



**“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
RIGHTS**

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.

TABLE OF CONTENTS

SUMMARY	10
METHODOLOGY	29
CHRONOLOGY OF EVENTS: AUGUST 2016 - JULY 2018	31
BACKGROUND	35
I. PREPARATIONS FOR ATROCITY CRIMES BETWEEN OCTOBER 2016 AND AUGUST 2017	41
Confiscating Sharp and Blunt Objects from Rohingya Civilians	41
Training and Arming Non-Rohingya Citizens	43
Avoidable Deprivations in Food and other Aid	46
Build-Up of State Security Forces in Northern Rakhine State	49
Other Human Rights Violations	50
II. ROHINGYA MILITANT ATTACKS ON AUGUST 25, 2017.	53
III. CRIMINAL ACTS AGAINST ROHINGYA BY CIVILIAN PERPETRATORS SINCE AUGUST 25, 2017	55
Murder	55
Looting and Destruction of Property	58
IV. CRIMINAL ACTS AGAINST ROHINGYA BY STATE SECURITY FORCES SINCE AUGUST 25, 2017	59
Murder	60
Throats Slit and Fatal Knife Wounds	60
Burned to Death	62
Indiscriminate and Targeted Shootings	62
Killings of Children and Infants	66
Burials and Burnings of Bodies	67
Rape and Sexual Violence	68
Landmines	69
Forced Displacement	70
Destruction of Homes, Civilian Structures, and Means of Subsistence	70
Destruction of Food Sources and Avoidable Deprivations in Aid.	71
V. HUMAN RIGHTS ABUSES BY ROHINGYA MILITANTS.	73
Murder	73
Criminal Responsibility	75
Threats and Intimidation.	76
Restrictions on Freedom of Movement.	77

VI. INTERNATIONAL LEGAL FRAMEWORK: GENOCIDE AND CRIMES AGAINST HUMANITY.	81
Genocide.	81
Prohibited Acts of Genocide	82
Protected Groups	86
Intent to Destroy	90
Crimes Against Humanity	102
Prohibited Acts of Crimes Against Humanity	103
The Contextual Element of Crimes Against Humanity	110
VII. ASSESSING CRIMINAL LIABILITY FOR GENOCIDE AND CRIMES AGAINST HUMANITY.	117
Command Responsibility for Commanders.	118
A Military or Military-Like Commander	118
Effective Command and Control or Effective Authority and Control Over Forces	118
Failure to Exercise Control Over Forces.	120
Knowledge of the Crimes	121
Modes of Liability.	125
Direct or Indirect Perpetration or Co-Perpetration of Crime(s)	125
Ordering, Soliciting or Inducing the Commission of Crime(s)	128
Aiding, Abetting or Otherwise Assisting in the Commission of Crime(s)	129
Substantially Contributing to the Commission of Crime(s).	129
Inciting Others to Commit Genocide	130
The Chain of Command: Individuals Who Should be Subject to Investigation and Possibly Prosecution	131
VIII. ROHINGYA HUMAN RIGHTS DEFENDERS	135
IX. RECOMMENDATIONS.	139
To the Government of the Republic of the Union of Myanmar.	139
To the United Nations Security Council.	140
To the United Nations Human Rights Council and the United Nations General Assembly	140
To the United Nations Country Teams in Myanmar and Bangladesh	140
To Member States of the Association of Southeast Asian Nations (ASEAN).	141
To the Government of Malaysia	141
To the International Community, Including Canada, the United States of America, the European Union, Australia, Japan, Korea, the Organization for Islamic Cooperation, and others.	141
To the Arakan Rohingya Salvation Army	142

ANNEX A: MYANMAR ARMY-LED “CLEARANCE OPERATIONS” FROM OCTOBER TO DECEMBER 2016 IN MAUNGDAW TOWNSHIP, RAKHINE STATE 143

Criminal Acts Against Rohingya, October to December 2016 143

- Murder 143
- Throats Slit and Fatal Knife Wounds 144
- Burned to Death 145
- Indiscriminate and Targeted Gunfire 146
- Killings of Children and Infants 148
- Burials and Burnings of Bodies 149
- Rape and Sexual Violence 150
- Testimony of Medical Doctors, Physicians, and Aid Workers 152
- Body Searches 153
- Arbitrary Mass Arrests and Enforced Disappearances 153
- Forced Displacement 154
- Destruction of Homes and Civilian Structures 155
- Destruction of Religious Structures 156
- Destruction and Confiscation of Means of Subsistence 157
- Multiple Internal Displacement and Refugee Flight 158

ACKNOWLEDGEMENTS 160



Noor Haba, 11, carries her family's belongings to Shamlapur Beach in Bangladesh after the boat she traveled on from Maungdaw Township, Myanmar arrived safely at 8:43 a.m.
Patrick Brown © Panos/UNICEF 2018





SUMMARY

The United Nations Office on Genocide Prevention has found that genocide and crimes against humanity are “processes that take time to plan, coordinate and implement.” These crimes do not occur spontaneously or as isolated events; they require resources and decisions by people in positions of power.

The dominant narrative accepted internationally about what occurred in Myanmar’s northern Rakhine State in 2017 suggests that Rohingya militants attacked dozens of police outposts, instigating a spontaneous Myanmar Army-led crackdown against Rohingya civilians, forcibly displacing hundreds of thousands to Bangladesh.

This report documents and reveals a sinister subplot: Myanmar authorities made extensive and systematic preparations for the commission of mass atrocity crimes against indigenous Rohingya civilians during the weeks and months before Rohingya-militant attacks on August 25, 2017.

▲
Mohammad F., 15, receives treatment at Cox’s Bazar General Hospital. The Myanmar Army opened fire on him as he fled his village in September 2017, shooting his arm clean off. His uncle covered the wound with medicinal leaves while they hid in the jungle for five weeks before arriving in Bangladesh. He is with his brother, 10, and sister, 7; their parents’ whereabouts are unknown.

Patrick Brown © Panos/UNICEF 2018

While the Myanmar authorities have subjected Rohingya to widespread and systematic human rights violations for decades, the Myanmar Army's preparations for the most recent attacks on civilians in northern Rakhine State occurred between October 2016 and August 2017. On October 9, 2016, Rohingya men and boys armed mostly with sticks and knives attacked three police outposts, reportedly killing nine police and sparking a Myanmar Army-led attack on Rohingya civilians in approximately 40 villages in Maungdaw Township, displacing more than 94,000 civilians.

Following that wave of brutal violence, the international community failed to act, and Myanmar officialdom evidently took note: The military, administrative, and civilian authorities subsequently made a series of decisions and enacted several measures that contributed to the commission of the crime of genocide and crimes against humanity beginning August 25, 2017.

Specifically, this report documents how, between October 2016 and August 2017, Myanmar authorities:

- **SYSTEMATICALLY “DISARMED”** Rohingya civilians, confiscating household items that might be used as weapons or in self-defense.
- **SYSTEMATICALLY TORE DOWN** fencing and other structures around Rohingya homes, providing the military with a greater line-of-sight on civilians.
- **TRAINED AND ARMED** local non-Rohingya communities in northern Rakhine State.



Lifeless bodies of Rohingya children and adult refugees are transported after their boat from Myanmar capsized off Inani Beach near Cox's Bazar, Bangladesh, September 28, 2017. More than 100 Rohingya were on board.

Patrick Brown © Panos/UNICEF 2018





Rohingya refugees from Myanmar walk through paddy fields and flooded land upon arriving in Bangladesh.

Patrick Brown © Panos/UNICEF 2018

- **SUSPENDED HUMANITARIAN AID AND ACCESS TO ROHINGYA**, systematically weakening the civilian population and removing monitors on the ground.
- **ENFORCED A DISCRIMINATORY MUSLIM-ONLY CURFEW** in northern Rakhine State and evacuated thousands of non-Rohingya citizens from the area.
- **BUILT UP AN UNUSUALLY SIZABLE MILITARY PRESENCE**, incommensurate with the threats at hand.

Taken together, these measures demonstrate a level of preparation not previously documented with respect to the Myanmar Army-led “clearance operations” in northern Rakhine State in 2016 and 2017. All of these measures fall within the United Nations *Framework for Analysis of Atrocity Crimes* for identifying “preparatory action” for genocide and crimes against humanity.

Moving from the preparations, almost immediately following the Arakan Rohingya Salvation Army’s (ARSA) attack on police outposts in Maungdaw, Rathedaung, and Buthidaung townships in northern Rakhine State during the early morning hours of August 25, Myanmar authorities descended on villages and activated non-Rohingya



civilian squads, some of whom the authorities previously armed and/or trained. These civilian perpetrators were not vigilantes—they acted under the Myanmar military and police in razing hundreds of Rohingya villages throughout northern Rakhine State, brutally killing masses of unarmed Rohingya men, women, and children.

For its part, the Myanmar Army led massacres, systematically raped women and girls, and otherwise attacked Rohingya men, women, and children in hundreds of villages in all three townships of northern Rakhine State. The attacks continued for several weeks, forcing more than 700,000 Rohingya to escape to Bangladesh.

There are reasonable grounds to believe that the crimes perpetrated in all three townships of northern Rakhine State constitute genocide and crimes against humanity. This report documents eight crimes against humanity—murder, extermination, rape, deportation or forcible transfer, torture, imprisonment, enforced disappearance, and persecution—as well as three acts of genocide committed with a special intent to destroy the Rohingya in whole or in part. Based on a comprehensive legal analysis, this report finds that Myanmar authorities may be liable for the crime of genocide and crimes against humanity.

Specifically, Fortify Rights identified 22 military and police officials responsible for the “clearance operations” in northern Rakhine State who should be criminally investigated for genocide and crimes against humanity. At the top of the list are Commander-in-Chief Senior General Min Aung Hlaing, Deputy Commander-in-Chief Vice-Senior General Soe Win, and the Joint-Chief of Staff General Mya Tun Oo.

At least 27 Myanmar Army battalions—including 22 Light Infantry Battalions and five Infantry Battalions—comprising up to 11,000 soldiers were involved in the attacks in northern Rakhine State beginning in August 2017, and at least three combat police battalions were also involved, comprising an estimated 900 police.

Fortify Rights conducted 254 interviews for this report in Myanmar and Bangladesh with Rohingya eyewitnesses and survivors, Bangladesh military officials, Myanmar military and police sources and analysts, members and former members of ARSA, international and local humanitarian aid workers, physicians, and others from October 2016 to June 2018.

The Preparations

Myanmar Army soldiers and *Lon Htein*—riot police—traveled house-to-house in northern Rakhine State and confiscated sharp or blunt household items, systematically “disarming” Rohingya men and women during the weeks and months before the August 2017 attacks.

“They came and took all the knives away,” said “Rahana,” a 50-year-old Rohingya mother of two from Nyaung Chaung village in Buthidaung Township. “It was around two weeks ago,” she told Fortify Rights on August 30, 2017.

Also speaking to Fortify Rights on August 30, “Mohammed Tayub,” a 26-year-old Rohingya businessperson from Tone Chaung village in northern Maungdaw Township, said, “Maybe 15 days ago, *Lon Htein* and the military arrived and took the knives from our houses.”

Well before disarming Rohingya civilians *en masse*, the authorities announced plans to train and arm non-Rohingya civilians to serve as “regional police” within their own villages. The authorities proceeded in implementing the plan, largely without notice or question from the international community. Residents from all three townships of northern Rakhine State testified to Fortify Rights that state security forces prepared non-Rohingya residents for violence, evidently against Rohingya, by providing them with weapons and/or training.

“The government provided [Rakhine civilians] with swords and also some guns,” said “Abdul Hussein,” a Rohingya father of three who survived mass killings in his native Khun Thi Pyin village—also known as Kuan Si Paun—in Maungdaw Township on August 26, 2017. “I could see [Myanmar soldiers] training them. It was maybe seven months ago. They taught them how to fire the guns.”

In some cases, Myanmar authorities armed non-Rohingya residents on the day of attacks in August and September 2017, such as in Tula Toli village—also known as Min Gyi—in Maungdaw Township, where state security forces and local residents killed at least several hundred Rohingya men, women, and children on August 30, 2017.



Stranded on the Myanmar border for up to three weeks, Rohingya refugees cross the Naf River into Bangladesh—a five to seven-hour-long journey—on makeshift rafts made of bamboo, tarp, and empty palm-oil cans.

Patrick Brown © Panos/UNICEF 2018



“They gave them long swords,” said “Mohammed Rafiq,” a 25-year-old Rohingya eyewitness to the massacre in Tula Toli. “I could see it. [The soldiers] handed [Rakhine civilians] swords. Even young Rakhine boys were given long swords, and they were moving around with the swords hanging on their backs.”

While disarming Rohingya and arming non-Rohingya in northern Rakhine State, the Myanmar authorities also cut humanitarian aid to Rohingya populations in northern Rakhine State, including food aid and lifesaving aid. The authorities evicted health workers, teachers, and others who provided services to Rohingya communities months in advance of the August 25 attacks. The United Nations Special Rapporteur on the situation of human rights in Myanmar Yanghee Lee reported to the U.N. Human Rights Council in March 2017 that “All humanitarian operations and activities normally undertaken in these areas were suspended.” The deliberate policy decision to suspend aid not only had the predictable effect of physically and mentally weakening the Rohingya civilian population ahead of attacks against them, but also effectively removed international observers from the ground.

“We were facing a problem with food,” said “Abu,” 24, a survivor of military-led attacks on Rohangya Taung village—also known as Ywet Nyo Taung—in Maungdaw Township in 2017. “People were dying because of hunger and a lack of medicine.”



Mohammed H., 23, carries his father Abdu S., 60, blind and unable to walk since fleeing their village in Buthidaung Township. Stranded in Myanmar on the banks of the Naf River for one month, they left behind three surviving family members suffering from illness.

Patrick Brown © Panos/UNICEF 2018

The U.N. identifies the expulsion of aid organizations or severe restrictions on their services as “preparatory action” toward genocide and crimes against humanity.

To further prepare for the August 2017 attacks, the Myanmar Army increased its security presence in northern Rakhine State. The authorities deployed large numbers of soldiers to Rakhine State weeks before August 25 and at a scale that appeared incommensurate with local threats from potential Rohingya militants.

“We got reports that the [Myanmar] military was bringing in more and more trucks of soldiers before August 25,” said Major Sharif, a senior commander of the Border Guards Bangladesh in Teknaf, to Fortify Rights. “That wasn’t our concern at the time because the Army didn’t violate the border. We didn’t think about what they might have been planning or doing.”

On August 11, 2017, U.N. Special Rapporteur Yanghee Lee said the deployment of additional troops to Rakhine State was “a cause for major concern.”



Newly arrived Rohingya refugees walk to the nearest refugee reception point in the coastal village of Shamlapur in Cox’s Bazar District, Bangladesh. Myanmar Army-led attacks forced more than 700,000 Rohingya to flee to Bangladesh beginning in August 2017. Patrick Brown © Panos/UNICEF 2018

The Mass Atrocities

The Myanmar authorities’ preparations for mass atrocities culminated in horrific, coordinated, and systematic attacks against Rohingya civilians throughout the three townships of northern Rakhine State—Maungdaw, Buthidaung, and Rathedaung.







Stranded on the Myanmar border with limited or no food and water for up to 20 days after fleeing Myanmar Army-led attacks, Rohingya refugees finally cross the Naf River on a makeshift raft made of bamboo and empty palm-oil cans—a five to seven-hour-long journey.

Patrick Brown © Panos/UNICEF 2018



The Myanmar military's ostensible trigger was on August 25, 2017, when Rohingya militants, armed mostly with sticks and knives, attacked several police outposts in northern Rakhine State, reportedly killing 12 officials. Members of ARSA explained to Fortify Rights their involvement in and knowledge of these attacks.

Almost immediately after these attacks, the Myanmar authorities moved into Rohingya villages and evidently activated groups of non-Rohingya residents, some of whom had earlier received arms and training by the Myanmar military. Armed with guns, swords, and knives, these groups of civilian perpetrators joined state security forces in using lethal force against Rohingya civilians in villages throughout northern Rakhine State.

"We know the people who came with the army," said "Abdul Rahman," 41, an eyewitness and survivor of a Myanmar Army-led massacre in Chut Pyin village—also known as So Farang—in Rathedaung Township on August 27, 2017. "They were Rakhine from a neighboring village. I know them well. I could recognize them. The army shot people and then the Rakhine cut them."

For several weeks, the Myanmar Army, Police, and non-Rohingya civilians raided hundreds of Rohingya villages, committing massacres of men, women, and children, systematic rape of women and girls, mass arbitrary arrest of men and boys, and widespread and systematic arson attacks. More than 700,000 Rohingya fled to Bangladesh in a matter of weeks, resulting in the fastest refugee outflow since the Rwandan genocide.

"Rashida," 50, watched as Myanmar Army and *Lon Htein* soldiers dragged her two adult sons from her home in Kha Maung Seik village—also known as Fora Bazaar—in Maungdaw Township on August 27.

"I was watching the whole time," she told Fortify Rights just days after the incident. "The soldiers made them lay down on the ground, and then they cut their necks. We were shouting and crying."

Conservative estimates suggest that in the span of a few weeks, soldiers and police with the support of armed non-Rohingya civilian-perpetrators killed at least several thousand Rohingya civilians—if not tens of thousands—from hundreds of villages throughout the three townships of northern Rakhine State.

An annex to this report provides extensive documentation of similar crimes perpetrated against Rohingya in upwards of 40 villages in Maungdaw Township during military-led "clearance operations" in 2016. Fortify Rights documented a chilling continuity of killings by state security forces from 2016 to 2017, differing only in scale.



Sunset at the Kutupalong refugee camp in Cox's Bazar District, Bangladesh.

Patrick Brown © Panos/UNICEF 2018

The Crime of Genocide and Crimes Against Humanity

In order for the International Criminal Court (ICC) to issue an arrest warrant, the court must have jurisdiction and the prosecutor must find “reasonable grounds” that perpetrators committed genocide and/or crimes against humanity. Fortify Rights finds that there are “reasonable grounds” to believe that Myanmar Army, Myanmar Police Force, and non-Rohingya civilian perpetrators committed acts that constitute genocide and crimes against humanity.

The crime of genocide requires: (1) the commission of one of five specified criminal acts; (2) committed against a protected national, ethnic, racial, or religious group; and (3) committed with the intent to destroy the group in whole or part. This report finds reasonable grounds to believe that perpetrators committed the crime of genocide against Rohingya in Myanmar through at least three criminal acts of genocide: killings, serious bodily and mental harm, and the infliction of conditions of life calculated to bring about the physical destruction of the group. Fortify Rights documented how perpetrators murdered a significant number of Rohingya civilians; inflicted physical and psychological injuries on Rohingya civilians, particularly while committing massacres, acts of sexual violence, and other violations that constitute serious harm; and destroyed Rohingya villages and withheld food and essential aid, creating conditions of life calculated to bring about physical destruction.

Given that the Rohingya have a unique language and culture, and both the perpetrators of the crimes as well as the Rohingya themselves view and treat the Rohingya as a distinct group, the Rohingya constitute a protected group as articulated by the Genocide Convention.

The special intent to destroy a protect group, 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. Case law provides that genocidal intent can be inferred from a number of factors, including the political doctrine that gives rise to the acts, the use of derogatory language toward members of the targeted group, the scale of the atrocities, the systematic nature and atrociousness of those acts, the deliberate and systematic targeting of victims on account of their membership in a protected group, and the targeting of all members of the group. The evidence collected by Fortify Rights demonstrates reasonable grounds to believe that the Myanmar Army, Police, and civilian perpetrators acted with genocidal intent to destroy the Rohingya in whole or in part.



A Rohingya refugee uses one of the many man-made dams in Balokhali 2 refugee camp, Cox's Bazar District, Bangladesh.

Patrick Brown © Panos/UNICEF 2018



Imam Nurul, 53, during afternoon prayers at a makeshift mosque in Kutupalong refugee camp, Cox's Bazar District, Bangladesh.

Patrick Brown © Panos/UNICEF 2018

There are also reasonable grounds to believe that perpetrators in Myanmar committed crimes against humanity against Rohingya. Crimes against humanity are specific enumerated criminal acts that are committed as part of a widespread or systematic attack directed against a civilian population and with knowledge of the attack.

Perpetrators likely committed at least eight of the specified criminal acts enumerated as part of the definition of crimes against humanity: murder, extermination, deportation or forcible transfers, imprisonment, torture, rape, persecution, and enforced disappearance. This report further concludes that there are reasonable grounds to believe perpetrators committed these acts as part of an attack directed against the Rohingya civilian population. The evidence suggests that the attack was widespread—given that it occurred in hundreds of villages and resulted in the deaths of at least 6,700 civilians in just the first three to four weeks of the military-led operations—and that it was systematic, considering the consistent pattern of crimes committed in multiple villages, in some cases, simultaneously. Finally, reasonable grounds exist to believe that the perpetrators of specific acts were aware of the broader circumstances surrounding those attacks.

Individuals Who Should Be Criminally Investigated

There is sufficient evidence to warrant an investigation into the liability of at least 22 high-level Myanmar Army and Police officials for genocide and crimes against humanity. Under command responsibility theory, Myanmar military and police commanders exercising control over those responsible for genocide and/or crimes against humanity may be liable for failing to act to prevent or repress the crime of genocide and crimes against humanity.

According to interviews conducted by Fortify Rights as well as open-source information, Commander-in-Chief Senior General Min Aung Hlaing was in Rakhine State during “clearance operations” and was closely involved in the scope, scale, and direction of those operations. He delegated certain authority to the Deputy Commander-in-Chief Vice-Senior General Soe Win, and the Joint-Chief of Staff General Mya Tun Oo coordinated the various armed forces, including the Army, Navy, and Air Force as well as the use of artillery.

Below these senior figures, the Chief of the Bureau of Special Operations Lieutenant General Aung Kyaw Zaw commanded the entire operation in northern Rakhine State, overseeing three regional commands—the Western Command, South Western

Command, and Southern Regional Command. He sent daily operational orders to the Chief of Staff of the Army Major General Moe Myint Tun and the General Staff Officer Brigadier General Kyaw Swar Linn. The commander of the Western Regional Command was Major General Maung Maung Soe.

Abuses by Rohingya Militants

ARSA also perpetrated human rights abuses, including the murder of Rohingya civilians. Fortify Rights interviewed six members of ARSA, eyewitnesses to ARSA killings of Rohingya civilians, and 11 civilians who provided credible information that ARSA killed six Rohingya civilians believed to be government “informants” in the weeks and days leading up the August 25 attacks. Members of ARSA told Fortify Rights that Atta Ullah, the head of ARSA, issued direct orders to kill Rohingya civilians, and local ARSA members carried out those orders.

For instance, on August 18, 2017 around 3 p.m., members of ARSA apprehended a Rohingya man—name and location withheld for security purposes—in a village in northern Maungdaw Township, bound his hands, and took him out of the village.

“He was killed in front of me,” said “Abdul Hassan,” a former member of ARSA who participated in the killing. Abdul Hassan told Fortify Rights: “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.”

This report also documents how members of ARSA attempted to restrict the freedom of movement of fleeing civilians and intimidated local residents—in some cases, threatening them with death if they did not support ARSA.

Next Steps

The international community failed to act after the Myanmar Army killed, raped, tortured, and forcibly displaced Rohingya civilians in October and November 2016. That inaction effectively paved the way for genocide, providing the Myanmar authorities with an enabling environment to make deeper preparations for more mass atrocity crimes.

Domestic remedies in Myanmar have been exhausted. The Government of Myanmar has consistently denied allegations of human rights violations in Rakhine State and failed to properly investigate and prosecute perpetrators. The government also refuses to cooperate with international human rights monitors, including the U.N. Special Rapporteur Yanghee Lee and the Independent International Fact-Finding Mission on Myanmar, which the U.N. Human Rights Council created in March 2017 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 international community must now act urgently.



Minara, 18, survived the Myanmar Army-led massacre in Tula Toli, Maungdaw Township on August 30, 2017.

Patrick Brown © Panos/UNICEF 2018

Rohingya survivor R. Begum, 20, recalls: “Between seven and 10 soldiers took us to a room in a house. I could hear women and girls screaming from the other rooms. They first took my child and threw him down on the ground. He was still alive then, and I had to watch as they killed him. The children of the other two women were killed the same way. A few minutes later, they took the bodies of the children and threw them on a fire outside. They beat us all until we were almost dead, and then they set the house on fire. I saw that one of the corners of the bamboo wall had a hole in it. I made it bigger by kicking it, and I escaped from the house. No one else came out of that house. They all burned to death inside.”

Patrick Brown © Panos/UNICEF 2018





N. Islam, 60, witnessed the Myanmar Army-led Tula Toli massacre on August 30, 2017. He retired from the Myanmar military in 1982, converted to Islam two years later, married a Rohingya woman 12 years ago, and now has three children. The Myanmar Army detained him the day before the massacre in Tola Toli. He now lives in Kutupalong refugee camp in Cox's Bazar District, Bangladesh.

*Patrick Brown © Panos/
UNICEF 2018*

U.N. Security Council member states should:

- Refer the situation in Myanmar to the International Criminal Court, which was established to investigate and prosecute mass atrocity crimes when states are unable or unwilling to do so;
- Issue a global arms embargo on the Myanmar military; and
- Sanction the individuals responsible for atrocities against Rohingya and others.

U.N. member states should:

- Support the establishment of a new U.N. mechanism, building on the work of the U.N. Fact-Finding Mission, to collect and preserve evidence of crimes to be used for future prosecutions. This new mechanism should involve members of the Rohingya community from its onset and focus also on other areas where the Myanmar military is responsible for mass atrocity crimes, including Kachin and Shan states.

The Government of the United States and the European Union should:

- Exercise collective and bilateral leverage to encourage all U.N. Security Council members states to support a referral of Myanmar to the International Criminal Court; and
- Issue targeted sanctions against individual perpetrators as a punitive first step and to send an important message, while also recognizing that sanctions do not supplant accountability.

Member States of the Association of Southeast Asian Nations (ASEAN) should:

- Initiate an emergency meeting of ASEAN Foreign Ministers to create a plan-of-action to:
 - Achieve accountability and justice for survivors of atrocities in Myanmar;
 - Ensure the U.N. Security Council refers the situation to the International Criminal Court; and
 - Propose measures to provide legal status and develop rights-respecting solutions for refugees in consultation with the U.N. Refugee Agency and refugee communities.

The Government of Bangladesh should:

- Continue to provide protection and unfettered humanitarian access to Rohingya refugees and continue to cooperate with international efforts to ensure justice and accountability for crimes perpetrated against Rohingya in Myanmar and on Bangladesh soil.



*Newly arrived Rohingya refugee
Hamid H., 27, surrounded by his
family, lost consciousness soon
after eating his first meal in two
days. Hamid and his family of
six walked for six days to get to
Bangladesh. Hamid was rushed to
a medical center after this photo
was taken.*

*Patrick Brown © Panos/
UNICEF 2018*

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.



RAKHINE STATE



MYANMAR

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 31

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

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."

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."

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."

2016

AUG

OCT

NOV

DEC

2017

FEB

MAR

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.

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-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 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."

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.

2017
APR
JUL
AUG
SEP
OCT
NOV
DEC

APRIL 5

In an exclusive interview with Fergal Keane of *BBC News*, State Counselor Suu Kyi says, "I don't think there's ethnic cleansing going on . . . It's Muslims killing Muslims as well."

AUGUST 10

Myanmar military deploys additional troops to northern Rakhine State, raising alarm.

AUGUST 24

The government-appointed Advisory Commission on Rakhine State led by former U.N. Secretary General Kofi Annan issues its final report to the Government of Myanmar, making 88 recommendations to improve the situation in Rakhine State.

SEPTEMBER 19

State Counselor Suu Kyi gives her first public address on the crisis in Rakhine State, falsely claiming, "All people living in the Rakhine State have access to education and healthcare services without discrimination" and that military "clearance operations" had stopped. She suggests Rohingya may be fleeing for reasons other than those reported.

NOVEMBER 12

U.N. Special Envoy on Sexual Violence Pramila Patten says the Myanmar Army's widespread use of sexual violence against Rohingya women and girls was "a calculated tool of terror aimed at the extermination and removal of the Rohingya as a group," adding that she documented the basis for characterizing the crimes as genocide.

DECEMBER 14

The Office of the President of Myanmar establishes a ten-member Advisory Commission Board on Rakhine State to advise the government on implementing the recommendations of the Kofi Annan-led Advisory Commission on Rakhine State, chaired by former Thailand Deputy Prime Minister Dr. Surakiart Sathirathai and including former Governor of New Mexico Bill Richardson.

MARCH 29

The Rohingya militant group *al Yaqin* rebrands itself as ARSA, still using both names.

MID-JULY

Myanmar authorities suspend the delivery of all food aid by the World Food Programme (WFP) to Rohingya in northern Rakhine State.

AUGUST 25

ARSA attacks an unknown number of police outposts in northern Rakhine State, killing 12 officials, according to state-run media

AUGUST 28

State Counselor Suu Kyi's office accuses international aid workers of helping "terrorists" in Rakhine State, prompting fear for the safety of aid workers in Rakhine State.

OCTOBER 18

U.S. Secretary of State Rex Tillerson calls for Myanmar's military to be held accountable for violations against Rohingya, adding, "The world can't just stand idly by and be witness to the atrocities that are being reported in the area."

NOVEMBER 15

The U.S. Holocaust Memorial Museum and Fortify Rights publish a report finding "mounting evidence of genocide" against Rohingya.

DECEMBER 12

Myanmar authorities arrest *Reuters* journalists Wa Lone and Kyaw Soe Oo in the midst of their investigation into a mass grave of Rohingya men in the village of Inn Dinn in Rakhine State.

DECEMBER 21

The U.S. government sanctions Major General Maung Maung Soe, former leader of the Western Command of the Myanmar Army, for his role in "extrajudicial killings, sexual violence, and arbitrary arrest as well as the widespread burning of villages" in Rakhine State in 2017.

JULY 10

Myanmar government spokesperson and Director-General of the President's Office Zaw Htay tells the *Irrawaddy*: "Whenever there is an accusation from the international community, we say we are taking action in line with the recommendations of the Kofi Annan commission. The commission is serving as a shield for us."

AUGUST 25

The Myanmar military begins "clearance operations" in all three townships of northern Rakhine State—Maungdaw, Buthidaung, and Rathedaung. Myanmar Army, Police, and civilian perpetrators kill thousands of Rohingya in a matter of days, razing hundreds of villages. More than 700,000 Rohingya flee to Bangladesh, creating the fastest refugee outflow since the Rwandan genocide.

OCTOBER 14

Myanmar government official Wyn Myat Aye tells *Al Jazeera* that Rohingya may have fled in large numbers to give the appearance of ethnic cleansing. "They may have been planning for that," he says.

DECEMBER 5

U.N. High Commissioner for Human Rights Zeid Ra'ad al-Husseini invokes the crime of genocide with regard to the attacks on Rohingya, saying, "Can anyone rule out that elements of genocide may be present?"

DECEMBER 18

U.N. High Commissioner for Human Rights Zeid Ra'ad al-Husseini tells the *BBC's* Justin Rowlett, "The elements suggest you cannot rule out the possibility that acts of genocide have been committed," adding that attacks on Rohingya had been "well thought out and planned."

2018

FEBRUARY 1

U.N. Special Rapporteur Yanghee Lee says the situation of Rohingya in Myanmar "bears the hallmarks of genocide."

FEB

MAR

APRIL 9

The Office of the Prosecutor at the International Criminal Court requests a ruling from the court for jurisdiction over the forcible expulsion of the Rohingya from Myanmar to Bangladesh.

APR

MAY

JUNE 21

State Counselor Suu Kyi blames the situation in Rakhine State on "hate narratives" from abroad.

JUN

JUL

JANUARY 25

Former Governor of New Mexico Bill Richardson resigns from the Advisory Commission Board on Rakhine State, calling it a "whitewash" and accusing State Counselor Suu Kyi of lacking "moral leadership."

MARCH 7

U.N. High Commissioner for Human Rights Zeid Ra'ad al-Hussein tells the U.N. Human Rights Council that his office strongly suspects that "acts of genocide" may have taken place against Muslim Rohingya in northern Rakhine State.

APRIL 11

The Myanmar Army says it convicted seven Myanmar soldiers for participating in a massacre of ten Rohingya Muslim men in Inn Dinn village in September 2017, reportedly sentencing them to "10 years in prison with hard labor in a remote area." *Reuters* journalists Wa Lone and Kyaw Soe Oo, whose work exposed the massacre, remain in jail for doing their work.

APRIL 16

U.N. Secretary-General António Guterres includes the Myanmar military on a blacklist of groups that are "credibly suspected" of carrying out sexual violence during conflict.

MAY 31

The Office of the President of Myanmar announces a plan to establish a three-member "commission of enquiry," comprising one international member and two Myanmar nationals, to investigate alleged human rights violations in Rakhine State by ARSA and "related abuses." Former President of Timor-Leste José Ramos-Horta reportedly declines an offer to join the commission.

JUNE 25

The European Union sanctions seven members of the Myanmar Army for their role in "serious human rights violations, for obstructing the provision of humanitarian assistance to civilians in need and for obstructing the conduct of independent investigations into alleged serious human rights violations or abuses."

JUNE 25

Commander-in-Chief Senior General Min Aung Hlaing announces the dismissal of Major General Maung Maung Soe and the retirement of Lieutenant General Aung Kyaw Zaw, commander of the Bureau of Special Operations No. 3, which oversaw the army's Western Command in Rakhine State during the "clearance operations."

JULY 4

U.N. High Commissioner Zeid Ra'ad al-Hussein tells the Human Rights Council, "I urge the Security Council to immediately refer Myanmar to the ICC, so that all allegations of crimes against humanity and genocide perpetrated against the Rohingya can be investigated, as well as allegations of war crimes against other ethnic groups such as the Kachin and the Shan."

BACKGROUND

THE REPUBLIC OF the Union of Myanmar, formerly known as Burma, is located in Southeast Asia, bordering Bangladesh, India, China, Laos, and Thailand. The country is home to approximately 51.4 million ethnically diverse peoples.¹ The majority of the population is ethnic *Bamar*, or Burman, and practices Theravada Buddhism.

The Rohingya are an officially unrecognized indigenous ethnic group who are primarily Muslim and have traditionally lived in the westernmost Rakhine State.² Prior to the "clearance operations" against Rohingya in 2016 and 2017, Rakhine State was home to more than one million Muslims, most of whom were Rohingya.³

While Rohingya Muslims comprised the majority population in the three townships of northern Rakhine State, other ethnic and religious minorities populate numerous villages and hamlets in the same area. The Buddhist community in northern Rakhine State includes ethnic Rakhine as well as Mro, Marama Gyi, Daignet, and others.⁴ Hindus, Chin Christians, and other religious minorities comprise a smaller population of northern Rakhine State.⁵

1 The controversial 2014 Myanmar Population and Housing Census showed a total population of 51,486,253, including 1,206,353 persons estimated not to have been counted during the census. Of the 1,206,353 people excluded from the census were, according to the government, an estimated 1,090,000 in Rakhine State. This figure is believed to represent the Rohingya population. The Republic of the Union of Myanmar Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census: Rakhine State*, May 2015, <http://myanmar.unfpa.org/sites/default/files/pub-pdf/Rakhine%20State%20Census%20Report%20-%20ENGLISH.pdf> (accessed August 15, 2017), p. 8.

2 Rakhine State is the country's second-poorest state, which is paradoxically home to multi-billion dollar natural gas deposits and agricultural promise. Most Rohingya reside in the three townships comprising a region known as "northern Rakhine State" i.e. Maungdaw, Buthidaung, and Rathedaung townships.

3 The Myanmar Ministry of Immigration and Population and the United Nations Population Fund (UNFPA) excluded Rohingya from the 2014 national census, Myanmar's first census in 30 years. The government's census report clarifies that "members of some communities [in Rakhine State] were not counted because they were not allowed to self-identify using a name that is not recognized by the Government." That "name" is "Rohingya," an ethnic identity the government rejects and claims does not exist. The government estimates that approximately 1,090,000 people were not counted in Rakhine State during the census—they were presumably Rohingya. The census cost in excess of US\$75 million and was supported, via UNFPA, by multiple donor governments, including the U.S., U.K., and Australia. Many viewed it as a debacle for multiple reasons, not least of all the way in which it collected data on *lummy*, or ethnicity. The authorities have yet to release ethnic data from the census. Myanmar Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census*. See, Mary P. Callahan, "Distorted, Dangerous Data? *Lummy* in the 2014 Myanmar Population and Housing Census?" *SOJOURN: Journal of Social Issues in Southeast Asia*, Vol. 32, No. 2 (2017), pp. 452-78.

4 Myanmar Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census*.

5 *Ibid.*

Although the Rohingya comprised almost two percent of Myanmar's total population prior to the recent exodus and materials dating back to the 17th century reference a Muslim population and the "Rooringya" in what is now Rakhine State, the government has refused to recognize the Rohingya as an ethnic minority or a "national race" in the country for decades.⁶ Many in Myanmar now insist that Rohingya are "Bengali" interlopers or descendants of agricultural workers imported by British colonial powers and that they do not belong in Myanmar.

For decades, the Government of Myanmar under both military and civilian rule has upheld the rhetoric that the Rohingya do not exist by creating, upholding, and enforcing discriminatory policies against the Rohingya.⁷ In addition, several military campaigns forcibly deported masses of Rohingya out of the country.

For example, the Myanmar military initiated operation *Naga Min* (Dragon King) in 1977 to scrutinize and register residents of three states and two divisions in the country as either citizens or foreigners.⁸ The operation began in Rakhine State in February 1978, targeting Rohingya.⁹ During the operation, the Myanmar Army reportedly razed Rohingya villages and committed severe human rights violations, forcing more than 200,000 Rohingya into Bangladesh.¹⁰ At the time, Rohingya refugees in Bangladesh alleged Myanmar Army soldiers burned down their homes while committing killings, rape, and other abuses.¹¹ Myanmar authorities, at the time, blamed the situation on "wild Muslim extremists" and "rampaging Bengali mobs."¹²

On July 9, 1978, following a June visit to Myanmar by the Foreign Minister of Bangladesh, Myanmar President Ne Win moved forward with a plan to forcibly return Rohingya refugees from Bangladesh.¹³ The authorities then forced tens of thousands of Rohingya back to northern Rakhine State.¹⁴

Three years after repatriating Rohingya survivors of *Naga Min*, the military government passed the 1982 Citizenship Law, which denied Rohingya equal access to citizenship rights and stripped a majority of Rohingya of their Myanmar citizenship.¹⁵ Myanmar's President at the time, General

6 Francis Buchanan, "A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire," *Asiatic Researches* 5 (1799), www.soas.ac.uk/sbbr/editions/file64276.pdf (accessed July 11, 2018), p. 234.

7 Fortify Rights, *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*, 2014, http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf (accessed July 9, 2018).

8 The *Naga Min* operation took place in three states and two divisions in Myanmar, including Rakhine State. See, William L. Scully and Frank N. Trager, *Burma 1978: The Thirtieth Year of Independence*, Asian Survey, Vol. 19, No. 2, A Survey of Asia in 1978: Part II (The University of California Press, February 1979), pp. 147–156.

9 *Ibid.*

10 *Ibid.* See also, Statement by the Myanmar Ministry for Home and Religious Affairs, November 16, 1977, quoted in Human Rights Watch, *Burma: Rohingya Muslims: Ending a Cycle of Exodus?*, September 1, 1996, <https://www.hrw.org/report/1996/09/01/rohingya-muslims-ending-cycle-exodus> (accessed July 10, 2018), p. 12; Human Rights Watch, *Malaysia/Burma: Living in Limbo: Burmese Rohingyas in Malaysia*, August 2000, <https://www.hrw.org/reports/2000/malaysia/> (accessed July 10, 2018).

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

12 Quoted in Martin Smith, *Burma: Insurgency and the Politics of Ethnicity*, Politics in Contemporary Asia Series, 2nd Ed. (Zed Books, October 1999), p. 241. See also, Human Rights Watch, "All You Can Do Is Pray": *Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, April 2013, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims> (accessed August 15, 2017), Appendix I; Irish Center for Human Rights, *Crimes Against Humanity in Western Burma: The Situation of the Rohingyas*, 2010, http://burmaactionireland.org/images/uploads/ICHR_Rohingya_Report_2010.pdf (accessed June 10, 2018), pp. 91–92.

13 Scully et al., *Burma 1978*, pp. 147–156.

14 Carl Grundy-Warrand and Elaine Wong, *Sanctuary Under a Plastic Sheet: The Unresolved Problem of Rohingya Refugees*, IBRU Boundary and Security Bulletin, Vol.5, No.3, Autumn 1997, pp.79–91; Human Rights Watch, *Perilous Plight: Burma's Rohingya Take to the Seas*, May 26, 2009, <https://www.hrw.org/report/2009/05/26/perilous-plight/burmas-rohingya-take-seas> (accessed June 10, 2018), p. 6; Human Rights Watch, "All You Can Do Is Pray."

