



The Rohingya Genocide

**Compilation and Analysis of
Survivors' Testimonies**

Center for the Study of
Genocide and Justice



Liberation War Museum

The Rohingya Genocide

Compilation and Analysis of Survivors' Testimonies

Collected by the CSGJ Research Team

Edited by
Mofidul Hoque

Co-edited by
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D e d i c a t i o n

*To the members of international community struggling to ensure that
the perpetrators of genocide in Myanmar face prosecution
and victims get justice*

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LIST OF TERMS AND ACRONYMS

Aleemdar	Scholarly individual (a religious nomenclature used in Islam)
ARSA	Arakan Rohingya Salvation Army
Azan	Call for prayers, through Mosque, given five times a day in Islam
BSPP	Burma Socialist Program Party
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CSC	Citizenship Scrutiny Card
ECCC	Extra-ordinary Chambers in the Courts of Cambodia
FRC	Foreign Registration Cards
HRC	Human Rights Council of the UN
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRC	International Committee of the Red Cross
ICT-BD	International Crimes Tribunal, Bangladesh
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ICJ	International Court of Justice
NGO	International Non-Government Organization
IOM	International Organization for Migration
Kabin-nama	Legal document of marriage under Muslim Law
Kala Party	Described by the Hindu Rohingya victims, as a group of men covered in 'black' veils and cloaks that attacked the Hindu villages. As they only revealed their eyes, their true identity could not be discerned.
Madrasas	Religious academic institution in Islam
Maghs	Local Rakhine extremist Buddhists, as identified by the Rohingya persecuted victims and survivors
Majhi	A traditional leader, in charge of a Block in the Rohingya makeshift camps in Ukhiya, Cox's Bazar, Bangladesh
Mehmaans	Guests/visitors
Namaz/Salaat	Prayer in Islam
NGO	Non-Government Organization
NLD	National League for Democracy
NRC	National Registration Cards
OHCHR	Office of the High Commissioner for Human Rights
Poita	Religious string worn by Hindu Brahmin
PPT	Permanent People's Tribunal
Rohingya	One of the ethnic groups in Myanmar (predominantly Muslim)
Tabliq	One kind of gathering of Muslims for preaching Islam
Tatmadaw	Myanmar Military Force
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commission for Refugees

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The Convention Relating to the Status of Refugees, 1951

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The International Convention on the Elimination of All Forms of Racial Discrimination,

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The Chief Prosecutor v. Mohibur Rahman alias Boro Mia, Mujibur Rahman alias Angur Mia, and Md. Abdur Razzak (ICT-BD Case No. 3 of 2015)

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PREFACE

Since the 25th August 2017, more than 6,00,000 Rohingya people fled seeking refuge towards Bangladesh, amidst outbreak of atrocities in Myanmar. With a view to collect the accounts and narratives of atrocities against the Rohingya people that culminated before and continued even after the 25th of August 2017 in the Northern Rakhine state of Myanmar, a team of young researchers from the Center for the Study of Genocide and Justice (CSGJ), Liberation War Museum visited the Rohingya makeshift camps currently located in Ukhiya, Cox's Bazar, Bangladesh. The team conducted three times consecutively visits. The first visit took place from October 13-14, 2017, while the second and third visits were made from February 1-4, 2018 and April 30-May 2, 2018, respectively. After visiting a total of eight makeshift camp-sites, the team collected testimonies of discriminations and atrocities from the Rohingya survivors, eyewitnesses and victims who fled the violence to Bangladesh.

Immediately after the first field work experience, the CSGJ in November 2017 published the testimonies in the form of human stories, titled 'The Testimony of Sixty on the Crisis of the Rohingyas in Myanmar' as a sequel to Oxfam's 1971 publication titled 'The Testimony of Sixty on the Crisis in Bengal', with the objective of highlighting the harrowing tales of the Rohingya survivors to the national and international community. In the context of humanitarian crisis and genocide of 1971 in the then East Pakistan (now Bangladesh), Oxfam published 'The Testimony of Sixty on the Crisis in Bengal' in order to appeal to the global community concerning the humanitarian catastrophe of the persecuted Bengali population who took refuge across the border areas of India. Thus, the sequel represents the resounding solidarity of a once victim nation towards the survivors of the world's fastest growing humanitarian crisis.

Systematic discrimination and widespread atrocities against the Rohingya minority of Myanmar is a historic occurrence. Bangladesh, being a neighboring country has opened its borders to the persecuted Rohingyas and has provided them primarily with facilities such as shelter in makeshift camps, food, clothing, and medical services and continues to provide other facilities concerning education, registration etc. With time, Bangladesh, despite of not being a party to the 1951's Refugee Convention has been fully respecting the customary law principle of non-refoulement¹ towards the Rohingya ethnicity. For a country such as Bangladesh, which is already engulfed with social, economic and political issues it indeed is a challenge to reach out with humanitarian aid and support to such a vastly persecuted population. However, Bangladesh, the ten million population which had surged across the Indian border in 1971 on the face of genocide initiated by the Pakistani military, could not sit idle, and thus immediately started sheltering the Rohingya people and bore the impact of Rohingya refugee crisis. It has been possible for Bangladesh to take the challenge of supporting the stateless people as the country experienced the pain and agony of refugee crisis in the past. A victim nation of 1971's genocide is now standing by the victims of 2017's genocide – Bangladesh presents an exceptional example of humanitarianism.

¹ The principle of non-refoulement, refers to the prohibition of expulsion or return, is a customary law principle and all countries must respect it. This principle is well-explained in Article 33 of the 1951 Refugee Convention which provides that: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." See the Note on Non-refoulement (submitted by the High Commissioner), <<http://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html>>.

The atrocities against the Rohingyas are now undoubtedly a global epidemic. Historically, they have been targeted, persecuted and forced to flee genocidal violence. But the power sharing arrangement between the military and elected civilian government denies the persecution of Rohingyas and furthermore the commission of International Crimes till date. In the words of survivors, witnesses, aid-workers and journalists, the present research intends to give a message to the world community that the 'hidden genocide' in Rakhine be widely investigated into and immediately be acknowledged, and that the world community who has a significant and crucial roles to work together towards ending the repetition of genocide in Rakhine and to implement the main findings and recommendations of the Independent International Fact-Finding Mission on Myanmar by the Human Rights Council of the Office of the United Nations High Commissioner for Human Rights (OHCHR). All the testimonies present here, both in the form of statement and photographs, provide a window to understand the extent of the Rohingya genocide and great human suffering of present time.

One of the major objectives of CSGJ's research has been to find out, through testimonies of victims and survivors, whether, international crimes – in particular genocide – have been committed against the Rohingya people. It also focuses on the legal analysis of those testimonies in light of the international legal framework on the crime of genocide and other international crimes such as the crimes against humanity.

Major findings of this research suggest that Rohingyas are historically and systematically deprived of fundamental human rights under the legal framework of Myanmar. The research also finds that Myanmar's military force, in collaboration with civilians influenced by an extremist, exclusionist form of Buddhist nationalism (identified as 'Maghs' by the victims in their testimonies) that is actively promoted by the Myanmar government (including local Rakhine Buddhist nationalists), has been committing international crimes, such as the crime against humanity and genocide.

The important elements of genocide under the UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948 and the Rome Statute of the International Criminal Court, 1998 are present here. The atrocities that took place before and continued till the 25th of August 2017, were conducted as attacks on the Rohingya ethnic population, not only targeting the mass individuals, but as members of a specific ethno-religious group. The group identity is dual here, namely ethnic identity as Rohingya and religious identity as Muslim, and it is sufficient to establish that the Rohingyas were targeted and persecuted because of their group identity. Furthermore, the intent of the perpetrators was to wholly and permanently erase the name 'Rohingya' from the social, cultural and political landscape of Myanmar's history. All these prove that the atrocities in Rakhine were as brutal as a clear case of genocide under the legal framework of International Criminal Law.

ACKNOWLEDGEMENT

The publication is a research-based contribution from the Center for the Study of Genocide and Justice (CSGJ) to give voice to the stateless Rohingya population. In this regard, the CSGJ is gratefully indebted to all the Rohingya survivors, eyewitnesses and victims who, during a time of stress and unbearable affliction, trusted the researchers shared their stories of sufferings and kindly participated in the interviews and dialogues and most importantly reflect utmost courage and strength. This publication could not have been completed without their generous cooperation and active participation. Without going into spelling their names individually, the CSGJ expresses its deepest thanks and gratitude to them collectively.

The CSGJ is thankful to the staff members of the Liberation War Museum for their prompt and required administrative assistance. The CSGJ also appreciates all the researchers, and data collectors for their valuable contribution in the preparation of this report. Kind assistance of the local communities and the interpreters made the field visit effective. We acknowledge the support and hospitality of the network-teachers and volunteers of the LWM rendering co-operation in Cox's Bazaar.

The CSGJ acknowledges the kind support extended by the National Human Rights Commission (NHRC), Bangladesh to undertake visits to the Rohingya camps. The NHRC fully supported the second field trip and their staff members were part of the visit to the camps to collect testimony of victims of sexual violence. The CSGJ acknowledges the contribution of Susmita Paik, Assistant Director (Complaint & Inquiry) and Farhana Syead, Public Relations Officer of NHRC along with Lubna Yasin Investigation & Human Rights Expert and Bithika Hasan Gender Expert of UNDP Bangladesh, for accompanying the team in the second visit.

A number of institutions and lot of people have helped and collaborated with the research team during the fieldwork. Local administration, law enforcing agencies and representatives of various organizations such as UNHCR, ICRC, IMO and others extended their cooperation to the team. The CSGJ is furthermore indebted to the Institute for International Criminal Investigations and the UN Women for providing training to the researchers organised by the NHRC, Bangladesh.

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ONE YEAR OF ROHINGYA CRISIS

13
The Daily Star
DHAKA, SATURDAY
AUGUST 25, 2018
BHADRA 10, 1435 BS

THE EXODUS

6,92,998
LATEST ARRIVAL, SINCE AUG 25, 2017

11,18,576
ROHINGYAS NOW LIVING IN BANGLADESH

8,86,778
LIVING IN THIRTY REFUGEE CAMPS

2,31,798
LIVING OUTSIDE CAMPS, NEARBY VILLAGES



"It is systematic violation of human rights. Rohingya people are the most discriminated people in the world."
UN SECRETARY-GENERAL ANTONIO GUTERRES SAID ON JULY 2 THIS YEAR.

"The situation seems a textbook example of ethnic cleansing."
ZED RAJED AL-HUSSAIN, UN HIGH COMMISSIONER FOR HUMAN RIGHTS, SAID ON SEPTEMBER 13 LAST YEAR.

"The presence of God today is also called Rohingyas."
POPE FRANCIS SAID ON DECEMBER 1 LAST YEAR.

"We cannot turn our heads away. We stand in solidarity – today we are all Rohingyas."
WORLD BANK PRESIDENT JIM YONG KIM SAID ON JULY 2 THIS YEAR.

"This is a daughter of the innocent Rohingyas people. We cannot allow genocide. The world must act against it."
NOBEL PEACE LAUREATE AHMED NAGIB SAID ON FEBRUARY 26 THIS YEAR.

THE FASTEST GROWING REFUGEE CRISIS

On August 25 last year, hundreds of thousands of Rohingyas started fleeing military operations in Myanmar's Rakhine State and crossing the border to take shelter in Bangladesh. Several rounds of talks have been held for repatriation of the refugees. But so far, there is no visible progress.

ENVIRONMENTAL IMPACT

- 6,000 ACRES OF FOREST destroyed for Rohingyas settlements.
- 100 TONNES OF FUEL WOOD is burnt every day for cooking for them.
- Groundwater level depleted in the area.
- Corridors of wild elephants blocked.



THE MASSACRE

25,000

MAY HAVE BEEN MURDERED

19,000

WOMEN MAY HAVE BEEN RAPED



UNICEF A RESEARCH FROM 2016 "MASSACRE OF ROHINGYAS: THE UNTOLD STORY"

EDUCATION SUPPORT

- 2,89,629 students and teachers have been supplied with educational kits.
- 1,106 education centres have been set up.
- 1,35,971 under-14 boys and girls are being given non-formal education.

RELIEF OPERATIONS

- 8,44,186 refugees are getting food support.
- So far 71,197 tonnes of rice, 36,978 tonnes of lentils, 5,659 tonnes of edible oil, 353 tonnes of sugar, 222 tonnes of salt and 46 tonnes of soap have been supplied to the Rohingyas.
- 2,100 foreign nationals are working with Rohingyas.

WATER AND SANITATION

- 4,365 shallow tube-wells, 2,608 deep tube-wells installed.
- 49,930 latrines set up including 1,000 by AFD with the assistance of Unicef.
- 10,796 bath houses have been built (5,000 more under construction).
- UNHCR, ICW and WFP have jointly taken up a plan to dig 30km canal in camps and adjoining areas.

MEDICAL SUPPORT

- 7 field hospitals, 162 primary healthcare centres set up.
- 124 govt & private organisations are engaged in providing healthcare.
- So far, 11,43,017 Rohingyas have been given medicine.
- 3,554 children were born in camps till July 31, 2018.
- Unicef launched massive cholera campaign in Cox's Bazar.

DISASTER MANAGEMENT

- 38,343 refugees (8,852 families) have been shifted to other camps.
- 21,480 more (6,319 families) need to be shifted.
- Another 38,949 shelter centres were repaired after they were found risky.



SHELTERS IN BANGLADESH

COX'S BAZAR

Ukhia
Kutupalong
Balukhali

Shamlapur

Leda
Nayapara

Teknaf

Maungdaw

Rethadaung

- A total of 30 camps have been built in Teknaf, Ukhia.
- There are 20 camps in greater Kutupalong and Balukhali areas under Ukhia upazila.
- 10 more camps in Hakimpura, Jantoli, Putbonia, Kenonli, Dechigpara, Al Khali, Leda, Sadimara, Nayapara Shalbon and Shamlapur areas.
- 1,96,926 temporary shelter houses have been built. The target is to build 2.11 lakh such houses.

NOW IN CAMPS

39,841

ORPHAN CHILDREN (left without one or both parents)

32,564

PREGNANT WOMEN



"We are having dialogues with Myanmar... Unfortunately, they do agree on all things, but they don't act."

PN SHERA HASINA
TODD KERRY REYNOLDS, PRESIDENT OF
ROBERT F KENNEDY HUMAN RIGHTS
ON JULY 25.

LAW AND ORDER SITUATION

- 22 Rohingyas killed in internal clash in last one year.
- 485 Rohingyas accused in 250 cases including 80 drug cases.
- 54,798 Rohingyas detained at checkpoints while fleeing from camps.
- 1,000 police deployed at seven camps to maintain law and order.



SOURCE: SECURITY ADMINISTRATION, DEPARTMENT OF FOREST, JOINT MILITARY POLICE DEPARTMENT AND SECURITY FORCE, JOINT FORCE, COX'S BAZAR CAMP 10A

Photo 1: One Year of Rohingya Crisis. Source: The Daily Star.

CHAPTER 1

SETTING THE CONTEXT AND PRELUDE TO THE RESEARCH

1.1 Research Background and Objectives

In the second half of last year (August 2017), the global community witnessed one of the most brutal humanitarian catastrophes in recent times, in which more than half a million Rohingya people fled their motherland Myanmar in the face of brutal attacks and constant persecution by the state of Myanmar itself. They reportedly left their country amidst mass atrocities in search of safety to Bangladesh. Despite being a third-world country with limited economic resources and having constant economical perils, Bangladesh immediately extended its land with a gesture of humanity towards them by giving shelter and support in the nearby border district of Cox's Bazar. Till date, the Government of Bangladesh is unhesitatingly supporting the stateless and persecuted Rohingya people, in association with different NGOs and INGOs which provide humanitarian assistance nationally and internationally. At the same time, the Government of Bangladesh is trying to negotiate with the Government of Myanmar and the global community for a peaceful and dignified repatriation of the Rohingya people to their own land in the northern Rakhine State, Myanmar. The government of Bangladesh is also pursuing international diplomacy and solidarity-campaign in order to ensure criminal liability of the genocide-perpetrators of Myanmar.

With an aim to collect the narrative of atrocities that the Rohingya people faced culminating way before and till the 25th of August 2017 in the northern Rakhine state of Myanmar, a team of young researchers from the Center for the Study of Genocide and Justice (CSGJ) of the Liberation War Museum visited the makeshift refugee camps located in Ukhiya, Cox's Bazar. The team visited the camps three times: the first visit took place in October 2017 and the last two visits in February and April-May 2018. During its field work, the team extensively interviewed the Rohingya victims, eyewitnesses and survivors, and found evidences of large scale atrocities and human rights violations committed against the Rohingya people by the state of Myanmar. The testimonies and accounts of the persecuted Rohingya people which the team collected through this research give a detailed description of what we know as the crime of genocide under International Law, specifically under the UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948 and the Rome Statute of the International Criminal Court, 1998.

Corresponding to the attack and violence of August 25, 2017 in the northern Rakhine state, an estimated 6,92,998 Rohingyas have crossed into Bangladesh increasing the total Rohingya people in Cox's Bazar to around 11,18,576.² A total of 8,86,778 Rohingyas are now living in thirty makeshift camps in Cox's Bazar, while a total of 2,31,798 Rohingyas are staying outside camps and in nearby villages.³ The camps visited by the research team included Kutupalong, Nayapara, Balukhali, Barmapara, Lambashia, Thaingkhali, etc. The research aimed to collect first-hand evidences concerning the Rohingya genocide and assess them in light of applicable International Criminal Law. As the duty to investigate and hold perpetrators to

² See 'One Year of Rohingya Crisis', The Daily Star (25 August 2018), p. 13.

³ Ibid.

account requires that investigations be undertaken by independent and impartial investigating authorities, the research team endeavored to be impartial, acting without preconceptions, bias or discrimination.⁴

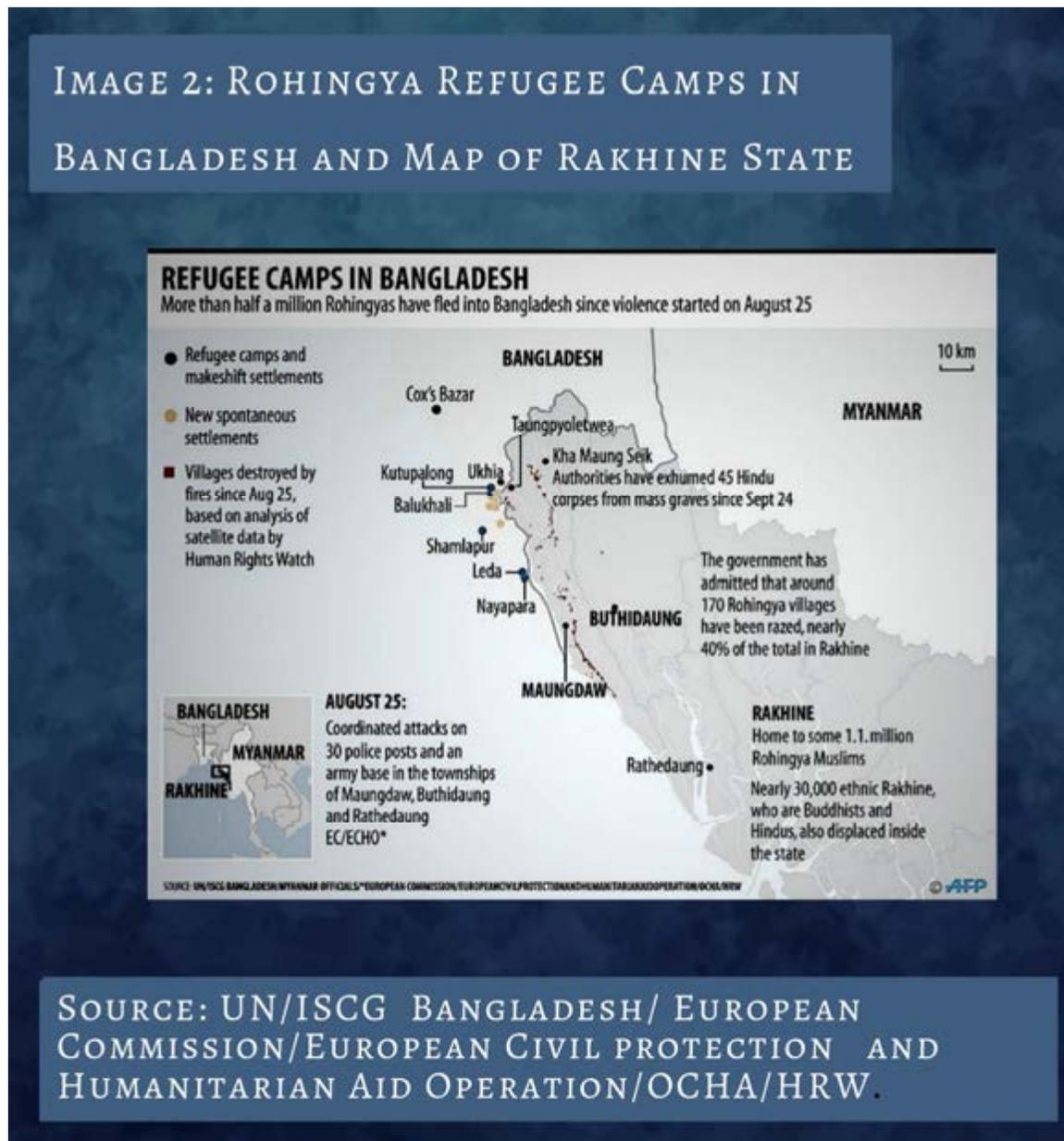


Photo 2: Rohingya Refugee Camps in Bangladesh and Map of Rakhine State.

1.2 Research Methodology

The researchers collected testimonies and conducted interviews through three consecutive field visits held in October 2017, February 2018 and April-May 2018. The first field visit was arranged by the Liberation War Museum in order to collect human narratives to explore the issues relating to their large scale extermination and also to portray the human agony and sufferings. The method of collecting oral testimonies was qualitative in nature and it followed an open-ended questionnaire prepared by the CSGJ.⁵ A total of 67 testimonies were collected in this visit. The Respondents

⁴ See the Revised UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (United Nations, 2016) – Minnesota Protocol, Principle 11.

⁵ See Annexures 2 and 3.

were selected irrespective of their age and gender. In an attempt to let the world know about the extent of the Rohingya tragedy and stories of great human suffering, a total of 24 oral testimonies was selected and published by the CSGJ in November 2017 titled 'The Testimony of Sixty on the Crisis of Rohingyas in Myanmar' as a sequel to 'The Testimony of Sixty on the Crisis in Bengal' which was published by OXFAM in a similar humanitarian crisis back in 1971.

The second field visit was arranged in collaboration with the National Human Rights Commission (NHRC), Bangladesh from February 1-4, 2018 in order to collect the evidences of sexual violence on the Rohingya women and children, both victims and eye-witnesses. A group of 11 researchers, one counseling expert, and 4 interpreters from the CSGJ contributed their assistance in conducting the second field visit. A total of 53 testimonies were collected adopting the same methodology as the first visit, however, importance to ethical standard and guidelines were emphasized in this visit due to the sensitivity of the victims and eye-witnesses of rape and sexual violence.

A follow-up visit (or, the third visit) was made from April 30-May 2, 2018 with a view to collect more testimonies from the Rohingya women victims concerning the allegation of sexual violence. The research team for this third visit received training by the UN Women's Institute for International Criminal Investigations, organized by the NHRC Bangladesh. The experts conducted a training workshop for the testimony collectors on 'Documenting Conflict Related Sexual Violence among the Rohingya', from March 20-22, 2018. In the third visit, 41 testimonies were collected.

