



Crimes against Humanity by Burmese Security Forces Against the Rohingya Muslim Population in Northern Rakhine State since August 25, 2017

Human Rights Watch

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Crimes against Humanity

Human Rights Watch has found that serious violations committed by members of Burma's state security forces against the Rohingya Muslim population in northern Rakhine State since August 25, 2017, amount to crimes against humanity under international law. The crimes against humanity alleged include: a) forced population transfers and deportation, b) murder, c) rape and other sexual violence, and d) persecution as defined by the Rome Statute of the International Criminal Court (ICC) and the ad hoc international criminal courts.

Human Rights Watch previously determined that the Burmese government was responsible for crimes against humanity against the Rohingya in 2012 and 2016 when Buddhist monks and ethnic Rakhine villagers carried out killings with help from the state security forces.¹

According to the ICC Statute, crimes against humanity are specified criminal acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."² The attack must also be part of a state or

¹ Human Rights Watch, "All You Can Do is Pray;" Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State, April 22, 2013, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>; Human Rights Watch, "Burma: Rohingya Recount Killings, Rape, and Arson; Video Testimony Matches Satellite Images of Attacks," December 21, 2016, <https://www.hrw.org/news/2016/12/21/burma-rohingya-recount-killings-rape-and-arson>.

² Rome Statute of the International Criminal Court (ICC Statute), 2187 U.N.T.S. 3, entered into force July 1, 2002, art. 7, http://www1.umn.edu/humanrts/instree/Rome_Statute_ICC/romestatute.html. The Rome Statute entered into force on April 11, 2002 and the ICC has the authority to prosecute the most serious international crimes since July 1, 2002. Burma is not a party to the Rome Statute.

organizational policy.³ International legal jurisprudence requires that the attack be widespread or systematic, but need not be both.⁴ “Widespread” refers to the scale of the acts or number of victims and a “systematic” attack indicates “a pattern or methodical plan.”⁵

The "attack" does not necessarily need to be a military attack as defined under international humanitarian law.⁶ Because crimes against humanity may be committed “inside or outside the context of an armed conflict, ... the term civilian must be understood within the context of war as well as relative peace.”⁷ Furthermore, “the term ‘population’ does not require that crimes against humanity be directed against the entire population of a geographical territory or area.”⁸

Crimes against humanity are crimes that fall within the jurisdiction of the International Criminal Court in The Hague and are crimes of universal jurisdiction, meaning they may be prosecuted before national courts in countries outside of Burma, even though neither victim nor the perpetrator is a national of that country.

A. Burmese military attacks on the Rohingya population have been widespread and systematic:

The Burmese military’s campaign against the Rohingya population was sparked by an August 25, 2017 attack by militants belonging to the armed group, the Arakan Rohingya

³ ICC Statute, art. 7(2)(a), http://untreaty.un.org/cod/icc/statute/99_corr/cstatute.htm.

⁴ *Ibid.*, art. 7(1); *Prosecutor v. Dusko Tadic*, ICTY, Case No. IT-94-1-T, Opinion and Judgment (Trial Chamber), May 7, 1997, para. 646, <http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507T2-e.pdf>.

⁵ See *Prosecutor v. Akayesu*, International Criminal Tribunal for Rwanda (ICTR), Case No. ICTR-96-4-T, Judgment (Trial Chamber I), September 2, 1998, para. 579. In *Akayesu* the Trial Chamber defined widespread as “massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims.” http://www1.umn.edu/humanrts/instreet/ICTR/AKAYESU_ICTR-96-4/Judgment_ICTR-96-4-T.html; see also *Prosecutor v. Kordic and Cerkez*, ICTY, Case No. IT-92-14/2, Judgment (Trial Chamber III), February 26, 2001, para. 179; *Prosecutor v. Kayishema and Ruzindana*, ICTR, Case No. ICTR-95-1-T, Judgment (Trial Chamber II), May 21, 1999, para. 123; *Prosecutor v. Dusko Tadic*, ICTY, Case No. IT-94-1-T, Opinion and Judgment (Trial Chamber), May 7, 1997, para. 648. See also *Prosecutor v. Kunarac, Kovac and Vokovic*, ICTY, Case No. IT-96-23 and IT-96-23-1A, Judgment (Appeals Chamber), June 12, 2002, para. 94. In *Kunarac* the Appeals Chamber stated that “patterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of [a] systematic occurrence.”

