Myanmar citizens'.

10 Human Rights Watch, 'Burma: 40 Rohingya Villages Burned Since October', 17 December 2017: <https://www.hrw.org/news/2017/12/17/burma-40-rohingya-villages-burned-october>. Accessed 9 April 2018.

11 Green, P, MacManus, T and de la Cour Venning, A, *Countdown to Annihilation: Genocide in Myanmar*, (London: International State Crime Initiative, 2015): <http://statecrime.org/data/2015/10/ISCI-Rohingya-Report-PUBLISHED-VERSION.pdf>. Accessed 10 April 2018.

1.2 METHODOLOGY

This report documents and analyses data gathered from Rohingya who fled violence in northern Rakhine state after mid-August 2017. It develops the themes articulated in ISCI's 2015 report, *Countdown to Annihilation: Genocide in Myanmar*, which was based on a 12-month study funded under the UK's Economic and Social Research Council's (ESRC) 'Pilot Urgency Grants Mechanism'.

An ISCI team of three Queen Mary University of London School of Law researchers (Prof Penny Green, Dr Thomas MacManus and Alicia de la Cour Venning) spent eight days in Bangladesh, between 28 October and 4 November 2017, collecting data in and around the Rohingya camps. The team conducted 70 interviews with Rohingya recently arrived in Bangladesh, 45 of which were in-depth.²⁵

The primary focus was on 'informal' Rohingya village administrators,²⁶ village elders, imams, teachers and mullahs because experience demonstrated that community leaders normally had the greatest knowledge about events leading up to the military 'clearance operations' launched in August 2017. These leaders were also used explicitly to communicate government and military edicts and orders to villagers and, unlike the women of the community, were engaged more actively in life beyond the village. In the socially conservative Rohingya communities, this emphasis inevitably resulted in the team interviewing more men than women – ISCI heard of no women village administrators or teachers amongst the Rohingya in northern Rakhine state. Nonetheless, ISCI interviewed 20 women and their testimonies are reflected and cited in this report.

Fieldwork also involved ethnographic observation in the vast camps (Kutupalong, Balukhali, Nayapara and Thankhali) for those displaced as well as in the town of Cox's Bazar on the southeast coast of Bangladesh. This provided insight into the situation inside northern Rakhine state, which had previously been closed to ISCI researchers.

Interviews were predominately conducted in the newly constructed Rohingya huts and every effort was made to ensure privacy and confidentiality. In most cases, however, audiences naturally gathered. They were welcomed by the interviewees and contributed to general discussions that sometimes emerged. ISCI sought a strong representation of women's voices and found many eager to have their experiences documented.

Informed consent was secured in every case and confidentiality assured if requested. Only two interviewees requested anonymity and in one other case a pseudonym is employed.

The fieldwork was supplemented by primary documents and communiqués emanating from the Myanmar government, NGO and media reports, and academic literature. In addition, leaked documents and interview data were made available by civil society and activist partners, and are referenced as such.

The names of villages appear with Rohingya name first (where available) and Rakhine name in brackets, unless indicated otherwise.

²⁵ The team also had many more informal conversations with Rohingya and discussions with NGO staff in the field.

²⁶ Rohingya village administrators are considered 'informal' as they are not paid a salary and fall outside the administrative hierarchy, but they invariably do the same job as their 'official', paid Rakhine counterparts.

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officers: 'They gave bullets and guns. They ordered the military not to throw bodies into the water but to bury or burn them... I heard a corporal saying... "We have the order to kill everyone and will kill everyone who disagrees."'158

Mohammed E Salam, aged 42, described what happened during the massacre in his village of Taung Bazar, Buthidaung, also on 30 August:

*The Rakhine, BGP and military came and shot many people. I was shot too... About 200 people were killed in total, but it's difficult to say. I saw two people killed by gunshot [Salima and her daughter Asmeida]; I don't know how many others were shot. There was no warning, the attack was sudden. My family was alone, I didn't know where they were. I was shot and I was separated; there are two members of my family. My family was brought to a house, they were there for two days, in Mee Para. I then found my wife by telephone. The military attacked Mee Para [near Taung Bazar] on 31 August and we fled again.*¹⁵⁹

Similar patterns were described in 2016; Mohammed Nu, aged 20, described what happened in his village of Dar Gyi Zar, northern Maungdaw:

*There are 4,000 people in my village. The military killed 120 people on 10 October [2016]. They came from Buthidaung and said that our village cooperated with "bad men". 600 houses were burned down. 120 were killed. When the forces started the attack the oldest and the children were not able to run – they were bound with ropes and burned. Many women were raped, threatened with rape and burned, and some were shot. A small river ran near the village and we tried to cross. After the crossing we were cornered by the military and we were shot at. All the villagers were hiding for a month after, as the military threatened us and we couldn't go back. Then we went back, on 12 November.*¹⁶⁰

He said the villagers put up tents to rebuild their community. Shortly after, on 22 November, the army called Rohingya village administrators and elders to a meeting at which there were 75 BGP and 15 soldiers. Mohammed Nu reported:

*They said that our village has "bad men", extremists, and they encouraged us to arrest them. The villagers said that there are no bad men, criminals, in the village. They were all then beaten.*¹⁶¹

From August 2017 to the end of the year, the Myanmar army continued its relentless terror campaign against the Rohingya.



Rahamed Ullah, aged 52 and from Rathedaung township, shows ISCI the remains of his money that was burnt by the Myanmar army during the assault on his community. ISCI spoke to him on 31 October 2017 in Thankhali camp, Bangladesh.

158 McPherson, P, 'Witness to a Massacre: the Former Myanmar Soldier Who Saw His Village Burn'.

159 Interview with Mohammed E Salam, Thankhali camp, 31 October 2017.

160 Interview with Mohammed Nu, Leda camp, 1 November 2017.

161 Ibid.

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4.2 RAPE AND GENDERED VIOLENCE

'If we tried to go, they would rip the clothes off us women and rape us.' – Zura Begum from Zay Di Taung, Buthidaung.¹⁶²

Evidence of rape and gendered violence as weapons of genocide against the Rohingya was overwhelming in the testimonies gathered by ISCI.¹⁶³ Over 70% of women interviewed by ISCI made reference to rape in describing the processes of persecution which had forced them to flee. Rape and other forms of sexual violence are acknowledged acts of genocide.¹⁶⁴

Rashan Ali, village administrator of Chut Pyin, described the ubiquity of rape during the clearance operations:

*During the massacre some of the woman fleeing were caught and raped, especially the beautiful ones. Children were also raped and killed. There were around 15 rapes in Chut Pyin – wherever the military operates, rape is a weapon. Rape has become normal. Before 2012, people were ashamed to talk about it. Now, it happens all the time. The military arrests some women and rapes them. Wherever the military has operations going on, there is rape.*¹⁶⁵

Rahima Begum, also from Chut Pyin, said government forces raped many women including a woman in the group being interviewed.¹⁶⁶

Mohammed Nu from Dar Gyi Zar village, which was attacked in October 2016 (see above), said the army threatened Rohingya in the neighbouring village of Sa Li Farang (Myaw Taung), then put 25 girls and young women in a room and raped them. He said two died: 'Both of them were my relatives, my niece Johara Begu, who was 17, and Halida, who was 20'.¹⁶⁷

Usman Goni, a 28-year-old man from Rathedaung, said sexual violence was integral to the terror campaign. He testified that during the attack in Rathedaung, which led to the killing of over 800 Rohingya, young women were raped and had their breasts cut.¹⁶⁸

Zura Begum told ISCI of the assault on her village of Zay Di Taung, Buthidaung township, during which her nine-year-old son and her husband were both killed. She said she witnessed:

*... many groups of attackers. Some were raping, some were killing, some were looting. When I tried to find my children I saw some of the soldiers and Rakhine extremists taking women to rape.*¹⁶⁹

¹⁶² Interview with Zura Begum, Balukhali camp, 2 November 2017.

¹⁶³ This evidence has been corroborated elsewhere. For an account of the deployment of rape and sexual violence in Myanmar's 'military clearances', see, Human Rights Watch, 'All of My Body Was Pain: Sexual violence against Rohingya Women and Girls in Burma', 16 November 2017: <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma>. Accessed 4 March 2018; *Kaladan Press Network*, 'Rape by Command: Sexual violence as a weapon against the Rohingya', (Chittagong: Kaladan Press Network, 2018): <http://www.kaladanpress.org/images/document/2018/RapebyCommandWeb3.pdf>. Accessed 20 March 2018; Amnesty International, 'My World is Finished: Rohingya Targeted in Crimes Against Humanity in Myanmar', 18 October 2017, pp.23-26: <https://www.amnesty.org/download/Documents/ASA1672882017ENGLISH.PDF>. Accessed 4 March 2018.

¹⁶⁴ See, International Criminal Tribunal for Rwanda (Akayesu case) which determined rape and sexual violence can qualify as acts of genocide; United Nations, 'International Criminal Tribunal for Rwanda, The Prosecutor versus Jean-Paul Akayesu, Case No. ICTR-96-4-T', 2 September 1998: <http://www.un.org/en/preventgenocide/rwanda/pdf/AKAYESU%20-%20JUDGEMENT.pdf>. Accessed 9 April 2018.

¹⁶⁵ Interview with Rashan Ali, Thankhali camp, 31 October 2017.

¹⁶⁶ Interview with Rahima Begum, Thankhali camp, 31 October 2017.

¹⁶⁷ Interview with Mohammed Nu, Leda camp, 1 November 2017.

¹⁶⁸ Interview with Usman Goni, Nayapara community centre, 1 November 2017.

¹⁶⁹ Interview with Zura Begum, Balukhali camp, 2 November 2017.

Annex 304

INTERSOS, “Nigeria, thousands of displaced people are unable to return to their homes”, 13 January 2022

Available at:

<https://www.intersos.org/en/nigeria-thousands-of-displaced-people-are-unable-to-return-to-their-homes/>



Nigeria, thousands of displaced people are unable to return to their homes

13 January 2022



 Facebook  Twitter  Google+

Since the Borno State Government decided to close the camps for internally displaced persons, in order to promote better living

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5/4/23, 2 39 PM

Nigeria, thousands of displaced people are unable to return to their homes

conditions, the number of displaced persons has increased dramatically

In the 2nd half of 2021, the Borno State Government, Nigeria, declared that **Internally Displaced people (IDP) camps in the state would be closed and their inhabitants relocated**. The move to shut down camps in the state by the end of December 2021 and relocate the IDPs was aimed at reducing the dependence on humanitarian aid and promoting better living conditions, dignity, stability and resilience among IDPs. But the decision was met with anxiety, fear, and disbelief. **No humanitarian organization is allowed to distribute food and non-food items** in any newly resettled communities across the state.

In recent months, INTERSOS' **Camp Coordination and Camp Management (CCCM)** team has received an unprecedented number of IDPs including returnees from the neighbouring countries. As the IDP camps in Maiduguri, the state Capital, began shutting down, their inhabitants started moving to other locations across the state. **Overcrowding** and its consequences such as spreading of diseases, exposure to exploitation and abuse, overstretched resources, and general discomfort, are among the challenges experienced in the camps we manage.

In the camps, INTERSOS guarantees access to essential services

*"In Banki camp alone, **we are catering to 47,715 internally displaced persons (comprised of 13,977 households)**; of which, 2% (953) are returnees from Maiduguri who came in less than one month after the government started shutting down camps", says Wakirwa Adamu (CCCM Camp Manager) in Banki. "Our services as CCCM are integrated – **WASH, health, nutrition, safes spaces for protection, food distribution** as well as a complaints and feedback mechanisms. We coordinate the entire humanitarian activities and the work of*

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Nigeria, thousands of displaced people are unable to return to their homes

other stakeholders to ensure even distribution and access to services across the camp” he adds.

One of the locations the IDPs who were relocated from Bakassi camp moved to was **Monguno** local government area (LGA) where **INTERMOS manages 6 out of 12 camps**. *“As of 10th December, 2021, INTERMOS/UNHCR CCCM Monitoring Team tracked a total of 2,031 households (12,486 individuals)”* says Luke Eghire, an INTERMOS CCCM Camp Manager in Monguno. Due to the fragile and volatile security situation in some of the locations like Guzamala and Marte LGAs, where some IDPs were supposed to return to, many preferred to stay in Monguno LGA which has 12 wards out of which only one is accessible – Monguno Central.

Most of the displaced indigenes from Monguno Central Ward were directly integrated into the host communities. Returnees from 11 wards in Monguno (inaccessible as a result of the protracted insurgency) stayed in Fulatari and Water-Board Extension IDP camps with makeshift shelters after SEMA (*Borno State Emergency Management Agency*) and LGA authorities helped with some land-space. We are also working closely with other partners and community members to **prevent discrimination and support their integration**.

The needs of the displaced population are very high

In a meeting with the recently relocated IDPs, they pointed out that there was the need for shelter, food, water, latrines, dignity kits, and medicines, in addition to the needs peculiar to women and children, to mention a few. ***“Over 2,000 shelters and Non-Food Items (NFIs) are needed to protect and improve the dignity of life of the returnees; this is in addition to the need for over 2,500 hygiene kits. 70% of the shelters are makeshift which need reinforcement due to the harsh and windy harmattan season. Additionally, many families are not able to benefit from food interventions, as they have been put on hold”***, narrates Luke.

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Nigeria, thousands of displaced people are unable to return to their homes

Between the 3rd and 10th of December 2021, there has been a sharp increase in the number of persons moving into Monguno. As the numbers continue to increase, there is a **grave need for Water Sanitation and Hygiene facilities (WASH)**. Some of the returnees are gradually practicing open defecation especially in Fulatari IDP Camp, due to **lack of latrines and showers**. Adequate measures need to be in place to support IDPs safe, dignified return, while protecting their human rights.

TAG: News Nigeria Protection

Categories

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LAST NEWS

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| <p>LEGGI TUTTO</p> | <p>LEGGI TUTTO</p> | <p>LEGGI TUTTO</p> | <p>LEGGI TUTTO</p> |

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Jamiatul-ulama, Memorandum from S. Ahmed, President of Jamiatul-ulama to the British Governor of Burma, 12 February 1947

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The following papers are in two parts.

The First Part contains a submission dated 24 February 1947 to the British Parliamentary Under-Secretary of State for Dominion Affairs Arthur Bottomley by the Jamiat ul Ulama North Arakan seeking an extension of the agreement reached at Panglong on 12 February 1947 to the Muslim community of North Arakan.

