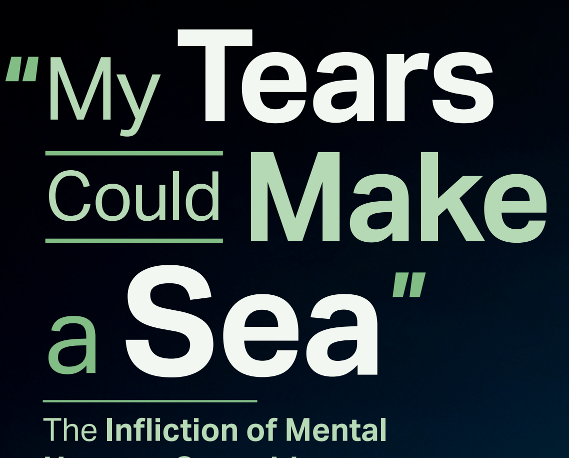

The **Infliction of Mental Harm** as **Genocide** Against Rohingya

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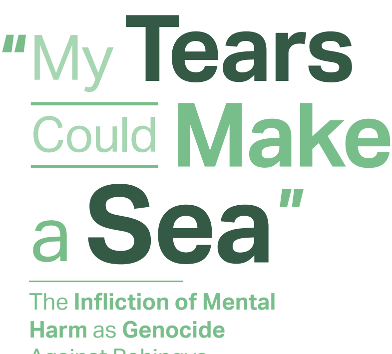

The **Infliction of Mental Harm** as **Genocide** Against Rohingya

Cover:

In 2017, four Myanmar military soldiers raped "Anowara Begum"—not her real name—age 33, in Maungdaw Township, Rakhine State. She told Fortify Rights she was wearing the dress in the photograph when she was raped. She carried it when she fled to Bangladesh, and she wanted it to be photographed. ©Saiful Huq Omi, Counter Foto, Bangladesh, 2023

ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, YALE LAW SCHOOL

The **Allard K. Lowenstein International Human Rights Clinic** is a Yale Law School course that gives students first-hand experience in human rights advocacy under the supervision of international human rights lawyers. The Clinic undertakes litigation and research projects on behalf of human rights organizations and individual victims of human rights abuses. Recent work has included involvement in human rights litigation in U.S. courts; preparing amicus briefs on international and comparative law for U.S., foreign, and international fora; advocacy before international and regional human rights bodies; and investigating and drafting reports on human rights situations.

FORTIFY RIGHTS

Fortify Rights works to ensure human rights for all. We investigate violations, engage people with power on solutions, and strengthen human rights defenders. We believe in the influence of evidence-based research, the power of strategic truth-telling, and the importance of working in close collaboration with individuals, communities, and movements pushing for change. Fortify Rights is an independent nonprofit organization registered in the United States and Switzerland.

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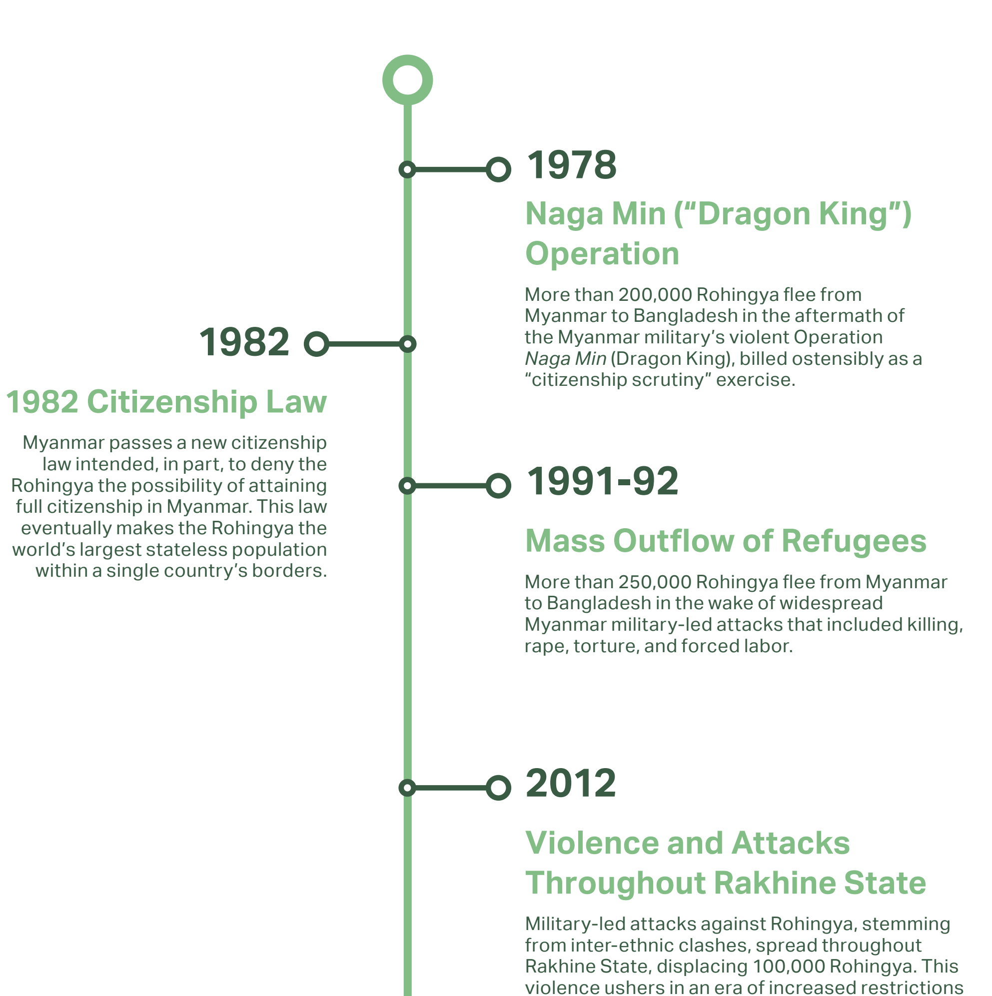


1978

Naga Min ("Dragon King") Operation

More than 200,000 Rohingya flee from Myanmar to Bangladesh in the aftermath of the Myanmar military's violent Operation *Naga Min* (Dragon King), billed ostensibly as a "citizenship scrutiny" exercise.

1982

1982 Citizenship Law

Myanmar passes a new citizenship law intended, in part, to deny the Rohingya the possibility of attaining full citizenship in Myanmar. This law eventually makes the Rohingya the world's largest stateless population within a single country's borders.

1991-92

Mass Outflow of Refugees

More than 250,000 Rohingya flee from Myanmar to Bangladesh in the wake of widespread Myanmar military-led attacks that included killing, rape, torture, and forced labor.

2012

Violence and Attacks Throughout Rakhine State

Military-led attacks against Rohingya, stemming from inter-ethnic clashes, spread throughout Rakhine State, displacing 100,000 Rohingya. This violence ushers in an era of increased restrictions on Rohingya in Rakhine State.

2016

"Clearance Operations" Begin in Northern Rakhine State

Myanmar military and police burn Rohingya villages in northern Rakhine State in a campaign of violence that forced 65,000 Rohingya civilians to Bangladesh. Survivors and eyewitnesses provide evidence of widespread sexual and physical violence, including massacres, by Myanmar's security forces.

2017

Widespread Violence in Northern Rakhine

After the Arakan Rohingya Salvation Army attacks police/army posts in northern Rakhine State, Myanmar security forces and civilians respond with planned and coordinated attacks against Rohingya civilians. The military redoubles its "clearance operations," razing more than 300 Rohingya villages in northern Rakhine State, killing thousands of women, men, and children, arresting men and boys en masse, and committing mass rape. This violence forces more than 700,000 Rohingya from Myanmar to Bangladesh.

2018

ICC Authorizes Investigation into Crimes Against Humanity in Bangladesh/Myanmar

The International Criminal Court (ICC) grants the Chief Prosecutor jurisdiction to investigate and possibly prosecute the crime against humanity of forced deportation of Rohingya to Bangladesh, as well as persecution and other inhumane acts.

2019

The Gambia Files Genocide Case Against Myanmar at ICJ

The Republic of The Gambia files an application in the International Court of Justice (ICJ) against the Republic of Myanmar, alleging violations of the Genocide Convention. In the Court's proceedings, Myanmar State Counsellor Aung San Suu Kyi represents Myanmar at the Court, denying the genocide and refusing to identify Rohingya as Rohingya, consistent with the longstanding racist government position that the Rohingya people do not exist.

2019

Rohingya File Criminal Complaint in Argentina Against Myanmar Officials

The Burmese Rohingya Organisation U.K. and other organizations file a criminal complaint in Argentina under the principle of universal jurisdiction against senior Myanmar military officials for the ongoing genocide of Rohingya in Myanmar.

2020

National League for Democracy Wins Elections

Myanmar's National League for Democracy overwhelmingly wins national elections, handily defeating military-backed parties. The military alleges voter fraud and refuses to accept the outcome of the election.

2021

Myanmar Military Launches Coup d'Etat and Crackdown

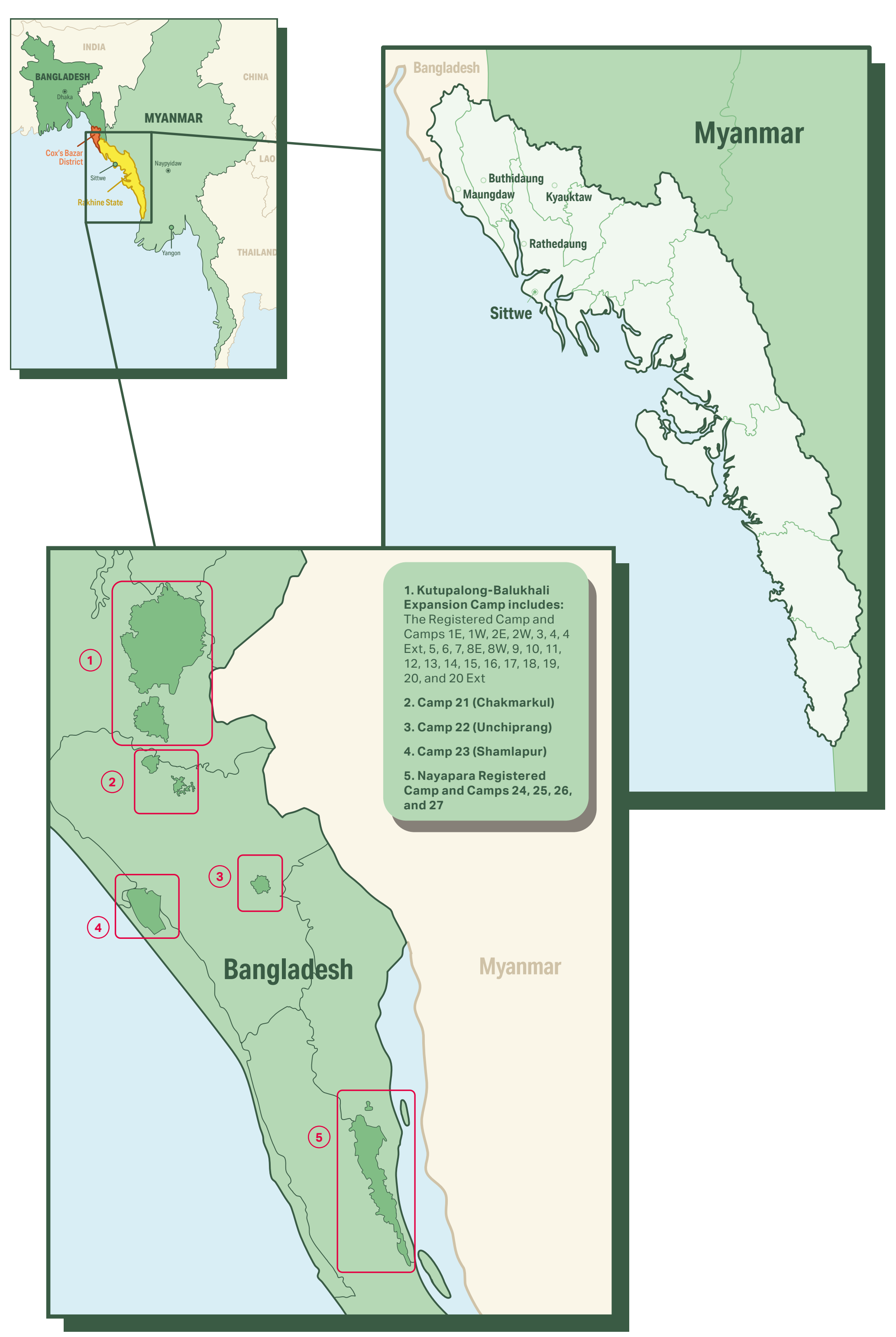
The Myanmar military initiates a coup d'etat, alleging widespread voter fraud in the 2020 elections. It arrests Aung San Suu Kyi and other senior officials, human rights defenders, and others. Mass protests against the military erupt nationwide, and the military and police respond with widespread and systematic attacks against the civilian population. Soldiers kill, imprison, and torture civilians en masse, leading civilians to take up arms.

2023

German Prosecutor Declines to Investigate Universal Jurisdiction Complaint

In January, Fortify Rights and 16 individual survivors of atrocity crimes in Myanmar, representing seven ethnic groups, file a criminal complaint in Germany under universal jurisdiction, providing evidence that senior generals and others are responsible for genocide, war crimes, and crimes against humanity. In October, the German Federal Prosecutor informed Fortify Rights it would not initiate an investigation based on the complaint, due to the fact the alleged perpetrators were not present in Germany.

Map of Myanmar and Bangladesh



A Rohingya woman rests on the ground in one of the world's largest refugee camps. ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, July 2014

A pregnant Rohingya mother who survived the genocide in Rakhine State with her child in a refugee camp in Bangladesh. Recent scientific research into intergenerational trauma shows how the experience of trauma by adults can be passed down to their children, harming future generations. ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, May 2014

Summary

In the aftermath of World War II and the horrors of the Nazi Holocaust, United Nations member states gathered in Paris in 1948 to adopt the Genocide Convention. This new law defined an old form of violence as a new crime – genocide. For the first time, this treaty provided a means under international law to punish those who seek to exterminate a group of people. Specifically, the crime of genocide, as defined by the Convention, involves the commission of one or more prohibited acts with an intent to destroy, in whole or part, a group of people defined by national, ethnic, racial, or religious ties.

The popular imagination of genocide has since focused primarily on mass killing. However, while most genocides – including the Rohingya genocide in Myanmar – have involved mass killing, the Genocide Convention encompasses four other prohibited acts, in addition to killing, that can destroy a protected group: deliberately inflicting conditions of life calculated to destroy the group, imposing measures intended to prevent births within the group, forcibly transferring children of one group to another group, and causing serious bodily or mental harm.