The primary data was collected directly from the victims and witnesses through an in-depth interview method. The selection was made on the basis of prior study and information collected in the field. In addition, the findings of the research were recorded and written with the prior consent of the interviewees. The lead interviewer and note takers were chosen from amongst female researchers and male researchers worked as verifiers. Intermediaries such as medical practitioners, local **majhi**, etc. were engaged to identify the location of the victims and survivors. All the interviews were taken at the shed of victims in refugee camps. Before taking interviews, purpose of the research was shared to them and consent forms as well as non-disclosure agreement forms were explained to them and duly signed by them. The methodology of research has followed qualitative approach. The targeted audiences were mostly the victims of torture, rape and sexual violence. The researchers also took accounts of eyewitnesses.

1.3 Data Collection Method and Ethical Consideration

The research team focused on collecting oral testimonies from the respondents and thus implemented some of their own learning along with from previous research experiences. The interviews were taken following a questionnaire with open-ended questions. Testimonies collected by the researchers were duly recorded, transcribed, translated and archived. Anonymity of the victims was maintained as per standard law and policy when requested.

Before interviewing, the respondents were informed about the research objectives and the researchers sought their consent using a consent form.⁶ Due to their scanty access to education, many respondents were illiterate and hence the researchers read out the consent forms with the help of the interpreters and had their thumb impression inscribed in the consent forms. Confidentiality and ethical guidelines were followed with the sensitivity of the issue. According to the Non-disclosure Agreement, pseudonyms were used to respect the identity of the Rohingya women who were found as victims of rape and sexual violence.⁷ CSGJ holds authenticated information of these victims on record and is documented.

In total, 161 (67+53+41) testimonies were collected in three visits, adopting the methodology, ethical standards and guidelines.

1.4 Research Locations

The Rohingya refugees were found living in the Cox's Bazar makeshift refugee camps in Bangladesh. Some of them were staying in the no man's land between the border of Bangladesh and Myanmar. The unprecedented number of Rohingya refugees who were forced to cross the border in Bangladesh since August 25, 2017, was accommodated in makeshift refugee camps in Ukhiya, Cox's Bazar.

1.5 Details of the Field Visits

The First Field Visit: Eight researchers were divided into a team of four, with one male and one female in each, to initiate building of trust between both the male and female Rohingya interviewees. The team started its journey for Cox's Bazar at 2 PM in the afternoon, from the Liberation War Museum premises in Dhaka on October 12, 2017. After a long journey by road, the team reached Cox's Bazar. On October 13, 2017, the team members started for Ukhiya, Cox's Bazar to visit the Rohingya refugee makeshift camps in the morning. On the way, the teams were joined by three local school teachers and two scout-students, accompanying as the interpreters.

On October 14, 2017, the team visited three different makeshift camps; the first one is called Kutupalong Hindu Para. Subsequently, the team moved to Kutupalong-1 refugee camp, and then to Thaingkhali (Block-A) refugee camp. On this day, the team had interviewed several Rohingya families. However, it is to be mentioned that, the eight researchers were divided into four groups, along with a mentor (Research lead, maintaining constant update and feedback from all teams and briefing the team as necessary), a local person from the Rohingya camp, so that, the team could utilize the time as much as possible. They conducted interviews on that day until 4.30 PM in the afternoon, owing to prevailing restrictions in the camp site.

On October 15, 2017, the team visited three different refugee camps, namely Balukhali-1, Balukhali-2 and Kutupalong temporary camp. The team conducted the interviews applying a similar method of the previous day. And in the evening, the team finally headed back to Dhaka.

⁶ See Annexure 6.

⁷ See Annexure 7.

On November 3, 2017, with a launching ceremony, the Center for the Study of Genocide and Justice (CSGJ) published the selected pieces of testimonies of the victims interviewed along with the narratives of the world leaders, aid workers and journalists. It is titled 'The Testimony of Sixty on the Crisis of Rohingyas in Myanmar', a sequel to the 'Testimony of Sixty 1971 on the Crisis in Bengal' published by OXFAM in October 1971.

The Second Field Visit: Four teams were constituted and each team included one lead interviewer, one note taker, one interpreter and one verifier. Considering the sensitivity surrounding rape and sexual violence, a verifier performed the role of verifying the notes and the answers received in order to prevent repetition of asking questions to the victims. The methodology of research followed a qualitative approach. The interviewees were the Rohingya victims of rape, sexual assault and the witnesses of such incidences. Prior to visiting the camps the team coordinated with CSGJ's local contact persons in order to identify camps with victims of rape and sexual violence. The information provided helped the team to target locations to visit. On camp location, the team communicated with medical officers on field and most importantly the 'Majhi' of the camps to obtain victims information. The 'Majhis' were helpful in maintaining respect and sensitivity while identifying victims for interviews. The teams followed a questionnaire, general guidelines and ethical conduct policy in order to take the interviews.

In this particular visit, the researchers followed the Colombian Protocol, which is an International Protocol on the Documentation and Investigation of Sexual Violence in Conflict for Interviewing the Cases of Sexual Violence.⁸ The researchers also followed the Notes on Interviewing the Rohingya People for Collecting Evidences prepared by Professor Irene Victoria Massimino from Argentina exclusively for the purpose of this research.⁹

Two teams of CSGJ visited the Thaingkhali makeshift camp on February 2, 2018 and interviewed victims of sexual violence while the other two teams went to Kutupalong-3 camp and conducted interviews. On the following day on February 3, 2018, the entire research team went to Kutupalong-3 camp and interviewed victims of sexual violence. The primary data was collected directly from the victims and witnesses through an in-depth interview method. In addition, the findings of the research were recorded and written with the prior consent of the interviewees. The lead interviewer and note-taker were chosen amongst female researchers and male researchers worked as verifiers, to cross check the information collected and to avoid contradicting information.

⁸ See Annexure 3.

⁹ See Annexure 4.

Table 1: Statistics of Sexual Violence against the Rohingya Women in Myanmar
(Statistics collected during second field visit)

Age Group			Victim or Witness		Marital Status		Victimized/Witness of					Place of Occurrence				
Below 18	18-35Years	Above 35	Victim	Witness	Unmarried	Married	Raped by Individual	Gang Raped	Sexual Assault	Torture	Others	Home	School	Neighborhood	Jungle	Others
4	35	14	47	6	5	48	12	24	12	3	2	22	5	13	5	8

The Third Field Visit: The team among the four included one lead interviewer, one note taker, and one interpreter. Two teams of CSGJ visited Hakimpara camp on April 30, 2018 and interviewed victims of sexual violence and other two teams went to Kutupalong camp for collecting testimonies from victims of sexual violence. On May 1, 2018, two teams went to Hakimpara camp and other two teams went to Balukhali-1 camp and interviewed victims of sexual violence. On May 2, 2018, all four teams went to Balukhali-2 camp for collecting testimonies. Patrick Burgess, President of Asia Justice and Rights (AJAR), voluntary consultant to this research and Mofidul Hoque, CSGJ Director of the Liberation War Museum (LWM), accompanied the teams.

Table 2: Statistics of Sexual Violence against the Rohingya Women in Myanmar
(Statistics collected during third field visit)

Age Group			Victim or Witness		Marital Status		Victimized/Witness of					Place of Occurrence				
Below 18	18-35Years	Above 35	Victim	Witness	Unmarried	Married	Raped by Individual	Gang Raped	Sexual Assault	Torture	Others	Home	School	Neighborhood	Jungle	Others
3	31	7	36	5	3	38	9	26	-	5	1	15	0	10	11	5

1.6 Limitations

Considering the objective of the research, challenges relating to location, language, accessibility is inevitable. This research inherently focuses on an ethnicity that is residing in the makeshift camps of Ukhiya. In conducting the research, emphasize had to be brought upon maintaining certain rules and regulations of the area concerned. Shortage of time was thus one of the major limitations of this research, as the team could visit the camps only during daytime as per rules to leave the camp sites by evening. As a result, the team could only conduct limited visits with efficiency, bearing in mind the sensitivity of the issues concerned.

In order to conduct the research coordination with on-field camp coordinators, medical officers, local people were very important as there was the need of constant cross-checking between the team to avoid repetition of testimonies. It was mere challenging to communicate and get information from the medical centers of different NGOs and INGOs about victims of sexual violence, as it required time to explain our objectives initially.

Language in terms of this research played a vital role, as there is bound to be limitations between the interviewees and the interviewers. Due to geographical language barrier, interpreters accompanied the team throughout the research work. The interpreters for the three visits were from Ukhiya, Cox's Bazar with a strong understanding of the local dialect in Ukhiya. Difficulties occurred in the initial phase of the interviews, however, the Rohingyas and the interpreters established familiarity in their languages due to the narrow geographical difference between the borders of Myanmar and Bangladesh. The interviewees established trust through body language and expressions as their strength to initiate conversation and collection of testimonies. Often, the information gathered from the respondents or from other sources was to some extent inconsistent (e.g. concerning the identity of local collaborators, or who attacked the villages, or whether or not there was peaceful coexistence between the Muslim and Hindu Rohingyas). However, such inconsistencies were dealt with constant cross-checking or through applying different research techniques. Furthermore, it is to be stated that the research team maintained unbroken professionalism and thorough state of nothingness in their expressions although the harrowing accounts of the narratives were agonising the researchers profoundly.



Photo 3: The Rohingya families, facing countless persecution, are now in search of safety and shelter in Cox's Bazar.



Photo 4: A future clouded with uncertainty is waiting for the Rohingyas?

CHAPTER 2

HISTORICAL BACKGROUND TO THE PRESENT ROHINGYA HUMANITARIAN CRISIS

2.1 Introduction

The Rohingya people who live in today's North Rakhine State of Myanmar, previously known as Arakan, are deeply rooted in the territory and its history. They are not only most persecuted people but also most misrepresented and misunderstood ethnic community of modern world. Myanmar is a land of diverse national and ethnic community practicing various religions. Although Buddhism is the dominant faith in Myanmar that did not obliterate the diversity of national and ethnic identity, few of which were formed over the centuries, from historic time and medieval period. Similar was the root of Rohingya ethnic identity that evolved in the middle ages and needs to be studied and put in proper historical perspective.

2.2 Historical background of the Emergence of Rohingya Identity

Arakan Kingdom emerged in the early period of history as a citadel of Buddhism. Later on coastal Arakan developed as a trading post with sea-faring merchants coming from far and near. Arab traders and Sufi saints began to settle in Arakan since the ninth century. The mingling of traders with local population and the spread of Islam gradually led to the emergence of distinct Rohingya identity of an ethnic group with their own language, culture, rituals and practices as well as by the influence of Islam. The Kingdom of Arakan, also known as Rosang Kingdom, established close relation with Bengal of Sultani period since early 15th century. This historical connection contributed in the consolidation and cohesion of Rohingya ethnic identity. Medieval historical evidences as reflected in the coins and flourishing of Bengali literature in the court of Arakan depicted the link of Arakan with Bengal as well as development of Arakan as a land of diverse culture and religion. The ethnic and religious conflict was unknown in the Medieval Kingdom of Arakan.

The pluralism and multi-culturalism of the Arakan State has not been dealt with due importance by the historians of colonial and post-colonial era. In many cases historical narratives began with Burmese domination over Arakan in late Eighteenth century and subsequent colonial rule. The narratives on Rohingya ethnic identity usually refers to Francis Buchanan's travel through the region and his observations published in the *Asiatic Researches* in 1799. But Bengali literary works being produced in the court of medieval Arakan tells a different story. These sources has been least consulted and call for greater attention from the scholars in Myanmar and abroad. Based on literary studies one can easily identify Rosang people or Rohingyas as a distinct ethnic group playing important role in the kingdom since the 15th century.

At a one point of time, when Mrauk-U was invaded by forces of the Burman Kingdom at Ava King Narmeikhla sought assistance from Bengal Sultan and expelled

the attackers with the support of Sultan's army in the 1400s.¹⁰ There followed a long era of Arakan Kingdom patronizing Bengali language in their court. The emergence of Rohingya identity in the medieval Arakan has been explained further in Annexure1.

Independent Arakan with its medieval past got buried in history with the occupation by Central Burmese Kingdom. The capital Mrauk-U was left to ruin, the Bengali literary creations were lost in oblivion. Rosang Kingdom with its diversity and plurarism became a forgotten chapter of history. Kingdom of Arakan was conquered by the Burman King Bodawpaya in 1784 and incorporated into the Kingdom of Ava in Central Burma. This was followed by the victory of British colonial power over the Burman King in 1824 which ushered in the long era of colonial rule.

Historical connection between Bengal and Arakan¹¹

Because of her geographical proximity to the southeastern parts of Bengal, Arakan developed both political and cultural ties with the Bengalis. The impact of Muslim culture on the life of the peoples of Arakan had profound effects on the subsequent course of Arakanese history. The kings of Arakan patronized the cultivation of Bangla Literature and consequently many talented poets from different regions of Bengal thronged to the Arakanese court. For example, Ashraf Khan held the post of war minister at the time of King Thadomentor (1645-52). Ashraf Khan was popularly known as 'Uzir Laskar'. He was a powerful minister and for his services the king awarded him one sword of honour and some elephants. Daulat Qazi (c 1600-1638) a medieval Bangla poet was appointed court poet of King Sri Sudharma, for whom he composed the poem Satimayna O Lorchandrani. It is a romantic narrative poem about the love between a feudal prince and a princess. He was able to complete only two-thirds of the poem before he died. The second great Bengali poet in the court of Arakan was Alaol. He completed the rest of the poem Satimayna O Lorchandrani in 1659. Besides, he wrote six books in all, of which, the most famous Padmavati, is a translation of Padmavat of Hindi poet Malik Mohammad Jayasi.

SOURCE: banglapedia.org

In 1784, the Burman King Bodawpaya conquered and incorporated the Arakan region into his Kingdom of Ava in central Burma.¹² As a consequence of the invasion, many Rohingyas began to pour into what is today the Cox's Bazar area of southern Chittagong. One of the groups of displeased Rohingya that fled to British controlled Chittagong in East Bengal proceeded to conduct raids against the Burman king. In one incident, the king's men pursued the Rohingya insurgents into British territory.¹³

¹⁰Maimul Ahsan Khan, *Human Rights for Rohingya Muslims: International Law and Political Realities* (Dhaka: Kamrul Book House, 2017).

¹¹ See A.M. Serajuddin, 'Muslim influence in Arakan and the Muslim names of Arakanese Kings: A resentment', *Journal of the Asiatic Society of Bangladesh (Humanities)* (1986) 31(1): 17-23; and Bisvesuar Bhattacharya, 'Bengali influence in Arakan: Bengal past and present', *Journal of the Calcutta Historical Society* (1927) 33 (65-66): 139-144.

¹² Ibid.

¹³ See K. Maudood Elahi, 'The Rohingya Refugees in Bangladesh: Historical Perspectives and Consequences'. In *Rohingya Refugees in World Press 1978*, ed. Shabbir Hussain (publisher and year of publication unknown), at pp. 138-148.

The incursion led to tension between the British colonial government and King Bodawpaya over the king's demands for extradition of the insurgents.¹⁴

The incursion led to tension between the British colonial government and King Bodawpaya over the king's demands for extradition of the insurgents.¹⁵

In 1811, the leader of the insurgents, Chin Bya, organized his forces and managed to capture much of Arakan. Nevertheless, a request by Chin Bya for British protection, however, was rejected and the Burmese army pushed Chin Bya back into Bengal.¹⁶ Many of the Rohingya that fled during this period never returned to Burma, but instead settled in the area of Cox's Bazar and became integrated with the local community.¹⁷

In a series of three wars beginning in 1824, the British colonized Burma. During their rule, the Arakan problem declined as the British allowed for a relative degree of local autonomy. From 1824 to 1942, there were few recorded incidences of uprisings. This period witnessed significant migration of laborers to Burma from neighboring South Asia.¹⁸ The British administered Burma as a province of India, thus migration to Burma was considered an internal movement. Still, the Burmese government considers that the migration which took place during this period was illegal, and it is on this basis that they refuse citizenship to the majority of the Rohingya. The reality is that the Rohingyas have had a well-established presence in the country since the 12th century.¹⁹

In 1942, Japanese forces invaded Burma and communal violence erupted during the British retreat. Attacks were made against those groups that had benefited from British colonial rule. Burman nationalists attacked Karen and Indian communities, while in Arakan/Rakhine and Rohingya villagers attacked one another causing a displacement of Buddhist villagers to the south and Rohingyas to the north.²⁰ Some 0.022 million Rohingya are believed to have crossed the border into Bengal. The region remained under Japanese control until a British offensive drove out the Japanese in 1945.²¹

2.3 Position of Rohingya in Post-Independent Myanmar (1948-till now)

After Burma became independent in January 1948, tensions between the government and the Rohingya grew to a greater extent. Immediately following independence, a group of Arakanese Muslims went on the political offensive,

¹⁴ Ibrahim (above n 13).

¹⁵ Azeem Ibrahim, *The Rohingyas: Inside Myanmar's Hidden Genocide* (New Delhi: Speaking Tiger Publishing Pvt. Ltd., 2017). See also Maung Zarni and Alice Cowley, 'The Slow-burning Genocide of Myanmar's Rohingya'. *Pacific Rim Law & Policy Journal* (2014) 23(3): 683-754; and Francis Buchanan, 'A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire', *Asiatic Researches* (1799) 5:219-240. Reprinted in *SOAS Bulletin of Burma Research*, Vol. 1, No., 1, Spring 2003, ISSN 1479-8484; <<https://www.soas.ac.uk/sbbr/editions/file64276.pdf>>.

¹⁶ Abdul Karim, *The Rohingyas: A Short Account of their History and Culture* (Dhaka: Jatiya Sahitya Prakash, 2016).

¹⁷ Ibid.

¹⁸ See Free Rohingya Coalition, *The Rohingyas: An Ethnic People, Our History and Persecution* (Basic Information Series One), (publisher unknown, 2018).

¹⁹ Khan (above n 10).

²⁰ Karim (above n 15).

²¹ Ibid.

pushing for the integration of Maungdaw and Buthidaung into what was then known as East Pakistan. The proposal was rejected by the Constituent Assembly in Rangoon. The government contributed to the escalation of tension by treating the Rohingya as illegal immigrants.²²

After that, the immigration authorities imposed limitations of movement upon Muslims from the regions of Maungdaw, Buthidaung, and Rathedaung to Akyab. The Muslims were not resettled in the villages from which they had been driven out in 1942 with the exception of villages they left in the Maungdaw and Buthidaung regions. Some 0.013 million Rohingyas still living in refugee camps in India and Pakistan whence they had fled during the war, were unable to return; as for those who did manage to return, they were considered illegal Pakistani immigrants. The properties and land of all these refugees have been confiscated. Moreover, as they were denied the right to citizenship, Rohingyas were prohibited from military service and Buddhist Rakhine villagers replaced Rohingya civil servants.²³

Early in the decade of the 1950s, the Pakistani government sent a warning to its Burmese counterparts about the treatment of Muslims in Arakan. However, Burma's Prime Minister, U Nu, quickly dispatched a Muslim ambassador, U Pe Kin, to negotiate an understanding according to which Pakistan would no longer provide weapons to the Mujahids. In 1954, authorities in Pakistan finally arrested Cassim, the leader of the Mujahids, and placed him in a Chittagong jail. In November 1954, the Burmese army stepped up counter-insurgency operations in Arakan and succeeded in quieting the rebellion.²⁴

During 1962, after General Ne Win and his Burma Socialist Program Party (BSPP) seized power, the government began to dissolve Rohingya social and political organizations. In its continuation, the Myanmar army initiated the "Operation Nagamin" or "Dragon King" that resulted in fleeing of more than 0.2 million Rohingyas to Bangladesh all through 1977.²⁵

In 1978, most of such Rohingyas were sent back to Burma under the purview of a UN-brokered arrangement between Bangladesh and Burma. However, a law was passed in 1982 that denied citizenship of the Rohingyas with a view to curtailing their rights to access to schools and health care services, and right of movement in and out of the country.²⁶ The government also imposed a two-child limit measure on Rohingya families and controlled inter-religious marriage.²⁷

All through 1991, in the name of bringing order in Rakhine State, the Myanmar army forced more than 0.25 million Rohingyas to flee from Myanmar. Approximately 0.23 million Rohingyas were repatriated in Rakhine State under another agreement

²² Ibrahim (above n 14).

²³ Ibid.

²⁴ Elahi (above n 13).

²⁵ Ibid.

²⁶ See Nick Cheesman, 'How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya', *Journal of Contemporary Asia* (2017) 47(3): 440-460.

²⁷ See at: <<https://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>>and <<http://www.mei.edu/content/map/rohingyas-refugee-crisis-regional-and-international-issue>>.

between Bangladesh and Myanmar during the period of 1992 to 1997.²⁸ Subsequently, an alleged riot took place between the Rohingyas and Rakhine Buddhists in 2012 that drove thousands of Rohingyas into the territory of Bangladesh. The Buddhist men conducted a series of coordinated attacks on Muslim Rohingya villages of Rakhine State for the duration of October 2013.²⁹

During October 2016, as a retaliation of an attack initiated by a Rohingya militant group, Harakah al-Yaqin, on the border guard posts, the Myanmar army started the “area clearance operations” for destroying the Rohingyas. Reportedly, more than 0.066 million Rohingyas fled to Bangladesh since 9 October 2016 after such intense army operations. The Rohingyas were victims of mass gang-rape, killings of men and women including babies and young children, brutal beatings, disappearances and other serious human rights violations.

Since August 2017, more than half a million Rohingyas fled from the northern Rakhine state of Myanmar to Bangladesh due to either being persecuted or with the fear of being persecuted by the Myanmar army or both. The Human Rights Watch (HRW) reported that minimum 288 villages were totally or partially ruined by fire in the northern Rakhine State after the period of time.³⁰ The UN indicated the persecutions of the Myanmar army against the Rohingyas as an undeniable “textbook example of ethnic cleansing” that amounts to the crime of genocide.³¹ A recent research done by Yale Law School, based on persuasive evidence, finds that acts committed against the Rohingya people, individually and collectively, satisfy the conditions for acts under the Genocide Convention and other decided cases for acts perpetrated against a protected group.³² According to another study,³³ the Rohingya Muslim community has been systematically persecuted and expunged from the national narrative – with a possibility of their complete extermination.

²⁸ Nassir Uddin, ‘State of Statelessness People: The Plight of Rohingya Refugees in Bangladesh’, in *The Human Right to Citizenship: A Slippery Concept*, ed. Rhoda E. Howard-Hassmann and Margaret Walton-Roberts (University of Pennsylvania Press, Philadelphia, 2015), at p. 5. Source: K. Maudood Elahi. ‘The Rohingya Refugees in Bangladesh: Historical Perspectives and Consequences’. In: Shabbir Hussain (ed.), *Rohingya Refugees in World Press 1978* (publisher and year of publication unknown), pp. 143-144.

²⁹ See Human Rights Watch (HRW), *Burma: End “ethnic cleansing” of Rohingya Muslims*, April 22, 2013; <<http://www.hrw.org/news/2013/04/22/burma-end-ethniccleansing-rohingya-muslims>>.

³⁰ See Human Rights Watch (HRW), *Burma: Scores of Rohingya Villages Bulldozed* (February 23, 2018); <<https://www.hrw.org/news/2-18/02/23/burma-scores-rohingya-villages-bulldozed>>.

³¹ See The Guardian, ‘Myanmar treatment of Rohingya looks like ‘textbook ethnic cleansing’, says UN’, (September 11, 2017); <<https://www.theguardian.com/world/2017/sep/11/un-myanmar-treatment-of-rohingya-textbook-example-of-ethnic-cleansing>>.