⁶ Rodney Dixon in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Baden-Baden: Nomos Verlagsgesellschaft, 1999), p. 124.

⁷ ICTR, *Kayishema and Ruzindana*, (Trial Chamber), May 21, 1999, paras. 127-29.

⁸ ICTR, *Bisengimana*, (Trial Chamber), April 13, 2006, para. 50.

Salvation Army (ARSA), which targeted about 30 police posts and an army base. The military's attacks, which include mass burning, killings, and other abuses, have caused more than 400,000 Rohingya to flee to neighboring Bangladesh. Tens of thousands more are internally displaced within Rakhine State. An additional 21,000 mainly ethnic Rakhine and other non-Muslims are also displaced in Rakhine State, as a result of ARSA attacks or the Burmese military operations.⁹

Early satellite imagery showed the overall area in which burnings were found to be spread along an approximately 100-kilometer long stretch of Rakhine State, which is substantially larger than the approximately 20-kilometer long stretch in which burnings by Burmese security forces occurred from October to November 2016.¹⁰

Maps of the damage seen in satellite imagery analyzed by Human Rights Watch show near-total destruction of 284 villages, with more than 90 percent of the structures in each village damaged.¹¹ Detailed satellite images show the destruction of tens of thousands of homes across Maungdaw and Rathedaung Townships.¹² Accounts taken from eyewitnesses, including video obtained and verified by Human Rights Watch researchers, place the blame for the vast majority of these burnings squarely on the Burmese security forces and vigilante groups acting in concert with the security forces.

⁹ UN Office for the Coordination of Humanitarian Affairs, Myanmar: Humanitarian Bulletin, Issue 2 2017 | June – 22 September, September 22, 2017, <https://reliefweb.int/report/myanmar/myanmar-humanitarian-bulletin-issue-2-2017-june-22-september>; Jurawee Kittisilpa, "Myanmar army chief urges internally displaced to return to Rakhine," Reuters, September 21, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-commander/myanmar-army-chief-urges-internally-displaced-to-return-to-rakhine-idUSKCN1BW1HD> "Nearly 400 Die in Rakhine State As Myanmar Army Steps Up Crackdown on Militants," Reuters, September 1, 2017, <https://www.irrawaddy.com/news/nearly-400-die-rakhine-state-myanmar-army-steps-crackdown-militants.html>

¹⁰ Human Rights Watch, "Burma: Military Burned Villages in Rakhine State," December 13, 2016, <https://www.hrw.org/news/2016/12/13/burma-military-burned-villages-rakhine-state>.

¹¹ 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>

¹² Human Rights Watch, "Satellite Imagery: Myar Zin village," September 18, 2017, <https://www.hrw.org/video-photos/satellite-imagery/2017/09/18/satellite-imagery-myar-zin-village>; Human Rights Watch, "Satellite Imagery: Nwar Yon Taung village," September 18, 2017, <https://www.hrw.org/video-photos/satellite-imagery/2017/09/18/satellite-imagery-nwar-yon-taung-village>.

B. Burmese military and government statements have indicated an intent to attack the Rohingya population:

On September 16, the Burmese army commander, Sr. Gen. Min Aung Hlaing, linked Rohingya demands to be recognized as an ethnic group under Burmese law with the army's actions.¹³ Using "Bengali," a Burmese ethnic slur for Rohingya, he stated in a Facebook post that, "They have demanded recognition as Rohingya, which has never been an ethnic group in Myanmar. [The] Bengali issue is a national cause and we need to be united in establishing the truth."¹⁴ He described the ongoing operations against the Rohingya as "unfinished business" dating back to World War II.¹⁵

On September 15, the Burmese Government Information Committee of State Counselor Aung San Suu Kyi's office, stated that, "Those who fled the villages made their way to the other country [Bangladesh] for fear of being arrested as they got involved in the violent attacks" – implying that the several hundred thousand people who fled Burma were responsible for the militant attacks against the government.¹⁶

On September 21, Sr. Gen. Min Aung Hlaing referred to restoring destroyed villages of the "national races," a reference to the official list of recognized indigenous ethnic groups – a list that does not include the Rohingya: "Regarding the rehabilitation of villages of our national races, for the national races [largely ethnic Rakhine] who fled their homes, first of all they must go back to their places. ...The important thing is to have our people in the region. It's necessary to have control of our region with our national races. We can't do anything if there are no people from our national races ... that is their rightful place."¹⁷

¹³ Min Aung Hlaing urges unity over Rakhine crisis, AFP, September 17, 2017, <https://frontiermyanmar.net/en/min-aung-hlaing-urges-unity-over-rakhine-crisis>.

