

# “THEY TRIED TO KILL US ALL”

Atrocity Crimes against  
Rohingya Muslims in Rakhine State, Myanmar



  
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**Washington, DC**

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The United States Holocaust Museum’s work on genocide and related crimes against humanity is conducted by the Simon-Skjodt Center for the Prevention of Genocide. The Simon-Skjodt Center is dedicated to stimulating timely global action to prevent genocide and to catalyze an international response when it occurs. Our goal is to make the prevention of genocide a core foreign policy priority for leaders around the world through a multipronged program of research, education, and public outreach. We work to equip decision makers, starting with officials in the United States but also extending to other governments and institutions, with the knowledge, tools, and institutional support required to prevent—or, if necessary, halt—genocide and related crimes against humanity.

**FORTIFY RIGHTS**

**Southeast Asia**

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

The United State Holocaust Memorial Museum uses the name “Burma” and Fortify Rights uses the name “Myanmar” to describe the same country. For the purposes of this joint report, the country will be referred to as “Myanmar.”

Cover: Abu Jafar prays next to a long line of Rohingya refugees who are waiting to be admitted to camps on October 16, 2017, after crossing the Naf River from Myanmar into Anjumanpara, Bangladesh. Abu Jafar made the same crossing in 1992 and said the border guards had mistaken him for a new arrival, forcing him to pray in the rice field instead of at the mosque across the road. *Photo by Andre Malerba*

## **Contents**

<b>Executive Summary</b>	<b>1</b>
<b>Background</b>	<b>5</b>
Myanmar's Political Transition	5
Rohingya Militancy	6
<b>"Clearance Operations" and Attacks on Rohingya Civilians</b>	<b>8</b>
Murder	8
Rape and Sexual Violence	10
Arbitrary Mass Arrests and Enforced Disappearances	11
Forced Displacement	12
<b>International Legal Framework: Atrocity Crimes</b>	<b>13</b>
Crimes Against Humanity	13
Ethnic Cleansing	15
Genocide	16
<b>Responses by the Government of Myanmar and International Community</b>	<b>17</b>
Investigative and Advisory Commissions	17
Denials of Human Rights Violations	20
<b>Next Steps</b>	<b>22</b>



*The security operation[s] are being conducted to apprehend the attackers on police outposts of security personnel and to recover arms lost during the recent attacks on police outposts.*

—Government of Myanmar on its “clearance operations” in Rakhine State

## Executive Summary

**On October 9, 2016, a previously unknown Rohingya militant group** calling itself Harakah al-Yaqin attacked three police outposts in Maungdaw and Rathedaung Townships in Myanmar’s northern Rakhine State. Armed mostly with sticks, knives, and improvised explosive devices, the group killed nine state security officials. After renaming itself the Arakan Rohingya Salvation Army (ARSA) in March 2017, the group waged a second attack on 30 police outposts and an army base on August 25, 2017, killing 12 officials. ARSA claimed the attacks were a response to protracted discriminatory treatment and persecution of the Rohingya Muslim minority in Myanmar.

Immediately following both of those attacks, the Myanmar Army launched clearance operations—a term the military uses to describe ongoing multiagency efforts to combat and apprehend Rohingya militants.

In practice, the military and the Government of Myanmar used such operations as a mechanism to commit mass atrocities against Rohingya men, women, and children.

Over the past year, Fortify Rights and the Simon-Skjoldt Center documented how the Myanmar Army, Air Force, Police Force, and armed civilians carried out an unprecedented, widespread, and systematic attack on Rohingya civilians throughout northern Rakhine State with brutal efficiency. Eyewitness testimony documented in this report reveals how Myanmar state security forces and civilian perpetrators committed mass killings. State security forces opened fire on Rohingya civilians from the land and sky. Soldiers and knife-wielding civilians hacked to death and slit the throats of Rohingya men, women, and children, and Rohingya civilians were burned alive. Soldiers raped and gang-raped Rohingya women and girls and arbitrarily arrested men and boys en masse.

“They tried to kill us all,” said “Mohammed Rafiq,” 25, from Min Gyi village in Maungdaw Township, recalling how soldiers corralled villagers in a group and opened fire on them on August 30, 2017. “There was nothing left. People were shot in the chest, stomach, legs, face, head, everywhere.”

Satellite imagery corroborates eyewitness testimony describing how Myanmar authorities and others razed Rohingya-owned homes and properties throughout northern Rakhine State, destroying hundreds of villages and entire village tracts.

Before August 25, the Rohingya population in northern Rakhine State numbered more than one million. The Myanmar Army-led attacks on civilians resulted in the forced displacement of nearly 700,000 Rohingya since October 2016—more than half of the entire population in northern Rakhine State.

At the time of this writing, thousands of Rohingya survivors of the attacks continue to cross into Bangladesh, contributing to the fastest-growing outflow of refugees from a country since the Rwandan genocide.

The evidence documented in this report demonstrates that Myanmar state security forces and civilian perpetrators committed crimes against humanity and ethnic cleansing during the two waves of attacks on Rohingya men, women, and children starting on October 9, 2016 and from August 25, 2017. There is mounting evidence to suggest these acts represent a genocide of the Rohingya population.

Fortify Rights and the Simon-Skjoldt Center traveled to Rakhine State and areas along the Bangladesh–Myanmar border before and during both rounds of military-led attacks on Rohingya civilians. Fortify Rights visited



Makeshift refugee sites, like this one in Balukali, cover the hillsides in southern Bangladesh. Many Rohingya are sheltering in primitive huts like these, which are made of bamboo and plastic sheeting. *Greg Constantine for the US Holocaust Memorial Museum*

locations along the Naf River—which separates Myanmar and Bangladesh—refugee camps in Bangladesh, forested enclaves on the border, and villages where Rohingya survivors sought refuge. This report is based on more than 200 in-depth, in-person interviews—documented primarily by Fortify Rights—with Rohingya survivors and eyewitnesses of atrocity crimes, including more than 100 Rohingya women, as well as aid workers.

Like many of Myanmar’s ethnic and religious minorities, the Rohingya—a predominantly Muslim ethnic minority living primarily in Rakhine State in western Myanmar—have suffered serious human rights violations and abuses in the Buddhist-majority country for decades. The Government of Myanmar has imposed strict restrictions on Rohingya freedom of movement, marriage, childbirth, and other aspects of daily life. Denied equal access to Myanmar citizenship by law since 1982, most Rohingya are also stateless. The government and members of Myanmar’s public further deny the ethnic identity of Rohingya and regard the Rohingya as unwanted “Bengali” foreigners from Bangladesh, casting them as an existential threat to Buddhist culture.

Rakhine State is also home to the Rakhine people, a primarily Buddhist ethnic nationality in Myanmar who compose the majority of Rakhine State and are full citizens of Myanmar by law. Tensions and deep social divisions

exist between Rohingya and Rakhine communities. And in 2012, violence between Rakhine Buddhists and Rohingya Muslims that left casualties on both sides resulted in a state-sanctioned attack against Rohingya and other Muslims in 13 of 17 townships in Rakhine State. The 2012 violence led to the mass displacement of Rohingya survivors to dozens of squalid internment camps in eight townships in Rakhine State. Today, the government confines more than 120,000 Rohingya to 38 internment camps.

Like in 2012, the Myanmar government could have prevented the current crisis had it heeded warnings sounded by the Simon-Skjoldt Center, Fortify Rights, and many others—including Rohingya communities themselves—of the risks of atrocities in Rakhine State. In every year since it began, the United States Holocaust Memorial Museum’s Early Warning Project ranked Myanmar in the top 3 of 162 countries identified as likely to see state-led mass killings. In 2015, the Museum issued a report raising concern about ongoing crimes against humanity and the risk of genocide in the country. A legal analysis published in 2015 by the Allard K. Lowenstein International Human Rights Clinic at Yale Law School and Fortify Rights also found “strong evidence” of possible crimes of genocide in Rakhine State.

The Government of Myanmar not only ignored warning signs of mass violence and atrocities but also created and perpetuated an environment for mass violence and atrocities,

including fostering long-standing discrimination against the Rohingya population and ensuring impunity for perpetrators.

Since October 2016, the civilian and military leadership of Myanmar have categorically denied any wrongdoing in Rakhine State and simultaneously blocked access to affected areas, apart from a few guided tours to select areas for diplomats and journalists. A December 26 press release from State Counselor Aung San Suu Kyi's office described allegations of rape by security forces as "rumors," "fabricated stories," and "one-sided accusations." In late December, Foreign Ministry spokesperson Aye Aye Soe said allegations of grave human rights violations were "made-up stories, blown out of proportion," adding that "the things they are accusing us of didn't happen at all."

Following the first military-led attacks in October 2016 on Rohingya residents in northern Rakhine State, the United Nations Human Rights Council appointed a fact-finding mission to look into allegations of severe human rights violations in Rakhine State and elsewhere in Myanmar. Following the second military-led attack that started in August 2017, the UN Security Council held a public session on September 28 on the situation in Rakhine State with member states condemning the violence against civilians. On October 23, 2017, the United States Government announced it would implement several measures and possible sanctions against the Myanmar military "in pursuit of accountability and an end to violence."<sup>1</sup>

Despite these interventions, the international community has failed to sufficiently press the Government of Myanmar to change course and prevent atrocities in Rakhine State.

Even today, as mass killings and the flight of Rohingya from Myanmar receive global attention, the Government of Myanmar's persecution of the Rohingya remains in place and is further entrenched.

Without urgent action, a risk of further outbreaks of mass atrocities exists in Rakhine State and possibly elsewhere in Myanmar.

## SUMMARY OF NEXT STEPS

**THE GOVERNMENT OF MYANMAR** should immediately cease its attack on Rohingya civilians and investigate and prosecute those responsible for human rights violations and atrocity crimes. The government should condemn attacks on all civilians in Rakhine State and urgently work to counter anti-Rohingya rhetoric and sentiment within the Myanmar public. The government should also provide humanitarian organizations, human rights monitors, and journalists with immediate and unfettered access to all affected areas of Rakhine State.