The copy of this submission attached is that sent to the Governor of Burma Sir Hubert Rance. It is not known what happened to the other copies, including (presumably) the top copy sent to Arthur Bottomley (which might be found in the British Library or National Archives in London).

There is no evidence that any response was ever sent by Arthur Bottomley, either directly or through the Governor. The papers include an assessment ("The memorialists state that they were given pledges...") by a senior, but unidentified official in the Governor's Office: his initials and date appear to be "AR - 24.3.47". His assessment is countersigned by "EN Larmour" who was Edward Noel Larmour (later Sir Edward Larmour) known generally (obituary at this link) as "Nick" Larmour and whom I later knew as an Under-Secretary of State in the Foreign and Commonwealth Office.

Derek Tonkin
11 February 2019+

The Second Part contains papers relating to correspondence with the AFPFL in Buthidaung and the Home Department of the Government of Burma on related matters, including the secession of part of Arakan to the planned new State of Pakistan.

Annex 305

From MR. SULTAN AHMED B.A. B.L.

~~SECRET~~ PRESIDENT Jamiatul-ulama, North Arakan.
Head Office :- MAUNGDAW.

Ref No :- 42D Dated, the..24-2-.....1947.

To HIS EXCELLENCY THE GOVERNOR OF BURMA,
RANGOON.
Sir,

I have the honour to submit herewith a copy of the Memorandum submitted to the Honourable A.G. Bottomley, his Majesty's Under Secretary for Dominions, for favour of Your Excellency's kind perusal, and necessary action.



I have the honour to be
Sir,
Your most obedient servant

Sultan Ahmed

President
Jamiatul Ulema, North Arakan.

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PRESIDENT
SECRETARY, Jamiatul-ulama, North Arakan,
Head Office:—MAUNGDAW.



Ref No:— Dated, the 21st Dec 194

To THE HONOURABLE A.D. BOTTOMLEY,
HIS MAJESTY'S UNDER-SECRETARY FOR INDIA NO,
Str, CASE OF THE CHIEF SECRETARY TO THE GOVERNMENT OF BURMA,

we, the undersigned on behalf of the Jamiatul Ulama,
North Arakan, beg to lay before Your Honour the following few
lines for favour of your honour's sympathetic considerations and
immediate action:-

1. That north Arakan comprises the towns of Maungdaw
Buthidaung townships and that portion of Kathachan township
which lies to the west of Kayu river. It covers an area of
about three thousand square miles. The total population will
reach well nigh three lakhs and at least 90% of them are Muslims.
2. That the Muslims first settled down in Arakan about the
year 788. Since then the Muslims have been playing an important
part towards the advancement of civilization in Arakan.
History reveals that during the days of Arakanese rule, some
of whom, being influenced by Islamic culture, adopted Arabic
names in preference to Arakanese ones and even the court language
was Persian. The Muslims and Arakanese Buddhists long ago lived
side by side peacefully for centuries.
3. That although the two communities lived side by side
for centuries, the Muslims remain quite distinct in religion,
race, language, culture and in mode of living from those of
their Arakanese Buddhist brethren.
4. That as time went on, the cordial relationship between
the Muslims and Arakanese Buddhists was marred when first
communal trouble broke out in 1710. and as history reports
itself, there occurred another clash between the two communities

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communities in the year 1825. In 1942, the event took a serious turn when the communal riots spread through out Sanyas district, when more than 40,000 innocent people were killed.

5. That when the Government protection was withdrawn from this area, we functioned successfully in the interim period as a Sovereign State forming a Peace Committee, the Administrative Body, in North Arakan. This conclusively proved our ability to manage our own internal affairs.

6. That when the Burma campaign was launched in the North Arakan Front, and the advancing Allied forces entered this area, this Peace Committee, the Administrative Body, gained recognition from the military Administrator, North Arakan. And this Administrative Body was given many pledges towards self determination, on the model of autonomous Muslim State, in New Burma. A kind reference may be made to the then Military Administrator, Brigadier D.C.P. Phelps and Mr. A.A. Shah, I.C.S., the then Civil Advisor to the Military Administrator, North Arakan, now the Private Secretary to the Chief Minister, Bengal.

7. That North Arakan was declared the Muslim area by Notification No. 110A-CC/42, dated the 31st December, 1942. (copy attached).

8. That on the strength of above mentioned pledges the Muslims of this area, during the North Arakan campaign, stood as a rock and fought side by side with Allied Nations and sacrificed their lives and properties towards the successful prosecution of the Allied War efforts in giving the enemy a crushing blow, with the best of hope for the attainment of freedom of Burma with an autonomous State of this Frontier Area. A kind reference may ~~xxxx~~ be made to the records maintained in the Head quarters of South East Asia Command.

That has at last come the glorious Allied victory and Burma is again under the Burma Government and now Burma is on the



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on the onward march to attain freedom soon. The Anglo-Burmese talk ended and even the cases of the Anglo-Burmans and Karens were given due considerations, but the case of the Muslims of this Frontier, inspite of the carnage of 1942 and inspite of their immense sacrifices and sufferings during the war, received no consideration.

10. That there appeared a certain glimpse of hope, when during the recent London talk on Burma, His Majesty's Government was gracious enough to announce its policy that the people of the Frontier Areas should not be included in that agreement without their specific consent and as a result the Panglong Conference materialised.

11. That we being on the Indo-Burma Frontier, were rightly under the impression that our views would receive duly represented in that Conference. The Conference is coming to its close, but unfortunately we find that we are totally ignored.

12. That this disappointment came as a rude shock towards us and we beseech Your Honour to do full justice to our cause before it is too late.

13. That by practical deeds through out the recent Burma campaign we have conclusively proved our ability to manage our own internal affairs. Thus we venture to suggest that the smallest unit of the Frontier Areas represented in the Panglong Conference can never equal North Arakan in population, area, importance or in any other respect.

Under the circumstances stated above we fervently pray and confidently hope Your Honour would be good enough to move His Majesty's and Government of Burma to extend to us the benefits of the agreement unanimously arrived at in the Panglong Conference to North Arakan accordingly.

WHICH ACT OF JUSTICE WE SHALL EVER PRAY.



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We the undersigned beg to remain,

Sir,

Your most obedient servants,

Sultan Ahmed
 Gh...
 It. Gh...
 H...
 M. M. ...
 Habibullah
 H. ...
 ...
 ...
 ...

Copy to:-

1. His Majesty's Govt: London.
2. The Secretary of State for Burma, London.
3. His Excellency the Governor of Burma, Rangoon.
4. The President, A.F.P.F. League, Burma, Rangoon.
5. The Commission of Enquiry, Arakan, Arakan.
6. The Editor, the Voice of Burma, Rangoon.
7. The Editor, The Statesman, Calcutta.
8. The Editor, The Dawn, Delhi.



Annex 306

Justice Base, *A Legal Guide to Citizenship and Identity Documents in Myanmar*,
December 2018

Available at:

https://www.lannpya.com/assets/img/resources/Civil%20Docu%20Eng/12.2018-Legal-Guide-to-Citizenship-Documentation_ENG_FINAL.pdf

**A LEGAL GUIDE TO CITIZENSHIP AND
IDENTITY DOCUMENTS IN MYANMAR**

DECEMBER 2018

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**A LEGAL GUIDE TO CITIZENSHIP AND
IDENTITY DOCUMENTS IN MYANMAR**

DECEMBER 2018
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Justice Base promotes the rule of law in transitional and post-conflict societies by building the capacity of local lawyers and supporting nationally owned rule of law initiatives. We endeavour to strengthen the capacity of lawyers to engage in – and guide – the national discussion on rule of law needs and priorities, develop domestic rule of law initiatives, and lead legal and institutional reform efforts in emerging democracies.

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A Legal Guide to Citizenship and Identity Documents in Myanmar

Published December 2018

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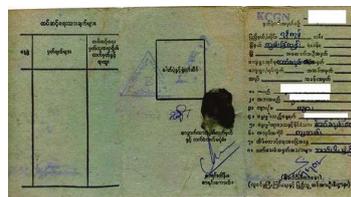
RESIDENCY DOCUMENTS

National Registration Card

National Registration Card (NRC) or “three-folded card” is a document that was issued to all Myanmar residents (except foreigners) after independence in 1948. Many Myanmar residents were granted citizenship in 1948. If an individual or his/her parents or grandparents have NRCs, they may be citizens, but an NRC is not a citizenship card. The government started replacing these cards with CSCs, but sometimes still gives out NRCs.



Women's NRC (outer)



Men's NRC (inner)

NRCs were issued pursuant to the Burma Residents Registration Act 1949 and the 1951 Resident Registration Rules. While NRCs were not technically citizenship documents, they served as de facto citizenship cards given that foreigners (i.e. non-citizens) were issued FRCs.

In 1989, to implement the new 1982 Law and 1983 Procedures, the government conducted a nationwide citizenship scrutiny process during which NRCs were to be replaced with CSCs. However, some minority group members turned in their NRCs and did not receive CSCs in return.

Annex 307

Médecins Sans Frontières, *“No one was left”*: Death and Violence Against the Rohingya in Rakhine State, Myanmar, March 2018

Available at:

<https://www.msf.org/myanmarbangladesh-%E2%80%98no-one-was-left%E2%80%99-death-and-violence-against-rohingya>



“No one was left”

Death and Violence Against the
Rohingya in Rakhine State, Myanmar

4.2 VIOLENCE AGAINST CHILDREN AND OLDER PEOPLE

Violence against the Rohingya in Myanmar was exerted irrespective of age. MSF estimates that at least 730 children under the age of five died from violence between 25 August and 24 September. Of the estimated 730 children under five killed since 25 August, 59.1% were shot, 14.8% were burned to death in their homes and 6.9% were beaten to death.

Mortality of older people was also extremely high: 5.47% of people aged 50 or above died between 25 August and 24 September,⁴⁴ the majority of whom died violently.⁴⁵

Deaths caused by violence affected people of all ages, including the very youngest, with 72.8%⁴⁶ of deaths in children under five between 25 August and 24 September being due to violence. Stories from refugees and patients emphasise the particularly brutal way in which children were killed.

"I lost my six children, three girls, three boys. The smallest one was three months old. When I was fleeing from the military, I took one baby of the size of my own baby. I thought it was mine. But after a while I realised that it's not my baby, this is another dead baby. Its tummy was slashed apart."

– Female, 35 years old, from Tula Toli/Min Gyi Ywa, Maungdaw Township, 14 September 2017

"They hit my baby with something heavy. It hit his head and he died, I saw how his scalp split open, his brain came out. I lost my baby."

– Female, 25 years old, from Tula Toli/Min Gyi Ywa, Maungdaw Township, 16 September 2017

Children and older people who survived were not spared violence: 15.3% of children under five and 22.6% of people aged five or above who recently arrived in Bangladesh experienced violence between 25 August and 24 September.⁴⁷ Since the beginning of the influx, staff in

MSF's Kutupalong clinic have treated five children under the age of six for violence-related injuries, including one with a gunshot wound.⁴⁸ In the same clinic, MSF has also provided care to 37 sexual violence survivors under the age of 18, some of them as young as nine.

4.3 "WE ARE SAFER HERE" – PLACES OF VIOLENCE

Findings from the surveys conducted by MSF show that violence took place mostly at home (68.7%) or on the journey (62.8%).⁴⁹ Findings also show that incidents took place in a variety of other locations reported by surveyed refugees: at work (18.1%), in the village, in the market, in the shop, at school.⁵⁰

"When I went to my house to find my son, suddenly I got shot. A bullet penetrated one side of my left leg and came out the other side. In a few seconds, another bullet hit my other leg and penetrated the same way as the left leg. I was at that time inside my house. The bullets crossed through the wall [made out of bamboo] of my house and then into my legs."

– Female, 40 years old, from Bossara/Tha Win Chaung, Maungdaw Township, 6 November 2017

Analysis from the testimonies confirm that the Rohingya have experienced violence in multiple locations, including in their own houses and villages.

Their accounts also highlight that violence has taken place across multiple villages throughout the three main townships of northern Rakhine State (Maungdaw, Buthidaung and Rathedaung).

44 Figure based on pooled results from the six surveys.

45 Information available for Kutupalong and Balukhali only, where 81.3% of reported deaths in the population aged 50 or above between 25 August and 24 September were due to violence.

46 Figure based on pooled results from the six surveys.

47 Information available for Kutupalong and Balukhali only.

48 Epidemiological weeks 34 to 48.

49 Information available for Kutupalong and Balukhali only.

50 Information available for Kutupalong and Balukhali only.

Annex 1: Methodology

QUANTITATIVE ANALYSIS

MSF conducted a total of six health surveys in different refugee settlements in Cox's Bazar, Bangladesh, just over the border from Myanmar. The full survey reports are available on MSF websites, including their detailed methodology,⁵⁵ as well as a summary of the pooled findings from the six surveys.⁵⁶

The primary objective of the surveys was to estimate the crude mortality rate (number of deaths per 10,000 people per day in a given area) and the mortality rate in children under five years of age. The secondary objectives were: 1) to describe the population in terms of age, sex and household composition; 2) to determine vaccination coverage; 3) to determine the prevalence of severe and global acute malnutrition in 6-59 month olds; 4) to identify the most prevalent morbidities in the population in the two weeks preceding the survey; 5) to describe health-seeking behaviour in terms of access to primary and secondary care; 6) to estimate the crude mortality rate for the total population and for children under five years of age for the recently displaced population before and after the crisis in Myanmar and for the pre-existing population in the Bangladeshi settlements; 7) to identify major causes of death, by age group and sex; 8) to gain knowledge of violence-related events.

Four of the six health surveys were conducted between 30 October and 12 November 2017 in the two main settlement locations: Kutupalong and Balukhali. A total of 905 households were surveyed across Kutupalong makeshift settlement, Balukhali makeshift settlement, Kutupalong makeshift settlement extension and Balukhali makeshift settlement extension, representing a total of 4,627 participants.

An additional two health surveys were conducted in Balukhali 2 (formerly Mainnerghona) and Tasnimarkhola (formerly Burmapara) between 8 and 12 November 2017. A total of 1,529 households were interviewed across these locations, representing a total of 6,799 participants.

These surveys are representative of 503,698 Rohingya who arrived from Rakhine State in Myanmar during the recent mass displacements, and 104,410 already living in the settlements in Bangladesh prior to 25 August. At the time the surveys were conducted, approximately 626,000 Rohingya were estimated to have arrived in Bangladesh since 25 August, and therefore the MSF surveys represent 80.4% of the total newly-arrived population in Bangladesh from Myanmar by November 2017.

