



# The Genocide Never Stopped

Five years on from the World Court's order to  
protect the Rohingya

January 2025

This report is dedicated to all the Rohingya who have been killed, maimed, raped, faced starvation, lost their homes, or forced to flee for their lives in the five years since 23 January 2020, when the International Court of Justice ordered provisional measures to protect the 'extremely vulnerable' Rohingya.



**Burmese Rohingya Organisation UK**

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## Executive summary

Five years have passed since the International Court of Justice's (ICJ) issued its legally binding provisional measures order to protect the Rohingya on 23 January 2020. Tragically, 'never again' has become 'yet again'. Many of the human rights violations documented in this report amount to atrocity crimes, including acts of genocide perpetrated by the Myanmar armed forces against the Rohingya and war crimes carried out by the Arakan Army (AA), in breach of the provisional measures ordered by the ICJ to protect the Rohingya. In 2024, several thousand more Rohingya, including forced conscripts, are believed to have been killed in the conflict in Rakhine State and at least 70,000 more have fled to Bangladesh.

The Arakan Army has made swift territorial gains since launching its attacks in November 2023. As of 31 December 2024, the Arakan Army was reported to have seized all but three of Rakhine State's 17 townships. The Arakan Army is now the *de facto* authority in most of Rakhine State.

The war in Rakhine State is characterised by both brutality and complexity, with the Myanmar military forcibly recruiting Rohingya men to its ranks and collaborating with Rohingya armed groups. This includes the Arakan Rohingya Salvation Army (ARSA) – the group whose attacks on Myanmar border guard police outposts in 2017 provided the pretext for the Myanmar military to launch its genocidal 'clearance operations' against the Rohingya population as a whole. None of these groups – ARSA, the Rohingya Solidarity Organisation (RSO), or Arakan Rohingya Army (ARA) - represent Rohingya communities or fight on their behalf and have been repeatedly denounced by Rohingya civil society.

The regime's divide-and-rule strategy needs to be analysed within the wider context of the Myanmar military's long history of inciting hatred towards the Rohingya, dehumanising the group and fomenting violence. Ongoing genocidal intent towards the Rohingya can be inferred from this tactic, particularly when viewed through the lens of the Court's provisional measures order. Instead of protecting the Rohingya – as it is legally bound to do - the regime has forcibly recruited thousands of Rohingya men and is deliberately putting them in harm's way on the frontlines of conflict, whilst at the same time inciting hatred and violence towards the Rohingya group as a whole. This strategy is akin to building a tinderbox with the Rohingya at the centre.

Instead of distancing itself from the regime's underhand tactics to incite hatred towards the Rohingya, the Arakan Army has appeared to lean into it, variously describing the Rohingya as 'Bengali', 'Bengali terrorist', 'Extremist Muslim' and 'Muslim terrorist'. Since seizing control of most of Rakhine State, the AA has characterised as itself as 'engaging in an armed struggle for the national equality of all ethnic groups with the Arakan region', but has yet to embrace the term Rohingya.

The tactics to incite hatred and violence towards the Rohingya employed by the regime have undoubtedly fuelled acts of collective punishment allegedly carried out by the Arakan Army against Rohingya communities, particularly in the Rohingya-majority townships of Buthidaung and Maungdaw, where the Rohingya armed groups have been given free rein to operate by the regime. However, this does not absolve the Arakan Army of responsibility for alleged atrocity crimes.

The Arakan Army has routinely violated international humanitarian law and committed acts which likely amount to war crimes, including forced displacement, arson attacks on Rohingya villages, killings, rape and sexual violence, and torture and cruel treatment. The Arakan Army also continues to forcibly recruit Rohingya men to its ranks, holds several thousand Rohingya men in incommunicado

detention, and routinely exacts forced labour from Rohingya communities in northern Rakhine State – including for landmine clearance.

At the same time, the regime continues to commission the genocidal act of deliberately inflicting ‘slow death’ conditions of life on the Rohingya group – in essence, the junta continues to deny the basic necessities of life to members of the Rohingya group in Rakhine State. In short, the genocide never stopped.

The regime’s restrictions on freedom of movement for Rohingya in Rakhine State have severely limited access to livelihoods and medical care for decades. Road and waterway blockades, combined with increased restrictions on international humanitarian access imposed by the regime since the resumption of armed conflict in Rakhine State in November 2023, have largely forced humanitarian agencies to abandon provision of the support on which many Rohingya communities were dependent, including medical care.

The ‘acute famine conditions’ forewarned by the UN in November have already taken hold in northern and central Rakhine State. The regime’s actions have not only contributed to the acute famine conditions in Rakhine State, but also to the extreme vulnerabilities of the Rohingya group under these conditions. Acute famine conditions mean that Rohingya IDPs confined to camps – and infants in particular – are extremely vulnerable in the event of an outbreak of diarrhoeal disease. Over the past few months, at least 100 Rohingya IDPs have died from diarrhoeal disease in northern and central Rakhine State, most of them young children.

Moreover, starvation is one of the factors forcing displaced Rohingya from northern Rakhine State to attempt the arduous and dangerous journey to the relative safety of the Bangladesh camps. BROUK warns that significant loss of life may be imminent among Rohingya communities in Rakhine State, due to malnutrition, starvation, and the spread of preventable disease under the conditions of life inflicted on the Rohingya group.

Many of the Arakan Army’s actions are eerily reminiscent of the Myanmar military’s conduct in 2016-2017, including its use of so-called ‘clearance operations’ to justify attacks on Rohingya villages on the pretext of driving out Rohingya armed groups such as ARSA, RSO and ARA. The AA has also co-opted much of the apartheid apparatus established by the regime - such as restrictions on freedom of movement for the Rohingya – which will likely have devastating consequences for extremely vulnerable Rohingya communities at this time of acute famine. To date, the Arakan Army has abjectly failed to uphold the Court’s order to protect the Rohingya.

Tens of thousands of Rohingya internally displaced in northern and central Rakhine State are in dire need of international humanitarian aid to prevent further loss of life. 112,000 Rohingya – half of them children – are currently trapped in Sittwe township, surrounded by landmines and unable to flee as the conflict edges closer to the city.

After five years, the international community’s repeated failure to uphold international law and protect the Rohingya is a stain on humanity’s conscience. The pain and suffering of Rohingya communities is profound. Rohingya communities can no longer survive through their incredible resilience alone – they urgently need international protection and life-saving humanitarian assistance.

## Key recommendations:

- The UK as penholder on Myanmar at the UN Security Council must urgently convene a meeting of the Council, which has the authority under the UN Charter to uphold the Court's binding orders when there is non-compliance. This should include discussing concrete steps that can be taken against the Myanmar military, Arakan Army, and Rohingya armed groups who are in breach of the provisional measures order to protect the Rohingya, as an urgent matter of regional peace and security.
- The international community must urge Bangladesh to open an emergency humanitarian aid corridor to Rakhine State and allow trade to help end the famine. The international community must also increase their support to the government of Bangladesh to provide protection and humanitarian assistance, including food, medicine and shelter, to ensure the rights and dignity of Rohingya refugees are upheld.
- The ICJ must urgently review Myanmar's non-compliance with the provisional measures and formally communicate its findings to the UN Security Council. It must instruct Myanmar to make its reporting public at the time of submission to the Court, due to the public interest nature of the case, to ensure transparency and rigorous scrutiny of Myanmar's compliance with the order.

## Introduction

23 January 2025 marks five years since the International Court of Justice's (ICJ) legally binding provisional measures order to protect the Rohingya. Yet in 2024 alone, several thousand more Rohingya, including forced conscripts, are believed to have been killed in the conflict in Rakhine State and at least 70,000 more have fled to Bangladesh.<sup>1</sup> Rohingya communities urgently need international protection and life-saving humanitarian assistance.

In July 2024, the UN Human Rights Council adopted a resolution on the Rohingya and other minorities in Myanmar in which it strongly condemns, 'the continuous targeting of Rohingya Muslims' and urges 'all parties to the conflict [in Rakhine State] to fully comply with the provisional measures ordered by the International Court of Justice.'<sup>2</sup>

Yet the international community – and the UN Security Council in particular – is failing the Rohingya and the wider population of Myanmar. To date, the UN Security Council has managed only one resolution on Myanmar, which 'encouraged diplomatic efforts...to help address the issues facing Rohingyas' but failed to mention the ICJ's legally binding order to protect the Rohingya, which it has a duty to uphold.<sup>3</sup>

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<sup>1</sup> Figure given by a Bangladeshi official, cited in Reuters, 'Myanmar junta intimidates aid groups in effort to hide hunger crisis' (16 December 2024) available at <<https://www.reuters.com/investigates/special-report/famine-data-myanmar/>> accessed 7 January 2025.

<sup>2</sup> UNHRC, Situation of human rights of Rohingya Muslims and other minorities in Myanmar (4 July 2024) UN Doc A/HRC/56/L.18 6[2].

<sup>3</sup> UNSC Resolution 2669 (21 September 2022) UN Doc S/RES/2669 (2022) 3.

In August, Rohingya communities worldwide marked the sombre 7<sup>th</sup> anniversary of Rohingya Genocide Remembrance Day. In a statement to mark the occasion, BROUK said, ‘These horrific acts of violence and persecution that began in August 2017 are not a distant memory but an ongoing tragedy. The Rohingya continue to endure relentless brutality, their plight a stark reminder of our collective failure to uphold international law.’<sup>4</sup>

The whole of Myanmar is “plumbing the depths of a human rights abyss,” according to James Rodehaver, the head of the UN human rights monitoring team for the country.<sup>5</sup> The number of internally displaced people has reached 3.5 million, marking a staggering increase of nearly 1.5 million internally displaced persons compared to 2023.<sup>6</sup> Despite the massive scale of the humanitarian and human rights catastrophe, the crisis in Myanmar is one of the most underfunded in the world.<sup>7</sup> By the end of 2024, the international community had funded just 36 percent of the almost \$1 billion Humanitarian Needs and Response Plan for Myanmar.<sup>8</sup>

In November, the Office of the Prosecutor for the International Criminal Court filed an application for the issuance of an arrest warrant for Senior-General Min Aung Hlaing for the crimes against humanity of deportation and persecution of the Rohingya in 2017. Although Myanmar is not a State party to the Rome Statute of the International Criminal Court (ICC), Bangladesh is a State party and therefore the ICC has territorial jurisdiction over crimes which took place at least in part on its territory.<sup>9</sup> This marks the second application for an arrest warrant for Min Aung Hlaing. The first was submitted by the Argentine Prosecutor investigating the genocide case brought by BROUK in Argentina under the principle of universal jurisdiction, which holds that some crimes - such as genocide - are so horrific that they can be tried anywhere.<sup>10</sup>

This latest report from BROUK is the tenth in its series highlighting repeated, sustained breaches of the Court’s order with zero consequences. With this report, BROUK seeks to amplify the voices of Rohingya women who have bravely spoken out about their experiences. It covers the period **24 May 2024 – 31 December 2024**, which extends from the May six-month deadline for the Myanmar State to comply with its reporting obligations to the International Court of Justice under the provisional measures order, up to and beyond its most recent six-month reporting deadline of 23 November 2024.

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<sup>4</sup> BROUK, ‘7th Anniversary of the Rohingya Genocide Remembrance Day’ (25 August 2024) available at <<https://www.brouk.org.uk/7th-anniversary-of-the-rohingya-genocide-remembrance-day/>> accessed 12 January 2025.

<sup>5</sup> New York Times, ‘U.N. Sees ‘Human Rights Abyss’ in Myanmar as Military Kills Civilians’ (17 September 2024) available at <<https://www.nytimes.com/2024/09/17/world/asia/myanmar-human-rights-abuse-un.html>> accessed 10 January 2025.

<sup>6</sup> Spokesperson for the UN Secretary-General, ‘Press briefing on Myanmar’ (3 January 2025) available at <<https://media.un.org/unifeed/en/asset/d332/d3327567>> accessed 10 January 2025.

<sup>7</sup> Norwegian Refugee Council, ‘Alarming drop in global funding to people in war and crisis’ (2 July 2024) available at <<https://www.nrc.no/news/2024/july/alarming-drop-in-global-funding-to-people-in-war-and-crisis>> accessed 10 January 2025.

<sup>8</sup> UNOCHA, ‘Myanmar: Humanitarian Update No. 43’ (3 January 2025) 1.

<sup>9</sup> The decision authorising the Office of the Prosecutor’s (OTP) investigation into the situation in Bangladesh/Myanmar sets out that the OTP can conduct investigations in relation to any crime, including any future crime, as long as: 1) the ICC has the powers to deal with such a crime; 2) the crime is allegedly committed at least in part on the territory of Bangladesh, or on the territory of any other States Parties, or States which would accept the jurisdiction of the Court under article 12(3) of the Statute; 3) the crime is sufficiently linked to the situation in Bangladesh/Myanmar; and 4) the crime was allegedly committed on or after 1 June 2010, the date of entry into force of the Rome Statute for Bangladesh, or, if the crime was committed at least in part on the territory of other States Parties, after the date of entry into force of the Statute for those States Parties. ICC, ‘Information for victims: Bangladesh/Myanmar’ available at <<https://www.icc-cpi.int/victims/bangladesh-myanmar>> accessed 19 January 2025.

<sup>10</sup> BROUK, ‘Argentine Prosecutor Seeks Arrest Warrants for Rohingya Genocide’ (28 June 2024) available at <<https://www.brouk.org.uk/argentine-prosecutor-seeks-arrest-warrants-for-rohingya-genocide/>> accessed 10 January 2025.

The report is based on first-hand information collected from the ground in Rakhine State.<sup>11</sup> It also draws on Rohingya interview testimony given to international human rights organisations, such as Amnesty International, Human Rights Watch, and Fortify Rights, as well as national and international media outlets.

Many of the human rights violations documented in this report amount to atrocity crimes, including acts of genocide perpetrated by the Myanmar armed forces against the Rohingya and war crimes carried out by the Arakan Army, in breach of the provisional measures ordered by the ICJ to protect the Rohingya.

## Overview of the current Rakhine State context

The ICJ's provisional measures order to protect the remaining Rohingya applies in particular to Rakhine State, where the vast majority of the Rohingya population live. Buthidaung township is home to the largest Rohingya population, followed in descending order by Sittwe, Maungdaw, Kyauktaw, Mrauk U, Minbya, Pauktaw, Rathedaung, Myebon, and Kyaukphyu.

The Arakan Army (AA) resumed fighting with the Myanmar military on 13 November 2023, the third outbreak of hostilities in Rakhine State since 2018. All 17 of Rakhine State's townships have been hit by rolling communication blackouts since the armed conflict resumed. The blackouts are sporadic, with conflict hotspots and townships that have been taken over by the Arakan Army most severely affected.

Fierce fighting has taken across Rakhine State over the reporting period. At the time of writing, only three townships in Rakhine State are currently under the control of the military regime: Sittwe, Kyaukphyu, and the island township of Manaung.<sup>12</sup> According to recent UN figures, 362,000 civilians have been newly displaced in Rakhine and southern Chin States since the resumption of hostilities – almost double the number reported in May 2024.<sup>13</sup> International humanitarian access to Rakhine State has continued to be severely restricted by the junta. The lack of access means that the number of newly displaced people in Rakhine State is likely to be significantly underreported.

Escalating conflict and internal displacement mean that people can no longer cultivate rice, their main food staple. The regime's ongoing blockade of roads and waterways linking the region to the rest of the country has resulted in a near-total cessation of internal and external trade. By October 2024, food prices in Rakhine State had risen 154% over the last year.<sup>14</sup>

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<sup>11</sup> This includes BROUK's own sources. BROUK has carried out due diligence efforts to verify the incidents documented in this report. However, at present there are significant challenges and limitations with documenting, verifying, and reporting on human rights violations in Rakhine State due to the volatile security situation and rolling communication blackouts. Given these significant challenges with collecting and verifying information, this report does not claim to provide a comprehensive account of alleged atrocity crimes perpetrated against the Rohingya from 24 May 2024 – 31 December 2024.

<sup>12</sup> Myanmar Now, 'Arakan Army signals openness to dialogue as it takes 14th Rakhine State town' (30 December 2024) available at <<https://myanmar-now.org/en/news/arakan-army-signals-openness-to-dialogue-as-it-takes-14th-rakhine-state-town/>> accessed 6 January 2024.

<sup>13</sup> UNOCHA, 'Myanmar: Humanitarian Update No. 42' (27 November 2024) 3 and 'Myanmar: Humanitarian Update No. 38' (24 May 2024) 2.

<sup>14</sup> Reuters, (16 December 2024) *op. cit.*

In October, the UN Special Rapporteur for the human rights situation in Myanmar, Thomas Andrews, reported, ‘Nowhere is the situation more desperate and dangerous than in Rakhine State...Hundreds of thousands of people in Rakhine State are completely cut off from humanitarian assistance and threatened by exposure, starvation and disease. Failure to act immediately to provide emergency humanitarian aid will be a death sentence for untold numbers of innocent men, women and children.’<sup>15</sup>

By November, the UN Development Program warned that Rakhine State was at imminent risk of ‘acute famine’, putting more than 2 million people at risk of starvation, with the situation particularly ‘dire’ for the Rohingya population in northern Rakhine State.<sup>16</sup>

The conditions of life inflicted on the Rohingya group in Rakhine State by the military regime leave them uniquely vulnerable in the context of armed conflict in the region. Restrictions on their freedom of movement make it very difficult for Rohingya to flee the fighting or move to safer areas. Restrictions on access to healthcare and livelihoods leave many Rohingya communities almost entirely dependent on international humanitarian assistance for their survival. Cutting off this lifeline has had a devastating impact on the Rohingya, described in detail in the section **Provisional measure (2) – do not commit genocidal acts - Deliberately inflicting conditions of life calculated to bring about the group’s physical destruction in whole or in part**. For its part, the Arakan Army has largely replicated the same freedom of movement restrictions on the Rohingya in areas under its control in Rakhine State.

The war in Rakhine State is characterised by both brutality and complexity, with the Myanmar military collaborating with Rohingya armed groups. This includes the Arakan Rohingya Salvation Army (ARSA) – the group whose attacks on Myanmar border guard police outposts in 2017 provided the pretext for the Myanmar military to launch its genocidal ‘clearance operations’ against the Rohingya population as a whole.

Since the resumption of war in Rakhine State, BROUK has highlighted the rise of Rohingya criminal enterprises in northern Rakhine State – namely ARSA, the Arakan Rohingya Army (ARA) and the Rohingya Solidarity Organisation - with alleged material support from the military regime.<sup>17</sup> The involvement of these groups in forced recruitment of Rohingya for the Myanmar military in Rakhine State and from the refugee camps in Bangladesh has been well-documented, and is described in detail under **Provisional measure (2) – do not commit genocidal acts – causing serious bodily or mental harm to members of the group**. Rohingya civil society organisations have condemned these Rohingya armed groups time and again, most recently on 23 December 2024: ‘We reiterate our strong rejection to all those groups cooperating with Burmese military. Such groups do not represent the Rohingya people or fight for Rohingya people.’<sup>18</sup>

This unholy alliance has been widely interpreted as part of a divide-and-rule strategy by the junta in Rakhine State. While accurate, this strategy needs to be analysed within the wider context of the Myanmar military’s long history of inciting hatred towards the Rohingya, dehumanising the group and fomenting violence. In other words, this strategy is not solely about achieving a military objective

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<sup>15</sup> UNGA, ‘Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews’ (24 October 2024) UN Doc A/79/550 2.

<sup>16</sup> UNDP, ‘Rakhine: A Famine in the Making’ (November 2024) 1.

<sup>17</sup> BROUK, ‘The Intensifying Rohingya Genocide’ (25 June 2024).

