

**‘THE MOST PERSECUTED  
MINORITY IN THE WORLD’**

# **THE GENOCIDE OF THE ROHINGYA**

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## EXECUTIVE SUMMARY

1. This report focuses on the way in which the international crime of genocide is being committed against the Rohingya with impunity by the state of Myanmar, in particular, its military. It also details how crimes against humanity are being perpetrated. The Islamic Human Rights Commission has collected evidence from Rohingya refugees in Bangladesh regarding atrocities committed on and around 25 August 2017. The report also considers the history of persecution of the Rohingya, contextualising the international crimes that have and are currently being committed.
2. Our report shows that the three elements of the international crime of genocide are present in violence committed against the Rohingya. They are a group, there have been genocidal acts committed against them, and these acts have the intent to destroy them in whole or in part.
3. The crimes committed against the Rohingya also amount to crimes against humanity. Our report shows how the violence meets the legal threshold for crimes against humanity. We show that there have been widespread and systematic attacks against civilian populations, the acts committed fall within the definition contained in Article 7 of the Rome Statute, and there is a state or organisational policy to commit the attacks.
4. The Islamic Human Rights Commission makes the following recommendations based on its findings:
  1. The international community should pressure the Myanmar government to immediately stop attacks against the Rohingya and anti-Muslim violence in general by groups in Myanmar. There are also Hindu Rohingya that have been persecuted and displaced.
  2. The UN Security Council should refer the matter to the ICC Prosecutor in accordance with Article 13(2) of the Rome Statute. It is clear that Myanmar is unwilling and unable to investigate the crimes itself.
  3. IHRC welcomes the ICC Prosecutor's request for a ruling from the ICC on whether it may exercise jurisdiction over the deportation of Rohingya to Bangladesh, under the crime of deportation (the enforced displacement of individuals across an international border),<sup>1</sup> and recommends the ICC Prosecutor's continued investigation into crimes against humanity and the crime of genocide committed in Myanmar.
  4. In support of the recommendation given by the UN High Commissioner for Human Rights, IHRC suggests that the UN Human Rights Council make a recommendation to the General Assembly to establish a "new impartial and independent mechanism... to assist individual criminal investigations of those responsible."<sup>2</sup>

5. UN mandated International Observers should be sent to Arakan State, which may discourage further attacks and can provide the international community with reliable information.
6. The international community, including ASEAN and the UN, should urge the government of Myanmar to abide by the decision of the UN General Assembly's human rights committee of 12 November 2013 to grant citizenship to the Rohingya, allow the internally and externally displaced to return, and cease all forms of discrimination and abuse against them in particular and Muslims and other discriminated minorities in general.
7. The international community should support governments in the region in abiding by the international law of nonrefoulement by protecting refugees and asylum seekers, allowing them into their country and not removing them to Myanmar where they are in danger of further persecution.

## INTRODUCTION

5. The Islamic Human Rights Commission (IHRC) is an independent, non-profit, campaigns, research and advocacy organisation based in London, UK. Since its establishment in 1997, the IHRC has developed relations with a wide range of different organisations around the world in order to campaign for justice for all peoples, regardless of their racial, confessional or political background.
6. IHRC has at the core of its mandate the investigation of human rights abuses and seeks to utilise the existing international legal framework for the referral of such abuses to all relevant international bodies, including the UN Human Rights Council and the International Criminal Court in The Hague.
7. This report focuses on the way in which the international crime of genocide is being committed against the Rohingya with impunity by the Myanmar state, in particular, the military. It also details how crimes against humanity are being perpetrated. IHRC has collected evidence from Rohingya refugees in Bangladesh regarding atrocities committed on and around 25 August 2017. The report also considers the history of persecution of the Rohingya, contextualising the international crimes that have been and are currently being committed.

### **The International Legal Framework – Accountability and Enforcement**

8. The international criminal framework and the international human rights framework provide two overlapping bases for analysing the atrocities committed in Myanmar.
9. Myanmar is a signatory to the Genocide Convention.<sup>3</sup> Under Article 1 of the Convention, signatories accept that genocide is an international crime. Under the same provision, Myanmar is bound to prevent and punish genocide. However, the enforcement mechanisms under the Convention for any genocide committed by Myanmar are particularly weak for two reasons. Firstly, Myanmar has made a reservation against the Genocide Convention that prevents any “foreign Courts and tribunals jurisdiction over any cases of genocide ... within the Union [or Burma] territory.”<sup>4</sup> Secondly, the Genocide Convention does not have an associated Treaty Body to monitor state compliance with the Convention. Consequently, whilst the Genocide Convention provides a legal definition of genocide by which to analyse what is happening in Myanmar, it does not necessarily provide an international judicial mechanism for holding Myanmar authorities to account.



10. The Rome Statute of the International Criminal Court (ICC) uses the same definition as that contained in the Genocide Convention. Myanmar is not a signatory to the Rome Statute and therefore has not accepted the jurisdiction of the ICC in relation to the crimes contained within it. However, in accordance with Article 13(2), the UN Security Council has authority to refer cases to The Office of the Prosecutor of the ICC and one of the objectives of this communication is to encourage such a referral.
11. IHRC is aware that the ICC will only exercise its jurisdiction when the country in question is unwilling or unable to investigate the crimes itself. Myanmar's UN representative has denied that there has been genocide or ethnic cleansing in Myanmar.<sup>5</sup> The state also maintains that its actions against the Rohingya have been for national security purposes, to tackle 'terrorism' and 'militants', with Aung San Suu Kyi, Myanmar's de facto leader, blaming 'fake news' for promoting the interests of 'terrorists'.<sup>6</sup> The fact the state refuses to acknowledge that potential international crimes may have been committed demonstrates an unwillingness and inability to investigate the crimes itself.
12. The UN Human Rights Commissioner and successive Special Rapporteurs on the human rights situation in Myanmar have investigated and collected evidence regarding the "widespread, systematic and shocking brutal attacks against the Rohingya community by the Myanmar security forces, acting at times in concert with local militia."<sup>7</sup> This report relies on and builds on that evidence, supporting the recommendation given by the UN High Commissioner for Human Rights that the UN Human Rights Council make a recommendation to the General Assembly to establish a "new impartial and independent mechanism... to assist individual criminal investigations of those responsible."<sup>8</sup>

### **Structure of this report**

13. This report starts by setting out the methodology used by IHRC during its fact-finding mission in Bangladesh in September 2017. This is followed by some geographical context for the crimes committed in Myanmar (for historical context please see Appendix A). The report goes on to consider the crime of genocide, setting out the legal framework and providing factual evidence satisfying each of the legal components of this crime. Thereafter, crimes against humanity are dealt with in the same way. The report ends by offering some recommendations to international bodies, with the objectives of ending the suffering of the Rohingya and holding those responsible for these international crimes to account.

