



The Intensifying Rohingya Genocide

Unlawful conscription, cruel, inhuman or degrading treatment, use of Rohingya as cannon fodder may amount to genocidal act of causing serious bodily or mental harm

June 2024

Executive summary

The International Court of Justice's (ICJ) provisional measures order to protect the Rohingya has now been in place for four-and-a-half years. The order was issued as part of the ongoing genocide case brought by The Gambia against Myanmar. This latest report is the ninth in our series highlighting repeated, sustained breaches of the Court's order with zero consequences for the Myanmar military. It covers the period 13 November 2023 – 23 May 2024, from the start of renewed armed conflict in Myanmar's Rakhine State up to the most recent six-month deadline for the military Myanmar military to comply with reporting obligations to the Court, to demonstrate the steps it has taken to protect the Rohingya.

The complete lack of consequences to date for the Myanmar military's pervasive breaches of the ICJ's order contrast sharply with the dire consequences faced by the Rohingya. In the past six months alone, hundreds if not several thousands more Rohingya have been killed. The report sets out how Rohingya have been targeted as part of the Myanmar military's intensifying genocide against the group, against the backdrop of a brutal and increasingly complex war in Rakhine State between the Myanmar military and its proxies, and the Arakan Army.

Successive military dictatorships have progressively stripped the Rohingya of their citizenship documents, and the protections and rights that citizenship bestows. All 600,000 Rohingya in Rakhine State continue to live under wide-ranging restrictions on freedom of movement imposed by the Myanmar military. 140,000 Rohingya confined to camps are living under a state of indefinite arbitrary detention. These two factors leave the Rohingya uniquely vulnerable during times of armed conflict in Rakhine State. If they flee the fighting, they risk arrest and imprisonment by the Myanmar military authorities for travelling without documents or prior authorisation.

The Myanmar military has continued to perpetrate the genocidal act known as 'slow death', which involves deliberately inflicting conditions of life calculated to bring about the physical destruction in whole or in part of the Rohingya group. This includes the deliberate deprivation of resources indispensable for survival – namely adequate food, water, shelter, sanitation and medical care – by the Myanmar military. The severe restrictions on freedom of movement imposed on the Rohingya underpin this act. These 'slow death' conditions have resulted in the preventable deaths of at least 86 Rohingya in the camps in Sittwe, most of them children.

The Myanmar military has deliberately exploited the vulnerability of the Rohingya living under these deplorable conditions of life. In February, the Myanmar military announced the enforcement of the People's Military Service Law. Young Rohingya men were the first group targeted by the Myanmar military for forced recruitment, even though the Myanmar military itself does not regard Rohingya as citizens. There is no legal basis for conscription of Rohingya.

The Myanmar military has forcibly recruited Rohingya men and youth, including minors, by abducting them from their homes, villages, markets, some during night raids and often at gunpoint. Once conscripted, Rohingya have been subjected to forced labour and cruel, inhuman, or degrading treatment, then sent to the frontlines in Rakhine State to be used as cannon fodder. The Myanmar military's treatment of forcibly recruited Rohingya may constitute the genocidal act of causing serious bodily or mental harm to the members of the group. Several thousand Rohingya men and youth are believed to have been forcibly recruited within Rakhine State, and hundreds are feared to have already been killed.

Burmese Rohingya Organisation UK

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At the same time as Rohingya men are being forcibly recruited into the Myanmar military and sent to the frontlines, Rohingya communities have been ordered to take part in anti-Arakan Army protests planned and orchestrated by the Myanmar military. Rohingya have faced various forms of coercion to participate, including fines, and threats of cutting off access to markets, mass arrests, and shelling of their villages.

As part of its divide-and-rule strategy in Rakhine State - which ensures that Rohingya are firmly in the crosshairs of the Arakan Army - the Myanmar military has been working in consort with Rohingya armed militia, once its sworn enemies. Rohingya men and boys have been abducted from the refugee camps in Bangladesh by criminal militia gangs Arakan Rohingya Salvation Army, Arakan Rohingya Army, and Rohingya Solidarity Organisation and handed over to the Myanmar military. As many as 1,500 Rohingya refugees are reported to have been taken to Rakhine State to fight for the Myanmar military and its proxies. The Burmese Rohingya Organisation UK (BROUK) and other Rohingya organisations have denounced these groups as criminal gangs who do not represent Rohingya communities.

The Myanmar military's actions to incite hatred and violence towards the Rohingya and to deliberately intensify a hostile environment conducive to atrocity crimes must be recognised. Forcibly recruiting Rohingya and sending them into battle with the Arakan Army, and coercing Rohingya into taking part in anti-Arakan Army protests, have put members of the Rohingya group at grave risk. The Myanmar military's genocidal intent towards the Rohingya can be further inferred from its role in inciting hatred and violence against the Rohingya, and its abject failure to prevent the commission of atrocity crimes by the Arakan Army.

Over the reporting period, the Myanmar military, its proxies, and the Arakan Army have committed likely war crimes against Rohingya communities, including murder, torture, cruel treatment, extrajudicial executions, sexual violence, rape, taking hostages, conscripting and using children, pillaging, attacking civilians, and attacking protected objects, summarised in this report. These alleged international crimes must be thoroughly investigated, and the perpetrators held accountable.

200,000 Rohingya internally displaced in northern Rakhine State are now in dire need of international humanitarian aid to prevent further loss of life. 110,000 Rohingya – half of them children – are currently trapped in Sittwe township, surrounded by landmines and unable to flee as the conflict edges closer to the city. Rohingya conscripts already living under conditions of indefinite arbitrary detention in Sittwe are at serious risk of being used as cannon fodder by the Myanmar military in the event of a battle with the Arakan Army over the city.

In the face of the renewed threats of irreparable harm to the Rohingya group detailed in this report, the Court must urgently respond by amending the existing order or indicating further provisional measures to protect the Rohingya. These include – but should not be limited to - instructing Myanmar to immediately halt conscription of Rohingya into its armed forces or allied militias and end its practice of coercing Rohingya to participate in anti-Arakan Army/pro-Myanmar military rallies.

The international community cannot afford to fail the Rohingya yet again. There must be concerted international public pressure for an open meeting of the UN Security Council to frankly discuss the Myanmar military's repeated breaches of the ICJ's provisional measures order over the past four-and-a-half years. All relevant organs of the United Nations must make consistent efforts to leverage the ICJ's provisional measures order within their own mandates, to seek urgent protection for the Rohingya and end the cycle of impunity in Myanmar, including support for the referral of the situation in Myanmar to the International Criminal Court or the creation of an ad hoc international tribunal.

Enduring peace and security in Myanmar and justice for the Rohingya are intertwined. This must include recognition of Rohingya identity and citizenship, which should be a touchstone policy for any transitional government and all relevant actors in Myanmar, including the Arakan Army. Rohingya simply want peaceful co-existence between Rohingya and Rakhine communities, on equal terms, rooted in dignity, respect, and protection for the Rohingya identity and their individual and collective rights.

Timeframe and methodology

This report covers the period 13 November 2023 – 23 May 2024, from the start of renewed hostilities in Rakhine State up to the most recent six-month deadline for the Myanmar State to comply with its reporting obligations to the International Court of Justice under the Court's provisional measures order to protect the Rohingya. It documents and analyses violations of human rights perpetrated against the Rohingya, which may amount to atrocity crimes - including acts of genocide.

In preparing this report, BROUK has collected first-hand information from the ground in Rakhine State and has also drawn on local, national, and international media reports, referenced as such. BROUK

has carried out due diligence efforts to verify the incidents described herein. However, at present there are significant challenges and limitations with documenting, verifying, and reporting on human rights violations in Rakhine State.

All 17 of Rakhine State's townships have been hit by rolling communication blackouts since the armed conflict resumed on 13 November. The blackouts are not imposed uniformly but have increased in scale since 18 January.¹ Most townships have lost both internet and phone lines, even those operated by Myanmar military-owned entities. In some cases, mobile internet has been blocked, or only weak or intermittent signals are available.² In addition, since January the Myanmar military has cut off the electricity supply to Buthidaung and Maungdaw townships in northern Rakhine State. It is still possible to receive information from these township areas via Rohingya who hold Bangladeshi sim cards. However, Bangladeshi network coverage is generally poor, especially in Buthidaung township. Where BROUK has not been able to verify incidents, this is noted in the report. Given these significant challenges with collecting information, this report does not claim to provide a comprehensive account of violations and alleged atrocity crimes perpetrated against the Rohingya over the reporting period. Further information is likely to emerge in the coming weeks and months.

There are also major security challenges with documenting serious violations of international law in Rakhine State. Rohingya individuals, families, and communities who dare to speak out about the violations they have been experiencing are at grave risk of reprisal attacks from the Myanmar military and its allies and/or proxies, as well as the Arakan Army. All potentially identifying information - including location names - has therefore been redacted from this report to protect victims, their families, communities, and BROUK sources, unless it is already in the public domain. Detailed information held on file with BROUK is referenced as such.

Introduction

This full-length report by BROUK is structured in three parts.

PART 1: Background explains the Gambia's genocide case against Myanmar at the International Court of Justice (ICJ) and the current complex context of armed conflict in Rakhine State. It also sets out the UN's risk factors for atrocity crimes as a framework of analysis for events that have unfolded in Rakhine State over the report's timeframe.

PART 2: Breaches of the ICJ's provisional measures by the Myanmar military analyses ongoing violations of the ICJ's legally binding order to protect the Rohingya, in accordance with both the risk factors for genocide and the existing jurisprudence on genocide.

PART 3: Violations of international humanitarian law and likely war crimes in Rakhine State describes the violence faced by Rohingya communities trapped by the armed conflict, followed by the report's conclusions and recommendations.

The ICJ's provisional measures order to protect the Rohingya has now been in place for four-and-a-half years. This latest report from BROUK is the ninth in our series highlighting repeated, sustained breaches of the Court's order with zero consequences for the Myanmar State. To date, the UN Security Council has managed only one resolution on Myanmar, which 'encouraged diplomatic efforts...to help address the issues facing Rohingyas' but failed to mention the ICJ's legally binding order to protect the Rohingya.³ A rare open meeting on Myanmar at the UN Security Council on 4 April heard briefings on the escalating human rights and humanitarian catastrophe in the country, and highlighted the plight of the Rohingya in Rakhine State.⁴ However, there was no discussion of the ICJ's provisional measures order and no concrete actions were agreed by the Security Council. The complete lack of consequences for the Myanmar military's pervasive breaches of the ICJ's order contrast sharply with the dire consequences faced by the Rohingya over the past four-and-a-half years. In the past six months alone, hundreds if not several thousands more Rohingya have been killed.

1 UNOCHA, 'Myanmar: Humanitarian Update No. 36' (3 March 2024) 11.

2 The Irrawaddy, 'Myanmar Junta Cuts Communications in Around 80 Myanmar's Townships: Report' (14 March 2024) available at <<https://www.irrawaddy.com/news/burma/myanmar-junta-cuts-communications-in-around-80-myanmars-townships-report.html>> accessed 31 May 2024.

3 UNSC Resolution 2669 (21 September 2022) UN Doc S/RES/2669 (2022) 3.

4 UN Press, 'As Crisis in Myanmar Worsens, Security Council Must Take Resolute Action to End Violence by Country's Military, Address Humanitarian Situation, Speakers Urge' (4 April 2024) UN Doc SC/15652 available at <https://press.un.org/en/2024/sc15652.doc.htm> accessed 6 June 2024.

The international community – and the UN Security Council in particular – is failing the Rohingya and the wider population of Myanmar. As armed conflict intensified across the country over the reporting period, by early May the number of internally displaced people had reached three million and is still rising.⁵ In the first four months of the year, the Myanmar military carried out at least six airstrikes per day. Rakhine State was targeted the most frequently, with 187 recorded airstrikes in that period.⁶

On 13 November 2023, the Arakan Army (AA) attacked State Administrative Council (SAC) positions in Rakhine State as part of Operation 1027, conducted by the Three Brotherhood Alliance comprised of the Arakan Army, the Myanmar National Democracy Alliance Army, and the Ta'ang National Liberation Army. The Arakan Army's assaults in Rakhine State ended a year-long ceasefire in the region. Armed conflict has rapidly escalated in the area since then, with the AA quickly making significant gains against Myanmar military forces.

The Myanmar military has been seriously depleted by casualties in its battles with resistance forces, desertions, and a recruitment crisis.⁷ In the face of significant losses since the launch of Operation 1027, on 10 February the SAC announced the enforcement of the People's Military Service Law for the first time in the decades-long history of military dictatorships in Myanmar.⁸

All male citizens aged 18-35 and females aged 18-27 have to serve for two years, with some exceptions. Young Rohingya men were the first group targeted by the Myanmar military for forced recruitment, even though the Myanmar military itself does not regard Rohingya as citizens. Successive military dictatorships have progressively stripped the Rohingya of their citizenship documents, and the protections and rights that citizenship bestows.⁹ There is no legal basis for conscription of Rohingya. After a very short period of military training, many Rohingya conscripts were sent to the frontlines in Rakhine State by March.

On 18 March, UN Secretary-General António Guterres called on “[A]ll parties [in Rakhine State] to prevent further incitement of communal tensions” and expressed concern at “reports of forcible detention and recruitment of youths, including Rohingya and the potential impact of forced conscription on human rights and on the social fabric of communities in Myanmar.”¹⁰ Forced recruitment of Rohingya and related cruel, inhuman and degrading treatment - possibly amounting to the genocidal act of causing serious bodily or mental harm - are discussed in detail in **PART 2: Breaches of the ICJ’s provisional measures by the Myanmar military.**

In April and May, conflict intensified in the northern townships of Buthidaung and Maungdaw, where Rohingya comprise the majority of the population. Thomas Andrews, the UN Special Rapporteur on the human rights situation in Myanmar, warned, “Thousands of innocent lives will be lost if the international community fails to respond to ominous signs of another Rohingya bloodbath in Rakhine State... the military’s role is clear in fostering toxic conditions in Rakhine State, from propaganda fuelling ethnic tensions to the forced recruitment of young Rohingya men into the junta’s military.”¹¹

The Special Advisory Council for Myanmar – comprised of former UN Special Rapporteur Yanghee Lee, and two former members of the UN Independent International Fact-Finding Mission on Myanmar – said, “The Arakan Army has been one of the most effective armed groups opposing the vicious Myanmar military following the attempted coup in February 2021....Now, however, it seems to be turning its guns on the defenceless Rohingya people to complete the genocide undertaken by the same military it has opposed.”¹²

5 UNOCHA, ‘Myanmar: Humanitarian Update No. 38’ (24 May 2024) 2.

6 The Irrawaddy, ‘Myanmar Junta Airstrikes Kill 359 Civilians in Four Months: Report’ (23 May 2024) available at <<https://www.irrawaddy.com/news/burma/myanmar-junta-airstrikes-kill-359-civilians-in-four-months-report.html>> accessed 6 June.

7 The Irrawaddy, ‘Six Key Points About Myanmar’s Newly Enforced Conscription Law’ (12 February 2024) available at <<https://www.irrawaddy.com/opinion/analysis/six-key-points-about-myanmars-newly-enforced-conscription-law.html>> accessed 6 June 2024.

8 The law was enacted in 1959 by General Ne Win, who oversaw the first military coup in 1962. The law was amended in 2010 by Senior-General Than Shwe, but never enforced. Ibid.

9 See Fortify Rights, ‘Genocide by Attrition: the role of identity documents in the holocaust and the genocides of Rwanda and Myanmar’ (June 2022), 11-13.

10 UN Press, ‘Secretary-General Deeply Concerned by Deteriorating Situation, Escalating Conflict in Myanmar, Condemns All Violence, Reiterates Call for Civilian Protection’ (18 March 2024) UN Doc SG/SM/22167.

11 OHCHR, ‘Myanmar: Urgent international action crucial to save lives of thousands of Rohingya in Rakhine State says UN expert’ (23 May 2024) available at <<https://www.ohchr.org/en/press-releases/2024/05/myanmar-urgent-international-action-crucial-save-lives-thousands-rohingya>> accessed 7 June 2024.

12 SAC-Myanmar, ‘Crisis in Rakhine: UN Human Rights Council Must Convene Urgent Special Session on Myanmar’ (19 May 2024) available at <<https://specialadvisorycouncil.org/2024/05/crisis-rakhine-un-human-rights-council-urgent-special-session-myanmar/>> accessed 7 June 2024.

By the time of the ICJ’s reporting deadline, the office of the UN High Commissioner for Human Rights announced that it had, “documented renewed attacks on Rohingya civilians by both the Arakan Army and military in northern Rakhine State. As well as aerial strikes, including by unmanned aerial vehicles, we have received reports of shooting at unarmed fleeing villagers, beheadings, disappearances, burnings of homes.” The High Commissioner continued, “[A]ll parties must comply fully and unconditionally with international law – including measures already ordered by the International Court of Justice, for the protection of Rohingya.”¹³

This report provides further context and evidence of alleged atrocity crimes perpetrated against the Rohingya over the past six months - including ongoing acts of genocide by the Myanmar military – in breach of the provisional measures ordered by the ICJ.

PART 1: Background

The Gambia v. Myanmar genocide case at the ICJ

Background to the ICJ case

In 2016 and 2017, BROUK and many other human rights organisations documented gross human rights violations perpetrated by the Myanmar military and its proxies during ‘clearance operations’ in Myanmar’s Rakhine State, resulting in significant loss of life and severe mental and physical harm to the Rohingya.¹⁴ These included mass rape of Rohingya women, children burned alive, machete attacks, shooting at fleeing villagers, the use of rocket launchers to raze entire Rohingya villages to the ground, coordinated massacres, as well as landmines laid at the border to target those fleeing the violence.¹⁵

In March 2017, the Independent International Fact-Finding Mission on Myanmar (UNFFMM) was established by the UN Human Rights Council.¹⁶ In 2019, the UNFFMM found that Myanmar had committed four out of the five underlying acts of genocide enumerated in the Genocide Convention, namely killings members of the Rohingya group, causing serious bodily or mental harm to members of the group, deliberately inflicting conditions of life calculated to bring about its physical destruction in whole or in part, and imposing measures intended to prevent births within the group.¹⁷ It further concluded that genocidal intent to destroy the Rohingya people in whole or in part could be inferred from the State’s pattern of conduct.¹⁸

On 11 November 2019, The Gambia filed a case against Myanmar before the International Court of Justice (ICJ), alleging that Myanmar has committed genocide against the Rohingya people. The ICJ is the principal judicial organ of the United Nations. It deals with disputes between States, not the individual criminal responsibility of particular perpetrators. The legal basis for the case is the Genocide Convention, to which both States are a party. The Gambia has also accused Myanmar of continuing to commit genocidal acts and of violating its other obligations under the Convention by failing to prevent and punish genocide.