<sup>18</sup> Joint Statement signed by 28 Rohingya organisations, ‘Rohingyas call for justice, equality, peaceful coexistence and inclusive governance in Arakan’ (23 December 2024) available at <<https://www.brouk.org.uk/rohingyas-call-for-justice-equality-peaceful-coexistence-and-inclusive-governance-in-arakan/>> accessed 7 January 2025.

of wresting back control of Rakhine State by bolstering the Myanmar military's dwindling ranks by any means necessary. The effects are far more pervasive and insidious. In fact, ongoing genocidal intent towards the Rohingya can be inferred from this tactic, particularly when viewed through the lens of the provisional measures order. Instead of protecting the Rohingya – as it is legally bound to do - the regime forcibly recruited thousands of Rohingya men and is deliberately putting them in harm's way on the frontlines of conflict, whilst at the same time inciting hatred and violence towards the group. This strategy is akin to creating a tinderbox with the Rohingya at the centre. All the regime had to do was ignite the spark and stand back and watch as other actors burn down villages and kill and maim the Rohingya.

As a military strategy, it has also been unsuccessful. The Arakan Army has made swift territorial gains since launching its attacks in November 2023. As of 31 December 2024, the Arakan Army was reported to have seized all but three of Rakhine State's 17 townships. The Arakan Army is now the *de facto* authority in most of Rakhine State.

The regime has responded to these heavy losses with devastating brutality against civilian populations in Rakhine State, including acts of collective punishment against Rakhine civilians. Shelling and retaliatory airstrikes carried out by the junta have killed hundreds of Rakhine civilians, including at least 64 residents of a single village in Thandwe township in June.<sup>19</sup> Civilians living in areas under the control of the Arakan Army live under the constant threat of retaliatory airstrikes by the regime.

The regime has also forcibly relocated people from over 30 predominantly ethnic Rakhine villages in Rakhine State since the beginning of 2024, affecting at least 10,000 Rakhine civilians.<sup>20</sup> After evicting Rakhine from coastal villages in Sittwe township, the junta is reported to have laid landmines in the area, making it forever dangerous for people to return to their homes.

On 29 May, a column of junta soldiers massacred at least 50 Rakhine villagers in Byine Phyu village on the outskirts of Sittwe, allegedly torturing the victims before killing them and gang-raping women.<sup>21</sup> Junta spokesman Major-General Zaw Min Tun has denied these accusations but acknowledged that a 'clearance operation' had taken place in the village.<sup>22</sup> The United League of Arakan (the political wing of the Arakan Army) issued a statement about the massacre, claiming that that 'SAC-trained Muslim conscripts' were part of the column, along with forces from the Arakan Liberation Party (ALP). The AA vowed to take 'strong retaliatory actions' against those who gave the orders and the perpetrators.<sup>23</sup> The ALP has denied any involvement, decrying it as 'fake news'.<sup>24</sup> BROUK asserts that the AA's claims amount to inflammatory disinformation and propaganda.

The regime's divide-and-rule strategy is largely responsible for the misguided perception that Rohingya communities support the Myanmar military and/or Rohingya criminal gangs like ARSA, ARA, and RSO. In fact, Rohingya communities are caught in the middle and are extremely vulnerable. Describing forced conscription of Rohingya by the Myanmar military, a 63-year-old cattle

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<sup>19</sup> Myanmar Now, 'Dozens of civilians confirmed killed in junta airstrikes near Ngapali' (13 June 2024) available at <<https://myanmar-now.org/en/news/dozens-of-civilians-confirmed-killed-in-junta-airstrikes-near-ngapali/>> accessed 6 January 2025.

<sup>20</sup> UNOCHA, 'Myanmar: Humanitarian Update No. 40' (16 August 2024) 9.

<sup>21</sup> UNGA, (25 October 2024) *op. cit.* 6[36].

<sup>22</sup> Myanmar Now, 'Myanmar junta forces massacre scores of civilians outside Sittwe' (6 June 2024) available at <<https://myanmar-now.org/en/news/myanmar-junta-forces-massacre-scores-of-civilians-outside-sittwe/>> accessed 7 January 2025.

<sup>23</sup> United League of Arakan, 'Condemnation and Warning to the Fascist Military Council' (SAC) (2 June 2024).

<sup>24</sup> DMG, 'ALP denies involvement in Sittwe massacre' (3 June 2024) available at <<https://www.dmediag.com/news/alpdenvo.html>> accessed 7 January 2025.

trader told Amnesty International, “I felt really bad that they were involving us in their fight, even though we had nothing to do with it. It felt like they were laying the foundation to get us killed.”<sup>25</sup>

Rather than distancing itself from the SAC’s incitement to hatred towards the Rohingya – and making a concerted effort to understand and explain the predicament of ordinary Rohingya communities to soldiers within its ranks, or the Rakhine public – the Arakan Army has at times appeared to lean into the hatred, variously describing the Rohingya as ‘Bengali’, ‘Bengali terrorist’, ‘Extremist Muslim’ and ‘Muslim terrorist’.<sup>26</sup> Since seizing control of most of Rakhine State, the AA has characterised as itself as ‘engaging in an armed struggle for the national equality of all ethnic groups with the Arakan region’, but has yet to embrace the term Rohingya.<sup>27</sup>

The tactics to incite hatred and violence towards the Rohingya employed by the regime have undoubtedly fuelled acts of collective punishment allegedly carried out by the Arakan Army against Rohingya civilians, particularly in the Rohingya-majority townships of Buthidaung and Maungdaw, where the Rohingya criminal gangs have been given free rein to operate by the regime. However, this does not absolve the Arakan Army of responsibility for alleged atrocity crimes.

The AA has flatly denied responsibility for the most widely publicised acts of violence targeting the Rohingya, such as arson attacks carried out on Rohingya villages in May during the AA’s military campaign to seize Buthidaung township, documented in BROUK’s previous briefing, and drone and artillery attacks which killed up to 200 Rohingya civilians in Maungdaw township in August, detailed in this report.

A Rohingya villager told Human Rights Watch that during attacks on his village in Buthidaung township on 14 May, Arakan Army fighters said:

*‘You sent your sons to the military for training to kill us. The military is your father. Is the military coming to protect you now? You don’t have the right to live in this area anymore.’ Afterward, they started burning the houses.*<sup>28</sup>

In a letter to the UN Special Rapporteur on the human rights situation in Myanmar, the Arakan Army vehemently denied allegations of human rights violations against Rohingya civilians, which it says are “one-sided accusations and allegations” by Rohingya militant groups or members of the Rohingya diaspora. The AA claimed that reported civilian casualties may be “collateral damage during armed clashes” and that some of those killed were not civilians but Rohingya militants.<sup>29</sup>

The Arakan Army also claimed that Rohingya homes in Buthidaung township were burned by fleeing Rohingya militants or caught fire because of junta airstrikes.<sup>30</sup> This claim has already been widely debunked by various investigative reports, including by Human Rights Watch.<sup>31</sup> HRW reported that a

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<sup>25</sup> Amnesty International, ‘Myanmar/Bangladesh: Rohingya community facing gravest threats since 2017’ (24 October 2024) available at <<https://www.amnesty.org/en/latest/news/2024/10/myanmar-bangladesh-rohingya-community-facing-gravest-threats-since-2017/>> accessed 8 January 2025.

<sup>26</sup> ‘Rohingya Organisations Joint Statement on Naf River Massacre’ (23 August 2024) available at <<https://www.brouk.org.uk/rohingya-organisations-joint-statement-on-naf-river-massacre/>> accessed 8 January 2025.

<sup>27</sup> United League of Arakan, ‘Statement No. (18/2024)’ (29 December 2024) available at <<https://www.arakanarmy.net/post/statement-11>> accessed 10 January 2025.

<sup>28</sup> HRW, ‘Myanmar: Armies Target Ethnic Rohingya, Rakhine’ (12 August 2024) available at <<https://www.hrw.org/news/2024/08/12/myanmar-armies-target-ethnic-rohingya-rakhine>> accessed 8 January 2025.

<sup>29</sup> UNGA, (25 October 2024) *op. cit.* 8[52].

<sup>30</sup> *ibid.*

<sup>31</sup> HRW, ‘Myanmar: Armies Target Ethnic Rohingya, Rakhine’ (12 August 2024) available at <<https://www.hrw.org/news/2024/08/12/myanmar-armies-target-ethnic-rohingya-rakhine>>. See also, Reuters, ‘Myanmar’s

Rakhine villager who witnessed Arakan Army fighters burning down Rohingya homes in villages in Buthidaung township said the Arakan Army framed the attacks as “clearance operations” against ARSA, mimicking the rhetoric used by the regime to describe their genocidal attacks on the Rohingya population in 2016-2017.

Even after the Myanmar military’s defeat in northern Rakhine State, these Rohingya armed groups will likely continue to operate. This further complicates the conflict landscape in Rakhine State and puts Rohingya – and Rakhine - communities at grave risk. It raises the prospect of further raids or ‘clearance operations’ on Rohingya villages by the AA alongside other acts of collective punishment, as well as human rights violations perpetrated by the Rohingya armed groups against civilians – including Rohingya.

On 8 December, following the AA’s capture of the last remaining Myanmar Border Guard Police Battalion No.5 outpost at Myo Thu Gyi in Maungdaw township, the group announced that all river transportation on the Myanmar side of the Naf River was indefinitely suspended. Their rationale for this was that fleeing Myanmar army soldiers and their proxies from ARSA, RSO and ARA were reportedly attempting to escape across the Naf River boundary into Bangladesh, via motorboat and canoe. This announcement has far-reaching implications for the Rohingya population. Firstly, it means that Rohingya can no longer fish in the river, cutting off a critical food supply at a time of famine. Secondly, fleeing Rohingya civilians who are trying to reach the relative safety of Bangladesh may be treated as military targets by the AA and are at risk of coming under attack. The most recently available figures indicate that at least 70,000 Rohingya have already crossed into Bangladesh in 2024, fleeing conflict and starvation.<sup>32</sup>

A further complicating factor for the Rohingya is the risk of pushbacks by Bangladeshi border guards, well-documented by Amnesty International and Fortify Rights. According to one credible estimate, there have been more than 5,000 cases of *refoulement* in 2024, where Bangladeshi border authorities have forcibly returned Rohingya people fleeing the violence in violation of international law.<sup>33</sup> Such incidents of *refoulement* leave Rohingya extremely vulnerable to further violence in Rakhine State.

A 25-year-old Rohingya woman recounted her experience of attempting to flee the drone and artillery strikes on August 5 by the Arakan Army to Fortify Rights:

*The Bangladesh border guards caught and detained us. After taking the photographs of us, we were taken to the [BGB] camp. On August 7, we were boarded onto a boat to be sent back to Myanmar. We were about 100 people in two boats when we were pushed back to Myanmar. ... We all shouted at them, saying we wouldn’t go back to Myanmar. The BGB also told us they would shoot if we came back to Bangladesh again.*<sup>34</sup>

A pregnant Rohingya woman described her experience of being pushed back by Bangladeshi border guards in late September. She was with her husband and a group of other Rohingya. She told Fortify Rights:

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junta terrorises, then rebels burn a Rohingya town’ (30 July 2024) available at <<https://www.reuters.com/graphics/MYANMAR-CONFLICT/ROHINGYA/dwpmkzqnlvm/>> accessed 7 January 2025.

<sup>32</sup> Figure given by a Bangladeshi official, cited in Reuters, (16 December 2024) *op. cit.*

<sup>33</sup> Amnesty International, (24 October 2024) *op. cit.*

<sup>34</sup> Fortify Rights, ‘Bangladesh: End Rohingya Refugee Pushbacks’ (19 November 2024) available at <<https://www.fortifyrights.org/bgd-inv-2024-11-19/>> accessed 10 January 2025.

[The Border Guard Bangladesh] *forcibly boarded the people onto the boat, even though the people were shouting and crying not to be sent back to Myanmar... They hit my husband two or three times on his cheek. I was lying on my husband's lap since I was extremely weak when [they] hit him. They threatened to shoot at us if we talked back at them.*<sup>35</sup>

The Arakan Army's conduct towards Rohingya communities which has forced thousands of civilians to flee to Bangladesh is set out in more detail under the section **Other atrocity crimes & the Arakan Army's failure to comply with the provisional measures**. All parties to the current conflict in Rakhine State have routinely violated international humanitarian law. However, under international law, the State has the primary responsibility to prevent atrocity crimes, including by non-State armed actors such as the Arakan Army. The UN's framework of risk factors for atrocity crimes offers a useful lens through which to deepen understanding of the current situation in Rakhine State.

## Risk factors for atrocity crimes in Rakhine State

Under international law, States have the primary responsibility to prevent the commission of genocide, war crimes, and crimes against humanity, as well as *incitement* to commit these atrocity crimes. The UN Office on Genocide Prevention and the Responsibility to Protect has set out a framework of analysis for atrocity crimes, with a focus on their prevention.<sup>36</sup>

The framework identifies eight common risk factors for all atrocity crimes, which help to identify the probability of atrocity crimes, without necessarily identifying the type of crime. Different kinds of atrocity crimes can occur concurrently in the same situation, or one crime might be a precursor to another type of atrocity crime.<sup>37</sup> For example, war crimes might be a precursor to crimes against humanity. The framework sets out two additional risk factors for war crimes, crimes against humanity, and genocide respectively.

COMMON RISK FACTORS		
<b>Risk Factor</b>	<b>1</b>	Situations of armed conflict or other forms of instability
<b>Risk Factor</b>	<b>2</b>	Record of serious violations of international human rights and humanitarian law
<b>Risk Factor</b>	<b>3</b>	Weakness of State structures
<b>Risk Factor</b>	<b>4</b>	Motives or incentives
<b>Risk Factor</b>	<b>5</b>	Capacity to commit atrocity crimes
<b>Risk Factor</b>	<b>6</b>	Absence of mitigating factors
<b>Risk Factor</b>	<b>7</b>	Enabling circumstances or preparatory action
<b>Risk Factor</b>	<b>8</b>	Triggering factors

<sup>35</sup> *ibid.*

<sup>36</sup> United Nations, 'Framework of Analysis for Atrocity Crimes - a tool for prevention' (2014).

<sup>37</sup> *ibid* 6.

## SPECIFIC RISK FACTORS

### Genocide

<b>Risk Factor</b>	<b>9</b>	Intergroup tensions or patterns of discrimination against protected groups
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<b>Risk Factor</b>	<b>10</b>	Signs of an intent to destroy in whole or in part a protected group
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### Crimes against humanity

<b>Risk Factor</b>	<b>11</b>	Signs of a widespread or systematic attack against any civilian population
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<b>Risk Factor</b>	<b>12</b>	Signs of a plan or policy to attack any civilian population
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### War crimes

<b>Risk Factor</b>	<b>13</b>	Serious threats to those protected under international humanitarian law
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<b>Risk Factor</b>	<b>14</b>	Serious threats to humanitarian or peacekeeping operations
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The framework also includes a non-exhaustive list of indicators, each one a possible manifestation of the corresponding risk factor. The framework emphasises that the more risk factors - and the greater number of relevant indicators that are present - the greater the risk that atrocity crimes may occur or re-occur. Similarly, the greater the number of indicators of a particular risk factor that are present, the greater the importance and role of that risk factor in a particular situation.<sup>38</sup>

While the regime's role cannot absolve the Arakan Army of its obligations under international law, the junta's actions to incite hatred and violence towards the Rohingya and to deliberately intensify a hostile environment conducive to atrocity crimes must be front and centre in understanding the devastating violence in Rakhine State targeting the Rohingya. The regime's failure to prevent the commission of alleged atrocity crimes by the Arakan Army and *its role in inciting such crimes* must be clearly understood by all stakeholders. In fact, the regime's genocidal intent towards the Rohingya group can be clearly inferred from such acts and omissions.

Of particularly grave concern is the fact that ALL indicators for Risk Factor 9 for genocide - Intergroup tensions or patterns of discrimination against protected groups are currently prevalent in Rakhine State. This risk factor refers to 'past or present conduct that reveals serious prejudice against protected groups and that creates stress in the relationship among groups or with the State, generating an environment conducive to atrocity crimes'. The indicators enumerated are:

- 9.1 Past or present serious discriminatory, segregational, restrictive or exclusionary practices, policies or legislation against protected groups.
- 9.2 Denial of the existence of protected groups or of recognition of elements of their identity.
- 9.3 History of atrocity crimes committed with impunity against protected groups.
- 9.4 Past or present serious tensions or conflicts between protected groups or with the State, with regards to access to rights and resources, socioeconomic disparities, participation in decision

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<sup>38</sup> UN Framework *op. cit.* 7.

making processes, security, expressions of group identity or to perceptions about the targeted group.

**9.5** Past or present serious tensions or conflicts involving other types of groups (political, social, cultural, geographical, etc.) that could develop along national, ethnical, racial or religious lines.

**9.6** Lack of national mechanisms or initiatives to deal with identity-based tensions or conflict.<sup>39</sup>

Likewise, many of the indicators for Risk Factor 10 for genocide - Signs of an intent to destroy in whole or in part a protected group – are prevalent in Rakhine State. This risk factor refers to ‘facts or circumstances that suggest an intent, **by action or omission**, to destroy all or part of a protected group based on its national, ethnical, racial or religious identity, or the perception of this identity [emphasis added].’<sup>40</sup> The indicators enumerated are:

**10.1** Official documents, political manifests, media records, or any other documentation through which a direct intent, or incitement, to target a protected group is revealed, or can be inferred in a way that the implicit message could reasonably lead to acts of destruction against that group.

**10.2** Targeted physical elimination, rapid or gradual, of members of a protected group, including only selected parts of it, which could bring about the destruction of the group.

**10.3** Widespread or systematic discriminatory or targeted practices or violence against the lives, freedom or physical and moral integrity of a protected group, even if not yet reaching the level of elimination.

**10.4** Development of policies or measures that seriously affect the reproductive rights of women, or that contemplate the separation or forcible transfer of children belonging to protected groups.

**10.5** Resort to methods or practices of violence that are particularly harmful against or that dehumanize a protected group, that reveal an intention to cause humiliation, fear or terror to fragment the group, or that reveal an intention to change its identity.

**10.6** Resort to means of violence that are particularly harmful or prohibited under international law, including prohibited weapons, against a protected group.

**10.7** Expressions of public euphoria at having control over a protected group and its existence.

**10.8** Attacks against or destruction of homes, farms, businesses or other livelihoods of a protected group and/or of their cultural or religious symbols and property.

Indicator 10.5 ‘Resort to methods or practices of violence that are particularly harmful against or that dehumanize a protected group, that reveal an intention to cause humiliation, fear or terror to fragment the group’ is of particular concern with reference to the Myanmar military’s ongoing forced recruitment of Rohingya men and youth and sending them into battle on the frontlines with the Arakan Army. Such acts are described in more detail below under **Provisional measure (2) - do not commit genocidal acts - causing serious bodily or mental harm to members of the group**.

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<sup>39</sup> UN Framework *op. cit.* 18.

<sup>40</sup> UN Framework *op. cit.* 19.

Lastly, given the acts and omissions by the Myanmar State, the following indicator of Common Risk Factor 6 – Absence of mitigating factors – should serve as a stark warning to ASEAN, the wider international community, and the UN Security Council in particular: ‘Lack of interest, reluctance or failure of United Nations Member States or international or regional organizations to support a State to exercise its responsibility to protect populations from atrocity crimes, **or to take action when the State manifestly fails that responsibility** [emphasis added].’<sup>41</sup>

## Breaches of the ICJ’s provisional measures by the Myanmar junta

This section of the report analyses breaches of the ICJ’s provisional measures order by the Myanmar junta in accordance with the existing jurisprudence on genocide as well as the above risk factors and indicators of genocide.

