



DOCUMENTING ATROCITY CRIMES COMMITTED AGAINST THE ROHINGYA IN MYANMAR'S RAKHINE STATE

THE PUBLIC INTERNATIONAL LAW & POLICY GROUP'S
2018 HUMAN RIGHTS DOCUMENTATION MISSION

—
FACTUAL FINDINGS & LEGAL ANALYSIS

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2018 Human Rights Documentation Mission*

FACTUAL FINDINGS & LEGAL ANALYSIS REPORT

December 2018



PEACE NEGOTIATIONS
POST-CONFLICT CONSTITUTIONS
WAR CRIMES PROSECUTION

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All of my interactions with the refugees were polite, generous and positive. This never ceased to amaze me, given the circumstances under which I was meeting them. The Rohingya are a pervasively persecuted minority, accustomed to being aliens in a land so hostile to them that the agents of law and order regularly brutalized them. Even the Rohingyas' neighbors regularly betrayed and victimized them. I would have thought they'd have earned the sort of distrust, cynicism, and fear that would have caused them to refuse to speak to any strangers, let alone those seeking to ask personal questions about their repression.

- Quote from an investigator

They cried from the pain of having lost loved ones, from the anguish of watching their houses, businesses and animals burn, from the horror of stepping over bodies on the banks of the river to climb on to the ferry that would take them away from a place they unfailingly called their "homeland." Most often, though, people started to cry when they described the injustice of what they had experienced. One man, who was in a refugee camp for the third time in his life because of government sponsored or tolerated repression (1978, 1991, 2017) said, "We did nothing to them. Nothing. When we saw the military, we would go the other way. We didn't touch a thing that was theirs. Why did they do this to us?"

- Quote from an investigator

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ABOUT THIS REPORT

In March and April 2018, the Public International Law & Policy Group (PILPG), undertook an as yet unprecedented large-scale and comprehensive human rights documentation investigation mission in the refugee camps and settlement areas in Eastern Bangladesh. The purpose of this investigation mission was to provide an accurate accounting of the patterns of abuse and atrocity crimes perpetrated against the Rohingya in Myanmar's Rakhine State and to help inform the policy decisions related to accountability in Myanmar. PILPG's investigation team ultimately conducted 1,024 interviews with Rohingya refugees, and those interviews are the basis of this Report.

PILPG's investigation collected more than 15,000 pages of documentation collected from the 1,024 interviews conducted by PILPG. PILPG reviewed all of this documentation and identified more than 13,000 instances of documented grave human rights violations. Based on all of this information, PILPG drafted an initial qualitative report to outline the factual findings and initial conclusions from PILPG's investigation mission.

Following the conclusion of the investigation mission, and with substantial support from an array of international attorneys and international criminal law experts, PILPG conducted an extensive legal analysis of the factual findings. Part III of this Report analyzes whether, based on the documentation collected during the investigation mission, there are reasonable grounds to believe that crimes against humanity, genocide, and war crimes have been committed against the Rohingya in Myanmar's northern Rakhine State. The legal analysis is intended primarily for policymakers to provide guidance on the international legal ramifications of the investigation mission's factual findings and to facilitate the formulation of effective measures to respond to the documented atrocities.

Dr. Paul R. Williams
Dean Michael P. Scharf
PILPG Co-Founders
December 2018

EXECUTIVE SUMMARY

In late August 2017, the Myanmar (formerly and still commonly known as “Burma”) armed forces launched a so-called “clearance operation” against the Rohingya population in Myanmar’s northern Rakhine State. Within a few months, more than 700,000 Rohingya had fled their homes to seek refuge in sprawling and overcrowded refugee camps and settlements in Eastern Bangladesh. These Rohingya men, women, and children fled to escape mass shootings and aerial bombardments, gang rapes and severe beatings, torture and burning, and attacks from flamethrowers and grenade launchers.

Even as the Rohingya fled from Myanmar, they had to step over the bodies of thousands of slain or drowned Rohingya who had been killed by the Myanmar armed forces mere moments before they could escape across the border to Bangladesh. The Rohingya who did make it to Bangladesh left behind a place of terror, violence, and destruction. Yet, despite the horrors they faced there, it is a place that the Rohingya refugees still unflinchingly call their “homeland.”

To provide an accurate accounting of the patterns of abuse and atrocity crimes perpetrated against the Rohingya in Rakhine State, and to support future justice and accountability efforts, the Public International Law & Policy Group (“PILPG”) undertook a human rights documentation mission in the refugee camps and settlement areas in Eastern Bangladesh. PILPG’s investigation represents a large-scale and comprehensive effort to document the experiences of the victims who fled the violence in Rakhine State since October 2016.

In February 2018, PILPG assembled an investigation team of 18 highly experienced and trained international investigators from 11 countries to conduct its investigation mission. This investigation team included former prosecutors and investigators from a range of countries and international criminal tribunals, former investigators from Darfur and South Sudan investigation missions, military and security experts, and international criminal accountability experts. The investigation team also included 18 local Rohingya and Bengali interpreters, all of whom were trained by PILPG and an interpretation expert with extensive experience working on International Criminal Court field missions.

Drawing from previous large-scale missions that investigated violence and crimes in Darfur and South Sudan, PILPG designed an investigation mission focused on systematically collecting first-hand accounts from a random and representative sample of refugees living in camps in Bangladesh.

From March to April 2018, PILPG’s investigators collected 1,024 interviews from Rohingya refugees in 34 refugee camps in Eastern Bangladesh. Having a team of experienced investigators to systematically conduct such a large number of interviews using random sampling protocols allowed PILPG to obtain the most broadly

representative information possible about the experiences of the Rohingya refugees who fled Myanmar. PILPG's Report provides a qualitative assessment of the collected documentation. As such, this Report in its Part II – *Factual Findings of the Investigation Mission* – does not present statistical and numeric findings; rather, it provides a qualitative analysis of the documentation, with a focus on identifying patterns in the documented violations. Although the factual analysis is limited to the data collected in the 1,024 interviews, the statistical methodology applied in the investigation mission allows for more generalized conclusions.

The investigation mission's findings reveal clear patterns of abuse against the Rohingya, some of which stretch back for decades. Though the investigators only interviewed refugees who had fled Rakhine State after October 2016, the interviews revealed years-long patterns of violence and widespread human rights violations targeted against the Rohingya, including curfews and movement restrictions, property and land confiscation, restricted access to food, marriage and family restrictions, religious persecution, extortion and threats of violence, forced labor, and regular beatings, rapes, and murder.

The investigation uncovers that a period of the most consistent persecution and escalating violence against the Rohingya began in 2012 and steadily intensified through the major attacks that began in August 2017 and culminated in the mass displacement of Rohingya to Bangladesh. Over these years, the violations and abuses against the Rohingya were predominantly perpetrated by the Myanmar armed forces—mainly the Tatmadaw-Army, but also the Border Guard Police, Combat Police Force, and Rakhine State Police.

The investigation further finds that, the military and police presence in and around Rohingya villages across northern Rakhine State increased noticeably in the weeks before the major systematic attacks of August–September 2017. This buildup of forces was accompanied by increasingly common raids and searches of Rohingya homes, seizures of cooking knives and other potential 'weapons,' public attacks on Rohingya women and religious leaders, mass detentions and beatings of young Rohingya men, regular interrogations and instances of torture, the removal of fences that might impede the progression of Myanmar armed forces, and a marked increase in killings, beatings, and other violent acts against the Rohingya.

Then, in late August 2017, after months of military buildup and escalating violence, Myanmar armed forces launched widespread and systematic attacks against Rohingya civilians across northern Rakhine State. These major attacks included large-scale and coordinated ground assaults that were sometimes accompanied by aerial support and typically involved dozens or hundreds of Myanmar armed forces personnel attacking Rohingya villages, burning homes, and killing or driving away the Rohingya inhabitants.

The attacks were brutal. They included indiscriminate shooting, mass killings, numerous rapes and gang rapes of young women, mutilation of pregnant women and

newborns, widespread beatings and killings of young men, the burning and drowning of children, executions of religious leaders, the desecration of religious structures and symbols, the destruction of homes and villages, crops and food stores, looting, and mass disappearances.

Of the 1,024 Rohingya interviewed, 20 percent were themselves physically injured in the attacks, nearly 70 percent witnessed their homes or villages being destroyed, and 80 percent witnessed the killing of a family member, friend, or personal acquaintance. The Myanmar armed forces, led by the Tatmadaw-Army and often in coordination with other security forces, only targeted Rohingya civilians in these attacks. Non-Rohingya civilians were left alone or evacuated by the armed forces prior to attacks. In some instances, non-Rohingya civilians joined in the attacks against the Rohingya, sometimes with weapons reportedly provided to them by the Myanmar armed forces.

After most of the Rohingya had been killed or had fled their villages, a second wave of Myanmar armed forces came to attack or kill the remaining Rohingya civilians, often going door-to-door to systematically kill those left alive. They also destroyed the remaining vestiges of their villages by leveling them with bulldozers or burning them to the ground. The Myanmar armed forces burned many of the bodies or sought to dispose of them in mass graves or in nearby bodies of water, including wells.

The investigation mission's findings suggest that these attacks were all part of a highly coordinated military campaign that required tactical and logistical planning. Specifically, interviewees reported the use of aircraft, artillery, and the transport of thousands of soldiers to remote villages. Furthermore, Myanmar armed forces executed this campaign in multiple places across northern Rakhine State within a matter of hours or days. The vast majority of these attacks occurred between August 25, 2017 and September 4, 2017, with the respondents commonly referring to the day their respective villages were attacked as "Massacre Day."

The Myanmar armed forces claimed that these attacks were part of a "clearing operation" designed to target the Arakan Rohingya Salvation Army (ARSA) following ARSA attacks on an army base and border guard police posts on August 25, 2017. However, the chronology, speed, and widespread scope of the attacks, as well as the systematic and exclusive targeting of all Rohingya people suggest that the Myanmar armed forces were carrying out a planned, coordinated, and systematic attack against the Rohingya for which the ARSA attacks provided a convenient justification.

Even as the Rohingya fled their villages and made their way to Bangladesh, they faced violent attacks. As many interviewees recounted witnessing first hand, Myanmar armed forces regularly shot at columns of Rohingya about to cross into Bangladesh, military helicopters hunted for and fired upon groups of fleeing Rohingya, and the Myanmar Navy shot Rohingya with boat-mounted guns or intentionally rammed overcrowded ferries to drown those on board as they sought to

flee across the Naf River into Bangladesh.

Every person interviewed by PILPG's investigation mission had personally experienced or witnessed large-scale attacks, killings, destruction of property, consistent intimidation and harassment, or contempt for their culture and religion. The scale and severity of the attacks and abuses—particularly the mass killings and accompanying brutality against children, women, pregnant women, the elderly, religious leaders, and persons fleeing into Bangladesh—suggest that, in the minds of the perpetrators, the goal was not just to expel, but also to exterminate the Rohingya. The factual findings of the investigation mission thus reveal that the violence against the Rohingya in northern Rakhine State was well-planned, widespread, systematic, and aimed at terrorizing the Rohingya, rendering them defenseless, and ensuring their removal from Myanmar—whether by displacement or death.

Following its investigation mission, and with substantial support from an array of international attorneys and international criminal law experts, PILPG conducted a comprehensive legal analysis of the investigation's factual findings to determine whether and to what extent there are reasonable grounds to believe that crimes against humanity, genocide, and war crimes have been committed against the Rohingya in northern Rakhine State.

The investigation mission documented a range of crimes amounting to crimes against humanity, including the particularly prevalent crimes of extermination, murder, rape and other forms of sexual violence, enslavement, forcible transfer, and persecution. The investigation's findings uncover that Myanmar armed forces and other actors knowingly carried out and directed widespread and systematic attacks against the civilian Rohingya population, and that a clear nexus exists between the attacks and the underlying crimes committed. This Report concludes that there are reasonable grounds to believe that crimes against humanity have been committed against the Rohingya in northern Rakhine State. In fact, all the elements of crimes against humanity under international law were so extensively documented that the authors of this Report find that the events in northern Rakhine State rise beyond the reasonable grounds standard, such that those events clearly amount to crimes against humanity.

With regard to the crime of genocide, this Report concludes that there are reasonable grounds to believe that genocide was committed against the Rohingya in Myanmar's northern Rakhine State. The Rohingya are a protected group for purposes of the law on genocide, and the investigation mission revealed extensive evidence of underlying acts of genocide committed against a substantial population of Rohingya, including killings, causing serious bodily or mental harm, and deliberately inflicting conditions of life calculated to bring about the Rohingya's physical destruction in whole or in part. The investigation mission also revealed circumstantial evidence providing reasonable grounds to believe these acts were committed with the intent to destroy, at least in part, the Rohingya in northern Rakhine State.

Finally, this Report concludes that there are reasonable grounds to believe that war crimes were committed in relation to abuses and violence committed against the Rohingya in northern Rakhine State. The investigation mission revealed numerous violations of international law capable of constituting war crimes, including murders and willful killings, causing injuries to body or health, rapes and other forms of sexual violence, torture, intentional attacks directed against the civilian population, deportation or illegal transfer, and illicit and arbitrary looting, destruction, and appropriation of civilian property. While the existence of an armed conflict necessary for war crimes to have taken place cannot be conclusively established by the investigation's findings, the United Nations Independent Fact-Finding Mission on Myanmar did find there was an internal armed conflict in northern Rakhine State for at least part of the time period covered by this Report. Within the context of such an internal armed conflict existing, the investigation's findings provide reasonable grounds to believe that a range of prohibited acts constituting war crimes were knowingly committed in northern Rakhine State and that there exists a nexus between the prohibited acts and the armed conflict.

This Report thus makes the legal determination that, based on the findings of the investigation mission, there are reasonable grounds to believe that crimes against humanity, genocide, and war crimes were committed against the Rohingya in northern Rakhine State. Thus, a criminal investigation is needed to establish all the elements of these crimes.

Crimes against humanity, genocide, and war crimes represent a threat to international peace and security and are of concern to the international community as a whole. The international community is obliged to protect populations subjected to atrocity crimes by their own governments and ensure justice and accountability for such crimes. The authors of this Report thus call for the urgent establishment of an accountability mechanism or an immediate referral of the situation in Rakhine State to the ICC. Furthermore, the authors welcome the recent UN Human Rights Council decision to establish an independent investigative mechanism to collect, consolidate, preserve, and analyze evidence of the most serious international crimes and violations of international law committed in Myanmar, including Rakhine State. It is imperative for these mechanisms to be provided with the necessary financial, technical, and political support, by States and international organizations for the successful execution of their mandate. States and international organizations should take all measures in accordance with international law aimed at ensuring the unimpeded work of the investigative mechanism, in particular access to northern Rakhine State and access to Myanmar archives.

TABLE OF CONTENTS

Acknowledgments	i
About this Report.....	iii
Executive Summary	iv
Part I – Background & Context	1
Chapter 1 – Background on Myanmar	2
Chapter 2 – Background on the Rohingya and the Context of the Rohingya Refugee Crisis	5
Chapter 3 – Background, Context, and Applied Methodology of PILPG’s Investigation Mission.....	9
Part II – Factual Findings of the Investigation Mission	11
Chapter 4 – Patterns of Continuous Violations (2012–2017)	12
Chapter 5 – Patterns of Escalating Violence & Violations (October 2016–August 2017)	19
Chapter 6 – Major Attack Patterns (August–September 2017).....	28
Chapter 7 – Overall Conclusions from the Investigation Team	50
Part III – Legal Analysis of Collected Documentation	52
Chapter 8 – Crimes Against Humanity	54
Chapter 9 – Genocide	66
Chapter 10 – War Crimes	77
Part IV – Conclusions	86

PART I

BACKGROUND & CONTEXT

This Part of the Report provides a brief background on Myanmar, the context of the situation in Rakhine State, and an overview of the conditions leading to mass displacement of the Rohingya since late 2016. It also outlines the context of PILPG’s investigation mission, as well as the methodological details of the mission’s design and function. This Part it is not intended to provide an exhaustive or comprehensive history or contextual background. Rather, its purpose is to introduce the context and conditions giving rise to PILPG’s investigation mission in the refugee camps in Eastern Bangladesh, and how that context shaped PILPG’s applied methodology.

CHAPTER 1

BACKGROUND ON MYANMAR

MYANMAR'S PATH FROM INDEPENDENCE AND DEMOCRACY TO MILITARY RULE AND ITS RECENT MOVEMENTS BACK TOWARDS DEMOCRACY

Myanmar (formerly and still commonly known as “Burma”) has a complex and turbulent political history. Following its independence from the United Kingdom in 1948, Myanmar has been primarily ruled by a repressive military junta or military-backed government. While Myanmar initially had a democratically-elected government following its independence, years of civil conflict and perceived mismanagement of the state led the military to oust the elected government in 1962. The military junta controlled all aspects of life, including the economy, media, election laws, and freedom of association. A hallmark of the military junta’s rule was its severe and often violent marginalization of ethnic minority populations across Myanmar. This included human rights abuses in the context of armed conflict with ethnic armed organizations, as well as in the routine repression of political opposition and minority populations.¹

Mounting political tensions came to a head in 1988, when a student uprising resulted in the deaths of 3,000 students and other civilians at the hands of the military. In 1990, the National League for Democracy (NLD) and members of the United Nationalities Alliance (UNA)—an alliance of ethnic political parties—were finally able to contest Myanmar’s elections. However, when the NLD won a majority of seats in parliament, the military nullified the results.²

After refusing to accept the NLD’s 1990 election victory, the military junta imposed further restrictions, arresting the NLD leader Aung San Suu Kyi and NLD party members, many of whom remained in prison for decades. Subsequent popular uprisings against the military-backed government and growing internal and international pressure led the government to slowly introduce democratic reforms, along with the release of Aung San Suu Kyi and other prominent political opposition leaders. Eventually, the military-backed government allowed the NLD

¹ Kansom Shakila Devi, *Myanmar Under Military Rule*, 3 INTERNATIONAL RESEARCH JOURNAL OF SOCIAL SCIENCES 46 (2014); Sean Turnell, *Myanmar’s Fifty-Year Authoritarian Trap*, JOURNAL OF INTERNATIONAL AFFAIRS (2011); Mohamad Faisal Keling, et. al., *A Historical Approach to Myanmar’s Democratic Process*, 1 JOURNAL OF ASIA PACIFIC STUDIES 132 (2010).

² Ishaan Tharoor, *What Happened When Aung San Suu Kyi’s Party Last Won an Election in Burma*, WASHINGTON POST (Nov. 9, 2015); National Public Radio, *As Myanmar Opens Up, A Look Back On A 1988 Uprising* (Aug. 8, 2013); Human Rights Watch, *Burma: Justice for 1988 Massacres* (Aug. 6, 2013), available at <https://www.hrw.org/news/2013/08/06/burma-justice-1988-massacres>; Derek Tonkin, *The 1990 Elections in Myanmar*, 29 CONTEMPORARY SOUTHEAST ASIA 33 (2007).

to run candidates for parliamentary bi-elections in 2012, and Aung San Suu Kyi was elected to a seat in parliament.³

In late 2015, Myanmar held its first democratic elections in half a century, and the NLD won a commanding majority of seats in parliament. The NLD-led government took office in March 2016.

Despite the NLD's electoral success, Myanmar's 2008 Constitution still preserves much of the military's dominance over the government. For instance, the Constitution exempts the military from civilian control. It also guarantees the military 25 percent of the seats in both the upper- and lower-chambers of Myanmar's parliament, providing the military with a *de facto* veto authority. Moreover, the 2008 Constitution reserves a range of positions and powers in every branch of government for the military. In effect, the Myanmar government design under the 2008 Constitution enables the military to control legislative outcomes, exert strong pressure on the President, and maintain authority over a range of executive powers.⁴

MYANMAR'S LONG HISTORY OF REPRESSION AND MARGINALIZATION OF ETHNIC AND RELIGIOUS MINORITIES

Myanmar has a highly diverse population, with 135 legally recognized ethnic groups. When Myanmar gained its independence, the Myanmar government decided not to adopt a federal structure that had previously been agreed upon in pre-independence talks. This federal structure would have provided autonomy to the ethnic minority regions that co-existed alongside the ethnic Bamar majority. In response, the ethnic minorities took up arms against the government. These armed conflicts between the military and dozens of ethnic armed organizations have been ongoing for decades, with varying degrees of intensity depending on the time period and the ethnic group involved. In fact, Myanmar is considered to have one of the world's longest-running civil wars, with conflicts with ethnic armed organizations ongoing for nearly 70 years.⁵

The political changes surrounding the 2015 elections opened up space for the negotiation of a Nationwide Ceasefire Agreement. However, only eight ethnic armed organizations out of almost two dozen signed the agreement, and conflicts continue to escalate. As efforts to expand the Nationwide Ceasefire Agreement to include more ethnic armed organizations proceed, conflicts continue across Myanmar, and political

³ Mohamad Faisal Keling, et. al., *A Historical Approach to Myanmar's Democratic Process*, 1 JOURNAL OF ASIA PACIFIC STUDIES 132 (2010); Susanne Kempel, Chan Myaw Aung San, & Aung Tun, *Myanmar Political Parties at a Time of Transition*, PYOE PIN PROGRAMME (Apr. 2015).

⁴ MYANMAR CONST. (2008); The Economist, *What is Wrong with Myanmar's Constitution* (May 4, 2014); Reuters, *New Myanmar Constitution Gives Military Leading Role* (Feb. 19, 2008).

⁵ Burma News International, *Deciphering Myanmar's Peace Process: A Reference Guide 2016* (Jan. 2017); Beina Xu & Eleanor Albert, *Understanding Myanmar*, COUNCIL ON FOREIGN RELATIONS (Mar. 25, 2016).

reforms have stalled or are making slow progress. Deep concerns remain about the preparations for a comprehensive national dialogue and potential constitutional reform, as part of a process to end the decades of conflict.⁶

In the midst of these decades of political turmoil and ethnic conflict, there has also been extensive religious persecution and violence within Myanmar, predominantly towards the Rohingya Muslim population in northern Rakhine State, which the next Chapter discusses in further detail.

⁶ Burma News International, *Deciphering Myanmar's Peace Process: A Reference Guide 2016* (Jan. 2017).

CHAPTER 2

BACKGROUND ON THE ROHINGYA AND THE CONTEXT OF THE ROHINGYA REFUGEE CRISIS

I believe that the level of harassment and violence prior to the August/September 2017 attack was more severe and widespread than previously documented. I lived in Rakhine State, read reports from UN trips up to northern Rakhine State, and knew Burmese and international staff that worked in northern Rakhine State. Yet, I did not learn that life for the Rohingya prior to the attacks was so restrictive and violent.

- Quote from an investigator

DECADES OF VIOLENCE AGAINST THE ROHINGYA MUSLIM POPULATION IN MYANMAR

Since 1978, the Rohingya, a Muslim minority population, has been subject to widespread state-sponsored violence in Myanmar's Rakhine State. Myanmar state media, official policy documents, politicians, and public sentiment portray the Rohingya as illegal 'Bengali' migrants who pose a threat to national security. Because Myanmar's government does not consider the Rohingya to be among the country's 135 official ethnic groups, the Rohingya are effectively ineligible for citizenship or associated rights.⁷

While accounts of persecution and violence against the Rohingya date back decades, a period of more consistent attacks began in June 2012, following the alleged rape of a Buddhist woman. Three Rohingya men were accused of the rape, inciting widespread mob attacks against the Rohingya. The state security forces refused to intervene, and they later actively joined in the killing, beating, and displacement of Rohingya. Numerous accounts detailed military forces surrounding Rohingya villages, shooting at random, and looting the homes of fleeing Rohingya after June 2012. The Myanmar government has not prosecuted anyone for these attacks. The resulting violence ultimately displaced

⁷ Katie Hunt, *How Myanmar's Buddhists Actually Feel About the Rohingya*, CNN (Sept. 20, 2017); Doctors Without Borders, *The Statistics from our Rohingya Report Are Sickening* (Dec. 15, 2017); Human Rights Watch, *Burma: Events of 2016*, in HUMAN RIGHTS WATCH WORLD REPORT 2017 (2017); Human Rights Watch, 'All You Can Do is Pray': *Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State* (April 22, 2013); Human Rights Watch, *Burma: End 'Ethnic Cleansing' of Rohingya Muslims*, (Apr. 22, 2013); *Citizenship Law* (Myanmar, 1982); Nora Rowley, *Burma's Authoritarian Rule and Depopulation of Rohingya*, THE SENTINEL PROJECT (July 29, 2013); Human Rights Watch, *Historical Background in BURMESE REFUGEES IN BANGLADESH*, (May 2000).

approximately 140,000 Rohingya within Rakhine State, with other Rohingya fleeing to Bangladesh where other Rohingya refugees had been for years.⁸

By September 2012, approximately 200,000 Rohingya were staying in makeshift relief camps in Bangladesh. From 2012 through 2016, tens of thousands more Rohingya fled violence in Rakhine State and lived in temporary camps in Myanmar that were physically segregated from the villages of other Rakhine civilians. Meanwhile, national and local policies prevented humanitarian assistance from reaching many of those interned populations. Other Rohingya attempted to flee by boat, which resulted in a highly publicized migrant crisis in May 2015 when thousands of fleeing Rohingya became stranded at sea.⁹

As documented in the factual findings presented in Part II of this Report, the violence and persecution against the Rohingya increased in both scale and severity after 2012, culminating in the major outbreaks of violence against them in 2016 and 2017 that led to the mass displacement of the Rohingya.

ESCALATION OF VIOLENCE AGAINST THE ROHINGYA IN 2016–2017, RESULTING IN THE MASS DISPLACEMENT OF AT LEAST 700,000 ROHINGYA

On October 9, 2016, Myanmar armed forces responded violently to armed attacks in Rakhine state by suspected Rohingya militants. This violence led to further widespread internal displacement of Rohingya, as well as displacement to countries in the region.¹⁰

Ten months later, on August 25, 2017, the Arakan Rohingya Salvation Army (ARSA)—a small Rohingya militant group that is one of the most recent armed groups to emerge in Rakhine State and about which relatively little is known—launched attacks on a range of military outposts, with the violence between the parties lasting for several days. The death toll from this encounter reportedly included 14 members of the security forces, 1 government official, and 371 ‘militants.’¹¹

⁸ UN Office for the Coordination of Humanitarian Affairs, *Rakhine Response Plan (Myanmar)*, (July 2012 – December 2013); Human Rights Watch, ‘*All You Can Do is Pray*’: *Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State* (Apr. 22, 2013).

⁹ UNHCR, *2015 UNHCR Country Operations Profile – Myanmar* (2015); Lizzie Dearden, *Rohingya Migrant Boat Crisis: Who is to Blame for Thousands of People Stranded at Sea?*, THE INDEPENDENT (May 20, 2015); BBC, *Why are so Many Rohingya Migrants Stranded at Sea?* (May 18, 2015); United States Holocaust Memorial Museum, ‘*They Want Us All to Go Away*’: *Early Warning Signs of Genocide in Burma*, (May 5, 2015); Human Rights Watch, *Bangladesh: Assist, Protect Rohingya Refugees* (Aug. 22, 2012).

¹⁰ Aung Hla Tun, *Myanmar Says Nine Police Killed by Insurgents on Bangladesh Border*, REUTERS (Oct. 9, 2016).

¹¹ International Crisis Group, *Myanmar’s Rohingya Crisis Enters a Dangerous New Phase* (Dec. 7, 2017) (citing Global New Light of Myanmar, *Humanitarian Aid Provided to Displaced People Without Segregation* (July 22, 2017) (representing Myanmar’s state-owned English-language daily newspaper)).

The Myanmar government immediately declared ARSA a terrorist organization, and the Myanmar military escalated and expanded its military campaign against the Rohingya. This campaign caused the mass displacement of over 700,000 Rohingya to Bangladesh,¹² which ultimately gave rise to PILPG's investigation mission. As detailed in Part II, the investigation mission revealed an unprecedented level of brutality and widespread violence against the Rohingya in northern Rakhine State.