Establishing that genocide has taken place under the Genocide Convention requires demonstrating both the commission of genocidal acts and genocidal intent – namely the intent to destroy a national, ethnic, racial, or religious group in whole or in part. The Gambia’s initial filing primarily focused on the first three genocidal acts enumerated in the Convention perpetrated by the Myanmar military and other State

13 OHCHR, ‘Myanmar: Growing human rights crisis in Rakhine state’ (24 May 2024) available at <<https://www.ohchr.org/en/press-briefing-notes/2024/05/myanmar-growing-human-rights-crisis-rakhine-state>> accessed 7 June 2024.

14 See for example, US Holocaust Memorial Museum and Fortify Rights, ‘“They Tried to Kill Us All”: Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar’ (15 November 2017); Fortify Rights, ‘“They Gave Them Long Swords”: Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar’ (19 July 2018); Physicians for Human Rights, ‘“Please Tell the World What They Have Done to Us”: The Chut Pyin Massacre: Forensic Evidence of Violence against the Rohingya in Myanmar’ (19 July 2018).

15 BROUK, ‘Burned, Stabbed, and Shot: Physical evidence of atrocities committed against the Rohingya’ (May 2017) 13-27. BROUK, ‘“I Thought I Would Die”: Physical evidence of atrocities against the Rohingya’ (1 November 2017) 12-31.

16 UN Human Rights Council Resolution 34/22, adopted 24 March 2017 (3 April 2017) UN Doc A/HRC/RES/34/22. The UNFFMM mandate was to “establish the facts and circumstances of the alleged recent human rights violations by military and security forces...in Myanmar, in particular in Rakhine State...with a view to ensuring full accountability for perpetrators and justice for victims.” The UNFFMM published two seminal reports of its detailed findings in 2018 and 2019.

17 Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 1 January 1951) 78 UNTS 277 art II.

18 UNFFMM 2019 report ‘Detailed findings of the Independent International Fact-Finding Mission on Myanmar’ (16 September 2019) UN Doc A/HRC/42/CRP.5 70 [220].

actors with the intent to destroy the Rohingya in whole or in part: 1) killing members of the group; 2) causing serious bodily or mental harm to members of the Rohingya group; and 3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part by destroying or otherwise denying access to food, shelter and other essentials of life.¹⁹

The Gambia's case against Myanmar marks the first time that a State without a direct connection to the alleged crime of genocide has brought a case before the ICJ under the Genocide Convention.²⁰ In doing so, The Gambia has emphasised the importance of the legal concepts of *erga omnes* obligations (owed to the international community as a whole) and *erga omnes partes* obligations (owed by any State party to all the other States parties to a convention), both of which apply to the crime of genocide.²¹

The ICJ's provisional measures order

Provisional measures are the equivalent of a legal injunction or court order, instructing a State to immediately take certain steps prior to a final ruling on the case.²² As part of its original case filing, The Gambia included an urgent request for the Court to order provisional measures in light of 'the ongoing, severe and irreparable harm being suffered by members of the Rohingya group.'²³

On 23 January 2020, the ICJ issued a relatively rare unanimous order on provisional measures. The Court described the Rohingya remaining in Myanmar as 'extremely vulnerable'. As part of its rationale for issuing the order, the ICJ made it clear that, 'Myanmar has not presented to the Court concrete measures aimed specifically at recognizing and ensuring the right of the Rohingya to exist as a protected group under the Genocide Convention.'²⁴ In short, the provisional measures order recognises that Myanmar's actions prior to the order were wholly inadequate to protect the Rohingya. It creates an expectation that Myanmar must take concrete measures in order to meet its obligations under the Genocide Convention.²⁵

Without prejudging the merits of the case - i.e. whether or not genocide has already taken place - the ICJ ordered Myanmar to 'take all measures within its power' to prevent irreparable harm against the Rohingya. In brief, the provisional measures imposed by the Court require Myanmar to prevent the commission of genocidal acts, ensure security forces and those under its influence do not commit or incite genocide, preserve evidence of alleged genocidal acts, and report back within four months on its compliance with the order and every six months thereafter until the case concludes.²⁶ Under the UN Charter, all member States must comply with ICJ decisions.²⁷ Critically assessing Myanmar's compliance with the order is therefore of the utmost importance.

To date, the State of Myanmar has not been under any legal obligation to make its reports public, despite consistent calls for this from a broad range of actors, including BROUK along with a coalition of Rohingya organisations. At the time of publication of BROUK's May 2023 briefing, two of Myanmar's compliance reports and The Gambia's observations on four of the reports had been published on the Court's website. However, they are no longer available and may have been published in error.²⁸

19 The Gambia v. Myanmar, International Court of Justice 'Application Instituting Proceedings and Request for Provisional Measures' (11 November 2019) 38 [113] 4 [2] 55-56 [99-110] 58 [114].

20 The case was brought with the support of the other 56 States belonging to the Organisation of Islamic Cooperation. Final Communiqué of the 14th Islamic Summit Conference (31 May 2019) 10 [47] OIC/SUM-14/2019/FC/FINAL.

21 The ICJ has held that "the rights and obligations enshrined by the [Genocide] Convention are rights and obligations *erga omnes*". See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Preliminary Objections, Judgment, 11 July 1996 [31].

22 Global Justice Center and Global Centre for the Responsibility to Protect, 'Q&A: The Gambia v. Myanmar - Rohingya Genocide at the International Court of Justice' (May 2020).

23 The Gambia v. Myanmar, ICJ 'Application Instituting Proceedings and Request for Provisional Measures' (11 November 2019) [113].

24 The Gambia v. Myanmar, ICJ provisional measures order op. cit. 22 [73].

25 USHMM, 'Practical Prevention - How the Genocide Convention's Obligation to Prevent Applies to Myanmar - Report #2: The Denial of the Right to Citizenship and the Right to Participate in Public Affairs' (October 2020) 5.

26 The Gambia v. Myanmar, 'Application' (11 November 2019) op. cit. 46 [86] 58 [113].

27 United Nations, Charter of the United Nations (1945) 1 UNTS XVI Art 94(1).

28 The reports were previously mentioned but not linked on the main case page <<https://www.icj-cij.org/case/178/other-documents>>, and were previously available at the following links <<https://www.icj-cij.org/node/106112>> (Myanmar's first report); <<https://www.icj-cij.org/node/106113>> (The Gambia's observations on the first report); <<https://www.icj-cij.org/node/106115>> (The Gambia's observations on the second report); <<https://www.icj-cij.org/node/106117>> (The Gambia's observations on the third report); <<https://www.icj-cij.org/node/106118>> (Myanmar's fourth report only available in French); and <<https://www.icj-cij.org/node/106119>> (The Gambia's observations on the fourth report), accessed 23 May 2023.

It is vital that all the reports are made readily available to the public at the time of submission to the Court. This is of the utmost importance to allow contemporaneous scrutiny of Myanmar's compliance with the order. The order is one of the few available mechanisms to protect the 'extremely vulnerable' Rohingya remaining in Myanmar. It must be viewed as an integral part of Myanmar's obligations to the international community as a whole to prevent and punish the crime of genocide.

BROUK once again reiterates its urgent call to the Court to amend the provisional measures order so that Myanmar is legally obliged to make its compliance reports public.

Latest developments in the ICJ case

On 15 November 2023, Canada, Denmark, France, Germany, the Netherlands and the United Kingdom filed a joint declaration of intervention in the case brought by The Gambia against Myanmar at the International Court of Justice. The countries' joint statement announcing the filing highlighted that, 'the Genocide Convention requires States Parties to prevent the crime of genocide and hold those responsible to account'.²⁹ Tun Khin, President of the Burmese Rohingya Organisation UK said, "We welcome this important step for justice for Rohingya from the British government and partners. The intervention of other countries in support of The Gambia strengthens the case, and increases the pressure on the Burmese military who are still committing genocide against Rohingya."³⁰ On 16 November 2023, the Republic of Maldives filed its declaration of intervention. The Maldives Minister of Foreign Affairs announced, "The decision of the Maldives to intervene stems from its support to ongoing efforts to secure accountability for the perpetrators of genocide against the Rohingya people, in line with the decision taken by the OIC [Organisation of Islamic Cooperation]. The Maldives firmly supports The Gambia in this endeavour."³¹

As State parties to the Genocide Convention, the Maldives, Canada, Denmark, France, Germany, the Netherlands and the United Kingdom have filed their declarations of intervention under Article 63(2) of the ICJ Statute. Read together with the Rules of the Court, this gives State parties to an international convention the right to intervene in a case where it concerns the 'construction' of a convention, but the construction given by the judgment will be equally binding upon intervening States.³² In brief, this means that intervening States can seek to clarify the interpretation of particular provisions of the Genocide Convention, and the Court's findings will be binding on them.

Following the declaration of intervention filings under Article 63 of the ICJ Statute, The Gambia and Myanmar will be invited to respond in writing to the filings within a fixed time-limit set by the Court. Myanmar may file an objection to the proposed interventions, in which case the Court must hear the States seeking to intervene and both Myanmar and The Gambia before coming to a decision on whether to allow the interventions. If the Court finds in favour of the intervening States, a time-limit will be set for their written submissions, followed by oral submissions on the subject matter of the interventions during subsequent oral pleadings.³³ BROUK urges the Court to deal with such procedural matters as swiftly as possible.

Regarding the merits of the case, following the Court's judgment on Myanmar's preliminary objections, the Court ordered Myanmar to submit its written submission, known as the counter-memorial, by 24 April 2023.³⁴ The Agent for Myanmar U Ko Ko Hlaing (the designated representative of the Myanmar State in ICJ court proceedings) lodged a request on 14 March 2023 to extend the deadline until 24 February 2024.

³⁵

Initially, the Court granted a one-month extension of the time limit, until 24 May 2023.³⁶ However, on

29 FCDO, 'Intervention by UK and partners in The Gambia v Myanmar ICJ case: joint statement' (16 November 2023) available at <<https://www.gov.uk/government/news/intervention-by-uk-and-partners-in-the-gambia-v-myanmar-icj-case-joint-statement>> accessed 1 June 2024.

30 BROUK, 'BROUK Welcomes UK Intervention In Rohingya Genocide Case' (16 November 2023) available at <<https://www.brouk.org.uk/brouk-welcomes-uk-intervention-in-rohingya-genocide-case/>> accessed 1 June 2024.

31 Doughty Street Chambers, Maldives File Declaration of Intervention in Myanmar Genocide Case at the International Court of Justice (16 November 2023) available at <<https://www.doughtystreet.co.uk/news/maldives-file-declaration-intervention-myanmar-genocide-case-international-court-justice>> accessed 1 June 2024.

32 Article 63(2) ICJ Statute available at <<https://www.icj-cij.org/statute>> and Article 82(3) ICJ Rules of Court, available at <<https://www.icj-cij.org/rules>> accessed 1 June 2024.

33 For further discussion, see Essex Court Chambers, 'Intervention Before the ICJ: A Practical Guide' (22 September 2022) available at <<https://essexcourt.com/publication/intervention-before-the-icj-a-practical-guide/>> accessed 1 June 2024.

34 ICJ order, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)' (22 July 2022) 3.

35 ICJ order, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)' (6 April 2023) 3.

36 *ibid.*

21 April 2023 Myanmar's Agent submitted a further request for an extension of the time-limit until 24 February 2024, citing the same reasons as in the original request. Despite The Gambia's opposition to the request on the basis that Myanmar had offered no new justification for the extension, the Court extended the time-limit by an additional three months until 24 August 2023.³⁷

Myanmar complied with the deadline and has submitted its counter-memorial. In accordance with the rules of the Court, in September the President of the Court met with both Agents to seek their views on whether a second round of written pleadings was necessary before proceeding to oral hearings. Both parties agreed it was necessary, and the Court subsequently fixed time-limits for the submissions. The Gambia has already submitted its Reply (written submission in response to Myanmar's Counter-Memorial) by the given deadline of 16 May 2024. Myanmar has until 16 December 2024 to submit its Rejoinder (written submission in response to The Gambia's Reply).³⁸ This second round of written pleadings means that oral hearings as part of the merits phase of the case will not take place until 2025 at the earliest.

Until the case concludes and the final judgment is issued, the State of Myanmar is obliged to comply with and continue reporting on that compliance with the Court's provisional measures every six months. The length of court proceedings mean that even greater scrutiny must be afforded to Myanmar's compliance with the ICJ's provisional measures order, given that its purpose is to protect the Rohingya.

Overview of the current Rakhine State context

The ICJ's provisional measures order to protect the remaining 600,000 Rohingya applies in particular to Rakhine State, where the vast majority of the Rohingya population live. According to estimates compiled by BROUK, Buthidaung township is home to the largest Rohingya population, estimated at around 260,000, followed in descending order by Sittwe, Maungdaw, Kyauktaw, Mrauk U, Minbya, Pauktaw, Rathedaung, Myebon, and Kyaukphyu.

When the Arakan Army resumed fighting with the Myanmar military on 13 November 2023, communities across Rakhine State were still struggling to recover from the devastating impact of Cyclone Mocha in May. As BROUK described in its previous two briefings, 'Struggling to survive' and 'Preventable deaths in Cyclone Mocha and the Rohingya genocide', Rohingya living under conditions of indefinite arbitrary detention in Sittwe were particularly hard hit.³⁹

The current war in Rakhine State is the third outbreak of hostilities between the Arakan Army and the Myanmar military since 2018. The Arakan Army has grown in strength and numbers since then, claiming it now has around 40,000 soldiers.⁴⁰ The current war is also the most brutal and complex, with multiple armed actors reported to be working in consort with or fighting alongside the Myanmar military.

The Arakan Army has publicly stated that it will not lay down arms until it has liberated all of Rakhine State from military rule.⁴¹ This makes it highly unlikely that a ceasefire can be negotiated on humanitarian grounds, as in previous rounds of fighting. As of 23 May 2024, the Arakan Army had seized nine out of Rakhine State's 17 townships - Pauktaw, Minbya, Kyauktaw, Mrauk U, Myebon, Ponnagyun, Ramree, Rathedaung and Buthidaung townships.

In May, the UN reported that 185,000 civilians had been newly displaced in Rakhine and southern Chin States since the resumption of hostilities on 13 November 2023.⁴² This figure does not include an estimated 200,000 Rohingya internally displaced by fierce fighting in Buthidaung and Maungdaw in April and May.⁴³ Due to the Myanmar military's rolling communication blackouts in Rakhine State, it is very difficult for human rights monitors and news outlets to collect comprehensive data about the numbers

37 ICJ order, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)' (12 May 2023) 2.

38 *ibid.*

39 BROUK, 'Struggling to Survive' (21 November 2023) and 'Preventable Deaths In Cyclone Mocha And The Rohingya Genocide' (25 May 2023) available at <https://www.brouk.org.uk/category/report/> accessed 31 May 2024.

40 TNI, 'Arakan at the Crossroads' (7 June 2024) available at <<https://www.tni.org/en/article/arakan-at-the-crossroads>> accessed 7 June 2024.

41 RFA, 'Arakan Army vows to fight for total control of Myanmar's Rakhine state' (4 March 2024) available at <<https://www.rfa.org/english/news/myanmar/aa-03042024163837.html>> accessed 6 June 2024.

42 UNOCHA, No. 38 op. cit. 3.

43 BROUK, '200,000 Newly Displaced Rohingya Need Urgent Humanitarian Aid' (30 May 2024) available at <<https://www.brouk.org.uk/200000-newly-displaced-rohingya-need-urgent-humanitarian-aid/>>. The Arakan Army also issued a statement with similar figures. Statement No.10/2024 (24 May 2024) available at <<https://www.arakanarmy.net>> accessed 6 June 2024.

of civilians killed and injured since 13 November. Numbers reported by the local media – such as 319 civilians killed during the first six months of the renewed conflict - tend to rely on data provided by the Arakan Army, which is incomplete.⁴⁴

The effects of the communication blackouts on daily life are far-reaching. Blocking internet access has caused banking disruptions, which has meant that cash is in very short supply, affecting people's ability to buy what they need to survive.⁴⁵ The communication blackouts make it extremely difficult for local relief workers to conduct rescue operations for survivors of the Myanmar military's airstrikes and artillery attacks.⁴⁶ Moreover, civilians cannot access information that might enable them to get out of harm's way of armed clashes in their vicinity. Even local news reporting has been stymied, resulting in several of the Myanmar military's deadly airstrikes on civilian populations in Rakhine State going unreported. The Myanmar military's communications blackouts heighten the risk of atrocity crimes, discussed in the section below - **Risk factors for atrocity crimes in Rakhine State**.

Internally displaced and conflict-affected people across Rakhine State urgently need food, water, shelter and other essential relief items. Since 13 November, the Myanmar military has restricted humanitarian access and blockaded roads and waterways in Rakhine State, which has contributed to soaring prices and shortages of food, medicines, and other essential items. Almost all hospitals have stopped functioning in central and northern Rakhine, leaving an estimated 1.6 million people without access to hospital care. At the time of writing, it is the peak of the dry season. Water scarcity and diarrhoeal diseases have been widely reported at displacement sites across Rakhine State.⁴⁷

The conditions of life inflicted on the Rohingya group in Rakhine State by the Myanmar military leave them uniquely vulnerable in the context of armed conflict in the region. Restrictions on their freedom of movement make it very difficult for Rohingya to flee the fighting or move to safer areas. Restrictions on access to healthcare and livelihoods leave many Rohingya communities almost entirely dependent on international humanitarian assistance for their survival. Cutting off this lifeline has had a devastating impact on the Rohingya, described in detail in the section **Provisional measure (2) - Ensure that the military and others under its influence do not commit any of the acts punishable under Article III of the Genocide Convention** - deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

Militarisation and armed actors in Rakhine State

Rakhine State is one of the most heavily militarised regions of Myanmar. Three out of 21 of the Myanmar military's Military Operation Command centres are in Rakhine State, in Kyauktaw, Buthidaung (both areas with large Rohingya populations) and Toungup townships. The Myanmar military's Western Command is based in Ann township.

At least eight Border Guard Police Battalions (known by the Burmese acronym Na Kha Kha) are believed to be based in Maungdaw township, while eight Light Infantry Battalions (LIBs), three Infantry Battalions (IBs) and one Artillery Battalion (AB) are reported to be based in Buthidaung township, as well as Military Operations Command 15.⁴⁸ Myanmar military bases and border guard outposts have long been strategically built nearby Rohingya villages, often by exacting forced labour from the Rohingya population.⁴⁹ Several border guard outposts in Maungdaw township were built on the site of Rohingya villages razed after the 'clearance operations' of 2016-2017.⁵⁰ Rohingya communities have suffered for decades under military occupation and repeated human rights violations perpetrated by the Myanmar military.

44 Data compiled by the Arakan Army's political wing, the United League of Arakan, includes reference to 'Muslim' civilians. It does not include information about civilian deaths for which the Arakan Army may be responsible. Narinjara, '319 civilians killed, 8500 buildings destroyed in 6 months of Arakan conflicts' (8 June 2024) available at <<https://www.narinjara.com/news/detail/66648f3f41d0da60962a4812>> accessed 8 June 2024.

45 UNOCHA, No. 36 op. cit.

46 Myanmar Now, 'Rescue workers struggle to assist victims of Thandwe attack as clashes continue' (17 May 2024) available at <<https://myanmar-now.org/en/news/rescue-workers-struggle-to-assist-victims-of-thandwe-attack-as-clashes-continue/>> accessed 7 June 2024.