**THE INTERNATIONAL COMMUNITY** has an important role to play in halting and averting atrocities. Individual governments and institutions, including the UN Security Council and UN General Assembly, should use all available leverage to end mass atrocities. Their options include (a) condemning the ongoing attacks on the civilian population; (b) demanding unfettered access for the UN-mandated fact-finding mission, which was established in March 2017; (c) enacting targeted sanctions on the individuals responsible for crimes in Rakhine State; and (d) instituting an arms embargo on Myanmar. The UN Security Council should also seriously consider referring the situation to the International Criminal Court, which was established to investigate, try, and prosecute those responsible for atrocity crimes.





## Background

**Before the current violence that has forced hundreds of thousands** from their homes to seek refuge in Bangladesh, more than one million Rohingya lived in Myanmar, mostly in the country's westernmost Rakhine State.<sup>2</sup> In 1982, Myanmar's military rulers adopted the 1982 Citizenship Law that denied Rohingya equal access to citizenship, effectively stripping them of nationality rights and leaving most Rohingya stateless.<sup>3</sup>

The Government of Myanmar has used the lack of nationality rights to deny Rohingya other basic rights and freedoms, imposing restrictions on movement, marriage, childbirth, and religious rights, as well as access to health, livelihoods, and education. Discriminatory local orders established by Myanmar authorities in northern Rakhine State further restrict aspects of daily life for Rohingya.<sup>4</sup> Because of the lack of rights and freedoms in Myanmar, most Rohingya are confined to poor villages, towns, and internment camps in Rakhine State.

Rakhine State is one of the poorest states in Myanmar. It is home to more than two million predominantly Buddhist ethnic Rakhine people, the majority population in 13 of the 17 townships in the state.<sup>5</sup> Unlike the Rohingya, the ethnic Rakhine minority group in Myanmar is a legally recognized "national race" with citizenship, yet they too suffered egregious human rights violations under decades of military rule and continue to face violations to this day.<sup>6</sup> The mistreatment endured by the Rakhine community at the hands of the Government of Myanmar has contributed to tensions between the Rakhine and Rohingya communities.

For years, Myanmar authorities reinforced a dangerous, discriminatory, apartheid-like system in Rakhine State to separate Rohingya Muslims from Rakhine Buddhist communities, fueling tensions between them. In June 2012, following tit-for-tat violence between Rakhine Buddhists and Rohingya Muslims in Rakhine State that resulted in casualties on both sides, tensions escalated into deadly, targeted attacks on Muslims.<sup>7</sup> In October 2012, state security forces and armed Rakhine civilians attacked Rohingya in 13 of 17 townships in Rakhine State, killing

untold numbers and displacing another 100,000 Rohingya.<sup>8</sup> Today, the Government of Myanmar confines more than 120,000 mostly Rohingya survivors of the 2012 violence to 38 internment camps in eight townships.<sup>9</sup>

Because the Myanmar authorities' failure to promote and protect the human rights of all residents in Rakhine State, the cycle of violence and impunity continues.

## Myanmar's Political Transition

The landslide victory of the National League for Democracy (NLD) in Myanmar's 2015 elections represented a major step in Myanmar's political transition from direct military rule. After more than five decades of successive military rulers, the nominally civilian government of President Thein Sein ceded power to the NLD, led by Nobel Peace Prize recipient Aung San Suu Kyi.<sup>10</sup> This change ushered in a new era with high hopes for reform in Myanmar, despite the fact that the military retained significant political power by law: Although the NLD has the majority of seats in Parliament, the military retains 25 percent of parliamentary seats. With more than 75 percent of Parliament needed to amend the constitution, the military has cemented its role in government. The military also selects the heads of several key ministries, including Defense, Home Affairs, and Border Affairs.<sup>11</sup> The Myanmar Police Force, which reports to the Ministry of Home Affairs, is therefore ultimately governed by the military and not the civilian NLD.

In September 2016, President Obama described the situation in Myanmar as a "good news story in an era in which so often we see countries going in the opposite direction."<sup>12</sup> The casting of Myanmar as a "good news story" captured the international narrative around the country's political transition. In line with this narrative, international policy conversations shifted away from a focus on human rights concerns toward bolstering development and political reforms in the country. Sanctions against Myanmar were largely removed.<sup>13</sup>

Although these shifts in narrative and policy conversations demonstrate an appreciation for positive changes under the leadership of the NLD, the Myanmar military remains unreformed and responsible for severe human rights violations against civilians, including Myanmar's Rohingya. Under the constitution, military-led ministries exert considerable control over the situation in Rakhine State and are therefore necessary players in ensuring civilian protection in the affected areas. Even if it had the political will to ensure the rights of the Rohingya population, the NLD at the national level cannot fully implement reforms at the state or local level without cooperation from these authorities.

International law imposes the primary responsibility for protecting civilians on the national government, whether civilian, military, or jointly led. Although Myanmar's civilian leadership may not have complete political freedom or political will to enact the sweeping reforms necessary to end the persecution of minorities throughout the country, including Rohingya, it must act to the full extent of its capacity to protect civilians at risk of mass atrocities.

## Rohingya Militancy

The Rohingya militant group responsible for deadly attacks on multiple police outposts in Maungdaw, Buthidaung, and Rathedaung Townships in northern Rakhine State in October 2016 and August 2017 initially called itself Harakah al-Yaqin, or Faith Movement, and later identified itself as the Arakan Rohingya Salvation Army (ARSA).<sup>14</sup> Rohingya residents of Rakhine State refer to the group as al-Yaqin.<sup>15</sup> According to the Government of Myanmar, ARSA killed nine police officers during the October 9 attack and 12 state security officers during the August 25 attack.<sup>16</sup> On August 25, the Government of Myanmar declared ARSA a terrorist organization under Myanmar law.<sup>17</sup>

ARSA is the first operational Rohingya armed force in Myanmar in decades.<sup>18</sup> Following its initial attack on October 9, 2016, the group released several propaganda videos online in which an apparent leader—later identified as Ata Ullah—calls for volunteers to engage in armed conflict in Rakhine State.<sup>19</sup> Interviews with Rohingya suggest that ARSA is not well organized, well funded, or well trained.<sup>20</sup> Some members said they received sticks,

knives, and small sums of money—approximately 20,000 kyats (US\$20)—in exchange for joining the group.<sup>21</sup> Other members received nothing.<sup>22</sup> Nevertheless, the group has proved itself capable of deadly violence.

The group stated that it does not associate with international extremist organizations and that its objectives are social and political, revolving mostly around the restoration of Rohingya rights. Yet since the most recent attacks on Rohingya, international extremist organizations such as al-Qaeda have publicly called for violence against Myanmar authorities.<sup>23</sup> Those calls appear to have been unsolicited.

The Government of Myanmar has alleged that Rohingya militants killed 59 civilians who supposedly cooperated with Myanmar authorities or spoke to news media in northern Rakhine State during the clearance operations.<sup>24</sup> Fortify Rights documented ARSA killings of Rohingya civilians in the weeks and days leading up to the August 25 attacks.<sup>25</sup>

Several Rohingya expressed concern to Fortify Rights and the Simon-Skjoldt Center about the existence of a Rohingya armed group, and most Rohingya interviewed by Fortify Rights in December 2016 and March 2017 had never heard of any active Rohingya militia in Rakhine State or elsewhere; very few expressed explicit moral or other support for the group.<sup>26</sup> In the weeks leading up to the August 25 attacks, Fortify Rights documented a sharp rise in ARSA's recruitment of young men in several villages throughout northern Rakhine State.<sup>27</sup> Residents and members of ARSA cited the Myanmar Army's attacks on the civilian population in October and November 2016 as a driver of recruitment, as well as intimidation tactics by ARSA, including death threats against local residents.<sup>28</sup>

One member of ARSA also told Fortify Rights how the group attempted to forcibly recruit Rohingya men and boys by preventing them from fleeing the country: "Yes, it's true. We were stopping the people so they would join the group [ARSA]. The head of my group instructed us to not let people come here [to Bangladesh]."<sup>29</sup>



Rohingya board a military vehicle for transport to a refugee camp near Cox's Bazar, Bangladesh, on October 14, 2017. *Photo by Lauren DeCicca*

In the span of one year, ARSA demonstrated its ability to recruit willing “fighters,” attack government installations, and commit human rights violations against civilians, including murder. The Myanmar authorities have used the advent of ARSA to attack Rohingya civilians and shape public opinion against them. These factors and the lack of accountability for atrocities committed by the military may aid ARSA’s recruitment efforts and contribute to future conflict and cycles of atrocities.

# “Clearance Operations” and Attacks on Rohingya Civilians



In September 2017, the north-south highway between Cox's Bazar and Tenaf had a steady flow of Rohingya refugees. *Greg Constantine for the US Holocaust Memorial Museum*

In response to the attacks by ARSA in October 2016 and August 2017, security forces initiated what they referred to as “clearance operations.” In a January 23 communication to the United Nations, the Government of Myanmar said the objectives of the October 2016 clearance operations were “to apprehend the attackers on police outposts of security personnel and to recover arms lost during the recent attacks on police outposts.”<sup>30</sup> Instead, state security forces initiated a widespread and systematic attack on the Rohingya civilian population. The army, police, and armed civilian perpetrators (a) razed entire villages; (b) killed men, women, and children; (c) raped and gang-raped Rohingya women and girls; and (d) arrested masses of Rohingya men and boys, many of whom remain missing, according to family members.