THE DIRE CIRCUMSTANCES AND AN UNCERTAIN FUTURE FACED BY DISPLACED ROHINGYA

At the time of writing, more than 700,000 Rohingya, over half of which are children, have escaped across the Myanmar border to neighboring Bangladesh, settling in two refugee camps in Cox's Bazar run by the UN Refugee Agency UNHCR (Kutupalong Refugee Camp and Nayapara Refugee Camp) and in makeshift settlements in the surrounding areas. As few as 10 percent of the original Rohingya population reportedly remain in northern Rakhine state. Most refugees are in Bangladesh, while others fled to Malaysia, Pakistan, Saudi Arabia, India, the United Arab Emirates, Thailand, and Indonesia.¹³

The refugee camps in Eastern Bangladesh—where the investigation mission took place—are overcrowded and underserved. The displaced Rohingya face grim conditions within the camp, including personal security concerns, public health issues due to contagious diseases and contaminated water, limited access to food, and major environmental threats. With most of the Rohingya refugees living in hastily constructed and flimsy huts with mud foundations, the safety risks related to monsoons and heavy rains are particularly pressing.

Bangladesh and Myanmar have signed an agreement outlining a plan for the return and repatriation of Rohingya refugees in Bangladesh, but flaws with that agreement have drawn widespread criticism and led to perpetual delays that have prevented its implementation. Though it was not a focus of the investigation, many respondents were concerned about repatriation, having heard rumors of potential repatriation plans. Generally, those interviewed wanted to return to their homes in Rakhine State, but only if they could be guaranteed their ethnic identity, the return

¹² Inter Sector Coordination Group, *Situation Report: Rohingya Refugee Crisis* (Aug. 16, 2018); Eleanor Albert, *The Rohingya Crisis*, COUNCIL ON FOREIGN RELATIONS (April 20, 2018); UNOCHA, *The Rohingya Crisis in Numbers* (Oct. 23, 2017); The Republic of the Union of Myanmar, *Arakan Rohingya Salvation Army (ARSA) Declared as Terrorist Group* (Aug. 25, 2017); UNICEF, *Bangladesh Humanitarian Situation Report No. 1* (May 2017).

¹³ UNOCHA, *Rohingya Refugee Crisis* (2018); Inter Sector Coordination Group, *Situation Report: Rohingya Refugee Crisis* (Aug. 16, 2018); Moe Myint, *Ninety Percent of Rohingya Population Ejected from Rakhine*, THE IRRAWADDY (Feb. 23, 2018); International Crisis Group, *Myanmar's Rohingya Crisis Enters a Dangerous New Phase* (Dec. 7, 2017); Stephanie Hancock & Skye Wheeler, *'The Darkness of Humans': Investigating Mass Rape in Burma*, HUMAN RIGHTS WATCH (Nov. 15, 2017); Shakeeb Asrar, *Rohingya Crisis Explained in Maps*, AL JAZEERA (Oct. 28, 2017).

of their possessions, and a real future for their children. They wanted to be recognized as “Rohingya,” wanted the Myanmar government to compensate them for the things that had been stolen or destroyed, and wanted their children to have an equal opportunity for government jobs. Respondents expressed their concern about being repatriated without being guaranteed safety and these basic citizenship rights. They reiterated frequently that they did not want to return to Myanmar unless those rights were secured and they would be treated with dignity, including respect for their religion, something that they at least felt they had received in Bangladesh, despite the difficult conditions of the camp.

CHAPTER 3

BACKGROUND, CONTEXT, AND APPLIED METHODOLOGY OF PILPG'S INVESTIGATION MISSION

Following the mass displacement of the Rohingya into Bangladesh, PILPG undertook an investigation mission in the refugee camps in Eastern Bangladesh to document patterns of violence perpetrated in northern Rakhine State.

The methodology for the mission built upon previous investigation missions conducted in Darfur and South Sudan. The mission's target was to collect over 1,000 interviews from a statistically significant and random sample of respondents, throughout all the refugee camps and settlement areas in Eastern Bangladesh. In total, PILPG's investigation team conducted 1,024 interviews of Rohingya refugees in 34 refugee camps.

Key elements of the methodology included: (1) the assembly of a highly experienced team of international investigators and trained interpreters to conduct the mission; (2) the random selection of respondents throughout all the refugee camps and settlement areas; (3) interviewing only persons above the age of 18; (4) interviewing only respondents who had fled Myanmar since October 2016; (5) collecting only first-hand accounts of human rights violations suffered or witnessed (i.e., not documenting hearsay); (6) a standardized interview format and approach to information collection; and (7) interview coding according to alleged perpetrator, crime, and location. Although the investigation randomly selected all respondents for interviews, all 1,024 interviewees were Rohingya, which was expected, as the Rohingya make up the vast majority of residents in the camps. Specifically, almost all of the respondents came from three townships in northern Rakhine State in Myanmar: Maungdaw, Buthidaung and Rathedaung.¹⁴

The applied methodology was a hybrid, using a combination of classical survey and criminal investigation methods. By conducting interviews to a criminal investigation standard, the mission's aim was to document the totality of violent events occurring in northern Rakhine State since 2016.

The mission was conducted by a team of 18 highly experienced and trained international investigators from 11 countries. The team included former investigators from Darfur and South Sudan investigation missions, former prosecutors and investigators from a range of countries and international criminal tribunals, military and security experts, and international criminal accountability experts. Before starting the interviews, the investigators were trained on

¹⁴ Only four respondents came from other townships in Rakhine State: Kyautaw (two respondents), Ponnayun (one respondent), and Pauktaw (one respondent).

methodology, self-care in the field, security, logistics, and the challenges involved in interviewing vulnerable populations. Professional psycho-social support was made available to the investigation team, including interpreters, throughout the mission. At the conclusion of the mission, each investigator prepared a report documenting their observations and conclusions based on the information they had collected.

The investigators were teamed with local interpreters trained by PILPG's interpretation expert, who has extensive experience working on International Criminal Court field missions. Each team was also assigned a local guide, a Rohingya refugee from within the camps, who was responsible for helping the teams navigate through the camps and securing privacy during the interviews by dispersing curious crowds.

Each team had at least one female member, either a female investigator or interpreter, to ensure gender sensitivity when interviewing female respondents. PILPG's training for the investigators and the interpreters also included gender-specific considerations.

Using a specifically developed questionnaire, the investigators performed a qualitative analysis of each interview collected. Namely, the investigators manually "coded" key pieces of information in each interview, including: (1) whether the respondent was a victim or witness of the reported violation; (2) the violation or "event" documented; (3) any identifiable perpetrator(s), including the perpetrators' unit, weapons used, and/or ethnic identity; (4) the date of the violation; (5) the number of victims of the reported violation or event; and (6) the location of the violation.

The codes for "events" and perpetrators were determined in advance and later expanded during the investigation mission. The "event codes" included 56 different types of violations (e.g., code 5 = killing by burning; code 23 = injury by knifing; code 39 = mass grave seen; code 54 = mutilation, etc.), while the "perpetrator codes" included 21 categories (e.g., code 2 = Tatmadaw-Army; code 10 = ARSA; code 15 = aircraft, etc.). Over 13,000 "events" were coded across the 1,024 questionnaires. PILPG used a documentation software to record all of the event and perpetrator codes for subsequent analysis.

In preparing this Report, PILPG drew upon (1) the aforementioned coded information, (2) each investigator's individual reports, and (3) a comprehensive qualitative review of each of the 1,024 questionnaires, performed by PILPG and attorneys from Orrick, Herrington & Sutcliffe LLP.

PART II

FACTUAL FINDINGS OF THE INVESTIGATION MISSION

Part II presents the key factual findings of the investigation mission, including the key patterns of violence and violations perpetrated against the Rohingya identified through an analysis of the 1,024 interviews conducted by the investigation team. Chapter 4 lays out the investigation’s findings of *pre-attack patterns* of violence and widespread human rights violations targeted against the Rohingya over many years, including more consistent violations since 2012 or 2016. Chapter 5 describes the patterns of escalating violence and violations that escalated throughout 2016–2017, while Chapter 6 details how Myanmar armed forces launched widespread and systematic major attacks against Rohingya civilians across northern Rakhine State beginning in August–September 2017, resulting in the displacement of hundreds of thousands of Rohingya. Finally, Chapter 7 summarizes the overall factual findings and conclusions of the investigation team.

CHAPTER 4

PATTERNS OF CONTINUOUS VIOLATIONS (2012–2017)

Though the investigators only interviewed refugees who had fled northern Rakhine State after October 2016, with a focus on the events that made them leave Myanmar, the interviews revealed years-long patterns of escalating persecution and violence against the Rohingya, culminating in the most recent waves of mass displacement in late 2017. The investigation further revealed that persecution and violence against the Rohingya began to noticeably escalate first in 2012 and then in 2016. This persecution and violence sporadically intensified through to the major attacks that began in August 2017 and resulted in the mass displacement of the Rohingya to Bangladesh. Over these many years, the violations and abuses against the Rohingya were predominantly perpetrated by the Myanmar armed forces—mainly the Tatmadaw-Army, but also commonly the Border Guard Police, Combat Police, and Rakhine State Police.

This Chapter describes the documented range of violations and abuses against the Rohingya during this period, including: (1) curfews and movement restrictions; (2) confiscation of land; (3) restricted access to food; (4) marriage and family restrictions; (5) religious-based restrictions; (6) extortion and threats of violence; (7) beatings; and (8) forced labor.

CURFEWS AND MOVEMENT RESTRICTIONS

“We couldn’t light bulbs at night, we had to stay in darkness.”

- Quote from 27-year old Rohingya woman from Maungdaw

Among the many restrictions imposed on the Rohingya, restrictions on movement—namely the imposition of curfews and the prevention of travel—were among the most consistently documented in PILPG’s investigation mission. In some areas in northern Rakhine State, curfews and restrictions on movement were imposed as far back as 2012,¹⁵ following the violence that arose from the alleged rape of a Buddhist woman and resulting mob attacks against the Rohingya. In other areas of northern Rakhine State, however, these restrictions were almost uniformly imposed against the Rohingya in northern Rakhine State as of 2016, and

¹⁵ Questionnaire No. 09SH13.

particularly in the period immediately before attacks in 2016 and 2017.¹⁶ Many respondents described life in this period as “jail” or “hell.”¹⁷

Throughout this time, curfews ran from 6:00pm to 6:00am or 8:00am,¹⁸ during which time even lights or fires were prohibited,¹⁹ and Rohingya could not leave their homes. A female respondent spoke of the difficulties of taking care of babies in complete darkness.²⁰

The Rohingya also needed permission to go to funerals²¹ or visit neighbors and family in other villages.²² One respondents described how the Rohingya were prohibited from hosting people from other villages in their homes.²³ Pregnant women and others seeking medical assistance needed approval to go to hospitals or otherwise travel outside of their villages.²⁴ Without a permit, Rohingya were unable to pass the many checkpoints set up around their villages.²⁵ The various village chairmen, who were answerable to the military and thus often unlikely to grant them, were the only ones allowed to grant permits.²⁶ When they did grant permits, it was usually through extortion for exorbitant sums of money.²⁷

These restrictions were only imposed in Rohingya-only villages or in Rohingya neighborhoods of mixed villages. Respondents explained that the Rohingya caught violating any of these rules were beaten,²⁸ arrested,²⁹ or shot dead.³⁰ One interviewee recounted the military cutting off a boy’s finger because he was out of the house after 6:00pm.³¹ The Rohingyas’ fear of repercussions for violating these restrictive rules is well illustrated in this interview:

One respondent told me that others in her village had gotten into “trouble” when their dogs barked after the curfew. Her fear of the situation was so high that she and her family decided to kill the family dogs.

- Quote from an investigator

¹⁶ E.g., Questionnaire Nos. 04VG04; 09KF12; 09SH14; 10CM12; 09KF10.

¹⁷ E.g., Questionnaire Nos. 03SM16; 10CM13; 11CM04; 04MS03.

¹⁸ E.g., Questionnaire Nos. 14CM12; 14CM12; 14CM12; UNVG48; 1WAF17; 15SO03.

¹⁹ E.g., Questionnaire Nos. 14CM12; 12CM04; 1EPN02.

²⁰ Questionnaire No. NESM76.

²¹ E.g., Questionnaire No. 03SM44.

²² PN Investigator Report, p. 17.

²³ Questionnaire No. 2EVG18

²⁴ E.g., Questionnaire Nos. 2WSM32; JASM57.

²⁵ E.g., Questionnaire No. 2WSM18.

²⁶ E.g., Questionnaire No. 2WSM23.

²⁷ E.g., Questionnaire Nos. 09CM04; 2EVG24; 2WSM23; 14CM07.

²⁸ E.g., Questionnaire Nos. 15SA35; 1WOO20; NASM65.

²⁹ E.g., Questionnaire Nos. 2WSM32; 09SH02; NERK123.

³⁰ E.g., Questionnaire Nos. 2WMS07; 8WSO02; UNVG48; 1WOO12.

³¹ Questionnaire No. 15SA43.

CONFISCATION OF LAND

Dozens of respondents spoke about their land being confiscated, most often in the weeks and months prior to an attack on their village. In most instances, the land was used to set up military camps.³²

One respondent indicated that the military made him sign a document indicating that he was not using his land for cultivation.³³ In another instance, Rohingya land was confiscated for the purpose of building a Buddhist temple, but was ultimately only used by local ethnic Rakhine families.³⁴ The confiscation of land and/or restrictions on land use for cultivation was closely connected to Rohingya's restricted access to food.

RESTRICTED ACCESS TO FOOD

"There were restrictions everywhere. We could not go to work, to madrasa, or school or mosque. Many times we had to stay without food."

- Quote from 25-year old Rohingya woman from Maungdaw

The investigation revealed regular patterns of the Rohingya having their access to food restricted or blocked altogether for many years, but most often in the months prior to attacks on their village. One interviewee described how the military banned cultivating land,³⁵ with the Rohingya having to grow what crops they could in secret.³⁶ Ethnic Rakhine civilians also chased away the Rohingya from their own fields to prevent them from cultivating the land.³⁷

Fishing, a livelihood for many Rohingya, was also banned for the Rohingya throughout northern Rakhine State,³⁸ with the military confiscating or destroying Rohingya fishing boats in some cases.³⁹ In some villages, only ethnic Rakhine civilians were allowed to use the boats or go fishing.⁴⁰ In other instances, Rohingya fishermen had to pay for permission to fish⁴¹ or had to pay bribes to sell fish at the markets.⁴² As indicated by interviewees, if they were caught fishing,

³² E.g., Questionnaire Nos. 14CM09; WSA01; NASH05.

³³ Questionnaire No. NEPN84.

³⁴ Questionnaire No. 03SM08.

³⁵ E.g., Questionnaire No. NEPN84.

³⁶ E.g., Questionnaire No. JASM59.

³⁷ E.g., Questionnaire Nos. 04VG04; 07RK45.

³⁸ E.g., Questionnaire Nos. 1WOO17; 09CM06; 11CM02.

³⁹ E.g., Questionnaire No. 11CM03.

⁴⁰ E.g., Questionnaire No. 2EVG22.

⁴¹ E.g., Questionnaire Nos. 14SH55; 12CM04; RKMS149.

⁴² Questionnaire No. UNVG54.

Rohingya men were arrested,⁴³ or they were threatened or attacked by the ethnic Rakhine civilians.⁴⁴

The aforementioned movement restrictions also made it difficult or impossible to collect firewood for cooking or to buy food and cooking supplies outside the village. These restrictions drove prices for rice, vegetables, and other staple foods drastically upwards.⁴⁵ In a number of villages, Myanmar armed forces burned the remaining local markets and food stores weeks prior to attacks on the villages.⁴⁶ In other villages, the military and Rakhine civilians stole or killed livestock, crops, and vegetables, and they also often destroyed food stores during searches of Rohingya homes.⁴⁷

MARRIAGE AND FAMILY RESTRICTIONS

They beat the males in the village and took all the hens and roosters away as punishment for having children.

- Quote from 22-year old Rohingya woman from Maungdaw

To get married, the Rohingya needed permission from the village chairman.⁴⁸ Typically, this permission required a large sum of money.⁴⁹ In one representative instance, a young man got married without permission, and he and his new wife were arrested because he could not afford to pay the fee.⁵⁰

Once married, the Rohingya were only permitted two children, a restriction that did not apply to the Rakhine or other ethnicities.⁵¹ If a Rohingya woman was pregnant before getting married, she was fined.⁵²

RELIGIOUS-BASED RESTRICTIONS

“If we wanted to pray we needed to have guards set up to warn us.”

- Quote from 35-year old Rohingya man from Maungdaw

Religious-based restrictions against the Rohingya became common after 2012, and stricter still in 2016.⁵³ The Rohingya in many villages could not access

⁴³ E.g., Questionnaire No. 11CM08.

⁴⁴ E.g., Questionnaire No. 04VG02.

⁴⁵ E.g., Questionnaire Nos. 03SM48; 1WAF08; 1WAF11; 1WAF08; 03SM02; 11CM02.

⁴⁶ E.g., Questionnaire Nos. SHVG43; UNVG53; 19SH41.

⁴⁷ E.g., Questionnaire Nos. 15SA43; SHVG42; RKMS137; 14CM06; 16LW47; 14CM02; 10KW12; 14SH59; 14CM08; UNVG53; 11CM12.

⁴⁸ E.g., Questionnaire Nos. 13LW44; 12KF37.

⁴⁹ E.g., Questionnaire Nos. 10CM15; 06VG28; 12KF33.

⁵⁰ Questionnaire No. 2WSM29.

⁵¹ E.g., Questionnaire Nos. 09KF02; 09KF03; 12KF33.

⁵² E.g., Questionnaire Nos. 09KF02; JAPN69; NARK112.

⁵³ E.g., Questionnaire Nos. 10CM11; 11KW08.

mosques, and there were prohibitions on group prayer and religious learning.⁵⁴ Madrassas across northern Rakhine State were closed in the years after 2012.⁵⁵ Village mosques were locked, and the call to prayer (azaan) was forbidden after October 2016.⁵⁶ One respondent described how in his village, the mosque and madrassa were not locked, but the Rohingya who went there were arrested.⁵⁷

The tradition of slaughtering cows for Eid was effectively banned after the military confiscated livestock in anticipation of the holiday, and later Eid celebrations were banned altogether.⁵⁸

People sometimes went to the mosque secretly to pray while others, including in one instance a myna bird, kept watch.⁵⁹

We interviewed a woman, head of the household, 4 children and a myna bird that travelled with the family from Myanmar (perched on the interviewee's shoulder). . . . The bird stood guard over the door and prevented people from entering. She later explained that when she wanted to pray the bird would stand at the doorway and alert her if people were approaching.

- Quote from an investigator

One respondent noted that the Rohingya would hide their Korans.⁶⁰ Several interviewees reported that if the military or police found the Rohingya praying, they were beaten, arrested, or killed.⁶¹

Muslim leaders were typically singled out for particularly violent treatment, and they were often accused of being members of ARSA.⁶² Imams (worship leaders of Rohingya Muslim communities) were regularly detained⁶³ and had their beards forcibly shaved—or even burned—off.⁶⁴ Imams were also often killed in a myriad of brutal ways, as set out further in Chapters 5–6.

EXTORTION AND THREATS OF VIOLENCE

Bribes and extortion levied by the military and police were commonplace, including the exorbitant sums of money required for the permits and taxes related to land use, travel, and marriage described above. If Rohingya were unable to pay,

⁵⁴ E.g., Questionnaire Nos. 06OO08; 14CM08.

⁵⁵ Questionnaire No. 09KF10.

⁵⁶ E.g., Questionnaire Nos. LDOO05; 14CM06; 13LW43; 2WSM32; UNVG55; 09KF01.

⁵⁷ Questionnaire No. NASH02.

⁵⁸ E.g., Questionnaire Nos. 1WOO12; 14CM10; 09CM01.

⁵⁹ E.g., Questionnaire Nos. 13LW42; UNVG55; UNVG57; 8ELW11; 13LW35.

⁶⁰ E.g., Questionnaire No. 09KF14.

⁶¹ E.g., Questionnaire Nos. JAVG63; UNVG57; UNVG53; UNVG55; 09CM07.

⁶² E.g., Questionnaire Nos. 04MS02; 2EOO01.

⁶³ E.g., Questionnaire Nos. 03SM09; 8EJW06.

⁶⁴ E.g., Questionnaire Nos. 8EJW12; 2EMS03; 1WAF20; 1EOO02.

their livestock and personal belongings would be taken.⁶⁵ One respondent described how the military in his village kept records of all Rohingya property and assets, such that whenever a cow was born or slaughtered, it was entered in the record, and the Rohingya farmer had to pay a fee.⁶⁶ Another respondent indicated that the Rohingya had to pay a tax for each child.⁶⁷

Several respondents reported that the military demanded protection money from Rohingya village chairmen to prevent the village from being attacked.⁶⁸ In one case, the military set up a meeting with Rohingya village leaders a week before the attack on that village and told them that if they wanted to stay in Myanmar they would face fines to run businesses, go fishing, or cultivate land.⁶⁹ In another instance, the Myanmar armed forces came into a Rohingya village and demanded that everyone pay 100,000 kyat per week to continue to live there.⁷⁰ The military also often met with Rohingya village leaders in an attempt to enforce the Myanmar government's official policy of having the Rohingya accept the National Verification Cards (NVC),⁷¹ threatening violence if they did not.⁷²

BEATINGS

"All village people were beaten at some point since 2016."

- Quote from 72-year old Rohingya woman from Maungdaw

Beatings were a consistent theme in nearly every interview. The Rohingya were beaten constantly, often for no apparent reason.⁷³ As one interviewee recounted, the military "would walk around and depending on their mood, beat people up."⁷⁴ The Rohingya were regularly beaten at checkpoints⁷⁵ and for violating the curfew.⁷⁶ They were beaten during searches of their homes or shops.⁷⁷

⁶⁵ E.g., Questionnaire No. 2WSM28.

⁶⁶ Questionnaire No. 10CM06.

⁶⁷ Questionnaire No. 2WRK33.

⁶⁸ E.g., Questionnaire Nos. 14CM02; 1WAF20; 1WOO13.

⁶⁹ Questionnaire No. 8ELW12.

⁷⁰ Questionnaire No. SHVG43.

⁷¹ NVC are Myanmar identification cards and represent one of many identification regimes imposed on the Rohingya over the past several decades. The NVC does not grant citizenship; rather, it states that holders "need to apply for citizenship" under the 1982 Citizenship Law. The Myanmar government has termed this process the 'first step towards citizenship.' In reality, however, the NVCs mark the Rohingya as non-citizens, in keeping with the Government's characterization of them as foreigners in their own homeland.

⁷² E.g., Questionnaire Nos. NEOF01; 14CM09; 10CM05; 10CM08; 1WOO06; 10CM09; 11CM01; 11CM11.

⁷³ E.g., Questionnaire Nos. 09KF11; 1E0001.

⁷⁴ Questionnaire No. UNVG55.

⁷⁵ E.g., Questionnaire No. 10CM03.

⁷⁶ E.g., Questionnaire Nos. 15SA35; 07SM44.

⁷⁷ E.g., Questionnaire Nos. 10CM03; 09KF01.

If the Rohingya complained about the military stealing their belongings, they were beaten.⁷⁸ If the Rohingya were caught praying in mosques or in their homes, they were beaten.⁷⁹ Parents trying to protect their daughters from being “touched” and dragged away were beaten.⁸⁰ Men caught hiding in the forest—often to avoid beatings—were beaten as well.⁸¹

FORCED LABOR

Forced labor was another issue that regularly came up, usually around the Burmese cantonment sites. Often forced labor occurred over a period of years. One older man with health issues explained how he was regularly tied up and beaten because he was unable to work as expected. At least in one instance, men who had been forced to work for the military were spared during the major military attacks; the witness believed it was because military officers were desperate to have the Rohingya men continue working.

- Quote from an investigator

Numerous respondents spoke of the Rohingya being forced to work in military camps or for other military or police units.⁸² The men were taken away to work for up to seven days at a time,⁸³ sometimes sleeping on the floor of the work sites.⁸⁴ One respondent described a system whereby every four days the village had to choose 10 men to go and work for the military.⁸⁵ They were forced to clean, cut grass, cultivate crops, cut wood, build military houses, unload trucks, and dig canals.⁸⁶ Sometimes, the military forced the Rohingya to work in fields of Rakhine villagers.⁸⁷ Rohingya men were regularly beaten or denied food during forced labor.⁸⁸ In some instances, family members were required to pay a ransom for the release of men taken for forced labor.⁸⁹ The threat of forced labor was one of the many reasons Rohingya men often left their villages to hide in the surrounding forests.⁹⁰

⁷⁸ E.g., Questionnaire Nos. 10CM10; NESM68.

⁷⁹ E.g., Questionnaire Nos. 19SH23; JAVG63.

⁸⁰ Questionnaire No. 18SO01.

⁸¹ E.g., Questionnaire No. SHSM48.

⁸² E.g., Questionnaire Nos. 15SA24; 14CM04; 04VG05; RKMS150; 1WAF17.

⁸³ E.g., Questionnaire Nos. 09KF11; UNRK83.

⁸⁴ Questionnaire No. RKMS150.

⁸⁵ Questionnaire No. 09KF11.

⁸⁶ E.g., Questionnaire Nos. 09KF11; 1EPN12; 8WSA04; UNRK83.

⁸⁷ Questionnaire No. 04VG04.

⁸⁸ E.g., Questionnaire Nos. 8WSA04; 13LW35.

⁸⁹ E.g., Questionnaire No. 15SA43.

⁹⁰ E.g., Questionnaire No. 16LW51.

CHAPTER 5

PATTERNS OF ESCALATING VIOLENCE & VIOLATIONS

(OCTOBER 2016–AUGUST 2017)

The investigation mission revealed that, following the start of the Myanmar military’s “clearing operation” in response to a series of purported attacks against state security forces by ARSA in October 2016, the scale and severity of mass violence and human rights abuses against the Rohingya escalated across northern Rakhine State, reaching their peak in the weeks prior to the major attacks of August–September 2017.

This Chapter describes the escalating violence following the ARSA attacks, including by: (1) conducting regular raids and searches of Rohingya villages, (2) attacking women, (3) humiliating and degrading Rohingya civilians, (4) interrogating and torturing Rohingya civilians, and (5) carrying out mass detentions, disappearances, and killings of Rohingya civilians, (6) monitoring and documenting the Rohingya civilians, (7) dramatically increasing military and police presence in and around Rohingya villages, (8) seizing anything resembling a weapon, and (9) removing fences and other barriers.

RAIDS AND SEARCHES OF ROHINGYA VILLAGES

“They used to threaten us that they would burn our houses, beat us, if we didn’t give names of bad people.”

- Quote from 55-year old woman from Maungdaw

After October 2016, the military often raided Rohingya villages and homes, sometimes claiming to be looking for ARSA and weapons.⁹¹ In one instance, the military came to the public square in the village and shouted that they were looking for ARSA. After demanding the identification of ARSA members, (whether or not any existed) the men and women present were then beaten.⁹² During these raids, the Rohingya were told that they would get identity cards and be able to move outside the village and go to the market if they provided information related to ARSA.⁹³

⁹¹ E.g., Questionnaire Nos. UNVG47; 1E0001; JASM57.

⁹² Questionnaire No. UNOO07.

⁹³ Questionnaire No. 2EVG18.