Of those enumerated acts of genocide, causing serious mental harm is the least understood. When examining this act of genocide – causing serious bodily or mental harm – international tribunals have focused more on serious bodily harm and have found serious mental harm difficult to define precisely. International courts have expanded the understanding of genocide to include sexual violence and displacement crimes as relevant to mental harm; however, in contrast to serious bodily harm, there is little jurisprudence and study of the contours of serious mental harm as an act of genocide. Case law and human rights reports have provided only a limited focus on it.

Judicial decisions and scholarly interpretation have established that an act causing serious mental harm under the law of genocide requires more than a minor or temporary impairment of mental faculties. The impairment need not be "permanent or irremediable," but it must result in "grave and long-term disadvantages to a person's ability to lead a normal and constructive life."

This study addresses how the infliction of mental harm can destroy a group of people in whole or in part. More specifically, it focuses on an urgent question: Is the Myanmar military responsible for inflicting serious mental harm as an act of genocide to destroy the Rohingya people? One aim of this study is to provide prosecutors, investigators, scholars, human rights groups, humanitarian aid workers, and others with both a broad understanding of how causing serious mental harm can be an act of genocide and an analysis of the ongoing destructive effects of mental harm on the Rohingya population.

Unlike killing or the infliction of physical wounds, the suffering of mental harm is often not readily discernable, making it difficult to document, quantify, or prove legally, even though it can be a powerful means to destroy a group "in whole or in part."

The violence and terror the Myanmar military and its partners and enablers unleashed on the Rohingya people in Rakhine State in 2016 and 2017 has been widely viewed as genocide. Fortify Rights, a U.N. Fact-Finding Mission, and the Government of the United States of America have each determined, in well-documented findings, that the Myanmar military is responsible for an ongoing genocide against Rohingya.

In 2020, Fortify Rights and a team of Rohingya researchers trained in quantitative research methods produced a 99-page report, *"The Torture in My Mind": The Right to Mental Health for Rohingya Survivors of Genocide in Myanmar and Bangladesh* (hereinafter *The Torture in My Mind*). *The Torture in My Mind* presents alarming quantitative findings of the severe mental harm that Rohingya suffered due to human rights violations in Myanmar.

Drawing on the data in *The Torture in My Mind,* this study incorporates tools of social science, particularly psychology, to explore the mental harm element of genocide in the context of the attacks led by the Myanmar military against the Rohingya people in 2016 and 2017. It also draws on hundreds of pages of testimonies from survivors and witnesses of the Rohingya genocide, collected by Fortify Rights in Myanmar and Bangladesh and analyzed by the Lowenstein International Human Rights Clinic at Yale Law School.

Specifically, this study analyzes statistically significant survey data on the rate of trauma symptoms among Rohingya living in refugee camps in Bangladesh to provide a legal analysis of the infliction of mental harm as a part of the Rohingya genocide. The survey findings provide empirical evidence of mental harm within the Rohingya population, adding to information from the testimonies of Rohingya survivors in refugee camps in Bangladesh.

For example, nearly all the surveyed refugees indicated surviving horrific experiences in Myanmar – 98.6 percent were exposed to frequent gunfire, 97.8 percent witnessed the burning and destruction of villages, 91.8 percent witnessed dead bodies, and 90.4 percent witnessed physical violence against others – traumatic events known to cause long-term mental health conditions such as post-traumatic stress disorder, depression, and anxiety.

The wounded wrist of a 16-year-old Rohingya boy from Maungdaw Township, Rakhine State, Myanmar. In 2016, during widespread military-led attacks against Rohingya civilians, the Myanmar military arbitrarily arrested him and, in detention, hacked his wrist with a machete. The boy managed to escape and reunite with family members in the Shamlapur refugee camp in Bangladesh. ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, February 2017

"The situation is difficult to describe," a Rohingya woman told Fortify Rights, explaining what she witnessed in northern Rakhine State during military-led attacks in 2016. "They cut the women's breasts. I saw so many killed. … They cut their breasts and put the knife in the women's private area, and they cut it. I saw it when it was happening. It was very close to my home."

An extraordinarily large portion of Rohingya survivors in Bangladesh report mental health distress symptoms. The World Health Organization (WHO) estimates that, in general, 10 percent of any adult population is affected by some type of moderate or mild mental health disorder. Twelve months after a humanitarian emergency, though, the rate of adults experiencing these types of mental health disorders, including mild and moderate depression and mild and moderate post-traumatic stress disorder (PTSD), is expected to increase to 15-20 percent of the population. The rates among Rohingya survivors in Bangladesh are dramatically higher. Among Rohingya survivors in the camps in Bangladesh, 61.2 percent report symptoms consistent with PTSD, 88.7 percent report depression, and 84 percent report emotional distress (including symptoms of anxiety combined with depression).

Since 2020, when Fortify Rights and the Rohingya team of researchers collected the quantitative data related to mental harm, conditions in Myanmar and the refugee camps in Bangladesh have worsened considerably. In Myanmar, the military responsible for the genocide of the Rohingya people in 2016 and 2017 initiated a *coup d'état* on February 1, 2021, upending Myanmar's elected government. The military, in attempting to gain political control of the country, has arrested tens of thousands of people and murdered an untold number of women, men, and children. At the time of publication, the military continues to carry out airstrikes against civilians and commit other widespread and systematic human rights violations with impunity.

A 25-year-old Rohingya man in a shelter in Kutupalong refugee camp in Bangladesh shows a gunshot wound he received in 2016 in Myanmar. The Myanmar military raided his village in northern Maungdaw around 4 a.m., opening fire on civilians. He and his 17-year-old brother were shot. After playing dead to avoid further abuse, the pair escaped to Bangladesh—an eight-day journey—and received treatment from Médecins Sans Frontières (MSF). ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, February 2017

A 16-year-old Rohingya boy who survived a machete attack by the Myanmar military in Maungdaw Township in 2016 is flanked by other Rohingya-genocide survivors now in Bangladesh refugee camps. Such an act, causing severe mental harm, can constitute an act of genocide. ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, February 2017

Meanwhile, approximately one million Rohingya refugees from Myanmar continue to suffer needlessly in Bangladesh. The Government of Bangladesh continues to tighten restrictions on those confined to refugee camps in Cox's Bazar District and those relocated to the remote island of Bhasan Char, denying their rights to freedom of movement, education, and livelihood. Exacerbating the situation, in March and again in June 2023, funding cuts led the U.N. World Food Programme (WFP) to slash food aid for Rohingya refugees in Bangladesh, increasing the risks of acute malnutrition, infant mortality, and violence. Moreover, militants based in refugee camps in Bangladesh have killed, tortured, abducted, and threatened Rohingya refugees with near-complete impunity, and Bangladesh authorities, as well as UNHCR, formally known as the U.N. High Commissioner for Refugees, which is mandated to protect refugees, have failed to protect many of those targeted. These worsening conditions in Bangladesh undoubtedly contribute to the adverse effects of PTSD, depression, and emotional distress that the genocide in Myanmar first triggered.

Although human rights defenders, academics, and others tend to view mental harm as a result of atrocity crimes rather than a criminal act itself, the infliction of serious mental harm can, as this study explains, be a stand-alone act of genocide. The language of Article II (b) of the Genocide Convention refers to "serious bodily or mental harm"; however, the Convention does not require a finding of bodily harm to determine that a group suffered the genocidal act of inflicting mental harm. Judgments by the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia state that acts that inflict strong fear, terror, intimidation, or threats can cause serious mental harm under the law of genocide. Courts have found some acts of genocide, like rape and other forms of physical torture, to involve both bodily and mental harm; other acts, such as forcible deportation or family separation, might not involve any physical violence but could nevertheless constitute mental harm. Acts of mental harm serious enough to be genocidal are those found to cause a lasting or long-term effect on the ability to lead a normal life.

The data collected by Fortify Rights and the team of Rohingya researchers on the mental condition of Rohingya genocide survivors indicate that their high levels of PTSD, depression, and emotional distress resulted from trauma the Myanmar authorities and their forces and allies inflicted upon the Rohingya people. Although it is too soon to know how long these symptoms will last among the Rohingya population, studies of other survivors of mass atrocities have demonstrated that these debilitating conditions often persist for decades after the original traumatic experience. These conditions have been found to disrupt the ability of survivors to lead a normal and constructive life, causing serious problems in daily functioning and long-term health problems, including drug and alcohol abuse and suicide.

The Myanmar military, police, and civilians perpetrated acts against Rohingya in 2016 and 2017 that caused serious mental harm – high rates of PTSD, anxiety, and depression – among the Rohingya refugees who were forced to flee to camps in Bangladesh. Rohingya experienced torture and rape, witnessed extreme violence against others, suffered the separation of families, and were forcibly displaced from their homes. International tribunals have recognized that these kinds of traumatic events cause serious mental harm, especially when there is evidence that they were intended to traumatize and displace a community and prevent its members from ever returning home. These violations are, in the language of the Genocide Convention, acts causing serious mental harm, particularly when their traumatic effect is likely to last a long time and impair the victims' ability to lead normal lives.

The trauma symptoms that Rohingya children suffer will likely recur in future generations. Recent research into Adverse Childhood Experiences (ACEs) and intergenerational trauma suggest that disruptions to normal life caused by PTSD, depression, and anxiety can persist throughout a lifetime and even be passed down

A Rohingya man prepares firewood during seasonal monsoon rains in a refugee camp in Bangladesh. Mental health care for Rohingya genocide survivors in Bangladesh is severely limited, leaving most to experience severe trauma effects on their own and with severely limited employment opportunities. ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, July 2010

An elderly Rohingya refugee and his wife, both genocide survivors, in a shelter in a Bangladesh refugee camp. ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, July 2010

A Rohingya man from Myanmar reads the Holy Quran in a Bangladesh refugee camp. More than 94 percent of Rohingya surveyed by a team supported by Fortify Rights reported that Myanmar authorities forced them to do things against their religion, including removing caps, cutting beards, eating pork, etc. ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, March 2009

to younger generations. These probable future traumatic consequences of the human rights violations the Rohingya suffered further support a conclusion that Myanmar perpetrated acts causing serious mental harm. Only decades from now will it be possible to prove that descendants of the Rohingya who survived these violations in Myanmar suffer from intergenerational trauma. The likelihood that the trauma the community has suffered will continue and exacerbate the mental harm found in *The Torture in My Mind* makes it imperative to support future studies of the Rohingya's experience of intergenerational trauma. Nevertheless, based on the evolving understanding of PTSD, anxiety, and depression and their long-lasting effects, this study finds that acts causing these conditions, when perpetrated against a defined group and with the requisite intent, can constitute genocide.

The Myanmar military's longstanding refusal to acknowledge the existence of the Rohingya as a people, the atrocity crimes committed against Rohingya, and the longstanding denial of access to full citizenship rights for Rohingya have also adversely affected the population. Before the coup in Myanmar, the government, the military, and segments of society conditioned the country's population to hold bigoted beliefs and attitudes toward Rohingya. Following the coup, various pro-democratic political actors in Myanmar have publicly apologized to the Rohingya for wrongs committed against them. Myanmar's National Unity Government (NUG) – the post-coup Government of Myanmar in opposition to military rule – has acknowledged the atrocities Rohingya have suffered, and it committed itself to ensuring justice, accountability, and citizenship for the Rohingya people. The NUG also took a concrete step toward justice when it issued an official declaration to the International Criminal Court (ICC), giving the court jurisdiction to investigate and prosecute mass atrocity crimes in the country from 2002 and into the future. For its part, at the time of publication, the ICC has failed to act on this declaration.

Nevertheless, at the time of this study's publication, several accountability mechanisms, including at the ICC, are in motion to address mass atrocity crimes against Rohingya in Myanmar. For example, in September 2018, the U.N. Human Rights Council passed a resolution establishing the Independent Investigative Mechanism for Myanmar (IIMM) to prepare case files, support criminal proceedings, and ensure accountability for those responsible for mass atrocity crimes committed in Myanmar since 2011. In November 2019, the Government of The Gambia brought a case against Myanmar at the International Court of Justice (ICJ) for genocide against Rohingya; the case is ongoing. The Office of the Prosecutor at the ICC is also investigating the forced deportation of Rohingya from Myanmar to Bangladesh as a crime against humanity. Argentinian courts are also considering the Rohingya genocide through a universal jurisdiction case brought by the Burmese Rohingya Organisation U.K. and others.

This study includes more than 35 recommendations to relevant parties, including the Myanmar military junta, the National Unity Government of Myanmar, U.N. member states, and humanitarian organizations providing aid to Rohingya genocide survivors.

All efforts to raise awareness and educate the public, practitioners, and even prosecutors about the various forms and manifestations of genocide, including the genocidal act of causing mental harm, can contribute to a more comprehensive and effective approach to accountability for the crime. In the specific context of Myanmar's genocide against the Rohingya population, recognizing and acknowledging the full range of acts that constitute genocide will enable more efficient humanitarian aid and efforts toward prevention, justice, and accountability for Rohingya and all people of Myanmar.

A 20-year-old Rohingya woman who fled from Rathedaung Township in Myanmar's northern Rakhine State. Single and alone in Bangladesh, she depends entirely on humanitarian aid for survival. ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, August 2019

Methodology

This study relies on tools of social science, particularly psychology, to describe and understand the mental harm inflicted upon the Rohingya people by the Myanmar military and others in Rakhine State, Myanmar, in 2016 and 2017. This study applies the law of genocide to that account of violence in Rakhine State to consider how causing that mental harm constituted an act of genocide. The study draws upon hundreds of pages of firsthand testimonies from survivors and eyewitnesses collected by Fortify Rights and the findings of a 99-page quantitative report, *"The Torture in My Mind": The Right to Mental Health for Rohingya Survivors of Genocide in Myanmar and Bangladesh*, published by Fortify Rights in December 2020. That report is based on participatory action research – an approach that involves community members as active partners in the entire research process, and that seeks to identify and advance community-supported, action-oriented solutions. Fortify Rights and a well-trained, experienced team of ethnic Rohingya researchers conducted the research in refugee camps in Bangladesh between March 2018 and November 2020. *The Torture in My Mind* provided new evidence of the severe mental health toll that genocide, human rights violations, and violence have on survivors. This study provides a legal analysis of that evidence to examine how the infliction of serious mental harm upon the Rohingya people of Myanmar can be found to constitute a genocidal act.