The recall period for the surveys conducted in Kutupalong and Balukhali included the period from 25 February 2017 until the date of the interview (comprised between 30 October 2017 and 12 November 2017). For the surveys conducted in Balukhali 2 and Tasnimarkhola, the total recall period covered 27 May 2017 until the survey date (between 8 and 10 November 2017).

Informed verbal consent, recorded by survey teams, was obtained from all participants in the survey. All participants had the survey explained to them in a language with which they were familiar. Each household was offered the opportunity to decline participation in the survey at any time without adverse consequences. Participation was voluntary and it was made clear that no incentives or inducements would be provided to respondents.

⁵⁵ Available at: http://www.msf.org/sites/msf.org/files/coxs_bazar_healthsurveyreport_dec2017_final1.pdf and <http://www.msf.org/sites/msf.org/files/report-rohingyas-emergency-17-vf1.pdf>

⁵⁶ Available at <http://www.msf.org/en/article/myanmarbangladesh-rohingya-crisis-summary-findings-six-pooled-surveys>

QUALITATIVE ANALYSIS

A total of 81 semi-structured individual interviews were conducted by MSF's humanitarian affairs team in Bangladesh with 31 MSF patients and caretakers and 50 refugees, all but two of whom arrived in Bangladesh after 25 August. All interviews took place between 16 August and 27 November in Kutupalong and Balukhali makeshift settlements.

Because of the densely populated nature of the settlements, some refugees were interviewed in the presence of family or community members. In these instances, the testimony was considered as given by the main respondent, and interjections from other participants were inserted into transcripts.

Interviews conducted by MSF international staff were carried out in local languages with the help of a trained interpreter. Where possible, both male and female interviewers facilitated interviews to respect local cultural sensitivity. Some interviews were conducted directly in local languages by Bangladeshi humanitarian affairs staff members and then transcribed into English.

Verbal informed consent was provided by all respondents. They were advised of the purpose of the research, of the voluntary nature of the interview, and that they could refuse to be interviewed, decline to answer any questions, or terminate the interview at any point. Patients and caretakers interviewed in MSF clinics were duly informed of the non-medical nature of the testimony collection process, and that it would under no circumstances affect their ability to continue seeking medical and/or psychological care in MSF facilities.

Quotes from testimonies used in this report include the location of origin of the interviewee. Villages in northern Rakhine State are named differently depending on the language used. As such, both Rohingya and Rakhine names are included in the report, as well as the township where they are located. Some village names provided by refugees could not be verified by MSF teams; in these instances, only the township of origin is mentioned in the quote reference.

ADDITIONAL SOURCES

Medical data from MSF health facilities, as well as accounts heard from patients by MSF doctors, nurses and midwives, are also included in this report to corroborate findings with direct medical observations.

MSF has had a presence in Cox's Bazar district through its Kutupalong clinic since 2009. This clinic has received most of the patients with violence-related injuries, including gunshot wounds, as well as most sexual violence survivors, since the start of the influx, mostly because it was the only MSF facility running during the first month of the influx. Several additional facilities have been opened by MSF since the end of October but, for the sake of accuracy, the medical data reflected in the report only accounts for patients for MSF's Kutupalong clinic.

Annex 308

Meta, “An Independent Assessment of the Human Rights Impact of Facebook in Myanmar”, by A. Warofka, 5 November 2018

Available at:

<https://about.fb.com/news/2018/11/myanmar-hria/>



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Meta

An Independent Assessment of the Human Rights Impact of Facebook in Myanmar

November 5, 2018

By Alex Warofka, Product Policy Manager



Update on August 26, 2020 at 12:30AM MMT:

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Facebook stands against hate and violence, including in Myanmar, and supports justice for international crimes. We're working with the UN's Independent Investigative Mechanism for Myanmar, which has a mandate to collect evidence with appropriate safeguards in place, and assist accountability efforts. Through this work, we've begun to lawfully provide data to the IIMM that we preserved back in 2018. As these investigations proceed, we will continue to coordinate with them to provide relevant information as they investigate international crimes in Myanmar.

Originally published on November 5, 2018 at 4:00PM PT:

We want Facebook to be a place where people can express themselves freely and safely around the world.

As part of that commitment, we commissioned an independent human rights impact assessment on the role of our services in Myanmar and today we are publishing the findings. The assessment was completed by BSR (Business for Social Responsibility) – an independent non-profit organization with expertise in human rights practices and policies — in accordance with the [UN Guiding Principles on Business and Human Rights](#) and our pledge as a member of the [Global Network Initiative](#).

The report concludes that, prior to this year, we weren't doing enough to help prevent our platform from being used to foment division and incite offline violence. We agree that we can and should do more.

Over the course of this year, we have invested heavily in people, technology and partnerships to examine and address the abuse of Facebook in Myanmar, and BSR's report acknowledges that we are now taking the right corrective actions.

BSR's report also examines the complex social and political context in Myanmar, which includes a population that has fast come online, a legal framework that does not reflect universal human rights principles, and cultural, religious, and ethnic tension. In this environment, the BSR report explains, Facebook alone cannot bring about the broad changes needed to address the human rights situation in Myanmar.

BSR provided several recommendations for our continued improvement across five key areas, in order to help mitigate the adverse human rights impact and maximize the opportunities for freedom of expression, digital literacy, and economic development. These areas include building on existing governance and accountability structures, improving enforcement of content policies, increasing engagement with local stakeholders, advocating for regulatory reform and preparing for the future.

Annex 309

Myanmar-Institute of Strategic and International Studies (M-ISIS),
Background Paper on Rakhine State, 28 May 2018

Available at:

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Background Paper on Rakhine State

by
Myanmar-Institute of Strategic and International Studies (M-ISIS)
28 May 2018
Yangon, Myanmar

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Sambawak from 1180-1237.¹⁹ Launggret was founded in 1237 and the kingdom was able to reassert independence owing to Bagan's decline. Between 1374 and 1430, the inland Bamar and coastal Mon kingdoms exerted influence onto Arakan. Launggret was sacked between 1404 and 1406, leading to the last king Naramekhla Min Saw Mon to flee to "Suratan" (i.e. the dominion of the Sultan)²⁰, meaning Bengal.²¹

2.1.4. Mrauk U (1430-1784)

Mrauk U was the last but also the most powerful and prosperous of Rakhine kingdoms. Fleeing invading Bamar forces, Min Saw Mon sought refuge in Gaur, the capital of the Sultanate of Bengal. After some years in exile, the Sultan of Bengal – Jalaluddin Muhammad Shah – provided military assistance to aid Min Saw Mon to reconquer Arakan in exchange for vassalage. Min Saw Mon was reinstated in 1430, and he moved the capital from Launggyet to Mrauk U (also known as Mrohaung) in 1433.²² Between 1430 and 1530, Mrauk U oscillated between vassalage and outright rivalry towards the Bengal Sultanate.

Bengal's dominance faded in the mid-16th century, which ultimately resulted in Mughal conquest in the 1570s. This enabled Mrauk U to assert itself and it became prosperous and influential during the 16th and 17th centuries, reflected in the large number of Buddhist temples and ruins dotting the former royal capital. It controlled Chittagong from 1459 till 1666.²³ The Mrauk U period marks the beginning of Muslim influence in Arakan.²⁴ For example, Min Saw Mon, despite being a Buddhist, assumed the title of *Suleiman Shah* to acknowledge Mrauk U's vassalage to the Sultanate of Bengal.²⁵ His successors continued this 'tradition' until Mrauk U was able to fully assert its sovereignty in 1531.²⁶ Min Saw Mon also introduced a coinage system heavily influenced by that in Bengal. Trilingual coins bore Buddhist epithets in Arakanese on one side, and the Shahada (the Islamic declaration of faith) in Bengali and Persian on the other side.²⁷ The first historical mosque in Arakan - the Santikan mosque - was built in the eastern outskirts of Mrauk U in the 1430s by Muslim soldiers from Bengal who came over with Min Saw Mon.²⁸

Portuguese friar Sebastien Manrique traveled to Bengal and Arakan from 1629 to 1637 and offered important insight into early 17th century Rakhine. During that time, Portuguese mercenaries and slave traders based in Dianga (opposite Chittagong) operated around the Ganges delta and alternated between competition and service to Mrauk U. The Portuguese raided villages on the Sundarbans delta, and sold the kidnapped Bengalis at ports in India, or to the Arakanese who used the slaves for agriculture.²⁹ Later, the Dutch East India Company replaced the Portuguese, and established a trading post in Arakan and had even facilitated the sending of Arakanese monks to Sri Lanka to revive the Buddhist ordination rites which had declined under Portuguese rule.³⁰

In 1660, the Mughal prince Shah Shuja and his supporters fled to Arakan after losing the civil war for Mughal succession to his brother Aurangzib. Despite Aurangzib offering large sums for Shuja's extradition, Arakanese King Sandathudamma consented to Shuja's request for asylum. Tensions however soon escalated between Sandathudamma and Shuja and when the king asked for Shuja's eldest daughter, Shuja plotted to seize the throne.³¹ The attempt – involving Shuja's retinue supported by local Muslims - was foiled and Shuja was ultimately executed, his treasures seized and daughters taken into the king's harem.³² Shuja's followers – mainly Afghan archers - were pressed into Arakanese service, but would become king makers within the Mrauk U court.³³ They were ultimately exiled to Ramree (Yanbyé) in the early 18th century and their descendants became the Kaman people ("bow" in Persian).³⁴

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Shuja's execution along with Arakanese-sanctioned piracy along the Bay of Bengal precipitated in the Mughals invading Chittagong in 1666. The Mughals pushed the Arakanese right up to Ramu near Cox's Bazar.³⁵ The fall of Chittagong and then civil war and natural disasters (specifically earthquakes in 1761-2) eventually led to Mrauk U's downfall.³⁶ Arakanese lords discontent with the last king, Thamada, sought assistance from King Bodawpaya of the Konbaung dynasty to install a contender. Konbaung forces invaded and instead annexed Arakan in late 1784.³⁷

2.2. Konbaung and British Rule (1784-1948)

The Rakhine coast was one of the last major areas in lower Burma to be incorporated into the Konbaung kingdom based in Central Myanmar. Along with Tanintharyi (Tenasserim), Rakhine was the first Myanmar territory to be annexed by the British. Both periods saw significant impact on the demographics of the region - major outflows of Arakanese fleeing Konbaung rule followed by major inflows of immigrants and migrant labourers from Bengal during British colonial rule.

2.2.1. Konbaung rule (1784-1826)

After the Konbaung conquest, a governor with a garrison of several thousand men was installed at Mrohaung. The Mahamuni Buddha image along with the deposed royal family and 20,000 inhabitants were brought back to the Konbaung capital.³⁸ Over 200,000 Arakanese fled to Chittagong and the Sundarbans.³⁹ These Arakanese communities who fled to Bengal would subsequently be known or referred as *Mugs* or *Maghs* by the British and Bengalis, and *Anaukthar* by the Arakanese who remained in Arakan.

Levies were raised in Arakan in 1790 and 1795 to support construction projects, notably for the Meiktila irrigation system and the Mingun pagoda.⁴⁰ In 1811, a local revolt killed nearly the entire Bamar population garrisoned at Mrauk U.⁴¹ The Konbaung kingdom sent forces to pacify the rebellion and cross-border raids caused friction with the East India Company that had conquered Bengal. Furthermore, tensions arose over competing territorial claims over a border island, known as 'Shin Ma Phyu kyun' in Burmese and St Martin's Island or of 'Shaporee'/Shahporee' to the British.⁴² The first Anglo-Burmese war erupted in March 1824 and Arakan was occupied by the British in 1825.⁴³

2.2.2. British Rule (1826-1941)

The Yandabo Treaty, signed in February 1826 to end the First Anglo-Burmese War, ceded Arakan to the East India Company, along with other territories such as Tanintharyi and Manipur.⁴⁴ Arakan was annexed into British India as part of the Bengal Presidency, and then as part British Burma which was formed in 1862.⁴⁵ When all of Myanmar was finally colonized in 1885, the entire country including Arakan became a province of India. Local rebellions broke out in 1827, 1836, 1870 and 1888 but had little impact on colonial rule.⁴⁶

The capital was shifted from inland Mrohaung to the newly built coastal town of Akyab (Sittwe) in 1826, and the region was incorporated into Arakan Division with four districts – Akyab,¹ Kyaukphyu, Sandoway and the Arakan Hill District (now part of Chin state). A commissioner was seated at Akyab with four Senior Assistants in charge of the districts.⁴⁷ With the development of the colonial economy – particularly agriculture - Akyab became an

¹ The colonial-era Akyab district is now divided into three districts – Maungdaw, Sittwe and Mrauk-U districts. Sandoway district is now called Thandwe District.

river, citing that the Mughals under General Shaista Khan had occupied Arakan right up to the river in 1666³.¹⁰⁸ During the campaigning in the run-up to the 1960 general elections, Prime Minister U Nu agreed to Muslim demands to create a “frontier region” in order to win the support of the Muslim political leaders.

It was also during the U Nu government era that the term “Rohingya” began to be more widely used as a collective identity by the Muslim community in Rakhine. However, as previously stated, the term “Rohingya”, first mentioned in Buchanan’s accounts as “Rossawn”, was not subsequently mentioned in any British colonial era administrative and census reports. It is safe to assume that the British colonial administration, with its practice of extensive studying and recording of ethnic groups in its colonies, should not have had any reason to purposefully exclude the “Rohingya” as an ethnic group. With the term only becoming widely used post-independence, i.e. in the 1950s, after a series of failed rebellions and separatist movements led mainly by the Mujahideen, it is safe to conclude that the term “Rohingya” is in fact a politically constructed identity.

3.2. Contested and Politicised History

For both the Arakanese and “Rohingya” political elites, history – or rather their versions of history – is a cause near and dear to them to the point of obsession. The Arakanese, disgruntled with what they perceive as neglect under successive Bamar-dominated post-independence governments, pine for rose-tinted recollections of Mrauk U and its kings who asserted Arakanese sovereignty such as Mong Ba Gri and Mong Razargri. For the “Rohingyas”, they present what they claim as irrefutable historical evidence of their presence in the region.

As nationalism emerged across British Burma, Arakanese and Muslim political leaders began to weave narratives to highlight their historical claims to political space in the emerging landscape. This politicization predictably led to liberal interpretations of history, the sweeping aside of inconvenient facts or narratives, and the projection of modern notions of ethnicity, nation-states and religion onto historical events and periods.