In the course of these searches, the military often stole valuables, including clothes, money, and livestock.⁹⁴ The military dug up floors looking for weapons and destroyed or confiscated solar panels and any other valuables they found.⁹⁵ Possession of mobile phones was forbidden in the months prior to the major attacks.⁹⁶ If a Rohingya civilian was found with a mobile phone, or other items such as Bangladesh currency, they were beaten severely and/or arrested and forced to pay large sums of money to be released.⁹⁷ One respondent indicated that, during the home searches, the military planted drugs and then arrested everyone in the home.⁹⁸

The interviewees reported that, due to the frequent and often violent raids and searches, Rohingya villagers were not able to sleep regularly for months before the attacks on their villages. Some Rohingya established informal security networks to warn others when soldiers were coming, both between and within villages.⁹⁹

In many villages, men who had not yet been arrested hid outside the villages to avoid the beatings and detentions that accompanied the regular raids, often sleeping in the surrounding hills and forests and coming home only to eat.¹⁰⁰ Thus, as one female respondent noted, when the military raided a village, “only women were left at home.”¹⁰¹ This placed the women in a particularly vulnerable position. The military searched the women’s bodies aggressively and touched them “in sensitive areas,” saying they’re looking for gold.¹⁰² During one such search, a girl had earrings ripped off her ears and was left bleeding.¹⁰³ In another, the military told the women that the men had to come back by the next day or they would kill the women.¹⁰⁴

ATTACKS ON WOMEN

“When soldiers came to the village and “searched” women, they groped our breasts, entire body. Today when I think about those days, this is what makes me sick. Our husbands were never there and cannot find out.”

- Quote from 25-year old Rohingya woman from Maungdaw

⁹⁴ E.g., Questionnaire Nos. 16LW47; 1WAF03; 04MS01; 13LW42; UNVG53; 01OO11; 06VG29; NASM65.

⁹⁵ E.g., Questionnaire Nos. UNSM55; 14CM06; 1WOO19; 8WVG34.

⁹⁶ Questionnaire No. JASM57.

⁹⁷ E.g., Questionnaire Nos. 14CM05; RCMK03.

⁹⁸ Questionnaire No. 04VG02.

⁹⁹ Questionnaire No. 2EPN35.

¹⁰⁰ E.g., Questionnaire Nos. LAVG79; NEVG75.

¹⁰¹ Questionnaire No. LAVG79.

¹⁰² E.g., Questionnaire Nos. 10CM13; 10CM07; 11CM12.

¹⁰³ Questionnaire No. UNSM55.

¹⁰⁴ Questionnaire No. 8WSA01.

As tensions increased in the run up to the August–September 2017 attacks, with the men hiding in hill tracts at night, women and girls were increasingly targeted. The military searched many women’s bodies, ripped their clothes off, and touched them in “sensitive areas.”¹⁰⁵ They accused women of “feeding ARSA.”¹⁰⁶ One female respondent described how the military ordered the women “to keep their men in the houses” or they would be beaten.¹⁰⁷

One respondent described Myanmar armed forces coming to their villages drunk at night and looking for women.¹⁰⁸ In some such instances, the women were raped,¹⁰⁹ and, in at least one instance, the local ethnic Rakhine men joined the armed forces in carrying out gang rapes.¹¹⁰ Rohingya men would thus sometimes “hide their wives in the forests.”¹¹¹

Several female respondents spoke of being gathered together and forced to sit in a field, staring at the sun all day with no food or water.¹¹² In one such instance, the women were forced to do so while reciting the kalima—the verses before death in Islam.¹¹³

Women were often detained, especially pretty girls. Soldiers would “keep” them until a fine was paid. Documented instances of the military entering houses and taking women away, either to be raped or never to be seen again, were particularly prevalent in the weeks immediately prior to the August–September 2017 attacks.¹¹⁴ The military also demanded that some village chairmen hand over groups of dozens of women; though not directly witnessed, the respondents suspected or heard from the victims that those women were taken to be raped. Some respondents reported that these acts against women were the direct trigger forcing some Rohingya to flee their homes.¹¹⁵

HUMILIATION AND DEGRADATION

Virtually every investigator documented several acts designed to humiliate and degrade the Rohingya civilians, both before and during the major attacks. These acts typically included the public defilement of persons, homes, food, and religious symbols.

¹⁰⁵ PN Investigator Report, p. 20; *e.g.*, Questionnaire Nos. SHVG44; 06AF06.

¹⁰⁶ *E.g.*, Questionnaire Nos. 13LW31; 15SO16.

¹⁰⁷ Questionnaire No. UNSM53.

¹⁰⁸ *E.g.*, Questionnaire No. 19SH45.

¹⁰⁹ *E.g.*, Questionnaire Nos. LDOO04; UNOO12; RKMS149; UNVG50; 8ELW10.

¹¹⁰ Questionnaire No. 2EVG25.

¹¹¹ Questionnaire No. 04MS05.

¹¹² *E.g.*, Questionnaire Nos. 09KF13; 09KF17; 13JW36; 8EJW07; 09KF01; 09KF10; 09CM01.

¹¹³ MS Investigator Report, p. 3; Questionnaire No. 10KW15.

¹¹⁴ *E.g.*, Questionnaire Nos. 16LW47; 14CM03; 14CM12; 14CM02; 15SO29; 06AF02.

¹¹⁵ *E.g.*, Questionnaire Nos. 04MS02; 04MS06; 09KF13; 13LW44; 03RK11.

These documented acts included the military or non-Rohingya civilians urinating and defecating in the Rohingya's cooked food,¹¹⁶ defecating in trunks of cloth and religious clothing,¹¹⁷ urinating on Korans¹¹⁸ or inside the village mosque,¹¹⁹ and tearing up and burning Korans.¹²⁰

These acts of humiliation and degradation were often designed to demean Rohingya women. Many respondents spoke of Myanmar armed forces forcing women outside without their headscarves¹²¹ and taking photos of women with their hair and face exposed.¹²² Military and police also pulled off women's headscarves at checkpoints.¹²³

MASS DETENTIONS, DISAPPEARANCES, AND KILLINGS

"One man was arrested for praying in the mosque; another one for being at the market."

- Quote from 55-year old Rohingya man from Maungdaw

In almost all interviews, respondents reported the abduction of tens or even hundreds of men from their village in the period after October 2016.¹²⁴ Myanmar armed forces blindfolded and handcuffed the men and then took them away in military trucks.¹²⁵ In some instances, the men were only released if their families could pay extortionate fines.¹²⁶ Otherwise, they were typically never seen again.¹²⁷

Young men were particularly targeted for arrest,¹²⁸ sometimes with an accusation of an affiliation with ARSA.¹²⁹ During the subsequent beatings and arrests, the soldiers would ask, "Where are your weapons? Turn them in."¹³⁰ According to respondents, rarely, if ever, were any such weapons found. Given the threats of these beatings and arrests, most Rohingya young men spent weeks or

¹¹⁶ E.g., Questionnaire Nos. 09SH12; 09KF14; 12CM02; 14KF41; 10KF08.

¹¹⁷ E.g., Questionnaire Nos. 11KW05; 12CM02; 11CM14.

¹¹⁸ KF Investigator Report, p. 4–5 ; e.g., Questionnaire Nos. SHVG45; 11CM14; 14KF41.

¹¹⁹ E.g., Questionnaire Nos. 01OO06; 09KF16; 03RK20.

¹²⁰ E.g., Questionnaire Nos. UNVG52; SHVG45; 1EOO01; 03RK20.

¹²¹ E.g., Questionnaire Nos. 14SH58; 2EVG26; 11CM07.

¹²² E.g., Questionnaire Nos. 16LW49; 14CM10.

¹²³ Questionnaire No. 10CM01.

¹²⁴ E.g., Questionnaire Nos. 04MS04; 07SM34; 03SM34; 03SM40; 03SM42; 16SM83; 1WOO22; 09KF18; 2WRK31; MSSM75; 14CM12; 03SM38.

¹²⁵ E.g., Questionnaire Nos. 16SM82; 1WOO22; 2WMS07; 06AF08; UNVG46; 2EVG26; 03RK05; 03RK23; 06AF08; 07RK51; 07RK54; 15SO03.

¹²⁶ E.g., Questionnaire Nos. 16LW50; 14SH59; 14CM02; 09CM04; 8EJW07; 09KF03; 10KF08.

¹²⁷ E.g., Questionnaire No. 09KF10.

¹²⁸ E.g., Questionnaire No. JAVG63.

¹²⁹ E.g., Questionnaire Nos. 1WOO22; 06OO08; 11CM09.

¹³⁰ Questionnaire No. 16SM82.

months hiding in the forests and hills near their villages.¹³¹ In one documented case, security forces came to a village and rounded up all the young men, accusing them of being ARSA.¹³² Then, “they covered the young men’s eyes and put guns in their hands and took photos of them and said they were ARSA. Then they cut their throats.”¹³³

In one village, the military carried out a “survey” to identify wealthy Rohingya families and then arrested six of those identified as educated and well-off.¹³⁴ In some instances, the military called out Rohingya villagers from a list of names or selected them from a list before arresting them or taking them away (as described below).

Religious leaders and village chairmen were often the first to be arrested, “as if to send a message,” as one respondent described.¹³⁵ In several instances, the military set up “mandatory meetings” with Rohingya village leaders or educated and wealthy Rohingya men, but as soon as they arrived to the “meetings,” the military arrested all of them.¹³⁶ In other instances, the military rounded up villagers on the pretext of checking for outsiders, and then arrested,¹³⁷ or in at least one case killed,¹³⁸ all of them. The ethnic Rakhine civilians also sometimes participated in the rounding up of Rohingya villagers, helping the Myanmar armed forces to identify Rohingya.¹³⁹ One respondent recounted how the military went into the village mosque and made a call to prayer to lure the Rohingya men and then arrested them.¹⁴⁰

One respondent described being one out of over 1,000 men and boys over the age of 12 ordered to a nearby military camp where they were held and beaten for 24 hours, some beaten to death.¹⁴¹ “They would take the rich and educated and leaders and bring them to jail. Later they would inform the family they had died.”¹⁴² One interviewee reported cases of doctors making fake reports for those who had died in detention, stating that they died from disease.¹⁴³ Another

¹³¹ *E.g.*, Questionnaire Nos. 1WOO10; NEVG75.

¹³² *E.g.*, Questionnaire Nos. 1WOO22; JAVG63; 06AF06.

¹³³ Questionnaire No. 1E0002.

¹³⁴ Questionnaire No. 03SM36.

¹³⁵ Questionnaire No. JAOO03.

¹³⁶ *E.g.*, Questionnaire Nos. 16SM81; 05GN23; 09SH05; NESM71.

¹³⁷ Questionnaire No. 10CM15.

¹³⁸ Questionnaire No. 8WSA03.

¹³⁹ *E.g.*, Questionnaire Nos. 2EMS08; 14CM06; 2EMS06.

¹⁴⁰ Questionnaire No. 06AF02.

¹⁴¹ Questionnaire No. 03SM51.

¹⁴² Questionnaire No. 1WOO22.

¹⁴³ Questionnaire No. 07SM36.

respondent indicated that there were special “burial grounds” for people who had been killed or died in jail.¹⁴⁴

Several respondents spoke of people who were sentenced to lengthy prison terms as well.¹⁴⁵ The investigation documented accounts of hundreds of Rohingya being taken to Maungdaw and Buthidaung jails, many of whom are reportedly still missing.¹⁴⁶ Many respondents said that they think the men are still alive and kept in one of these jails.¹⁴⁷ The respondents often asked the investigators to help them find their family members who were disappeared.¹⁴⁸

INTERROGATIONS AND TORTURE

The investigation documented dozens of Rohingya being interrogated and abused during the arrests and detentions immediately prior to the major attacks on their villages. Some respondents described being tortured in an effort to reveal the identity of ARSA members and the location of their supposed weapons.

For instance, in one case, the military kept a group of 30 young men in detention and beat them to force them “to confess that they were ARSA.”¹⁴⁹ Detained men had their nails pulled out,¹⁵⁰ their beards and genitals set on fire,¹⁵¹ and were severely beaten by soldiers who repeatedly asked, “Where are your weapons? How many weapons do you have?”¹⁵²

DOCUMENTING AND MONITORING ROHINGYA CIVILIANS

Many respondents spoke of the military coming to their villages and taking photos or creating lists of the villagers. In one village in Maungdaw, the military came two months before the major attack, separated the young and educated men and took photos of them, saying they were photographing members of ARSA.¹⁵³ In another village, the military created lists of males over the age of 12.¹⁵⁴ One respondent indicated that, after October 2016, the military carried out a “survey” to identify wealthy Rohingya families.¹⁵⁵ In some instances, the military conducted

¹⁴⁴ Questionnaire No. RCMK02.

¹⁴⁵ *E.g.*, Questionnaire Nos. JAVG61; 2EVG24; 8WSO07; 1WAF03.

¹⁴⁶ *E.g.*, Questionnaire Nos. JAVG62; 2EVG25; 1EPN12; 1WAF13; 06PN37; 07RK63; 8EJW06; 09SH05; 18SA17.

¹⁴⁷ *E.g.*, Questionnaire Nos. 12CM03, 09CM04; 1WAF10; 03SM06; RCMK02; 1WOO04; 1WOO09; 2EPN37; 2EVG26; 05GN21; 8ELW20; JASM59; NASM64.

¹⁴⁸ Questionnaire No. JASM59.

¹⁴⁹ *E.g.*, Questionnaire Nos. 03SM05; NASM62.

¹⁵⁰ *E.g.*, Questionnaire Nos. 03SM49; 04MS02.

¹⁵¹ Questionnaire No. 8WSO05.

¹⁵² SM Investigator Report, p. 8; Questionnaire No. NASM65.

¹⁵³ Questionnaire No. NASM62.

¹⁵⁴ Questionnaire No. 8EJW05.

¹⁵⁵ Questionnaire No. 03SM36.

these activities just a week or two before the major attacks,¹⁵⁶ while in others it happened as early as two months beforehand.¹⁵⁷

In one village, the military forced all villagers into a large house and kept them there for 48 hours while taking photos of all of them, both men and women.¹⁵⁸ Some also reported that the military “touched” the Rohingya women during these so-called surveys.¹⁵⁹ While a few respondents indicated that they were photographed every year,¹⁶⁰ the more prevalent pattern appears to be a form of census in Rohingya villages in the weeks before the August–September 2017 attacks.

INCREASED MILITARY PRESENCE

“It was a large gathering of ants.”

- Quote from 60-year old Rohingya woman from Maungdaw

Most respondents indicated that there was a major increase in military presence in and near their villages, including helicopter surveillance, in the period before the major attacks of August–September 2017.¹⁶¹ Many respondents reported large groups of military personnel coming to their villages, occupying the village’s schools, mosques, and monasteries,¹⁶² or setting up camp in the village or on nearby river banks.¹⁶³

In other instances, the military stationed itself in neighboring Buddhist villages. Respondents also noticed a buildup of weaponry in the military camps close to the Rohingya townships, including trucks bringing in weaponry.¹⁶⁴

Patrols by military and police forces also increased significantly during this period.¹⁶⁵ As one respondent recounted, “Prior to October 2016, the military came once a month to [their] village. Afterwards, patrols occurred almost every day.”¹⁶⁶ The military said they were looking for “the bad people.”¹⁶⁷ In those villages where the military was not stationed, they came in large numbers, as many as 100–200

¹⁵⁶ E.g., Questionnaire Nos. 2WSM30; 03SM30.

¹⁵⁷ E.g., Questionnaire Nos. 03SM05; NASM62.

¹⁵⁸ Questionnaire No. 03SM05.

¹⁵⁹ Questionnaire No. 8WS011.

¹⁶⁰ E.g., Questionnaire Nos. 13JW43; 8WSO11.

¹⁶¹ E.g., Questionnaire Nos. 06PN43; 03RK19; 06PN31; JAPN72.

¹⁶² E.g., Questionnaire Nos. MSSM77; 16SM82; 16LW47; 14CM05; 14CM04; 03SM40; 03SM47; UNSM54; UNVG48; 1EOO01; 2EPN40; 06PN31; 14CM04.

¹⁶³ E.g., Questionnaire Nos. 2EPN39; 04MS04.

¹⁶⁴ Questionnaire No. 15SO23.

¹⁶⁵ E.g., Questionnaire Nos. 16SM81; 12CM03; 03SM40; 03SM47; UNSM52.

¹⁶⁶ E.g., Questionnaire Nos. UNSM52; 09KF01.

¹⁶⁷ Questionnaire No. 04VG04.

soldiers, once or twice a day from different directions.¹⁶⁸ The occupying military forces forced the Rohingya to cook and run errands for them.¹⁶⁹ One woman from Maungdaw recounted, “Rohingya houses were ordered to feed the military, even though there wasn’t enough food for the children.”¹⁷⁰ As a further intimidation tactic, the military also sometimes came with dogs and unleashed them on the Rohingya, including on children and other animals.¹⁷¹

SEIZURE OF ANYTHING RESEMBLING A WEAPON

“The only way to protect ourselves from the military was to hide, like animals. We didn’t have knives to cut the fish.”

- Quote from 22-year old Rohingya woman from Maungdaw

In the period prior to the August–September 2017 attacks, the military seized any items that might be used as weapons from Rohingya homes and shops. Sharp metal objects, including kitchen knives, spades, hoes, cooking and farming utensils, and “anything made of iron”¹⁷² were seized.¹⁷³ The military levied fines on those found with metal implements resembling weapons.¹⁷⁴ In several villages, after confiscating all metal objects, the military photographed the confiscated items, saying they were photographing ARSA weapons.¹⁷⁵ In some instances, the respondents reported non-Rohingya civilians taking part in these seizure operations with the military.¹⁷⁶

REMOVAL OF BARRIERS, FENCES, AND HIDING PLACES

“Cannot use bamboo fence near house, the government said this because they did not want us to hide militants there.”

- Quote from 55-year old Rohingya man from Maungdaw

Throughout 2016–2017, and particularly in the weeks immediately prior to the August–September 2017 attacks, the military and police took down any fences, walls, or even trees around Rohingya homes—presumably in order to remove anything that could be a barrier or a hiding place.¹⁷⁷ Sometimes, the military and

¹⁶⁸ E.g., Questionnaire Nos. 04VG01; UNSM52; SHVG45; 09KF01; 10KF08; 16LW52.

¹⁶⁹ E.g., Questionnaire Nos. 07SM40; JASM60.

¹⁷⁰ Questionnaire No. 10KF08.

¹⁷¹ E.g., Questionnaire Nos. 8EJW10; 13JW22; 1EPN06; 11CM09.

¹⁷² E.g., Questionnaire Nos. UNVG55; 06VG28.

¹⁷³ E.g., Questionnaire Nos. CHOO03; 14CM11; 1WAF06; 04MS01; 06AF03; 1WAF07; UNVG47; 06VG28; 8WVG39; 09SH03; 13JW39; 13JW41.

¹⁷⁴ AF Investigator Report; Questionnaire No. 8ELW10.

¹⁷⁵ E.g., Questionnaire Nos. MSSM75; NASM62.

¹⁷⁶ E.g., Questionnaire No. 06VG31.

¹⁷⁷ E.g., Questionnaire Nos. 14CM06; 14CM11; 15SO22; SHVG40; 2WSM32; 09KF11; 09SH03; 11CM11; 03SM33; 03SM43; 03SM48; 03SM50; UNSM53; UNSM54; JASM56; JASM58;

police took down these objects with the assistance of ethnic Rakhine,¹⁷⁸ but in some villages, they forced the Rohingya to disassemble their own fences and walls;¹⁷⁹ one respondent described the order being announced through the mosque megaphone.¹⁸⁰ Another interviewee noted that those who did not take down their fences were beaten.¹⁸¹

Along with destroying fences, the military and police also destroyed outside toilets and showers. In addition to removing the toilets and showers as potential hiding places or obstacles to an attack, part of the purpose of the removal of fences and other barriers was undoubtedly humiliation and harassment, as all the Rohingya had to use the bathroom in the open.¹⁸²

The military also took steps in the period before the major attacks to ensure that road access to Rohingya villages across northern Rakhine State would be clear, presumably for trucks and weaponry for use in the major attack. In some villages, the military first marked trees with red flags or tape¹⁸³ and then used bulldozers to take them down.¹⁸⁴

NESM68; NESM69; 05VG33; 8WVG35; 10KF08; 13JW39; 13JW41.

¹⁷⁸ *E.g.*, Questionnaire Nos. JAVG63; 03SM16; 03SM13; 03SM16.

¹⁷⁹ *E.g.*, Questionnaire Nos. 03SM04; 06VG31; NASM65; 2EMS08; 09SH07.

¹⁸⁰ Questionnaire No. JASM58.

¹⁸¹ Questionnaire No. UNSM53.

¹⁸² KF Investigator Report, p. 4.

¹⁸³ Questionnaire No. 2EMS09.

¹⁸⁴ *E.g.*, Questionnaire Nos. 03RK23; 07RK57.

CHAPTER 6

MAJOR ATTACK PATTERNS (AUGUST–SEPTEMBER 2017)

PILPG’s investigation mission found that in late August 2017, Myanmar armed forces launched widespread and systematic attacks against Rohingya civilians across northern Rakhine State. The attacks were remarkable in their scale, level of military coordination, and brutality.

This Chapter details the unprecedented violence and abuses perpetrated against the Rohingya in the major attacks of August–September 2017 that resulted in the mass displacement of Rohingya that prompted this investigation. Specifically, this Chapter describes the Myanmar armed forces’ massive strategic ground assaults, sometimes supported by aircraft and artillery, as well as how non-Rohingya civilians joined in these attacks. The findings detailed in this Chapter also show how the perpetrators spewed hateful epithets in the midst of the attacks and exclusively targeted Rohingya civilians, including targeting children, Rohingya religious leaders and symbols, and women. The Chapter details the brutal indiscriminate shootings, mass killings, human bonfires, destruction of bodies, poisoning, rapes, gang rapes, other sexual violence, burning of villages, and looting that accompanied these attacks and caused the Rohingya to flee to Bangladesh. Moreover, this Chapter documents how the Myanmar armed forces continued to target and kill Rohingya civilians attempting to flee to Bangladesh, slaughtering hundreds or even thousands of Rohingya at the border crossing.

STRATEGIC GROUND ASSAULTS

“They were looking for ARSA. They said they were looking for bad people. They used to say if there are bad people in your village you need to let us know. But they attacked everyone anyway.”

- Quote from 20-year old Rohingya woman from Maungdaw

The major attacks on the villages, when they finally came, were predominantly ground assaults by the Myanmar military, with aerial support from helicopters dropping grenades, weaponry, and other material to the military forces prepared and waiting below.¹⁸⁵ The attacks usually took place early in the morning or on

¹⁸⁵ E.g., Questionnaire Nos. 15SA43; 14SH58; 14CM07; 14CM09; RKMS136; RKMS147; 2EPN37; 03RK19; 03RK20; NERK116.

Fridays while Rohingya villagers were praying—Jumu'ah is the Muslim congregational prayer on Fridays.¹⁸⁶

Groups of dozens or hundreds of soldiers¹⁸⁷ would arrive in jeeps and trucks,¹⁸⁸ on foot from nearby military camps,¹⁸⁹ or on ships.¹⁹⁰ They typically came from different directions,¹⁹¹ surrounding a given village¹⁹² and spreading out into groups covering different portions of the area before beginning to burn, shoot, and stab the Rohingya.¹⁹³ One respondent recounted, “The military entered from the East and South of the village at the same time, it was a very clean plan.”¹⁹⁴ Groups of soldiers typically had different tasks, as described by one interviewee: one group shot people, a second searched houses, and a third burned them.¹⁹⁵ In one documented case, one group of soldiers entered the village, while another group of soldiers surrounded the village to prevent people from fleeing.¹⁹⁶ In others, the military surrounded a village and blocked all exits except one, leaving a corridor for the Rohingya to flee to Bangladesh.¹⁹⁷

Sometimes, groups of soldiers came, peacefully, to neighboring Rakhine Buddhist villages 12 or 24 hours before the attacks on the Rohingya villages.¹⁹⁸ The military, security forces, and/or enlisted Rakhine civilians then attacked the Rohingya village in the early morning – entering together on trucks and jeeps.¹⁹⁹ These attacks were full-fledged military operations that involved shooting at individuals²⁰⁰ and groups²⁰¹ of civilians, including when they tried to flee,²⁰²

¹⁸⁶ *E.g.*, Questionnaire Nos. 1EPN13; 1WAF20; 2WRK38; 2WRK30; 1EGN02; 1EPN13; 1WOO16; 2WRK37; 03RK11; 03RK12; JARK98; NERK122.

¹⁸⁷ *E.g.*, Questionnaire Nos. RKMS136 (200 soldiers); RKMS137 (4000 soldiers); RKMS148 (800 soldiers); RKMS150 (500 soldiers); 2EPN37 (500 soldiers); 2EPN39 (100–200 soldiers); 03RK11 (300 soldiers); 05PN21 (700 soldiers); 06PN37 (500 soldiers).

¹⁸⁸ *E.g.*, Questionnaire Nos. UNVG50; 03SM07; 03SM43; 03SM45; 03SM46; 03SM47; 03SM48; 03RK12; 06PN37; 09SH08.

¹⁸⁹ *E.g.*, Questionnaire Nos. 1WOO19; 2EPN37; 2EPN39; 03SM02; 03SM04.

¹⁹⁰ *E.g.*, Questionnaire No. 10KF08.

¹⁹¹ *E.g.*, Questionnaire Nos. JAVG63; 04MS09; JAOO03; 2WSM23; 03SM36; UNSM55; 2EPN39; NESM76.

¹⁹² *E.g.*, Questionnaire Nos. 06PN33; 03SM35; 03SM48; UNVG48.

¹⁹³ *E.g.*, Questionnaire Nos. 03SM07; 03SM29; 03SM50; 2WSM26; 2EPN39; 15SO08.

¹⁹⁴ Questionnaire No. 2WSM23.

¹⁹⁵ *E.g.*, Questionnaire No. NESM68.

¹⁹⁶ *E.g.*, Questionnaire No. 2WSM25.

¹⁹⁷ *E.g.*, Questionnaire Nos. 06VG31; JASM58.

¹⁹⁸ *E.g.*, Questionnaire Nos. 03SM07; 03SM08.

¹⁹⁹ *E.g.*, Questionnaire Nos. 10KW11; 03SM08; 03SM47; 03SM43; 03RK10; 06VG29.

²⁰⁰ *E.g.*, Questionnaire No. 05PN23.

²⁰¹ *E.g.*, Questionnaire No. 10CM03.

²⁰² *E.g.*, Questionnaire No. 10CM09.

shelling²⁰³ and burning²⁰⁴ of civilian villages; beating²⁰⁵ and knifing²⁰⁶ of civilians; use of landmines²⁰⁷ in civilian villages; the abduction²⁰⁸ of civilians; the throwing of people into a river²⁰⁹ or fire;²¹⁰ the poisoning of civilian water supplies;²¹¹ and the rape²¹² and sexual assault²¹³ of young women. One respondent noted that the attack on his village lasted for a week.²¹⁴

PARTICIPATION OF NON-ROHINGYA CIVILIANS IN THE ATTACKS

“The military used to bring Rakhine from nearby villages as guides, since most of the military was not from the area.”

- Quote from 26-year old Rohingya man from Maungdaw

The involvement of local, non-Rohingya civilians in the attacks alongside state forces was a near-ubiquitous theme in the interviews.²¹⁵ Many described ethnic Rakhine (or “Mogh,” as they were often referred to by the respondents) taking part in the burning of Rohingya villages,²¹⁶ the looting of Rohingya homes,²¹⁷ and in the mass killings of Rohingya civilians, usually by using knives and machetes to eviscerate those who did not die of gunshot wounds.²¹⁸ Several respondents spoke of “Rakhine youth” as participants of the attacks,²¹⁹ and one respondent indicated that Rakhine women also took part in the attacks.²²⁰

In one instance, the Rakhine forced the Rohingya out of their homes, and then the military shot them.²²¹ In another case, the military forced Rohingya men to

²⁰³ E.g., Questionnaire No. 12S452.

²⁰⁴ E.g., Questionnaire No. 14CM07.

²⁰⁵ E.g., Questionnaire No. 09SH16.

²⁰⁶ E.g., Questionnaire No. 16SM78.

²⁰⁷ E.g., Questionnaire Nos. 6LW50 & 13JW38.

²⁰⁸ E.g., Questionnaire No. 10CM14.

²⁰⁹ E.g., Questionnaire No. 07RK54.

²¹⁰ E.g., Questionnaire No. 07RK51.