## **IHRC FACT-FINDING MISSION IN SEPTEMBER 2017**

14. This report is a preliminary assessment of the violence taking place in Myanmar against the Rohingya community. The report is based on a six-month study funded by the Islamic Human Rights Commission. The project consisted of a field visit to Cox's Bazaar, Bangladesh to interview Rohingya refugees about their experiences and a review of news articles and other literature in the public domain. The purpose of the study is to make an initial assessment about whether or not Myanmar's persecution of the Rohingya constitutes genocide / a crime against humanity.
15. The research team comprised Narjis Khan, Mohammad Choudhury, Ahmed Uddin and Abed Choudhury.
16. Two members of the team (Ahmed Uddin and Abed Choudhury) visited Cox's Bazaar from 25 to 30 September 2017 and conducted interviews with refugees in the Kutupalong and Balukhali refugee camps, Sadar Hospital, at the army run sorting centres for newly arrived refugees before they were taken to the camps, as well as a beach on the southern tip of Teknaf where boats laden with refugees land, known locally as zero point<sup>9</sup>. They also spoke to NGO staff, local and international journalists, lawyers and businesspeople.
17. The interviews were designed to elicit the personal accounts of the Rohingya refugees and to document the genocidal persecution they had experienced or witnessed.
18. The primary purpose of the field visit was to assess the nature of the violence and the quality of the evidence the witnesses are able to provide.
19. Our researchers discussed with the interviewees the nature of their work, and the purpose of the research, assured them of their confidentiality and secured consent in every case. None of the refugees interviewed for this project are named in order to protect their identities and ensure their safety.
20. The interviews with the Rohingya refugees were conducted with the support of Bangladeshi translators. A summary of the interviews can be found at Appendix B. The unstructured and chaotic nature of the camps and the prohibition against refugees leaving the camps meant that interviews began immediately upon entering the camps, with researchers randomly selecting those willing to speak. Women in the camps mostly stayed inside their tents for their own safety, but our researchers found that both men and women wanted to recount their experiences to the outside world.
21. For the purposes of this report, the fieldwork was supplemented by a review of media, other NGO reports and academic literature surveys.

## THE GEOGRAPHICAL CONTEXT

22. Situated in the region of south-east Asia, Myanmar is bordered by Bangladesh and India to the west, Thailand and Laos to its east, and China to its north-east. Its capital is Naypyidaw which is in central Myanmar, north of the previous capital, Yangon. In 1997, Myanmar became a member of the Association of Southeast Asian Nations (ASEAN), an intergovernmental organisation promoting Pan-Asianism and regional economic, political, and security cooperation.
23. Myanmar has a population of approximately 55 million.<sup>10</sup> There are 135 ethnic groups recognised by the Myanmar government. These ethnic groups are categorised under eight major national races mentioned in the Burma Citizenship Act 1982.<sup>11</sup> They are the Kachin, Kayah, Karen, Chin, Bamar, Mon, Rakhine and Shan. 68% of Myanmar's population are Bamar.<sup>12</sup> The Kachin, Karen and Shan are among various groups who share a history of violent conflicts with the Myanmar government. The Rohingya, who are the subject of this communication, are not included among the 135 ethnic groups and are considered illegal Bengali immigrants.
24. According to the 2014 Census, Buddhists make up 88% of the country's population, while Christians make up 6.2% and Muslims 4.3%.<sup>13</sup> The largest of the Muslim groups are the Rohingyas. Prior to the 2017 genocide, the Rohingya population was estimated between 1 million and 1.3 million.<sup>14</sup> The Kaman, who are citizens of Myanmar, predominantly live in Rakhine along with the Rohingya. Burmese converts to Islam are known as 'Bamar Muslims'. Burmese Indians (Muslims of Indian descent) mainly reside in the former capital, Yangon. The children of inter-ethnic marriages between Indian Muslim fathers and Burmese mothers are known as Zerbadi Muslims.<sup>15</sup> Many Zerbadis claim to be Bamar Muslims out of fear of being viewed as Indians. The Panthay (Chinese-descended Muslims) live predominantly in the northern regions and the Shan State, whilst the Pashu who are descendants of Malay people reside in the south of the country.<sup>16</sup>
25. Rakhine State is the westernmost part of Myanmar bordered by the Bay of Bengal, the Magway and Bago regions lie to the east, Ayeyarwardy to the south, with Chin State, Chittagong and Bangladesh to the north. Rakhine covers 36,778km<sup>2</sup> with Sittwe as its capital. The state population was estimated at 3.22 million with a density of 88 people per square kilometre, 16% of the population living in urban areas, and the remaining 84% in rural areas.<sup>17</sup>

## GENOCIDE

26. This report now considers how a genocide is being committed against the Rohingya, setting out the legal definition and analysing the evidence that exists which satisfies that definition.
27. The Convention on the Prevention and Punishment of the Crime of Genocide, adopted in 1948, known as the 'Genocide Convention', defines genocide in Article 2 as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:
1. Killing members of the group;
  2. Causing serious bodily or mental harm to members of the group;
  3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  4. Imposing measures intended to prevent births within the group;
  5. Forcibly transferring children of the group to another group.
28. The Genocide Convention confirms in Article 1 that genocide, whether committed in peace or war, is a crime under international law which the parties to the Convention undertake to prevent and punish. Myanmar ratified the Genocide Convention on 14 March 1956 and is therefore bound by the Convention's provisions.<sup>18</sup>
29. The above definition of genocide is found again in the Rome Statute of the International Criminal Court at Article 6, with Article 5 confirming that the ICC has jurisdiction over the crime of genocide. The definition can also be found in the Statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).<sup>19</sup>
30. The definition can be broken down into three elements. Firstly, the identity element of the group which is being subjected to the genocidal acts with intent (the 'group' element); secondly, the genocidal acts themselves listed in a-e of Article 2 of the Convention. Finally, the intention element i.e. the genocidal acts must be committed with the intent to destroy, in whole or in part, the particular group. Each of these elements will be examined individually below.

### (1) The Group Identity

31. The subject of the genocide must be a national, ethnic, racial or religious group. Raphael Lemkin first coined the word 'genocide' and explained that it derived from the word 'genos' in Greek, referring to a race, nation or tribe and 'cide' which

has its roots in Latin, from the word 'caedere' meaning to kill.<sup>20</sup> Consequently, the focus on group identity is crucial to understanding genocide.

32. The ICTR has held that:

1. A national group is defined as a 'collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties.'<sup>21</sup>
  2. An ethnic group is defined as a group 'whose members share a common language or culture'.<sup>22</sup>
  3. The conventional definition of a racial group is 'based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors.'<sup>23</sup>
  4. A religious group is one 'whose members share the same religion, denomination or mode of worship'.<sup>24</sup>
33. Furthermore, the ICTR has noted that whether a particular people satisfy the group requirement "ought to be assessed on a case-by-case basis by reference to the objective particulars of a given social or historical context, and by the subjective perceptions of the perpetrators."<sup>25</sup> The ICTY has echoed this by stating that "a group's cultural, religious, ethnical or national characteristics must be identified within the socio-historic context which it inhabits" and that the Court also "identifies the relevant group by using as a criterion the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics."<sup>26</sup>
34. The ICTR and ICTY have both held that the victims of genocide must be targeted because of or by reason of their membership in a group.<sup>27</sup>