15 Burma Citizenship Law, October 15, 1982.

Ne Win, described the controversial law as a way to “clarify the position of guests and mixed-bloods.”¹⁶ Alluding to Rakhine State, Ne Win explained that “foreigners who had settled in Burma [Myanmar] at the time of independence have become a problem” and that those who could demonstrate long-term residency would be given “associate” citizenship under the law in order to prevent them from obtaining any role in government.¹⁷

As a result of the 1982 Citizenship Law, Myanmar created the world’s largest stateless population within a country.¹⁸ Authorities have used the lack of citizenship to deny Rohingya other basic rights and freedoms. In 2014, Fortify Rights revealed local orders in northern Rakhine State, enforced for decades and continuing to date, that sharply restrict the rights to freedom of movement, marriage, childbirth, and other aspects of daily life for Rohingya in Rakhine State.¹⁹

The refusal to recognize the Rohingya ethnic identity or to restore their access to citizenship has also fueled tension between the Rohingya Muslims and Rakhine Buddhists in the state. The Rakhine Buddhist community represents the majority in Rakhine State.²⁰ Over the years, the Myanmar authorities have committed severe human rights violations against ethnic Rakhine civilians, including forced labor, torture, killings, land confiscation, and other violations. These include human rights violations against Rakhine civilians committed in the conduct of armed conflict between the Myanmar Army and the Arakan Army—an ethnic Rakhine armed group—as well as killings and beatings of unarmed protesters by Myanmar authorities as recent as January 2018.²¹

Moreover, during the last several years, the Myanmar authorities established *natala* villages, also referred to as “model” villages, in northern Rakhine State by transplanting Buddhist communities to predominantly Rohingya Muslim populated areas.²² The authorities created these villages as an attempt to inject Buddhist culture and populations into Muslim-populated areas. 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.”²³ Some *natala* villages in northern Rakhine State are home to Rakhine and other Buddhists whom the authorities supported to transplant from elsewhere.²⁴ Rohingya in northern Rakhine State commonly distinguish between *natala* villages and “old” Rakhine villages, which have existed for generations.

Tensions between the two communities date back decades but reached a boiling point in June and October 2012 when deadly violence erupted between ethnic Rakhine Buddhists and Rohingya

16 President Ne Win, “Speech by General Ne Win: Meeting Held in the Central Meeting Hall, President House, Ahlone Road,” *The Working People’s Daily*, unofficial translation, October 9, 1982, <https://www.scribd.com/document/162589794/Ne-Win-s-Speech-1982-Citizenship-Law> (accessed August 15, 2017).

17 *Ibid.*

18 United Nations High Commissioner for Refugees (UNHCR), *UNHCR Global Trends: 2013– Stateless Persons*, 2013, <http://www.unhcr.org/protection/statelessness/546e01319/statistics-stateless-persons.html> (accessed August 15, 2017).

19 Fortify Rights, *Policies of Persecution*.

20 Myanmar Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census*, p. 8.

21 “Myanmar: Drop Trumped-Up Charges Against Human Rights Defender Khaing Myo Htun,” Fortify Rights, news release, July 17, 2017, <http://www.fortifyrights.org/publication-20170717.html> (accessed July 10, 2018); “Myanmar: Investigate Deadly Crackdown Against Rakhine Protesters in Mrauk-U,” Fortify Rights, news release, January 22, 2018, <http://www.fortifyrights.org/publication-20180122-1.html> (accessed July 10, 2018); “Myanmar: Investigate Forced Labor of Rakhine Buddhists in Western Myanmar,” Fortify Rights, news release, March 15, 2016, <http://www.fortifyrights.org/publication-20160315.html> (accessed July 10, 2018).

22 See, Francis Wade, “The West Bank of the East: Burma’s Social Engineering Project,” *Los Angeles Review of Books*, November 7, 2015, <https://lareviewofbooks.org/article/west-bank-of-the-east-burmas-social-engineering-project/#!> (accessed July 10, 2018).

23 *Ibid.*

24 *Ibid.*

Muslims, escalating into full-scale targeted attacks on Rohingya and other Muslims by Rakhine civilians and state security forces.²⁵ The violence included massacres, and arson attacks on villages throughout the state, forcibly displacing more than 140,000 Muslims—mostly Rohingya—to dozens of internment camps in townships throughout the state.²⁶ At the time of writing, the government still confines more than 120,000 Rohingya to more than 20 internment camps in five townships, denying them the right to freedom of movement as well as adequate access to livelihoods, food, healthcare, and other necessities.²⁷

From 2012 to at least 2015, more than 200,000 Rohingya—mostly from the camps and northern Rakhine State—fled Myanmar with many falling victim to transnational human trafficking syndicates who worked in concert with regional authorities to buy and sell Rohingya refugees *en masse*.²⁸

The landslide victory of the National League for Democracy (NLD) in Myanmar's 2015 elections ushered in ideas of a new era. There were high hopes for reform in the country under the civilian leadership of human rights icon and Nobel-laureate Aung San Suu Kyi.²⁹ Although the 2008 Constitution includes a provision deliberately intended to prevent Suu Kyi from becoming President, a month after the NLD took power, the Myanmar Parliament passed a bill creating the position of State Counsellor—a work-around to enable Suu Kyi to be the *de facto* head of state.³⁰

Despite high expectations in Myanmar and internationally, the Suu Kyi administration has not prioritized human rights. State Counsellor Suu Kyi and the NLD government have failed to use their power in Parliament to repeal laws that contravene Myanmar's human rights obligations, and Suu Kyi has personally failed to use her political and moral authority to promote and protect human rights, particularly for ethnic minorities, including the Rohingya, Kachin, Shan, and others.

In an attempt to address the situation in Rakhine State, on August 24, 2016, the Government of Myanmar appointed a nine-member Advisory Commission chaired by former U.N. Secretary General Kofi Annan.³¹ While the commission was not mandated to investigate human rights violations, it was established to “consider humanitarian and development issues, access to basic services, the assurance of basic rights, and the security of the people of Rakhine.”³² The commission comprised six Myanmar nationals and three foreigners, including former U.N. Secretary General Kofi Annan, the former Lebanese Minister of Culture U.N. Special Advisor to the Secretary General Ghassan Salamé, and former Netherlands Ambassador Laetitia van den Assum.³³ The government did not appoint any Rohingya to the commission.³⁴

25 Human Rights Watch, “*The Government Could Have Stopped This*”: *Sectarian Violence and Ensuing Abuses in Burma’s Arakan State*, July 2012, <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan> (accessed August 15, 2017).

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

27 Fortify Rights interviews with Rohingya residents of internment camps, Sittwe Township, Rakhine State, Myanmar, 2013-2017.

28 Fortify Rights and the Burmese Rohingya Organization U.K., “*Everywhere is Trouble*”: *A Briefing on the Situation of Rohingya Refugees from Myanmar in Thailand, Malaysia, and Indonesia*, March 11, 2016, <http://www.fortifyrights.org/downloads/EverywhereisTrouble.pdf> (accessed July 9, 2018); Testimony of Mr. Matthew Smith, Fortify Rights, House Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, March 22, 2016, http://www.fortifyrights.org/downloads/Testimony_20160322.pdf (accessed July 9, 2018).

29 During the 2010 elections, the NLD party boycotted the elections.

30 A clause in the constitution prevents anyone with family members who hold foreign nationality from becoming President. Suu Kyi, in addition to holding the State Counsellor position, is also the Foreign Minister. See, Euan McKirdy, “New Government Role Created for Myanmar’s Aung San Suu Kyi?” *CNN*, April 7, 2016, <http://edition.cnn.com/2016/04/06/asia/aung-san-suu-kyi-state-counsellor-role-created/index.html> (accessed August 15, 2017).

31 “Establishment of the Advisory Commission on Rakhine State,” *Office of the State Counsellor*, August 23, 2016, <http://www.globalnewlightofmyanmar.com/establishment-of-the-advisory-commission-on-rakhine-state/> (accessed July 10, 2018).

32 *Ibid.*

33 *Ibid.*

34 “Myanmar: Kofi Annan-led Commission on Rakhine State a Welcomed Move,” Fortify Rights, news release, August 24, 2016, <http://www.fortifyrights.org/publication-20160824.html> (accessed June 10, 2018).

On October 9, 2016, a previously unknown militant group—calling itself *al Yaqin*, and later ARSA—attacked three police posts in Maungdaw and Rathedaung townships in northern Rakhine State, reportedly killing nine Myanmar Police Force officers.³⁵ According to the Government of Myanmar, on November 12, 2016, the Myanmar Army and Rohingya militants reportedly clashed again near Pwint Hpyu Chaung village—also known as Zarmai Na—in Maungdaw Township.³⁶

In response, the Myanmar military declared it was carrying out “clearance operations”—which the government defined as an effort to capture “terrorists” and recover stolen weapons.³⁷ The Myanmar Army and police razed dozens of villages in Maungdaw Township and opened fire on civilians, killing an untold number of men, women, and children.³⁸ Myanmar Army soldiers systematically raped and gang-raped Rohingya women and girls, slit throats, burned victims alive, and arbitrarily arrested hundreds of men and boys.³⁹ The attacks displaced more than 94,000 Rohingya in October and November 2016, and more than 74,000 Rohingya refugees fled to Bangladesh.⁴⁰

Myanmar state security forces at the time interrogated residents of villages in Maungdaw Township, accusing them of providing shelter and support to Rohingya militants while threatening to destroy Rohingya. “Meena,” 22, from Pwint Hpyu Chaung village, told Fortify Rights: “The military said we provided shelter to the Rohingya armed force. Soldiers said, ‘The Rohingya armed force killed us, so we kill you. We’ll vanish all Muslims from Myanmar.’”⁴¹

The Government of Myanmar—civilian and military leaders—vehemently denied allegations of mass atrocities against Rohingya in 2016. For instance, in December 2016 State Counsellor Aung San Suu Kyi’s office described allegations of rape by security forces as “rumors,” “fabricated stories,” and “one-sided accusations.”⁴² Also in December, Foreign Ministry spokesperson Aye Aye Soe told *IRIN News* that allegations of grave human rights violations were “made-up stories, blown out of proportion,” adding that “the things they are accusing us of didn’t happen at all.”⁴³

Other disturbing rhetoric increased after the onset of the October 2016 violence. On October 31, 2016, Rakhine State Member of Parliament Aung Win declared, “All Bengali villages are like military strongholds.”⁴⁴ On November 1, state-run media alluded to Rohingya as a “thorn” that “has to be removed as it pierces,” and on November 3, the Myanmar Ministry of Information posted

35 “Security Tightened: Nine Policemen Killed, Five Injured, Nine Missing in Border Attacks,” *Global New Light of Myanmar*, October 10, 2016, p. 1, 3.

36 “One Officer, One Soldier Dead, Several Injured [as] Fighting Continuously Erupts in Rakhine,” *Global New Light of Myanmar*, November 13, 2016, <http://www.globalnewlightofmyanmar.com/fighting-erupts-in-northern-rakhine-two-tatmadaw-soldiers-killed/> (accessed July 10, 2018).

37 “Tatmadaw Ends Area Clearance Operations in Northern Rakhine State,” *The Republic of the Union of Myanmar President Office*, <http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-7288> (accessed July 10, 2018).

38 See Annex A of this report. See also, Fortify Rights and the United States Holocaust Memorial Museum, “*They Tried to Kill Us All: Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar*,” November 2017, http://www.fortifyrights.org/downloads/THEY_TRIED_TO_KILL_US_ALL_Atrocity_Crimes_against_Rohingya_Muslims_Nov_2017.pdf (accessed July 10, 2018).

39 *Ibid.*

40 *Ibid.*

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

42 “Information Committee Refutes Rumours of Rapes,” *Myanmar Office of the State Counsellor*, December 26, 2016, <http://www.statecounsellor.gov.mm/en/node/551> (accessed July 10, 2018).

43 Jared Ferrie, “Myanmar says Rohingya Rape and Abuse Allegations ‘Made-Up,’ Despite Mounting Evidence,” *IRIN News*, December 22, 2016, <https://www.irinnews.org/feature/2016/12/22/myanmar-says-rohingya-rape-and-abuse-allegations-%E2%80%9Cmade-%E2%80%9D-despite-mounting> (accessed August 6, 2017).

44 “Amid News Blackout, Myanmar Politician Blames Muslims for Torched Villages,” *Radio Free Asia*, October 31, 2016, <http://www.rfa.org/english/news/myanmar/amid-news-blackout-myanmar-politician-blames-muslims-for-torched-villages-10312016155616.html/> (accessed July 10, 2018).

an article alleging that international media “intentionally fabricated” allegations of human rights violations in Rakhine State “in collusion with terrorist groups.”⁴⁵

In contrast to claims by the Myanmar government, OHCHR alleged in a February 2017 “Flash Report” 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.”⁴⁶

One month later, the U.N. Human Rights Council passed a resolution creating an Independent International Fact-Finding Mission to investigate human rights violations in Rakhine State as well as other ethnic states in Myanmar.⁴⁷ The Government of Myanmar disassociated itself from the resolution and vowed to not cooperate with it.⁴⁸ The government, and specifically State Counsellor Aung San Suu Kyi, subsequently refused to grant visas to the members of the Fact-Finding Mission.⁴⁹

In the middle of the night on August 25, 2017, just hours after the Kofi Annan-led Advisory Commission published its final report making concrete recommendations to the Government of Myanmar, Rohingya militants attacked several police outposts and reportedly one army base in various locations in northern Rakhine State.⁵⁰ Armed mostly with sticks, knives, and improvised explosive devices, militants killed 12 state security officials, according to the Myanmar authorities.⁵¹ ARSA’s attack prompted an immediate response by the Myanmar Army, Police, and armed civilians against the Rohingya Muslim population in northern Rakhine State.⁵²

Unlike the “clearance operations” in October and November 2016, which were primarily isolated to villages in Maungdaw Township, the attacks that started in August 2017 targeted Rohingya residents of hundreds of villages in all three townships of northern Rakhine State.

45 Khin Maung Oo, “The Thorn Needs Removing as It Pierces!” *Global New Light of Myanmar*, October 31, 2016, <http://www.globalnewlightofmyanmar.com/the-thorn-needs-removing-if-it-pierces/> (accessed July 10, 2018); Pho Swe, “Shwe Maung Fails to Confess the Truth About Rakhine,” *Myanmar Ministry of Information*, November 3, 2016, <http://www.moi.gov.mm/moi:eng/?q=news/4/11/2016/id-9039> (accessed July 10, 2018).

46 U.N. Office of the High Commissioner for Human Rights (OHCHR), *Report of the OHCHR Mission to Bangladesh: Interviews with Rohingyas Fleeing From Myanmar Since 9 October 2016: Flash Report*, February 3, 2017, <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf> (accessed July 10, 2018).

47 U.N. Human Rights Council, *Resolution Adopted by the Human Rights Council on 24 March 2017*, U.N. Doc. A/HRC/RES/34/22, April 3, 2017, <http://undocs.org/A/HRC/res/34/22> (July 10, 2018).

48 “Press Release issued by the Ministry of Foreign Affairs on UN Human Rights Council’s Resolution Calling for the Dispatch of an International Fact Finding Mission,” *The Global New Light Of Myanmar*, March 25, 2017, <http://www.globalnewlightofmyanmar.com/the-following-the-full-text-of-the-press-release-issued-by-the-ministry-of-foreign-affairs-on-un-human-rights-councils-resolution-calling-for-the-dispatch-of-an-international-fact-finding-mi/> (accessed July 10, 2018).

49 Simon Lewis, “Myanmar says it Will Refuse Entry to U.N. Investigators Probing Rohingya Abuses,” *Reuters*, June 30, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-un/myanmar-says-it-will-refuse-entry-to-u-n-investigators-probing-rohingya-abuses-idUSKBN19LoCP> (accessed July 10, 2018).

50 Wa Lone and Shoon Naing, “At Least 71 Killed in Myanmar as Rohingya Insurgents Stage Major Attack,” *Reuters*, August 25, 2017 (accessed July 10, 2018).

51 *Ibid.*

52 *Ibid.*

I. PREPARATIONS FOR ATROCITY CRIMES BETWEEN OCTOBER 2016 AND AUGUST 2017

IN ADVANCE OF attacks against Rohingya communities in northern Rakhine State, the Myanmar military and civilian authorities: 1) “disarmed” Rohingya civilians, systematically collecting sharp or blunt objects from Rohingya civilian homes; 2) Systematically tore down fencing and other structures around Rohingya homes, providing the military with a greater line-of-sight on civilians. 3) trained and armed local non-Rohingya citizens in northern Rakhine State; 4) deprived Rohingya civilians of food and other aid, systematically weakening them physically; 5) built up state security forces in northern Rakhine State to unnecessary levels; and 6) committed human rights violations against Rohingya civilians, including imposing discriminatory curfews and other violations.

These deliberate actions fit within the U.N.’s *Framework for Analysis of Atrocity Crimes* as “preparatory actions” for genocide and crimes against humanity. Taken together, these actions demonstrate a level of preparation not previously documented with respect to the Myanmar Army-led “clearance operations” in northern Rakhine State in 2016 and 2017.⁵³

CONFISCATING SHARP AND BLUNT OBJECTS FROM ROHINGYA CIVILIANS

OHCHR identifies the “adoption of measures . . . that affect or deliberately discriminate against” protected groups as “enabling circumstances or preparatory action” toward mass atrocity crimes.⁵⁴ It also identifies the “[s]trengthening of the security apparatus, its reorganization or mobilization against protected groups” as similarly enabling mass atrocity crimes.⁵⁵

In the months and weeks leading up to August 25, the Myanmar Army and police traveled house-to-house in Rohingya villages in northern Rakhine State, confiscating sharp and blunt objects from the civilian population.⁵⁶

⁵³ U.N., *Framework for Analysis of Atrocity Crimes: A Tool for Prevention*, 2014, http://www.un.org/en/genocideprevention/documents/publications-and-resources/Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf (accessed July 10, 2018), p. 16.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ See, for example, Fortify Rights interviews with #9-2, #11-2, #14-2, and #15-2, Cox’s Bazar

I. PREPARATIONS FOR ATROCITY CRIMES BETWEEN

Soldiers also removed fences from Rohingya villages. In some cases, soldiers confiscated knives directly from Rohingya civilians and their homes, beating and threatening local residents in the process.⁵⁷ In other cases, soldiers forced local village heads to collect and hand over knives from local homes.⁵⁸

Rohingya survivors and eyewitnesses told Fortify Rights that the authorities began seizing sharp and blunt household objects, including knives used for cooking, in the weeks and months before the August 25 militant attacks that sparked an unprecedented Myanmar Army-led attack on Rohingya civilians.⁵⁹ For example, “Nora Begum,” 40, from Khun Thi Pyin village in northern Maungdaw Township, told Fortify Rights:

We had some knives, but the government came and seized them two months ago [in June 2017]. They ordered the village authority to hand over the knives . . . They took the knives we use to cut the fish and chicken. We could only keep very small knives. They took all the longer ones.⁶⁰

A 30-year-old Rohingya woman from Kyet Yoe Pyin village—also known as Kiari Farang—in Maungdaw Township, who remained in her village after mass killings in November 2016, said: “[The Myanmar soldiers] seized our kitchen supplies [in December 2016].”⁶¹

“Rahana,” a 50-year-old Rohingya mother of two from Nyaung Chaung village in Buthidaung Township, witnessed soldiers confiscate knives in her village approximately two weeks before the August 25 attacks. She said: “We can’t even keep a small knife at home. They came and took all the knives away around two weeks ago. When they came to take the knives, they also took the chickens and eggs and even the vegetables.”⁶²

The systematic nature of the confiscation of sharp and blunt objects from civilian homes demonstrates that Myanmar Army soldiers and police were likely operating under orders. Such measures do not constitute a reasonable counterinsurgency tactic.

Rohingya also described to Fortify Rights how soldiers forced them to remove wood and tin fencing surrounding their homes before the August 25 attacks.⁶³ For example, “Mohammed Tayub,” a 26-year-old businessperson from Tone Chaung village in Maungdaw Township, told Fortify Rights that *Lon Htein* police came to his village around August 15.⁶⁴ He said: “When [*Lon Htein*] came, they ordered us to remove the fences from around our houses, and they told us to hand over knives and iron rods and other things.”⁶⁵

Amateur video footage available online shows Myanmar state security forces systematically destroying wood and tin fencing around Rohingya homes between October 2016 and August 25,

District, Bangladesh, August 30, 2017; Fortify Rights interview with #44-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

⁵⁷ See, for example, Fortify Rights interview with #14-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

⁵⁸ See, for example, Fortify Rights interview with #9-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

⁵⁹ See, Fortify Rights interviews with #9-2, #11-2, #14-2, #15-2, #44-2, #55-2, #64-2, Cox’s Bazar, Bangladesh, August 27, 2017–February 27, 2018.

⁶⁰ Fortify Rights interview with #9-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

⁶¹ Fortify Rights interview with #11-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

⁶² Fortify Rights interview with #15-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

⁶³ See, for example, Fortify Rights interviews with #9-2, #11-2, #14-2, and #15-2, Cox’s Bazar District, Bangladesh, August 30, 2017; Fortify Rights interviews with #44-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

⁶⁴ *Lon Htein* are a special unit of “riot police” falling under the command of the Myanmar Police Force.

⁶⁵ Fortify Rights interview with #14-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

2017.⁶⁶ Rohingya and international journalists also reported how soldiers systematically tore down fencing around Rohingya homes in October and November 2016 and penalized Rohingya who erected new fences.⁶⁷ The U.N. Special Rapporteur Yanghee Lee reported on the forced removal of fences in Maungdaw Township following her mission to Myanmar from January 9 to 20, 2017. Her report to the Human Rights Council notes:

One of the more remarkable observations made during the visit to Maungdaw was of “hanging doors.” It had been reported previously that during the security operations, villagers were ordered to remove fencing around their houses, yards, ablution blocks and water ponds (allegedly accompanied by harassment, arrest and extortion of villagers). The observation of doors standing alone without fencing appears to corroborate those orders, which have made women feel particularly vulnerable and insecure as bathing and toilet facilities are normally enclosed within those fences. The Special Rapporteur noted that earlier in June, an instruction was apparently issued by the Maungdaw authorities to ban zinc fencing around “Bengali” houses and its implementation was reportedly accelerated following the 9 October attacks.⁶⁸

While the Myanmar authorities ostensibly ordered the removal of fencing to “strengthen” the state’s security apparatus, the measures discriminatorily targeted only Rohingya properties. This enabled the authorities to have a greater line-of-sight on Rohingya civilian populations, effectively preventing civilians from hiding around their properties and making it more difficult for them to safely flee from an attack.

The confiscation of knives and removal of fences from Rohingya properties was discriminatory and failed to constitute reasonable counterinsurgency tactics. Instead, these tactics formed part of a disturbing constellation of preparations for mass atrocities.

TRAINING AND ARMING NON-ROHINGYA CITIZENS

The U.N. identifies the “[c]reation of, or increased support to, militia or paramilitary groups” as an “enabling” circumstance or “preparatory action” toward genocide and crimes against humanity.⁶⁹

Following the attacks on police by armed Rohingya and the subsequent crackdown by the Myanmar Army in Rakhine State in October 2016, the Myanmar authorities announced a plan to recruit and arm ethnic Rakhine and other non-Rohingya citizens in Maungdaw Township.⁷⁰ Rakhine State Police Chief Colonel Sein Lwin told *Reuters* that the new “regional police” would include local non-Rohingya residents who would not otherwise meet educational or physical requirements to join the Myanmar Police Force, adding that recruits would serve in their own villages.⁷¹ It was reported that more than 100 recruits between the ages of 18 and 35 would receive

66 “Myanmar Government Removing #Rohingya’s Fences & Barriers,” *Samatar Media*, YouTube, September 8, 2017, <https://www.youtube.com/watch?v=e6Z4dg3HZTk> (accessed July 10, 2018).

67 See, for example: Rohingya Eye, “Woman Penalized for Fencing Her Home,” *Rohingya Vision*, April 7, 2017, <http://www.rvisiontv.com/woman-penalized-fencing-home/> (accessed July 10, 2018). In April 2017, Carlos Sardinia Galache reported that soldiers returned to Myo Thu Gyi village in Maungdaw Township after committing extrajudicial killings in October 2016, demanding “that every household remove the fences around their compounds, to deprive insurgents of hiding places.” “Myanmar Villagers Tell of Myanmar Forces’ Reprisal Killings After Insurgents’ Deadly Attack,” *South China Morning Post*, April 28, 2017, <http://www.scmp.com/magazines/post-magazine/long-reads/article/2091093/rohingya-villagers-tell-myanmar-forces-reprisal> (accessed July 10, 2018). On October 12, 2016, Fortify Rights reported on killings in Myo Thu Gyi. “Myanmar: Protect Civilians in Rakhine State, Investigate Fatal Shootings,” Fortify Rights, news release, October 12, 2016, <http://www.fortifyrights.org/publication-20161012.html> (accessed July 10, 2018).

68 U.N. Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, U.N. Doc. A/HRC/34/67, March 14, 2017.

69 U.N., *Framework for Analysis of Atrocity Crimes*.

70 “Myanmar: Scrap Plan to Arm Civilians in Rakhine State,” Fortify Rights, news release, November 5, 2016, <http://www.fortifyrights.org/publication-20161105.html> (accessed July 10, 2018).

71 “Myanmar Police to Arm and Train Non-Muslims in Conflict-torn Rakhine Region,” *Reuters*, November 3, 2016, <http://>

a 16-week “accelerated” training program, beginning in the state capital of Sittwe on November 7, 2016.⁷² The police intended to provide the recruits with weapons and “other equipment” as well as compensation.⁷³

Despite condemnation by human rights organizations, including Fortify Rights, and members of the international community, the authorities proceeded with the plan.⁷⁴

This report documents how, in some cases, state security forces provided ethnic Rakhine and other local non-Rohingya citizens in northern Rakhine State with weapons on the day of attacks against Rohingya civilians; in other cases, the authorities trained and armed them weeks or months in advance.

“Abdul Hussein,” a Rohingya father of three, survived and witnessed a Myanmar Army-led attack on his village of Khun Thi Pyin in Maungdaw Township on August 26. Soldiers and armed civilians reportedly killed his 15-year-old son, two daughters, aged 12 and eight, and wife, 45. Months before the attack on his village, beginning in January 2017, he witnessed police providing nearby Rakhine residents with guns, swords, and training. He told Fortify Rights:

The soldiers provided [Rakhine] with swords and also some guns . . . I could see [the soldiers] training them. It was maybe seven months ago [in January 2017]. They taught them how to fire the guns. The Rakhine village is close to my village. They had some schools and long shelters and they were gathering in and around those places. The name of the village is Nan Thar Taung village. They would shoot [rifles] towards the jungle.⁷⁵

Abdul Hussein identified the residents who received training as the same people who attacked his village alongside Myanmar Army soldiers on August 26.⁷⁶

“Mohammed Rafiq,” 25, also witnessed soldiers arming and training Rakhine civilians in his village of Tula Toli in Maungdaw Township—the site of a large-scale massacre on August 30. Just days after he witnessed a massacre, he told Fortify Rights:

The police gave the Rakhine people swords, knives, and guns one month ago. They sometimes practiced shooting the guns. I could hear the sounds of the gunfire. Starting one month ago, we could no longer go to the Rakhine part of the village. We were banned from entering. When we tried to go, they’d threaten us or try to kill us or cut us.⁷⁷

Mohammed Rafiq also identified Rakhine as well as ethnic Mro civilians who attacked his village alongside Myanmar Army soldiers on August 30. He told Fortify Rights:

[Myanmar Army soldiers] brought the Mro people from the hillside. Before the violence took place, the Rakhine and military took the Mro people and kept them in the Rakhine village. We know the Mro because we had some dealings with them in the mountainside—they have long hair and wear it in a knot behind their head. On the same day of the violence, the Rakhine and Mro arrived . . . [Myanmar Army soldiers] gave them long swords . . . Even young Rakhine boys were given long swords, and they were moving around with the swords hanging on their backs.⁷⁸

blogs.reuters.com/faithworld/2016/11/03/myanmar-police-to-arm-and-train-non-muslims-in-conflict-torn-rakhine-region (accessed June, 10, 2018).

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ “Myanmar: Scrap Plan to Arm Civilians in Rakhine State,” Fortify Rights.

⁷⁵ Fortify Rights interview with #8-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

⁷⁶ *Ibid.*

⁷⁷ Fortify Rights interview with #33-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

⁷⁸ *Ibid.*

Other survivors from Tula Toli village further described to Fortify Rights how local Rakhine and Mro citizens slit throats and fatally slashed people with swords.⁷⁹

A Rohingya village head—technically referred to as the “person-in-charge” as Rohingyas are not permitted to assume the administrative position of “village head”—from a village in Maungdaw Township—details withheld for security purposes—told Fortify Rights how Rakhine citizens were prepared for violence in his village:

I have a good relationship with the Rakhine people because I would visit them [in fulfilling my duties as the person-in-charge]. Around two months ago, they were cleaning rust off guns. My Rakhine friends told me they got the guns from the military. . . . The police brought some retired [non-state ethnic army] soldiers, Rakhine people who know how to shoot guns, from lower townships. They were formerly with a Rakhine insurgent group, and the government brought them here to train others. The police brought them, but it was the township administrator who arranged it. . . . I didn't see them shoot the guns, but I saw them training them on how to use, clean, and take care of their guns. As a village head, I would move around for my work, and they had an alcohol and beer shop where they met in the village. In one place, they [trained] openly. I could see them. They jokingly aimed a gun at me.⁸⁰

Survivors also claimed that in the months leading to the August attacks, their Rakhine neighbors began to stand watch over their hamlets and villages throughout the night, in some cases, while holding rifles.⁸¹ The authorities reportedly encouraged these watchmen and provided them with material support.⁸²

“Noor,” a 25-year-old Rohingya woman from Ta Man Thar village—also known as Shab Bazaar—in Maungdaw Township, told Fortify Rights:

The military trained [our Rakhine neighbors] every night in their village. I saw it. It was just beside the road, and we could see the training. One of the people was a trainer, showing the other people what to do. . . . They were holding wooden guns. I could tell they weren't real guns. It started five or six months ago [in February or March 2017]. They did it every night.⁸³

“Hussan Ullah,” 38, from Thit Tone Gwa Son village—also known as Raani—in Maungdaw Township, witnessed *Lon Htein* police deliver a shipment of rifles to a nearby Rakhine village in a white-colored van approximately two months before the August 25 attacks:

The government gave the Rakhine people guns. I know because the police brought some guns with a van and, on the way to the nearby Rakhine village, the tire of the van was punctured. We looked through the window of the van and saw piles of guns. This was more than two months ago [in June 2017]. There was only one driver and a Rakhine woman in the front and with them were *Lon Htein* police—three in the car and three following. . . . They finally drove toward the Rakhine villages [Nga Yant Chaung village and Min Galar Nyunt village in Maungdaw Township].⁸⁴

On August 8, 2017, just weeks before the August 25 attacks, an announcement circulated by the Rakhine State General Administrative Government mentioning acts of “extremist terrorism” and that local residents—non-Rohingya—fled their “native homes” out of fear of “Muslim

⁷⁹ Fortify Rights interviews with #33-2, #39-2, #43-2, #45-2 Cox's Bazar District, Bangladesh, September 2017.

⁸⁰ The name of the village is on file with Fortify Rights but withheld for security reasons. Fortify Rights interview with #40-2, Cox's Bazar District, Bangladesh, September 4, 2017.

⁸¹ See, for example, Fortify Rights interview with #42-2, Cox's Bazar District, Bangladesh, September 4, 2017.

⁸² *Ibid.*

⁸³ Fortify Rights interview with #32-2, Cox's Bazar District, Bangladesh, September 2, 2017.

⁸⁴ Fortify Rights interview with #29-2, Cox's Bazar District, Bangladesh, September 2, 2017.

Bengalis.”⁸⁵ The statement references “a security system and cooperation among the public and particular security forces.”⁸⁶

Moreover, Myanmar Commander-in-Chief Senior General Min Aung Hlaing visited northern Rakhine State during the “clearance operations” and, on September 22, 2017, he met with non-Rohingya citizens, whom he referred to as “local ethnics,” implicitly contrasting them with Rohingya, whom the government does not regard as an ethnic group. He encouraged further cooperation between local non-Rohingya citizens and the Myanmar military, saying, “Local ethnics can strengthen the defense prowess by living in unity and by joining hands with the administrative bodies and security forces in oneness.”⁸⁷

The authorities also trained Rakhine civilians several years ago, according to some Rohingya. For example, “Sumi,” 37, a local aid worker in northern Rakhine State, witnessed Myanmar Army soldiers training Rakhine civilians in Zin Kha Ma village in southern Buthidang Township in 2013. Zin Kha Ma village has both Rakhine and Muslim residents. He told Fortify Rights:

I was passing by the village, and I saw the military training [the Rakhine residents]. It was in 2013. The soldiers were showing the Rakhine how to hold guns, how to shoot them, and how to march. I could tell they had real guns, but they were empty. When I was passing by, the training was very near to me, and we stood and watched. Some soldiers saw us and told us to leave and not to watch.⁸⁸

Residents of Khin Tha Ma village—also known as Khan Sa Ma—in Maungdaw Township described similar trainings by state security forces in their village in 2013. Some described how members of the Arakan Liberation Party (ALP)—an ethnic Rakhine political party with an armed group—settled in Rohingya-majority areas of northern Rakhine State as part of a ceasefire deal. Residents of Khin Tha Ma village told Fortify Rights that former fighters aligned with the ALP were involved in state-sponsored trainings of local Rakhine-Buddhist civilians.⁸⁹ Fortify Rights did not speak with members of ALP for this report.

AVOIDABLE DEPRIVATIONS IN FOOD AND OTHER AID

“Before the [August 2017] violence took place, the government banned the delivery of food since early July.”

—“Sumi,” local aid worker in Rakhine State, August 2017

“Officially we don’t have any access [in Maungdaw Township]. If we don’t have access, how can we help these people?”

—U.N. official to Fortify Rights, December 2016

“We were getting rations from the U.N. before this happened. They gave us rice, oil, and beans. They gave it to us almost every month for about four years. The U.N. was unable to give food after the violence started [in October 2016].”

—“Kyaw Kyaw,” 26, Dhar Giza village, Maungdaw Township, December 14, 2017

⁸⁵ Republic of Union of Myanmar State Administrative Government, Rakhine State, Announcement 1/ 2007, Myanmar Year- 1379, August 8, 2017.

⁸⁶ *Ibid.*

⁸⁷ Senior General Min Aung Hlaing, Facebook Post, September 22, 2018, <https://www.facebook.com/seniorgeneralminaulhlaing/posts/1717476404953507> (accessed July 10, 2018).

⁸⁸ Fortify Rights interview with #30-2, Cox’s Bazar District, Bangladesh, September 2, 2017.

⁸⁹ Fortify Rights interview with #40-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

The U.N. identifies the expulsion of aid organizations or severe restrictions on their services as “preparatory action” toward genocide and crimes against humanity, specifying the “[e]xpulsion or refusal to allow the presence of NGOs, international organizations, media or other relevant actors, or imposition of severe restrictions on their services and movements” as “enabling circumstances or preparatory action.”⁹⁰

The Myanmar authorities have restricted access for foreigners to northern Rakhine State for years, allowing only a small group of international humanitarian aid groups and U.N. agencies to operate in northern Rakhine State and in tightly restricted ways.⁹¹

Beginning in October 2016, during the Myanmar Army-led attacks on civilians in Maungdaw Township, Myanmar authorities further restricted access to affected areas in northern Rakhine State and suspended pre-existing humanitarian programs, including food aid, nutrition, and lifesaving health care.⁹²

The decision to impose restrictions and suspend aid to northern Rakhine State involved both civilian and military leadership: State Counsellor Aung San Suu Kyi controls relevant ministries, including the Ministry of Social Welfare, Relief, and Resettlement, that grant travel authorizations to aid groups and aid workers in Rakhine State.⁹³ The military controls, at minimum, physical access on the ground in northern Rakhine State.

The decision to restrict and suspend aid had the predictable effect of physically and mentally weakening the civilian population ahead of the attacks in August as well as removing international observers from the ground. Aid workers also told Fortify Rights that the restrictions heightened risks for several thousand Rohingya children who were already suffering from severe acute malnutrition and resulted in otherwise preventable deaths, including of children.⁹⁴

Rohingya survivors of the attacks during October and November 2016 also described adverse impacts on their health and well-being resulting from the suspension of humanitarian programs. For instance, “Abu,” a 24-year-old Rohingya man from Ywet Nyo Taung village—also known as Rohangya Taung—in Maungdaw Township spent more than one month displaced in Maungdaw Township, and he told Fortify Rights: “We were facing a problem with food. We couldn’t go outside and couldn’t go to the paddies. People were dying because of hunger and a lack of medicine.”⁹⁵

⁹⁰ U.N., *Framework for Analysis of Atrocity Crimes*.

⁹¹ In addition to restricting humanitarian access, the authorities have imposed strict restrictions on access to northern Rakhine State for journalists, members of the press, human rights workers, and other monitors. *Associated Press* journalist Robin McDowell was one of the first foreign journalists to visit and report from Maungdaw Township in 2013. Bob Woodruff and a team from *ABC News* were one of the first foreign television crews to film in northern Rakhine State as part of an Emmy Award winning broadcast in 2015. Robin McDowell, “The Suffering of ‘Dogs’: Rohingya Kids in Myanmar,” *Associated Press*, October 15, 2013, <https://www.yahoo.com/news/suffering-dogs-rohingya-kids-myanmar-051842006.html> (accessed July 10, 2018); “Thousands of Rohingya People Face Death, Slavery to Escape Myanmar,” *ABC News*, October 22, 2015, <https://abcnews.go.com/Nightline/video/thousands-rohingya-people-risk-death-slavery-escape-myanmar-34642965> (accessed July 10, 2018).

⁹² See, for example, Fortify Rights interviews with international aid workers #35 and #36, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁹³ In order to access restricted areas where travel authorization is required, humanitarian aid organizations must submit a detailed activity plan several weeks in advance of the requested travel date to the relevant government ministry in Naypyidaw. Fortify Rights interviews with #64 and #66, Yangon, Myanmar, May 10 and May 12, 2017, respectively.

⁹⁴ Fortify Rights interview with international aid worker #36, Cox’s Bazar District, Bangladesh, December 13, 2016. See, for example, Fortify Rights interviews with #1-2, #3-2, #7-2, #18-2, #19-2, #20-2, #21-2, #22-2, #26-2, #43-2, Cox’s Bazar District, Bangladesh, August 28 to September 4, 2017. See also, World Food Programme (WFP), *Food Security Assessment in the Northern Part of Rakhine State: Final Report*, May 2017, <http://reliefweb.int/sites/reliefweb.int/files/resources/WFP-0000019264.pdf> (accessed August 15, 2017).

⁹⁵ Fortify Rights interview with #13, Cox’s Bazar District, Bangladesh, December 3, 2016.

As of December 2016, Myanmar authorities continued to deny access for humanitarian aid agencies to affected areas in Maungdaw Township, apart from a single food distribution to four villages in Maungdaw Township in early November.⁹⁶ In March 2017, U.N. Special Rapporteur Yanghee Lee reported:

All humanitarian operations and activities normally undertaken in these areas were suspended. Teachers, health workers and other service providers left these areas with reports that military helicopters were used in some cases to evacuate Rakhine civil servants from remote areas.⁹⁷

The WFP announced that its spring 2017 survey confirmed a worsening food-security situation in northern Rakhine State due to government restrictions and estimated that approximately 80,500 children under the age of five would require treatment for severe acute malnutrition in the next twelve months.⁹⁸ If untreated, severe acute malnutrition leads to “wasting” and death.⁹⁹

Several Rohingya described lacking access to food, water, and healthcare following the attacks and while displaced in Maungdaw Township and *en route* to Bangladesh—a journey that could take days or weeks for those traveling by foot through difficult terrain and with little to no belongings.¹⁰⁰

In the absence of humanitarian aid, “Yunus” told Fortify Rights how he and his family struggled to find food and relied on others for support after the attacks. He said: “We ate when we were at home and ate from others’ houses. There was no shame to ask for food since all of us fell into the same troubles.”¹⁰¹ “Salim,” 25, from Sali Farang village—also known as Myaw Tawng—in Maungdaw Township, told Fortify Rights: “Before the violence, [aid agencies] could give aid. After the violence, they couldn’t.”¹⁰²

“Nura Nura,” a 17-year-old Rohingya woman from Wapeik village—also known as Waabag—in Maungdaw Township, told Fortify Rights:

In my village, aid was being provided. We received rice, salt, chickpeas, and coconut oil. We received this six months per year. We have seven family members, so we would receive five bags of rice. We had to spend about 500 Myanmar Kyat [US\$0.50 cents] in transport to get the rations to the house. When the military started to come, the rations stopped. After October [2016], the rations stopped.¹⁰³

The country director for an international aid organization in Bangladesh told Fortify Rights in December 2016:

Our programs [in Rakhine State] are fully suspended. In Maungdaw, we had around ten nutrition centers that have been closed for the last month and a half, so it is not surprising we are seeing huge caseloads of children on this side because the situation is already bad on that side. They have been fleeing those places for weeks and weeks.¹⁰⁴

⁹⁶ Fortify Rights electronic communication with United Nations official, December 7, 2016.