²¹¹ E.g., Questionnaire No. 04MS05.

²¹² E.g., Questionnaire No. 1WAF14.

²¹³ E.g., Questionnaire No. 14CM01.

²¹⁴ Questionnaire No. 19SH45.

²¹⁵ LW Investigator Report, p. 4.

²¹⁶ E.g., Questionnaire No. 12SH52.

²¹⁷ PN Investigator Report, p. 19; Questionnaire No. 06OO08.

²¹⁸ E.g., Questionnaire Nos. 1WOO23; 1WOO23; LDOO04; 14SH59; 09KF11; 10CM03; 10KW13; 10CM10; 03SM11; 2EPN41; 15SA25; JARK105.

²¹⁹ E.g., Questionnaire Nos. JAPN74; 03RK02.

²²⁰ Questionnaire No. 03RK06.

²²¹ E.g., Questionnaire No. 03RK03.

kneel in a field and then ordered the ethnic Rakhine civilians to shoot the Rohingya men.²²²

Many respondents spoke of military and Rakhine coordination via “a system”²²³ of an initial phase of heavy gunfire from the military followed by a looting and burning phase by the Rakhine. The Rakhine would enter a given village carrying petrol tanks as the military was shooting. They would then loot the village as the Rohingya started fleeing. After looting, the Rakhine would spread the petrol, and the military would burn the village.²²⁴ In some instances, the military stood guard or patrolled the area while the non-Rohingya civilians looted Rohingya homes and shops.²²⁵ Respondents also noted that some non-Rohingya civilians had obviously received training from military²²⁶ and carried weapons “similar to those of the military.”²²⁷ The respondents reported many instances of groups of non-Rohingya civilians outfitted in military²²⁸ or other Myanmar armed forces uniforms.²²⁹

Several respondents spoke of the ethnic Rakhine and Hindus serving as informants to the military because they were from the area, “knew who the rich and educated Rohingya were,” and were able to guide the military during the attacks.²³⁰ One respondent described local ethnic Rakhine leaving the village in the days immediately before the attack, obviously knowing what was coming; “[i]nformers for Rakhine were spared, given advance notice, so they went to Maungdaw.”²³¹

Respondents were sometimes able to identify specific Rakhine individuals from neighboring villages participating in the attacks.²³² In one case, the respondent identified Hindus participating in the attack even though there were no Hindu villages nearby, indicating that the Myanmar armed forces likely organized their participation well beforehand.²³³

²²² Questionnaire No. JAOO02.

²²³ *E.g.*, Questionnaire Nos. 03SM13; 03RK02.

²²⁴ *E.g.*, Questionnaire Nos. 2WSM24; *E.g.* Interview 2WSM28; 12SH52; 03SM47; 03SM43; 03SM15; UNSM54.

²²⁵ *E.g.*, Questionnaire Nos. 1WAF03; 03SM07; 03SM14.

²²⁶ *E.g.*, Questionnaire Nos. 2WSM18; 03SM12; 03SM06; 03SM18.

²²⁷ *E.g.*, Questionnaire Nos. 03SM06; 03SM17; 09KF12.

²²⁸ *E.g.*, Questionnaire Nos. 07SM41; MSSM74; 14CM10; 03SM12; 03SM13; 03SM07; 03SM40; 03SM48; JASM59; NASM62; 09KF12; 09CM04; 13JW35; 13LW41; 03RK20.

²²⁹ *E.g.*, Questionnaire Nos. 03SM12; 03SM20; 03SM38.

²³⁰ *E.g.*, Questionnaire Nos. 03SM12; 07SM41; 8EJW09; UNSM53; 1WOO07.

²³¹ Questionnaire No. 1WAF09.

²³² *E.g.*, Questionnaire Nos. 14CM13; 2WSM28.

²³³ Questionnaire No. SHVG41.

ACCOMPANYING RACIAL, ETHNIC, AND RELIGIOUS EPITHETS

The military and the police started firing at our village from the bank of the river. They said: You are Bengali, you have to go to Bangladesh.

- Quote from 30-year old Rohingya man from Buthidaung

When the attackers referred to the Rohingya, it was almost always racially or ethnically discriminatory and disparaging. While many respondents indicated that they did not speak Burmese, so they could not entirely understand what was being shouted at them,²³⁴ derogatory names for the Rohingya included “Kalar” (literally meaning: black or dark-skinned), “Bengali” (literally meaning: majority Muslim population of Bangladesh), and “Sapakulu” and “Mingy Liu” (unclear literal translation but often translated as “motherfucker” and “bastard”).

Other examples of what the respondents heard and understood during the attacks included:

- *“This is not your country. If you stay we will rape your women, burn you, leave Bengali!”*²³⁵
- *“You Bengali, we will finish you.”*²³⁶
- *“Leave our country, you will never be citizens.”*²³⁷
- *“This is not your land, this is our land. We will not let you build houses here.”*²³⁸
- *“You must leave this land because it is our land. You are Rohingya, not citizens of Myanmar.”*²³⁹
- *“Kalars, why are you living here. You must live with your people. You must go.”*²⁴⁰
- *“You are a Bengali, Kalar, not a citizen of Myanmar.”*²⁴¹
- *“You are the Bengali Kalar, a thief. You must go to your country. It is time to leave.”*²⁴²
- *“Kalars, Bengalis, Why are you enjoying our land? This is not your country. Go to your country.”*²⁴³
- *“You are homeless in Myanmar. Go back to your motherland.”*²⁴⁴

²³⁴ E.g., Questionnaire Nos. UNOO07 & MSSM76.

²³⁵ Questionnaire No. 2WRK30.

²³⁶ Questionnaire No. 11CM09.

²³⁷ Questionnaire No. 03RK22.

²³⁸ Questionnaire No. 01OO06.

²³⁹ Questionnaire No. 03SM06.

²⁴⁰ Questionnaire No. 03SM08.

²⁴¹ Questionnaire No. 03SM09.

²⁴² Questionnaire No. 03SM15.

²⁴³ Questionnaire No. 03SM20.

²⁴⁴ Questionnaire No. 03SM21.

- *“You are not citizens of this land. Why are you taking advantage of our land? Just leave.”*²⁴⁵
- *“Fucking Bengali, you have to go to Bangladesh, what you have here is not yours, it’s ours.”*²⁴⁶

TARGETING OF ONLY ROHINGYA CIVILIANS

“It seemed as though the Rohingya were being targeted because there were Hindus in our village but the soldiers did not go to their area. They only came to us and tortured us.”

- Quote from 25-year old Rohingya man from Maungdaw

Most villages attacked were comprised almost exclusively of Rohingya. However, in those instances where villages had mixed communities, the Buddhist, Hindu, and other non-Rohingya populations were left entirely unharmed.²⁴⁷ Nearby Rakhine villages were invariably left unharmed. In all 1,024 interviews, the respondents were asked whether any non-Rohingya community suffered during the attacks—zero responded affirmatively.

In mixed villages, only the Rohingya houses were burned.²⁴⁸ Sometimes, as described by one respondent, Rohingya homes were instead destroyed with “shovels” or other means to avoid the accidental burning of nearby non-Rohingya houses.²⁴⁹ In one case, on the day of the attack on a mixed Rohingya-Hindu village, the military took the Hindu villagers by vehicle to the safety of a nearby military office and then began the attack, only attacking and burning the houses occupied by Rohingya.²⁵⁰

TARGETING OF CHILDREN

“Children were hacked and thrown into the fire. There were more children killed than adults.”

- Quote from 30-year old Rohingya woman from Maungdaw

Dozens of respondents recounted brutal attacks against children, including the abduction and disappearances of children,²⁵¹ the execution of dozens of children in a single attack,²⁵² and children being stabbed, slaughtered, dismembered and

²⁴⁵ Questionnaire No. 03SM22.

²⁴⁶ Questionnaire No. 14CM09.

²⁴⁷ E.g., Questionnaire Nos. RKMS146; 1EPN10; 06VG30; 06VG31; 09KF01; 1EPN02.

²⁴⁸ E.g., Questionnaire Nos. 2E0006; SHVG43; 04VG02; UNVG52; UNVG53; 1WAF20; 8WVG37; 14KF42.

²⁴⁹ E.g., Questionnaire No. RKMS137.

²⁵⁰ Questionnaire No. 12KW01.

²⁵¹ E.g., Questionnaire Nos. 13JW36; 03RK04; 11CM16.

²⁵² E.g., Questionnaire Nos. 060008; 15SA43, 15SA42; 19SH46; UNRK81.

beheaded.²⁵³ Respondents also recounted babies being smashed against floors and walls,²⁵⁴ thrown out of windows,²⁵⁵ thrown into fires,²⁵⁶ thrown into rivers,²⁵⁷ thrown up in the air and caught on a sword,²⁵⁸ or thrown into wells.²⁵⁹ One seven-year old boy was beheaded while his mother was being raped.²⁶⁰ In one documented instance of the murder of a child, the attacker declared that the murder was motivated from fear that “[the child] might [otherwise] kill 10 Mogh (Rakhine) in the future.”²⁶¹

TARGETING OF ROHINGYA LEADERS AND RELIGIOUS SYMBOLS

“I saw some Islamic scholars were put together in one village and slaughtered in front of everyone. Some who went to school past grade 9 were also slaughtered. Their tongues and hands were cut off.”

- Quote from 49-year old Rohingya man from Maungdaw

A common theme across the vast majority of interviews was public, brutal, and symbolic attacks against Rohingya leaders and Islamic symbols.

Typically, the first people to be attacked once the armed forces came into the villages were the village leaders, particularly the religious leaders. Local religious teachers and Rohingya chairmen were mutilated and had their throats slit.²⁶² Men in religious garb, teachers, and students of religion were targeted and killed; as one interviewee explained: “educated people seemed to be the most threatening to the military.”²⁶³ In one village, the military pushed five wealthy community leaders into a house, locked the door, and set it on fire.²⁶⁴

Mosques and madrassa were usually burned and destroyed first during the attacks on the villages,²⁶⁵ and several incidents of the pointed burning of Korans were documented.²⁶⁶

²⁵³ E.g., Questionnaire Nos. SHVG42; 14CM03; 15SA46; 2EVG20; 03SM13; RKMS150.

²⁵⁴ Questionnaire No. 13JW35.

²⁵⁵ Questionnaire No. 14KW08.

²⁵⁶ E.g., Questionnaire Nos. 1EGN17; 2WSM28; 06OO08; 06AF02; 1WOO12; 2EPN39; 03RK15; 05VG33; 06OO08; 07RK60; 11KW22; 19KF30; 19SH42.

²⁵⁷ E.g., Questionnaire Nos. 07RK54; 11KW22; 11KW06.

²⁵⁸ E.g., Questionnaire Nos. 1EGN19; NASM61.

²⁵⁹ E.g., Questionnaire Nos. 1WAF05; NEVG72.

²⁶⁰ E.g., Questionnaire Nos. RKMS150.

²⁶¹ Questionnaire No. 51SA42.

²⁶² E.g., Questionnaire Nos. 03SM16; 2EMS01; SHVG41; 2EMS01; 03SM16.

²⁶³ E.g., Questionnaire Nos. 05PN26; NAOO02; 2WSM24; 2WSM24; 03SM09; 16SM81.

²⁶⁴ Questionnaire No. MSSM77.

²⁶⁵ E.g., Questionnaire Nos. 07SM41; 09KF11; 09SH13; 10KW13; SHSM46; 06OO07; 2EOO06.

²⁶⁶ E.g., Questionnaire Nos. 06OO08; 14CM05; 2EVG27; 10CM03.

Rohingya imams were assaulted or killed in many instances, and many were slaughtered and mutilated.²⁶⁷ Several incidents of the military beating imams and burning their beards during the attacks were documented.²⁶⁸ In one case, the village imam and his son-in-law were singled out, forced to lie down in the dirt, and then stabbed to death while villagers were forced to watch.²⁶⁹ In another instance, the village imam and the five members of his family were publicly shot and killed.²⁷⁰ One respondent reported witnessing an imam being shot, stabbed, and his body hung on a tree.²⁷¹ Several cases were documented of the wives and daughters of imams being targeted for rape.²⁷² One investigator recounted one respondent's description of a particularly brutal attack on an imam and his family, as follows:

A 35-year-old man who had broken his hip trying to protect his daughter from a gang rape, after describing the murders of his wife with a machete, his mother via a rocket launch[er], and the drownings of his brother, nephew and uncle crossing the border, finally broke down describing the murder of his grandfather who was the senior Imam for the village who after being severely beaten had had kerosene poured down his throat before being lit afire. (Six other Imams who were forced to walk across nails and glass were also butchered.)

- Quote from an investigator

TARGETING OF WOMEN

You could hear screaming. The girls were screaming so loud like their souls were leaving their bodies.

- Quote by 65-year old Rohingya man from Maungdaw

The investigation mission's findings revealed how women were particularly targeted during the major attacks. Specifically, Rohingya women were the victims of a wide range of crimes and violations, including (1) abductions, (2) rape and gang rape, (3) other forms of sexual violence, and (4) attacks on pregnant women. Many women also described the separation of women and men, the use of extreme violence targeting young and unmarried women, multiple-perpetrator gang rape, the mutilation of women's bodies, and the physical and mental health symptoms of the aftermath, including feelings of shame and despair.

²⁶⁷ E.g., Questionnaire Nos. 2E0004; 010006; 1WAF20; 1W0008; 03RK02; 8EJW06.

²⁶⁸ E.g., Questionnaire Nos. 060007.

²⁶⁹ Questionnaire No. 03SM06.

²⁷⁰ Questionnaire No. JASM60.

²⁷¹ Questionnaire No. 11KW15.

²⁷² E.g., Questionnaire Nos. 10CM13; 10KW11; 09CM06.

Abductions of Women

Many respondents described seeing groups of women, sometimes in the hundreds, being dragged or trucked by attackers to military bases, fields, and forests and then blindfolded and/or handcuffed.²⁷³ Most such respondents reported hearing that these women had been raped, or they at least suspected as much.²⁷⁴ Many of these women were never seen again.²⁷⁵

Rapes and Gang Rapes

Two police from my village raped me. I know these men by sight, but not their names. After they were done, they told me to leave the country, this is not your country.

- Quote from 23-year old Rohingya woman from Buthidaung

Bearing in mind the assaults on women in the weeks prior to the major attacks, the Rohingya respondents had an omnipresent fear of their women being raped. When the military came to a village, parents hid their daughters,²⁷⁶ and young girls smeared their bodies and faces in charcoal and black ink or put on dirty clothes and carry small children, so the military would think they were married and not pretty.²⁷⁷ Unfortunately, these strategies were often unsuccessful. In one instance, a soldier took a newborn baby from a young woman and squeezed her breasts to see if milk was coming out; then, he and other soldiers raped her.²⁷⁸

A 55-year-old man told me a story that showed the level of fear the Rohingya had of the military and [Border Guard Police]. As he was on his way to another village, he stopped at a stream near a military outpost to get a drink of water. He heard the sound of girls and found four girls tied up in rope, two could not speak, two could speak but were “half dead.” The girls asked him to untie the ropes. They said they had been there for three days and the military had repeatedly gang raped them. He said he could see the girls were bleeding a lot. He said that he was so scared that the military was around that he told the girls he couldn’t help them but he would tell their home village what had happened. He went back the next day with 20-25 people from his village, but the girls were gone.

- Quote from an investigator

²⁷³ E.g., Questionnaire Nos. 1WAF05; UNRK80; UNRK81; 04VG08; 04VG11; 2WRK30; 06AF02; 13JW34; 1WOO12; 2WRK33; 06VG30; 12KW01.

²⁷⁴ E.g., Questionnaire Nos. 1E0001; 1EGN08; 2E0007.

²⁷⁵ E.g., Questionnaire Nos. RCVG12; 2WRK26; 07RK41.

²⁷⁶ Questionnaire No. 2EVG20.

²⁷⁷ E.g., Questionnaire Nos. SHVG40; 03RK15.

²⁷⁸ Questionnaire No. 09KF13.

Multiple accounts of rape, particularly mass gang rapes of groups of Rohingya women, were reported.²⁷⁹ Victims were as young as seven years old.²⁸⁰ Many respondents described their family members²⁸¹ and neighbors being raped.²⁸² Groups of women would be shoved into houses,²⁸³ latrines,²⁸⁴ schools,²⁸⁵ and mosques,²⁸⁶ or taken out to fields²⁸⁷ and then raped, and in many cases killed. Other respondents saw women being taken inside a house and then heard screams; afterwards, they saw the women with their clothes torn.²⁸⁸ In one case, after a group of women were raped in a house, they were locked inside, and the house was set on fire.²⁸⁹ Women were tied up and raped by dozens of soldiers.²⁹⁰ “Many beautiful women were taken by the military and raped and then killed. The ugly girls were just killed.”²⁹¹

Non-Rohingya civilians also took part in the rapes.²⁹² In one case, the military stood guard while a group of Rakhine boys raped nine Rohingya women.²⁹³

A great many incidents of public rape were also documented. Women were raped in front of their entire village; if the men protested, they would be shot or beaten.²⁹⁴ Women were dragged from their houses onto the road and raped in front of everyone.²⁹⁵ In some instances, women were tied up in the middle of the village and raped by multiple soldiers. Sometimes, the rapes would last for days.²⁹⁶ In instances of detention, when groups of women were locked in schools, the military would rape women and force others to watch.²⁹⁷ In one village, a group of girls were tied up and gang-raped in a field, where they were left and later killed by wild dogs.²⁹⁸

²⁷⁹ *E.g.*, Questionnaire Nos. 13JW29; 13JW36; RKMS144; 06AF05; 07RK41; 11CM10.

²⁸⁰ Questionnaire No. 8WSO11.

²⁸¹ *E.g.*, Questionnaire Nos. 04VG06; 1E0002; 1W0008; 03RK06; 03RK21; 06VG31.

²⁸² *E.g.*, Questionnaire Nos. 1W0020; 8ELW09; 15SO05.

²⁸³ *E.g.*, Questionnaire Nos. 16SM82; 07SM44; UNVG47; UNVG48; 2EPN40.

²⁸⁴ *E.g.*, Questionnaire Nos. 06AF02; 09KF10.

²⁸⁵ *E.g.*, Questionnaire Nos. 2WRK33; 2WRK37; 07RK41; 09CM01; JARK102.

²⁸⁶ Questionnaire No. 03RK03.

²⁸⁷ *E.g.*, Questionnaire Nos. 14CM03; 14CM11; 2EVG26; 2WRK35; 8WVG38; 10KW01; NERK123.

²⁸⁸ *E.g.*, Questionnaire Nos. UNVG46; 03RK05; 15SO05.

²⁸⁹ Questionnaire No. 2EVG22.

²⁹⁰ *E.g.*, Questionnaire No. 16LW52.

²⁹¹ Questionnaire No. 1EGN19.

²⁹² *E.g.*, Questionnaire Nos. 1W0014; 09KF12.

²⁹³ Questionnaire No. 03RK22.

²⁹⁴ *E.g.*, Questionnaire Nos. 2WMS05; 1WAF20; 06AF02.

²⁹⁵ *E.g.*, Questionnaire Nos. 2WRK26; 03RK03.

²⁹⁶ Questionnaire No. JAVG59.

²⁹⁷ *E.g.*, Questionnaire Nos. 2WSM18; 2WRK38; 2EPN39; 2WRK37.

²⁹⁸ Questionnaire No. 1WAF06.

The women who resisted rape were killed, beaten, and mutilated.²⁹⁹ Husbands and male family members trying to defend their women were killed.³⁰⁰ Some women committed suicide after they were raped.³⁰¹

In a number of cases, after being raped, women would be mutilated and killed.³⁰² There was a high incidence of mutilation related to sexual violence. Women were beheaded after being raped,³⁰³ had their breasts cut off,³⁰⁴ eyes gauged out,³⁰⁵ or vaginas cut or stabbed.³⁰⁶ In some instances, “half-dead” bodies of rape victims were thrown into the river³⁰⁷ or wells.³⁰⁸

The two most memorable and disturbing interviews I conducted were with two women who performed burial rights for women before they were buried. Part of this process included washing the bodies of these dead women. Both women described in great detail the injuries of several dozen women had sustained in the course of being gang raped and their eventual killing. These two interviews were the most difficult I have ever done. The women we interviewed were clearly haunted by these experiences. I also remain haunted by their stories. The image is fresh in my mind, sitting on the floor of their houses, hearing them describe the brutality the victims had suffered, seeing the pain and sorrow in their eyes, their hands touching their faces, hearing them mourn those young women and the inexplicable brutality with which they had to contend, in a way unlike anyone I have ever spoken with before.

Multiple incidents of rape of women while fleeing to Bangladesh were also documented. Groups of girls were snatched from the column of people fleeing towards the border and raped,³⁰⁹ often on the side of the road.³¹⁰ Respondents reported cases of women being raped and afterwards killed by the military on the way to Bangladesh³¹¹ and seeing naked dead bodies of women near the border.³¹²

It was apparent from many interviews that the public and brutal nature of these rapes and associated killings was successful as a terrorizing tactic. Not only did the majority of respondents report hearing rape stories even if they did not witness

²⁹⁹ E.g., Questionnaire Nos. 09KF17; 03RK06; 03RK07; 15SO09; 09KF02.

³⁰⁰ E.g., Questionnaire Nos. 07RK48; NERK115.

³⁰¹ E.g., Questionnaire Nos. 04MS03; 10CM03.

³⁰² E.g., Questionnaire Nos. 1WOO14; 13JW41; 1WAF08; 07RK48; 19SH43.

³⁰³ Questionnaire No. RKMS150.

³⁰⁴ E.g., Questionnaire Nos. NEOO03; 1EGN11; 1WOO10; 14KW01.

³⁰⁵ Questionnaire No. 03RK07.

³⁰⁶ E.g., Questionnaire Nos. NEOO03; 1EOO02; 1WOO10; JAPN71.

³⁰⁷ Questionnaire No. 2WSM28.

³⁰⁸ Questionnaire No. NEOO03.

³⁰⁹ Questionnaire No. SHSM48.

³¹⁰ Questionnaire No. 09KF11.

³¹¹ E.g., Questionnaire No. 03SM10.

³¹² E.g., Questionnaire Nos. 03SM11; 13JW34.

them directly, but also several respondents, both female and male, indicated that the fear of rape, among all the other travesties occurring, was the reason they fled.³¹³

Survivors also reported severe physical symptoms following the incidents, including continuous bleeding and scars. While receiving medical treatment in Bangladesh, they had not spoken to anyone of the rapes or sought help for the emotional difficulties they had experienced. As documented by the investigation mission's psychosocial expert, many Rohingya women exhibited symptoms of post-traumatic stress disorder (PTSD), including flashbacks, recurring thoughts, and nightmares. They also described symptoms consistent with depression and anxiety.

Other Forms of Sexual Violence

At the first checkpoint they checked our whole body, inside body and in sensitive places, not only touching but pressing, I was crying. Many women and girls were crying. They did this at 4 checkpoints. Then at the last checkpoint they took our clothes off.

- Quote from 25-year old Rohingya woman from Buthidaung

The majority of respondents spoke about women being aggressively groped and touched while they were being searched in their homes or at checkpoints.³¹⁴ The military abused the women by grabbing their body parts, ripping off their clothing, searching them for valuables, and threatening rape and death. In some instances, women were forced to strip naked to show their underwear,³¹⁵ with attackers taking away their clothing.³¹⁶ One father was killed after trying to prevent the military from touching his daughter.³¹⁷ Several respondents also spoke of women being taken away as sex slaves.³¹⁸

Attacks on Pregnant Women

While in hiding, I saw 6 women assisting a pregnant woman trying to give birth during the attack. Soldiers shot the women and cut up their bodies. They dug three graves and threw in the victims' body parts.

- Quote from 24-year old Rohingya man from Maungdaw

³¹³ E.g., Questionnaire Nos. 06PN44; 04MS02; 04MS06; 09KF13; 13LW44 (R); 03RK11; 07RK49.

³¹⁴ E.g., Questionnaire Nos. MSSM75; 14CM06; 09KF10; 10KF08.

³¹⁵ Questionnaire No. 09KF14.

³¹⁶ E.g., Questionnaire Nos. 09KF13; 1WAF20.

³¹⁷ Questionnaire No. 05GN27.

³¹⁸ E.g., Questionnaire Nos. 2WRK35; 03RK12.

Several cases were documented of pregnant women being beaten in the abdominal area or having their stomachs cut open³¹⁹ prior to being shot and/or butchered and killed.³²⁰ Pregnant women were also targeted for rape.³²¹

Several respondents recounted brutal attacks on women during actual childbirth, including instances of women's vaginas being cut, stabbed, or shot as they were in the midst of delivering the baby.³²² One woman was beheaded while giving birth.³²³ Midwives and women assisting childbirth were also killed.³²⁴

A 20-year-old woman from Buthidaung described her experience thusly:

When the military entered the village, people began to flee. The military began burning huts in the north side of the village. Everyone was running. I was pregnant and I had my child. A big group of us went through the forest, where we stayed. Military and Rakhine found us, about 30 soldiers took 15 women to a rubber field. I was one and my sister. They beat us and started pulling our clothes off. I lost consciousness while they were raping me. I don't know how many raped me. When I woke up, it was dark. I couldn't stand. My whole body hurt. I was naked. I thought I was going to die. About 8 of the women were dead. My sister was dead. I saw they had cut her breasts. Other bodies looked like they were also cut. Two bodies were decapitated. I don't know what happened to the other 7 women. I found clothes and ran away.

After this incident, the woman miscarried. She now lives in Kutupalong refugee camp with her mother and her child, and the whereabouts of her husband are unknown. She stated that, "I feel very ashamed. My life is destroyed." Her narrative echoes the experiences described by many other Rohingya women.

KILLINGS

Only one respondent, out of the 1,024 interviewed, indicated that there were no killings in his village, speaking instead of "just burned houses." The killing of Rohingya civilians was a constant theme in all other interviews, including (1) indiscriminate shootings, (2) mass killings, and (3) human bonfires.

³¹⁹ E.g., Questionnaire Nos. 10CM03; SHVG43; 06AF02; 19KF30; NARK112; 18SA10.

³²⁰ E.g., Questionnaire Nos. 09KF18; 1WAF08; 06AF05; 03RK12; 19SH46; NERK121.

³²¹ E.g., Questionnaire Nos. 09KF02; UNPN64.

³²² E.g., Questionnaire Nos. 8ELW04; 13JW32; 05GN32; 2EVG20; 1EGN19; 2EPN39; 2EMS09; 2EVG26.

³²³ Questionnaire No. 03SM13.

³²⁴ E.g., Questionnaire Nos. 2EMS09; 2EPN39; 05GN32.

Indiscriminate Shooting

“The whole village was under random fire like rain.”

- Quote from 20-year old Rohingya man from Maungdaw

“My sister lost her mind that day because of all the shooting.”

- Quote from 25-year old Rohingya man from Buthidaung

After entering the villages during the major assaults, security forces often started shooting indiscriminately at villagers, killing dozens or hundreds in the streets and fields.³²⁵ The respondents reported that everyone was a target,³²⁶ and even the animals were shot.³²⁷ “The military was shooting madly,” as described by one respondent.³²⁸

In one case, Rohingya villagers were shot at from helicopters.³²⁹ In another village, the military shot randomly at people in the village from a tower in a nearby military camp.³³⁰ In other instances, the military first shot in the air to get people running and then fired at them as they fled.³³¹ Non-Rohingya civilians sometimes participated in the random shooting.³³²

Mass Killings

“They were hunting us.”

- Quote from 50-year old Rohingya woman from Maungdaw

Many Rohingya were killed in the initial random shooting attacks. In some villages, soldiers then shot at columns of Rohingya as they began to flee.³³³ In other villages, the attackers went from house to house and killed those left alive after the initial random shooting phase.³³⁴ In many of these villages, because the men had been hiding in the forests for days or weeks beforehand, there were only women, children, and the elderly in the villages when the attacks occurred. When the military entered, these women, children, and elderly were rounded up and systematically shot, burned to death, or slaughtered en masse.³³⁵

³²⁵ E.g., Questionnaire Nos. 12CM04; 12CM03; 09CM04; 15SA43; SHVG44; 16SM83; 14CM03; 14SH59; 15SA35; 13LW42; RKMS148; 10KW09; 10KF09.