In BROUK’s view, the information compiled in this report demonstrates that the regime continues to commission genocidal acts: namely, deliberately inflicting conditions of life calculated to bring about the physical destruction in whole or in part of the Rohingya group, causing serious bodily or mental harm, and killings.

### Provisional measure (1) – prevent genocide

‘The Republic of the Union of Myanmar shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Rohingya group in its territory, **namely the order to take all measures within its power to prevent the commission of genocidal acts** within the scope of Article II of this Convention, in particular:

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- d) imposing measures intended to prevent births within the group.’<sup>42</sup>

Provisional measure (1) is focused on the *prevention* of genocide and the ICJ instructs the Myanmar State to take ‘all measures within its power’ to do so.

#### ***Denial of identity, citizenship, and freedom of movement***

The regime continues to deny the Rohingya their identity, consistently referring to them as ‘Bengali’. The junta also persists with upholding the 1982 Citizenship Law, which was designed to strip Rohingya of citizenship. All Rohingya remaining in Rakhine State continue to live under wide-ranging restrictions on freedom of movement imposed by the regime, and – with very few exceptions – maintained by the Arakan Army in areas under their control. If Rohingya attempt to flee from

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<sup>41</sup> UN Framework *op. cit.* 15.

<sup>42</sup> ICJ, ‘Order: Request for the Indication of Provisional Measures’ *The Gambia v. Myanmar* (23 January 2020) 25 [86].

Rakhine State across Myanmar into areas under regime control, they face arrest and imprisonment by the junta authorities for travelling without documents or prior authorisation.

Almost 145,000 Rohingya – half of them children – have been confined to internment camps under indefinite arbitrary detention in the central Rakhine townships of Sittwe, Pauktaw, Myebon, Kyauktaw and Kyaukphyu for more than twelve years. The majority of them, over 112,000, are confined to camps in Sittwe township, which is the only township in Rakhine State still under *full control* of the regime at the time of writing.<sup>43</sup>

The freedom of movement restrictions on Rohingya imposed by the regime and largely maintained by the Arakan Army have had a particularly devastating impact during the armed conflict in Rakhine State. Together with the denial of citizenship, these restrictions have rendered Rohingya communities uniquely vulnerable among civilian populations in Myanmar and subject to exploitation by all parties to the conflict in Rakhine State.

### ***Restricting international humanitarian access***

The junta has not taken *any* steps to lift the well-documented restrictions on freedom of movement, access to livelihoods, or healthcare for Rohingya communities over the reporting period, leaving them heavily dependent on international humanitarian assistance for their most basic needs. For this reason, the regime's wide-ranging restrictions on humanitarian access in Rakhine State have a disproportionate impact on extremely vulnerable Rohingya communities.

As soon as renewed hostilities broke out in Rakhine State in November 2023, the regime blockaded roads and waterways into Rakhine State, critically affecting the movement of supplies.<sup>44</sup> In addition, the junta's prohibition on the importation of medicines and sanitary products to Rakhine State has had a devastating impact on all conflict-affected populations, but particularly Rohingya communities due to their additional vulnerabilities. Access restrictions continue to hinder the delivery of humanitarian aid, with the regime's travel authorizations to humanitarian actors granted only intermittently, and limited solely to Sittwe township.<sup>45</sup> The current access restrictions and impediments imposed by the junta are so severe that the UN Special Rapporteur on the human rights situation in Myanmar concluded, 'Humanitarian programs across Rakhine State have largely been abandoned.'<sup>46</sup> Displaced and increasingly desperate Rohingya across Rakhine State have been left to fend for themselves.<sup>47</sup>

The regime's wide-ranging access restrictions in Rakhine State continue to defy UN Security Council Resolution 2669, which urged 'full, safe and unhindered humanitarian access' as well as provisional measure (1) ordered by the ICJ.<sup>48</sup> In essence, the junta continues to deny the basic necessities of life to members of the Rohingya group in Rakhine State who are almost entirely dependent on humanitarian aid for their survival.

These ongoing policies and practices towards the Rohingya by the Myanmar regime track with several of the UN Framework's risk factor indicators for genocide – including, 'denial of the existence of protected groups', 'segregational, restrictive or exclusionary practices, policies or legislation against protected groups', and 'systematic discriminatory or targeted practices against...the

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<sup>43</sup> These numbers are based on the latest available *CCCM* Cluster report at the time of writing, 'CCCM Camp Profiles, Central Rakhine, Myanmar Q3 2024' (Sep 2024).

<sup>44</sup> UNOCHA, 'Myanmar: Humanitarian Update No. 40' (16 August 2024) 2-3.

<sup>45</sup> UNOCHA, 'Myanmar: Humanitarian Update No. 42' (27 November 2024) 3.

<sup>46</sup> UNGA (25 October 2024) *op. cit.* 11[76].

<sup>47</sup> *ibid.*

<sup>48</sup> UNSC Resolution 2669 (21 September 2022) *op. cit.*

freedom...of a protected group’.<sup>49</sup> The severe consequences of these humanitarian access restrictions are described in detail below.

## **Provisional measure (2) – do not commit genocidal acts**

‘The Republic of the Union of Myanmar shall, in relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide.’

This section of the report examines the conduct of the Myanmar military with regard to the genocidal acts of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, causing serious bodily or mental harm to members of the group, and killing members of the group under Article II of the Genocide Convention.

### **Deliberately inflicting conditions of life calculated to bring about the group’s physical destruction in whole or in part**

The genocidal act of ‘deliberately inflicting conditions of life on the group intended to bring about its physical destruction’, sometimes referred to as ‘slow death’, addresses situations in which the perpetrator does not immediately kill the members of the group, but uses other methods intended to ultimately bring about their physical destruction. Examples of possible means by which this underlying act can be carried out have been well-established by the case law in the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR):

‘Examples of such acts include, but are not limited to, subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally **creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation**, or subjecting members of the group to excessive work or physical exertion [emphasis added].’<sup>50</sup>

With regard to the question of genocidal intent, the 2016 ICTY *Karadzic* judgment held that,

‘In the absence of direct evidence of whether the conditions of life imposed on the group were deliberately calculated to bring about its physical destruction, a chamber can be guided by the objective probability of these conditions leading to the physical destruction of the group in part. **The actual nature of the conditions of life, the**

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<sup>49</sup> UN Framework indicators 9.1, 9.2, and 10.3 listed in full above, *op. cit.*

<sup>50</sup> ICTY, *Prosecutor v. Karadzic*, IT-95-5/18-T, Judgment, 24 March 2016, [547], with reference to the preceding cases ICTY, *Prosecutor v. Brdjanin*, IT-99-36-T, Judgment, 1 December 2004, [691]; ICTY, *Prosecutor v. Stakic*, IT-97-24-T, Judgment, 31 July 2003, [517]; ICTR, *Prosecutor v. Musema*, ICTR-96-13-T, Judgment, 27 January 2000, [157]; ICTR, *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, [115–116]; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, [506].

**length of time that members of the group were subjected to them, and the characteristics of the group such as its vulnerability are illustrative factors to be considered in evaluating the criterion of probability. [emphasis added]**<sup>51</sup>

The regime's restrictions on freedom of movement for Rohingya in Rakhine State have severely limited access to livelihoods and medical care for decades. Road and waterway blockades, combined with increased restrictions on international humanitarian access imposed by the regime over the past year, have largely forced humanitarian agencies to abandon provision of the support on which many Rohingya communities were dependent. These factors have contributed not only to the acute famine conditions in Rakhine State, but also the extreme vulnerabilities of the Rohingya group under these conditions.

### **Conditions of life in northern Rakhine State**

The full and drastic effects of the regime's blockade and restrictions on humanitarian aid - exacerbated by the intense fighting - are being deeply felt in northern Rakhine State, particularly among Rohingya IDPs. Acute famine conditions have already taken hold. In Buthidaung township, some IDPs have resorted to eating rice bran, typically used as animal feed.<sup>52</sup> Yusuf is a forced conscript who fled to Bangladesh, but his wife, children, mother, and brothers remain in Buthidaung. He told Human Rights Watch:

*I don't know how my family is surviving without food. People are now very helpless and in extreme and dire situations. They are living under the open sky in rain and shine. I cried so much for my family; I have run out of tears.*<sup>53</sup>

It is very difficult to collect detailed information about the current conditions at IDP sites in Buthidaung township, due to the rolling communications blackout. However, at least 60 Rohingya IDPs – most of them children and the elderly – are known to have died during an outbreak of diarrhoea in June. Overcrowding and lack of access to clean drinking water and basic hygiene supplies at the IDP sites are major factors in the spread of communicable disease, with many IDPs reportedly suffering from skin infections.<sup>54</sup> The Arakan Army is reported to have corralled Rohingya IDPs into particular locations and has replicated the movement restrictions originally imposed by the regime, compounding the risks of starvation and disease – discussed in more detail under **Other atrocity crimes & the Arakan Army's failure to comply with the provisional measures**.

During the escalating fighting in Maungdaw township in June, a World Food Programme warehouse with enough food and supplies to sustain 64,000 people for a month was looted and set alight. The Arakan Army accused the military of burning down the warehouse; the junta blamed the Arakan Army and said the military had rescued the food and distributed it to the local population. According to information received by BROUK, both parties were involved in looting the warehouse. The Arakan Army is alleged to have begun looting it first, over several days, before coming under attack by the Myanmar military. The rations which were seized from the AA during that attack by the Myanmar military were distributed to local people as a public relations exercise; but the SAC then proceeded to

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<sup>51</sup> ICTY, *Prosecutor v. Karadzic*, *op. cit.* [548].

<sup>52</sup> UNDP (November 2024) *op. cit.* 8.

<sup>53</sup> HRW, 'Myanmar: Armies Target Ethnic Rohingya, Rakhine' (12 August 2024) available at <<https://www.hrw.org/news/2024/08/12/myanmar-armies-target-ethnic-rohingya-rakhine>> accessed 10 January 2025.

<sup>54</sup> Incident ref ICJ10-BUT-ARM-CON-AA1. See also UNDP (November 2024) *op. cit.* 8.

loot the remaining rations from the warehouse for themselves, before burning it down.<sup>55</sup> This cynical act by the SAC is not only in violation of international humanitarian law; it should be interpreted as directly contributing to yet another act of ‘slow death’.

Starvation is one of the factors forcing displaced Rohingya from northern Rakhine State to attempt the arduous and dangerous journey to the relative safety of the Bangladesh camps. 25-year-old Juhara Begum, who arrived in the camps in November, told Reuters that her family had to survive on leaves and other vegetation. There was nothing to eat, so when her older son, a toddler, cried they gave him a piece of banana stem to suck on to relieve the hunger. “It felt like hell,” Juhara said. 23-year-old Kasmida, her husband Sulaiman and their two young children have also recently arrived in Bangladesh. She told Reuters there was so little to eat that she was unable to breastfeed their baby. “Where will milk be produced from, if I am hungry all the time?” she asked.<sup>56</sup>

BROUK warns that significant loss of life may be imminent in northern Rakhine State, due to malnutrition, starvation, and the spread of preventable disease under the conditions of life inflicted on the Rohingya group.

## Conditions of life in central Rakhine State

### *Forced displacement of the Rohingya*

Although forced displacement itself is not enumerated as an act of genocide under the Convention, the ICJ, in its interpretation of the meaning of “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction”, has held that forced displacements may occur in parallel to other acts prohibited by Article II of the Genocide Convention. Forced displacements may also be indicative of the specific intent to destroy a group in whole or in part behind those parallel genocidal acts.<sup>57</sup>

Almost 145,000 Rohingya (of whom over 112,000 are in rural Sittwe, according to the latest publicly available figures at the time of writing<sup>58</sup>) have been subjected to arbitrary indefinite detention in camps across central Rakhine State for over twelve years, in violation of international law.<sup>59</sup> 50 percent of them are children – a generation of Rohingya who have only ever known the brutality of indefinite detention under squalid conditions.

The Myanmar military has a decades-long history of employing divide-and-rule tactics and instigating violence against the Rohingya. The State-orchestrated violence of 2012-13 marked a critical juncture in the military authorities’ treatment of the group. A false narrative of ‘intercommunal violence’ constructed by the military authorities was used as a pretext to introduce draconian restrictions on

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<sup>55</sup> Incident ref ICJ10-MDW-PM2c1.

<sup>56</sup> Reuters, (16 December 2024) *op. cit.*

<sup>57</sup> International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*), Judgment, ICJ Reports 2015, 72 [161-163].

<sup>58</sup> These numbers are based on the latest available CCCM Cluster report, ‘CCCM Camp Profiles, Central Rakhine, Myanmar Q3 2024’ (Sep 2024). The precise figure given is 144,793.

<sup>59</sup> UNFFMM, ‘Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar’ (17 September 2018) UN Doc A/HRC/39/CRP.2 [747-748] and Human Rights Watch, “An Open Prison without End”: Myanmar’s Mass Detention of Rohingya in Rakhine State (October 2020).

freedom of movement for the Rohingya across Rakhine State.<sup>60</sup> This false narrative that the 2012 violence was simply ‘intercommunal’ has unfortunately prevailed, both within Myanmar and internationally. In fact, the State-orchestrated violence in 2012-2013 laid the groundwork for the brutal ‘clearance operations’ that were to follow in 2016-2017. The UNFFMM concluded,

*The 2012 and 2013 violence in Rakhine State was pre-planned and instigated...the Myanmar security forces were actively involved and complicit. They participated in acts of violence... [This] actively instigated violence between the ethnic Rakhine and the Rohingya, with the involvement of State institutions and other figures of authority, result[ed] in mass arrests of Rohingya, policies of segregation and the mass displacement and confinement of Rohingya into squalid and barb-wired “displacement” sites and camps in central Rakhine, where they have been arbitrarily detained.*<sup>61</sup>

Although best understood as detention or internment camps, the 24 sites in Sittwe, Kyauktaw, Kyaukphyu, Myebon and Pauktaw townships<sup>62</sup> are officially classified as temporary camps for internally displaced persons (IDPs). As such, international humanitarian standards apply to those settings.<sup>63</sup>

Analysis of the latest publicly available data<sup>64</sup> for the Rohingya camps gives an overview of the dire living conditions at the sites. It provides clear insight into the impact of the regime’s humanitarian access restrictions, which have prevented humanitarian actors from meeting their response targets. BROUK has supplemented this analysis with data collected from the camps in Sittwe and Pauktaw townships, to highlight the devastating human cost of the ‘slow death’ circumstances for those confined to camps in central Rakhine State.

### ***‘Lack of proper shelter’***

The 16 sites along the Sittwe coastline were already very overcrowded before Cyclone Mocha struck in May 2023. Available space in several of the Sittwe displacement sites has been significantly reduced following Cyclone Mocha, most likely caused by the storm surge and coastal erosion.<sup>65</sup> On average, there is just 20m<sup>2</sup> of space per person in the Sittwe sites – less than half the international standard of 45m<sup>2</sup>.

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<sup>60</sup> For a more detailed description, see BROUK, ‘Slow death’ *op. cit.* 9-10.

<sup>61</sup> UNFFMM 2018 report *op. cit.* [747-748].

<sup>62</sup> Out of these 24 sites, 19 are formal camps, 3 are integrated host communities, and 2 are officially closed camps where IDPs remain. See < <https://sheltercluster.org/hub/rakhine>> accessed 18 December 2024. In April 2017, the authorities announced that it would begin closing camps in response to the recommendations in an interim report from the Advisory Commission on Rakhine State led by the late Kofi Annan. Three camps (Kyein Ni Pyin in Pauktaw township, Nidin in Kyauktaw township, and Taung Paw in Myebon township) were officially declared ‘closed’ in 2018 and Kyauk Ta Lone camp in Kyaukpyu was officially ‘closed’ in May 2023 but its current status is unclear. As previously reported by BROUK, the ‘camp closure’ strategy is better understood as the permanent segregation and detention of Rohingya in flood-prone locations.

<sup>63</sup> The Humanitarian Charter and Minimum Standards in Humanitarian Response also provides guidance to humanitarian actors for establishing targets for humanitarian response in protracted crises. See Sphere, ‘The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response’ (2018 edition).

<sup>64</sup> Analysis is based on UN OCHA humanitarian updates, and CCCM Camp Profiles, Central Rakhine, Myanmar March, June, and September 2024 available at <<https://www.cccmcluster.org/where-we-work/myanmar>> accessed 18 December 2024.

<sup>65</sup> The available space in Basara, Baw Du Pha 2, Khaung Doke Khar 1, and Ohn Taw Gyi South in Sittwe has significantly reduced.

The Rohingya confined to camps across central Rakhine State are largely living in cramped temporary bamboo structures known as ‘longhouses’, designed to last two years.<sup>66</sup> Just 14 percent of the shelters have been repaired over the past two years in comparison with 27 percent one year ago – against a humanitarian response target of 100 percent.

As shelters become unliveable, conditions become more and more cramped. On average, over half of single room units now house more than six persons. Yet according to humanitarian response targets, no single room unit should ever house more than six. Cramped living conditions contribute to a host of other public health issues, including the spread of tuberculosis and diarrhoeal disease.

***‘Subjecting the group to a subsistence diet / lack of proper food’***

Acute famine conditions are already pervasive in the camps. In June, the UN High Commissioner for Human Rights highlighted credible reports of starvation from the camps in Sittwe township.<sup>67</sup> Since then, due to humanitarian access restrictions, on average less than half of households in the camps had access to food aid between July and September. Over 32,000 Rohingya confined to camps in Myebon, Kyauktaw, Kyaukphyu and Pauktaw townships under Arakan Army control received *no food aid at all* according to official UN data.<sup>68</sup>

Extreme food shortages in Taung Paw camp in Myebon township contributed to the deaths of two elderly Rohingya women in September, according to local media reports. “We don’t want this to happen again in our camp. It’s tragic. We remain helpless. The other people in the camp are also facing difficulties,” said a camp leader.<sup>69</sup>

In August, Habi, an IDP in Ah Nauk Ywe camp in Pauktaw township told BROUK, “We ran out of rice, cooking oil, salt, pepper, and onion a long time ago. We have been suffering from hunger for more than nine months. 20 Rohingyas have died of starvation.”<sup>70</sup>

According to UN data, 58-60 percent of the Rohingya population at four out of the five Pauktaw camps are children.<sup>71</sup> Yet, Rohingya IDPs in Nget Chaung 1, Nget Chaung 2, and Kyein Ni Pyin camps in Pauktaw township report that they have not received any food or cash assistance since February this year.<sup>72</sup>

Prior to the outbreak of conflict, IDPs in Pauktaw could occasionally travel to Sittwe by boat to buy food at the market with SAC permission. But movement restrictions are now strictly enforced by both the Myanmar military and the Arakan Army. IDPs can very occasionally go fishing, but this carries inherent risks due to the movement restrictions. In September, 15 Rohingya IDPs were arrested by the

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<sup>66</sup> In December 2023, just 11 percent of the shelters in the Sittwe camps had been repaired in the past two years. By March 2024, this had only risen to 13 percent. This falls extremely short of the international standard that ALL such shelters should be repaired over a two-year period. Analysis based on CCCM Camp Profiles, Central Rakhine, Myanmar Q4 December 2023 and Q1 March 2024 *op. cit.*

<sup>67</sup> UN High Commissioner for Human Rights, ‘Situation of human rights of Rohingya Muslims and other minorities in Myanmar’ (18 June 2024) UN Doc A/HRC/56/23 11 [39].

<sup>68</sup> Analysis based on CCCM Camp Profiles 2024 *op. cit.*

<sup>69</sup> Narinjara News, ‘2 women died of malnutrition in Muslim IDP camp in Myebon’ (24 September 2024) available at <<https://www.narinjara.com/news/detail/66f2e3bc31ae899c1cc45259>> accessed 18 December 2024.