"In 2009, the Myanmar government took this photo; they call it the 'household' photo. This is to keep records for them. And this is the only photograph of my whole family that I have. In 2017, they killed my mother and sister in front of me, and I brought this photo with me when we fled our country for our neighbor Bangladesh. This is an essential photograph for my future family members, as the [Myanmar] army already killed many in the photographs; this remains their only memory." –Rohingya genocide survivor in Bangladesh. ©Saiful Huq Omi, Counter Foto, Bangladesh, 2023

"I want to go back to my motherland. They have committed so many crimes toward us; they tortured us so much. I came walking to Bangladesh, it took us days, and I was wearing this shirt when I came, which I still wear regularly. I do not want to be in the refugee camp. I want to go back to Myanmar." –Rohingya genocide survivor in Bangladesh. ©Saiful Huq Omi, Counter Foto, Bangladesh, 2023

"I made this scarf myself. When I had to come to Bangladesh in 2018, I carried it. This is my favorite. The military junta came to our village and burnt everything, the whole town and my home. Sometimes, when I wear this as a head cloth [hijab], I remember my motherland." – Rohingya woman and refugee, age 45, from Rathedaung Township. ©Saiful Huq Omi, Counter Foto, Bangladesh, 2023

“Once our village was under attack when I had to run away, I had no time to pack. But I would never leave my Holy Quran; I am a Muslim. I carried it with me, with my Tasbeeh.” – Rohingya man and refugee, 60, from, Rakhine State, Myanmar. ©Saiful Huq Omi, Counter Foto, Bangladesh, 2023

“I do not remember how far we had to walk to reach Bangladesh; we walked days and nights. I still have this pair of sandals with me. I was wearing these when I came to Bangladesh. I had to fix it after coming to Bangladesh, and it is hardly any more wearable. But I do not want to throw it away. I want to keep it. This is from Myanmar .” – Rohingya refugee woman, 24, from Rakhine State, Myanmar. ©Saiful Huq Omi, Counter Foto, Bangladesh, 2023

"I know these are not gold, nothing valuable, but other than my clothes, these are the old things I could carry with me when they [the Myanmar military] attacked my village and burned everything we had. This is a remembrance for me. My husband bought these for me. I shall keep these safe." –Rohingya refugee woman, 32, in Bangladesh. ©Saiful Huq Omi, Counter Foto, Bangladesh, 2023

"I used this rope to tie everything I could have carried from my home in Myanmar. I know many who couldn't leave the country, and I do not know what happened to them. I know they [the Myanmar military] killed so many of them. This rope reminds me of my country and that my fate is tied. I have kept the rope stored here as a reminder of my days in Myanmar ." –Rohingya refugee man from Rakhine State, Myanmar. ©Saiful Huq Omi, Counter Foto, Bangladesh, 2023

A Rohingya refugee and genocide survivor from Myanmar, now in Bangladesh. Among Rohingya survivors in the camps in Bangladesh, 61.2 percent report symptoms consistent with Post Traumatic Stress Disorder, 88.7 percent report depression, and 84 percent report emotional distress (including symptoms of anxiety combined with depression). ©Saiful Huq Omi, Counter Foto, Bangladesh, 2023

I. Background

Various groups with a variety of ethnic, cultural, linguistic, and religious backgrounds live in Myanmar. According to a 2014 census, 87.9 percent of the population is Buddhist, 6.2 percent Christian, and 4.3 percent Muslim.[1] The Rohingya are a primarily Muslim ethnic and indigenous group native to Rakhine State – also known as Arakan State – in western Myanmar.[2] For decades, they have been the victims of discrimination, persecution, and violence by the Myanmar government, military, police, and private citizens due to their ethnic origin and religious affiliation.

Violence against Rohingya in Myanmar is not a new phenomenon. From 1962 until 2011, Myanmar was governed by an all-powerful military regime, and during that time, persecution and attacks against Rohingya persisted.[3] In 1977 and 1978, the Myanmar military carried out Operation *Naga Min* (Dragon King), ostensibly to scrutinize and register residents as citizens or foreigners.[4] In Rakhine State, this operation targeted the Rohingya and led to severe human rights violations, including killings, rape, the burning of homes, and the displacement of Rohingya into Bangladesh.[5] In 1982, the government passed a new citizenship law that denied Rohingya the possibility of attaining citizenship in Myanmar.[6] Under the law, anyone belonging to one of eight specified "national ethnic groups" is a full citizen by birth in Myanmar, as are persons belonging to ethnic groups deemed to have settled before 1823.[7] The Rohingya are not recognized under the law or by the junta as a "national ethnic

1 *See,* Myanmar Information Management Unit, "The 2014 Myanmar Population and Housing Census," http://themimu.info/census-data (accessed August 25, 2023). The 2014 census in Myanmar famously omitted Rohingya due to the government's insistence that Rohingya do not exist and that those claiming to be Rohingya are instead "Bengali." *See,* Paul Mooney, "Myanmar's First Census in Three Decades Completed Amid Controversy," *Reuters*, April 11, 2014, https://www.reuters.com/article/uk-myanmar-census/myanmars-first-census-in-three-decades-completed-amid-controversy-idUKBREA3A0X420140411.

2 There are small populations of Rohingya Christians and Rohingya Hindus in, at least, Rakhine State, refugee camps in Bangladesh, and in India.

3 U.N. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar,* U.N. Doc. A/HRC/39/CRP.2, September 17, 2018, pp. 22-23.

4 Fortify Rights, *"They Gave them Long Swords": Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar*, July 2018, https://www.fortifyrights.org/downloads/Fortify_Rights_Long_Swords_July_2018.pdf, p. 36 (accessed August 25, 2023). *See also,* Fortify Rights, *"Tools of Genocide": National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar*, September 2019, https://www.fortifyrights.org/downloads/Tools%20of%20Genocide%20-%20Fortify%20Rights%20-%20September-03-2019-EN.pdf (accessed August 25, 2023).

5 U.N. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar,* U.N. Doc. A/HRC/39/CRP.2, September 17, 2018, pp. 101-109.

6 Fortify Rights, *"Tools of Genocide,"* p. 36.

7 *Ibid.*

group" of Myanmar.[8] The 1982 citizenship law effectively made the Rohingya one of the largest stateless populations in the world.[9] The timing and content of the 1982 law demonstrate that it deliberately targeted Rohingya on racial and religious grounds.[10] However, the authorities did not fully enforce it for several years.[11]

In addition to Myanmar's longstanding state policy that deprives the Rohingya population of nationality, official state policies also restricted Rohingya ability to marry, earn a livelihood, have children, travel outside their villages or internment camps, express their religion, secure medical care, and attend schools.[12] Rohingya couples who wish to marry must receive official permission to obtain marriage licenses, and, as a matter of policy, Rohingya families are not permitted to have more than two children.[13] These restrictions have long applied exclusively to Rohingya couples and families.

In 2011 elections, boycotted by the pro-democracy National League for Democracy (NLD), the military-backed Union Solidarity and Development Party won 80 percent of seats in Parliament, bringing former military general Thein Sein to the Presidency. President Thein Sein released political prisoners and introduced a variety of democratic reforms, including the easing of media restrictions, ushering in a process of measured democratization.[14]

In 2012, violence against the Rohingya broke out when three Muslim men allegedly raped and murdered Thida Htwe, a 27-year-old Buddhist woman, in Rakhine State.[15] Ethnic Rakhine, or Arakanese, residents of Rakhine State called for widespread retribution against Muslims throughout the state and country.[16] That June, hundreds of Rakhine surrounded a bus carrying Muslim travelers, forced them off the bus and beat them to death; nearby police and military did not intervene.[17] Violence rapidly spread across Rakhine State, with clashes between Rakhine and

8 Burma Citizenship Law, Pyithu Hluttaw Law No. 4, October 15, 1982, art. 3. *See also*, Burmese Rohingya Organisation UK, "Myanmar's 1982 Citizenship Law and Rohingya," December 2014, https://burmacampaign.org.uk/media/Myanmar's-1982-Citizenship-Law-and-Rohingya.pdf (accessed August 25, 2023).

9 U.N. Human Rights Council, U.N. Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Ojea Quintana, *Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar,* U.N. Doc No. A/HRC/13/48, March 10, 2010, paras. 87-88; Allard K. International Lowenstein Human Rights Clinic, Yale Law School, and Fortify Rights, *Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis*, October 2015, https://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf, pp. 6-13 (accessed August 28, 2023).

10 Fortify Rights, "*Tools of Genocide*"; Nick Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya," *Journal of Contemporary Asia*, Vol. 47, No. 3, 2017, pp. 461-483, https://www.tandfonline.com/doi/full/10.1080/00472336.2017.1297476?scroll=top&needAccess=true. Cheesman writes that the "work of introducing the new citizenship regime appears to have gone on lethargically and without fanfare," and other accounts differ as to when the government began implementing the law. Most accounts, including government data, indicate that, by 1989, the authorities were implementing the law as designed. *See also,* for example, Patrick Brown, *No Place on Earth* (New York: FotoEvidence, 2019); Natalie Brinham, "Looking Beyond Invisibility," *Tilburg Law Review*, Vol. 24, No. 2, 2019, pp.156–169.

11 *Ibid*.

12 *See,* Allard K. International Lowenstein Human Rights Clinic, Yale Law School, and Fortify Rights, *"Policies of Persecution."*

13 Human Rights Watch, *"All You Can Do is Pray": Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, April 2013, p. 80; Human Rights Watch, "Burma: Revoke 'Two Children Policy' For Rohingya," May 28, 2013, https://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya (accessed August 28, 2023).

14 *See,* Patrick Boehler, "A Brief Guide to Myanmar's Elections," *The New York Times*, November 5, 2015, https://www.nytimes.com/2015/11/06/world/asia/myanmar-election-president-aung-san-suu-kyi-explainer.html (accessed August 28, 2023); Thomas Fuller, "Myanmar Election Has Aung San Suu Kyi's Party Confident of Landslide," *The New York Times*, November 9, 2015, https://www.nytimes.com/2015/11/10/world/asia/myanmar-election-results-aung-san-suu-kyi.html (accessed August 28, 2023).

15 Human Rights Watch, "*All You Can Do is Pray*," p. 21.

16 *Id.* at 22-29.

17 Human Rights Watch, *"The Government Could Have Stopped This": Sectarian Violence and Ensuing Abuses in Burma's Arakan State*, August 1, 2012, https://www.hrw.org/report/2012/08/01/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan.

Rohingya. State security forces failed to intervene and stop violence on either side and sometimes participated in the violence against Muslims.[18] In October 2012, the military and police, Arakanese political party officials, and senior Buddhist monks led a much more organized and planned attack against Muslim villages, mostly Rohingya, throughout Rakhine State.[19] Violence occurred in 13 of 17 townships statewide and initially displaced approximately 120,000 Rohingya, whom the government confined to more than 40 internment camps in 5 townships of Rakhine State, later consolidating the number of internment camps to approximately 20 sites in 5 townships.[20] More than 100,000 Rohingya remain confined to internment camps at the time of publication, and the military continues to deny adequate humanitarian aid to Rohingya in Rakhine State.[21]

In the lead-up to the violence in 2012, ethnic-Arakanese political leaders and Buddhist monks urged the government to isolate Muslims economically and socially, and some made explicit calls for the "ethnic cleansing" of Muslims from the area.[22] In July 2012, following the first wave of violence, Myanmar President Thein Sein said that "the only solution" for the situation in Rakhine State was to expel "illegal" Rohingya to other countries or to camps overseen by the UNHCR.[23] Incidents of violence against Muslims, including sexual violence by security forces against Rohingya women, continued with impunity. Violence perpetrated against Rohingya by the military and Arakanese civilian perpetrators included massacres, arson attacks on villages, and forced displacement.[24] From 2012 to 2015, more than 200,000 Rohingya fled Myanmar; many were subjected to human trafficking and mass atrocity crimes at sea and on land in Thailand and Malaysia. [25]

In 2015, the NLD participated in and swept national elections. The international community expressed great hope for reform of the government under the civilian leadership of human rights icon Aung San Suu Kyi, who became head of state.[26] However, under Myanmar's new government, the authorities continued to commit violence against Rohingya, denying them basic human rights and their existence as an ethnic group and refusing to accept them as citizens with equal rights.[27]

On August 23, 2016, Myanmar State Counsellor Aung San Suu Kyi established the Advisory Commission on Rakhine State, also known as the Annan Commission, an international advisory commission headed by former U.N. Secretary-General Kofi Annan.[28] The commission was mandated

18 Human Rights Watch, "*All You Can Do is Pray*," p. 5.

19 *Id.* at p. 7.

20 *Id.* at p. 21.

21 Matthew Smith, "The Rohingya Genocide – Warning Signs, International Inaction, and Missteps," *Opinio Juris*, August 29, 2022, http://opiniojuris.org/2022/08/29/symposium-on-myanmar-and-international-indifference-the-rohingya-genocide-warning-signs-international-inaction-and-missteps/ (accessed August 28, 2023).

22 Human Rights Watch, "Burma: End 'Ethnic Cleansing' of Rohingya Muslims," April 22, 2013, https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims# (accessed August 28, 2023).

23 Human Rights Watch, "*All You Can Do is Pray*, p. 21.

24 *See,* Allard K. Lowenstein International Human Rights Clinic, Yale Law School, and Fortify Rights, *"Persecution of the Rohingya Muslims*," October 2015.

25 Fortify Rights and Human Rights Commission of Malaysia (SUHAKAM), *"Sold Like Fish": Crimes Against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015*, March 2019, https://www.fortifyrights.org/reg-inv-rep-2019-03-27/ (last accessed August 25, 2023); Fortify Rights and the Burmese Rohingya Organisation U.K., "*Everywhere is Trouble": A Briefing on the Situation of Rohingya Refugees from Myanmar in Thailand, Malaysia, and Indonesia*, March 11, 2016, https://www.fortifyrights.org/downloads/EverywhereisTrouble.pdf (accessed August 25, 2023)..