¹⁴ Ibid.

¹⁵ James Hookway, "Myanmar Says Clearing of Rohingya Is Unfinished Business From WWII," September 2, 2017, <https://www.wsj.com/articles/myanmar-army-chief-defends-clearing-rohingya-villages-1504410530>.

¹⁶ Ministry of Information, "Local people arrive back home in peace," MOI Webportal Myanmar, September 17, 2017, <https://www.facebook.com/MOIWebportalMyanmar/posts/1311640255630504>.

¹⁷ Jurawee Kittisilpa, "Myanmar army chief urges internally displaced to return to Rakhine," Reuters, September 21, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-commander/myanmar-army-chief-urges-internally-displaced-to-return-to-rakhine-idUSKCN1BW1HD>.

Alleged criminal acts amounting to crimes against humanity

A. Crime of deportation and forced population transfers

Since August 25, the Burmese military has subjected Rohingya to both deportation and forced population transfers.

Deportation is recognized as a crime against humanity in each of the major international criminal instruments prior to the ICC.¹⁸ Deportation and forcible transfer of population are distinguished by whether or not the victim was forced across an international border:

Both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State.¹⁹

The crime of forcible transfer of populations includes "the full range of coercive pressures on people to flee their homes, including death threats, destruction of their homes, and other acts of persecution such as depriving members of a group of employment, denying them access to schools, and forcing them to wear a symbol of their religious identity."²⁰

The requisite elements of the crime against humanity of deportation or forcible transfer consist of coercing movement to another location of people lawfully in the area with the intent of permanently relocating them.²¹

As noted, since late August, more than 400,000 Rohingya have fled to Bangladesh, and tens of thousands have been forcibly displaced within Burma, along with members of

¹⁸ These included the Nuremberg Charter, the Tokyo Charter, the Allied Control Council Law No. 10, and the statutes of the international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). See Roy Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Ardsley, NY: Transnational Publishers, 2001), p. 86; M. Cherif Bassiouni and Peter Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia* (New York: Transnational Publishers, 1996), pp. 627-38 (arguing that the crime of "deportation" under the Nuremberg Charter included "all unjustified transfers [including] internal displacement.").

¹⁹ *Prosecutor v. Krstić*, (Trial Judgment) IT-98-33-T (2 August 2001), para. 521.

²⁰ Christopher K. Hall in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Baden-Baden: Nomos Verlagsgesellschaft, 1999), p. 162.

²¹ See *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, ICTY, Appeals Chamber, Judgment, paras. 686-87.

other ethnic groups. In early September, Human Rights Watch interviewed more than 50 Rohingya refugees who had fled across the border to Bangladesh and obtained detailed accounts from about a dozen people. The Rohingya told Human Rights Watch that Burmese government security forces had carried out armed attacks on villagers, inflicting bullet and shrapnel injuries, and burned down their homes. They described the military's use of small arms, mortars, and armed helicopters in the attacks.

Satellite images corroborate accounts gathered by Human Right Watch from refugees who have described abuses by the Burmese military, police, and ethnic Rakhine mobs to force them to leave their homes.²²

The Burmese military alleges that ARSA militants and Rohingya villagers have burned down their own homes but has provided no evidence to substantiate this claim. The scale, scope, and timing of the burnings, many of which occurred after hundreds of thousands of Rohingya had already fled, is inconsistent with this claim. The pattern of burnings over time suggests government responsibility for the destruction.²³

B. Crime of Murder

Murder is recognized as one of the prohibited acts that may constitute a crime against humanity in the ICC statute and in the ad hoc criminal courts.²⁴ It has been defined as “the death of the victim which results from an act or omission by the accused, committed with the intent either to kill or to cause serious bodily harm with the reasonable knowledge that it would likely lead to death.”²⁵

Human Rights Watch interviewed [a number of] Rohingya refugees who had described the murder of relatives and neighbors by the Burmese military.