³²⁶ VG Investigator Report, p. 7; Questionnaire No. LDOO04.

³²⁷ E.g., Questionnaire No. 1WAF01.

³²⁸ Questionnaire No. UNVG47.

³²⁹ Questionnaire No. 1EGN08.

³³⁰ Questionnaire No. 1WOO05.

³³¹ E.g., Questionnaire Nos. 07SM45; 03SM02; 03SM04; JASM58.

³³² E.g., Questionnaire No. 04MS14.

³³³ E.g., Questionnaire Nos. RKMS149; 1EPN11; 04MS03; 09KF12; JASM57.

³³⁴ E.g., Questionnaire No. 03SM07.

³³⁵ E.g., Questionnaire Nos. 1WOO23; UNVG48; 07SM43; RKMS150.

In some villages, dozens of Rohingya were killed in execution style, with their hands tied and blindfolded.³³⁶ Men were lined up and had their throats slit or were shot in the back of the head.³³⁷ In other instances, men were forced to lie on the ground and were then shot.³³⁸ Often, hundreds of men were killed in this fashion per village.³³⁹ In one case, some 200 men were rounded up with their hands tied by women's scarfs. They were all forced to lay face down on the ground in a yard. The men were first shot, and then had their throats were slit.³⁴⁰

Several instances of beheadings³⁴¹ and hangings were also documented, with several dozen men seen hanged on trees in one village.³⁴² Many interviews documented non-Rohingya civilians, including Rakhine, Hindu, Borua and Chakma, taking part in the mass killings, usually using knives and machetes.³⁴³ While most Rohingya villagers were killed by shooting or "cutting" (typically stabbing with machetes),³⁴⁴ deaths from landmines and bombings were also documented, especially near the Bangladesh border.³⁴⁵

Some of those who survived the shootings and executions, usually by hiding in the hills and forests, later returned to their villages to try and save their belongings and/or bury the dead.³⁴⁶ In several of these instances, the military waited in hiding for these people to return and then killed them by shooting or stabbing.³⁴⁷

Human Bonfires

The investigation mission documented multiple instances of Rohingya villagers being burned alive.³⁴⁸ In one village, the military handcuffed a group of men, tied them together, poured petrol on them, and set them on fire.³⁴⁹ In other villages, the

³³⁶ *E.g.*, Questionnaire Nos. 15SA47; 16SM79; JARK97.

³³⁷ *E.g.*, Questionnaire Nos. 2EVG22; 1EGN19.

³³⁸ *E.g.*, Questionnaire Nos. 03RK06; 06OO06.

³³⁹ *E.g.*, Questionnaire Nos. 2EGN42 (172 killed); 09KF13 (200 killed); 13JW36 (150 killed); 13JW39 (310 killed); 13JW40 (250 killed); 13JW43 (350 killed); RKMS137 (1000 killed); RKMS149 (120 killed); RKMS140 (300 killed); RKMS142 (40 killed); 1EPN07 (30 killed); 1WAF08 (200 killed); 1EGN19 (500 killed); 2WRK26 (20 killed); 03RK06 (60–70 killed); 19SH45 (400 killed); NERK121 (300 killed).

³⁴⁰ Questionnaire No. 14CM01.

³⁴¹ *E.g.*, Questionnaire Nos. 16SM78; NEOO03; RKMS137; RKMS142; 2WRK34; 14KF42; 19SH45; NERK121.

³⁴² Questionnaire No. 03RK03.

³⁴³ *E.g.*, Questionnaire Nos. 1WOO23; 1WOO23; LDOO04; 14SH59; 09KF11; 10CM03; 10KW13; 10CM10.

³⁴⁴ *E.g.*, Questionnaire Nos. LDOO04; 14CM03; 2EMS09; SHSM48; 13JW36; RKMS149; 19KF28; 18SA05.

³⁴⁵ *E.g.*, Questionnaire Nos. 8ELW07; 13JW38; 8WOO05; 19KF28; 19KF30; NERK121; 6LW50.

³⁴⁶ *E.g.*, Questionnaire No. 1WAF01.

³⁴⁷ *E.g.*, Questionnaire Nos. 03SM05; 04MS14; 12CM01.

³⁴⁸ *E.g.*, Questionnaire Nos. 1EGN09; 10CM05; 1WAF20; 06PN32.

³⁴⁹ Questionnaire No. LAVG78.

attackers pushed people into houses, barricaded them inside, and then set the houses on fire.³⁵⁰

In several instances, elderly or physically and/or mentally handicapped Rohingya were separated from the rest of their fellow villagers and burned alive;³⁵¹ or, they were simply unable to leave their homes as they were set on fire.³⁵² In some cases, the attackers slit throats and then set the houses on fire, so as to burn the corpses.³⁵³

Two respondents described how groups of Rohingya who sought sanctuary in village mosques were burned alive in the mosques.³⁵⁴ Several respondents witnessed women, children, and the elderly being pushed into a ditch in their villages and then set on fire.³⁵⁵

DISPOSAL AND DESTRUCTION OF BODIES

When people die in our culture in the ways that people have died, they aren't able to complete janaza [an obligatory funeral prayer in Islam for seeking pardon for the deceased].

- Quote from 30-year old Rohingya woman from Buthidaung

Several respondents described Myanmar armed forces destroying or disposing of bodies after executions or burnings. The military threw bodies into rivers,³⁵⁶ ponds,³⁵⁷ or wells.³⁵⁸ In some instances, the military dug graves to bury those killed, or they sometimes forced the surviving Rohingya men to dig the graves.³⁵⁹ The military also used bulldozers to dig graves and place the dead bodies inside.³⁶⁰ Sometimes, those wounded in the mass executions, but who were still alive, were buried together with the dead bodies.³⁶¹

The investigation documented instances of the military returning to villages after an attack to collect and take away the bodies.³⁶² In at least one village, the military returned after a mass execution and pulled corpses out of graves where they had

³⁵⁰ E.g., Questionnaire Nos. 04MS05; 09KF12; 10CM15; 1EOO02.

³⁵¹ E.g., Questionnaire Nos. 10CM05; MSSM73.

³⁵² E.g., Questionnaire Nos. 14VG89; 05PN22; 07RK54; JARK102.

³⁵³ E.g., Questionnaire Nos. 1WAF02; 2EVG23; 09KF17.

³⁵⁴ E.g., Questionnaire Nos. 15SA43; 2EVG26.

³⁵⁵ E.g., Questionnaire Nos. 15SO08; JARK103.

³⁵⁶ E.g., Questionnaire Nos. 14CM08; 8WVG37; 12KF38; NEVG75.

³⁵⁷ E.g., Questionnaire Nos. SHSM48; SHSM48; 10KW01.

³⁵⁸ Questionnaire No. 12KW01.

³⁵⁹ E.g., Questionnaire Nos. 2EVG22; 13JW36; NESM71.

³⁶⁰ E.g., Questionnaire Nos. 16SM78; NERK119; NERK123.

³⁶¹ Questionnaire No. 13JW36.

³⁶² E.g., Questionnaire Nos. 14CM01; NERK119; NERK123; UNRK83.

been placed by surviving Rohingya before, then taking the bodies away.³⁶³ The respondents described several mass graves where soldiers had covered bodies in blankets before burning or burying them.³⁶⁴

A few cases were documented in which the military burned dead bodies³⁶⁵ or used acid to disfigure corpses and, consequently, render identification impossible.³⁶⁶ One respondent indicated that the attackers painted the victims' foreheads with red paint to portray the Rohingya victims as Hindus killed by the Rohingya.³⁶⁷

POISONING OF FOOD AND WATER

Several cases were documented of the Myanmar armed forces or other attackers poisoning food and water used by the Rohingya. In a number of incidents, the water supply was poisoned by pouring oil or other chemicals in village ponds and wells.³⁶⁸ In one village, the well was filled with mud and sand,³⁶⁹ while in another, respondents reported the rice being poisoned and children being forced to eat it before being thrown, deceased, into wells.³⁷⁰ Other instances of dead bodies of villagers being thrown into wells were recorded as well.³⁷¹ In two incidents, the river used by the Rohingya for fishing was poisoned, and the respondents reported seeing many dead fish floating in the river.³⁷² A respondent recounted that they carefully checked their wells before drinking because they had heard that the military would poison it.³⁷³

BURNING AND DESTRUCTION OF HOMES AND VILLAGES

"Don't return back. We have burned down your house. If you return we will kill you."

– Quote from 21-year old Rohingya woman from Maungdaw, quoting an attacker

The widespread burning of homes and entire villages was commonplace. The vast majority of interviewees reported their villages and homes burnt.³⁷⁴

³⁶³ Questionnaire No. 14CM10.

³⁶⁴ PN Investigator Report, p. 19.

³⁶⁵ E.g., Questionnaire Nos. 2EVG22; 13JW27; 13JW39; 13JW45; RKMS140; 13LW35.

³⁶⁶ E.g., Questionnaire Nos. 2EPN36; 07RK40.

³⁶⁷ Questionnaire No. NERK123.

³⁶⁸ E.g., Questionnaire Nos. 04MS05; NARK108; UNRK81.

³⁶⁹ Questionnaire No. 1WAF01.

³⁷⁰ Questionnaire No. 1WAF05.

³⁷¹ E.g., Questionnaire Nos. SHVG45; 1WAF20; 8WVG36; 12KW01.

³⁷² E.g., Questionnaire Nos. 03SM18; 2WSM18.

³⁷³ Questionnaire No. 04VG05.

³⁷⁴ E.g., Questionnaire Nos. 14CM03; 15SA35.

Respondents spoke of the unbearable heat caused by the fires.³⁷⁵ Most respondents directly witnessed their own villages destroyed in whole or in part by fire; others fled unsure of what had happened to their villages and were left to rely on hearsay accounts later.³⁷⁶

Mosques and madrassa were usually burned and destroyed first.³⁷⁷ In most villages, nothing was spared. Rice mills were burned,³⁷⁸ as were trees, coconuts, and crops,³⁷⁹ shops owned by Rohingya, workshops, and whole rice paddies.³⁸⁰ In one case, the military destroyed hundreds of tube wells (hand pumps), “ripp[ing] them from the ground.”³⁸¹ The use of bulldozers for tearing down Rohingya villages was also documented³⁸² According to one respondent, “They didn’t burn houses, they just flattened them.”³⁸³

Petrol was commonly used for setting homes on fire.³⁸⁴ Houses were first sprayed with gasoline and then flamethrowers were used.³⁸⁵ Attackers also used incendiary grenades. One respondent noted, “They would shoot a gun they held on their shoulders [often identified in photos as a mortar or rocket grenade launcher] and a whole area would catch on fire.”³⁸⁶ Another indicated that the “military was carrying a launcher in their hand like a big rifle. Fire balls were released when they shot.”³⁸⁷ Others spoke of soldiers shooting “bombs” or “fire bombs” from their rifles.³⁸⁸

According to the interviews, the burning was carried out by military and/or non-Rohingya civilians alike,³⁸⁹ and often their actions were coordinated. For example, according to many interviewees, the military burned the village while the Rakhine carried petrol tanks.³⁹⁰ In other instances, the military forced the Rohingya villagers themselves to set fire to their own homes.³⁹¹ In one instance, the military forced about 250 Rohingya villagers to burn their own homes, shooting any who

³⁷⁵ Questionnaire No. JASM60.

³⁷⁶ MS Investigator Report, p. 3.

³⁷⁷ *E.g.*, Questionnaire Nos. 07SM41; 09KF11; 09SH13; 10KW13; SHSM46; JARK103; NASM62.

³⁷⁸ Questionnaire No. 13LW22.

³⁷⁹ Questionnaire No. SHSM47.

³⁸⁰ *E.g.*, Questionnaire Nos. 16LW49; 2WSM33.

³⁸¹ Questionnaire No. 1EAF03.

³⁸² *E.g.*, Questionnaire Nos. 1WAF05; NARK107; NERK116.

³⁸³ Questionnaire No. NASH04.

³⁸⁴ *E.g.*, Questionnaire Nos. JAVG61; 03RK17; 07RK46.

³⁸⁵ *E.g.*, Questionnaire Nos. 1WAF06; JAVG63; 1WOO22.

³⁸⁶ Questionnaire No. 2EPN40.

³⁸⁷ Questionnaire No. 06VG29.

³⁸⁸ *E.g.*, Questionnaire Nos. 03RK15; 03RK17; 07RK41; 8EJW08.

³⁸⁹ *E.g.*, Questionnaire No. 12SH52.

³⁹⁰ *E.g.*, Questionnaire No. 2WSM24.

³⁹¹ *E.g.*, Questionnaire Nos. 2WSM20; 07RK63.

resisted.³⁹² Several respondents reported non-Rohingya civilians dressing up as Muslims and then burning down houses.³⁹³

Very few villages were spared. In those instances where the houses were not burned, they were destroyed with pipes, bars, machetes, and shovels.³⁹⁴ One respondent indicated that this was done to avoid the accidental burning of nearby Hindu and Rakhine homes.³⁹⁵ In another case, the respondent said that his village was not set on fire because “it was too close to Bangladesh.”³⁹⁶ The respondents from mixed villages reported that only the Rohingya houses were burned.³⁹⁷

LOOTING

Everything was destroyed, but before military set fire to our houses, the Rakhine carried away all of our belongings. They put our furniture, food, solar panels, clothes, pots, jewelry into vans and drove away. They were happy and celebrating. It seemed like they were going to a party.

- Quote from 37-year old Rohingya woman from Maungdaw

While theft of Rohingya livestock, crops, and other valuables was a regular occurrence prior to the 2017 attacks,³⁹⁸ once the major attacks started, everything was taken from Rohingya homes and farms.³⁹⁹ Virtually all of the Rohingya homes and shops were looted.⁴⁰⁰ Theft of livestock, food, motorbikes and rickshaws, fish nets, fishing boats, and personal items, including clothing and jewelry, by military and non-Rohingya civilians alike was documented in nearly all of the interviews.⁴⁰¹

The looting was predominately carried out by non-Rohingya civilians, some of whom the respondents even knew or recognized.⁴⁰² Many respondents said that the looting seemed organized, such that it “looked like they had a system.”⁴⁰³ The military stood guard or patrolled the area while non-Rohingya civilians looted Rohingya homes and shops.⁴⁰⁴ One respondent noted, “Ethnic Rakhine knew

³⁹² Questionnaire No. 07RK63.

³⁹³ E.g., Questionnaire Nos. 07SM41; 13LW22; 07RK46; 07RK55.

³⁹⁴ E.g., Questionnaire Nos. RKMS137; NERK120; 03RK05.

³⁹⁵ Questionnaire No. RKMS137.

³⁹⁶ Questionnaire No. UNVG54.

³⁹⁷ SO Investigator Report, p. 7.

³⁹⁸ E.g., Questionnaire Nos. 09KF19; 07SM34; 06AF05, 06AF06, 06OO06, 06PN33, 07SM38, 14CM09, 15SA36, MSSM75, MSSM77;

³⁹⁹ E.g., Questionnaire Nos. CHOO03; 14CM02; 14CM08; 19SH42.

⁴⁰⁰ E.g., Questionnaire No. 16SM83.

⁴⁰¹ E.g., Questionnaire Nos. UNOO02; UNVG58; 1WAF01; SHSM49; UNVG50; 06OO08.

⁴⁰² E.g., Questionnaire Nos. 16SM83; 14CM09, 14CM07; 8ELW02; 09KF12, 10CM10; SHSM48; NASH03.

⁴⁰³ Questionnaire No. 03SM07.

⁴⁰⁴ E.g., Questionnaire Nos. 1WAF03; 03SM07.

exactly which families owned more assets, and did not waste time.”⁴⁰⁵ The looting operation usually occurred after the attack on the village, and just prior to the burning down of Rohingya homes.⁴⁰⁶ The local non-Rohingya civilians used vans and jeeps to collect and transport Rohingya property away from the scene of the attack.⁴⁰⁷

ATTACKS AGAINST ROHINGYA FLEEING TO BANGLADESH

“There were so many bodies and so much blood in the river, it looked like the river was bleeding.”

- Quote from 18-year old Rohingya woman from Buthidaung

The investigation documented multiple accounts of attacks on the Rohingya as they fled their villages for Bangladesh, including dozens of documented attacks at the border.⁴⁰⁸ The investigation documented attacks on refugees travelling on foot,⁴⁰⁹ including an attack on an “enormous crowd,” which the military fired upon and a respondent estimated to have killed approximately 1,000 people;⁴¹⁰ the military shooting randomly at large groups of fleeing Rohingya, creating a “killing field;”⁴¹¹ and the military firing from a cliff top on a line of refugees walking towards the border with Bangladesh.⁴¹²

In some cases, after attacks on villages, the military photographed the Rohingya fleeing,⁴¹³ and/or followed them to make sure they did not go back.⁴¹⁴ One respondent indicated that the military destroyed their identification documents as they reached the border.⁴¹⁵ The fleeing Rohingya were also robbed. The border police, military, or non-Rohingya civilians took anything valuable that the Rohingya had been able to carry with them in the course of flight.⁴¹⁶

The Myanmar armed forces also used helicopters to attack columns of fleeing Rohingya.⁴¹⁷ As one respondent described, “Helicopters would search for us and then throw light and shoot at us.”⁴¹⁸

⁴⁰⁵ Questionnaire No. 2WSM17.

⁴⁰⁶ E.g., Questionnaire Nos. 2WSM28; 12SH52.

⁴⁰⁷ E.g., Questionnaire Nos. 2WSM28, 03SM43, 03SM51, 03SM35, 03SM46, MSSM75.

⁴⁰⁸ E.g., Questionnaire No. 14SH59.

⁴⁰⁹ E.g., Questionnaire Nos. 05GN31, 12S452.

⁴¹⁰ Questionnaire No. 10CM09.

⁴¹¹ Questionnaire No. 2E0006.

⁴¹² Questionnaire No. 2WSM23.

⁴¹³ Questionnaire No. 04VG13.

⁴¹⁴ E.g., Questionnaire Nos. 16SM83; 16SM79; JARK99.

⁴¹⁵ Questionnaire No. NESM72.

⁴¹⁶ E.g., Questionnaire Nos. 03SM08; 04VG02; 04VG03; 1EPN03; 18SA15.

⁴¹⁷ E.g., Questionnaire Nos. 12SH52; 15SA35.

⁴¹⁸ Questionnaire No. 1EGN19.

The Rohingya were often attacked while waiting for boats to cross into Bangladesh, including attacks from military “speedboats.”⁴¹⁹ Myanmar Navy boats rammed boats or rafts full of fleeing Rohingya refugees to flip or sink them, resulting in numerous drownings at the border with Bangladesh.⁴²⁰

The military also raped women on the way to Bangladesh, usually on the side of the road,⁴²¹ and they sometimes then killed the women.⁴²² Multiple interviewees reported seeing naked dead women near the border.⁴²³

In addition to seeing many burned villages on the way to Bangladesh,⁴²⁴ dead bodies in forests and paddy fields,⁴²⁵ severed limbs and heads,⁴²⁶ dead women with their breasts cut off,⁴²⁷ dead bodies of women hanging from trees⁴²⁸ (some naked),⁴²⁹ bodies of naked women with hands tied to trees (crucifixion style)⁴³⁰ earrings cut off ears,⁴³¹ dead and mutilated bodies floating in the Naf river,⁴³² and open graves with many hundreds of bodies.⁴³³ Many respondents spoke of people dying of hunger, starvation, and exhaustion on the way to Bangladesh, especially the children and the elderly.⁴³⁴ Some of those who fled reported being unable to drink water from the streams or river on the way to Bangladesh due to the number of floating bodies.⁴³⁵

While the majority of respondents were unable to identify the location of these many crimes scenes,⁴³⁶ several spoke of passing through sites of known mass killings, including Tula Toli, Shil Khali, and Tong Bazar.⁴³⁷

⁴¹⁹ *E.g.*, Questionnaire Nos. 12CM03; 14CM12; 11CM13; 16LW49.

⁴²⁰ *E.g.*, Questionnaire Nos. 14CM08; 15SO22; 06AF07; 06AF08; 2E0007; 2E0007, 12CM03; 09KF12; 07RK44.

⁴²¹ Questionnaire No. 09KF11.

⁴²² Questionnaire No. 03SM10.

⁴²³ *E.g.*, Questionnaire Nos. 03SM11; 13JW34.

⁴²⁴ *E.g.*, Questionnaire Nos. 14CM09; 09CM04.

⁴²⁵ *E.g.*, Questionnaire Nos. 06OO08, 15SA43, 16LW51; 14CM06; 04VG11; SHVG45; 03RK12.

⁴²⁶ *E.g.*, Questionnaire Nos. 2EGN39; 18SO06; 15SA40; 1WAF15; SHVG45; 06AF01; 01OO11; 1WAF13; 8WSA03.

⁴²⁷ *E.g.*, Questionnaire Nos. 04MS02; 07SM42; 1WOO14; 13JW41; 03RK15; 03RK16.

⁴²⁸ Questionnaire No. 1EPN10.

⁴²⁹ Questionnaire No. 07SM34.

⁴³⁰ Questionnaire No. NASM61.

⁴³¹ Questionnaire No. 03RK15.

⁴³² *E.g.*, Questionnaire Nos. 15SO23, JAVG63; 1WAF04; 1WOO19.

⁴³³ *E.g.*, Questionnaire Nos. 2WRK30; 03RK01.

⁴³⁴ PN Investigator Report, p. 20. Questionnaire No. 15SA43.

⁴³⁵ Questionnaire No. 04VG05.

⁴³⁶ *E.g.*, Questionnaire Nos. 04VG010; 2EPN39.

⁴³⁷ *E.g.*, Questionnaire Nos. 2EPN40; 06PN33; 07RK50; 8WVG39; 07RK47; 07RK51; 11KW20; 11KW22; 13LW32; 15SA25.

BRUTALITY

“I saw people without hands, with intestines pulled out spread across the village. They shoot people, if they don’t die, the military uses cobra knives to gut them. If the intestines don’t come out, they pull them out.”

- Quote by 40-year old Rohingya woman from Maungdaw

As noted throughout this Report, the investigation mission documented an exceptionally high incidence of severe brutality in the attacks against the Rohingya. The investigation documented many instances of mutilation, including: beheadings;⁴³⁸ dismembered hands or limb;⁴³⁹ gauging of eyes,⁴⁴⁰ including those of children;⁴⁴¹ cutting of breasts and vaginas;⁴⁴² castrating men;⁴⁴³ and incidents of prolonged death resulting from the cutting of tongues and testicles and being left to bleed out.⁴⁴⁴ One particularly gruesome account involved a prolonged sadistic sexual account, as summarized by one investigator:

In perhaps the most gruesome story I heard, a woman described how she and other women from the village were rounded up and forced to sit in the sun all day. Some women were chosen to be gang raped. Women who resisted were further abused. Some women’s hands were nailed to walls or fences (crucifixion-style). Then they were raped, followed by having a breast chopped off. While still alive, their “private parts” were cut with a knife, and the perpetrators “filled the bowls with blood.” Then the women were killed. The interviewee also had to watch perpetrators cut open the torsos and bellies of pregnant woman. The fetus was ripped out and thrown on the ground, and the women died.

Many of these brutal attacks either took place in public, or with bodies of victims laid out in public, so as to increase the intensity of the terror. In one case, the body of a Rohingya village chairman was found with his tongue and penis cut off and his eyes removed.⁴⁴⁵ In another, Islamic scholars had their tongues and hands cut off.⁴⁴⁶ Respondents also spoke of hundreds of body parts hanging from trees.⁴⁴⁷

⁴³⁸ E.g., Questionnaire Nos. 16SM78; NEOO03; RKMS149; 1EGN12; 2WRK34; 07RK45; 12KF33.

⁴³⁹ E.g., Questionnaire Nos. 1WAF01; 1WAF07; RKMS150; 2WRK34; 07RK45; 12KF33; NERK116.

⁴⁴⁰ E.g., Questionnaire Nos. 1WOO18; 1WOO20.

⁴⁴¹ E.g., Questionnaire Nos. SHVG42; 14CM03; 15SA46; 2EVG20; 03SM13.

⁴⁴² E.g., Questionnaire Nos. 04MS02; 07SM42; NEOO031, 2EVG20; 19KF27; 19KF30.

⁴⁴³ Questionnaire No. 06OO08.

⁴⁴⁴ E.g., Questionnaire Nos. 1WAF05; 19KF27.

⁴⁴⁵ MS Investigator Report, p. 4.

⁴⁴⁶ Questionnaire No. SHVG41.

⁴⁴⁷ Questionnaire No. 1WAF01.

CHAPTER 7

CONCLUSIONS FROM THE INVESTIGATION TEAM

This Chapter summarizes the overall conclusions of the investigators comprising PILPG’s investigation team, based on the totality of the documented information and the factual findings of the 1,024 interviews. The unanimous finding of all 18 investigators who took part in the mission was that the major attacks on the Rohingya leading directly to their displacement involved a premeditated and well-coordinated operation. As one investigator noted:

In sum, there are too many coincidences in the nature and similarity of the attacks across the mapped area of Rakhine to suggest anything other than a carefully planned military operation designed to terrorize the refugees into leaving their homeland.

The investigators also highlighted the likelihood that the military operation could not have been merely a response to the ARSA attacks, debunking the military’s narrative of a legitimate counter-insurgency response. The scale, timing, and consistency of the attacks across such a large territory could not have been planned and coordinated in such a short period of time (within a few days of the last ARSA attack). The increased military presence and buildup of weaponry weeks earlier, the seizure of any objects that could be used as weapons for self-defense weeks earlier, as well as the removal of all fences or installations that could be used as barriers, shields, or hiding spots during an assault all point towards a long-planned state-wide operation. The pretense of a “clearing operation” to protect the state from a Rohingya terrorist insurgency threat rings hollow in the face of so much of this data. As one investigator noted in his report:

The Myanmar Government clearly had unimpeded access to these villages at any time of their choosing as evidenced by the frequent appearance of security forces to impose and enforce lockdowns/curfews. So if they were actively seeking insurgents they already had a mechanism to find them. Yet, clearly as part of a broader and planned effort to expel the population they still launched coordinated attacks that left great gaping holes open so that the entire population (insurgents included) could flee.

Investigators posited that the coordinated way in which villages had been attacked and the corridors left open to enable people to flee into Bangladesh leaves no doubt that it was a deliberate course of action aimed at expelling the Rohingya from Myanmar. Furthermore, the destruction of their villages, crops, and virtually all infrastructure clearly points to a strategy of ensuring the Rohingya's permanent removal. The mass killings and accompanying brutality, including against children, women, pregnant women, the elderly, and those crossing the border to Bangladesh further suggest, however, that, at least in the minds of some perpetrators, the goal was not only to expel, but also to exterminate the Rohingya. As one investigator concluded:

While one can debate whether Burma's goal was to exterminate the Rohingya or "merely" push them out of the country, there were striking examples that indicate a possible desire to go far beyond pushing the population into Bangladesh. I was struck by the mass murder of Rohingya even once they were about to enter Bangladesh. I heard several reports of hundreds or thousands of people being killed with bombs and guns while waiting on the river bank to cross into Bangladesh. I also heard reports of military speedboats purposefully running into canoes full of refugees, which would then tip over and everyone would drown. In both of these examples, the Burmese had basically achieved their desire to force the Rohingya into Bangladesh, yet that wasn't sufficient – instead, they preferred the Rohingya dead.

PART III

LEGAL ANALYSIS OF COLLECTED DOCUMENTATION

Part III analyzes whether, based on the documentation collected during the investigation mission, there are reasonable grounds to believe that crimes against humanity, genocide, and war crimes have been committed against the Rohingya in Myanmar’s northern Rakhine State. PILPG’s mission to investigate atrocities against the Rohingya represents one of the largest documentation efforts to date; as such, the authors of this Report consider this wealth of facts to merit a comprehensive legal analysis.