26 Fortify Rights, *"They Gave Them Long Swords*," p. 38.

27 Fortify Rights's 2019 report on the National Verification Card process found that even under the NLD, Myanmar authorities forced and coerced Rohingya to accept the cards, which effectively identify Rohingya as foreigners and strip them of access to full citizenship rights. *See,* Fortify Rights, *"Tools of Genocide."*

28 Fortify Rights, "Myanmar: Kofi Annan-led Commission on Rakhine State a Welcomed Move," August 24, 2016, https://www.fortifyrights.org/mya-inv-2016-08-24/ (accessed August 28, 2023).

to ensure the social and economic well-being of both the Rakhine/Arakanese Buddhist and the Rohingya Muslim communities of Rakhine State. It had six members who were Myanmar nationals, three international members, and no Rohingya members. It was not mandated to investigate or ensure accountability for atrocity crimes.[29]

Violence against the Rohingya escalated again on October 9, 2016, when Rohingya militants calling themselves *Harakh al Yaqin* attacked three police outposts in Maungdaw Township, northern Rakhine State, allegedly killing nine police officers.[30] The Myanmar military and police, rather than targeting the militant group responsible for the attacks, launched a "brutal and grossly disproportionate" attack targeting the entire Rohingya population.[31] The Myanmar Army began "clearance operations," razing dozens of villages and killing, raping, and arresting Rohingya *en masse*. The attacks displaced more than 94,000 Rohingya in October and November 2016, and more than 74,000 Rohingya refugees fled to Bangladesh.[32]

In response to the 2016 attacks and to advocacy by governments and human rights organizations, including Fortify Rights, the U.N. Human Rights Council established the Independent International Fact-Finding Mission on Myanmar (FFM) on March 24, 2017, to "establish the facts and circumstances of the alleged recent human rights violations by military and security forces…with a view to ensuring full accountability for perpetrators and justice for victims."[33] The U.N. Human Rights Council resolution establishing the investigative body further encouraged the Government of Myanmar to "cooperate fully with the fact finding mission," stressing the need for "full, unrestricted and unmonitored access to all areas and interlocutors."[34]

The Government of Myanmar, led by State Counsellor Aung San Suu Kyi, also the Foreign Minister at the time, refused to cooperate with the FFM or grant it access to the country, despite widespread calls by Myanmar civil society for cooperation.[35]

On August 24, 2017, the Annan Commission released its final report with 88 recommendations to improve the situation in Rakhine State.[36] The next day, on August 25, 2017, Rohingya militants in Rakhine State attacked the police and military again, calling themselves the Arakan Rohingya Salvation Army (ARSA). Using mostly sticks and knives, farming equipment, and improvised explosive devices, the group attacked the Myanmar police and army in all three townships of northern Rakhine State, reportedly killing a dozen police. In response, the Myanmar army,

29 *Ibid.*

30 Fortify Rights, *"They Gave them Long Swords*," p. 36 and 39. *See also*, Fortify Rights and the United States Holocaust Memorial Museum, *"They Tried to Kill Us All": Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar*, November 2017, https://www.fortifyrights.org/downloads/THEY_TRIED_TO_KILL_US_ALL_Atrocity_Crimes_against_Rohingya_Muslims_Nov_2017.pdf (accessed August 25, 2023).

31 U.N. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, A/HRC/39/CRP.2, September 17, 2018, para. 751.

32 Fortify Rights, *"They Gave them Long Swords*," p. 39.

33 Years of advocacy targeting U.N. member states culminated in the establishment of the U.N. Fact-Finding Mission. *See*, Fortify Rights, "United Nations: Establish Independent Investigation into Genocide in Myanmar," October 29, 2015, https://www.fortifyrights.org/mya-2015-10-29/ (accessed August 28, 2023); Fortify Rights, "Myanmar: Civil Society Calls for International Investigation in Rakhine State," January 18, 2017, https://www.fortifyrights.org/mya-inv-2017-01-18/ (accessed August 28, 2023); Fortify Rights, "U.S.: Support International Inquiry Into Violations in Myanmar," March 17, 2017, https://www.fortifyrights.org/us-mya-inv-2017-03-17/ (accessed August 28, 2023); Fortify Rights, "Myanmar: U.N. Orders Vital Inquiry into Severe Rights Violations," March 24, 2017, https://www.fortifyrights.org/mya-inv-2017-03-24/ (accessed August 28, 2023).

34 U.N. Human Rights Council, *Resolution Adopted by the Human Rights Council on 24 March 2017*, U.N. Doc. A/HRC/RES/34/22, March 24, 2017, para. 12.

35 Fortify Rights, "Myanmar: Cooperate with U.N. Fact-Finding Mission, Says Civil Society," May 25, 2017, https://www.fortifyrights.org/mya-inv-2017-05-25/ (accessed August 28, 2023); "Myanmar Says it Will Not Grant Visas For UN Fact-finding Mission on Rakhine," *Radio Free Asia*, June 29, 2017, https://www.rfa.org/english/news/myanmar/un-visas-06292017165515.html (accessed August 25, 2023).

36 Kofi Annan Foundation, "*Advisory Commission on Rakhine State: Lessons Learned*," June 2018, https://www.kofiannanfoundation.org/app/uploads/2018/06/180530_Rakine_Lessons-Learned_final.pdf.

police, and ethnic Arakanese and Mro civilians razed hundreds of Rohingya villages, committing massacres of women, men, and children, systematic rape of women and girls, and mass arbitrary arrests of men and boys. More than 700,000 Rohingya women, men, and children fled across the border to Cox's Bazar District in Bangladesh.[37]

Following both waves of violence in 2016 and 2017, the FFM reported patterns of human rights violations committed by the Myanmar military and police:

> The Mission [FFM] established consistent patterns of serious human rights violations and abuses in Kachin, Rakhine and Shan States, in addition to serious violations of international humanitarian law. These are principally committed by the Myanmar security forces, particularly the military. Their operations are based on policies, tactics and conduct that consistently fail to respect international law, including by deliberately targeting civilians. Many violations amount to the gravest crimes under international law. In the [sic] light of the pervasive culture of impunity at the domestic level, the mission finds that the impetus for accountability must come from the international community. It makes concrete recommendations to that end, including that named senior generals of the Myanmar military should be investigated and prosecuted in an international criminal tribunal for genocide, crimes against humanity and war crimes.[38]

The FFM also referred to the psychological damage experienced by the Rohingya who survived the "clearance operations" and fled Myanmar. They faced a journey of significant risk, under appalling conditions, many having just suffered the trauma of losing their families and friends, their homes, and their villages.[39] Victims reported the harm and the trauma they suffered.[40] Children had become afraid of opening doors and hid when they saw or heard planes.[41] Victims reported no longer being able to work to sustain a livelihood.[42] Victims of torture and other ill-treatment stated that they suffered from severe trauma, cognitive dysfunction, and other mental and physical consequences that require medical care.[43] The impact of sexual and gender-based violence on women and men was particularly severe, varied, and long lasting.[44]

Fortify Rights, followed by the FFM, and, later, the U.S. government, found that the Myanmar military's 2016 and 2017 attacks on the Rohingya amounted to genocide and crimes against humanity.[45]

Aung San Suu Kyi, who became head of the Government of Myanmar as State Counsellor following the 2015 elections, refused to speak out or take meaningful action to stop the brutal violence against Rohingya Muslims; at the same time, she defended the Myanmar military's actions against them.[46]

37 Fortify Rights, *"They Gave Them Long Swords."*

38 U.N. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar,* U.N. Doc. A/HRC/39/CRP.2, September 17, 2018, p. 1.

39 *Id.* at p. 355.

40 *Ibid.*

41 *Ibid.*

42 *Ibid.*

43 *Ibid.*

44 U.N. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar,* U.N. Doc. A/HRC/39/CRP.2, September 17, 2018, p. 94.

45 Fortify Rights, *"They Gave Them Long Swords;"* U.N. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar,* U.N. Doc. A/HRC/39/CRP.2, September 17, 2018; Antony J. Blinken, U.S. Secretary of State, "Secretary Antony J. Blinken on the Genocide and Crimes Against Humanity in Burma," March 21, 2022, https://www.state.gov/secretary-antony-j-blinken-at-the-united-states-holocaust-memorial-museum/ (accessed August 28, 2023).

46 Hannah Ellis-Petersen, "From Peace Icon to Pariah: Aung San Suu Kyi's Fall From Grace," *The Guardian*, November 23, 2018, https://www.theguardian.com/world/2018/nov/23/aung-san-suu-kyi-fall-from-grace-myanmar (accessed August 25, 2023).

On November 11, 2019, the Republic of The Gambia ("The Gambia") filed an application at the International Court of Justice (ICJ) against the Republic of the Union of Myanmar alleging violations of the Genocide Convention.[47] The Gambia argued that Myanmar had committed and was continuing to commit genocidal acts against Rohingya and that Rohingya remaining in Myanmar "face grave threats to their existence, placing them in urgent need of protection."[48] Although the Court could not decide breaches of the Genocide Convention at the provisional-measures stage, it was able to determine whether the situation entailed a risk of irreparable prejudice to the rights of the Rohingya and whether there was an urgent need for the protection of those rights.[49]

Myanmar denied any real and imminent risk of irreparable prejudice, asserting that the government was seeking to bring stability to Rakhine State.[50] Aung San Suu Kyi led Myanmar's defense against the accusations of genocide. In her pleadings, she emphasized the need for the government to respond to attacks by ARSA in 2016 and 2017, which she characterized as starting an internal armed conflict.[51] At the ICJ, in keeping with state policy to deny the existence of Rohingya, Aung San Suu Kyi's only use of the name "Rohingya" was in reference to the "Arakan Rohingya Salvation Army."[52]

On January 23, 2020, the ICJ, relying on the conclusions of the FFM and rejecting the arguments put forward by Myanmar, granted provisional measures of protection for the Rohingya.[53] The Court summarized the Mission's findings:

> [T]he Rohingya in Myanmar have been subjected to acts which are capable of affecting their right of existence as a protected group under the Genocide Convention, such as mass killings, widespread rape and other forms of sexual violence, as well as beatings, the destruction of villages and homes, denial of access to food, shelter and other essentials of life.[54]

The Court concluded that the "right of the Rohingya group in Myanmar and of its members to be protected from killings and other acts threatening their existence as a group, are of such a nature that prejudice to them could cause irreparable harm."[55]

In 2020, the NLD won national elections, handily defeating military-backed parties. In response, the military alleged widespread voter fraud and refused to accept the outcome of the election. On February 1, 2021, the day before Parliament was scheduled to swear in new members elected in 2020, the Myanmar military, under Senior General Min Aung Hlaing, launched a *coup d'état*, arresting State Counsellor Aung San Suu Kyi, President Win Myint, and dozens of other parliamentarians and government officials. [56] The military announced a "state of emergency," attempted to seize all powers of government, and commenced a nationwide attack on the civilian population.[57]

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47 *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, International Court of Justice (ICJ), No. 2019/47, Press Release, November 11, 2019, https://www.icj-cij.org/sites/default/files/case-related/178/178-20191111-PRE-01-00-EN.pdf (accessed August 25, 2023). *The Gambia v. Myanmar*, ICJ, Provisional Measures Order, 2020, I.C.J. Rep. 79, January 23, 2020. The Court indicates provisional measures to preserve individual rights claimed by The Gambia for the protection of the Rohingya in Myanmar.

48 *Ibid.*; *The Gambia v. Myanmar*, ICJ, Provisional Measures Order, 2020, I.C.J. Rep. 79, January 23, 2020, para. 67.

49 Rules of Court, adopted on April 14, 1978, and entered into force on July 1, 1978, arts. 73-76.

50 *Ibid.*

51 *The Gambia v. Myanmar*, ICJ, CR 2019/19, Verbatim Record, December 11, 2019, para. 5.

52 *See*, *The Gambia v. Myanmar*, ICJ, CR 2019/19, Verbatim Record.

53 Fortify Rights, "Myanmar: Protect Rohingya, Comply with ICJ Provisional Measures," January 23, 2020, https://www.fortifyrights.org/mya-inv-2020-01-23/ (accessed August 28, 2023).

54 *The Gambia v. Myanmar*, ICJ, Provisional Measures Order, 2020, I.C.J. Rep. 79, January 23, 2020, para. 71.

55 *The Gambia v. Myanmar*, ICJ, Provisional Measures Order, 2020, I.C.J. Rep. 79, January 23, 2020, para. 67.

56 Fortify Rights and the Schell Center for International Human Rights at Yale Law School, *"Nowhere Is Safe": The Myanmar Junta's Crimes Against Humanity Following the* Coup d'état, March 2022, https://www.fortifyrights.org/downloads/Nowhere%20is%20Safe%20-%20Fortify%20Rights%20Report.pdf (accessed August 28, 2023).

57 *Ibid.*

In the six months following its *coup d'état*, the Myanmar junta murdered, imprisoned, tortured, disappeared, forcibly displaced, and persecuted civilians in acts that amount to crimes against humanity.[58] In response to nationwide armed resistance that arose, the junta subsequently launched airstrikes and attacks in ethnic states in which there was longstanding armed conflict, as well as in central regions that have not seen armed conflict since World War II.[59]

Until the coup in 2021, the government continued to deny the existence of the Rohingya, refusing to recognize them as an official ethnic group or to restore their citizenship. Following the 2021 coup and the arrest and imprisonment of Aung San Suu Kyi, the Committee Representing Pyidaungsu Hluttaw (CRPH) – a committee of elected Myanmar parliamentarians that formed following the February *coup d'état* – established the NUG of Myanmar on April 16, 2021. The people of Myanmar overwhelmingly recognize the NUG as their legitimate, elected government, and the Myanmar junta's claim to be the Government of Myanmar is not supported by international law.[60] The NUG formally apologized for past atrocity crimes against Rohingya and committed to ensuring justice and accountability and the full restoration of rights for Rohingya in Myanmar.[61] The Myanmar military junta continues to subject Rohingya to acts of genocide and other human rights violations.[62]

In Bangladesh, nearly a million Rohingya have been living in dangerous conditions in refugee camps for years; with the current situation in Myanmar, they have no prospect of returning home, despite the military junta's claims to want the Rohingya to return to Rakhine State.[63] The refugees are confined to camps where they are denied the rights to freedom of movement, to education, and to health.[64] Rohingya militants operating in the refugee camps continue to commit murder, torture, and abductions with impunity.[65] Moreover, in March and again in June 2023, the WFP announced devastating reductions of food aid to Rohingya in the camps, increasing the risks of "acute malnutrition, infant mortality, violence, and even death."[66]

On January 24, 2023, Fortify Rights and 16 individual survivors from seven ethnic groups in Myanmar, including Rohingya, filed a criminal complaint with the Federal Public Prosecutor General of Germany under the principle of universal jurisdiction.[67] The complaint provided evidence

58 *Ibid.* A 193-page report by Fortify Rights and the Schell Center for International Human Rights at Yale Law School, *"Nowhere Is Safe,"* documented those atrocities, identified 61 perpetrators, and exposed 1,040 military locations nationwide – information intended to assist future prosecutions. The nationwide attacks have affected all people of Myanmar, including Rohingya, and the attacks have only grown more frequent and severe.

59 Fortify Rights and the Schell Center for International Human Rights at Yale Law School, *"Nowhere Is Safe."*

60 U.N. Human Rights Council, *Illegal and Illegitimate: Examining the Myanmar Military's Claim as the Government of Myanmar and the International Response*, A/HRC/52/CRP.2, January 31, 2023.

61 Fortify Rights, "Myanmar National Unity Government: Appoint an Ethnic-Rohingya Envoy to Implement New Policy," June 3, 2021, https://www.fortifyrights.org/mya-inv-2021-06-03/ (accessed August 28, 2023).

62 Fortify Rights, *"Genocide by Attrition": The Role of Identity Documents in the Holocaust and the Genocides of Rwanda and Myanmar*, June 8, 2022, https://www.fortifyrights.org/mya-inv-rep-2022-06-08/ (accessed August 28, 2023).

63 Reuters, "Rohingya Refugees Demand Citizenship and Security on First Return to Myanmar," *CNN*, May 7, 2023, https://www.cnn.com/2023/05/07/asia/rohingya-myanmar-repatriation-visit-intl-hnk/index.html (accessed August 25, 2023).