While the cosmopolitan nature of the Buddhist kingdom of Mrauk U cannot be denied, the extent of Muslim influence and historical presence as claimed by “Rohingya” activists is not indisputable, particularly when such claims constitute a part of an effort in historical revisionism intended to further the argument in favour of the “Rohingyas’ ” ethnic identity.

4. SECURITY CONCERNS AND CHALLENGES

4.1. Links to Extremist Organizations

While most of the Muslim population living in Northwestern Rakhine state have eschewed extremist or terrorist activities, some have sought to cultivate ties with terrorist and extremist organizations operating in Southeast and South Asia. The “Rohingya Solidarity Organization” (RSO) and the latest militant group – Harakah al-Yaqin / “Arakan Rohingya Salvation Army” (ARSA) have exhibited links to Islamist terrorist organizations such as al-Qaeda, Harakat-ul-Jihad-al-Islami (HuJI), Hizb-e-Islami Mujahideen, Lashkar-e-Taiba (LeT) and Jemah Islamiyah (JI).

³ However, this is not supported by historical evidence

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Physicians for Human Rights, *“Please Tell the World What They Have Done to Us”*: *The Chut Pyin Massacre: Forensic Evidence of Violence against the Rohingya in Myanmar*, by T. Nelson and R. Haar, 19 July 2018

Available at:

<https://phr.org/our-work/resources/please-tell-the-world-what-they-have-done-to-us/>



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"Please Tell the World What They Have Done to Us"

The Chut Pyin Massacre: Forensic Evidence of Violence against the Rohingya in Myanmar

July 19, 2018 | Mass Atrocities, Burma

By Tamaryn Nelson, MPA and Rohini Haar, MD, MPH



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Executive Summary

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"Please Tell the World What They Have Done to Us" - PHR



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and burning their homes to the ground.

The attackers perpetrated a vast array of human rights violations on the Rohingya villagers, including killings, disappearances, beatings, stabbings, rape, and forcible displacement. It is estimated that some 400 Chut Pyin villagers, including 99 children, were killed that day or are missing – including a group of 50 men who were taken away and never seen again.

Similar attacks have killed thousands of Rohingya and pushed at least 720,000 refugees into neighboring Bangladesh since August 2017. As part of a broad effort to secure forensic evidence of atrocities against the Rohingya, Physicians for Human Rights (PHR) interviewed and conducted forensic examinations of 22 survivors – men, women, and children – of the Chut Pyin massacre. The injuries PHR doctors documented, including gunshot wounds, blunt-force trauma, lacerations, and more, serve as clear medical evidence to corroborate the survivors' accounts of shooting attacks, beatings, stabbings, and other forms of violence which occurred on that day.

Based on the forensic examinations and the consistent and detailed testimony, as well as corroborating information from additional credible sources, PHR believes that the savagery inflicted on the people of Chut Pyin is a typical example of the widespread and systematic campaign that Myanmar authorities have waged against the Rohingya – acts that should be investigated as crimes against humanity.

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Introduction

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stripped the Rohingya of citizenship in 1982, the Rohingya have been stateless and subjected to decades of human rights violations, including denial of the right to health and education, limited political participation, restrictions on freedom of movement, forced displacement, arbitrary detentions and killings, forced labor, and trafficking, among other abuses.^[1]

Following alleged attacks on Myanmar security forces by the insurgent Arkan Rohingya Salvation Army in October 2016, and again in August 2017, the Myanmar military unleashed attacks on Rohingya communities^[2] which have driven more than 720,000 Rohingya into neighboring Bangladesh from August 2017 to June 2018.^[3]

Physicians for Human Rights (PHR) has conducted three visits to Bangladesh since October 2017 to interview and carry out forensic medical examinations of Rohingya survivors of these attacks. This report focuses on the events that occurred in the village of Chut Pyin as an example of what happened in dozens of villages in Rakhine state: the Rohingya villagers faced a host of human rights violations, including killings; detentions and disappearances; physical assault involving beatings, stabbings, and mutilations; rape and other forms of sexual violence; and forced displacement in the form of looting and burning of homes.

Several survivors interviewed by PHR, many of them women and children, faced multiple violations. Most survivors did not have access to adequate emergency medical care. They then endured a 150-kilometer (roughly 100-mile) journey, often walking for up to 10-12 days, to seek refuge in the Cox's Bazar area of Bangladesh.

To date, Myanmar authorities have failed to conduct impartial and independent investigations into these events and have not fully cooperated with others seeking to do so.^[4] A United Nations fact-finding mission on Myanmar, created in 2017, has a mandate to collect evidence that may be used in potential future prosecutions, but has been barred from entering the country. Myanmar authorities also denied the UN-appointed Myanmar human rights expert, Yanghee Lee, any further access or cooperation following the publication of her findings.^[5]



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Security Council to refer Myanmar to the International Criminal Court (ICC) to investigate allegations of crimes against humanity.^[7] In June 2018, the ICC itself sent a request to Myanmar asking to exercise jurisdiction over the alleged crime of deportation, while one of the ICC prosecutors asked the Court to consider whether prosecution could take place through Bangladesh, given the influx of 720,00 Rohingya people into the country.^[8]

At the same time, the Myanmar government announced the creation of an "independent commission of inquiry"^[9] to investigate further allegations of human rights abuses in Rakhine state. Given Myanmar's limited past efforts on justice and accountability, there are reasonable grounds for concern about whether these investigations will be carried out in an objective and impartial manner. For example, in April 2018 the Myanmar military announced that an internal investigation had led to the sentencing of seven soldiers for the killing of 10 Rohingya men whose bodies were found in a mass grave at Inn Din village in northern Rakhine state – though the reporters who broke the story were arrested and detained.^[10] Moreover, the Myanmar military continues to deny responsibility for incidents in the dozens of other Rohingya villages.

PHR is publishing this report based on testimonies and forensic evaluations of Chut Pyin individual cases to contribute to documentation and investigation efforts, so that those who perpetrated these crimes can be held accountable and survivors may be given redress. This report draws exclusively on testimonies that demonstrated a high degree of consistency between described events and forensic examination findings, and with overall information reported by other credible sources.

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Methodology

Field Investigations

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survivors; these, in turn, referred the team to additional interviewees. All survivors interviewed were adults or accompanied minors who self-identified as Rohingya and who were in surrounding hospitals or lived in refugee camps in the Ukhiya and Teknaf areas south of Cox's Bazar. PHR excluded anyone who arrived before August 27, 2017 and/or was unable to provide consent.

The PHR research team interviewed nearly 100 key informants, including survivors, community leaders, medical professionals, activists, lawyers, journalists, and others. Out of the 81 Rohingya survivors from approximately 25 villages in Rakhine state who were interviewed, 25 survivors were from the village of Chut Pyin: 22 of these 25 interviewees sustained physical injuries or abuses and underwent a forensic examination – 12 adults (seven women and five men) and 10 minors under the age of 18 (four girls and six boys). The additional three Chut Pyin interviewees were witnesses who did not sustain injuries and who provided background information.

This report focuses on information from these 25 Chut Pyin survivors. Additionally, PHR drew upon interviews with three other witnesses who participated in Chut Pyin meetings with Myanmar security forces prior to August 27, 2017, and soon thereafter faced similar attacks in their neighboring villages.

Consent and Ethics Approval

The PHR researchers obtained verbal and written consent from each interviewee through an interpreter, following a detailed explanation of PHR's work, the purpose of the investigation, and its voluntary nature. For reasons of safety and confidentiality, PHR replaced the names of survivors with pseudonyms and blurred their faces in the images used in this report.

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In Thangkali refugee camp in Bangladesh, Rohingya refugees Laila Baegum (Profile 1), 12, her five-year-old brother Shofiquil Islam (Profile 2), and her seven-year-old brother Anwar Sadak (Profile 3) show where they were shot by attackers who massacred their family and destroyed their village of Chut Pyin. Their grandmother (back) also survived, but their mother, father, and two other siblings were killed. Photo: Salahuddin Ahmed for Physicians for Human Rights

Of the 25 Chut Pyin villagers whom Physicians for Human Rights (PHR) interviewed, 22 had physical injuries and underwent a forensic examination; three additional testimonies came from witnesses and served as background information.

Ranging from five to 60 years of age, these 22 survivors were evenly split between male and female; 12 were adults (seven women and five men) and 10 were minors under the age of 18 (four girls and six boys). They sustained several different kinds of injuries, with some survivors sustaining multiple injuries. These included gunshot wounds (17); blunt force trauma such as kicking and beating (6); injuries from explosives or fragmented projectiles (3); penetrating injuries such as stabbings (3); and rape and sexual violence (1). All the forensic examinations and medical records were highly consistent with the events that the survivors described as having occurred within the previous six months.

Gunshot Wounds

Physical findings consistent with gunshot wounds were present in 17 of 22 survivors, who sustained a total of 21 gunshot wounds. These survivors ranged in age from five to 60 years old. These injuries uniformly reflected the survivors' narratives of being shot while attempting to flee, usually running away from the village toward a rice field or neighboring forest for protection.

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Five-year-old Mohammed Yusuf (Profile 16) was playing near Chut Pyin when he was hit by an explosion and felt a pain in his right eye. He is completely blind in that eye and cannot hear out of his right ear. He was examined by Homer Venters, MD, part of the PHR clinical team that conducted forensic medical examinations at Thangkali refugee camp in Bangladesh. Photo: Salahuddin Ahmed for Physicians for Human Rights

Penetrating Injuries (Stabbing, Slashing, Mutilation)

"They shot the young men dead.... [The military] shot them with guns and [the] Rakhines slit throats."

Two women described being stabbed with a knife attached to the end of a gun. Hala Banu (Profile 19), 35, was held at the school, where attackers took her valuables and then told her to leave. She froze in shock, so a soldier stabbed her below the breast. Similarly, 20-year-old Kismath Fatima (Profile 20) said she was stabbed in the forearm with a knife attached to a gun when she tried to resist being gang-raped in the school.



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men who were kneeling and therefore already surrendering to the attackers. PHR did not have access to Chut Pyin to examine the bodies of those killed, but 10 witnesses consistently described having seen dead men with slit throats, and five witnesses reported seeing women with their breasts cut off or mutilated.

Tormented By Flashbacks of Her Murdered Husband and Son

As the attackers swarmed into Chut Pyin, Hala Banu's (Profile 19) family tried to escape out the back of their house, but her husband and six-year-old son were shot dead just steps away. Hala's nine-year-old daughter, Somaiya (Profile 7), was shot in the leg and couldn't run; she lay bleeding by the bodies of her father and brother as security forces struck Hala in the face with a metal rod and dragged her away to the schoolhouse. At the school, Hala found women screaming and crying. She saw two women being raped, and the baby of one of the victims being thrown into a fire. After her attackers forced Hala to turn over her jewelry, they stabbed her with a knife attached to the end of a gun. She managed to run out of the building and back to her home, where she found Somaiya still alive. Mother and daughter were finally rescued and taken to a nearby village. From there, they set out on an arduous 12-day walk to Bangladesh, Somaiya's older brother and a cousin carrying her in a blanket through heavy rains and mud up to their thighs.

PHR's forensic medical examination of Hala found scars highly consistent with her account of being struck in the face and stabbed; Somaiya's leg bore scars typical of bullet entry and exit wounds. Hala's affect throughout her evaluation was one of depression and anxiety; she described having nightmares and other psychological symptoms which are highly consistent with a diagnosis of post-traumatic stress disorder.

Rape and Sexual Violence

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dead."

All governments carry a duty to abstain from violating human rights and the positive obligation to protect human rights.^[55] The International Covenant on Civil and Political Rights (ICCPR), a core international human rights instrument ratified by 171 UN member states, establishes that "every human being has the inherent right to life."^[56] While Myanmar has not yet ratified the ICCPR, it is party to the Convention on the Rights of the Child,^[57] the Convention on the Elimination of All Forms of Discrimination against Women,^[58] and the Convention on the Rights of Persons with Disabilities,^[59] all of which include the right to life. This right is also enshrined in the Universal Declaration of Human Rights, largely accepted as a common standard for all nations and adopted by all UN member states, including Myanmar.^[60]

All Chut Pyin survivors interviewed by PHR reported having witnessed a relative or neighbor being killed, in some cases several people at once, pointing to the perpetration of mass killings. PHR research shows that 13 out of the 22 survivors lost 25 family members; in addition, a survivor who did not sustain injuries lost 10 relatives. According to a media report, one survivor from Chut Pyin has compiled a list of more than 350 missing or dead villagers, of whom 99 are young children or babies who were killed because they were unable to run fast enough to escape their attackers.^[61] Another 50 men are disappeared and presumed to be detained or dead. Overall, this represents roughly one third of Chut Pyin's estimated Rohingya population of 1,400 people.

