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The Human Rights Situation of the Rohingya

Distinguished Senators, thank you very much for organizing this hearing, and thank you for the opportunity to testify. It's a great honor and a privilege.

Please let me begin by commending the Government of Canada for officially making a genocide determination with regard to the situation of Rohingya in Myanmar. Some actors have attempted to downplay the attacks on Rohingya or avoid genocide determinations for political reasons. Canada's straightforward, accurate, and honest position was duly noted and set an important example for others. In order to properly address any pattern of crimes, it is essential to properly diagnose those crimes, and the Canadian government took an important step in doing so. Canada's targeted sanctions against a handful of perpetrators as well as its generous humanitarian support for Rohingya refugees were also duly noted by Rohingya communities and human rights organizations alike.

I would like to take this opportunity to share with you the findings of our last report and to provide a brief update on the situations in Myanmar and Bangladesh with respect to the situation of Rohingya.

Fortify Rights is an independent, non-profit, non-governmental human rights organization. We support human rights defenders, investigate human rights violations, and engage people in power. Our team and I have documented the Myanmar military's crimes and impunity throughout the country for several years and we have worked alongside local partners and affected communities to identify and advance solutions.

The United Nations Office on Genocide Prevention has found that genocide and crimes against humanity are "processes that take time to plan, coordinate and implement." These crimes do not occur spontaneously or as isolated events; they require resources and decisions by people in positions of power.

Following the most recent round of violence against Rohingya last year, the dominant narrative suggested that Rohingya militants attacked dozens of police outposts in northern Rakhine State on August 25, 2017, instigating a spontaneous Myanmar Army-led crackdown against Rohingya civilians, forcing the displacement of hundreds of thousands to Bangladesh. But the authorities' operations were not spontaneous. On July 19, we published a 160-page report, "[They Gave Them Long Swords](#)," detailing how the Myanmar authorities made "extensive and systematic preparations" for attacks against Rohingya civilians during the weeks and months before militants attacked police on August 25, 2017.

Specifically, in the weeks and months before August 25, we found that the Myanmar authorities: 1) systematically collected sharp or blunt objects from Rohingya civilians, “disarming” them; 2) trained and armed local non-Rohingya ethnic citizens in northern Rakhine State, preparing them for violence with swords, firearms, and in some cases, quasi-military training; 3) systematically tore down fencing and other structures around Rohingya homes, providing attackers with a greater line-of-sight on Rohingya civilians; 4) evicted aid groups and deprived Rohingya civilians of food and other lifesaving aid, systematically weakening the civilian population ahead of attacks; 5) deployed unnecessarily high numbers of state-security forces to northern Rakhine State; and 6) committed other human rights violations against Rohingya civilians, including imposing discriminatory Muslim-only curfews and tightening restrictions on freedom of movement.

These deliberate actions fit within the United Nations’ Framework for Analysis of Atrocity Crimes as “preparatory actions” for genocide and crimes against humanity. More importantly, international case law has considered preparations such as these as reflective of a “systematic attack,” which is a component in evaluating genocidal intent.

Our report also finds that the attacks included the involvement of at least 27 Myanmar Army battalions, comprising up to 11,000 soldiers, and at least three combat police battalions, comprising an additional 900 police personnel. These are conservative estimates based on information obtained from state security forces.

Our report is based on a 21-month-long investigation, including 254 interviews with Rohingya eyewitnesses and survivors, Myanmar military and police personnel, Bangladesh military and government officials, members and former members of the Arakan Rohingya Salvation Army (ARSA), aid workers, medical physicians, and others.

We interviewed several current and former members of ARSA who explained their involvement in hastily planned attacks on police outposts on August 25, which provided the ostensible spark for the Myanmar Army-led crackdown on civilians. Members of ARSA described the group as having little to no military capacity and no training.

Upon ARSA’s assault on police outposts on August 25, which killed 12 state security officials, Myanmar authorities activated local non-Rohingya citizens, some of whom the military previously armed and trained, and together they attacked Rohingya villages and civilians.