This legal analysis is intended primarily for policymakers and serves a dual purpose: (1) to provide guidance on the international legal ramifications of the investigation mission’s factual findings and (2) to facilitate the formulation of effective measures to respond to the documented atrocities. The requisite first step in this process is determining what these facts represent within the realm of international law. Therefore, this Report analyzes crimes against humanity, genocide, and war crimes separately against the documentation collected during the investigation mission to determine whether the elements of the crimes are satisfied and ultimately whether the crimes have been committed.

In conducting its legal analysis, this Report assesses whether there are *reasonable grounds to believe* that crimes have been committed. This standard is applied by the International Criminal Court (“ICC”) when deciding whether to open an investigation into alleged crimes within its jurisdiction, as well as by international fact-finding missions, notably those conducted by the UN.⁴⁴⁸ In practice, “reasonable grounds to believe that crimes have been committed” means that there are strong preliminary indications that crimes have been committed and further investigation is warranted. The application of this standard is particularly pertinent in the context of this Report because it does not require the identification of individual perpetrators, which is a task for subsequent investigations.⁴⁴⁹

⁴⁴⁸ See, e.g., *Report of the Independent International Fact-Finding Mission on Myanmar*, para. 6, delivered to UN Human Rights Council, U.N. Doc. A/HRC/39/64 (Aug. 24, 2018).

⁴⁴⁹ There are a range of standards that can apply throughout international criminal proceedings, depending on how far advanced a case is. See, e.g., *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, Case No. ICC/-01/09, ICC Pre-Trial Chamber II, paras. 27–35, (Mar. 31, 2010).

This Report ultimately concludes that there are reasonable grounds to believe that crimes against humanity, genocide, and war crimes have been committed against the Rohingya in Myanmar's northern Rakhine State and that, therefore, a criminal investigation is warranted. Chapters 8–10 lay out the analyses of these respective international crimes and the underpinning facts relevant to each crime, upon which the authors of this Report have based their legal conclusions.

CHAPTER 8

CRIMES AGAINST HUMANITY

Under international law, certain acts—such as murder, torture, rape, deportation, and persecution—amount to crimes against humanity when committed as part of a widespread or systematic attack against a civilian population and with knowledge of the attack.⁴⁵⁰

Through the legal analysis set forth below, this Chapter assesses whether there are reasonable grounds to believe that crimes against humanity have been committed against the Rohingya in Myanmar. Specifically, this Chapter lays out the relevant international law regarding crimes against humanity and then applies that law to the investigation mission’s factual findings. This Chapter concludes that all the elements of crimes against humanity under international law have been documented well beyond the reasonable grounds standard, such that the authors of this Report find that the events in northern Rakhine State, as described in Chapters 4–6, clearly amount to crimes against humanity. Therefore, further criminal investigation is warranted, focused in particular on identifying perpetrators and gathering other types of evidence, including insider testimony and military documentation.

INTERNATIONAL LAW REGARDING CRIMES AGAINST HUMANITY

Under international law, a two-pronged approach is used to determine whether crimes against humanity were committed. Specifically, international law requires showing that: (1) the contextual elements of crimes against humanity are satisfied and (2) the underlying prohibited acts or crimes (e.g., murder, torture, or rape) were committed.

The Contextual Elements of Crimes Against Humanity

The contextual elements of crimes against humanity are common to all crimes against humanity under international law.⁴⁵¹ Specifically, the requisite contextual elements are that: (1) an attack be directed against any civilian population; (2) the attack be widespread or systematic; (3) there is a nexus or link between the attack

⁴⁵⁰ See, e.g., *Rome Statute of the International Criminal Court*, art. 7(1) (1998) [hereinafter *Rome Statute*].

⁴⁵¹ *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya*,” Case No. ICC-01/09, Pre-Trial Chamber II, para. 77 (Mar. 31, 2010).

and the underlying crime committed; and (4) the accused had knowledge of the widespread or systematic attack.⁴⁵² The ICC also requires that the crimes be in furtherance of or pursuant to a State or organizational policy.⁴⁵³

An Attack Directed Against Any Civilian Population

International law provides a relatively broad definition of “attack.” The Rome Statute defines an “attack” as “a course of conduct involving the multiple commission” of offenses falling under this category of crimes.⁴⁵⁴ Importantly, an attack is not limited to the use of armed force; rather, it may encompass any mistreatment of a civilian population.⁴⁵⁵

An attack must also be directed against any “civilian population” to satisfy the contextual element for crimes against humanity. International courts have held that the meaning of “civilian” accords with the customary international law definition of “civilian” under the law of armed conflict. Thus, “civilians” include persons that never take part in an armed conflict and those that lay down their arms—commonly referred to as *hors de combat*.⁴⁵⁶ It does not matter if a group attacked included non-civilian personnel, provided the civilian elements of group attacked were the primary, rather than incidental, target of the attack.⁴⁵⁷

International courts have further held that “population” does not mean that the entire populace of the geographical areas in which an attack takes place must have been subject to an attack.⁴⁵⁸ Instead, it is adequate to show that a sufficiently large number of individuals were targeted during an attack to indicate the attack was directed at a “civilian population,” rather than against a limited number of individuals.⁴⁵⁹

⁴⁵² See *Rome Statute*, art. 7(1) (1998); *Updated Statute of the International Criminal Tribunal for the Former Yugoslavia*, art. 5 (2009) [hereinafter *ICTY Statute*]; *Statute for the International Tribunal for Rwanda*, art. 3 (2007) [hereinafter *ICTR Statute*].

⁴⁵³ See Antonio Cassese & Paolo Gaeta, *CASSESE’S INTERNATIONAL CRIMINAL LAW* 105–08 (3rd ed., 2013).

⁴⁵⁴ *Rome Statute* art. 7(2)(a) (1998).

⁴⁵⁵ See *Bagosora & Nsengiyumva v. The Prosecutor*, Case No. ICTR-98-41-A, Appeals Judgement, para. 390 (Dec. 14, 2011).

⁴⁵⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 50, June 8, 1977, 1125 UNTS 3 [hereinafter *Additional Protocol I*]; *Prosecutor v. Martić*, Case No. IT-95-11-A, Appeals Judgement, para. 311 (Oct. 8, 2008).

⁴⁵⁷ *Prosecutor v. Kunarac et. al*, Case No. IT-96-23, Appeals Judgement, para. 92 (June 12, 2002).

⁴⁵⁸ See Roger O’Keefe, *INTERNATIONAL CRIMINAL LAW* 142 (1st ed., 2017) (quoting *Prosecutor v. Kunarac et. al*, Case No. IT-96-23, Appeals Judgement, para. 90 (June 12, 2002)).

⁴⁵⁹ See Roger O’Keefe, *INTERNATIONAL CRIMINAL LAW* 142 (1st ed., 2017) (quoting *Prosecutor v. Kunarac et. al*, Case No. IT-96-23, Appeals Judgement, para. 90 (June 12, 2002)).

Widespread or Systematic Attack

Another key contextual element of crimes against humanity is the requirement that a prohibited act be committed on a “widespread or systematic” basis. “Widespread” and “systematic” are disjunctive, in that it is only necessary to show that an attack was either widespread *or* systematic, not both.⁴⁶⁰

International courts have held that an attack is “widespread” when it is “massive, frequent, carried out with considerable seriousness and directed against a multiplicity of victims.”⁴⁶¹ Moreover, an attack can be “widespread” if it is “over a large geographical area,” as well as if it is “in a small geographical area against a large number of civilians.”⁴⁶²

International courts have further held that “systematic” refers to the organized or planned nature of an attack and the improbability that it was a random occurrence.⁴⁶³ In making determinations of whether an attack was “systematic,” international courts consider a range of factors, including whether the attack was pursuant to a political objective or plan, the scale or repeated and continuous commission of acts comprising the attack, the preparation and resources involved in the attack, and whether high-level military or political authorities were implicated in creating the plan for attack.⁴⁶⁴

Link or Nexus Between the Underlying Act and the Attack

Under international law, a perpetrator must also commit a prohibited act “as part” or not wholly independent of an attack for that act to constitute a crime against humanity.⁴⁶⁵ There is thus a need to show the existence of a link or nexus between the underlying act for which an accused is charged and the widespread or systematic attack against the civilian population.

While international courts assess the existence of any such nexus on a case by case basis, it is clear from their practice that, to convict an accused of crimes against humanity, it must be proven that the crimes were related to the attack on a civilian population and that the accused knew that his or her crimes were so related.⁴⁶⁶ As long as there is a link with the widespread or systematic attack against a civilian population, a single act or a small number of acts could qualify as a crime against

⁴⁶⁰ *Prosecutor v. Kunarac et. al*, Case No. IT-96-23, Appeals Judgement, para. 93 (June 12, 2002).

⁴⁶¹ *The Prosecutor v. Jean-Pierre Bemba Gombo* (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo), ICC-01/05-01/08, Pre-Trial Chamber II Decision, para. 83 (June 15, 2009).

⁴⁶² *The Prosecutor v. Jean-Pierre Bemba Gombo* (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo), ICC-01/05-01/08, Pre-Trial Chamber II Decision, para. 83 (June 15, 2009).

⁴⁶³ *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgement, para. 203 (March 3, 2000).

⁴⁶⁴ *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgement, para. 203 (March 3, 2000).

⁴⁶⁵ *Rome Statute* art. 7(1) (1998); *Prosecutor v. Kunarac*, Case No. IT-96-23/1-A, Judgment, para. 99 (June 12, 2002).

⁴⁶⁶ *See Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, para. 271 (July 15, 1999).

humanity,⁴⁶⁷ even if the act was carried out for the purely personal motives of the perpetrator.⁴⁶⁸

Knowledge

To satisfy the mental element, or *mens rea*, of crimes against humanity, an accused must have (1) the intent to commit the underlying offense and (2) awareness of the existence of a widespread or systematic practice and that his or her acts form part of it.

For purposes of satisfying the contextual knowledge element, international courts have held that a perpetrator only needs to know that there is a widespread or systematic attack on the civilian population and that his or her acts form part of that attack.⁴⁶⁹ The perpetrator does not need to know the details of the attack⁴⁷⁰ or share the purpose of the attack⁴⁷¹ to satisfy the *mens rea* requirement of crimes against humanity.

State or Organizational Policy

The Rome Statute sets out another element of crimes against humanity: an attack must have been committed pursuant to or in furtherance of a State or organizational policy.⁴⁷² The International Criminal Tribunal for the Former Yugoslavia (ICTY), in contrast, has explicitly rejected such a requirement for a finding of crimes against humanity.⁴⁷³ The ICC has explained that a policy to commit an attack “requires that the State or organization actively promote or encourage such an attack against a civilian population.”⁴⁷⁴

Where it is necessary to show that crimes were committed in furtherance of or pursuant to a State or organizational policy, the policy does not need to be formalized or written in one document. Rather, such a policy can be inferred from the totality of circumstances.⁴⁷⁵

⁴⁶⁷ See Roger O’Keefe, INTERNATIONAL CRIMINAL LAW 143 (1st ed., 2017) (quoting *Prosecutor v Nahimana*, ICTR-99-52-A, Appeals Chamber, Judgement, para. 924 (Nov. 28, 2007)).

⁴⁶⁸ See *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, para. 272 (July 15, 1999).

⁴⁶⁹ *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Appeals Judgement, para. 126 (July 29, 2004).

⁴⁷⁰ *Prosecutor v. Kunarac et. al.*, Case No. IT-96-23/1-A, Appeals Judgment, para. 102 (June 12, 2002).

⁴⁷¹ *Prosecutor v. Kunarac et. al.*, Case No. IT-96-23/1-A, Appeals Judgment, para. 103 (June 12, 2002).

⁴⁷² See *Rome Statute* art. 7(2)(a) (1998).

⁴⁷³ See *Prosecutor v. Jelisić*, Case No. IT-95-10-A, Judgement, para. 48 (July 5, 2001).

⁴⁷⁴ See International Criminal Court, ELEMENTS OF CRIMES 5 (2011).

⁴⁷⁵ See *Judgment Pursuant to Article 74 of the Statute in the Situation in the Democratic Republic of the Congo in the Case of The Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07, ICC Trial Chamber II, paras. 1108–10, (Mar. 7, 2014); *Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08, ICC Pre-Trial Chamber II, para. 81, (June 15, 2009); *Decision on the Confirmation of Charges Against Laurent Gbagbo*, Case No. ICC-02/11-01/11, ICC Pre-Trial

The Underlying Prohibited Acts or Offenses Constituting Crimes Against Humanity

For crimes against humanity to be committed, an underlying prohibited act constituting a crime against humanity must have been committed, in addition to the contextual elements set out above. It is generally accepted that the underlying prohibited acts that can comprise crimes against humanity under international law include: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer; (e) imprisonment or other severe deprivation of physical liberty; (f) torture; (g) rape and any other form of sexual violence of comparable gravity; (h) persecution; (i) enforced disappearance of persons; (j) apartheid; and (k) other inhuman acts of similar gravity.⁴⁷⁶

ANALYSIS AS TO WHETHER THERE ARE REASONABLE GROUNDS TO BELIEVE CRIMES AGAINST HUMANITY HAVE BEEN COMMITTED IN MYANMAR

This Report details numerous instances of acts that are capable of constituting crimes against humanity, notably: murder, extermination, enslavement, forcible transfer, rape and other forms of sexual violence, and persecution.

Contextual Elements

The authors of this Report find that there are reasonable grounds to believe that all of the requisite contextual elements for crimes against humanity are satisfied with regard to the attacks against the Rohingya in Myanmar's northern Rakhine State.

An Attack Directed Against Any Civilian Population

PILPG's investigation mission revealed long-term patterns of violence and widespread human rights violations against the Rohingya that stretched back many years, or even decades. Specifically, violence against the Rohingya began to escalate in 2012, increased dramatically from 2016 and culminated in the major attacks of August–September 2017, which resulted in the mass displacement of Rohingya to Bangladesh. Throughout this period, multiple underlying prohibited acts were perpetrated against the Rohingya, and these prohibited acts coincided with the Myanmar armed forces' numerous military assaults against the Rohingya.

As a result, it is clear that "attack(s)" within the meaning of the definition for crimes against humanity have taken place against the Rohingya through the period documented by the investigation mission because there was a clear course of conduct comprising the commission of multiple underlying prohibited acts.

Chamber I, para. 215, (June 12, 2014); *see also* Marina Lostal Becceril et. al., *International Criminal Law Guidelines: Crimes Against Humanity*, CASE MATRIX NETWORK 33–40 (Feb. 2017).

⁴⁷⁶ *See* Antonio Cassese & Paolo Gaeta, CASSESE'S INTERNATIONAL CRIMINAL LAW 94–98 (3rd ed., 2013); International Criminal Court, ELEMENTS OF CRIMES 5–12 (2011) (providing a useful summary of each of the elements of the crimes).

The investigation mission's findings further provide ample information to support the conclusion that attacks were directed against a "civilian population." Specifically, Rohingya civilians were the primary targets of attacks, including women, children and the elderly, and the attacks were conducted in a wide geographical area across northern Rakhine State.

The patterns of violence and abuse against the Rohingya in Myanmar's Rakhine State thus constitute an "attack against a civilian population."

Widespread or Systematic Attack

While it is only necessary for attacks to be "widespread" *or* "systematic" to constitute crimes against humanity, the investigation revealed that the attacks against the Rohingya were both "widespread" *and* "systematic."

Widespread

The investigation mission's findings show that the attacks against the Rohingya were "widespread" because there were regular massive attacks against a multiplicity of victims. Notably, the vast majority of the interviewees, who constituted a representative sample of Rohingya who fled from villages across northern Rakhine State, provided firsthand accounts of repeated incidents of prohibited acts taking place across Rakhine State for many years. The documented attacks increased in intensity from 2012 onwards, with a more dramatic increase after October 2016, and by August 2017 they were occurring on a near daily basis and at unprecedented levels of severity.

These attacks involved groups of hundreds of soldiers arriving in villages across northern Rakhine State and burning, shooting, stabbing, raping, and otherwise brutally attacking the Rohingya civilians. Further, soldiers shot at columns of Rohingya as they fled attacks. The attack patterns detailed in the Report also feature mass killing, rape, torture and other prohibited acts that were not only of grave severity, but also that occurred on a massive scale and on a wide geographical basis. This pattern of violence suggests a highly coordinated military response that likely required weeks of tactical and logistical planning. The attacks involved the use of aircraft, artillery and the transport of perhaps hundreds of soldiers to often remote villages for a campaign that was executed in multiple places within a matter of days.

Systematic

In addition to being widespread, the attacks were systematic. Specifically, the investigation mission revealed clear information demonstrating the planned or policy-based nature of violence. For instance, attacks took place in a highly coordinated and long-planned manner, sometimes involving the creation of lists and photographic documentation of Rohingya villagers prior to attacks, as well as multiple perpetrators acting in close coordination during the attacks. Preparations

for the attacks were made in advance and included the removal of any objects that could be used for self-defense and the destruction of possible hiding places.

Furthermore, the resources employed in the attacks reveal their organized nature. Namely, the weapons used against civilians included: rocket launchers, guns, machetes, knives, petrol and fire, dogs, land mines, swords, mortars, spades, bayonets, rocket propelled grenades, and flamethrowers. Helicopters were also used to transfer soldiers, equipment, and material. In addition, the attackers were almost always soldiers that the villagers had not seen before, suggesting they had been transported into the area specifically for the attacks.

In addition, Rohingya were the sole focus of attacks, demonstrating the existence of an underlying policy to target Rohingya. The investigation mission revealed that the attacks exclusively targeted the Rohingya, with the Myanmar armed forces seeking to identify the religion of individuals before an attack took or ceasing to attack when they discovered that individuals were not Rohingya. These matters demonstrate that the attacks took place in a highly coordinated and long-planned manner designed to further a policy of targeting Rohingya, thus supporting the conclusion that attacks were systematic.

Knowledge and Nexus to Attack

The Myanmar armed forces committing the prohibited acts simultaneously carried out large-scale and coordinated attacks across northern Rakhine State. The sheer scale and coordinated military-driven nature of violence lead to a conclusion that underlying prohibited acts were not isolated events and that perpetrators had knowledge of the wider conduct and attacks taking place. Furthermore, the consistent and repeated violations across a wide geographic area strongly point to the perpetrators' knowledge of the attacks.

State or Organization Policy

The investigation revealed clear patterns of violence in the attacks across northern Rakhine State, leading to the conclusion that these attacks were the result of a carefully planned and systematic military operation. The killings, rapes, and destruction were carried out so systematically that there are strong indications they are the product of a policy. Furthermore, there are sufficient findings to conclude that these violations were not coincidental, sporadic, or carried out by disorganized groups who were not controlled by the Myanmar armed forces. Indeed, the patterns of conduct, the manner in which these acts were carried out, the various State forces that participated, their timing, and the areas in which they occurred combine to reveal a purpose, systematicity, and superior direction, including planning and coordination from higher authorities.

*Analysis of the Underlying Prohibited Acts Constituting Crimes Against
Humanity*

The authors of this Report conclude that, in addition to the satisfaction of the contextual elements for crimes against humanity, it is clear that a wide range of underlying prohibited acts were committed against the Rohingya.

It is beyond the purpose of this Report to analyze in detail each and every possible underlying prohibited act that was committed, especially whether intent for each of the underlying acts was present. The investigation mission's findings, however, do support a conclusion that at least the following underlying acts were committed as crimes against humanity.

*Extermination*⁴⁷⁷

Multiple instances of mass killings amounting to the crime of extermination were documented during the investigation mission, including mass executions, indiscriminate shooting, and human bonfires. In one village in Buthidaung, a respondent witnessed an estimated 800 villagers being corralled into the central area of the village and stabbed or having their throats slit. The victims included men, women, and children. The bodies were buried in a mass grave.⁴⁷⁸

In another incident near Maungdaw, travelers from Buthidaung arrived near the interviewee's village. The military, border guard police, and ethnic Rakhine lined them up and killed them all by slitting their throats and throwing their bodies in the river. The interviewee reported there were approximately 1,000 victims, including women and children.⁴⁷⁹

In another village near Maungdaw, after an attack by the Myanmar security forces, the villagers left the village and ran to the river. The military and ethnic Rakhine followed them and separated the men from the women. The men were made to stand in rows and were then shot at; some men jumped into the river, but others could not and were shot. The women were raped and beaten. Some of the men were forced to dig graves and put bodies in them.⁴⁸⁰

In several cases, the interviewees reported that the death toll was simply too numerous to count.⁴⁸¹

⁴⁷⁷ The material elements of the crime of extermination: (1) The perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population. (2) The conduct constituted, or took place as part of, a mass killing of members of a civilian population. See International Criminal Court, ELEMENTS OF CRIMES 6 (2011).

⁴⁷⁸ Questionnaire No. 16SM78.

⁴⁷⁹ Questionnaire No. 14CM08.

⁴⁸⁰ Questionnaire No. 2EVG22.

⁴⁸¹ E.g., Questionnaire No. 05PN45.

*Murder*⁴⁸²

The investigation mission documented thousands of instances in which a perpetrator killed one or more persons, including particularly brutal instances in which persons fleeing were shot and killed, or in which individuals had petrol poured on them and were burned alive. Beheadings and hangings were also documented, including of children and women giving birth.⁴⁸³ Killings by shooting, execution, and the use of other weapons such as knives and machetes were also widely documented. In a village in Maungdaw, one day prior to the major attack on that village, the border guard police and military came to the village and arrested the Chairman and his assistant and then slit their throats on the road.⁴⁸⁴

In addition to eyewitness accounts of hundreds of murders, many interviewees reported that their friends, family members, and other villagers had gone missing and were presumed to have been killed.

*Rape*⁴⁸⁵ and Other Forms of Sexual Violence⁴⁸⁶

The investigation documented hundreds of rape cases and other forms of sexual violence. The majority of the interviewees identified that the Myanmar security forces had committed widespread rapes, including gang rapes against Rohingya women and girls throughout all Rohingya-inhabited townships in northern Rakhine State in 2017 and earlier. One refugee who reported being raped also reported witnessing over 100 rapes by the military.⁴⁸⁷ Rohingya women were made the systematic targets of rapes. One villager reported that “[e]very night about twenty women were raped in their homes; many killed themselves afterward.”⁴⁸⁸ Many of these documented cases of rape were instances of gang rapes against groups of

⁴⁸² Material element of the crime of murder: The perpetrator killed one or more persons. *See* International Criminal Court, ELEMENTS OF CRIMES 5 (2011).

⁴⁸³ *E.g.*, Questionnaire No. 03SM13.

⁴⁸⁴ Questionnaire No. 09CM01.

⁴⁸⁵ Material elements of the crime of rape: (1) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. (2) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. *See* International Criminal Court, ELEMENTS OF CRIMES 8 (2011).

⁴⁸⁶ Material elements of the crime of sexual violence: (1) The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent. (2) Such conduct was of a gravity comparable to offences like rape, sexual slavery, etc. *See* International Criminal Court, ELEMENTS OF CRIMES 10 (2011).

⁴⁸⁷ Questionnaire No. 13JW38.

⁴⁸⁸ Questionnaire No. 04MS03.

women and girls as young as seven. One interviewee, a local doctor, reported that he had “treated seven young girls who were raped in August 2017. Two girls could not walk and were carried by their family members. One was transferred to a hospital due to severe injuries.”⁴⁸⁹

In a number of cases, after being raped, women were mutilated and killed. In one village in Maungdaw, security forces comprising the Tatmadaw, border guard police, combat police forces, and ethnic Rakhine civilians, gathered in the center village, selected beautiful women (15–18 years old), took them away, raped and killed them, cut their throats, and dumped their bodies near the village.⁴⁹⁰

In addition, numerous instances of other forms of sexual violence were perpetrated against women, notably ripping off clothes and aggressively groping women’s genitals, with the threat of force for failure to comply. Random check points were a pretense for sexual assault perpetrated by the military against women.

*Enslavement*⁴⁹¹

Several respondents indicated that they and many others were routinely subjected to forced labor in 2017 and earlier. Civilians were forced to undertake a variety of tasks including portering, digging, unloading trucks, cutting grass and cleaning up, working on military bases, giving a massage to tired soldiers, fishing and crop harvesting, digging graves, and burying bodies of victims.

The involuntarily work and services were provided under the threat of penalty. People were beaten if they did not work. In some villages, the military required village leaders to gather laborers to fulfill the military’s labor requirements. In other places, the military arrested villagers whom they encountered and forced them to work. One villager reported that “[t]he soldiers caught him, brought him to the camp, where they treated him like a slave and made him to do extra work (like digging a hole) for 3 days.”⁴⁹² Villagers reported that they were never paid or provided with any food.

*Forcible Transfer*⁴⁹³

The investigation’s findings extensively document instances of forcible transfer.

⁴⁸⁹ Questionnaire No. 07SM36.

⁴⁹⁰ Questionnaire No. 14SH56.

⁴⁹¹ Material element of the crime of enslavement: The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty. *See* International Criminal Court, ELEMENTS OF CRIMES 6 (2011).

⁴⁹² Questionnaire No. 1EPN12.

⁴⁹³ Material elements of the crime of forcible transfer: (1) The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts. (2) Such person or persons were lawfully present in the area from which they were so deported or transferred. *See* International Criminal Court, ELEMENTS OF CRIMES 6 (2011).

The military invaded Rohingya villages, burned them to the ground, and violently attacked and killed villagers, while leaving non-Muslim villages nearby intact and undisturbed. Refugees reported that they had no choice but to leave their villages, as their supplies, livestock, and money were stolen, chemicals were intentionally introduced into the drinking water, their homes were destroyed, and their families were murdered. In at least one instance, soldiers told the villagers that the attack on their village had been ordered by their commander. In that case, villagers were told that they must “leave by tomorrow or your house will be burned.”⁴⁹⁴

Many refugees reported that the military told them, “leave the country; this is not your country,” “you are not Rohingya, you are from Bangladesh,” and, “you can’t live in my country, go away from my country.” The military also chased fleeing villagers while shooting at them and threatening them, “don’t come back, we will kill you.” Villagers who did not leave or who attempted to return to their homes were killed.

*Persecution*⁴⁹⁵

The investigation revealed how the Myanmar military has deprived members of the Rohingya population of fundamental human rights, including among others the right to life, liberty, and security of person; freedom from torture or cruel, inhuman, or degrading treatment or punishment; freedom from arbitrary arrest, detention, or exile; and the right to freedom of movement and residence. The military targeted only the Rohingya, as non-Rohingya people and villages were always spared. Myanmar security forces maintained a presence in many villages in northern Rakhine, enforcing economic, movement and marriage restrictions against the Rohingya. If Rohingya were found in violation of these and other restrictions, they were arrested, beaten and sometimes raped in retaliation.

The Rohingya could not access mosques, and there were prohibitions on group prayer and religious learning. If the military or police found them praying, they were beaten, arrested, or killed. Refugees describe families having to pay large sums of money to have their loved ones released from jail for minor infractions. During searches of Rohingya homes, Myanmar military troops often assaulted family members, raped women, took valuables, and ruined food stores while telling people to leave the country. Thousands of Rohingya Muslims have been murdered and many more have been raped, tortured, and disappeared.

⁴⁹⁴ Questionnaire No. 05PN45.

⁴⁹⁵ Material elements of the crime of persecution: (1) The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights. (2) The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such. (3) Such targeting was based on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law. (4) The conduct was committed in connection with any underlying act of crimes against humanity. See International Criminal Court, ELEMENTS OF CRIMES 10 (2011).

Religious figures and educated people were singled out for harsh beatings and torture. Religious scholars and community leaders were often among the first to be killed, and places of worship and items of religious significance were burned or otherwise destroyed by the Myanmar military forces.

CHAPTER 9

GENOCIDE

Genocide is an international crime with a foundation in both international treaty law and customary international law. Like crimes against humanity, genocide can be committed both in times of peace and times of war.⁴⁹⁶ As set forth below, proving genocide requires showing the existence of a protected group that was the target of underlying acts committed against that group with an intent to destroy all or part of the protected group.