<sup>70</sup> Incident ref ICJ10-PTW-PM2c1.

<sup>71</sup> Analysis based on CCCM Camp Profiles 2024 *op. cit.*

<sup>72</sup> Incident refs ICJ10-PTW-PM2c1, ICJ10-PTW-PM2c2, ICJ10-PTW-PM2c3.

Myanmar navy while fishing on the Kaladan river. They were held overnight and brutally beaten while in custody. Most IDPs in Pauktaw township have resorted to foraging for food.<sup>73</sup>

On a societal level, Rohingya IDPs in Pauktaw have experienced increased levels of hostility and discrimination towards them from Rakhine communities. On a practical level, Rohingya reported that a national NGO tasked with distributing food aid to Rohingya IDP camps by WFP instead diverted it to Rakhine communities, leaving Rohingya without access to food assistance for months on end.<sup>74</sup>

Acute famine conditions mean that Rohingya IDPs confined to camps – and infants in particular – are extremely vulnerable in the event of an outbreak of diarrhoeal disease. High levels of malnutrition mean they are more likely to contract diarrhoea, with an increased risk that it will be fatal.

#### ***‘Lack of water and proper sanitation facilities’***

The Humanitarian Charter establishes a minimum standard of one shared toilet per 20 people.<sup>75</sup> Even before Cyclone Mocha caused extensive damage to the latrines in the Sittwe camps, this basic standard was not being met.<sup>76</sup> The latest report from UNOCHA notes that, ‘In Rakhine, sanitation gaps are extreme, with only one latrine for approximately 130 people in some IDP camps. 49 per cent of sanitation facilities remain non-functional.’<sup>77</sup> These problems have been compounded by water shortages, especially in Pauktaw township.

Disease risks to Rohingya IDPs in the camps due to lack of proper sanitation facilities and water shortages are compounded by their lack of access to adequate medical care due to restrictions imposed by the regime, and in most cases maintained by the Arakan Army in areas under their control.

#### ***‘Failing to provide adequate medical care’***

Due to freedom of movement restrictions on Rohingya in Rakhine State, Rohingya confined to camps have long been dependent on INGO healthcare providers to access medical care – either through the provision of mobile clinic services in the camps, or through INGO-facilitated referrals to SAC-run hospitals for more complex cases.

Médecins Sans Frontières (MSF) has been the primary healthcare provider for Rohingya confined to the camps for many years. However, since the resumption of hostilities in November 2023, the regime revoked travel authorisations for the organisation in Rakhine State and most of their mobile clinics, including those serving the camps, were forced to close.<sup>78</sup>

In Pauktaw, where MSF ran clinics for both Rohingya confined to the camps and Rakhine communities, the disruption of MSF activities has had severe consequences. People in these have extremely limited access to healthcare, as MSF’s clinics are closed and access routes – mostly by water - are heavily controlled by checkpoints.<sup>79</sup>

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<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*

<sup>75</sup> Sphere *op. cit.* 116.

<sup>76</sup> In the first three months of 2023, there was an average of 27 people per functioning latrine across all the Rohingya camps. BROUK, ‘Struggling to Survive’ (November 2023).

<sup>77</sup> UNOCHA, (Update No. 42) *op. cit.* 10.

<sup>78</sup> Dr Nimrat Kaur, ‘Denial of humanitarian assistance is a death sentence in Myanmar’, The New Humanitarian, 11 June 2024 available at <<https://www.thenewhumanitarian.org/opinion/2024/06/11/denial-humanitarian-assistance-death-sentence-myanmar>> accessed 18 December 2024.

<sup>79</sup> *ibid.*

In April and May, MSF recorded 222 cases of acute watery diarrhoea (AWD) in just one Rohingya camp in Pauktaw, causing the deaths of 7 children.<sup>80</sup> BROUK received additional information about outbreaks of diarrhoeal disease in the five Pauktaw camps in July, September, and October. BROUK has been able to verify the deaths of 31 Rohingya but has also received credible – although unconfirmed - reports of an additional 56 deaths, making a total of 94 (including those documented by MSF).<sup>81</sup> The majority of deaths from AWD are among children under five. In camps where BROUK was able to gather disaggregated data, infant girls have been disproportionately affected. In a separate case, a 22-year-old new mother died from diarrhoeal disease just three days after giving birth. Due to the regime’s ban on importation of medicines to Rakhine State, it is very difficult to find oral rehydration salts (ORS) and the cost is prohibitive.

In Sittwe, 70 Rohingya IDPs were reported to have been hospitalised in Thet Kay Pyin rural hospital due to an outbreak of diarrhoeal disease in early October. To date, BROUK has received confirmation of one fatality, a 7-year-old Rohingya boy.<sup>82</sup>

Rohingya in the Pauktaw camps also reported discriminatory treatment within the extremely limited healthcare options available to them. For example, the one available doctor working in a rural hospital near one of the camps allegedly charges Rohingya patients ten times more than Rakhine. The nearest functioning general hospital is in Myebon township, but Rohingya are required to secure a travel authorisation permit from the Arakan Army, which has maintained the freedom of movement restrictions on Rohingya originally imposed by the regime.<sup>83</sup>

In October, a Rohingya IDP in one of the Pauktaw camps reported, “People here have been suffering from diarrhoea for more than five months. The children pick up and eat what they find on the street because of the lack of food. Right now, we don’t get any support from previous sources and cannot feed our children properly. And since we live in IDP camps, the environment is not clean.”<sup>84</sup> Increasing numbers of desperate Rohingya IDPs are reported to be risking their lives to flee Pauktaw township by boat, due to social hostilities and the prevalence of extreme hunger and disease in the camps.<sup>85</sup>

### **Criminalisation of Rohingya fleeing the conditions of life inflicted on them**

Rohingya who attempt to flee the appalling conditions of life inflicted upon them in Rakhine State are routinely arrested and imprisoned for travelling without identity documents and travel authorisations - which the State itself has made it so difficult to obtain. Cases against the Rohingya are usually brought under the 1949 Residents of Burma Registration Act (and 1951 Resident of Burma Registration Rules), which carries a maximum penalty of two years in jail with hard labour, or under Article 13(1) of the 1947 Burma Immigration (Emergency Provisions) Act) for a jail term of five years.<sup>86</sup> Under international law, the statelessness of a person resulting from the arbitrary deprivation of nationality cannot be invoked by a State as a justification for the denial of other human rights, including freedom of movement.<sup>87</sup> The Myanmar State’s complex web of discriminatory laws and movement restrictions

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<sup>80</sup> *ibid.*

<sup>81</sup> Verification involves collecting the biodata of the deceased, including name, sex, age, and date and cause of death.

<sup>82</sup> Incident ref ICJ10-SIT-PM2c1.

<sup>83</sup> Incident refs ICJ10-PTW-PM2c1, ICJ10-PTW-PM2c2, ICJ10-PTW-PM2c3.

<sup>84</sup> Incident ref ICJ10-PTW-PM2c3.

<sup>85</sup> Incident refs ICJ10-PTW-PM2c1, ICJ10-PTW-PM2c2, ICJ10-PTW-PM2c3.

<sup>86</sup> Rohingya Communities Worldwide, ‘Joint UPR Submission 2020’ 11 [30]. Burma Human Rights Network, ‘Nowhere to Run in Burma: Rohingya trapped between an open-air prison and jail’ (26 August 2020).

<sup>87</sup> UNFFMM 2018 report *op. cit.* 119-120 [499-500].

applied solely to members of the Rohingya group violate international human rights laws. Furthermore, they criminalise the Rohingya for attempting to flee the appalling conditions of life they are subjected to in Rakhine State.

Both the military junta and the Arakan Army are profiteering from the freedom of movement restrictions on Rohingya, and the threat of arrest and imprisonment. BROUK has received credible allegations of Arakan Army involvement in human trafficking. In Pauktaw township, Rohingya IDPs report that the Arakan Army is compiling lists of Rohingya who want to flee and charging them for boat transportation.<sup>88</sup>

From July onwards, BROUK received reports that Rohingya IDPs who fled the conflict in Buthidaung and Maungdaw townships to seek relative safety in Sittwe faced multiple extortion demands along the way. The Arakan Army extorted money from Rohingya IDPs leaving territory under their control, then the IDPs faced similar demands from Myanmar navy patrols on the river. On arrival in Sittwe, Rohingya IDPs faced further extortion demands from the Myanmar military, as well as police and immigration authorities. Male IDPs who were unable to meet the final extortion demands were charged for travelling without authorisation or identity documents. Hundreds of Rohingya IDPs have faced trial and automatic conviction at Sittwe District Court every week. Rohingya women and girls from families who couldn't meet the extortion demands were reportedly transferred to a military compound to face rape and sexual violence.<sup>89</sup>

Increasing numbers of Rohingya find themselves faced with impossible choices, with little chance of survival. Many are departing on rickety, overcrowded boats in the hope of eventually reaching safety. On 10 November, 174 Rohingya drowned after their boat capsized near Hai Gyi Island in Ayeyarwady Region. They had fled from northern Rakhine State on 1 November.

At the time, Tun Khin, President of Burmese Rohingya Organisation UK, said, "Children and families are risking their lives on unseaworthy boats because they have no safe options in Burma. The drowning of 174 Rohingya is not just another tragedy at sea - it is a direct consequence of ongoing genocide and brutal repression. The international community's inaction has allowed these tragedies to persist."<sup>90</sup>

Six survivors – including two children - who had clung to debris for days, were eventually rescued by a foreign ship and handed over to the Myanmar Navy. The four adults were subsequently arrested and sentenced to two years imprisonment, while the two minors are being held in a child detention centre.<sup>91</sup>

In summary, this section of the report has set out numerous examples of the acts underlying 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part', otherwise known as 'slow death'. In line with the acts enumerated by the ICTY and ICTR, they include denial of proper shelter, subjecting the group to a subsistence diet / lack of proper food, lack of water and proper sanitation facilities, and failing to provide adequate medical care.

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<sup>88</sup> Incident ref ICJ10-PTW-PM2c3.

<sup>89</sup> Incident refs ICJ10-SIT-PM2c3, ICJ10-SIT-PM2b1.

<sup>90</sup> BROUK, '174 Rohingya Drown at Sea Fleeing Escalating Genocide and Violence in Burma' (18 November 2024) available at <<https://www.brouk.org.uk/174-rohingya-drown-at-sea-fleeing-escalating-genocide-and-violence-in-burma/>> accessed 19 December 2024.

<sup>91</sup> Incident ref ICJ10-BUT-PM2c1.

With regard to the question of genocidal intent, the 2016 ICTY *Karadzic* judgment established that evaluating the criterion of probability should take into account the illustrative factors of the actual nature of the conditions of life, the length of time that members of the group were subjected to them, and the characteristics of the group, such as its vulnerability. These illustrative factors are arguably all present. The proactive attempts by Myanmar authorities to *prevent* the Rohingya group from escaping these appalling conditions is arguably further indication of genocidal intent to destroy the group in whole or in part.

It is important to recall that the *Karadzic* judgment establishes that the genocidal act of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ‘does not require proof that the conditions actually led to death or serious bodily or mental harm of members of the protected group. When **“such a result is achieved, the proper charge will be paragraphs (a) or (b)” [killing or serious bodily or mental harm].**’ [emphasis added]<sup>92</sup>

## Causing serious bodily or mental harm to members of the group

The jurisprudence of the ad hoc tribunals has clarified that the genocidal act of causing serious bodily or mental harm ‘need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment or humiliation. It must be harm that results in a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life’.<sup>93</sup>

The conduct underpinning this genocidal act may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment, as set out in the Elements of Crimes for the Rome Statute of the International Criminal Court.<sup>94</sup> This reflects the seminal finding by the ICTR in the *Akayesu* case that sexual violence and rape can constitute genocide, provided that they are committed with genocidal intent, and are ‘one of the worst ways [to] inflict harm on the victim as he or she suffers both bodily and mental harm’.<sup>95</sup> The ICJ itself has previously referred to this construction.<sup>96</sup> The ICTR further clarified in *Akayesu* that ‘rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person’.<sup>97</sup>

According to the ICTY, ‘the bodily or mental harm caused must be of such a serious nature as to contribute or tend to contribute to the destruction of the group’ and ‘may include torture; rape; and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs’.<sup>98</sup> The ICTY has further established that threats of death and ‘knowledge of impending death’ are examples of serious mental harm.<sup>99</sup>

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<sup>92</sup> ICTY, *Prosecutor v. Karadzic*, *op. cit.* [546].

<sup>93</sup> ICTY, *Prosecutor v. Krstić*, Trial Chamber, Judgment, 2 August 2001, IT-98-33-T, [513]; ICTR, *Prosecutor v. Akayesu*, Trial Chamber, Judgment, 2 September 1998, ICTR-96-4-T, [502] stating that the bodily or mental harm need not be ‘permanent or irremediable’. Cited in Mark Klamberg, Jonas Nilsson and Antonio Angotti (eds.) *Commentary on the Law of the International Criminal Court: The Statute, Volume I* (2nd ed.) Torkel Opsahl Academic E-Publisher (2023).

<sup>94</sup> International Criminal Court, *Elements of Crimes*, (2011) Article 6(b).

<sup>95</sup> ICTR, *Prosecutor v. Akayesu*, Trial Chamber, Judgment, 2 September 1998, ICTR-96-4-T, [713].

<sup>96</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*), Judgment, ICJ Reports 2015, 3 [158]; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, ICJ Reports 2007, 43 [300-302].

<sup>97</sup> ICTR, *Prosecutor v. Akayesu*, (Case No. ICTR-96-4-T), 2 September 1998, [597].

<sup>98</sup> ICTY, *Prosecutor v. Mladić*, Trial Chamber, Judgment, 22 November 2017, IT-09-92-T [3433]; *Prosecutor v. Karadžić*, Trial Chamber, Judgment, 24 March 2016, IT-95-5/18-T [543–545]. Cited in Klamberg eds. *op. cit.* 132.

<sup>99</sup> *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-A, ICTY A. Ch., Judgment, 8 April 2015 [206].

Against the backdrop of the appalling conditions of life inflicted on the Rohingya group in Rakhine State by the regime, the Myanmar military has routinely targeted Rohingya men and youth for forced recruitment since February 2024.<sup>100</sup> Coercion is routine, particularly threats to family members. It is very difficult to verify exactly how many Rohingya youth and men have been forcibly conscripted into the Myanmar military, but the number could be as many as 5,000 or more.<sup>101</sup> After a short period of abusive military training lasting no more than two weeks, they are routinely deployed to the frontlines, where many are believed to have been killed.

By September, 2,000 Rohingya were reported to have been abducted from the refugee camps in Bangladesh by Rohingya armed groups, and either conscripted into the RSO, ARSA, or ARA or handed over to the Myanmar military.<sup>102</sup> Provisional measure (2) specifically refers to acts committed by the Myanmar military and ‘any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence’.<sup>103</sup>

### **Allegations of rape and sexual violence by the Myanmar military**

BROUK has received credible allegations of the Myanmar military perpetrating rape and sexual violence against Rohingya IDP women and girls who arrived in Sittwe after fleeing the conflict in Buthidaung and Maungdaw townships. As described above, Rohingya IDPs faced multiple extortion demands en route, as well as on arrival in Sittwe. Rohingya brokers who have reportedly been given weapons by the Myanmar military are involved in the extortion racket in Sittwe, offering to secure the release of Rohingya IDPs from police custody in return for huge sums of money. Women and girls are threatened with being transferred to military compounds - where they face sexual violence and rape by Myanmar army soldiers - to coerce them to pay. A displaced Rohingya woman from Buthidaung was among those who fled to Sittwe, along with her four children. She told BROUK,

*My husband was killed in the drone explosion in Buthidaung [on 17 May]. I fled here together with others and was arrested here. The broker demanded 1.5 million kyat from each person [over \$700]. The broker told me that if I don't pay, he will send me and my two daughters to the military [compound] for a while. I refused to send my daughters to them. I had to ask my relatives for help, and they agreed to send the money to the broker. So finally, we were released as I could raise the money. However, there are more than 100 displaced Rohingya who are unable to pay and so their daughters and sisters will be taken to the military [compound].<sup>104</sup>*

BROUK has been unable to verify how many Rohingya women and girls have been sent to military compounds, or what exactly happened to them at the hands of Myanmar army soldiers there. However, BROUK is gravely concerned that these reports fit the pattern of conduct previously identified by the UNFFMM during the 2016-2017 genocidal attacks. The UNFFMM documented that, ‘The operations

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<sup>100</sup> BROUK first received reports that IDP Camp Management Committees in Sittwe had been ordered to recruit Rohingya for the Myanmar military on 20 January, a few weeks before the first batch of Rohingya men and youth were taken for conscription.

<sup>101</sup> HRW, ‘Myanmar: Armies Target Ethnic Rohingya, Rakhine’ (12 August 2024) citing local media reports, available at <<https://www.hrw.org/news/2024/08/12/myanmar-armies-target-ethnic-rohingya-rakhine>> accessed 26 December 2024.

<sup>102</sup> Myanmar Now, ‘Rohingya refugees detail worsening violence in Myanmar’ (24 September 2024) available at <<https://myanmar-now.org/en/news/rohingya-refugees-detail-worsening-violence-in-myanmar/>> accessed 31 December 2024.

<sup>103</sup> ICJ, (23 January 2020) *op. cit.*

<sup>104</sup> Incident ref ICJ10-SIT-PM2b1.

involved the systematic abduction of women and girls and in many cases their detention in military and police compounds, where they were raped or gang raped.<sup>105</sup>

## Ongoing forced recruitment into the Myanmar military

*Of extreme concern, including in the light of the provisional order on the prevention of Rohingya deaths by the International Court of Justice, is the existence of videos, pictures and multiple other sources indicating that, under the cover of the conscription law, the military has forcibly taken Rohingya men out of camps and villages and provided rudimentary training before deploying them to the battlefield.*<sup>106</sup> (UN High Commissioner for Human Rights)

BROUK and local media outlets have continued to document forced recruitment of Rohingya by the Myanmar military from the internment camps and Rohingya villages in Sittwe township in September, October, and November.<sup>107</sup> It is very difficult to corroborate the number of Rohingya youth and men who have been forcibly recruited in the latest rounds. Overall, local media report that over 1,000 Rohingya have been taken from Sittwe camps and villages for forced recruitment since conscription began in February.<sup>108</sup>

A Rohingya IDP from Darpaing camp explained, “We don’t want to attend the military training. If we evade conscription, our family members will be arrested. We can’t deny the junta’s forced conscription and have nowhere to flee. Rohingya [Muslims] are being used by the regime.”<sup>109</sup> Another Rohingya youth reported, “In a given family, if a son runs away without serving in the military, the regime arrests a member of his family and forces him to serve in the military. If a draftee does not attend military training, the regime arrests and tortures his parents.”<sup>110</sup> Similar threats to family members of forced recruits have been corroborated by the UN High Commissioner for Human Rights.<sup>111</sup>

Rohingya IDPs and villagers in the Sittwe area also report that conscription orders are accompanied by rising extortion demands from the Myanmar military, ostensibly to pay salaries and other necessities for forced recruits. This has been disputed by the few Rohingya who have been able to contact conscripts after they have been recruited, who instead report severe hardship and denial of medical treatment. Such extortion demands are adding to the famine conditions prevalent in the camps. A Rohingya IDP man from Ohn Taw Gyi camp reported, “Without a job and income, many can’t afford to give that amount of money. They have to borrow from others to pay. Many are even struggling just to not starve. Many can’t afford to buy medicines when they are sick.”<sup>112</sup>

It is difficult to collect and verify detailed information about the fate of Rohingya conscripts after they are deployed to the frontlines. BROUK fears that the death toll among Rohingya forced recruits

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<sup>105</sup> UNFFMM, 2018 report *op. cit.* 348 [1372].