A UN official monitoring the clearance operations described it as “an abusive situation, not to the armed people, but to the civilians. The civilians became the victims.”<sup>31</sup> In February 2017, the UN Office of the High Commissioner for Human Rights alleged that the Myanmar forces “very likely” committed “crimes against humanity.”<sup>32</sup> In September 2017, the high

commissioner for human rights referred to the situation in Rakhine State as a “textbook example of ethnic cleansing.”<sup>33</sup>

The testimonies that follow detail mass atrocities committed during the Myanmar Army–led clearance operations in northern Rakhine State from October 2016 to January 2017 and from August 2017 to the time of this writing. The testimonial evidence demonstrates the consistent nature of the Myanmar Army–led attack on civilians throughout disparate geographic areas in northern Rakhine State and during the first and second rounds of clearance operations.

## Murder

Fortify Rights documented and analyzed more than 80 testimonies of Rohingya women and men from more than 40 villages in Maungdaw, Buthidaung, and Rathedaung Townships who witnessed or shared information about unlawful killings by members of the Myanmar security forces and men wearing civilian clothing—working

in concert with the army and police—during the two clearance operations in northern Rakhine State.

Myanmar Army soldiers slit throats; burned victims alive, including infants and children; and beat civilians to death. State security forces opened fire on men, women, and children from land and helicopter gunships at close range and at a distance, killing untold numbers. Survivors from some villages also reported how soldiers slashed women's breasts, hacked bodies to pieces, and beheaded victims. The brutality with which the killings unfolded is alarming, as is the apparent coordination that would be necessary for these crimes to occur in similar manners across several areas in northern Rakhine State and over a span of several months.

Several Rohingya eyewitnesses described mass killings in three villages located, respectively, in Maungdaw, Buthidaung, and Rathedaung Townships during the second wave of violence starting in August 2017.

“Rasheed Salim,” 48, described how Myanmar Army soldiers surrounded the large house of a prominent Rohingya family where dozens of residents of Maung Nu village in Buthidaung Township gathered for protection on the morning of August 27. Soldiers forcibly entered the house and dragged men and boys outside.<sup>34</sup> “Rasheed Salim” said: “They were taken out of the house. They were blindfolded and made to lie down on the ground. Then [the Myanmar Army soldiers] shot them.”<sup>35</sup>

“Flora Begum,” 50, also witnessed the attack: “[The soldiers] shot some of them dead and kicked the others, screaming and threatening them....They were beating and shooting the men on the ground.”<sup>36</sup> Her father-in-law—who was a local mullah—brother-in-law, and his two sons, ages 16 and 18, were among those killed.<sup>37</sup>

Survivors estimate that the soldiers killed at least 150 men and boys, ranging in age from 12 to 90, during the attack on Maung Nu village.

Myanmar Army soldiers reportedly also killed hundreds of Rohingya civilians, including children gathered on the banks of the Purma River, in Min Gyi village in Maungdaw Township on the morning of August 30.<sup>38</sup>

“Mohammed Rafiq,” 25, survived the attack and described what happened: “Not long after that, [the soldiers] started shooting at us. There were maybe 70 soldiers shooting us. It was a continuous noise, continuous bullets. Almost everyone died.”<sup>39</sup>

“N. Islam,” 51, who also witnessed the mass killing on the Purma riverbank, told Fortify Rights that small children were among those killed. He said: “Some small children were thrown into the river....They hacked small children who were half alive. They were breastfeeding-age children, two years, three years, five years.”<sup>40</sup>

When the killing was complete, soldiers moved bodies into piles and set them alight.<sup>41</sup>

Myanmar Army soldiers and armed civilians working in apparent collaboration with the soldiers also committed mass killings in Chut Pyin village in Rathedaung Township on August 27. According to Rohingya survivors, soldiers shot rocket-propelled grenades (RPGs) at homes to burn them down and opened fire on civilians, while armed civilians slashed and stabbed Rohingya residents with knives and long swords.<sup>42</sup> Soldiers corralled a group of men and boys into a thatch-roof hut and set the hut on fire, burning them alive.<sup>43</sup> Soldiers also beheaded two children.<sup>44</sup>

These attacks are similar to those committed by security forces in October 2016 in Maungdaw Township. “Sanjula,” a 25-year-old woman from Hpar Wut Chaung village, watched as soldiers violently interrogated her 60-year-old Rohingya neighbor, accusing him of supporting Rohingya fighters before beheading him in November 2016. She recounted the incident:

Five or six soldiers held him down on the porch. One soldier held his shoulders, another held his legs, and another held his hands. He was facing upward. They were holding his mouth, but he was screaming. The soldier with the knife slashed him across the throat with one stroke. [Later], they grabbed his head by the hair and threw the head into the paddy field. They picked up his body under the legs and arms and threw his body into the road. The body stayed there for maybe one week. Nobody dared to go near it.<sup>45</sup>

Fortify Rights spoke to numerous Rohingya eyewitnesses who described aerial attacks against civilians by Myanmar military helicopter gunships during the first clearance operations, including “Fatima Zuhan,” a 30-year-old Rohingya woman, from Myaw Taung village. She said:

It was raining bullets. We couldn’t see anything. We only understood that it was gunfire when we saw the wounds. One person was shot through the lower leg, all the way through. One person was shot in the side. Another person was shot in the head.<sup>46</sup>

Several Rohingya men and women eyewitnesses described how Myanmar Army soldiers disposed of bodies in October and November 2016, in some cases cutting victims to pieces and burying them in shallow mass graves. In August and September 2017, soldiers burned “piles” of bodies in various locations, according to survivors and eyewitnesses.

In both clearance operations, survivors identified soldiers in green uniforms, some with red scarves—a characteristic of Myanmar Army soldiers—as the main perpetrators of killings, as well as *Lon Tein* police—or riot police—in camouflage uniforms. Survivors from both clearance operations also described civilians armed with swords and knives accompanying and acting in coordination with Myanmar Army soldiers and *Lon Tein* police.

## Rape and Sexual Violence

Rohingya survivors of rape elected to share their testimony on the record for this report. Fortify Rights spoke to eight Rohingya women who were raped or gang-raped by Myanmar Army soldiers in October and November 2016 in seven villages in Maungdaw Township, as well as 17 eyewitnesses to rape. Soldiers gang-raped women and girls in homes, schools, other community buildings, paddy fields, and forested areas, often in plain view of other soldiers and civilians.<sup>47</sup> Testimony from survivors, eyewitnesses to rapes, and others with additional information on the rape of women and girls by Myanmar Army soldiers revealed patterns in how these crimes were carried out.<sup>48</sup>

In many villages, soldiers went systematically from house to house, forcing residents to gather in open fields, schoolyards,

or other outdoor spaces. Survivors and eyewitnesses described how soldiers surrounded and separated their captives by gender and, in many cases, conducted aggressive body searches of detained women and girls. Soldiers then selected, raped, and in some cases raped and killed women and girls from these groups. Soldiers interrogated some women and girls about the whereabouts of their husbands and brothers, typically with threats of death, before raping them.<sup>49</sup> Fortify Rights also documented the mutilation of women’s bodies.<sup>50</sup>

For example, “Laka,” a 27-year-old Rohingya woman from U Shey Kya village in Maungdaw Township, explained how soldiers raped her and three other women in her home in November 2016 after beating her and her children:

I grabbed my legs, saying, “Please do not do this. I already have a husband. Please do not do this.” I said this to the soldiers, but they had no mercy on me. This was in the house. The soldiers took all my family members to a separate room. Then two soldiers raped me. The other two men raped three other women in my house.<sup>51</sup>

Doctors working with the UN at Leda makeshift refugee camp in Bangladesh reportedly treated hundreds of Rohingya women with injuries related to sexual violence during the clearance operations of October and November.<sup>52</sup> Fortify Rights interviewed five medical doctors and physicians treating Rohingya rape survivors in Bangladesh, more than 17 eyewitnesses to rapes, and 14 Rohingya who provided additional information on the rape of women and girls by Myanmar Army soldiers in October and November 2016 in Maungdaw Township.<sup>53</sup>

Fortify Rights also interviewed nine Rohingya who provided information about rape and women being taken away by state security forces in August and September.<sup>54</sup> “N. Islam,” 51, survived the Min Gyi massacre on August 30. He said:

After they first shot the men and boys, they selected some women from the group and put the women on the top of the hill. While the soldiers were killing and cutting the others, these women were then taken to the riverbank. Groups of around ten soldiers took about six



Rohingya refugees wait in a food distribution line in Kutapalong refugee camp, Cox's Bazar, Bangladesh, on October 12, 2017. *Photo by Andre Malerba*

women three times. They took them to the bushes of the bank. And then they came again and took six more. I couldn't see what happened to them but the women never came back. I believe they were raped and killed.<sup>55</sup>

### **Arbitrary Mass Arrests and Enforced Disappearances**

In a January 23, 2017, communication to the UN, the Government of Myanmar acknowledged that as of November 21, 2016, it had arrested and detained 406 suspects in 36 criminal cases in northern Rakhine State as part of the 2016 clearance operations.<sup>56</sup> Criminal charges ranged from murder to illegal possession of weapons. Testimony gathered by the authors indicates that the arrests and disappearances targeted people, including children, with no connection to the attacks on police stations in early October 2016.

Fortify Rights documented and analyzed testimony of 29 Rohingya eyewitnesses from seven villages, all describing the arbitrary mass detention of Rohingya men and boys during the first Myanmar Army-led attack on civilians in Maungdaw Township in October and November. Soldiers captured and rounded up able-bodied men and boys and transported them

from villages, sometimes blindfolded and with their hands bound behind their backs. Elderly men, as well as women, girls, and young boys, were left behind. The testimony collected for this report suggests that many more than 406 were arrested and not released, raising grave questions about the whereabouts and well-being of the detainees.