⁹⁷ U.N. Human Rights Council, *Report of the Special Rapporteur, A/HRC/34/67*.

⁹⁸ WFP, *Food Security Assessment in the Northern Part of Rakhine State*.

⁹⁹ Oliver Holmes, “Rohingya Crisis: UN Warns 80,000 Children ‘Wasting’ from Hunger in Myanmar,” *The Guardian*, July 17, 2017, <https://www.theguardian.com/world/2017/jul/17/rohingya-crisis-un-warns-80000-children-wasting-from-hunger-in-myanmar> (accessed July 10, 2018).

¹⁰⁰ For information on difficulties during the exodus to Bangladesh beginning August 25, 2017. See, Fortify Rights interviews with #1-2, #2-2, #4-2, #16-2, #17-2, #18-2, #20-2, #22-2, #25-2, #26-2, #27-2, #29-2, #31-2, #32-2, #33-2, #39-2, #43-2, #45-2, and #46-2, Cox’s Bazar District, Bangladesh, August 28–September 4, 2017.

¹⁰¹ Fortify Rights interview with #09, Cox’s Bazar District, Bangladesh, December 10, 2016.

¹⁰² Fortify Rights interview with #29, Cox’s Bazar District, Bangladesh, December 14, 2016.

¹⁰³ Fortify Rights interview with #66, Cox’s Bazar District, Bangladesh, December 16, 2016.

¹⁰⁴ Fortify Rights interview with #36, Cox’s Bazar District, Bangladesh, December 13, 2016.

By the time Rohingya refugees arrived in Bangladesh, many had significant humanitarian needs, including food and nutrition, medical, clothing, shelter, psychosocial, and other needs.¹⁰⁵ In December 2016, Fortify Rights and local partners located communities of thousands of new Rohingya refugee arrivals in Bangladesh seeking refuge in jungle enclaves along the border with Myanmar with little to no access to emergency humanitarian aid at the time.¹⁰⁶

Before and during the crisis, the WFP was the main provider of food aid to hundreds of thousands of Rohingya in northern Rakhine State. “Sumi,” a local aid worker in northern Rakhine State, confirmed that the government imposed restrictions on aid groups following the violence in October 2016: “Only the WFP was allowed to resume activities in January and February [2017]. Only the WFP was able to work freely, but the other [groups] couldn’t provide aid.”¹⁰⁷

However, WFP’s access was short-lived. In mid-July 2017, more than one month before the Myanmar Army-led “clearance operations,” the authorities completely denied WFP access to northern Rakhine State, effectively denying food to the civilian population. On August 30, 2017, the WFP issued a statement saying: “WFP is currently unable to access its usual operational sites and warehouses with food stocks in the northern part of Rakhine State and has not been able to distribute food and cash assistance in the area since mid-July.”¹⁰⁸

The U.N. Special Rapporteur Yanghee Lee reported the disastrous scale of the avoidable deprivations:

As at 4 November [2016], due to pre-existing humanitarian services having been suspended in most parts of northern Rakhine, more than 150,000 people went without their normal cash/food and nutrition assistance; 3,400 children already diagnosed with Severe Acute Malnutrition (SAM) did not have access to their usual life-saving treatment; over 2,900 children who have been cured of SAM could not get their follow-up treatment and faced a high risk of relapsing; and 42,000 people including 37,000 children with Moderate Acute Malnutrition (MAM) were at high risk of deteriorating into SAM cases. An estimated 7,600 pregnant women in need of continued care were also unable to access reproductive health services.¹⁰⁹

On August 28, an aid worker in Maungdaw Township told Fortify Rights: “People are dying. They are going to starve. There is no food available.”¹¹⁰

BUILD-UP OF STATE SECURITY FORCES IN NORTHERN RAKHINE STATE

The U.N. identifies the “[s]trengthening of the security apparatus, its reorganization or mobilization against protected groups” as “enabling circumstances or preparatory action” toward genocide and crimes against humanity.¹¹¹

Eyewitnesses and Bangladesh officials told Fortify Rights of an increased Myanmar military presence in northern Rakhine State in the lead-up to August 25. For example, a senior commander

¹⁰⁵ Fortify Rights interviews with new refugees, Cox’s Bazar District, Bangladesh, December 2016. *See also*, Fortify Rights, survey of 71 Rohingya-refugee respondents, Cox’s Bazar District, Bangladesh, December 10, 2017.

¹⁰⁶ Fortify Rights and partners from the Rohingya community referred the new arrivals to medical doctors who traveled to the temporary forested enclave and provided them with treatment.

¹⁰⁷ Fortify Rights interview with #30-2, Cox’s Bazar District, Bangladesh, September 2, 2017.

¹⁰⁸ “WFP Statement on Northern Rakhine State,” WFP, news release, August 30, 2017, <https://www.wfp.org/news/news-release/wfp-statement> (July 11, 2018).

¹⁰⁹ U.N. Human Rights Council, *Report of the Special Rapporteur*, A/HRC/34/67.

¹¹⁰ Fortify Rights interview with #1-2, August 28, 2017.

¹¹¹ U.N., *Framework for Analysis of Atrocity Crimes*.

of the Border Guards Bangladesh (BGB) described to Fortify Rights a significant and unusual increase in Myanmar military activity in northern Rakhine State in the days and weeks prior to August 25. Describing the BGB's internal intelligence reports, a portion of which was provided to Fortify Rights, he said:

Their army was around for two months [before August 25, in areas they hadn't previously been located]. We got the information that the army was attacking [civilians before August 25]. We got the situation reports. We got reports that the military was bringing in more and more trucks of soldiers before August 25. That wasn't our concern at the time because the Army didn't violate the border. We didn't think about what they might have been planning or doing . . . Once a military decides to act, the policy is to keep it quiet. They would do many things that would never be known or seen.¹¹²

Local and international aid workers operational in Maungdaw Township told Fortify Rights about a noticeable increase in military activity in the days before August 25.¹¹³

On August 11, 2017, U.N. Special Rapporteur Yanghee Lee issued a statement about reports that the Government of Myanmar flew an army battalion to Rakhine State, calling it “a cause for major concern.”¹¹⁴ The Special Rapporteur called on the government to “ensure that security forces exercise restraint in all circumstances and respect human rights in addressing the security situation in Rakhine State.”¹¹⁵ Myanmar military sources also confirmed that the Myanmar Army deployed sizable numbers of soldiers to northern Rakhine State in the weeks leading up to August 25.¹¹⁶

OTHER HUMAN RIGHTS VIOLATIONS

The U.N. identifies “[i]ncreased violations of the right to life, physical integrity, liberty or security of members of protected groups, populations or individuals, or recent adoption of measures . . . that affect or deliberately discriminate against them” as “enabling circumstances or preparatory action” toward genocide and crimes against humanity.¹¹⁷

Eyewitnesses, survivors, and aid workers described to Fortify Rights increased “tensions” and incidents of human rights violations in northern Rakhine State in the lead-up to August 25. Fortify Rights also documented discriminatory and tightened restrictions on freedom of movement and a curfew, which applied only to Muslim populations.¹¹⁸

In the weeks and months before and after August 25, Myanmar authorities imposed a discriminatory Muslim-only curfew throughout Rakhine State. A Rohingya man in Maungdaw town told Fortify Rights:

¹¹² Fortify Rights interview with senior official of Border Guards Bangladesh, Teknaf, Cox's Bazar District, Bangladesh, November 12, 2017.

¹¹³ See, Fortify Rights interview with international aid worker, Bangkok, Thailand, October 26, 2017. See also, Fortify Rights interviews with #1-2, #3-2, #7-2, #18-2, #19-2, #20-2, #21-2, #22-2, #26-2, #43-2, Cox's Bazar District, August 28, 2017–September 7, 2018.

¹¹⁴ OHCHR, “Myanmar: UN Rights Expert Urges Restraint in Security Operation in Rakhine State,” August 11, 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21968&LangID=E (accessed July 10, 2018).

¹¹⁵ *Ibid.*

¹¹⁶ Fortify Rights interview with military personnel, Myanmar, June 2018. See also, Wa Lone, “Myanmar Sends Hundreds of Troops to Rakhine as Tensions Rise: Sources,” *Reuters*, August 11, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-military/myanmar-sends-hundreds-of-troops-to-rakhine-as-tension-rises-sources-idUSKBN1ARoZN> (accessed July 10, 2018).

¹¹⁷ U.N., *Framework for Analysis of Atrocity Crimes*.

¹¹⁸ See, Fortify Rights interviews with #50-2, #53-2, #56-2, and #57-2, Cox's Bazar District, Bangladesh, September 2018.

The curfew is from 6 p.m. to 6 a.m. Between the curfew time, the Rohingya people cannot move anywhere. We can see Rakhine people moving around, outside and on the main road. I can tell you this is only imposed on the Muslim people. We fear that the extremists will attack us because the Rakhine people can move during the curfew time.¹¹⁹

“Sumi,” a 37-year-old local aid worker from Buthidaung town, told Fortify Rights:

The curfew is still in effect from 6 p.m. to 6 a.m. It mostly applies on the Rohingya people but not on the Rakhine. We can see after 6 p.m. some people are moving around on motorbikes. We can see them moving around the city. There are seven wards in Buthidaung [town]. Ward 1 is purely Muslim and Ward 6 is purely Rakhine, and the others are mixed.¹²⁰

Likewise, the U.N. Special Rapporteur Yanghee Lee reported to the Human Rights Council on the curfew, stating:

In the immediate aftermath [of violence in October 2016], the Government extended an existing curfew from 7 p.m. to 6 a.m. in Maungdaw and two other townships. In respect of the “clearance operations,” Maungdaw, Buthidaung and Rathedaung townships were officially declared affected and closed off for security reasons.¹²¹

The Myanmar authorities also evacuated non-Rohingya citizens from northern Rakhine State, providing them with humanitarian aid while simultaneously depriving Rohingya civilians left behind of aid.¹²² U.N. Special Rapporteur Yanghee Lee reported:

As at 21 October 2016, it was estimated about 3,000 Rakhine community members were displaced. Some were reportedly transported by boat out of Maungdaw and many provided temporary shelters in Buthidaung, Maungdaw and Sittwe towns. Their needs were attended to by the State Government, local NGOs and religious organizations, with offers of international assistance from the United Nations and other international organizations mostly declined. In contrast, the estimated 10–15,000 Rohingya community members displaced as of 21 October had apparently not received any government assistance and were sheltered by host communities in villages affected by security operations. Humanitarian organizations — despite being ready to undertake assessment and respond to population in need — were not permitted to do so.¹²³

Within the context of curfews and heightened tensions in northern Rakhine State, Fortify Rights also documented arbitrary arrests, killings, and enforced disappearances of Rohingya civilians before the August 25 attacks. For instance, “Mohammed Tayub,” 26, from Tone Chaung village in Maungdaw Township described arbitrary arrests by state security forces in the days prior to August 25: “It was around ten days before I left, people were arrested. I saw the soldiers take them away on motorbikes. I don’t know why they thought they were supporting fighters, but they were mainly arresting the rich people from the village.”¹²⁴

A 36-year-old Rohingya aid worker from Ta Man Thar village in Maungdaw Township also described arbitrary arrests in the lead-up to August 25, telling Fortify Rights:

Some days [before the violence on August 25] more people were arrested, and they were beaten badly. The [Lon Htein] arrested three people. A mullah and six others were arrested,

¹¹⁹ Fortify Rights interview with #1-2, Maungdaw, Rakhine State, August 28, 2017.

¹²⁰ Fortify Rights interview with #30-2, Maungdaw, Rakhine State, September 2, 2017.

¹²¹ U.N. Human Rights Council, *Report of the Special Rapporteur*, A/HRC/34/67.

¹²² On August 27, two days after the violence reignited in northern Rakhine State, the Government of Myanmar claimed that it had safely evacuated 4,000 non-Rohingya citizens from northern Rakhine State. “Thousands of Non-Muslims Evacuated as Violence Flares in Northwest Myanmar,” *Reuters*, August 27, 2017, <https://www.voanews.com/a/thousands-non-muslims-evacuated-northwest-myanmar/4002468.html> (accessed July 10, 2018).

¹²³ U.N. Human Rights Council, *Report of the Special Rapporteur*, A/HRC/34/67.

¹²⁴ Fortify Rights interview with #14-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

but only four were taken. The [*Lon Htein*] came on motorbikes with the help of ethnic Daignet people, the informers. He informed the [*Lon Htein*] where the mullah was at that time. Then [the mullah] was arrested by the [*Lon Htein*] and badly beaten. Villagers tried to save the mullah, but they couldn't do anything. The mullah asked for help, shouting, "Help me! help me!" but we couldn't do anything because the [*Lon Htein*] shot four times in the sky.¹²⁵

As of the time of writing, the witnesses to this arrest had not heard from those arrested and received no information on their whereabouts. Likewise, an international aid worker operating in northern Rakhine State at the time told Fortify Rights about "huge examples of arbitrary arrest in Buthidaung" the week before August 25.¹²⁶

A 50-year-old Rohingya woman from Kha Maung Seik village —also known as Fora Bazaar—in Maungdaw Township described an enforced disappearance and an extrajudicial killing by state security forces just days before August 25:

[The *Lon Htein*] arrested people and took them to the camp, and they never returned. Khalu was a very senior person in the village. He was arrested around eight or nine days before this violence. He was taken to the camp and never came back. I saw them take him. They put a blindfold on him and tied his hands behind his back. When the elder people were taken, the residents would gather to see, and [the soldiers would] attack the residents. My brother-in-law was killed. He was taken by the military. When the village elder was taken, my brother-in-law went to try to stop it and he was shot. *Lon Thein* shot him. The bullet hit his chest. He was brought here for medical treatment but died. His name was Liykad Ali. He was 35-years old. He died yesterday.¹²⁷

¹²⁵ Fortify Rights interview with #18-2, Cox's Bazar District, Bangladesh, August 31, 2017.

¹²⁶ Fortify Rights interview with international aid worker, Bangkok, Thailand, October 26, 2017.

¹²⁷ Fortify Rights interview with #34-2, Cox's Bazar District, Bangladesh, September 3, 2017.

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.

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.

III. CRIMINAL ACTS AGAINST ROHINGYA BY CIVILIAN PERPETRATORS SINCE AUGUST 25, 2017

AFTER ARMING AND training local non-Rohingya citizens who had a demonstrated history of hostility toward Rohingya Muslims in northern Rakhine State, the Myanmar authorities activated them on August 25, immediately following the attacks by local militants described above. Groups of local non-Rohingya citizens, in some cases trained, armed, and operating alongside Myanmar security forces, murdered Rohingya men, women, and children, destroyed and looted Rohingya property, and assisted the Myanmar Army and Police in razing villages.

MURDER

Rakhine and other ethnic citizens of Myanmar citizens armed with swords, knives, and guns killed Rohingya men, women, and children during the military-led attacks on villages in Maungdaw, Buthidaung, and Rathedaung townships beginning on August 25, 2017.

Survivors of massacres in Chut Pyin village in Rathedaung Township, Tula Toli village in Maungdaw Township, and Maung Nu village in Buthidaung Township described witnessing sword-wielding Rakhine civilians slash and even behead Rohingya, including at least two children in Chut Pyin village, aged six and nine.¹³⁸ "Sultan Ahmed," 27, a Rohingya eyewitness of the Chut Pyin massacre on August 27, told Fortify Rights:

Some people were beheaded, and many were cut. We were in the house hiding when they were beheading people. When we saw that, we just ran out the back of the house. Rakhine people were doing it. The military shot people, and the Rakhine were cutting heads. Some of the people were shot by the military first and, when they were lying down, the Rakhine came and cut their necks. Some were not yet shot, and the Rakhine came and cut their life away.¹³⁹

Sultan Ahmed identified civilian perpetrators as residents from a neighboring Rakhine village.¹⁴⁰ Names of alleged perpetrators are on file with Fortify Rights.

¹³⁸ Fortify Rights interviews with #4-2, #5-2, #23-2, #33-2, and #48-2, Cox's Bazar District, Bangladesh, September 2017.

¹³⁹ Fortify Rights interview with #23-2, Cox's Bazar District, Bangladesh, September 1, 2017.

¹⁴⁰ *Ibid.*

Another Rohingya survivor and eyewitness of the massacre in Chut Pyi village, “Abdul Rahman,” a 41-year-old father of three, similarly told Fortify Rights:

I saw the military shoot people. When they fell down, some Rakhine men with swords came and cut them. I saw only two Rakhine in the front, and the rest were soldiers. There were around 50 soldiers, and behind them, there were maybe 50 more Rakhine . . . The former [Rakhine] village administrator killed a man named Solim. He cut his head off. Solim’s father’s name is Rahaman Ullah. He was about 40 years old.¹⁴¹

Abdul Rahman and others identified ethnic Rakhine perpetrators who attacked them alongside state security forces: “We know the people who came with the army; they are Rakhine from a neighboring village. I know them well. I could recognize them. The army shot us, and then the Rakhine cut us.”¹⁴² Abdul Rahman identified by name the alleged Rakhine perpetrators from the neighboring Rakhine village. Their names are on file with Fortify Rights.¹⁴³

Survivors of the August 30 massacre in Tula Toli village in Maungdaw Township shared similar testimonies of Rakhine involvement in the attack. For instance, “Nurul,” 43, watched from a nearby vantage point as soldiers and armed civilians killed Rohingya residents that had gathered on the banks of the Purma River. He told Fortify Rights:

The military together with the neighboring Rakhine people came to the group, and they shot and beat them with big sticks and cut some people. They threw children into the river . . . 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.¹⁴⁴

Other survivors from Tula Toli village confirmed that the perpetrators included armed ethnic Rakhine as well as Mro civilians.¹⁴⁵ One survivor said he also saw ethnic Kamwe—a small ethnic hilltribe in northern Rakhine State—supporting the military in the attack on Tula Toli village: “They live in the mountains with the Mro people. They were stabbing and cutting people.”¹⁴⁶ Another survivor of the Tula Toli massacre, “Mohammed Rafiq,” said:

First, [the Myanmar Army soldiers] burned the houses, and then they started killing the people. At around 10 a.m., [the military] started burning the village. Around 11 a.m., the killings started. The Rakhine and Mro people with the military and *Lon Htein* killed people. [The Rakhine and Mro] were from the neighboring village.¹⁴⁷

“Narinda,” a 23-year-old Rohingya woman from Auk Phyto Mya village—also known as Hasiril Bil—in northern Maungdaw Township, told Fortify Rights: “It wasn’t only the military but also the Rakhine who threatened to kill us. The Rakhine people came once the military opened fire. They had guns, swords, sticks.”¹⁴⁸

On August 26, Myanmar Army soldiers, police, and armed Rakhine civilians surrounded and entered Khun Thi Pyin village in Maungdaw Township. Myanmar Army soldiers shot and killed four family members of “Abdul Hussein,” 58, including his 15-year-old son. He also witnessed Rakhine civilians from a neighboring hamlet kill unarmed civilians in the village, using swords: “The military provided long swords to the Rakhine. The military were shooting from outside the village and the Rakhine people who were holding the long swords were chasing people and cutting them.”¹⁴⁹

¹⁴¹ Fortify Rights interview with #5-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ Fortify Rights interview with #39-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

¹⁴⁵ Fortify Rights interviews with #33-2, #39-2, #43-2, and #45-2 Cox’s Bazar District, Bangladesh, September 2017.

¹⁴⁶ Fortify Rights interview with #43-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

¹⁴⁷ Fortify Rights interview with #33-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

¹⁴⁸ Fortify Rights interview with #42-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

¹⁴⁹ Fortify Rights interview with #8-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

A 16-year-old Rohingya boy from Khun Thi Pyin village also told Fortify Rights:

In my village, the military came and shot their weapons at us. The Rakhine also came with them, and they were cutting people in the village . . . The soldiers set fires in the village. I saw it myself. The military were shooting the bombs and, at the same time, they were chasing people along with Rakhine, cutting people.¹⁵⁰

Most survivors said Rakhine perpetrators were armed with swords or knives. Some survivors reported seeing Rakhine civilians carrying guns.¹⁵¹ This is consistent with testimony about soldiers arming non-Rohingya citizens with firearms well before August 25.¹⁵² A Rohingya survivor from Thit Tone Gwa Son village in Maungdaw Township, for example, described seeing neighboring Rakhine-civilian perpetrators shooting guns at unarmed Rohingya civilians.¹⁵³

Rohingya survivors of attacks since August 25 alleged that Rakhine and other ethnic nationalities from *natala* villages—places established by the government to populate predominantly Muslim areas with Buddhist citizens—were also involved in the attack against Rohingya.¹⁵⁴ For instance, “Nurul” from Tula Toli village, Maungdaw Township told Fortify Rights:

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 . . . I could see the military because they were in uniform. The Rakhine were in normal clothes, but they held long swords.¹⁵⁵

A Rohingya man from Kha Maung Seik village in northern Maungdaw Township told Fortify Rights that tensions between Rohingya and Rakhine were growing in the days leading up to the August 25 militant attacks:

There were also [armed] Rakhine people together with the military. They were from the neighboring village, called Min Kha Maung. It’s a model village, a *natala* village . . . Recently, when we went to the market, Rakhine would say, ‘What are you doing here? You can’t stay in this country. This is ours.’¹⁵⁶

Not all survivors recognized the civilian perpetrators involved in the attacks. For example, on August 28, Fortify Rights spoke to a Rohingya man in Maungdaw Town who said: “In the downtown area today, police and some Rakhine were burning homes [and structures]. The police brought the Rakhine from elsewhere. We’ve never seen them here . . . The Rakhine had long swords, machetes, and knives.”¹⁵⁷

¹⁵⁰ Fortify Rights interview with #10-2, Cox’s Bazar District, Bangladesh, August 30, 2017. A resident of Du Nyaung Pin Gyi village—also known as Shaira Para—in Maungdaw Township told CNN that their Rakhine Buddhist neighbors, whom they identified, killed Rohingya in the village: “The Rakhine and the Hindus, they joined with the military. I watched them coming over the hill, like a team. As they came towards us to attack, I saw faces that I recognized. I knew them, yet they were killing us.” Kathleen Prior “I Knew Them, Yet They Were Killing Us,” CNN, September 18, 2017, <https://edition.cnn.com/2017/09/18/asia/ethnic-cleansing-rakhine-rohingya/index.html> (accessed June 11, 2018).

¹⁵¹ *Ibid.*

¹⁵² See the section of this report entitled, “Training and Arming non-Rohingya Citizens.”

¹⁵³ See, for example, Fortify Rights interview with #29-2, Cox’s Bazar District, Bangladesh, September 2, 2017.

¹⁵⁴ Fortify Rights interview with #40-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

¹⁵⁵ Fortify Rights interview with #39-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

¹⁵⁶ Fortify Rights interview with #19-2, Cox’s Bazar District, Bangladesh, August 31, 2017.

¹⁵⁷ Fortify Rights interview with #1-2, August 28, 2017.

LOOTING AND DESTRUCTION OF PROPERTY

Several Rohingya survivors of attacks starting on August 25 described how Rakhine and other ethnic civilians looted Rohingya-owned properties. For instance, “Than Win,” 38, from Thit Tone Gwa Son village in northern Maungdaw Township told Fortify Rights: “[The Myanmar Army soldiers] shot launchers at the houses and burned them. At the same time, the neighboring Rakhine villagers were taking property from our houses. We watched what happened from the forest.”¹⁵⁸

Approximately one week after an attack on Tha Man Thar village in Maungdaw Township on August 25, a 27-year-old Rohingya woman recalled the looting and destruction of property, including the office of an international aid organization, by ethnic Rakhine from a nearby village armed with rifles as well as ethnic Marama Gyi civilians in civilian clothing. She said:

The Rakhine and the Marama Gyi went to the [aid organization’s] office and took property away. Before the houses were burned, the Rakhine and Marama Gyi entered homes and took property with them. We were hiding close by and could see them . . . packing big bags and carrying them out. We couldn’t see what was in the bags, but we saw them carry them out. There were around 50 of them. They had long guns—longer than the military’s.¹⁵⁹

Another Rohingya woman, injured during the attacks when a Myanmar Army soldier slashed her left foot as she fled, told Fortify Rights on September 4 how civilians burned down Rohingya-owned homes and property just days earlier in Ward 5 of Maungdaw Town—an area of approximately 150 households. She said:

The military watched as the Hindus and Rakhine set fires. I think they used 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. They burned down all of Ward 5 in this way . . . The Hindu also took the property of people.¹⁶⁰

¹⁵⁸ Fortify Rights interview with #26-2, Cox’s Bazar District, Bangladesh, September 1, 2017. *See also*, Fortify Rights interview with #33-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

¹⁵⁹ Fortify Rights interview with #32-2, Cox’s Bazar District, Bangladesh, September 2, 2017. She continued: “The Rakhine village is the southern and eastern part of the village. It takes just three minutes to walk there. It was just a little bit farther to the Marama Gyi village. They [Marama Gyi men] had on normal clothing. The Rakhine people wore green uniforms. It was the color of grass. The Marama Gyi wore normal clothes. Some of them wore pants and some wore longyis.”

¹⁶⁰ Fortify Rights interview with #41-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

IV. CRIMINAL ACTS AGAINST ROHINGYA BY STATE SECURITY FORCES SINCE AUGUST 25, 2017

"Everyone died."

—25-year-old Rohingya survivor of the Tula Toli massacre in Maungdaw Township

FOLLOWING THE OCTOBER 2016 Myanmar Army-led "clearance operations" in Maungdaw Township, the Myanmar Army arrested "Mohammed Rafique," 25, and 18 other men from Tula Toli village, Maungdaw Township in October 2016, accusing them of supporting Rohingya militants. Soldiers beat the men, forced them to porter military equipment and supplies, and to pay 200,000 Myanmar Kyat (US\$200). Mohammed Rafique told Fortify Rights: "We carried baskets, some solar panels, and some weapons and food. They beat us. It took a half-hour to carry the load. We were told that if we walked their things to the camp, then they'd release us. If we refused, we'd have been beaten badly."¹⁶¹

Before his release, soldiers issued a chilling and prophetic threat: "A soldier said, 'If there is violence again, we'll destroy you all.' They said they would finish and kill all of us. This was three or four days after the October violence happened."¹⁶²

Approximately ten months later, Mohammed Rafique's village—Tula Toli—was the site of a well-documented massacre on August 30, following an assault on police by Rohingya militants on August 25. Soldiers slaughtered hundreds of men, women, and children, raped women and girls, and burned victims' bodies in piles.

In the span of a few weeks, soldiers and police with the support of armed non-Rohingya citizens attacked Rohingya civilians in hundreds of villages throughout the three townships of northern Rakhine State: Maungdaw, Buthidaung, and Rathedaung.

Fortify Rights documented the chilling continuity and brutal efficiency of killings by state security forces in August and September 2017 and in the earlier attacks during October and November 2016.¹⁶³ Soldiers slit throats, fatally shot people at close range and from distances, burned people alive, and laid landmines, which killed and maimed people as they fled.

¹⁶¹ Fortify Rights interview with #33-2, Cox's Bazar District, Bangladesh, September 3, 2017.

¹⁶² *Ibid.*

¹⁶³ See Annex A of this report for documentation on 2016 killings.

MURDER

Throats Slit and Fatal Knife Wounds

Soon after Rohingya fled their villages in late August and early September 2017, survivors and eyewitnesses from 11 villages in the three townships of northern Rakhine State provided Fortify Rights with testimony on how Myanmar Army soldiers, police, and civilians killed men, women, and children *en masse* with knives and swords.¹⁶⁴

“Nora Begum,” 40, fled Khun Thi Pyin village in Maungdaw Township when the Myanmar Army attacked on August 28 and shot and killed her 24-year-old son. On August 30, she told Fortify Rights how she also witnessed soldiers kill another man by hacking him to death. She said:

When we were coming out of our house, I saw one young man. The military caught him and cut his ears and nose, and they sliced his body with knives. Sahad is his name. The young man was holding his young sister. When the military came, he was going toward the fence. They caught him.¹⁶⁵

On August 30, four days after “Rahana,” 30, fled Kyet Yoe Pyin village in Maungdaw Township with two of her children, she told Fortify Rights:

The military came to the village, and they were beheading, cutting, and chopping people. My husband and father were killed. I could come [to Bangladesh] only with my two children. I had five family members. On the first day when the violence took place, they came at 1 a.m. on Friday night. I could see that they cut the people. It was just outside the village in the field. It was around 4 p.m. . . . It was very noisy from gunfire. We could see the military shooting into the village, and we could see dead bodies. There were women, men, children. When we were leaving, we saw some flesh, cut into pieces, and we saw some dead bodies were lying around, scattered in different places. It was in the field. There were around 20 dead bodies, scattered.¹⁶⁶

A Rohingya man from Done Pike, a hamlet in Aung Sit Pyin village in northern Maungdaw Township, fled on August 28. He described seeing a large group of Rohingya militants gathered in the forest and described how they detonated an explosive in the village, which led a large number of Myanmar Army soldiers to descend on the village. On September 1, he told Fortify Rights:

Then [the Myanmar Army soldiers] started beating and killing the people [on August 28]. Hundreds of the military came to the village . . . 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. [The officers] had stars on their shoulders. They killed around ten people . . . I saw my own children killed. Those who are left of my family came with me here. My three children and my mother were killed. They made them lie down on the ground and they cut the backs of their necks.¹⁶⁷

Survivors and eyewitnesses from other villages described similar killings. “Mohammed Rafique” from Tula Toli village in Maungdaw Township recalled the massacre in his village on August 30, describing how residents corralled themselves along the banks of the Purma River, where soldiers systematically killed masses of men, women, and children. Some of the killings by security forces

¹⁶⁴ Fortify Rights interviews with survivors from Maung Nu village in Buthidaung Township, Nyaung Chaung village in Buthidaung Township, Done Pike village in Buthidaung Township, Chut Pyin village in Rathedaung Township, Kun Thi Pyin village in Maungdaw Township, Kyet Yoe Pyin village in Maungdaw Township, Tula Toli village in Maungdaw Township, Kha Kaung Seik village in Maungdaw Township, Hathi village in Maungdaw Township, Maungdaw Town Ward 5, and Padagah Ywa Thit village in Maungdaw Township, August 27–September 5, 2017.

¹⁶⁵ Fortify Rights interview with #9–2, Cox’s Bazar District, Bangladesh, August 30, 2017.

¹⁶⁶ Fortify Rights interview with #11–2, Cox’s Bazar District, Bangladesh, August 30, 2017.

¹⁶⁷ Fortify Rights interview with #25–2, Cox’s Bazar District, Bangladesh, September 1, 2017.

were with machetes and swords: “They made [the Rohingya] lay on the ground, and they cut them. The heads of some were separated. I saw them cutting heads off.”¹⁶⁸

“N. Islam,” 51, also witnessed the mass killing on the Purma riverbank. He told Fortify Rights:

Some small children were thrown into the river . . . They hacked small children who were half alive. They were breastfeeding-age children, two years, three years, five years . . . They tried to bury those who were still a little alive. They cut people and stabbed them.¹⁶⁹

When the killing was complete, soldiers moved bodies into piles and set them alight.¹⁷⁰

On September 30, 2017, “Rashida,” a 50-year-old Rohingya woman from Kha Maung Seik village in Maungdaw Township told Fortify Rights how police massacred men, women, and children beginning on Sunday, August 27 around 10 a.m.:

The Rakhine people and *Lon Htein* were dragging people out of homes. They were cutting throats and bodies and arms. I watched it with my own eyes. More than 100 people were cut like this, from the age of eight to 15, men and women too. Some women were pregnant with babies inside and they cut their stomachs open.¹⁷¹

Rashida witnessed police fatally cut the necks of her two adult sons:

I lost two family members—my two sons were cut. Both were married. Both had two children. One is Nurul Husom and one is Nurul Amin. They were day laborers. They were taken from the house and dragged to the side of the road and cut. I was watching the whole time. The soldiers made them lay down on the ground, and then they cut their necks. We were shouting and crying. [Soldiers] said to us [through Rakhine interpreters], ‘Would you convert to our religion?’ The Rakhine [police] could speak my language. They wore camouflage. The military colors were green. The *Lon Htein* were wearing [camouflage]. Their knives were long and curved. They were also holding guns. When they found a group of people, they shot at them. There was so much blood. I will never see my children again.¹⁷²

Another Rohingya woman, age 25 and a mother of five children, from Hathi Para hamlet in Kha Maung Seik village, Maungdaw Township, told Fortify Rights:

My husband was Nur Husom. My husband was a hard worker, a day laborer. Last Thursday night [August 25], my husband was taken away by *Lon Htein* from our house. I was at home. It was around midnight when 20 to 25 *Lon Htein* soldiers came to our house. They tied his hands behind his back. When he was being tied up, he was told that he killed and cut people. My husband goes to work all day. He is innocent. I don’t know why he was taken away. They just took him away. They didn’t harm me. There were around 40 other people arrested in my village that night. It was after the violence. He was dragged out of the house and taken to the bank of the river. One of the soldiers cut him and threw him into the river. It was very close, right next to the house. My house is near to the Lekkyia River. They used a long knife and cut his throat. I could see only my husband. He was in front of me. Two *Lon Htein* police held him. He was shouting, asking for help. Then one of them cut his throat. I saw a lot of this type of violence.¹⁷³

¹⁶⁸ Fortify Rights interview with #33-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

¹⁶⁹ Fortify Rights interview with #43-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

¹⁷⁰ Fortify Rights interview with #39-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

¹⁷¹ Fortify Rights interview with #34-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

¹⁷² *Ibid.*

¹⁷³ Fortify Rights interview with #37-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

Fortify Rights also reviewed photographs and video evidence of fatal knife wounds. For example, a mobile phone video from Long Done—also known as Lone Don—in Gere Kali village in northern Maungdaw Township shows a severed head and two charred bodies nearby.¹⁷⁴

Burned to Death

The Myanmar Army and its civilian and police accomplices razed several hundred Rohingya villages and Rohingya-populated areas of otherwise “mixed” villages, killing untold civilians throughout northern Rakhine State starting on August 25. Survivors recounted seeing Myanmar Army soldiers burn their family members and neighbors to death. For example, in Chut Pyin village in Rathedaung Township on August 27, Myanmar Army soldiers shot rocket-propelled grenades (RPGs) at homes to burn them down, and soldiers corralled a group of men and boys into a thatch-roof hut and set the hut on fire, burning the group alive.¹⁷⁵ “Abdul Rahman,” 41, witnessed the attack. Three days later, he told Fortify Rights:

The military took and arrested around 50 people. They brought them to the military camp . . . and set fire to where they kept them. One was my own brother. There was a small hut, and they put all the people in there and set it on fire. They shot a launcher at the hut [where they held the detainees].¹⁷⁶

On September 1—four days after the attack on Chut Pyin village—another survivor, “Sultan Ahmed,” 27, told Fortify Rights how he lost his 50-year-old uncle named Amin Ullah and his 43-year-old brother-in-law Mougul Hashim during the attack. He said:

They were burned down in the camp. We could see well that they were being taken to the camp . . . It was a small camp, like a bamboo-wood hut. [The Myanmar Army soldiers] put them all there, and the hut is gone now. The military is staying now in the school.¹⁷⁷

Indiscriminate and Targeted Shootings

The Myanmar Army shot and killed unarmed civilians at close range and opened fire indiscriminately on Rohingya men, women, and children from land and sky, killing untold numbers. In the days immediately following the attacks, 23 eyewitnesses—five women and 18 men— from 15 villages in Maungdaw, Buthidaung, and Rathedaung townships provided testimony to Fortify Rights regarding indiscriminate and targeted fatal shootings. They witnessed Myanmar Army soldiers shooting and killing civilians in late August and early September 2017, and some reported seeing bodies with gunshot wounds in areas where the Myanmar Army was operational.¹⁷⁸

The violence in Tula Toli village in Maungdaw Township was one of the largest massacres during the military-led attack on civilians in northern Rakhine State.¹⁷⁹ Myanmar Army soldiers, police,

¹⁷⁴ Mobile-phone video from “Anwar,” on file with Fortify Rights, received August 30, 2017.

¹⁷⁵ Fortify Rights interviews with #4-2, #5-2, and #23-2, Cox’s Bazar District, Bangladesh, August–September 2017.

¹⁷⁶ Fortify Rights interview with #5-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

¹⁷⁷ Fortify Rights interview with #23-2, Cox’s Bazar District, Bangladesh, September 1, 2017.

¹⁷⁸ The villages are Chut Pyin in Rathedaung Township, Maung Nu in Buthidaung Township, and the following villages in Maungdaw Township: Khun Thi Pyin, Lar Gwa Para, Tone Chaung, Kan Yin Tan, Yay Nauk Nga Thar, Ta Man Thar, Yae Nauk Nga Thar, Thit Tone Gwa Son, Nwa Nyon Taung, Maungdaw Town Ward 5, Auk Phyoo Ma/Kasir Bil, Padagah Ywa Thit, and Tula Toli.

¹⁷⁹ Fortify Rights and the United State Holocaust Memorial Museum, as well as Human Rights Watch, Amnesty International, and news outlets, including a documentary film by BBC, documented mass killings in the village. Fortify Rights *et. al.*, “*They Tried to Kill Us All*”; Human Rights Watch, *Massacre by the River: Burmese Army Crimes Against Humanity in Tula Toli*, December 19, 2017, <https://www.hrw.org/report/2017/12/19/massacre-river/burmese-army-crimes-against-humanity-tula-toli> (July 11, 2018); Amnesty International, “*My World is Finished*”: *Rohingya Targeted in Crimes Against Humanity in Myanmar*, October 18, 2017, <https://www.amnesty.org/en/documents/asa16/7288/2017/en/>

and non-Rohingya citizens killed hundreds of Rohingya civilians, including children in Tula Toli village on the morning of August 30.¹⁸⁰ Survivors told Fortify Rights that when the Myanmar Army and non-Rohingya citizens arrived in the village, hundreds of residents gathered on the banks of the Purma River, surrounded by the Myanmar Army. The local Rakhine village administrator told them they would be safe there. They were not. Soldiers opened fire on unarmed men, women, and children, slashed victims with machetes, threw infants into the river, and burned bodies in piles.

Many of the killings in Tula Toli village were by gunfire. “N. Islam,” 51, hid by a large mango tree and watched the scene unfold. He said:

Two soldiers came to the group, and then they called for something loudly. Then many soldiers came . . . Then [the soldiers] suddenly started shooting the men. [The men] 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.¹⁸¹

N. Islam described how the killings continued, saying:

That was only the first round. They tried to selectively kill the men. The soldiers were watching the people. Some [soldiers left and] joined the soldiers in the village. Then they came back from the village, and they opened fire again, [this time] without regard for women and children . . . Some survived. [The soldiers] were just shooting. Those who still survived, they let them swim across the river, and then they shot them. Some small children were thrown into the river.¹⁸²

Fortify Rights obtained mobile-phone video footage of Rohingya adults lifting dead infant children out of the Purma River.¹⁸³ “Mohammed Rafiq,” 25, also survived the massacre, and told Fortify Rights: “There were maybe 70 soldiers shooting us. It was a continuous noise, continuous bullets. Almost everyone died.”¹⁸⁴

The Myanmar Army, Police, and non-Rohingya civilian perpetrators committed other massacres in northern Rakhine State in August and September 2017. For example, the Myanmar Army killed scores in Maung Nu village in Buthidaung Township on the morning of August 27.¹⁸⁵ Mohammadul Hassan, 19, told Fortify Rights how soldiers apprehended him and two of his brothers when the soldiers entered Maung Nu village on August 27. He said: “They tied our hands behind our backs. There were around ten soldiers and they were kicking us and threatening us. Ten to 15 soldiers were watching over us and beating us and threatening us.”¹⁸⁶

(accessed July 11, 2018); “Rohingya Crisis: The Tula Toli Massacre,” *BBC*, November 14, 2017, <https://www.youtube.com/watch?v=HRpoo0fzB2I> (accessed June 10, 2018).

¹⁸⁰ Fortify Rights interviews with #33-2, Cox’s Bazar District, Bangladesh, September 3, 2017; Fortify Rights interviews with #39-2 and #43-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

¹⁸¹ Fortify Rights interview with “N. Islam,” #43-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

¹⁸² *Ibid.*

¹⁸³ Mobile-phone video footage, on file with Fortify Rights.

¹⁸⁴ Fortify Rights interview with “Mohammed Rafiq,” #33-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

¹⁸⁵ Several news outlets and organizations documented the Maung Nu massacre. See, Annie Gowen, “‘Blood Flowed in the Streets’: Refugees from One Hamlet Recount Days of Horror,” *The Washington Post*, September 16, 2017, https://www.washingtonpost.com/world/asia_pacific/blood-flowed-in-the-streets-refugees-from-one-rohingya-village-recount-days-of-horror/2017/09/15/34059ecc-9735-11e7-af6a-6555caae88dc_story.html?utm_term=.e979b9c7ea24 (July 11, 2018); “Burma: Military Massacres Dozens in Rohingya Village,” Human Rights Watch, news release, October 4, 2017, <https://www.hrw.org/news/2017/10/03/burma-military-massacres-dozens-rohingya-village> (accessed July 11, 2018); Todd Pitman and Wong Maye-E, “Rohingya Survivors: Myanmar’s Army Slaughtered Men, Children,” *Associated Press*, December 22, 2017, <https://pulitzercenter.org/reporting/rohingya-survivors-myanmars-army-slaughtered-men-children> (accessed July 11, 2018); Amnesty International, “We Will Destroy Everything”: *Military Responsibility for Crimes Against Humanity in Rakhine State, Myanmar*, June 27, 2018, <https://www.amnesty.org/en/documents/asa16/8630/2018/en/> (accessed July 11, 2018).