### *Are the Rohingya a 'group'?*

35. Based on both objective and subjective standards, the Rohingya certainly qualify as a 'group' for the purposes of the definition of genocide. From an objective perspective, the majority of the Rohingya share the same religion (Islam) and ethnicity. They share the same language and culture which is differentiated from the Rakhine Buddhists, who represent the majority in that region.
36. From a subjective perspective, the Rohingya have been singled out for stigmatisation, denoting their status as a particular 'group' for the purposes of the definition of genocide. This is evident when one looks at the contested narrative regarding the history of the Rohingya in Rakhine. Most Rakhine nationalist Buddhists claim that the Rohingya are foreigners, illegal immigrants who migrated from East Bengal during British rule of Burma and just after Pakistan's independence. In reality, there are references to the Rohingya living in Rakhine before the colonial period. For example, in 1799, Dr Buchanan's study of languages noted "The first [language] is that spoken by the Mohammedans, who



have long settled in Arakan, and who call themselves Rooinga, or natives of Arakan.”<sup>28</sup> Other academics have commented on the Rakhine region being a multi-ethnic and multi-faith area given its geographical location. Its coast faces into the Bay of Bengal, merging into the Indian Ocean, and therefore was naturally placed for interdependence culturally and economically with Bengal, and therefore a site for various ethnic and faith groupings.<sup>29</sup> The creation of certain historical ‘myths’ about the Rohingya and their presence in Myanmar demonstrates the way in which they are seen to be a particular ‘group’, with those ‘myths’ used to justify maltreatment of the Rohingya.

37. Legally, the Rohingya are not recognised by the state within the 135 ethnic groups of Myanmar contained in the 1982 Citizenship Act. Those 135 groups are automatically entitled to citizenship whereas those who are not, such as the Rohingya, must obtain nationality through an application procedure with stringent and difficult criteria, making it as hard as possible for the Rohingya to succeed in any such applications.<sup>30</sup> For example, to obtain nationality, one has to provide evidence of his or her family having lived in Myanmar since before 1948 but many Rohingya lack the resources to keep documentary evidence of their family’s residence.<sup>31</sup>

38. Maung Zarni and Alice Cowley trace the stigmatisation and ‘otherisation’ of Rohingya, codified in the country’s legislation, to colonial-era policies. They argue that “...under Britain’s colonial rule (1824-1948), the Burmese experienced colonial economic exploitation as two-layered: the British occupied the top of the colonial hierarchy, socially, economically, and politically; the Indians (and to a lesser extent Chinese) dominated the middle layer; and finally, the Burmese, especially tradition-bound Buddhists, were at the bottom. Anti-foreign, most specifically, anti-Indian and anti-Chinese, racism developed as a historical and societal reaction to this sordid state of Burmese affairs.”<sup>32</sup>

39. Consequently, following independence, the notion of a state identity based on ethnic and racial lines which favoured Myanmar’s Buddhist population was particularly appealing. During the era of military dictator General Ne Win from 1962, this sentiment was embedded within the identity of the state, its policies and structures, for example in the 1982 Citizenship Act. In the drafting of that legislation, General Ne Win made the following speech:

“We, the natives or Burmese nationals, were unable to shape our own destiny. We were subjected to the manipulations of others from 1824 to 4 January 1948. Let us now look back at the conditions that prevailed at the time we regained independence on 4 January 1948. We then find that the people in our country comprised of true nationals, guests, issues from unions between nationals and guests or mixed bloods, and issues from unions between guests and guests.... This became a problem after independence. The problem was how to clarify the position of guests and mixed bloods...”<sup>33</sup>

As the speech makes clear, “[R]acism was widespread and colonially rooted, especially toward the dark-skinned...”<sup>34</sup>

40. Hence, from both an objective and subjective perspective, the Rohingya satisfy the criterion of being a 'group'. There are certain objective characteristics such as ethnicity and religion particular to the Rohingya but they are also singled out as a particular group within Myanmar.

## **(2) The Acts**

41. Article 2 of the Genocide Convention, mirrored in Article 6 of the Rome Statute, sets out what acts, when committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group constitute genocide. These are:

*1. Killing members of the group.*

Both the ICTY and ICTR have stated that for this act, there need not be premeditation.<sup>35</sup> There simply needs to be an intention to kill that results in the victims' death.

*2. Causing serious bodily or mental harm to members of the group.*

The ICTR has noted that the harm does not necessarily have to be permanent and irremediable and includes acts of torture, be they bodily or mental, inhuman or degrading treatment or persecution.<sup>36</sup>

*3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.*

This has been found to include subjecting a group to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement.<sup>37</sup>

*4. Imposing measures intended to prevent births within the group.*

The ICTR has noted that this can include rape as "rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate."<sup>38</sup>

*5. Forcibly transferring children of the group to another group.*

## ***Genocidal acts against the Rohingya***

### ***August 2017 onwards***

42. IHRC's fact-finding mission focused on events in the summer of 2017. Of the 22 individuals interviewed by the IHRC, 19 said that they had relatives or knew people who had been either killed or seriously injured by the Myanmar military. One interviewee estimated the death toll of nearby villages to exceed 3000 people, with the death toll in his own village more than 400 people. Another interviewee

mentioned his mother being burnt alive, and another mentioned her father being shot dead. Others mentioned people being killed in mine blasts or being beheaded by the military. Three of those interviewed stated that women in their villages had also been raped. The majority of those interviewed said that the attacks took place on or around 25 August 2017.

43. These accounts align with evidence collected by other organisations. For example, Amnesty International's report *"My World is Finished". Rohingya Targeted in Crimes Against Humanity in Myanmar* details widespread and unlawful killings carried out by the Myanmar security forces, at times with the support of vigilante mobs during the forces' scorched-earth campaign, focusing on events from 25 August 2017. Amnesty also interviewed seven survivors of sexual violence carried out by the Myanmar military, four of them women and a 15-year-old girl who had been raped.<sup>39</sup>

44. Similarly, the UN Human Rights Office of the High Commissioner (OHCHR) summarised its findings from its rapid response mission in September 2017 as follows:

*"Credible information indicates that the Myanmar security forces purposely destroyed the property of the Rohingyas, scorched their dwellings and entire villages in northern Rakhine State, not only to drive the population out in droves but also to prevent the fleeing Rohingya victims from returning to their homes."*<sup>40</sup>

45. The events of the summer of 2017 cannot be viewed in isolation, but instead should be analysed within their historical context. This is not the first time genocidal acts have been committed against the Rohingya, rather the events are part of a larger picture of a more long-term strategy to drive the Rohingya out of Myanmar. Some of the pre-2017 history is mentioned below.