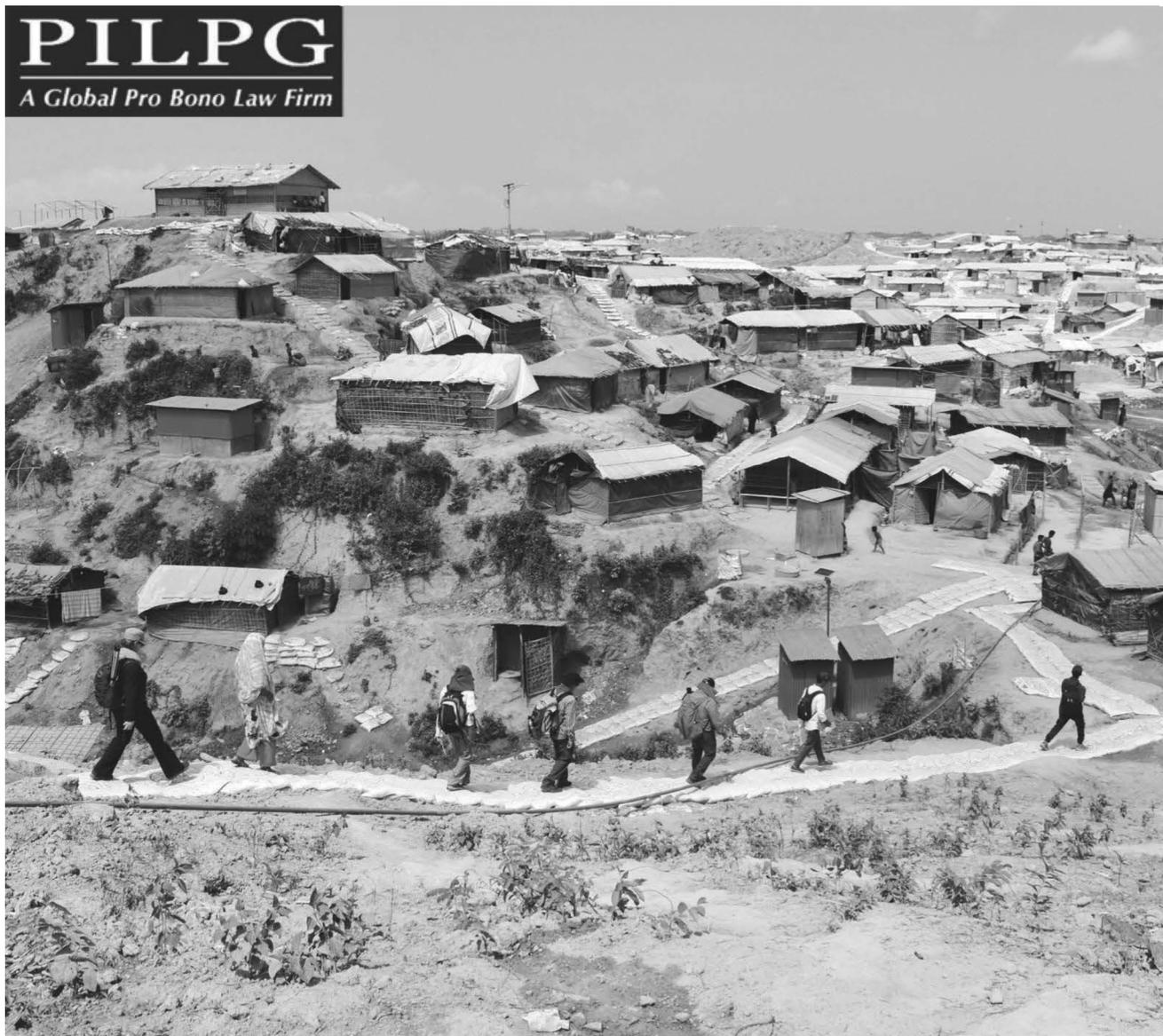
"My husband went missing [after] he went out for afternoon prayers. I still don't know whether ... he was arrested or whether he was slaughtered."

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Public International Law & Policy Group, *Documenting Atrocity Crimes Committed Against the Rohingya in Myanmar's Rakhine State: Factual Findings Report*, September 2018

Available at:

<https://www.publicinternationallawandpolicygroup.org/s/PILPG-ROHINGYA-REPORT-Factual-Findings-and-Legal-Analysis-3-Dec-2018-1.pdf>



DOCUMENTING ATROCITY CRIMES COMMITTED AGAINST THE ROHINGYA IN MYANMAR'S RAKHINE STATE

THE PUBLIC INTERNATIONAL LAW & POLICY GROUP'S
2018 HUMAN RIGHTS DOCUMENTATION MISSION

FACTUAL FINDINGS

**DOCUMENTING ATROCITY CRIMES
COMMITTED AGAINST THE
ROHINGYA IN MYANMAR'S
RAKHINE STATE**

*The Public International Law & Policy Group's
2018 Human Rights Documentation Mission*

FACTUAL FINDINGS REPORT

September 2018



PEACE NEGOTIATIONS
POST-CONFLICT CONSTITUTIONS
WAR CRIMES PROSECUTION

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EXECUTIVE SUMMARY

In late August 2017, the Myanmar (formerly and still commonly known as “Burma”) armed forces launched a so-called “clearance operation” against the Rohingya population in Myanmar’s northern Rakhine State. Within a few months, more than 700,000 Rohingya had fled their homes to seek refuge in sprawling and overcrowded refugee camps and settlements in Eastern Bangladesh. These Rohingya men, women, and children fled to escape mass shootings and aerial bombardments, gang rapes and severe beatings, torture and burning, and attacks from flamethrowers and grenade launchers.

Even as the Rohingya fled from Myanmar, they had to step over the bodies of thousands of slain or drowned Rohingya who had been killed by the Myanmar armed forces mere moments before they could escape across the border to Bangladesh. The Rohingya who did make it to Bangladesh left behind a place of terror, violence, and destruction. Yet, despite the horrors they faced there, it is a place that the Rohingya refugees still unflinchingly call their “homeland.”

To provide an accurate accounting of the patterns of abuse and atrocity crimes perpetrated against the Rohingya in Rakhine State, and to support future justice and accountability efforts, the Public International Law & Policy Group (“PILPG”), at the request of the U.S. Department of State (“State Department”), undertook a human rights documentation mission in the refugee camps and settlement areas in Eastern Bangladesh. PILPG’s investigation represents a large-scale and comprehensive effort to document the experiences of the victims who fled the violence in Rakhine State since October 2016.

In February 2018, PILPG assembled an investigation team of 18 highly experienced and trained international investigators from 11 countries to conduct its investigation mission. This investigation team included former prosecutors and investigators from a range of countries and international criminal tribunals, former investigators from Darfur and South Sudan investigation missions, military and security experts, and international criminal accountability experts. The investigation team also included 18 local Rohingya and Bengali interpreters, all of whom were trained by PILPG and an interpretation expert with extensive experience working on International Criminal Court field missions.

Drawing from previous large-scale missions that investigated violence and crimes in Darfur and South Sudan, PILPG and the State Department designed an investigation mission focused on systematically collecting first-hand accounts from a random and representative sample of refugees living in camps in Bangladesh to enable the State Department to formulate policy decisions to address the situation faced by the Rohingya.

From March to April 2018, PILPG’s investigators collected 1,024 interviews from

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Rohingya refugees in 34 refugee camps in Eastern Bangladesh. Having a team of experienced investigators to systematically conduct such a large number of interviews using random sampling protocols allowed PILPG to obtain the most broadly representative information possible about the experiences of the Rohingya refugees who fled Myanmar. PILPG provided quantitative data from the interviews to the US State Department, which is captured in its recent report *Documentation of Atrocities in Northern Rakhine State*.¹ PILPG's Report, in turn, complements the State Department's report by providing the underlying qualitative data. As such, this Report in its Part II – *Factual Findings of the Investigation Mission* – does not present statistical and numeric findings; rather, it provides a qualitative analysis of the documentation, with a focus on identifying patterns in the documented violations. Although the factual analysis is limited to the data collected in the 1,024 interviews, the statistical methodology applied in the investigation mission allows for more generalized conclusions.

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The investigation mission's findings reveal clear patterns of abuse against the Rohingya, some of which stretch back for decades. Though the investigators only interviewed refugees who had fled Rakhine State after October 2016, the interviews revealed years-long patterns of violence and widespread human rights violations targeted against the Rohingya, including curfews and movement restrictions, property and land confiscation, restricted access to food, marriage and family restrictions, religious persecution, extortion and threats of violence, forced labor, and regular beatings, rapes, and murder.

The investigation uncovers that a period of the most consistent persecution and escalating violence against the Rohingya began in 2012 and steadily intensified through the major attacks that began in August 2017 and culminated in the mass displacement of Rohingya to Bangladesh. Over these years, the violations and abuses against the Rohingya were predominantly perpetrated by the Myanmar armed forces—mainly the Tatmadaw-Army, but also the Border Guard Police, Combat Police Force, and Rakhine State Police.

The investigation further finds that, the military and police presence in and around Rohingya villages across northern Rakhine State increased noticeably in the weeks before the major systematic attacks of August–September 2017. This buildup of forces was accompanied by increasingly common raids and searches of Rohingya homes, seizures of cooking knives and other potential 'weapons,' public attacks on Rohingya women and religious leaders, mass detentions and beatings of young Rohingya men, regular interrogations and instances of torture, the removal of fences that might impede the progression of Myanmar armed forces, and a marked increase in killings, beatings, and other violent acts against the Rohingya.

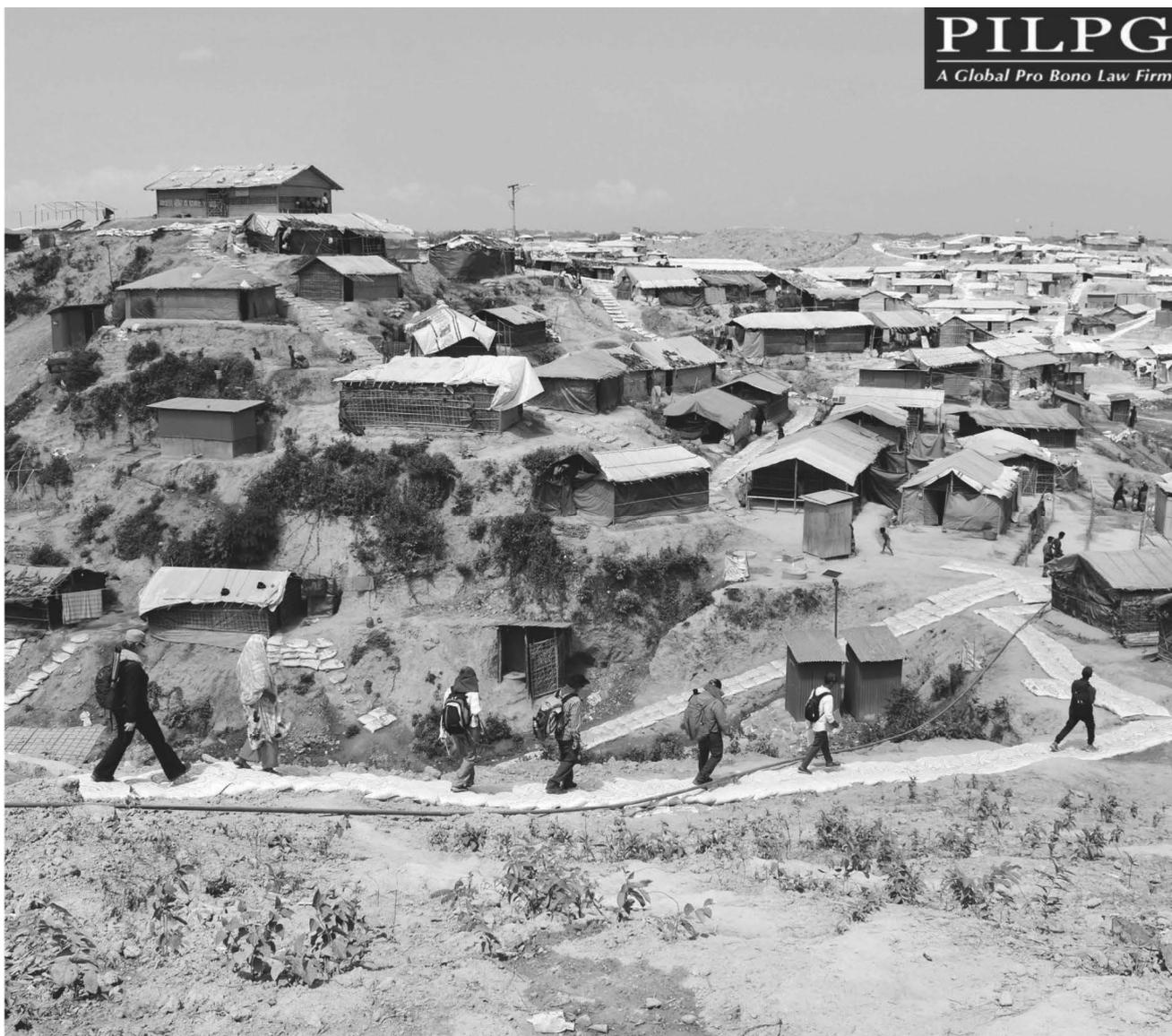
¹ United States Department of State, *Documentation of Atrocities in Northern Rakhine State* (2018), available at <https://www.state.gov/documents/organization/286307.pdf>.

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Public International Law & Policy Group, *Documenting Atrocity Crimes Committed Against the Rohingya in Myanmar's Rakhine State: Factual Findings & Legal Analysis Report*, December 2018

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THE PUBLIC INTERNATIONAL LAW & POLICY GROUP'S
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FACTUAL FINDINGS & LEGAL ANALYSIS

**DOCUMENTING ATROCITY CRIMES
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LEGAL ANALYSIS REPORT**

December 2018



PEACE NEGOTIATIONS
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Annex 312

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In preparing this Report, PILPG received substantial *pro bono* support, in the form of legal analysis, from **PRO BONO PARTNERS**. Specifically, *ORRICK, HERRINGTON & SUTCLIFFE, LLP* helped PILPG analyze each interview questionnaire, conduct a qualitative analysis of each documented interview and input those analyses into a database, and assisted PILPG with drafting a qualitative and legal analysis of the investigation's findings. In addition, *DENTONS, LLP* supported this project by providing a legal analysis of international adjudication of atrocity crimes in situations of mass deportation or displacement.

CHAPTER 3 BACKGROUND, CONTEXT, AND APPLIED METHODOLOGY OF PILPG'S INVESTIGATION MISSION

Following the mass displacement of the Rohingya into Bangladesh, PILPG undertook an investigation mission in the refugee camps in Eastern Bangladesh to document patterns of violence perpetrated in northern Rakhine State.

The methodology for the mission built upon previous investigation missions conducted in Darfur and South Sudan. The mission's target was to collect over 1,000 interviews from a statistically significant and random sample of respondents, throughout all the refugee camps and settlement areas in Eastern Bangladesh. In total, PILPG's investigation team conducted 1,024 interviews of Rohingya refugees in 34 refugee camps.

Key elements of the methodology included: (1) the assembly of a highly experienced team of international investigators and trained interpreters to conduct the mission; (2) the random selection of respondents throughout all the refugee camps and settlement areas; (3) interviewing only persons above the age of 18; (4) interviewing only respondents who had fled Myanmar since October 2016; (5) collecting only first-hand accounts of human rights violations suffered or witnessed (i.e., not documenting hearsay); (6) a standardized interview format and approach to information collection; and (7) interview coding according to alleged perpetrator, crime, and location. Although the investigation randomly selected all respondents for interviews, all 1,024 interviewees were Rohingya, which was expected, as the Rohingya make up the vast majority of residents in the camps. Specifically, almost all of the respondents came from three townships in northern Rakhine State in Myanmar: Maungdaw, Buthidaung and Rathedaung.¹⁴

The applied methodology was a hybrid, using a combination of classical survey and criminal investigation methods. By conducting interviews to a criminal investigation standard, the mission's aim was to document the totality of violent events occurring in northern Rakhine State since 2016.