³² See for example the *Cases Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide: Bosnia-Herzegovina v. Serbia and Montenegro*, ICJ Judgment, February 26, 2007; *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Judgment, September 2, 1998; *The Prosecutor v. Kambanda*, Case No. ICTR-97-23-S, Trial Judgment, September 4, 1998; *The Prosecutor v. Clement Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Trial Judgment, May 21, 1999; *The Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Trial Judgment, June 7, 2001; *The Prosecutor v. Jellic*, Case No. ICTY-IT-94-10-A, Appeal Judgment, July 5, 2001; *The Prosecutor v. Krstic*, Case No. ICTY-IT-98-33, Judgment of August 2, 2001; *The Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Trial Judgment and Sentence, May 15, 2003; *The Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, Trial Judgment, May 16, 2003; and *The Prosecutor v. Stakic*, Case No. ICTR-IT-97-24-T, Trial Judgment, July 31, 2003.

³³ Alina Lindblom, Elizabeth Marsh, Tasnim Motala and Katherine Munyan, *Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar’s Rakhine State? A Legal Analysis* (Yale Law School, Hartford, ct, 2015).

The Rohingyas including men, women and children reached southern Bangladesh risking death by sea or on foot. Approximately 58% of all the Rohingyas who fled from Myanmar after August 2017 are children and 60% of the adults are women. The Kutupalong refugee camp, situated at Teknaf Highway, Ukhiya, Cox's Bazar, is the largest camp where the number of Rohingyas has climbed approximately from 0.014 million to 0.02 million since August 2017. In addition to that, the number of Rohingyas has mounted from more than 0.099 million to 0.31 million who are living in makeshift or spontaneous settlements outside the camp in the surrounding countryside and nearby Balukhali.

2.4 Conclusion

In such situation, Bangladesh made a plan to establish more makeshift shelters for them in some of its specified areas while it also intends to send them back in their own country. While the government of Myanmar claimed that “clearance operations” ended on September 5, 2017,³⁴ military engagement continued well into October 2017. Freedom of movement was further constrained, restricting remaining Rohingya to their houses, with limited access to markets and livelihood and exacerbating malnutrition. Humanitarian access was severely restricted or blocked. Conversely, no protection was provided to Rohingya against vigilante attacks and the theft of property, livestock and other possessions by civilians of other ethnic groups. Sporadic attacks, including sexual violence, continued. These factors forced more Rohingya to Bangladesh, an average rate of 1,733 per month since the beginning of 2018.

However, Ms. Aung San Suu Kyi, leader of the National League for Democracy and State Counsellor of Myanmar has largely been criticized worldwide for her ignorance and silence on the acts of persecutions of the Myanmar Army against the Rohingyas and is yet to implement any decision of their repatriation in the Rakhine State of Myanmar.³⁵ The Commander-in-Chief of the Burmese Military, Senior General Min Aung Hlaing, has made public statements that the Rohingya do not exist, describing them as the “Bengali Problem”, and defending the recent violence as “unfinished business” from World War II.

In the Report of the Independent International Fact-Finding Mission on Myanmar issued on 27 August 2018, it has been revealed that the State Counsellor, Aung San Suu Kyi, has not used her *de facto* position as Head of Government, nor her moral authority, to stem or prevent the unfolding events, or seek alternative avenues to meet a responsibility to protect the civilian population. On the other hand, the civilian authorities spread false narratives and propaganda; denied the Tatmadaw's wrongdoing; blocked independent investigations, including of the Fact-Finding Mission; and overseen the destruction of evidence. Through their acts and omissions, the civilian authorities have contributed to the commission of atrocity crimes.

³⁴ See Speech delivered by Her Excellency Daw Aung Suu Kyi, State Counsellor of the Republic of the Union of Myanmar on Government's efforts with regard to National Reconciliation and Peace (Nay Pyi Taw, September 19, 2017); <http://www.mofa.gov.mn/wp-content/uploads/2017/09/SC-speech-transcription-Final-19-9-2017_.pdf>.

³⁵ See Full Interview of Daw Aung San Suu Kyi on Rohingya Crisis, Republic World; <<https://www.youtube.com/watch?v=q4O3AreGcYk>>.



Photo 5: The Rohingyas receive medical services from various aid and relief agencies.



Photo 6: Innocent Rohingya children, sheltered in refugee camps, seek for their lost childhood.

CHAPTER 3

THE BURMA CITIZENSHIP ACT, 1982 AND THE SUFFERINGS OF THE ROHINGYA PEOPLE

3.1 Introduction

Historically the demand for the right to citizenship emerged in response to the growing power of the modern State. The right to citizenship enumerates the right to identity and the freedom to exercise civil and political rights in a country. Citizenship in law defines the legal bond between the State and the individual, where the former guarantees the rights of the latter. It is well established that the rights a State guarantees varies from State to State, however, certain rights are of certain universality, such as the right to permanent residence within the State, the right to freedom of movement within the State, the right to vote and to be elected or appointed to public office, the right of access to public services etc. The Rohingya ethnicity in the northern Rakhine state of Myanmar faced the adverse effect of the country's national Laws and subsequently the Burma Citizenship Act of 1982. In the following paragraphs, the sufferings of the Rohingya people arising out of the citizenship laws and related human rights violations are discussed with examples from the history.

3.2 Legal framework as per the Burma Citizenship Act, 1982

The Rohingya ethnicity in the Northern Rakhine State of Myanmar faced the adverse effect of the country's national Laws and subsequently the Citizenship Act of 1982. The aftermath of 1962 brought upon immense change in the social structure of the Rohingya population and gradually changed their legal rights. The Emergency Immigration Act introduced in 1974 by the Myanmar regime, initiated the issuance of National Registration Cards (NRC), also known as ethnicity-based identity cards. These cards were later replaced with Foreign Registration Cards (FRC) and then the Citizenship Act of 1982 laid the final nail in the coffin.

The Citizenship Act of 1982 created four categories of citizenship, namely: citizenship, associate citizenship, naturalized citizenship and foreigners. The Law further lays down the power of determining the category of citizenship of a Myanmar individual on the Government Officials. A person was issued a color-coded Citizenship Scrutiny Card (CSC) consistent with his or her citizenship status-pink, blue, and green respectively.³⁶

As per the provisions of the said Act:

“Citizens are persons who belong to one of the national races (Kachin, Kayah (Karenni), Karen, Chin, Burman, Mon, Rakhine, Shan, Kaman, or Zerbadee) or whose ancestors settled in the country before 1823, the beginning of British occupation of Arakan State.³⁷

³⁶ See Human Rights Watch (HRW), *Burma: The Rohingya Muslims: Ending a Cycle of Exodus?*, Vol. 8, No. 9 September 1996, p. 26.

³⁷ See The Burma Citizenship Act, 1982, Chapter II.

If a person cannot provide evidence that his ancestors settled in Burma before 1823, he or she can be classified as an associate citizen if one grandparent, or pre-1823 ancestor, was a citizen of another country. Those persons who qualified for citizenship under the 1948 law, but who would no longer qualify under this new law, are also considered associate citizens if they had applied for citizenship in 1948.³⁸

To become a naturalized citizen, a person must be able to provide inconclusive evidence that he or his parents entered and resided in Burma prior to independence in 1948. Persons who have at least one parent who holds one of the three types of Burmese citizenship are also eligible.³⁹

Beyond these two qualifications, Section 44 of the act stipulates that the person must be eighteen years old, be able to speak well one of the national language, be of good character, and be of sound mind."⁴⁰

According to the 1982 Law, full citizens are descendants of residents who lived in Myanmar prior to 1823⁴¹ or were born to parents who were citizens at the time of birth.⁴² On the other hand, associate citizens are those who acquired citizenship through the 1948 Union Citizenship Act.⁴³ Naturalized citizens are those who lived in Myanmar before 4 January 1948 and applied for citizenship after 1982.⁴⁴ Therefore, in order to gain the status of full citizen under this law the Rohingya must demonstrate that they lived in Myanmar prior to 1823 – before the Anglo-Burmese war.⁴⁵ The Rohingya people claim that their ancestors were in Myanmar long before 1823.⁴⁶ However, the Myanmar government denies this and ignores the citizenship rights of the Rohingya people.

3.3 Consequences of the Citizenship Act on the Rohingya Ethnicity

The rigid provisions of the legislation stipulate the strong discriminatory ideology towards the Rohingya ethnicity. Despite evidence of traces of this ethnicity existing historically, this legislation provided a legal framework out-casting the Rohingya ethnicity. The provisions eliminate the ethnicity from the identity of a 'national race' and thus the right to a full citizenship. The ethnicities acknowledged in the 'national race' under the said legislation, also faced discrimination from the Myanmar regime, like Karen, Kachin and Kaman – a Muslim ethnic group in Myanmar, among others. The lack of conclusive evidence in terms of proving identity of the categorized

³⁸ See The Burma Citizenship Act, 1982, Chapter III.

³⁹ See The Burma Citizenship Act, Chapter IV.

⁴⁰ Ibid.

⁴¹ The Burma Citizenship Act, 1982, Section 3.

⁴² The Burma Citizenship Act, 1982, Section 5.

⁴³ The Burma Citizenship Act, 1982, Section 23.

⁴⁴ The Burma Citizenship Act, 1982, Section 42.

⁴⁵ The first Anglo-Burmese War (1824–26) ended on 24 February 1826 when Burma ratified the Treaty of Yandabo and ceded Arakan and Tenasserim to British India. See for details Frederick Brickdale Doveton, *Reminiscences of the Burmese War, in 1824-5-6*, (London: Allen and Co., 1852) pp. 35–63.

⁴⁶ Ashley South, *Ethnic Politics in Burma: States of Conflict* (London: Routledge, 2008), at pp. 3–21.

citizenship stripped most people from an identity. Moreover, the arbitrary practice of the Myanmar officials in determining the national identity of a Rohingya individual, by imposing discriminatory provisions such as forceful submission of Identification/Registration Cards, writing off from the ancient Rohingya list and enlisting in the Resident Foreigner (Bengali) category. Such willful discrimination over the years, lead to the 'statelessness' status of the Rohingya ethnicity.

The 'statelessness' of the Rohingya ethnicity due to implementation of the Citizenship Act of 1982, curtailed the right to exercise civil and political rights for the vast population. With no identity, the rights to freedom of movement, freedom of education, freedom to marry etc. were further restrained violating International Laws, such as UDHR and ICCPR among others.

The testimonies collected in this research depict implications of the statelessness and thus the suffering perpetrated upon the Rohingya ethnicity due to the enactment and implementation of the Citizenship Act of 1982, by the Myanmar government.

Umme Hayer, aged around 32, from Chakiya, Mundumoron, Myanmar, stated *"The Myanmar military and the local 'Maghs'⁴⁷ would shout at us saying 'this is not your country, this is not your village. You are not Rohingyas. Go somewhere else.' If we said that we are Rohingyas and our forefathers have been living in this land from time immemorial, the soldiers used to ask for proof."*

"I have no identity card and documents. All our cards said we are 'Bengalis' living in Myanmar. The access card we received for shopping were to be displayed at all time, otherwise we would be subject to beating in public. I had a family picture which is a mandatory document ordered by the Burmese Government. If there were more than three children, then Rohingyas were subject to either fine or imprisonment. Through maintaining a family picture, the government officials would make sure if there were more children after the previous year."

- Rafiqa from Khing Chong, Boli Bazar, Myanmar, who arrived in Ukhiya, Bangladesh with her children and husband after the 25th of August

Rohingya man Rahmat Ullah said *"in my locality people cannot marry without the permission card. We have been identified as 'Bengali'. But we are not. We are the native inhabitants of Rakhine."*

Another individual named Yakub originally from Buthidaung, Myanmar, currently staying at Palongkhali camp in Ukhiya, Cox's Bazar, stated *"the identity card issued to*

⁴⁷ According to Maung Zarni, *"'Magh' is a derogatory reference to Rakhine Buddhists commonly used by the Rohingya"*. In our investigation, we also found that the term 'Magh' is often considered to be a slur by many Rakhine Buddhists. However, this was the term which the victim used referring to basically the Rakhine Buddhists.

Rohingyas identified us as 'Bengalis'. They said we are not Rohingyas, but we are 'Bengalis'. That we were merely mehmaans (guests) from Bangladesh. We were asked to get citizenship card only if we accepted that we are Bengalis living in Burma. If there is truly peace I will go back to my country, but only as a Rohingya; I fled home out of desperation and to seek protection to life."

3.4 Conclusion

The abovementioned testimonies are just a prelude to the gradual and systematic deprivation of the Rohingya ethnicity of a national identity. The Citizenship Act of 1982, categorically contradicts generally accepted international laws and norms as it deliberately denies the right to citizenship, a national identity, to the historically existing Rohingya ethnicity.

Although the State may determine the right to citizenship, it is to be adhered that the State abides by the international customs in conforming the criteria of a citizenship status. Through fundamental legislation of the Citizenship Act, 1982 and subsequently through imposing various arbitrary National legislation on the targeted Rohingya ethnicity, the State of Myanmar has led them towards 'Statelessness' eventually driving towards forced displacement, as we will later see in the following chapters.



Photo 7: Market access card/travel card provided to the Rohingyas by the Myanmar State authority.



Photo 8: Family picture taken by the Government officials of Myanmar to keep count of the new members in each Rohingya family.



CHAPTER 4

THE PATTERN OF ATROCITIES AND THE CRIME OF GENOCIDE AGAINST THE ROHINGYA ETHNICITY

4.1 Introduction

The United Nations Office of the High Commissioner for Human Rights (OHCHR) indicated the persecutions against the Rohingyas as an undeniable 'textbook example of ethnic cleansing',⁴⁸ and has lately provided the findings and recommendations of the Independent International Fact-Finding Mission on Myanmar.⁴⁹ In 2017, the Permanent Peoples' Tribunal (PPT) on 'State Crimes Allegedly Committed in Myanmar against the Rohingyas, Kachins and Other Groups' declared that mass killing, rape and various atrocities that are taking place in Rakhine amount to the international crime of genocide and of crimes against humanity.⁵⁰ More specifically, the Tribunal observed that genocide is precisely what the Myanmar government and allied militias are committing against the Rohingya population.⁵¹

Ms. Yanghee Lee, Special Rapporteur on the situation of human rights in Myanmar at the 37th session of the Human Rights Council (HRC) in March 2018, appealed to the international community and the government of Myanmar to end violence and committing the crime of genocide and crimes against humanity against the Rohingya ethnicity.⁵² However, the world leaders have chosen their words carefully when describing the mass exodus of Rohingya fleeing violence in Myanmar, so far largely avoiding the legally specific and politically charged term 'genocide'.⁵³ The actions that the Myanmar's military took against the Muslim minority Rohingya group had been called a 'complicated situation', a 'brutal crackdown' and a 'textbook case of ethnic cleansing'.⁵⁴ The OHCHR report did not mention the atrocities to be amounted as genocide or ethnic cleansing, but the information shared by the persecuted Rohingyas who fled the violence strongly suggests that the violence that the Rohingyas experienced meet the definition of genocide under International Criminal Law.⁵⁵

The Responsibility to Protect (R2P) doctrine underlines that if a State is unable to protect its own populations from 'genocide, war crimes, ethnic cleansing and crimes against humanity', then the international community must do something'.⁵⁶ However, Dr. Gregory H. Stanton observed, "the so-called 'international community' will avoid calling the crimes 'genocide'. Genocide is more powerful word than ethnic cleansing, but governments in the UN prefer to do nothing, rather than take more forceful action to stop genocide. On the other side, the term 'ethnic cleansing' is not

⁴⁸ The Guardian (above n 30).

⁴⁹ Report of the Independent International Fact-Finding Mission on Myanmar, Human Rights Council, A/HRC/39/CRP.2.

⁵⁰ See Annexure 10.

⁵¹ Ibid.

⁵² Yanghee Lee, 'Report of the Special Rapporteur on the Situation of human rights in Myanmar'. *UN Human Rights Council A/HRC/31* (2016); <<http://www.refworld.org/pdfid/56ead91d4.pdf>>.

⁵³ Layla Quran, 'What's the difference between genocide and ethnic cleansing?', 24 October 2017.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

used in the ICC Statute. It has no legal meaning in international law.”⁵⁷ He added that, “weak words have never motivated the use of force. Indeed they were probably chosen because the decision whether or not to use force had already been made. It was not until the term ‘genocide’ was applied to the crimes, that force was used to stop them.”

Testimonies collected from the Rohingya people show the mounting evidence of long struggle, discriminations and systematic violence by the authoritarian Myanmar regime in a vast region of the Northern Rakhine State. The place of origin of each respondent reveals that the atrocities were conducted widely over a period of time. In the following discussions, instances of discrimination and deprivation as well as *prima facie* evidence of genocide against the Rohingya people are highlighted based on testimonies and evidence collected from the field.

4.2 Assessing Elements of the Crime of Genocide in Light of Testimonies of the Rohingya Survivors

Article 6 of the Rome Statute of the International Criminal Court, 1998 and Article 2 of the UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948, defines the crime of genocide as follows:

“Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group; or
- (e) Forcibly transferring children of the group to another group.”

Article 3 of the Genocide Convention makes the crime of genocide as one of the punishable offences. Conspiracy and attempt to commit genocide is punishable under this Convention. Complicity in genocide and direct and public incitement to commit genocide are also punishable.

Let us discuss the core acts and elements of the crime of genocide under the abovementioned international laws.

(a) Rohingya as a protected group

Under the existing framework of International Criminal Law, genocide takes place when any or all of the prohibited acts outlined in Article 2 of the UN Genocide Convention or Article 6 of the Rome Statute, is or are committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such. According to this legal framework, the Rohingya as an ethno-religious community is a protected group. The Rohingyas in Myanmar, especially in northern Rakhine state,

⁵⁷ Persecution, Forced Displacement, and Genocide of Rohingya, Kachin, Shan, Karen and other minorities in Myanmar, Testimony of Dr. Gregory H. Stanton to the Permanent People’s Tribunal, Kuala Lumpur, Malaysia, September 18, 2017.

are predominantly Muslims. At the same time, the identity of 'Rohingya' is historically an ethnic identity which is different from other ethnic identities of Myanmar, despite the fact that the State of Myanmar officially denies the existence of this ethnicity in Myanmar.

The treatment of the Rohingyas by the Myanmar government officials and security forces, acting in concert with certain civilians, includes conduct which amounts to four of the five defined prohibited acts; (a) killing, (b) causing serious bodily or mental harm, (c) inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part, and (d) imposing measures intending to prevent births.

(b) Targeting and killing members of the Rohingya protected group

Religious persecution is the overwhelming fact in the violence that the Rohingya people have experienced on and off in Myanmar across centuries. Information received indicates that Myanmar security forces targeted teachers, cultural and religious leaders, and other people of influence in the Rohingya community in an effort to diminish Rohingya history, culture and knowledge. These security sweeps by Myanmar security forces are not merely to wage counter-insurgency, but rather to target the Rohingya people themselves because of their identity.⁵⁸

For instance, on October 9, 2016, the Myanmar Army attacked the Nathkura village of Mundumoron, Myanmar. One respondent named Md. Jamil of the same village recalled the incident, *"The Military asked for my maternal uncle, my aunt's husband Sirajuddin and said they have a meeting to attend. The Army went to several houses on that day and asked for elderly educated (Aleemdar) people speaking of a meeting. They also informed us that they are going to the Police Station of the regiment Quarter 5, BGP (Border Guard Police) camp. I heard that the soldiers took a total 16 wealthy, religious, educated men firstly to a camp, and then got them out to a Buddhists temple and slaughtered two of them there. After killing two, they tortured the 14 rest. They were physically tortured and hacked to death. They were not even given water to drink."*

***"Mosques, madrasahs were either shut down or burnt to ashes after 2012. Any religious assembly or processions were banned. Even the minimum right to pray together in mosques would lead to threats and torture. We secretly sacrificed during the Qurbani Eid (Eid-ul-Azha) in the previous years, because if they caught us we would be subject to fine and torture."
- Hamid Hossain of Chakiya, Mundumoron***

Senowara Begum's husband was a school teacher. He was taken hostage by the military as he is educated. Senowara said, *"they killed most educated Rohingyas and would slaughter them in market places. They would run after the Rohingyas and chase them to death"*.

"There are no Muslim doctors, no educated established Muslims remaining. All were tortured to death by soldiers. It went from immediate killing to death by torture for the

⁵⁸Zarni and Cowley (above n 14).

educated and well off Rohingyas. The soldiers would stab them, cut off their fingers and then toss salt on the wounds to lead them a tortured death”, said Yakub, a Rohingya refugee at the Palongkhali refugee camp.

Halima Khatun’s grandfather was an *Aleemdar* (intellectual) in the area in Rakhine. He was shot seven times by the army but luckily he did not die. Then his throat was cut and he was burnt alive by the Myanmar military, as describe by her.

Even the children did not get relief from the aggression of the military. The babies were barbarically thrown alive, to the air, water, and fire. Mohammad Saleh of Kutupalong-1 camp said that the children were given poisonous chocolates by Rakhine Buddhists and they used to mix poison in the main drinking water sources, too.

Uzma Hayer of Chakaiya, Mundumoron, Rakhine State, now staying at the Balukhali camp, Ukhiya, said that, *“In a locality called ‘Garoti Bill’, more than hundreds of Rohingya men ranging from all ages except women were killed by using launchers and then thrown in the nearby river. Kids, teenagers and the elderly were all killed. During that time the women were inside the houses. These men gathered from market places and their workplaces and were brutally killed near the Garoti Bill. Children mostly accompany their fathers when they go to work, and thus were killed together. Women were not spared just because we would be inside our houses. The military would attack with launchers and many would die being trapped inside the houses. The moment we would see a village nearby being attacked, we would go into hiding,”*

(c) Causing serious bodily or mental harm to members of the Rohingya protected group

The evidence of forced conversion to religion was found during field visit. Hamid Hossain from Chakaiya, Mundumoron, Myanmar now residing in the Kutupalong-1 camp said, *“Religious freedom was curtailed by the Government who would reach out to the ‘Chairman’ or ‘Member’ of a locality and ask them to spread ‘new rules’ on religious practice. Most of the Chairmen were Rakhine Buddhists; hardly any Chairman was from the Muslim community. They would meet the government officials every month and receive leaflets stating rules for the Rohingya Muslims to follow. It was their duty to make sure all Rohingya Muslims were following their rules. The leaflets were also distributed in the locality sometimes. The leaflets were in Burmese language and stated rules about banning them from talking in groups of more than two, restricted movement after 8 PM and banned religious practices like ‘namaz’ and ‘tabliq’.”*

Abdul Haque from Balukhali-2 camp gave a similar statement. He said *“In early days when the mosques were open for religious practices, they were performing their namaz (daily prayer) one day when the Burmese military came and asked them to convert themselves into Buddhism. Azan is forbidden in the Rakhine State.”*

Fulosree Sheel residing at the Hindu Rohingya temporary camp, Kutupalong, Ukhiya, said due to persecution, while she was crossing the Myanmar border, she hid away her son’s ‘Poita’ (religious string worn by Hindu Brahmin), out of fear of religious persecution, as she heard stories of several young girls vowing to Islam out of fear while entering to Bangladesh. The extent of the attacks escalated to targeting the group due to their religious identity of not being a Rohingya Buddhist and most

importantly for belonging to the Rohingya ethnicity. As the atrocities took a barbaric turn, the Rohingya ethnicity was attacked wholly.

The evidence of causing mental harm by terrorising the Rohingyas were also found. Rashida Begum's (Buthidaung Myanmar) children now staying at the Palongkhali camp, earlier could study at school, mosques were open for prayers. However, after 2012 all the schools for Muslim Rohingyas were shut down and turned into Military camps. Mosques and madrasas were shut down with heavy locks, with ancient mosques being burnt. One respondent named Minara, a housewife from Noyapara village of Maungdaw, said the military used to enter into the mosques and defecated on the holy Quran.

Each Rohingya was issued an access to market card, without which they couldnot shop for food in markets. Most markets were also situated in Burmese localities where local Rakhine Buddhists used to terrorize the Rohingyas.