#### Pre-2017

46. In 1978, the military carried out 'Operation Dragon King' against the Rohingya in Rakhine. The purpose of this was: "designating citizens and foreigners in accordance with the law and taking actions against foreigners who have filtered our country illegally."<sup>41</sup> The Rohingya, deemed illegal immigrants, were detained, tortured, murdered and raped. As a result, it is estimated that over 220,000 Rohingyas were forcibly displaced, fleeing to Bangladesh.<sup>42</sup> As is the case today, the Myanmar Government claimed that the violence was first initiated by "armed bands of Bengalis", "ramping Bengali mobs" and "wild Muslim extremists".<sup>43</sup>

47. Large-scale violence resulting in forced displacement also occurred in May 1991, March 1992, in 2001 and in 2012, with the military playing the key role in inflicting violence.<sup>44</sup> In 2012, there was a particularly brutal campaign against the Rohingya, carried out by state authorities and civilian mobs. Evidence collected by human rights organisations suggested the killings were planned and perpetrated with the purpose of driving out the Rohingya. The state both participated in this violence through its agents but also facilitated it by allowing the violence to continue.<sup>45</sup> Human Rights Watch described the events in October 2012 as:



*"...organized, incited, and committed by local Arakanese political party operatives, the Buddhist monkhood, and ordinary Arakanese, at times directly supported by state security forces. Rohingya men, women, and children were killed, some were buried in mass graves, and their villages and neighborhoods were razed. While the state security forces in some instances intervened to prevent violence and protect fleeing Muslims, more frequently they stood aside during attacks or directly supported the assailants, committing killings and other abuses. In the months since the violence, the Burmese government of President Thein Sein has taken no serious steps to hold accountable those responsible or to prevent future outbreaks of violence."*<sup>46</sup>

48. Besides these episodes of violence, the Myanmar government has a history of discriminatory laws and practices against the Rohingya. The 1982 Citizenship Act has already been mentioned. In the 1990s, a law was passed requiring all those in Rakhine State to obtain permission before getting marriage licences but this was only enforced against Muslims. In order to get such licences, men have to shave their beards and women are not allowed to wear any face or head coverings in the licence photographs. Keeping beards and wearing coverings are practices which are particular to the Muslim population and therefore are deliberate obstacles to the Rohingya obtaining such licences. Furthermore, since 2005, a strict two-child policy has been imposed in Maungdaw and Buthidaung, in northern Rakhine on the Rohingya.<sup>47</sup>

49. The following extract from the report of the Special Rapporteur on the situation of human rights in Myanmar in April 2014, concisely summarises the plight of the Rohingya:

*"Taking into consideration the information and allegations the Special Rapporteur has received throughout the course of his six years on this mandate,<sup>48</sup> including during his five visits to Rakhine State, and in particular since the June 2012 violence and its aftermath, he concludes that the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court. He believes that extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State. He believes that the deprivation of health care is deliberately targeting the Rohingya population, and that the increasingly permanent segregation of that population is taking place. Furthermore, he believes that those human rights violations are connected to discriminatory and persecutory policies against the Rohingya Muslim population, which also include ongoing official and unofficial practices from both local and central authorities restricting rights to nationality, movement, marriage, family, health and privacy."*<sup>49</sup>

50. The UN OHCHR completed a further flash report in February 2017, after its team visited Bangladesh from 8–23 January 2017 to interview Rohingya refugees. The team collected testimonies from 220 individuals who had fled Rakhine State in the aftermath of attacks on 9 October 2016. The team estimated that 66,000 Rohingya

had crossed the border to Bangladesh since that date. The Myanmar military and security forces began 'clearance operations' on 9 October 2016 after it was alleged that nine police officers were killed. According to testimonies collected, during these 'clearance operations', the Rohingya were subjected to beatings, cruel, inhuman or degrading treatment in homes, mosques and sometimes in makeshift detention centres. The report concludes that the following types of violations were frequently experienced in the clearance operation area: "extrajudicial executions or other killings, including by random shooting; enforced disappearance and arbitrary detention; rape, including gage rape, and other forms of sexual violence; physical assault including beatings; torture, cruel, inhuman or degrading treatment or punishment; looting and occupation of property; destruction of property; and ethnic and religious discrimination and persecution."<sup>50</sup> Human Rights Watch, relying on satellite images, also identified 1,500 buildings in Rakhine State burned between 9 October 2016 and 23 November 2016. The findings of this NGO refuted the claim by the Myanmar military and government that the Rohingya were responsible for burning down their own villages.<sup>51</sup>

51. Fast forward to the events of the summer of 2017 and based on the above, it is no surprise that the UN Human Rights Office of the High Commissioner's rapid response mission in September 2017 highlights the fact that before the "crackdown of 25 August", a strategy was pursued to:

1. Arrest and arbitrarily detain male Rohingyas between the ages of 15-40 years;
2. Arrest and arbitrarily detain Rohingya opinion-makers, leaders and cultural and religious personalities;
3. Initiate acts to deprive Rohingya villages of access to food, livelihoods and other means of conducting daily activities and life;
4. Commit repeated acts of humiliation and violence prior to, during and after 25 August to drive out Rohingya villagers en masse through incitement to hatred, violence and killings, including by declaring the Rohingyas Bengalis and illegal settlers in Myanmar;
5. Instill deep and widespread fear and trauma – physical, emotional and psychological, in the Rohingya victims via acts of brutality, namely killings, disappearances, torture, and rape and other forms of sexual violence.<sup>52</sup>

52. In summary, it is clear from the evidence collected by IHRC, other organisations and the United Nations, that acts carried out by the Myanmar military both in 2017 and beforehand fall into the recognised categories under the Genocide Convention. There is evidence of:

1. The military and security forces killing the Rohingya.
2. The military and security forces causing serious bodily or mental harm to members of the group through the violence inflicted against the Rohingya

and by not taking measures to prevent violence carried out by civilian mobs.

3. The deliberate infliction of conditions of life calculated to bring about the Rohingya's physical destruction, such as depriving them of access to food, aid and health care.

4. Imposing measures intended to prevent births within the Rohingya, including sexual violence, rape, the two-child policy and making it as difficult as possible for them to obtain marriage licences.

53. Thus far, 2 of the 3 elements of the crime of genocide have been established – the 'group' element and the genocidal acts. Below, the final element is discussed – intention.

### **(3) Intent in whole or part**

54. The element which differentiates genocide from other international crimes is the requirement of intention. As stated by the ICTR, "Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged."<sup>53</sup>

55. The ICTR has noted how difficult it is to determine intent and states "in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact." The ICTR goes on to detail how the genocidal intent can be deduced from the "general context" of the genocidal acts with factors such as "the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act."<sup>54</sup>

56. The ICTR has also found that "the use of derogatory language toward members of the targeted group"<sup>55</sup> can indicate intention. Other relevant indicators include "the number of group members affected"; "the physical targeting of the group or their property"; "the weapons employed and the extent of bodily injury"; "the methodical way of planning"; "the systematic manner of killing"; and "the relative proportionate scale of the actual or attempted destruction of a group."<sup>56</sup>

57. Consequently, various factual indicators are sufficient to demonstrate an intention as required under the definition of genocide.

### ***Genocidal intent against the Rohingya***

#### **1. The Scale of Atrocities and their General Nature**

58. The UN Office of the High Commissioner for Human Rights has been refused access to Rakhine State over the past year by the Myanmar authorities,<sup>57</sup> as have

other NGOs seeking to collect evidence. The UN Special Rapporteur on human rights in Myanmar was refused access to Myanmar in December 2017, and the Myanmar government withdrew its cooperation with her for the duration of her tenure.<sup>58</sup> This makes the task of identifying the scale of atrocities somewhat difficult, but also demonstrates the more sinister point that the authorities are seeking to conceal the potential scale of the suffering of the Rohingya.