²² Human Rights Watch, “Burma: Military Torches Homes Near Border,” September 15, 2017, <https://www.hrw.org/news/2017/09/15/burma-military-torches-homes-near-border>.

²³ Human Rights Watch, “Arson Attacks on Villages in Rakhine State, Burma,” December 12, 2016, <https://www.hrw.org/video-photos/interactive/2016/12/12/arson-attacks-villages-rakhine-state-burma>.

²⁴ ICC Statute, art. 7(1)(g).

²⁵ See e.g., *Blagojevic and Jokic* (ICTY Trial Chamber), January 17, 2005, para. 556.

Momena, a 32-year-old Rohingya woman from Maungdaw Township, said that she fled to Bangladesh on August 26, a day after security forces attacked her village. She first hid with her children when the soldiers arrived, but upon returning to the village she saw 40 to 50 villagers dead, including some children and elderly people: “All had knife wounds or bullet wounds, some had both. My father was among the dead; his neck had been cut open. I was unable to do last rites for my father – I just fled.”

Usman Goni, 20, said that he and five friends were in the hills outside their village, tending cattle, when they were attacked. He saw a helicopter flying overhead and then something fall out of it. He later realized he had been hit by whatever the helicopter dropped. Four of his friends died from fragment injuries while villagers transported Goni to Bangladesh for treatment.

Hasina, a 20-year-old Rohingya woman, said that the Burmese army attacked her village of Tu Lar To Li in late August. The villagers ran when the soldiers came, but some were trapped on a riverbank and she saw dozens murdered on the beach. She said the soldiers forced her and many other women to stand waist-deep in water and watch while soldiers dug a pit to burn the bodies of those they had killed. She tried to hide her infant daughter under her shawl, but a soldier noticed the baby, snatched her away and tossed her into the fire.

Hasina said that several hours later the soldiers took her, her mother-in-law and sister-in-law, and three other relatives, all children, to a nearby house. The soldiers tried to rape the women, knifing her mother-in-law to death when she resisted and beating Hasina and her sister-in-law unconscious. They beat the young children to death with spades. She said the soldiers tried to burn her and her sister-in-law alive in the house; they managed to escape the flames, but with serious burns.²⁶

Witnesses described dozens of killings in the village of Maung Nu in Buthidaung Township at a single house. One man said he saw soldiers kill three men; one of them while

²⁶ Peter Bouckaert, “Witness to Carnage in Burma’s Rakhine State,” Human Rights Watch, September 22, 2017, <https://www.hrw.org/news/2017/09/22/witness-carnage-burmas-rakhine-state>.

handcuffed and in their custody. He also saw soldiers beat two children to death with the butts of rifles after they were taken from their mothers.

Another man said that while hiding in an adjacent building, he saw two soldiers execute his elder brother, shooting him in the back and then cutting his neck with a long knife.

A woman said that a soldier entered the house she was hiding in, tore her 10-year-old nephew out of her hands, dragged him into the next room, and shot the boy in the head with a rifle, killing him instantly.

Witness accounts, independent reporting, and photo and video recordings also described Burmese soldiers in recent weeks deliberately laying antipersonnel landmines at key crossing points along the Burma-Bangladesh border that are used by the fleeing Rohingya population. Witnesses also told Human Rights Watch that Burmese military personnel also planted mines on roads inside northern Rakhine State prior to their attacks on predominantly Rohingya villages.²⁷

C. Crime of Rape and Other Sexual Violence

Rape and other acts of sexual violence are recognized as prohibited acts that may be prosecuted as crimes against humanity, including in the ICC statute.²⁸ There are many reports of the military carrying out rapes, including gang rapes, of Rohingya women during the security crackdown in Burma in recent weeks, as well as in 2016.²⁹

²⁷ Human Rights Watch, "Burma: Landmines Deadly for Fleeing Rohingya," September 23, 2017, <https://www.hrw.org/news/2017/09/23/burma-landmines-deadly-fleeing-rohingya>.

²⁸ See ICC Statute, art. 7(1)(g)

²⁹ Claire Cozens, "Gang rape horrors haunt Rohingya refugees," AFP, September 24, 2017, <https://au.news.yahoo.com/world/a/37204578/gang-rape-horrors-haunt-rohingya-refugees/?cmp=st>; Human Rights Watch, "Burma: Security Forces Raped Rohingya Women, Girls," February 6, 2017, <https://www.hrw.org/news/2017/02/06/burma-security-forces-raped-rohingya-women-girls>.