¹⁸⁶ Fortify Rights interview with #61-2, Cox’s Bazar District, Bangladesh, February 23, 2018.

The soldiers led Mohammadul and his two brothers to a hilltop, where soldiers continued to beat them. He said:

When we were taken to the hill, I saw a house and many people tied up the same as us. There were hundreds of people, maybe 500. They were laying down, piled on each other . . . They beat us for two hours. During the beatings, there was a phone call to the soldier named Ba Kyaw, and he went outside and talked for a while. When he returned, he said, “We will kill them.”¹⁸⁷

Mohammadul watched as soldiers hacked residents to death before taking him and his brothers to a nearby pond. Mohammadul recalled:

The soldiers took away people in groups of two and three and one-by-one hacked on the back of their necks. The three of us were taken to another place, near a pond. We were made to sit with our heads down. Six or seven military surrounded us, and then they shot us. We fell down, and they unfastened our hands.¹⁸⁸

The soldiers shot Mohammadul twice in the back of the head—miraculously, he survived but his brothers lay dead beside him:

I was still conscious, but I pretended like I was dead. After about 30 minutes, I opened my eyes, and there was a soldier still there with a gun. I saw him and then he realized I was alive, and he walked up to me, saying ‘*Kalar*, didn’t you die yet?’ He shot me again in the chest. I fell down again, and I was bleeding.¹⁸⁹

Miraculously, again, Mohammadul did not die. When the soldier moved on, Mohammadul crawled to his home nearby, where he found two of his brothers hiding in the rafters. The three spent the night hiding in the home, and the next day began a 14-day journey on foot to Bangladesh. Mohammadul’s wounds on his chest and head were gaping as evidenced by mobile-phone photographs taken at the time and reviewed by Fortify Rights as well as the deep scars he showed Fortify Rights. His brother and a local resident carried him to Bangladesh and, upon arriving, he received lifesaving medical treatment from an American doctor known as “Dr. Kelly.”¹⁹⁰

Fortify Rights consulted with physicians who confirmed that Mohammadul’s injuries were consistent with his testimony and that survival following the ordeal he described—while slim—is possible.¹⁹¹ The *Associated Press* similarly documented Mohammadul’s survival.¹⁹²

Other residents of Maung Nu and the neighboring village did not survive the military attack on August 27. “Flora Begum,” 50, witnessed Myanmar Army soldiers enter Maung Nu and kill residents, including her brother-in-law Zayed Husain and his two sons, Shamshul Islam, 18, and Mohammed, 16. She said:

When [the soldiers] entered the village, they were shooting. Whoever they found in front of them, they grabbed as many as they could . . . My brother-in-law and his two sons were taken out of the house, and the soldiers shot them. From the next house, I saw them get shot . . . Many people were taken like this from the house and to the edge of the hillside and shot.¹⁹³

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ Pitman *et. al.*, “Rohingya Survivors: Myanmar’s Army Slaughtered Men, Children,” *Associated Press*.

¹⁹² *Ibid.*

¹⁹³ Fortify Rights interview with #48-2, Cox’s Bazar District, Bangladesh, September 5, 2017.

Survivors from the Maung Nu massacre identified perpetrators as from Myanmar Army battalion 564, which is based nearby Maung Nu village and is under the Military Operations Command (MOC) 15, commanded by Brigadier General Khin Maung Soe.¹⁹⁴

Survivors of the Myanmar Army-led attacks in northern Rakhine State also reported being shot at by soldiers as they attempted to flee to Bangladesh. For example, “Mohammad Hussain,” his wife, and their six children traveled by foot from Taung Bazar in Buthidaung Township to the Myanmar-Bangladesh border, where they attempted to board a boat along with others to cross the Naf River into Bangladesh. On September 6 around 12 p.m., as they boarded the boat, Myanmar Army soldiers opened fire on the group. He said:

The boat was small, carrying only 20 people. As we were trying to get on the boat, the soldiers shot some of the people who were still on the land. Six people were killed on the boat, and seven people were injured. When all the people were gathered near the boat, the military shot at us. Some of the dead bodies remained there. We had six dead bodies in the boat. We brought them to Bangladesh and buried them here.¹⁹⁵

“Solema,” 30, from Taung Bazar in Buthidaung Township, was also on the boat. She told Fortify Rights:

My father and my daughter died in the boat. There were two boats and we came all together. One boat was first, and one was second. I was in the second boat. We were running, and the military was forcing us to run. As soon as we got on the boat, they shot at us. They shot us near the riverbank . . . Foyezur Rahman was my father. My daughter was Sofia. She was 18. They were both shot in the back. As soon as the military shot them, they stopped moving. We brought their dead bodies here [to Bangladesh] and buried them.¹⁹⁶

Aid workers were not spared during the military’s attack on Rohingya in northern Rakhine State. For example, “Rafique,” a 33-year-old security guard for an international humanitarian aid organization operating in northern Maungdaw Township described to Fortify Rights how soldiers attacked the office of his employer on the evening of August 25, prompting him to flee. The next day, he and a group of his colleagues with the aid organization encountered security forces while attempting to flee the village by way of the Purma River. He said:

When we were crossing the river after escaping the office, there were seven people all together, and suddenly ten military appeared and shot at us. Four died on the spot in the small boat while crossing the river. One fell into the water . . . This happened on Friday around 4 p.m. and, the next day, we buried them quickly in the mountain, not in line with the religious practice. We buried two in each grave. We saw the southern part of the village was burning down at that time.¹⁹⁷

Rafique explained how he escaped: “[The soldiers] shot from head on. They were on the other side of the river. We were on the boat. After the shooting, I fell into the water and just floated down with the current. The river is called Purma River. It’s not that wide, but it has a strong current.”¹⁹⁸

Several Rohingya reported how soldiers killed Dil Mohammed, 38, in the village of Maung Nu on August 27, 2017. Dil Mohammed was a Water, Sanitation, and Hygiene (WASH) Field Officer with an international humanitarian organization in Buthidaung Township. He had three children. A 32-year-old survivor told Fortify Rights:

¹⁹⁴ See the section of this report entitled “The Chain of Command: Individuals Who Should be Subject to Investigation and Possibly Prosecution.”

¹⁹⁵ Fortify Rights interview with #50-2, Cox’s Bazar District, Bangladesh, November 3, 2017.

¹⁹⁶ Fortify Rights interview with #51-2, Cox’s Bazar District, Bangladesh, November 3, 2017.

¹⁹⁷ Fortify Rights interview with #21-2, Cox’s Bazar District, Bangladesh, August 31, 2017.

¹⁹⁸ *Ibid.*

I saw the senior staff of [name of organization withheld] get killed. His children were asking for water, and he came to give them water, and then he was taken by the soldiers and killed. When he was being taken from the house, I could see it. The soldiers were beating him. He was in the same compound. [Later,] I only saw his body. I could recognize him from his shirt. His name was Dil Mohammed. His father's name was Eunos Mohammed.¹⁹⁹

Soldiers in Maung Nu village also reportedly killed Dil Mohammed's father and his eight-year-old son.²⁰⁰ As of the time of writing, the international aid organization that employed Dil Mohammed has not publicly acknowledged his death. A local aid worker told Fortify Rights:

He was one of our staff. I asked our office in country and the headquarters to seek justice for him. But they are still silent. It appears like they are afraid the government will suspend their MOU [Memorandum of Understanding] to work in [northern Rakhine State]. I didn't report this before because I thought our organization would do something. But unfortunately, it didn't happen as I thought.²⁰¹

Dil Mohammed's wife is currently a refugee in Bangladesh.²⁰²

In some areas, survivors returned to places after the attacks and after perpetrators had retreated only to find gunshot-ridden bodies and victims of other violent deaths.²⁰³ For example, a local administrator, 45, in Nwa Yong Tang village—also known as Haurau Diel—in northern Maungdaw Township went to nearby Myaw Taung village after seeing approximately 100 Myanmar Army soldiers in four vehicles in addition to a police vehicle traveling toward the village and subsequently hearing gunfire. He said: "I saw 18 people were shot dead and three villagers were missing. We think maybe they jumped into Pyat Thar River."²⁰⁴

Killings of Children and Infants

Fortify Rights documented and analyzed testimony from survivors and eyewitnesses who saw Myanmar Army soldiers kill children and infants in five villages in Maungdaw, Buthidaung, and Rathedaung townships in August and September 2017.²⁰⁵ Survivors reported how soldiers cut, shot, and burned children to death, including children under the age of five.²⁰⁶

Soldiers beheaded at least two children in Chut Pyin village in Rathedaung Township on August 27, 2017.²⁰⁷ Myanmar Army soldiers and non-Rohingya citizens from a nearby village entered Chut Pyin village around 2 p.m. Survivors described how soldiers shot and killed several residents, while residents from a neighboring village armed with swords and knives hacked and, in some cases, beheaded Rohingya residents, including children. "Abdul Rahman," a 41-year-old survivor of the attacks on Chut Pyin village told Fortify Rights:

¹⁹⁹ Fortify Rights interview with #62-2, Cox's Bazar District, Bangladesh, February 23, 2018.

²⁰⁰ Fortify Rights telephone communication with aid worker, October 2017.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ Fortify Rights interviews with #23-2, Cox's Bazar District, Bangladesh, September 1, 2017.

²⁰⁴ Fortify Rights interview with #40-2, Cox's Bazar District, Bangladesh, September 4, 2017.

²⁰⁵ Those villages are Thit Tone Gwa Son, Kha Maung Seik, Tula Toli, and Ta Man Thar in Maungdaw Township; Maung Nu in Buthidaung Township; and Chut Pyin in Rathedaung Township.

²⁰⁶ Fortify Rights interviews with #5-2, #23-2, #26-2, #34-2, #43-2, #45-2, #48-2, and #53-2, August 30–December 11, 2017.

²⁰⁷ See, Fortify Rights interviews with #23-2, September 1, 2017; Fortify Rights interviews with #5-2, August 30, 2017. See also, "Myanmar: End Attacks in Rakhine State, Protect Civilians," Fortify Rights, news release, September 1, 2017, <http://www.fortifyrights.org/publication-20170901.html> (accessed July 11, 2018).

My brother was killed. [Myanmar Army soldiers] burned him with the group. We found [my other family members] in the fields. They had marks on their bodies from bullets and some had cuts. My two nephews, their heads were off. One was six-years old and the other was nine-years old. My sister-in-law was shot with a gun.²⁰⁸

Survivors reported how soldiers threw children into rivers. For example, “Rashida,” 50, watched as soldiers threw children into the Lekaya River in her native Kha Maung Seik village in Maungdaw Township on August 27, beginning around 10 a.m. She told Fortify Rights:

They wrapped some bodies with tarpaulin and threw some bodies into the [Lekaya] river. When their parents were killed, and the children were standing alone, they [soldiers] threw the children in the river . . . We were watching from the other side of the riverbank. Even the newborns and the ones who could barely walk, they threw them in the river. It was not far from where we were hiding.²⁰⁹

“Nurul Islam,” 51, watched a similarly horrific scene from the banks of the Purma River near Tula Toli village in Maungdaw Township. He said: “Some small children were thrown into the river . . . Small children who were half alive, they cut them. They were breastfeeding-age children up to five-years old.”²¹⁰

Another survivor, a 50-year-old father of six from Tula Toli village in Maungdaw Township, recalled:

[The Myanmar Army soldiers] stomped on some small children with their feet. As the parents were holding their children, [the soldiers] shot the parent and then the children fell down. The soldiers picked them up and threw them down on the ground. I saw a mother holding a baby, she fell down and didn’t let go of her baby.²¹¹

Burials and Burnings of Bodies

“We couldn’t find some family members, so we just went to where the dead bodies were burned. We could see eight piles. We also saw some graves, holes with burnt bodies. I could see the bones. The piles were smoking.”

—“Nurul Hakim,” 43, survivor from Tula Toli village, Maungdaw Township, September 4, 2017

During and after the Myanmar Army’s deadly attacks on residents of villages in northern Rakhine State in August and September 2017, Myanmar Army soldiers cut up, buried, and burned bodies of victims. Fortify Rights interviewed 12 survivors who witnessed Myanmar Army soldiers creating mass graves.²¹² The burning and burying of bodies in mass graves is consistent with measures taken by the Myanmar Army following the attacks in Maungdaw Township in October and November 2016.²¹³

Fortify Rights also spoke with several Rohingya who returned to sites of mass killing in northern Rakhine State to collect and bury victims’ bodies.²¹⁴

²⁰⁸ Fortify Rights interview with #5-2, Cox’s Bazar District, Bangladesh, August 30, 2017. See also, “Myanmar: End Attacks in Rakhine State, Protect Civilians,” Fortify Rights.

²⁰⁹ Fortify Rights interview with #34-2, Cox’s Bazar District, Bangladesh, September 3, 2017.

²¹⁰ Fortify Rights interview with #43-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

²¹¹ Fortify Rights interview with #45-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

²¹² Fortify Rights interview with #5-2, #23-2, #33-2, #39-2, #43-2, #45-2, #48-2, #50-2, #55-2, #62-2, #63-2, and #64-2, Cox’s Bazar District, Bangladesh, August–September 2017.

²¹³ See Annex A of this report.

²¹⁴ See, for example, Fortify Rights interviews with #5-2, #23-2, and #64-2, Cox’s Bazar District, Bangladesh, August 27,

“Sultan Ahmed,” 27, told Fortify Rights how he returned to the site of the massacre in Chut Pyin village in Rathedaung Township, where he collected and buried seven bodies. He said:

The military took some dead bodies and put them in a cowshed. We could see well the place where they burned these dead bodies. They piled them in the shed, and then they just burned them, including the shed . . . In the late evening, after the military and Rakhine left, we went back secretly. I myself saw about 150 dead bodies. I couldn’t go close to the camp—there were more there. Some dead bodies had gunshot wounds. Some were cut up. Some were beheaded, and some were cut into pieces, three separate pieces. I saw this myself. It was near the mosque. We couldn’t bring all the dead bodies back. We could only bring seven bodies.²¹⁵

Survivors from the attack on Tula Toli village in Maungdaw Township reported seeing Myanmar Army soldiers use fuel to burn piles of bodies in large holes. One survivor claimed ethnic Kamwe civilians dug the holes that the Myanmar Army filled with Rohingya bodies.²¹⁶ A 50-year-old eyewitness from Tula Toli village witnessed soldiers burning bodies in holes and later returned to the scene to inspect the remains. He said:

Some of the people were burned and some were cut up. We kept our fear in our hearts and counted the dead bodies as much as we could. We also had to look out for the military. We counted up to 340 dead bodies. The bodies were all in the same area. Some were in piles, and some were laying around. I saw some throats were cut. One head wasn’t completely separated but the bone was sticking out . . . Most of the men were shot dead. I saw a big hole, and many bodies were burned, covered in hay. The children’s bodies were burned. I saw one hole that was mostly children.²¹⁷

Several survivors from a massacre in Maung Nu village in Buthidaung Township reported that Myanmar Army soldiers wrapped bodies in tarpaulin and threw them into military vehicles that drove away.²¹⁸

RAPE AND SEXUAL VIOLENCE

In the days immediately following Myanmar Army-led attacks on Rohingya civilians, Fortify Rights documented rape and sexual violence in all three townships of northern Rakhine State, including through interviews with nine eyewitnesses to rapes, gang rapes, and post-rape body mutilation by Myanmar Army soldiers.²¹⁹ As in October and November 2016, Myanmar Army soldiers raped and gang-raped women and girls, and in some cases killed women and mutilated their bodies.²²⁰

For instance, a 27-year-old eyewitness of the military-led attack in Chut Pyin village in Rathedaung Township described seeing a Myanmar Army soldier rape a 22-year-old Rohingya woman, who was the wife of a local mullah. She said:

2017–February 27, 2018.

²¹⁵ Fortify Rights interview with #23-2, Cox’s Bazar District, Bangladesh, September 1, 2017.

²¹⁶ Fortify Rights interview with #43-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

²¹⁷ Fortify Rights interview with #45-2, Cox’s Bazar District, Bangladesh, September 4, 2017.

²¹⁸ See, Fortify Rights interview with #48-2, Cox’s Bazar District, Bangladesh, September 5, 2017; Fortify Rights interview with #62-2, Cox’s Bazar District, February 23, 2018.

²¹⁹ Fortify Rights interviews with #5-2, #9-2, #11-2, #23-2, #25-2, #33-2, #38-2, #43-2, and #45-2, Cox’s Bazar District, Bangladesh, August 27–September 4, 2017.

²²⁰ Fortify Rights documented and analyzed the testimony of more than 17 eyewitnesses to rapes in October and November 2016 and 14 Rohingya who provided additional information related to rape committed by Myanmar Army soldiers in the above villages and other villages between October and November 2016. Fortify Rights interviews with #19, #22, #37, #08, #11, #12, #25, #32, #30, and #64, Cox’s Bazar District, Bangladesh, December 2016–March 2017.

I saw her taken from the house and raped by military soldiers. It happened outside, beside a house. We watched from inside the house. After they raped her, they killed her. Only one person [raped her], then she was taken to the road, and he cut her neck and cut her breasts off.²²¹

Several eyewitnesses described seeing Myanmar Army soldiers take groups of women into homes or forested areas, later emerging alone.²²² The rapes documented by Fortify Rights in August and September 2017 were consistent with the rapes documented during the 2016 “clearance operations.”²²³

LANDMINES

Fortify Rights spoke to Rohingya eyewitnesses of landmine detonations that killed or injured Rohingya civilians as they fled attacks by the Myanmar Army. Due to the timing and locations of the mines, it would appear that Myanmar Army soldiers planted landmines with the intent to maim or kill fleeing Rohingya.

For example, survivors of the attacks in Khun Thi Pyin village, Maungdaw Township told Fortify Rights that they fled down Khun Thi Pyin Road—the same road on which the Myanmar Army entered the village on August 26. As they fled, landmines detonated in the road, killing at least four. A 16-year-old Rohingya survivor told Fortify Rights:

I didn’t see the military set the mine, but the same road they traveled on is the road we left on . . . There were around 20 people running on the road. One of the people hit by the mine, their legs were badly damaged. After one mine exploded, four people died . . . I know two people who were killed. One was Doloaya, who was 19 or 20 years old. He just got married two years ago. Another was my brother, Mohammed Rafique. He has one child and is maybe 24-years old. I don’t know what happened to their bodies. We kept running and jumped into the river to escape.²²⁴

A 22-year-old Rohingya woman survivor from Lar Gwa Para hamlet, near Khun Thi Pyin village in Maungdaw Township, said she witnessed soldiers laying landmines on Khun Thi Pyin Road as they moved towards the village.²²⁵ She said: “When the soldiers were abusing the women, the men [came out of hiding and] tried to attack them, and when they tried, they stepped on bombs. The military set the bombs on the road. I saw them setting them on the road on [August 26].”²²⁶

Survivors from villages in northern Maungdaw Township told Fortify Rights they had to divert their path to the Bangladesh border, taking longer and more arduous routes because they heard the military and police had laid landmines on the fastest route.²²⁷

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

²²¹ Fortify Rights interview with #23-2, Cox’s Bazar District, Bangladesh, September 1, 2017. *See also*, Fortify Rights interview with #5-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

²²² Fortify Rights interviews with #5-2, #9-2, #11-2, #23-2, #25-2, #33-2, #38-2, #43-2, and #45-2, Cox’s Bazar District, Bangladesh, August 27-September 4, 2017.

²²³ Amy Smith and Matthew Smith, “The Refugee Crisis Ravaging Southeast Asia: On the Ground with the Rohingya,” *Forbes*, October 17, 2017, <https://www.forbes.com/sites/insideasia/2017/10/17/the-refugee-crisis-ravaging-southeast-asia-on-the-ground-with-the-rohingya/#4540e4ea5235> (accessed July 11, 2018).

²²⁴ Fortify Rights interview with #10-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

²²⁵ Fortify Rights interview with #12-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

²²⁶ *Ibid.*

²²⁷ Fortify Rights interview with #31-2, Cox’s Bazar District, Bangladesh, August 20, 2017; Fortify Rights interview with #21-2, Cox’s Bazar District, Bangladesh, August 31, 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.

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

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 State. 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.

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.

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 Jokiv*, 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 Jelisic*, 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 *Jelisic*, there is increasing skepticism of the accuracy of objective definitions of the four groups, particularly the ethnic, racial, and national categories. *Jelisic*, 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.”); *Stakic*, 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., *Jelisic*, 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 *Krstic*, 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/#YXCi4rEgQttdDCU.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 *Stanic* 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 *Stakic*, 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 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 “*Inyenzi*,” 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,” But *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 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 can 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 *Medicins Sans Frontieres* (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 171,000 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,” *Medicins Sans Frontieres*, 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.” *Akeyesu* stressed that the killing of “even newborn babies” and “even pregnant women” evinced the atrocious nature of the killings.⁴⁴¹ In addition, the *Akeyesu* 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 *Akeyesu*, 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.

were . . . fighters.”⁴⁶⁰ Similarly, the killing of Rohingya women and children also indicates that the Myanmar security forces and their proxies targeted Rohingya on account of their Rohingya origin and not because of a desire to target potential militants.

Evidence that shows perpetrators targeted Rohingya deliberately and systematically on account of their being Rohingya supports a finding of genocidal intent.

Targeting all members of the group

Whether perpetrators of genocidal acts targeted all members of a protected group or just a portion of the group further informs a finding of genocidal intent. In the *Akayesu* case, the tribunal found that the Hutu sought to eradicate every member of the Tutsi tribe, including newborns and pregnant Hutu women whose unborn children may have been fathered by Tutsi men.⁴⁶¹ The fact that the Hutu indiscriminately targeted members of the Tutsi tribe, regardless of age or threat level, weighed in favor of finding genocidal intent. However, genocidal intent may still be established even if only part of the group is targeted. For example, in the *Krstić* case, the tribunal noted that while the defense claimed to have targeted only men of military age, Serbian forces actually killed Bosnian men of all ages, which indicated a genocidal intent to eradicate the group overall.⁴⁶²

In the case of the 2017 and 2016 attacks against the Rohingya, the Myanmar security forces and non-Rohingya citizens targeted literally all Rohingya, including men, women, children, elderly, babies, etc. MSF estimated that of the 6,700 conservatively estimated Rohingya killed in less than four weeks, 730 were younger than five years of age.⁴⁶³ The targeting of all Rohingya by the Myanmar security forces supports a finding of genocidal intent.

Based on the analysis provided above, there are reasonable grounds to believe that: (1) the Rohingya are a distinct ethnic group for the purposes of the Rome Statute; (2) the Myanmar state security forces and local non-Rohingya citizens committed prohibited acts by killing Rohingya, inflicting serious bodily and mental harm on Rohingya, and inflicting conditions of life calculated to bring about the physical destruction of Rohingya; and (3) the Myanmar state security forces and their proxies conducted these prohibited acts with genocidal intent.

CRIMES AGAINST HUMANITY

Under Article 7 of the Rome Statute, a crime against humanity is committed when one or more prohibited criminal acts enumerated by the Statute are “committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”⁴⁶⁴ This section finds that the elements required to prove that Myanmar forces have committed crimes against humanity have been met.

Specifically, this report establishes that: (1) Myanmar forces committed the crimes of murder, extermination, rape, deportation or forcible transfer, torture, imprisonment, enforced disappearance, and persecution, (2) as part of a widespread and systematic attack directed against the Rohingya civilian population of northern Rakhine State, and (3) with knowledge of the widespread and systematic attack.

⁴⁶⁰ *Id.* at para. 125.

⁴⁶¹ *Akeyasu*, Case No. ICTR-96-4-T para. 119-21.

⁴⁶² *Krstić*, Case No. ICTY-98-33-T, para. 27.

⁴⁶³ “Myanmar/Bangladesh: MSF Surveys Estimate That at Least 6,700 Rohingya Were Killed During the Attacks in Myanmar,” *Medecins Sans Frontieres*.

⁴⁶⁴ Rome Statute, art. 7(1).

Prohibited Acts of Crimes Against Humanity

A crime against humanity involves the commission of one or more of the following prohibited criminal acts: murder, extermination, enslavement, deportation or forcible transfer, imprisonment, torture, rape and other forms of sexual violence, persecution, enforced disappearance, apartheid, or other inhumane acts.⁴⁶⁵ Any one of the 11 acts is sufficient to establish a crime against humanity, provided that the other elements of the crime are satisfied. This section will examine the legal elements of eight of the 11 enumerated prohibited acts—murder, extermination, rape, deportation or forcible transfer, torture, imprisonment, enforced disappearance, and persecution—and analyze whether Myanmar state security forces and their proxies committed such acts in Rakhine State based on the facts documented in this report.

Murder

Murder requires that a perpetrator killed, that is, caused the death of, one or more persons through his acts or omissions.⁴⁶⁶ The ICC, noting that neither the Rome Statute nor the ICC's *Elements of Crimes* “provide a particular mental element for murder constituting a crime against humanity,” requires a demonstration that the perpetrator(s) “(i) meant to kill or to cause the death of one or more persons or (ii) were aware that the death(s) would occur in the ordinary course of events.”⁴⁶⁷ Murder can be proven by circumstantial evidence, even where a body has not been recovered, if “the victim’s death is the only reasonable conclusion that can be drawn.”⁴⁶⁸

As discussed in the previous section on *Killings as a Prohibited Act of Genocide*, this report documents numerous intentional killings of Rohingya beginning on August 25, 2017 as well as in October and November 2016. Myanmar state security forces and their proxies killed Rohingya by shooting them, both from land and helicopters; knife and sword attacks; beatings; and burnings.

The *Katanga* tribunal noted that the nature of killings by machetes and the necessarily close proximity between perpetrators and victims showed the intentional nature of such killings. In this case, the tribunal held that various machete killings, along with related gun killings, constituted murder.⁴⁶⁹ Just as in that case, it is possible to conclude that the Myanmar state security forces and citizen perpetrators intentionally killed Rohingya, committing the prohibited act of murder.

Extermination

Extermination involves the “mass destruction of life” which is “directed against a group of individuals.”⁴⁷⁰ Extermination differs from murder in that the perpetrator’s act of killing must constitute or be part of a mass killing.⁴⁷¹ A mass killing includes killings where a “substantial” or a

⁴⁶⁵ Rome Statute, art. 7 (listing murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity; persecution; enforced disappearance; apartheid; and other inhumane acts).

⁴⁶⁶ ICC, *Elements of Crimes*, 2011, art. 7(1)(a)(1) & n.7; *Katanga*, Case No. ICC-01/04-01/07, para. 766-67.

⁴⁶⁷ *Bemba*, Case No. ICC-01/05-01/08, para. 89-90. See also, *Katanga*, Case No. ICC-01/04-01/07, para. 781; *Prosecutor v. Kupreskic*, ICTY, Case No. IT-95-16-T, Judgment, January 14, 2000, para. 560-61; *Akayesu*, Case No. ICTR-96-4-T, para. 587-89. There is some debate as to whether premeditation is required. Compare *Akayesu*, Case No. ICTR-96-4-T, para. 587-89 (not expressly requiring premeditation), with *Kayishema and Ruzindana*, Case No. ICTR-95-1-T, para. 139-40 (requiring premeditation).

⁴⁶⁸ *Katanga*, Case No. ICC-01/04-01/07, para. 768.

⁴⁶⁹ *Id.* at para. 858-59, 866, 870.

⁴⁷⁰ See *Prosecutor v. Seromba*, ICTR, Case No. ICTR-2001-66-I, Judgment (Trial), December 13, 2006, para. 361; *Akayesu*, Case No. ICTR-96-4-T, para. 591.

⁴⁷¹ ICC, *Elements of Crimes*, art. 7(1)(b)(2); *Semanza*, Case No. ICTR-97-20-T, para. 340.

“large number” of people are killed.⁴⁷² The ICC’s *Elements of Crimes* expressly includes not only acts that would qualify as murder, but also “inflicting conditions of life calculated to bring about the destruction of part of a population,” such as “the deprivation of access to food and medicine.”⁴⁷³

The killings documented in this report occurred on a scale that qualifies as extermination. The massacre at Tula Toli village in Maungdaw Township on August 30 involved hundreds of victims, with one eyewitness stating that he counted 340 bodies after the attack. Several eyewitness accounts involve the killing of many people within days or hours. For example, one eyewitness described seeing 20 bodies after a Myanmar Army-led knife and gun attack in Kyet Yoe Pyin village in Maungdaw Township. Another survivor described soldiers setting fire to a hut in Chut Pyin village, Rathedaung Township after moving an estimated 50 persons inside the structure.

In addition to more overt forms of killing, the destruction of Rohingya villages through arson attacks, including the destruction of food stocks and other means of subsistence, along with deprivations of food aid and basic medical care may also qualify as an act that inflicted “conditions of life calculated to bring about the destruction of part of” the Rohingya population. The denial of lifesaving aid to tens of thousands of people, which in some cases resulted in death, also supports the establishment of extermination.

Given that the *Akayesu* tribunal found that perpetrators committed extermination based on the killing of 16 people, the killings committed against Rohingya in northern Rakhine State would likely qualify as extermination.⁴⁷⁴

Rape

Rape under the Rome Statute is defined as the invasion “of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.”⁴⁷⁵ The Rome Statute also provides that “other form[s] of sexual violence of comparable gravity” can constitute a crime against humanity.⁴⁷⁶ Rape also requires a showing that the perpetrator committed the act either: “(i) by force; (ii) by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; (iii) by taking advantage of a coercive environment; or (iv) against a person incapable of giving genuine consent.”⁴⁷⁷

Evidence of physical force is not necessary to demonstrate coercive circumstances.⁴⁷⁸ Rather, “[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or . . . military presence [among the civilian population].”⁴⁷⁹ The ICC further noted that, beyond a military presence, there are “other coercive environments of which a perpetrator may take advantage to commit rape,” such as when the rape is “committed together with other

⁴⁷² *Semanza*, ICTR, Case No. ICTR-97-20-T, para. 340; *Kayishema and Ruzindana*, Case No. ICTR-95-1-T, para. 146.

⁴⁷³ ICC, *Elements of Crimes*, art. 7(1)(b) & n.9. See also, *Prosecutor v. Blagojevich and Jokic*, ICTY, Case No. ICTY-02-60-T, Judgment, January 17, 2005, para. 574 n.1916 (listing deprivation of food and medicine).

⁴⁷⁴ *Akayesu*, Case No. ICTR-96-4-T, para. 735-44. Many cases do, however, discuss far higher numbers. See, e.g., *Seromba*, Case No. ICTR-2001-66-I, para. 365 (finding that “the destruction of [a] church, which resulted in the death of 1,500 Tutsi refugees, constitutes the crime of extermination”)

⁴⁷⁵ ICC, *Elements of Crimes*, art. 7(1)(g)-1(1); *Katanga*, Case No. ICC-01/04-01/07, para. 962.

⁴⁷⁶ Rome Statute art. 7(1)(g).

⁴⁷⁷ *Bemba*, Case No. ICC-01/05-01/08, para. 102. See also, *Katanga*, Case No. ICC-01/04-01/07, para. 962; ICC, *Elements of Crimes*, art. 7(1)(g)-1(2).

⁴⁷⁸ *Akayesu*, Case No. ICTR-96-4-T, para. 688.

⁴⁷⁹ *Ibid.* See also, *Bemba*, Case No. ICC-01/05-01/08, para. 103.

crimes.”⁴⁸⁰ Further, a person can be considered “incapable of giving genuine consent if affected by natural, induced or age-related incapacity,” even in non-forcible situations.⁴⁸¹ According to the ICC, the perpetrator must have acted deliberately and with knowledge of the “forcible nature of the situation, or of the incapacity of the victim to give genuine consent.”⁴⁸²

Fortify Rights documented rape and sexual violence in all three townships of northern Rakhine State during the August 2017 attacks through interviews with nine eyewitnesses to rapes, gang rapes, and post-rape body mutilation by Myanmar Army soldiers.⁴⁸³ In addition, eight women told Fortify Rights that soldiers raped or gang-raped them by force during the October to November 2016 timeframe. All but one of these eight women witnessed soldiers raping other women and girls, some of whom were as young as 12 and 13 years old.⁴⁸⁴ Eyewitnesses described soldiers beating women, tying them up, and physically holding them down in order to commit the rapes. Sometimes, soldiers violently interrogated women before raping them. Testimony from a doctor who treated 63 rape survivors, often for extensive bleeding, corroborates these accounts and also demonstrates the forceful nature of the rapes.⁴⁸⁵ Humanitarian agencies found 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.⁴⁸⁶

The acts documented in this report meet the requirements of the crime against humanity of rape. Each act involved the invasion of the victim’s body with a sexual organ, primarily through physical force. Even where physical force was not present, the victims were clearly coerced through fear of violence and abuse of power by those in authority. The acts are factually similar to those found to constitute rape in the *Katanga* case, where the victim was assaulted and threatened with death before and while being raped.⁴⁸⁷ Although unnecessary to prove rape in these circumstances, some of the victims were also too young to give genuine consent.

Deportation or Forcible Transfer

The crime of deportation or forcible transfer occurs when persons are moved from an area where they are lawfully present by expulsion or other coercive acts, and the transfer is impermissible under international law.⁴⁸⁸ Commentators agree that the lawfulness of the victims’ presence in a particular area is assessed not just by domestic law but also by the safeguards of international law.⁴⁸⁹ As with rape, “forcibly” refers not only to physical force but also to “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power . . . or by taking advantage of a coercive environment.”⁴⁹⁰ In other words, the

⁴⁸⁰ *Bemba*, Case No. ICC-01/05-01/08, para. 104.

⁴⁸¹ ICC, *Elements of Crimes*, art. 7(1)(g)-1(2) n. 16.

⁴⁸² *Katanga*, Case No. ICC-01/04-01/07, para. 970.

⁴⁸³ Fortify Rights interviews with #5-2, #9-2, #11-2, #23-2, #25-2, #33-2, #38-2, #43-2, and #45-2, Cox’s Bazar District, Bangladesh, August 27-September 4, 2017.

⁴⁸⁴ Fortify Rights interviews with #19, #22, #37, #08, #11, #12, #25, #32, #30, and #64, Cox’s Bazar District, Bangladesh, December 2016-March 2017.

⁴⁸⁵ Fortify Rights interviews with #1, #27, #35, #36, and #54, Cox’s Bazar District, Bangladesh, December 2016.

⁴⁸⁶ Inter Sector Coordination Group, “Situation Report: Rohingya Refugee Crisis, Cox’s Bazar.” 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*.

⁴⁸⁷ *Katanga*, Case No. ICC-01/04-01/07, para. 993.

⁴⁸⁸ Rome Statute art. 7(2)(d); ICC, *Elements of Crimes*, art. 7(1)(d).

⁴⁸⁹ See, Vincent Chetail, *Is There Any Blood on My Hands: Deportation as a Crime of International Law*, *Leiden Journal of International Law*, Vol. 29, Iss. 917, 2016, p. 925.

⁴⁹⁰ ICC, *Elements of Crimes*, art. 7(1)(d) n.12. See also, *Prosecutor v. Krnojelac*, ICTY, Case No. IT-97-25-T, Judgment, March 15, 2001, para. 179.

victims are “not faced with a genuine choice as to whether to leave or to remain.”⁴⁹¹ Deportation refers to movement from one country to another, whereas forcible transfer encompasses transfers within one country.⁴⁹² While forcible movement for safety or “imperative military reasons” may be permissible, the ICTY has noted that “recourse to such measures would only be lawful in the gravest of circumstances and only as measures of last resort.”⁴⁹³

The Myanmar military-led attacks starting in August 2017 resulted in the displacement of more than 700,000 Rohingya—either internally or outside the Myanmar border. The attacks in October 2016 similarly displaced approximately 94,500 Rohingya, with more than 74,000 Rohingya fleeing to Bangladesh. State security forces expressly told some Rohingya to leave their homes, and others fled following mass killings and the destruction of their villages. Even where military authorities did not physically force Rohingya to leave, it is likely that the “force” requirement has been met, given the wider context of mass killings and destruction of property. In a manner similar to Bosnian Muslims terrorized in Srebrenica, the Rohingya were not “faced with a genuine choice” to stay in villages that had been obliterated and where they faced a threat of further violence.⁴⁹⁴

Furthermore, although the Myanmar government claims that Rohingya are in the country illegally, there is substantial evidence that the Rohingya are indigenous to what is now Rakhine State.⁴⁹⁵ Thus, it is unlikely that their presence is unlawful under international law, even if Myanmar domestic law is not clear.⁴⁹⁶ The ICTY has found that the “lawfully present” standard encompasses all persons who “have, for whatever reason, come to ‘live’ in the community.”⁴⁹⁷ The terms “exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally.”⁴⁹⁸ Previous governments allowed Rohingya to form political parties and vote in multiparty elections in 1990 and 2010 as well as the constitutional referendum in 2008, and the authorities have also maintained lists of Rohingya families for several decades, which the Myanmar government does for all residents.⁴⁹⁹

Finally, there is support in international law for the illegality of collective expulsions and expulsions that deprive individuals of fundamental human rights, such as the right to due process.⁵⁰⁰ The discriminatory and collective nature of the expulsions documented in this report is apparent: the Myanmar authorities did not single Rohingya out for deportation one-by-one but rather discriminatorily displaced Rohingya *en masse*.

⁴⁹¹ Krstić, Case No. ICTY-98-33-T, para. 147.

⁴⁹² *Id.* at 521.

⁴⁹³ *Prosecutor v. Simic, Tadic, and Zaric*, ICTY, Case No. ICTY-95-9-T, Judgment (Trial), October 17, 2003, para. 125, n. 218.

⁴⁹⁴ Krstić, Case No. ICTY-98-33-T, para. 147.

⁴⁹⁵ See, Zarni *et. al.*, *The Slow-Burning Genocide of Myanmar’s Rohingya* (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).

⁴⁹⁶ See, Chetail, *Is There Any Blood on My Hands: Deportation as a Crime of International Law*, pp. 925–26 (noting that even undocumented persons can be lawfully present when “their undocumented status results from arbitrary deprivation of nationality”)

⁴⁹⁷ *Prosecutor v. Popovic*, ICTY, Case No. IT-05-88-T, Judgment, June 10, 2010, para. 900.

⁴⁹⁸ *Ibid.* See also, *Prosecutor v. Dordevic*, ICTY, Case No. IT-05-87/1-T, February 23, 2011, para. 1616 (“Inhabitants or residents of an area can be accepted readily as lawfully present in it.”)

⁴⁹⁹ See, Benjamin Zawacki, “Defining Myanmar’s Rohingya Problem,” *Human Rights Brief*, Vol. 20, No. 3, 2013, p. 18–25.

⁵⁰⁰ The Human Rights Committee considers that collective expulsions violate Article 13 of the ICCPR. See, U.N. Human Rights Committee, *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, April 11, 1986, para. 1011. Moreover, 143 states have ratified treaties that expressly prohibit collective expulsion. See Chetail, *Is There any Blood on my Hands: Deportation as a Crime of International Law*, pp. 926–27 (pointing to the American Convention on Human Rights, the African Charter on Human and Peoples’ Rights, the European Convention on Human Rights, the Arab Charter on Human Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families). Furthermore, several conventions guarantee the right to due process in deportation proceedings. See, e.g., ICCPR, art. 13 (providing that aliens can be expelled “only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by ... the competent authority”)

Torture

Under the Rome Statute, torture entails the intentional infliction of severe physical or mental pain or suffering upon a person, where that person was in the perpetrator’s custody or control.⁵⁰¹ Pain or suffering caused in connection with lawful sanctions is not considered torture.⁵⁰² While the ICTR and ICTY have limited torture to pain or suffering inflicted for particular purposes, including to obtain information, punish, or coerce, the Rome Statute and the ICC *Elements of Crimes* notably omit a purpose requirement.⁵⁰³

When discussing the severity of the pain and suffering inflicted, tribunals take into account both the objective harshness of the actions and the subjective effect on the particular victim, including “the victim’s age, sex, or state of health.”⁵⁰⁴ All surrounding circumstances are relevant, including the victim’s position of subordination, the time period of mistreatment, and the institutionalization of the mistreatment.⁵⁰⁵ Nevertheless, permanent injury is not necessary.⁵⁰⁶

This report documents numerous instances of torture. For example, one eyewitness described several people being “beaten badly” in Maungdaw Township in the lead-up to August 25, 2017, and another recounted how soldiers had detained approximately 500 people near a hilltop, where soldiers beat them for hours before hacking victims to death. Survivors of these events not only suffered physical harm, but also extreme mental harm by being forced to watch the torture and murder of their family members and neighbors.