59. Through investigations in Cox's Bazaar in Bangladesh, where most fleeing Rohingya have sought refuge, and through the use of satellite images, NGOs and UN bodies have been able to provide some statistics on how many people have fled Rakhine State.
60. According to the UN OHCHR's rapid response mission report, as of 8 October 2017, an estimated 519,000 new Rohingya arrivals had been reported since 25 August 2017.<sup>59</sup> The numbers of those fleeing are probably much higher given the high level of underreporting. By 2 December 2017, the number of refugees having fled to Bangladesh was estimated to be 626,000.<sup>60</sup>
61. According to surveys carried out by Doctors Without Borders (MSF) in refugee settlement camps in Bangladesh, between 25 August 2017 and 24 September 2017, at least 6,700 Rohingya, in the most conservative estimates, were killed in Rakhine State, with at least 730 children below the age of five.<sup>61</sup> MSF acknowledges that the numbers are likely to be an underestimation given that the organisation did not carry out surveys in all refugee settlements in Bangladesh and of course, the surveys do not account for families that were not able to escape the violence in Myanmar.
62. The statistics referenced above are evidence of the scale of the atrocities but the nature of the atrocities is also relevant in demonstrating intention. The evidence collected by IHRC shows that the violence committed on and around 25 August 2017 was indiscriminate in terms of age and gender. People were beaten, beheaded and shot; houses were torched; women were raped and then killed. Furthermore, as noted by various NGOs and UN bodies, the violence was "systematic, organised, and ruthless."<sup>62</sup> It is not difficult to infer a genocidal intention from this level of coordination along with the scale and gravity of the violence.

## **2. Deliberate targeting of one group and exclusion of others**

63. Some of those that IHRC interviewed, when commenting on the incidents on and around 25 August 2017, stated that the Myanmar military had separated the Hindus and Buddhists living around the Rakhine region before engaging in a campaign of violence specifically against the Muslim Rohingya populations.
64. The UN OHCHR's rapid response mission report in September 2017 notes that the evidence they collected showed human rights violations were committed against the Rohingya in Rakhine "often in concert with armed Rakhine Buddhist individuals."<sup>63</sup> This accords with the evidence IHRC collected, in which individuals interviewed stated that the violence against them was committed by the military and Rakhine Buddhists.



65. The exclusion from other groups in Myanmar, and even the collusion between the military and other civil society groups such as Rakhine Buddhists, is evidence of the way in which the Rohingya have been deliberately targeted because of their being Rohingya.

### 3. Derogatory language and rhetoric

66. Various Members of Parliament have made statements about the Rohingya that continue to 'otherise' them and portray them as foreigners who are not part of the national identity of Myanmar, laying the foundation for violent acts to be committed against them. For example:

- In 2009, Myanmar's former Consul-General, Ye Myint Aung, wrote to heads of foreign missions in Hong Kong describing the Rohingya as "ugly ogres" and denying that the Rohingya are "Myanmar People".<sup>64</sup>
- In 2012, Myanmar's Minister for Home Affairs, Lieutenant-General Ko Ko, is reported to have told Parliament that "Originally, only Rakhine nationals lived in Rakhine State, but later the ratio of Bengali [Rohingya] to Rakhine nationals in Maungdaw and Buthidaung has become 94 to six percent due to illegal immigration of Bengali and long-term settlement in the region."<sup>65</sup>
- In 2015, the Arakan National Party ('ANP'), led by Dr Aye Maung, former chairman of the Party, won the most contested seats in Rakhine State's legislature. A major element of the Party's campaign was rhetoric aimed at demonising the Rohingya. The ANP is reported to have handed out leaflets saying, 'Love your nationality, keep pure blood, be Rakhine and vote ANP.' The Party's vice-chairwoman is reported to have said that the ANP would like to see the Rohingya moved into camps or deported.<sup>66</sup> Dr Aye Maung is also reported to have said in 2012 that "The Rakhine State should be established in the way Israel was established" and to have referred to the desire of Rakhine people to drive out the Rohingya from Rakhine.<sup>67</sup>
- In an interview with BBC's Jonah Fisher, Aung Win MP, stated in November 2016, that it was the Rohingya who had burnt down their own houses and there was no way the soldiers could have raped the women, because the Rohingya are "dirty". He then explained that Rohingya women have a very low standard of living and poor hygiene and are therefore not attractive, so neither the local Buddhist men or soldiers are interested in them.<sup>68</sup> Aung Win MP made these comments when he was chairman of the Rakhine Investigation Committee, which was set up in October 2016 and made up of individuals from different political parties, following an incident in Rakhine State which left nine policemen dead. Aung Win reportedly said that the Rohingya attackers did it to "build Rohingya society."<sup>69</sup> As detailed above in this report, after this incident, the Myanmar military and security forces began 'clearance operations', which, according to testimonies collected by the UN OHCHR, included subjecting Rohingya civilians to beatings, cruel inhuman or degrading treatment in homes, mosques and sometimes in makeshift detention centres.

- In September 2017, Myanmar army's commander-in-chief is reported to have defended the clearing of Rohingya villages as part of an essential plan to root out perceived militant groups.<sup>70</sup>
  - In January 2018, former army general U Tin Aye of the Union Solidarity and Development Party is reported to have asked Immigration Minister Thein Swe what the government was doing to inform the world that there was no such race as the Rohingya in Myanmar. In response, Minister Thein Swe said that the word 'Rohingya' had never been used by Myanmar officials travelling abroad and they object to it if used by others.<sup>71</sup>
67. At the civil society level, Ashin Wirathu is a well-known Buddhist monk who has propagated anti-Rohingya views. He has reportedly referred to Myanmar's Muslim minority as "the enemy"<sup>72</sup> and in a BBC interview with Jonah Fisher, he said "Muslims are only well behaved when they are weak. When they are strong they are like a wolf or a jackal, in large packs they hunt down other animals." When asked if he was saying that when Muslims are in big groups that they will naturally attack Buddhists, he replied "Not only Buddhists, they do not respect other religions either. Apart from themselves, they don't recognise others as being human. They attack Christians and Hindus too. In fact they attack everyone. If you don't believe me hand over your nuclear technology to the Taliban. I promise you, your country will soon disappear, as will the United States."<sup>73</sup>
68. Cartoons contained in local newspapers also vilify the Rohingya, for example, one cartoon entitled 'Crocodile Tears', portrays Rohingya refugees as crocodiles who have killed animals on shore but are fleeing towards a Western journalist.<sup>74</sup>
69. This demonisation of the Rohingya in the language and rhetoric of officials, politicians and civil society leaders is all part of a general context in which genocidal acts against the Rohingya take place, and represent evidence from which it is possible to infer a genocidal intent.
- #### 4. General conditions and discriminatory policies
70. As detailed elsewhere in this report, there are policies, practices and attitudes embedded in Myanmar society which create an environment of demonisation of the Rohingya. The strict two child policy, only imposed on the Rohingya, is one example of such discrimination. There are also reports of the police and military carrying out invasive 'spot checks' on Rohingya homes in Rakhine State to allegedly check for illegal immigrants. These checks are reported to be violent and used as a pretext to arrest and detain Rohingya men.<sup>75</sup>
71. One of the factors which provides strong evidence of an intention to destroy in whole or in part the Rohingya is the fact that humanitarian aid is either prevented from reaching the Rohingya desperately in need of it, or there are serious obstacles in place that make it difficult for the aid to reach the Rohingya. Furthermore, there are restrictions on the freedom of movement of the Rohingya community, preventing them from seeking aid. The Advisory Commission on Rakhine State, headed by Kofi Annan, published its report on 23 August 2017 and found that since October 2016, humanitarian activities had either been

prevented by the authorities or are bound by time-consuming processes, such as obtaining weekly travel authorisation from the District Commissioner, making planning activities uncertain.<sup>76</sup>