“Hnin R.,” 23, a Rohingya mother of three, recounted how soldiers arrested men in Hpar Wut Chaung village in late November, including her husband, after rounding up and detaining a large group of residents in a local field:

At 3 p.m., the soldiers told the women that they could return home....But none of the men were allowed to leave. All the men were taken away at this time. My husband was taken away along with about 35 men.... The last time I saw my husband was in the field. When they told us to go away, we just waited to see what would happen to the men. We saw five trucks taking our men away.<sup>57</sup>

“Hnin R.” has not seen her husband since he was arbitrarily arrested.

From October 2016 to March 2017, the Myanmar authorities halted visits by international monitors and humanitarian workers to places of detention in Rakhine State, resulting in an inexplicable six-month-long “blackout” in detention centers after the clearance operations began.

Arrests and possible enforced disappearances continued during the second Myanmar Army–led attack on Rohingya civilians starting in August 2017.<sup>58</sup> For example, “Kyaw Win,” a 35-year-old Rohingya resident from Tha Man Thar village, Maungdaw Township, described how Myanmar Army soldiers and *Lon Tein* police arrested and took away his adult brother on August 21:

First, they came to our house, and they hit him on his head with their guns. They tied his wrists together.... Ten of the people from our village were arrested and taken away. Four were later freed. The rest were not.... My father went to the [police] camp, but they didn’t give him access. They said they didn’t know anything about my brother or where he was.<sup>59</sup>

## Forced Displacement

In addition to the climate of fear created by mass killings, rapes, and other violations against Rohingya, Myanmar Army soldiers purposefully destroyed dozens of mosques and the homes of tens of thousands of civilians, razing entire villages, most commonly using RPGs during both clearance operations. Myanmar Army soldiers also told people to leave and issued menacing threats of death and of “vanish[ing] all Muslims from Myanmar.”<sup>60</sup> At the time of this writing, these attacks have forced the displacement of nearly 700,000 Rohingya since October 2016, many of whom were forced across the border to Bangladesh and farther afield. The Rohingya population in Myanmar numbered approximately one million before the clearance operations began, which means that more than half of the entire group was forcibly displaced in less than 11 months.

“Rashida,” a 20-year-old Rohingya woman and eyewitness from Yae Khat Chaung Gwa Son village, Maungdaw Township, recalled how soldiers targeted mosques in her village in November: “There were 15 mosques in the village.

All were burned down. There’s not a single green leaf left in the village. They [Myanmar Army soldiers] used a launcher to start the fires.”<sup>61</sup>

“Kumyar Begum,” a 20-year-old mother of three and resident of Pwint Hpyu Chaung village in Maungdaw Township, similarly described how soldiers burned down her house: “They shot fire at the house....It was a heavy sound. Around 100 [soldiers] were standing nearby....The military waited until the whole house had burned down and left around 4 p.m. We had only the clothes we were wearing.”<sup>62</sup>

Fortify Rights spoke with 51 Rohingya men and women from 16 villages in Maungdaw Township who directly witnessed soldiers carry out arson attacks during the first round of clearance operations starting in October 2016.<sup>63</sup> Additional research indicates that Myanmar security forces attacked at least 26 other villages from October to December 2016—indicating that attacks took place in at least 42 villages in Maungdaw Township during the first wave of attacks. Fortify Rights spoke to an additional 51 survivors who described similar systematic arson attacks on at least 31 villages in Maungdaw, Buthidaung, and Rathedaung Townships during the clearance operations starting in August 2017. In total, several hundred villages were targeted during the Myanmar Army -led attack beginning August 25. Several survivors also described how soldiers destroyed food stocks, contributing to further forced displacement. Satellite imagery indicates arson attacks destroyed more than 200 villages.<sup>64</sup>

The level of collective destruction demonstrates that the military created conditions that make it impossible or extremely difficult for people to survive in their places of origin.





Under the cover of darkness, desperate Rohingya (mostly women and children) cross the Naf River in boats to Bangladesh on September 21, 2017. After their villages were destroyed in Buthiduang township, they spent days walking to the river. *Greg Constantine for the US Holocaust Memorial Museum*

## International Legal Framework: Atrocity Crimes

The Simon-Skjoldt Center and Fortify Rights are gravely concerned that Myanmar's military and civilian leadership may be responsible for atrocity crimes, including crimes against humanity and ethnic cleansing. We are also concerned about mounting evidence of genocide against the Rohingya.

### International Legal Implications of Mass Atrocities

#### Crimes against Humanity

The attacks by Myanmar security forces against Rohingya civilians in Maungdaw Township during the clearance operations from October to December 2016 and since August 2017 appear to constitute crimes against humanity.

Under customary international law, all states have an affirmative legal obligation to prevent crimes against humanity from occurring and to hold perpetrators of such crimes to account.<sup>65</sup> The 1998 Rome Statute of the International Criminal Court (ICC) provides the most recent codification of crimes against humanity.<sup>66</sup> Although Myanmar is not a signatory to the Rome Statute, the statute provides an authoritative and widely accepted definition of a crime against humanity.<sup>67</sup>

Article 7 of the Rome Statute defines a *crime against humanity* as a prohibited act "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."<sup>68</sup> As part of the definition, the Rome Statute delineates a number of prohibited acts, including murder, rape and sexual violence, torture, enforced disappearance of persons, imprisonment or severe deprivation of physical liberty, deportation and forcible transfer of population, persecution, and "other inhumane acts."<sup>69</sup>

As demonstrated in this report, members of the Myanmar security forces and armed civilians committed a number of prohibited acts against Rohingya civilians during the clearance operations, including murder, rape and sexual violence, enforced disappearances, imprisonment or severe deprivation of physical liberty, and the deportation and forcible transfer of population.<sup>70</sup> These acts were perpetrated against Rohingya by reason of their membership of an ethnic and religious group and constitute persecution.<sup>71</sup>

The evidence collected suggests that the prohibited acts were also perpetrated as part of an attack in line with a state

policy that was either in place at the time of the attacks or crystalized during the attacks.<sup>72</sup> This policy may be inferred by the coordinated nature of the attack, the recurrent pattern of violence, the commitment of public resources to facilitate the attack, and the involvement of state forces, as well as the underlying motivation for the attack.<sup>73</sup>

During the two waves of violence in October 2016 and August 2017, the Myanmar security forces implemented what appeared to be coordinated attacks on multiple Rohingya villages in a variety of locations and for several weeks. Those attacks were carried out in similar ways and required a significant commitment of public resources. Furthermore, those attacks are in line with long-standing state-sponsored forms of persecution and discriminatory policies aimed at excluding the Rohingya from basic rights and freedoms, including the right to nationality, in Myanmar.

The International Criminal Court has affirmed that crimes against humanity are attacks that are either “widespread” or “systematic.”<sup>74</sup> Only the attack must be widespread or systematic, not the individual acts of the direct perpetrators.<sup>75</sup> Relevant factors to consider when determining whether an attack is widespread or systematic include the “means, methods, resources and result of the attack,” as well as “the consequences of the attack..., the number of victims, the nature of the acts, the possible participation of officials or authorities and any identifiable pattern of crimes.”<sup>76</sup>

The evidence collected and analyzed by Fortify Rights and the Simon-Skjodt Center shows that the Myanmar Army’s attacks against the Rohingya population in Maungdaw Township from October to December 2016 were both widespread and systematic. An attack is considered “widespread” on the basis of the “large-scale nature of the attack and the number of targeted persons.”<sup>77</sup> Widespread attacks are generally “massive, frequent, carried out collectively” against many people.<sup>78</sup> An attack that takes place over time and across geographical space may also be considered widespread.<sup>79</sup>

Fortify Rights and the Simon-Skjodt Center documented and analyzed the mass movement of Myanmar Army battalions into at least 40 villages across a relatively vast

geographic area in Maungdaw Township between October and December 2016, committing targeted attacks on a large number of Rohingya civilians. The attacks resulted in the displacement of at least 94,000 Rohingya civilians from Maungdaw Township over a three-month period.<sup>80</sup> The Myanmar Army-led attacks in August and September 2017 spread across all three townships in northern Rakhine State, targeting hundreds of Rohingya villages and hundreds of thousands of civilians, displacing more than half a million.

The attacks against the Rohingya population in northern Rakhine State were also systematic. A *systematic attack* refers to “the organized nature of the acts of violence and the improbability of their random occurrence,” or “non-accidental repetition of similar criminal conduct.”<sup>81</sup> The existence of a plan or policy may provide evidence that an attack was systematic but is not required.<sup>82</sup>

The organized nature and pattern of the acts of violence perpetrated by the Myanmar security forces against the Rohingya civilian population during the two clearance operations indicate that the attacks were also systematic.<sup>83</sup> At least four Myanmar Army battalions comprising an estimated 2,000 soldiers were reportedly involved in the attacks in October and November and used sophisticated weapons, including RPGs.<sup>84</sup> In response to ARSA’s August 25 attack, the Myanmar Army reportedly deployed thousands of additional soldiers from nearly 40 battalions, including six from Light Infantry Division 33 and eight from Light Infantry Division 99.<sup>85</sup> The large deployment of troops as well as the use of RPGs would have required detailed planning and coordination and the strategic allocation of significant financial resources and arms—the widespread use of such weaponry demonstrated “the organized nature of the acts of violence and the improbability of their random occurrence.”<sup>86</sup>

Finally, it appears that Myanmar security forces and other perpetrators knew that their actions contributed to or were intended to contribute to the larger attack on the Rohingya civilian population.<sup>87</sup> Soldiers from a variety of battalions commanded by different military officials moved from village to village committing prohibited acts against Rohingya civilians in line with a common pattern, indicating a necessary level of awareness of the attack taking place and that the prohibited acts contributed to the attack.<sup>88</sup>

## Ethnic Cleansing

Fortify Rights and the Simon-Skjoldt Center share the conclusions of the United Nations and many nongovernmental organizations that the Government of Myanmar is perpetrating ethnic cleansing in northern Rakhine State. Ethnic cleansing has no authoritative definition under international law but is understood as “rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area.”<sup>89</sup> The type of acts that may be considered coercive for removing a population from a particular area include those being employed by Myanmar security forces: murder, torture, arbitrary arrest and detention, rape and sexual assaults, severe physical injury to civilians, confinement of

a civilian population in ghetto areas, displacement, and deliberate military attacks or threats of attacks on civilians and civilian areas.<sup>90</sup>

The UN Office of the High Commissioner for Human Rights alleged the possible commission of crimes against humanity against Rohingya both before and since these latest attacks and recently referred to the situation as a “textbook example of ethnic cleansing.” On September 13, 2017, the UN Security Council condemned the violence and on the same day, UN Secretary-General António Guterres referred to the situation as “catastrophic.”<sup>91</sup>

## ROME STATUTE DEFINITIONS

### CRIMES AGAINST HUMANITY

Any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

### GENOCIDE

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.