64 *See*, Fortify Rights, "Bangladesh: Restore and Strengthen Capacity of Community-led Schools in Rohingya Camps," Joint Statement, April 28, 2022, https://www.fortifyrights.org/bgd-inv-stm-2022-04-28/ (accessed August 28, 2023); Fortify Rights "Bangladesh: Investigate Refugee-Beatings by Police, Lift Restrictions on Movement," May 26, 2022, https://www.fortifyrights.org/bgd-inv-2022-05-26/ (accessed August 28, 2023); Fortify Rights, "Bangladesh: Remove Fencing, Support Fire-Affected Refugees," May 5, 2021, https://www.fortifyrights.org/bgd-inv-2021-05-05/ (accessed August 28, 2023); Fortify Rights, "Bangladesh: Remove Fencing That Confines Rohingya to Refugee Camps," October 9 , 2020, https://www.fortifyrights.org/bgd-inv-2020-10-09-2/ (accessed August 28, 2023).

65 Human Rights Watch, "Bangladesh: Spiraling Violence Against Rohingya Refugees," July 13, 2023, https://www.hrw.org/news/2023/07/13/bangladesh-spiraling-violence-against-rohingya-refugees (accessed August 28, 2023).

66 U.N. Office of the High Commissioner for Human Rights, "Bangladesh: UN Experts Decry Devastating Second Round of Rations Cuts for Rohingya Refugees," June 1, 2023, https://www.ohchr.org/en/press-releases/2023/06/bangladesh-un-experts-decry-devastating-second-round-rations-cuts-rohingya (accessed August 28, 2023); *See also*, "Alarm Grows over WFP Plan to Cut Food Aid for Rohingya Refugees," *Al Jazeera*, February 17, 2023, https://www.aljazeera.com/news/2023/2/17/alarm-grows-over-plan-to-cut-food-aid-for-rohingya-refugees (accessed August 28, 2023).

67 Fortify Rights, "Criminal Complaint Filed in Germany against Myanmar Generals for Atrocity Crimes," January 24,

that senior Myanmar military generals and others are responsible for genocide, war crimes, and crimes against humanity.[68] The 215-page complaint and more than 1,000 pages of annexes provided evidence to assist the Federal Prosecutor in investigating and prosecuting those responsible for the Rohingya genocide and the atrocity crimes related to the military junta's February 2021 *coup*.[69] On October 11, 2023, the Federal Public Prosecutor of Germany informed Fortify Rights that it would not be initiating an investigation into the crimes alleged in the complaint.

2023, https://www.fortifyrights.org/mya-inv-2023-01-24/ (accessed August 25, 2023).

68 *Ibid.*

69 *Ibid.*

II. Mental Harm and Human Rights Violations Among the Rohingya

The Genocide Convention identifies several acts that, if "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such," can constitute genocide. The list of acts that can constitute genocide includes acts "[c]ausing serious bodily or mental harm to members of the group."[70] International case law has established that acts causing serious mental harm to members of a group that result in lasting damage to their ability to lead a normal and constructive life can constitute acts of genocide. However, the "serious mental harm" form of genocide has generally been neglected in case law and human rights reports, even though it can, by itself, be a powerful means for destroying a group. Unlike physical wounds, mental harm is often not readily discernable, making it difficult to document, quantify, or prove legally, even though its presence and destructive effects are deeply felt by targeted groups.

With the aim of documenting the mental harm suffered by the Rohingya refugee population, a team of Rohingya researchers, supported by Fortify Rights, interviewed nearly 500 Rohingya in the refugee camps in Bangladesh to document the violence they suffered in Myanmar.[71] The study's findings are significant for several reasons. First, few studies have examined the mental harm that systematic human rights violations and exposure to traumatic events cause.[72] Second, the study relied on Rohingya researchers both to assist in framing the study's methodology and to conduct interviews, thus ensuring strong representation of Rohingya perspectives throughout the study's design

70 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), adopted December 9, 1948, G.A. Res. 260 A (III), U.N. Doc. E/447, art. II.b.

71 Fortify Rights, *"The Torture in My Mind": The Right to Mental Health for Rohingya Survivors of Genocide in Myanmar and Bangladesh*, December 2020, https://www.fortifyrights.org/mya-inv-rep-2020-12-10/ (accessed August 25, 2023); *See also* Andrew Riley, Yasmin Akther, Mohammed Noor, Rahmar Ali, Courtney Welton-Mitchell, "Systematic Human Rights Violations, Traumatic Events, Daily Stressors and Mental Health of Rohingya Refugees in Bangladesh," *Conflict and Health,* Vol. 14, Article 60, 2020.

72 *See,* U.N. High Commissioner for Refugees, *Culture, Context and Mental Health of Rohingya Refugees: A Review for Staff in Mental Health and Psychosocial Support Programmes for Rohingya Refugees,* 2018, https://www.unhcr.org/media/culture-context-and-mental-health-rohingya-refugees (accessed August 25, 2023); Andrew Riley, Andrea Varner, Peter Ventevogel, M. M. Taimur Hasan, Courtney Welton-Mitchell, "Daily Stressors, Trauma Exposure, and Mental Health Among Stateless Rohingya Refugees in Bangladesh," *Transcultural Psychiatry,* Vol. 54, No. 3, 2017, p. 304–331; International Organization for Migration, *Assessment of Mental Health and Psychosocial Needs of Displaced Refugees in Cox's Bazar*, 2018.

and implementation.[73] Third, the study's representative sample and rigorous methodology permits quantitative conclusions about the effects of the violence on the mental health of the Rohingya refugee population as a whole.[74]

To identify and measure trauma events, the Rohingya research team adapted the Harvard Trauma Questionnaire (HTQ).[75] The trauma-symptoms scale used in the Rohingya-led study was based on the PTSD-symptom subscale of the HTQ. Participants were asked how much each of several symptoms listed had bothered them in the previous week. Response options ranged from 1 (not at all) to 4 (extremely). To supplement the HTQ's questions, the research team organized focus groups of representative members of the Rohingya community and led guided discussions about their experience of trauma. When needed, the team referred community members to medical and mental health professionals. The following sections summarize the study's key findings, which show the magnitude of the mental harm inflicted on the Rohingya.

Human Rights Violations

Human rights reports have documented, through detailed individual testimony, the violations that Rohingya suffered in Myanmar.[76] However, to quantify the degree and extent of human rights violations against the Rohingya communities in Rakhine State, researchers developed a scale to measure human rights violations. The respondents were asked to answer based not only on their own experience but also on their perception of the experiences of Rohingya communities as a whole. Respondents indicated, for each question, the extent to which they experienced a particular category of violation, using a four-item scale, with response options ranging from 1 (not at all) to 4 (extremely). The survey asked respondents about their experience within the seven-year period from 2012 to 2018, to ensure both that answers covered the relatively contemporary period and captured violations that occurred since the start of the 2012 wave of violence.

Respondents, on average, reported that Rohingya communities in Rakhine State had experienced "extreme" levels of systematic human rights violations since 2012 (see Table 1). Average responses across all respondents for all human rights violations included in the survey were in the "quite a bit" to "extremely" range (options 3 and 4 on the 4-item scale), most of them very close to an average of 4, "extremely."

73 Fortify Rights, "*The Torture in My Mind*," pp. 21-35.

74 Fortify Rights, "*The Torture in My Mind*," p. 14.

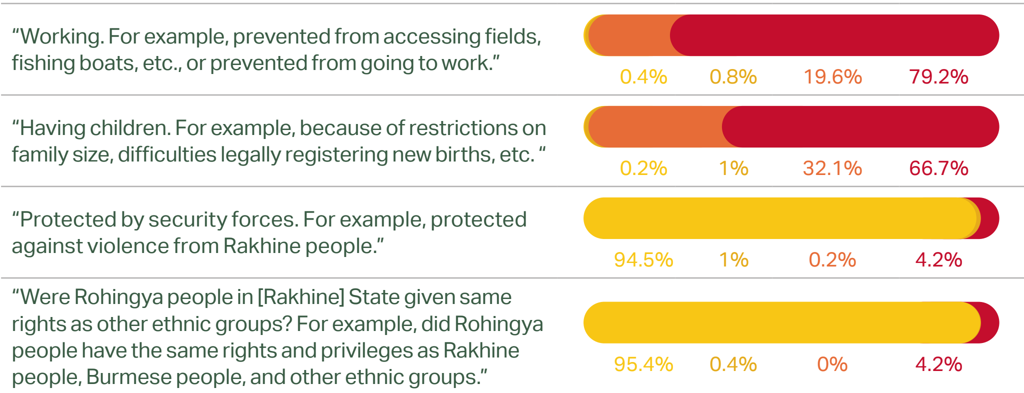
75 Harvard Trauma Questionnaire (HTQ) is an adaptable survey created by the Harvard Program in Refugee Trauma (HPRT). The HTQ inquires about trauma events and the emotional symptoms associated with trauma. The version used by Fortify Rights team derived trauma symptom items from the DSM-IV PTSD criteria, but also added culture-specific questions. *See*, R. F. Mollica, L. McDonald, M. Massagli, D. Silove, "Measuring Trauma, Measuring Torture: Instructions and Guidance on the Utilization of the Harvard Program in Refugee Trauma's Versions of the Hopkins Symptom Checklist-25 (HSCL-25) and the Harvard Trauma Questionnaire (HTQ)," *Harvard Program in Refugee Trauma*, 2004.

76 *See*, Human Rights Watch, *"All You Can Do is Pray"*; Fortify Rights, *"They Gave them Long Swords"*; U.N. Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, U.N. Doc. A/HRC/39/CRP.2, September 17, 2018; Fortify Rights, *"Tools of Genocide."*

Table 1. Experiences with Human Rights Violations in Myanmar[77]

Experiences with Human Rights Violations in Myanmar				
"Were Rohingya people in [Rakhine] State blocked/ prevented from . . ."	**Not at all**	**A little**	**Quite a bit**	**Extremely**
"Obtaining citizenship. For example, blocked from hav[ing] the same citizenship status as other ethnic groups in [Rakhine] State."	0%	0%	0.8%	99.2%
"Working in government positions."	0%	0%	0.8%	99.2%
"Obtaining official identification/documentation, such as National Registration Card (NRC), etc."	0%	0.2%	1%	98.8%
"Using the name Rohingya. For example, at work, school, or in front of officials, etc."	0.2%	0.2%	1%	98.6%
"Expressing their thoughts/feelings publicly. For example, publicly expressing desire for changes in [Rakhine] State, freely speaking to the press about the situation in [Rakhine], etc."	0%	0.2%	2%	97.8%
"Meeting in groups in public."	0.2%	0.2%	1.6%	98%
"Travelling freely. For example, not being able to travel from one township to another without authorization or permission."	0%	0.4%	3.2%	96.4%
"Carrying out religious practices. For example, going to masjid, madrasa, burial rituals, call to prayer, etc."	0.2%	0.2%	3.2%	96.4%
"Voting."	0.2%	0.6%	1.8%	97.4%
"Accessing legal services. For example, access to legal defense, court systems, etc."	0%	0%	4.6%	95.4%
"Were Rohingya people in [Rakhine] State pressured to accept unwanted documentation? For example, NVC card or other unwanted documentation."	0%	0.2%	4.4%	95.4%
"Building or repairing houses."	0%	0.4%	9.5%	90.1%
"Pursuing education. For example, blocked from attending government schools, universities, or blocked from pursuing chosen field of study."	0%	0.4%	9.3%	90.3%
"Marrying. For example, by being denied authorization to marry by authorities or charged large amounts of money for permission to marry by authorities."	0.2%	0.2%	18.4%	81.2%
"Accessing medical services. For example, being refused care at a medical facility or being prevented from travelling to a medical facility for care."	0%	0.4%	18.8%	80.8%

77 Fortify Rights, "*The Torture in My Mind*," pp. 55–56.



The results in Table 1 illustrate the magnitude and frequency of human rights violations experienced by Rohingya. The consistently high average scores for respondents’ perceptions of the human rights violations they suffered or witnessed provide powerful evidence that the many individual accounts of abuse must be understood as illustrations of the common experiences, the shared suffering, of the Rohingya community.

Trauma Events

The Rohingya refugees who were surveyed reported a variety of traumatic events that they had suffered in Myanmar. Nearly all the participating refugees indicated they had experienced horrific events. For example, a 25-year-old woman described the traumatic events she experienced in 2016 a few days before she decided to flee her village:

> I was standing at my home with my father, my grandfather, and my uncle. We were in the same compound. They arrested them in the compound. I was hiding in the house. My father tried to run, and they shot at him. My grandfather was beaten to death with a wooden stick. My father and my grandfather were both killed. … I was hiding in the loft area, watching and listening. I was watching when they shot him [father]. That’s why I left the country. They shot him in the back. Just one shot. Three hours later, when the military left, I saw the body. … I saw when my grandfather was beaten. I was crying. He was lying down on the ground, and they were beating him. His face was on the ground. There were three soldiers. They were kicking and beating him. He was a very old man, with white hair and a white beard.[78]

To measure the extent of trauma events experienced by the Rohingya refugee population, researchers asked respondents about their experience of a number of traumatic events. More than 80 percent of the respondents reported that they had been victims of extortion, had been forced to flee under dangerous conditions, had experienced threats against their ethnic group, had been forced to do things against their religion, had witnessed the destruction or burning of villages, or had been exposed to (heard or saw) frequent gunfire (see Table 2). The respondents also reported that they had been consistently exposed to online images of violence perpetrated against Rohingya. Furthermore, 55.5 percent of respondents recounted that they had suffered torture at the hands of security forces in northern Rakhine State.