In the case of *Furundzija*, the ICTY found that torture occurred where perpetrators beat a man then forced him to watch his friend be sexually assaulted.⁵⁰⁷ Similar events described in this report, where soldiers restrained persons while their family members, including children, were killed, attacked, and raped in front of them, qualify as torture. Further, rape as documented in this report may qualify as torture. As noted above, in most cases—if not all—perpetrators forced rape survivors to remain in their custody. Case law indicates that rape, which necessarily involves extreme pain and suffering, qualifies as torture when all other elements are met.⁵⁰⁸

Finally, rapes, killings of children and civilians, and beatings that ultimately led to the deaths of most of those involved are not considered lawful sanctions and are impermissible under international and Myanmar law, even if the victims had committed a crime.

⁵⁰¹ Rome Statute, art. 7(2)(e); ICC, *Elements of Crimes*, art. 7(1)(f).

⁵⁰² *Ibid.* The lawfulness of the sanction likely depends on whether they have been imposed in accordance with minimum standards set forth by international law, such as those in the International Covenant on Civil and Political Rights. See, Kai Ambos and Steffen Wirth, *The Current Law of Crimes against Humanity: An Analysis of UNTAET Regulation 15/2000*, Criminal Law Forum, Vol. 13, Iss. 1, 2002, p. 28.

⁵⁰³ Rome Statute, art. 7(2)(e); ICC, *Elements of Crimes*, art. 7(1)(f) n.14 (stating that “no specific purpose need be proved”). See also, *Akayesu*, Case No. ICTR-96-4-T, para. 593-94; *Prosecutor v. Kunarac, Kovac, and Vukovic*, ICTY, Case No. IT-96-23-T and IT-96-23/1-T, Judgment (Trial), February 22, 2001, para. 497; *Krnjelac*, Case No. IT-97-25-T, para. 179. These purposes “need not be the predominant or sole purpose,” and the list of prohibited purposes is not exhaustive. *Prosecutor v. Mucic, et al.*, ICTY, Case No. IT-96-21-T, Judgment (Trial), para. 470.

⁵⁰⁴ *Prosecutor v. Kvocka*, ICTY, Case No. IT-98-30/1-T, Judgment (Trial), November 2, 2011, para. 143.

⁵⁰⁵ *Krnjelac*, Case No. IT-97-25-T, para. 182.

⁵⁰⁶ *Kvocka*, Case No. IT-98-30/1-T, para. 148.

⁵⁰⁷ *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Judgment (Trial), December 10, 1998, para. 267.

⁵⁰⁸ See, e.g., *Kunarac, et al.*, Case No. IT-96-23-T and IT-96-23/1-T, para. 150-51 (“Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture.”); *Akayesu*, Case No. ICTR-96-4-T, para. 687 (following early case law on the public official requirement and finding that “rape in fact constitutes torture” when inflicted by public officials).

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, detention, 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).

Finally, the Myanmar authorities singled out Rohingya, subjecting them to acts prohibited by the crimes against humanity provision of the Rome Statute or other criminal acts falling within the jurisdiction of the ICC. None of the acts were isolated and each took place in a wider context of mass murders, rapes and gang-rapes, arbitrary arrests, and other violent behavior. Thus, all of the acts previously discussed, along with the destruction of Rohingya villages, likely qualify as persecution.

The Contextual Element of Crimes Against Humanity

The prohibited acts described above must be committed within a certain context to be considered a crime against humanity as defined by Article 7 of the Rome Statute. Specifically, Article 7(1) requires that one or more of the prohibited acts be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”⁵²⁴ This requires showing: (1) that there was an “attack directed against any civilian population;” (2) that the attack was “widespread or systematic;” and (3) that the perpetrator of the specific act knew about the attack and there was a nexus between the specific acts and the attack.

The evidence collected by Fortify Rights, combined with reporting on the broader context, demonstrates that the Myanmar security forces and their proxies not only committed one or more prohibited acts but these acts were committed within the necessary context to amount to a crime against humanity.

The Attack was Directed at Any Civilian Population

“An attack directed at any civilian population” requires a demonstration that (1) there was a course of conduct involving the multiple commission of prohibited acts; (2) the conduct was directed against any civilian population; and (3) the conduct was carried out pursuant to or in furtherance of a state or organizational policy.⁵²⁵

The requirement that the attack occur within the context of a “course of conduct” underscores that crimes against humanity are not designed to capture “single isolated events” but rather a series of linked events or actions directed at a civilian population.⁵²⁶ The ICC has interpreted a “course of conduct” as “a campaign, an operation or a series of actions directed against the civilian population.”⁵²⁷

These linked events must involve “multiple commissions” of prohibited acts as enumerated by Article 7(1) of the Rome Statute. The *Bemba* tribunal determined that this “indicates a quantitative threshold requiring ‘more than a few,’ ‘several’ or ‘many’ acts.”⁵²⁸ However, the tribunal also found that the “number of the individual types of acts . . . [is] irrelevant provided that each of the acts fall within the course of conduct and cumulatively satisfy the required quantitative threshold.”⁵²⁹

In finding that multiple prohibited attacks occurred against the Hema ethnic group in Bogoro, Democratic Republic of Congo, the *Katanga* tribunal highlighted that attacks against civilians occurred “from the outset of the attacks, when the military camp was captured and even when fighting had ceased,” demonstrating that the attacks were part of a course of conduct and not isolated events.⁵³⁰ Moreover, the tribunal stressed that combatants “intentionally caused the death of numerous civilians” and that the multiple commission threshold was met “even though the only definitive breakdown of the death toll [established] was 33 civilian deaths.”⁵³¹

⁵²⁴ Rome Statute, art. 7.

⁵²⁵ See ICC, *Elements of Crimes*, art. 7. See also *Katanga*, Case No. ICC-01/04-01/07; *Bemba*, Case No. ICC-01/05-01/08, para. 148.

⁵²⁶ See, *Bemba*, Case No. ICC-01/05-01/08, para. 149; see also *Katanga*, Case No. ICC-01/04-01/07, para. 1101.

⁵²⁷ *Katanga*, Case No. ICC-01/04-01/07, para. 1101.

⁵²⁸ *Bemba*, Case No. ICC-01/05-01/08, para. 150.

⁵²⁹ *Ibid.*

⁵³⁰ *Katanga*, Case No. ICC-01/04-01/07, para. 1137.

⁵³¹ *Ibid.*

By this standard, the attacks by Myanmar security forces and non-Rohingya citizens undoubtedly constituted a “course of conduct” and were not “single isolated events.” Indeed, the “clearance operations” constituted a “campaign” targeting and either completely or partially destroying at least 362 villages in all three townships in northern Rakhine State since August 25, 2017.⁵³² Similarly, the Myanmar Army-led attacks starting in October 2016 targeted approximately 40 villages in Maungdaw Township and were also not “isolated events” but rather a “series of linked events.”

Within this campaign or course of conduct, Fortify Rights documented and analyzed the commission of literally hundreds of prohibited acts against the Rohingya, including murder, extermination, rape and sexual violence, torture, enforced disappearances, imprisonment, deportation and forcible transfer of population, and persecution. Eyewitnesses consistently described how, much as in the *Katanga* case, Myanmar security forces and their proxies burned houses, shot at civilians, and hacked victims to death, including women and children, upon entering villages. For example, in Chut Pyin village in Rathedaung Township on August 27, 2017, Myanmar authorities forcibly took an estimated 50 civilians from a village, imprisoned them in a military camp, and burned them to death in a hut, while perpetrators also beheaded at least two children.⁵³³

The attack must also be “directed against any civilian population,” underscoring that crimes against humanity are committed against a collective of civilians rather than individuals.⁵³⁴ Although the entire population in an area does not need to be targeted, civilians must be targeted in sufficient number or in such a manner to demonstrate that the attack was directed against the civilian population rather than “a limited group of randomly selected persons.”⁵³⁵ Under the crimes against humanity framework, a civilian population comprises all “persons who are civilians,” meaning that the nationality, ethnic group, or “any other distinguishing feature” is “immaterial.”⁵³⁶ While the population targeted must be “primarily civilians” the “presence of non-civilians in its midst has . . . no effect on its status [as a] civilian population.”⁵³⁷ Put simply, attacks cannot be used to justify counterattacks, and “[e]ach attack against the other’s civilian population would be equally illegitimate and . . . could . . . amount to crimes against humanity.”⁵³⁸

Factors considered to determine whether an attack was primarily directed at civilians include: “the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.”⁵³⁹

The *Katanga* tribunal focused on the fact that attackers “made no distinction between combatants and civilians” in its finding that attacks were directed against the Hema civilian population.⁵⁴⁰ The tribunal rejected the argument that the presence of members of a Hema-dominated militia camp demonstrated that civilians were not the primary target. It stressed that attackers had “pursued, wounded or killed by machete and firearm” villagers who stayed in their homes, those who had fled to the bush, and those who were seeking refuge.⁵⁴¹ The tribunal stressed that the

⁵³² “Burma: Scores of Rohingya Villages Bulldozed,” Human Rights Watch.

⁵³³ Fortify Rights interview with #5-2, Cox’s Bazar District, Bangladesh, August 30, 2017.

⁵³⁴ Rome Statute, art. 7(1); ICC, *Elements of Crimes*, art. 7. See also, *Katanga*, Case No. ICC-01/04-01/07, para. 1105; *Kunarac, et al.*, Case No. IT-96-23 and IT-96-23/1-A, Judgement (Appeal), June 12, 2001, para. 90.

⁵³⁵ *Kunarac, et al.*, Case No. IT-96-23 and IT-96-23/1-A, para. 90.

⁵³⁶ *Katanga*, Case No. ICC-01/04-01/07, para. 1102.

⁵³⁷ *Id.* at para. 1105.

⁵³⁸ *Ibid.*

⁵³⁹ *Id.* at para. 1104.

⁵⁴⁰ *Id.* at para. 1137.

⁵⁴¹ *Id.* at para. 1104.

villagers whom perpetrators killed “had no part in combat.”⁵⁴² Finally, the tribunal highlighted the status of the victims, which included “women, elderly people and children, together with babies,” to further demonstrate that the Hema civilian population was the “principal target” and not “a group of randomly selected individuals.”⁵⁴³

Like the attackers in the *Katanga* case, Myanmar security forces made no distinction between combatants and civilians when carrying out its attack on Maungdaw Township beginning in October 2016 and in all three townships in northern Rakhine State beginning August 25, 2017. Considering that the Myanmar security forces attacked more than 300 villages, killed thousands, and displaced more than 700,000 Rohingya since August 2017, the Myanmar authorities targeted Rohingya civilians in “sufficient numbers” to constitute an attack on a civilian population.

Moreover, just as in the *Katanga* case, the alleged presence of Rohingya militants in the villages attacked by the Myanmar military, if true, does not alter the civilian character of the Rohingya population. The Myanmar authorities claim the Myanmar military’s “clearance operations” were directed against the Rohingya militant group, which the Office of the President of Myanmar Htin Kyaw alleged only comprise “400 insurgents fighting in Maungdaw region” in October 2016.⁵⁴⁴ The Myanmar government claimed there were 1,000 Rohingya combatants involved in the August 25 attack. The presence of 400 or even 1,000 non-civilians among more than 1,000,000 Rohingya civilians does not deprive the population of its civilian character.

Finally, the means and methods used in the course of the attacks, the status of the victims, their number, the discriminatory nature of the attack, and the nature of the crimes committed in its course further demonstrates that the attacks were against the Rohingya civilian population. Myanmar Army battalions moved into Rohingya-only villages; burned homes, in some cases firing rocket-propelled grenades into civilian homes; rounded up and executed non-combatant Rohingya men, in some cases beheading them with swords; killed and raped women; burned children alive; and threw children into rivers to drown. Just as in the *Katanga* case, these civilians had “no part in combat.” Similarly, where the *Katanga* tribunal highlighted that perpetrators had chased victims into “the bush” in many instances, Myanmar security forces and non-Rohingya citizens captured Rohingya as they fled their villages and executed or otherwise killed them as they fled. The evidence demonstrates that the Myanmar security forces and non-Rohingya citizens identified the Rohingya civilian population as the “principal target” and not merely “a group of randomly selected individuals.”

Attacks must also be committed “pursuant to or in furtherance of a State or organizational policy to commit such attack.”⁵⁴⁵ Given that the Myanmar state orchestrated the attacks against the Rohingya population, an assessment of whether it constitutes an organization is unnecessary. Survivor testimony demonstrates that Myanmar security forces disarmed Rohingya civilians in the lead up to the attack, trained and armed local non-Rohingya citizens, transported soldiers to areas of attack, shot and killed Rohingya civilians, burned houses, raped women, and laid landmines. Moreover, while disputing the scale and intent of the attacks, the Myanmar government acknowledged it conducted operations in northern Rakhine State beginning August 25, 2017 and even recently fired a senior Army official—Major General Maung Maung Soe—for “underperformance” during the operations.⁵⁴⁶

⁵⁴² *Id.* at para. 1137.

⁵⁴³ *Id.* at para. 1138.

⁵⁴⁴ Simon Lewis and Wa Lone, “Myanmar Blames Islamist Group for Attacks in Rohingya Muslim Region,” *Reuters*, October 14, 2016, <http://in.reuters.com/article/myanmar-border-idINKBN12E1SR> (accessed August 6, 2017).

⁵⁴⁵ ICC, *Elements of Crimes*, art. 7.

⁵⁴⁶ James Griffiths and Angus Watson, Myanmar Fires General in Charge of Rohingya Crackdown After EU Sanctions, *CNN*, June 26, 2018, <https://www.cnn.com/2018/06/26/asia/myanmar-military-rohingya-general-intl/index.html> (accessed July 12, 2018) (citing Myanmar Army’s official Facebook page, <https://www.facebook.com/Cincds/posts/1743024342485090>).

To demonstrate that the attack is pursued in accordance with a policy, ICC jurisprudence recognizes that it is rare for a state to adopt and disseminate a pre-established design or plan.⁵⁴⁷ However, a state or organizational policy can be inferred from factors, including: (1) that the attack was planned, directed or organized; (2) a recurrent pattern of violence; (3) the use of public or private resources to further the policy; (4) the involvement of the state or organizational forces in the commission of crimes; (5) statements, instructions or documentation attributable to the state or the organization condoning or encouraging the commission of crimes; and/or (6) an underlying motivation.⁵⁴⁸ Further, the state or organizational policy may “crystallise and develop as actions are set in train and undertaken by the perpetrators.”⁵⁴⁹

There is substantial evidence that a state policy was in place and crystallized during the attacks on the Rohingya. During the two waves of violence beginning respectively in October 2016 and August 2017, the Myanmar security forces implemented coordinated attacks on scores of Rohingya villages. Planning for the latter attacks began well in advance of August 25, 2017, evidenced by Myanmar security officials systematically disarming and weakening the ability of Rohingya civilians to protect themselves weeks prior to the attacks, while also training and arming nearby non-Rohingya communities to prepare them to engage in violence. Once attacks commenced, Myanmar military commanders directed ground troops, civilian perpetrators, and helicopter gunships to facilitate the attacks in a coordinated and planned manner.

Additional evidence of a Myanmar state policy includes the fact that several branches of the Myanmar security forces, including the Myanmar Army, Air Force, and Police, participated in the two waves of attacks, which would require a significant commitment of public resources and joint operational planning. Furthermore, these attacks are in line with longstanding state-sponsored forms of persecution and discriminatory policies aimed at excluding the Rohingya from basic rights and freedoms, including the right to nationality, in Myanmar.

There must also be a demonstration that the perpetrators committed the attacks “pursuant to or in furtherance of” the state policy.⁵⁵⁰ Perpetrators do not need to be motivated by the policy or be members of the state that created the policy.⁵⁵¹ The perpetrator(s) only need to “engage in conduct envisaged by the policy, and with knowledge thereof.”⁵⁵²

In the *Bemba* case, the tribunal found that perpetrators conducted attacks in furtherance of an organizational policy where militia forces: (1) acted consistently with evidence of motives and a method; (2) were aware of the attack; and (3) were soldiers of the organization and acting on behalf of the organization at the relevant time.⁵⁵³ Similarly, Myanmar state security personnel: (1) demonstrated consistent methods, for example by regularly leading attacks into villages, shooting civilians and burning houses, followed by non-Rohingya residents hacking to death civilians; (2) were aware of the attack given that they were participating in a large-scale operation against civilians; and (3) were Myanmar soldiers and police acting on behalf of the Myanmar state at the time of the attacks.

⁵⁴⁷ *Katanga*, Case No. ICC-01/04-01/07, para. 1109. *See also*, *Bemba*, Case No. ICC-01/05-01/08, para. 160.

⁵⁴⁸ *Ibid.*

⁵⁴⁹ *Katanga*, Case No. ICC-01/04-01/07, para. 1110 (“Otherwise stated, the State or organisational policy be part of an ongoing process whose every aspect is not always predetermined before the operation or course of conduct pursued against the targeted civilian population has commenced or even once it has started.”)

⁵⁵⁰ *See*, *Bemba*, Case No. ICC-01/05-01/08, para. 161. *See also*, *Katanga*, Case No. ICC-01/04-01/07, para. 1115.

⁵⁵¹ *Katanga*, Case No. ICC-01/04-01/07, para. 1125.

⁵⁵² *Ibid.*

⁵⁵³ *Bemba*, Case No. ICC-01/05-01/08, para. 161.

The Attack was “Widespread” or “Systematic”

The attack must also be either “widespread” or “systematic” to establish a crime against humanity.⁵⁵⁴ The attack does not need to be both widespread and systematic, and only the attack must be widespread or systematic—not the individual acts of the perpetrators.⁵⁵⁵

According to ICC jurisprudence, “widespread” refers to “the large-scale nature of the attack and the number of targeted persons.”⁵⁵⁶ Widespread attacks are generally “massive, frequent, carried out collectively” against many people.⁵⁵⁷ For example, in the *Bosco Ntaganda* case, the ICC found that attacks against the non-Hema civilian population were widespread because they “resulted in a large number of civilian victims” across a “broad geographical area” and were conducted over a period of more than nine months.⁵⁵⁸ An attack that takes place over time and across geographical space may also be considered “widespread.”

The ICC has held that “systematic” refers to the “organized nature of the acts of violence and the improbability of their random occurrence.”⁵⁵⁹ When determining whether an attack is “systematic,” international tribunals consider the “pattern of crimes” and the “non-accidental repetition of similar criminal conduct on a regular basis.”⁵⁶⁰ In the *Ntaganda* case, the tribunal found that the attacks were systematic as they “followed a recurrent *modus operandi*.”⁵⁶¹ The tribunal noted that, in locations with a predominantly non-Hema population, perpetrators erected roadblocks, laid landmines, and regularly committed prohibited acts across a number of locations, including killings, arbitrary arrests, rapes, and force expulsion of non-Hema civilians from their homes.⁵⁶²

The evidence collected and analyzed by Fortify Rights shows that the Myanmar Army’s attacks against the Rohingya population beginning respectively in October 2016 and August 2017 were both widespread and systematic. During the October 2016 attacks, Myanmar security forces moved *en masse* into dozens of villages throughout a sizable geographic area in Maungdaw Township, committing targeted attacks on tens of thousands of Rohingya civilians, sometimes in a similar fashion and simultaneously in disparate locations. The attacks resulted in the displacement of more than 94,000 Rohingya civilians from Maungdaw Township during a three-month period.⁵⁶³ The attacks that began in August 2017 occurred throughout all three townships in northern Rakhine State with Myanmar security forces and their proxies targeting more than 300 Rohingya villages, killing at least 6,700 civilians—if not tens of thousands—and displacing more than 700,000 Rohingya civilians. The attacks similarly spanned weeks, if not months.⁵⁶⁴ These facts

⁵⁵⁴ *Prosecutor v. Gbagbo*, ICC, ICC-02/11-14-Corr, para. 52. The International Criminal Tribunal for the Former Yugoslavia confirmed that an attack need only be widespread or systematic under customary international law. See, *Prosecutor v. Tadi*, ICTY, Case No. IT-94-1-T, Judgment (Trial), May 7, 1997, para. 648; *Prosecutor v. Tadi*, Case No. IT-94-1-A, Judgment (Appeal), July 15, 1999, para. 248.

⁵⁵⁵ See, *Bemba*, Case No. ICC-01/05-01/08, para. 162; *Katanga*, Case No. ICC-01/04-01/07, para. 1112; *Kunarac, et. al.*, Case No. IT-96-23 and IT-96-23/1-A, para. 96.

⁵⁵⁶ *Katanga*, Case No. ICC-01/04-01/07, para. 1113.

⁵⁵⁷ *Bemba*, Case No. ICC-01/05-01/08, para. 83.

⁵⁵⁸ *Prosecutor v. Ntaganda*, ICC, ICC-01/04-02/-6, Decision, June 9, 2014, para. 24.

⁵⁵⁹ *Katanga*, Case No. ICC-01/04-01/07, para. 1123 (citing *Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman*, ICC, ICC-02/05-01/07-1-Corr, Decision (Pre-Trial), para. 62).

⁵⁶⁰ *Katanga*, Case No. ICC-01/04-01/07, para. 1123.

⁵⁶¹ *Id.* at para. 24.

⁵⁶² *Id.* at para. 24-29.

⁵⁶³ See, UNOCHA, “Myanmar: Northern Rakhine, Flash Update No. 1,” March 8, 2017, <http://reliefweb.int/sites/reliefweb.int/files/resources/170308%20Myanmar%20Flash%20Update.pdf> (accessed August 15, 2017).

⁵⁶⁴ As of September 19, 2017, State Counsellor Aung San Suu Kyi claimed the clearance operations had ceased, though Border Guards Bangladesh, with at least line of sight and ability to hear gunfire and mortars as well as other

demonstrate that the attacks against the Rohingya in northern Rakhine State were “widespread.”

The attack against the Rohingya population in northern Rakhine State was also “systematic.” At least 22 Myanmar Army Light Infantry Battalions and five Infantry Battalions comprising up to 11,000 soldiers were involved in the attack against Rohingya civilians in northern Rakhine State.⁵⁶⁵ As in the *Ntaganda* case, Myanmar security forces engaged in a “pattern of crime”—laying landmines, using RPG launchers, and repeatedly committing murder, extermination, rape, torture, and other underlying acts in a similar manner. Given the facts, the attack against the Rohingya population was not simply a random constellation of acts or the behavior of rogue soldiers but a systematic attack carried out in an organized fashion.

Perpetrators had Knowledge About the Attack

Lastly, a crime against humanity requires that the perpetrator committed the prohibited acts with knowledge of the widespread or systematic attack, meaning there must be a nexus between the prohibited acts and the attack.⁵⁶⁶ For example, in the *Katanga* case, the tribunal stressed that “[m]urder was in fact the main means of carrying out the attack and was integral to it.”⁵⁶⁷ Likewise, the *Bemba* tribunal found that the “acts of murder and rape” fit within the “*modus operandi*” of the attack and that the perpetrators committed the acts “as part of a widespread attack against the civilian population.”⁵⁶⁸

The nature, aims, characteristics—including the types of crimes and victims—and consequences of the prohibited acts and of the other acts that form the attack must be compared to determine whether the prohibited acts were “part of” the attack.⁵⁶⁹ According to the ICC, “[i]solated acts that clearly differ in their nature, aims and consequences from other acts that form part of an attack, fall [outside of] article 7(1) of the Statute.”⁵⁷⁰

The perpetrator must have also “knowingly participated in the attack directed against a civilian population.”⁵⁷¹ The perpetrator does not need to have “knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization.”⁵⁷² Instead, the perpetrator only needs to know “that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.”⁵⁷³ Moreover, the perpetrator’s motive for committing the prohibited acts is “irrelevant.”⁵⁷⁴

With respect to the knowledge requirement, the *Katanga* tribunal found that “the perpetrators of the acts were members of the militia . . . and they committed the murders, rapes and sexual

intelligence capacity, told Fortify Rights that attacks continued into November. Moreover, Rohingya refugees fleeing violence continued to enter Bangladesh throughout October.

⁵⁶⁵ Fortify Rights interview with Myanmar military personnel, details withheld for security purposes. The battalions involved were confirmed also by military analysts; the estimates of soldiers are based on the number of soldiers believed to actually comprise battalions (400) as opposed to the military’s own estimates for how many soldiers comprise a battalion (800).

⁵⁶⁶ See, ICC, *Elements of Crimes*, art. 7; *Bemba*, Case No. ICC-01/05-01/08, para. 164, 166; *Katanga*, Case No. ICC-01/04-01/07, para. 1124-25.

⁵⁶⁷ *Id.* at para. 1164.

⁵⁶⁸ *Bemba*, Case No. ICC-01/05-01/08, para. 690

⁵⁶⁹ *Bemba*, Case No. ICC-01/05-01/08, para. 165; *Katanga*, Case No. ICC-01/04-01/07, para. 1124.

⁵⁷⁰ *Ibid.*

⁵⁷¹ *Katanga*, Case No. ICC-01/04-01/07, para. 1124.

⁵⁷² *Id.* at para. 1124-25; *Bemba*, Case No. ICC-01/05-01/08, para. 168.

⁵⁷³ See, e.g., ICC, *Elements of Crimes*, art. 7(1)(a)(3), 7(1)(b)(4), 7(1)(c)(3), 7(1)(d)(5), 7(1)(e)(5).

⁵⁷⁴ *Kunarac, et. al.*, Case No. IT-96-23 and IT-96-23/1-A, para. 103.

slavery in the knowledge of that attack and that their acts formed part of it.”⁵⁷⁵ In finding that the militia in question had requisite knowledge of the attack in the *Bemba* case, the tribunal stressed that the attack directed against a civilian population lasted four months, there were a large number of victims, and the attacks occurred over a large geographical area, indicating knowledge should be assumed given the scale.⁵⁷⁶ In addition, the tribunal highlighted that the attack “drew the attention of both local and international media.”⁵⁷⁷ Taken together, these facts led the tribunal to find that “the perpetrators had knowledge of the attack, and knew that their conduct was, or intended their conduct to be, part of the widespread attack directed against the civilian population.”⁵⁷⁸

Given the widespread scale of the attacks against the Rohingya, combined with the international attention, “knowledge should be assumed.” As noted above, up to 11,000 soldiers were likely involved in the attacks that began in August 2017. The large number of troops along with the military’s command-and-control structure suggest that soldiers would know about the clearance operations. Indeed, the Facebook analysis conducted by *Reuters* cites a post from a 99th Light Infantry Division soldier who on September 5, 2017 stated: “The *kalar* are quiet now. *Kalar* villages have burned,” demonstrating knowledge of attacks in multiple villages.⁵⁷⁹ The soldier was posting from northern Maungdaw Township, where numerous attacks occurred. Moreover, a contemporaneous post from a lieutenant in the 33rd Light Infantry Division describes how in late-August 2017 he hiked from one “*kalar* village” to another. His destination village was Inn Din, the site of a well-documented massacre of Rohingya men.⁵⁸⁰ The same lieutenant, upon arrival in Rakhine State with his unit, wrote on Facebook a full two weeks prior to the beginning of the attacks, saying “If they’re Rohingya, they’ll be killed.”⁵⁸¹ This demonstrates knowledge of a plan to kill Rohingya as well as knowledge that their individual criminal acts were a part of a larger scale attack on the Rohingya.

Moreover, as in the *Bemba* case, the attacks against the Rohingya garnered substantial media coverage, drawing widespread international condemnation as well as domestic media and Facebook postings throughout the time of the attacks. For example, the Facebook page of the office of the Commander-in-Chief of the military, Min Aung Hlaing, included 360 posts in September 2017, mostly about the military operations in Rakhine State.⁵⁸² As demonstrated by the *Reuters* analysis of Facebook posts, even in the midst of the operations, soldiers had access to Facebook and would have been able to view the posts of their Commander-in-Chief.

The legal analysis above demonstrates that Myanmar security forces and non-Rohingya citizens committed prohibited acts of murders, rape, extermination, forced displacement, deportation or forcible transfer, imprisonment, enforced disappearance, and persecution with the necessary knowledge of widespread and systematic attacks that directly targeted the Rohingya civilian population. With all those factors satisfied, the elements for crimes against humanity have been met.

⁵⁷⁵ *Katanga*, Case No. ICC-01/04-01/07, para. 1166.

⁵⁷⁶ *Bemba*, Case No. ICC-01/05-01/08, para. 691.

⁵⁷⁷ *Ibid.*

⁵⁷⁸ *Ibid.*

⁵⁷⁹ Lewis, *et al.*, “The Shock Troops Who Expelled the Rohingya From Myanmar: Tip of the Spear,” *Reuters*.

⁵⁸⁰ Wa Lone, Kyaw Soe Oo, *et al.*, Massacre in Myanmar, *Reuters*, February 8, 2018, <https://www.reuters.com/investigates/special-report/myanmar-rakhine-events/> (accessed July 12, 2018).

⁵⁸¹ Lewis, *et al.*, “The Shock Troops Who Expelled the Rohingya From Myanmar: Tip of the Spear,” *Reuters*.

⁵⁸² The posts have since been hidden. Shoon Naing, “Myanmar Army Facebook Posts Covering Key Period of Offensive ‘Hidden,’” *Reuters*, September 26, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-facebook/myanmar-army-facebook-posts-covering-key-period-of-offensive-hidden-idUSKCN1C11ZH> (accessed July 11, 2018).

VII. ASSESSING CRIMINAL LIABILITY FOR GENOCIDE AND CRIMES AGAINST HUMANITY

UNDER ARTICLE 28 of the Rome Statute, commanders of state security forces exercising control over those responsible for crimes against humanity and/or genocide—whether as physical perpetrators or some other form of liability—are liable for international crimes if they failed to act to prevent or repress them.⁵⁸³ Article 25 establishes criminal liability for different forms of involvement in committing the crime, including as a direct, indirect, or co-perpetrator, or as perpetrators responsible for ordering, contributing to, or inciting criminal action.⁵⁸⁴

It is beyond the scope of this report to definitively identify individual physical perpetrators of genocide and crimes against humanity committed against Rohingya civilians in northern Rakhine State in 2016 and 2017.⁵⁸⁵ However, Fortify Rights has identified a number of individuals and categories of individuals who played operative roles in the Myanmar Army-led “clearance operations” in Rakhine State in 2016 and 2017 and merit further investigation

⁵⁸³ Command, or superior, responsibility can be traced back to the fifteenth century. See, e.g., W. H. Parks, *Command Responsibility for War Crimes*, *Military Law Review*, Vol. 62, Iss. 1, 1973, pp. 4–5 (describing the 1474 case of a knight convicted by an international tribunal and executed for murder, rape, perjury, and other crimes “against the laws of God and man” that he, as a knight, had a duty to prevent). However, it only became firmly established in international customary law after World War II. Although the International Tribunal in Nuremberg did not use the doctrine and the Tribunal of Tokyo did so only “very broadly,” the *Yamashita* case before the United States Military Commission marked its modern debut. Rene Vark, *Superior Responsibility*, 15 *Estonian National Defence College Proceedings*, Vol. 15, Iss. 143, 2012, p. 144. The ICTR and ICTY further developed the doctrine, initially for military commanders but increasingly—and somewhat controversially—for civilian superiors as well. Superior responsibility had three elements, set forth in Article 7(3) of the ICTY Statute and Article 6(3) of the ICTR Statute: (i) a superior–subordinate relationship, (ii) knowledge or reason to know the subordinate was about to commit or had committed a crime, and (iii) the superior’s failure to take necessary and reasonable measures to prevent the crime or punish the perpetrators.

⁵⁸⁴ Rome Statute, art. 25, 28.

⁵⁸⁵ “Physical perpetrators” is a term that refers to those who physically committed a crime, for example, the person who killed or raped another person. In addition to the practical limitations on eliciting evidence about physical perpetrators from relevant military and government actors who routinely deny any wrongdoing by state actors, evidence leading to the identification of physical perpetrators often requires investigative capacities, such as subpoenas, production orders, and political influence, usually reserved for state or United Nations investigators.

to establish whether they may be liable for the commission of genocide and crimes against humanity. Given that the crimes were committed as part of a military operation led by the Myanmar Army—the military commanders responsible for the “clearance operations” in Rakhine State may be held criminally liable under Article 28 of the Rome Statute.⁵⁸⁶

This chapter provides an overview of command responsibility doctrine as articulated by Article 28 and the various modes of liability as defined by Article 25 of the Rome Statute.

COMMAND RESPONSIBILITY FOR COMMANDERS

Article 28 (a) establishes criminal liability for “a military commander or person effectively acting as a military commander” when international crimes take place “by forces under his or her effective command and control” or “as a result of his or her failure to exercise control properly over such forces.”⁵⁸⁷ Further, the commander must have known or should have known about the crimes and “failed to take all necessary and reasonable measures within his or her power” to prevent, repress, or report the crimes.⁵⁸⁸

A Military or Military-Like Commander

A “military commander” refers to a person formally or legally appointed to a position of authority in a state’s armed forces or “non-governmental irregular” armed forces.⁵⁸⁹ Article 28(a) also covers quasi-military commanders such as those who do not occupy official positions but operate as commanders.⁵⁹⁰ The commander does not need to perform exclusively military functions, and the commander and subordinates do not need to be connected by a direct chain of command—the doctrine encompasses both indirect and direct relationships, provided the superior has effective control.⁵⁹¹ Command responsibility also applies regardless of rank—the individual may be the most senior commander in the force or have command only over a few soldiers.⁵⁹²

The officials responsible for the crimes committed against Rohingya civilians in 2016 and 2017 are largely members of the military and fall under the military’s command structure. Some cases involved members of the Myanmar Police Force; however, given that the Police Force was effectively operating under the control of the military, those officers would be considered military-like commanders and also criminally liable under command responsibility.

Effective Command and Control or Effective Authority and Control Over Forces

Under the command responsibility doctrine of Article 28(a) of the Rome Statute, the commanders must have “effective command and control, or effective authority and control” over the forces under his or her command.⁵⁹³ According to the *Bemba* tribunal, “command” and “authority” have

⁵⁸⁶ Although the evidence suggests that State Counsellor Aung San Suu Kyi may be criminally responsible for crimes against humanity and/or genocide by her inaction and failure to prevent, repress, or report the crimes committed by the Myanmar military and their proxies, she is not the focus of this analysis.

⁵⁸⁷ Rome Statute, art. 28(a).

⁵⁸⁸ The Rome Statute codifies superior responsibility doctrine in Article 28. Article 28(a) applies to military commanders or those acting as military commanders and Article 28(b) applies to non-military commanders, including civilians. Vark, *Superior Responsibility*, p.143.

⁵⁸⁹ *Bemba*, Case No. ICC-01/05-01/08, para. 176.

⁵⁹⁰ *Bemba*, Case No. ICC-01/05-01/08, para. 177. The doctrine has long covered both *de jure* and *de facto* commanders. See, e.g., *Mucic, et al.*, Case No. IT-96-21-A, Judgment (Appeal), February 20, 2001, para. 370.

⁵⁹¹ *Mucic, et al.*, Case No. IT-96-21-A, para. 252.

⁵⁹² *Bemba*, Case No. ICC-01/05-01/08, para. 408; see, e.g., *Prosecutor v. Ori*, Case No. IT-03-68-T, Judgment, para. 313 (June 30, 2006).

⁵⁹³ Rome Statute, art. 28(a).

“close, but distinct meanings”—they do not denote different levels of control, but instead the different “modalities, manner, or nature” through which a commander exercises control.⁵⁹⁴

For example, having official authority over subordinates does not necessarily amount to commanders having effective control over subordinates.⁵⁹⁵ Effective control also requires more than exercising influence over subordinates.⁵⁹⁶ “Control” is interpreted as “the material ability to prevent and punish the commission of offences.”⁵⁹⁷ The *Bemba* Pre-Trial Chamber also stressed that the period of effective control must coincide with the criminal conduct and concluded that the commander must have had effective control “at least when the crimes were about to be committed.”⁵⁹⁸

Although the *Bemba* Pre-Trial Chamber found that the indicators for the existence of effective control are “more a matter of evidence than of substantive law,” it also set out factors to consider for establishing “effective control.”⁵⁹⁹ These factors include: the commander’s official position; power to issue orders; capacity to ensure compliance with those orders; position within the military structure and the actual tasks he or she carried out; capacity to order force or units under his or her command to engage in hostilities; capacity to re-subordinate units or change the command structure; power to promote, replace, remove or discipline any member of the forces; authority to send and withdraw forces to/from hostilities; independent access to and control over the means to wage war; control over finances; capacity to represent the forces in negotiations or act on the group’s behalf; and representation of the group’s ideology with a sufficiently high profile.⁶⁰⁰ In contrast, the following factors indicate a lack of effective control: the existence of a different, exclusive authority over the forces; disregard or non-compliance with orders or instructions by subordinates; and a weak or malfunctioning chain of command.⁶⁰¹

Multiple commanders may exercise control and be held concurrently responsible.⁶⁰² It is not necessary to identify the principal perpetrators by name—identifying them “to the extent necessary to assess the existence of the superior-subordinate relationship” for instance by group or unit, is sufficient.⁶⁰³ The superior also does not need to know the subordinates’ exact identity.⁶⁰⁴

⁵⁹⁴ *Bemba*, Case No. ICC-01/05-01/08, para. 180–181 (“As noted by the Pre-Trial Chamber, the term ‘command’ is defined as ‘authority, especially over armed forces,’ and the expression ‘authority’ refers to the ‘power or right to give orders and enforce obedience’”).

⁵⁹⁵ According to the Appeals Chamber in *Hadžihasanovi*, while having the official position of commander *prima facie* results in effective control, “[e]ven when a superior is found to have *de jure* authority over his subordinates, the Prosecution still has to prove beyond reasonable doubt that this superior exercised effective control over his subordinates[.]” *Prosecutor v. Hadžihasanović & Kubura*, ICTY, Case No. IT-01-47-A, Judgment (Appeal), April 22, 2008, para. 21.

⁵⁹⁶ *Mucic, et al.*, Case No. IT-96-21-A, para. 266 (“It is clear, however, that substantial influence as a means of control in any sense which falls short of the possession of effective control over subordinates, which requires the possession of material abilities to prevent subordinate offences or to punish subordinate offenders, lacks sufficient support in State practice and judicial decisions.”) *See also, Bemba*, Case No. ICC-01/05-01/08, para. 183. Influence may, however, constitute control for civilian superiors, as discussed further below.

⁵⁹⁷ *Bemba*, Case No. ICC-01/05-01/08, para. 183.

⁵⁹⁸ Although the *Bemba* Pre-Trial Chamber acknowledged that the Special Court for Sierra Leone held a different view. *Bemba*, Case No. ICC-01/05-01/08, para. 418 (citing *Prosecutor v. Sesay et al.*, Special Court for Sierra Leone (SCSL), Case No. SCSL-04-15-T, Judgment (Trial), March 2, 2009, para. 299. (“[T]he superior must have had effective control over the perpetrator at the time at which the superior is said to have failed to exercise his powers to prevent or to punish[.]”))

⁵⁹⁹ The Pre-Trial Chamber articulated eight factors, which the Trial Chamber in the *Bemba* case added to. *Bemba*, Case No. ICC-01/05-01/08, para. 416.

⁶⁰⁰ *Bemba*, Case No. ICC-01/05-01/08, para. 188, 417. *See also, Karadžić*, Case No. IT-95-5/18-T (“Factors to be considered in assessing whether a superior exercised effective control include, *inter alia*, (i) his capacity to issue orders and whether those orders were in fact followed, (ii) the authority to issue disciplinary measures, and (iii) the power to promote personnel and terminate positions held.”)

⁶⁰¹ *Bemba*, Case No. ICC-01/05-01/08, para. 190.

⁶⁰² *Id.* at para. 185.

⁶⁰³ *Id.* at para. 186.

⁶⁰⁴ *Karadžić*, Case No. IT-95-5/18-T, para. 583.

Like other national armies, all personnel within the Myanmar Army at any level of the hierarchy are subject to military command and are under the authority and control of a military commander at any given time. Major General Maung Maung Soe, the head of the Myanmar Army's Western Command, was involved in operations in Rakhine State during the "clearance operations."⁶⁰⁵ The Western Command comprises three divisions, each with approximately 10 battalions of 400 soldiers each.⁶⁰⁶ The Military Operations Command 15 (MOC-15) stationed in Buthidaung Township reportedly led the "clearance operations" in Maungdaw Township in October to December 2016 with an estimated 2,000 Myanmar Army soldiers reportedly directly involved in the attack.⁶⁰⁷ The same forces were involved in the 2017 attack in addition to thousands of other soldiers.⁶⁰⁸

Rohingya residents and eyewitnesses from the first "clearance operations" in 2016 estimated that heavily armed soldiers arrived in their villages in groups comprising approximately 200 to 250 soldiers each.⁶⁰⁹ Ranking majors or lieutenant colonels appeared to command Myanmar Army battalion subgroups—or "platoons," in military parlance—operational at the village level, each comprising 25 to 30 soldiers, according to residents and eyewitnesses.⁶¹⁰ This is consistent with an exclusive report by *Reuters*, citing a senior army source saying that each battalion operational during the "clearance operations" in 2016 had four "companies" and an artillery section, each of which was led by a commander in the rank of lieutenant colonel.⁶¹¹

Failure to Exercise Control Over Forces

The commander must not only have "effective command and control" over the forces that perpetrated international crimes, the crimes must also be a result of the commander's "failure to exercise control properly over such forces."⁶¹² In interpreting this causality requirement, the *Bemba* Pre-Trial Chamber provides only that the commander's omissions must have increased the likelihood of the crimes' occurrence.⁶¹³

Establishing causality between the crimes, or at least an increase in likelihood of the crimes, and the failure of the Myanmar military commanders to exercise proper control over their forces is not difficult given the military's prominent role in committing the crimes. The military had the capacity to prevent or repress the crimes and failed to do so—indeed, they prepared for the commission of crimes and devoted significant human and material resources to the attacks.