UN and other health workers said that after this most recent August 2017 military crackdown, they treated dozens of Rohingya women and girls who had escaped to Bangladesh for injuries consistent with violent sexual attacks.³⁰

One woman told Human Rights Watch that she and four other women were taken to a hut, slashed with knives, and sexually assaulted. The soldiers then set the hut on fire. She is the only one to escape alive. Another woman who was raped still has injuries from the machete attack and beatings that accompanied the rape, and said she also barely managed to escape from a burning house.

One man told Human Rights Watch that he witnessed an army soldier rape three women in Maung Nu village. Two other woman from the same village told Human Rights Watch that soldiers stripped them and several other women who were hiding from the military naked and that they were “touched everywhere.”

D. Crime of Persecution

Persecution is recognized as among the offenses that can constitute a crime against humanity.³¹ The ICC statute defines persecution as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”³² The crime of persecution consists of an act or omission that 1) entails actual discrimination and denies a fundamental human right, and 2) was carried out deliberately with the intention of discriminating on one of the recognized grounds.³³ These include for political, national, ethnic, and religious reasons.³⁴ Persecutory acts have been found to include murder, sexual assault, beatings, destruction of livelihood, and deportation and forced transfer, among others.³⁵

³⁰ Simon Lewis, Tommy Wilkes, “U.N. medics see evidence of rape in Myanmar army ‘cleansing’ campaign,” Reuters, September 24, 2017, <https://www.reuters.com/article/us-myanmar-rohingya-rape-insight/u-n-medics-see-evidence-of-rape-in-myanmar-army-cleansing-campaign-idUSKCN1BZo6X>

³¹ See ICC Statute, art. 7(1)(h); *Nadhimana, Barayagwiza and Ngeze*, ICTR Appeals Chamber, November 28, 2007, para. 985.

³² ICC Statute, art. 7(2)(g).

³³ *Prosecutor v. Krnojelac*, ICTY judgment, IT-97-25T, March 15, 2002, sec. 431.

³⁴ ICC statute, art. 7(1)(h).

³⁵ See Antonio Cassese, ed. *The Oxford Companion to International Criminal Justice*, (Oxford: Oxford University Press, 2009) p. 454.

Acts of violence, restrictions on fundamental rights, and other discriminatory actions – such as depriving members of the population access to their livelihoods or to food – might be considered acts of persecution that amount to crimes against humanity.

Evidence of government intent to commit the crime of persecution against the Rohingya can be found in both the actions and inaction of state security forces, combined with the longtime discriminatory state practices against them, such as restrictions on freedom of movement, marriage, childbirth, education, and employment.

For decades, the Burmese government has considered the Rohingya, most of whom live in northern Rakhine State, to be foreign nationals from Bangladesh. Just over one million Rohingya lived in Burma before August 2017, and they make up a large portion of the country's relatively small Muslim population. The Rohingya have long faced systematic discrimination in Burma based on their exclusion from citizenship under the 1982 Citizenship Law. As a result, the Rohingya are one of the largest stateless populations in the world.

Since the Rohingya lack citizenship, Burmese police, border guards, and local officials systematically subject them to numerous rights-abusing restrictions. Government laws, policies, and practices prevent Rohingya from freedom of movement to leave their villages; restrict their right to livelihoods; interfere with their privacy rights to marry and have children; and obstruct them from access to basic health services and education.

Official restrictions and recurrent military operations against Rohingya communities have left the Rohingya highly dependent on food and other aid distributed by United Nations agencies and humanitarian aid organizations.

Hostility against aid agencies has grown following government accusations that international aid workers supported the Rohingya militants because some high-energy biscuits distributed by the World Food Program were found in an alleged militant camp in

July 2017.³⁶ Some supply warehouses of international aid groups were reported looted in September, while national and international staff of the UN and international aid organizations have faced intimidation, according to the European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations.

³⁶ World Food Program, "World Food Programme Statement, August 29, 2017, https://docs.wfp.org/api/documents/WFP-0000022211/download/?_ga=2.166720382.1774434364.1504902633-504753397.1504902633