<sup>106</sup> UNHCHR, ‘Situation of human rights of Rohingya Muslims and other minorities in Myanmar’ (18 June 2024), *op. cit.* 9 [30].

<sup>107</sup> Incident refs ICJ10-SIT-PM2b-FR2, ICJ10-SIT-PM2b-FR3, ICJ10-SIT-PM2b-FR4.

<sup>108</sup> DMG, ‘Threefold rise in monthly levy on households to supply Muslim conscripts’ (12 October 2024) available at <<https://www.dmediag.com/news/wasapyhu.html>> accessed 26 December 2024.

<sup>109</sup> DMG, ‘Regime signals more conscription of Muslim IDPs from Sittwe displacement camps’ (30 September 2024) available at <<https://www.dmediag.com/news/sigmoecn.html>> accessed 26 December 2024.

<sup>110</sup> DMG, ‘Forced Muslim Recruitment and Divide-to-Conquer Tactics in War for Control of Arakan’ (5 October 2024) available at <<https://www.dmediag.com/review/mudepkst.html>> accessed 26 December 2024.

<sup>111</sup> UNHCHR, (18 June 2024), *op. cit.* 10 [35].

<sup>112</sup> DMG, (12 October 2024) *op. cit.*

deployed to the frontlines may never be known, but believes that hundreds if not thousands of Rohingya men have likely been sent to their deaths in this brutal way.

After losing control of Buthidaung township to the Arakan Army in May, the Myanmar army primarily appeared to rely on its collaboration with Rohingya armed groups to bolster its ranks in Buthidaung and Maungdaw, detailed below.

## **Rohingya armed groups: abductions, trafficking from Bangladesh refugee camps for the Myanmar military**

All three Rohingya armed groups - Arakan Rohingya Salvation Army (ARSA), Arakan Rohingya Army (ARA), and Rohingya Solidarity Organisation (RSO) - largely function as criminal enterprises and do not represent Rohingya communities.

As highlighted by the UN Special Rapporteur in his October 2024 report, these Rohingya criminal gangs have continued to forcibly recruited Rohingya men and boys, including children, in refugee camps in Bangladesh for deployment to the conflict in Rakhine State.<sup>113</sup> They are either forced to fight alongside Myanmar military soldiers, or directly handed over to the junta. Many have been abducted by the gangs or faced violence or other forms of coercion, such as extortion.

The abduction and forced recruitment of under-18 Rohingya boys is particularly concerning. A Rohingya refugee told HRW that RSO members took his 15-year-old son, 17-year-old nephew, and about 20 other young men and boys to Myanmar in May. He said, “We have stopped eating and drinking due to grief. I want to get my son back. He is too young to understand anything about war.”<sup>114</sup>

A 16-year-old Rohingya refugee described his abduction from a camp by alleged RSO members. Despite being delivered to a military base, he said that he didn’t receive any military training. “We were blindfolded and led to a boat. I don’t know where exactly they (the kidnappers) delivered us in Myanmar, but it was a military base. They (the junta) posted pictures of us with firearms online. They didn’t give us ammunition but put us on the front lines,” he told BenarNews.<sup>115</sup>

A 17-year-old Rohingya refugee recounted a similar abduction experience to Fortify Rights. He described being abducted by a Rohingya criminal gang in March: “There were around seven people who came to a café where I was drinking tea. They pointed a gun at me, blindfolded and tied my arms and legs with a rope, then abducted me from there. Later, I was taken to Myanmar... Then I was taken to the Myo Thu Gyi BGP [Border Guard Police] Headquarters [in Maungdaw Township, Rakhine State].”<sup>116</sup>

After being abducted from a market by a Rohingya criminal gang in May, a Rohingya refugee man described being bused to the Teknaf jetty on the Myanmar-Bangladesh border, before being transferred by boat late at night. He told Fortify Rights:

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<sup>113</sup> UNGA, (25 October 2024) *op.cit.* 7[43].

<sup>114</sup> HRW, (12 August 2024) *op. cit.*

<sup>115</sup> Benar News, ‘Rohingya recount horrors of being kidnapped, forced to fight in Myanmar’ (12 November 2024) available at <<https://www.benarnews.org/english/news/bengali/rohingya-recount-battles-11122024114349.html>> accessed 26 December 2024.

<sup>116</sup> Fortify Rights, ‘Myanmar/Bangladesh: End Abduction, Forced Conscription of Rohingya Civilians’ (26 July 2024) available at <<https://www.fortifyrights.org/bgd-inv-2024-07-26/>> accessed 26 December 2024.

*We were taken from the boat and kept at the Border Guard Police Headquarters, also known as Na Kha Ka 5 [Border Guard Police Battalion no.5] in Myo Thu Gyi [village] in Maungdaw [Township]. ... I had been in detention for seven days. ... During the training, [the Myanmar military] beat us badly with a wooden stick if any of us couldn't do the training properly.<sup>117</sup>*

These accounts track with information previously reported by BROUK, about Rohingya refugees being abducted and sent to the Border Guard Police Battalion no. 5 at Myo Thu Gyi in Maungdaw.<sup>118</sup> The Arakan Army began its assault on the military outpost on 14 October, eventually capturing it on 8 December. According to the AA, more than 450 junta soldiers were killed in the battle for Myo Thu Gyi, the last remaining junta outpost in Maungdaw. It may never be known how many of them were Rohingya conscripts who had been unable to escape. The AA has acknowledged capturing Rohingya prisoners of war, alongside Brigadier General Thurein Tun, who led the 15th Military Operations Command (MOC-15). However, the AA described them as Islamic extremists belonging to the RSO, ARA, and ARSA.<sup>119</sup>

## **Killing members of the group**

As described above, untold numbers of Rohingya men and youth forcibly recruited by the Myanmar military and allied criminal enterprises have been sent to their deaths on the frontlines in Rakhine State.

The regime's blockade and restrictions on humanitarian access in Rakhine State have exacerbated acute famine conditions, especially for Rohingya. Moreover, the ever-deteriorating conditions of life inflicted upon Rohingya by the regime in north and central Rakhine State have resulted in the preventable deaths of at least 100 Rohingya.<sup>120</sup> Many were young children who died from diarrhoeal disease. This figure is conservative and is likely to be much higher.

In June, a boat carrying over 40 Rohingya civilians fleeing the fighting was stopped by Myanmar Border Guard Police on the Naf River. After passengers met extortion demands, they were allowed to pass. Two miles from that location, the Myanmar navy rammed the boat, causing it to sink. There were only three survivors of the attack, who reported that the bodies of dozens who were killed - including children - were seen floating in the water.<sup>121</sup>

In accordance with the *Karadzic* case law, the killings described above may amount to genocidal acts when intent to destroy the group in whole or in part can be inferred from the context and the actions of the perpetrators.

Due to factors such as the denial of international humanitarian access, lack of international scrutiny, security issues and rolling communication blackouts, BROUK is extremely concerned that killings of Rohingya amounting to genocidal acts may be more pervasive than documented in this report.

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<sup>117</sup> *ibid.*

<sup>118</sup> BROUK, 'The Intensifying Rohingya Genocide' (June 2024) 26.

<sup>119</sup> Arakan Army Statement released on their official Telegram channel in Burmese language only, (11 December 2024) available at < <https://t.me/aainfodesk/1191>>.

<sup>120</sup> This figure includes the 60 IDPs who died of diarrhoeal disease in Buthidaung township, 7 deaths confirmed by MSF in Pauktaw township, an additional 31 deaths confirmed by BROUK in Pauktaw township and one in Sittwe. It also includes the two elderly women who died in Myebon township, who were named in local media.

<sup>121</sup> Incident ref ICJ10-MDW-PM2a1.

## Provisional measure (3) – preserve evidence

‘The Republic of the Union of Myanmar shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide.’

In its previous briefings, BROUK has highlighted how the Myanmar regime has continued to build infrastructure on Rohingya land razed during the ‘clearance operations’ of 2016-2017, including on sites of alleged mass killings and other serious crimes. A case in point is Myo Thu Gyi. After the clearance operations in 2017 the whole of Myo Thu Gyi village tract in Maungdaw township was confiscated. The Myanmar military constructed present-day Border Guard Police outpost no. 5 on the site of Hainda Para Rohingya village, also known as Myo Thu Gyi. More than 100 Rohingya are estimated to have been killed in Hainda Para in 2017, with some bodies reportedly buried in Myo Thu Gyi cemetery and others removed by the Myanmar military. As described above, an unknown number of Rohingya forced recruits have been taken to Border Guard Police outpost no. 5 since February 2024. At least some likely died there during the battle for control of the outpost, the last to fall to the Arakan Army in Maungdaw township.

The Myanmar State is obliged to comply with this provisional measure at all times. This includes during situations of internal armed conflict, as well as with reference to fresh allegations of genocidal acts since the provisional measures were ordered in January 2020.

## Provisional measure (4) – report to the ICJ

‘The Republic of the Union of Myanmar shall submit a report to the Court on all measures taken to give effect to this Order within four months, as from the date of this Order, and thereafter every six months, until a final decision on the case is rendered by the Court.’

At the time of writing, it is unclear whether the SAC met the 23 November 2024 deadline to submit its latest report on compliance with the provisional measures order.

The extensive evidence and analysis of the junta’s breaches of the ICJ’s provisional measures order presented in this report underscore – yet again – the urgent need for *contemporaneous* international scrutiny and transparency in the reporting process on compliance with provisional measures to the Court in this case. As the situation currently stands, the SAC can breach the provisional measures without facing any consequences.

Under the Rules of the Court, the ICJ may of its own accord either issue further provisional measures or amend the existing order by providing more specific instructions.<sup>122</sup> If Myanmar were legally obliged to make its compliance reports public *at the time of submission* to the Court as part of its *erga*

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<sup>122</sup> See International Court of Justice Rules of Court adopted on 14 April 1978 and entered into force on 1 July 1978, Rules 75 and 76. See also Prachiti Venkatraman and Ashley Jordana, UK Human Rights Blog, ‘Myanmar’s Compliance with the ICJ Provisional Measures Order & the Road Ahead’ (3 September 2020) available at <https://ukhumanrightsblog.com/2020/09/03/myanmars-compliance-with-the-icj-provisional-measures-order-the-road-ahead/> accessed 14 May 2024 and USHMM, Report#2, *op.cit.* 5. A change to the Internal Judicial Practice of the Court provided for the establishment of an ad hoc committee comprised of three judges to assist the Court in monitoring the implementation of provisional measures. The ad hoc committee reports periodically to the Court and can recommend potential options to the Court, which should include a recommendation to make Myanmar’s reports public. ICJ Press Release, ‘Adoption of a new Article 11 of the Resolution concerning the Internal Judicial Practice of the Court, on procedures for monitoring the implementation of provisional measures indicated by the Court’ (21 December 2020) No. 2020/38.

*omnes* obligations to the international community on the prevention and punishment of genocide, this would give UN member states compelling reason to urge the UN Security Council to exercise its Chapter VII mandate and adopt a binding resolution on Myanmar in pursuit of peace and security in the country and wider region.<sup>123</sup> Such a resolution should include referring the situation in Myanmar to the International Criminal Court.

## Latest developments in the ICJ case

On 3 July 2024, the Court unanimously decided that two declarations of intervention in The Gambia's case against Myanmar by State parties to the Genocide Convention were admissible.<sup>124</sup> Myanmar had objected to the admissibility of the two declarations, while The Gambia had argued in favour.

Canada, Denmark, France, Germany, the Netherlands and the United Kingdom had filed their joint declaration of intervention in the case on 15 November 2023. The Republic of the Maldives filed a separate declaration of intervention the same day. These States filed their declarations of intervention under Article 63(2) of the ICJ Statute, as they are parties to the Genocide Convention. Read together with the Rules of the Court, this gives State parties to an international convention the right to intervene in a case where it concerns the 'construction' of a convention.<sup>125</sup> In brief, this means that intervening States can seek to clarify the interpretation of the Genocide Convention, and the Court's findings will be binding on them. In practice, the Court's order gives intervening States the right to participate in proceedings, on this basis.

On 29 November 2024, the Republic of Slovenia also submitted a declaration of intervention in the case, followed by the Democratic Republic of the Congo (DRC), Belgium, and Ireland on 10, 12, and 20 December 2024 respectively. According to the recently updated Rules of the Court, declarations of intervention must be filed not later than the date fixed for the filing of the last written pleading by State parties to the case.<sup>126</sup> This deadline was 30 December 2024, when Myanmar's Rejoinder was due to be filed with the Court. Under the Court's procedures, the latest declarations will have been immediately passed on to both Myanmar and The Gambia to seek their views on admissibility. At the time of writing, Canada, Denmark, France, Germany, the Netherlands, the United Kingdom and the Maldives have been confirmed as intervening States by the Court. The Court has yet to publicly issue its decision on the admissibility of additional declarations filed by other States.<sup>127</sup>

The merits phase of the case is currently at the second round of written proceedings. During written proceedings, The Gambia and Myanmar file and exchange written pleadings. These are detailed statements on the facts and points of law on which each party relies to build their case, followed by an

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<sup>123</sup> Article 77 of the Rules read with Article 41(2) of the Court's Statute provides that any provisional measures ordered by the Court are to be communicated to the UNSC. To date there is no indication that the reports on compliance with the orders have been provided to the UNSC. Erin Farrell Rosenberg, John Packer, Fernand de Varennes, 'Provisional Measures in The Gambia v. Myanmar Case Before the ICJ: The Case for Making Myanmar's Report Public' (22 May 2021), 11.

<sup>124</sup> *The Gambia v. Myanmar*, International Court of Justice 'Order - Admissibility of the Declarations of Intervention' (3 July 2024).

<sup>125</sup> Article 63(2) ICJ Statute available at <<https://www.icj-cij.org/statute>> and Article 82(3) ICJ Rules of Court, available at <<https://www.icj-cij.org/rules>> accessed 1 June 2024.

<sup>126</sup> EJIL! Talk 'The ICJ Changes the Rules for Intervention' (11 March 2024) available at <<https://www.ejiltalk.org/the-icj-changes-the-rules-for-intervention/>> accessed 3 January 2025.

<sup>127</sup> Following its practice with the earlier declarations of intervention, the Court will likely fix deadlines for the submission of written observations by the two parties to the case in response to the declarations - and for Slovenia, DRC, Belgium and Ireland in the event of an objection to their declarations by either party - after which the Court will issue its decision on the admissibility of these latest declarations of intervention, most likely in the first quarter of 2025.

oral phase consisting of public hearings at which Agents for each State (their designated representatives) and lawyers address the Court.<sup>128</sup>

The first round of written proceedings concluded in August 2023, following Myanmar's submission of its case for the defence - known as the Counter-Memorial - in response to The Gambia's earlier submission of its case for the prosecution, the Memorial. Both parties to the case agreed that a second round of written pleadings was necessary before proceeding to oral hearings. According to the latest publicly available information, The Gambia submitted its Reply (written submission in response to Myanmar's Counter-Memorial) on 23 May 2024. The Court subsequently set the deadline of 30 December 2024 for the filing of Myanmar's Rejoinder (written submission in response to The Gambia's Reply).<sup>129</sup>

Intervening States confirmed by the Court will be provided with copies of the written pleadings by The Gambia and Myanmar. Once all the written pleadings have been filed, the Court will fix a deadline for intervening States to submit their written observations. These written observations must be limited to the subject matter of their intervention – i.e. seeking to clarify the meaning of provisions of the Genocide Convention, as they relate to the case. The Court will decide at a later date whether intervening States will be allowed to make observations during oral proceedings.<sup>130</sup>

Based on their declaration of intervention, the Joint Declarants (Canada, Denmark, France, Germany, the Netherlands and the United Kingdom) will submit their written observations to the Court primarily on interpretation of Article II of the Genocide Convention, namely the *underlying acts* constituting genocide when committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

In brief, in their written observations the Joint Declarants will submit to the Court that underlying acts of genocide may take the form of sexual and gender-based violence, and that forced displacement can lead to an underlying act of genocide. They will also put forward legal arguments to support their view that underlying acts of genocide need to be assessed differently when committed against children, bearing in mind the particular impact of such acts on children. Finally, they will argue that sexual and gender-based violence, acts committed against children, and forced displacement play an important role in determining the specific genocidal intent required under Article II of the Genocide Convention.<sup>131</sup> For its part, the Maldives will submit their written observations on the *duty to punish genocide* set out in Articles I, IV, V and VI of the Genocide Convention.<sup>132</sup>

Until the case concludes and the final judgment is issued, the State of Myanmar is obliged to continue reporting on compliance with the Court's provisional measures order every six months. The length of court proceedings mean that even greater public scrutiny must be afforded to Myanmar's compliance with the ICJ's provisional measures order, given that its purpose is to protect the Rohingya from irreparable harm. At the time of writing, it is unclear whether intervening States will be provided with

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<sup>128</sup> ICJ, 'How the Court works' available at <<https://www.icj-cij.org/how-the-court-works>> accessed 5 December 2024.

<sup>129</sup> *The Gambia v. Myanmar: seven States intervening*, International Court of Justice, 'Order 21 November 2024' available at <<https://www.icj-cij.org/sites/default/files/case-related/178/178-20241121-ord-01-00-en.pdf>> accessed 5 December 2025.

<sup>130</sup> ICJ 'Order - Admissibility of the Declarations of Intervention' *op cit.* 10 [48].

<sup>131</sup> 'Joint Declaration of Intervention of Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom' 17 [75] available at <<https://www.icj-cij.org/sites/default/files/case-related/178/178-20231115-wri-01-00-en.pdf>> accessed 5 December 2024.

<sup>132</sup> 'Declaration of intervention of The Republic of the Maldives' 6 [20] available at <<https://www.icj-cij.org/sites/default/files/case-related/178/178-20231115-wri-02-00-en.pdf>> accessed 5 December 2024. If the declarations of intervention filed by Slovenia, DRC, Belgium and Ireland before the 30 December 2024 deadline are deemed admissible by the Court, BROUK will address these in future reports.

Myanmar's compliance reports and The Gambia's written observations in response to those reports as part of their participation in proceedings.

The next section of this report examines violations of international humanitarian law and likely war crimes committed in Rakhine State over the reporting period, further breaches of the provisional measures.

## **Other atrocity crimes & the Arakan Army's failure to comply with the provisional measures**

The International Court of Justice ordered the provisional measures in the context of The Gambia's genocide case against Myanmar. The legal basis for the case is the Genocide Convention, to which both States are a party. The Gambia has also accused Myanmar of *continuing* to commit genocidal acts and of violating its other obligations under the Convention by failing to *prevent* and *punish* genocide. The Myanmar State has the primary responsibility to prevent and punish the crime of genocide and to prevent the commission of all atrocity crimes, as well as incitement to those crimes.

However, the significance of the Court's provisional measures order extends beyond the prevention of the crime of genocide and State responsibility. The Court described the Rohingya remaining in Myanmar as 'extremely vulnerable' and referred to the 'right of the Rohingya group in Myanmar and of its members to be protected from killings and other acts threatening their existence as a group'.<sup>133</sup> In simple terms, the order sets out that the Rohingya must be protected from further harm. Their right to exist as a group must be protected, and their rights respected. It makes common sense that the order must be interpreted within the wider body of international law. Otherwise, it would be meaningless to suggest that only killings and other acts *committed with genocidal intent* are outlawed by the order. All human rights violations perpetrated against the Rohingya cause grave harm, especially those amounting to atrocity crimes.