47 UNOCHA No. 38 op cit.

48 Fortify Rights, Annex: Myanmar Military Unit Locations in '“Nowhere is Safe”: The Myanmar Junta's Crimes Against Humanity Following the Coup d'Etat' (March 2022) 158, and Border News Agency, 'Strategic Importance of Coup Military Council Camps in Maungdaw for Resolving Rakhine Conflict' (30 December 2023).

49 ILO, 'Forced Labour in Myanmar (Burma): Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)', (1998) [362] [534]. UNFFMM 2019 report op. cit. [182-183], [187].

50 BROUK, 'Ongoing Rohingya genocide: Myanmar military defies provisional measures ordered by International Court of Justice' (22 November 2021) 14, BROUK, '“Slow death”: ten years confined to camps for 130,000 Rohingya in Myanmar' (23 May 2022) 15.

Since the armed conflict has intensified in Maungdaw, the Myanmar military is also reported to have deployed additional troops from Light Infantry Division (LID) 22.⁵¹ LIDs are usually not permanently deployed to a geographical area, but instead function as “mobile” units dispatched according to strategic military need. They are often deployed for use in counter-insurgency operations against non-State armed groups. Allegations of gross human rights violations have been levelled against them.⁵² During a previous outbreak of conflict in 2019, LID22 was accused of war crimes against Rakhine and Rohingya communities.⁵³ Troops from LID22 may also have been stationed in Rakhine State since then.⁵⁴

Recent analysis reports indicate that the Myanmar military has been working in consort with Rohingya militia gangs - namely the Arakan Rohingya Salvation Army, Arakan Rohingya Army, and Rohingya Solidarity Organisation – for some time, as part of a divide-and-rule strategy in Rakhine State.⁵⁵

BROUK’s November 2023 briefing covered the re-emergence of the Arakan Rohingya Salvation Army (ARSA) in Maungdaw and Buthidaung areas, following the crackdown by Bangladesh authorities on ARSA’s criminal activities in the refugee camps and the disputed no-man’s-land territory between Bangladesh and Myanmar. It also highlighted local reports that ARSA had been sponsored and armed by the Myanmar military as part of a divide-and-rule strategy - as well as the fact that the Myanmar military had not clashed with ARSA, despite ARSA activities taking place in areas close to Myanmar Army bases.⁵⁶ The Arakan Rohingya Army – an armed criminal group reported to be involved in drug trafficking - is alleged to have received support from the Myanmar military and Border Guard Police Battalions.⁵⁷ The Rohingya Solidarity Organisation is an armed group that was formed in 1982 and active until the late 1990s. It has reemerged in the camps in Bangladesh since 2021, with alleged support from Bangladeshi security agencies.⁵⁸

These groups are alleged to have been involved in forced recruitment of Rohingya in Rakhine State and the refugee camps in Bangladesh for the Myanmar military, described in detail under **Provisional measure (2) - Ensure that the military and others under its influence do not commit any of the acts punishable under Article III of the Genocide Convention** – causing serious bodily or mental harm to members of the group. In a recent joint statement, BROUK and other Rohingya organisations worldwide said, “We again totally reject ARSA, ARA, and RSO. Those groups do not represent or act on behalf of Rohingya communities. We condemn their actions unequivocally.”⁵⁹

Against this complicated backdrop, both the rhetoric and the conduct of the Arakan Army towards Rohingya communities in Rakhine State has noticeably shifted. On 25 March, the Arakan Army issued a statement about the Myanmar military’s use of Rohingya forced recruits in the battle for Rathedaung township, using the pejorative term ‘Bengali’ to refer to the Rohingya.⁶⁰ Previously, the AA had avoided using this term, instead most frequently using ‘Muslims from Arakan’ to refer to the Rohingya. The AA’s Commander-in-Chief Twan Mrat Naing has doubled down on the use of ‘Bengali’ on Twitter/X.⁶¹ An Arakan Army statement on 20 May said, ‘SAC has been inciting racial and religious violence by recruiting, training, and equipping militant Bengali Muslims from Buthidaung, Maungdaw, and

51 Narinjara, ‘Junta boosts military reinforcements to Maungdaw via waterways’ (18 May 2024) available at <<https://www.narinjara.com/news/detail/6648344c7c5c41df304c2b43>> accessed 8 June 2024.

52 UN Human Rights Council, ‘Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar’, (17 September 2018) UN Doc. A/HRC/39/CRP.2 [1251] [1525].

53 Amnesty International, ‘“No One Can Protect Us”: War crimes and abuses in Myanmar’s Rakhine State’ (29 May 2019).

54 Fortify Rights account of the attack on Hpon Nyo Leik village mentions that LID 22 is based in Buthidaung: ‘ICC Member States: Ensure Accountability for Attacks on Civilians in Myanmar’ (13 February 2024) available at <<https://www.fortifyrights.org/mya-inv-2024-02-13/>> accessed 7 June 2024.

55 See for example, ICG, ‘War in Western Myanmar: Avoiding a Rakhine-Rohingya Conflict’ (10 May 2024) available at <<https://www.crisisgroup.org/asia/south-east-asia/myanmar/war-western-myanmar-avoiding-rakhine-rohingya-conflict>> and USIP, ‘Rohingya Face Fresh Uncertainty in Myanmar’ (8 May 2024) available at <<https://www.usip.org/publications/2024/05/rohingya-face-fresh-uncertainty-myanmar>>, and TNI, (7 June 2024) op. cit. accessed 7 June 2024.

56 BROUK, ‘Struggling to Survive’ op cit. 13.

57 IISS, ‘Competing armed groups pose new threat to Rohingya in Bangladesh’ (13 December 2023) available at <<https://myanmar.iiss.org/analysis/rohingya>> and TNI, ‘A New Dimension to Armed Conflicts in Arakan?’ (20 September 2023) available at <<https://www.tni.org/en/article/a-new-dimension-to-armed-conflicts-in-arakan#note-18272-12>> accessed 7 June 2024.

58 IISS (13 December 2023) *ibid*.

59 Joint Statement, ‘Rohingya Facing Existential Threat In Arakan’ (21 May 2024) available at <<https://www.brouk.org.uk/rohingya-facing-existential-threat-in-arakan/>> accessed 7 June 2024.

60 Arakan Army, ‘Statement No. 7/2024’ (25 March 2024) available at <<https://www.arakanarmy.net/post/statement-8>> accessed 7 June 2024.

61 See 26 March 2024 post <<https://x.com/TwanMrat/status/1772562446882074725>>.

Kyaukphe townships, in collaboration with RSO, ARSA, and ARA.⁶² Unlike the March statement, this later statement does not acknowledge any form of forcible recruitment.

The Arakan Army's conduct towards Rohingya communities is set out in more detail in **PART 3: Violations of international humanitarian law and likely war crimes in Rakhine State**. All parties to the current conflict in Rakhine State have routinely violated international humanitarian law. Under international law, the State has the primary responsibility to prevent atrocity crimes, including by non-State armed actors. The UN's framework of risk factors for atrocity crimes offers a useful lens through which to understand the current situation in Rakhine State.

Risk factors for atrocity crimes in Rakhine State

Under international law, States have the primary responsibility to prevent the commission of genocide, war crimes, and crimes against humanity, as well as incitement to commit these atrocity crimes. The UN Office on Genocide Prevention and the Responsibility to Protect has set out a framework of analysis for atrocity crimes, with a focus on their prevention.⁶³ The framework identifies eight common risk factors for all atrocity crimes, which help to identify the probability of atrocity crimes, without necessarily identifying the type of crime. Different kinds of atrocity crimes can occur concurrently in the same situation, or one crime might be a precursor to another type of atrocity crime.⁶⁴ The framework sets out two additional risk factors for war crimes, crimes against humanity, and genocide respectively.

COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian law
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
Genocide		
Risk Factor	9	Intergroup tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
Crimes against humanity		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
War crimes		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations

In its September 2019 report, the UNFFMM found that the eight common risk factors for atrocity crimes and two specific risk factors for genocide were all present in Myanmar.⁶⁵ The eight common risk factors have undoubtedly heightened across Myanmar since the 2021 military takeover.

The framework also includes a non-exhaustive list of indicators, each one a possible manifestation of the corresponding risk factor. The framework emphasises that the more risk factors - and the greater number of relevant indicators that are present - the greater the risk that atrocity crimes may occur or re-occur.

62 Statement available via Arakan Army Telegram channel <<https://t.me/aainfodesk/911>> accessed 7 June 2024.

63 United Nations, 'Framework of Analysis for Atrocity Crimes - a tool for prevention' (2014).

64 *ibid* 6.

65 UNFFMM 2019 report op. cit. 77 [240].

Similarly, the greater the number of indicators of a particular risk factor that are present, the greater the importance and role of that risk factor in a particular situation.⁶⁶

With reference to the situation unfolding in Rakhine State right now, the Myanmar military is proactively engaging in common Risk Factor 7 – Enabling circumstances or preparatory action. This relates to measures which produce an environment conducive to the commission of atrocity crimes. As described above, the Myanmar military is collaborating with ARSA, ARA, and RSO, a clear example of increased support to militia or paramilitary groups (indicator 7.5). The Myanmar military has also imposed wide-ranging communication blackouts (indicator 7.6), severe restrictions on humanitarian access for international actors (indicator 7.7) and increased inflammatory propaganda targeting the Rohingya (indicator 7.14), described in detail in the following section of this report. Such acts of incitement targeting the Rohingya are a clear example of Risk Factor 8 Triggering factors (indicator 8.7).⁶⁷

While the Myanmar military's role cannot absolve the Arakan Army of its obligations under international law, the Myanmar military's actions to incite hatred and violence and to deliberately intensify a hostile environment conducive to atrocity crimes must be front and centre in understanding the rapidly escalating violence in Rakhine State targeting the Rohingya. The Myanmar military's failure to prevent the commission of alleged atrocity crimes by the Arakan Army – detailed in the section **Violations of international humanitarian law and likely war crimes in Rakhine State** - and its role in inciting such crimes must be clearly understood by all stakeholders. In fact, the Myanmar military's genocidal intent towards the Rohingya group can be clearly inferred from such acts and omissions.

Of particularly grave concern is the fact that ALL indicators for Risk Factor 9 for genocide - Intergroup tensions or patterns of discrimination against protected groups are currently prevalent in Rakhine State. This risk factor refers to 'past or present conduct that reveals serious prejudice against protected groups and that creates stress in the relationship among groups or with the State, generating an environment conducive to atrocity crimes'. The indicators enumerated are:

- 9.1 Past or present serious discriminatory, segregational, restrictive or exclusionary practices, policies or legislation against protected groups.
- 9.2 Denial of the existence of protected groups or of recognition of elements of their identity.
- 9.3 History of atrocity crimes committed with impunity against protected groups.
- 9.4 Past or present serious tensions or conflicts between protected groups or with the State, with regards to access to rights and resources, socioeconomic disparities, participation in decision making processes, security, expressions of group identity or to perceptions about the targeted group.
- 9.5 Past or present serious tensions or conflicts involving other types of groups (political, social, cultural, geographical, etc.) that could develop along national, ethnical, racial or religious lines.
- 9.6 Lack of national mechanisms or initiatives to deal with identity-based tensions or conflict.⁶⁸

Likewise, many of the indicators for Risk Factor 10 for genocide - Signs of an intent to destroy in whole or in part a protected group – are currently prevalent in Rakhine State. This risk factor refers to 'facts or circumstances that suggest an intent, **by action or omission**, to destroy all or part of a protected group based on its national, ethnical, racial or religious identity, or the perception of this identity [emphasis added].'⁶⁹ The indicators enumerated are:

- 10.1 Official documents, political manifests, media records, or any other documentation through which a direct intent, or incitement, to target a protected group is revealed, or can be inferred in a way that the implicit message could reasonably lead to acts of destruction against that group.
- 10.2 Targeted physical elimination, rapid or gradual, of members of a protected group, including only selected parts of it, which could bring about the destruction of the group.
- 10.3 Widespread or systematic discriminatory or targeted practices or violence against the lives, freedom or physical and moral integrity of a protected group, even if not yet reaching the level of elimination.

66 UN Framework op. cit. 7.

67 UN Framework op. cit. 16-17.

68 UN Framework op. cit. 18.

69 UN Framework op. cit. 19.

- 10.4 Development of policies or measures that seriously affect the reproductive rights of women, or that contemplate the separation or forcible transfer of children belonging to protected groups.
- 10.5 Resort to methods or practices of violence that are particularly harmful against or that dehumanize a protected group, that reveal an intention to cause humiliation, fear or terror to fragment the group, or that reveal an intention to change its identity.
- 10.6 Resort to means of violence that are particularly harmful or prohibited under international law, including prohibited weapons, against a protected group.
- 10.7 Expressions of public euphoria at having control over a protected group and its existence.
- 10.8 Attacks against or destruction of homes, farms, businesses or other livelihoods of a protected group and/or of their cultural or religious symbols and property.

Indicator 10.5 ‘Resort to methods or practices of violence that are particularly harmful against or that dehumanize a protected group, that reveal an intention to cause humiliation, fear or terror to fragment the group’ is of particular concern with reference to the Myanmar military’s forced recruitment of Rohingya men and youth and using them as cannon fodder in their battles with the Arakan Army. Such acts are described in more detail below under **Provisional measure (2) - Ensure that the military and others under its influence do not commit any of the acts punishable under Article III of the Genocide Convention** - causing serious bodily or mental harm to members of the group.

Lastly, given the acts and omissions by the Myanmar State, the following indicator of Risk Factor 6 – Absence of mitigating factors – should serve as a stark warning to ASEAN, the wider international community, and the UN Security Council in particular: ‘Lack of interest, reluctance or failure of United Nations Member States or international or regional organizations to support a State to exercise its responsibility to protect populations from atrocity crimes, **or to take action when the State manifestly fails that responsibility** [emphasis added].’⁷⁰

PART 2: Breaches of the ICJ’s provisional measures by the Myanmar military

Part 2 of this report analyses breaches of the ICJ’s provisional measures order by the Myanmar military in accordance with the existing jurisprudence on genocide as well as the above risk factors and indicators of genocide.

In BROUK’s view, the information compiled in this report demonstrates that the Myanmar military continues to commit genocidal acts: namely, deliberately inflicting conditions of life calculated to bring about the physical destruction in whole or in part of the Rohingya group, causing serious bodily or mental harm, and killings.

Provisional measure (1) – prevent the commission of genocidal acts under Article II of the Genocide Convention

‘The Republic of the Union of Myanmar shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Rohingya group in its territory, **namely the order to take all measures within its power to prevent the commission of genocidal acts** within the scope of Article II of this Convention, in particular:

- 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; and
- d) imposing measures intended to prevent births within the group.’⁷¹

70 UN Framework op. cit. 15.

71 The Gambia v. Myanmar, ICJ Provisional Measures Order (23 January 2020) op. cit. 25 [86].

Provisional measure (1) is focused on the prevention of genocide and the ICJ instructs the Myanmar State to take ‘all measures within its power’ to do so.

Denial of identity, citizenship, and freedom of movement

The Myanmar military continues to deny the Rohingya their identity, consistently referring to them as ‘Bengali’. The Myanmar military also persists with upholding the 1982 Citizenship Law, which was designed to strip Rohingya of citizenship. All 600,000 Rohingya in Rakhine State continue to live under wide-ranging restrictions on freedom of movement imposed by the Myanmar military. 140,000 Rohingya confined to camps in Sittwe, Pauktaw, Myebon, and Kyaukphyu townships are living under a state of indefinite arbitrary detention. These two factors leave the Rohingya uniquely vulnerable during times of armed conflict in Rakhine State. If they flee the fighting, they risk arrest and imprisonment by the Myanmar military authorities for travelling without documents or prior authorisation.

These ongoing policies and practices towards the Rohingya by the Myanmar military track with several of the UN Framework’s risk factor indicators for genocide – including, ‘denial of the existence of protected groups’, ‘segregational, restrictive or exclusionary practices, policies or legislation against protected groups’, and ‘systematic discriminatory or targeted practices against...the freedom...of a protected group’.⁷²

Restricting international humanitarian access

The Myanmar military has not taken any steps to lift the well-documented restrictions on freedom of movement, access to livelihoods, or healthcare for Rohingya communities over the reporting period, leaving them heavily dependent on international humanitarian assistance for their most basic needs. This also continues to be heavily restricted by the Myanmar military.

In March and April, UNOCHA reported ‘severe access constraints’ in Rakhine, with travel authorisations urgently needed but still pending. The limited humanitarian operations that are taking place have been severely hampered by the rolling communication blackouts, as international organisations cannot communicate effectively with local partners or people on the ground. The Myanmar military’s blockade of all major transport routes from Yangon into Rakhine State prevented the replenishment of essential shelter and non-food item stockpiles as well as medicines and therapeutic supplies for the treatment of malnutrition. The agency warned that water scarcity was expected to affect almost 84,000 displaced Rohingya people, with vulnerable people in displacement camps in Pauktaw being the hardest hit.⁷³ Essential delivery of water via boats and trucks is needed during the hot season, but extremely challenging due to movement and access restrictions. Moreover, the Myanmar military has refused to grant any travel authorisations to organisations providing healthcare services in Rakhine State since the renewed outbreak of hostilities, to devastating effect for Rohingya.⁷⁴

The severe consequences of these restrictions are described under **Provisional measure (2) - Ensure that the military and others under its influence do not commit any of the acts punishable under Article III of the Genocide Convention** - Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

False promises of citizenship in the context of forced recruitment

Since February, the Myanmar military has used the false promise of a ‘pink card’ denoting full citizenship as part of its forced recruitment campaign targeting Rohingya.⁷⁵ The 140,000 Rohingya confined to detention camps are extremely vulnerable, particularly those in the Sittwe area. They are grieving the loss of loved ones during Cyclone Mocha and are grappling with the ever-deteriorating conditions of life inflicted upon them by the Myanmar military.

Rohingya in the detention camps in the Sittwe area reported to BROUK that Myanmar military officials told them that such documentation would only be issued in the name ‘Bengali’, not Rohingya, and only to those who could provide the citizenship documentation of their parents.⁷⁶ In the early stages of the campaign, promises of rice rations and a salary were used to ‘incentivise’ Rohingya to comply with the

72 UN Framework indicators 9.1, 9.2, and 10.3 listed in full above, op. cit.

73 UNOCHA, No. 36 op. cit. UNOCHA, ‘Myanmar: Humanitarian Update No. 37’ (5 April 2024) 3.

74 UNOCHA, No. 38 op. cit. 8.

75 Human Rights Watch, ‘Myanmar: Military Forcibly Recruiting Rohingya (9 April 2024)’ available at <<https://www.hrw.org/news/2024/04/10/myanmar-military-forcibly-recruiting-rohingya>> accessed 12 May 2024.

76 BROUK documentation on file, incident ref. ICJ#9-SIT-PM2-FR#5.

order.⁷⁷ However, it is very clear that from the outset of the forced recruitment campaign Rohingya did not have the option of refusing to comply with the order.