Many of you are no doubt well-aware of the scale, scope, and type of atrocities that occurred. We documented extensively how soldiers, police, and local non-Rohingya citizens hacked Rohingya civilians, slit throats, and fatally shot and burned thousands of men, women, and children in a matter of weeks. Soldiers raped masses of Rohingya women and girls, killed infant children, arbitrarily arrested men and boys, and destroyed several hundred villages in arson attacks, forcing more than 700,000 Rohingya civilians to flee to Bangladesh.

The attacks on Rohingya civilians mirrored similar attacks by the Myanmar authorities in October and November 2016. The 2016 attacks focused on one township in Myanmar's Rakhine State—Maungdaw Township—and displaced more than 90,000 civilians. After that initial wave of violence, and in a context of insufficient international action, the Myanmar authorities began preparations for a more extensive attack that included all three townships of northern Rakhine State—Maungdaw, Buthidaung, and Rathedaung townships.

Fortify Rights also documented human rights abuses by ARSA—the Rohingya militant organization—including the murder of Rohingya civilians. We interviewed members of ARSA and eyewitnesses to ARSA killings of Rohingya civilians in the lead-up to the August 25 attacks. The militant group threatened, beat, and, in some cases, killed Rohingya they suspected of being government informants. Members of ARSA told Fortify Rights that Atta Ullah, the head of ARSA, issued the kill orders.

Since the publication of our report, Rohingya civilians in refugee camps in Bangladesh have continued to disappear and there have been more killings of Rohingya civilians in Bangladesh. We have reason to believe ARSA is responsible for at least some of these cases.

Beyond this, our report provides an extensive legal analysis detailing reasonable grounds to believe that the crimes perpetrated by the Myanmar Army, police, and civilians against Rohingya constitute genocide and crimes against humanity. We worked closely with the law firm Covington & Burling LLP on our legal analysis.

Our report identifies 22 military and police officials whom we believe should be criminally investigated and potentially prosecuted for genocide and crimes against humanity. The list includes Commander-in-Chief Senior General Min Aung Hlaing—whom no government has sanctioned—Deputy Commander-in-Chief Vice Senior General Soe Win, and the Joint Chief of Staff General Mya Tun Oo.

As many of you are no doubt aware, the military's violations in Rakhine State are generally consistent with broader patterns of human rights violations by the Myanmar military committed elsewhere with complete impunity, including Kachin and Shan states, where armed conflict continues.

For several years, we've documented extrajudicial killings, rape, forced labor, widespread and systematic torture, avoidable deprivations in humanitarian aid, and other human rights violations by the Myanmar Army in Kachin State and northern Shan State. In these areas we've documented violations that constitute war crimes and crimes against humanity. We continue to document restrictions that hinder humanitarian groups from providing lifesaving aid to displaced populations in Kachin and northern Shan states, and we remain concerned by the continued impunity for the systematic use of torture against Kachin civilians by Myanmar Army, Police Force, and Military Intelligence, which we exposed in 2014.

Bangladesh

With regard to the situation in Bangladesh, there are now more than 1 million Rohingya refugees in sprawling camps. The Government of Bangladesh had proposed to send the vast majority, beginning with an initial group of 100,000, to the remote and flood-prone island of Bhasan Char. This idea is ill advised and dangerous and, if carried out, will further violate the rights of Rohingya.

The authorities have also signed a bi-lateral agreement with the Government of Myanmar to return Rohingya refugees to Myanmar.

Conditions in northern Rakhine State are not conducive for safe or dignified refugee returns. Fortify Rights confirmed that Rohingya refugees continue to cross the Myanmar-Bangladesh border in search of safety, and Rohingya in Myanmar have told us they have no freedom of movement, access to livelihoods, and many are being coerced into accepting National Verification Cards (NVCs), which are part of a controversial process that Rohingya fear will further erase their identity from Myanmar records.

At least three boats of Rohingya refugees have left Rakhine State in the last month seeking safety from state-sponsored persecution.