72. The Rohingya also face restrictions on their movement. According to the report of the Advisory Commission on Rakhine State, after the violence in 2012, about 120,000 Muslims were confined to internally displaced person (IDP) camps in Rakhine State. Those in IDP camps are completely denied any freedom of movement, whilst others not in IDP camps in northern Rakhine face formal restrictions in the form of legal orders which prevent movement. The report notes it is a "patchwork of government restrictions, ad hoc decisions by local officials, and exorbitant travel costs due to corrupt practices by government officials" which causes the restrictions on freedom of movement.<sup>77</sup> As a result of these restrictions, access to healthcare, education and economic activity is seriously hindered.
73. Confining the Rohingya, preventing access to healthcare, imposing discriminatory measures on them such as the two-child policy, as detailed above, are all examples of the general conditions in which violence is perpetrated against this group. One can infer from these factors generally, an intent on the part of the authorities to wipe out the Rohingya, in whole or in part.

#### **(4) Conclusion on Genocide**

74. To conclude this section of the report, the following is an extract from a statement made by the UN High Commissioner for Human Rights on 5 December 2017, with our added emphasis in bold:

*"...considering the decades of statelessness as well as systematic and systemic discrimination against the Rohingya; policies of segregation, exclusion and marginalization; long-standing patterns of violations and abuses with little or no access to justice and redress; and considering the recent allegations of killing by random firing of bullets, use of grenades, shooting at close range, stabbings, beatings to death, and the burning of houses with families inside; the serious bodily or mental harm inflicted on Rohingyas including children; the subjection to various forms of torture or ill-treatment, being beaten, sexually abused, raped; considering the forced displacement and systematic destruction of villages, homes, property and livelihoods; considering also that Rohingyas self-identify as a distinct ethnic group with their own language and culture, and are also deemed by the perpetrators themselves as belonging to a different national, ethnic, racial or religious group – **given all of this, can anyone rule out that elements of genocide may be present?**"<sup>78</sup>*

75. The evidence presented above confirms that the three elements of the international crime of genocide are present in the case of the Rohingya. They are a group, there have been genocidal acts committed against them and these acts have the intention of destroying them in whole or in part.

## CRIMES AGAINST HUMANITY

76. The focus of this report has been on demonstrating that a genocide is being committed against the Rohingya.

77. Much of the evidence presented above in relation to genocide also demonstrates that crimes against humanity have been committed, and hence, is not repeated in the same level of detail again below.

78. According to Article 7 of the Rome Statute, a crime against humanity means 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:

1. Murder;
2. Extermination;
3. Enslavement;
4. Deportation or forcible transfer of population;
5. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
6. Torture;
7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
8. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender..., or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
9. Enforced disappearance of persons;
10. The crime of apartheid;
11. Other inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

79. Breaking down this definition, we can see that there must be:

1. A widespread and systematic attack against a civilian population
2. Any of the acts from (a) to (k) must be part of the attack



3. There must be a state or organisational policy to commit the attack.<sup>79</sup>

80. Each element is considered below.

### **(1) A Widespread and Systematic Attack Against a Civilian Population**

81. The ICTR has pointed out that an attack need not require the use of armed force. It is generally defined as an unlawful event or series of events.<sup>80</sup> Widespread refers to the large-scale nature of the attack and systematic describes the organised nature of the attack.<sup>81</sup>

82. The ICTY held that what constitutes a “widespread” or “systematic” attack is “a relative exercise in that it depends upon the civilian population which, allegedly, was being attacked.” It went on to say that “the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements...”<sup>82</sup>

83. The civilian population must be the primary object of the attack.<sup>83</sup> The targeted population will be a civilian one even if individuals within it at one time bore arms as long as the population is predominantly civilian.<sup>84</sup>

#### ***Has there been a widespread and systematic attack against the Rohingya, a civilian population?***

84. Both from a long-term historical perspective and from focusing on isolated events, such as those of August 2017, it is clear that there has been a widespread and systematic attack against the Rohingya, and that the overwhelming majority of victims are civilians. As noted elsewhere in this report, the UN Human Rights Commissioner and successive Special Rapporteurs on the human rights situation in Myanmar have investigated and collected evidence regarding the “widespread, systematic and shocking brutal attacks against the Rohingya community by the Myanmar security forces, acting at times in concert with local militia.”<sup>85</sup>

85. In terms of scale, again as detailed when analysing genocidal intent, according to surveys carried out by Doctors Without Borders (MSF) in refugee settlement camps in Bangladesh, between 25 August 2017 and 24 September 2017, at least 6,700 Rohingya, in the most conservative estimates, were killed in Rakhine State, with at least 730 children below the age of five years.<sup>86</sup> MSF acknowledges that the numbers are likely to be an underestimation given that the organisation did not carry out surveys in all refugee settlements in Bangladesh and of course, the surveys do not account for families that were not able to escape the violence in Myanmar.

86. The statistics referenced above are evidence of the scale of the attack against the Rohingya. The evidence collected by IHRC shows that the violence committed on and around 25 August 2017 was indiscriminate in terms of age and gender. People were beaten, beheaded and shot; houses were torched; women were raped and then killed. Furthermore, as noted by various NGOs and UN bodies, the violence was “systematic, organised, and ruthless.”<sup>87</sup>

## **(2) Acts Must be Part of the Attack**

87. This requires that the acts from (a) to (k) committed are not isolated from the wider attack being committed.<sup>88</sup>

### ***Which acts have been committed against the Rohingya and are they part of a widespread and systematic attack?***

88. As detailed when considering the crime of genocide earlier in this report, there is clear evidence of several of the acts listed in the Rome Statute which constitute crimes against humanity. As the Special Rapporteur on the situation of human rights in Myanmar in April 2014 wrote:

*“Taking into consideration the information and allegations the Special Rapporteur has received throughout the course of his six years on this mandate,<sup>89</sup> including during his five visits to Rakhine State, and in particular since the June 2012 violence and its aftermath, he concludes that the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court. He believes that extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State. He believes that the deprivation of health care is deliberately targeting the Rohingya population, and that the increasingly permanent segregation of that population is taking place. Furthermore, he believes that those human rights violations are connected to discriminatory and persecutory policies against the Rohingya Muslim population, which also include ongoing official and unofficial practices from both local and central authorities restricting rights to nationality, movement, marriage, family, health and privacy.”<sup>90</sup>*

89. Thus, there is evidence of murder, extermination, forcible transfer, imprisonment, torture, rape, persecution, enforced disappearances and potentially apartheid through the segregation of the Rohingya population. Given the widespread and systematic nature of these acts, it is also clear that they are being carried out as part of a large-scale attack, rather than through random, isolated events.