The ongoing forced recruitment drive targeting Rohingya is highly coercive. Rohingya in village, ward, or IDP camp leadership positions have faced numerous threats to force them to comply with the orders to provide young male conscripts.⁷⁸ Throughout the forced recruitment campaign, Rohingya men and youth have been abducted at gunpoint by the Myanmar military.

The Myanmar military's unique targeting of the Rohingya for conscription in Rakhine State - ahead of its nationwide recruitment drive – must be viewed as a clear example of Risk Factor 9 for genocide, 'present conduct that reveals serious prejudice against protected groups and that creates stress in the relationship among groups [the Rohingya and Rakhine]... generating an environment conducive to atrocity crimes.'⁷⁹

Other forms of coercion as well as violence experienced by Rohingya forced recruits and their family members are described in detail under **Provisional measure (2) - Ensure that the military and others under its influence do not commit any of the acts punishable under Article III of the Genocide Convention** - causing serious bodily or mental harm to members of the group.

The Myanmar military's communication blackouts have compounded the extreme vulnerability of the Rohingya. For example, in Sittwe the rolling communication blackouts have meant that Rohingya in one camp struggle to call friends in a neighbouring camp to share information about threats they are facing, such as forced recruitment into the Myanmar military or coercion to participate in anti-Arakan Army protests.

Coercion to participate in State-orchestrated protests against the Arakan Army

At the same time as Rohingya men are being forcibly recruited into the Myanmar military and sent to the frontlines, Rohingya communities have been ordered to take part in anti-Arakan Army protests planned and orchestrated by the Myanmar military. The Myanmar military typically orders one person from each household to attend, provides placards and facemasks to participants, and arranges for pro-military media outlets to attend.⁸⁰ The resulting propaganda has been widely circulated by Myanmar military mouthpieces.⁸¹ The first such event took place in Buthidaung on 19 March. Footage of this orchestrated protest in Buthidaung quickly flooded social media, even though the Myanmar military had imposed a communication blackout in the area for weeks.

This first orchestrated protest was followed by others in various Rohingya villages and neighbourhoods in Sittwe township on 21 and 23 March. Rohingya communities were again coerced into protesting in Sittwe between 20-22 April and in Buthidaung on 12 April and 5 May.⁸² A Rohingya man in Sittwe explained, "There's a military outpost or gate in every village and they have set the times for when to protest and when to come back. They said they would not allow anyone to pass through the gate if they did not protest... They are not allowing us to bring in basic necessities amid these threats, so we had no choice but to attend the protest."⁸³ BROUK and media outlets have reported on various forms of coercion to participate, including fines, and threats of cutting off access to markets, mass arrests, and shelling of their

77 HRW, op. cit., The Irrawaddy, 'Rohingya Men in Myanmar Are Being Forcibly Recruited by The Junta's Military' (23 February 2024) available at <<https://www.irrawaddy.com/news/burma/rohingya-men-in-myanmar-are-being-forcibly-recruited-by-the-juntas-military.html>> accessed 12 May 2024; BBC News, 'Myanmar's army massacred Rohingyas. Now it wants their help' (8 April 2024) available at <<https://www.bbc.co.uk/news/world-asia-68730994>> accessed 12 May 2024.

78 BROUK, 'Genocide Against Rohingya Is Intensifying, Warns Burmese Rohingya Organisation UK' (2 April 2024) available at <<https://www.brouk.org.uk/genocide-against-rohingya-is-intensifying-warns-burmese-rohingya-organisation-uk/>> accessed 12 May 2024.

79 UN Framework Risk Factor 9, quoted in full above, op. cit.

80 BROUK op. cit. 2 April 2024.

81 See for example, The Global New Light of Myanmar, 'Bengalis rally for peace in Sittway Township' (21 April 2024) available at <<https://www.gnml.com.mm/bengalis-rally-for-peace-in-sittway-township/>> accessed 12 May 2024.

82 RFA, 'Junta forces Rohingyas to protest ethnic rebels in Myanmar's Rakhine state' (22 April 2024) available at <<https://www.rfa.org/english/news/myanmar/protest-04222024154413.html>>; DMG, 'Muslims stage anti-AA protest in Buthidaung' (6 May 2024) available at <<https://www.dmediag.com/news/mussagen.html>> both accessed 12 May 2024.

83 Myanmar Now, 'Myanmar military using old tactics to 'incite conflict' between Rohingya and Rakhine communities, locals warn' (2 May 2024) available at <<https://myanmar-now.org/en/news/myanmar-military-using-old-tactics-to-incite-conflict-between-rohingya-and-rakhine-communities-locals-warn/>> accessed 12 May 2024.

villages.⁸⁴

The Myanmar military's creation and circulation of propaganda purporting to show 'Bengalis' protesting against the AA has deliberately incited ethnic and religious hatred and violence towards Rohingya. This is another clear example of Risk Factor 9 for genocide, fuelling 'intergroup tensions' and deliberately generating an environment which is highly conducive to atrocity crimes. Rather than taking 'all measures within its power' to prevent the commission of genocidal acts, the Myanmar military's actions instead provide further evidence of their genocidal intent towards the Rohingya.

Provisional measure (2) - Ensure that the military and others under its influence do not commit any of the acts punishable under Article III of the Genocide Convention

'The Republic of the Union of Myanmar shall, in relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide.'

This section of the report examines the conduct of the Myanmar military with regard to the genocidal acts of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, causing serious bodily or mental harm to members of the group, and killing members of the group under Article II of the Genocide Convention.

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

The genocidal act of 'deliberately inflicting conditions of life on the group intended to bring about its physical destruction', sometimes referred to as 'slow death', addresses situations in which the perpetrator does not immediately kill the members of the group, but uses other methods intended to ultimately bring about their physical destruction. Examples of possible means by which this underlying act can be carried out have been well-established by the case law in the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR):

'Examples of such acts include, but are not limited to, subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally **creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation**, or subjecting members of the group to excessive work or physical exertion [emphasis added].'⁸⁵

With regard to the question of genocidal intent, the 2016 ICTY Karadzic judgment held that,

'In the absence of direct evidence of whether the conditions of life imposed on the group were deliberately calculated to bring about its physical destruction, a chamber can be guided by the objective probability of these conditions leading to the physical destruction of the group in part. **The actual nature of the conditions of life, the length of time that members of the group were subjected to them, and the characteristics of the group such as its vulnerability are illustrative factors to be considered in evaluating the criterion of probability.** [emphasis added]'⁸⁶

This report once again highlights the 'circumstances that would lead to a slow death' outlined by the

84 BROUK documentation on file, incident refs ICJ#9-SIT-PM1-CP#1, ICJ#9-SIT-PM1-CP#2, ICJ#9-SIT-PM1-CP#3, ICJ#9-BUT-CP#1, ICJ#9-BUT-CP#2. The Irrawaddy, 'Myanmar Junta 'Orchestrating Rohingya Protests' Against Arakan Army in Rakhine' (22 March 2024) available at <<https://www.irrawaddy.com/news/burma/myanmar-junta-orchestrating-rohingya-protests-against-arakan-army-in-rakhine.html>>, Myanmar Now, 'As war escalates in northern Rakhine, Rohingya have no allies' (1 April 2024) <<https://myanmar-now.org/en/news/as-war-escalates-in-northern-rakhine-rohingya-have-no-allies/>> accessed 13 May 2024, RFA, (22 April 2024) op. cit.

85 ICTY, Prosecutor v. Karadzic, IT-95-5/18-T, Judgment, 24 March 2016, [547], with reference to the preceding cases ICTY, Prosecutor v. Brdjanin, IT-99-36-T, Judgment, 1 December 2004, [691]; ICTY, Prosecutor v. Stakic, IT-97-24-T, Judgment, 31 July 2003, [517]; ICTR, Prosecutor v. Musema, ICTR-96-13-T, Judgment, 27 January 2000, [157]; ICTR, Prosecutor v. Kayishema and Ruzindana, ICTR-95-1-T, Judgment, 21 May 1999, [115-116]; ICTR, Prosecutor v. Akayesu, ICTR-96-4-T, Judgment, 2 September 1998, [506].

86 ICTY, Prosecutor v. Karadzic, op. cit. [548].

ICTR and ICTY, namely: ‘lack of proper shelter’, ‘subjecting the group to a subsistence diet / lack of proper food’, ‘lack of water and proper sanitation facilities’ and ‘failing to provide adequate medical care.’

This latest analysis – together with previous briefings by BROUK - provides further evidence of the ongoing commission of this genocidal act by the Myanmar military. It underscores the degrading, dehumanising, and dire conditions of life inflicted on Rohingya by the Myanmar military and the increasingly desperate situation they are facing. Against this backdrop, the Myanmar military has targeted the extremely vulnerable Rohingya for forced recruitment.

Restrictions on movement, humanitarian access, and access to healthcare for Rohingya in northern Rakhine State

Rohingya communities across Rakhine State are effectively living in an open-air prison. They are subjected to severe restrictions on their movement across Rakhine State, imposed through a complex system of written and verbal orders, abusive practices, extortion, barbed-wire barriers, and militarised checkpoints. These ongoing restrictions, coupled with the complex armed conflict situation, impact access to livelihoods and medical care. As a result, many rural Rohingya communities in northern Rakhine State are largely dependent on international humanitarian organisations for food aid, supplementary nutrition, and medical care.

Since the resumption of armed conflict on 13 November, the Myanmar military’s blockade of roads and waterways in Rakhine State has had a huge impact on access to food for Rohingya communities. Village leaders in Buthidaung and Maungdaw reported that their communities are facing unprecedented levels of food insecurity and are desperate for aid. They urged humanitarian and political actors to advocate for the opening of a waterway humanitarian corridor for the transfer of aid across the Naf River from Bangladesh.⁸⁷

The Myanmar military’s blockades have heavily restricted the importation of medicine and medical supplies to Rakhine State. Rohingya communities in rural areas of northern Rakhine State depend on mobile clinic services provided by Médecins Sans Frontières (MSF). Due to the restrictions on their movement, Rohingya are also dependent on MSF to facilitate referrals to Buthidaung and Maungdaw general hospitals if needed. Due to the denial of travel authorisations, MSF has not been able to run its 25 mobile clinics in central and northern Rakhine since November 2023.⁸⁸

Since January, the Myanmar military has cut off the electricity supply to Buthidaung and Maungdaw townships. This has led to fuel shortages and a total communications blackout. In March, the Myanmar military ordered Maungdaw hospital staff to evacuate to Sittwe and closed the hospital.⁸⁹ Soldiers from the Myanmar military then reportedly occupied the hospital.⁹⁰ Buthidaung hospital in northern Rakhine was forced to close due to shortages of fuel, staff, and medical supplies. The closure of these two hospitals meant that people in the townships were left with no options for emergency or advanced healthcare, including services for complicated pregnancies. MSF recorded nine maternal deaths or stillbirth cases between November 2023 and March 2024, although it is unclear how many were Rohingya women and children.⁹¹

On 15 April, MSF’s office and pharmacy in Buthidaung town was burnt down as part of a wider arson attack. No staff were injured, but all medical stock was destroyed. In a statement responding to the incident MSF said, ‘We urge relevant authorities to consider the urgent need to expedite approvals for the movement of medical supplies, facilitate our ability to restock the destroyed supplies at our Buthidaung office, and restore humanitarian access... We are gravely concerned for the welfare of Rohingya communities who, due to their lack of legal status and restrictions imposed on their freedom of movement, are being confronted with unimaginable choices for their survival.’⁹²

Rohingya confined to camps in central Rakhine State are also facing a drastic deterioration in the already deplorable conditions of life inflicted on them by the military Myanmar military.

87 USIP, (8 May 2024) op. cit.

88 MSF, ‘MSF office and pharmacy in Rakhine state destroyed in fire amid ongoing violence’ (16 April 2024) available at <<https://www.msf.org/msf-office-destroyed-fire-amid-ongoing-violence-rakhine-myanmar>> accessed 1 June 2024.

89 RFA, ‘Myanmar’s junta shuts down public hospital in wartorn township’ (21 March 2024) available at <<https://www.rfa.org/english/news/myanmar/rakhine-hospital-closed-03212024134945.html>> accessed 1 June 2024.

90 Narinjara, ‘Maungdaw general hospital closed as junta soldiers stationed on campus’ (5 March 2024) available at <<https://www.narinjara.com/news/detail/65e69018fdb09682b9a258c5>> accessed 1 June 2024.

91 MSF, (16 April 2024) op. cit.

92 ibid.

Almost 12 years of arbitrary indefinite detention for more than 140,000 Rohingya confined to camps

The ICJ, in its interpretation of the meaning of “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction”, has held that forced displacements may occur in parallel to other acts prohibited by Article II of the Genocide Convention. Forced displacements may also be indicative of the specific intent to destroy a group in whole or in part behind those parallel genocidal acts.⁹³

Forced displacement of the Rohingya

More than 140,000 Rohingya (of whom around 110,000 are in rural Sittwe, according to the latest publicly available figures⁹⁴) have been subjected to arbitrary indefinite detention in camps across Central Rakhine State for almost twelve years, in violation of international law.⁹⁵

The Myanmar military has a decades-long history of employing divide-and-rule tactics and instigating violence against the Rohingya. The State-orchestrated violence of 2012-13 marked a critical juncture in the military authorities’ treatment of the group. A false narrative of ‘intercommunal violence’ constructed by the military authorities was used as a pretext to introduce draconian restrictions on freedom of movement for the Rohingya across Rakhine State.⁹⁶ This false narrative that the 2012 violence was simply ‘intercommunal’ has unfortunately prevailed, both within Myanmar and internationally. In fact, the State-orchestrated violence in 2012-2013 laid the groundwork for the brutal ‘clearance operations’ that were to follow in 2016-2017. The UNFFMM concluded,

‘The 2012 and 2013 violence in Rakhine State was pre-planned and instigated...the Myanmar security forces were actively involved and complicit. They participated in acts of violence...

... [This] Actively instigated violence between the ethnic Rakhine and the Rohingya, with the involvement of State institutions and other figures of authority, result[ed] in mass arrests of Rohingya, policies of segregation and the mass displacement and confinement of Rohingya into squalid and barb-wired “displacement” sites and camps in central Rakhine, where they have been arbitrarily detained.’⁹⁷

Although best understood as detention camps, the 24 sites in Sittwe, Kyauktaw, Kyaukphyu, Myebon and Pauktaw townships⁹⁸ are officially classified as temporary camps for internally displaced persons (IDPs) and as such international humanitarian standards apply. The Humanitarian Charter and Minimum Standards in Humanitarian Response also provides guidance to humanitarian actors for setting targets for humanitarian response in protracted crises.⁹⁹

Rohingya confined to camps are almost entirely dependent on humanitarian aid for their survival. One year on, Rohingya are still struggling to recover from Cyclone Mocha due to the Myanmar military’s restrictions on humanitarian access, and the devastating consequences this has had on Rohingya communities confined to camps.

Analysis of the latest publicly available data¹⁰⁰ for the Rohingya camps demonstrates the extent to which

93 International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, ICJ Reports 2015, 72 [161-163].

94 These numbers are based on the latest available CCCM Cluster report, ‘CCCM Camp Profiles, Central Rakhine, Myanmar Q1 2024’ (Mar 2024). The precise figure given is 143,246.

95 UNFFMM 2018 report op. cit. [747-748] and Human Rights Watch, “An Open Prison without End”: Myanmar’s Mass Detention of Rohingya in Rakhine State (October 2020).

96 For a more detailed description, see BROUK, ‘Slow death’ op. cit. 9-10.

97 UNFMM 2018 report op. cit. [747-748].

98 Out of these 24 sites, 19 are formal camps, 3 are integrated host communities, and 2 are officially closed camps where IDPs remain. See < <https://sheltercluster.org/hub/rakhine> > accessed 7 June 2024. In April 2017, the authorities announced that it would begin closing camps in response to the recommendations in an interim report from the Advisory Commission on Rakhine State led by the late Kofi Annan. Three camps (Kyein Ni Pyin in Pauktaw township, Nidin in Kyauktaw township, and Taung Paw in Myebon township) were officially declared ‘closed’ in 2018 and Kyauk Ta Lone camp in Kyaukpyu was officially ‘closed’ in May 2023 but its current status is unclear. As previously reported by BROUK, the ‘camp closure’ strategy is better understood as the permanent segregation and detention of Rohingya in flood-prone locations.

99 Sphere, ‘The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response’ (2018 edition).

100 Analysis is based on UN OCHA humanitarian updates, and CCCM Camp Profiles, Central Rakhine, Myanmar December 2023 and March 2024 available at < <https://www.cccmcluster.org/where-we-work/myanmar> > accessed 17 May 2024.

humanitarian actors are struggling to meet international minimum humanitarian standards and targets, in large part due to the restrictions on humanitarian access. This analysis provides some insight into the devastating human cost of the Myanmar military's restrictions and the 'slow death' circumstances arising from 'lack of proper shelter', 'subjecting the group to a subsistence diet / lack of proper food', 'lack of water and proper sanitation facilities' and 'failing to provide adequate medical care'.

'Lack of proper shelter'

The 16 sites along the Sittwe coastline were already very overcrowded before Cyclone Mocha struck in May 2023. Available space in several of the Sittwe displacement sites has been significantly reduced following Cyclone Mocha, most likely caused by the storm surge and coastal erosion.¹⁰¹ On average, there is just 19m² of space per person in the Sittwe sites – less than half the international standard of 45m².

The Rohingya confined to camps are largely living in cramped temporary bamboo structures known as 'longhouses', designed to last two years.¹⁰² Each longhouse contains 8-10 single room units with one family living in each room. The units are separated by thin bamboo partitions which afford little privacy.

In November 2023, UNOCHA reported that more than 57,000 Rohingya people were still living in compromised shelters in the camps, six months after Cyclone Mocha struck. Humanitarian access restrictions hampered efforts to rebuild the shelters.¹⁰³ One year on after the cyclone, there are no directly comparable figures publicly available. However, given the extent of the restrictions and blockades, the situation is highly unlikely to have improved.

110,000 Rohingya people – half of whom are children - are living in these overcrowded, squalid conditions in the Sittwe area.

'Subjecting the group to a subsistence diet / lack of proper food'

Rohingya IDPs confined to camps are facing increasing levels of food scarcity and hunger due to the Myanmar military's blockades of roads and waterways and restrictions on humanitarian access.¹⁰⁴

Sittwe has virtually emptied as most Rakhine citizens who have the means have already fled to areas already under Arakan Army control, in anticipation of a fierce battle for the state's capital. Impoverished Rakhine families and Rohingya IDPs are reportedly the only civilians left behind.¹⁰⁵ On 20 May, the UN Secretary-General's spokesperson Stéphane Dujarric warned of food shortages, unavailability of cash, and soaring market prices in the town.¹⁰⁶ BROUK has received reports that Rohingya IDPs in Sittwe are receiving some form of assistance from the World Food Programme; either food rations or cash assistance, but that it is insufficient to meet their needs. Due to the severe commodity and food shortages driving up costs, market prices are unaffordable for Rohingya IDPs.