78 Fortify Rights interview with B.I., Cox’s Bazar District, Bangladesh, December 13, 2016.

Table 2. Experience with Trauma Events[79]

Experience with Trauma Events	Bangladesh (%)	Myanmar (%)
Exposure (i.e., hearing and/or seeing) to frequent gunfire	1.6	98.6
Witnessed destruction/burning of villages	2	97.8
Repeatedly exposed to violent images against Rohingya on websites (i.e., Facebook, *RVision*, TV, WhatsApp, etc.)	88.7	95.3
Forced to do things against religion (e.g., eat pork, remove cap/niqab/veil, burn/cut beard, etc.)	0	94.9
Threats against your ethnic group	0.6	93.3
Home destroyed	0.6	93.1
Witnessed dead bodies	2.8	91.8
Witnessed physical violence against others	1.4	90.4
Confiscation/looting of personal property	1.2	88.2
Murder of extended family or friend	0.2	86.2
*Follow-up to above item: Family member was killed by security forces		100
Threats against you or your family	1.6	83.7
Forced to flee under dangerous conditions	0.4	83.7
Extortion (i.e., paying money due to force or threats)	2.8	83.1
Forced to hide because of dangerous conditions	1	75.5
Death of family or friends while fleeing or hiding (e.g., not from violent injury like shooting or stabbing, but because of illness, lack of food, drowning, etc.)	2	70.6

79 Fortify Rights, "*The Torture in My Mind*," pp. 51–53.

Witnessed sexual violence/abuse of others	0.8	67.3
Unjust detainment	1.4	63.3
Present while security forces forcibly searched for people or things in your home (or the place where you were living)	1.2	56.9
Torture (i.e., while in captivity you received deliberate and systematic infliction of physical or mental suffering)	1.4	55.5
Forced labor (i.e., forced to do work that you could not decline, for example, patrolling, working for security forces, etc.)	0.2	48.6
Beaten by non-family member	1.6	46.1
Turned back while trying to flee	0.2	46.1
Sexual abuse, sexual humiliation, or sexual exploitation (e.g., coerced sexual acts, inappropriate touching, forced to remove clothing, etc.)	1	33.7
Murder of immediate family member (i.e., father, mother, sister, brother, husband/wife, or children)	0	29.5
*Follow-up to above item: Family member was killed by security forces		99.3
Physical injury from being intentionally stabbed or cut with object (e.g., knife, axe, sword, machete, etc.)	1.8	29.4
Disappearance of family member	0.2	19
Beaten by spouse or family member	3	14.5
Other serious physical injury from violence (e.g., shrapnel, burn, landmine injury, etc.)	0.2	9.2
Forced abortion (only female) [80]	0	5.4

80 The data reflected a significant correlation between forced abortion and experiencing sexual violence in Myanmar. Rohingya researchers also discussed how women got abortions due to fear of violating the government-imposed two-child policy. A participant said: “One woman knew that her family lists would be checked, and she was pregnant with her third child. She was afraid of being arrested and tortured, so she got an abortion.”

Physical Injury from being shot (bullet wound)	0.2	5.1
Rape by security forces (i.e., forced to have unwanted sexual relations with security forces)	0	1.6
Rape by others (i.e., forced to have unwanted sexual relations with a stranger, acquaintance, or family member)	0	1.2

Both men and women reported that they had been sexually assaulted.[81] For example, in one of the testimonies, a Rohingya woman recounted that when soldiers came to her village, she witnessed acts of extreme violence against other women: "The situation is difficult to describe. They cut the women's breasts. I saw so many killed. … They cut their breasts and put the knife in the women's private area, and they cut it. I saw it when it was happening. It was very close to my home."[82]

According to the survey, 33.1 percent of women and 34.3 percent of men reported suffering sexual assault.[83] However, rape (by both security forces and others) was reported at a higher rate by women (3.1 percent) than men (0.8 percent). A large percentage of respondents also reported having witnessed the sexual assault or abuse of others (67.3 percent). For example, a 20-year-old woman described how she witnessed extreme acts of violence against women: "I saw in my village burning houses, and many beautiful unmarried ladies were raped in the house. I witnessed [the military] rape one girl, and other ladies were screaming for two to three hours. I saw this and thought it might happen to my family, so we ran away."[84] Focus group participants suggested that the actual number of people raped could be higher because many who were raped were also killed.[85]

Among female respondents, 5.4 percent narrated having been subjected to forced abortion. In the focus group, participants stated that women's fear of violating the two-child policy imposed on Rohingya living in Rakhine State made them have abortions. They reported that the fear of having children, knowing that the government would blacklist them and bar them from registration, education, and livelihood opportunities, worked to compel women to obtain abortions.

The Rohingya population now living as refugees in Bangladesh witnessed or directly suffered a wide array of human rights abuses and other traumatic events in Myanmar. These events were a common experience for the vast majority of the Rohingya, as shown, not only in individual testimonies and human rights reports, but also in the careful survey of nearly 500 Rohingya refugees and in focus-group discussions organized and facilitated by the Rohingya research team.

81 As it developed the questionnaire, the research team invested significant time and effort in determining how to translate the concepts of rape and sexual assault into the Rohingya language in a way that would not be offensive to respondents. In the Rohingya culture, there is a strong sensitivity to issues related to sexuality. The Rohingya researchers chose wording as close as possible to the concept of rape without being offensive. The team translated rape in language equivalent to "forced to have unwanted sexual relations with," while sexual assault was translated as "other types of sexual abuse, sexual humiliation, or sexual exploitation (e.g., coerced sexual acts, inappropriate touching, forced to remove clothing, etc.)".

82 Fortify Rights interview with B.A., Cox's Bazar District, Bangladesh, December 11, 2016.

83 Fortify Rights, "*The Torture in My Mind*," p. 15. *See also*, Verena Hölzl, "Male Rape Survivors go Uncounted in Rohingya Camps," *The New Humanitarian*, September 4, 2019, https://www.thenewhumanitarian.org/news-feature/2019/09/04/Rohingya-men-raped-Myanmar-Bangladesh-refugee-camps-GBV (accessed August 28, 2023). Women Refugee Commission, "*Sexual Violence against Men and Boys in Conflict and Displacement: Findings from a Qualitative Study in Bangladesh, Italy, and Kenya*," October 2020, https://www.womensrefugeecommission.org/wp-content/uploads/2020/10/Sexual-Violence-against-Men-Boys-Synthesis-Report.pdf (accessed August 28, 2023).

84 Fortify Rights interview with D.H., Cox's Bazar District, Bangladesh, December 10, 2016.

85 *See*, Fortify Rights, "*They Gave them Long Swords*," p. 68.

Mental Health Distress

An extraordinarily large portion of respondents in the study reported symptoms of mental health distress. The WHO estimates that, in general, 10 percent of any adult population is affected by some type of moderate or mild mental health disorder.[86] Twelve months after a humanitarian crisis, the rate of adults experiencing such mental health disorders (including mild and moderate depression and mild and moderate PTSD) is expected to increase by 5-10 percent to a total of 15-20 percent.[87] Among the Rohingya interviewed, the rates were dramatically higher than expected: PTSD (61.2 percent), depression (88.7 percent), and emotional distress (84.0 percent).[88]

In their detailed testimonies, many Rohingya described traumatic experiences that are typically associated with the development of PTSD. For example, a 22-year-old woman described witnessing the ruthless execution of one of her children along with other children in her hometown:

> I was able to take one baby with me, the twin one. I could not take both. The military took one of my twins and threw her in fire. This is the thing they did. If they found any child, they just put them in fire. I saw this in front of me. I shouted and cried but they did not give my baby back. … I watched from where I stayed at the school field. It was my baby and other babies. I saw this. I think about 20 babies, small ones. When they found anyone [with infants], they just took them and threw them into fire.[89]

To further explore the extent to which Rohingya suffered from PTSD, the survey sought to measure the degree of the PTSD symptoms that they experienced. The survey asked respondents to rate, on a scale from 1 to 4 (1 = not at all, 2 = a little, 3 = quite a bit, 4 = extremely), a number of PTSD symptoms.[90] For all of the symptoms about which respondents were asked, the average severity scores were 2.5 or higher; respondents indicated that, on average, they experienced most of the symptoms, at least, "quite a bit."[91]

The answers with the highest average severity scores included (see Table 3) "recurrent thoughts or memories of the most hurtful or terrifying events" (extremely, 69.9 percent), "feeling as though the event is happening again" (extremely, 61.4 percent), "feeling as if [they] don't have a future" (extremely, 42 percent), and "recurrent nightmares" (extremely, 41.2 percent). Responses to symptoms were averaged to provide a total PTSD symptom score. An average score of greater than 2.5 is typically considered diagnostic of PTSD. [92] On the basis of this criterion, 61.2 percent of participants reported post-traumatic distress symptoms.[93] The average score for all participants was 2.80 – that is, the Rohingya respondents experienced the totality of the sixteen measured symptoms, on average, much more than "a little" and very nearly "quite a bit."[94]

86 World Health Organization, "Mental Health in Emergencies," Fact sheet, March 16, 2022, https://www.who.int/news-room/fact-sheets/detail/mental-health-in-emergencies (accessed August 25, 2023).

87 World Health Organization & U.N. High Commissioner for Refugees, "Assessing Mental Health and Psychosocial Needs and Resources: Toolkit for Major Humanitarian Settings," 2011 https://apps.who.int/iris/bitstream/handle/10665/76796/9789241548533_eng.pdf;sequence=1 (accessed August 25, 2023).

88 Fortify Rights, "*The Torture in My Mind*," p. 59.

89 Fortify Rights interview with E.G., Cox's Bazar District, Bangladesh, December 11, 2016.

90 Fortify Rights, "*The Torture in My Mind*," p. 27, 59.

91 *Id.* at p. 59.

92 Although the PTSD subscale of the HTQ has not been validated for use with the Rohingya population, a composite cut-off score of greater than 2.5 on the PTSD subscale of the HTQ has typically been used to indicate scores that are diagnostic of PTSD. *See,* K. Allden, I. Ceric, A. Kapetanovic, J. Lavelle, S. Loga, M. Mathias, K. McInnes, Merhamet Medical Team-Rijeka, R. F. Mollica, V. Puratic, Ruke Team-Zagreb, N. Sarajlic, "Harvard Trauma Manual: Bosnia-Herzegovina Version," (Cambridge: Harvard Program in Refugee Trauma, 1998).

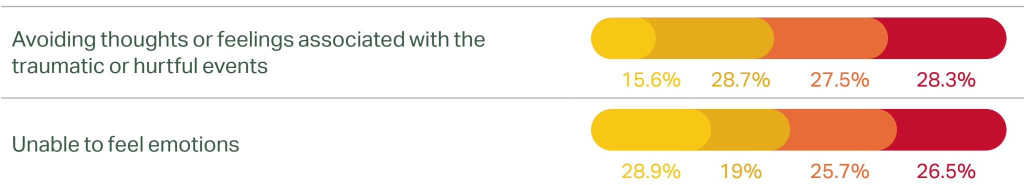
93 Fortify Rights, "*The Torture in My Mind*," p. 47.

94 *Ibid.*

Table 3. Symptoms of Trauma[95]

Symptoms of Trauma				
Symptom	**Not at all**	**A little**	**Quite a bit**	**Extremely**
Recurring thoughts or memories of the most hurtful or terrifying events	2.4%	9.5%	18.2%	69.9%
Feeling as though the event is happening again	3.4%	12.7%	22.4%	61.4%
Feeling as if you don't have a future	16.2%	18.6%	23.2%	42%
Recurrent nightmares	17.8%	23%	18%	41.2%
Feeling detached or withdrawn from people	18.2%	19.6%	23%	39.2%
Sudden emotional or physical reaction when reminded of the most hurtful or traumatic events. For example, sudden anxiety/stress or suddenly feeling heart racing, rapid breathing, etc.	15.4%	24.6%	23%	37%
Less interest in daily activities	16.2%	22%	25.5%	36.4%
Inability to remember parts of the most hurtful or traumatic events	17.6%	22%	25.5%	34.9%
Feeling on guard	19.4%	25.3%	23.2%	32.1%
Avoiding activities that remind you of the traumatic or hurtful event	17.6%	22.8%	27.7%	31.9%
Trouble sleeping	27.7%	16.2%	25.1%	31.1%
Difficulty concentrating	25.7%	20.2%	23%	31.1%
Feeling jumpy, easily startled	25.3%	25.5%	20%	29.3%
Feeling irritable or having outbursts of anger	26.5%	22.6%	22.4%	28.5%

95 Fortify Rights, "*The Torture in My Mind*," p. 60.



Depression and Anxiety

Survey findings confirmed that many of the Rohingya exhibit signs of depression and anxiety that appeared anecdotally in individual testimonies. Signs of anxiety and depression vary depending on the personality and experience of each individual. In their testimonies, many Rohingya expressed their loss of hope for the future or their feelings of worthlessness. For example, a 25-year-old woman who fled her village after her 5-year-old daughter was shot dead said, "I don't think about the future, now only food and shelter."[96] Similarly, a 51-year-old woman described her feelings after being tortured, witnessing the burning of her hometown, and becoming separated from her husband and one of her sons while fleeing her village: "There's no hope for us. … I have nothing to ask. I have nothing now. I lost everything. I hope God will help me. Please pray for us. If you can help us, please help us."[97]

Other Rohingya refugees testified about their anxiety and depression and expressed feelings of sadness or actual bodily distress. A 30-year-old mother of five who hid in a hole next to her house while she witnessed a massacre in her village of Chalipara said that because of her experience, "all of my tears could make a sea."[98] Also, a Rohingya woman reported that her 15-year-old daughter was unable to speak after seven soldiers beat and raped her.[99] Another woman described her inability to sleep because of the traumatic events she suffered: "This is the month of fifth moon that we came over here. We were taken out of houses there, and we could not sleep for four months. When we could not sleep there and our children were lost."[100]

The survey asked Rohingya respondents to rate, on a scale from 1 to 4 (1 = not at all, 2 = a little, 3 = quite a bit, 4 = extremely), several symptoms related to depression and anxiety. [101] Respondents rated every symptom about which they were asked at an average severity score of higher than 2.0 (see Table 4). On average, the respondents experienced all the symptoms at least "a little." The vast majority of survey participants also reported that they experienced certain of the listed symptoms of depression and anxiety "quite a bit" or "extremely," in particular, the following symptoms: "worry[ing] too much about things" (86.3 percent, quite a bit or extremely), "feeling sad" (84.8 percent), "loss of interest in things you previously enjoyed doing" (89.5 percent), and "feeling tense or [agitated]" (72.5 percent).

96 Fortify Rights interview with E.I., Cox's Bazar District, Bangladesh, December 10, 2016.

97 Fortify Rights interview with G.E., Cox's Bazar District, Bangladesh, December 13, 2016.

98 Fortify Rights interview with H.E., Cox's Bazar District, Bangladesh, December 14, 2016.

99 Fortify Rights interview with G.B., Leda Camp, Cox's Bazar District, Bangladesh, March 30, 2017.

100 Fortify Rights interview with I.H., undisclosed location, June 4, 2017.

101 Fortify Rights, "*The Torture in My Mind*," fn. 125. Depression and anxiety were measured using the 25-item Hopkins Symptoms Checklist (HSCL-25), which includes ten anxiety symptom items and fifteen depression symptom items. *See*, R. F. Mollica, L. McDonald, M. Massagli, D. Silove, "Measuring Trauma, Measuring Torture: Instructions and Guidance on the Utilization of the Harvard Program in Refugee Trauma's Versions of the Hopkins Symptom Checklist-25 (HSCL-25) and the Harvard Trauma Questionnaire (HTQ)," *Harvard Program in Refugee Trauma*, 2004.