The mission was conducted by a team of 18 highly experienced and trained international investigators from 11 countries. The team included former investigators from Darfur and South Sudan investigation missions, former prosecutors and investigators from a range of countries and international criminal tribunals, military and security experts, and international criminal accountability experts. Before starting the interviews, the investigators were trained on

¹⁴ Only four respondents came from other townships in Rakhine State: Kyautaw (two respondents), Ponnayun (one respondent), and Pauktaw (one respondent)

PART III

LEGAL ANALYSIS OF COLLECTED DOCUMENTATION

Part III analyzes whether, based on the documentation collected during the investigation mission, there are reasonable grounds to believe that crimes against humanity, genocide, and war crimes have been committed against the Rohingya in Myanmar's northern Rakhine State. PILPG's mission to investigate atrocities against the Rohingya represents one of the largest documentation efforts to date; as such, the authors of this Report consider this wealth of facts to merit a comprehensive legal analysis.

This legal analysis is intended primarily for policymakers and serves a dual purpose: (1) to provide guidance on the international legal ramifications of the investigation mission's factual findings and (2) to facilitate the formulation of effective measures to respond to the documented atrocities. The requisite first step in this process is determining what these facts represent within the realm of international law. Therefore, this Report analyzes crimes against humanity, genocide, and war crimes separately against the documentation collected during the investigation mission to determine whether the elements of the crimes are satisfied and ultimately whether the crimes have been committed.

In conducting its legal analysis, this Report assesses whether there are *reasonable grounds to believe* that crimes have been committed. This standard is applied by the International Criminal Court ("ICC") when deciding whether to open an investigation into alleged crimes within its jurisdiction, as well as by international fact-finding missions, notably those conducted by the UN.⁴⁴⁸ In practice, "reasonable grounds to believe that crimes have been committed" means that there are strong preliminary indications that crimes have been committed and further investigation is warranted. The application of this standard is particularly pertinent in the context of this Report because it does not require the identification of individual perpetrators, which is a task for subsequent investigations.⁴⁴⁹

⁴⁴⁸ See, e.g., *Report of the Independent International Fact-Finding Mission on Myanmar*, para 6, delivered to UN Human Rights Council, U N Doc A/HRC/39/64 (Aug 24, 2018)

⁴⁴⁹ There are a range of standards that can apply throughout international criminal proceedings, depending on how far advanced a case is. See, e.g., *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, Case No ICC-01/09, ICC Pre-Trial Chamber II, paras 27–35, (Mar 31, 2010)

Annex 313

Sphere Association, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, 2018 Edition

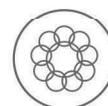
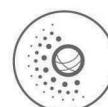
Available at:

<https://spherestandards.org/wp-content/uploads/Sphere-Handbook-2018-EN.pdf>

The Sphere Handbook

Humanitarian Charter and Minimum Standards in Humanitarian Response

 Sphere
2018 Edition



Annex 313

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1202 Geneva, Switzerland
Email: info@spherestandards.org
Website: www.spherestandards.org

First edition 2000
Second edition 2004
Third edition 2011
Fourth edition 2018

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www.spherestandards.org/handbook

The Sphere Project was initiated in 1997 by a group of NGOs and the Red Cross and Red Crescent Movement to develop a set of universal minimum standards in core areas of humanitarian response: The Sphere Handbook. The aim of the Handbook is to improve the quality of humanitarian response in situations of disaster and conflict, and to enhance the accountability of humanitarian action to crisis-affected people. The Humanitarian Charter and Minimum Standards in Humanitarian Response are the product of the collective experience of many people and agencies. They should therefore not be seen as representing the views of any one agency. In 2016, the Sphere Project was registered as the Sphere Association.

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Annex 314

Translators Without Borders, “Language: Our Collective Blind Spot in the Participation Revolution”, by A. Ansari, Executive Director of Translators Without Borders, *Translators Without Borders Blog*, 16 April 2018

Available at:

<https://translatorswithoutborders.org/blog/language-collective-blind-spot/>



Menu



Language: Our Collective Blind Spot in the Participation Revolution

Two years ago, I embarked on an amazing journey. I started working for Translators without Borders (TWB). While being a first-time Executive Director poses challenges, immersing myself in the world of language and language technology has by far been the more interesting and perplexing challenge.

Annex 314

Language: Our Collective Blind Spot in the Participation Revolution- TWB

able to understand simple written messages in Hausa or Kanuri; that went down to just 9% among less educated women who were second-language speakers of Hausa or Kanuri, yet 94% of internally displaced persons receive information chiefly in one of these languages.

- In Greece, TWB found that migrants relied on informal channels, such as smugglers, as their trusted sources of information in the absence of any other information they could understand.
- TWB research in Turkey in 2017 found that organizations working with refugees were often assuming they could communicate with them in Arabic. That ignores the over 300,000 people who are Kurds or from other countries.
- In Cox's Bazar, Bangladesh, aid organizations supporting the Rohingya refugees were working on the assumption that the local Chittagonian language was mutually intelligible with Rohingya, to which it is related. Refugees interviewed by TWB estimate there is a 70-80% convergence; words such as 'safe', 'pregnant' and 'storm' fall into the other 20-30%.

What can we do?

Humanitarian response is becoming increasingly digital. How do we build trust, even when remote from people affected by crises?

'They only hire Iranians to speak to us. They often can't understand what I'm saying and I don't trust them to say what I say.' – Dari-speaking Afghan man in Chios, Greece.

Speak to people in their language and use a format they

understand: communicating digitally – or any other way – will mean being even more sensitive to what makes people feel comfortable and builds trust. The right language is key to that. Communicating in the right

Annex 315

Translators Without Borders, *The language lesson: what we've learned about communicating with Rohingya refugees*, November 2018

Available at:

https://translatorswithoutborders.org/wp-content/uploads/2018/12/TWB_Bangladesh_Comprehension_Study_Nov2018.pdf



The language lesson:

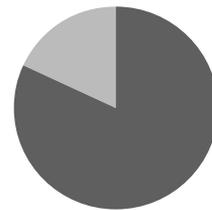
WHAT WE'VE LEARNED ABOUT
COMMUNICATING WITH ROHINGYA REFUGEES

November 2018

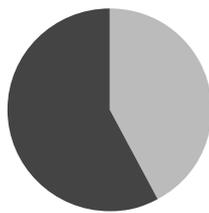


Who participated in the study?

407
respondents
from within the
**Kutupalong-
Balukhali**
expansion site.



82%
ARE NEW ARRIVALS.
Most of the population reached the camps
between August and October 2017.

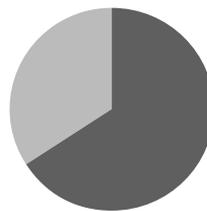


58% **42%**
WOMEN MEN

3 in 4 are 18
to 44 years old.



2 in 3 have no
formal education.



66%
REPORTED THAT
THEY CANNOT READ
OR WRITE.

So, what's the difference between Rohingya and Chittagonian anyway?

The Rohingya language is an oral language without a standardized and universally recognized written script. It is closely related to the Chittagonian dialect of Bangla, which is also an oral language. Chittagonian is the primary dialect spoken by the host population around Cox's Bazar.

Linguistic borders do not always follow political borders. Rohingya, Chittagonian, and Bangla are all eastern Indo-Aryan languages and have similarities. For example, all three lack grammatical gender and share a core vocabulary and syntax derived from Sanskrit.

Furthermore, all three languages gradually change over a continuum. This means that small differences between neighboring dialects become amplified over distance. Chittagonian speakers from the north of Chittagong district might find it difficult to understand a Rohingya speaker from southern Rakhine state. However, the Chittagonian spoken in Teknaf is very similar to the Rohingya spoken across the river (and border) in Maungdaw.

While their similarities are clear, their differences can be stark. The main difference between Chittagonian and Rohingya is the source of their recent loanwords, or the words they borrow from other languages. Chittagonian borrows from standard Bangla, whereas Rohingya more commonly borrows from Burmese, Rakhine, and Urdu.

You will also find other dialects within the Rohingya language. Recent arrivals may use more Burmese and Urdu terms, but Rohingya refugees who have lived in Bangladesh for 30 years have adopted more Chittagonian and Bangla terms and their dialect is generally more understandable by Chittagonian speakers.

For example, while the word for cyclone is pronounced similarly in Rohingya and Chittagonian (*tuan* and *tu-en* respectively), the words for danger (*mosibot* / *bifod-afod*), rescue (*bason* / *uddar*) and safe (*hefazot* / *nirafot*) are noticeably different. Emergency warnings broadcast in Chittagonian could therefore be misinterpreted, with potentially fatal consequences.

Annex 316

Translators Without Borders, “Rohingya language factsheet” (undated)

Available at:

https://translatorswithoutborders.org/wp-content/uploads/2018/06/RohingyaFactsheet_ENGLISH.pdf.pdf

ROHINGYA

language factsheet

Rohingya and Chittagonian are similar enough languages that speakers can broadly understand each other. However, differences in pronunciation and contact with other languages make certain words and concepts difficult to understand.



Rohingya is a spoken language without a standard written version. Attempts have been made to write Rohingya using Arabic, Urdu and Latin scripts, as well as Hanifi, a unique script developed for Rohingya.

Rohingya words related to humanitarian response (gender, protection, accountability, etc.) are often distinctly different from Bangla, and even from Chittagonian.

Literacy among male Rohingya refugees in 'second' languages, such as Bangla and Burmese, is around 10-15 %, and lesser so among women.



Avoid jargon and use plain English when communicating with interpreters and developing communication content. Words like consent, anonymous, compensate, and even confidentiality can be difficult to translate. Work with interpreters, programme staff, and local communities to build a common understanding of terminology.

Complement all written information with pictures, and use audio and video communication where possible.

Speak slowly and clearly to reduce misunderstanding. Ensure Chittagonian interpreters are aware of dialect differences. Refer to glossaries to aid communication.



This work was developed with the support of IOM, the UN migration agency, and is co-funded by the UK Department for International Development, UNICEF, and Oxfam.



Read the Rohingya Zuban story map for more information. <https://translatorswithoutborders.org/rohingya-zuban/>
Contact bangladesh@translatorswithoutborders.org for language needs in Bangladesh, or info@translatorswithoutborders.org to discuss overall language services and resources for communicating with communities in need.

Digging Deeper into **ROHINGYA**



Why does this matter?

Humanitarian information is ineffective if it is not understood. In the case of Rohingya refugees in Bangladesh, there are many areas of misunderstanding. For example, Rohingya and Chittagonian communities use different words for common concepts such as 'safety' and 'pregnancy.' Language and communication barriers can greatly reduce the quality of two-way dialogue between programme staff and community based volunteers, affecting vulnerable populations, particularly women, elderly and marginalised groups.

Are there Rohingya dialects?

Many interpreters aiding the humanitarian efforts are local Chittagonian speakers. Chittagonian, like Rohingya, is a spoken language with no written form. The Chittagonian spoken in the Cox's Bazar area is closely related to Rohingya, however there are some accent and pronunciation differences between the two. While Chittagonians consider their language to be a regional dialect of Bangla, it (like Rohingya), is not mutually intelligible with Bangla. If working with Chittagong interpreters from outside of Cox's Bazar district, it is important to make them aware of dialect differences.

Can Rohingyas understand Chittagonian?

Yes. Depending on what contact the community has had with other cultures influences the words they have adopted into their language. For instance, the language of the settled Rohingya refugees in Bangladesh has evolved over several decades to incorporate Chittagonian and Bangla words. Communities along the Rakhine coast also have exposure to Chittagonian. More urban Rohingya communities throughout the state have greater exposure to Rakhine and Burmese. As most Rohingya communities are deeply religious, they have also adopted many Arabic and Persian words into their daily vocabulary.

Do Rohingyas speak other languages?

In addition to Rohingya language, many Rohingya refugees are conversant in one or more of the following languages: Burmese, Rakhine, Chittagonian, Bangla, Urdu, and English. However, socioeconomics plays a large role in exposure and competence in these languages. Rohingya speakers who attended schools in Myanmar are more familiar with Burmese and English. Earlier refugees in Bangladesh can often speak Bangla. Women, who often have had no schooling, are far less likely to understand a second language.

How can TWB help ?

Translators without Borders (TWB) has set up a growing network of Rohingya, Chittagonian, Burmese, and Bangla translators and language experts who support organizations by identifying language barriers, simplifying text, providing audio and written translations, and humanitarian terminology development. TWB also hosts 'Interpreter Connect' training workshops and publishes resources to address linguistic concerns of the humanitarian community.

Annex 317

Xchange, Research on Migration, *The Rohingya Survey 2017*

Available at:

[http://xchange.org/reports/pdf/The Rohingya Survey 2017-xchange 02.pdf](http://xchange.org/reports/pdf/The_Rohingya_Survey_2017-xchange_02.pdf)



The Rohingya Survey

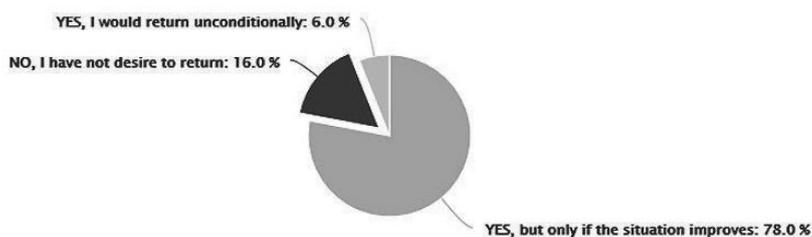
2017



There were multiple reports of the targeted murder of children and infants (5%). These reports appeared to demonstrate a total disregard for human life, as the security forces and civilian perpetrators stand accused of murdering babies and children by burning or drowning. The frequency with which such incidents were reported may demonstrate an intent to eradicate younger generations.

The final question of the survey asked the respondents if they would consider returning to Myanmar in the future. Despite the atrocious incidents documented in this survey, 78% stated that they would willingly return if the situation improves; 16% had no desire to return; 6% would return unconditionally.

Would you return to Myanmar?



Though attitudes can change with time, these responses demonstrate that the Rohingya refugees would be open to returning to their homes if conditions in Myanmar were to improve. What constitutes an adequate improvement to conditions in Myanmar, however, is a question that lies outside the scope of this survey. The large number of respondents willing to return to Myanmar can, in part, be explained by the fact that there are very few opportunities for Rohingya refugees in Bangladesh. Generations of Rohingya refugees living in the camps following previous expulsions from Myanmar continue to live in poverty without access to adequate services, and have limited mobility rights or opportunities for advancement.

Annex 318

Xchange, Research on Migration, *The Rohingya Survey 2019*

Available at:

<http://xchange.org/reports/TheRohingyaSurvey2019.html>

Annex 318

5/8/23, 11:25 PM

The Rohingya Survey 2019



“The Myanmar Government just know [how] to kill Muslims, they don't know to respect Muslims.”