### **(3) State or Organisational Policy to Commit the Attack**

90. The 'Elements of Crime' document of the ICC confirms that the attack against a civilian population must be "pursuant to or in furtherance of a state or organisational policy to commit such an act". The act does not need to be a military attack. Furthermore, it is understood that "policy to commit such attack" requires that the state or organisation actively promotes or encourages such an attack against a civilian population.<sup>91</sup>
91. According to the ICTR, there is no requirement that the policy must be adopted formally as the policy of the state but there must be some form of preconceived plan or policy.<sup>92</sup>

#### *Is there a State or organisational policy to commit the attack against the Rohingya?*

92. The Myanmar government continues to deny any ill-treatment of the Rohingya, and has refused access to international bodies hoping to investigate potential crimes and human rights abuses. As such, collecting 'hard', factual evidence of any over-riding state policy has been impossible to obtain. However, based on the testimonies collected by IHRC from Rohingya who have fled Myanmar, along with the numerous academic and NGO reports on the subject, we do know that there are specific state policies which target the Rohingya. These have been mentioned already in this report, for example:
- The denial and erasure of the Rohingyas' identity through excluding them from the 135 ethnic groups of Myanmar contained in the 1982 Citizenship Act;
  - The strict two child policy, only imposed on the Rohingya;
  - The police and military carrying out invasive 'spot checks' on Rohingya homes in Rakhine State which are allegedly to check for illegal immigrants. These checks are reported to be violent and used as a pretext to arrest and detain Rohingya men;
  - The prevention of humanitarian aid from reaching the Rohingya who are desperately in need of it, or the imposition of serious obstacles in place that make it difficult for the aid to reach the Rohingya by the state;
  - The restrictions on the freedom of movement of the Rohingya community, preventing them from seeking aid;
  - In addition, statements by politicians and officials which vilify and 'otherise' the Rohingya can be seen as active encouragement of violence against them. For example, the campaigning of the ANP, which won the most contested seats in Rakhine State's legislature in 2015 included handing out leaflets saying 'Love your nationality, keep pure blood, be Rakhine and vote ANP' propagating an anti-Rohingya message. The Party's vice-chairwoman, is

reported to have said that the ANP would like to see the Rohingya moved into camps or deported.<sup>93</sup> Aung Win MP referred to the Rohingya as “dirty” in an interview with the BBC,<sup>94</sup> and in September 2017, the army’s commander-in-chief is reported to have defended the clearing of Rohingya villages as part of an essential plan to root out perceived militant groups.<sup>95</sup>

93. The explicit state policies and statements from various public figures, combined with the evidence of the widespread and systematic scale of the violence against the Rohingya, committed by a state body, the Myanmar military, makes it highly plausible that a policy at the state level to commit an ‘attack’, constitutive of a crime against humanity, exists.

#### **(4) Conclusion on Crimes against Humanity**

94. In October 2017, the United Nations Committee on the Elimination of Discrimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC) issued a joint statement in which they called on Myanmar authorities to stop the violence in Rakhine State. They stated that they were concerned about Rohingya women and children being subjected to serious violations of their human rights, including killings, rape and forced displacement, and that such violations may amount to crimes against humanity.<sup>96</sup>
95. The findings of this report demonstrate that there is strong evidence that crimes against humanity have been committed by the Myanmar state.

## CONCLUSION & RECOMMENDATIONS

96. This report has brought together evidence collected by various international organisations, including the IHRC, to show that the crime of genocide and crimes against humanity have been committed against the Rohingya in Myanmar.
97. This violence has been going on for many years, with its roots in the post-colonial history of Myanmar. Rather than seeking a solution, government officials have either ignored or downplayed the violence while others have sought to blame the Rohingya for the violence committed against them. The Rohingya find themselves voiceless and powerless in the face of hate and anger, without the resources or standing to negotiate an end to this violence.
98. We believe it is the responsibility of the international community to protect the Rohingya and end the violence directed towards them. We have listed below a number of recommendations we think should be the starting point. But it must be borne in mind that any solution will require a long-term commitment to supporting and protecting the Rohingya.
99. IHRC makes the following recommendations:
1. The international community should pressure the Myanmar government to immediately stop attacks against the Rohingya and anti-Muslim violence in general by groups in Myanmar. There are also Hindu Rohingya that have been persecuted and displaced.
  2. The UN Security Council should refer the matter to the ICC Prosecutor in accordance with Article 13(2) of the Rome Statute. It is clear that Myanmar is unwilling and unable to investigate the crimes itself.
  3. IHRC welcomes the ICC Prosecutor's request for a ruling from the ICC on whether it may exercise jurisdiction over the deportation of Rohingya to Bangladesh, under the crime of deportation (the enforced displacement of individuals across an international border),<sup>97</sup> and recommends the ICC Prosecutor's continued investigation into crimes against humanity, and the crime of genocide, committed in Myanmar.
  4. In support of the recommendation given by the UN High Commissioner for Human Rights, IHRC suggests that the UN Human Rights Council make a recommendation to the General Assembly to establish a "new impartial and independent mechanism... to assist individual criminal investigations of those responsible."<sup>98</sup>
  5. UN mandated International Observers should be sent to Arakan State, which may discourage further attacks and can provide the international community additional reliable information.

6. The international community, including ASEAN and the UN, should urge the government of Myanmar to abide by the decision of the UN General Assembly's human rights committee of 12 November 2013 to grant citizenship to the Rohingya, allow the internally and externally displaced to return, and cease all forms of discrimination and abuse against them in particular and Muslims and other discriminated minorities in general.
  7. The international community should support governments in the region to abide by the international law of non-refoulement, by protecting refugees and asylum seekers, allowing them into their country and not removing them to Myanmar where they are in danger of further persecution.
100. Points 2, 3 and 4 of these recommendations will eventually necessitate investigations by external parties being conducted within Myanmar, something the Myanmar authorities have avoided to date. Consequently, pressure should be placed on the Myanmar government through the UN, EU, ASEAN and international legal framework, such that independent investigators are able to enter Rakhine State and carry out the research needed in order to hold those responsible to account.



## Appendix A: Time Line of Key Events in Myanmar

### Colonial Period<sup>99</sup>

**1826** - The First Anglo-Burmese war ends. Burma ceded the Arakan coastal strip to British India.

**1852** - Britain annexed lower Burma, including Rangoon, following the Second Anglo-Burmese war.

**1886** - Burma becomes a province of British India after the Third Anglo-Burmese War.

**1937** - Britain separates Burma from India and is declared a crown colony.

**1942** - Japan invades and occupies Burma with help from the Japanese-trained Burma Independence Army, which later transforms itself into the Anti-Fascist People's Freedom League (AFPFL) and resists Japanese rule.