⁶⁰⁵ Wa Lone, "Command Structure of the Myanmar Army's Operation in Rakhine State," *Reuters*, April 25, 2017, <http://www.reuters.com/article/us-myanmar-rohingya-crisis-army-idUSKBN17R18F> (accessed August 11, 2017).

⁶⁰⁶ *Ibid.*

⁶⁰⁷ *Ibid.* (referring to MOC 15 as LID 15); Fortify Rights meetings with senior military personnel.

⁶⁰⁸ Fortify Rights interviews with Myanmar military personnel and independent military analysts, Myanmar, June and May 2018, respectively.

⁶⁰⁹ If there were 10 battalions operational in Maungdaw Township in October to December 2016 as reported by *Reuters*, with approximately 200 soldiers per battalion as reported by residents, then the reported estimate of 2,000 active fighters would appear accurate.

⁶¹⁰ Fortify Rights interview with #50, Cox's Bazar District, Bangladesh, December 13, 2016.

⁶¹¹ Wa Lone, "Command Structure of the Myanmar Army's Operation in Rakhine State," *Reuters*.

⁶¹² Rome Statute, art. 28(a).

⁶¹³ The Chamber rejected a more traditional but-for causation analysis with regards to the duty to prevent, as "it would not be practical to predict exactly what would have happened if a commander had fulfilled his obligation to prevent crimes." As for the duties to repress or submit the matter to competent authorities during or after the commission of crimes, the Chamber found it "illogical" to say the failure to do so would have prevented the crimes' commission, instead requiring only that the failure increase the risk of further crimes. *Bemba*, Case No. ICC-01/05-01/08, para. 424-426. The Appeals Chamber offered no further insight. As the two judges said in their separate opinion, "The question of whether superior responsibility requires causation has been a live issue in legal writings for many years, and the present Judgment will unfortunately not give the long-awaited judicial answer, as the judges are divided and could only express themselves in opinions." *Bemba*, Case No. ICC-01/05-01/08 A, Separate Opinion, J. Christine Van den Wyngaert & J. Howard Morrison (Appeal), June 8, 2018, para. 51.

Moreover, military commanders' failure to punish crimes during the attacks in Maungdaw Township in 2016 and again during the attacks in Maungdaw, Buthidaung, and Rathedaung townships starting in August 2017 increased the likelihood of further crimes.

Myanmar Army battalions have also committed mass atrocities elsewhere in Myanmar with impunity, increasing the risk of the crimes in Rakhine State. For example, the 33rd and 99th Light Infantry Divisions reportedly committed war crimes against civilians in Kachin and Shan states—including rape, killings, forced labor, arbitrary arrest and detention, and torture—prior to their deployment to Rakhine State, where they carried out similar crimes.⁶¹⁴

Knowledge of the Crimes

Article 28(a) of the Rome Statute further requires that the commander either knew or should have known the forces were committing or about to commit the crimes. The requirement of “knowing” means that the commander must have actual knowledge of the crimes, whereas demonstrating that a commander “should have known” requires a showing of negligence.⁶¹⁵ It has been widely established that knowledge cannot be presumed but must be shown through direct or circumstantial evidence.⁶¹⁶ For example, the *Blaskic* tribunal found that a person's position in the command structure was a significant indicator to demonstrate knowledge about the crimes committed by subordinates.⁶¹⁷ The *Bemba* tribunal affirmed that the more distant a commander is from the crimes, the more evidence may be required to prove his or her knowledge of them.⁶¹⁸

Factors pointing to “knowledge” include: “the number of illegal acts, their scope, whether their occurrence is widespread, the time during which the prohibited acts took place, the type and number of forces involved, the means of available communication, the *modus operandi* of similar acts, the scope and nature of the superior's position and responsibility in the hierarchal structure, the location of the commander at the time and the geographical location of the acts.”⁶¹⁹ Knowledge can also be demonstrated where a military commander is part of “an organised structure with established reporting and monitoring systems.”⁶²⁰

To demonstrate that a commander “should have known” or was negligent, the commander must have (i) “had general information to put him [or her] on notice of crimes committed by subordinates or of the possibility of occurrence of the unlawful acts and (ii) such available information was sufficient to justify further inquiry or investigation.”⁶²¹ The failure to punish past crimes committed by the same subordinates may also be relevant albeit not wholly sufficient to establish negligence.⁶²²

⁶¹⁴ See, for example, “Myanmar: Ethnic Minorities Face Rang of Violations Including War Crimes in Northern Conflict,” Amnesty International, press release, June 2014, <https://www.amnesty.org/en/press-releases/2017/06/myanmar-ethnic-minorities-face-violations-in-northern-conflict/> (accessed July 12, 2018).

⁶¹⁵ This is similar but slightly distinct from the standard embodied in the statutes of the ICTR/ICTY and SCSL: “had reason to know.” *Bemba*, Case No. ICC-01/05-01/08, para. 434.

⁶¹⁶ See, e.g., *Prosecutor v. Blaškić*, ICTY, Case No. IT-95-14-T, March 3, 2000, para. 307. See also *Bemba*, Case No. ICC-01/05-01/08, para. 191.

⁶¹⁷ *Blaškić*, Case No. IT-95-14-T, para.308. See also, *Prosecutor v. Aleksovski*, ICTY, Case No. IT-95-14/1-T, Judgment (Trial), June 25, 1999, para. 80.

⁶¹⁸ *Bemba*, Case No. ICC-01/05-01/08, para. 460.

⁶¹⁹ *Id.* at para. 431.

⁶²⁰ *Ibid.*

⁶²¹ *Id.* at 434.

⁶²² *Ibid.* (citing *Prosecutor v. Sesay et al.*, SCSL, Case No. SCSL-04-15-T, Judgment (Trial), March 2, 2009, para. 311 (“[W]hile a superior's knowledge of and failure to punish his subordinates' past offences is insufficient on its own to conclude that the superior knew that future offences would be committed, such knowledge may constitute sufficiently alarming information to justify further inquiry[.]”)).

Considerable evidence indicates that both proximate and remote commanders knew about the crimes being committed by their subordinates during the attacks on Rohingya civilians in 2016 and 2017. During the 2017 “clearance operations” in Rakhine State, Commander-in-Chief Senior General Min Aung Hlaing travelled to Rakhine State with Minister of Home Affairs Lieutenant General Kyaw Swe from September 19 to 21, 2017, where he met with relevant commanders.⁶²³ On September 19, the two generals met in person with Lieutenant General Aung Kyaw Zaw, who oversaw the operations in northern Rakhine State, and Major General Maung Maung Soe, who was the commander of the Western Command.⁶²⁴ The Secretary of the Rakhine State government Tin Maung Swe, senior military officers, and others were also present during these meetings.⁶²⁵ On September 20, Senior General Min Aung Hlaing reportedly described the military’s operations in northern Rakhine State as “gallant” and “brilliant.”⁶²⁶

The Chief of the Bureau of Special Operations Lieutenant General Aung Kyaw Zaw was, at times, embedded within MOC-15 and on the ground during “important operations.”⁶²⁷ His physical proximity to crimes would indicate knowledge of what was happening, increasing also the likelihood that soldiers were operating according to orders from their superiors. Information obtained by Fortify Rights indicates Lt. Gen. Aung Kyaw Zaw ranked fourth in the chain of command for the “clearance operations” in Rakhine State, behind the commander-in-chief, his deputy, and the joint chief-of-staffs.

Moreover, the news media as well as U.N. agencies and human rights organizations consistently reported allegations of serious human rights violations, some of which were directly submitted to the military and government authorities.⁶²⁸ For example, in a February 2017 “Flash Report,” OHCHR alleged that Myanmar Army-led attacks against Rohingya starting in October 2016 appeared to be “widespread as well as systematic, indicating the very likely commission of crimes against humanity.”⁶²⁹

⁶²³ Senior General Min Aung Hlaing Facebook Post, September 19, 2017, <https://www.facebook.com/seniorgeneralminaunghlaing/posts/1715340745167073>.

⁶²⁴ *Ibid.*

⁶²⁵ *Ibid.*

⁶²⁶ Senior General Min Aung Hlaing Facebook post, September 20, 2018, <https://www.facebook.com/seniorgeneralminaunghlaing/posts/1716465351721279>.

⁶²⁷ Fortify Rights meeting with senior military personnel, Myanmar, June 2018. Details withheld for security purposes.

⁶²⁸ Every major media outlet internationally reported on crimes against Rohingya since 2016—in print, TV, and radio—including the *New York Times*, the *Washington Post*, the *Guardian*, CNN, *Al Jazeera*, *Channel News Asia*, *Reuters*, *Agence-France Presse*, the *Associated Press*, and others. These same outlets often reported government responses, including outright denials as well as obfuscations; For reports by human rights organizations, see for example Fortify Rights *et. al.*, “*They Tried to Kill Us All*”; “Myanmar/Bangladesh: Prevent Premature Repatriation, Ensure Rights for Rohingya,” Fortify Rights, news release, January 22, 2018, <http://www.fortifyrights.org/publication-20180122.html> (accessed July 18, 2018); “Myanmar: End Attacks in Rakhine State, Protect Civilians,” Fortify Rights; “Myanmar: Protect Civilians in Rakhine State, Investigate Fatal Shootings,” Fortify Rights; Human Rights Watch, *Massacre by the River*; Human Rights Watch, “*All of My Body Was Pain*”: *Sexual Violence against Rohingya Women and Girls in Burma*, November 16, 2017, <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma> (accessed July 18, 2018); “Burma: Widespread Rape of Rohingya Women, Girls,” Human Rights Watch, news release, November 16, 2017, <https://www.hrw.org/news/2017/11/16/burma-widespread-rape-rohingya-women-girls> (accessed July 18, 2018); “Burma: Military Commits Crimes Against Humanity,” Human Rights Watch, news release, September 25, 2017, <https://www.hrw.org/news/2017/09/25/burma-military-commits-crimes-against-humanity> (accessed July 18, 2018); “Burma: Security Forces Raped Rohingya Women, Girls,” Human Rights Watch, news release, February 6, 2017, <https://www.hrw.org/news/2017/02/06/burma-security-forces-raped-rohingya-women-girls> (accessed July 18, 2018); “Burma: Rohingya Recount Killings, Rape, and Arson,” Human Rights Watch, news release, December 21, 2016, <https://www.hrw.org/news/2016/12/21/burma-rohingya-recount-killings-rape-and-arson> (accessed July 18, 2018); Burma Rohingya Organization UK, “*I Thought I Would Die*”: *Physical Evidence of Atrocities Against the Rohingya*, November 2017, <http://brouk.org.uk/?p=1558> (accessed July 18, 2018); Burma Human Rights Network, “Report on Rohingya Refugees in Bangladesh Tell of Horrors in Maungdaw,” May 16, 2017, <http://www.bhrn.org.uk/en/report/14-report-on-rohingya-refugees-in-bangladesh-tell-of-horrors-in-maungdaw.html> (accessed July 18, 2018).

⁶²⁹ OHCHR, *Report of the OHCHR Mission to Bangladesh*.

The setting in which the crimes occurred provides further evidence indicating commanders would have known of the crimes being committed. In both the 2016 and 2017 attacks, a large number of soldiers acting under military control committed crimes in northern Rakhine State in 2016 and 2017 during many months and in a similar fashion throughout multiple locations and without interruption. In some cases, Myanmar Army commanders were physically present while assemblages of soldiers raped and gang-raped women and girls, fatally shot and cut the throats of men, women, and children, and burned people to death, including infant children. Eyewitness testimony shows that in multiple locations and on similar timelines, Myanmar Army soldiers massacred large numbers of civilians and discarded their bodies in mass graves or burned piles of bodies, all in the presence of large numbers of soldiers. The fact that different bands of soldiers performed these same actions repeatedly and across disparate locations further suggests knowledge by commanders of the crimes. Even if senior military commanders were not aware that crimes were being committed during the first days of the operation, it seems implausible for them to remain unaware after the discovery of bodies, destroyed villages, and the mass exodus of civilians from villages.

Based on evidence collected in this report, military commanders with effective control over the perpetrators of genocide and crimes against humanity knew or should have known of the crimes committed and/or the crimes about to be committed.

Where a commander has effective control and the requisite knowledge about crimes, they must act on their obligation to prevent or punish them or submit them to the appropriate authorities by taking all necessary and reasonable measures within their power.⁶³⁰ That is, commanders must take measures that are within their material ability or the bounds of their effective command to control their subordinates.⁶³¹

The *Karadžić* case defined “necessary measures” as those “‘appropriate for the superior to discharge his obligation’ to prevent or punish the underlying crime,” and it defined “reasonable measures” as those “‘reasonably falling within the material powers of the superior.’”⁶³² What constitutes a necessary and reasonable measure in a given case will depend on the commander’s official power and his or her effective ability to implement such measures.⁶³³

Ultimately, the commander must have failed to fulfill one of three duties arising at three different stages in the commission of crimes: the duty to prevent crimes (before a crime’s commission), the duty to repress crimes (during their commission), or the duty to submit the matter to the competent authorities for investigation and prosecution (afterwards).⁶³⁴ Each failure constitutes

⁶³⁰ For more detail regarding steps a commander may take to meet these obligations, see *Bemba*, Case No. ICC-01/05-01/08, para. 203–204, 438, 440.

⁶³¹ *Id.* at 198–199.

⁶³² *Karadžić*, Case No. IT-95-5/18-T.

⁶³³ *Id.* at para. 442 (citing *Prosecutor v. Kordić & Čerkez*, ICTY, Case No. IT-95-14/2-A, Judgement (Appeal), December 17, 2004, para. 443 (“[I]t is the actual ability, or effective capacity to take measures which is important. . . . When assessing whether a superior failed to act, the Trial Chamber will look beyond his formal competence to his actual capacity to take measures.”)). The *Bemba* Appeals Chamber found the Trial Chambers’ analysis erred on this point by demanding more of superiors than the law requires. The Appeals Chamber emphasized, “it is not the case that a commander is required to employ every single conceivable measure within his or her arsenal, irrespective of considerations of proportionality and feasibility.” It continued, “[i]n assessing reasonableness, the Court is required to consider other parameters, such as the operational realities on the ground at the time faced by the commander.” The Appeals Chamber cautioned against evaluating a superior’s actions “with the benefit of hindsight” and found trial chambers must specifically identify what a superior should have done “in concreto” rather than make “a list of measures which the commander could hypothetically have taken.”

⁶³⁴ *Id.* at para. 589.

its own crime.⁶³⁵ In other words, failing both to prevent a crime and to punish those responsible would be two offenses stemming from the same underlying crime.⁶³⁶ Further, failing to prevent a crime could not be rectified by submitting the matter to the competent authorities.⁶³⁷

While Article 28 does not prescribe specific required measures that must be taken to prevent crimes, the *Bemba* Pre-Trial Chamber found it “appropriate to be guided by” four measures: “(i) ensur[ing] that the superior’s forces are adequately trained in international humanitarian law; (ii) secur[ing] reports that military actions were carried out in accordance with international law; (iii) issu[ing] orders aiming at bringing the relevant practices into accord with the rules of war; (iv) and tak[ing] disciplinary measures to prevent the commission of atrocities by the troops under the superior’s command.”⁶³⁸ The Trial Chamber in the *Bemba* case added: “(i) issuing orders specifically meant to prevent the crimes, as opposed to merely issuing routine orders; (ii) protesting against or criticising criminal conduct; (iii) insisting before a superior authority that immediate action be taken; (iv) postponing military operations; (v) suspending, excluding, or redeploying violent subordinates; and (vi) conducting military operations in such a way as to lower the risk of specific crimes or to remove opportunities for their commission.”⁶³⁹

The duty to prevent crimes is triggered whenever the superior knew or should have known subordinates were committing or about to commit crimes.⁶⁴⁰

The duty to repress crimes includes two separate duties arising at two different times: (i) the duty to stop ongoing crimes and “interrupt a possible chain effect” and (ii) the duty to repress, which in turn encompasses a duty to punish forces after they commit crimes.⁶⁴¹ The latter serves as an alternative to the third duty—the duty to submit the matter to the competent authorities.⁶⁴² Whether the second or third duty applies to a commander will depend on the specific facts of the case and the commander’s position and capacity to punish subordinates himself rather than referring the issue to someone else.⁶⁴³

The third duty—to submit the matter to the competent authorities for investigation and prosecution—acts almost as a check on the second, ensuring commanders do not escape liability because they cannot sanction their forces themselves. It requires superiors without that power to nevertheless take “active steps in order to ensure that the perpetrators are brought to justice.”⁶⁴⁴

While the precise actions taken by Myanmar military commanders to prevent or punish crimes or submit them to a competent authority are unknown, the available evidence indicates that the commanders have not fulfilled their duties. The Myanmar military has consistently denied the crimes occurred and commissioned “investigations” that appeared designed from the outset to exonerate the military of any wrongdoing.⁶⁴⁵ For instance, in November 2017, the Myanmar Army

⁶³⁵ *Ibid.*

⁶³⁶ *Ibid.*

⁶³⁷ *Ibid.*

⁶³⁸ *Id.* at para. 438.

⁶³⁹ *Id.* at para. 204.

⁶⁴⁰ *Id.* at para. 437.

⁶⁴¹ *Id.* at para. 440 (quoting R. Arnold, *Commentary on the Rome Statute of the International Criminal Court, Observers’ Notes, Article by Article*, 838 (Nomos Verlag 2nd ed., 2008)).

⁶⁴² *Ibid.*

⁶⁴³ *Id.* at para. 441.

⁶⁴⁴ *Id.* at para. 442.

⁶⁴⁵ See, for example, Wa Lone, “Myanmar Military Denies Atrocities Against Rohingya, Replaces General,” *Reuters*, November 13, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-general/myanmar-military-denies-atrocities-against-rohingya-replaces-general-idUSKBN1DD18S> (accessed July 12, 2018); Oliver Holmes, “Myanmar

released a report denying all allegations of killings and rape.⁶⁴⁶ Senior Myanmar military officials also explicitly referenced or denied the crime of genocide on multiple occasions, including at the U.N. and by Commander-in-Chief Senior General Min Aung Hlaing.⁶⁴⁷ The civilian government has repeated these denials and, in some cases, led the way in denying allegations of serious human rights violations. Further, a military source told Fortify Rights that all senior-ranking officers received written instructions forbidding all military personnel from communicating with the media, specifically with regard to the “clearance operations” in Rakhine State and military operations in Kachin State.⁶⁴⁸ The written order is reportedly explicit and includes information about punishment for anyone who speaks to the media.⁶⁴⁹

Based on patterns of prohibited criminal acts and the fragmentary facts available regarding Myanmar military commanders’ failure to prevent the prohibited acts, Fortify Rights believes there is sufficient evidence to determine that Myanmar Army and Police commanders should be investigated under a command responsibility theory for genocide and crimes against humanity in Rakhine State in 2016 and 2017.

MODES OF LIABILITY

In addition to command responsibility found in Article 28 of the Rome Statute, Article 25 provides a number of other avenues, or “modes,” to find individuals liable for their participation in genocide and/or crimes against humanity. The various modes allow the ICC to find individuals liable based on: (1) direct or indirect perpetration or co-perpetration of the crime; (2) ordering, soliciting, or inducing the commission of the crime (often seen as the inverse of command responsibility, in that rather than being liable as a commander for failing to act, the commander directly ordered, induced, or solicited the act); (3) aiding, abetting or otherwise assisting in the commission of the crime; (4) substantially contributing to the commission of the crime; or (5) directly and publicly inciting others to commit genocide.⁶⁵⁰ This section analyzes each mode of responsibility, their elements, and their application through the international tribunals.

Direct or Indirect Perpetration or Co-Perpetration of Crime(s)

International tribunals have read Article 25(3)(a) as providing four ways for an individual to perpetrate a crime: (1) direct perpetration, (2) indirect perpetration, (3) co-perpetration, and (4) indirect co-perpetration.⁶⁵¹

Direct perpetration is the most straightforward mode of liability, establishing liability for when a perpetrator physically or directly commits a crime. Perpetrators include individuals who

Tells UN: ‘There is No Ethnic Cleansing and No Genocide of Rohingya’ *The Guardian*, September 29, 2017, <https://www.theguardian.com/world/2017/sep/29/myanmar-un-ethnic-cleansing-genocide-rohingya> (accessed July 12, 2018); “Myanmar Envoy Denies Genocide Against Rohingya Muslims,” *Associated Press*, October 12, 2017, <https://www.voanews.com/a/myanmar-envoy-denies-genocide-against-rohingya-muslims/4067204.html> (accessed July 12, 2018); Robert Birseel and Wa Lone, “Myanmar Army Chief Says Rohingya Muslims ‘Not Natives,’ Numbers Fleeing Exaggerated,” *Reuters*, October 12, 2017, <https://www.reuters.com/article/us-myanmar-rohingya/myanmar-army-chief-says-rohingya-muslims-not-natives-numbers-fleeing-exaggerated-idUSKBN1CHOI6> (accessed July 12, 2018).

⁶⁴⁶ Wa Lone, “Myanmar Military Denies Atrocities Against Rohingya, Replaces General,” *Reuters*.

⁶⁴⁷ Following a meeting with U.S. Ambassador to Myanmar Scot Marciel, Min Aung Hlaing’s Facebook page reported him as saying, “They are even saying that security forces are using excessive force and committing genocide.” Senior General Min Aung Hlaing Facebook Post, October 11, 2017, <https://www.facebook.com/seniorgeneralminaulhlaing/posts/1736743383026809>.

⁶⁴⁸ Fortify Rights meetings with senior military official, 2017 and 2018.

⁶⁴⁹ *Ibid.*

⁶⁵⁰ Rome Statute, art. 25.

⁶⁵¹ Rome Statute, art. 25(3)(a).

physically carried out the crime with the necessary intent.⁶⁵² The ICC has not pursued this path of liability often as it prefers to focus on those most responsible for atrocities, like military, political, or religious leaders, rather than combatants or civilians who follow orders.⁶⁵³

An indirect perpetrator may be liable for a crime when the crime is committed “through another person, regardless of whether that other person is criminally responsible.”⁶⁵⁴ An indirect perpetrator must have the power to decide whether and how the crime will be committed.⁶⁵⁵ An indirect perpetrator must exert “control” over the crime, which can be demonstrated by showing that the person either (1) controlled an “innocent agent” who lacked the mental capacity to form intent or who was induced to commit a crime by deceit, force, or threats or (2) manipulated, exploited, or ordered a direct perpetrator.⁶⁵⁶ Control can also be demonstrated where the indirect perpetrator is a superior within an organization that has a defined leadership and hierarchical structure.⁶⁵⁷ In this situation, the indirect perpetrator must have: (a) the power to ensure his or her orders will be complied with and (b) actually wielded that power.⁶⁵⁸ In other words, only those who can and do control at least part of an apparatus of power may be criminally liable for overseeing the execution of a criminal activity.⁶⁵⁹

In addition to demonstrating “control” over the crime, the indirect perpetrator must also have the necessary intent to carry out the crime and have acted with knowledge, meaning he or she was aware of the factual circumstances that allowed him or her to exert control over the crime.⁶⁶⁰

The Rome Statute is the first international instrument to explicitly establish liability for indirect perpetrators.⁶⁶¹ In comparison to direct perpetration, this mode is more frequently relied on to try those connected to crimes in nuanced ways.⁶⁶²

Article 25(3)(a) also provides criminal liability for the co-perpetration of crimes.⁶⁶³ Co-perpetrators are those who agree with any other individuals to act in a way that leads to the commission of

⁶⁵² The required intent depends on the specific intent required by the particular crime or, if there is none specified, the intent to engage in the conduct, to cause the consequence of that conduct or was aware that the consequence would occur and was at least aware that a circumstance existed or a consequence would occur. *Ntaganda*, ICC, ICC-01/04-02/-6, Decision (Pre-Trial), para. 136.

⁶⁵³ David Luban, Julie O’Sullivan, and David P. Stewart, *International and Transnational Criminal Law*, 2nd ed., 2009, p. 913.

⁶⁵⁴ *Katanga*, Case No. ICC-01/04-01/07.

⁶⁵⁵ *Id.* at para. 1396.

⁶⁵⁶ *Id.* at para. 1398, 1402.

⁶⁵⁷ Luban, *et. al.*, *International and Transnational Criminal Law*, p. 924.

⁶⁵⁸ *Katanga*, Case No. ICC-01/04-01/07, para. 1408-11.

⁶⁵⁹ *Id.* at para. 1412 (finding Katanga not guilty as an indirect perpetrator of war crimes and crimes against humanity despite being the president of a militia with powers of administration, oversight, security, public order, and military authority because he did not have the material ability to issue orders, ensure their execution, or to mete out punishment and discipline against commanders; Katanga was found guilty for the same crimes under a different mode of liability). Compare with *Al-Bashir*, Case No. ICC-02/05-01/09-OA (issuing an arrest warrant for *Al-Bashir* under indirect perpetration based on reasonable grounds to believe that as president of Sudan he had full control of the apparatus of the state and used that control to oversee the design and implementation of genocide, war crimes, and crimes against humanity).

⁶⁶⁰ Similar to the intent requirement for direct perpetrators, the required intent depends on the specific intent required by the particular crime or, if there is none specified, the intent to engage in the conduct, to cause the consequence of that conduct or was aware that the consequence would occur and was at least aware that a circumstance existed or a consequence would occur. More specifically, the tribunal in *Katanga* described the knowledge element as awareness of the factual circumstances that would allow the defendant to exert control over the crime. *Katanga*, Case No. ICC-01/04-01/07, para. 1399.

⁶⁶¹ *Id.* at para. 1391, n.3188.

⁶⁶² Luban, *et. al.*, *International and Transnational Criminal Law*, p. 913-14. See also, Stefano Manacorda and Chantal Meloni, *Indirect Perpetration versus Joint Criminal Enterprise*, *Journal of International Criminal Justice*, Vol. 9, Iss. 159, 2011, p. 163 (highlighting the case law from newer ICC decisions like *Katanga* and *Lubanga*).

⁶⁶³ Rome Statute, art. 25(3)(a).

a crime. Each co-perpetrator must have “joint control” over the crime, meaning each member performs a different but essential task to commit the crime. An essential task is one that if it were not completed, the crime would not have been committed.⁶⁶⁴

The co-perpetration of crimes requires an agreement or common plan between two or more persons to commit a crime.⁶⁶⁵ This agreement can be to specifically commit the crime that occurred or it could be an agreement that merely embodies a sufficient risk that a crime would occur by implementing the plan—the crime does not need to be the co-perpetrators’ actual goal.⁶⁶⁶ Circumstantial evidence is also sufficient to show that an agreement existed.⁶⁶⁷ Factors to determine a common plan include: specification of the criminal goal pursued; its temporal and geographic scope; any characteristics of the victims pursued; and the identity of the members of the group, though each person need not be named.⁶⁶⁸

A co-perpetrator must have provided an essential contribution to the common plan that resulted in a crime.⁶⁶⁹ However, a co-perpetrator does not need to be involved at the execution stage because the purpose of co-perpetrator liability is to hold responsible “those who assist in formulating the relevant strategy or plan, become involved in directing or controlling other participants or determine the roles of those involved in the offence.”⁶⁷⁰

Finally, a co-perpetrator must also have the necessary intent to carry out the crime.⁶⁷¹

The Rome Statute also provides criminal liability for indirect co-perpetration, which is a combination of the concept of an indirect perpetrator and a co-perpetrator. In this case, an indirect co-perpetrator agrees with others to a common plan and then controls or manipulates a direct perpetrator to carry out an essential task to implement that plan.⁶⁷² This often takes the form of indirect co-perpetrator using an organization to commit crimes. The ICC has charged thirteen defendants under this mode of liability.⁶⁷³

Accountability for the indirect co-perpetration of crimes requires a showing that the person had: (1) a common plan to commit a crime or engage in conduct that would lead to the commission of a crime, (2) control over the crime by virtue of his or her essential contribution within the framework of the common plan, (3) control over the direct perpetrators who actually committed the crime, and (4) the requisite knowledge and intent to commit the crime.⁶⁷⁴

⁶⁶⁴ *Prosecutor v. Thomas Lubanga Dylio*, Case No. 01/04-01/06, Decision (Trial) March 14, 2012, para. 7.

⁶⁶⁵ *Id.* at para. 1006. Note also that the existence of a common plan is a key element in several other modes of liability, including indirect co-perpetration and helping in any other way under Article 25(3)(d).

⁶⁶⁶ *Id.* at para. 982–84.

⁶⁶⁷ *Id.* at para. 988.

⁶⁶⁸ *Katanga*, Case No. ICC-01/04-01/07, para. 1626.

⁶⁶⁹ A contribution is essential when it is beyond the “substantial” standard under accessory liability under Article 25(3)(c), though it cannot have caused the crime alone since no one co-perpetrator can have control of the whole enterprise. Otherwise, a defendant with total control would simply be a direct or indirect perpetrator rather than a co-perpetrator. *Id.* at para. 997–99; *Lubanga*, Case No. ICC-01/04-01/06, para. 1006.

⁶⁷⁰ *Lubanga*, Case No. ICC-01/04-01/06, para. 473, 1004; *Prosecutor v. Blé Goudé*, ICC, Case No. ICC-02/11-01/15, Decision (Pre-Trial), December 11, 2014, para. 135.

⁶⁷¹ The required intent depends on the specific intent required by the particular crime or, if there is none specified, the intent to engage in the conduct, to cause the consequence of that conduct or was aware that the consequence would occur and was at least aware that a circumstance existed or a consequence would occur. *Id.* at 1007. *See Lubanga*, Case No. ICC-01/04-01/06 (finding Lubanga guilty of war crimes as a co-perpetrator because he played an essential role in the commission of the crimes as co-founder and president of a militaristic group where he had a coordinating role in the recruitment policy, remained informed of the operations of the army that was committing the crimes, and gave speeches encouraging children to join the army).

⁶⁷² Luban, *et. al*, *International and Transnational Criminal Law*, p. 914.

⁶⁷³ *Id.* at 924.

⁶⁷⁴ *See Al-Bashir*, Case No. ICC-02/05-01/09-OA (holding there were reasonable grounds to believe that Al-Bashir was guilty

Ordering, Soliciting or Inducing the Commission of Crime(s)

Article 25 of the Rome Statute further establishes criminal liability for “ordering, soliciting, or inducing” the commission of a crime.⁶⁷⁵ This mode of liability relates to a commander’s affirmative ordering of the commission of a wrongful act, in contrast to command responsibility under Article 28 for “failing to act to prevent commissions of crimes or by punishing them.”⁶⁷⁶ Ordering, soliciting, and inducing are technically three separate modes of responsibility to hold a perpetrator accountable, though with some overlap.⁶⁷⁷

Criminal liability for ordering the commission of a crime requires that: (1) the person was in a position of authority vis-à-vis the perpetrator, (2) the person ordered another person to either commit or attempt or perform an act or omission that resulted in a crime, (3) the person’s order had a direct effect on the commission or attempt of the crime, and (4) the person was at least aware that the crime would be committed as a consequence of the implementation of the order.⁶⁷⁸ Importantly, a person can be responsible even if the order is given through intermediaries rather than directly to a physical perpetrator.⁶⁷⁹

Solicitation is interpreted as the encouragement of, or request for, a perpetrator to commit a crime, while inducement interpreted as influencing someone to commit a crime.⁶⁸⁰ Inducing is a broad term that covers any conduct that influences another person to commit a crime, including solicitation. Influence is often psychological or financial, but it can also be in a physical sense.⁶⁸¹ Neither solicitation nor inducement require a superior-subordinate relationship.⁶⁸²

In addition, criminal liability for the person who ordered, solicited, or induced the commission of a crime requires that the person acted with knowledge of the crime and intent to commit the crime as well as knowledge that the direct perpetrator had the required mental state to commit the crime.⁶⁸³ However, excesses committed by an influenced perpetrator cannot be attributed to the person who ordered, solicited, or induced the person to act.⁶⁸⁴

of genocide, war crimes, and crimes against humanity as an indirect co-perpetrator because he played a role that went far beyond the mere coordination of a plan and he used his control over the apparatus of the state to further implement the plan). See also, *Blé Goudé*, Case No. ICC-02/11-01/15, para. 137, 182 (ruling there were reasonable grounds to believe that Blé Goudé was guilty of crimes against humanity in the Ivory Coast, including as an indirect co-perpetrator, given he and others engaged in a common plan to keep the president in power “at any cost,” used his relationships to coordinate group members, mobilize the youth, and to train and supply militias to commit prohibited acts).

⁶⁷⁵ Rome Statute, art. 25.

⁶⁷⁶ Luban, et. al, *International and Transnational Criminal Law*, p. 934.

⁶⁷⁷ *Id.* at 933.

⁶⁷⁸ *Prosecutor v. Mudacumura*, ICC, Case No. ICC-01/04-01/12-1-Red, Decision (Pre-Trial), July 13, 2012, para. 63. See also, *Blé Goudé*, Case No. 02/11-01/15, para. 159.

⁶⁷⁹ Luban, et. al, *International and Transnational Criminal Law*, p. 934; *Mudacumura*, Case No. ICC-01/04-01/12-1-Red, para. 63.

⁶⁸⁰ *Id.* at 934.

⁶⁸¹ *Ibid.*

⁶⁸² *Commentary Rome Statute: Part 3: Case Matrix Network*, Case Matrix Network, June 30, 2016, <https://www.casematrixnetwork.org/cmnn-knowledge-hub/icc-commentary-clicc/commentary-rome-statute/commentary-rome-statute-part-3/> (accessed July 12, 2018).

⁶⁸³ Luban, et. al, *International and Transnational Criminal Law*, pp. 934, 934 n.128.

⁶⁸⁴ *Commentary Rome Statute: Part 3: Case Matrix Network*, Case Matrix Network. See, *Mudacumura*, ICC, Case No. ICC-01/04-01/12-1-Red, para. 63 (issuing an arrest warrant for Mudacumura for ordering particular military campaigns that caused the underlying crimes given he was the top commander in the military, compliance with his orders was mandatory, and he was aware of the factual circumstances that showed an armed conflict existed as well as the risk that the crimes would be committed in the ordinary course of implementing his orders). See also, *Blé Goudé*, Case No. ICC-02/11-01/15 (finding reasonable grounds to believe Blé Goudé ordered, solicited, or induced others to commit crimes against humanity despite not being a superior in the formal structure of his organization because he had a

Aiding, Abetting or Otherwise Assisting in the Commission of Crime(s)

As of the time of writing, the ICC had not litigated criminal liability for “aiding, abetting, or otherwise assisting in the commission of a crime” as provided for under Article 25 of the Rome Statute.⁶⁸⁵ One expert has opined that such criminal liability would require that a direct perpetrator in fact committed the crime and that the aider contributed a certain level of help.⁶⁸⁶ Article 25(3)(c) also specifically requires the aider acted with the purpose to facilitate the crime.⁶⁸⁷

Substantially Contributing to the Commission of Crime(s)

Contributor liability may establish criminal liability when the other modes of liability are not applicable.⁶⁸⁸ Contributor liability requires that: (1) a crime was in fact committed, (2) that crime was committed by someone acting as part of a common plan, and (3) the accused made a significant contribution to the commission of the crime.⁶⁸⁹

Factors to evaluate if a person’s contribution to the crime was sufficiently “significant” to trigger potential liability include: (a) the sustained nature of the person’s participation after acquiring knowledge of the criminality of the plan, (b) any efforts made to prevent criminal activity or to impede the efficient functioning of the crime, (c) whether the person created or merely helped execute the plan, (d) the person’s position in the group or relative to it, and most importantly, (e) the role the person played vis-à-vis the seriousness and scope of the crimes committed.⁶⁹⁰ Contributor liability can apply irrespective of whether the person is a member of the group acting with a common purpose.⁶⁹¹ It can also apply in cases involving providing assistance after the commission of a crime, such as assisting in covering up a crime, as long as the group agreed upon the contribution before the crime was committed.⁶⁹²

Contributor liability also requires that the person intended to engage in the alleged conduct and either (a) meant to further the criminal activity or criminal purpose of the group or (b) was at least aware of the group’s intent to commit the crime—although the person does not need to

position of authority relative to those he was leading and instructed those inferiors to commit violence).

⁶⁸⁵ *Ibid.*

⁶⁸⁶ *Ibid.* There is a question as to the required level of this contribution because the subsection’s order within Article 25(3) and its wording differs from that in the enacting statutes for the ad hoc tribunals. In *Lubanga*, the chamber implicitly accepted that the standard must be a “substantial effect,” matching the ad hoc tribunals and appropriately slotting it in between the laxer 25(3)(d) and the more stringent 25(3)(b). *Lubanga*, Case No. 01/04-01/06, para. 997. However, some authorities believe that the Article 25(3) modes have some overlap and therefore that there is no real hierarchy to the level of contribution standards. See Luban, *et. al*, *International and Transnational Criminal Law*, pp. 931–32. The organization of the subsection further suggests that “otherwise assists” is a catchall for any possible forms of criminal assistance, meaning that the required contribution level could actually be quite low.

⁶⁸⁷ *Prosecutor v. Mbarushimana*, ICC, Case No. ICC-01/04-01/10-465-Red, Decision (Pre-Trial), December 16, 2011, para. 274. It is unclear whether the accused must merely know of the direct perpetrator’s underlying intent to commit the crime, or if the accused must also have the intent to commit that crime on top of the facilitation. Luban, *et. al*, *International and Transnational Criminal Law*, p. 932. In issuing the arrest warrant for Blé Goudé, the pre-trial chamber found substantial grounds to believe that he was criminally liable under article 25(3)(c). Specifically, he assisted military forces by recruiting for them, by training and supplying militias and mercenaries, by instructing forces to repress an opposition march, and by performing other mobilization activities. He also actively participated in promoting cooperation between the components of various military forces. *Blé Goudé*, Case No. ICC-02/11-01/15, para. 168, 171.

⁶⁸⁸ *Lubanga*, Case No. 01/04-01/06, para. 337.

⁶⁸⁹ *Katanga*, Case No. ICC-01/04-01/07, para. 1620.

⁶⁹⁰ *Id.* at para. 284.

⁶⁹¹ *Id.* at para. 275.

⁶⁹² *Id.* at para. 286–87.

have intended to commit the crime to which he or she contributed.⁶⁹³ To avoid having too many unintentional accomplices, one tribunal suggested the additional requirement that the contributor be aware that his or her conduct contributes to the activities of the group whose crimes he or she may be held liable.⁶⁹⁴

Inciting Others to Commit Genocide

While the ICC has yet to bring charges on incitement to commit genocide, the ICTR provides examples of the application of this mode of liability based on a similarly worded statute.⁶⁹⁵ Under ICTR case law on incitement to commit genocide, there is no requirement that genocide be accomplished or even attempted because incitement to commit genocide is its own significant form of criminal participation, even if the accused failed to produce the results he sought.⁶⁹⁶ Under this mode of liability, the perpetrator must have: (1) engaged in “incitement” (2) the incitement must have been in public, and (3) the incitement was direct. “Incitement” is defined as encouraging or persuading another to commit an offense.⁶⁹⁷ “Public” is defined as a call for criminal action to a number of individuals in a public place or to the general public at large by such means as the mass media—like radio or TV.⁶⁹⁸ “Directness” requires that incitement must specifically provoke another to engage in a criminal act and that more than mere vague or indirect suggestion is required.⁶⁹⁹

Incitement should be viewed in light of its cultural and linguistic content, which can vary by country.⁷⁰⁰ Generally, incitement can still be considered direct even if it is implicit—the tribunal in *Akayesu* stated that playing skillfully on mob psychology by insinuating a certain group’s responsibility for a country’s economic or other difficulties would suffice.⁷⁰¹

Directness should be analyzed on a case-by-case basis to see whether the intended recipients immediately grasped the genocidal implications of the message.⁷⁰² The perpetrator must intend to “directly prompt or provoke another to commit genocide, to create by his actions a particular state of mind necessary to commit such a crime in the minds of the persons he is so engaging.”⁷⁰³

⁶⁹³ *Id.* at para. 288–89 (noting that this element of the statute is a disjunctive “either/or” scenario).

⁶⁹⁴ *See Id.* (finding Katanga guilty for contributing to war crimes and crimes against humanity because of the significant assistance he provided local militias by helping form alliances, creating strategies, facilitating communication, and directing the movement of weapons and ammunition to known criminal actors).

⁶⁹⁵ Luban, *et. al*, *International and Transnational Criminal Law*, pp. 936 and 936, n. 142.

⁶⁹⁶ *Akayesu*, Case No. ICTR-96-4-T, para. 552.

⁶⁹⁷ *Ibid.*

⁶⁹⁸ *Id.* at para. 556; Luban, *et. al*, *International and Transnational Criminal Law*, p. 1074.