Severe food shortages have also been reported by Rohingya IDPs confined to camps in Kyaukphyu and Pauktaw. "We haven't received any food aid for over two months," said a Rohingya resident of Pauktaw's Nget Chaung camp in January. "We live without food for a while. And we are not allowed to go out of the camp. We are having extreme health problems."¹⁰⁷ In February, IDPs in Kyauk Ta Lone camp in Kyaukphyu reported that rations had been replaced with monthly cash assistance. Due to soaring commodity prices, the cash assistance is insufficient and IDPs described skipping meals and other

101 The available space in Basara, Baw Du Pha 2, Khaung Doke Khar 1, and Ohn Taw Gyi South in Sittwe has significantly reduced. The largest reduction in available space in the Sittwe camps has been in Ohn Taw Gyi South, down to 14m² per person from 18m².

102 In December 2023, just 11 percent of the shelters in the Sittwe camps had been repaired in the past two years. By March 2024, this had only risen to 13 percent. This falls extremely short of the international standard that ALL such shelters should be repaired over a two-year period. Analysis based on CCCM Camp Profiles, Central Rakhine, Myanmar Q4 December 2023 and Q1 March 2024 op. cit.

103 UNOCHA, 'Myanmar: Humanitarian Update No. 34' (10 November 2023) 10.

104 DMG, 'Lack of donors brings food shortages for Muslim IDPs in Arakan State' (18 May 2024) available at <<https://www.dmediag.com/news/danfoosh.html>> accessed 31 May 2024.

105 Narinjara, 'Sittwe residents, fled or staying, face livelihood difficulties' (10 May 2024) available at <<https://www.narinjara.com/news/detail/663e11b8cccf367b8acf9e3c>> accessed 31 May 2024.

106 Daily Press Briefing by the Office of the Spokesperson for the Secretary-General (20 May 2024) available at <<https://press.un.org/en/2024/db240520.doc.htm>> accessed 31 May 2024.

107 RFA, 'Fierce fighting in Rakhine state prompts aid workers to evacuate' (31 January 2024) available at <<https://www.rfa.org/english/news/myanmar/rakhine-aid-workers-01312024160935.html>> accessed 31 May 2024.

negative coping mechanisms.¹⁰⁸

In March, the UN Special Rapporteur highlighted a Rohingya researcher's findings from the IDP camps: "[Rohingya people] are finding it difficult to get food regularly. Many people are actually starving or eating less. In the past they were eating two times a day and now they are eating once. There are some that are not eating at all."¹⁰⁹

BROUK has been unable to collect more up-to-date information about food scarcity in the camps in Pauktaw, Myebon, and Kyauktaw townships due to the rolling communication blackouts imposed by the Myanmar military. All three townships are under the control of the Arakan Army. Kyaukphyu has been the site of sporadic heavy fighting and at the time of writing is still under the control of the Myanmar military.

In late April, BROUK received concerning reports that the ULA/AA had imposed movement restrictions on Rohingya IDPs in camps in Pauktaw and Myebon, areas under their control. According to local sources, this was in response to rising social tensions following coerced Rohingya participation in anti-Arakan Army protests in Sittwe and Buthidaung, orchestrated by the Myanmar military and used as propaganda.

BROUK is gravely concerned that food scarcity and hunger among Rohingya IDPs confined to camps may now be even more pervasive.

'Lack of water and proper sanitation facilities'

As the Humanitarian Charter sets out,

'An environment free of human excreta is essential for people's dignity, safety, health and well-being. This includes the natural environment as well as the living, learning and working environments. Safe excreta management is a Water Supply, Sanitation, and Hygiene Promotion (WASH) priority. In crisis situations, it is as important as providing a safe water supply. All people should have access to appropriate, safe, clean and reliable toilets.'¹¹⁰

The Humanitarian Charter establishes a minimum standard of one shared toilet per 20 people.¹¹¹ Even before Cyclone Mocha caused extensive damage to the latrines in the Sittwe camps, this basic standard was not being met.¹¹² In November, UNOCHA reported that, 'In Rakhine, lengthy approval processes have delayed...renovation and construction of WASH facilities, and provision of WASH services for people in need. These delays have hampered the ability of humanitarian partners to provide an effective WASH response in some of the affected sites, leaving a significant gap in addressing the basic needs of the IDPs.'¹¹³

Analysis of the data available for service delivery across the Rohingya camps in the first quarter of 2024 demonstrates that the average across the Sittwe IDP sites is 66 persons per functioning latrine – more than three times the minimum humanitarian standard. In Maw Ti Ngar this rose to 127 and in Thae Chaung, 146 persons per functioning latrine.¹¹⁴

In April, UNOCHA warned that water scarcity during the hot season of April to June was expected to negatively impact Rohingya IDPs, especially in the camps in Sittwe and Pauktaw. They are heavily dependent on humanitarian intervention for continuity of water supplies during hot season – usually delivery of water via boat or truck to refill ponds. The agency warned that water levels were 'rapidly dropping' and that 'additional access and funding are urgently needed to enable WASH partners to implement time-sensitive and life-saving support.'¹¹⁵

108 Myanmar Now, 'Clashes, blockade in southern Rakhine State hit minority IDPs hardest' (9 February 2024) available at <<https://myanmar-now.org/en/news/clashes-blockade-in-southern-rakhine-state-hit-minority-idps-hardest/>> accessed 31 May 2024.

109 UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, (14 March 2024) UN Doc. A/HRC/55/65 [84].

110 Sphere op. cit. 113.

111 Sphere op. cit. 116.

112 In the first three months of 2023, there was an average of 27 people per functioning latrine across all the Rohingya camps. BROUK, 'Struggling to Survive' (November 2023).

113 UNOCHA, No. 34 op. cit. 11.

114 Analysis based on CCCM Camp Profiles, Central Rakhine, Q1 March 2024 op. cit.

115 UNOCHA, No. 37 op. cit. 3.

Overreliance on unsafe water sources exposes IDPs to contaminated water resulting in diarrhoeal diseases, which can have deadly consequences for vulnerable children and the elderly. In May, UNOCHA reported that, '[In Rakhine] Normal WASH activities have been heavily interrupted increasing disease risks.'¹¹⁶

Disease risks to Rohingya IDPs in the camps due to lack of water and proper sanitation facilities are compounded by their lack of access to adequate medical care due to restrictions imposed by the Myanmar military.

'Failing to provide adequate medical care'

The Myanmar military's refusal to provide travel authorisations to healthcare providers in Rakhine State has had a devastating impact on Rohingya confined to IDP camps.

In February, a pregnant Rohingya woman and her baby reportedly died after being forced to return to Kyein Ni Pyin camp in Pauktaw because she was denied entry to Sittwe township and therefore could not continue the journey to Sittwe General hospital, despite an emergency referral from MSF. MSF's facilitation of emergency referrals is a lifesaving service that Rohingya people depend on due to the severe restrictions imposed on their freedom of movement.¹¹⁷

In the first quarter of 2024, only six of the 16 sites in Sittwe where Rohingya IDPs live under detention conditions had a functioning clinic. Apart from the field hospital at Thet Kay Pyin, the remaining five clinics were only open one or two days a week for a few hours at a time.¹¹⁸ There are reportedly no medical facilities accessible to Rohingya at nighttime in Sittwe.¹¹⁹ In addition, basic medicines like oral rehydration salts and other essential medical supplies are in extremely short supply due to the Myanmar military's ongoing blockades.¹²⁰

By the end of April, it was widely reported that at least 86 Rohingya in Sittwe had died from diarrhoeal diseases that month – most of them children under the age of 5. "The outbreak of dysentery began more than a month ago, but the deaths started this month. Now, many people have died, and there are still many villages where we have not been able to compile the death toll," a local aid worker told Myanmar Now.¹²¹ More than half of the confirmed deaths were reported in the Say Tha Mar Gyi and Ohn Taw Gyi (South) and (North) sites.¹²² Due to the communication blackouts, lack of basic medicines, and ongoing restrictions on international humanitarian access in the Sittwe area, BROUK believes the true death toll may be higher.¹²³

BROUK is also gravely concerned that the five Rohingya IDP camps in Pauktaw township may have suffered similar preventable deaths. Statistics for the first quarter of 2024 show that there are no functioning clinics in any of the five camps in Pauktaw.¹²⁴ Given the water scarcity, restrictions on humanitarian access, and restrictions on freedom of movement reportedly imposed by the United League of Arakan/Arakan Army on Rohingya in the camps, a similar outbreak of diarrhoeal disease would likely have a devastating outcome.

Due to the ongoing communication blackout in the area, BROUK has been unable to confirm the current situation in the Pauktaw camps.

Criminalisation of Rohingya fleeing the conditions of life inflicted on them

Rohingya who attempt to flee the appalling conditions of life inflicted upon them in Rakhine State are routinely arrested and imprisoned. In March, more than 90 Rohingya, including children, were arrested

116 UNOCHA, No. 38 op. cit. 3.

117 MSF, (16 April 2024) op. cit.

118 The targets set for the IDP sites are for clinics to be open 5 days a week for 6 hours per day. CCCM Camp Profiles, Central Rakhine, Myanmar Q1 March 2024 op. cit.

119 In the fourth quarter of 2023, Thet Kay Pyin field hospital was open 24 hours a day 7 days a week. By the first quarter of 2024, this was reduced to 8 hours a day 7 days a week. Analysis based on CCCM Camp Profiles, Central Rakhine, Myanmar Q4 December 2023 and Q1 March 2024 op. cit.

120 UNOCHA, No. 38 op. cit. 8.

121 Myanmar Now, 'Dysentery claims lives of more than 80 Rohingya IDPs in Sittwe' (29 April 2024) available at <<https://myanmar-now.org/en/news/dysentery-claims-lives-of-more-than-80-rohingya-idps-in-sittwe/>> accessed 1 June 2024.

122 *ibid.*

123 See also RFA, 'Nearly 80 die in 3 weeks at Myanmar refugee camps: aid workers' (22 April 2024) available at <<https://www.rfa.org/english/news/myanmar/myanmar-refugee-camp-04222024081635.html>> accessed 1 June 2024.

124 CCCM Camp Profiles, Central Rakhine, Myanmar Q1 March 2024 op. cit.

in Ayerwaddy region by Myanmar military officials.¹²⁵ Another 80 Rohingya who had fled by boat were arrested by the Myanmar military's navy off the coast of Mon State.¹²⁶

Cases against the Rohingya are usually brought under the 1949 Residents of Burma Registration Act (and 1951 Resident of Burma Registration Rules), which carries a maximum penalty of two years in jail with hard labour, or under Article 13(1) of the 1947 Burma Immigration (Emergency Provisions) Act) for a jail term of five years.¹²⁷ Under international law, the statelessness of a person resulting from the arbitrary deprivation of nationality cannot be invoked by a State as a justification for the denial of other human rights, including freedom of movement.¹²⁸ The Myanmar State's complex web of discriminatory laws and movement restrictions applied solely to members of the Rohingya group violate international human rights laws. Furthermore, they criminalise the Rohingya for attempting to flee the appalling conditions of life they are subjected to in Rakhine State.

In summary, this section of the report has set out numerous examples of the acts underlying 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part', otherwise known as 'slow death'. In line with the acts enumerated by the ICTY and ICTR, they include denial of proper shelter, subjecting the group to a subsistence diet / lack of proper food, lack of water and proper sanitation facilities, and failing to provide adequate medical care.

With regard to the question of genocidal intent, the 2016 ICTY Karadzic judgment established that evaluating the criterion of probability should take into account the illustrative factors of the actual nature of the conditions of life, the length of time that members of the group were subjected to them, and the characteristics of the group, such as its vulnerability. These illustrative factors are arguably all present.

Firstly, the Myanmar authorities instigated and participated in the 2012 violence which forcibly displaced more than 140,000 already vulnerable Rohingya. Secondly, they then segregated them in overcrowded, flood-prone internment camps where they have remained in arbitrary indefinite detention - in increasingly squalid conditions without adequate shelter - for almost twelve years. Thirdly, the remaining Rohingya population in Rakhine State effectively lives in an open-air prison, subjected to severe restrictions on movement and denied access to humanitarian aid and healthcare, designed to result in their 'slow death'. Finally, the Myanmar authorities criminalise and imprison members of the Rohingya group who attempt to flee the conditions of life inflicted upon them. The proactive attempts by Myanmar authorities to prevent the Rohingya group from escaping these appalling conditions is arguably further indication of genocidal intent to destroy the group in whole or in part.

It is important to recall that the Karadzic judgment establishes that the genocidal act of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part 'does not require proof that the conditions actually led to death or serious bodily or mental harm of members of the protected group. When **“such a result is achieved, the proper charge will be paragraphs (a) or (b)” [killing or serious bodily or mental harm].**' [emphasis added]¹²⁹

Causing serious bodily or mental harm to members of the group

Against the backdrop of the appalling conditions of life inflicted on the Rohingya group in Rakhine State by the Myanmar military, Rohingya men and youth have been targeted for forced recruitment into the Myanmar military since February.¹³⁰ Although exact numbers are difficult to ascertain due to the rolling communications blackout, several thousand Rohingya men and youth are believed to have already been forcibly recruited in Rakhine State. At the time of writing, the forced recruitment campaign targeting Rohingya in Rakhine State is ongoing.¹³¹

125 Democratic Voice of Burma, 'Daily briefing' (19 April 2024) available at <<https://english.dvb.no/thai-academic-says-regimes-days-are-numbered-more-military-personnel-flee-attacks-into-bangladesh/>> accessed 1 June 2024.

126 RFA, 'Junta navy arrests around 80 Rohingya off Myanmar coast' (21 March 2024) available at <<https://www.rfa.org/english/news/myanmar/navy-arrests-rohingya-03212024052444.html>> accessed 1 June 2024.

127 Rohingya Communities Worldwide, 'Joint UPR Submission 2020' 11 [30]. Burma Human Rights Network, 'No-where to Run in Burma: Rohingya trapped between an open-air prison and jail' (26 August 2020).

128 UNFFMM 2018 report op. cit. 119-120 [499-500].

129 ICTY, Prosecutor v. Karadzic, op. cit. [546].

130 BROUK first received reports that IDP Camp Management Committees in Sittwe had been ordered to recruit Rohingya for the Myanmar military on 20 January, a few weeks before the first batch of Rohingya men and youth were taken for conscription.

131 RFA, 'Myanmar junta threatens to block food aid for Rohingyas who refuse military training' (29 May 2024) available at <<https://www.rfa.org/english/news/myanmar/junta-block-food-aid-rohingya-recruitment-05292024163347.html>> accessed 2 June 2024.

In an interview with media outlet Radio Free Asia in early March, former Myanmar military captain and defector Nyi Thuta said, “These [Rohingya] people are being coerced and manipulated in various ways into fighting to the death for the junta, which is facing defeat in [the civil] war.”¹³² BROUK’s President Tun Khin has pointed out, “The Myanmar military has targeted Rohingya for forced recruitment because we are vulnerable. We cannot flee because of the restrictions on movement the junta has imposed on us – Rakhine State is like an open-air prison. The junta views us as expendable. This is their latest heinous way to intensify the genocide against us.”¹³³

Initially the Myanmar military denied conscripting Rohingya. Referring to the Rohingya by the pejorative term ‘Bengali’, the Myanmar military decried conscription of Rohingya as ‘false news’, stating that ‘Bengalis are not even Myanmar citizens’.¹³⁴ Later, after video footage emerged of Rakhine State Minister for Security and Border Affairs Colonel Kyaw Thura visiting a batch of Rohingya forced recruits in military uniforms in Sittwe, the Myanmar military could no longer simply deny it.¹³⁵ Instead, Myanmar military spokesman General Zaw Min Tun denied using Rohingya forced recruits to fight its battles with the Arakan Army in an interview with the BBC, claiming that, “We want to ensure their safety, so we have asked them to help with their own defence.”¹³⁶

Over the past three months, Rohingya men and boys have also been abducted from the refugee camps in Bangladesh by criminal militia gangs Arakan Rohingya Salvation Army (ARSA), Arakan Rohingya Army (ARA) and Rohingya Solidarity Organisation (RSO) and handed over to the Myanmar military.¹³⁷ As many as 1,500 Rohingya refugees are reported to have been taken to Rakhine State to fight for the Myanmar military and its proxies.¹³⁸

This report draws on testimony from Rohingya forced recruits from both Rakhine State and the camps in Bangladesh and their family members, who have been interviewed by media outlets and others including Human Rights Watch. Their accounts paint an extremely disturbing picture of the experiences of Rohingya forced recruits and their families. The names given are pseudonyms.

Coercion, violence, and abductions: Rohingya forced recruitment in Sittwe and Kyaukphyu¹³⁹

Rohingya men and youth in the IDP sites, villages, and ghettoised areas of Sittwe have faced at least three rounds of forced recruitment to the Myanmar military over the reporting period.¹⁴⁰ Forced recruitment even took place in April at the height of the neglected public health crisis which cost the lives of more than 80 children and elderly Rohingya.

From the outset, the campaign has been characterised by threats and coercion. 31-year-old Mohammed told the BBC that in the middle of February, a Baw Du Pha camp leader came to him late at night and told him he would have to do military training. “These are army orders,” he remembers him saying. “If you refuse they have threatened to harm your family.”¹⁴¹ Initially, promises of citizenship documents, rice rations and a salary were also offered to ‘incentivise’ Rohingya to comply with the order. As described under the section **Provisional measure (1) – prevent the commission of genocidal acts under Article II of the Genocide Convention**, promises of citizenship documents were entirely false. Rohingya men in Sittwe have routinely been abducted at gunpoint in raids and taken away for military training.¹⁴²

Rohingya in village, ward, or IDP camp leadership positions in Sittwe have faced numerous threats to force them to comply with the orders to provide young male conscripts, including being threatened at gunpoint and detained overnight in military bases. In March, the Myanmar military blockaded a key road, cutting off access to markets and other IDP camps, and police besieged one of the camps for several

132 RFA, ‘Videos appear to show Myanmar military training Rohingyas’ (11 March 2024) available at <<https://www.rfa.org/english/news/myanmar/training-03112024175743.html>> accessed 4 June 2024.

133 BROUK (2 April 2024) op. cit.

134 Myawady Daily Newspaper, ‘Rakhine State Government’s Spokesperson Rejects an Accusation of Recruitment of Bengalis for Military Service under People’s Military Service Law’ (28 February 2024) available at <<https://infosheet.org/node/6127>> accessed 3 June 2024.

135 Myanmar Witness, post on X (15 March 2024) available at <<https://x.com/MyanmarWitness/status/1768579157707870486>> accessed 3 June 2024.

136 BBC, (8 April 2024) op. cit.

137 South China Morning Post, ‘Myanmar’s Rohingya youths abducted and forced to fight as ‘human shields’ by junta and insurgents’ (25 May 2024) available at <<https://www.scmp.com/week-asia/politics/article/3264034/myanmars-rohingya-youths-abducted-and-forced-fight-human-shields-junta-and-insurgents>> accessed 2 June 2024.