**1945** - Britain drove out the Japanese and re-occupied Burma with help from the AFPFL, led by Aung San.

**1947** - Aung San and six members of his interim government were assassinated.

**1948** - Burma declared independent and renamed the Union of Burma with U Nu as prime minister.

### Military Junta

**1962** - U Nu government is ousted in a coup d'état orchestrated by General Ne Win. Burma Socialist Programme Party (BSSP) rules Myanmar under a one-party state with Ne Win as head of state.<sup>100</sup>

**1978** - Burmese military launched Operation Nagamin (Dragon King). The Rohingya were accorded illegal status and persecuted. Some 220,000 Rohingyas fled to Bangladesh. An agreement was signed by both the Burmese and Bangladeshi governments for the repatriation of Rohingyas which also recognised their legal status in Burma.<sup>101</sup>

**1982** - Citizenship Act curtailed Rohingya rights as the Burmese government declared them foreign residents. Rohingyas were subsequently subjected to discriminatory laws.<sup>102 103</sup>

**1988** - The 8888 Uprising triggered a series of nationwide pro-democratic protests that led to the resignation of Ne Win.<sup>104</sup>

## Myanmar

**1989** - Burma was renamed the Republic of the Union of Myanmar.<sup>105</sup>

**1991** - Operation Pyi Thaya (Clean and Beautiful Nation) was launched by the Myanmar military. This resulted in the displacement of over 200,000 Rohingyas.<sup>106</sup>

**1997** - Myanmar joins the ASEAN (Association of Southeast Asian Nations).<sup>107</sup>

**2012** - Rakhine State riots took place after three Muslim men were accused of the rape and murder of a Rakhine woman on 28th May.<sup>108</sup> This triggered a series of riots between June and October. More than 80 people were killed and 100,000 Buddhists and Muslims were displaced.<sup>109</sup>

**2013** - Clashes between Muslims and Buddhists in Meiktila, south of Mandalay triggered riots across Myanmar. At least 43 people were killed.<sup>110</sup>

**2016** - Aung San Suu Kyi declared State Counsellor, heading the civilian government. The Myanmar military carried out 'clearance operations' in Rohingya villages in Rakhine between September 2016 and January 2017 after nine Rakhine police officers were killed.<sup>111</sup>

## Rohingya Crisis

**2017-Present** - An attack on 30 police outposts in Rakhine, supposedly by ARSA (Arakan Rohingya Salvation Army) resulted in a major military response. Rohingyas were subject to systematic torture, rape and killings. Almost 700,000 Rohingyas fled to Bangladesh and have settled in various camps in Cox's Bazaar. At least 6,700 Rohingyas were killed in the first month of the crisis and a further 43,000 Rohingyas have been reported missing, feared dead.<sup>112</sup>



## Appendix B: Summary of IHRC Interviews

Date of interview	Interviewee	M/F	Age	Summary of testimony	Who carried out the attack	Date of attack
25.09.2017	MK	M	N/A	Wife's parents, son-in-law and a neighbour was killed. His sister, son (18 yrs), and daughter (13-14 yrs) were taken away. His house was burned down. Arrived in Bangladesh by boat. Paid 15,000 tekka to board.	Military	N/A
25.09.2017	MA	M	N/A	His son (32 yrs) was killed. He estimates the death toll to be 400+ in his village and other local places have different death tolls. He estimates one nearby village had death toll of 3000+. He also stated that the military were capturing and dressing young men up in jihadi and Buddhist monk clothing and killing them to make up the story that Muslim extremists killed the monks and so they killed the extremists.	Military, Rakhine Buddhists (Mogh) and Gujarati (Hindus)	N/A
25.09.2017	A	F	N/A	Husband brutally murdered. One child (7 yrs) missing whilst fleeing.	N/A	N/A
26.09.2017	AB	F	N/A	Two of her sisters were killed. She told of how the military removed Hindus and Buddhists from the area before attacking the Rohingya. She was Smuggled into Bangladesh by boat from Shah Baghan. Paid 6,000 tekka to board.	Min Aung Hlaing, Military	N/A
26.09.2017	UK	F	20	Most of the people in her village were killed. Walked 3 days into Ramu border and crossed border with other people	Military and police	N/A
26.09.2017	AR	M	N/A	His mother was burned alive after house was hit with a rocket launcher. The people that were captured were beheaded. Women were raped and killed. The family walked for 15 days and crossed the border on their own.	Military, police and Rakhine Buddhist (Mogh)	13.09.2017
26.09.2017	RK	F	20	Her father was shot dead. Her husband was attacked, and he was unconscious for 2 hours. After he regained consciousness she fled with him to Bangladesh where he was treated. Walked to Bangladesh, took 18 days.	Military	3 days before Eid
26.09.2017	U&M	M+F	20	10-month-old child was left behind as house was set ablaze. The military were going from village to village attacking people and intercepting people who were fleeing. After the Hindus and Buddhists were separated from Muslims the military proceeded to attack the Muslims	Military	25.08.2017
27.09.2017	FK	F	25	Military attacked her village, cutting people, raping women, torching houses. Witnessed killings and beheadings. Military and civilians collaborating together, members of the Hindu community also joined the attacks against the Muslims.	Military, Rakhine Buddhists (Mogh) and Hindus	6 days before Eid
27.09.2017	R	F	30	Her relatives were killed.	Military	N/A

Date of interview	Interviewee	M/F	Age	Summary of testimony	Who carried out the attack	Date of attack
27.09.2017	KA	F	50	The girls in her village were captured and taken away and she believes they are dead, but did not see where they were taken. The Rakhine Buddhists and Hindus were taken far away by the military and then after that they attacked the Muslims. Women were raped.	Military and Rakhine Buddhists (Mogh)	N/A
27.09.2017	M	M	43	The children in the village were beaten and taken away. The military extort money (around 20k-50k tekka) from the parents in exchange for the children. Military ordered Hindus and Buddhists to be separated from Muslims before the attack on Muslims began. Interviewee witnessed beatings.	Military, police, Rakhine Buddhist (Mogh) and Hindus	25.08.2017
28.09.2017	MD	M	N/A	Buddhists attacked them and people were captured	Military and Rakhine Buddhists (Mogh)	N/A
28.09.2017	G	F	30	Her mother-in-law was killed. House burnt down with her mother-in-law inside.	Military and Rakhine Buddhists (Mogh)	23.08.2017
29.09.2017	T	F	50	Two of her nephews were killed. The Rakhine Buddhists were shooting people, beheading people, killing people.	Military and Rakhine Buddhists (Mogh)	25.08.2017 (3 days before Eid)
29.09.2017	S	M	45	Surrounding villages were burned down and a lot of people killed and those that survived fled to Bangladesh.	Military, police and Rakhine Buddhist (Mogh)	N/A
29.09.2017	NJ	M	37	Military entered their village all the boys and girls were killed. Beat people's feet with sticks and left them thinking they are all dead.	Military, police and Rakhine Buddhist (Mogh)	N/A
29.09.2017	MH	M	75	He was caught in a mine blast as he fled into Bangladesh, shrapnel hit his legs breaking many of the bones in his legs.	N/A	26.08.2017 (2 days before Eid)
29.09.2017	H	F	40	In her village 100-150 boys were taken and most girls were raped. Military bombed their village and attacked people with machetes. Her family crossed the river by boat after paying 5,000 tekka per person.	Military	N/A
29.09.2017	GB	F	30	She received bullet wound on the shoulder. She witnessed her husband's death.	Military	N/A
29.09.2017	K	F	13	One of the children in her family suffered a broken leg as a result of an assault by a military officer. Her two sisters, both married, arrived at their father's house. When military entered the village and used rocket launchers, they all fled.	Military	N/A

In order to protect the identities of the interviewees we have anonymised their name and removed any information that could identify them to the Myanmar authorities. Where information was not provided we have put N/A.

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