⁶⁹⁹ *Id.* at para. 557. *See also*, *Prosecutor v. Muvunyi*, ICTR, Case No. ICTR-00-55A-T, Judgement (Trial), September 12, 2006, para. 501, n. 704.

⁷⁰⁰ *Akayesu*, Case No. ICTR-96-4-T, para. 557.

⁷⁰¹ *Ibid.*

⁷⁰² *Id.* at para. 558.

⁷⁰³ *Id.* at 552, 560 (convicting Akayesu of direct and public incitement of genocide because he leveraged his role as a community leader to address citizens and convince them to attack and kill Tutsis, whom he labeled the “sole enemy”). *See also*, *Prosecutor v. Bikindi*, ICTR, Case No. ICTR-01-72-T, Judgment (Trial), December 2, 2008, para. 159, 233, 421–24 (finding Bikindi guilty of direct and public incitement of genocide because he attended rallies calling for the killing of Tutsis and used his role as a famous singer to spread messages calling Tutsis “snakes,” “the enemy,” and “a cunning animal” in songs and at rallies); *Muvunyi*, ICTR, Case No. ICTR-00-55A-T, para. 501, n. 704 (convicting Muvunyi for direct and public incitement of genocide for calling for the killing of a specific person, as well as generally for the killing of Tutsis, referring to them as “snakes to be killed and their eggs crushed”).

THE CHAIN OF COMMAND: INDIVIDUALS WHO SHOULD BE SUBJECT TO INVESTIGATION AND POSSIBLY PROSECUTION

At least 22 high-ranking officials in the military and police could be held criminally liable under Article 28 or the various components of Article 25 of the Rome Statute for their role in the “clearance operations” against Rohingya civilians in 2016 and 2017. For the purposes of issuing an arrest warrant for alleged criminal responsibility in the commission of genocide or crimes against humanity, an ICC prosecutor would only need to show that the “evidence provides reasonable (not conclusive or definitive) grounds to believe that the person committed a crime within the jurisdiction of the Court.”⁷⁰⁴

Fortify Rights relied on military sources and analysts, open-source data, Burmese-language social media, and interviews with others who are knowledgeable of military operations to establish the chain of command with respect to the Myanmar Army-led “clearance operations” in Rakhine State in 2016 and 2017. According to these sources, the “clearance operations” beginning August 25, 2017 involved at least 22 Light Infantry Battalions and five Infantry Battalions comprising up to 11,000 soldiers in Rakhine State.⁷⁰⁵ Three police combat battalions—2, 12, and 13—were also involved in the “clearance operations,” providing an estimated 900 soldiers.⁷⁰⁶ The relevant chain of command for the “clearance operations” in Rakhine State in 2017 involves at least 22 high-ranking officials in the military and police.

First, Commander-in-Chief Senior General Min Aung Hlaing was closely involved in the scope, scale, and direction of the Myanmar Army-led “clearance operations” and, according to sources, was the senior-most responsible military actor with regard to military operations.⁷⁰⁷ As described in this report, during the 2017 “clearance operations” in Rakhine State, Commander-in-Chief Senior General Min Aung Hlaing travelled to Rakhine State with Minister of Home Affairs Lieutenant General Kyaw Swe from September 19 to 21, 2017, where he met with relevant commanders.⁷⁰⁸ On September 20, Senior General Min Aung Hlaing reportedly described the military’s operations in northern Rakhine State as “gallant” and “brilliant.”⁷⁰⁹ The Facebook page of the office of Senior General Min Aung Hlaing included 360 posts in September 2017, which are now hidden, but provided information about the military’s operations in Rakhine State.⁷¹⁰

⁷⁰⁴ *Al-Bashir*, 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.”)

⁷⁰⁵ Fortify Rights interview with senior military personnel and military analyst, Myanmar, May–June 2018. The 22 Light Infantry battalions were: LIBs 344 and 354 under Sittwe Regional Operations Commands; LIBs 345, 352, 353, 535, 536, 537, 538, 551, 564, 565 under Buthidaung Regional Military Command; LIB 552 under Taunggyar Regional Military Command; LIBs 111, 116, and 119 under the 33rd Light Infantry Division, based in Mandalay, and LIBs 109, 113, 302, 305, 306, and 307 under the 99th Light Infantry Division base in Meikhtila. The five Infantry Battalions were: IB 30, 232, and 270 under Sittwe Regional Operation Commands, and IBs 233 and 263 under Buthidaung Military Operation Commands. According to Myanmar military official estimations, there are approximately 800 soldiers in each Light Infantry Battalion and Infantry Battalion, which in this case would equal an approximate total of 21,000 soldiers involved in the clearance operations in Rakhine State; however, most analysts agree that there are typically approximately 300 to 400 soldiers in each battalion, which in this case would equal upwards of 11,000 soldiers.

⁷⁰⁶ Fortify Rights interviews with Myanmar military analyst and police personnel, Myanmar, June 2018.

⁷⁰⁷ Fortify Rights interview with senior military personnel and military analyst, Myanmar, May–June 2018.

⁷⁰⁸ Senior General Min Aung Hlaing Facebook Post, September 19, 2018, <https://www.facebook.com/seniorgeneralminaunghlaing/posts/1715340745167073>.

⁷⁰⁹ Senior General Min Aung Hlaing Facebook Post, September 20, 2018, <https://www.facebook.com/seniorgeneralminaunghlaing/posts/1716465351721279>.

⁷¹⁰ Shoon Naing, “Myanmar Army Facebook Posts Covering Key Period of Offensive ‘Hidden,’” *Reuters*.

Senior General Min Aung Hlaing delegated certain authority to the Deputy Commander-in-Chief Vice-Senior General Soe Win.⁷¹¹ The Joint-Chief of Staff General Mya Tun Oo oversaw the “clearance operations” and coordinated the various armed forces, including the Army, Navy, and Air Force as well as the use of artillery.⁷¹²

Below these senior figures, the Chief of the Bureau of Special Operations Lieutenant General Aung Kyaw Zaw commanded the entire operation in northern Rakhine State, overseeing three regional commands—the Western Command, South Western Command, and Southern Regional Command.⁷¹³ Lieutenant General Aung Kyaw Zaw sent daily operational orders to the Chief of Staff of the Army Major General Moe Myint Tun and the General Staff Officer Brigadier General Kyaw Swar Linn.⁷¹⁴ The commander of the Western Regional Command was Major General Maung Maung Soe.⁷¹⁵ The Deputy Commander of the Western Regional Command was Brigadier General Sunny Ohn and the Commander of the Regional Operation Command was Brigadier General Hla Myint Soe.⁷¹⁶

The Buthidaung-based MOC 15 reportedly led the 2016 “clearance operations” in Maungdaw Township and were also involved in the 2017 “clearance operations.” At the time, Major General Khin Maung Soe headed MOC 15. MOC 15 includes Myanmar Army Battalion 551, which was commanded by Major Kyaw Zay Ya. During the 2017 “clearance operations,” the Chief of the Bureau of Special Operations Lieutenant General Aung Kyaw Zaw was at times embedded within MOC 15 during “important operations.”⁷¹⁷

Other senior-level commanders involved in the “clearance operations” include the Commander of MOC 15 in Buthidaung Major General Khin Maung Soe. The Myanmar military transported the 33rd and 99th Light Infantry Divisions to Rakhine State in early August, where they played a key role in the 2017 “clearance operations.” Brigadier General Aung Aung was the commander of the 33rd Light Infantry Division and Brigadier General Than Oo was the commander of the 99th Light Infantry Division, and Colonel Soe Kyaw Htet commanded the Tactical Operations Command 333.

While the Myanmar military led the “clearance operations,” the Myanmar Police Force, which is controlled by the Myanmar military through the military-led Ministry of Home Affairs, was also involved. Lieutenant General Kyaw Swe heads the Ministry of Home Affairs and was in Rakhine State during “clearance operations” in September 2017. The “border guards” or riot police, known in Burmese as *Lon Htein*, which fall under the command of the Myanmar Police Force, were likewise involved in the “clearance operations.” Police Major General Aung Win Oo is the Chief of Police and second in command of the Myanmar Police Force. He has been in his position since April 2017. Police Brigadier General Maung Maung Khin was the Chief of Police during the 2016 “clearance operations” and was replaced by Police Brigadier General Thura San Lwin in October 2016.

The Chief of the Border Guard Force during the 2016 and 2017 “clearance operations” was Police Brigadier General Thura San Lwin. According to sources, he oversaw *Lon Htein*’s joint operations with the Myanmar Army during the 2016 and 2017 “clearance operations.”⁷¹⁸ In October 2017,

⁷¹¹ Fortify Rights interview with senior military personnel and military analyst, Myanmar, May–June 2018.

⁷¹² *Ibid.*

⁷¹³ *Ibid.* In response to evidence of mass atrocity crimes perpetrated by the Myanmar Army against Rohingya civilians in 2017, the Government of the United States of America sanctioned a single military actor—Major General Maung Maung Soe.

⁷¹⁴ *Ibid.*

⁷¹⁵ Major General Soe Tint Naing replaced Major General Maung Maung Soe in November 2017. Evidence indicates that Major General Soe Tint Naing was not involved in the attacks in 2017 and is not on the list of persons named in this report who should necessarily face criminal investigation. *Ibid.*

⁷¹⁶ *Ibid.*

⁷¹⁷ Fortify Rights interview with senior military personnel, Myanmar, May 2018.

⁷¹⁸ Fortify Rights interview with police personnel, Myanmar, May 2018.

he was replaced.⁷¹⁹ The Chief of the Rakhine State Police Force, which also participated in the “clearance operations,” was Police Colonel Sein Lwin.⁷²⁰ Sources also indicate that the Minister of Rakhine State Security and Border Affairs Colonel Phone Tint was involved in the “clearance operations.”⁷²¹

Lastly, while this report does not focus on direct perpetrators, several eyewitnesses and survivors of the Maung Nu massacre on August 27 in Buthidaung Township testified that Staff Sergeant Ba Kyaw with Light Infantry Battalion 564, which is stationed in northern Rakhine State, played an operative role in the massacre in Maung Nu on August 27.⁷²² Ba Kyaw spoke the Rohingya language and was well known to local residents.

Unless otherwise noted, the above individuals merit further investigation for genocide and crimes against humanity under the previously described modes of liability. Of these 22 individuals who should face further investigation, the European Union and Canada sanctioned seven on June 25, 2018.⁷²³ Amnesty International included nine of these 22 individuals in their list of 13 high-ranking officials responsible for crimes against humanity published on June 27, 2018.⁷²⁴

⁷¹⁹ Police Brigadier General Thura San Lwin’s replacement was Police Brigadier General Myint Toe. He is not considered someone who should face investigation at this time based on current available evidence.

⁷²⁰ In September 2017, Police Colonel Aung Myat Moe replaced is not considered someone who should face investigation based on current available evidence.

⁷²¹ Fortify Rights interview with senior military personnel and military analyst, Myanmar, May–June 2018. In response to evidence of mass atrocity crimes perpetrated by the Myanmar Army against Rohingya civilians in 2017, the Government of the United States of America sanctioned a single military actor—Major General Maung Maung Soe.

⁷²² See Fortify Rights interview with #61-2, Cox’s Bazar District, Bangladesh, February 23, 2018.

⁷²³ The E.U. and Canada sanctioned Aung Kyaw Zaw; Maung Maung Soe; Than Oo; Aung Aung; Khin Maung Soe; Thura San Lwin; and Thant Zin Oo. Government of Canada, “Regulations Amending the Special Economic Measures (Burma) Regulations,” June 22, 2018, http://www.international.gc.ca/sanctions/countries-pays/myanmar_regulations-myanmar_reglement.aspx?lang=eng (accessed July 12, 2018); Council of the E.U., “Myanmar/Burma: EU Sanctions 7 Senior Military, Border Guard and Police Officials Responsible for or Associated with Serious Human Rights Violations against Rohingya Population,” June 25, 2018, <http://www.consilium.europa.eu/en/press/press-releases/2018/06/25/myanmar-burma-eu-sanctions-7-senior-military-border-guard-and-police-officials-responsible-for-or-associated-with-serious-human-rights-violations-against-rohingya-population/pdf> (accessed July 12, 2018); Robin Emmott and Antoni Slodkowski, “EU, Canada Sanction Myanmar Generals Over Rohingya; Myanmar Says Two are Fired,” *Reuters*, June 25, 2018, <https://www.reuters.com/article/us-myanmar-eu/eu-canada-sanction-myanmar-generals-over-rohingya-myanmar-says-two-are-fired-idUSKBN1JLoSC> (accessed July 12, 2018).

⁷²⁴ Amnesty International named Min Aung Hlaing; Soe Win; Aung Kyaw Zaw; Maung Maung Soe; Khin Maung Soe; Aung Aung; Than Oo; Thura San Lwin; Thant Zaw Win; Aung Myo Thu; Tun Naing; Kyaw Chay; and Ba Kyaw. Amnesty International identified four individuals who are not identified in this report: Thant Zaw Win; Aung Myo Thu; Tun Naing; and Kyaw Chay. Amnesty International, “*We Will Destroy Everything.*” See, Advisory Commission on Rakhine State, *Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Commission on Rakhine State*, August 2017, http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf (accessed July 11, 2018), pp.46–50.

Military and Police officials who should be investigated for genocide and crimes against humanity against Rohingya in Rakhine State

1. Senior General Min Aung Hlaing, Commander-in-Chief of the Myanmar military
2. Vice-Senior General Soe Win, Deputy Commander-in-Chief of the Myanmar military
3. General Mya Tun Oo, Joint-Chief of Staff of the Myanmar military
4. Lieutenant General Aung Kyaw Zaw, Chief of the Bureau of Special Operations, Myanmar Army
5. Major General Moe Myint Tun, Chief of Staff of the Myanmar Army
6. Major General Maung Maung Soe, Commander of the Western Regional Command, Myanmar Army
7. Brigadier General Kyaw Swar Linn, General Staff Officer of the Myanmar Army
8. Brigadier General Sunny Ohn, Deputy Commander of the Western Regional Command, Myanmar Army
9. Brigadier General Hla Myint Soe, Commander of the Myanmar Army Regional Operations Command
10. Major General Khin Maung Soe, head of Myanmar Army Military Operations Command 15
11. Major Kyaw Zay Ya, Commander of Myanmar Army Battalion 551
12. Brigadier General Aung Zeya, Commander of Myanmar Army Military Operations Command 5
13. Brigadier General Aung Aung, Commander of Myanmar Army Light Infantry Division 33
14. Brigadier General Than Oo, Commander of Myanmar Army Light Infantry Division 99
15. Lieutenant General Kyaw Swe, Minister of Home Affairs
16. Police Major General Aung Win Oo, Chief of Police
17. Police Brigadier-General Maung Maung Khin, former Chief of Police
18. Police Brigadier General Thura San Lwin
19. Police Colonel Aung Myat Moe, Commander of the Rakhine Regional Police Force
20. Colonel Phone Tint, Minister of Rakhine State Security and Border Affairs
21. Staff Sergeant Ba Kyaw, Myanmar Army Light Infantry Battalion 564
22. Colonel Soe Kyaw Htet, Commander of Tactical Operations Command 333, Myanmar Army

VIII. ROHINGYA HUMAN RIGHTS DEFENDERS

“We already sacrificed so many things. We want our rights. We want to live in our country with dignity and identity.”

—“Abu,” 24, Rohingya man from southern Maungdaw Township, December 2016

There are no registered Muslim-led civil society organizations in Rakhine State as Myanmar authorities have largely prevented Rohingya in the country from establishing formal organizations.⁷²⁵ The government has also denied Rohingya the right to vote since the 2015 national elections—denying them formal political representation—and prevents Rohingya from obtaining civil service positions. Rohingya are likewise denied the opportunity to be Village Tract Administrators or “Village Heads.”⁷²⁶

Nevertheless, a vibrant Rohingya civil society perseveres. Since the Myanmar Army-led “clearance operations” in northern Rakhine State began in 2016, members of the Rohingya community have gone to great lengths to document the truth, often risking their lives to collect visual evidence of arson attacks, victims’ bodies and mass graves, eyewitness and survivor testimony, and films and photographs of the attacks. Rohingya survivors and eyewitness also shared their experiences with journalists, investigators, human rights and humanitarian organizations, visiting dignitaries and officials, and others, often at great personal risk and mental and emotional strain.

In investigating the Myanmar authorities’ atrocities against Rohingya, Fortify Rights encountered numerous individuals who embody the resilience of an effective civil society: individuals who demonstrate a commitment to the truth, a willingness to act for justice, and a desire to effect positive and lasting change for their communities.

Fortify Rights met “Jaffar,” a 33-year-old Rohingya man from Zambonna village—also known as Pwint Phyu Chaung—in Maungdaw Township, on

⁷²⁵ See, Advisory Commission on Rakhine State, *Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine*, pp. 46–50.

⁷²⁶ *Ibid.* Fortify Rights interview with #40–2 Rohingya “person-in-charge,” Cox’s Bazar District, Bangladesh, September 4, 2017. Rohingya “persons-in-charge” are elected locally by Rohingya to liaise with Village Tract Administrators and Village Heads.

December 9, 2016 in Cox’s Bazar District. On November 12, around 4:30 a.m., the Myanmar Army surrounded his village and opened fire. He said, “I sent my family the other way. I didn’t go with my family because I wanted to document it.”⁷²⁷

Jaffar took serious risks to document the Myanmar Army’s attacks on civilians and their aftermath. While fires still burned and smoke rose from corpse-laded ash-heaps, Jaffar walked slowly through his village with his mobile phone in-hand, steadily shooting video while quietly narrating. He investigated the military’s actions and documented details in his notebook, quantifying arrests and disappearances. Jaffar told Fortify Rights:

They were burning the houses at that time. They killed nine people, children and men, [who] were thrown into fires. Thirty-three people were cut and killed. There were around 182 people arrested, and approximately 150 are still disappeared. We were hiding in the jungle, up a hill, and saw everything. We also took some film. After the military left, we came down and saw everything.⁷²⁸

After the attack, Jaffar found other survivors of violent attacks and filmed their testimonies. He continues to document human rights violations and share his findings with human rights investigators, monitors, and policy makers.

“Sam,” a 22-year-old Rohingya man from Dhar Giza village in Maungdaw Township likewise returned to his village clandestinely to document the truth after the Myanmar Army attacked the village in early December 2016. “There was a group of people who went back to find the bodies,” he told Fortify Rights. “There were 12 of us. Some took photos, some counted. I counted the bodies. The three persons who we tried to bury were burned. We were unable to bury them [because the military returned].”⁷²⁹

Speaking about why he documents the truth despite the risks, Sam told Fortify Rights:

I want justice. I want rights. The main priority for me is Rohingya identity. Many people are displaced like me, living in different countries. We all want to go back to our country with rights and our own identity. We are completely restricted. We can’t move from one place to another. We need permission. Other minorities don’t need that. We want freedom, and we want to talk with the government about our discrimination and abuse.⁷³⁰

Rohingya in the refugee camps in Bangladesh have also organized themselves and exercised their rights to peaceful assembly, demanding citizenship rights and justice before any repatriation to Myanmar.⁷³¹

Moreover, there are numerous Rohingya individuals in other parts of Myanmar, including Yangon, who work tirelessly and at great personal risk for human rights for their community and other ethnic and religious communities in the country. Due to security concerns, their names and profiles are omitted here. There are also two Rohingya-led political parties based in Yangon—the Democracy and Human Rights Party and the National Democratic Party for Development—both of which the Myanmar government summarily excluded from the 2015 national elections.

⁷²⁷ Fortify Rights interview with #03-01, Cox’s Bazar District, Bangladesh, December 9, 2016.

⁷²⁸ *Ibid.*

⁷²⁹ Fortify Rights interview with #12-01, Cox’s Bazar District, Bangladesh, December 11, 2016.

⁷³⁰ *Ibid.*

⁷³¹ “As Repatriation Looms, Rohingya Stage Protests at Bangladesh Camp,” *Radio Free Asia*, January 19, 2018, <https://www.rfa.org/english/news/myanmar/rohingya-protests-01192018170410.html/> (accessed July 12, 2018); Rohingya Demand Justice as UN Delegation Visits Bangladesh Camps,” *Al Jazeera*, April 29, 2018, <https://www.aljazeera.com/news/2018/04/rohingya-demand-justice-delegation-uns-visits-bangladesh-camps-180429090351738.html> (accessed July 11, 2018).

Members of the Rohingya and Myanmar diaspora also constitute Rohingya civil society and are committed to work for human rights in Myanmar and Bangladesh, particularly now that more Rohingya reside outside Myanmar than inside the country. Rohingya civil society organizations include, but are not limited to, the Rohingya Consultative Body—a network of Rohingya leaders and advocates—the Burmese Rohingya Organization U.K., the Arakan Rohingya National Organization (ARNO), the Free Rohingya Coalition, Rohingya Vision, and Rohingya Blogger as well as numerous national chapters of Rohingya-led organizations and community-based organizations in Europe, Asia, North America, and beyond, including the Arakan Rohingya Union.

These groups and the individuals within them have helped journalists and international organizations establish the facts of human rights violations in Rakhine State, often from behind the scenes and without attribution, and they have done indispensable work to pressure people in power.

While there are a variety of views within Myanmar civil society, the Rohingya have allies in their country who recognize the rights of all ethnic and religious minorities in Myanmar and the need for accountability for military-perpetrated violations, including violations committed against the Rohingya. On January 18, 2017, 40 Myanmar-based civil society organizations called for a “truly independent” international investigation into the situation in Rakhine State.⁷³² The group recommended the establishment of a “commission of inquiry 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.” The diverse signatories to the statement included women-led organizations, human rights groups, academic institutions, and development organizations working throughout the country and with various ethnic communities.⁷³³ Speaking in support of the statement Director of the Tampadipa Institute Khin Zaw Win, said, “National reconciliation, stability, and development depend in large part on ending and remedying abuses and atrocities and that can’t happen until the facts are firmly established.”⁷³⁴

Representatives of U.N. member states in Geneva told Fortify Rights that the statement from the 40 Myanmar-based organizations played a decisive role in shaping the thinking of E.U. member states.⁷³⁵ In March, the U.N. Human Rights Council passed a resolution creating an Independent International Fact-Finding Mission to document the human rights situation in Rakhine State as well as other areas in Myanmar. When State Counsellor Aung San Suu Kyi refused to cooperate with the Fact-Finding Mission, 59 Myanmar-based civil society organizations called on their government to reverse course and fully cooperate with the mission.⁷³⁶

This domestic show of concern for the situation in Rakhine State runs counter to the dominant international narrative that there is no domestic constituency of support for the Rohingya. Ultimately, many of the diverse groups in Myanmar want the same thing: an end to military impunity and the protection of fundamental human rights.

⁷³² “Myanmar: Civil Society Calls for International Investigation in Rakhine State,” Fortify Rights, January 18, 2017, <http://www.fortifyrights.org/publication-20170118.html> (accessed July 12, 2018).

⁷³³ *Ibid.*

⁷³⁴ “Myanmar: Cooperate with U.N. Fact-Finding Mission, Says Civil Society,” Fortify Rights, May 25, 2017, <http://www.fortifyrights.org/publication-20170525.html> (accessed July 12, 2018).

⁷³⁵ Fortify Rights meetings with E.U. member states, March 2017, Geneva, Switzerland.

⁷³⁶ “Myanmar: Cooperate with U.N. Fact-Finding Mission, Says Civil Society,” Fortify Rights.

IX. RECOMMENDATIONS

TO THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR

- **IMMEDIATELY** cease military-led attacks on civilian populations, order state security forces to promote and protect human rights, and publicly ensure protections for all civilians in Myanmar, regardless of race, ethnicity, or religion.
- **COOPERATE** fully with current and future international efforts to hold perpetrators of international crimes accountable, including crimes by state security forces and non-state actors.
- **IMPLEMENT** recommendations from credible advisory and investigatory bodies, including the Independent International Fact-Finding Mission on Myanmar and former U.N. Secretary General Kofi Annan's Advisory Commission on Rakhine State.
- **IMMEDIATELY** allow free and unfettered access for humanitarian aid organizations, journalists, and human rights monitors to all areas of Rakhine State.
- **IMMEDIATELY** abolish all discriminatory policies and practices in Rakhine State that violate human rights, including restrictions on the right to nationality and freedom of movement, marriage, childbirth, and other basic rights.
- **AMEND** the 1982 Citizenship Law to ensure equal access to full citizenship rights regardless of ethnic identity and in line with international standards. Cease basing access to citizenship on ethnic categories and ensure Rohingya children have the right to acquire a nationality in accordance with Article 7 of the Convention on the Rights of the Child.
- **CEASE** including ethnic and religious biographical details on national identity cards.

- **FACILITATE** safe, dignified, and voluntary returns for all displaced Rohingya in accordance with international standards. Prior to encouraging refugee returns, restore Rohingya rights to full citizenship and lift discriminatory restrictions on basic rights and freedoms, including the right to freedom of movement.
- **IMMEDIATE** release *Reuters* journalists Wa Lone and Kyaw Soe Oo, drop all charges against them, and ensure media freedoms.
- **RATIFY** the Rome Statute of the International Criminal Court, the International Covenant on Civil and Political Rights, the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and their respective protocols as well as other international human rights instruments.
- **END** official dissemination of inflammatory anti-Rohingya rhetoric, cease all references to Rohingya as “Bengali,” and launch a public information campaign to promote tolerance and non-discrimination.

TO THE UNITED NATIONS SECURITY COUNCIL

- **URGENTLY** refer Myanmar to the International Criminal Court to investigate, prosecute, and sentence those responsible for mass atrocity crimes against Rohingya and others in Myanmar, including the Kachin and Shan.
- **IMPOSE** a global arms embargo on Myanmar and the Myanmar military.
- **IMPOSE** targeted sanctions against those found to be responsible for human rights violations in Rakhine State, including those persons named in this report.
- **SUPPORT** and ensure the implementation of the forthcoming recommendations of the Independent International Fact-Finding Mission on Myanmar, including all recommendations geared toward holding perpetrators of mass atrocities accountable.

TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL AND THE UNITED NATIONS GENERAL ASSEMBLY

- **ESTABLISH** a mechanism, further to the recommendation of U.N. High Commissioner for Human Rights Zeid Ra’ad al-Hussein, to collect and preserve evidence of crimes against Rohingya and others in Myanmar, including the people of Kachin and Shan states, which could be used for future prosecutions. Ensure the involvement of directly affected communities as well as other relevant Myanmar nationals in the establishment and implementation of such a mechanism.
- **EXTEND** the mandate of the U.N. Special Rapporteur on the situation of human rights in Myanmar and pressure the Government of Myanmar to cooperate with her.

TO THE UNITED NATIONS COUNTRY TEAMS IN MYANMAR AND BANGLADESH

- **ENSURE** that any Rohingya refugee returns to Myanmar are safe, voluntary, and dignified.
- **ADVOCATE** for the Government of Myanmar to amend the 1982 Citizenship Law to ensure equal access to full citizenship rights regardless of race or religion.

- **OPERATIONALIZE** the Human Rights Up Front initiative, particularly in development projects in Rakhine State and the delivery of humanitarian aid to internment camps, to promote and protect human rights and avoid complicity in human rights violations.
- **COOPERATE** fully with international efforts, including the Independent International Fact-Finding Mission on Myanmar and any future efforts by the International Criminal Court to investigate the situation of human rights in Myanmar and prosecute perpetrators.

TO MEMBER STATES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN)

- **HOLD** an emergency ASEAN meeting to develop a plan-of-action to end and remedy human rights violations against Rohingya, including through accountability for mass atrocities in Myanmar and justice for survivors.
- **COORDINATE** and publicly express support for the U.N. Security Council to refer Myanmar to the International Criminal Court and encourage all member states to support a referral.
- **DEVELOP** and implement laws to provide legal status and documentation to refugees and protect refugees and survivors of human trafficking from forced return and immigration detention.

TO THE GOVERNMENT OF MALAYSIA

- **CONTINUE** ongoing efforts to fulfill the promises in government's *Pakatan Harapan* manifesto, "Buku Harapan: Rebuilding Nation, Fulfilling Hopes," including promise 59 to "lead efforts to resolve" the Rohingya crisis and to ratify the 1951 Refugee Convention and its 1967 Protocol and promise 58 to address transnational human trafficking.
- **INITIATE** an emergency ASEAN meeting to develop a plan-of-action to end and remedy human rights violations against Rohingya, including accountability for mass atrocities in Myanmar and justice for survivors.
- **COORDINATE** and publicly express support for the U.N. Security Council to refer Myanmar to the International Criminal Court and encourage all U.N. Security Council member states to support a referral.

TO THE INTERNATIONAL COMMUNITY, INCLUDING CANADA, THE UNITED STATES OF AMERICA, THE EUROPEAN UNION, AUSTRALIA, JAPAN, KOREA, THE ORGANIZATION FOR ISLAMIC COOPERATION, AND OTHERS

- **EXERCISE** universal jurisdiction to investigate and prosecute alleged perpetrators of genocide and crimes against humanity in Myanmar, including persons named in this report.
- **EXERCISE** collective and bilateral leverage to encourage all U.N. Security Council member states to support a referral of Myanmar to the International Criminal Court.
- **IMPOSE** targeted sanctions against those found to be responsible for human rights violations in Rakhine State, including persons named in this report.
- **IMPOSE** an arms embargo on the Myanmar military.

TO THE ARAKAN ROHINGYA SALVATION ARMY

- **IMMEDIATELY** order all members of the Arakan Rohingya Salvation Army to protect the rights of all civilians and to refrain from any unlawful behavior or killings, including killings of suspected “informants.”
- **ORDER** all members of the Arakan Rohingya Salvation Army to respect and protect the rights of Rohingya people to express and hold opinions without interference, including opinions that may be contrary to those of the Arakan Rohingya Salvation Army or its interests.
- **COOPERATE** fully with current and future international efforts to hold perpetrators of international crimes accountable, including crimes by state security forces and non-state actors.
- **IMMEDIATELY** demobilize children under the age of 18 from the Arakan Rohingya Salvation Army and cease the recruitment and use of children; work with international and local humanitarian organizations to ensure child soldiers are reunited with their families and reintegrated with their communities.

ANNEX A:

MYANMAR ARMY-LED "CLEARANCE OPERATIONS" FROM OCTOBER TO DECEMBER 2016 IN MAUNGDAW TOWNSHIP, RAKHINE STATE

CRIMINAL ACTS AGAINST ROHINGYA, OCTOBER TO DECEMBER 2016

Beginning October 10, 2016, Myanmar Army battalions moved into Rohingya villages in Maungdaw Township in response to unprecedented, deadly attacks on three police outposts by unknown Rohingya militants on October 9, which reportedly killed nine police.⁷³⁷

Based on eyewitness and survivor testimony, the following sections document Myanmar Army-led attacks on the Rohingya Muslim civilian population in Maungdaw Township, Rakhine State. Fortify Rights documented at least 42 villages affected by Myanmar state security forces in Maungdaw Township from October to December 2016.

Murder

"My father is dead. My mother is missing. My two sons were murdered—one was 13-years old and another was nine-years old. My father was shot dead in front of me. I saw my father shot while he was running, and the house was burning. I thought my mother was inside the house, but I'm not sure if she was outside or inside. She was sick. My little daughter was seven-months old, and she was thrown into a fire. I was raped by two soldiers."

—"Fatina," 25, Kyar Goung Taung village, Maungdaw Township, November 2016

Fortify Rights documented and analyzed 71 testimonies from Rohingya survivors—40 women and 31 men—from 12 villages in Maungdaw Township who witnessed or shared information about unlawful killings perpetrated by Myanmar state security forces—primarily the Myanmar Army—and men wearing civilian clothing during the Myanmar Army's "clearance operations" from October to December 2016.⁷³⁸ Soldiers slit throats, burned victims alive,

⁷³⁷ "Myanmar: Protect Civilians in Rakhine State, Investigate Fatal Shootings," Fortify Rights.

⁷³⁸ *Ibid.* Survivors and eyewitnesses reported killings in the following 12 villages: Kyet Yoe Pyin, Nga Khu Ya, Dar Gyi Zar, Sin Thay Pyin, Pwint Hpyu Chaung, Hpar Wut Chaung, Yae

including infants and children, and beat people to death. Myanmar state security forces opened fire on men, women, and children from land and helicopters at close range and at a distance, killing untold numbers.

Survivors described most of the perpetrators as military soldiers in green and black uniforms, and some with red scarves.⁷³⁹ Some Rohingya described how Rakhine or other civilians accompanied Myanmar Army soldiers and other state security forces during “clearance operations.”⁷⁴⁰ Rohingya eyewitnesses and survivors also explained how some soldiers wore “short pants,” which is consistent with reports of a mysterious brigade referred to in Karen State as *Baw Bi Doh* or the “short pants” brigade and has reportedly been operational in other parts of Myanmar.⁷⁴¹

It appears that in some cases Myanmar Army soldiers attempted to destroy or conceal evidence of their crimes by burning, burying, or carrying away bodies.⁷⁴² In other cases, soldiers left bodies at the scenes of killings or on public display, effectively threatening or targeting anyone who dared try to bury them.⁷⁴³

Throats Slit and Fatal Knife Wounds

In its “clearance operations” in October and November, Myanmar Army soldiers slit throats and inflicted other fatal knife wounds on Rohingya men, women, and children. Twenty-two Rohingya survivors—14 women, seven men, and one girl—described witnessing these types of killings by Myanmar Army soldiers in October and November 2016 in six different villages in Maungdaw Township.⁷⁴⁴ Other survivors described dead bodies with throats slit or severe knife wounds.⁷⁴⁵

Khat Chaung Gwa Son, Myaw Taung, Kyar Goung Taung, Ngan Chaung, Ywant Nyo Thauung, and Myo Thu Gyi villages. Nineteen of 71 new Rohingya refugee arrivals surveyed in Bangladesh, reported that state security forces killed family members. Fortify Rights, random survey of 71 Rohingya-refugee respondents, Cox’s Bazar District, Bangladesh, December 10, 2017. See also, “Matthew Smith, ‘Is Genocide Unfolding in Myanmar?’ CNN, December 6, 2016, <http://edition.cnn.com/2016/12/05/opinions/rakhine-state-rohingya-genocide-opinion/index.html> (accessed July 2, 2017); Puttanee Kangkun, “The Rohingya Are Ready to Talk About the Atrocities in Burma,” *Wall Street Journal*, January 9, 2017, <https://www.wsj.com/articles/the-rohingya-are-ready-to-talk-about-the-atrocities-in-burma-1483983264> (accessed July 2, 2017); Matthew Smith, “Bringing Burma Back from the Brink,” *Wall Street Journal*, February 15, 2017, <https://www.wsj.com/articles/bringing-burma-back-from-the-brink-1487181031> (accessed July 2, 2017).

⁷³⁹ For instance, one resident of Ye Twin Khun village said: “They wrapped red cloth on their body. These are not the police and *Lon Htein* who came in the past to the village.” Fortify Rights interview with #80, Cox’s Bazar District, Bangladesh, June 5, 2017.

⁷⁴⁰ See for example Fortify Rights interview with #06, Cox’s Bazar District, Bangladesh, December 10, 2017: “When the military came, they didn’t come alone. They came with police and Rakhine Buddhists...They took away whatever they found. They said they were firing on RSO [Rohingya Solidarity Organization]. We said we never heard of RSO and never saw anyone from RSO. They said, ‘RSO is killing us so we are killing you.’ A Rakhine person said that to me.”

⁷⁴¹ In a November 2014 report, the International Human Rights Clinic at Harvard Law School wrote: “The Clinic was unable to ascertain the exact nature of this group which, based on descriptions of their operations, could be a highly trained special force, a mobile hit squad, and/or a special reconnaissance force. However, the *Baw Bi Doh* were known for their ruthlessness and may have played a “shock and awe” role in forcing villagers to comply with military directives.” International Human Rights Clinic at Harvard Law School, *Legal Memorandum*, <http://hrp.law.harvard.edu/wp-content/uploads/2014/11/2014.11.05-IHRC-Legal-Memorandum.pdf> (accessed July 12, 2018), p. 72. The Karen Human Rights Group has also documented the presence of short-pants brigades in armed-conflict zones in Karen State. Fortify Rights interview with #75, Cox’s Bazar District, Bangladesh, December 13, 2017; Fortify Rights interviews with #73, #5, Cox’s Bazar District, Bangladesh, December 14, 2017; Fortify Rights interview with #68-2, Cox’s Bazar District, Bangladesh, December 15, 2017.

⁷⁴² Fortify Rights interviews with #04, #07, #24, #44, #51, and #53 Cox’s Bazar District, Bangladesh, December 2016.

⁷⁴³ Those five villages are Nga Khu Ya, Dar Gyi Zar, Pwint Hpyu Chaung, Sin Thay Pyin, and Kyet Yoe Pyin. See Fortify Rights interviews with #10, #12, #17, #19, and #23, Cox’s Bazar District, Bangladesh, December 2016.

⁷⁴⁴ Those six villages are Kyet Yoe Pyin, Nga Khu Ya, Dar Gyi Zar, Sin Thay Pyin, Pwint Hpyu Chaung, Hpar Wut Chaung, and Yae Khat Chaung Gwa Son. See Fortify Rights interviews with #07, #09, #10, #12, #19, #24, #26, #51, #53, #38, #40, #63, #69, #71, and #72, Cox’s Bazar District, Bangladesh, December 2016.

⁷⁴⁵ See, for example, Fortify Rights interviews with #76 and #77, Cox’s Bazar District, Bangladesh, December 13, 2016.

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.

I saw several of my relatives sitting together. The soldiers took them one by one and threw them in the fire. They were all my close relatives . . . They threw all nine in the fire, one-by-one. Many soldiers together were throwing people into the fire. My cousin was young. They threw him in the fire, and he ran out, but they threw him back in . . . They were all thrown into a burning home.⁷⁵⁴

Jaffar fled Pwint Hpyu Chaung village, hid in nearby hills, and returned to the village when the military retreated. He said he noted physical evidence—bodies—of at least 48 killings in the village.⁷⁵⁵

“Mohammed S.,” 20, similarly described how the Myanmar Army burned down his home in Hpar Wut Chaung village in November 2016 with his 29-year-old sister-in-law inside, saying: “Some military knew someone was inside . . . We were just outside the home in the compound. We heard her crying and shouting. The military closed the door. If the military didn’t close the door, she could have escaped.”⁷⁵⁶

“Shajda,” 20, from Yae Khat Chaung Gwa Son village—also known as Bor Gozibil—similarly described how the military set fire to her house with her sick grandfather and her grandfather’s brother still inside. She said: “[The soldiers] threw a bottle with petrol on the house and set it on fire. We couldn’t try to save them because [the soldiers] would have killed us . . . We could only watch.”⁷⁵⁷ When she returned to the house one day later, she found their burned bodies in the house.⁷⁵⁸

Several survivors told Fortify Rights about returning to their village after the military left to find burned or partially burned bodies, including the bodies of their relatives. For example, “Sol,” a 50-year-old woman from Yae Khat Chaung Gwa Son village returned to search for four of her relatives, including her brother who had been taken by the military, and to check on her cows. She returned to find her house burned and the dead and burned bodies of her relatives.⁷⁵⁹

Indiscriminate and Targeted Gunfire

The Myanmar Army shot and killed unarmed civilians at close range and opened fire indiscriminately on Rohingya men, women, and children from land and sky, killing civilians. Fortify Rights documented and analyzed testimony from 53 eyewitnesses—26 women and 27 men—who witnessed or provided information about Myanmar Army soldiers shooting and killing civilians in October and November 2016 in 11 villages in Maungdaw Township.⁷⁶⁰

“Noor Begum” described how soldiers came to her house in Hpar Wut Chaung village and fatally shot her 40-year-old son and granddaughter without warning or provocation. She said:

We were eating our morning meal when the military came. They stood in front of our house and told us to come out. My son went out first, and they shot him three times in the chest. They didn’t say anything when they shot him. We just screamed and ran to beside the door. His body was lying in front of the door, and we were screaming and crying. I was telling everyone to get out of the house and hide. When they shot my son, my granddaughter—his daughter—ran to her father. They shot her too. She was maybe four-years old.⁷⁶¹

⁷⁵⁴ Fortify Rights interview with #03, Cox’s Bazar District, Bangladesh, December 9, 2016. Another 33-year-old Rohingya man interviewed by Fortify Rights also witnessed this incident. Fortify Rights interview with #17, Cox’s Bazar District, Bangladesh, December 12, 2016.

⁷⁵⁵ Fortify Rights interview with #03, Cox’s Bazar District, Bangladesh, December 9, 2016.

⁷⁵⁶ Fortify Rights interview with #21, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁷⁵⁷ Fortify Rights interview with #76, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁷⁵⁸ *Ibid.*

⁷⁵⁹ Fortify Rights interview with #63, Cox’s Bazar District, Bangladesh, December 16, 2016.

⁷⁶⁰ Those villages are Pwint Hpyu Chaung, Yae Khat Chaung Gwa Son, Kyet, Yoe Pyin, Ywet Nyo Taung, Dar Gyi Zar, Hpar Wut Chaung, Myaw Taung, Wapeik, Hati Para, Ngan Chaung, and Kyar Goung Taung.