138 Myanmar Now, ‘Three Rohingya killed in Bangladesh refugee camp turf war’ (12 June 2024) available at <<https://myanmar-now.org/en/news/three-rohingya-killed-in-bangladesh-refugee-camp-turf-war/>> accessed 12 June 2024.

139 Detailed information on file with BROUK, unless otherwise referenced.

140 These appear to take place roughly on a monthly basis. Incident refs: SIT-PM2-FR#1-13.

141 BBC (8 April 2024) op. cit.

142 HRW, (9 April 2024) op. cit.

days while they searched for Rohingya IDPs to forcibly remove for conscription. In April, the Myanmar military threatened to burn down Rohingya villages in Sittwe if they did not comply with the forced recruitment order.¹⁴³ Rohingya in the ghettoised urban ward of Aung Mingalar were also forcibly recruited in April.¹⁴⁴

Rakhine State Minister for Security and Border Affairs Colonel Kyaw Thura appears to be overseeing the campaign targeting Rohingya. In early March, video footage emerged of Colonel Kyaw Thura overseeing a group of Rohingya forced recruits in Sittwe. On 24 March, Colonel Kyaw Thura summoned Rohingya village and ward administrators and IDP camp management committee leaders from more than a dozen locations in Sittwe, to insist that they comply with the orders to provide Rohingya conscripts.¹⁴⁵

Around 1,100 Rohingya and Kaman IDPs have been living under indefinite arbitrary detention in Kyauk Ta Lone camp in Kyaukphyu since 2012. In February, a small number managed to flee the conscription order and sought refuge in areas under the control of the Arakan Army. As punishment, Myanmar military officials brutally beat and arbitrarily detained around 40 family members. Around 120 Rohingya forced recruits – including at least five minors - were rounded up by dozens of Myanmar military soldiers and corralled in a warehouse at the camp. They were threatened with being beaten to death if they refused to join military training, before being taken away in military trucks.

A displaced Muslim woman who had three of her relatives taken away told Myanmar Now, “None of the men taken from this camp were attending the military training willingly. It’s just because they can’t escape. Our life is like being a ball in a game.”¹⁴⁶ Some Rohingya were publicly beaten for speaking with the local media about the forced recruitment campaign, and camp residents were reportedly banned from using mobile phones.¹⁴⁷

Tactical Operation Commander Wunna Aung of LIB542 in Kyaukphyu is reportedly responsible for forced recruitment of IDPs from Kyauk Ta Lone camp, as well as numerous abuses against IDPs and their family members during the campaign in February.¹⁴⁸ Other implicated Myanmar military officials include Township Administrator Myo Min Tun, Lt.-Col. Myo Swe Latt, commander of Infantry Battalion 34 and Capt. Han Thu Aung of the Military Security Affairs agency.¹⁴⁹ The Myanmar military’s English-language mouthpiece the Global New Light of Myanmar decried the forced recruitment at Kyauk Ta Lone as ‘fake news’.¹⁵⁰

Due to the Myanmar military’s communications blackout, BROUK has been unable to check if forced recruitment at Kyauk Ta Lone camp has continued beyond the well-documented incident in February.

Night raids, mass abductions: Rohingya forced recruitment in Buthidaung and Maungdaw townships

Starting from February, hundreds of Rohingya men and youth have been forcibly recruited from at least ten villages in Buthidaung township, as well as Buthidaung town itself.¹⁵¹ They were abducted from their homes, villages, markets, some during night raids.

143 Partners Relief & Development, post on Twitter/X (27 April 2024) available at <<https://x.com/PartnersRelief/status/1784227668612763771>> accessed 3 June 2024.

144 Incident ref. SIT-PM2-FR#11.

145 Incident ref. SIT-PM2-FR#6. BROUK, (2 April 2024) op. cit.

146 Myanmar Now, ‘Myanmar army forces Rohingya, Muslim conscripts to work at Chinese-backed development projects in Rakhine State’ (4 April 2024) available at <<https://myanmar-now.org/en/news/myanmar-army-forces-rohingya-muslim-conscripts-to-work-at-chinese-backed-development-projects-in-rakhine-state/>> accessed 4 June 2024.

147 RFA, ‘Scores of captive Muslims forced to undergo military training at displaced camp’ (28 February 2024) available at <<https://www.rfa.org/english/news/myanmar/camp-02282024153748.html>> RFA, ‘Junta troops abduct 40 relatives of Muslim camp residents who fled conscription’ (1 March 2024) available at <<https://www.rfa.org/english/news/myanmar/abduction-03012024174047.html>>, Myanmar Now, ‘Junta subjects young, displaced Muslims to forced military training’ (1 March 2024) available at <<https://myanmar-now.org/en/news/junta-subjects-young-displaced-muslims-to-forced-military-training/>>, Myanmar Now, ‘Nowhere to run’ for Muslims forcibly sent to military training in southern Rakhine State’ (11 March 2024) available at <<https://myanmar-now.org/en/news/nowhere-to-run-for-muslims-forcibly-sent-to-military-training-in-southern-rakhine-state/>> accessed 3 June 2024.

148 Narinjara, ‘Junta officer collects list of 107 young men from Kyauk Ta Lone Muslim camp in Kyaukphyu for military training’ (1 March 2024) available at <<https://www.narinjara.com/news/detail/65e0c5dbad6ead14a509bf22>> and ‘Narinjara, Junta forces took away 117 men from Muslim camp for military training’ (2 March 2024) available at <<https://www.narinjara.com/news/detail/65e2f10c5c57959444834ed3>> accessed 3 June 2024.

149 Myanmar Now, ‘Myanmar junta enforces conscription among displaced Rohingya, detains families of those escaping draft law’ (28 February 2024) available at <<https://myanmar-now.org/en/news/myanmar-junta-enforces-conscription-among-displaced-rohingya-detains-draft-evaders-families/>> accessed 3 June 2024.

150 GNLM, ‘Malicious media accuses Tatmadaw of detaining 107 men in Kyaukpyu’ (29 February 2024).

151 Incident refs: BUT-PM2-FR#1-2.

A 22-year-old unnamed Rohingya man told Human Rights Watch that soldiers abducted him and 30 other young men and boys at gunpoint at about 11 p.m. on February 25 in Buthidaung town. “The youngest boy taken away with us was 15 years old,” he said. “There were three recruits under 18 among us. After we were apprehended and taken to the military battalion, we saw the list of Rohingya who were going to be recruited. All the Rohingya youths in the region were included.”¹⁵² By late March, a military training camp in Buthidaung reportedly held up to 500 Rohingya conscripts.¹⁵³

In March, Rohingya forced recruitment into the Myanmar military was reported in at least three different village tracts in Maungdaw township.¹⁵⁴ BROUK believes the practice is likely much more widespread in the area, but incidents are challenging to document because of the Myanmar military’s communications blackout.¹⁵⁵ In April, Myanmar military officials were reported to have carried out night raids in those same village tracts but did not manage to abduct any Rohingya youth. Since the March orders, Rohingya youth had reportedly been avoiding sleeping in their homes, instead hiding in paddy fields to evade conscription.¹⁵⁶

ARSA are also alleged to be involved in abducting Rohingya and handing them over to the Myanmar military. In May, a Rohingya man from Buthidaung explained to Myanmar Now how his family member, a 24-year-old named Ali, had resorted to hiding to escape conscription. But he was discovered and abducted in a raid. “A group of armed men—ARSA men dressed partially in uniform—raided the house at night and took Ali from where he was hiding,” the Buthidaung man said. “Nobody could stop them from what they were doing. They were armed and they could kill you. They took him to the military’s strategic post in Buthidaung.”¹⁵⁷

By May, Buthidaung town was crowded with tens of thousands of Rohingya IDPs, newly displaced by fierce fighting in and around their villages as well as arson attacks and other serious human rights violations alleged to have been committed by the Arakan Army (described in more detail in the section below, **Violations of international humanitarian law and likely war crimes in Rakhine State**). In early May, Myanmar military soldiers abducted an estimated 250 displaced Rohingya youth from the high school in Buthidaung where they had been taking shelter. Witnesses described distressing scenes of Rohingya youth – including boys aged around 15 – being snatched away from their parents’ grasp for the purposes of forced recruitment. In a separate incident a few days later, Myanmar military soldiers took away around 100 Rohingya youth from ward no. 5 in military trucks.¹⁵⁸

Alleged ARSA, ARA, RSO involvement in abductions, trafficking from Bangladesh refugee camps

As described in the Overview of the current Rakhine State context section, all three of these Rohingya armed militia - Arakan Rohingya Salvation Army (ARSA), Arakan Rohingya Army (ARA), and Rohingya Solidarity Organisation (RSO) - largely function as criminal enterprises and do not represent Rohingya communities. In recent months, ARSA has had a more visible presence in Rakhine State and its direct cooperation with the Myanmar military has become more evident. As described above, ARSA has been involved in forced recruitment of Rohingya to the Myanmar military in Rakhine State. Refugees in the Bangladesh camps have also reported that known ARSA members have been seen traveling from the camps in Bangladesh to Rakhine State in recent months, indicating a higher level of coordination with the Myanmar military.¹⁵⁹

At the same time, ordinary Rohingya refugees have been abducted from the camps and handed over to the Myanmar military in increasingly large numbers, with most recent abductions blamed on RSO or ARA. 23-year-old Abdul recounted his experience to Myanmar Now. Armed RSO members kidnapped him and 13 others – including three minors – from his camp in broad daylight. The group were taken to Maungdaw by boat and handed over to the Myanmar military, after which soldiers took them to a base camp for military training.¹⁶⁰

Zakir, Rohmat Ali, and Yunus were abducted from one of the refugee camps at gunpoint on 3 May by known RSO members and were taken to Border Guard Police Battalion no. 5 at Myo Thu Gyi in

152 HRW, (9 April 2024), op cit.

153 Myanmar Now, (1 April 2024) op. cit.

154 Incident refs: MDW-PM2-FR#2-3.

155 See also, RFA ‘Village heads quit in anger over military recruitment in Myanmar’s Rakhine state’ (19 March 2024) available at <<https://www.rfa.org/english/news/myanmar/resignations-03192024163107.html>> accessed 3 June 2024.

156 Narinjara, ‘Maungdaw’s Muslim youths flee due to junta’s arrest for conscription’ (20 April 2024) available at <<https://www.narinjara.com/news/detail/6623b95b994ca7312b80a2b0>> accessed 3 June 2024.

157 Myanmar Now, (16 May 2024) op cit.

158 Incident refs: BUT-PM2-FR#3-4.

159 USIP, (8 May 2024) op. cit.

160 Myanmar Now (16 May 2024) op. cit.

Maungdaw. According to their accounts, there are more than 500 young men known as the ‘Rohingya military’ at the base, including around 150 abductees trafficked from the refugee camps.¹⁶¹

Mohammad Amin, a Rohingya refugee who was abducted by eight RSO members on 18 May, shared a similar account from the military training centre in Rakhine where he was taken: “There are at least 500 Rohingya at this centre, all divided into small groups of 10 or 15 conscripts. In my group, no one wants this life as a soldier in the Myanmar military. We all desperately want to run away from this place.”¹⁶²

In recent weeks, Rohingya women and youth have strenuously resisted the abduction attempts by RSO and ARA cadres in the refugee camps, armed only with sticks. The Bangladeshi camp police tasked with protecting the refugees are accused of complicity with the criminal militia groups.¹⁶³

During military training: cruel, inhuman or degrading treatment, forced labour

Many Rohingya forced recruits were either prevented from contacting their families during military training or had no means of contacting them. For example, families of Rohingya conscripts in Sittwe described not being allowed to meet with their loved ones while they were undergoing training at a military base in the town. The only contact was through village/ward administrators or camp management committee members, who were ordered by the Myanmar military to provide the forced recruits.¹⁶⁴

Several Rohingya forced recruits have described the gruelling conditions of military training in extreme heat, without adequate food or water.¹⁶⁵ As well as being given weapons training, Rohingya conscripts were subjected to forced labour. Forced recruits in Sittwe were reported to be working as porters inside the military base during their training period.¹⁶⁶ The unnamed 22-year-old man from Buthidaung described to Human Rights Watch how he was forced to dig bunkers and split wood, under constant harassment. He said, “We became weak within a few days. Some recruits fell unconscious. Three of us were bleeding from our mouths and noses. The military officers used abusive language, called us ‘kalar’ [a slur for Muslims], and degraded our mothers and sisters. Those 12 days felt like 12 years of our lives.”¹⁶⁷

Once conscripted, it is very difficult for Rohingya to escape. Several groups of Rohingya forced recruits who fled military training in Sittwe were rounded up and taken back to the military base. During Ramadan evening prayers, soldiers entered a mosque and forcibly removed a group of Rohingya men who had sought refuge there.¹⁶⁸ At least two Rohingya men were severely injured and one was killed in a landmine explosion when they fled military training in Sittwe.¹⁶⁹ A Rohingya forced recruit from northern Rakhine named Abdullah who managed to flee from the military base where he was being trained told the Guardian that he tried to persuade others to escape with him, but they feared their families would be punished in retaliation.¹⁷⁰

After military training: forced labour, cruel, inhuman or degrading treatment, used as cannon fodder

After completing military training, Rohingya conscripts from Kyauk Ta Lone camp in Kyaukphyu township were ordered to dig trenches and perform sentry duty at the entrances to the Kyaukphyu Special

161 Dhaka Tribune, ‘Rohingya families torn apart by conscription’ (17 May 2024) available at <<https://www.dhakatribune.com/bangladesh/rohingya-crisis/346776/rohingya-families-torn-apart-by-conscription>> accessed 3 June 2024.

162 SCMP (25 May 2024) op. cit.

163 Nikkei Asia, ‘Rohingya refugees signal despair and hope in world’s most crowded camp’ (29 May 2024) available at <<https://asia.nikkei.com/Spotlight/The-Big-Story/Myanmar-s-Rohingya-refugees-signal-despair-and-hope-in-overcrowded-camp#>> and Shafiur Rahman posts on Twitter/X 20 May <<https://x.com/shafiur/status/1792609074493755574>> and 21 May <<https://x.com/shafiur/status/1792895906360037509>> accessed 3 June 2024.

164 Incident ref: SIT-PM2-FR#4a-c

165 Narinjara, ‘Two Rohingya youths who escaped Myanmar military training arrested by Bangladeshi police’ (1 May 2024) available at <<https://www.narinjara.com/news/detail/6631d63e4e6fcc1c96460c1a>> accessed 3 June 2024, Dhaka Tribune, (17 May 2024) op. cit., HRW, (9 April 2024) op. cit.

166 Incident ref: SIT-PM2-FR#1b.

167 HRW (9 April 2024) op cit.

168 Incident ref: SIT-PM2-FR#10. BROUK (2 April 2024) op cit.

169 Incident ref: SIT-PM2-FR#3.

170 The Guardian, ‘Rohingya being forcibly conscripted in battle between Myanmar and rebels’ (14 May 2024) available at <<https://www.theguardian.com/global-development/article/2024/may/14/rohingya-being-forcibly-conscripted-in-battle-between-myanmar-and-rebels>> accessed 4 June 2023.

Economic Zone and deep sea port project, a key Chinese investment in Myanmar.¹⁷¹ Other Rohingya conscripts from the camp were reported to have been deployed to guard outposts where soldiers in Kyaukphyu are based.¹⁷² Sporadic but intense fighting has taken place in the township in recent months.¹⁷³

It has been widely reported that Rohingya conscripts have routinely been sent to the frontlines since early March. The Rohingya conscripts receive minimal military training, which sometimes lasts only a few days.

Abdul, who was abducted from his refugee camp by RSO and handed over to the Myanmar military in Maungdaw, managed to escape. After just four days of basic training, he was sent into battle to fight the Arakan Army. He told Myanmar Now, “After the whole night of walking through jungle, mountains, and villages, I made it back to my camp.” However, he worries that RSO will track him down and take him back to Rakhine State to fight again. He is making plans to flee by boat from the refugee camp to a third country, a perilous journey that claims the lives of hundreds of Rohingya every year.¹⁷⁴

Mohammed, who was forcibly recruited from Baw Du Pha IDP camp in Sittwe, was sent to the frontlines in Rathedaung. He fought there for 11 days, until he was injured and brought back to Sittwe for treatment. He witnessed several Rohingya conscripts being killed by artillery. The Arakan Army released photos from the battle, showing the corpses of several Rohingya. Mohammed told the BBC, “While I was in the middle of the battle I was terrified the whole time. I kept thinking about my family. I never thought I would have to go to war like that. I just wanted to go home...I’m afraid they will call me again. This time I came back because I was lucky, but next time I am not sure what will happen.”¹⁷⁵

The mother of a Rohingya conscript who was killed told Human Rights Watch, “They tricked my son into the military. They took him to do electrical work, then forced him into the training. Now he’s dead because he was sent to war. They didn’t let us see the bodies. I couldn’t touch my son one last time. When he was taken away, his wife and I followed. He was held at a nearby cantonment for a few hours and we were able to talk to him from outside the fence. Then they were brought to a car. That was the last talk. He was crying.”¹⁷⁶

Rohingya forced recruits who managed to escape cited the knowledge of their impending death on the battlefield as the reason for risking their lives to flee from the Myanmar military.

Abdullah told the Guardian, “I saw lots of dead bodies at the base and if the soldiers who had training for six months were being killed in fighting, how could we fight the rebels after just 10 days of training? It was impossible. I was sure we would die fighting.”¹⁷⁷

Another unnamed Rohingya conscript explained that he decided to flee after learning that his training cohort would be taken to a military post surrounded by AA fighters. “A hundred well-trained SAC troops had already failed to eliminate them,” the man recounted. “We asked the commanding officer, ‘Why you are sending only 50 of us, who don’t have any knowledge about war, to do what your well-trained troops could not?’ I realized that the SAC wanted us to be killed.”¹⁷⁸

Given the scale of the Myanmar military’s ongoing forced recruitment campaign targeting Rohingya and the intensity of the conflict in Rakhine State, BROUK fears that hundreds of Rohingya conscripts have already been killed. Hundreds more are at risk, amidst reports that Rohingya forced recruits are being used in the Myanmar military’s current battles with the Arakan Army in Maungdaw in northern Rakhine State, as well as Thandwe to the south.¹⁷⁹ BROUK is also extremely concerned about the fate of Rohingya conscripts in Sittwe, who will likely be called upon to defend the city in the event of an attack by the AA.

171 Myanmar Now, ‘Myanmar army forces Rohingya, Muslim conscripts to work at Chinese-backed development projects in Rakhine State’ (4 April 2024) available at <<https://myanmar-now.org/en/news/myanmar-army-forces-rohingya-muslim-conscripts-to-work-at-chinese-backed-development-projects-in-rakhine-state/>> accessed 4 June 2024.

172 Narinjara, ‘50 Muslims from Kyauk Ta Lone IDP camp armed and sent to Kyaukphyu outposts’ (28 March 2024) available at <<https://www.narinjara.com/news/detail/6605a109f8c9f2f5672fa2ff>> accessed 4 June 2023.