As UN Human Rights Commissioner Volker Türk has said,

*Despite the world saying "never again" we are once more witnessing killings, destruction and displacement in Rakhine. Parties to the armed conflict are issuing statements denying responsibility for attacks against the Rohingya and others, acting as though they are powerless to protect them. This stretches the bounds of credulity.... Such attacks stand in sharp contrast to obligations of all parties under international humanitarian law and to the provisional measures ordered by the International Court of Justice to protect the Rohingya against risk of further harm.*<sup>134</sup>

As the main powerholder in Rakhine State, the Arakan Army has both a legal and moral duty to respect and protect the rights of the Rohingya, including their right to exist as a distinct group. The Arakan Army must comply with the provisional measures and take concrete steps to protect the

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<sup>133</sup> ICJ, (23 January 2020) *op. cit.* 23[72], [70].

<sup>134</sup> OHCHR, 'Myanmar: Türk deploras attacks on civilians fleeing Rakhine, fears repeat of 2017 atrocities against Rohingya' (23 August 2024) available at < <https://myanmar.un.org/en/277135-myanmar-t%C3%BCrk-deplores-attacks-civilians-fleeing-rakhine-fears-repeat-2017-atrocities-against>> accessed 20 January 2025.

Rohingya, alongside all other civilians in Rakhine State. As a party to the conflict in Rakhine State, the Arakan Army must also uphold international humanitarian law.

### ***International humanitarian law***

One of the main purposes of international humanitarian law (IHL) is to protect non-combatants, people who are not taking part in hostilities – specifically, civilians, health workers and aid workers. Fundamental rules applicable in internal armed conflicts include the principle of distinction between combatants and civilians and between military and civilian objects. IHL requires all parties to a conflict to take precautionary measures to minimise harm to civilians and civilian objects, which includes providing effective warnings to civilian populations. Direct attacks against civilians and civilian objects are prohibited. Indiscriminate attacks (attacks which strike military objectives and civilians or civilian objects without distinction) are also prohibited. Reprisal attacks against civilians are prohibited in all circumstances, regardless of the behaviour of the other party to the conflict. All parties to internal armed conflicts must comply with IHL. Perpetrators of IHL violations may be held criminally liable under national and international law.

Customary international humanitarian law prohibits the use of weapons that are by nature indiscriminate.<sup>135</sup> Landmines are victim-activated weapons that cannot distinguish between civilians and combatants, and as such are inherently indiscriminate weapons. Although landmines are not yet enumerated as a specific prohibited weapon in the ICC Rome Statute, international human rights organizations are increasingly calling for the extensive use of landmines in civilian areas such as homes, villages, and farmland to be investigated as the war crime of directing attacks against civilians and civilian objects, a crime over which the ICC does have jurisdiction.<sup>136</sup>

War crimes are serious violations of international humanitarian law. Specific acts which are prohibited in the context of an internal armed conflict are described in Articles 8(2)(c) and 8(2)(e) of the Rome Statute of the International Criminal Court.<sup>137</sup> Such acts include (but are not limited to) murder, torture, cruel treatment, extrajudicial executions, sexual violence, rape, taking hostages, using, conscripting and enlisting children under the age of 15, pillaging, attacking civilians, and attacking civilian objects. Ordering the displacement of a civilian population in the context of an internal armed conflict is also prohibited, unless the security of the civilians involved or imperative military reasons so demand, both of which are exceptional circumstances.<sup>138</sup> When perpetrated in the context of an internal armed conflict and with the necessary intent and knowledge of both the act and context, these acts amount to war crimes.<sup>139</sup>

Torture constitutes a war crime when the perpetrator inflicted the pain or suffering for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind.<sup>140</sup> Although forced labour is not specifically enumerated as a war crime, it can amount to cruel treatment. In its judgment in the *Simić* case, the ICTY found that:

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<sup>135</sup> Rule 71. The use of weapons which are by nature indiscriminate is prohibited. See < [https://ihl-databases.icrc.org/en/customary-ihl/v1/rule71#Fn\\_8ACA2B68\\_00035](https://ihl-databases.icrc.org/en/customary-ihl/v1/rule71#Fn_8ACA2B68_00035) > accessed 13 November 2023.

<sup>136</sup> Amnesty International, ‘Myanmar: Military’s use of banned landmines in Kayah State amounts to war crimes’ (20 July 2022) available at < <https://www.amnesty.org/en/latest/news/2022/07/myanmar-militarys-use-of-banned-landmines-in-kayah-state-amounts-to-war-crimes/> > and accessed 9 January 2025.

<sup>137</sup> Articles 8 (2) (c) (i-iv) and 8 (2) (e) (i-xv). Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 1998, 2187 UNTS 90, U.N. Doc. A/CONF.183/9 (2002).

<sup>138</sup> Klamberg, Nilsson and Angotti (eds.) *International Criminal Court: The Statute Volume 1*, (2023) 2nd edition Torkel Opsahl Academic E-Publisher 405.

<sup>139</sup> Rome Statute, Article 30. See also International Criminal Court, *Elements of Crimes*, (2011) Articles 8(2)(c) and 8(2)(e).

<sup>140</sup> ICC Elements of Crimes, Article 8(2)(c)(i)-4.

*[C]ertain types of forced labor may amount to cruel and inhumane treatment if the conditions under which the labor is rendered are such as to create danger for the life or health of the civilians, or may arouse in them feelings of fear, and humiliation. . . . Forcing protected persons to work in life-threatening circumstances fails to meet the obligation for protection against acts of violence and may result in inflicting upon these persons physical and mental suffering. It has been held that placing detainees in life-threatening situations constitutes cruel and inhuman treatment.<sup>141</sup>*

Due to the rolling communication blackouts, the information presented below should not be considered a comprehensive or exhaustive account of serious violations of international humanitarian law amounting to likely war crimes perpetrated between 24 May – 31 December 2024. However, it does provide insight into the patterns of IHL violations affecting Rohingya civilians. It also demonstrates that the Arakan Army is failing to comply with the provisional measures order to protect the Rohingya.

## **Indiscriminate attacks, attacking civilians**

In Maungdaw township, Rohingya civilians have been killed in indiscriminate attacks by both the SAC and the AA. BROUK has received information about Rohingya civilians coming under direct attack by both parties, who occupied Rohingya villages from early June onwards, turning them into battlegrounds.

In early June, AA members took up position in Har Bi Rohingya village to the north of Maungdaw town. The Myanmar navy attacked the village with heavy artillery, killing a Rohingya family of six, including three children. Other Rohingya civilians were reported to have been injured in the attack.<sup>142</sup>

On 16 June, the Arakan Army ordered residents to evacuate Maungdaw town by 9pm. But there were no safe routes out of the town, and very few places to take refuge, with many of the surrounding villages already occupied by either AA or SAC soldiers and their proxies.<sup>143</sup> Fierce fighting broke out during the Islamic holy festival of Eid-al-Adha on 18 June. The Myanmar military took up positions in the Rohingya villages of Nyaung Chaung, Pa Din, and Du Chee Yar Tan, while the AA occupied Pan Taw Pyin. Rohingya civilians were trapped in the fighting and had to flee for their lives. In the days that followed, SAC airstrikes killed two Rohingya civilians in Har Bi village and injured three, including two children. AA drone attacks on Maung Ni Rohingya village (from their position at Pan Taw Pyin) killed at least five Rohingya civilians and injured another six.<sup>144</sup>

The fighting then spread to the Rohingya village of Shwe Zar. At least five Rohingya civilians including four children were severely injured in heavy shelling by the AA in early July. At least two of the children are known to have later died from their injuries. One family tried to cross into Bangladesh

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<sup>141</sup> *Prosecutor v. Simić*, ICTY, IT-95-17/1-T, Judgment (Trial) [91].

<sup>142</sup> Incident ref ICJ10-MDW-ARM-CON-1.

<sup>143</sup> Reuters, 'Thousands of Rohingya feared trapped in fighting in western Myanmar' (17 June 2024) available at <<https://www.reuters.com/world/asia-pacific/thousands-rohingya-feared-trapped-fighting-western-myanmar-2024-06-17/>> accessed 3 January 2025.

<sup>144</sup> Incident refs ICJ10-MDW-ARM-CON-2, ICJ10-MDW-ARM-CON-SAC1, ICJ10-MDW-ARM-CON-AA1.

to get treatment for their severely injured teenage daughter but were pushed back by the Border Guard Bangladesh.<sup>145</sup>

From June onwards, indiscriminate attacks also took place in Maungdaw town. Heavy artillery reportedly fired by the AA killed a 13-year-old Rohingya boy in Payzi hamlet, which is nearby the SAC military barracks in Myo Ma ward in Maungdaw town. Heavy shelling by the AA on Da Rwa Rohingya hamlet in Ward No. 1 landed on a Rohingya home next to a mosque, killing two Rohingya civilians instantly and injuring a dozen more.<sup>146</sup> Abdur was injured in a drone attack by the AA in Maungdaw town in similar circumstances. He managed to flee to Bangladesh a few days later. He told Reuters, “I never thought of leaving my village, not even in 2017. I don’t see any future for us. It all looks bleak.”<sup>147</sup> Fighting continued to escalate in Maungdaw town throughout July and August. Dozens of Rohingya civilians are believed to have been killed daily during the conflict in Maungdaw township, but exact numbers are hard to verify.<sup>148</sup>

## **Forced displacement by the AA**

In the immediate aftermath of the AA’s attack on Buthidaung town on 17 May that displaced tens of thousands of people, BROUK received information that the AA corralled IDPs in particular locations, such as Sein Hnyin Pyar and Hpon Nyo Leik. This led to overcrowding and is at least partly responsible for the rapid spread of communicable diseases among IDPs such as skin conditions and outbreaks of diarrhoea.<sup>149</sup>

A similar pattern is reported to be unfolding in Maungdaw township, with thousands of IDPs believed to be corralled at Hla Poe Khaung repatriation camp, as well as Mingalar Gyi and Kyauk Hle Kha village tracts. In October, AA soldiers are reported to have taken up positions within Hla Poe Khaung camp. They restricted Rohingyas from leaving the camp both day and night, essentially imprisoning them within the camp. They also banned the use of mobile phones and threatened that anyone found outside of the camp or using a mobile phone would be tortured.<sup>150</sup> The AA’s occupation of IDP sites and Rohingya villages increases the risk of retaliatory airstrikes by the SAC, which would have deadly consequences for Rohingya civilians.

The Arakan Army’s forced displacement of Rohingya civilians in Buthidaung and Maungdaw townships threatens to become a protracted situation. The AA has not yet allowed IDPs to return to their homes and villages in Buthidaung township and continues to conduct raids, including on villages that are hosting large numbers of IDPs, such as Hpon Nyo Leik.

In early October, AA forces conducted an early-morning raid on the Rohingya villages of Ah Twin Nget They and Hpon Nyo Leik. Villagers reported that AA members threatened and assaulted residents. The AA claimed the raids were in response to alleged Rohingya armed groups hiding in these villages, but residents deny this. “There are neither members nor supporters of Rohingya armed

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<sup>145</sup> Incident refs ICJ10-MDW-ARM-CON-3, ICJ10-MDW-ARM-CON-AA2.

<sup>146</sup> Incident refs ICJ10-MDW-ARM-CON-AA3, ICJ10-MDW-ARM-CON-AA4.

<sup>147</sup> Reuters, ‘Rohingya minority in firing line as rebels attack western Myanmar town’ (3 July 2024) available at <<https://www.reuters.com/world/asia-pacific/rohingya-minority-firing-line-rebels-attack-western-myanmar-town-2024-07-02/>> accessed 10 January 2025.

<sup>148</sup> Rohingya Organisations Joint Statement on Naf River Massacre (23 August 2024) available at <<https://www.brouk.org.uk/rohingya-organisations-joint-statement-on-naf-river-massacre/>> accessed 10 January 2025. See also, HRW, ‘Myanmar: New Atrocities Against Rohingya (22 August 2024) available at <<https://www.hrw.org/news/2024/08/22/myanmar-new-atrocities-against-rohingya>> accessed 10 January 2025.

<sup>149</sup> Incident ref ICJ10-BUT-ARM-CON-AA1.

<sup>150</sup> Incident ref ICJ10-MDW-ARM-CON-AA5.

groups in these villages. We haven't seen the movements of any armed groups except the movements of Arakan Army in these areas. This seems to be part of a plan to continue their brutal actions against Rohingya IDPs, who sought refuge here after fleeing from their own villages," a local resident reported.<sup>151</sup>

The Arakan Army is also maintaining strict curfews and movement restrictions on Rohingya villages across northern Rakhine State.<sup>152</sup> Co-opting the apartheid apparatus established by the regime will likely have particularly devastating consequences for extremely vulnerable Rohingya communities at this time of acute famine.

## **Attacking civilian objects by the AA**

The AA's arson attacks on Rohingya villages in Buthidaung township in April and May before, during, and after it seized control of the area have been well-documented by BROUK and other organisations, including Human Rights Watch.<sup>153</sup> BROUK is extremely concerned that the AA is repeating this pattern in Maungdaw township. On 17 December – after the AA had already captured the last remaining Border Guard Police Battalion No. 5 in Maungdaw town on 8 December – the AA is alleged to have deliberately set fire to the Rohingya villages of Maung Ni, Payzi, Ali, and Ward No. 2 in Maungdaw downtown. The villages were set ablaze at 1pm and the fires kept burning until evening. No other armed groups were reported to be present in the area at the time.<sup>154</sup>

## **Use of landmines**

Both the Myanmar military and the Arakan Army are reported to have laid landmines in Rakhine State, including along the Myanmar-Bangladesh border. Dozens of Rohingya fleeing the fighting in northern Rakhine State are believed to have been killed and maimed by landmines.

40-year-old Abdullah told HRW that four or five landmines exploded on the day he fled his village, killing at least two Rohingya. Abdullah and a friend were seriously injured, and only survived due to the help of the villagers fleeing with them. Both had to have a leg amputated. Abdullah recounted:

*On August 9, the Arakan Army forcibly evicted us from our village, so we headed toward the Naf River to cross the border into Bangladesh...The landmines were placed inside what looked like condensed milk cans, with sand and gravel piled on top. As soon as anything came near, they exploded. A landmine exploded beneath me and another villager as we walked along the main road...Villagers collected money to rush me to Bangladesh as quickly as possible...I believe I would have died if I had not been able to reach Bangladesh for one more day.*<sup>155</sup>

The SAC has laid landmines all around Rohingya IDP sites and villages in Sittwe township. In late July, a 19-year-old Rohingya youth lost his right leg in a landmine explosion while walking towards his village from the paddy field.<sup>156</sup> Only the most vulnerable civilians are now left behind in Sittwe,

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<sup>151</sup> BROUK, 'BROUK Denounces Continued Attacks by Arakan Army Against Rohingya in Rakhine State' (17 October 2024) available at <<https://www.brouk.org.uk/brouk-denounces-continued-attacks-by-arakan-army-against-rohingya-in-rakhine-state/>> accessed 11 January 2025.

<sup>152</sup> Incident refs ICJ10-MDW-ARM-CON-AA6, ICJ10-MDW-ARM-CON-AA7, ICJ10-MDW-ARM-CON-AA8.

<sup>153</sup> HRW (12 August 2024) *op. cit.*

<sup>154</sup> Incident ref ICJ10-MDW-ARM-CON-AA10.

<sup>155</sup> HRW, "I Didn't Think the Military Would Lay Mines in My House" (20 November 2024) available at <<https://www.hrw.org/news/2024/11/20/i-didnt-think-military-would-lay-mines-my-house>> accessed 9 January 2025.

<sup>156</sup> Incident ref ICJ10-SIT-SAC1.

including 112,000 Rohingya, half of them children. Confined to the camps and villages and surrounded by landmines, they are extremely vulnerable if Sittwe comes under attack by the AA.

## Unlawful killings by the AA

### *The Naf River massacre and its aftermath*

The events leading up to and including the Naf River massacre on 5-6 August have been well-documented, including by CNN, BBC, Amnesty International, Human Rights Watch, and Fortify Rights. Up to 200 Rohingya civilians are alleged to have been killed by the Arakan Army, many of them women and children according to eyewitness accounts and video documentation.

On 5 August, thousands of Rohingya civilians had fled the fighting and drone attacks by the AA on their villages and gathered on the banks of the Naf River, waiting for boats to take them to the relative safety of Bangladesh. 25-year-old Rehan told Fortify Rights:

*I and many other Rohingya moved out of our villages because AA has been dropping a lot of drone bombs on our villages since August 4, [2024]. Around a hundred Rohingya were already killed and injured in the villages [before we fled]. As many people were dying from drone attacks, all of us decided to move out of our village. ... AA began heavy shelling on August 4. They were firing continuously. As the attacks increased by August 5, we saw hundreds of villagers injured...and around 20 to 30 died; in addition to that, there being no doctors, we all decided to move to a shoreline [of the Naf River].<sup>157</sup>*

On the riverbank, the crowd came under attack by mortar shelling and drone bombs fired from AA positions, including Shwe Zar and Pan Taw Pyin village.<sup>158</sup> Fayaz, a survivor of the massacre whose infant son and sister-in-law were both killed, told the BBC:

*We were getting on the boat one after another - that's when they started bombing us...I ran and carried [my son]. But he died while we were waiting for the bombing to stop. [The boatman] said there was no point in carrying the dead, so I dug a hole by the riverbank and hastily buried him...The direction that the bombs came from, I know the Arakan Army was there.<sup>159</sup>*

An 18-year-old woman from Maungdaw told Amnesty International that she lost both parents and two of her sisters, aged seven and five, during the attack. As they arrived at the shore of the Naf River, one munition exploded, and they ducked down. She recounted:

*We quickly hid in the mud, sitting down in the muddy water, and then another bomb exploded, killing my parents, sisters and many others...I saw it all with my own eyes – my parents and sisters were killed when the bomb shrapnel hit them.<sup>160</sup>*

Several eyewitnesses have reported that some armed RSO members were among the group of civilians fleeing on 5 August. However, the vast majority of the people gathered on the beach waiting to cross the Naf River were civilians fleeing the violence. Moreover, there are credible reports that the AA sent

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<sup>157</sup> Fortify Rights, (27 August 2024) *op. cit.*

<sup>158</sup> *ibid.*

<sup>159</sup> BBC, 'My family died in front of my eyes': Harrowing tales from a Myanmar massacre' (20 August 2024) available at <<https://www.bbc.com/news/articles/czx6w130q1ko>> accessed 10 January 2025.

<sup>160</sup> Amnesty International, (24 October 2024) *op. cit.*

a surveillance drone before launching its deadly attack, indicating that the group intentionally attacked a civilian crowd that included children and the elderly.<sup>161</sup>

The AA's attack continued the next day, as people waited to be rescued on the shore. A 35-year-old Rohingya man explained to Fortify Rights that he was among a group of civilians who hid beside a retaining wall on the banks of the Naf River. He described how a group of 6 AA soldiers opened fire on them, killing his 8-year-old son and his sister-in-law, and injuring him and his 10-year-old daughter. He said:

*I acted like I was a dead body after they shot me. I told my daughter, "Don't cry." I told her, "If you cry, they will shoot us." ... I heard everything that the AA said, and they came close to our bodies. ... One AA soldier told another, "There are 19 dead people."<sup>162</sup>*

45-year-old Jamila tried to escape from her village on 5 August during a pause in the fighting, but then bombs struck her home, instantly killing her daughter, son-in-law, and seven-year-old granddaughter. Jamila managed to grab her six-month-old baby granddaughter from her daughter's arms and fled with her other three surviving grandchildren. They hid for five days. But her eldest grandchild didn't survive his injuries and died before they were able to find a boat to take them to Bangladesh. Jamila was forced to leave him on the beach. Jamila told CNN, "AA wants to wipe out Rohingyas from Rakhine State... Sadness will not go from our lives."<sup>163</sup> In the aftermath of the attacks dozens of Rohingya also drowned while trying to flee, when their boats capsized due to inclement weather and overcrowding.<sup>164</sup>

AA soldiers are alleged to have unlawfully killed Rohingya civilians in the days and weeks that followed the Naf River massacre. A 42-year-old Rohingya shopkeeper, who sought refuge in downtown Maungdaw after he was driven out of his village by the Arakan Army along with other Rohingya families, told Amnesty International he saw AA "snipers" shoot two Rohingya civilians on 15 August:

*I witnessed the Arakan Army kill a woman right on the spot with gunfire while she went to a pond to collect water ... there was another man who was sitting and smoking in front of his house and he too was shot right in his head and killed.<sup>165</sup>*

BROUK has also received information about the unlawful killing of a Rohingya man in a village in Buthidaung township on 6 September, allegedly carried out by AA soldiers. The group grabbed him in a public place, tied him up, kicked and punched him, and brutally beat him with guns and wooden sticks before tying a rope around his neck and dragged him away. Finally, he was shot dead and hastily buried in the local graveyard by AA soldiers. According to local reports, the man was falsely accused of affiliation with the Myanmar military.<sup>166</sup>

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<sup>161</sup> Fortify Rights (27 August 2024) *op. cit.*

<sup>162</sup> *ibid.*

<sup>163</sup> CNN, 'Massacre survivors say history is repeating – with new perpetrators' (29 August 2024) available at <<https://edition.cnn.com/2024/08/29/asia/myanmar-massacre-survivor-testimonies-intl-hnk-dst/index.html>> accessed 10 January 2025.