Table 4. Symptoms of Depression and Anxiety[102]

Symptoms of Depression and Anxiety

Symptom	Not at all	A little	Quite a bit	Extremely
Worry too much about things	7.5%	6.3%	16.2%	70.1%
Feeling sad	8.7%	6.5%	21.4%	63.4%
Feeling tense or keyed up	11.3%	16.2%	20.6%	51.9%
Loss of interest in things you previously enjoyed doing	10.5%	16%	32.3%	41.2%
Feeling of worthlessness	34.5%	7.3%	21.4%	36.8%
Faintness, dizziness, or weakness	19.8%	22.8%	22.2%	35.2%
Feeling hopeless about the future	22.6%	17.4%	25.5%	34.5%
Crying easily	30.7%	19.2%	18%	32.1%
Feeling everything is an effort	19%	31.9%	17.2%	31.9%
Feeling low in energy, slowed down	18.6%	24.4%	26.9%	30.1%
Feeling lonely	19.4%	25.9%	24.6%	30.1%
Feeling fearful	24.4%	28.3%	18.6%	28.7%
Nervousness or shakiness inside	24.6%	24.6%	22.2%	28.5%
Headaches	23%	25.3%	23.4%	28.3%
Heart pounding or racing	27.9%	23%	21.8%	27.3%

102 Fortify Rights, "*The Torture in My Mind*," pp. 61–62.

Symptom				
Trembling	29.1%	21.4%	22.6%	26.9%
Spell of terror or panic	29.5%	25.5%	18.2%	26.9%
Poor appetite	15.2%	29.1%	30.1%	25.7%
Difficulty sleeping, staying asleep	23.2%	23.2%	28.5%	25.1%
Feeling restless or can't sit still	31.1%	25.7%	20.8%	22.4%
Suddenly scared for no reason	34.3%	27.9%	16.4%	21.4%
Blaming yourself for things	49.7%	10.9%	19.4%	20%
Feeling no interest in things	25.7%	31.5%	25.7%	17.2%
Feelings of being trapped or caught	20.6%	34.9%	28.7%	15.8%

Rohingya survey participants' most highly reported symptoms related to re-experiencing traumatic events. For example, most Rohingya participants reported that they experienced, at some level, "recurrent thoughts or memories of the most hurtful or terrifying events" (97.6 percent), "feeling as though the event is happening again" (96.6 percent), and "recurrent nightmares" (82.2 percent). The research team added several items specifically designed for the Rohingya refugee population to the standard symptoms used in the HTQ. For example, 39.4 percent of respondents reported feeling extremely "humiliated/subhuman"; extremely "disrespected" (36.4 percent); and extremely "helpless" (29.5 percent).[103]

The researchers also calculated an overall score that combined, for each respondent, the anxiety and depression symptom items. The researchers used a version of the Hopkins Symptom Checklist-25 (HSCL-25) originally developed by the Harvard Program in Refugee Trauma and then modified for the Rohingya study by the research team.

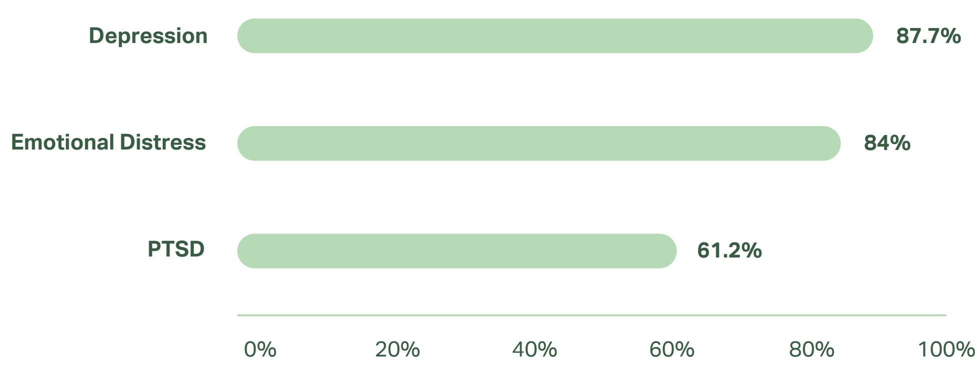
103 Fortify Rights, "*The Torture in My Mind*," p. 64.

The Hopkins Symptom Checklist-25 (HSCL-25)

The HSCL-25 is a symptom inventory that measures symptoms of anxiety and depression. It consists of 25 items: Part I of the HSCL-25 has 10 items for anxiety symptoms; Part II has 15 items for depression symptoms. The scale for each question includes four categories of response ("Not at all," "A little," "Quite a bit," "Extremely," rated 1 to 4, respectively). Two scores are calculated: the total score is the average of all 25 items, while the depression score is the average of the 15 depression items. It has been consistently shown in several populations that the total score is highly correlated with severe emotional distress of unspecified diagnosis, and the depression score is correlated with major depression as defined by the Diagnostic and Statistical Manual of the American Psychiatric Association, IV Version (DSM-IV)."[104]

With this symptom survey, the higher the total score for the combined category of anxiety and depression symptoms, the more likely it is that the respondent was experiencing significant emotional distress.[105] In the study of Rohingya refugees, 84.0 percent of respondents reported overall anxiety and depression symptoms at or above this threshold of 1.75 or higher, typically considered as indicative of emotional distress, with an average score of 2.64 for all participants (see Graph 1).[106] A high percentage of Rohingya survey participants reported experiencing symptoms indicative of depression (88.7 percent), emotional distress (84.0 percent), and PTSD (61.2 percent). The survey results support the conclusion that the Rohingya refugees in Bangladesh suffered from high levels of depression, anxiety, PTSD, and overall emotional distress from the traumatic events they had experienced in Myanmar.

Graph 1. Percentage of Respondents Reporting Significant Depression, Emotional Distress, or PTSD[107]



104 Harvard Program in Refugee Trauma, "Hopkins Symptom Checklist," http://hprt-cambridge.org/screening/hopkins-symptom-checklist/ (accessed August 25, 2023

105 *Ibid. See also,* Fortify Rights, "*The Torture in My Mind*," p. 59; Andrew Riley, Yasmin Akther, Mohammed Noor, Rahmar Ali, Courtney Welton-Mitchell, "Systematic Human Rights Violations, Traumatic Events, Daily Stressors and Mental Health of Rohingya Refugees in Bangladesh," *Conflict and Health,* Vol. 14, Article 60, 2020, p. 24.

106 *Ibid.*

107 The thresholds to find that respondents have higher than average psychological impact is 1.75 for depression, 1.75 for emotional distress, and 2.5 for PTSD. *See* Andrew Riley, Yasmin Akther, Mohammed Noor, Rahmar Ali, Courtney Welton-Mitchell, "Systematic Human Rights Violations, Traumatic Events, Daily Stressors and Mental Health of Rohingya Refugees in Bangladesh," *Conflict and Health,* Vol. 14, Article 60, 2020, pp. 24-25.

Functioning

The Rohingya refugees who participated in *The Torture in My Mind* study reported difficulty functioning, including difficulty engaging in daily tasks like cooking, child care, working, and gathering food, water, and firewood.[108] The research team developed a scale designed to assess various difficulties the refugees were experiencing in their daily functioning (see Table 6). The team created four items based on questions it asked focus-group participants about the types of everyday activities that they felt were necessary. Response options for each item ranged from 1 (not at all) to 4 (extremely).

Table 6. Attribution of Causes of Functioning Difficulty[109]

Attribution of Causes of Functioning Difficulty	Frequency	%[110]
Current living situation	325	71.6
Mental health	283	62.3
Physical health	219	48.2
Specify (lack of income, capital, opportunity)	27	5.9
Specify (displacement, being stateless, lack of rights)	8	1.8
Specify (monsoon season)	7	1.5
Other	38	8.4

Participants who indicated any level of functioning difficulty were asked to respond to a follow-up item about why participants were experiencing these difficulties: "What do you attribute these difficulties to?" Respondents were instructed that they could choose more than one response and were given four response options: "current living situation" (71.6 percent), "mental health" (62.3 percent), "physical health" (48.2 percent), and "other" (8.4 percent).

Results from the survey demonstrate that the mental harm caused by traumatic events that the respondents suffered or witnessed has contributed to the damage they have experienced in their ability to complete everyday tasks and, therefore, to lead a normal and constructive life.

108 Fortify Rights, "*The Torture in My Mind*," pp. 64-65.

109 Fortify Rights, "*The Torture in My Mind*," p. 65.

110 These percentages represent respondents who reported experiencing some level of functioning difficulty.

Prediction of Mental Health Outcomes

The systematic human rights violations and traumatic experiences that the Rohingya suffered in Myanmar and the daily sources of stress in their lives in refugee camps in Bangladesh play significant roles in predicting the refugees' mental health. In particular, a series of regression models that the research team analyzed indicate that the refugees' trauma history significantly predicts their experience of PTSD and depression symptoms.[111]

The systematic human rights violations that the refugees suffered in Myanmar clearly contributed to the mental health problems (PTSD, anxiety, and depression, as well as problems with everyday functioning) that the Rohingya refugees have experienced in the camps in Bangladesh.[112] These findings emphasize the importance of considering exposure to systematic human rights violations in predicting and understanding the effects of trauma on mental health. The violations the Rohingya experienced as traumatic events included witnessing killings, rape and other torture, and the burning of homes and villages; being subjected to pervasive forms of persecution, including being prevented from participating in religious practices, marriage, and childbirth, from travelling freely within the country, and from securing access to education and health facilities; and, finally, being forced to flee one's home and country. The findings show conclusively that the human rights violations the Rohingya suffered in Myanmar have caused grave and lasting mental harm.

111 Andrew Riley, Yasmin Akther, Mohammed Noor, Rahmar Ali, Courtney Welton-Mitchell, "Systematic Human Rights Violations, Traumatic Events, Daily Stressors and Mental Health of Rohingya Refugees in Bangladesh," *Conflict and Health,* Vol. 14, Article 60, 2020, p. 35.

112 *Ibid.*

III. Legal Framework and Analysis

Elements of Genocide

The Polish lawyer Raphael Lemkin coined the word "genocide" in the aftermath of World War II.[113] The word merges the Greek word *genos*, meaning nation, race, or tribe, with the Latin word *cide*, referring to killing.[114] In 1946, the General Assembly of the U.N. passed a resolution recognizing "genocide as a denial of the right of existence of entire human groups."[115] The Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"), which the U.N. General Assembly adopted on December 9, 1948, went into force on January 12, 1951, and defines "genocide" as:

> . . . any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> a. Killing members of the group;
>
> b. Causing serious bodily or mental harm to members of the group;
>
> c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> d. Imposing measures intended to prevent births within the group;
>
> e. Forcibly transferring children of the group to another group. [116]

Key subsequent international legal instruments, including the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the Statute of the International Criminal Tribunal for Rwanda (ICTR), and the Rome Statute of the International Criminal Court (ICC), use the same definition of genocide.[117]

113 Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, (New York: Columbia University Press: 1944). *See also*, Raphael Lemkin, Report on the Preparation of a Volume on Genocide, Yale University, Law School, March-May 1948.

114 Lemkin, Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress.

115 U.N. General Assembly, *The Crime of* Genocide, U.N. Doc. Res. 96(1), December 11, 1946.

116 Genocide Convention, art. II.

117 Statute of the International Criminal Tribunal for the Former Yugoslavia, adopted May 25, 1993, U.N. Doc. S/RES/827, annex, art. 4(2); Statute of the International Criminal Tribunal for Rwanda, adopted November 8, 1994, U.N. Doc. S/RES/955, annex, art. 2(2). Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 1998, 2187 U.N.T.S. 90, U.N. Doc. A/CONF.183/9, (2002), art. 6.

In 2006, the International Court of Justice (ICJ) established that the prohibition of genocide is a peremptory norm (*jus cogens*) of public international law, a norm from which no state may derogate under any circumstances.[118] This was the first time the ICJ declared that any legal rule had the status of *jus cogens*.[119]

Accounts of genocide usually feature the killing of a vast number of individuals. Although these are the most familiar examples of genocide, the emphasis on such examples has tended to push aside or obscure other acts that can constitute this crime. Acts of genocide also include acts that "caus[e] serious…mental harm to members of the group." This study draws special attention to the evolving understanding of acts that cause "mental harm," as provided in Article II.b of the Genocide Convention.

To determine if a particular conduct causing mental harm to members of a group constitutes genocide, three elements must be present: (1) an act or acts causing "serious mental harm," (2) committed against a protected group, (3) with "the intent to destroy in whole or in part" that group. The following sections discuss each of these elements.

"Mental harm," as set forth in Article II.b, is distinct from "physical" harm and can itself be the basis for a genocidal act. A trial attorney in the Office of the Prosecutor of the ICC wrote that "requiring mental harm to manifest physically would render meaningless its inclusion because it would be covered by the protection against bodily harm."[120] This understanding is consistent with the drafting history of the Convention as well as subsequent judicial interpretations by the ICTY and ICTR.

In 1946, the U.N. General Assembly gave the U.N. Economic and Social Council (ECOSOC) responsibility for drafting the Convention.[121] The delegation of China suggested the addition of mental harm as an element of genocide, wanting to ensure that the Convention would criminalize as genocide certain acts, such as Japan's use of narcotics against the Chinese during World War II, that the concept of physical harm might not encompass.[122] China's reasoning was not persuasive to the other delegations, but the phrase "mental harm" was eventually included in the Genocide Convention as part of an amendment successfully proposed by India's delegate.[123] The delegates agreed that acts causing mental harm, like acts causing physical harm, could lead to genocide, but they did not define "mental harm" at the time.

The Genocide Convention lists four distinct bases for constituting a group: nationality, ethnicity, race, and religion. The term "national group," as it is used in the Genocide Convention, has come to be understood as a group that identifies with an established nation state as well as national

118 *Case Concerning Armed Activities on the Territory of the Congo* (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application, February 3, 2006, para. 64.

119 William Schabas, *Genocide in International Law*, (Cambridge: Cambridge University Press, 2009), p. 4. *Jus cogens* ("compelling law" in Latin and "peremptory norm" in English) norms are "certain fundamental, overriding principles of international law." Wex, Legal Information Institute, Cornell Law School https://www.law.cornell.edu/wex/jus_cogens (accessed August 28, 2023). The Vienna Convention on the Law of Treaties states that "a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" Vienna Convention on the Law of Treaties, adopted on May 23, 1969, 1155 U.N.T.S. 331, art. 53.

120 Nema Milaninia, "Understanding Serious Bodily or Mental Harm as an Act of Genocide," *Vanderbilt Journal of Transnational Law*, Vol. 51, No. 5, November 2018, p. 1393.

121 U.N. General Assembly, *The Crime of* Genocide, U.N. Doc. Res. 96(1), December 11, 1946; Article II.B. did not initially include mental harm.

122 Hirad Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires*, Volume One, (Leidin, Boston, Martinus Nijhoff Publishers: 2008), p. 2024; U.N. General Assembly, *Genocide: Draft Convention and Report of the Economic and Social Council: Amendment to Article 2 of the Draft Convention (E/794): Revision: China*, U.N. Doc. A/C.6/232/Rev.1, October 18, 1948; U.N. General Assembly, *Continuation of the Consideration of the Draft Convention on Genocide [E.794]: Report of the Economic and Social Council [A/633]*, U.N. Doc. A/C.6/SR.81, October 22, 1948.