173 Myanmar Now, ‘Fighting breaks out near Chinese-owned pipeline in Kyaukphyu, Rakhine State’ (2 February 2024) available at <<https://myanmar-now.org/en/news/fighting-breaks-out-near-chinese-owned-pipeline-in-kyaukphyu-rakhine-state/>> and VOA, ‘Major rebel push in Myanmar closes in on pivotal Chinese megaproject’ (27 April 2024) available at <<https://www.voanews.com/a/major-rebel-push-in-myanmar-closes-in-on-pivotal-chinese-megaproject/7587492.html>> accessed 4 June 2024.

174 Myanmar Now (16 May 2024) op cit.

175 BBC (8 April 2024) op cit.

176 HRW (9 April 2024) op cit.

177 The Guardian (14 May 2024) op cit.

178 USIP (8 May 2024) op cit.

179 Narinjara, ‘Facing casualties in Thandwe, junta forces deploy Muslims from Sittwe and conscripts from Ayeyarwady’ (14 May 2024) available at <<https://www.narinjara.com/news/detail/66428a3e213a55bc63322e5a>> accessed 4 June 2024.

As the Myanmar military has systematically stripped Rohingya of citizenship, leaving them without the protections and rights that citizenship bestows, there is no legal basis for their conscription. As noted by Human Rights Watch, conscription without a legal basis is a form of arbitrary detention in violation of international human rights law. The treatment of forcibly recruited Rohingya likely amounts to cruel, inhuman, or degrading treatment. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which Myanmar ratified in September 2019, prohibits the forced recruitment, conscription, or use of anyone under 18 in armed conflict.¹⁸⁰

In addition, using, conscripting, or enlisting children under the age of 15 in an internal armed conflict is a war crime under the Rome Statute of the International Criminal Court.¹⁸¹ The Pre-Trial Chamber in the Lubanga case at the International Criminal Court determined that the term ‘conscripting’ refers to a forcible act. The mental element of the crime – that the perpetrator knew or should have known that such person or persons were under the age of 15 years - provides for situations where the perpetrator does not know the given child’s age due to a failure to exercise due diligence in the circumstances.¹⁸²

Furthermore, the treatment of forcibly recruited Rohingya may constitute the genocidal act ‘causing serious bodily or mental harm to the members of the group’ when there is intent to destroy the group in whole or in part. This conduct underpinning this genocidal act may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or **inhuman or degrading treatment** [emphasis added].¹⁸³ The ICTY case law has further established that threats of death and ‘knowledge of impending death’ are examples of serious mental harm.¹⁸⁴

Killing members of the group

As described above, Rohingya men and youth forcibly recruited by the Myanmar military and sent to the frontlines in Rakhine State to be used as cannon fodder may number in the hundreds.

Moreover, the ever-deteriorating conditions of life inflicted upon Rohingya by the Myanmar military in the camps and villages in Sittwe have resulted in the preventable deaths of at least 86 Rohingya, mostly children, from diarrhoeal disease. In accordance with the Karadzic case law, such killings may amount to genocidal acts when intent to destroy the group in whole or in part can be inferred from the context and the actions of the perpetrators. Other preventable deaths over the reporting period due to the Myanmar military’s obstruction of humanitarian aid to Rohingya communities in central and northern Rakhine State may yet come to light.

Provisional measure (3) – prevent the destruction of and ensure the preservation of evidence

‘The Republic of the Union of Myanmar shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide.’

In its previous briefings, BROUK has highlighted how the Myanmar military has continued to build infrastructure on Rohingya land razed during the ‘clearance operations’ of 2016-2017, including on sites of alleged mass killings and other serious crimes. BROUK has been unable to follow up on these developments, due to the intensity of the conflict and the rolling communications blackout.

The Myanmar State is obliged to comply with this provisional measure at all times. This includes during situations of internal armed conflict, as well as with reference to fresh allegations of genocidal acts since the provisional measures were ordered in January 2020.

Provisional measure (4) – submit a report to the ICJ on all measures taken to implement the order

‘The Republic of the Union of Myanmar shall submit a report to the Court on all measures taken to give effect to this Order within four months, as from the date of this Order, and thereafter every six months, until a final decision on the case is rendered by the Court.’

180 HRW (9 April 2024) op. cit.

181 Article 8(2)(e)(vii). Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 1998, 2187 UNTS 90, U.N. Doc. A/CONF.183/9 (2002).

182 ICC, Prosecutor v. Lubanga, Pre-Trial Chamber I, Decision on the Confirmation of Charges,

29 January 2007, ICC-01/04-01/06 [246-247], [348].

183 International Criminal Court, Elements of Crimes, (2011) Article 6(b).

184 Prosecutor v. Zdravko Tolimir, Case No. IT-05-88/2-A, ICTY A. Ch., Judgment, 8 April 2015 [206].

At the time of writing, it is unclear whether the SAC has met the 23 May 2024 deadline to submit its latest report on compliance with the provisional measures order.

The extensive evidence and analysis of the Myanmar military's breaches of the ICJ's provisional measures order presented in this report underscore – yet again – the urgent need for international scrutiny and transparency in the reporting process on compliance with provisional measures to the Court in this case. As the situation currently stands, Myanmar can breach the provisional measures without facing any consequences.

Under the Rules of the Court, the ICJ may of its own accord either issue further provisional measures or amend the existing order by providing more specific instructions.¹⁸⁵ If Myanmar were legally obliged to make its compliance reports public as part of its erga omnes obligations to the international community on the prevention and punishment of genocide, this would give UN member states compelling reason to urge the UN Security Council to exercise its Chapter VII mandate and adopt a binding resolution on Myanmar in pursuit of peace and security in the country and wider region.¹⁸⁶ Such a resolution should include referring the situation in Myanmar to the International Criminal Court.

The next section of this report examines violations of international humanitarian law and likely war crimes committed in Rakhine State over the reporting period 13 November 2023 – 23 May 2024.

PART 3: Violations of international humanitarian law and likely war crimes in Rakhine State

International humanitarian law (known as the rules of war) applies to the internal armed conflict in Rakhine State. One of the main purposes of international humanitarian law (IHL) is to protect non-combatants, people who are not taking part in hostilities – specifically, civilians, health workers and aid workers. Fundamental rules applicable in internal armed conflicts include the principle of distinction between combatants and civilians and between military and civilian objects. IHL requires all parties to a conflict to take precautionary measures to minimise harm to civilians and civilian objects, which includes providing effective warnings to civilian populations. Direct attacks against civilians and civilian objects are prohibited. Indiscriminate attacks (attacks which strike military objectives and civilians or civilian objects without distinction) are also prohibited. Reprisal attacks against civilians are prohibited in all circumstances, regardless of the behaviour of the other party to the conflict. All parties to internal armed conflicts must comply with IHL. Perpetrators of IHL violations may be held criminally liable under national and international law.

War crimes are serious violations of international humanitarian law. Specific acts which are prohibited in the context of an internal armed conflict are described in Articles 8(2)(c) and 8(2)(e) of the Rome Statute of the International Criminal Court.¹⁸⁷ Such acts include (but are not limited to) murder, torture, cruel treatment, extrajudicial executions, sexual violence, rape, taking hostages, using, conscripting and enlisting children under the age of 15, pillaging, attacking civilians, and attacking protected objects. When perpetrated in the context of an internal armed conflict and with the necessary intent and knowledge of both the act and context, these acts amount to war crimes.¹⁸⁸

The rolling communications blackout in Rakhine State makes it very difficult for BROUK and other human rights organisations to compile comprehensive information about civilian deaths and injuries during the current conflict. Numbers cited here only include Rohingya civilian casualties that BROUK

185 See International Court of Justice Rules of Court adopted on 14 April 1978 and entered into force on 1 July 1978, Rules 75 and 76. See also Prachiti Venkatraman and Ashley Jordana, UK Human Rights Blog, Myanmar's Compliance with the ICJ Provisional Measures Order & the Road Ahead (3 September 2020) available at <<https://ukhumanrightsblog.com/2020/09/03/myanmars-compliance-with-the-icj-provisional-measures-order-the-road-ahead/>> accessed 14 May 2024 and USHMM, Report#2, op.cit. 5. A change to the Internal Judicial Practice of the Court provided for the establishment of an ad hoc committee comprised of three judges to assist the Court in monitoring the implementation of provisional measures. The ad hoc committee reports periodically to the Court and can recommend potential options to the Court, which should include a recommendation to make Myanmar's reports public. ICJ Press Release, 'Adoption of a new Article 11 of the Resolution concerning the Internal Judicial Practice of the Court, on procedures for monitoring the implementation of provisional measures indicated by the Court' (21 December 2020) No. 2020/38.

186 Article 77 of the Rules read with Article 41(2) of the Court's Statute provides that any provisional measures ordered by the Court are to be communicated to the UNSC. To date there is no indication that the reports on compliance with the orders have been provided to the UNSC Erin Farrell Rosenberg, John Packer, Fernand de Varennes, 'Provisional Measures in The Gambia v. Myanmar Case Before the ICJ: The Case for Making Myanmar's Report Public' (22 May 2021), 11.

187 Articles 8 (2) (c) (i-iv) and 8 (2) (e) (i-xv). Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 1998, 2187 UNTS 90, U.N. Doc. A/CONF.183/9 (2002).

188 Rome Statute, Article 30. See also International Criminal Court, Elements of Crimes, (2011) Articles 8(2)(c) and 8(2)(e).

has been able to confirm. These figures likely only represent a fraction of the total number of Rohingya civilians killed and injured between 13 November 2023 to 23 May 2024.

A timeline of the current conflict is presented below, followed by a more detailed description of events for townships where BROUK has been able to collect information.

Timeline of the conflict and key events in Rakhine State 13 November 2023 – 23 May 2024

Disclaimer: this timeline aims to contextualise the information contained in this report about the situation of the Rohingya in Rakhine State, whom the ICJ's provisional measures order seeks to protect. It does not claim to be a comprehensive overview of the conflict. The dates listed are based on publicly available information and official Arakan Army announcements. It should be noted that reports from the ground indicate that Kyauktaw and Buthidaung townships are believed to have been seized by the Arakan Army earlier than announced.

November 2023

On 13 November the Arakan Army attacks SAC positions in Rathedaung and Minbya townships, ending a year-long ceasefire.

Fighting also takes place in Kyauktaw, Pauktaw and Kyaukphyu townships. SAC blocks all major roads and waterways in Rakhine State.

December 2023

The Arakan Army launches attacks in Mrauk U. Pauktaw comes under heavy artillery fire from the SAC.

January 2024

Fighting intensifies in Rakhine State from 11 January onwards, after the Three Brotherhood Alliance and SAC agree a temporary truce in northern Shan State but not Rakhine State.

SAC cuts off electricity and telecommunications in Buthidaung & Maungdaw. Rolling communications blackouts imposed across Rakhine State.

Fierce clashes take place in Mrauk U, Minbya, Kyauktaw, Buthidaung and Rathedaung. On 24 January, the Arakan Army claims control over Pauktaw.

February 2024

On 10 February, the SAC announces enforcement of 2010 People's Military Service Law.

The SAC suffers heavy losses in Rakhine State. On 6 February, the Arakan Army seizes control of Minbya. On 13 February, the Arakan Army announces full control of Kyauktaw township, followed by Minbya and Mrauk U two days later.

In mid-February, the first round of forced recruitment of Rohingya in Kyaukphyu, Sittwe, and Buthidaung is reported.

On 28 February, the Myanmar military's Burmese-language mouthpiece the Myawady Daily Newspaper issues a denial of Rohingya conscription, saying, 'Bengalis are not even Myanmar citizens'.

March 2024

On 4 March, the Arakan Army announces it has seized Ponnagyun township, followed by Ramree township on 11 March and Rathedaung township on 17 March.

On 8 March, video footage emerges of Rakhine State Minister for Security and Border Affairs Colonel Kyaw Thura overseeing a group of Rohingya forced recruits in Sittwe.

On 19 March, Rohingya are coerced into taking part in an anti-Arakan Army protest orchestrated by the Myanmar military in Buthidaung. Similar protests follow days later in Sittwe.

Forced recruitment of Rohingya begins in Maungdaw township, as it continues in Sittwe.

On 25 March, the Arakan Army issues a statement about the Myanmar military-orchestrated anti-AA protests, as well as the Myanmar military's use of Rohingya conscripts in the battle for Rathedaung, using the term 'Bengali'.

April 2024

Fighting intensifies in Buthidaung and Maungdaw townships.

On 21 April, reports emerge of the Arakan Army forcibly recruiting Rohingya in Buthidaung township. On 26 April, the Arakan Army imposes a curfew in Buthidaung & Maungdaw townships.

Forced conscription of Rohingya in Sittwe continues. Rohingya are again coerced to take part in anti-AA protests in Sittwe. At least 86 Rohingya die from diarrhoeal diseases, most of them children.

May 2024

On 5 May, another coerced anti-Arakan Army protest takes places in Buthidaung town.

On 6 May, the Arakan Army announces it has captured MOC 15 in Buthidaung township in a video statement. The AA's commander-in-chief mocks Rohingya conscripts on X.

On 17 May, the Arakan Army drives Rohingya out of Buthidaung downtown area, looting and setting fire to homes. Reports emerge of alleged atrocity crimes by the Arakan Army in the days and weeks leading up to the attack.

On 18 May, the Arakan Army announces it has taken over Buthidaung township. Fighting continues in Maungdaw township.

Mrauk U township

Around 40,000 Rohingya live in Mrauk U township, according to estimates.¹⁸⁹ Fierce fighting between the Arakan Army and the Myanmar military took place in the area in December 2023 and January 2024. Four Rohingya civilians were reported to have been killed and 16 injured due to the SAC's artillery shelling and airstrikes on three different Rohingya villages on 28 December.¹⁹⁰ Four Rohingya civilians were also reported to have been abducted by Myanmar military soldiers fleeing Myaung Bway police station and used as human shields.¹⁹¹ BROUK has been unable to verify what has happened to the four men, due to the communication blackouts.

Kyauktaw township¹⁹²

Approximately 65,000 Rohingya live in Kyauktaw township, mainly in Rohingya villages along the banks of the Kaladan river. Fighting intensified in the township from 11 January 2024 onwards, after the AA reportedly attacked the SAC's LIB539 with drone bombs. The SAC responded with indiscriminate shelling, resulting in civilian casualties, including two Rohingya who were injured. On 20 January, the AA launched its attack on Military Operation Command 9 (MOC 9), which is right next to Rohingya villages. It was finally captured by the Arakan Army on 7 February, according to local reports from the ground.¹⁹³

From the start of its assault on MOC 9, the Arakan Army took up positions inside or very near Rohingya villages, turning them into battlegrounds. According to information received by BROUK, they did not warn civilians in advance to let them get out of harm's way. Rohingya in one village described waking up to find that AA soldiers were digging trenches in their village. Fighting broke out immediately. Five Rohingya were killed in this village, including three children. Rohingya IDPs who fled upriver described watching their village come under attack from SAC jet fighters and helicopters day after day until it was reduced to ashes.

The battle for MOC 9 between was very fierce, involving SAC ground, air, and naval troops. During this battle, seven Rohingya villages came under attack. Thousands of Rohingya IDPs temporarily sought shelter in another Rohingya village further north of the fighting but returned home after the AA captured MOC 9 on 7 February. The AA is reported to have attacked and sunk three naval vessels retreating from MOC 9 on 8 February.¹⁹⁴

On 9 February, an SAC fighter jet bombed Ambari Rohingya village in Kyauktaw township late at night, killing four Rohingya civilians including two children, and injuring 25. There was no fighting happening in the area at the time and the Arakan Army did not have a presence nearby. Survivors of the attack fled to other Rohingya villages in the township area, including the large Rohingya village of Paik Thei just south of Kyauktaw town. Paik Thei village was attacked by an SAC fighter jet two days later, late at night on 11 February. 12 Rohingya civilians, including two children, were killed and 16 were injured. BROUK has obtained video footage of the immediate aftermath of this attack. This distressing footage clearly shows that Rohingya civilians were targeted in their own homes. Again, there was no fighting happening in the area at the time.¹⁹⁵ Overall, at least 33 Rohingya civilians were killed and dozens more were injured during the fighting in Kyauktaw township.

189 BROUK, 'Prevent the Unthinkable' (2 December 2022).

190 RFA, 'Junta raid kills 10 Rohingyas, injures 17 in Myanmar's Rakhine state' (29 December 2023) available at <<https://www.rfa.org/english/news/myanmar/junta-rohingya-rakhine-12292023060131.html>> Narinjara, '4 killed, 16 injured in Myaung Bway conflict: Three Brotherhood Alliance' (30 December 2023) available at <<https://www.narinjara.com/news/detail/658fa9d91133a44f18098fd3>> accessed 6 June 2024.

191 Narinjara, 'Fleeing soldiers from Myaung Bway police station open fired on Muslim village taking 4 villagers as human shields' (31 December 2023) available at <<https://www.narinjara.com/news/detail/659057e45850911a36fdbee>> accessed 6 June 2024.

192 Detailed information on file with BROUK, unless otherwise referenced. With the exception of information that is already in the public domain, village names have been redacted to protect Rohingya communities from reprisal attacks.

193 Myanmar Now also reported 7 February as the date the AA seized MOC 9 and effectively took control of Kyauktaw township. See Myanmar Now, 'AA seizes last junta base in Minbya Township, Rakhine State' (28 February 2024) available at <<https://myanmar-now.org/en/news/aa-seizes-last-junta-base-in-minbya-township-rakhine-state/>> accessed 7 June 2024.

194 Myanmar Now, 'AA seizes Kyauktaw township, sinks another junta ship in Rakhine State' (15 February 2024) available at <<https://myanmar-now.org/en/news/aa-seizes-kyauktaw-township-sinks-another-junta-ship-in-rakhine-state/>> accessed 7 June 2024.

195 BROUK, 'BROUK Condemns Junta's Airstrikes Targeting Vulnerable Rohingya Civilians In Burma's Rakhine State, Calls For Urgent UN Security Council Meeting' (21 March 2024) available at <www.brouk.org.uk/brouk-condemns-juntas-airstrikes-targeting-vulnerable-rohingya-civilians-in-burmas-rakhine-state-calls-for-urgent-un-security-council-meeting/> accessed 7 June 2024.

Initially, Rohingya communities reported that they were not facing any problems from the Arakan Army after their takeover of the township. However, by late April BROUK received reports of forced conscription orders by the AA, as well as arbitrary taxation demands. The AA allegedly issued threats that if Rohingya villages did not meet their quota demands for forced recruits, the AA would consider them to be ARSA supporters. Rohingya youth in Kyauktaw are attempting to flee the AA recruitment orders, amidst credible - but as yet unverified - reports of AA involvement in human trafficking.¹⁹⁶

Minbya township

According to information collected by BROUK, there are 15 Rohingya villages in Minbya township with an estimated population of 40,000. After fierce fighting in late January and early February, by 6 February the Arakan Army had seized control over Minbya township.¹⁹⁷ On 18 March, a fighter jet attack by the Myanmar military on Thar Dar Rohingya village in Minbya, Rakhine State, killed at least 22 Rohingya civilians, half of them children. At least 30 more were seriously injured.¹⁹⁸ There was no fighting taking place at the time.