One of the respondents named Bobita from Chikonchori, Rakhine State, staying at the Hindu Rohingya temporary camp, Kutupalong, Ukhiya, said she was given a green identification card by the Rakhine Buddhists stating she was Indian with the access to markets and also India, which she has never been to. Another respondent of the same Rohingya camp named Fullosree added that having no markets to buy food in their area, they had to reach out to a separate market in an area called 'Roagum'.

Women felt scared to go to the market place and also hospitals. Mostly they sent their husbands to their nearby markets. Women were kidnapped by soldiers from markets and houses. Then, they were raped and tortured in the jungles and were abandoned. Some survived, some did not.

(d) Deliberately inflicting on members of the Rohingya protected group conditions of life calculated to bring out their physical destruction in whole or in part

The Hindus had to shop from the nearby markets in the Muslim area. Even they were denied rice, lentil, milk, etc. by the Rakhine Buddhists. Soon the fear of being slaughtered by the Kala Party⁵⁹ stopped them from going to markets and they were merely surviving on water and greens they could find growing on the ground. Eventually most of them starve to death.

"There was no way out. If you step out from your house, they will stab you, if you don't they will burn you. If you can run you will survive, otherwise not. I would much rather take poison, but never to back there. The military used to put mines in the villages across the Rakhine State."

- Rashida Begum, a married Muslim Rohingya woman from Buthidaung, Myanmar

⁵⁹ The 'Kala Party', as described by the Hindu Rohingya victims, is a group of men covered in 'black' veils and cloaks who attacked the Hindu villages. As they only revealed their eyes, their true identity is not identified, however, the testimonies suggest that such act has been committed by the Local Rakhine Buddhists as local collaborators of the Myanmar's military force, in order to instill fear among the Rohingya ethnicity as a whole.

In the case of *Chief Prosecutor v. Md. Akamal Ali Talukder & 3 Others* (ICT-BD Case No. 8 of 2016), the International Crimes Tribunal, Bangladesh observed that, “Committing rape, destroying houses by burning, looting households formed parts of one single ‘murderous scheme’. Those criminal acts were the constituents of the offence of ‘genocide’ as same were deliberately calculated to destroy the normal livelihood of a particular protected religious group.”⁶⁰ The Tribunal further held that, “the killings, together with a determined effort to capture others for killing, the forced internal displacement of the survived members of the group, and the destruction of their homes and households constituted a single criminal mission which was executed with intent to destroy a group in whole or in part of the group.”⁶¹

In the case of *The Chief Prosecutor v. Mohibur Rahman alias Boro Mia, Mujibur Rahman alias Angur Mia, and Md. Abdur Razzak* (ICT-BD Case No. 3 of 2015), the International Crimes Tribunal observed that, “The massive and malicious intentional destruction of homes and properties of civilian population was obviously detrimental to their customary livelihood and a blatant denial of their fundamental rights. The act of ‘destruction’ was carried by launching systematic attack with intent to destroy or damage extensively the properties of civilians and such extensive damage was not justified even by military necessity.”⁶²

As per the OHCHR report, credible information indicates that the destruction by the [armed forces of Myanmar] of houses, fields, food stocks crops, livestock and even trees, render the possibility of the Rohingya returning to normal lives and livelihoods in the future in northern Rakhine is almost impossible for the foreseeable future.⁶³ It also indicates an effort to effectively erase all signs of memorable landmarks in the geography of the Rohingya landscape and memory in such a way that returning to their lands would yield nothing but a desolate and unrecognisable terrain.⁶⁴

(e) Imposing measures intended to prevent births within the Rohingya protected group

In Rakhine, the Rohingya couples were not allowed to take more than two children in general and in no way more than three. This was mentioned in the marriage document, ‘Kabin-nama’. Parents had to go under severe punishment if exceeded that permitted number. The range of fine would keep increasing each time, also leading to suffer in jail. Through maintaining family pictures, the government officials would make sure if there were more children than in the previous year.

⁶⁰ *Chief Prosecutor v. Md. Akamal Ali Talukder & 3 Others* (ICT-BD Case No. 8 of 2016), at para.241.

⁶¹ *Ibid*, at para 242.

⁶² *The Chief Prosecutor v. Mohibur Rahman alias Boro Mia, Mujibur Rahman alias Angur Mia, and Md. Abdur Razzak* (ICT-BD Case No. 3 of 2015), at para. 327.

⁶³ See Report of the UN High Commissioner for Human Rights on the situation of human rights of Rohingya Muslims and other minorities in Myanmar, A/HRC/32/8, dated June 29, 2016.

⁶⁴ *Ibid*.

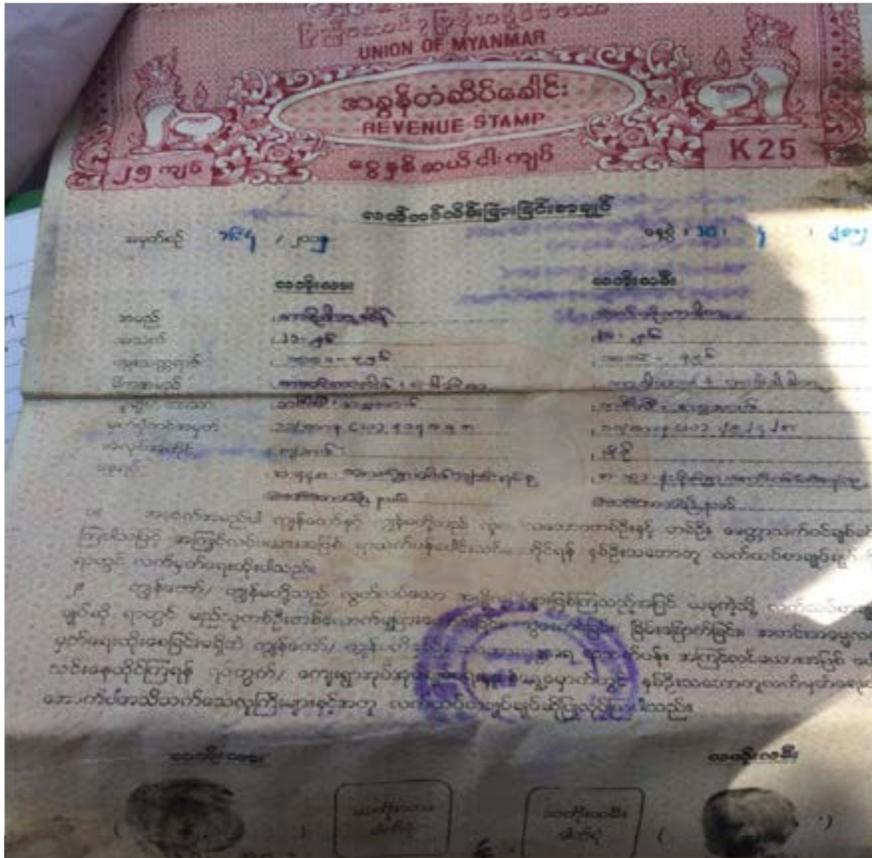


Photo 9: A copy of 'Kabin-nama' found with a Rohingya woman.

They also distributed in hospitals a medicine called 'Dibu', which stopped the menstruation cycle of women and prevented them from having kids. As a nature of the side effect of this contraceptive, some of the female respondents also added that this would often cause death to many women.

One respondent Minara said, "From house or Bazar (market) the military captured beautiful women, took them to camp, raped them, beat them with iron rod and sometimes put iron rod in their genitals."

(f) Existence of 'genocidal intent'

In order to constitute the crime of genocide, proving the element of perpetrators' intent is required under applicable international law. The mental element of intent, as a requirement for the crime of genocide, has been understood as a specific intent in which the destruction of the group – in whole or in part – constitutes the perpetrators' preliminary goal. Moreover, according to vast legal doctrine, intent is present if the perpetrator aims at the destruction of the physical and/or social existence of a specific group.⁶⁵ Thus, in light of the acts included in the UN Genocide Convention and the Rome Statute, protecting only the physical existence of a group would be superfluous.⁶⁶

⁶⁵ See G. Werle and F. Jessberger, *Principles of International Criminal Law* (New York: Oxford University Press, 3rd edition, 2014).

⁶⁶ See Article 6(c) of the Genocide Convention, which specifically and expressly includes the physical destruction as an element of the act of imposing conditions of life calculated to bring about such result.

As it has been mentioned in this work, different discriminatory measures imposed on the Rohingya people by the State of Myanmar, prior to the violence erupted on 25th August 2017, and are a clear evidence of a structured public policy aiming at the social destruction of this particular group due to both its religious and ethnic identities. Consequently, the extreme physical violence exercised in the context of already existing discriminatory policies can be legally labelled as the acts constituting the crime of genocide, a genocide that began with the social destruction and ended with the partial physical destruction of the Rohingya people.

On genocidal intent of the perpetrators, the Report of the Independent International Fact-Finding Mission on Myanmar issued on 27 August 2018 is very important to quote. It goes on to say that,

“The crimes in Rakhine State, and the manner in which they were perpetrated, are similar in nature, gravity and scope to those that have allowed genocidal intent to be established in other contexts. Factors pointing at such intent include the broader oppressive context and hate rhetoric; specific utterances of commanders and direct perpetrators; exclusionary policies, including altering the demographic composition of Rakhine State; the level of organization indicating a plan for destruction; and the extreme scale and brutality of the violence.

[...] In this regard, the Mission notes the Tatmadaw Commander-in-Chief’s statement [i.e. “The Bengali problem was a long-standing one which has become an unfinished job despite the efforts of the previous governments to solve it. The government in office is taking great care in solving the problem.”]⁶⁷, [which reveals] that the “clearance operations” [initiated from the 25th of August 2017] were not a response to a concrete threat from ARSA, but to the “unfinished job” of “solv(ing) the long-standing Bengali problem.”⁶⁸

The genocidal intent is also clear in the words of Myanmar’s most revered Buddhist monk Sitagu Sayadaw who gave a speech at a military base in Kayin State on October 30, 2017, in which he urged “the killing of those who are not Buddhist could be justified on the grounds that they were not complete humans, or indeed human at all”.⁶⁹

4.3 Conclusion

Based on the above analysis made in light of the legal framework and the testimonies collected from the field visits, it is claimed that the Rohingya community as an ‘ethno-religious’ identity qualifies to be a protected group – the members of which group

⁶⁷ Senior General Min Aung Hlaing, “Entire government institutions and people must defend the country with strong patriotism” (Facebook post, 2 September 2017); <<https://www.facebook.com/seniorgeneralminaugnhlaing/posts/1698274643540350>>.

⁶⁸ See Report of the Independent International Fact-Finding Mission on Myanmar, UNGA Res. A/HRC/39/64, dated 27 August 2018, at paras. 85 and 86.

⁶⁹ Paul Fuller, ‘Sitagu Sayadaw and justifiable evils in Buddhism’, *New Mandala* (13 November 2017); <www.newmandala.org/sitagu-sayadaw-justifiable-evils-buddhism/>.

faced four of the five prohibited genocidal attacks from the Myanmar government officials, security forces and the local Rakhine Buddhists, namely (a) *killing*, (b) *causing serious bodily or mental harm*, (c) *inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part*, and (d) *imposing measures intending to prevent births*. It is also to claim that the perpetrators attacked and/or complicated, conspired, instigated to the attacks with 'genocidal intent' – the fact of which is very much apparent in the words of Senior General Min Aung Hlaing or of Buddhist monk Sitagu Sayadaw, as discussed above.

Given these considerations on the inference of genocidal intent, it establishes that there is sufficient information to warrant the investigation and prosecution of senior officials in the Tatmadaw chain of command, so that a competent court can determine their liability for genocide in relation to the situation in Rakhine State. The UN Independent International Fact-Finding Mission on Myanmar suggested the international community, through the United Nations, should use all diplomatic, humanitarian and other peaceful means to assist Myanmar in meeting its responsibility to protect its people from genocide and other alleged international crimes.⁷⁰



Photo 10: Life of the Rohingyas in refugee camps.

⁷⁰ The UN Fact-Finding Mission (above n 67), at para. 103.

CHAPTER 5

THE CRIME OF RAPE AND SEXUAL VIOLENCE AMOUNTING TO INTERNATIONAL CRIME AGAINST THE ROHINGYA WOMEN

5.1 Introduction

Violent conflict has long existed between countries and it is now inevitable to construct the history of the world without referring to armed conflicts. Conflict in any form, whether occurring within a State or amongst different States, is destructive in nature, as it predominantly threatens peace, security and the rights of humanity. However, violent armed conflicts create a situation of wartime and violate international human rights with the vast use of weapons and other cruel means of wartime. In such conflict, national laws fail to provide protection to victims of war, civilians, children, prisoners of war, combatants etc. due to the widespread and grievous nature of the crimes committed. Conflict in any form whether occurred within a State or amongst different States is destructive in nature, as it predominantly threatens peace, security and the rights of humanity.

5.2 Rape and Sexual Violence as a Weapon of Atrocity

Sexual violence has been widely employed as a tactic of atrocity, with widespread and strategic rapes, including mass rapes, allegedly committed by several parties to armed conflict, mostly in conjunction with other crimes such as killing, looting, pillage, forced displacement and arbitrary detention. The strategic nature of the violence remains evident in the selective targeting of victims from opposing ethnic, religious or political groups, mirroring the fault lines of the wider conflict or crisis even today. Patterns of the crime of sexual violence is persistent in the context of modern warfare through means of strategic searches for arms and weapons in house or at checkpoints and is an established mean of weapon of atrocity targeted against vulnerable women, children and men of an already discriminated community.

In 2009, the then UNHCR Chief António Guterres (the present UN Secretary General) described sexual violence as “a brutal form of physical and psychological warfare rooted in the gender inequality extant not only in zones of conflict, but in our everyday personal lives. The persistence of such forms of violence undermines peace and security and shatters community and family ties”.⁷¹

The term “conflict-related sexual violence”, refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict⁷². Rape and other means of sexual violence stand as a widely used tool, part of a military strategy in a conflict situation. From systematic rape of women in Bosnia, Colombia, Congo, Sudan, Bangladesh, Myanmar among others, stand as a testament of the use of such acts as a weapon of atrocity even today.

⁷¹ See ‘UNHCR chief reiterates commitment to prevention of sexual violence’ (November 25, 2009).

⁷² Report of the Secretary General on Conflict related Sexual Violence (April 15, 2017); <<https://www.ohchr.org/documents/countries/mm/cxbmissionsummaryfindingsoctober2017.pdf>>.

In the case of *The Chief Prosecutor v. Mohibur Rahman alias Boro Mia, Mujibur Rahman alias Angur Mia, and Md. Abdur Razzak* (ICT-BD Case No.03 of 2015), the International Crimes Tribunal observed that, "rape is an aggression that is articulated in a sexual manner under conditions of coercion. Raising shout by the victim forces us to conclude that the attackers, the Pakistani army men, attacked her in a violent sexual manner under coercion. Act of rape imprints an unending and life-long horror that continues to attack victim's cerebral entity."⁷³

In another case titled *Chief Prosecutor v. Md. Akamal Ali Talukder & 3 Others* (ICT-BD Case No.08 of 2016), the International Crimes Tribunal, Bangladesh observed "These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole [...] Sexual violence was a step in the process of destruction of the Tutsi group – destruction of the spirit, of the will to live, and of life itself."⁷⁴

5.3 Status of Rape, Sexual Violence and Torture in light of the ICC Statute

International Criminal Law recognizes jurisdiction over persons suspected of committing international crimes through the establishment of the International Criminal Court (ICC). The Court was established in 1998 and enforced in 2002 with its founding treaty the 'Rome Statute'.⁷⁵ As enumerated in Article 5 of the Rome Statute,⁷⁶ the Court has jurisdiction over the most serious crimes of concern to the international community as a whole, such as the crime of genocide, crimes against humanity, war crimes and crimes of aggression. The United Nations Security Council acting under Chapter VII of the United Nation's Charter, established two ad-hoc International Criminal Tribunals to punish war crimes committed in context of former Yugoslavia and Rwanda, better known as ICTY and ICTR following which the ICC became the permanent court by adopting the Statute in 2002.

International Criminal Tribunals have made significant strides in articulating sexual violence as a crime against the bodily integrity and human dignity of victims.⁷⁷ Article 4(2) of the International Covenant on Civil and Political Rights (ICCPR)⁷⁸ prohibits derogation from the right to life and the prohibition of torture or cruel, inhuman or degrading treatment.

Following World War II, rape has emerged as an international crime although being prohibited during times of conflict.⁷⁹ However, it is only until the introduction

⁷³ *The Chief Prosecutor v. Mohibur Rahman alias Boro Mia, Mujibur Rahman alias Angur Mia, and Md. Abdur Razzak* (ICT-BD Case No. 03 of 2015), at para. 385.

⁷⁴ *Chief Prosecutor v. Md. Akamal Ali Talukder & 3 Others* (ICT-BD Case No.08 of 2016), at para.239.

⁷⁵ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6

⁷⁶ See The ICC Statute, Article 5.

⁷⁷ Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Cambridge, Mass.: Kluwer Law International, 1997).

⁷⁸ See, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

⁷⁹ Mark S. Ellis, 'Breaking the Silence: Rape as an International Crime', *Case Western Reserve Journal of International Law* 38 (2006-07): 227.

of the 'Nuremberg Trials' in 1949 that Courts began to seriously consider rape and sexual violence as a crime.⁸⁰ The Rwanda Tribunal and the Yugoslavia Tribunal have been the two main engines driving the contemporary evolution of rape and sexual violence jurisprudence. In particular, the Tribunals have included rape/sexual violence as a constituent violation under the crimes of genocide, war crimes, and crimes against humanity.

The landmark case decision of *The Prosecutor v. Jean-Paul Akayesu*,⁸¹ in the Rwanda Tribunal directly implicated rape and sexual violence and associated the use of such act as an act of genocide. The judgment established that rape and sexual violence could be done with the intent of killing members of a group,⁸² could constitute serious bodily or mental harm,⁸³ could be comprised of measures intended to prevent births within the group,⁸⁴ and could amount to forcibly transferring children of the group to another group.⁸⁵ Approximately two years later, the judgment in the case of *The Prosecutor v. Musema*,⁸⁶ affirmed the decision rendered in the *Akayesu* case. Subsequently, *The Prosecutor v. Furundzija*⁸⁷ at the Yugoslavia Tribunal affirmed the *Akayesu* judgment in its Appeals Chamber and also established that rape could also constitute torture.

5.3 Rape and the Crimes against Humanity

Article 7 of the Rome Statute enumerates the elements of Crimes against Humanity.⁸⁸ *Prosecutor v. Kunarac (Kunarac)*⁸⁹ was the first Yugoslavia Tribunal case to prosecute and convict individuals for rape as a constituent offense of crimes against humanity. With reference to the Rome Statute, crimes against humanity are defined as follows:

“For the purpose of this Statute, ‘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:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;

⁸⁰ David S. Mitchell, 'The Prohibition of Rape in International Humanitarian Law as a Norm of Jus Cogens: Clarifying the Doctrine', *Duke Journal of Comparative and International Law* 15(2015):219-258.

⁸¹ *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Judgment, September 2, 1998.

⁸² *Ibid.*

⁸³ *Ibid.*, at p. 731.

⁸⁴ *Ibid.*, at p. 507.

⁸⁵ *Ibid.*, at p. 509.

⁸⁶ *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Trial Judgment, January 27, 2000.

⁸⁷ *The Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-A, Appeal Judgment, July 21, 2000.

⁸⁸ See International Criminal Court (ICC), *Elements of Crimes*, 2011, ISBN No. 92-9227-232-2.

⁸⁹ *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Case No. IT-96-23-T & IT-96-23/1-T, Trial Chamber, February 22, 2001.

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

Paragraph 2 of Article 7 of the Rome Statute defines 'attack' "directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack".

In *Kunarac*, the Appeals Chambers affirmed the trial Chambers judgment and established an element of assessing the lack of consent of the victim and the knowledge of the perpetrator that the victim did not consent.⁹⁰

Thus, to constitute crimes against humanity, an act as enumerated in the Rome Statute is to be when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

5.4 Evidence of Crime against Humanity against the Rohingya Women

In order to establish Crimes against Humanity, it is prudent that the Elements of Crimes are proved sequentially in light of Article 7 of the ICC Statute, Article 7(1)(g)-1 and Article 7(1)(g)-3 of the Elements of Crimes.⁹¹ The following paragraphs provide the occurrence of rape in the form of gang or individual rape, sexual violence and torture against the Rohingya women.

Since the outbreak of conflict in the northern Rakhine state of Myanmar, 900,000⁹² people of the Rohingya Community have taken refuge in the makeshift camps of Ukhiya, Cox's Bazar, Bangladesh. An analysis of the testimonies collected

⁹⁰ Ibid.

⁹¹ *Elements of Crimes* (above n 86).

⁹² UNHCR, Bangladesh emergency preparedness and response update dashboard, July 26, 2018.

depicts the gravity and nature of the crimes committed by the local Rakhine Buddhists⁹³ along with the Myanmar Military Force (Tatmadaw) against the Rohingya women. Incidences of rape, sexual violence, sexual harassment, mutilation, torture leaving no stones unturned in committing the acts by the perpetrators, in this case the Tatmadaw and the Rakhine Buddhists.

The Rohingya Community as a whole has been deprived of the right to citizenship, education, to practice religion among others and have been isolated in the geographical area of the northern Rakhine state, as informed by the interviewees. Rohingya men were not provided work because of their ethnical identity; women were harassed at markets, streets, checkpoints, etc. No medical assistance was provided to this community due to their ethnical identity, forcing them to consume medicines off the street or to suffer pain inevitably. The Myanmar Military forces transformed the schools in the Northern Rakhine State to their checkpoints or 'concentration camps' and troops were deployed all around the area, establishing a 'chilling effect'.

The Myanmar Military Forces attacked the northern Rakhine state in the name of 'security operation' and continued till August 25, 2017 and beyond. Attacks were conducted with the use of armed weapons such as 'guns', 'mines' and 'launchers'. Thousands of villages in the township of Maungdaw, Buthidawng, Rathudawng were burned down by spilling oil with helicopters. Civilians were killed by means slaughter, gunshots, arson, rape and were buried in mass graves. Women, irrespective of their age and marital status, were *gang raped, sexually assaulted, tortured by the Myanmar military forces as well as the Local Buddhists*. Even pregnant women were not spared from the wrath of the armed forces. Amongst the conflict situation, with houses burning and security null, women were dragged to *nearby jungles, schools, and street and were raped or violated*. The attacks were carried out throughout the northern state of Rakhine against the civilian, non-combatant women and children of the Rohingya Community by the Myanmar military forces. The commission of such widespread and systematic acts against the particular men, women and children of the Rohingya Community by the Myanmar military forces establishes the occurrence of the Crimes against Humanity towards the Rohingya Community of northern Rakhine state, Myanmar.

(a) Crime Against Humanity of Rape in light of the Testimonies Collected

The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

The testimonies of provided by the Rohingya women describes the heinous crime of rape and sexual violence committed against them by the perpetrators being the Myanmar militia and the Rakhine Buddhists. Rohingya women were raped and violated while they were fleeing home, hiding in the jungles, or even snatched away

⁹³ In several cases it was indicated that Rakhine Buddhist individuals were issued with uniforms and weapons. In these cases they were identified as the people they had been living side by side with—people they reportedly regularly met at the local market.

from their houses. Women were tortured by their hands being tied up and then being raped, either individually or through gang-rape.

“About 4 days before the Eid-UI-Azha, the Myanmar military along with local ‘maghs’ attacked our area. The men were dressed in Myanmar military uniforms, bearing patches of ‘star’ and circular shapes. The uniforms were ‘khaki’ colored. Amidst the chaos, they broke in our house, and 12 army men dragged me out of the house. I was then taken to the nearest jungles by 12 men, and was raped by 2 army men. 6 of them initially tied me up to a ‘jack-fruit’ tree, tore my dress apart and raped me. I was lying there as they left me violated amidst the jungle.”