42-year-old Rohingya female

“Not, because the Myanmar Government killed many people, burned many children, destroyed our future dreams, so I think the Government of Myanmar is a killer.”

30-year-old Rohingya female

“The Myanmar Government says one thing but does another thing.”

48-year-old Rohingya male

“Not at all, because the Myanmar Government planned to force us from our homeland and denied our citizenship rights. I think they are successful now and don't give the rights to the Rohingya who are still inside Myanmar.”

27-year-old Rohingya male

In the event that the Myanmar Government would provide the Rohingya with their rights in the next two years, the majority of the Rohingya would consider repatriation; with 93% of respondents saying that they would return to Myanmar. Disaggregated by sex however, even though males almost unanimously (99.8%) agreed to considering repatriation, females were more reluctant, with 13% no longer considering repatriation. This finding agrees with the fact that relatively fewer females (22%) believed that repatriation will happen in the next two years than males (34%).

Overall, 73% of Rohingya did not think that repatriation will happen in two years' time. This finding is quite different from the one in Xchange's Repatriation Survey, where to the same question, the majority, or 78%, thought repatriation would take place in the next two years. Rohingya have become less optimistic over time.

“The government of Myanmar hasn't accepted us for centuries - how can we believe they will recognize us in two years?”

29-year-old Rohingya male

Annex 318

5/8/23, 11:25 PM

The Rohingya Survey 2019



27-year-old Rohingya male



[Where will you be in six months?](#) - © Xchange.org 2019

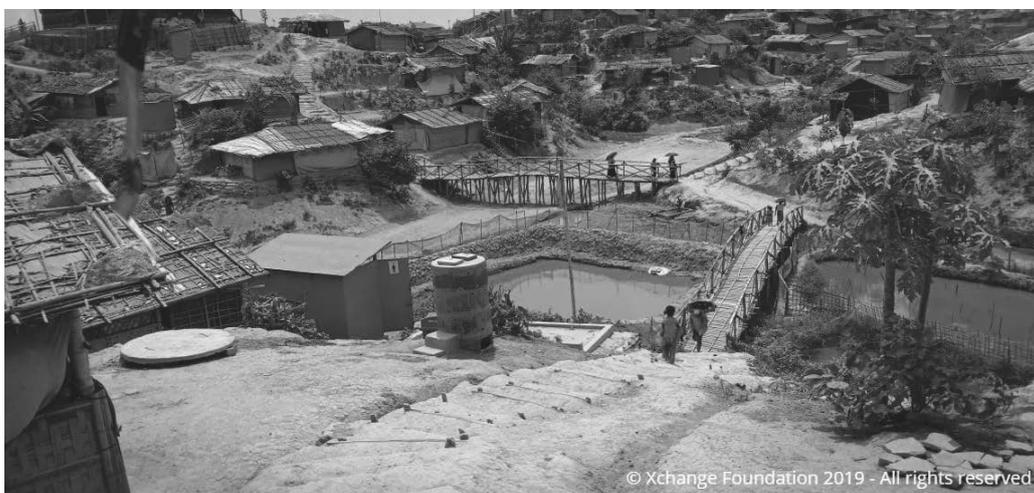
Respondents were asked to imagine where they will be in six months from the time the survey took place, which corresponds to the end of the 2019 monsoon season. Several aspired to the idea of living in a place where they felt safe and respected, including returning to Myanmar.

“I will be in another place where I will get my human rights.”

33-year-old Rohingya female

“If the international community helps us then I will be at my motherland in six months.”

25-year-old Rohingya female



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Camp 8W

However, the vast majority was confident they would still be residing in their current refugee camp.

“We, Rohingya, don’t have a place to go anywhere.”

30-year-old Rohingya male

**CONSTITUTIONS AND
LEGISLATION OF OTHER
STATES**

Annex 319

Canada, Criminal Code, RSC 1985, c C-46, section 318

Available at:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/page-42.html#h-121176>

Annex 319

Criminal Code

discretion, give a direction or opinion to the jury on the matter in issue as in other criminal proceedings, and the jury may, on the issue, find a special verdict.

R.S., c. C-34, s. 281.

Hate Propaganda

Advocating genocide

318 (1) Every person who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Definition of *genocide*

(2) In this section, ***genocide*** means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

- (a)** killing members of the group; or
- (b)** deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

Consent

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

Definition of *identifiable group*

(4) In this section, ***identifiable group*** means any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.

R.S., 1985, c. C-46, s. 318; 2004, c. 14, s. 1; 2014, c. 31, s. 12; 2017, c. 13, s. 3; [2019, c. 25, s. 120](#).

[Previous Version](#)

Public incitement of hatred

319 (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

- (a)** an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b)** an offence punishable on summary conviction.

Wilful promotion of hatred

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

- (a)** an indictable offence and is liable to imprisonment for a term not exceeding two years; or

Annex 320

Canada, Crimes Against Humanity and War Crimes Act, SC 2000, c 24,
preamble and section 4

Available at:

<https://www.canlii.org/en/ca/laws/stat/sc-2000-c-24/latest/sc-2000-c-24.html?resultIndex=1>

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SC 2000, c 24 | Crimes Against Humanity and War Crimes Act | CanLII



Home > Canada (Federal) > Consolidated Statutes > SC 2000, c 24

Français | English

Find in document

Crimes Against Humanity and War Crimes Act, SC 2000, c 24

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Amendments (2)

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Stable link to this
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retrieved on 2023-04-25

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<https://www.canlii.org/en/ca/laws/stat/sc-2000-c-24/latest/sc-2000-c-24.html?resultIndex=1>[25/04/2023 13:40:24]

Annex 320

SC 2000, c 24 | Crimes Against Humanity and War Crimes Act | CanLII

Crimes Against Humanity and War Crimes Act

S.C. 2000, c. 24

Assented to 2000-06-29

An Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Crimes Against Humanity and War Crimes Act*.



Interpretation

Definitions

2 (1) The definitions in this subsection apply in this Act.



conventional international law means any convention, treaty or other international agreement

(a) that is in force and to which Canada is a party; or

(b) that is in force and the provisions of which Canada has agreed to accept and apply in an armed conflict in which it is involved. (*droit international conventionnel*)

International Criminal Court means the International Criminal Court established by the Rome Statute. (*Cour pénale internationale*)

official, in respect of the International Criminal Court, means the Prosecutor, Registrar, Deputy Prosecutor and Deputy Registrar, and the staff of the organs of the Court. (*fonctionnaire*)

Rome Statute means the Rome Statute of the International Criminal Court adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998, as corrected by the *procès-verbaux* of November 10, 1998, July 12, 1999, November 30, 1999 and May 8, 2000, portions of which are set out in the schedule. (*Statut de Rome*)

Words and Expressions

(2) Unless otherwise provided, words and expressions used in this Act have the same meaning as in the *Criminal Code*.

Her Majesty

Binding on Her Majesty

3 This Act is binding on Her Majesty in right of Canada or a province.



<https://www.canlii.org/en/ca/laws/stat/sc-2000-c-24/latest/sc-2000-c-24.html?resultIndex=1>[25/04/2023 13:40:24]

Offences Within Canada

Genocide, etc., committed in Canada

4 (1) Every person is guilty of an indictable offence who commits

- (a) genocide;
- (b) a crime against humanity; or
- (c) a war crime.



Conspiracy, attempt, etc.

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.

Punishment

(2) Every person who commits an offence under subsection (1) or (1.1)

- (a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and
- (b) is liable to imprisonment for life, in any other case.

Definitions

(3) The definitions in this subsection apply in this section.

crime against humanity means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (*crime contre l'humanité*)

genocide means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (*génocide*)

war crime means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (*crime de guerre*)

Interpretation — customary international law

(4) For greater certainty, crimes described in Articles 6 and 7 and paragraph 2 of Article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law. This does not limit or prejudice in any way the application of existing or developing rules of international law.

Breach of responsibility by military commander

Annex 321

France, Constitution, Articles 15 and 17

English version available at:

https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf

French version available at:

<https://www.conseil-constitutionnel.fr/sites/default/files/2021-09/constitution.pdf>

C O N S T I T U T I O N
O F O C T O B E R 4 ,
1 9 5 8

Annex 321

Conseillers d'État, the *Grand Chancelier de la Légion d'Honneur*, Ambassadors and Envoys Extraordinary, *Conseillers Maîtres* of the *Cour des Comptes*, Prefects, State representatives in the overseas communities to which article 74 applies and in New Caledonia, highest-ranking Military Officers, *Recteurs des Académies* and Directors of Central Government Departments shall be appointed in the Council of Ministers.

An Institutional Act shall determine the other posts to be filled at meetings of the Council of Ministers and the manner in which the power of the President of the Republic to make appointments may be delegated by him to be exercised on his behalf.

An Institutional Act shall determine the posts or positions, other than those mentioned in the third paragraph, concerning which, on account of their importance in the guaranteeing of the rights and freedoms or the economic and social life of the Nation, the power of appointment vested in the President of the Republic shall be exercised after public consultation with the relevant standing committee in each House. The President of the Republic shall not make an appointment when the sum of the negative votes in each committee represents at least three fifths of the votes cast by the two committees. Statutes shall determine the relevant standing committees according to the posts or positions concerned.

ARTICLE 14.

The President of the Republic shall accredit ambassadors and envoys extraordinary to foreign powers; foreign ambassadors and envoys extraordinary shall be accredited to him.

ARTICLE 15.

The President of the Republic shall be Commander-in-Chief of the Armed Forces. He shall preside over the higher national defence councils and committees.

ARTICLE 16.

Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the Houses of Parliament and the Constitutional Council.

He shall address the Nation and inform it of such measures.

The measures shall be designed to provide the constitutional public authorities as swiftly as possible, with the means to carry out their duties. The Constitutional Council shall be consulted with regard to such measures.

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Parliament shall sit as of right.

The National Assembly shall not be dissolved during the exercise of such emergency powers.

After thirty days of the exercise of such emergency powers, the matter may be referred to the Constitutional Council by the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators, so as to decide if the conditions laid down in paragraph one still apply. The Council shall make its decision publicly as soon as possible. It shall, as of right, carry out such an examination and shall make its decision in the same manner after sixty days of the exercise of emergency powers or at any moment thereafter.

ARTICLE 17.

The President of the Republic is vested with the power to grant individual pardons.

ARTICLE 18.

The President of the Republic shall communicate with the two Houses of Parliament by messages which he shall cause to be read aloud and which shall not give rise to any debate.

He may take the floor before Parliament convened in Congress for this purpose. His statement may give rise, in his absence, to a debate without vote.

When not in session, the Houses of Parliament shall be convened especially for this purpose.

ARTICLE 19.

Instruments of the President of the Republic, other than those provided for under articles 8 (paragraph one), 11, 12, 16, 18, 54, 56 and 61, shall be countersigned by the Prime Minister and, where required, by the ministers concerned.

Title III

THE GOVERNMENT

ARTICLE 20.

The Government shall determine and conduct the policy of the Nation.

It shall have at its disposal the civil service and the armed forces.

It shall be accountable to Parliament in accordance with the terms and procedures set out in articles 49 and 50.

Annex 322

France, *Code pénal*, Article 211-1

Available at:

[https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/
LEGISCTA000006165393/#LEGISCTA000006165393](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165393/#LEGISCTA000006165393)



Code pénal

Version en vigueur au 24 avril 2023

Partie législative (Articles 111-1 à 727-3)
Livre II : Des crimes et délits contre les personnes (Articles 211-1 à 227-33)
Titre 1er : Des crimes contre l'humanité et contre l'espèce humaine (Articles 211-1 à 215-3)
Sous-titre 1er : Des crimes contre l'humanité (Articles 211-1 à 213-4-1)
Chapitre 1er : Du génocide (Articles 211-1 à 211-2)

Article 211-1

Modifié par Loi n°2004-800 du 6 août 2004 - art. 28 () JORF 7 août 2004

Constitue un génocide le fait, en exécution d'un plan concerté tendant à la destruction totale ou partielle d'un groupe national, ethnique, racial ou religieux, ou d'un groupe déterminé à partir de tout autre critère arbitraire, de commettre ou de faire commettre, à l'encontre de membres de ce groupe, l'un des actes suivants :

- atteinte volontaire à la vie ;
- atteinte grave à l'intégrité physique ou psychique ;
- soumission à des conditions d'existence de nature à entraîner la destruction totale ou partielle du groupe ;
- mesures visant à entraver les naissances ;
- transfert forcé d'enfants.

Le génocide est puni de la réclusion criminelle à perpétuité.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables au crime prévu par le présent article.

Article 211-2

Création LOI n°2010-930 du 9 août 2010 - art. 1

La provocation publique et directe, par tous moyens, à commettre un génocide est punie de la réclusion criminelle à perpétuité si cette provocation a été suivie d'effet.

Si la provocation n'a pas été suivie d'effet, les faits sont punis de sept ans d'emprisonnement et de 100 000 € d'amende.

Annex 323

The Gambia, Sexual Offences Act, 2013, sections 4 and 5

Available at:

<https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5d1d654749d9a70001826156/1562207562046/Sexual+Offences+Act+2013.pdf>

Sexual Offences Act, 2013



**THE GAMBIA
NO. 15 OF 2013
Assented to by The President,**

this 30th day of Dec, 2013



**YAHYA A. J. J. JAMMEH
President**

AN ACT to amend the law and procedure relating to the trial of rape and other sexual offences and for connected matters

[]

ENACTED by the President and National Assembly.

1. Short title, commencement and application

(1) This Act may be cited as the Sexual Offences Act, 2013, and shall come into force on such date as the Minister may appoint by order published in the gazette.

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Sexual Offences Act, 2013

- (ii) Intoxicating liquor or any drug or other substance which mentally incapacitates the complainant, or
- (iii) Sleep, to such an extent that the complainant is rendered incapable of understanding the nature of the sexual act or is deprived of the opportunity to communicate unwillingness to submit to or to commit the sexual act;
- (g) circumstances where the complainant submits to or commits the sexual act by reason of having been induced (whether verbally or through conduct) by the perpetrator, or by some other person to the knowledge of the perpetrator, to believe that the perpetrator or the person with whom the sexual act is being committed, is some other person;
- (h) circumstances where as a result of the fraudulent misrepresentation of some fact by, or any fraudulent conduct on the part of, the perpetrator, or by or on the part of some other person to the knowledge of the perpetrator, the complainant is unaware that a sexual act is being committed with him or her;
- (l) circumstances where the presence of more than one person is used to intimidate the complainant.