## Genocide

Fortify Rights and the Simon-Skjoldt Center continue to be gravely concerned about growing evidence of genocide against Rohingya Muslims in northern Rakhine State.

Genocide is a crime that involves the intentional targeting of a community for destruction via one or more prohibited acts. To constitute genocide, one or more of the five enumerated prohibited acts must be committed (a) against a group on the basis of the religious, ethnic, racial, or national identity and (b) with the intent to destroy that group as such, in whole or in part. The facts laid out in this report demonstrate that state security forces targeted the Rohingya group with several of the enumerated acts in the law of genocide.

Further investigation would assist in determining the identity and specific intent of the perpetrators of crimes against Rohingya in northern Rakhine State. The Government of Myanmar has repeatedly thwarted or refused to support investigations into areas where clearance operations have happened. Regardless, the Government of Myanmar and the international community should not wait for a formal legal determination of genocide to take immediate action. The Genocide Convention requires that all states take action to prevent and punish genocide but leaves the details on how to do so to the states. The evidence available thus far should serve as the highest of alarms to leaders within Myanmar and the international community to prevent genocide and to protect people who remain at risk.

Thus far, civilian and military authorities in Myanmar have demonstrated a lack of political will to protect civilians at risk of or subject to mass atrocities. The crimes detailed in this report indicate a failure of the Government of Myanmar as well as the international community to properly protect civilians from mass atrocities. Military and civilian leaders in Myanmar, as well as soldiers and civilian perpetrators, may be liable for international crimes. Those responsible for crimes should be held accountable.

Without an adequate and immediate response to crimes perpetrated against the Rohingya and documented in this report, state-led violence in Myanmar will persist, impunity will reign, and dangerous and discriminatory policies will gain permanence. Concerted action is now required to eliminate the root causes of state-led violence, to bridge deeply divided communities, and to protect all civilians against future atrocities.



Rohingya refugees wait in a muddy rice paddy on orders of the Border Guards Bangladesh (BGB) after crossing the Naf River from Myanmar to Anjumanpara, Bangladesh, on October 16, 2017. They were kept there for more than a day, through intense heat and rain. At least one person died and many others collapsed from exhaustion. *Photo by Andre Malerba*

## Responses by the Government of Myanmar and International Community

### Investigative and Advisory Commissions

Under international pressure to respond, the Myanmar authorities established national-level commissions to investigate the situation in Rakhine State since October 2016 and to provide statewide recommendations. The commissions were not designed or mandated to identify specific perpetrators of violence, and no one has yet been held accountable for atrocities. The culture of impunity in Myanmar continues to prevail, leaving the Rohingya population and other communities at risk of continued atrocities.

Two commissions—the Advisory Commission on Rakhine State led by UN Secretary-General Kofi Annan and the Rakhine Investigation Commission led by Vice President General Myint Swe—issued reports on their findings in August 2017 and January 2017, respectively. The Myanmar military and police have also each conducted internal investigations. Most recently, on October 12, State Counselor Suu Kyi announced the formation of yet another committee

staffed by government officials to focus on repatriating refugees from Bangladesh and “bringing development to the region and establishing durable peace.”<sup>92</sup>

The UN Human Rights Council created a fact-finding mission in March 2017 to focus, in large part, on human rights violations perpetrated by the Myanmar military and security forces in Rakhine State.

### Advisory Commission on Rakhine State (Annan Commission)

In August 2016, Aung San Suu Kyi established the Advisory Commission on Rakhine State, comprised of three international and six national commissioners and chaired by former UN secretary-general Kofi Annan.<sup>93</sup> The Government of Myanmar mandated the advisory commission to “consider humanitarian and development issues, access to basic services, the assurance of basic rights, and the security of the people of Rakhine” and to submit a report of its findings and recommendations within one year.<sup>94</sup>

The Annan Commission published its final report and recommendations on August 23, 2017. The commission's recommendations addressed both immediate and long-term problems, including the need for the Government of Myanmar to (a) allow full and unimpeded humanitarian access to affected areas, (b) hold perpetrators of serious human rights violations accountable, (c) remove obstacles to accessing education and health care, and (d) close internally displaced persons camps in Rakhine State.<sup>95</sup> The ARSA attack on August 25, 2017, and the immediate, disproportionate, and brutal response by the Myanmar military left the commission's recommendations unaddressed. Aung San Suu Kyi's September 19, 2017, speech seemed to disregard the commission's recommendations, as she stated, for example, that all people in Rakhine State had equal access to health care and education—a finding that contradicted the Annan Commission's final report.

### **Rakhine Investigation Commission**

The president of Myanmar established the Rakhine Investigation Commission on December 1, 2016, and mandated it to investigate the situations that led to violent attacks allegedly by Rohingya militants against police outposts on October 9 and 12, as well as November 13. The commission, led by Vice President Myint Swe, a former Myanmar military general, included current and former military, police, and other government officials. Human rights groups expressed concern that the composition of the commission and the weak research methodology indicated that the commission's investigations and findings lacked credibility, independence, and impartiality.<sup>96</sup>

The commission's first public report, issued on January 3, 2017, and based on a three-day investigation, claimed that evidence was insufficient to address allegations of rape and referred to "fabricated rumors and news."<sup>97</sup> The report also referred to *Bengali* populations (a derogatory term for the Rohingya) in the area and the existence of mosques as "proof that there were no cases of genocide and religious persecution in the region."<sup>98</sup>

65-year-old Nur Alam lost his 15-year-old son, Syed, when the young boy stepped on a landmine. Syed and three others were out grazing their family's cows. "I carried my son's body back to our village," Nur Alam said. Later, his village was destroyed. He and the rest of his family arrived in Bangladesh on September 12, 2017. *Greg Constantine for the US Holocaust Memorial Museum*





UN Special Adviser on the Prevention of Genocide Adama Dieng expressed concern that the commission found no evidence to substantiate allegations of human rights violations, despite having access to areas in which crimes were allegedly committed and said that the commission would be unable to credibly undertake a new investigation.<sup>99</sup>

### Internal Investigations

The police and military both established internal investigations in February 2017.<sup>100</sup> In May 2017, the military announced that its investigation found the accusations in the February 2017 report by the UN Office of the High Commissioner for Human Rights—which documented evidence suggesting the military may have committed serious international crimes—to be either incorrect or fabricated, stating the alleged abuses were “based on lies and invented statements.”<sup>101</sup> On October 14, 2017, the Myanmar Army announced that it would conduct another internal investigation into the behavior of its soldiers in Rakhine State.<sup>102</sup>

### United Nations Human Rights Council's Fact-Finding Mission

Myanmar's failure to properly investigate the human rights violations in Rakhine State prompted the United Nations Human Rights Council to establish a fact-finding mission in March 2017 to investigate alleged human rights violations by Myanmar's military and security forces across Myanmar, with a focus on Rakhine State.<sup>103</sup> The Government of Myanmar objected to the initiation of the fact-finding mission and disassociated itself from the resolution that established it.<sup>104</sup> After weeks of indicating that it would not cooperate with the fact-finding mission, the Government of Myanmar announced on June 30, 2017, that it would not grant visas to the UN fact-finding team to access the country.<sup>105</sup> At a press briefing in Brussels in May 2017, State Counselor Aung San Suu Kyi explained her government's disassociation with the UN Human Rights Council resolution that established the fact-finding mission, saying, “We do not think that the resolution is in keeping with what is actually happening on the ground.”<sup>106</sup> She also said that her government would not accept recommendations that would “divide further the two communities in Rakhine.”<sup>107</sup>

The fact-finding mission formally requested access to Myanmar and the government ignored the request; the fact-finding mission is continuing its work regardless.

### Restrictions on Humanitarian Assistance

At the time of this writing, the Government of Myanmar continues to deny aid groups, monitors, and journalists unfettered access to areas of northern Rakhine State. Humanitarian aid groups are provided only limited access in Rakhine State generally, and the authorities have closely shepherded groups of journalists to certain affected areas.<sup>108</sup> Humanitarian groups have been denied access to northern Rakhine State since August 2017, and there are no signs that the Government of Myanmar will allow humanitarian agencies (other than the International Committee of the Red Cross) to return to northern Rakhine State, which puts hundreds of thousands of lives at risk.<sup>109</sup>

### Denials of Human Rights Violations

The Government of Myanmar has consistently denied reports of human rights violations, including the allegations of atrocities committed during the clearance operations against the Rohingya.