- Hasina Begum (not real name), aged around 35, from Masilapara,

Tasmina, a Rohingya woman of 35 years, from Louchpara, Buthidaung, said, “A month before Eid-ul-Azha, our neighborhood was attacked by the Myanmar military army, wearing ‘khaki’ colored uniform. Soon they broke into our house, and started beating my husband. They then ripped my clothes off and raped me. They raped me for more than 2/3 hours. I was unconscious as they left me in my house, violated.”

Another woman named Momina, aged around 18, from Shabpara, Rathidong, Myanmar, said, “Wearing ‘khaki’ colored military uniform Myanmar Army shot my husband. They took me from our house along with my sister-in-law to their school camp in Chakpara. The perpetrators tied us up. Anyone who tried to retaliate were stabbed to death, whereas, some died as a result of gang rape. On an average, every woman was raped by 7 men. Some women who were shouting were incinerated with kerosene. The women who became sick were also killed. Firstly, they tied up my mouth with a towel and then tied up my hands and legs. Then they undressed and raped me. I was there for one night”.

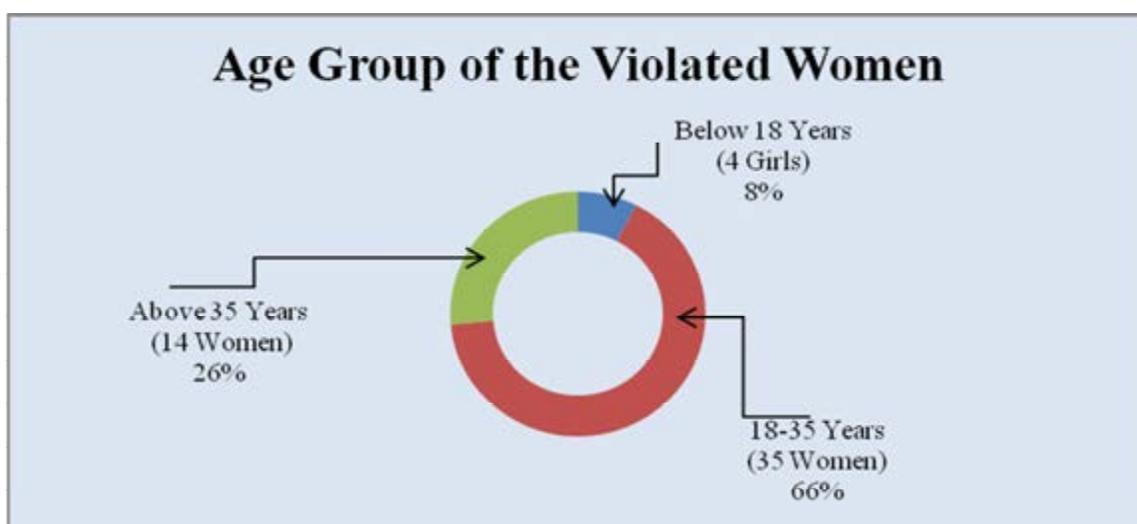


Figure 1: Age Group of the Violated Women.

The diagram reflects that age of victimized women as obtained from the Testimonies of Rohingya Women. It shows that among the testimonies collected, 66% were women of 18-35 years of age. 8% were below 18 years and 26% were above the age of 35 years. The interviewee's stated that perpetrators violated women of all age and didn't spare any.

"Women came without clothes here. We didn't have any clothes. We have been assaulted in the name of being inspected for carrying valuable items in our body. Army and local Buddhists harassed us and searched our body with cruel and sexual intentions. Women of all ages were subject to rape, although the initial target was the younger women."

**- Hasina Khatun (not real name), aged around 28, from
Sohagpara, Maungdaw**

The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

The testimonies collected depict harrowing tales of Rohingya women being raped and violated sexually through the invasion of force. The Myanmar Military along with the local collaborators abused their authoritarian power and in many instances detained Rohingya women in schools and raped them leaving them to die. Detention in schools which were converted to camps by the local Myanmar Police, expresses the forceful intention in committing such crime.

"Myanmar's military forces attacked our home. They beat my parents and my brothers. The military forcefully snatched me and my two younger sisters from my family members. When my parents tried to protect us the military beat them and shot them and forcefully locked me and my two sisters into a separate home. They separated me from my two other sisters and confined us. 3 to 4 (three to four) military people imprisoned me and my sisters and raped us repeatedly."

**- Shafat Ara (not real name), aged around 19, from Koiya Bazar,
Ghater Dhade, Rakhine**

Shafina, aged around 28, from Kiadong, Toma Bazar, said, "Myanmar's military forces forcefully entered into my home and snatched my baby from me. They beat my husband with their guns and weapons. That time I was pregnant. Military people separated me from my children and husband. Physically, I was not that much capable so I couldn't fight against them to protect myself. Among them one military person raped me and others confined my husband as well as beat him constantly and finally shot him. I fell unconscious after being raped."

Another woman named Salma from Sohagpara, Rathidaung, Rakhine, said, "One day, the Myanmar military wearing 'khaki' uniform came to our house and called for a

meeting. They called everyone in our neighborhood to an open field. From there they took all the men in the neighborhood in one room, and the women in another. Afterwards, they tied me down with a rope. I was amongst so many other women. They undressed me, and then raped me. Women, irrespective of their age were subject to rape and sexual assault at the same place.”

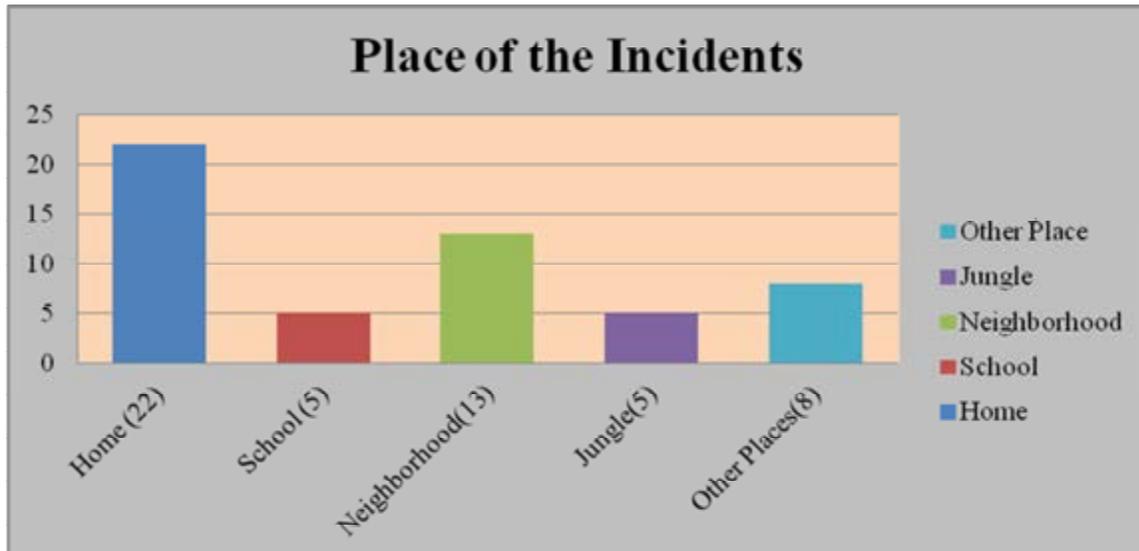


Figure 2: Place of occurrence of Rape and sexual violence.

The diagram shows the places in which the incidence of rape, sexual violence and torture occurred. In most cases women were violated in their house after the village was attacked, or even randomly during mornings. If houses were attacked, women would be dragged out of the house and raped in the courtyard in front of others to witness. In several cases, women were taken to schools which have been transformed to camps of the military. In schools more than 50 women were kept at once and left to die after being violated. Most occurrences in a conflict situation occur during flight, that is, when everyone is running amidst chaos. To save their lives, many women took shelter in the nearby jungles; however, they were also violated in the jungle. Sometimes while at hiding, and sometimes being dragged to the jungles. Women were harassed in checkpoints, in their neighborhood while going to the markets, in any village, in their home and schools by the Myanmar Military Forces.

Monira (not real name), aged around 18, from Sohagpara, said, “The military took me from our house along with my sister-in-law to their school camp in Chakpara. My sister-in-law Anwara Begum is 22 years’ old uneducated women having two sons. Her husband’s name is Sayadul Alam, a day laborer, who was also killed by that attack. We found ourselves among hundreds of women inside the school room. Wearing military uniform, Unsamiya (a Magh Member) helped the Army. Zuzu Miya, son of Unsamiya, also tortured and raped us wearing military uniform with the Army.”

Anwara Begum from the same locality said, “As I can remember it was four days before the Eid-ul-Azha. Local Maghs and Myanmar military came in our village. MaghChowkider ‘Unsamiya’ was there with the perpetrators. They took my 2 daughters; Harira Begum (23) and Sobiya Begum (17) to their school camp. Then after torturing they burnt their bodies with other 30 women.”

“About 2/3 months before Eid-ul-Azha military attacked our neighborhood. They surrounded our house. We all began running for our lives. I was 2/3 months pregnant. One Military man, got hold of me, and raped me. I begged him not to do so, I begged for my life. After finishing he went outside calling others to do so. In the meantime, I escaped and ran to the mountain with my elder son.”

- Rupaiya (not real name), aged around 25, from Buthidaung, Rakhine

Hamida Begum (not real name), aged around 17, from Maungdaw, said, “ We fled our house and country out of fear of our lives. Almost 4 days before Eid-ul-Azha, attacks broke out in our area. The men were dressed in Myanmar military uniforms, bearing patches of ‘star’ and circular shapes. The uniforms were ‘khaki’ colored. Amidst the chaos, they broke in our house, and 12 army men dragged me out of the house. My father and brother began running after me, and they were captured and locked inside a room, and killed immediately. I was then taken to the nearest jungles by 12 men, and was raped by 2 army men. 6 of them initially tied me up to a ‘jack-fruit’ tree, tore my dress apart and raped me. I was lying there as they left me violated amidst the jungle.”

Nura Begum (not real name), aged around 25, from Sohagpara, recalled similar incident: “The Myanmar army came to my house around late afternoon and forcefully dragged me out of the house. I just gave birth to my youngest son. 4/5 of them dragged me out of the house near the jungle. They took other women in police stations and school. They raped women and mutilated their bodies. Women in groups were locked in rooms and kept for days after being raped and assaulted. In the jungle where I was taken, several other women were kept. Some died after the incident. I had my baby in my hand, and I was dragged there.”

The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

Almost all the testimonies depict similar pattern of crime committed by the Myanmar military forces. The perpetrators are identified wearing ‘khaki’ coloured military uniform. Incidences took place against the women of the northern Rakhine state. The attacks were widespread and systematic in nature as they took place throughout the area of the northern Rakhine state. The burning down of houses, killing men, dragging women to school premises and jungles, calling out the community in the name of meeting shows the systematic and organized military strategy used by the Myanmar military forces along with the local ‘Maghs’.

Six hundred to seven hundred families lived in our villages. Half of them died and some of them still in there. Seven days before the Eid-ul-Azha this incident took place. Perpetrators were military and in the incident (Gang Rape) 4/5 (four/five) perpetrators were involved. Two people raped me and I was not conscious when I was abused by two perpetrators.”

- Ishita (not real name), aged around 22, from Yammangkingdong, Buthidaung

Jamila (not real name), aged around 25, from Maungdaw, said, "On 17th August, they took 30 women to the school, separated 4 amongst them including me. Since the rest 3 were unmarried they raped them separately and took me to another room. They at first undressed me, pulled my brassier with their legs and then raped me. I was getting numb. As I moved my leg, they tortured me."

Hasina Khatun (not real name), aged around 35, from Buthidaung, shared that, "The military came to our house and took my husband and one of my sons to their camp. I and my 10 years old daughter and my 18 years old sister-in-law were taken to a school. A lot of women were there in the school with us. The local Maghs and the military then snatched my jewelries and money. The military men then raped me. I also witnessed my daughter and my sister-in-law getting raped and then being killed by the militaries. The last thing I remember is two men forced and raped me and I fell unconscious."

Among the testimonies collected, almost all stated being attacked before the Eid-ul-Azha of 2017. Since the Rohingya people were marginalized and uneducated, the research team made queries regarding the timeline in association with the Eid-ul-Azha, as it was easier for them to identify. A total of 28 women stated they were attacked before the Eid-ul-Azha, 17 stated undefined mainly because of the trauma they faced and 8 stated being attacked after Eid day.

"This incident took place 5 days before Eid-ul-Azha. Perpetrators were military and in the incident (physically abused) 2 perpetrators were involved. I was gang raped."

– Sona Khatun (not real name), aged around 30, from Buthidaung

"This incident took place 3 days before Eid-ul-Azha. Perpetrators were military and in the incident (Gang rape) 3 perpetrators were involved. All the young ladies and girls were the victim of this incident."

– Som Mehraj (not real name), aged around 25, from Maungdaw

"Before 8 days of Eid-ul-Azha. Perpetrators were military and in the incident (conceived as a result of rape) 4 (four) perpetrators were involved. I was conscious when I was abused by those perpetrators."

– Rustoma Begum (not real name), aged around 25, from Buthidaung

The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

In this element, Knowledge can be proven by drawing inferences from relevant facts and circumstances.⁹⁴The perpetrators as identified from the profile of the victims are the Myanmar military forces aided by the local Rakhine Buddhists. The perpetrators deliberately committed the crimes in the northern state of Rakhine, against the Rohingya community. In the name of carrying out 'security operation' the military forces used rape, arson and sudden attack to permanently displace the civilian population. With houses burnt, men killed, women dragged from jungles and houses the Military was able to establish fear of life in the already marginalized community, which led them to leave for Bangladesh. Attacks began after August 25th, in all of the northern Rakhine state, which is the residing area of the Rohingya

⁹⁴ *The Prosecutor v. Mitar Vasiljevid*, Case No. IT-98-32-A, Appeal Judgment, February 25, 2004.

Community. Testimonies collected are of women from Shohagpara, Rathidaung, Buthidaung, Tolatuli, Chopara, Merula, etc. reflecting the widespread attack carried out all over the Rakhine State.

“Two hundred to three hundred families lived in our villages. Most of them died and some of them are still in there. Perpetrators were military men and in the incident, (gang rape) 4/5 perpetrators were involved. I cannot differentiate among those perpetrators whether they were military but they were in green coloured uniform. Initially I was raped by 2 (two) perpetrators and then later by a group of men. My infant child was killed.”
– Sonia (not real name), aged around 25, from Hasurota, Burghati

Rehima Begum (not real name), aged around 38, from Noahpara, Maungdaw, said, “There were about 100 houses in our neighborhood. All the houses have been burnt down by the military. 3-4 days before the Eid-ul-Azha, the attacks of the military became fierce. They began sudden attacks in villages, wearing ‘khaki’ colored uniform and dragged women, irrespective of their age to the nearby mountains. Muslim women were mostly the target of such atrocities.”

Fatiha (not real name), 20-year old widow, from from Purdu Para, Buchidaung, said, “About 3/4 days before Eid-ul-Azha Police called a meeting in our area. About 300-400 people attended that meeting. Police and Maghs locked everybody and tied all men with women’s ‘orna’ in a room and then killed them. They killed about 250 men. They locked all the women in another room and I was there with the other women.”

5.5 Conclusion

The research findings are evident in stating that a widespread and systematic attack through means of rape and acts of sexual violence against the civilian population has indeed been committed by the Myanmar Military forces aided by the local ‘Maghs’. The victims were Rohingya women, who suffered violations of rape, gang rape, mutilation, assault, torture among others and also witnessed the death of their family members. These marginalized people have been forcibly displaced from their country, by initially depriving them from the right to live and then by instilling fear of life.

“Rape is often used in ethnic conflicts as a way for attackers to perpetuate their social control and redraw ethnic boundaries”, Gita Sahgal, Amnesty International. Rape and sexual violence as used in Yugoslavia, Rwanda, Bosnia, Sudan, Bangladesh, and Colombia, etc. has been established as a common military strategy through instilling fear by exercising vicious and calculated exercise of power on a helpless and destabilized community which is already suffering from conflict situation. In the case of Myanmar, hundreds of women have entered Bangladesh in ripped clothes, traumatized from being either a victim or a witness to the heinous crimes.

From the testimonies collected, the legal framework and the cases cited, it is apparent that rape and sexual violence has been used as an instrument by Tatmadaw, in committing the crime of genocide and crimes against humanity. The research also finds that that Myanmar’s military force, in collaboration with local ultra-nationalists and extremists, has been committing international crime of genocide and crimes against humanity by targeting the Rohingya women with the intent to destroy and eliminate the ethnic community as a whole.



Photo 11: Memory of the past still haunts the Rohingya psyche.

CHAPTER 6

CONCLUSION: THE QUESTION OF ACCOUNTABILITY OF THE PERPETRATORS

Principle 19 of the UN Updated Set of Principles for the Protection of Human Rights through Action to Combat Impunity in this regard provides that: “States shall undertake *prompt, thorough, independent and impartial investigations* of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are *prosecuted, tried and duly punished*.”⁹⁵

Myanmar is a party to the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); the Optional Protocol to the CRC on the involvement of children in armed conflict; the Convention on the Rights of Persons with Disabilities (CPRD); and the International Covenant on Economic, Social and Cultural Rights (ICESCR). From the above discussions, it has been found by the team that Myanmar has violated all the international instruments of law that it is signatory to, and has committed a slow yet massive genocide against the Rohingya community.

The discriminations and atrocities against the Rohingya ethnic group have been historically perpetrated and are orchestrated through the implementation of various official policies and regulations. Major findings of this research suggest that Rohingyas are historically and systematically deprived of fundamental human rights under the legal framework of Myanmar. Discrimination and deprivation includes, among others, the denial of citizenship/national identity, limited access to education and public health service, controlled access to market, limited right to land/property, controlled freedom of religion and association, restrictions upon marriage and family, less support from police during and post violence.

It is indeed fundamentally challenging to accurately assess the magnitude and gravity of the heinous crimes so committed, however, the research team found hundreds of evidences and proofs of genocidal acts and systematic attacks against the Rohingya population. One of the major find of the research team is the that Myanmar’s military force, in collaboration with local ultra-nationalists and extremists, have committed genocide by: (a) mass killing in the way of gunning, slaughtering and burning alive; (b) arbitrary arrest and detention in concentration camps; (c) torturing and raping and committing other forms of sexual violence; (d) killing and burning children; (f) forcibly displacing Rohingyas; (g) enforcing disappearances of right-conscious Rohingyas; and (h) arson, plundering and destroying of villages as well as religiously significant places.

The important elements of genocide under the UN Genocide Convention are prominent in assessing the plight of the Rohingyas. The ongoing atrocities are taking

⁹⁵Set of Principles for the Protection of Human Rights through Action to Combat Impunity, UN Doc E/CN.4/2005/102/add.1 (2005).

place as a systematic attack on Rohingya people and with the intent to destroy the group; thus, the Rohingya People have not been targeted as individuals, but as members of their group. The commission of rape and sexual violence against the Rohingya women provides conclusive evidence regarding crime against humanity and also genocide. The group identity is dual here, namely ethnic identity as Rohingya and religious identity as Muslim, and it is sufficient to establish that the Rohingyas are targeted and persecuted because of their group identity. Further, the intent of the perpetrators is to wholly and permanently erase the name 'Rohingya' from the social, cultural and political landscape of Burma's history. All these prove that the atrocities in Rakhine were as brutal as a clear case of genocide under the legal framework of international criminal law.

The persecuted voices of the Rohingya people reflect different patterns of atrocities and elements of genocide under international law. The testimonies collected from survivors, victims and eyewitnesses clearly reflect that the Rohingya community has been facing one of the most serious humanitarian crises of present times, and moreover, are victims of genocide and crimes against humanity. As the Rohingya crisis is yet to be recognised as 'genocide' in its truest form, different international agencies of the UN and other humanitarian organisations have implicitly found some of the elements of crime of genocide in case of Rakhine atrocities against Rohingya people starting way before and culminating after the 25th of August, 2017. The recent report of the Human Rights Council, OHCHR provides a legal footing in acknowledging the genocidal intent in the commission of such crimes by the Myanmar perpetrators. Despite the legal definition of the crime, the humanitarian crisis can no more be overlooked by the Myanmar Government in particular and the international community in general. The present report prepared by the CSGJ is a contribution to the existing plethora of narratives and testimonies which explicitly show that Rohingya genocide should no more be acknowledged merely as 'hidden genocide'. The deliberation made by the experts in the Permanent People's Tribunal in Malaysia and its judgement similarly support the view that genocide has been taking place in Rakhine for a long time and that the international community should no longer delay putting a stop to this violence. Above all, preceding this genocide, the Rohingya community in northern Rakhine has undergone a long history of discrimination and systematic violence sponsored by State mechanism. With no exception, the Myanmar Generals abused religion and some ultra-nationalist religious leaders ignited communal violence and hatred which eventually ended up in committing genocide against the Rohingya minority group.

Historically, they have been targeted, persecuted and forced to flee genocidal violence and rape and other forms of sexual violence have been used as an act of genocide against the Rohingya, constituting Crimes against Humanity. Yet, the current regime as a power sharing arrangement between the military and elected civilian government including the present one of Suu Kyi have denied time and again the Rohingya genocide. In recent times, the government of Myanmar dined ICC's jurisdiction over the Rohingya matter because Myanmar is not a party to the Rome Statute. However, in the words of survivors, witnesses, aid-workers and journalists, the present research work intends to give a message to the world community: the 'hidden genocide' in Rakhine should widely be investigated into and immediately acknowledged. The world community, especially the United Nations and neighboring

countries, have significant and crucial roles in working towards ending the brutal genocide in Rakhine.

The UN Independent International Fact-Finding Mission on Myanmar has drawn up a non-exhaustive list of alleged perpetrators of crimes under international law, indicating priority subjects for investigation and prosecution. The list includes the names of alleged direct perpetrators, but focuses on those exercising effective control over them. In relation to the recent events in Rakhine State, this includes the Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing, as well as:

- Deputy Commander-in-Chief, Vice Senior-General Soe Win;
- Commander, Bureau of Special Operations-3, Lieutenant-General Aung Kyaw Zaw;
- Commander, Western Regional Military Command, Major-General Maung Maung Soe;
- Commander, 33rd Light Infantry Division, Brigadier-General Aung Aung; and
- Commander, 99th Light Infantry Division, Brigadier-General Than Oo.

In continuation of that effort, on April 9, 2018, the ICC Prosecutors Ms. Fatou Bensouda and Mr. James Stewart submitted a request to the Judges of the Court. In the application to the Pre-Trial Chamber of the ICC, the office of the Prosecutor requested the Judges to find that the ICC's prosecution team has jurisdiction to investigate into the Rohingya matter, and if necessary, to prosecute the 'deportation of the Rohingya people to Bangladesh' at the hands of the Myanmar's authorities.

Under the Rome Statute, the ICC's jurisdiction extends to war crimes, crimes against humanity and genocide that have either been committed within the territory or by a national of a State that is a member to the Court. Myanmar is not a member to the Court – the fact of which means that most of the crimes that were committed within the territory of Myanmar (i.e. northern Rakhine state) are outside the jurisdiction of the ICC.