<sup>164</sup> HRW (22 August 2024) *op. cit.*, Fortify Rights (27 August 2024) *op. cit.*, Amnesty International, (24 October 2024) *op. cit.*

<sup>165</sup> Amnesty International, (24 October 2024) *ibid.*

<sup>166</sup> Incident ref ICJ10-BUT-ARM-CON-AA2.

## Rape and sexual violence by AA soldiers

Several Rohingya women have spoken out about gang-rape at the hands of AA soldiers in Maungdaw township.

22-year-old Hamida described to CNN how she was gang-raped by seven Arakan Army soldiers in late July.

*After they entered my home, they hit me, beat me, and I was struggling to get free when they raped me...They beat me with their guns. They kicked me. Still, I can't move (without) pain. They slaughtered my husband after they raped me. Four Arakan Army soldiers were holding him down tightly, and one slaughtered him with a big sharp knife.*<sup>167</sup>

19-year-old Manwara, her sister Shamshida and their family fled from their home in Hari Fara (Ward 2 in Maungdaw town) a few days after the Naf River massacre. On the way, their parents were killed by drone bombs from the direction of Arakan Army positions. Their three other sisters are missing, presumed dead. Manwara described to the New York Times how she ran together with her sister Shamshida, who was heavily pregnant. At some point Manwara was dragged away from her sister, and gang-raped by soldiers in Arakan Army uniforms. Immediately after escaping across the Naf River, Shamshida gave birth to a baby girl. Her infant daughter later died. The sisters were reunited with one surviving brother in Bangladesh but have been left severely traumatised. Manwara said, "Everyone hates us, but I don't know why. It's our curse."<sup>168</sup>

The 35-year-old Rohingya man who saved himself and his 10-year-old daughter during the Naf River massacre by playing dead for many hours, told Fortify Rights that he heard what he believed was AA soldiers raping, mutilating and killing a Rohingya woman:

*The woman was crying, 'Don't do this to me.' ... It was almost two hours, and then one AA said, 'Cut her arm and cut her breast.' ... After five minutes, I heard another gunshot. After that, I could not hear the woman.*<sup>169</sup>

These accounts are similar to the descriptions of brutal gang-rapes perpetrated by Myanmar army soldiers during the 2016-2017 genocidal attacks on the Rohingya group, documented by the UNFFMM.<sup>170</sup>

## Mass abduction and incommunicado detention of Rohingya men by the AA

According to information received by BROUK, mass abduction and detention of Rohingya men by the AA is widespread in both Buthidaung and Maungdaw townships. The vast majority are held incommunicado, prevented from having any contact with their families, which leaves them at serious risk of starvation, torture, and unlawful killings. Most family members do not know where their loved ones are being detained by the AA.

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<sup>167</sup> CNN, (29 August 2024) *op. cit.*

<sup>168</sup> New York Times, 'Tormentors Change, but Not the Torment' (28 December 2024) available at <<https://www.nytimes.com/2024/12/28/world/asia/myanmar-rohingya-abuse.html>> accessed 8 January 2025.

<sup>169</sup> Fortify Rights (27 August 2024) *op. cit.*

<sup>170</sup> UNFFMM 2018 report *op. cit.* 187[790], 215[927], 283[1197], 353[1397], 356[1410], 377[1498].

Since the AA's takeover of Buthidaung in May, more than 1,000 Rohingya men are believed to have been detained in Buthidaung prison on false accusations of supporting either the SAC or Rohingya criminal gangs. The conditions in Buthidaung prison are reported to be dire, with Rohingya detainees forced to work as labourers by the AA. Rohingya prisoners are facing extreme hunger and malnutrition. In October, an eyewitness recounted, "The prisoners are only fed once every two days, and the food is mostly spoiled. Many prisoners are suffering from various diseases due to the poor-quality food. Those who fall ill are not given any medical treatment. The prisoners are completely forbidden from meeting with their family members."<sup>171</sup> BROUK is very concerned that Rohingya prisoners might be left to starve by the AA during the acute famine conditions in Rakhine State. Hundreds more Rohingya men are believed to be held in over ten makeshift bamboo prisons in villages across Buthidaung township.<sup>172</sup>

BROUK has collected detailed information about 16 separate abduction incidents by the AA in Buthidaung and Maungdaw townships, in which at least 179 Rohingya men detained and held incommunicado by the AA.<sup>173</sup>

In late June, AA soldiers reportedly abducted eight worshippers during morning prayers at a mosque in Maungdaw town. Sometimes Rohingya men have been abducted in the middle of the night, while they were asleep. Reports that the AA is targeting educated Rohingya, including well-respected teachers and religious scholars for abduction, are especially concerning. At least four Rohingya teachers have been abducted by the AA and are being held incommunicado.<sup>174</sup>

Rohingya men are frequently abducted from their homes by the AA during raids on their villages. In late July, the Arakan Army raided Kye Kan Pyin village in northern Maungdaw, purportedly to investigate the disappearance of a man and a woman, both ethnic Rakhine. According to information received by BROUK, no Rohingya armed group was active in the area. The AA rounded up around 700 Rohingya civilians and interrogated them late into the night. Most were released that day, but around 200 are believed to have been held in AA custody in the area for at least another month, where they endured beatings and harsh interrogation. Most were gradually released in batches, including dozens of women and children who had been detained in the village school. But during that period, at least 19 Rohingya men and youths were transferred by the AA to Border Guard Police Battalion No. 2 (BGP 2) at four-mile outside of Maungdaw town, which the AA had been using as a detention centre since it captured the outpost on 6 July. On 9 September, the SAC conducted an airstrike on BGP 2, killing dozens of AA detainees and SAC soldiers. Rohingya detainees from Kye Kan Pyin village are believed to be among them, but this is difficult to verify.<sup>175</sup>

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<sup>171</sup> Incident ref ICJ10-BUT-TOR-AA1.

<sup>172</sup> Incident ref ICJ10-BUT-TOR-AA1. See also, UNHRC, ' (18 June 2024) *op. cit.* 10[36].

<sup>173</sup> Incident refs ICJ10-BUT-ABD-AA5, ICJ10-BUT-ABD-AA4, ICJ10-BUT-ABD-AA3, ICJ10-BUT-ABD-AA2, ICJ10-BUT-ABD-AA1, ICJ10-MDW-ABD-AA11, ICJ10-MDW-ABD-AA10, ICJ10-MDW-ABD-AA9, ICJ10-MDW-ABD-AA8, ICJ10-MDW-ABD-AA7, ICJ10-MDW-ABD-AA6, ICJ10-MDW-ABD-AA5, ICJ10-MDW-ABD-AA4, ICJ10-MDW-ABD-AA3, ICJ10-MDW-ABD-AA2, ICJ10-MDW-ABD-AA1.

<sup>174</sup> Incident refs ICJ10-MDW-ABD-AA6, ICJ10-MDW-ABD-AA9, ICJ10-BUT-ABD-AA5, ICJ10-BUT-ABD-AA3.

<sup>175</sup> Incident ref ICJ10-MDW-ABD-AA8. BROUK, 'International Action Needed Following Military Airstrikes in Rakhine State. Arakan Army Must End Arbitrary Detentions' (12 September 2024) available at <<https://www.brouk.org.uk/international-action-needed-following-military-airstrikes-in-rakhine-state-arakan-army-must-end-arbitrary-detentions/>>. See also, Myanmar Now, 'Arakan Army still holding Rohingya villagers detained in August: sources' (8 October 2024) available at <<https://myanmar-now.org/en/news/arakan-army-still-holding-rohingya-villagers-detained-in-august-sources/>> accessed 10 January 2025.

The AA has continued conducting raids on Rohingya villages even after it has seized control of an area. A Rohingya villager from Buthidaung township described one such raid in late October:

*The village was surrounded in the morning and members of the AA inspected each house. They abducted the Rohingya youths they encountered and took them into custody... the villagers were intimidatingly prohibited from moving for hours until the raid was accomplished. Movement was restricted solely to facilitate the abduction of people from their homes... The AA members threatened the villagers, warning that anyone who attempts to move or escape during the inspection will be shot.*<sup>176</sup>

## **Torture and cruel treatment by the AA**

BROUK is extremely concerned at reports that AA soldiers in northern Maungdaw township have subjected some Rohingya detainees to forms of torture targeting their Rohingya Muslim identity. This includes the burning of their beards, while yelling ‘[expletive] kular’ [a racist slur] at them. AA soldiers have also allegedly poured boiling water on Rohingya detainees during interrogation. Some Rohingya detainees are reported to have been tortured to death in AA custody in northern Maungdaw township.<sup>177</sup>

Rohingya prisoners held in Buthidaung jail are routinely tortured by AA members, according to reports. A former Rohingya prison labourer recounted:

*I personally heard the screams of prisoners as they were being brutally tortured and saw many prisoners starving for days. The prisoners are dying daily because they are not given medical treatment after being tortured and mistreated. When the prisoners die, we are forced to bury them as labourers. But we have to bury them without proper funerals, even though the deceased prisoners are Muslims. The Arakan Army does not allow funeral prayers.*<sup>178</sup>

These ground reports raise the prospect that the AA’s use of torture against Rohingya detainees across northern Rakhine State may be both widespread and systematic.

## **Forced recruitment by the AA**

Across Maungdaw township, more than 2,500 Rohingya men are believed to have been abducted by the AA for the purposes of forced recruitment. They have reportedly been taken to the AA headquarters in Kha Maung Seik in northern Maungdaw. Many are believed to have been taken to the frontlines to fight against the SAC and allied Rohingya armed groups.<sup>179</sup> According to local media reports, the AA uses the Rohingya conscripts as forced labour on a daily basis, described in more detail below.

Forced recruitment by the AA has also continued in Buthidaung township. In late October, the AA issued orders to at least five villages in southern Buthidaung township. A Rohingya resident explained:

*Smaller villages are required to provide 30 youths, while larger villages must provide 90. These youths will be recruited into the Arakan Army to fight against the*

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<sup>176</sup> Incident ref ICJ10-BUT-ABD-AA4.

<sup>177</sup> Incident ref ICJ10-MDW-TOR-AA1.

<sup>178</sup> Incident ref ICJ10-BUT-TOR-AA1.

<sup>179</sup> Incident ref ICJ10-MDW-FR-AA1.

*Military Council and Rohingya armed groups...Additionally, any individuals with connections to the Military Council or Rohingya armed groups must be handed over to the AA. If they fail to comply, the AA will continue conducting operations in the villages.*<sup>180</sup>

## **Forced labour by the AA**

Rohingya conscripted by the AA are reportedly subjected to forced labour daily. For example, at AA's Kha Maung Seik headquarters, Rohingya conscripts are ordered to cut 25 to 30 bundles of wood each day and forced to carry them back to headquarters on their shoulders.<sup>181</sup>

The AA have also exacted forced labour from multiple villages in northern Maungdaw township. Villagers have been forced to carry out sentry duty, clear land and plant crops on their own farmland for the AA, repair roads, ferry AA soldiers across the Naf River, and even clear landmines.<sup>182</sup> Those ordered to repair roads and plant crops around AA outposts have had to abandon their own meagre livelihoods to comply with the forced labour demands, at a time of acute famine.

In late October, 135 Rohingya youth and men from two villages were taken for six consecutive days and forced to clear landmines planted by the SAC at two locations, including Border Guard Police Battalion No. 5 at Myo Thu Gyi. Members of the AA are reported to have threatened villagers, stating that anyone who refuses to work will be “brutally punished, with strong action taken against them at our discretion.” They made it clear that such punishment included being shot dead or detained.<sup>183</sup> Rohingya men taken by the AA to clear landmines face constant danger and are at significant risk of losing their lives while performing the work.

## **Conclusion and recommendations**

Five years on from the International Court of Justice's legally binding provisional measures order to protect the Rohingya, and ‘never again’ has become ‘yet again’. In 2024, several thousand more Rohingya, including forced conscripts, are believed to have been killed in the conflict in Rakhine State and at least 70,000 more have sought refuge in Bangladesh.

The evidence presented in this report demonstrates that the Myanmar junta continues to commission genocidal acts with impunity. These include deliberately inflicting ‘slow death’ conditions of life on the Rohingya group. The regime's restrictions on freedom of movement for Rohingya in Rakhine State have severely limited access to livelihoods and medical care for decades. Road and waterway blockades, combined with increased restrictions on international humanitarian access imposed by the regime over the past year, have largely forced humanitarian agencies to abandon provision of the support on which many Rohingya communities were dependent.

Acute famine conditions have already taken hold in northern and central Rakhine State, in large part due to the regime's actions. The ever-deteriorating conditions of life inflicted upon Rohingya by the regime in north and central Rakhine State have resulted in the preventable deaths of at least 100 Rohingya, which may amount to the genocidal act of killings. The true figure is likely much higher. The regime also continues to commission the genocidal act of causing serious bodily or mental harm

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<sup>180</sup> Incident ref ICJ10-BUT-ABD-AA5.

<sup>181</sup> Incident ref ICJ10-MDW-FR-AA1.

<sup>182</sup> Incident ref ICJ10-MDW-ARM-CON-AA6, ICJ10-MDW-FL-AA1, ICJ10-MDW-FL-AA2, ICJ10-MDW-ARM-CON-AA9, ICJ10-MDW-FL-AA3.

<sup>183</sup> ICJ10-MDW-FL-AA3.

to members of the group by allegedly holding Rohingya women captive for rape and forcibly recruiting Rohingya men and youth - sending them to their deaths on the frontlines.

Instead of protecting the Rohingya – as it is legally bound to do - the regime is deliberately putting them in harm's way on the frontlines of conflict. It has allied itself with Rohingya armed groups, which also serves to incite hatred and violence towards the Rohingya community as a whole. The junta's actions to deliberately intensify a hostile environment conducive to atrocity crimes must be recognised. The regime's failure to prevent the commission of alleged atrocity crimes by the Arakan Army and its role in inciting such crimes are indicative of its ongoing genocidal intent towards the Rohingya group.

For its part, the Arakan Army has routinely violated international humanitarian law and committed acts which amount to war crimes, including forced displacement, arson attacks on Rohingya villages, killings, rape and sexual violence, and torture and cruel treatment. The Arakan Army also continues to forcibly recruit Rohingya men to its ranks and holds several thousand Rohingya men in incommunicado detention.

Many of the Arakan Army's actions are eerily reminiscent of the Myanmar military's conduct in 2016-2017, including its use of so-called 'clearance operations' to justify attacks on Rohingya villages on the pretext of driving out Rohingya armed groups such as ARSA, RSO and ARA. The AA's co-opting of the apartheid apparatus established by the regime - such as restrictions on freedom of movement for the Rohingya - will likely have devastating consequences for extremely vulnerable Rohingya communities at this time of acute famine. To date, the Arakan Army has abjectly failed to uphold the Court's order to protect the Rohingya.

Tens of thousands of Rohingya internally displaced in northern and central Rakhine State are in dire need of international humanitarian aid to prevent further loss of life. 112,000 Rohingya – half of them children – are currently trapped in Sittwe township, surrounded by landmines and unable to flee as the conflict edges closer to the city.

After five years, the international community's repeated failure to uphold international law and protect the Rohingya is a stain on humanity's conscience. The pain and suffering of Rohingya communities is profound. Rohingya communities can no longer survive through their incredible resilience alone – they urgently need international protection and life-saving humanitarian assistance.

The UK as penholder on Myanmar at the UN Security Council must urgently convene a meeting of the Council, which has the authority under the UN Charter to uphold the Court's binding orders when there is non-compliance. This should include discussing concrete steps that can be taken against the Myanmar military, Arakan Army, and Rohingya armed groups who are in breach of the provisional measures order to protect the Rohingya, as an urgent matter of regional peace and security.

The international community must urge Bangladesh to open an emergency humanitarian aid corridor to Rakhine State and allow trade to help end the famine. The international community must also increase their support to the government of Bangladesh to provide protection and humanitarian assistance, including food, medicine and shelter, to ensure the rights and dignity of Rohingya refugees are upheld.

Enduring peace and security in Myanmar and justice for the Rohingya are intertwined. This must include recognition of Rohingya identity and citizenship, which should be a touchstone policy for any transitional government and all relevant actors in Myanmar, including the Arakan Army. Rohingya

simply want peaceful co-existence between Rohingya and Rakhine communities, on equal terms, rooted in dignity, respect, and protection for the Rohingya identity and their individual and collective rights.

## **Recommendations**

### **To the International Court of Justice:**

- Urgently review Myanmar's compliance with the provisional measures and formally communicate its findings to the UN Security Council.
- Instruct Myanmar to make its reporting public at the time of submission to the Court, due to the public interest nature of the case, to ensure transparency and rigorous scrutiny of its compliance with the order.
- To prevent further irreparable harm to members of the Rohingya group, urgently amend the existing provisional measures order or indicate further provisional measures to include (but not limited to) requirements that Myanmar must immediately:
  - Cease and desist from conscripting Rohingya into its armed forces or allied armed groups;
  - Cease and desist from forcing the Rohingya to participate in public rallies in support of the Myanmar military;
  - Allow international, national, and local humanitarian actors immediate, unrestricted, and sustained access to Rakhine State;
  - End all arbitrary restrictions on freedom of movement, access to health and other resources indispensable for survival for the Rohingya;
  - Restore electricity and telecommunications to Rakhine State;
  - Implement policy and legislative changes as part of concrete measures it must take to comply, including the restoration of full citizenship to the Rohingya as a vital first step;
  - Cooperate with United Nations bodies and other international investigative mechanisms that seek to investigate the acts that are the subject of this case.

### **To the UN General Assembly, UN Human Rights Council, other UN bodies, human rights mandate-holders and mechanisms:**

- Make concerted efforts to consistently refer to the ICJ's legally binding provisional measures order in public statements about the Rohingya, including urging all parties to the conflict in Rakhine State to fully comply with the order to protect the Rohingya from further harm.
- Robustly engage with the Arakan Army to demand an immediate end to all human rights violations against Rohingya and other ethnic and religious groups in Rakhine State, including curfews and arbitrary restrictions on freedom of movement for the Rohingya in areas under their control.
- Increase diplomatic engagement with Myanmar's neighbours to facilitate humanitarian access and protection for Rohingya fleeing violence.
- Leverage the ICJ's provisional measures order within their own mandates to seek urgent protection for the Rohingya and end the cycle of impunity in Myanmar, including via public support for referral of the situation in Myanmar to the International Criminal Court or the creation of an ad hoc international tribunal.