To its credit, the Government of Bangladesh has vowed to not force any Rohingya back to Myanmar, but forced returns can come in many forms, including through avoidable deprivations in humanitarian aid. For that reason, the international community must maintain pressure on Bangladesh to respect the rights of the refugee population and to ensure aid groups have free and unfettered access. Rohingya must not be coerced to return to their homeland prematurely.

It should be noted that between 250,000 and 500,000 Rohingya were in the camps in Bangladesh before the 2016 and 2017 attacks, according to Bangladesh government figures. It is not uncommon to find refugees who have lived more than 30 years in the camps, and it's not uncommon to find refugees who were born and raised in the camps. That subset of refugees—unknown to many recent onlookers—have known only the confines of the camps for their entire lives and they lack any meaningful opportunities to improve their livelihoods and exercise basic freedoms.

Likewise, an estimated several hundred thousand Rohingya remain in Rakhine State at grave risk of mass atrocities. The Government of Myanmar continues to deny them equal access to full citizenship rights; continues to restrict their freedom of movement; and continues to fail to provide them with protection. Rohingya in Myanmar are no closer to regaining their rights than they were before the recent round of mass atrocities.

The Government of Myanmar continues to confine more than 120,000 Rohingya to more than 20 internment camps in five townships in Rakhine State, and several hundred thousand other Rohingya are confined to their squalid villages.

As the chair of the U.N. Fact Finding Mission recently noted, the genocide continues.

Recommendations

For its part, the Myanmar military is a wholly unreformed institution and one of the world's worst abusers of human rights. The culture of impunity in Myanmar must end, and we believe the Canadian Government can continue to play a constrictive role.

We encourage the Government of Canada to work to persuade U.N. member states to ensure the U.N. Security Council refers the situation in Myanmar to the International Criminal Court (ICC). This would be consistent with the recommendations of the U.N. Fact Finding Mission, the U.N. Special Rapporteur on the situation of human rights in Myanmar Yanghee Lee, and others.

The prospect of a China veto at the Security Council is often used to justify inaction toward international justice. We do not subscribe to the idea that there is nothing that governments can do to get China and Russia to step aside and allow an ICC referral. China and Russia stepped aside when the U.N. Security Council referred the situation in Sudan to the ICC, and they can be incentivized to do the same now. Part of the challenge is getting other U.N. Security Council member states on board, including the United States and France.

In addition to the U.N. referring the matter to the ICC, the U.N. Security Council could, as it has on multiple occasions, exercise its authority under Chapter VII to establish a separate tribunal to investigate and try the crimes committed against the Rohingya. Such tribunals have taken two forms: (1) *ad hoc* full U.N. tribunals in the model of the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda, or (2) hybrid U.N.-local country courts (e.g. the Special Court for Sierra Leone, the Special Tribunal for Lebanon, and the Extraordinary Chambers in the Courts of Cambodia). Given that the Myanmar government will not cooperate at this stage in a hybrid-style court involving the host government, a fully controlled U.N. tribunal, in the mold of the ICTY/ICTR would be the natural choice, barring substantial changes in Myanmar.

Potential obstacles in the U.N. Security Council have previously stood aside during the creation of tribunals, and specifically in the case of the Special Tribunal for Lebanon, where China and Russia, amongst others, abstained from voting on the resolution creating the tribunal.

The Government of Canada could also apply additional targeted sanctions, including against the Commander in Chief Senior General Min Aung Hlaing.

We also fully encourage the Government of Canada to help ensure that Bangladesh protects Rohingya refugees. The Government of Canada could help ensure that Bangladesh continues to postpone bilateral plans for returns to Myanmar until Rohingya rights in Myanmar are restored and until returns are voluntary, safe, and dignified.

Canada can also help persuade Bangladesh to register refugees and ratify the 1951 Refugee Convention, and then enact domestic legislation to fully implement the treaty. Bangladesh should ensure full and unfettered access for humanitarian agencies and ensure Rohingya refugees have access to education, health care, and freedom of movement.

Thank you very much for your time and ongoing attention to these matters.

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