However, the perpetrators should not be gratified and pleased for the lack of ICC's jurisdiction over the matter, as, a number of crimes committed against the Rohingya ethnicity may arguably fall within the jurisdiction of the ICC as it is apparent that their commission continued into the territory of Bangladesh, which has been a member. The Court since March 2010. According to the office of the Prosecutor, "forcible deportation is one such crime under the ICC Rome Statute (possibly the crime against humanity). To prove the crime of deportation, one must demonstrate that the victim has crossed an international border and entered into another State. Accordingly, the crime of deportation can only be committed if and once the victim enters into the territory of another State. This makes deportation an inherently transnational crime that cannot be committed within the borders of a single State. In the case of the Rohingya, this State is Bangladesh."⁹⁶

Hence, the Prosecutor argued that the ICC may exercise jurisdiction as the crimes have been committed, albeit partially, within a member State (i.e. Bangladesh). However, the crime of deportation cannot be seen in isolation of ongoing

⁹⁶ See Prosecution's Request for Ruling on Jurisdiction under Article 19(3) of the ICC Statute.

commission of the crime of genocide, which culminated before and continued after 25th of August 2017. As this report is work in progress, the Pre-Trial Chamber of the International Criminal Court on September 6, 2018 has ruled that the Court may exercise its jurisdiction over alleged deportations of Rohingya people from Myanmar to Bangladesh as a possible crime against humanity.⁹⁷ Although Myanmar is not a party to the ICC Statute, the cross-border nature of deportation as an element of crime against humanity has occurred on the territory of Bangladesh which is a State Party to the Statute.⁹⁸

Due to the beginning of the brutal attacks, as evidence shows, the Rohingya people were forced to flee violence in search of safety to Bangladesh. If the testimonies of the Rohingya victims and survivors are carefully assessed, it is clear that the crime of deportation has been a part of overall 'persecutory campaign' launched by the Myanmar's authorities. It is unfortunate that the Rohingya people still continue to be persecuted while living in the refugee camps in Bangladesh – not by the Bangladeshi authorities who offered them temporary shelters –but by the Myanmar authorities who continue to act in furtherance of their brutal 'persecutory campaign', by denying the fact of genocide and delaying the repatriation of the persecuted Rohingyas their own homeland. It is high time that the ICC holds the Myanmar authorities to account for the crimes they have committed against the Rohingya ethnic group.

It is imperative under the customary international law for every country to try the responsible perpetrators by applying the principle of 'universal criminal jurisdiction' which allows any State to investigate and prosecute persons responsible for international crimes such as genocide, crimes against humanity and war crimes, even if they were committed in the territory of another State. In international law, atrocities or acts of criminal violence amount to the breach of a peremptory norm of international law, or '*jus cogens*'. And international crimes that rise to the level of *jus cogens* constitute *obligation erga omnes* (non-derogable obligations). The implication of such a position is that they are subject to universal criminal jurisdiction, meaning all States can exercise their jurisdiction in prosecuting a perpetrator irrespective of where the crimes were committed.⁹⁹

⁹⁷ See for details at: <<https://www.reuters.com/article/us-myanmar-rohingya-icc/international-criminal-court-says-it-has-jurisdiction-over-alleged-crimes-against-rohingya-idUSKCN1LM23H>>.

⁹⁸ Ibid.

⁹⁹ Bruno Simma, 'Universality of International Law from the Perspective of a Practitioner', *European Journal of International Law*, vol. 20, no. 2 (2009), p. 280.

ANNEXURE : 1

Medieval Arakan Kingdom and the Emergence of Rohingya Identity

Arakan was a region defined by its natural boundary. In the east the Yoma mountain separated Arakan from Burman Kingdom. In the West river Naf drew the border line between Arakan and Bengal. The hills, mountains and forest erected another boundary on the north. The sea opened Arakan to maritime ships from far and near anchoring at its harbour. Thus Medieval Arakan was protected as well as connected.

The link of Bengal with Rakhine State or Kingdom of Arakan had a long historical link and legacy which need to be studied further to understand the emergence of Rohingya ethnic identity and their religiosity. The formation of Bengali nationhood dates back to the 7th-9th century with the advent of Bengali language. The earliest example of Bengali language was found in *Charyapad*, the Buddhist chants and songs. It has passed through centuries of formative period where Bengal Sultanate in the middle ages played a pivotal role by extending court patronization to Bengali literary expressions. It was during the Sultani period that bond between Bengal and Rakhine Kingdom developed through political and dynastic shifts.

Buddhism reached Rakhine earlier than the interior of Burma. May be it reached through contacts with Sri Lanka or as a fall-out of the Ashoka empire of Gupta era when Bengal became a citadel of Buddhist learning. Whatever it was Bengal certainly played an important role in the dissemination of Buddhism in the Rakhine state. During the Pala empire in Bengal Paharpur Buddha Vihar emerged as a great seat of learning about Buddhism, as well as similiar other centres at Mainamati, Savar etc. Acharya Shilavadra, Atish Dipanker were renowned scholars of Bengal who were known far and away. It was understandable that novices and monks from Arakan visited those places or studied under Buddhist scholars in Bengal. Compared to Buddhism, the Hindus came to Arakan much later. Arab traders started to visit the sea-ports from the 9th century, followed by Muslim Sufi saints who settled in Chittagong as well as in Arakan. Later came the Europeans, specially the Portuguese with their large ocean-going ships and superior fire-power.

Islam came to Arakan in the ninth century when Arab maritime merchants made their call at the ports and carried trade with local market and products. They linked Arakan with wider world both in the Middle East and Far East. Later on other Muslims from Arabia, Persia and adjacent Kingdoms entered into the Arakan. They brought with them not only a new religion but also a language that earned circulation and respectability. Thus Islam and Arab culture made a lasting impact on the land and its people.

The reference to early Muslim settlement in Arakan can be found in the writing of P.B. Smart published in the *Burma Gazetteer, 1917*. He wrote that during the reign of Mahataing Sandaya, in the early ninth century :

"Several ships were wrecked on Ramree island and the crews said to have been Mohammedans were sent to Arakan Proper and settled in villages."¹⁰⁰

Apart from Muslims of Arab origin there were also influx of both Buddhists and Muslims from Bengal to the Rakhine State because of geographical proximity and intra-regional trade. The relation with Bengal took a dramatic turn in 1406 A.D when the Rakhine King Min Saw-Mun or

¹⁰⁰. R. B. Smart, *Burma Gazetteer* (Rangoon, Government Printing and Stationary, 1917), p. 19.

Narameikhla was deposed. He fled from the country to take shelter in the court of Sultan Ghiyasuddin Azam Shah in Gaur, the capital of Bengal Sultanate. He with his retinues stayed in Bengal for almost 20 years, where he learned the art of war, taught Sultan's men the technique of herding wild elephants and other skills they knew. It was a relation of mutual respect and understanding with a lasting impact.

In 1426 during the reign of Sultan Jalaluddin Muhammad Shah (1418-32 AD) deposed King of Rakhine Min Saw-Mun recovered his lost kingdom with the help of expeditionary army of the Bengal Sultan, This led to close relation between Bengal Sultanate and Arakan Kingdom. Bengali warriors, administrators found place of honour in the Arakan court. Bengali peasants settled in the fertile river valleys as they had great skill in cultivation.

The long stay of the Rakhine King in Bengal under the patronage of subsequent Bengal Sultans influenced him much. The Sultani period was a golden era in Bengal with religious harmony and syncreticism being promoted by the court. The court language was Persian, religious language Arabic and Sultans patronized the literary expressions in Bengali. Hindu poet Krittibas composed the Bengali version of *Ramayana* being commissioned by Muslim king of Gaur Jalaluddin Muhammad Shah. Thus Bengali language earned respectability of royal patronage. The Arakan King returned imbued with such ideals and a big entourage of people from the Bengal court.

Along with the Rakhine King combatants and non-combatants taken together several thousand Muslims entered into Arakan in 1430's. The king carried with him large group of courtesans and skilled persons from Bengal Sultanate. Thus began a new phase of influence of Islam and Bengal Sultanate. The coins and medallions introduced by the reinstated King had inscriptions in Arabic which created lot of confusion. Dr. Abdul Karim, noted historian of medieval Bengal, wrote :

"The Arakanese king returned to his kingdom with all these experiences. Arakan had no proper coinage, they became now acquainted with minted coins; Arakan used Burmese script, literature was not developed, but in Bengal they found Bengali, Arabic and Persian languages and literature. So Arakanese returned to their country with much committment to a civilised life and a better living."¹⁰¹

History in Coins

Begining with King Min Saw-Mun (1430-34) upto King Thiri (Shri) Thudahmma (1622-38 AD) for two hundred years the Arakan Kings came to be known also by their Arabic titles stamped on their coins and medallions. Thus the first king was named Sulaiman Shah or Sawmun Shah and the last one being Salim Shah II. Many later day scholars termed the titles as Muslim or Islamic and few like M.A. Tahir Ba Tha claimed that they were Muslim rulers of the Arakan kingdom. But the titles were not Islamic, they were Arabic having no connection with religion. One reason for adopting such titles was to show grandeur of the ruler following the Sultani tradition. But there was also Arakanese coin with Kalima engraved on the reverse side. This added much to the confusion. Sir Arthur P. Phayre, author of the book "*History of Burma*" (1883), considered the Arabic inscriptions as 'barbarous imitation' and 'fanciful designation'. Kalima on the coin was also a Sultani and Mughol tradition which was put as a religious symbol as well as a design. But in Arakan they were not many in number and not a common practice.

It has to be noted that Arakan did not had any facility to mint coins, on the other hand Bengal minted and stamped coins of superior dies and exquisite finishing. The Bengal coins were of standard size, weight and shape bearing inscription in Arabic characters. When the mint masters of Bengal were taken to Arakan by the King to establish its own mint house the artisans along with Burmese inscriptions on the coin also added the King's title in Arabic. One can assume this was necessary for the master craftsmen to know what type of coin they were minting and for whom. The artisans were conversant in Arabic but had little knowledge of local language. Arab inscriptions

¹⁰¹ Karim (above n 16), p. 26.

helped them to overcome the problem. Moreover Arakan kingdom had long exposure to Arabic language and culture through trade. Thus Arabic inscription in Arakanese coin was not that novel and bear no relation with religion or to the claim of the king embracing Islam.

Professor Abdul Karim rightly observed that, there is no evidence that the Arakanese kings gave up their Buddhist religion and accepted Islam. So the reason for accepting Muslim names and inscription in Arabic should be sought elsewhere. Abdul Karim highlighted the problematics of such phenomenon. He wrote :

"Min Saw-Mun made the pact with the Bengal Sultan to pay for the cost of the expedition and to pay tribute, but how long the Arakanese kings were obliged to honour the pact is not known. Certainly all the monarchs of Arakan who ruled for more than two hundred years did not honour the pact because there is positive evidence that some kings of Arakan did not only annul the pact unilaterally, but actually fought against the Bengal kings, or Mughal Viceroys of Bengal under their control. Both sides fought between themselves on the possession of Chittagong in the Husain Shahi period (1493-1538) and Afghan period (1538-1576)."¹⁰²

The port city of Chittagong was a centre of conflict between Bengal and Arakan, sometimes Kingdom of Tripura joining the battle. The Portuguese with their naval power was also a contender. Thus control of Chittagong changed hands many a time. Arakanese control over Chittagong in the 17th century produced interesting silver coins as numismatic Michael Robinson noted:

"From around 1580 until 1784 the Arakanese Rajas issued silver tankas in their own names, initially in three languages (Arakanese, Arabic and Bengali) from the Chittagong mint. From 1635 onwards, the legend is purely Arakanese (the same on both sides) and the coins are now issued from the Mrohaung mint. The issues following the loss of Chittagong in 1666 are quite straight forward."¹⁰³

In the above-mentioned book Michael Robinson wrote the chapter on "The Rajas of Arakan and Governors of Chittagong". He observed :

"During the period the Rajas controlled Chittagong they adopted in addition a Muslim name for the benefit of the mainly Muslim population of the city. This name was given in all three languages used on the coins. By 1622, however, the use of Muslim names has ceased, and, from 1635, only Arakanese inscriptions were in use. These must reflect changes in the coin administration."¹⁰⁴

It is interesting to note that coins minted in medieval Bengal during the Sultani period had Arabic and Persian inscriptions but not any in Bengali. At that period of history it was only in Arakanese and Tripura coins, apart from other languages, one can find inscriptions in Bengali. It can be noted that Bengali inscription on the coins were first found in those issued by the Kingdom of Arakan. There were not many such specimen found but those rare coins reflected a phenomenon to be celebrated. It should also be noted that Chittagong being an important trade outpost was under the domination of Arakan Kingdom for a long time in history. The coins of that time, usually referred as '*Trade Tankas*' or Trade Coins by the historians, reflected multi-lingual reality of the society and Kingdom of Arakan. Chittagong University Museum in their coin collection has one such specimen of Arakanese coin with Bengali inscription. The only silver coin of the King of Arakan in their coin cabinet belonged to the reign of Salim Shah who ruled from 1593 to 1612 AD. On the observe it has writing in Burmese, "Lord of the White Elephant, Lord of Men and Land, Salim Shah." On the reverse apart from Arabic inscription the lower part has the following text in Bengali : *Ôaej M̃t̃RK̃j̃ k̃k̃ k̃k̃ Q̃j̃ g̃ k̃ñ|Ô*

¹⁰² Ibid, p. 33.

¹⁰³ Stan Goron and D.P. Goenka, *The Coins of the Indian Sultanates* (New Delhi, Munshiram Manoharlal Ltd. 2001), P 267

¹⁰⁴ Ibid, p. 33.

The coins of the Kingdom of Rakhine reflected multi-lingual multicultural reality of the time. The scholars are divided in their explanation of reasons behind the inscriptions but the coins uphold the diversity of the society in a strong way.

History as Depicted in Literature

Apart from the coins literature also tells us a lot about the history of Arakan. A significant feature in the medieval period was the development of Bengali language and literature in the court of Arakan. Arakan kings with their patronage of Bengali poets greatly contributed in the development of Bengali language in the middle ages. In the history of Bengali language and literature Arakan court hold a prime place. Alaol, the greatest of medieval Bengali poet, flourished under the patronage of Arakan King Thado Minter (1645-52) and Sanda Thuddhamma (1652-84). The royal courtesan Magon Thakur took Alaol under his fold. Alaol became part of Royal bodyguard and stayed in the kingdom for long years. He wrote his epic *Padmabati* in 1651 and his last work *Sekandarnama* (on Alexander the Great) in 1671.

During Alaol's tenure in the Arakan court another historical event took place. Shah Shuja, brother of Mughal Emperor Aurongjeb fled to the East in 1660 and took shelter in the court of Arakan. He was brutally murdered later on. His other brother, greatest Sufi scholar of India Dara Shiko fled to the West and was also murdered by the cohorts of Aurongjeb. Alaol depicted the plight of Shah Shuja in one of his creative work. He rendered various Persian and Hindi texts into Bengali adding his own observation of the time. Thus his writings reflected various aspects of life in the Arakan court which deserve much attention.

Arakan Kingdom was cosmopolitan in true sense. In Alaol's epic one can find reflection of that. He wrote :

bvbr t`uk bvbr tj uK i`ubqv ti vmi½ tFvM
AvBmŠfbc QvqvZj |
Avi ue, ugQwi, mung ZjvK, nveum, i aag
tLvi vmi vbr DRtevM gjj |
j vûix, gjjZvbx, umUx, KvKšwi, `wYx, urw`
Kvgjfcx Avi e½t`kx
AncvB, tLviUbPri x, KYŋ x, gjj vqevi x
AvP KŋP KYŋUKevmx

Alaol wrote that people of various nations from different places assembled at the capital Mrohoung, in Alaol's word Roshang, upon learning about the wealth of the kingdom. He mentioned of people from the land of Arabia, Egypt, Syria, Turkey, Abbysinia, Roman, Khurasan, Uzbekistan, Lahori, Multani, Sindhi, Kashmiri, Deccan, Hindi (North India), Kamrupi, Bengali, Karnal, Malayi, Achi, Cochi and Karnataki. Among people of different races he mentioned of Mughal, Pathan, Rajput, Hindu and the people of Ava, Burma, Siam (Thailand), Tripura, Kukis, Armenians, Dutch, English, French, Spanish and Portuguese.

The description of diverse people assembled in Mrohaung, capital of Rakhine Kingdom in 1660's, stand in sharp contrast to what subsequent centuries of development has made of Arakan. The land of diversity gradually became mono-cultural and erased the identity of others. The Burmese domination and colonial rule delinked the Rakhine State with its medieval past. For most of the contemporary scholars the recorded history of Arakan started with Francis Buchanan's account given in 1799 but Bengali literary renderations the middle age uphold the social reality of much earlier time.

The literary depiction by Alaol and other Bengali poets belonging to the court of Arakan mostly remained out of scholarly interpretation as those were part of Bengali oral tradition and hand-written Puthi manuscripts. As proper attention has not been given to the Bengali literary sources of medieval Arakan life the deep root of Rohingya people in the land of Arakan did not got the attention it deserved. It was to the credit of Abdul Karim Shahityabisharad (1871-1953) of

Chittagong who in early 20th century brought Alaol and other Bengali poets into the limelight and opened the path of new historical understanding.

The Rakhine Kingdom was a place for the Buddhist, Hindu, Muslims as well as other religious community and small indigenous groups. In medieval Bengali literature the kingdom was always known as Roshang and Mrohaung (Mrauk-U) its capital was also known as Roshang. The period was the heyday of multi-cultural Rakhine kingdom, with harmony and tolerance prevailing among many national, ethnic and religious groups. Bengali poets wrote hymns in praise of the Arakan king.

Paying tribute to the Roshang kingdom Alaol wrote :

*mgb̃ t̃i ṽm̃i½ t̃ k̃ b̃m̃n g̃` c̃i c̃t̃j k̃
 k̃l̃p̃` ² m̃g̃r̃c̃Z̃ṽt̃Z̃ i ṽR̃ṽ |
 Z̃ṽb̃ c̃ṽl̃ ı̃ ẽ` ² ṽb̃ k̃l̃h̃z̃ t̃Q̃ṽt̃j g̃ṽb̃
 ĩ f̃ỹt̃Ỹ m̃R̃j̃ ṽ ı̃ẽãṽZ̃ṽ |*

Glory to Roshang land where no evil or sin prevail
 Ruled by King Srichandra Suddhamma.
 His courtesan with divine knowledge Srijut Solaiman
 was born at an auspicious hour.¹⁰⁵

Apart from Alaol there were other poets in the court of Rakhine/Roshang state who also made great contribution in the development of Bengali language and literature. Doulat Kazi was a predecessor of Alaol, whose name suggests that he was in charge of finance of the court. He translated the Hindi/Oudh folk tale of Sati Moina and Lor Chandrani which was left unfinished. Alaol completed the rendition in a masterly way.

A later day poet, Abdul Karim Khandkar, translated the Persian story "*Dulla Majlish*" in 1698. In the preamble the poet narrated how four generations of their family served the court and thereby provided a glimpse of life in the Rakhine state in the seventeenth century. He wrote :

*i g̃Q̃z̃ ỹg̃q̃ṽ b̃r̃t̃g̃ c̃l̃c̃Z̃ṽ ² ṽg̃ṽi
 ı̃ẽl̃q̃ c̃` ẽx̃ c̃ṽB̃j̃ c̃d̃h̃t̃` i ṽR̃ṽi |
 ı̃m̃ı̃½ṽi ñm̃Q̃j̃ h̃Z̃ Z̃ṽr̃ṽi K̃ṽi Ỹ
 j̃ B̃q̃ṽ t̃f̃ŨG̃ m̃g̃ b̃t̃c̃i P̃i Ỹ |
 Z̃ṽb̃ c̃ỹ g̃Q̃b̃ ² ṽj̃ x̃ ı̃m̃ı̃½ṽi ` ı̃ṽl̃ x̃
 ı̃ẽ` ẽ` ı̃ñt̃j̃ b̃c̃ ı̃ı̃t̃b̃ t̃` G̃ ² ṽm̃b̃ |
 ĩ m̃ı̃t̃½Z̃ h̃Z̃ m̃` ı̃m̃ĩ ² ṽB̃t̃m̃ h̃ṽl̃
 Z̃ṽb̃ c̃ỹ ² ṽj̃ x̃ ² ṽK̃ı̃ẽı̃ṽi ² t̃ĩ b̃ı̃g̃
 ĩ x̃g̃ı̃Z̃ g̃ñı̃R̃b̃ m̃ẽ` ² Yãı̃g̃ |
 Z̃ṽb̃ c̃ỹ ² ṽẽ` ı̃j̃ K̃ı̃ı̃ı̃ g̃ t̃L̃ı̃` K̃ṽi
 ² ṽk̃ṽi ` K̃b̃ỹG̃-ı̃K̃Z̃ı̃ẽ ĩ ı̃P̃t̃Z̃ c̃q̃ṽi |*

Ramsulu Mia was the first person in the family taken to the court and given responsibility of collecting tariff from the ships. Son Mochon Ali was interpreter for the sailors calling at the port. His son Ali Akabbar was a businessman of repute. The member of the next generation Abdul Karim Khandoker was the poet who narrated the story in verse. The narrative indicated how the Muslims through inter-generational experiences became part of cultural and ethnic diversity of the Rakhine Kingdom. The poet also paid tribute to the Kazi or justice minister of the court one Akoyango who inspired him to engage in writing. Abdul Karim Shahityabisharad could not find any meaning of the name but maintained that he may be a Mroung converted to Islam.¹⁰⁶

¹⁰⁵ Abdul Ahsan Choudhury (ed), *Abdul Karim Shahityabisharad Rachanabali*, (Bangla Academy, Dhaka, Vol.1, 1991), p. 525.

¹⁰⁶ Abdul Ibid, pp. 517-18.

In the Rakhine State the mixing of different culture, religion and language happened over the centuries and gave its people a unique identity. This syncreticism has also been reflected in its architecture as well as in the ways of worship.

Early British chronicler of history R. B. Smart wrote :

"There are few modern temples in Akyab which are interesting as their architectural style is a mixture of the Burmese turreted pagoda and the Mohamedan four cornered mineral structure immounted by a hemispherical cupola. The worship, too, is mixed, both temples are visited by Mohammadans, and Buddhists, and the Buddermokan has also its Hindu votaries. The Buddermokan is said to have been rounded in A.D. 1756 by the Mussalmans in memory of one Budder Auliab, whom they regard as an eminent saint."¹⁰⁷

While R. B. Smart has written 'Auliab' which actually is 'Aulia' in Arabic meaning revered saint. 'Mokan' is also an Arabic word meaning abode or shrine. Rohingya language has similarity with the Chittagongian dialect of Bengali with many Arabic words in the vocabulary. Sufi Islam had its prevalence in Bengal as well as in the Arakan where the religious Guru or saints are revered by practitioners of all religious.

According to Abdul Karim Shahityabisharad the indigenous people used to call the land *Rakhaing* which derived from Sanskrit *Raksha* and Pali *Yaksha*. As mentioned earlier in all the Bengali literary expression the kingdom has been referred as 'Roshang'. In one of the earliest Western reference the kingdom has been called 'Roun'. The English traveler Fitch, who was in Chittagong in 1585, stated that, "it is often times under the king of Ruon." Historian of Medieval period Dr. Abdul Karim has written that the name Roshang in the mouth of local people became 'Rohang', 'sha' being turned into 'ha' and thus the people of the place came to be known as "Rohongi" or 'Rohingya'.