During a September 19, 2017, address, Aung San Suu Kyi expressed doubts about mounting evidence of military atrocities and feigned ignorance about why Rohingya fled to Bangladesh. This reaction follows a pattern of denial by her and other civilian and military officials. Likewise, on October 14, 2017, the Myanmar government official tasked with managing Rohingya refugee repatriation said that civilians may have “planned” to flee in order to give the appearance that they were victims of ethnic cleansing.<sup>110</sup>

A December 26, 2016, press release from State Counselor Aung San Suu Kyi's office described allegations of rape by security forces as “rumors,” “fabricated stories,” and “one-sided accusations.”<sup>111</sup> Also in late December, Foreign Ministry spokesperson Aye Aye Soe told IRIN that allegations of grave human rights violations were “made-up stories, blown out of proportion,” adding that “the things they are accusing us of didn't happen at all.”<sup>112</sup>



In response to an October 21, 2016, communication to the Government of Myanmar from five UN special rapporteurs about “alleged human rights violations occurring in relation to recent attacks on 9 October 2016 in northern Rakhine State,” the Government of Myanmar denied allegations of summary executions, arbitrary detention, and mass graves, stating, “There is no evidence revealed to date to support the allegations of mass graves filled with persons killed during the operations.”<sup>113</sup> In response to allegations of rape, the government cited Commander-in-Chief Senior General Min Aung Hlaing in its claim that “there were no murder or rape cases according to the reports on the ground.”<sup>114</sup>

In the same communication to the UN, the government also claimed, “There were no children arrested, detained and/or killed in the context of security operation [sic].”<sup>115</sup> Weeks later, Reuters published information obtained directly from the Myanmar Police Force detailing that Rohingya children as young as 10 were among hundreds arrested and detained in Rakhine State since October 2016.<sup>116</sup>

The Government of Myanmar and the military also steadfastly denied allegations that state security forces razed Rohingya homes and civilian structures, despite abundant eyewitness testimony and satellite imagery published by Human Rights Watch that placed the Myanmar Army in villages at the time of the arson attacks.<sup>117</sup> In August 2017, the office of State Counselor Suu Kyi claimed “extremist terrorists” were burning down civilian homes.<sup>118</sup>

The government’s denials of atrocities in the face of documentation conducted by many independent groups signal an official willingness to see the Rohingya population removed from the country. The seriousness of the information at hand should force the Government of Myanmar to (a) confront perpetrators of atrocities, (b) allow independent investigations to move forward in areas where clearance operations have taken place, and (c) dismantle the acts of persecution that allowed such violence to erupt.

## Next Steps

**A political transition where entire populations continue to be targeted** for atrocity crimes on the basis of their ethnicity will be incomplete at best and volatile at worst. Although many actors can take an active part in halting atrocities against the Rohingya population, in holding perpetrators accountable, and in preventing similar crimes in the future, the primary obligation rests upon the Government of Myanmar. The international community can press the Government of Myanmar to uphold this obligation in several ways. Such pressure will require the international community—including countries in Southeast Asia, Europe, and North America—to use a range of atrocity prevention and accountability tools to encourage the Government of Myanmar to cease its attack on Rohingya.

The Myanmar military has the immediate ability to cease attacks on civilian populations in Rakhine State. The military and civilian-led government both have the responsibility to allow aid organizations and investigators access to affected areas, and both actors will need to undertake long-term work to promote accountability and prevent future atrocities. The Government of Myanmar should take the following initial steps:

- Immediately cease attacks on civilian populations in northern Rakhine State and ensure protections for civilians.
- Immediately allow free and unfettered access for humanitarian aid organizations, journalists, and human rights monitors to all areas of Rakhine State.
- Urgently provide specific and detailed information on the whereabouts and well-being of all individuals arrested during the clearance operations in northern Rakhine State.
- Immediately and unconditionally free all Rohingya civilians, including children, arbitrarily detained in Rakhine State and ensure that only individuals charged under laws compatible with international law and tried in proceedings that meet international fair trial standards are detained.
- Prosecute those responsible for human rights violations and mass atrocities, regardless of rank or position, in proceedings that meet international fair trial standards.
- Prosecute militants responsible for murdering state security officials and civilians in proceedings that meet international fair trial standards.
- Cooperate with international efforts, including the fact-finding mission mandated by the UN Human Rights Council, to investigate the situation of human rights in Rakhine State as well as other ethnic states, such as Kachin and Shan States.
- Implement recommendations from credible independent advisory and investigatory bodies, including the fact-finding mission mandated by the UN Human Rights Council and the Advisory Commission on Rakhine State.
- Implement recommendations geared toward establishing the truth about crimes committed in Rakhine State and securing accountability for responsible perpetrators.
- Review and amend the 1982 Citizenship Law to align it with international standards and to provide residents of Myanmar with equal access to full citizenship rights regardless of ethnic identity.
- Immediately collect and abolish all local orders in Rakhine State that violate human rights, particularly those that restrict freedom of movement, marriage, childbirth, and other basic rights.
- Announce the immediate abolition of restrictions on freedom of movement in Rakhine State, particularly among villages in Muslim-majority townships in northern Rakhine State, and provide civilian populations with the necessary protection to ensure safe freedom of movement. Appoint a task force comprising at least one senior civilian government official and one military official, as well as Muslims and Rohingya, to travel village-to-village in Rakhine State to advise village administrators about the abolition of restrictions and to ensure that all restrictions on freedom of movement are lifted.



More than 1,000 Rohingya congregate around a truck filled with private donations of rice. The surge of Rohingya into Bangladesh has caused a humanitarian crisis, with desperate refugees completely reliant on humanitarian assistance. *Greg Constantine for the US Holocaust Memorial Museum*

Various international institutions and other governments are well placed to press the Myanmar authorities to make effective progress on the items listed above.

The United Nations Security Council is a primary international organ through which various tools can press Myanmar to move forward on these next steps. Situations of mass atrocities are intrinsically matters of international peace and security, and Myanmar remains on the formal agenda of the UN Security Council. A UN Security Council open session on Myanmar on September 28, 2017—the first open session on the country since 2009—was an opportunity for some Security Council members and the UN secretary-general to express outrage and urgency about the crimes against Rohingya. Although the open session was an important step that demonstrated the Security Council's seriousness, the discussions should be followed by concerted action to issue a resolution that will allow its members to pursue tools, including an arms embargo and a referral to the International Criminal Court, to curb the atrocities in Myanmar and to promote accountability.

The UN Human Rights Council has established and extended mandates for special rapporteurs on the situation of human rights in Myanmar for the past 25 years. Experts serving that mandate have shone a light on the human rights situation in Myanmar and have spoken out about apparent mass atrocities against Rohingya. During its March 2017 session, the UN Human Rights Council established an independent fact-finding mission to investigate human rights violations in northern Rakhine State, as well as other areas in Myanmar. As of the writing of this report, the Government of Myanmar has signaled its unwillingness to cooperate with the fact finders. The UN Human Rights Council and other UN agencies can press the Myanmar authorities to effectively adopt the next steps listed above. In addition, those UN agencies can move forward with the following actions:

- Extend the mandate of the UN fact-finding mission and continue to encourage the Government of Myanmar to cooperate with international efforts, including the fact-finding mission, to investigate the situation of human rights in northern Rakhine State as well as other ethnic states, such as Kachin and Shan States, and to hold perpetrators accountable.
- Provide the UN fact-finding mission with access to relevant information, databases, and other sources of information related to the situation in Rakhine State, particularly information related to alleged human rights violations and perpetrators.
- Encourage the Government of Myanmar to cooperate with international efforts, including the fact-finding mission mandated by the UN Human Rights Council; to investigate the situation of human rights in northern Rakhine State as well as other ethnic states, such as Kachin and Shan states; and to hold perpetrators accountable.
- Openly press Myanmar's military to end and remedy atrocities against Rohingya and cease any engagement with the military apart from human rights-related dialogue, including training and joint exercises, until mass atrocities against the Rohingya population cease and effective, transparent processes are put in place to hold perpetrators accountable.

Other governments, including those in Southeast Asia, can press the Government of Myanmar to end and remedy atrocities against Rohingya and create an environment that will eventually facilitate safe and voluntary returns of those displaced. Refugees have a right to return; however, discussions now of repatriations are premature as Rohingya are still under attack in Myanmar and face well-founded fears of persecution, while perpetrators still enjoy complete impunity. Bangladesh will have a key role to play in ensuring that refugees are not forcibly returned to Myanmar, and other governments can help ensure that returns take place only when they can be done in a manner that is voluntary, safe, and dignified. Myanmar's neighbors in ASEAN (Association of Southeast Asian Nations) have traditionally abided by a policy of noninterference in member states' affairs, refusing to confront the long-standing persecution and violence against Rohingya in Myanmar. The devastating scale of the humanitarian crisis has, in recent months and years, led some of Myanmar's regional neighbors to openly press for an end to violence. The escalated violence against Rohingya in recent months and the resulting refugee crisis demand a strong response from countries in the region. ASEAN members and other governments, including those in Europe and North America, can press the Government of Myanmar to effectively address the atrocities against Rohingya in the following ways:

- Pursue targeted sanctions against the perpetrators most responsible for mass atrocities.
- Ensure future returns are voluntary, safe, and dignified in accordance with international standards, and that refugees have the option to return to their places of origin.
- Encourage high-level envoys to visit the Bangladesh/ Myanmar border to hear from refugees about the atrocities they have suffered and witnessed, and to visit Rakhine State, Myanmar.