In April, the Arakan Army/United League of Arakan is reported to have imposed movement restrictions on Rohingya communities in Minbya, effectively limiting their access to markets and to healthcare. The move was said to be in response to anger at the coerced anti-Arakan Army protests in Sittwe and Buthidaung. The Arakan Army is also alleged to have forcibly recruited Rohingya from at least eight Rohingya villages, for AA military training that began on 30 April.¹⁹⁹

Buthidaung township²⁰⁰

Buthidaung township is home to the largest remaining Rohingya population in Rakhine State, estimated at 260,000 people. Rohingya communities in the area have been caught in the middle of the conflict since the renewed outbreak of hostilities. In the first two months of the war, at least seven Rohingya civilians were killed – including four children – and more than a dozen were seriously injured by the SAC’s indiscriminate shelling of two villages. Another Rohingya civilian was shot and severely injured by Myanmar military soldiers.²⁰¹ In early January, BROUK received reports that three Rohingya civilians were shot and killed by members of ARSA.²⁰²

The war in Buthidaung township escalated in late January, and at the same time the SAC cut off electricity and telecommunications in the township. Collecting and verifying detailed information – particularly about civilian casualties – has become increasingly challenging, especially as the conflict has intensified in the township in recent months. BROUK is concerned that significant numbers of Rohingya civilians may have lost their lives in Buthidaung township.

One incident that has been well documented is what happened at Hpon Nyo Leik village.²⁰³ BROUK believes that this incident is emblematic of the types of violations experienced by Rohingya communities in Buthidaung township during the conflict. On 24 January, several hundred Arakan Army soldiers dug trenches around the village and took up positions, without warning villagers in advance. The next day, SAC forces began a four-day assault of the village, using heavy weaponry and helicopter gunships. At least 12 Rohingya civilians are believed to have been killed, and dozens more were injured.

In February, a Rohingya child was killed and at least three adults were seriously injured when the Myanmar military indiscriminately shelled a Rohingya village to the west of Buthidaung town.²⁰⁴ By late March, the Arakan Army intensified its attacks on various SAC positions in Buthidaung township. By early April, BROUK started to receive reports that several thousand Rohingya had fled the fighting and sought refuge in the Buthidaung downtown area. Thousands more sought refuge in the town over the

196 Incident ref: KYA-AA#4. See also 18 May posts on Twitter/X <<https://x.com/Greendorje/status/1791828890123726883>> and <<https://x.com/PaulGreening16/status/1791897519989076375>> accessed 7 June 2024.

197 Myanmar Now, ‘Myanmar military loses control of Minbya and major outpost on Bangladesh border’ (7 February 2024) available at <<https://myanmar-now.org/en/news/myanmar-military-loses-control-of-minbya-and-major-outpost-on-bangladesh-border/>> accessed 6 June 2024.

198 BROUK, (21 March 2024) op cit.

199 Incident ref: MBY-AA#1.

200 Detailed information on file with BROUK, unless otherwise referenced.

201 Incident refs: BUT-ARM-CON#1A-C, BUT-ARM-CON#2A-B.

202 Incident ref: BUT-ARM-CON-ARSA#1.

203 The short report written by Fortify Rights is very similar to information collected by BROUK from local sources. See, Fortify Rights, ‘ICC Member States: Ensure Accountability for Attacks on Civilians in Myanmar’ (13 February 2024) available at <<https://www.fortifyrights.org/mya-inv-2024-02-13/>> accessed 7 June 2024.

204 Incident ref: BUT-ARM-CON#6.

following weeks, as Rohingya civilians were reported to have been killed by SAC shelling and airstrikes on their villages. In mid-April, reports emerged of the Myanmar military, along with Rohingya conscripts and members of ARSA, committing arson attacks on Rakhine homes in Buthidaung, which also destroyed the Médecins Sans Frontières office. BROUK and other Rohingya organisations wholeheartedly condemned these attacks.²⁰⁵

Throughout this period, BROUK received reports of forced recruitment, mass abductions, torture, looting, arson attacks, and killings of Rohingya civilians by the Arakan Army. In the first week of May, the Arakan Army is alleged to have stepped up its arson attacks on Rohingya villages, forcibly displacing thousands more Rohingya civilians. Independent analysis of available satellite imagery corroborates these accounts.²⁰⁶ On 4 May, the Arakan Army is accused of shelling High School No. 1 in Buthidaung town, where Rohingya IDPs had sought refuge. Three Rohingya civilians are believed to have been killed. In a similar attack alleged to have been carried out by the AA on Buthidaung hospital on 11 May, three Rohingya civilians were killed. Dozens were injured in these attacks. BROUK has also received credible – but as yet unverified – reports of mass killings of Rohingya civilians alleged to have been carried out by the Arakan Army in multiple villages over the first two weeks of May, as well as allegations of mass abduction and suspected rape of Rohingya women and girls by the AA in at least two villages over the same period.

BROUK is gravely concerned that these alleged acts may have been committed as a form of collective punishment by the Arakan Army against Rohingya communities for their perceived support of the Myanmar military and/or Rohingya criminal militia gangs like ARSA, ARA and RSO. In fact, Rohingya communities are caught in the middle. They are facing violations from all sides and are extremely vulnerable.

On the morning of 17 May, fierce fighting between the AA and Myanmar military took place in the Rohingya village of Tat Yar to the south of Buthidaung town. Several Rohingya civilians were killed and injured, while others fled to Buthidaung downtown for safety. The Arakan Army issued an order for all Rohingya to leave Buthidaung downtown by 10am on 18 May.

Tens of thousands of Rohingya IDPs were seeking shelter in Buthidaung downtown and refused to leave because they had nowhere else to go. Before the deadline had expired, Arakan Army soldiers surrounded the town. According to eyewitnesses, they fired shots overhead to frighten people out of their homes, then looted them before setting fire to them. Rohingya were forced to flee and seek shelter on the main road and in nearby paddy fields for many hours. They were then directed by the Arakan Army to go to villages such as Hpon Nyo Leik and Sein Hnyin Pyar. Residents in Buthidaung downtown reported that Myanmar army soldiers, their proxies, and Rohingya forced recruits had already retreated from Buthidaung before the attacks on the town took place.

Tens of thousands of Rohingya are internally displaced in areas of Buthidaung township under the control of the Arakan Army. All the IDPs – including vulnerable Rohingya children, women, and the elderly – are in desperate need of food, shelter, and medical care.²⁰⁷

Maungdaw township²⁰⁸

Armed clashes have taken place in the township since the start of renewed hostilities. In December, a Rohingya civilian was killed in crossfire between the Arakan Army and Border Guard Police.²⁰⁹ Since January, collecting and verifying information in Maungdaw township has also been challenging after the Myanmar military cut off electricity and telecommunications in the area. BROUK received reports that the AA shot and injured six Rohingya fishermen in January, and abducted and allegedly killed three Rohingya youths in March.

In April, the war intensified in the Maungdaw area as the Arakan Army attacked Border Guard Police (BGP) Battalion outposts – often built next to Rohingya villages - and the SAC responded with indiscriminate shelling and retaliatory airstrikes. Suspected members of ARSA are reported to have been seen at various BGP outposts, alongside SAC forces.

On 17 April, five Rohingya civilians were massacred in the hamlet of Ah Bu Gyar. The Arakan Army is

205 Joint Statement, (21 May 2024) op cit.

206 See for example, ASPI, ‘They left a trail of ash: decoding the Arakan Army’s arson attacks in the Rohingya heartland’ (13 June 2024) available at <<https://www.aspistrategist.org.au/they-left-a-trail-of-ash-decoding-the-arakan-armys-arson-attacks-in-the-rohingya-heartland/>> accessed 13 June 2024.

207 BROUK, (30 May 2024) op cit.

208 Detailed information on file with BROUK, unless otherwise referenced.

209 Incident ref: MDW-ARM-CON#1.

widely believed to be responsible for their deaths. The AA are reported to have occupied the village and launched an attack on a nearby BGP outpost. After they had concluded their operation, they allegedly scattered hand grenades and other unexploded ordnance around the village before leaving. When the Rohingya villagers returned, two young children were killed when one of the grenades exploded. In late April and May, BROUK also received reports of AA abducting Rohingya civilians from their villages in at least three separate incidents.

On 6 May, the AA launched attacks on SAC and/or ARSA positions in Paung Zar, Ka Nyin Taw and La Baw Zar village tracts, forcing thousands of Rohingya civilians to flee. The SAC responded with indiscriminate shelling and airstrikes. Several Rohingya civilians are believed to have been killed.

A few days later, video footage emerged online of Rohingya in Myanmar military uniforms setting fire to Rakhine homes in Maungdaw township. BROUK's President Tun Khin immediately denounced their actions, writing on Twitter/X, "I totally condemn the actions we see in the video circulating. These men appear to be Rohingya conscripts in the Myanmar military uniform. We do not know the exact circumstances. But we can say with 100 percent certainty that their words and actions do not represent the Rohingya community."²¹⁰

At the time of writing, the Bangladesh border remains closed to Rohingya. Amid reports that 4,000 Rohingya IDPs²¹¹ have fled to an area of the Naf River close to the border, BROUK is extremely concerned about their fate along with thousands of other Rohingya who have been internally displaced within Maungdaw township.

Sittwe township²¹²

Around 110,000 Rohingya are trapped in Sittwe township, confined in conditions of indefinite arbitrary detention by the Myanmar military. In addition to facing forced recruitment, coerced participation in anti-Arakan Army protests orchestrated by the Myanmar military, and a serious public health crisis, Rohingya civilians have been killed and injured in several shooting and shelling incidents over the reporting period.

In January and February, members of the Arakan Liberation Party (ALP), which is allied with the Myanmar military, are believed to have been responsible for shooting incidents in ghettoised areas of Sittwe where Rohingya are confined. Several Rohingya were injured in the attacks. In March, ALP members are reported to have kidnapped a 4-year-old Rohingya child and held her for ransom. She was later found dead nearby the ALP office.²¹³

In February, a Rohingya herdsman from a coastal village was killed by a stray shell believed to have been fired by SAC forces.²¹⁴ Three Rohingya were among the 13 civilians killed in the SAC's heavy artillery attack on Sittwe's municipal market on 29 February.²¹⁵ In March, five Rohingya civilians, including two children, were killed and several were seriously injured when Police Battalion No.12 shelled Kathe, a Rohingya neighbourhood next to Aung Mingalar in Sittwe.²¹⁶ In a separate incident, four Rohingya civilians were reported to have been killed in a grenade attack on their rural village by police. In May, a Rohingya woman was shot dead by Myanmar military soldiers at Manzi junction.

Tensions are running high in Sittwe amid anticipation of a major battle for control over the city. According to local media reports, the Myanmar military has planted landmines around the city.²¹⁷ BROUK is gravely concerned that Rohingya forced recruits from the Sittwe area will be used by the Myanmar military as cannon fodder in the event of an AA assault on the city.

The serious violations of international humanitarian law documented by BROUK and others since 13 November 2023 likely constitute war crimes by both the Myanmar military (and its proxies) and the Arakan Army. These include – but are not limited to - murder, torture, cruel treatment, extrajudicial executions, sexual violence, rape, taking hostages, using, conscripting and enlisting children, pillaging, attacking civilians, and attacking protected objects.

210 See <<https://x.com/tunkhin80/status/1789974413292556587>> accessed 7 June 2024.

211 Spokesperson for the UN High Commissioner for Human Rights (24 May 2024) op cit.

212 Detailed information on file with BROUK, unless otherwise referenced.

213 Incident refs: SIT-ALP#1-3.

214 Incident ref: SIT-ARM-CON#1.

215 Incident ref: SIT-ARM-CON#2

216 BROUK (21 March 2024) op cit.

217 DMG, 'Locals in junta-held Sittwe fear landmines planted by military' (18 May 2024) available at <<https://www.dmediag.com/news/localsind.html>> accessed 8 June 2024.

Conclusion

It is impossible to overstate the gravity of the situation facing Rohingya in Rakhine State right now. Over the reporting period, hundreds if not several thousand more Rohingya have been killed.

The evidence presented in this report demonstrates that the Myanmar military continues to commit the genocidal act of deliberately inflicting conditions of life calculated to bring about the physical destruction in whole or in part of the Rohingya group. These ‘slow death’ conditions have resulted in the preventable deaths of at least 86 Rohingya, most of them children.

The Myanmar military has further exploited the vulnerability of the Rohingya living under these conditions of life. It has forcibly recruited Rohingya men and youth, including minors, into the Myanmar military and sent them to the frontlines to be used as cannon fodder. The Myanmar military’s treatment of forcibly recruited Rohingya likely amounts to cruel, inhuman, or degrading treatment and may constitute the genocidal act causing serious bodily or mental harm to the members of the group.

The Myanmar military’s actions to incite hatred and violence towards the Rohingya and to deliberately intensify a hostile environment conducive to atrocity crimes must be recognised. Forcibly recruiting Rohingya and sending them into battle with the Arakan Army, and coercing Rohingya into taking part in anti-Arakan Army protests, have put members of the Rohingya group at grave risk. The Myanmar military’s genocidal intent towards the Rohingya can be further inferred from its abject failure to prevent the commission of atrocity crimes by the Arakan Army against the Rohingya, and from its role in inciting hatred and violence.

In the face of these renewed threats of irreparable harm to the Rohingya group, the Court must urgently respond by amending the existing order or indicating further provisional measures to protect the Rohingya. These include – but should not be limited to - instructing Myanmar to immediately halt conscription of Rohingya into its armed forces or allied militias and end its practice of coercing Rohingya to participate in anti-Arakan Army/pro-Myanmar military rallies.

Since 13 November 2023, the Myanmar military, its proxies, and the Arakan Army have committed likely war crimes against Rohingya communities, including murder, torture, cruel treatment, extrajudicial executions, sexual violence, rape, taking hostages, conscripting and using children, pillaging, attacking civilians, and attacking protected objects. These alleged international crimes must be thoroughly investigated, and the perpetrators held accountable.

200,000 Rohingya internally displaced in northern Rakhine State are in dire need of international humanitarian aid to prevent further loss of life. 110,000 Rohingya – half of them children – are currently trapped in Sittwe township, surrounded by landmines and unable to flee as the conflict edges closer to the city. Rohingya conscripts already living under conditions of indefinite arbitrary detention in Sittwe are at serious risk of being used as cannon fodder by the Myanmar military in the event of a battle with the Arakan Army over the city.

The need for international action is beyond urgent. The international community cannot afford to fail the Rohingya yet again. There must be concerted international public pressure for an open meeting of the UN Security Council to frankly discuss the Myanmar military’s repeated breaches of the ICJ’s provisional measures order over the past four-and-a-half years.

All relevant organs of the United Nations must make consistent efforts to leverage the ICJ’s provisional measures order within their own mandates, to seek urgent protection for the Rohingya and end the cycle of impunity in Myanmar, including support for the referral of the situation in Myanmar to the International Criminal Court or the creation of an ad hoc international tribunal.

Enduring peace and security in Myanmar and justice for the Rohingya are intertwined. This must include recognition of Rohingya identity and citizenship, which should be a touchstone policy for any transitional government and all relevant actors in Myanmar, including the Arakan Army. Rohingya simply want peaceful co-existence between Rohingya and Rakhine communities, on equal terms, rooted in dignity, respect, and protection for the Rohingya identity and their individual and collective rights.

Recommendations

Recommendations to the International Court of Justice

- Urgently review Myanmar's compliance with the provisional measures and formally communicate its findings to the UN Security Council.
- To prevent further irreparable harm to members of the Rohingya group, urgently amend the existing provisional measures order or indicate further provisional measures to include (but not limited to) requirements that Myanmar must immediately:
 - Cease and desist from conscripting Rohingya into its armed forces or allied militias;
 - Cease and desist from forcing Rohingya to participate in public rallies in support of the Myanmar military;
 - Restore electricity and telecommunications to Rakhine State;
 - Allow international, national, and local humanitarian actors immediate, unrestricted, and sustained access to Rakhine State;
 - Make its reporting public, to ensure transparency and rigorous scrutiny of its compliance with the order;
 - End all arbitrary restrictions on freedom of movement, access to health and other resources indispensable for survival for the Rohingya;
 - Implement policy and legislative changes as part of concrete measures it must take to comply, including the restoration of full citizenship to the Rohingya as a vital first step;
 - Cooperate with United Nations bodies and other international investigative mechanisms that seek to investigate the acts that are the subject of this case.

Recommendations to the UN General Assembly, UN Human Rights Council, other UN bodies, human rights mandate-holders and mechanisms

- Make concerted efforts to consistently refer to the ICJ's legally binding provisional measures order in public statements about the Rohingya.
- Leverage the ICJ's provisional measures order within their own mandates to seek urgent protection for the Rohingya and end the cycle of impunity in Myanmar, including via public support for referral of the situation in Myanmar to the International Criminal Court or the creation of an ad hoc international tribunal.

Recommendations to UN member states

- Urgently exert maximum pressure on Myanmar to allow international, national, and local humanitarian actors immediate, unrestricted, and sustained access to Rakhine State and the rest of the country.
- Urge Myanmar to restore electricity and telecommunications in Rakhine State, and end all arbitrary restrictions on freedom of movement, access to health and other resources indispensable for survival for the Rohingya.
- Give generously to meet the urgent humanitarian needs of the Rohingya and people across Myanmar, including via flexible funding mechanisms that enable direct support to local civil society organisations already working under extremely difficult and dangerous conditions to meet the needs of displaced communities.
- Coordinate efforts to secure an open meeting of the UN Security Council to discuss the Myanmar military's repeated breaches of the ICJ's provisional measures order over the past four-and-a-half years.

- Publicly support calls from Rohingya communities for the International Court of Justice to make Myanmar's reports on compliance with the provisional measures order publicly available.
- Exert maximum pressure on Myanmar to cooperate with the International Criminal Court investigation and provide access to Rakhine State to ICC and Argentinian investigators.
- Publicly support the referral of the situation in Myanmar to the International Criminal Court or support the creation of an ad hoc international tribunal.
- Exercise universal and other forms of jurisdiction to investigate any individual from Myanmar – irrespective of position or rank - who may be responsible for committing genocide, war crimes, and crimes against humanity under international law. Ensure such individuals are brought to justice in fair trials.
- Propose a UN Security Council resolution that imposes a comprehensive arms embargo on Myanmar, including on the transfer of aviation fuel to the military; imposes targeted economic sanctions on the Myanmar military, its leaders, and its sources of revenue, and refers the situation in Myanmar to the International Criminal Court. The prospect of a veto by a Member State in the UN Security Council should not deter other Member States from placing a resolution before the Council for consideration, debate and a vote.
- Coordinate multilateral efforts to impose arms embargoes on Myanmar, including on the transfer of aviation fuel to the military as well as targeted economic sanctions on the Myanmar military, its leaders, and its sources of revenue.



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