The kingdom of Arakan was tormented by interval feuds as well as external threat from the Burman Kingdom. In the difficult period nature also struck the region with massive earthquakes of 1761 and 1762. In a contemporary chronicle the author described the event vividly as R. B. Smart noted :

"The sea retired (so the chronicler described this great convulsion) along the whole coast to the extent of three enlists perpendicular. In some places the sudden elevation of the land far exceeded that amount. As if to fulfill the gloomy prognostications of the soothsayer, from this time there is nothing to record but change of dynasty or the struggles of aspirants to the throne. The ancient kingdom of Arakan, weakened by constant strife among her own children, was soon to be the prey of the successors of Alaunghprd, and was destined only to find rest when annexed to the empire of British India."¹⁰⁸

In 1784 Roshang kingdom was attacked and conquered by the Burman King Bodapayh. This was the end of great Arakan kingdom but the resistance continued. Following the defeat Buddhists, Muslims and Hindus of Arakan fled to Cox's Bazar including leader of Arakan resistance, Chin Byan, a Buddhist Rakhine chief. The conflict in Arakan at that time was not of Buddhists versus Muslims, rather it was conflict between two kingdoms and two nations. The Burmese domination resulted in large-scale exodus from the Arakan State. Only last year the underground shelter of Chin Byan's army was found near Ramu. This complex of underground caves known as "*Andhar Manik*" or "*Diamond in the Darkness*" highlighted the struggle for national and ethnic rights of people of Arakan which had great significance in history. The cave complex which could shelter large number of people has yet to be explored and studied, but prevailing local myth link this with the King who fled and waited with his army to be rearmed and launch new attack to regain his kingdom. The King was known to local people as '*Kana Raja*', the one-eyed king. The Vante or Buddhist priest of the court was buried inside the cave and became a place of worship for the local Buddhists.

¹⁰⁷ Smart (above n 100), p. 37.

¹⁰⁸ Ibid, p. 182.

The Rakhine Buddhists were usually known as 'Magh' and their presence led to the establishment of the Cox's Bazar township. The presence of Rakhine Buddhists was so wide-spread that 'Moghbazari' in Dhaka still bears the testimony of this historical connectivity.

Like the formation of Bengali identity in the medieval period Rohingya identity also started to evolve as a distinct one in late medieval Arakan with local characteristics and confluence from various sources. The Rakhine state as a centre of multi-culturalism and diversity lost its glory with the occupation of Arakan by central Burman Kingdom. The invaders ransacked the capital Mrohaung or Roshang which became abandoned and left to ruin. The Rakhine Kingdom was gone but the historical legacy remained along with the ethnicity of Rohingya people.

In 1824 British occupied Burma initiating hundred years of colonial domination. When they put the Rakhine Kingdom under the central colonial rule they found many ethnic groups in the region including the Rohingya, a distinct ethnic people rooted in the land among other diverse ethnic communities. The Kingdom of Arakan was a place where people with different ethnic, religious, linguistic identity defined their life together. Contemporary historian Michael Charney of SOAS, London University rightly noted,

"We do not find a lot of pre-18th century tensions between the Buddhist and Muslim populations. The physical geography and climate favored approaches to living and ruling, interacting, and community building, social mentalities that were flexible and inclusive, that favored the emergence of ethnically and religiously diverse communities."¹⁰⁹

Lt. Col Thomas H. Lewin, a young cadet of the East India Company joined the service in 1857 during the Sepoy Mutiny or the First Indian War of Independence. He spend his whole career in Eastern Bengal at one time being posted in Chittagong Hill Tracts. In the memoir "*A Fly in the Wheel or How I Helped to Govern India*" he made a broad category of the Arakanese people in Hill Tracts in 1867-68. He wrote :

"The dwellers in the Hill Tracts of Chittagong might roughly be classed under two headings: the Khyoung-tha, or children of the river : and Toung-tha, or children of the hill. The former as their name signifies, lived near the river and were experts in water-craft. They were for the most part of Arrcanese descent and spoke that language of which Burmese is a modern offshoot. They followed the Buddhist religion and customs. The Toung-tha shunned and feared the river, and could not sail a boat. I consider them to be autochthonous tribes, springing originally from the great Singpho horde and speaking cognate dialects of the same speech."¹¹⁰

It can be mentioned here that the great grandson of Colonel Thomas Lewin worked with the victims of Bangladesh Genocide in 1971. A great humanitarian soul Julian Francis was coordinator of OXFAM's relief operation in Kolkata and after his retirement settled in Bangladesh. He is still active in defending the rights of refugees and recently visited the camps of Rohingya refugees. He was traumatized by the experience and wrote a moving piece in the newspaper. He personified the link of present Rohingya refugee crisis with that of 1971. His family history takes the link further down in history where an encounter of different kind occurred in 1867-68.

Francis Buchanan during his travel in Burma and Bengal coast in 1799 found an ethnic group who called themselves 'Rohingya', which indicated that such group had emerged as a distinct identity over the previous centuries. It is therefore important to study the history of medieval Arakan or Rakhine Kingdom in depth and dimension. The Rohingya belonged to the Arakan Kingdom as one of the older ethnic group. They do not need to prove their identity, one has to read the history to understand their identity.

¹⁰⁹ Michael W. Charney, *The Rohingya: An Ethnic People, Their History and Persecution* ("On the Rohingya and other Myanmar Ethnic Groups") (Free Rohingya Coalition), p. 28.

¹¹⁰ Lt. Col. Thomas H. Lewin, *A Fly On the Wheel or How I Helped to Govern India* (Kolkata: Firma KLM Pvt. Ltd., 1912 and 1977), pp. 226-27.

ANNEXURE : 2

Research Questionnaire Used in the First Field Visit for the Purpose of Collecting Testimonies of the Rohingya Survivors and Victims

A. General Information of the Respondent:

Name:	
Age:	
Occupation in Myanmar:	
Educational Qualification:	
Gender:	Male/Female/Child/Others (_____)
Religion/Faith:	
Address in Myanmar (If you have any Identity Card issued by the Myanmar's government, please show us):	
Number of Family Members:	Male (___) Female (___) Child (___) Others (___) Specifically they are:

B. Questions relating to discrimination that the Respondent faced in Myanmar:

- Tell us about your family in Myanmar.
- Tell us about your residence and neighbour in Myanmar.
- How was your relation with people of other religions?
- Did you study in government educational institutions like school, college, etc.?
- Did you have any private or community-based educational institutions?
- Was it possible for you to have Medicare from government hospitals?
- Did you get any help from Police Station when you were attacked with the communal violence?
- Did Myanmar's government take your land or place of residence in the name of development or implementing projects?
- Was it possible for you to sale and purchase land in Myanmar? Who used to purchase your land? Whose land you used to purchase? Was there any restriction?
- In your locality, did you have any Mosque, Madrasa or Temple? Were these establishments also attacked?
- Do you have any Citizenship Card or Identity Card issued by Myanmar's government? Can you tell us the name of the card? When did you get this card? Did you have any other card before getting this card?
- Was identity card necessary to enroll your children in schools? If you hadn't any card, what you used to do?
- Was there any rule of the government to register your newly born children (birth registration)?

- Was it possible for Muslim Rohingyas to get married with someone from another religion/community? Was there any restriction by the government in case getting married? Did you register your marriage? How?
- Did Myanmar's government impose any restriction in order to control birth rate within Rohingya community? Please tell us in details.

C. Questions relating to on-going atrocities of the Myanmar's Military Forces over Rohingya population:

- For how long you were living in Myanmar? Do you have any relatives or ancestors in Bangladesh?
- When did you come to Bangladesh? Is this your first time entry to Bangladesh?
- How did you cross Bangladesh border?
- Why did you come to Bangladesh? For the reason you stated, did you come earlier like this time?
- Have you been the victim of any atrocity or attack in recent time in Myanmar?
- Who did attacked you (Military or local people? People of which religion or community)?
- When and how did they attack you?
- What types of weapons did they use during attack or violence?
- Did they spread any hate speech before attacking you? Can you remember those words/statements?
- What did you lose in the attack? Did you lose any family member? Please tell us in details.
- What attack did you face? Did you get injured?
- Were you the victim of similar attacks before? Please tell us when and how?
- What did you do when you were attacked or you had the fear of persecution? Did you take any step to prevent the attack?
- With how many alive family members, were you able to come to Bangladesh? Do you know anything about those who couldn't come to Bangladesh along with you?
- After coming to Bangladesh, did you communicate with anyone staying in Myanmar now? What did they inform you about the situation in Myanmar?

ANNEXURE : 3

Research Questionnaire Used in the Second and Third Field Visits for Collecting Evidences of Alleged Sexual Violence Against the Rohingya Women

1. Identity of the Interviewee:

[Note: If more than one person is concerned, please attach relevant information on each person separately.]

- (a) Family name:
- (b) First name:
- (c) Sex: __ Male __ Female ___Third Gender _____
- (d) Birth date or age:
- (e) Occupation and level of education:
- (f) Civil status (single, married, etc.):
- (g) If married;
 - * Spouse name and occupation?
 - * Number of children
 - * What are their names?
- (h) Mother's name and occupation:
- (i) Father's name and occupation:
- (j) Address in Myanmar? (Village/Town/District)
- (k) Did you have any valid document as citizen/resident of Myanmar? (Collect a photocopy/scan, if possible):
- (l) Present address (Camp name, Block no., Shade no., Majhi, etc.):
- (m) Registration ID No. in Bangladesh (Collect a photocopy/scan, if possible):
- (n) Any other information (Please specify):

2. Background Information:

- (a) How many families were living in your village in Myanmar?
- (b) How many (approximately) families/people left?
- (c) How many of your family members crossed over to Bangladesh?
- (d) Why did you decide to leave? (Did anyone force you to leave your country Myanmar? Who and why?)
- (e) How many days did you take to reach Bangladesh?
- (f) How many people were with you during the journey?
- (g) Did you face any problem/difficulties during the journey?
- (h) What were they?

3. Information related to Alleged Sexual Violence:

- (a) Date, place and time in which the incident took place (Specify village/town/ district)
- (b) Does the incident involve an individual _____ or a group_____?

- * How many of them were perpetrators?
 - * How many of them were victims of violence?
 - (c) How did the perpetrators look like? Were they in uniform or civil dress? Did they have weapons?
 - (d) How did the perpetrators select their victims?
 - (e) How many people were injured during the incident? Do you know if anyone was raped during the incident? Were you injured/victimised/violated?
 - (f) Can you explain details of your injury/ victimization?
-
-

- (g) How many times were you injured/victimised/violated?

[Note for the interviewer: If the victim was repeatedly harassed/injured/raped, then repeat Q 3 provided the victim agrees to discuss details of the incident and does not appear to be tired or traumatized.]

- (h) Was there anyone else on the spot that faced similar injuries along with you?
- (i) Was any one killed? What happened to the dead bodies?
- (j) Who among your family members/neighbors/villagers witnessed this incident?
- (k) Are they in this camp with you? (Please attach relevant information on each witness separately)
- (l) What did the perpetrators do immediately after the incident?
- (m) What did you do immediately after the incident?
- (n) Did you report the incident to anyone? (Health/legal)
 - * In Myanmar?
 - * In Bangladesh?
- (o) Did you get any medical treatment in Myanmar? When? Where? Who provided this service? If no, why not?
- (p) Were you given any medical treatment in Bangladesh? When? Where?
- (q) If the answer to the above is yes then did you go to the medical center alone or with an accompaniment? Is that person in this camp? If yes, get details?

[Note for the interviewer: Please interview the persons who accompanied the victim to the medical center.]

ANNEXURE : 4

International Protocol on the Documentation and Investigation of Sexual Violence in Conflict [shortly known as “the Colombia Protocol for Interviewing the Cases of Sexual Violence”]

Before starting the interview:

Be clear that the risk level assessment interview does not necessarily have to address the violating event. This guide is only for cases in which the interview is required and the interviewee has allowed it.

The facts described here can be manifested even though the act of sexual violence is not being addressed. This is why you must pay close attention to the information provided.

What is sexual violence?

Sexual violence is any sexual act, the attempt to consummate a sexual act or another act directed against the sexuality of a person through coercion by another person, regardless of his/her relationship with the victim, in any ambit (definition by the World Health Organization).

Consequences of sexual violence

Violations, torture, sexual abuse and other acts of violence have an impact on the bodies, mental health, sexuality and reproductive health of women and men. The damages can be:

- Physical and physiological damages that permanently affect their sexual and reproductive autonomy, with serious consequences to their sexual and reproductive health.
- Contagious diseases or infections of sexual transmission and increased risk of contracting HIV, pelvic inflammatory diseases and cervical cancer.
- Unwanted pregnancies
- Deep emotional traumas.
- Sexual problems such as frigidity, fear of sex, decreased sexual functioning.

Reactions of victims of sexual abuse

As a result of a sexual abuse, many women feel that they have lost control of their lives. This feeling is the result of the fact that during a sexual abuse, the woman is forced to participate against her will.

In general, every victim of sexual abuse experiences concentration problems. Sometimes during the sexual assault other people are affected (homicides or injuries), this leads to the victim feeling guilty and responsible for the harming of others. This feeling is called “The survivor’s guilt”.

Another fairly common reaction is feeling sadness or depression. The victim has feelings of despair as if everything in life were given for lost, which can lead to suicide.

As a consequence of what has been mentioned above, an imbalance in interpersonal relationships usually occurs. This imbalance is the result of the isolation to which depression and sadness leads. Moreover, the victim experiences feelings of shame that makes her/him not want to socialize with others. It is very important to feel close to family and friends. These friendships contribute to the quick recovery of the person.

Physical reaction. There are three different ways of reacting to fear: physical, mental and behavioural. Our physical reactions are automatic, unconscious, amongst them are: the increase in speed and intensity of the heart rate, increase of blood pressure, breathing faster and muscles stressing, all of which are a reaction of the brain to run away or confront.

Mental reaction. Fear is also experienced mentally; sometimes some people and certain places tend to stimulate paranoid thoughts. Many victims experience nightmares on a daily basis, they can even cause people to wake up terrified in the middle of the night, without being able to remember what they were dreaming about.

What should we keep in mind if facing a crisis of the victim during the interview?

A victim of sexual violence can present an emotional crisis at any time during the interview and therefore we must contemplate the following six basic principles:

1. Immediate intervention. In the face of an emotional crisis of the interviewee, it is necessary to provide primary psychological attention as soon as possible. Pay attention to what the person interviewed expresses with non-verbal language (gestures, silences).
2. Stabilization. Actively favouring the motivation of the victim's resources, the restoration of her/his sense of security and vital order, as well as activating all those sources of support that facilitate her/his integral recovery.
3. Facilitating the understanding of what happened. Actively listening to those aspects of the aggression that spontaneously want to be reported, making an alternative re-elaboration on the comprehension of the facts, with the purpose of helping the victim to think about herself/himself beyond the crime and removing her/his guilt about what occurred.
4. Restoration of the feeling of self-awareness in the victim. Promoting a positive vision of herself/himself; favouring the restoration of her/his independent functioning and directing her/his attention towards the future in which it has already overcome the effects of the traumatic event. When facing identified symptoms and problems, victims should be encouraged to put into practice their own strategies to cope with them, reinforcing those that effectively help to restore a normal balance in the life of the survivor.
5. Risk assessment. From a comprehensive care perspective, possible risks to the victim of sexual assault should be evaluated, such as: self-injury, presence of psychosis, impaired self-care capacity, insufficient availability of social support networks, depressive symptoms, manifested impulsivity, hetero-aggression, ideation of self-injury or presence of self-induced injuries.
6. Referral to mental health services and follow-up. Social, family and institutional networks can provide high levels of support and care to the interviewee in the short, medium and long terms.

During the interview any of the following manifestations can arise

1. Early sequels (Acute disorganization stage)

It occurs from the moment of the fact and can last for several weeks. During this stage the victim will possibly seek help; during the interview the victim can present: • Frequent crying • Expression of rages • Fear • Instability • Disbelief. There are interviewees who look controlled but emotionally distant. It should not be assumed that they are doing well because they may be masking feelings that are painful and confusing.

Physical symptoms can also occur, such as: • Fatigue • Headache • Pain due to physical trauma • Difficulty sleeping (sometimes, if they are asleep, they may wake up at the time of the rape).

And psychological symptoms such as: • Guilt • Fear of being killed • Feeling of degradation and loss of esteem • Feelings of depersonalization and unreality • Recurring and intrusive thoughts and memories (sudden) • Anxiety • Depression.

2. Long-term effects (post-traumatic stress disorder)

- To feel (to revive) again everything that happened
- little response or commitment to the activities of daily life
- Despair
- Fear of men.

What should be done in these cases?

- ✓ Find a person of confidence who can accompany the victim at all times.
- ✓ Listen to her/him. If the person wants to talk about the event, it is convenient to do so. The interviewer has to understand that for the victim it will be difficult to talk about certain things, such as penetration, for example. If the victim does not want to talk, she/he should not press for this to happen.
- ✓ Let her/him know that she/he is responsible for her/his care in all aspects.
- ✓ Facilitate safety regarding her/his physical condition. Suggest that she/he sees a doctor.
- ✓ Help the victim decide whether or not to press charges against the aggressor. Remember that this must be a personal decision. If you plan to make a report and the event just happened, recommend not bathing so they can perform laboratory tests. The victim can go to a specialized centre and then go to the police.

What should not be done!

- ✗ Do not press the victim to speak, if she/he is not psychologically ready, probably do it later.
- ✗ Do not make judgments. This is not the time to talk about what could have been done to avoid the sexual aggression.

Consider orienting for:

- In addition to general health care, victims of sexual violence have the right to post-exposure prophylaxis and treatment for HIV and sexually transmitted diseases (STIs), emergency contraception within 72 hours, attention on sexual and reproductive rights and referral to other health services that are required.
- The victim has the right to choose the sex of the person who will provide advice and perform specialized medical exams. It is important to be receptive of this request.
- The victim must give her/his informed consent for the performance of specialized exams.
- Determine which is the competent entity to receive complaints in the event of an act of sexual violence.

Guidelines for a direct interview

... You must

- ✓ Inform the victim of her/his rights and procedures; use examples and/or graphics to explain them, avoid using technical words and confirm the victim understood all explanations.
- ✓ Have a private space that allows discretion. If this is not possible immediately, you should look for mechanisms to interview ensuring privacy and make arrangements with local authorities to ensure adequate space in the future.
- ✓ From the greeting to the farewell, forward a communication characterized by:
 - Confidentiality (For security and as a guarantee of the right to privacy, do not give information to third parties)
 - Amiability
 - Empathy
 - Credibility
 - Disposition
 - Security
- ✓ Maintain a body and verbal language that tells the victim you are listening. Do not use cell phones, music players or any device that diverts your attention during the interview. Eye contact is important.

- ✓ Motivate (but do not press) the victim to talk about what happened. If there is a document where the facts are recorded, transcribe them and do not ask again if it is not essential. Always prioritize the security and emotional stability of the interviewee. If you face a crisis situation that prevents you from carrying out the interview, refer the victim to psychological help, a health centre or any other psychological support.
- ✓ Record everything the victim has indicated and of all procedures carried out. This will prevent the victim from having to repeat his story and will allow defining concrete actions for the case.
- ✓ If the victim should go to another institution, inform her/him in writing about the place, the hours of service, the documents she/he must carry and, insofar as possible, the name of the person who will assist her/him. For this, it is important to have made the diagnosis previously.
- ✓ The interview performed must itself be restorative that is a relief or solution to the situation.

You must not...

- ✗ Do not judge, or assume the victim is to blame for what happened. This is re-victimization.
- ✗ Avoid commenting on what you should have done, especially when those comments refer to the roles assigned in society (role of mother, wife, etc.) These are discriminatory.
- ✗ Do not assume a fatherly or familiar attitude with the victims with expressions like "my life, daughter, my love, my girl, grandmother" and do not speak with diminutives like "little person, mommy, old lady". Speak to her/him by name.
- ✗ Do not minimize the situation with expressions such as "everything is fine, nothing has happened".
- ✗ Do not allow your religious beliefs to interfere your attention, whether or not different to those of the victims. Remember the right to freedom of religion and conscience.
- ✗ Never press if the victim does not want to tell what happened.
- ✗ Do not interrupt the victim's story. Wait for an idea to finish and if necessary ask for clarification. If your time is limited, clarify from the beginning how much time is available.
- ✗ Do not let the victim tell what happened to people who cannot activate procedures or give her/him support. This violates the victims' right to privacy, dignity and safety.

You must...

- ✓ Guarantee the protection of all the rights of victims of violence of sexual violence within the context.
- ✓ Before starting, ask the victim if she/he has already narrated them. If you have a letter describing them, read them beforehand and avoid the victim retelling them, unless it is to broaden some relevant aspects.
- ✓ Make sure the environment for the interview respects privacy.
- ✓ If the woman is accompanied by someone to the interview, try to attend her alone. In any case, respect her will if she wants to be accompanied.
- ✓ Build an atmosphere of trust; show your interest. Avoid taking your job as a routine.
- ✓ Guarantee active listening body language; your voice should express calmness.
- ✓ Allow the victim to express her/his emotions on the subject: anger, crying, and silence. It is important to have minimum elements to face these situations: glass with water, paper for the face, and empathy to respect.
- ✓ Have empathy with what happened; understand what happened to the victim but without losing your role.
- ✓ Explain to the victim that sexual violence can occur with many behaviours and not only with carnal access. Recognize the seriousness of the fact.
- ✓ Inquire about situations that may suggest the occurrence of sexual violence: being in camps, being alone with armed actors. Be respectful of her/his desire to narrate or not.
- ✓ Record all the information in detail, including the emotional aspects that you observe (situations of crying, sadness, anger, etc.).

- ✓ Remember that children conceived as a result of rape are also victims. If necessary, record this situation for legal and health purposes.
- ✓ Before closing the interview, give the victim a space to ask questions about procedures.
- ✓ When closing the interview, inform the victim that sexual violence has occurred to many women, try to reduce her feelings of guilt.
- ✓ Give the victim a copy of the documents you have completed, if any. Remember that it is your right to have them. Remember that most of the time the victim has not told what happened to her/his relatives.

You must not...

- ✗ Do not underestimate or minimize what happened to the victim.
- ✗ Never prioritize the statement or process over the victim and her/his feelings.
- ✗ Your role is not of a researcher. Do not try to verify if what is said by the victim is true.
- ✗ If the victim provides evidence or references, record them. Do not say you cannot report or testify without proof.
- ✗ Do not pressure the victim to talk about things she/he does not want.
- ✗ Never divulge what happened to the victim. Remember that you have a duty of confidentiality.
- ✗ If the victim must be referred to other entities, never make her/him go alone.

If the respondent belongs to other protected populations

- § If the victim is a person with a disability do not focus on her/his limitation, focus on facilitating access to rights; the particularities of each case and, especially, victims themselves will indicate the support they require. In the case of intellectual or cognitive disability, in some situations it will require the intervention of a specialist who should be contacted immediately.
- § If the victim is an illiterate woman – who does not know how to read or write-, ensure that she has full access to information about rights and resources. Speak in a simple every-day language and, if possible, use graphic resources.

In addition, it is important to follow specific guidelines, since sexual violence is a category that has a particular impact on the victim and therefore deserves a different attention.

ANNEXURE : 5

Notes on Interviewing the Rohingya People for Collecting Evidences

Prepared by Professor Irene Victoria Massimino.¹¹¹

Relevant notes for consideration:

- A list of relevant questions (questionnaire) should be prepared for the interview. However, it is advised to allow the victim speak freely in an environment of confidence and trust, and ask for clarification or pose a questions only when needed.
- Legal aspect. If Bengali authorities pursue the interviews, local Bengali law for criminal investigations should be followed, as victims will be interviewed under Bengali jurisdiction. Yet, international standards should always be followed (consider Practice Guidelines for Interviewing Children and Colombian Guidelines for interviewing victims of sexual violence).
- Translation. There must be an official translator present at all times of the interview. If there is not an official translator, a person with vast knowledge of the languages used during the interview should translate. Such person shall sign a written oath specifying his/her commitment to accuracy and the truth of what is said during the interview. Each testimony, once transcribed into written, shall be signed by the translator.
- If possible, the interview should be printed immediately and signed by those conducting the interview, as well as by the interviewed and the translator.
- Before starting the interview, the interviewer and translator shall read and know in detail all international guidelines for conducting an interview with victims of sexual violence and children.
- Psychological, psychiatric and medical help shall be available at all times during the interview. If not possible, the interviewer shall know where such support is located within the refugee camps to accompany the victim in case of a crisis.
- A medical, psychological and psychiatric report should be attached to each interview, when possible, in order to further validate the testimony
- Any other relevant documents (such as a copy of the victim's identity card, for example) shall be attached to the written interview to start making a file about the victim and the crime she/he suffered.
- At least one independent legal advisor with knowledge of international standards, international human rights law and international crimes should be available during the interviews.