**To UN member states:**

- The UK as penholder on Myanmar at the UN Security Council (UNSC) must urgently convene a meeting of the UNSC, which has the authority under the UN Charter to uphold the Court's binding orders when there is non-compliance. This should include discussing concrete steps that can be taken against the Myanmar military, Arakan Army, and Rohingya armed groups who are in breach of the provisional measures order to protect the Rohingya, as an urgent matter of regional peace and security.
- Bangladesh must open an emergency humanitarian aid corridor between Bangladesh and Rakhine State and allow trade to help end the famine.
- Support Bangladesh to rescue those fleeing violence in Rakhine State and provide protection and humanitarian assistance, including food, medicine and shelter to ensure the rights and dignity of these refugees are upheld.
- Exert maximum pressure on Myanmar to lift the blockade on roads and waterways in Rakhine State, and allow international, national, and local humanitarian actors immediate, unrestricted, and sustained access to Rakhine State and the rest of the country.
- Impose targeted sanctions on the Arakan Army and its leadership if they continue to commit serious violations of international humanitarian and human rights law against the Rohingya.
- Urge Myanmar to restore electricity and telecommunications in Rakhine State, and end all arbitrary restrictions on freedom of movement, access to health and other resources indispensable for survival for the Rohingya.
- Give generously to meet the urgent humanitarian needs of the Rohingya and people across Myanmar, including via flexible funding mechanisms that enable direct support to local civil society organisations already working under extremely difficult and dangerous conditions to meet the needs of displaced communities.
- Publicly support calls from Rohingya communities for the International Court of Justice to make Myanmar's reports on compliance with the provisional measures order publicly available at the time of submission to the Court.
- Exert maximum pressure on Myanmar to cooperate with the International Criminal Court investigation and provide access to ICC and Argentinian investigators.
- Publicly support the referral of the situation in Myanmar to the International Criminal Court or support the creation of an ad hoc international tribunal.
- Exercise universal and other forms of jurisdiction to investigate any individual from Myanmar – irrespective of position or rank - who may be responsible for committing genocide, war crimes, and crimes against humanity under international law. Ensure such individuals are brought to justice in fair trials.
- Propose a UN Security Council resolution that imposes a comprehensive arms embargo on Myanmar, including on the transfer of aviation fuel to the military; imposes targeted economic sanctions on the Myanmar military, its leaders, and its sources of revenue, and refers the situation in Myanmar to the International Criminal Court. The prospect of a veto by a Member State in the UN Security Council should not deter other Member States from placing a resolution before the Council for consideration, debate and a vote.
- Coordinate multilateral efforts to impose arms embargoes on Myanmar, including on the transfer of aviation fuel to the military as well as targeted economic sanctions on the Myanmar military, its leaders, and its sources of revenue.

### **To the Arakan Army:**

- Immediately cease all attacks on Rohingya civilians and ensure accountability for violations committed by its forces.
- Cooperate with Rohingya community leaders in Arakan State and internationally to advocate for an emergency humanitarian aid corridor from Bangladesh to end the famine.
- Facilitate humanitarian access by allowing unrestricted aid to reach all communities in need, ensuring that assistance is delivered equitably and without discrimination.
- Publicly recognise the Rohingya as an integral part of Arakan State's diverse communities.
- Guarantee the rights and security of all communities including Rohingya by protecting civilians from all forms of violence and discrimination, ensuring freedom of movement, and providing equal access to livelihoods and essential services for everyone.
- Adopt and enforce a public code of conduct for Arakan Army fighters to ensure the protection of civilians and investigate alleged violations of the code.
- Publicly support independent investigations into allegations of human rights violations committed by the Burmese military, Arakan Army, and Rohingya armed groups. Allow UN human rights agencies, including the OHCHR, Special Rapporteur, IIMM as well as independent human rights organisations to have access to Rakhine State to investigate all alleged violations.
- Establish an interim consultative committee which includes representatives of all ethnic and religious people in Arakan State, so that all voices can be heard, and all can work together to rebuild the future Arakan State. There must be integration of Rohingya and other minority communities into decision-making processes and administrative structures at all levels. Equal representation is essential to building trust and promoting inclusivity.
- Engage in regular, meaningful dialogue with Rohingya leaders, within Arakan State, in the refugee camps in Bangladesh, and in the diaspora, to address grievances, rebuild trust, and foster understanding.
- End restrictions on internet and communications, such as confiscation of mobile phones, and banning the use of satellite dishes which can be used to access the internet. Independent media should also be given access to operate freely.

## Annex: Background to The *Gambia v. Myanmar* genocide case at the ICJ

In 2016 and 2017, BROUK and many other human rights organisations documented gross human rights violations perpetrated by the Myanmar military and its proxies during ‘clearance operations’ in Myanmar’s Rakhine State, resulting in significant loss of life and severe mental and physical harm to the Rohingya.<sup>184</sup> These included mass rape of Rohingya women, children burned alive, machete attacks, shooting at fleeing villagers, the use of rocket launchers to raze entire Rohingya villages to the ground, coordinated massacres, as well as landmines laid at the border to target those fleeing the violence.<sup>185</sup>

In March 2017, the Independent International Fact-Finding Mission on Myanmar (UNFFMM) was established by the UN Human Rights Council.<sup>186</sup> In 2018, the UNFFMM found that Myanmar had committed four out of the five underlying acts of genocide enumerated in the Genocide Convention, namely killings members of the Rohingya group, causing serious bodily or mental harm to members of the group, deliberately inflicting conditions of life calculated to bring about its physical destruction in whole or in part, and imposing measures intended to prevent births within the group.<sup>187</sup> It further concluded that genocidal intent to destroy the Rohingya people in whole or in part could be inferred from the State’s pattern of conduct.<sup>188</sup>

On 11 November 2019, The Gambia filed a case against Myanmar before the International Court of Justice (ICJ), alleging that Myanmar has committed genocide against the Rohingya people. The ICJ is the principal judicial organ of the United Nations. It deals with disputes between States, *not* the individual criminal responsibility of particular perpetrators. The legal basis for the case is the Genocide Convention, to which both States are a party. The Gambia has also accused Myanmar of *continuing* to commit genocidal acts and of violating its other obligations under the Convention by failing to *prevent* and *punish* genocide.

Establishing that genocide has taken place under the Genocide Convention requires demonstrating both the commission of genocidal acts and genocidal intent – namely the intent to destroy a national, ethnic, racial, or religious group in whole or in part. The Gambia’s initial filing primarily focused on the first three genocidal acts enumerated in the Convention perpetrated by the Myanmar military and other State actors with the intent to destroy the Rohingya in whole or in part: 1) killing members of the group; 2) causing serious bodily or mental harm to members of the Rohingya group; and 3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction

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<sup>184</sup> See for example, US Holocaust Memorial Museum and Fortify Rights, ‘“They Tried to Kill Us All”: Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar’ (15 November 2017); Fortify Rights, ‘“They Gave Them Long Swords”: Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar’ (19 July 2018); Physicians for Human Rights, ‘“Please Tell the World What They Have Done to Us”: The Chut Pyin Massacre: Forensic Evidence of Violence against the Rohingya in Myanmar’ (19 July 2018).

<sup>185</sup> BROUK, ‘Burned, Stabbed, and Shot: Physical evidence of atrocities committed against the Rohingya’ (May 2017) 13-27. BROUK, ‘“I Thought I Would Die”: Physical evidence of atrocities against the Rohingya’ (1 November 2017) 12-31.

<sup>186</sup> UN Human Rights Council Resolution 34/22, adopted 24 March 2017 (3 April 2017) UN Doc A/HRC/RES/34/22. The UNFFMM mandate was to “establish the facts and circumstances of the alleged recent human rights violations by military and security forces...in Myanmar, in particular in Rakhine State...with a view to ensuring full accountability for perpetrators and justice for victims.” The UNFFMM published two seminal reports of its detailed findings in 2018 and 2019.

<sup>187</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 1 January 1951) 78 UNTS 277 art II.

<sup>188</sup> UNFFMM 2018 report (17 September 2018) *op. cit.* 364 [1441].

in whole or in part by destroying or otherwise denying access to food, shelter and other essentials of life.<sup>189</sup>

The Gambia's case against Myanmar marks the first time that a State without a direct connection to the alleged crime of genocide has brought a case before the ICJ under the Genocide Convention.<sup>190</sup> In doing so, The Gambia has emphasised the importance of the legal concepts of *erga omnes* obligations (owed to the international community as a whole) and *erga omnes partes* obligations (owed by any State party to all the other States parties to a convention), both of which apply to the crime of genocide.<sup>191</sup>

### ***The ICJ's provisional measures order***

Provisional measures are the equivalent of a legal injunction or court order, instructing a State to immediately take certain steps prior to a final ruling on the case.<sup>192</sup> As part of its original case filing, The Gambia included an urgent request for the Court to order provisional measures in light of 'the ongoing, severe and irreparable harm being suffered by members of the Rohingya group.'<sup>193</sup>

On 23 January 2020, the ICJ issued a relatively rare unanimous order on provisional measures. The Court described the Rohingya remaining in Myanmar as 'extremely vulnerable'. As part of its rationale for issuing the order, the ICJ made it clear that, 'Myanmar has not presented to the Court concrete measures aimed specifically at recognizing and ensuring the right of the Rohingya to exist as a protected group under the Genocide Convention.'<sup>194</sup> In short, the provisional measures order recognises that Myanmar's actions prior to the order were wholly inadequate to protect the Rohingya. It creates an expectation that Myanmar must take concrete measures in order to meet its obligations under the Genocide Convention.<sup>195</sup>

Without prejudging the merits of the case - i.e. whether or not genocide has already taken place - the ICJ ordered Myanmar to 'take all measures within its power' to prevent irreparable harm against the Rohingya. The Court emphasised that the Myanmar State must fulfil its obligations to prevent and punish the crime of genocide, regardless of the internal armed conflict situation in Rakhine State.<sup>196</sup> In brief, the provisional measures imposed by the Court require Myanmar to prevent the commission of genocidal acts, ensure security forces and those under its influence do not commit or incite genocide, preserve evidence of alleged genocidal acts, and report back within four months on its compliance with the order and every six months thereafter until the case concludes.<sup>197</sup> Under the UN Charter, all

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<sup>189</sup> *The Gambia v. Myanmar*, International Court of Justice 'Application Instituting Proceedings and Request for Provisional Measures' (11 November 2019) 38 [113] 4 [2] 55-56 [99-110] 58 [114].

<sup>190</sup> The case was brought with the support of the other 56 States belonging to the Organisation of Islamic Cooperation. Final Communiqué of the 14th Islamic Summit Conference (31 May 2019) 10 [47] OIC/SUM-14/2019/FC/FINAL.

<sup>191</sup> The ICJ has held that "the rights and obligations enshrined by the [Genocide] Convention are rights and obligations *erga omnes*". See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Preliminary Objections, Judgment, 11 July 1996 [31].

<sup>192</sup> Global Justice Center and Global Centre for the Responsibility to Protect, 'Q&A: The Gambia v. Myanmar - Rohingya Genocide at the International Court of Justice' (May 2020).

<sup>193</sup> *The Gambia v. Myanmar*, ICJ 'Application Instituting Proceedings and Request for Provisional Measures' (11 November 2019) [113].

<sup>194</sup> *The Gambia v. Myanmar*, ICJ provisional measures order *op. cit.* 22 [73].

<sup>195</sup> USHMM, 'Practical Prevention - How the Genocide Convention's Obligation to Prevent Applies to Myanmar - Report #2: The Denial of the Right to Citizenship and the Right to Participate in Public Affairs' (October 2020) 5.

<sup>196</sup> *The Gambia v. Myanmar*, ICJ provisional measures order *op. cit.* 22 [74].

<sup>197</sup> *The Gambia v. Myanmar*, 'Application' (11 November 2019) *op. cit.* 46 [86] 58 [113].

member States must comply with ICJ decisions.<sup>198</sup> Critically assessing Myanmar’s compliance with the order is therefore of the utmost importance.

To date, the State of Myanmar has not been under any legal obligation to make its reports public, despite consistent calls for this from a broad range of actors, including BROUK along with a coalition of Rohingya organisations. At the time of publication of BROUK’s May 2023 briefing, two of Myanmar’s compliance reports and The Gambia’s observations on four of the reports had been made published on the Court’s website. However, they are no longer available and may have been published in error.<sup>199</sup>

### *Timeline of events*

#### **2017**

- **March 2017:** The UN Fact-Finding Mission on Myanmar (UNFFMM) was established by the UN Human Rights Council to “establish the facts and circumstances of the alleged human rights violations by military and security forces, and abuses, in Myanmar.”<sup>200</sup>
- **25 August 2017:** Myanmar’s military begins its brutal ‘clearance operations’ in northern Rakhine State, resulting in mass atrocities against the Rohingya, including killings, sexual violence, and the forced displacement of over 700,000 Rohingya to Bangladesh. These follow earlier ‘clearance operations’ in 2016.

#### **2018**

- **September 2018:** The UNFFMM found that Myanmar had committed four out of the five underlying acts of genocide enumerated in the Genocide Convention, namely killings members of the Rohingya group, causing serious bodily or mental harm to members of the group, deliberately inflicting conditions of life calculated to bring about its physical destruction in whole or in part, and imposing measures intended to prevent births within the group.<sup>201</sup> It further concluded that genocidal intent to destroy the Rohingya people in whole or in part could be inferred from the State’s pattern of conduct.<sup>202</sup>

#### **2019**

- **11 November 2019:** The Gambia, with the support of the Organisation of Islamic Cooperation (OIC), files an [application](#) at the International Court of Justice (ICJ) against Myanmar for violations of the Genocide Convention.

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<sup>198</sup> United Nations, Charter of the United Nations (1945) 1 UNTS XVI Art 94(1).

<sup>199</sup> The reports were previously mentioned but not linked on the main case page <<https://www.icj-cij.org/case/178/other-documents>>, and were previously available at the following links <<https://www.icj-cij.org/node/106112>> (Myanmar’s first report); <<https://www.icj-cij.org/node/106113>> (The Gambia’s observations on the first report); <<https://www.icj-cij.org/node/106115>> (The Gambia’s observations on the second report); <<https://www.icj-cij.org/node/106117>> (The Gambia’s observations on the third report); <<https://www.icj-cij.org/node/106118>> (Myanmar’s fourth report only available in French); and <<https://www.icj-cij.org/node/106119>> (The Gambia’s observations on the fourth report), accessed 23 May 2023.

<sup>200</sup> UN Human Rights Council Resolution 34/22, (3 April 2017) *op. cit.*

<sup>201</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 1 January 1951) 78 UNTS 277 art II.

<sup>202</sup> UNFFMM 2018 report *op. cit.* 364 [1441].

- **10-12 December 2019:** Public hearings are held on The Gambia's request for provisional measures to prevent ongoing genocidal acts against the Rohingya. Myanmar's delegation is led by Aung San Suu Kyi.

## 2020

- **23 January 2020:** The ICJ issues binding [provisional measures](#) ordering Myanmar to:
  1. Prevent genocidal acts against the Rohingya.
  2. Ensure its military and security forces do not commit genocide.
  3. Preserve evidence related to allegations of genocide.
  4. Submit regular reports to the Court on compliance.
- **18 May 2020:** The ICJ sets [deadlines](#):
  - 23 October 2020 for The Gambia's Memorial (written submission for the prosecution)
  - 23 July 2021 for Myanmar's Counter-Memorial (written submission for the defence)

## 2021

- **20 January 2021:** Myanmar submits preliminary objections, challenging the Court's jurisdiction and The Gambia's standing.
- **1 February 2021:** Myanmar's military stages a coup d'état, overthrowing the elected government. The military junta, named the State Administration Council (SAC) led by Senior-General Min Aung Hlaing, assumes control.
- **16 April 2021:** The National Unity Government (NUG) is formed by ousted lawmakers, ethnic representatives, and civil society groups.
- **June 2021:** The UN General Assembly passes a resolution urging Myanmar to restore democracy but defers recognizing the SAC or NUG as Myanmar's official representatives.

## 2022

- **21–28 February 2022:** The ICJ holds public hearings on Myanmar's preliminary objections. The SAC-appointed delegation represents Myanmar. The NUG formally notifies the ICJ of its intention to represent Myanmar and withdraws all preliminary objections.
- **22 July 2022:** The ICJ [rejects](#) Myanmar's preliminary objections, affirming its jurisdiction and allowing the case to proceed to the merits phase. The Court does not comment on the legitimacy of the SAC versus the NUG. The ICJ [sets](#) new deadline for Myanmar's Counter-Memorial to April 24, 2023.

## 2023

- **6 April 2023:** The ICJ [extends](#) Myanmar's deadline to submit its Counter-Memorial to May 24, 2023.
- **12 May 2023:** The ICJ [further extends](#) Myanmar's deadline to submit its Counter-Memorial to August 24, 2023.

- **24 August 2023:** Myanmar submits its Counter-Memorial.
- **16 October 2023:** The ICJ [authorizes](#) a second round of written submissions:
  - The Gambia's Reply due 16 May 2024.
  - Myanmar's Rejoinder due 16 December 2024.
- **15 November 2023:** Canada, Denmark, France, Germany, the Netherlands and the United Kingdom had filed their joint [declaration](#) of intervention in the case under Article 63(2) of the ICJ Statute.<sup>203</sup> The Republic of the Maldives filed a separate declaration of intervention the same day.

## 2024

- **23 May 2024:** The Gambia submitted its Reply (written submission in response to Myanmar's Counter-Memorial).
- **3 July 2024:** The ICJ [accepts](#) Article 63 declarations of intervention by the Maldives, and, jointly by Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom.
- **29 November 2024:** Slovenia files a [declaration](#) of intervention under Article 63.
- **10 December 2024:** The Democratic Republic of the Congo files a [declaration](#) of intervention under Article 63.
- **12 December 2024:** Belgium files a [declaration](#) of intervention under Article 63, focusing on the interpretation of Article II of the Genocide Convention.
- **20 December 2024:** Ireland files a [declaration](#) of intervention under Article 63.
- **30 December 2024:** Deadline for Myanmar's Rejoinder submission to the ICJ (date was [extended](#) from original 16 December 2024 deadline).

## 2025 and beyond

- **Additional declarations of intervention:** The Court will rule on whether or not the additional declarations of intervention filed by Slovenia, the Democratic Republic of the Congo, Belgium and Ireland are admissible.
- **Completion of written observations:** Intervening States confirmed by the Court will be provided with copies of all written pleadings submitted by both The Gambia and Myanmar. Once these pleadings are complete, the Court will establish a deadline for intervening States to submit their written observations. These submissions must strictly address the subject matter of their intervention, focusing on the interpretation of the Genocide Convention in the context of the case. The Court will decide at a later date whether the intervening States will be allowed to present their observations during the oral proceedings.

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<sup>203</sup> Article 63(2) ICJ Statute available at <<https://www.icj-cij.org/statute>> and Article 82(3) ICJ Rules of Court, available at <<https://www.icj-cij.org/rules>> accessed 1 June 2024.

- **Oral hearings:** Following the completion of all written submissions, the ICJ will schedule oral hearings where both the Gambia and Myanmar will present their cases, respond to questions, and provide additional evidence.
- **Deliberations by the judges:** The ICJ judges will engage in private deliberations, reviewing all evidence and arguments to assess Myanmar's compliance with the Genocide Convention.
- **Final judgment:** The ICJ will issue a binding judgment on the merits of the case. If the Court finds in favour of The Gambia, it will determine Myanmar's responsibility under the Genocide Convention and set out legal obligations for reparations or guarantees of non-repetition.



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