⁷⁶¹ Fortify Rights interview with #88, Cox’s Bazar District, Bangladesh, December 14, 2016.

In many cases, soldiers shot at civilians as they were attempting to flee.

“Anwara,” a 30-year-old Rohingya woman—and rape survivor—witnessed Myanmar Army soldiers shoot and kill people fleeing Pwint Hpyu Chaung village in November. She said:

Military soldiers shot at the people going over the bridge. Seven people, including men, women, children, were killed. We saw the military shooting at the people . . . The military came from both sides of the bridge. They surrounded the people from both sides and shot at them. Three children fell off the bridge. They shot at the children and threw them into the water.⁷⁶²

The Myanmar Army also carried out aerial strikes against civilians. For instance, following an attack on state security forces by Rohingya militants on November 12 near Pwint Hpyu Chaung village, the Myanmar military deployed helicopters that opened fire on civilians. Fortify Rights spoke to nine Rohingya eyewitnesses to the helicopter attacks—six men and three women.⁷⁶³

“Kyaw Kyaw,” a 26-year-old survivor recalled the helicopter attack on Dar Gyi Zar village—also known as Chodo Gozibil. He said:

I was harvesting the paddies with my father, the landowner, and a friend when people started fleeing from the village. We heard heavy shooting. There were so many noises and fighting sounds. One hour later, a helicopter came. The helicopter started shooting at the village. During the attack, my father and the landowner were both killed. Bullets injured my friend and me. Gunfire was coming from the helicopter, and rocket fire was coming from the ground.⁷⁶⁴

“Abu,” 24, was in Dar Gyi Zar village at the time of the air attacks. He said:

The helicopter also came and started shooting . . . We were hiding under the house. One person beside me was killed and another two were injured. There was continuous shooting for 30 minutes. There were about 30 people under the house, including my sister and nephew . . . The man who was killed was shot in the arm, the leg, and the neck. The bullets came from the helicopter.⁷⁶⁵

“Kyaw Kyaw,” 26, showed Fortify Rights bullet wounds in his back, neck, and foot and said that his friend was shot in the leg during the aerial attack from Dar Gyi Zar village. He also described how his 55-year-old father and older local landowner was killed by an RPG:

The launcher hit them, both of them. We were standing up, watching what was going on. My father was hit in the stomach, and it went through his body and hit the landowner. I was beside my father and my friend was on the other side. The landowner was behind my father. The launcher came with a small piece that exploded bits of glass and some lead. It first hit my father and then hit the landowner and then hit the ground and set a fire.⁷⁶⁶

Kyaw Kyaw says he was unconscious on the ground for some time: “When I woke up I saw my father—he was dead. I touched him. Then I fled to [Ywet Nyo Taung] village. I used my *longyi* to bandage my wounds.”⁷⁶⁷

⁷⁶² Fortify Rights interview with #4, Cox’s Bazar District, Bangladesh, December 10, 2016. Anwara also reported witnessing the military shoot two village committee members of Pwint Hpyu Chaung village as well as a boy and two girls nearby her relative’s house in Pwint Hpyu Chaung village.

⁷⁶³ Fortify Rights interview with #4, #6, #7, #9, #13, #15, #25, #30, and #45, Cox’s Bazar District, Bangladesh, December 12, 2016.

⁷⁶⁴ Fortify Rights interview with #25, Cox’s Bazar District, Bangladesh, December 14, 2016.

⁷⁶⁵ Fortify Rights interview with #13, Cox’s Bazar District, Bangladesh, December 11, 2016.

⁷⁶⁶ Fortify Rights interview with #25, Cox’s Bazar District, Bangladesh, December 14, 2016.

⁷⁶⁷ *Ibid.*

Families were separated during the helicopter attack. “Diljam,” a Rohingya woman from Yae Khat Chaung Gwa Son village described how she lost her son and 30-year-old husband of four years during the attack. She said: “When the helicopter came, everyone was just running, and I lost them. My son was with my husband. I have no news about them.”⁷⁶⁸

Killings of Children and Infants

Fortify Rights documented and analyzed testimony from 17 survivors and eyewitnesses who saw Myanmar Army soldiers kill children and infants in eight villages in Maungdaw Township in October and November 2016.⁷⁶⁹ In many cases, soldiers killed unaccompanied children after their parents fled; in other cases, soldiers took children from their mothers’ arms and killed them.⁷⁷⁰ Eyewitnesses showed signs of severe traumatic stress.

“Dildar,” a 20-year-old Rohingya mother of four from Dar Gyi Zar village, explained how the Myanmar Army surrounded her village in a mid-November morning and corralled all residents into a field. She described how soldiers then slashed several children with knives. She said:

I saw [the military] cut five children. The military also separated boys from women. Boys were with men. Then they separated some boys and cut them. They didn’t shoot the children. They cut them. Boys were around five to ten years old. I saw them cut five or six boys . . . Altogether, probably 10 boys were killed. Children were not shot. They were cut alive. The military didn’t speak. They just cut them . . . The military burned the dead bodies. Dead bodies were here and there on the ground before they took them and burned them.⁷⁷¹

Several survivors described soldiers throwing children into fires. “Wai Ni,” a 35-year-old Rohingya mother of eight from Kyet Yoe Pyin village, told Fortify Rights how the soldiers grabbed her two-year-old daughter from the arms of her 14-year-old daughter and threw her into the fire. She said: “We were standing nearby, but we were not allowed grab the body out of the fire. We were screaming, hoping the military would not harm others. We could save [my older daughter] but not [the younger one].”⁷⁷²

“Meena,” 22, a mother of six children from Pwint Hpyu Chaung village, similarly told Fortify Rights:

The military took one of my twins and threw her into fire . . . I saw this in front of me. I shouted and cried, but they did not give my baby back . . . I watched from where I was at the school field. It was my baby and other babies. I saw this . . . I counted about 12 [babies] killed, but people said more than 20 [were killed]. The other babies belonged to my neighbors.⁷⁷³

“Zammira,” a 35-year-old Rohingya mother of 11 children from Yae Khat Chaung Gwa Son village explained how several hundred Myanmar Army soldiers entered her village in November 2016, set fire to houses and killed her husband and baby. She said:

⁷⁶⁸ Fortify Rights interview with #76, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁷⁶⁹ Those eight villages are Yae Khat Chaung Gwa Son, Kyet Yoe Pyin, Myaw Taung, Dar Gyi Zar, Kyar Goung Taung, Hpar Wut Chaung, Pwint Hpyu Chaung, and Ngan Chaung. See Fortify Rights interviews with #04, #06, #08, #15, #17, #26, #38, #40, #41, #42, #44, #46, #47, #48, #49, #56, and #75, Cox’s Bazar District, Bangladesh, December 2016 and March 2017. One eyewitness from Yae Khat Chaung Gwa Son village said, “Many of the parents escaped and couldn’t take their children. They left them behind.” Fortify Rights interview with #06, Cox’s Bazar District, Bangladesh, December 10, 2016.

⁷⁷⁰ See, for example, Fortify Rights interviews with #06 and #38, Cox’s Bazar District, Bangladesh, December 2016; Fortify Rights interview with #56, Cox’s Bazar District, Bangladesh, March 30, 2017.

⁷⁷¹ Fortify Rights interview with #40, Cox’s Bazar District, Bangladesh, December 12, 2016.

⁷⁷² Fortify Rights interviews with #44, Cox’s Bazar District, Bangladesh, December 11, 2016.

⁷⁷³ Fortify Rights interview with #46, Cox’s Bazar District, Bangladesh, December 11, 2016.

Military soldiers cut my husband's throat, and soldiers threw my small baby into the open fire. After this, some soldiers beat my face. [Several] military [soldiers] tied me up very tightly, and when I cried, two soldiers beat me. They tied my hands and my neck and hands and legs . . . My baby was six months old. He is dead. My baby is dead. I cried, 'Please give me my baby, my son.' First, my husband was cut by the military. Then the soldiers threw my baby into the fire. The soldier snatched him away from my arms.⁷⁷⁴

Burials and Burnings of Bodies

During and after the Myanmar Army's deadly attacks on residents of villages in Maungdaw Township in October and November 2016, soldiers and civilian residents cleared dead bodies of Rohingya men, women, and children who had been lacerated, burned, or shot. Survivors witnessed soldiers cutting up, burying, and burning bodies of victims killed during the attacks. Fortify Rights also analyzed testimony from five Rohingya men ranging in age from 22 to 75 who personally buried victims killed by the Myanmar Army in five separate villages in Maungdaw Township.⁷⁷⁵

Fortify Rights documented and analyzed testimony from six other Rohingya men and women eyewitnesses who described how the Myanmar Army soldiers disposed of bodies, in some cases cutting bodies into pieces and burying them.⁷⁷⁶

Several survivors described mass graves in Kyet Yoe Pyin village.⁷⁷⁷ For example, "Wai Ni," 35, told Fortify Rights what she saw the day after an attack on Kyet Yoe Pyin village:

In the morning, the military came again and tied an old man's body with rope and one long bamboo, and they put children in a basket. The bodies were taken to the paddy field. They dug a grave, but it was small, so the soldiers cut bodies into pieces so that [the bodies] would fit in the hole. They put maybe ten bodies in each hole. There were more than 15 holes. A whole family was killed, including my relative's family. The military did the same thing [to that family]—they killed them and cut the bodies . . . I saw some hands, legs coming out of the holes. The soldiers dug shallow graves.⁷⁷⁸

"Hafez," a 25-year-old Rohingya man from Kyet Yoe Pyin village, similarly recalled how Myanmar Army soldiers returned to the village to cut up and bury bodies. He watched while hiding in the paddy field. He said:

Three days after the October 9 attack, the army came to [Kyet Yoe Pyin village] and arrested some people and took them to the police post. They also killed people. They cut their necks, legs, and used their guns. After that, they buried parts of the bodies.⁷⁷⁹

"Kalam," 22, from Kyet Yoe Pyin village told Fortify Rights: "I saw 25 people who were murdered; some were shot, and some were slashed. I saw [Myanmar Army soldiers] kick a pregnant woman and slash her. They put the bodies inside bags and dug a hole and put the bodies into the hole."⁷⁸⁰

Several additional survivors witnessed Myanmar Army soldiers burn bodies to dispose of them.⁷⁸¹

⁷⁷⁴ Fortify Rights interview with #56, Cox's Bazar District, Bangladesh, March 30, 2017.

⁷⁷⁵ Those five villages are Nga Khu Ya, Dar Gyi Zar, Pwint Hpyu Chaung, Sin Thay Pyin, and Kyet Yoe Pyin. See Fortify Rights interviews with #10, #12, #17, #19, and #23, Cox's Bazar District, Bangladesh, December 2016.

⁷⁷⁶ Fortify Rights interviews with #04, #07, #24, #44, #51, and #53 Cox's Bazar District, Bangladesh, December 2016.

⁷⁷⁷ Fortify Rights interviews with #44, Cox's Bazar District, Bangladesh, December 11, 2016; Fortify Rights interviews with #23, Cox's Bazar District, Bangladesh, December 14, 2016.

⁷⁷⁸ Fortify Rights interview with #44, Cox's Bazar District, Bangladesh, December 11, 2016.

⁷⁷⁹ Fortify Rights interview with #07, Cox's Bazar District, Bangladesh, December 10, 2016.

⁷⁸⁰ Fortify Rights interview with #53, Cox's Bazar District, Bangladesh, December 12, 2016.

⁷⁸¹ Fortify Rights interview with #24, #26, and #62, Cox's Bazar District, Bangladesh, December 14, 2016.

For example, “Rahana,” 25, witnessed Myanmar Army soldiers burn the bodies of her seven-year-old son and 30-year-old husband in Myaw Taung village in mid-November. She told Fortify Rights:

[The Myanmar Army soldiers] brought both the dead bodies to the house and set fire to the house. They fired a launcher at the house and set it on fire . . . I saw the military bring their two bodies to the home. I ran to the paddy field and saw houses burning . . . [The soldiers] put [the weapon] on their shoulder. The flames came out one by one.⁷⁸²

Rape and Sexual Violence

“It’s widespread. It’s widespread.”

—International aid worker, Bangladesh, on rape cases among Rohingya refugee arrivals, December 2016

Fortify Rights spoke to eight Rohingya women who were raped and gang-raped by Myanmar Army soldiers in October and November 2016 in seven villages in Maungdaw Township.⁷⁸³ Six of these cases were gang rapes; the seventh and eighth were rapes followed by attempted gang rapes. All of these cases involved forceful sexual penetration, and all but one rape survivor witnessed soldiers rape other Rohingya women and girls as well.

Fortify Rights also documented and analyzed the testimony of more than 17 eyewitnesses to rapes and 14 Rohingya who provided additional information related to rape committed by Myanmar Army soldiers in the above villages and other villages between October and November 2016.⁷⁸⁴

Myanmar Army soldiers gang-raped “Noor,” a 20-year-old Rohingya woman from Pwint Hpyu Chaung village, on their second visit to her village. She explained how soldiers dragged her to a nearby school:

Three of them grabbed my arms and legs. I saw my parents, and they were crying. Some military were holding them. I couldn’t say anything. They were pulling me, and I didn’t want to go, so they beat me. They beat me with the gun. They hit me just one time . . . They took me directly to the school. . . . They brought me into a big hall. There were about 50 military. There were about 30 other [Rohingya] women there. When we entered the school, they threw me down. Two of them held my hands and the other held my feet. They didn’t take off my blouse. They just pulled my gown up. I was trying to struggle. I thought I would either be killed, or it would save my life. He took off his trousers. He was very young, maybe 16 or 17 years old.⁷⁸⁵

Noor described how three young men in green uniforms with red scarves raped her one-by-one before she lost consciousness. She said:

Another woman told me there were eight men altogether who raped me. When I woke up, the military had already left. I saw that there were six dead bodies [women and girls]. All the other women were still there. When I looked down, I saw I was covered in blood. There was a lot of blood. I was very stressed and felt pain inside. Until today, I feel pain inside. When I woke up, I saw six dead bodies. They were all nude. There was a lot of blood nearby. It was blood on their bottom half. All of them were very young age, 13 to 15 years old. I knew three of them . . . They were my neighbors. I saw some dark spots on their bodies. Maybe they were cut or beaten.⁷⁸⁶

⁷⁸² Fortify Rights interview with #26, Cox’s Bazar District, Bangladesh, December 14, 2016.

⁷⁸³ Those seven villages are Kyet Yoe Pyin, Pwint Hpyu Chaung, Kyar Goung Taung, Ngan Chaung, Yae Khat Chaung Gwa Son, Wapeik, and U Shey Kya villages. See Fortify Rights interviews with #48, #04, #42, #41, and #55, Cox’s Bazar District, Bangladesh, December 2016 and March 2017.

⁷⁸⁴ See for example Fortify Rights interview with #19, #22, #37, #08, #11, #12, #25, #32, #30, and #64, Cox’s Bazar District, Bangladesh, December 2016 and March 2017.

⁷⁸⁵ Fortify Rights interview with #71, Cox’s Bazar District, Bangladesh, December 14, 2016.

⁷⁸⁶ *Ibid.*

Myanmar Army soldiers gang-raped Rohingya women and girls in homes, schools, paddy fields, forested areas, and other community buildings in a widespread and systematic manner, and often in plain view of other soldiers and civilians.⁷⁸⁷

Myanmar Army soldiers killed the five-year-old daughter of “Tasmina” 25, and arrested her husband before gang-raping her in the forest near Kyet Yoe Pyin village in November 2016. She said:

The [Myanmar] military surrounded the village again, and they separated 15 girls. They made us sit in lines under the sun. They chose three women, one unmarried and two married, including me. They took us into the forest. One military person tied me up, and they raped me, one-by-one. Three men raped me. I was gone; I fainted after that. The military left me, and then other women came to help me.⁷⁸⁸

A 28-year-old woman from Kyet Yoe Pyin village saw soldiers take women into the forest:

[The Myanmar Army soldiers] took some women to the forest, and when the soldiers were gone, the women came out without clothes. I saw two ladies. They are neighbors, unmarried ladies. The ladies were without clothes and crying. When they came out, we held them. The head of the village took them to the doctor.⁷⁸⁹

“Nura Nura,” a 17-year-old Rohingya girl from Wapeik village told Fortify Rights how a soldier raped her in her home in October 2016. She said:

Three of the soldiers took me into the house, but only one of them raped me. I was struggling so much so only one could rape me. The other soldiers left because I was screaming so much. The one soldier alone held me down. He held my two hands with one hand and held his other hand over my mouth . . . I was wearing a skirt at the time. He pulled down my skirt to knee level—he didn’t take it off. I tried to struggle but he held me tight. He didn’t let me move.⁷⁹⁰

Survivors and eyewitnesses from several villages explained how Myanmar Army soldiers detained women and interrogated them about the whereabouts of their husbands, typically with threats of death.⁷⁹¹ In many cases, soldiers interrogated women violently before raping them, according to survivors and eyewitnesses, indicating a particular weaponization of rape.⁷⁹²

“Rashida,” 20, witnessed two Myanmar Army soldiers rape and kill her older sister in mid-November 2016 in Yae Khat Chaung Gwa Son village. She said:

She was raped in the paddy field. I saw it with my eyes. There were two soldiers . . . I could see her being raped. It wasn’t far away. When the soldiers interrogated her, they asked her where her husband was. She’s very beautiful, so they took her. Her body was in the same place where she was raped. After she was raped, she was hacked. They cut her throat.⁷⁹³

⁷⁸⁷ While Myanmar Army, Police, and Border Guard Force all participated in “clearance operations,” rape survivors and eyewitnesses interviewed for this report described assailants as wearing green uniforms, which would be consistent with Myanmar Army uniforms.

⁷⁸⁸ Fortify Rights interview with #48, Cox’s Bazar District, Bangladesh, December 10, 2016.

⁷⁸⁹ Fortify Rights interview with #47, Cox’s Bazar District, Bangladesh, December 10, 2016.

⁷⁹⁰ Fortify Rights interview with #66, Cox’s Bazar District, Bangladesh, December 16, 2016. She continued: “The rape itself was only four to five minutes. He did not satisfy himself because I was struggling so much. I felt pain. His hand also touched me . . . I know about sex because the boys talk about it in my village.”

⁷⁹¹ Fortify Rights interviews with #04, #22, and #25, Cox’s Bazar District, Bangladesh, December 2016. For example, one eyewitness from Dhar Gyi Zar village recalled: “The military said, ‘If you don’t bring back your husbands, then we will kill you all.’” Fortify Rights interviews with #12, Cox’s Bazar District, Bangladesh, December 11, 2016.

⁷⁹² See, for example, Fortify Rights interview with #22, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁷⁹³ *Ibid.*

Myanmar soldiers described as wearing green uniforms with red and yellow scarves raped a 12-year-girl in Hpar Wut Chaung village who later died from injuries. “S. Begum,” the girl’s 22-year-old sister, said:

We were tied with wire. They tied our hands behind our backs. Everyone had their hands tied behind their backs. Then they took my sister into the other room. I could hear her scream at first but then didn’t hear anything. They kept her in the room for about two hours. Soldiers continued to come and go from the room. Sometimes they came out and sometimes they went in . . . When they came out of the room, they were laughing but didn’t say anything. At that time, they beat us and said, “Don’t tell anyone, we’ve done nothing. Don’t tell anyone that this has happened.”⁷⁹⁴

When S. Begum was set free, she rushed to her younger sister in the room. She described what she saw to Fortify Rights:

She had bite marks over her whole body. She had blood coming out of her vagina. She could speak only a little bit. She said, “Please forgive me.” She died within 10 minutes. She had deep bites—on her cheek, breast, thigh, and arm—too many bites to count. We shouted for our neighbors, and we wrapped the body.⁷⁹⁵

Fortify Rights has reason to believe there are a large number of unreported rape cases among Rohingya women and girls who survived the attacks in Maungdaw Township between October and November 2016 and August and September 2017.⁷⁹⁶

Testimony of Medical Doctors, Physicians, and Aid Workers

Five medical doctors and physicians treating Rohingya rape survivors in Bangladesh and three international aid workers provided further information on the rape of Rohingya women during “clearance operations” in Maungdaw Township in October and November 2016.⁷⁹⁷

Fortify Rights met a local physician in December 2016 in Cox’s Bazar District, Bangladesh providing medical treatment to Rohingya refugees. He said that between October and December 2016, he treated 13 Rohingya women and girls who survived rape and sexual violence in villages in Maungdaw Township.⁷⁹⁸ When Fortify Rights met him again in March 2017, the number of women and girls he treated for rape and sexual violence had more than quadrupled. In March 2017, he told Fortify Rights:

I’ve now treated 63 women who were raped since October. All were raped, aged 15 to 30. Only one was under 15. She was 13. There are many girls who don’t want to disclose they were raped. They are scared for their married life. It is a big social problem. I have some records but not for all of them. Bleeding is the most common problem. I had to provide stitches to two women . . . [One] woman . . . was bleeding profusely. It was caused by gang rape, by mass rape.⁷⁹⁹

⁷⁹⁴ Fortify Rights interview with #75, Cox’s Bazar District, Bangladesh, December 14, 2016.

⁷⁹⁵ *Ibid.*

⁷⁹⁶ Some women shared information about rape only after significant trust building. Moreover, generally Rohingya society is socially and religiously conservative, creating strong disinclinations for women and girls to report rapes and sexual violence. This in turn inhibits rape survivors from seeking medical care. Rohingya women, physicians, and aid workers remarked about the social stigma that Rohingya rape survivors face. For instance, a 25-year-old rape survivor from Ngan Chaung village said: “I am afraid about the confidentiality of this because other people might know about this. I’m not married yet and may get married one day.” Fortify Rights interview with #41, Cox’s Bazar District, Bangladesh, December 11, 2016.

⁷⁹⁷ See, for example, Fortify Rights interviews with #1, #27, #35, #36, and #54, Cox’s Bazar District, Bangladesh, December 2016.

⁷⁹⁸ Fortify Rights interview with #01, Cox’s Bazar District, Bangladesh, December 09, 2016. He told Fortify Rights: “Now for two months I have been helping people coming from Myanmar who have been raped and have other injuries. I have seen 13 victims of rape. Some are young, and some are middle age. One woman I have been taking care of, she is still bleeding. She has been bleeding for two weeks. Seven people raped her. She is about 42 years of age. She has a young daughter and when the military tried to take her daughter, she tried to save her and then she was also raped by seven people. All seven were military, she said.”

⁷⁹⁹ Fortify Rights interview with #54-2, Cox’s Bazar District, Bangladesh, March 30, 2017.

Fortify Rights and Rohingya colleagues located new arrivals of Rohingya refugees in a jungle enclave in Bangladesh in December 2016, some of whom had recently survived rape and sexual violence in Maungdaw Township. Rohingya and Bangladeshi colleagues and Fortify Rights referred four Bangladeshi medical doctors—two women, two men—who provided ad hoc emergency care. Fortify Rights subsequently conducted a focus group discussion with the physicians.⁸⁰⁰ The doctors were unable to conduct conclusive examinations of the refugees in the jungle enclave due to environmental constraints but explained that many of the women whom they treated appeared to have been raped or sexually assaulted.⁸⁰¹ One doctor told Fortify Rights, “They complained about injuries to their genitalia.”⁸⁰²

A U.N. aid worker in Cox’s Bazar said, “In a month period, I was informed that 30 women and girls came and complained about having been raped.”⁸⁰³

Body Searches

Many Rohingya women reported aggressive body searches by military soldiers during the “clearance operations.” One young Rohingya woman explained how soldiers physically searched all the women for money, jewelry, and valuables after corralling the residents from Hpar Wut Chaung village in a paddy field. She said:

They made me open my skirt. There were altogether five military soldiers around me and three checked my skirt. The other two were watching . . . They touched my breasts. Then they tried to put their hand inside my shirt and searched my breasts.⁸⁰⁴

The same woman also told Fortify Rights that some soldiers filmed the body searches.⁸⁰⁵ Some survivors reported that soldiers beat women during the body-search process. “Fatima Zuhan,” 30, from Myaw Taung village said:

[The soldiers] would use a stick or their gun to beat anyone who moves. They didn’t beat me because I didn’t move. But I saw some women being beaten in the head and shoulder. Some were bleeding from the head. They told us that they are just counting us, but this wasn’t a head count. They were robbing us. They searched our whole body. They felt all over. They touched in our hair. Especially they touched our breasts. Those who are young, they grab their breasts very aggressively . . . Now, I’m okay, but at that time all of my tears could make a sea.⁸⁰⁶

Soldiers confiscated valuables they found during body searches.⁸⁰⁷

Arbitrary Mass Arrests and Enforced Disappearances

“The military is taking us. No one has come back.”

—Rohingya man, 20, Hpar Wut Chaung village, December 2016

⁸⁰⁰ Fortify Rights interview with #27, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁸⁰¹ *Ibid.*

⁸⁰² *Ibid.*

⁸⁰³ Fortify Rights interview with #35, Cox’s Bazar District, Bangladesh, December 17, 2016.

⁸⁰⁴ Fortify Rights interview with #68-2, Cox’s Bazar District, Bangladesh, December 15, 2017.

⁸⁰⁵ *Ibid.*

⁸⁰⁶ Fortify Rights interview with #74, Cox’s Bazar District, Bangladesh, December 14, 2016.

⁸⁰⁷ Fortify Rights interview with #70, Cox’s Bazar District, Bangladesh, December 15, 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?gId=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.

Myanmar Army soldiers forced the displacement of tens of thousands of civilians in dozens of villages through systematic arson attacks on civilian homes and structures, mosques and religious structures, and by destroying food stocks and means of subsistence.

According to the U.N. Office for the Coordination of Humanitarian Affairs (OCHA), an estimated 94,500 people were displaced in northern Rakhine State following the attacks in Maungdaw Township that started in October 2016, including more than 74,500 men, women, and children who fled to neighboring Bangladesh.⁸¹⁶

Fortify Rights documented and analyzed eyewitness and survivor testimony of Myanmar Army attacks on civilians and civilian property that forced the displacement of civilians from 16 villages in Maungdaw Township from October to December 2016. Additional research indicates Myanmar Army soldiers attacked at least 42 villages from October to December 2016.⁸¹⁷

Destruction of Homes and Civilian Structures

Myanmar Army soldiers systematically razed civilian homes and structures. Fortify Rights documented and analyzed testimony from 51 Rohingya men and women who witnessed Myanmar Army soldiers destroying civilian homes and structures, most commonly with shoulder-fired RPGs, in 11 villages in Maungdaw Township in October and November 2016.⁸¹⁸ 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.

In most affected communities, eyewitnesses described Myanmar Army soldiers using RPGs to destroy homes and other properties. “Wai Dara,” 20, from Hpar Wut Chaung village described the weapon as “banana bud shaped,” which would match the shape of an RPG.⁸¹⁹

“Nurul Islam,” 25, a resident of Dar Gyi Zar village, was an estimated half-mile from his home when soldiers burned down his house and other houses in his village. He said:

⁸¹⁶ UNOCHA, “Asia and the Pacific: Weekly Regional Humanitarian Snapshot, February 28 – March 6, 2017.”

⁸¹⁷ First-hand research conducted by Fortify Rights combined with information from open-source media, Rohingya citizen-journalists, and Rohingya in northern Rakhine State indicates at least 39 villages in Maungdaw Township were directly affected by “clearance operations” from October to December 2016 as well as two villages in Buthidaung Township and one in Rathedaung Township, for a total of 42. “Directly affected” villages experienced violence from Myanmar state security forces during the specified timeframe. This figure is conservative. The security situation has tightened throughout the three townships of northern Rakhine State—Maungdaw, Buthidaung, and Rathedaung—as well as around dozens of internment camps in other townships of Rakhine State has since October. Previous reporting suggested the Myanmar Army’s crackdown occurred in only ten villages in Maungdaw Township. See, Antoni Slodkowski, Wa Lone, et al, “How a Two-Week Army Crackdown Reignited Myanmar’s Rohingya Crisis,” *Reuters*, April 25, 2017, <http://www.reuters.com/investigates/special-report/myanmar-rohingya-crisis2/> (accessed June 6, 2017). For satellite imagery of arson attacks, see, “Burma: Military Burned Villages in Rakhine State,” Human Rights Watch, news release, December 13, 2016, <https://www.hrw.org/news/2016/12/13/burma-military-burned-villages-rakhine-state> (accessed June 26, 2017). Rohingya residents told Fortify Rights their villages were wet due to rains at the time of the soldiers’ attacks. Some residents suggested the rains were perhaps the reason soldiers used rocket launchers. “It wasn’t possible for them to set fires with lighters. The houses were wet.” Fortify Rights interview with #29, Cox’s Bazar District, Bangladesh, December 14, 2016.

⁸¹⁸ 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 villages.

⁸¹⁹ Fortify Rights interview with #68-2, Cox’s Bazar District, Bangladesh, December 15, 2017. A 19-year-old Rohingya woman from Dar Gyi Zar village also described the weapon as firing bullets of fire. She said: “I heard it was called a rocket launcher. I saw them shoot the balls of fire, and then I saw the houses burning.” Fortify Rights interview with #30, Cox’s Bazar District, Bangladesh, December 15, 2016.

I saw the soldiers set fire to the house using a [fire] ball system that they shot out toward their targets. The soldiers waited until everything burned down and then left. I wasn't at the house at the time of the fire. I came back after and found my house burned down and found the dead and burned body of my elder brother . . . Eighteen houses were burned down. Four-hundred houses are still safe.⁸²⁰

“Noor,” 22, also from Kyet Yoe Pyin village, said: “[The soldiers] fired a big [rocket], and when it hit the house, the fire spread everywhere. I saw that and fled.”⁸²¹

Some survivors described soldiers throwing hand-held petrol bottles onto houses and other structures. For example, “Sanjula,” 25, from Hpar Wut Chaung village said: “[The soldiers] were throwing small bottles with a rope coming out. They had bags full of these small bombs. I saw four to five soldiers throwing them into houses.”⁸²²

Destruction of Religious Structures

In several places during several weeks in October and November 2016, Myanmar security forces singled out Islamic mosques and madrassas for destruction, forcing displacement and further indicating acts of religious persecution. Fortify Rights documented and analyzed 13 testimonies of Rohingya who witnessed Myanmar Army soldiers destroy mosques with RPGs as well as with petrol and lighters in October and November 2016 in six villages.⁸²³ Dozens of other Rohingya men and women shared information about destroyed mosques in their respective villages.

Rohingya residents described how soldiers razed the two mosques in Hpar Wut Chaung village, more than ten mosques in Pwint Hpyu Chaung village, and 15 mosques in Yae Khat Chaung Gwa Son village.⁸²⁴ Residents of Dar Gyi Zar village told Fortify Rights that the army razed an “ancient mosque” in the village that “was more than 300 years” old.⁸²⁵

“Abdu!” 25, similarly recalled the burning of a mosque in Hpar Wut Chaung village. He said:

The mosque was very close to my home. First, [the soldiers] were using a lighter but couldn't burn it. Then they shot a launcher at it, and it didn't burn. Then they called [local residents] to set fire to the mosque. I was inside my home. One of the men . . . helped set fire to the mosque. He used a lighter to burn a candle and used that. The roof was made of leaves and the walls were wood. The soldiers surrounded [him] when he lit the fire. There were around 20 soldiers. After they set the fire, the military left.⁸²⁶

“Rahana,” a 25-year-old Rohingya woman, witnessed soldiers use an RPG to burn down the mosque in Myaw Taung village and desecrate the Koran. She added: “They urinated on [the Koran]. I saw them urinating on it. It happened maybe 30 feet from my home.”⁸²⁷

⁸²⁰ Fortify Rights interview with #50, Cox's Bazar District, Bangladesh, December 13, 2016.

⁸²¹ Fortify Rights interview with #08, Cox's Bazar District, Bangladesh, December 10, 2016.

⁸²² Fortify Rights interview with #69, Cox's Bazar, Bangladesh, December 15, 2016.

⁸²³ Those six villages are Kyet Yoe Pyin, Yae Khat Chaung Gwa Son, Pwint Hpyu Chaung, Hpar Wut Chaung, Myaw Taung, and Dar Gyi Zar. See Fortify Rights interviews with #6, #7, #9, #17, #18, #21, #22, #26, #32, #50, #70, #72, and #77, Cox's Bazar District, December 2016, March 2017, June 2017, and July 2017.

⁸²⁴ See Fortify Rights interviews with #21, #22, #32, and #77, Cox's Bazar District, Bangladesh, December 10, 2016. A Rohingya man, 20, from Yae Khat Chaung Gwa Son said: “Suddenly the military came with a car. It was very nearby prayer time and people were going to the mosque. They fired a launcher on the mosque. I saw them fire it. It was this wide [motions to his arm]. They fired from their shoulder. The fired six to seven launchers at the mosque. There were two military soldiers firing them. They were standing nearby the mosque. No one was inside.” Fortify Rights interviews with #22, Cox's Bazar District, Bangladesh, December 10, 2016.

⁸²⁵ See, Fortify Rights interview with #50, Cox's Bazar District, Bangladesh, December 13, 2016.

⁸²⁶ Fortify Rights interview with #18, Cox's Bazar District, Bangladesh, December 13, 2016.

⁸²⁷ Fortify Rights interview with #28, Cox's Bazar District, Bangladesh, December 14, 2016.

Destruction and Confiscation of Means of Subsistence

“My house was burned; I used to have 400 baskets of paddy and two cows. The paddies were burned, and the cows were taken.”

—Rohingya woman, 50, Yae Khet Chaung Gwa Son village, December 2016

Myanmar Army soldiers also destroyed food stocks and means of subsistence, contributing to forced displacement.

“Mohamed Naeem,” 58, witnessed Myanmar Army soldiers destroy food stocks in Sin Thay Pyin village in November 2016:

The soldiers destroyed three stocks of paddy and hay. They used a lighter. I was there. I saw it. They destroyed one haystack that we use for our animals and two paddy stocks . . . The soldiers also took some furniture—chairs—they found in the homes, and they took them out to the street and burned them. They burned cabinets and boxes too. They broke some things.⁸²⁸

“Allam,” 37, said soldiers used loudspeakers to announce in the Burmese language to residents of Kyet Yoe Pyin village their intention to destroy food stocks.⁸²⁹ Most residents in Kyet Yoe Pyin village and other villages in Maungdaw Township understand only the Rohingya language and not the Burmese language.⁸³⁰ Allam, who speaks and understands Burmese, recalled:

The military destroyed the paddy stocks and burned them. They said: ‘This is ours, not yours. You aren’t from this country. Go back to Bangladesh.’ They said this over loudspeakers. They said, ‘We won’t let you eat this paddy that you cut. You have to leave.’⁸³¹

Soldiers and Rakhine civilians also killed or confiscated cattle, chicken, and other livestock during the attack on the villages in Maungdaw Township.⁸³² For example, “Hnin R.,” 23, told Fortify Rights how soldiers looted her house while they were held in a paddy field in Hpar Wut Chaung village. She said: “When we returned in the evening, we saw that [the soldiers] took everything. They took our money, gold, clothes, everything. They broke our cookware. They used bags made out of rope and a cart to carry the things that they took.”⁸³³

“Rashida,” a 20-year-old Rohingya woman, described what happened in her village of Yae Khat Chaung Gwa Son village in November:

When we gathered in the field, the military ordered us not to go anywhere. They said we wouldn’t be harmed. While we were in the field, the soldiers killed our cattle—the cows and the chickens. Many properties were destroyed. Some of the model [Rakhine] villagers accompanied with the soldiers and took some of our cows and chickens.⁸³⁴

⁸²⁸ Fortify Rights interview with #19, Cox’s Bazar District, Bangladesh, December 13, 2016.

⁸²⁹ Fortify Rights interview with #23, Cox’s Bazar District, Bangladesh, December 14, 2016.

⁸³⁰ Fortify Rights interview with #23, Cox’s Bazar District, Bangladesh, December 14, 2016. Regarding Burmese language among Rohingya, “Tasnim,” 25, told Fortify Rights: “My house was burned down. All houses in my village were burned down. I don’t understand the language so I don’t know what the military said. I’m illiterate.” Fortify Rights interview with #48, Cox’s Bazar District, Bangladesh, December 10, 2016.

⁸³¹ Fortify Rights interview with #23, Cox’s Bazar District, Bangladesh, December 14, 2016.

⁸³² See for example Fortify Rights interview with #19, 22, 30, 52, Cox’s Bazar District, Bangladesh, December 2016. Soldiers in Dar Gyi Zar took animals away on trucks, according to eyewitnesses. See for example Fortify Rights interview with #30, Cox’s Bazar District, Bangladesh, December 15, 2016. Residents of Kyet Yoe Pyin told Fortify Rights soldiers killed their animals: “[Myanmar Army soldiers] set fire to houses, including my house. I was a day laborer, a woodcutter. I owned a house. I had two goats and they were also burned in the fire.” Fortify Rights interview with #53, Cox’s Bazar District, Bangladesh, December 12, 2016.

⁸³³ Fortify Rights interview with #70, Cox’s Bazar District, Bangladesh, December 15, 2016.

⁸³⁴ Fortify Rights interview with “Rashida,” no. 22, Cox’s Bazar District, Bangladesh, December 13, 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.

After initial attacks and violence in their villages, some Rohingya hid in jungle areas during the daytime and returned to their village during nighttime, at great personal risk, in an attempt to find food, loved ones, or to assess the situation.

Rohingya survivors also explained that they fled due to violent attacks on civilians. After Myanmar Army soldiers raped her and killed her father and two of her children, “Fatima” from Kyar Goung Taung village was displaced and alone: “I lived for three days without food. After six days, I found my husband and other children, and then we successfully escaped [to Bangladesh].”⁸⁴¹

Some displaced Rohingya families fleeing from the Myanmar Army used limited material belongings to “purchase” temporary shelter from fellow Rohingya in Maungdaw Township as well as for safe passage to Bangladesh.⁸⁴² Many Rohingya explained that they lacked any money or material resources and relied instead on the good will of those they encountered on the way to Bangladesh.⁸⁴³

⁸⁴¹ Fortify Rights interview with #42, Cox’s Bazar District, Bangladesh, December 10, 2016.

⁸⁴² See, for example, Fortify Rights interviews with #08 and #11, Cox’s Bazar District, Bangladesh, December 2016 and March 2017.

⁸⁴³ See, for example, Fortify Rights interviews with #64, #70, and #74, Cox’s Bazar District, Bangladesh, December 2016.

ACKNOWLEDGEMENTS

This report is based on research conducted by Fortify Rights from October 2016 to June 2018. Fortify Rights’ Chief Executive Officer Matthew Smith is the primary author of this report. Executive Director Amy Smith, Thailand Human Rights Specialist Puttanee Kangkun, Multimedia Specialist Taimoor Sobhan, Myanmar Human Rights Specialist Nickey Diamond, Human Rights Specialist John Quinley III, Partnerships Manager Jillian Tuck, and Rohingya human rights defenders “Zaw Win” (not his real name) and “Abu Maria” (not his real name) provided research and writing support. Razia Sultana conducted research with Fortify Rights during the 2016 “clearance operations” and Tin Soe and Rafiq Uddin provided logistical support. Human Rights Specialist John Quinley III also provided logistical and administrative support. Covington and Burling LLP provided Fortify Rights with legal research and writing for this report, led by Roger Polack and Megan O’Neill, and supervised by Jonathan Gimblett. Several interpreters and translators—not named here for security purposes—assisted with secondary transcriptions of audio files of eyewitness and survivor testimony to enable Fortify Rights to double-check initial interpretations for accuracy. M.S. Anwar helped Fortify Rights establish the accuracy of names of villages affected by the 2016 “clearance operations.” Nay San Lwin helped Fortify Rights establish the accuracy of the names of villages affected from 2016 to 2017.

Fortify Rights’ Digital Design Associate Iuri Kato created the layout and design of the report. Award-winning photographer Patrick Brown provided photographs.

Fortify Rights extends a special thanks to Rohingya survivors and eyewitnesses of attacks in northern Rakhine State as well as human rights defenders, aid workers, and others who contributed to the research and documentation and generously shared their time, energy, and experiences with Fortify Rights. Many are unnamed here. Fortify Rights also extends solidarity and support to Myanmar civil society and Rohingya who are engaged in local, national, and international-level human rights activism and advocacy, often at great personal risk.

Special thanks also to the generous supporters of Fortify Rights who make this work possible.

The dominant narrative about what occurred in Myanmar's northern Rakhine State in 2017 suggests that Rohingya militants attacked police outposts and instigated a spontaneous Myanmar Army-led crackdown, forcing hundreds of thousands of Rohingya to escape to Bangladesh.

This groundbreaking report reveals how Myanmar authorities made systematic preparations for mass atrocities against Rohingya civilians well before August 2017 militant attacks.

"They Gave Them Long Swords" provides the most comprehensive legal findings to date about the situation in Rakhine State, identifying 22 Myanmar officials who should be criminally investigated for genocide and crimes against humanity. It also reveals new information about how civilian perpetrators worked alongside the Myanmar military to perpetrate atrocities against Rohingya civilians. Fortify Rights and Rohingya advocates are calling on the United Nations Security Council to urgently refer the situation in Myanmar to the International Criminal Court.



**FORTIFY
RIGHTS**