¹¹¹ Irene Victoria Massimino is a human rights lawyer working as a Rapporteur for the High Criminal Court of Buenos Aires Province, Argentina; The Head Professor of Human Rights in Latin American in the Department of International Education at the Universidad Nacional de Tes de Febrero, Argentina; and a human rights activist working nationally and internationally in genocide prevention and justice processes.

ANNEXURE : 6

Sample Consent Form

Consent Form

I, _____, age _____ fully understand the purposes of the investigation by the National Human Rights Commission (NHRC), Bangladesh on the **ALLEGATIONS OF SEXUAL VIOLATIONS ON ROHINGYA WHICH TOOK PLACE IN MYANMAR.**

I understand that I would be asked to answer questions by the interviewer of the violence faced in Myanmar either from my personal or surrounding experience.

I understand my personal details which will reveal my identity to the public will be kept confidential. I further understand, in case these details need to be disclosed my prior permission should be ascertained.

I understand that my participation is voluntary (I do not have to do it). I have the right to withdraw my consent or stop my participation at any time without penalty. I have the right to refuse to answer any question or to decline any procedure or may leave the interview at any stage.

I have understood the information presented here, and I fully give my consent to participate in this investigation.

Written Consent of the victim/survivor/witness

Consent given: ___Yes | ___No

Signature of Interviewer Obtaining Verbal Consent

Name: _____

Date: _____

ANNEXURE : 7

Sample Non-disclosure Agreement Form

Non-Disclosure Agreement between NHRC, Bangladesh and CSGJ Researchers

Name:

Occupation:

Address:

Contact Number:

National ID:

I, _____, hereby declare that I am voluntarily participating in the investigation team for collecting information (interview, note taking, interviewing, psycho-social support) on an investigation of **ALLEGATIONS OF SEXUAL VIOLATIONS ON ROHINGYA WHICH TOOK PLACE IN MYANMAR**, organized by the National Human Rights Commission (NHRC), Bangladesh scheduled to be held from 01/02/2018 to 04/02/2018 at the Rohingya Refugee Camps in the district of Cox's Bazar, Bangladesh.

Therefore, I am signing this Non-Disclosure Agreement form consenting and obliging the following:

1. The confidentiality of the findings of the investigation team will be strictly maintained and I will not share the findings of the investigation team with anyone except with the prior permission of the National Human Rights Commission (NHRC), Bangladesh.
2. I will be obliged to comply with the directions of the supervisor of the investigation team and I undertake the responsibility for reporting to the National Human Rights Commission (NHRC), Bangladesh on time before or after the investigation and complete the given task within the given time frame and disobedience may result in being excluded from the investigation team.

Signature: _____

Date: _____

ANNEXURE : 8

Select Accounts of the Rohingyas Victimization

I.

“One day at 7’o clock in the morning, I and my daughter heard that very near to our house someone was firing bullets. Hearing the awful sound both of us got out of the room and rushed to the back side of our house. Once we were there, I saw that my fifteen years old son was lying dead on the road and a group of military men was walking and firing here and there. We were terrified. I immediately realized that my son was shot dead by the military personnel.

Seeing us standing there, the military tied us up by rope. In front of us, three military men ripped off the dead body of my son with machete and then they left.

After experiencing such a frightened situation, I started bursting into tears. At that moment, five or six military men came to us and asked us to give our ornaments to them or else they would snatch the ornaments from us. Without a single argument, we just gave them our ornaments asked them not to harm us.

But who cares the prayer of Rohingyas like us! Those military men ordered me and my daughter to get undressed. I was then eight-month pregnant and those military started their ruthless torture upon me and my daughter. At first my hands and feet were tied up tightly and also they tied up my mouth with a rope and also hit on my head with a betel nut box and that made me very weak. Those military men started slapping and punching me so hard that my teeth had also fallen. They raped me from my front and back as well. Three of the military men raped me from front and the rest three from my back. As they raped me from my back, it caused immediate miscarriage. Still those military men did not stop. Thereafter, they started to bite my private parts and they bit until blood came from those parts. Till now, the marks of torture are very much visible on my body, as you can see. My physical condition is so bad that I cannot now walk properly, my vision gets blurry and I cannot even move my hands in a proper way. They raped not only me, but also another woman from my neighbor.

I want justice and I am not afraid to share what I have gone through. I do not want that this incident takes place again, with another woman”

- Narrated by Sahida Begum (not real name), 43, Balukhali camp, originally from Bora Sikder para, Maungdaw, Rakhine.

II.

“After the Eid-ul-Azha of 2017, I escaped Myanmar along with my family and other Muslim neighbors. We walked for 7 days straight and took shelter in hills. Women seen in the markets were subject to rape, extortion and sexual assault by the military soldiers. Hundreds of teenage girls were held captive at gunpoint from markets by the soldiers, with only a few victims coming out alive. There was no way out. If you step out they’ll stab you, if you don’t they will burn you. If you can run you will survive, otherwise not. I would much rather take poison, but never to back there.”

- Narrated by Rashida Begum (not real name), 50, Palongkhali camp, originally from Buthidaung, Rakhine.

III.

"My name is Anowara. I am 10 years old. I have a 20 year old brother who is mentally disabled and another 8 year old younger brother. Our mother passed away when my younger brother was born, in Kyamong. My father was a cultivator there. One day, the military and the Maghs attacked our village and began shooting and stabbing relentlessly. We crossed the Bangladeshi border with hundreds of strangers, initially by walking and then taking a boat. It is only when the registration process began in the Bangladeshi camps that people asked where our father was. People from our locality said he is dead. We didn't even get to see him one last time. It is only after crossing the border that we have been recognized as 'orphans'."

- Narrated by Anowara, 10, Kutupalong-1 camp, originally from Kyamong, Rakhine.

IV.

"There were 10 (ten) families living in our villages and among them 08 (eight) families left for Bangladesh. Moreover, 8 (eight) family members of my family crossed over to Bangladesh. It took 14 (fourteen) days to reach Bangladesh. Around 30 (thirty) people were with me during that journey. I witnessed my daughter being raped by the perpetrator in brown colour uniform. I got shot by one bullet. My sons were killed; Militaries took the dead bodies in a truck and threw those dead bodies in a ditch and left".

- Narrated by Khurshida Begum, 40, Kutupalong-1 camp, originally from Monopara, Rakhine.

V.

"I studied till 2008 till class 9, most boys are uneducated as all the schools and madrashas of our community has been shut down in 2012. Mosques were initially locked down in 2012 and recently burned. These oppressions gradually led to killing in the most atrocious manner. Elderly and educated men were slaughtered, houses were burnt down with people still inside the house, and women were raped and left to die. They would burn the houses and stop for a while. Once you start running they would chase us down and kill us. We had no one to go to, no one to stand up for us. As attacks became frequent, we decided to flee our village. We took shelter in the nearby hills and before we could leave our border, we heard our village was destroyed."

- Narrated by Md. Junayed, 18, Majhi (camp leader of Block in Kutup along camp), originally from Dumbai, Myanmar.

ANNEXURE : 9

Selected Provision of the Burma Citizenship Act, 1982

The following is the English translation of the Burma Citizenship Act, 1982

The Burma Citizenship Act (Pyithu Hluttaw Law No. 4 of 1982)

The Pyithu Hluttaw enacts the following Act:

Chapter I - Title and Definition

1. This Law shall be called the Burma citizenship Law.
2. The expressions contained in this Law shall have the following meanings:
 - (a) "State" means the Socialist Republic of the Union of Burma;
 - (b) "Citizen" means a Burma citizen;
 - (c) "Associate Citizen" means an associate citizen prescribed by this Law;
 - (d) "Naturalized Citizen" means a prescribed by this Law;
 - (e) "Foreigner" means a person who is not a citizen or an associate citizen or a naturalized citizen;
 - (f) "Certificate of citizenship" means a certificate of citizenship granted under the Union Citizenship (Election) Act, 1948 or the Union Citizenship Act, 1948 or this Law;
 - (g) "Certificate of Associate Citizenship" means a certificate of associate citizenship granted under this Law;
 - (h) "Certificate of Naturalized Citizenship" means a certificate of naturalized citizenship granted under this Law;
 - (i) "Central Body" means the body established under this Law.

Chapter II - Citizenship

3. Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. are Burma citizens.
4. The Council of State may decide whether any ethnic group is national or not.
5. Every national and every person born of parents, both of whom are nationals are citizens by birth.
6. A person who is already a citizen on the date this Law comes into force is a citizen. Action, however shall be taken under section 18 for infringement of the provision of that section.
7. The following persons born in or outside the State are also citizens:
 - (a) persons born of parents, both of whom are citizens;
 - (b) persons born of parents, one of whom is a citizen and the other an associate citizen;
 - (c) persons born of parents, one of whom and the other a naturalized citizen;
 - (d) persons born of parents one of whom is

- (i) a citizen; or
 - (ii) an associate citizen; or
 - (iii) a naturalized citizen;
 - and the other is born of parents, both of whom are associate citizens;
 - (e) persons born of parents, one of whom is
 - (i) a citizen; or
 - (ii) an associate citizen; or
 - (iii) a naturalized citizen;
 - and the other is born of parents, both of whom are naturalized citizens;
 - (f) persons born of parents one of whom is
 - (i) a citizen; or
 - (ii) an associate citizen; or
 - (iii) a naturalized citizen;
 - and the other is born of parents, one of whom is an associate citizen and the other a naturalized citizen.
8. (a) The Council of State may, in the interest of the State confer on any person citizenship or associate citizenship or naturalized citizenship.
- (b) The Council of State may, in the interest of the State revoke the citizenship or associate citizenship or naturalized citizenship of any person except a citizen by birth.
9. A person born in the State shall have his birth registered either by the parent or guardian in the prescribed manner, within year from the date he completes the age of ten years, at the organizations prescribed by the ministry of Home Affairs

Proviso. If registration is not possible within one year from the date he completes the age of ten years, application may be made by the parent or guardian, furnishing sufficient reasons to the organizations prescribed by the Ministry of Home Affairs.

10. A person born outside the State shall have his birth registered either by the parent or guardian in the proscribed manner within one year from the date of birth at the Burmese Embassy or Consulate or organizations prescribed by the Ministry of Home Affairs.

Proviso. If registration is not possible within one year from the date of birth, application may be made by the parent or guardian, furnishing sufficient reasons to the Central Body through the Burmese Embassy or Consulate or organizations prescribed by the Ministry of Home Affairs.

11. (a) A parent or guardian who fails to comply with section 9 or section 10 shall be liable to pay a penalty of Kyats fifty per year to the Burmese Embassy or Consulate or an organization prescribed by the Ministry of Home Affairs.
- (b) A parent or guardian who fails for five years in succession to comply with section 9 or section 10 shall be liable to a penalty of Kyats one thousand.
12. A citizen shall
 - (a) respect and abide by the laws of the State;
 - (b) discharge the duties prescribed by the laws of the State
 - (c) be entitled to enjoy the rights prescribed by the laws of the State.
13. A citizen shall not as well acquire the citizenship of another country.
14. A citizen shall have no right to divest himself of his citizenship during any war in which the State is engaged.
15. (a) A citizen shall not automatically lose his citizenship merely by marriage to a foreigner.
- (b) A foreigner shall not automatically acquire citizenship merely by marriage to a citizen.
16. A citizen who leaves the State permanently, or who acquires the citizenship of or registers himself as a citizen of another country, or who takes out a passport or a similar certificate of another country ceases to be a citizen.

17. The citizenship of a citizen by birth shall in no case be revoked except in the case of cessation of citizenship due to infringement of the provision of section 16.
18. A citizen who has acquired citizenship by making a false representation or by concealment shall have his citizenship revoked, and shall also be liable to imprisonment for a term of ten years and to a fine of kyats fifty thousand.
19. A citizen who has committed abetment of obtaining, in a fraudulent manner, a certificate of citizenship or a certificate of associate citizenship or a certificate of naturalized citizenship for another person shall be liable to imprisonment for a term of seven years and to a fine of kyats ten thousand.
20. (a) The certificate of citizenship of a person whose citizenship has ceased or has been revoked shall be cancelled. A person holding such a cancelled certificate shall surrender it in the manner prescribed by the Ministry of Home Affairs.
(b) Failure to surrender a cancelled certificate of citizenship or continued use of it or transfer of it in a fraudulent manner to another person shall entail imprisonment for a term of ten years and a fine of kyats twenty thousand.
(c) Whoever holds and uses a cancelled certificate of citizenship or the certificate of a deceased citizen shall be liable to imprisonment for a term of ten years and to a fine of kyats twenty thousand.
21. Whoever forges a certificate of citizenship or abets such act shall be liable to imprisonment for a term of fifteen years to a fine of kyats fifty thousand.
22. A person whose citizenship has ceased or has been revoked shall have no right to apply again for citizenship or associate citizenship or naturalized citizenship.

Chapter III - Associate Citizenship

23. Applicants for citizenship under the Union Citizenship Act, 1948, conforming to the stipulations and qualifications may be determined as associate citizens by the Central Body.
[....]
41. A person whose associate citizenship has ceased or has been revoked shall have no right to apply again for associate citizenship or naturalized citizenship.

Chapter IV - Naturalized Citizenship

42. Persons who have entered and resided in the State anterior to 4th January, 1948, and their off springs born Within the State may, if they have not yet applied under the union Citizenship Act, 1948, apply for naturalized citizenship to the Central Body, furnishing conclusive evidence.
[....]
61. A naturalized citizen who has personal knowledge of an offence committed by any person under section 59 or section 60, or as an accomplice who has committed such an act, discloses or admits the offence before organizations prescribed by the Ministry of Home Affairs within one year from the date this Law comes into force, or within one year from the date of commission of the offence shall be exempted from the penal provisions relating to such offence.

Chapter V - Decision as to Citizenship, Associate Citizenship or Naturalized Citizenship

65. Any person may apply to the Central Body when it is necessary for a decision as to his citizenship, associate citizenship or naturalized citizenship.
[....]

Chapter VI - Central Body

67. The Council of Ministers shall form the Central Body as follows:
(a) Chairman: Minister, Ministry of Home Affairs

- (b) Member: Minister, Ministry of Defence
 - (c) Member: Minister, Ministry of Foreign Affairs
68. The Central Body has the authority:
- (a) to decide if a person is a citizen, or an associate citizen or a naturalized citizen;
 - (b) to decide upon an application for associate citizenship or naturalized citizenship;
 - (c) to terminate citizenship or associate citizenship or naturalized citizenship;
 - (d) to revoke citizenship or associate citizenship or naturalized citizenship;
 - (e) to decide upon an application regarding failure as to registration or affirmation.
69. The Central Body shall give the right of defence to a person against whom action is taken

Chapter VII - Appeals

70. (a) A person dissatisfied with the decision of the Central Body may appeal to the Council of Ministers in accordance with the procedure laid down.
- (b) The decision of the Council of Ministers is final.
- [....]

Chapter VIII - Miscellaneous

72. Except under any of the provisions of this Law, no foreigner shall have the right to apply for naturalized citizenship from the date this Law comes into force.
73. A foreigner who is adopted by a citizen or by an associate citizen or by a naturalized citizen shall not acquire citizenship or associate citizenship or naturalized citizenship.
74. Except on penal matters, all matters relating to this Law shall be decided by the only organizations which are conferred with authority to do so.
75. The Council of Ministers, shall, for the purpose of carrying out the provisions of this Law, lay down necessary procedures with the approval of the Council of State.
76. The following Acts are repealed by this Law:
- (a) The Union Citizenship (Election) Act, 1948;
 - (b) The Union Citizenship Act, 1948.

ANNEXURE : 10

Elements of Crime of Genocide and Crime against Humanity under the ICC Statute, 1998

Article 6, the ICC Statute: Genocide

Article 6(a): Genocide by killing

Elements

1. The perpetrator killed¹¹² one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6(b): Genocide by causing serious bodily or mental harm

Elements

1. The perpetrator caused serious bodily or mental harm to one or more persons.¹¹³
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6(c): Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

Elements

1. The perpetrator inflicted certain conditions of life upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.¹¹⁴
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6(d): Genocide by imposing measures intended to prevent births

Elements

1. The perpetrator imposed certain measures upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

¹¹² The term “killed” is interchangeable with the term “caused death”.

¹¹³ This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

¹¹⁴ The term “conditions of life” may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

4. The measures imposed were intended to prevent births within that group.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6(e): Genocide by forcibly transferring children

Elements

1. The perpetrator forcibly transferred one or more persons.¹¹⁵
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 7, the ICC Statute: Crime against Humanity

Article 7 (1) (g)-1: Crime against humanity of rape

Elements

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (g)-6: Crime against humanity of sexual violence

Elements

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. Such conduct was of a gravity comparable to the other offences in article 7, paragraph 1 (g), of the Statute.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

¹¹⁵ The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.

ANNEXURE : 11

Abridged Version of the PPT Judgment on the Rohingya Genocide

Panel of Judges:

Daniel Feierstein (Argentina), Zulaiha Ismail (Malaysia), Helen Jarvis (Cambodia-Australia), Gill H. Boehringer (Australia), Nursyahbani Katjasungkana (Indonesia), Shadi Sadr (Iran), and Nello Rossi (Italy)

Place of Hearings:

Faculty of Law, University of Malaya, Kuala Lumpur, Malaysia

Dates:

September 18-22, 2017

'Persecution of Rohingya – a summary'

The Rohingya are an ethnic minority of Burma/Myanmar who have been subject to Institutionalized and systematic denial of identity and rights for decades. The integral and fundamental parts of their identity, such as language, culture, religion and history, have been criminalized, prohibited to be taught, suppressed and contradicted.

The government of Myanmar has denied the right to nationality of Rohingya through different laws and policies which have subsequently caused the deprivation of civil, political, economic, social and cultural rights.

The gross human rights violations in Myanmar/Burma have been massively documented in detail by the UN, international NGOs and Myanmar human rights and civil society organizations. The Prosecution presented several fact-finding reports to this Tribunal as evidence, which confirmed testimonies, which were heard by the Tribunal in London and Kuala Lumpur hearings.

International crimes against the Rohingya

1. Arbitrary detention and torture

The Tribunal both in London and Kuala Lumpur sessions heard several accounts of arbitrary arrests of civilians, including children and young people, by the armed government forces.

Several witnesses testified before the Tribunal about the different types of physical and mental torture which they had been subjected to while in detention.

2. Enforced disappearance

Both personal and expert witnesses testified before the Tribunal about many cases of people who had been arrested by the government forces and have not been seen or heard from since then, and their families do not know their fate or whereabouts. The survivors of the recent crisis have also given reports of missing family members.

3. Rape and other forms of sexual abuse

The Tribunal heard first-hand horrific accounts of Rohingya women who had been raped in their homes, their villages and the IDP (Internally Displaced People) camps by military forces. They also witnessed other women being raped or gang raped. The memories of the victims of rape are usually bonded with horrendous scenes of the killings, disappearances and injuring of their family members, their children and neighbours, the burning of their homes, and destruction of their belongings.

The Rohingya women are reported being subjected to other forms of physical and psychological sexual violence such as violation of bodily integrity by groping their private parts during body searches, as well as forcing them to undress in public.

Four survivors' testimonies also presented a horrific pattern that Rohingya women who had been raped by the military were raped again on numerous occasions, some for several months, by the smugglers and other people who took the advantage of their situation, along their way from Rakhine through Thailand to Malaysia.

The Tribunal was informed that, despite being traumatized and impaired, they often do the support they are in desperate need of from the UNHCR in Malaysia.

4. Extra judicial killing and causing bodily harm

The survivors of the Rohingya persecution shared unimaginable experiences with the Tribunal of their fellows being severely injured, shot dead, slaughtered with knives or burned alive. Several massacres in different villages across Rakhine State were reported to the Tribunal by the expert witnesses. These reports also included some details about throwing the bodies of the victims into mass graves.

5. Confiscation of property and destruction of buildings

Several accounts presented to the Tribunal clearly described looting, confiscation of property and destruction of homes, shops, workplaces, mosques and other buildings and indeed entire villages in the areas in which Rohingya people had lived.

In most cases that were brought before the Tribunal, the armed government forces or non-state actors take all valuable belongings of the Rohingya people and subsequently burn or destroy the buildings. Several accounts were given of confiscation of land and other properties by either the government or ultra-religious Buddhist groups.

6. Internal displacement and forced exile

Over the course of only three weeks in August-September 2017, more than 400,000 Rohingya, mostly women, children and the elderly, had to flee their homes and entered Bangladesh. However, the number of Rohingya refugees who had to escape state persecution over the past few decades is much higher than that, with Bangladesh alone soon expected to be hosting 1 million Rohingya refugees in total.

The Tribunal heard several testimonies of Rohingya refugees who were forced to leave their homes and their country, Myanmar, by Border Guard and other Army forces accompanied by Rakhine Buddhist mobs, sometimes including monks. According to the testimonies and other evidence, forced exile takes the form of directly pushing the populations of villages near the border out of the country, often by terrorizing them by burning their homes and seizing their belongings and killing their relatives and other villagers, or indirectly through imposing severe and intolerable hardship on them.

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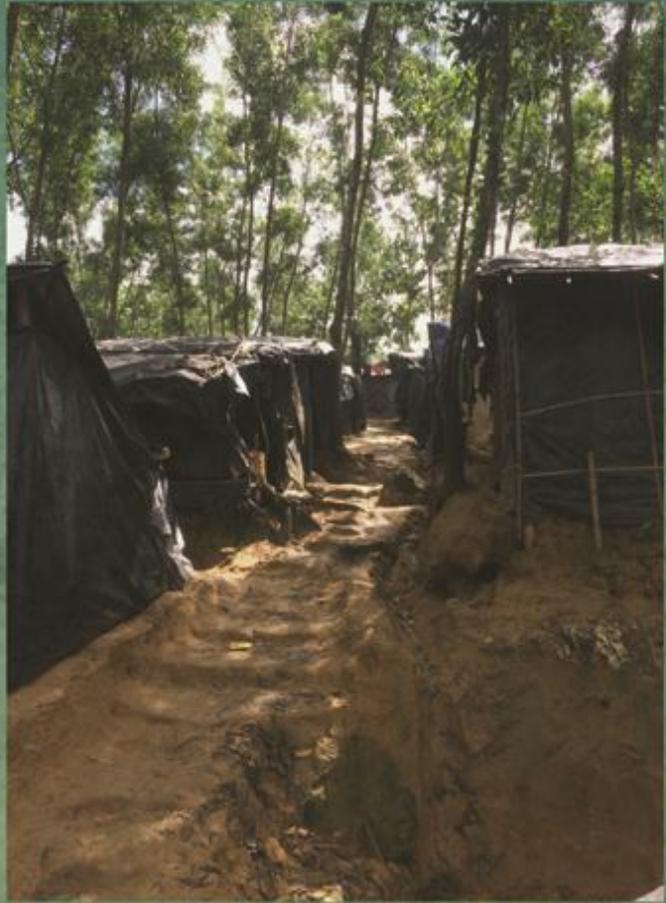
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Makeshift Refugee Camps Ukhiya, Cox's Bazar



*"Far away
from home,
I sew the
designs and
patterns
etched in my
memory in
this makeshift
camp of
Bangladesh."*

Place of Origin: Buthidaung, Myanmar
Living in: Hakimpara Camp,
Ukhiya, Cox's Bazar, Bangladesh



Cover Photo : Rohingya refugees
looking back at the homeland they
left behind to which they want to return

Photo credit : CSGJ Team Members