In addition to the items listed below, donor governments have the ability to support the urgent demand for humanitarian assistance, the long-term efforts to uncover the full truth of the atrocities against the Rohingya, and the institution building and monitoring required to prevent future atrocities. Specific efforts can include the following:



A young Rohingya boy carries some of his belongings on October 13, 2017, the morning after he arrived in Bangladesh by boat. *Photo by Lauren DeCicca*

- Support programs or organizations responding to humanitarian needs in Rakhine State and other ethnic states in Myanmar, and along the Bangladesh–Myanmar border, including essential health services and trauma-sensitive care
- Support organizations or programs engaged in documenting human rights violations, truth telling, casualty recording, tracing of disappeared persons, providing support for arbitrarily detained individuals, and reuniting separated families
- Support for survivors of atrocities and their representatives to pursue justice, including supporting documentation efforts
- Investment in programs that monitor early-warning signs of future mass killings in northern Rakhine State and other areas of Myanmar

## NOTES

- 1 US Department of State, “Accountability for Human Rights Abuses in Rakhine State, Burma,” press statement, October 23, 2017, <https://www.state.gov/r/pa/prs/ps/2017/10/275021.htm>.
- 2 The Myanmar Ministry of Immigration and Population and the United Nations Population Fund excluded Rohingya from the 2014 national census, Myanmar’s first census in 30 years. The government’s census report clarifies that “members of some communities [in Rakhine State] were not counted because they were not allowed to self-identify using a name that is not recognized by the Government.” That name is *Rohingya*, an ethnic identity the government rejects and claims does not exist. The government estimates that approximately 1,090,000 people were not counted in Rakhine State during the census—they were presumably Rohingya. Republic of the Union of Myanmar Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census: Rakhine State* (Naypyidaw: Ministry of Immigration and Population, May 2015), 8, <http://myanmar.unfpa.org/sites/default/files/pub-pdf/Rakhine%20State%20Census%20Report%20-%20ENGLISH.pdf>.
- 3 UN special rapporteurs since the 1990s and human rights organizations, including Fortify Rights and the Simon-Skjoldt Center, have consistently highlighted how the 1982 Citizenship Law is not in line with international standards, as it includes discriminatory provisions for granting citizenship on the basis of ethnicity or race. See, for example, “Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Quintana,” A/HRC/25/64, United Nations, March 12, 2014; “Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee,” A/69/398, United Nations, September 23, 2014; and “Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Yanghee Lee, A/HRC/34/67, United Nations, March 1, 2017. As a result of the 1982 Citizenship Law, and until the August 2017 attacks, Myanmar hosted more stateless people within its borders than any country in the world.
- 4 Fortify Rights, *Policies of Persecution: Ending Abusive State Policies against Rohingya Muslims in Myanmar* (Bangkok: Fortify Rights, 2014).
- 5 Myanmar Ministry of Immigration and Population, 2014 *Census: Rakhine State*.
- 6 See, for example, Fortify Rights, “Myanmar: Drop Trumped-Up Charges against Human Rights Defender Khaing Myo Htun,” news release, July 17, 2017, <http://www.fortifyrights.org/publication-20170717.html>; and Fortify Rights, “Myanmar: Investigate Forced Labor of Rakhine Buddhists in Western Myanmar,” news release, March 15, 2016, <http://www.fortifyrights.org/publication-20160315.html>. See also reports by Arakan Oil Watch, the Shwe Gas Movement, and EarthRights International.
- 7 Human Rights Watch, “‘The Government Could Have Stopped This’: Sectarian Violence and Ensuing Abuses in Burma’s Arakan State,” July 2012, <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan>.
- 8 Human Rights Watch, “‘All You Can Do Is Pray’: Crimes against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State,” April 2013, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>.
- 9 See UN Office for the Coordination of Humanitarian Affairs, “Myanmar: Northern Rakhine,” Flash Update no. 1,” March 8, 2017, <http://reliefweb.int/sites/reliefweb.int/files/resources/170308%20Myanmar%20Flash%20Update.pdf>.
- 10 Although the 2008 constitution includes a provision deliberately intended to prevent Suu Kyi from becoming president, a month after the NLD took power, the Myanmar Parliament passed a bill creating the position of state counselor—a work-around to enable Suu Kyi to be the de facto head of state. A clause in the constitution prevents anyone with family members who hold foreign nationality from becoming president. In addition to holding the state counselor position, Suu Kyi is also the foreign minister. See Euan McKirdy, “New Government Role Created for Myanmar’s Aung San Suu Kyi,” CNN, April 7, 2016, <http://edition.cnn.com/2016/04/06/asia/aung-san-suu-kyi-state-counsellor-role-created/index.html>.
- 11 See Constitution of the Republic of the Union of Myanmar, 2008, art. 109, 141, 436, 232(b)(ii).
- 12 White House, “Remarks by President Obama and State Counselor Aung San Suu Kyi of Burma,” September 14, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/09/14/remarks-president-obama-and-state-counselor-aung-san-suu-kyi-burma>.
- 13 Fortify Rights and United to End Genocide, “Supporting Human Rights in Myanmar: Why the U.S. Should Maintain Existing Sanctions Authority,” May 9, 2016, [http://www.fortifyrights.org/downloads/Fortify\\_Rights\\_and\\_UEG\\_Supporting\\_Human\\_Rights\\_in\\_Myanmar\\_May%202016.pdf](http://www.fortifyrights.org/downloads/Fortify_Rights_and_UEG_Supporting_Human_Rights_in_Myanmar_May%202016.pdf).
- 14 Rohingya Salvation Army, “Press Statement from Arakan Rohingya Salvation Army,” Ref. no. ARSA/PR/01/2017, March 29, 2017.
- 15 Fortify Rights interviews, Cox’s Bazar District, Bangladesh, and Rakhine State, Myanmar, October 2016–September 2017.
- 16 “Nine policemen killed, five injured, one missing in border attack,” *Global New Light of Myanmar*, October 10, 2016, 1, 3; “Extremists Terrorists Attack on Police Outposts in N-Rakhine,” *Global New Light of Myanmar*, August 26, 2017.
- 17 Republic of the Union of Myanmar, Anti-Terrorism Central Committee, Order no. 1/2017 1379 MY 4 Waxing Day of Tawthalin, August 25, 2017, <https://www.facebook.com/MyanmarSCOInfoCom/posts/786463714860070>.
- 18 At the time of Myanmar’s independence from Britain when many ethnic armed groups formed to challenge Burman rule, a Muslim armed group formed in northern Rakhine State to demand an autonomous Muslim state. However, the group had limited military capacity and was short-lived. See Bertil Lintner, *Burma in Revolt: Opium and Insurgency since 1948* (Chiang Mai, Thailand: Silksworm Books, 2000), 110. In response to ongoing human rights violations, Rohingya militants formed the Rohingya Solidarity Organization, a nonstate ethnic army, in 1982 and the Arakan Rohingya Islamic

- Front in 1987. Neither group waged a meaningful armed resistance. By the 2000s, both groups were inactive. See Martin Smith, *Burma: Insurgency and the Politics of Ethnicity* (New York: Zed Books, 1999), 194–95, 241; Human Rights Watch, “Rohingya Muslims: Ending a Cycle of Exodus?” September 1996, 14; and Human Rights Watch, “All You Can Do Is Pray,” app. I.
- 19 Fortify Rights, “Myanmar: Protect Civilians in Rakhine State, Investigate Fatal Shootings,” news release, October 12, 2016, <http://www.fortifyrights.org/publication-20161012.html>.
  - 20 Matthew Smith, “The Human Rights of the Rohingya People,” Fortify Rights testimony before the Tom Lantos Human Rights Commission, Washington, DC, March 17, 2017, [http://www.fortifyrights.org/downloads/Fortify\\_Rights\\_Testimony\\_Before\\_the\\_Tom\\_Lantos\\_Human\\_Rights\\_Commission\\_March\\_17\\_2017.pdf](http://www.fortifyrights.org/downloads/Fortify_Rights_Testimony_Before_the_Tom_Lantos_Human_Rights_Commission_March_17_2017.pdf). See International Crisis Group, “Myanmar: A New Muslim Insurgency in Rakhine State,” December 15, 2016, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-musliminsurgency-rakhine-state>.
  - 21 See Fortify Rights interview with no. 24-2, September 1, 2017.
  - 22 Fortify Rights interview with no. 31-2, September 2, 2017.
  - 23 See “Al Qaeda Warns Myanmar of ‘Punishment’ over Rohingya,” Reuters, September 13, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-alqaeda/al-qaeda-warns-myanmar-of-punishment-over-rohingya-idUSKCN1BOoNI>.
  - 24 See Kayleigh Long, “Rohingya Insurgency Takes Lethal Form,” *Asia Times*, June 20, 2017, <http://www.atimes.com/article/rohingya-insurgency-takes-lethal-form-myanmar/>; and International Crisis Group, “Myanmar: A New Muslim Insurgency” (note 19). For instance, in December 2016, the Myanmar police reported finding a 41-year-old Rohingya man beheaded days after the man told journalists traveling on a military-guided tour of Maungdaw Township that there were “no cases of arson by the military and police forces, no rape and no unjust arrests.” Carole Oudot and Matthew Baudey, “Muslim Found Beheaded after Talking to Myanmar Journalists,” *Asia Times*, December 24, 2016, <http://www.atimes.com/article/muslim-found-beheaded-talking-journalists/>. See also “Myanmar Unrest: Rohingya Muslim Man Found Decapitated in River, BBC, December 23, 2016, <http://www.bbc.com/news/world-asia-38418881>. In June 2017, the Office of State Counselor Suu Kyi claimed “terrorists” had killed 34 civilians “in various ways” since October 2016 and that 22 others had disappeared. “Terrorist Training Camps, Guns Uncovered in Mayu Mountains,” *Global New Light of Myanmar*, June 22, 2017, <http://www.globalnewlightofmyanmar.com/terrorist-training-camps-guns-uncovered-in-mayu-mountains/>.
  - 25 Fortify Rights interviews with ARSA members and Rohingya survivors, Cox’s Bazar District, Bangladesh, August 28–September 5, 2017.
  - 26 Fortify Rights interviews with survivors and eyewitnesses, Cox’s Bazar District, Bangladesh, December 2016. Fortify Rights and the Simon-Skjoldt Center did not survey the Rohingya general public on its views with regard to Rohingya militancy, and most interviewees had witnessed or survived human rights violations perpetrated by the Myanmar security forces.
  - 27 See Fortify Rights interviews with no. 24, Cox’s Bazar District, Bangladesh, September 1, 2017; no. 31 Cox’s Bazar District, Bangladesh, September 2, 2017; and no. 44, Cox’s Bazar District, Bangladesh, September 4, 2017.
  - 28 Ibid.
  - 29 Fortify Rights interview with member of ARSA, no. 24-2, September 1, 2017.
  - 30 “Response from the Government of Myanmar to U.N. Special Rapporteurs,” no. 30/3-27/91, United Nations, January 23, 2017.
  - 31 Fortify Rights interview with UN official, no. 35, Cox’s Bazar District, Bangladesh, December 17, 2016.
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  - 33 Annie Gowen, “‘Textbook Example of Ethnic Cleansing’: 370,000 Rohingyas Flood Bangladesh as Crisis Worsens,” *Washington Post*, September 12, 2017, [https://www.washingtonpost.com/world/textbook-example-of-ethnic-cleansing--370000-rohingyas-flood-bangladesh-as-crisis-worsens/2017/09/12/24bf290e-8792-41e9-a769-c79d7326bedo\\_story.html?utm\\_term=.ef5ea455aeca](https://www.washingtonpost.com/world/textbook-example-of-ethnic-cleansing--370000-rohingyas-flood-bangladesh-as-crisis-worsens/2017/09/12/24bf290e-8792-41e9-a769-c79d7326bedo_story.html?utm_term=.ef5ea455aeca).
  - 34 Fortify Rights interviews with nos. 28-2, 48-2, and 49-2, Cox’s Bazar District, Bangladesh, September 2, 2017.
  - 35 Fortify Rights interview with “Rasheed Salim,” no. 28-2, Cox’s Bazar District, Bangladesh, September 2, 2017.
  - 36 Fortify Rights interview with “Flora Begum,” no. 48-2, Cox’s Bazar District, Bangladesh, September 5, 2017.
  - 37 Ibid.
  - 38 Fortify Rights interviews with no. 33-2, Cox’s Bazar District, Bangladesh, September 3, 2017; no. 39-2, Cox’s Bazar District, Bangladesh, September 4, 2017; and no. 43-2, Cox’s Bazar District, Bangladesh, September 4, 2017.
  - 39 Fortify Rights interview with “Mohammed Rafiq,” no. 33-2, Cox’s Bazar District, Bangladesh, September 3, 2017.
  - 40 Fortify Rights interview with “N. Islam,” no. 43-2, Cox’s Bazar District, Bangladesh, September 4, 2017.
  - 41 Fortify Rights interview with no. 39-2, Cox’s Bazar District, Bangladesh, September 4, 2017.
  - 42 Fortify Rights interviews with nos. 4-2, 5-2, and 23-2, Cox’s Bazar District, Bangladesh, August–September 2017.
  - 43 Ibid.