This Chapter assesses whether the factual findings of this Report satisfy the elements of genocide under international law. It concludes that there are reasonable grounds to believe that genocide has been committed because the Rohingya are a protected group for purposes of the law on genocide, and a wide range of prohibited acts underlying genocide were committed against the Rohingya with an intent to destroy, at least in part, the Rohingya as a protected group. Further investigation, focused on establishing the elements of the crime of genocide, particularly the requisite mental elements, and identifying the perpetrators, is thus required.

INTERNATIONAL LAW REGARDING GENOCIDE

Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (“the Convention”) defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (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;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”⁴⁹⁷

As a result, proving that genocide has taken place requires showing that: (1) a protected group was targeted; (2) underlying prohibited acts were committed against persons belonging to the protected group; and (3) those acts were committed pursuant to an intent to destroy, in whole or in part, the protected group.

⁴⁹⁶ Convention on the Prevention and Punishment of the Crime of Genocide, art. 1, Dec. 9, 1948, 78 U.N.T.S. 277 (1948).

⁴⁹⁷ Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, Dec. 9, 1948, 78 U.N.T.S. 277 (1948).

A Protected Targeted Group

For genocide to have been committed, both the material (physical) and the mental elements of the crime require the targeting of a “protected group”—i.e. a national, ethnical, racial or religious group. That is, the perpetrator’s criminal acts must have targeted a group with protected status, and the perpetrator must have intentionally targeted the group, as such.

Neither the Convention nor other international statutes clearly define what constitutes a “protected group.” International courts have found, however, that a protected group largely corresponds with identifiable “national minorities.”⁴⁹⁸

Underlying Prohibited Acts

International law provides that any of the following prohibited acts can amount to genocide when committed with the requisite intent: (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 destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.

Killing Members of the Group

The requirements for killing for purposes of genocide are equivalent to murder as a crime against humanity or as a war crime. Specifically, the underlying crime of killing involves an act or omission resulting in the death of at least one individual.⁴⁹⁹ The requirement that death must be “a result of” the perpetrator’s act or omission does not require that the act or omission be the sole cause for the victim’s death. Instead, it is sufficient to constitute a killing if the “perpetrator’s conduct contributed substantially to the death of the person.”⁵⁰⁰

Causing Serious Bodily or Mental Harm to Members of the Group

To satisfy this prohibited act, harm must go “beyond temporary unhappiness, embarrassment or humiliation” and inflict “grave and long-term disadvantage to a

⁴⁹⁸ See *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Trial Judgement, para. 556 (Aug. 2, 2001).

⁴⁹⁹ See *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Appeals Judgement, para. 261 (Feb. 28, 2005); see also *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Trial Judgement, para. 542 (Mar. 24, 2016); *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Appeals Judgement, para. 108 (Nov. 12, 2009) (relating to Article 5 of the ICTY Statute); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Trial Judgement, vol. 1 para. 137 (Feb. 26, 2009); *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Appeals Judgement, paras. 147–50 (Nov. 30, 2006).

⁵⁰⁰ *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Trial Chamber II Judgement, para. 347 (June 30, 2006); see also *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Trial Judgement, para. 1708 (Feb. 23, 2011); *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Trial Judgement, para. 788 (June 10, 2010); *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Trial Judgement, para. 899 (July 20, 2009); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Trial Judgement, vol. 1 para. 137 (Feb. 26, 2009).

person's ability to lead a normal and constructive life."⁵⁰¹ The harm need not be "permanent and irremediable."⁵⁰²

Examples of acts causing serious bodily or mental harm include killing, torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or serious injury to members of the targeted protected group.⁵⁰³

International courts have held that the deportation or displacement of a protected group "does not constitute *in and of itself* a genocidal act."⁵⁰⁴ However, deportation or displacement of a protected group can constitute an underlying act that causes serious bodily or mental harm, particularly in the form of a forcible transfer operation undertaken in such a manner and attended by such circumstances that lead to the death of at least part of the displaced population.⁵⁰⁵

Deliberately Inflicting on the Group Conditions of Life Calculated to Bring About its Physical Destruction in Whole or in Part

Deliberately inflicting conditions of life calculated to bring a group's physical destruction in whole or in part is a prohibited act that does not immediately kill the

⁵⁰¹ See, e.g., *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Trial Judgment, para. 513 (Aug. 2, 2001); see also *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Trial Judgment, para. 645 (Jan. 17, 2005).

⁵⁰² *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Trial Judgment, para. 513 (Aug. 2, 2001); see also *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, Trial Judgment, para. 487 (Feb. 11, 2010); *The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-T, Trial Judgment, para. 664 (Feb. 25, 2004); *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-95-54A-T, Trial Judgment, para. 634 (Jan. 22, 2004); *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Trial Judgment, para. 516 (July 31, 2003); *The Prosecutor v. Ignace Bagilishema*, Case no. ICTR-95-1A-T, Trial Judgment, para. 59 (June 7, 2001); *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Trial Judgment, para. 108 (May 21, 1999); *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Judgment, para. 502 (Sept. 2, 1998).

⁵⁰³ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Trial Judgment, paras. 812 & 844 (June 10, 2010); *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Trial Judgment, para. 690 (Sept. 1, 2004); *Case Concerning 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 (Feb. 26), para. 319.

⁵⁰⁴ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, para. 33 (Apr. 19, 2004) (emphasis added).

The International Court of Justice has held that neither the intent to render an area ethnically homogenous nor operations to implement the policy "can as such be designated as genocide: the intent that characterizes genocide is to 'destroy, in whole or in part,' a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group." *Case Concerning 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 (Feb. 26), para. 190.

⁵⁰⁵ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Trial Judgment, paras. 650 & 654 (Jan. 17, 2005); see also *CrimC (Jer) 40/61 The Attorney General v. Adolf Eichmann*, 36 I.L.R. 5, para. 186 (1961) (Isr.).

members of the group, but that ultimately seeks their physical destruction.⁵⁰⁶

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.⁵⁰⁷

Absent direct evidence of whether “conditions of life” imposed on the targeted group were calculated to bring about its physical destruction, international courts have “focused on the objective probability of whether these conditions would lead to the physical destruction of the group in part.” In doing so, courts have assessed factors such as the nature of the conditions imposed, the length of time that members of the group were subjected to them, and characteristics of the targeted group itself, such as their vulnerability.⁵⁰⁸

Genocidal Intent

What distinguishes genocide from other international crimes is genocidal intent—the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”⁵⁰⁹ Direct evidence of genocidal intent is predictably rare. As a result, international courts often determine genocidal intent based on circumstantial evidence.⁵¹⁰

⁵⁰⁶ *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Judgement, para. 505 (Sept. 2, 1998); see also *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Trial Judgement, para. 691 (Sept. 1, 2004); *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Trial Judgement, paras. 517–18 (July 31, 2003); *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Trial Judgement, para. 157 (Jan. 27, 2000); *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, Trial Judgement, para. 52 (Dec. 6, 1999).

⁵⁰⁷ *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Trial Judgement, para. 691 (Sept. 1, 2004); *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Trial Judgement, para. 517 (July 31, 2003); *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Trial Judgement, para. 157 (Jan. 27, 2000); *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Trial Judgement, paras. 115–16 (May 21, 1999); *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Judgement, para. 506 (Sept. 2, 1998).

⁵⁰⁸ *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Trial Judgement, para. 906 (Sept. 1, 2004); *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Trial Judgement, paras. 115, 548 (May 21, 1999); *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Judgement, para. 505 (Sept. 2, 1998); *Prosecutor v. Momčilo Krajišnik*, Case no. IT-00-39-T, Trial Judgement, para. 863 (Sept. 27, 2006) (holding that “[l]iving conditions, which may be inadequate by any number of standards, may nevertheless be adequate for the survival of the group.”).

⁵⁰⁹ See, e.g., *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, para. 134 (Apr. 19, 2004).

⁵¹⁰ See *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Appeals Judgement, para. 142 (Feb. 4, 2013); *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Appeals Judgement, para. 55 (Mar. 22, 2006).

Intent to Destroy the Targeted Group as Such

International criminal courts have held that the words “as such” in the Convention underscore that something more than discriminatory intent is required for genocide; in particular, there must be intent to destroy, in whole or in part, the protected group “as a separate and distinct entity.”⁵¹¹ As noted by the ICTY, [t]he ultimate victim of the crime of genocide is the group.⁵¹²

The term “destroy” in customary international law means physical or biological destruction and excludes attempts to annihilate cultural or sociological elements.⁵¹³ However, attacks on cultural and religious property and symbols of the targeted group often occur alongside physical and biological destruction and “may legitimately be considered as evidence of an intent to physically destroy the group.”⁵¹⁴

By its nature, intent is not usually susceptible to direct proof because “[o]nly the accused himself has first-hand knowledge of his own mental state, and he is unlikely to testify to his own genocidal intent.”⁵¹⁵

Absent direct evidence, intent to destroy may be inferred from a number of facts and circumstances, including: the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts, as well as acts, utterances, and statements of the accused.⁵¹⁶ Further, proof of the mental

⁵¹¹ See, e.g., *Case Concerning 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 (Feb. 26), para. 187; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Trial Judgment, para. 665 (Jan. 17, 2005); *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Trial Judgment, para. 698 (Sept. 1, 2004); *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Appeals Judgment, para. 53 (July 9, 2004).

⁵¹² See *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Trial Judgment, para. 821 (June 10, 2010).

⁵¹³ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, para. 33 & n.39 (Apr. 19, 2004); see also *Case Concerning 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 (Feb. 26), para. 344.

⁵¹⁴ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Trial Judgment, para. 580 (Aug. 2, 2001); *Case Concerning 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 (Feb. 26), para. 344.

⁵¹⁵ *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Appeals Judgment, para. 40 (July 7, 2006); see also *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Trial Judgment, para. 159 (May 21, 1999); *Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-A, Appeals Judgment, para. 525 (May 26, 2003).

⁵¹⁶ *Prosecutor v. Jelisić*, Case No. IT-95-10-A, Judgment, para. 47 (July 5, 2001); see also *The Prosecutor v. Pauline Nyarimasuhuko et al.*, Case No. ICTR-98-42-A, Appeals Judgment, para. 621 (Dec. 14, 2015); *Mikaeli Muhimana v. The Prosecutor*, Case No. ICTR-95-1B-A, Appeals Judgment, para. 31 (May 21, 2007); *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Appeals Judgment, para. 123 (May 9, 2007); *Laurent Semanza v. The Prosecutor*, Case

state with respect to the commission of the underlying act can serve as evidence from which to further infer that the accused possessed the specific intent to destroy.⁵¹⁷

Forcible transfer alone is an insufficient basis from which to infer the intent to destroy.⁵¹⁸ The intent to displace a group from a given area is distinct from the intent to destroy, and forcible transfer can evince intent to displace rather than destroy.⁵¹⁹ Forcible transfer is, nonetheless, a relevant consideration and a contributing circumstance for assessing genocidal intent.⁵²⁰

In Whole or in Part

For genocide to be committed, underlying prohibited acts must be committed with the intent to destroy a protected group “in whole or in part.”

International courts have held that if a group is targeted “in part,” the portion targeted must be a substantial part of the group because it “must be significant enough to have an impact on the group as a whole.”⁵²¹

The numeric size of the part of the group targeted, evaluated both in absolute terms and relative to the overall group size, “is the necessary and important starting

No. ICTR-97-20-A, Appeals Judgement, para. 262 (May 20, 2005); *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, paras. 33 & 35 (Apr. 19, 2004); *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Judgement, para. 523 (Sept. 2, 1998).

⁵¹⁷ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, para. 20 (Apr. 19, 2004).

⁵¹⁸ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Appeals Judgement, para. 123 (May 9, 2007).

⁵¹⁹ See *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, para. 133 (Apr. 19, 2004) (ruling that Krstić harboured no genocidal intent because his intent was limited to forcibly displace, whereas others “harboured the same intent to carry out forcible displacement, but viewed this displacement as a step in the accomplishment of their genocidal objective”); CrimC (Jer) 40/61 *The Attorney General v. Adolf Eichmann*, 36 I.L.R. 5, para. 186 (1961) (Isr.) (“With regard to the expulsion of Jews, in the organization of which the Accused was engaged . . . : We have found that these were organized by the Accused in complete disregard for the health and lives of the deported Jews. So, too, it has been proved that many Jews died a result of the expulsions from Nisko, Stettin and the Warthe district. There is no doubt that here, there was cruelty which bordered on premeditated malice, and we have weighted carefully whether or not the Accused foresaw the murderous consequences of these deportations, and this was what he wished. But in the final analysis, a doubt remained in our minds as to whether there was that intentional aim to exterminate which is required for proof of a crime against the Jewish People, and we shall, therefore, deal with these inhuman acts as being crimes against humanity.”)

⁵²⁰ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Appeals Judgement, para. 123 (May 9, 2007); see also *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, para. 33 (Apr. 19, 2004).

⁵²¹ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, para. 8 (Apr. 19, 2004); accord *Case Concerning 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 (Feb. 26), para. 198 (“In the first place, the intent must be to destroy at least a substantial part of the particular group. That is demanded by the very nature of the crime of genocide: since the object and purpose of the Convention as a whole is to prevent the intentional destruction of groups, the part targeted must be significant enough to have an impact on the group as a whole.”).

point” in assessing whether the part targeted is sufficiently substantial, but it is “not in all cases the ending point of the inquiry.”⁵²² Establishing genocide does not require meeting a specific numerical threshold for the number of victims.⁵²³

Other considerations, which are similarly “neither exhaustive nor dispositive,” include: the prominence within the group of the targeted part; whether the targeted part of the group “is emblematic of the overall group, or is essential to its survival;” and the area of the perpetrators’ activity and control and limitations on the possible extent of their reach.⁵²⁴ International courts determine which factors are applicable, and their relative weight, based on the circumstances of a particular case.⁵²⁵

ANALYSIS AS TO WHETHER THERE ARE REASONABLE GROUNDS TO BELIEVE GENOCIDE HAS BEEN COMMITTED IN MYANMAR

This Report details numerous instances of acts that are capable of constituting genocide of the Rohingya population, notably killings and serious bodily or mental harm, as well as conditions calculated to bring about their physical destruction.

Protected Status of the Rohingya

Rohingya Muslims represent the largest percentage of Muslims in Myanmar, with the majority living in Rakhine State. They self-identify as a distinct ethnic group with their own language and culture, and they claim a long-standing connection to Rakhine State.⁵²⁶ The UN Committee on the Elimination of Discrimination against Women considers the Rohingya an ethnic group,⁵²⁷ and the UN Committee on the Rights of the Child refers to the Rohingya as an ethnic and religious minority group.⁵²⁸

As described earlier in this Report, the perpetrators used ethnic and racial slurs during the attacks, further demonstrating that the Rohingya were being attacked because of their membership of a discrete group. International criminal courts have used such stigmatization by perpetrators to establish the protected status of the group under the Genocide Convention.⁵²⁹

⁵²² *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, para. 12 (Apr. 19, 2004).

⁵²³ *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Trial Judgment, para. 522 (July 31, 2003).

⁵²⁴ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, paras. 12–14 (Apr. 19, 2004).

⁵²⁵ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeals Judgment, para. 14 (Apr. 19, 2004).

⁵²⁶ United Nations High Commissioner for Human Rights, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, para. 3, A/HRC/32/18 (June 29, 2016).

⁵²⁷ Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Myanmar, p. 10, CEDAW/C/MMR/CO/4-5, (July 25, 2016).

⁵²⁸ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Myanmar, para. 35, CRC/C/MMR/CO/3-4, (Mar. 14, 2012).

⁵²⁹ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Trial Judgment, para. 557 (Aug. 2, 2001);

Underlying Acts of Genocide

The investigation mission documented at least three underlying acts of genocide: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; and (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. This Chapter considers each in turn and concludes that there are reasonable grounds to believe that the underlying acts of genocide have been committed.

Mass Killings of the Rohingya

Mass killings were documented in numerous interviews. The killings were committed by shooting, stabbing, beating, drowning, burning, and other violent means. Multiple instances of executions of hundreds of Rohingya, often men, were documented.⁵³⁰ Only one respondent, out of the 1,024 interviewed from dozens of villages across northern Rakhine State, indicated that there were no killings in his village.

The killings most often took place in Rohingya villages, both in public spaces and inside individuals' homes. However, the respondents also reported witnessing hundreds of killings during their escape to Bangladesh, as well as numerous mass executions and dead bodies at or near the border crossing. These killings included attacks on refugees travelling on foot; an attack on an "enormous crowd," during which the military fired upon and killed approximately 1,000 people;⁵³¹ the military shooting randomly at large groups creating a "killing field;"⁵³² and the military firing from a clifftop on a line of refugees walking towards the border with Bangladesh.⁵³³

Hundreds of Rohingya were also killed while crossing the border in boats, including an instance of the Myanmar Navy attacking persons crossing the river by sinking four boats full of refugees and drowning approximately 2,000 fleeing Rohingya.⁵³⁴

Women, children, and the infirm were targeted for killings as well. One refugee described specific attacks against more than 10 older "grandfathers," who the military had accused of being rebel leaders and, as a result, were arrested and

Prosecutor v. Dragan Nikolić, Case No. IT-94-2-R61, Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, para. 27 (Oct. 20, 1995); *Prosecutor v. Jelisić*, Case No. IT-95-10-A, Appeals Judgement, para. 70 (July 5, 2001).

⁵³⁰ E.g., Questionnaire Nos. 2EGN42 (172 killed); 09KF13 (200 killed); 13JW36 (150 killed); 13JW39 (310 killed); 13JW40 (250 killed); 13JW43 (350 killed); RKMS137 (1000 killed); RKMS149 (120 killed); RKMS140 (300 killed); 1EPN07 (30 killed); 1WAF08 (200 killed); 1EGN19 (500 killed); 19SH45 (400 killed); NERK121 (300 killed).

⁵³¹ Questionnaire No. 10CM09.

⁵³² Questionnaire No. 2E0006.

⁵³³ Questionnaire No. 2WSM23.

⁵³⁴ Questionnaire No. 07RK51.

killed.⁵³⁵ Another refugee described how she was unable to gather all her children as she fled, and her five-year old son was slaughtered;⁵³⁶ another saw both her neighbor's two small children murdered and their bodies sliced in half head to toe, while her 70-year old mother was killed by being shot in the mouth,⁵³⁷ and another witnessed over 100 people, mainly children, being thrown alive into the river—all of the victims drowned except for a few who were shot.⁵³⁸

In another documented instance, after killing a Rohingya child, the perpetrator stated that “[the child] might kill 10 Mogh in the future.”⁵³⁹ Another individual described a pregnant woman and her family being killed with flamethrowers, a newborn baby girl being shot and left on her dead mother's breast, and a woman and her 18-month old child being shot, along with their family.⁵⁴⁰ Other reports involved women giving birth and their attendants being targeted for killing,⁵⁴¹ as well as soldiers shooting⁵⁴² or cutting open the bellies of pregnant women, including those in the process of giving birth.⁵⁴³

Serious Bodily and Mental Harm

The investigation mission found that serious bodily and mental harm was inflicted on the Rohingya, particularly through: killing individuals and groups of civilians, including when they tried to flee; shelling and burning of civilian villages; beating and knifing of civilians; using landmines in civilian villages; abducting of civilians; throwing people into rivers or fire; poisoning of civilian water supplies; and raping and sexually assaulting civilians.

The killings and disappearances, in particular, inflicted serious mental harm on the surviving family members, as evidenced by the investigation mission. Hundreds were taken to jails across northern Rakhine State, and many of them are still missing. Many interviewees believe that their disappeared loved ones are still alive, often based on rumors, and would regularly ask investigators for assistance in finding them. Surviving family members are left with uncertainty about their future and fear about the fate of those they loved and suffer profound physical and psychological harm as a result.

⁵³⁵ Questionnaire No. 13JW23.

⁵³⁶ Questionnaire No. 14CM03.

⁵³⁷ Questionnaire No. SHVG42.

⁵³⁸ Questionnaire No. 07RK54.

⁵³⁹ Questionnaire No. 51SA42.

⁵⁴⁰ Questionnaire No. 06AF05.

⁵⁴¹ Questionnaire No. 2EMS09.

⁵⁴² Questionnaire No. 05GN34.

⁵⁴³ Questionnaire Nos. SHVG43 and 06AF02.

Deliberately Inflicting on the Group Conditions of Life Calculated to Bring About its Physical Destruction in Whole or in Part

Finally, the information collected by the investigation mission provides reasonable grounds to believe that the deliberate inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part are present. The majority of the interviewees reported the destruction and burning of entire villages, mosques, schools, fishing boats, and farm equipment by means that included flamethrowers, rocket propelled grenades, petrol, and bombardment from helicopters. In one case, the military also destroyed hundreds of well pumps, “ripp[ing] them from the ground.”⁵⁴⁴ In most villages, nothing was spared. Rice mills were burned, as were trees, coconuts, crops, shops owned by Rohingya, workshops, and whole rice paddies. In addition, the Myanmar armed forces poisoned the water supplies in several Rohingya villages. Lastly, entire Rohingya villages were leveled by bulldozers.

Genocidal Intent

The requisite intent to destroy, in whole or in part, a particular group is the element that distinguishes genocide from other international crimes. It is also typically the most difficult element to prove. Namely, intent is a mental factor, referring to a person’s state of mind and, as such, extremely difficult to prove unless explicitly stated, such as through a confession.

As set out above, international criminal courts have regularly used circumstantial evidence to establish genocidal intent, based on “all of the evidence, taken together.”⁵⁴⁵ The investigation revealed such circumstantial facts, which can be relied on to reach the conclusion that there are reasonable grounds to believe that underlying acts as set out above have been committed with genocidal intent.

Namely, the attacks were systematically and exclusively directed against the Rohingya as a group. The investigation mission’s findings reveal clear patterns of abuse and systematic violations of fundamental human rights against the Rohingya, some of which stretch back for decades. The perpetrators regularly referred to their Rohingya victims using racial and ethnic slurs, demonstrating that the violence was intentionally directed toward Rohingya on the basis of their religion and ethnicity. Refugees reported the military shouting, “You are not Rohingya, you are Bengali,” and “You are not Rohingya, you are from Bangladesh – you can’t live in our country.” One refugee noted that when the military realized that a group of individuals caught in his village were Hindu, not Muslim, they immediately stopped their attack on those men but continued to shoot and kill the other Rohingya villagers.

⁵⁴⁴ Questionnaire No. 1EAF03.

⁵⁴⁵ *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Appeals Judgement, para. 55 (Mar. 22, 2006).

International courts have relied on considerations of the scale of atrocities for determining that “a reasonably substantial” number of individuals of the protected group were targeted, as proof of genocidal intent.⁵⁴⁶ While “there is no numeric threshold of victims necessary to establish genocide,”⁵⁴⁷ in a number of cases, courts have compared the number of victims with the total number of the protected group to establish intent to destroy the protected group. While the investigation mission documented the killing of more than 2,000 Rohingya, this Report does not make estimates of the total number of Rohingya victims in Rakhine State. Nonetheless, the evidence collected during the investigation mission clearly shows a pattern of mass atrocities, including killings, torture, rape, and extreme acts of brutality that were committed against the entire Rohingya population, including women, children, and the infirm, across all Rohingya townships throughout northern Rakhine State.

Furthermore, a common theme across nearly all interviews were public, brutal, and symbolic attacks against Rohingya leaders and Islamic symbols. The first people to be attacked once the armed forces came into Rohingya villages were typically the village leaders, particularly the religious leaders. Imams were killed and, in many instances, slaughtered and mutilated. Mosques and madrassa were usually burned and destroyed first during the attacks on the villages, and several incidents of burning of Korans were documented. Such evidence has been used by international courts to determine genocidal intent.⁵⁴⁸

⁵⁴⁶ *Prosecutor v. Dusko Sikirica et al.*, Case No. IT-95-8-T, Trial Judgement, paras. 64–65 (Sept. 3, 2001).

⁵⁴⁷ *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Trial Judgement, para. 522 (July 31, 2003).

⁵⁴⁸ *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Trial Judgment, para. 580 (Aug. 2, 2001). See also ICJ Bosnia Judgment, para. 344.

CHAPTER 10 WAR CRIMES

War crimes are serious violations of international humanitarian law (also known as the “law of war” or the “law of armed conflict”) that, like other international crimes, incur individual criminal or State responsibility under international law. Accordingly, war crimes can only take place in the context of an armed conflict, which can be international or internal.

This Chapter assesses whether there are reasonable grounds to believe that war crimes have been committed in Myanmar in relation to the abuses and violence against the Rohingya in Rakhine State. This Chapter concludes that there are reasonable grounds to believe that war crimes were committed in relation to abuses committed against the Rohingya in northern Rakhine State and further criminal investigation is thus required. While the investigation’s findings cannot conclusively establish the existence of an armed conflict necessary for war crimes to have taken place, the United Nations Independent Fact-Finding Mission on Myanmar found there to have been an internal armed conflict in northern Rakhine State at least for a period of time covered by this Report. Within the context of such an internal armed conflict existing, the investigation’s findings provide reasonable grounds to believe that a range of prohibited acts constituting war crimes were knowingly committed in northern Rakhine State in connection to the armed conflict.

INTERNATIONAL LAW REGARDING WAR CRIMES

To establish that war crimes have been committed, international law requires showing that: (1) the contextual elements of war crimes are satisfied, and (2) the underlying prohibited acts or crimes were committed, so as to satisfy both the material and mental element of each prohibited act or crime. There is no single codification of all crimes amounting to war crimes under international law. Instead, lists of war crimes can be found in international humanitarian law, international criminal law treaties, and customary international law.⁵⁴⁹

⁵⁴⁹ See, e.g., Hague Convention on Laws and Customs of War on Land (Hague, IV), Oct. 18, 1907, 36 Stat. 2277, Treaty Series 539 (1907); Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons during War on Land (Hague, V), Oct. 18, 1907, 36 Stat. 2310, Treaty Series 540 (1907); Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva I), Aug. 12, 1949, 75 U.N.T.S. 31 (1949); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva II), Aug. 12, 1949, 75 U.N.T.S. 85 (1949); Geneva Convention Relative to the Treatment of Prisoners of War (Geneva III), Aug. 12, 1949, 75 U.N.T.S. 135 (1949); Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva IV), Aug. 12,

Contextual Elements

The contextual elements of war crimes are that: (1) an armed conflict of an international or internal nature exists; (2) the relevant conduct took place in the context of and was associated with an armed conflict; and (3) the perpetrator is aware of the factual circumstances that established the existence of an armed conflict.⁵⁵⁰ Only when all of these conditions are satisfied can an underlying prohibited act constitute a war crime.

The Existence of an Armed Conflict

An armed conflict must exist for a war crime to be committed. The armed conflict can be international or internal.⁵⁵¹ As the ICTY has held, an armed conflict exists whenever there is a “resort to armed force between States or protracted violence between governmental authorities and organized armed groups or between such groups within a State.”⁵⁵² Thus, an international armed conflict exists when one or more States use armed force against another State, and internal armed conflict occurs when there is consistent fighting between government armed forces and non-governmental armed groups or when there is an armed conflict between particular groups.⁵⁵³ As there is no evidence indicating the armed involvement of other states in the Rakhine context, the following analysis will be limited to internal armed conflicts.

In assessing whether an internal armed conflict is taking place, international courts frequently look to the length, intensity, and organized nature of violence.⁵⁵⁴ Each factor goes towards assessing whether there is protracted armed violence

1949, 75 U.N.T.S. 287 (1949); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3 (1977); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609 (1977).

⁵⁵⁰ International Criminal Court, ELEMENTS OF CRIMES 13–42 (2011).

⁵⁵¹ Traditionally, violations of international humanitarian law during an internal armed conflict are more limited than during an international armed conflict, but the custom is evolving. *See Prosecutor v. Dusko Tadić*, Case No. IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, paras. 97–137 (Oct. 2, 1995). This view has been upheld and is included in the Rome Statute. *Rome Statute* arts. 8(2)(c)–(f) (1998); *see also* Antonio Cassese & Paolo Gaeta, CASSESE’S INTERNATIONAL CRIMINAL LAW 71 (3rd ed., 2013).