(3) For the purposes of this section, rape shall not apply to married couples.

4 Penalties.

(1) A person who is convicted of rape under this act, subject to sub-section (2), (3) and (4), is liable

- (a) In case of the first conviction-
 - (i) where the rape is committed under circumstances other the circumstances contemplated in sub-paragraphs (ii) and (iii), to imprisonment for not less than ten years;
 - (ii) Where the rape is committed under any of the coercive circumstances referred to in paragraphs (a), (b) or (e) of section 3(2), to imprisonment for not less than fifteen years;

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Sexual Offences Act, 2013

- (iii) Where
 - (aa) the complainant has suffered grievous bodily or mental harm as a result of the rape,
 - (bb) the complainant is under the age of thirteen years or is by reason of age exceptionally vulnerable.
 - (cc) the complainant is under the age of eighteen years and the perpetrator is the complainant's parent, guardian or caretaker or is otherwise in a position of trust or authority over the complainant,
 - (dd) the convicted person is infected with any serious sexually transmitted disease and at the time of the commission of the rape knows that he or she is so infected,
 - (ee) the convicted person uses a firearm or anyother weapon for the purpose of or in connection with the commission of the rape,

to mandatory imprisonment for life;

- (b) In case of a second or subsequent conviction where the rape is committed under circumstances described in sub-section (1), to imprisonment for a period of not less than twenty years.

(2) If the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the applicable sentence prescribed in sub-section (1), it shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.

(3) The minimum sentences prescribed in sub-section (1) shall not be applicable in respect of a convicted person who was under the age of eighteen years at the time of the commission of the rape and the court may such circumstances, impose an appropriate sentence.

(5) Defilement of girl between the ages of sixteen and eighteen years

(1) A person who unlawfully has carnal knowledge of a girl between the ages of sixteen and eighteen commits an offence

Annex 323

and is liable on conviction to imprisonment not exceeding seven years.

(2) It is a sufficient defence to a charge under this section if it is proved before the court that the accused person had reasonable cause to believe and did in fact believe that the girl was of or above the age of eighteen.

6. Incapability of boy under fourteen years

(1) If in any legal proceedings, the question arises as to whether a male person has had sexual intercourse or has performed

- (a) an act of a sexual nature with another person or is the father of any child, such question shall be determined as a question of fact; and
- (b) no presumption or rule of law to the effect that a boy under the age of fourteen years is incapable of sexual intercourse shall be applicable.

(2) The criminal capacity of an accused under the age of fourteen years who is charged with an offence of a sexual nature shall be determined in the same manner as the criminal capacity of an accused under the age of fourteen years who is charged with any other offence.

7. Abolition of cautionary rule

A court shall not treat the evidence of any complainant in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature with special caution because the accused is charged with any such offence.

8. Evidence of previous consistent statements

(1) Evidence relating to all previous consistent statements by a complainant shall be admissible in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature.

(2) An inference shall not be drawn only from the fact that no such previous statements have been made.

9. Evidence of period of delay

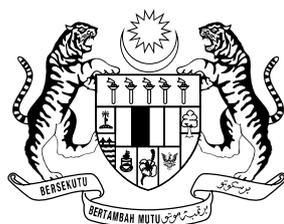
In criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature, the court shall not draw any inference only from the length of the delay between the

Annex 324

Malaysia, Federal Constitution, 1957, Article 153

Available at:

https://www.constituteproject.org/constitution/Malaysia_2007.pdf?lang=en



FEDERAL CONSTITUTION

REPRINT

As at 15 October 2020

PRINTED WITH THE CONSENT
OF THE YANG DI-PERTUAN AGONG
PURSUANT TO ARTICLE 160A OF THE
FEDERAL CONSTITUTION

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FEDERAL CONSTITUTION

| | | | | |
|---------------------------------------------------------------------------------|-----|-----|-----|-------------------------------------------------------|
| First introduced as the Constitution of the Federation of Malaya on Merdeka Day | ... | ... | ... | 31 August 1957 |
| Subsequently introduced as the Constitution of Malaysia on Malaysia Day | ... | ... | ... | 16 September 1963 |
| Latest amendment made by Act A1603 which came into operation on | ... | ... | ... | 11 September 2019 except section 3 of Act A1603 |

PREVIOUS REPRINTS

| | | | | |
|---------------------------|-----|-----|-----|------|
| <i>First Reprint</i> | ... | ... | ... | 1958 |
| <i>Second Reprint</i> | ... | ... | ... | 1962 |
| <i>Third Reprint</i> | ... | ... | ... | 1964 |
| <i>Fourth Reprint</i> | ... | ... | ... | 1968 |
| <i>Fifth Reprint</i> | ... | ... | ... | 1970 |
| <i>Sixth Reprint</i> | ... | ... | ... | 1977 |
| <i>Seventh Reprint</i> | ... | ... | ... | 1978 |
| <i>Eighth Reprint</i> | ... | ... | ... | 1982 |
| <i>Ninth Reprint</i> | ... | ... | ... | 1988 |
| <i>Tenth Reprint</i> | ... | ... | ... | 1992 |
| <i>Eleventh Reprint</i> | ... | ... | ... | 1994 |
| <i>Twelfth Reprint</i> | ... | ... | ... | 1997 |
| <i>Thirteenth Reprint</i> | ... | ... | ... | 2002 |
| <i>Fourteenth Reprint</i> | ... | ... | ... | 2003 |
| <i>Fifteenth Reprint</i> | ... | ... | ... | 2006 |
| <i>Sixteenth Reprint</i> | ... | ... | ... | 2010 |

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
2020

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[ARTICLE 152]

Federal Constitution

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(2) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the English language may be used in both Houses of Parliament, in the Legislative Assembly of every State, and for all other official purposes.

(3) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the authoritative texts—

(a) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament; and

(b) of all Acts of Parliament and all subsidiary legislation issued by the Federal Government,

shall be in the English language.

(4) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, all proceedings in the Federal Court, the Court of Appeal or a High Court shall be in the English language:

Provided that, if the Court and counsel on both sides agree, evidence taken in the language spoken by the witness need not be translated into or recorded in English.

(5) Notwithstanding the provisions of Clause (1), until Parliament otherwise provides, all proceedings in subordinate courts, other than the taking of evidence, shall be in the English language.

(6) In this Article, “official purpose” means any purpose of the Government, whether Federal or State, and includes any purpose of a public authority.

Reservation of quotas in respect of services, permits, etc., for Malays and natives of any of the States of Sabah and Sarawak

153. (1) It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.

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NOTES

Art. 152—(cont.)

3. *See* Art. 161(1).

4. The words “Federal Court, the Court of Appeal” substituted for the words “Supreme Court” by Act A885, section 37, in force from 24-06-1994.

Clause (5): See Art. 161(1).

Clause (6): Inserted by Act A30, section 5, in force from 10-03-1971.

Art. 153

See Art. 38(5), 159(5), 161A(2), (3) & (4).

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[ARTICLE 153]

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(2) Notwithstanding anything in this Constitution, but subject to the provisions of Article 40 and of this Article, the Yang di-Pertuan Agong shall exercise his functions under this Constitution and federal law in such manner as may be necessary to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and to ensure the reservation for Malays and natives of any of the States of Sabah and Sarawak of such proportion as he may deem reasonable of positions in the public service (other than the public service of a State) and of scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government and, when any permit or licence for the operation of any trade or business is required by federal law, then, subject to the provisions of that law and this Article, of such permits and licences.

(3) The Yang di-Pertuan Agong may, in order to ensure in accordance with Clause (2) the reservation to Malays and natives of any of the States of Sabah and Sarawak of positions in the public service and of scholarships, exhibitions and other educational or training privileges or special facilities, give such general directions as may be required for that purpose to any Commission to which Part X applies or to any authority charged with responsibility for the grant of such scholarships, exhibitions or other educational or training privileges or special facilities; and the Commission or authority shall duly comply with the directions.

(4) In exercising his functions under this Constitution and federal law in accordance with Clauses (1) to (3) the Yang di-Pertuan Agong shall not deprive any person of any public office held by him or of the continuance of any scholarship, exhibition or other educational or training privileges or special facilities enjoyed by him.

(5) This Article does not derogate from the provisions of Article 136.

(6) Where by existing federal law a permit or licence is required for the operation of any trade or business the Yang di-Pertuan Agong may exercise his functions under that law in such manner, or give such general directions to any authority charged under that law with the grant of such permits or licences, as may be required to ensure the reservation of such proportion of such permits or licences for Malays and natives of any of the States of Sabah and

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Art. 153—(cont.)

Clause (2): See Art. 161A(1) & (2).

Clauses (3), (4) & (5): See Art. 161A(1).

Clauses (1), (2), (3), (6) & (8)

- a. The words “and natives of any of the Borneo States” were inserted after the word “Malays” by Act A30, paragraph 6(a), in force from 10-03-1971.
- b. The words “the States of Sabah and Sarawak” substituted for the words “the Borneo States” by Act A354, section 43, in force from 27-08-1976.

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[ARTICLE 153]

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Sarawak as the Yang di-Pertuan Agong may deem reasonable; and the authority shall duly comply with the directions.

(7) Nothing in this Article shall operate to deprive or authorize the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him or to authorize a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of a person any permit or licence when the renewal or grant might reasonably be expected in the ordinary course of events.

(8) Notwithstanding anything in this Constitution, where by any federal law any permit or licence is required for the operation of any trade or business, that law may provide for the reservation of a proportion of such permits or licences for Malays and natives of any of the States of Sabah and Sarawak; but no such law shall for the purpose of ensuring such a reservation—

- (a) deprive or authorize the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him; or
- (b) authorize a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of any person any permit or licence when the renewal or grant might in accordance with the other provisions of the law reasonably be expected in the ordinary course of events, or prevent any person from transferring together with his business any transferable licence to operate that business; or
- (c) where no permit or licence was previously required for the operation of the trade or business, authorize a refusal to grant a permit or licence to any person for the operation of any trade or business which immediately before the coming into force of the law he had been *bona fide* carrying on, or authorize a refusal subsequently to renew to any such person any permit or licence, or a refusal to grant to the heirs, successors or assigns of any such person any such permit or licence when the renewal or grant might in accordance with the other provisions of that law reasonably be expected in the ordinary course of events.

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(8A) Notwithstanding anything in this Constitution, where in any University, College and other educational institution providing education after Malaysian Certificate of Education or its equivalent, the number of places offered by the authority responsible for the management of the University, College or such educational institution to candidates for any course of study is less than the number of candidates qualified for such places, it shall be lawful for the Yang di-Pertuan Agong by virtue of this Article to give such directions to the authority as may be required to ensure the reservation of such proportion of such places for Malays and natives of any of the States of Sabah and Sarawak as the Yang di-Pertuan Agong may deem reasonable; and the authority shall duly comply with the directions.

(9) Nothing in this Article shall empower Parliament to restrict business or trade solely for the purpose of reservations for Malays and natives of any of the States of Sabah and Sarawak.

(9A) In this Article the expression “natives” in relation to the State of Sabah or Sarawak shall have the meaning assigned to it in Article 161A.

(10) The Constitution of the State of any Ruler may make provision corresponding (with the necessary modifications) to the provisions of this Article.

Federal capital

154. (1) Until Parliament otherwise determines, the municipality of Kuala Lumpur shall be the federal capital.

(2) Notwithstanding anything in Part VI, Parliament shall have exclusive power to make laws with respect to the boundaries of the federal capital.

(3) (*Repealed*).

Commonwealth reciprocity

155. (1) Where the law in force in any other part of the Commonwealth confers upon citizens of the Federation any right or privilege it shall be lawful, notwithstanding anything in this Constitution, for Parliament to confer a similar right or privilege upon citizens of that part of the Commonwealth who are not citizens of the Federation.

Annex 325

United States of America, Constitution, Article II, Section 2

Available at:

<https://uscode.house.gov/static/constitution.pdf>

CONSTITUTION OF THE UNITED STATES OF AMERICA—1787¹

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE. I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

¹This text of the Constitution follows the engrossed copy signed by Gen. Washington and the deputies from 12 States. The small superior figures preceding the paragraphs designate clauses, and were not in the original and have no reference to footnotes.

In May 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the Second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of Government under the new Con-

SECTION. 2. ¹The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

²No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

³Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.² The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

⁴When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

⁵The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. ¹The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof,³ for six Years; and each Senator shall have one Vote.

stitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 25, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1790. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of Congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States."

²The part of this clause relating to the mode of apportionment of representatives among the several States has been affected by section 2 of amendment XIV, and as to taxes on incomes without apportionment by amendment XVI.

³This clause has been affected by clause 1 of amendment XVII.

²Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.⁴

³No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

⁴The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

⁵The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

⁶The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

⁷Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. ¹The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

²The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December,⁵ unless they shall by Law appoint a different Day.

SECTION. 5. ¹Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

²Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

³Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their

Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

⁴Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. ¹The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.⁶ They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

²No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. ¹All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

²Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

³Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. ¹The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Ex-

⁴This clause has been affected by clause 2 of amendment XVIII.

⁵This clause has been affected by amendment XX.

⁶This clause has been affected by amendment XXVII.

cises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

²To borrow Money on the credit of the United States;

³To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

⁴To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

⁵To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

⁶To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

⁷To establish Post Offices and post Roads;

⁸To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

⁹To constitute Tribunals inferior to the supreme Court;

¹⁰To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

¹¹To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

¹²To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

¹³To provide and maintain a Navy;

¹⁴To make Rules for the Government and Regulation of the land and naval Forces;

¹⁵To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

¹⁶To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

¹⁷To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

¹⁸To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. ¹The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

²The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of

Rebellion or Invasion the public Safety may require it.

³No Bill of Attainder or ex post facto Law shall be passed.

⁴No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.⁷

⁵No Tax or Duty shall be laid on Articles exported from any State.

⁶No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

⁷No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

⁸No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. ¹No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

²No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

³No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE. II.

SECTION. 1. ¹The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

²Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

³The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall

⁷This clause has been affected by amendment XVI.

make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.⁸

⁴The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

⁵No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

⁶In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office,⁹ the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

⁷The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

⁸Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION. 2. ¹The President shall be Commander in Chief of the Army and Navy of the

United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

²He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

³The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE. III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. ¹The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;¹⁰—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different

⁸This clause has been superseded by amendment XII.

⁹This clause has been affected by amendment XXV.

¹⁰This clause has been affected by amendment XI.