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- 46 Fortify Rights interview with “Fatima Zuhán,” no. 74, Cox’s Bazar District, Bangladesh, December 14, 2016.
- 47 Although the Myanmar Army, Air Force, Police Force, and Border Guard Force all participated in clearance operations, rape survivors and eyewitnesses interviewed for this report described assailants as wearing green uniforms, which would be consistent with Myanmar Army uniforms. See Fortify Rights interviews with nos. 48, 4, 42, 41, and 55, Cox’s Bazar District, Bangladesh, December 2016 and March 2017.
- 48 Ibid.
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- 50 See, for example, Fortify Rights interviews with nos. 5-2 and 23-2, Cox’s Bazar District, Bangladesh, August 2017.
- 51 Fortify Rights interview with “Laka,” no. 55, Cox’s Bazar District, Bangladesh, March 30, 2017.
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- 57 Fortify Rights interview with “Hnin R.,” no. 70, Cox’s Bazar District, Bangladesh, December 15, 2016.
- 58 Fortify Rights interviews with nos. 16-2, 18-2, 31-2, 47-2, 48-2, and 49-2, Cox’s Bazar District, Bangladesh, August–September 2017.
- 59 Fortify Rights interview with “Kyaw Win,” no. 31-2, Cox’s Bazar District, Bangladesh, September 2, 2017.
- 60 Fortify Rights interview with no. 22, Cox’s Bazar District, December 11, 2016.
- 61 Fortify Rights interview with “Rashida,” no. 22, Cox’s Bazar District, Bangladesh, December 13, 2016.
- 62 Fortify Rights interview with “Kumyar Begum,” no. 39, Cox’s Bazar District, Bangladesh, December 11, 2016.
- 63 Fortify Rights collected eyewitness testimony of the Myanmar Army burning civilian structures in the following villages in Maungdaw Township in October and November 2016: Pwint Hpyu Chaung, Yae Khat Chaung Gwa Son, Kyet Yoe Pyin, Nag Pura, Dar Gyi Zar, Ywet Nyo Taung, Hpar Wut Chaung, Sin Thay Pyin, Myaw Taung, Wapeik, and Kyar Goung Taung.
- 64 Human Rights Watch, “Burma: Satellite Imagery Shows Mass Destruction,” September 19, 2017, <https://www.hrw.org/news/2017/09/19/burma-satellite-imagery-shows-mass-destruction>.
- 65 Rome Statute of the International Criminal Court, July 17 1998 art. 6-7.
- 66 Ibid., art. 7(1), UN A/CONF.183/9.
- 67 Following extensive negotiation, 120 member states of the UN General Assembly adopted the definition of crimes against humanity as articulated by the Rome Statute. The Rome Statute also authorizes the ICC to investigate allegations of crimes against humanity. Although Myanmar is not a signatory to the Rome Statute, the ICC could investigate allegations of crimes against humanity if the Government of Myanmar agreed to ICC jurisdiction or the UN Security Council referred the situation to the ICC. See Rome Statute, art. 12(3) and 13(b).
- 68 Rome Statute, art. 7(1). Although Myanmar is not a signatory to the Rome Statute, the Rome Statute provides an authoritative and widely accepted definition of a crime against humanity. Under customary international law, all states have an affirmative legal obligation to prevent crimes against humanity from occurring and to hold perpetrators of such crimes to account.
- 69 Ibid.
- 70 For definitions of the prohibited acts for the purposes of establishing a crime against humanity, see International Criminal Court, Elements of Crimes, UN Doc. ICC-ASP/1/3 (part II-B), adopted September 9, 2002, 5.
- 71 See art. 7(1)(b), ICC Elements of Crimes, 10.
- 72 A state policy to commit an attack may be established through the active promotion or encouragement of the attack, as well as through a “deliberate failure to take action, which is consciously aimed at encouraging the attack.” It is also not necessary for a policy to be predetermined but may “crystallise and develop as actions are set in train and undertaken by the perpetrators.” See *Katanga* trial judgment, para. 1108–10; and *Bemba* trial judgment, para. 159–160. The Elements of Crimes adds the proviso that “[t]he existence of such a policy cannot be inferred solely from the absence of governmental or organizational action. Elements of Crimes, 5, fn.6.
- 73 A number of factors may be considered to infer a state policy, including (a) whether the attack was “planned, directed or organized”; (b) whether the attack involved “a recurrent pattern of violence”; (c) whether public resources were used; (d) whether state forces were involved; (e) whether statements, instructions, or documentation attributable to the state encouraged the attack; or (f) whether the state had an underlying motivation. See *Katanga* trial judgment, para. 1109; and *Bemba* trial judgment, para. 160.



- 74 *Prosecutor v. Gbagbo*, Case no. ICC-02/11-14-Corr, para. 52. The International Criminal Tribunal for the former Yugoslavia confirmed that an attack need only be widespread or systematic under customary international law. See *Prosecutor v. Tadić*, Case no. IT-94-1-T, judgment, para. 648 (May 7, 1997); and *Prosecutor v. Tadić*, Case no. IT-94-1-A, appeal judgment, para. 248 (July 15, 1999).
- 75 *Prosecutor v. Kunarac et al.*, Case nos. ICTY-96-23 and ICTY-96-23/1A, appeal judgment, para. 96 (June 12, 2002).
- 76 *Ibid.*
- 77 *Blaškić* appeal judgment, para. 101, citing *Kunarac* appeal judgment. An attack is “widespread” so long as it entails “the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.” *Prosecutor v. Blaškić*, Case no. IT-95-14, trial chamber judgment, para. 206 (International Criminal Tribunal for the former Yugoslavia, March 3, 2000).
- 78 *Prosecutor v. Bemba*, Case no. ICC-01/05-01/08-424, decision pursuant to art. 61(7)(a) and (b) of the Rome Statute on the charges of the prosecutor against Jean-Pierre Bemba Gombo, para. 83 (June 15, 2009).
- 79 For example, in *Prosecutor v. Bosco Ntaganda*, the ICC found that an attack against the non-Hema civilian population in the Democratic Republic of Congo was widespread because it “resulted in a large number of civilian victims,” occurred across a “broad geographical area,” and was conducted over a period of more than nine months. *Prosecutor v. Bosco Ntaganda*, Case no. ICC-01/04-02/-6, decision pursuant to art. 61(7)(a) and (b) of the Rome Statute on the charges of the prosecutor against Bosco Ntaganda, para. 24 (June 9, 2014).
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- 81 *Kunarac* appeal judgment, para. 94.
- 82 *Ibid.*, para. 98.
- 83 *Prosecutor v. Kunarac, Kovac and Vukovic*, ICTY Case nos. IT-96-23 and IT-96-23/1-T, trial chamber judgment, para. 429 (February 22, 2001); *Prosecutor v. Tadić*, ICTY Case no. IT-94-1-T, trial chamber judgment, para. 648 (May 7, 1997).
- 84 Fortify Rights interviews with eyewitnesses and survivors, Cox’s Bazar District, Bangladesh, December 2016 and March 2017; Wa Lone, “Command Structure of the Myanmar Army’s Operation in Rakhine State,” Reuters, April 25, 2017, <http://www.reuters.com/article/us-myanmar-rohingya-crisis-army-idUSKBN17R18F>.
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- 87 Rome Statute, art. 7(1).
- 88 A perpetrator does not need to have “knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization,” but rather an intent to further the attack is sufficient. See Elements of Crimes, art. 7(2), 5.
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