⁵⁵² *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, para. 70 (Oct. 2, 1995).

⁵⁵³ *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, para. 70 (Oct. 2, 1995).

⁵⁵⁴ *See Rome Statute* arts. 8(2)(d) & (f) (1998); Common Article to the Geneva Conventions of 12 August 1949; *see also Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-T, Trial Judgement, paras. 94–173 (Nov. 30, 2005); Office of the United Nations High Commissioner for Human Rights, *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003*, UNITED NATIONS HUMAN RIGHTS OFFICE 261 (2011).

between organized armed groups, as set out above. The organized nature of parties involved in a conflict is important, as international courts have held that groups must “possess organized armed forces,” meaning “for example that these forces have to be under a certain command structure and have the capacity to sustain military operations.”⁵⁵⁵

Nexus to Armed Conflict and Perpetrators’ Awareness

To qualify as a war crime, crimes committed during an armed conflict must possess a nexus or be associated with an armed conflict. In practice, this requirement means that crimes must be “closely related to the hostilities.”⁵⁵⁶ If there is no relationship between the act and the armed conflict, then a war crime will not have taken place. The following criteria have been used by international courts to assess whether an offence qualifies as a war crime: (1) the fact that the perpetrator is a combatant; (2) the fact that the victim is a non-combatant or a member of the opposing party; (3) the fact that the act may be said to serve the ultimate goal of a military campaign; and (4) the fact that the crime is committed as part of or in the context of the perpetrator’s ‘official duties.’⁵⁵⁷

The final contextual element of war crimes is that a perpetrator must be aware of the factual circumstances that establish the existence of an armed conflict. Courts undertake their assessment of the awareness of the circumstances that established the existence of an armed conflict on a case by case basis, once specific perpetrators have been identified. The requirement of awareness is closely linked to nexus and is therefore often easily satisfied on the facts of a particular case.

The Rome Statute gives guidance for when this condition will be satisfied, providing that: (1) there is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or internal; (2) in that context, there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or internal; and (3) there is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms “took place in the context of and was associated with.”⁵⁵⁸

⁵⁵⁵ International Committee of the Red Cross, *Non-international armed conflict*, in HOW DOES LAW PROTECT IN WAR (2018).

⁵⁵⁶ Antonio Cassese & Paolo Gaeta, *CASSESE’S INTERNATIONAL CRIMINAL LAW* 77 (3rd ed., 2013) (referencing both case law and legal literature).

⁵⁵⁷ See *Prosecutor v. Dragoljub Kunarac et al.*, Case Nos. IT-96-23-T & IT-96-23/1-T, Trial Judgement, para 402 (Feb. 22, 2001); *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Trial Judgement and Sentence, paras. 6153–54.

⁵⁵⁸ *Rome Statute* art. 8 (1998).

Underlying Prohibited Acts

For a war crime to be committed, an underlying prohibited act must have been committed, in addition to the satisfaction of the contextual elements described above. Also, the underlying prohibited act must be accompanied by the necessary mental state or intent.

In an internal armed conflict, the underlying prohibited acts include serious violations of common Article 3 of the four Geneva Conventions of 12 August 1949, as well as other serious violations of the laws and customs applicable in armed conflicts not of an international character. The violations under common Article 3 include the following acts against persons taking no active part in the hostilities: (1) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (2) committing outrages upon personal dignity, in particular humiliating and degrading treatment; (3) taking of hostages; and (4) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable. The relevant other serious violations of the laws and customs applicable in internal armed conflicts include (1) rape, (2) pillaging, (3) displacement of civilians, (4) intentionally directing attacks against the civilian population, and (5) intentionally directing attacks against buildings dedicated to religion and education.⁵⁵⁹

ANALYSIS AS TO WHETHER THERE ARE REASONABLE GROUNDS TO BELIEVE WAR CRIMES HAVE BEEN COMMITTED IN MYANMAR

This Report highlights multiple documented violations of international law that are capable of constituting war crimes against the Rohingya, including: (1) murders and willful killings; (2) the causing of injuries to body or health; (3) rapes and other forms of sexual violence against women and children; (4) torture; (5) intentional attacks directed against the civilian population; (6) the deportation or illegal transfer of all or part of a civilian population; and (7) illicit and arbitrary looting, destruction, and appropriation of civilian property.

Based on the investigation mission's findings, there are reasonable grounds to believe that war crimes were committed against the Rohingya in northern Rakhine State because of the likelihood that an internal armed conflict existed in Rakhine State that was linked to underlying crimes committed by perpetrators who were aware of the factual circumstances establishing the armed conflict.

Contextual Elements

The authors of this Report conclude that there are reasonable grounds to believe that all of the requisite contextual elements for war crimes were satisfied with regard to the attacks against the Rohingya in northern Rakhine State.

⁵⁵⁹ For a full list of the crimes, see *Rome Statute* art. 8(2)(e) (1998).

Internal Armed Conflict

The first contextual element for war crimes requires that an armed conflict exists. Because there is no evidence of inter-State hostilities, any armed conflict that exists must be of an internal character. For an internal armed conflict to exist, there must be protracted armed violence between State forces and organized armed groups.

It is important to note here that this Report's legal analysis has relied exclusively on the information collected during the investigation mission, which was not focused on documenting particular crimes and their elements, including whether an armed conflict exists. As such, the investigation mission's documentation alone cannot conclusively support a finding on the existence of an armed conflict.

Nonetheless, documentation collected by other organizations indicates that ARSA is a sufficiently organized military force and that its confrontations with Myanmar armed forces reached the requisite level of intensity.⁵⁶⁰ Based on such and similar information, leading authorities in the field—including most recently, the UN Independent Fact-Finding Mission on Myanmar—consider there to have been an internal armed conflict in Rakhine State, at least during a portion of the time that was the focus of this investigation mission.⁵⁶¹

Nexus to Armed Conflict and Awareness

The nexus contextual element requires that prohibited acts be connected or closely related to the hostilities. The nexus between prohibited acts and the believed armed conflict in northern Rakhine State is clear. The relevant perpetrators include members of the Myanmar armed forces who have committed acts against the civilian population as part of their official, and self-proclaimed, duties to serve the ongoing military clearance operation against ARSA. As documented by the investigation mission, both prior to and after ARSA's August 25, 2017 attacks, the Myanmar armed forces threatened to shoot people and burn villages over claims relating to the supposed presence of ARSA, all of which occurred as the Myanmar armed forces were perpetrating widespread violence against Rohingya civilians.⁵⁶² This further indicates a direct nexus between the acts that followed and the armed conflict between Myanmar and ARSA, as well as the perpetrators' awareness that an armed conflict was taking place.

⁵⁶⁰ See, e.g., International Crisis Group, *Myanmar: A New Muslim Insurgency in Rakhine State*, Asia Report No. 283, (Dec. 15, 2016); The Geneva Academy of International Humanitarian Law and Human Rights, *The War Report: Armed Conflicts in 2017*, Geneva Academy, 96–97, (Mar. 2018).

⁵⁶¹ See United Nations Human Rights Council, *Report of the Independent International Fact-Finding Mission on Myanmar*, para. 10 (Aug. 24, 2018); see also International Committee of the Red Cross, *Rakhine: Returns must be safe, dignified and voluntary* (June 2018).

⁵⁶² Amnesty International, *Myanmar: "We Will Destroy Everything": Military Responsibility for Crimes Against Humanity In Rakhine State*, 10 (June 27, 2018).

Underlying Prohibited Acts

The documentation collected during the investigation mission satisfies the elements of a wide range of underlying acts of war crimes in an internal armed conflict. While, as with crimes against humanity, it is beyond the scope of this Report to analyze in detail each and every element of each underlying crime, including whether the mental elements of each of underlying crimes are present, the investigation mission's findings broadly support a conclusion that the following underlying acts were committed as war crimes.

Violence to Life and Person

The investigation documented a range of acts involving violence to life and person. In particular, those acts include murder, mutilation, and cruel treatment, most notably by the murdering of men, women and children, religious and community leaders, the elderly, and pregnant women and unborn babies, as well as the systematic rape of Rohingya women and girls.

The investigation mission documented an exceptionally high incidence of severe brutality in the attacks against the Rohingya. Detained men had their nails pulled out and their beards and genitals set on fire. Other torture techniques included slashing of the wrists and peeling back skin, being beaten with a wooden stick embedded with nails, being forced to lie down on a bed of nails and then being beaten, or having one's hands set on fire or held over a flame. The investigation documented many instances of mutilation, including: beheadings; dismembered hands or limb; gauged eyes, including those of children; cutting of breasts and vaginas; castrated men; and incidents of prolonged death resulting from being left to bleed out after the cutting of tongues or testicles.

Execution Without Due Process

The majority of interviewees reported witnessing killings firsthand. In fact, only one respondent, out of the 1,024 interviewed, indicated that there were no killings in his village. These killings ranged from indiscriminate or random shooting, knifing, burning and beating to death of people inside and outside their villages and on their journeys to Bangladesh, the deaths of women as a result of or subsequent to being raped or sexually assaulted, and the deaths of individuals who were selected in some way, having previously been detained or arrested. Several respondents reported significant numbers of victims, either civilians or religious personnel, taking no active part in hostilities, being selected for killing, and then being executed without any due process. For instance, one interviewee recounted how, in a village near Rathedaung, 10 named people were called to a meeting with the military, taken away and killed, with their photographs being posted on Facebook by either military or local police.⁵⁶³ In another incident in Buthidaung,

⁵⁶³ Questionnaire No. 05GN23.

one interviewee witnessed soldiers across the river tying the hands of 200 plus people and forcing them to lie down with tape over their eyes. Those people were each beheaded in turn.

Intentionally Directing Attacks Against a Civilian Population

The attacks directed against the civilian Rohingya population were a hallmark of the investigation's findings. These attacks included the shelling and burning of civilian villages; the beating and knifing of civilians; the use of landmines in and around civilian villages; the abduction of civilians; the throwing of both live people and dead bodies into rivers or fires; the poisoning of civilian water supplies; and the rape, typically gang rape, and sexual assault of young women.

The vast majority of the attacks documented during the investigation mission are described as occurring in the villages previously inhabited by the refugees. These villages are described as being "civilians only" and there is no indication that the villages were taking any part in military action or that there was any military advantage, legitimate or otherwise, gained by the capture, destruction or neutralization of the villages.

The remainder of the attacks occurred when civilians had left their villages and were travelling to Bangladesh, including the raping of women on the road, shooting at crowds waiting to cross into Bangladesh, and capsizing of boats carrying hundreds of refugees. Given that these were groups of refugees whose villages had been destroyed or who had been ordered to leave Myanmar, and which included women, children and the elderly, they could not have been a military target under any interpretation of applicable international law.

Intentionally Directing Attacks Against Buildings Dedicated to Religion

As widely documented by the investigation mission, numerous attacks were intentionally directed against the Rohingya's religious buildings. These attacks included burning and destroying mosques and madrassas as a common first stage of the attacks on Rohingya villages. Several instances were documented of groups of women and girls being shoved into mosques and raped, as well as groups of Rohingya who sought sanctuary in village mosques burnt alive in the mosques.

Destroying or Seizing Property

The refugees reported hundreds of credible, first-hand accounts of widespread instances of coordinated and systematic destruction and seizure of property occurring over a substantial period of time. The Rohingya suffered the destruction or seizure of their property by the burning of their villages, huts, mosques, schools, crops and fields, fishing boats, and farm equipment. These burnings were conducted by means that included flame throwers, rocket propelled grenades, petrol, and helicopters. The destruction of homes and villages was directed exclusively at the Rohingya. For example, one individual reported that on the day

of the attack on a village in which both Rohingya and Hindus lived, the military took the Hindu villagers by vehicle to a military office and then began the attack on the village—only houses occupied by Rohingya were burned down.⁵⁶⁴ The collected documentation shows that the numerous incidents of destruction of civilian property by burning were perpetrated by various state actors, often in concert with ethnic Rakhine civilians.

The majority of interviewees also provided first-hand accounts of property being seized. Property was seized both by various state actors and by ethnic Rakhine civilians with the active assistance of state actors. The seizure of property occurred at least from October 2016 through the departure of the interviewees from Myanmar in the late summer and fall of 2017. Nearly all types of personal property were seized, including vehicles, livestock, crops, food, utensils, clothing, tools, money, gold, and other valuables. Moreover, while some of these incidents may have been isolated and random, many of them involved planned, systematic action by military and/or police units. In one example, the military and ethnic Rakhine civilians wearing uniforms knocked on the door in the middle of a night in August 2017, forced a family to step outside, searched the house and looted money, gold, kitchen utensils, cell phones, and livestock; the same procedure was conducted at many houses in the village, especially of the wealthy families.⁵⁶⁵

Rape

Multiple accounts of rape, particularly mass gang rapes of groups of Rohingya women, were reported. Public rapes, and rapes of pregnant women and girls as young as seven years old were widely documented. Many respondents spoke about seeing their family members and neighbors being raped. Groups of women would be shoved into houses, latrines, schools, and mosques, or taken out to fields and then raped, and in many cases killed. One villager stated that “[t]he military came every day. They collected women in a group and then beat or raped them. Women were publicly gang-raped. Multiple women were dragged away and raped.”⁵⁶⁶

The Myanmar armed forces committed many gang rapes. A victim of a gang rape described how she and four other women and girls were taken by a dozen soldiers, locked inside an empty house, and then individually brought to a separate room to be raped; at least one of the girls was raped by seven soldiers and then killed. The interviewee was able to run away through a door left open. On her way out of the house she noticed “a little girl who was heavily injured and was lying in the room.”⁵⁶⁷

In a number of cases, after being raped, women would be mutilated and killed. There was a high incidence of mutilation related to sexual violence.

⁵⁶⁴ Questionnaire No. 12KW01.

⁵⁶⁵ Questionnaire No. 07SM34.

⁵⁶⁶ Questionnaire No. 06AF02.

⁵⁶⁷ Questionnaire No. 07SM44.

Women were beheaded after being raped, had their breasts cut off, eyes gauged out, or vaginas cut or stabbed.

Forcible Displacement of Civilians

The investigation's findings provide extensive support for the material elements of forcible displacement. The Myanmar armed forces expelled hundreds of thousands of Rohingya civilians from their homes and forcibly deported them to Bangladesh through extreme violence and threats against their lives.

The security forces burned down entire villages; destroyed homes, schools, and mosques; and destroyed or seized livestock, money, and supplies. In most villages, nothing was spared. Rice mills were burned, as were trees, coconuts, crops, shops owned by Rohingya, workshops, and whole rice paddies. Entire villages were leveled by bulldozers. The military hunted down Rohingya men, women and children, beat them, mutilated and killed them, brutally raped Rohingya women and girls, and threatened them with more violence if they did not leave Myanmar. Many of these brutal attacks either took place in public, or with bodies of victims laid out in public, so as to presumably increase the intensity of the terror and force the Rohingya to flee.

Many refugees reported that the military told them, "leave the country; this is not your country," "you are not Rohingya, you are from Bangladesh," and, "you can't live in my country, go away from my country." The military also chased fleeing villagers while shooting at them and threatening them, "don't come back, we will kill you."

PART IV

CONCLUSIONS

This Part addresses the ramifications of the Report’s findings in international law, outlines potential next steps for securing justice and accountability for the atrocities described in the Report, and addresses possible challenges in this endeavor.

THE INVESTIGATION’S FINDINGS LEAD TO CLEAR CONCLUSIONS ABOUT THE NATURE, EXTENT, AND INTENT BEHIND THE ATTACKS AGAINST THE ROHINGYA

From the investigation mission’s factual findings alone, it is clear that the violence that triggered the mass displacement of Rohingya was of a scale and severity without precedent in the many years of abuses against the Rohingya. The investigation also revealed clear patterns in the attacks across northern Rakhine State, leading to the unanimous conclusion of all the investigators on the investigation team, as well as all the authors of this Report, that these attacks were the result of a carefully planned and systematic military operation. Indeed, the killings, rapes, looting, and destruction were carried out so systematically that they strongly appear to be the product of a policy. Moreover, the exclusive focus of these attacks on Rohingya civilians and the complete lack of findings of any military necessities reveal that the attacks against the Rohingya could not have been merely a response to ARSA attacks.

On the basis of the documentation gathered and examined, the authors of this Report conclude that serious violations of international law—including crimes against humanity, genocide, and war crimes—have been committed in northern Rakhine State on a large scale and were particularly brutal and ferocious in their execution. Furthermore, there is sufficient information to conclude that these violations were not coincidental, sporadic, or carried out by disorganized groups who were not controlled by the Myanmar government. Indeed, the patterns of conduct, the manner in which these acts were carried out, the various State forces that participated, the timing of the acts, and the areas in which the acts occurred combine to reveal a purpose, systematicity, and superior direction behind the attacks, including planning and coordination from higher authorities.

A LEGAL ANALYSIS OF THE INVESTIGATION’S FINDINGS CONCLUDES THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT A RANGE OF INTERNATIONAL CRIMES WERE COMMITTED IN RAKHINE STATE

From a legal standpoint, there is no hierarchy among international atrocity crimes. Crimes against humanity, genocide, and war crimes can be of equal

gravity—they *all* represent a threat to international peace and security and are of concern to the international community as a whole. The same underlying crimes—such as murder, rape, and displacement—can constitute any of these international crimes. It is the requisite contextual and mental elements that ultimately determine whether the underlying crime constitutes a crime against humanity, genocide, or a war crime. Looking to all these crimes, the legal analysis of the documentation collected during the investigation mission shows that there are reasonable grounds to believe that crimes against humanity, genocide, and war crimes have been committed against the Rohingya.

This Report’s legal analysis of all these international crimes has relied on an objective standard of whether there are reasonable grounds to believe that crimes have been committed. This standard is based on the ICC’s standard for opening an investigation into crimes and international fact-finding missions. The standard is lower than the criminal standard of proof that is required for a finding of guilt—i.e., the ‘beyond reasonable doubt’ standard. However, it is important to note that many findings presented in this Report have been established well beyond the reasonable grounds to believe standard. For example, there is no doubt in the minds of the authors of this Report that the underlying acts that constitute crimes against humanity, genocide, and war crimes have been committed (e.g., murder, rape, etc.).

At the same time, the contextual and mental elements of crimes against humanity, genocide, and war crimes have been established to varying degrees in this Report. This distinction is due to the inherently limited scope of the investigation mission, which was not focused on documenting particular crimes and their elements, nor focused on identifying individual perpetrators and providing a legal analysis that mirrors an indictment. As a result, while the authors found that there are reasonable grounds to believe that all three international crimes have been documented, some crimes were more extensively and convincingly documented. Specifically, the authors found that *all* of the elements of crimes against humanity are conclusively supported by the factual findings, well beyond the reasonable grounds standard. In contrast, for genocide and war crimes, the authors found that only some elements were conclusively supported by the factual findings, though they all still satisfied the reasonable grounds standard.

In line with the findings of other fact-finding and documentation missions,⁵⁶⁸ it is clear that the events described in this Report qualify as crimes against humanity. The documentation collected is sufficient to establish the elements of crimes against humanity, including the existence of an attack against a civilian population, the widespread and systematic nature of the attack, and the perpetrators’ awareness of the attack.

⁵⁶⁸ See, e.g., Amnesty International, *Myanmar: “We Will Destroy Everything”: Military Responsibility for Crimes Against Humanity In Rakhine State* (June 27, 2018); Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, para 59, A/HRC/39/CRP.2 (Sept. 17, 2018).

Reaching such a conclusive finding is more challenging for genocide and war crimes, due to the unavailability of certain types of evidence, such as access to crime scenes, access to military and other government documentation, and access to perpetrators and members of armed forces. However, as shown in the legal analysis, the available evidence does provide reasonable grounds to believe that these crimes have been committed and require further investigation.

As noted previously, proving the existence of genocidal intent is a difficult task that cannot be unequivocally achieved outside the context of judicial proceedings. Nonetheless, the Genocide Convention obliges all States to prevent and suppress the commission of this crime no matter whether a court has adjudicated on its existence. Therefore, not only should this high evidentiary standard not impede a *prima facie* finding on genocide, but the Genocide Convention obliges States to make such a preliminary determination and act on it.

The authors recognize that such a *prima facie* finding is not always easy to make based on the factual findings of the investigation mission and that uncertainties exist. For example, considering that as many as 90 percent of the Rohingya people from northern Rakhine State have been displaced to Bangladesh, one could understandably argue that the intent was merely to displace the Rohingya and not to destroy the group. Indeed, international courts have dismissed genocide charges in some cases by finding that, despite having the resources to kill more members of the protected group, the perpetrators chose to displace them.⁵⁶⁹ However, the mass killings of Rohingya while crossing or waiting to cross the border to Bangladesh and attacks on fleeing columns of people (i.e. once the act of displacement had nearly been accomplished) is key evidence to the contrary.⁵⁷⁰ Moreover, it is necessary to distinguish specific intent from motive. Namely, the perpetrators' motive, for example, to remove the Rohingya population from northern Rakhine State as part of a counter-insurgency operation does not preclude them from also having the specific intent to commit genocide.⁵⁷¹

⁵⁶⁹ *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Appeals Judgement, para. 553 (Mar. 22, 2006); *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Trial Judgement, para. 978 (Sept. 1, 2004).

⁵⁷⁰ For example, one of the key pieces of evidence the ICTY used to distinguish intent to destroy from intent to displace and establish genocide in Srebrenica was the fact that all those captured from fleeing columns were killed. *See, e.g., Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Trial Judgement, para. 856 (June 10, 2010)

⁵⁷¹ The Appeals Chamber of the ICTY has further recalled the necessity to distinguish specific intent from motive. The personal motive of the perpetrator of the crime of genocide may be, for example, to obtain personal economic benefits, political advantage, or some form of power. The existence of such a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide. In the *Tadić* appeal judgement, the Appeals Chamber stressed the irrelevance and “inscrutability of motives in criminal law.” *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, para. 269 (July 15, 1999); *see also Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Appeals Chamber Judgement, para. 106 (Feb. 28, 2005); *Prosecutor v. Jelesić*, Case No. IT-95-10-A, Appeals Chamber Judgement, para. 49 (July 5, 2001); *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Appeals Chamber Judgement, para. 102 (Sept. 17, 2003).

Furthermore, the unavailability of the above-mentioned evidence precludes a conclusive determination on the existence of an armed conflict, which is a key contextual element of a war crime. Namely, very little information was collected on ARSA during the investigation mission, and the information available is often contradictory and varies widely across sources and observations. Thus, the investigation mission does not provide enough information on the intensity of the confrontations and ARSA's organizational structure to conclude on the existence of an internal armed conflict. As set out above, however, leading international authorities consider the existence of an armed conflict in Rakhine State to be established at least for a period of time during the "clearance operations."⁵⁷²

THE INTERNATIONAL COMMUNITY MUST PROTECT THE ROHINGYA FROM
INTERNATIONAL ATROCITY CRIMES AND SEEK JUSTICE AND ACCOUNTABILITY
AGAINST THE PERPETRATORS

The crimes of genocide, crimes against humanity, and war crimes are the most serious crimes under international law. The United Nations Security Council has stated in numerous resolutions that serious and gross breaches of international human rights and humanitarian law constitute threats to international peace and security. The responsibility to protect populations against genocide, war crimes, and crimes against humanity lies primarily with individual States. However, in cases where States fail in their responsibility, or in cases like Myanmar where the State *is the one* committing such acts against its population, the international community is obliged to take collective action to protect populations from those crimes.

Moreover, States have an obligation under conventional and customary international law to see that those responsible for crimes against humanity, acts of genocide, or war crimes are made accountable and that victims have a right to an effective remedy. Thus far, Myanmar has largely failed to punish anyone responsible for the heinous crimes committed against the Rohingya.⁵⁷³ Furthermore, Myanmar continues to deny access to northern Rakhine State to international investigation and fact-finding missions, including the United Nations.⁵⁷⁴

At present, there is no clear mechanism for seeking accountability for the violations described in this Report. For instance, *ad hoc*, hybrid, or domestic tribunals, usually set up by intergovernmental organizations like the United

⁵⁷² Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, para 59, A/HRC/39/CRP.2 (Sept. 17, 2018); see also International Committee of the Red Cross, *Rakhine: Returns must be safe, dignified and voluntary* (June 2018).

⁵⁷³ The possible sole exception to impunity for crimes against the Rohingya is the trial relating to the Inn Din killings. See Reuters, *Seven Myanmar soldiers sentenced to 10 years for Rohingya massacre*, (Apr. 10, 2018).

⁵⁷⁴ See UN News, *Zeid calls for ICC probe into Myanmar Rohingya crisis* (July 4, 2018).

Nations or the European Union, that have specialized jurisdiction over international crimes have not been established yet and do not have jurisdiction over alleged crimes. Furthermore, Myanmar is not a State Party to the Rome Statute, and there has been no UN Security Council resolution referring the situation to the ICC. Notably, the ICC has established that it has jurisdiction over the crime against humanity of deportation relating to the Rohingya crisis and possibly over the crimes against humanity of persecution and other inhumane acts. However, even if the Court exercises jurisdiction over these crimes, this Report has identified further crimes for which accountability is required.

A CRIMINAL TRIBUNAL SHOULD BE ESTABLISHED OR GRANTED JURISDICTION
TO FURTHER INVESTIGATE INTERNATIONAL CRIMES COMMITTED IN RAKHINE
STATE AND PROSECUTE THOSE RESPONSIBLE

As emphasized previously, the international community is obliged to protect populations subjected to atrocity crimes by their own governments and ensure justice and accountability for such crimes. Conventional and customary international law do not prescribe how this obligation is to be effectuated. The UN Security Council—tasked with maintaining international peace and security—would be an obvious choice for such an effort. However, the politics and conflicting interests of member states can sometimes paralyze the work of this body, like in the case of the Rohingya exodus in Myanmar.⁵⁷⁵ These political challenges must not prevent or serve as an excuse for not addressing one of the gravest human rights crises in recent history.

The authors of this Report consider the international community’s duty to ensure accountability to be primarily one of result. The ultimate purpose of this duty is to provide justice to victims, deter potential perpetrators, and prevent future mass atrocities. For this reason, this Report does not recommend a particular accountability mechanism for pursuing justice and accountability. In similar circumstances in the past, different mechanisms were successfully employed to achieve this goal, including the ICC, *ad hoc* tribunals established by the UN, and hybrid or domestic tribunals established with the support of intergovernmental organizations.

The authors of this Report do, however, call for a politically viable choice to be made and the urgent establishment of an accountability mechanism or an immediate referral of the situation to the ICC. Furthermore, the authors welcome the recent UN Human Rights Council decision to establish an independent investigative mechanism to collect, consolidate, preserve, and analyze evidence of the most serious international crimes and violations of international law committed in Myanmar, including Rakhine State, for future criminal proceedings.⁵⁷⁶ It is

⁵⁷⁵ See The Daily Star, *Rohingya Crisis: China, Russia still unmoved at the UNSC*, (May 16, 2018).

⁵⁷⁶ Human Rights Council, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, para 22, A/HRC/39/L.22 (Sept. 25, 2018).

imperative for these mechanisms to be provided with the necessary financial, technical, and political support, by States and international organization for the successful execution of their mandate. States and international organizations should take all measures in accordance with international law aimed at ensuring the unimpeded work of the investigative mechanism, in particular access to northern Rakhine State and access to Myanmar archives.

After explaining the purpose of the interview, they would say, “this is good, we need justice, not just food.” But based on what several people said and the amount of tears, it was clearly painful for them to remember the violence that they endured and the people and property that they lost. One woman actually started crying as soon as we told her about our project.

- Quote from an investigator

During the investigation mission, it seemed that mentioning the prospects of justice in the introductory part of the interview was the first time the refugees were being acknowledged as victims of wrongdoings and were given a platform to openly share their story outside their community.

- Quote from an investigator