123 U.N. General Assembly, *Genocide: Draft Convention (E/794) and Report of the Economic and Social Council: Amendments to Article 2/India*, U.N. Doc. A/C.6/244, October 21, 1948; U.N. Economic and Social Council, *Ad Hoc Committee on Genocide: Summary Record of the 28th Meeting, Lake Success, New York, Monday, 10 May 1948*, U.N. Doc. E/AC.25/SR.28, June 9, 1948.

minorities with shared historical and cultural links.[124] In a key judgment, *Akayesu*, the ICTR found a national group to be "a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties."[125] In the same judgment, the ICTR also provided definitions of groups based on ethnicity, race, or religion. An "ethnic group" is one whose "members share a common language or culture," while a "racial group is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors."[126] A "religious group" is comprised of members who "share the same religion, denomination or mode of worship."[127] Identifying members of a group protected under the Genocide Convention relies on a subjective test: To find that a victim is a member of the group the perpetrators seek to destroy, it is sufficient that the perpetrators believe the victim to be a member of the group.[128]

Although the ICTR in *Akayesu* suggested that the four categories of groups should be evaluated separately, the history, language, and context of the Genocide Convention suggests that the group element is best analyzed holistically.[129] In establishing whether a targeted group falls within the scope of the definition of genocide, it is not necessary to establish exactly within which of the four enumerated categories the group belongs. [130]

To be found guilty of the crime of genocide, perpetrators must not only have committed a proscribed act against members of a protected group but must also have had the intent to destroy the group, in whole or in part.[131] A finding of genocidal intent does not require direct evidence of the perpetrators' intent. Genocidal intent can be inferred from various kinds of evidence, including enumerated acts systematically directed against a group, the scale of atrocities the group has suffered, and the deliberate targeting of victims who are members of a particular group while not targeting members of other groups.[132] The ICTY has, in the absence of direct, explicit evidence of intent, considered the repetition of destructive and discriminatory acts against a group as evidence of genocidal intent.[133]

Acts Causing Serious Mental Harm Are Stand-Alone Genocidal Acts

Acts May Be Found to Have Caused Serious Mental Harm Independent of Serious Bodily Harm

To establish the genocidal act of causing mental harm, it is not necessary for the mental harm to be connected to physical harm. Judgments of the ICTR and ICTY have found that non-physical acts that inflict strong fear or strong terror, intimidation, or threats are acts that cause serious mental

124 Matthew Lippman, "The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later," *Arizona Journal of International & Comparative Law,* Vol. 15, 1998, p. 415, 456.

125 *Prosecutor v. Jean-Paul Akayesu*, International Criminal Tribunal for Rwanda (ICTR), Case No. ICTR-96-4-T, Judgment (Trial), September 2, 1998, para. 512.

126 *Id.* at paras. 513-514.

127 *Id.* at para. 515.

128 Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law*, (Oxford University Press 2013), p. 121.

129 Allard K. Lowenstein International Human Rights Clinic, Yale Law School, and Fortify Rights, *"Persecution of the Rohingya Muslims."*

130 Schabas, *Genocide in International Law*, pp. 130-131.

131 *Prosecutor v. Radislav Krstić*, International Criminal Tribunal for the Former Yugoslavia (ICTY), Case No. IT-98-33-T, Judgment (Trial), August 2, 2001, para. 32.

132 *Akayesu*, Case No. ICTR-96-4-T, para. 524. The court also cites to *The Prosecutor v. Ignace Bagilishema*, ICTR, Case No. ICTR-95-1A-T, Judgment (Trial), June 7, 2001, para. 62-63; *The Prosecutor v. Alfred Musema,* ICTR Case No. ICTR-96-13-T, Judgment (Trial), January 27, 2000, para. 166-167; *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda,* ICTR, Case No. ICTE-96-3-A, Judgment (Trial), December 6, 1999, para. 61-63; *Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR, Case No. ICTR 95-1-T, Judgment (Trial), May 21, 1999, para. 93; and *The Prosecutor v. Goran Jelisic*, ICTY, Case No. IT-95-10-T, Judgment (Trial), December 14, 1999, para. 73.

133 *Prosecutor v. Laurent Semanza*, ICTR, Case No. ICTY-97-20-T, Judgment (Trial), May 15, 2003, para. 262.

harm.[134] Furthermore, tribunals have indicated that "serious mental harm" should be broadly understood and not limited to the imposition of narcotics or other acts that physically impair the brain.[135] The jurisprudence of the ICTY and the ICTR has established that mental and physical harm are both important, independently of each other, for the determination of genocide. However, international case law has not yet thoroughly explored mental harm as an element of genocide.

In early cases, the ICTR and ICTY discussed acts, such as rape or torture, that necessarily inflict both bodily *and* mental harm, but over time, the tribunals addressed psychological injuries occurring separately from acts of physical harm. For example, in the seminal *Akayesu* case, the ICTR defined acts causing serious bodily or mental harm to include "acts of torture, be they bodily or mental, inhumane or degrading treatment, [and] persecution."[136] The tribunals did not define an exhaustive list of acts that fall within this description, but determined acts of serious bodily or mental harm on a case-by-case basis.[137] Certain acts that constitute torture inflict both bodily and mental harm.[138] For example, the ICTR found in *Akayesu* that incidents of rape and sexual violence during the Rwandan genocide were acts of "serious bodily and mental harm" that resulted in both the "physical and psychological destruction" of individual Tutsi women as well as their families and communities.[139] Although the acts discussed in the *Akayesu* judgment generally involved both physical and mental harm, the ICTR specifically pointed out that rape, like other forms of torture, is used for purposes beyond just the infliction of physical pain, such as "intimidation, degradation, humiliation, discrimination, punishment, control, or destruction of another person."[140] The ICTR found that the effects of rape manifested not only physically in the Tutsi women but mentally as well. The means of torture might be the infliction of physical pain, but the goal is to humiliate, frighten, degrade, or destroy another person. These forms of mental harm can also be achieved without inflicting physical harm.

Since the ICTR's *Akayesu* judgment, tribunals investigating allegations of genocide have increasingly assessed mental harm separately from bodily injury, concluding that a finding of "serious mental harm" does not require the finding of an act causing concomitant physical harm.[141] For example, the ICTY held that forcible transfer or deportation and trauma resulting from family separation can cause "serious mental harm."[142]

In several cases, the ICTY found that forcible transfer and deportation of Bosnian Muslims from the Srebrenica enclave caused the victims to suffer serious mental and bodily harm. In *Krstić*, the Trial Chamber of the ICTY held that "inhuman treatment, torture, rape, sexual abuse and deportation are among the acts which may cause serious bodily or mental injury."[143] The analysis in the *Krstić* judgment addressed both bodily and mental harm, including the psychological harm of deportation and detention. The prosecutor in *Krstić* invoked the Jerusalem District Court's *Eichmann* judgment, which held that the deportation, persecution, and detention of Jewish people were meant

134 *Kayishema*, Case No. ICTR 95-1-T, para. 107.

135 *See Prosecutor v. Zdravko Tolimir,* ICTY, Case No. IT-05-88/2-T, Judgment, December 12, 2012; *See Kayishema*, Case No. ICTR 95-1-T.

136 *Akayesu*, ICTR, Case No. ICTR 96-4-T, para. 504.

137 *See e.g., Tolimir,* Case No. IT-05-88/2-T, para. 738; *Kayishema*, Case No. ICTR-95-1-T, paras. 110 and 113.

138 *See e.g., Akayesu*, Case No. ICTR 96-4-T.

139 *Id.* at para. 731.

140 *Id.* at para. 597.

141 *See Kayishema*, Case No. ICTR 95-1-T and *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, ICTY, Case No. IT-02-60-T, Judgment, January 17, 2005.

142 *See e.g. Tolimir*, Case No. IT-05-88/2-T; *Blagojevic,* Case No. IT-02-60-T; *Krstić*, Case No. IT-98-33-T; and *The Prosecutor v. Radovan Karadžić and Ratko Mladić*, ICTY, Case No. IT-95-5-R61 and IT-95-18-R61, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, July 11, 1996, para. 93.

143 *Krstić*, Case No. ICTY IT-98-33-T, para. 513.

to degrade them, deprive them of their rights, and cause "inhumane suffering and torture."[144] The ICTY Trial Chamber held that the "wounds and trauma" suffered by Srebrenica survivors, who were similarly deported, persecuted, and detained, constituted serious bodily and mental harm.[145] The Trial Chamber also specifically included deportation, an act that does not itself necessarily include overt physical violence, among the list of acts that can cause bodily or mental harm.[146]

Four years later, in *Blagojević*, the ICTY Trial Chamber further focused on the mental harm caused by deportation and forced separation. The Trial Chamber found "that the trauma and wounds suffered by those individuals who managed to survive the mass executions does constitute serious bodily and mental harm."[147] With regard to the mental harm, the Trial Chamber found, "The fear of being captured, and, at the moment of separation, the sense of utter helplessness and extreme fear for their family and friends' safety as well as for their own safety, is a traumatic experience from which one will not quickly – if ever – recover."[148] The ICTY Trial Chamber explained that the psychological stress caused by the disappearance of thousands of Bosnian Muslim men created what has come to be known as "Srebrenica syndrome" in the family members and friends of the disappeared.[149] The expert witness on war trauma who testified in multiple ICTY trials concerning the events at Srebrenica described the survivors' mental state as:

> constant, perpetual uncertainty as to what happened to their loved ones, because they keep waiting. … They cannot begin life, they cannot face up with the reality of the death of a missing person. They only remember the moment they bade farewell, the moment when they had agreed to meet in a spot that would be safe. … This is exhausting, discouraging. They think that life has no value.[150]

In another case concerning Srebrenica, the ICTY noted that the "children who witnessed separations suffer from a range of problems years after the events."[151] The tribunal found that the forcible family separations at Srebrenica caused women and children serious mental harm that lasted long after the event even though they were not themselves physically harmed.[152]

The Trial Chamber presiding over *Blagojević* stated that it was "convinced that the forced displacement of women, children, and elderly people was itself a traumatic experience" the effects of which rose to the level of serious mental harm.[153] Although these women, children, and elderly people were not physically attacked, they were "cruelly separated" from the military-aged men and forcibly displaced "in such a manner as to traumatize them and prevent them from ever returning."[154] The Chamber noted that the victims had to abandon their property, personal belongings, traditions, and long-established relationship with the territory in which they had resided.[155] The Appeals Chamber in *Blagojević* reiterated these findings and held that "[t]he forcible transfer out of the enclave of the women, children and elderly, in combination with those killings [of the men], *or on its own*,

144 *The Israeli Government Prosecutor General v. Adolph Eichmann*, Jerusalem District Court, December 12, 1961, in International Law Reports (ILR), Vol. 36, 1968, p. 340, cited in the Prosecutor's pre-trial Brief pursuant to Rule 65 ter (E) (i), 25 Feb. 2000, p. 39, para. 105.

145 *Krstić*, Case No. ICTY IT-98-33-T, para. 514.

146 *Id.* at para. 513.

147 *Blagojevic*, Case No. IT-02-60-T, para. 647.

148 *Ibid.*

149 *Blagojevic*, Case No. IT-02-60-T, para. 845 (citing *Prosecutor v. Momir Nikolić*, ICTY, Case No. IT-02-60/1-S, Sentencing Judgment, December 2, 2003, para. 113 referring to the testimony of Teufika Ibrahimefendić, KT. 5817-18 and Teufika Ibrahimefendić, KT. 5817-18).

150 *Nikolić*, Case No. IT-02-60/1-S, para. 113, n. 175 (quoting from testimony of Teufika Ibrahimefendić).

151 *Id.* at para. 113.

152 *Id.* at paras. 111, 113, and 121.

153 *Blagojevic*, Case No. IT-02-60-T, para. 650.

154 *Id.* at para. 652.

155 *Id.* at para. 652.

caused the survivors to suffer serious mental harm" (emphasis added).[156] The Appeals Chamber's recognition of the unique mental injury caused by forcible transfers confirmed, generally, that serious mental harm can be inflicted separately from physical violence and, specifically, that forced relocation can cause such mental harm.

The Bosnian Muslim men who were separated from their loved ones also suffered various forms of mental harm. The *Blagojević* Trial Chamber discussed, as a distinct form of harm, the mental suffering and dread inflicted on the men as they anticipated their execution. After being torn from their families and stripped of their identification documents, the men suffered acute distress upon seeing the killing fields piled with bodies.[157] Some who escaped death also experienced "the further mental anguish of lying still, in fear, under the bodies – sometimes of relative[s] or friends – for long hours, listening to the sounds of the executions, of the moans of those suffering in pain, and then of the machines as mass graves were dug."[158] By addressing, in detail, the psychological pain of the men, the ICTY Trial Chamber acknowledged the mental harm the perpetrators had inflicted in conjunction with, as well as separately from, physical violence.

In the *Tolimir* judgment, the ICTY, years after deciding *Blagojević,* reinforced its holding that forcible displacement and family separation can cause serious mental harm. The ICTY found that the Bosnian Muslim men from Srebrenica experienced serious mental harm before being killed. Separating them from their families, depriving them of their identification, and providing them with insufficient food and water caused intense psychological injury. The men further experienced significant distress from the knowledge that they would soon be executed. The tribunal also found that the family separations caused a "profound psychological impact upon the female members of the protected group," as did the resulting uncertainty about the fate of their family members and themselves during their transfer.[159]

Criteria to Establish "Serious Mental Harm"

When addressing the crime of genocide, the committee created by the United Nations to consolidate a draft convention for establishing the ICC stated that "mental harm" is "understood to mean more than the minor or temporary impairment of mental faculties."[160] A few months after this statement, the ICTR held, in *Akayesu*, that, although "serious mental harm" must be more than minor or temporary in nature, it "does not necessarily mean that the harm is permanent or irremediable."[161] In *Krstić,* the ICTY further elaborated on the content of this "seriousness" standard, saying that "serious harm need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment or humiliation. It must be harm that results in a grave and long-term disadvantage to a person's ability to lead a normal and constructive life."[162]

Determining whether a particular instance of mental harm was severe enough to be "serious mental harm" requires evaluating the totality of the circumstances. In its judgment in *Blaškić*, the ICTY stated that "the victim must have suffered serious bodily or mental harm; the degree of severity must be assessed on a case by case basis with due regard for the individual circumstances" of each situation.[163] The tribunals developed a seriousness-threshold approach to guide determinations of whether a mental injury had been grave enough to constitute "serious mental harm" within the

156 *Id*. at para. 671.

157 *Blagojevic*, Case No. IT-02-60-T, paras. 647 and 649.

158 *Id.* at para. 647.

159 *Tolimir,* Case No. IT-05-88/2-T, para. 756.

160 U.N. Preparatory Committee on the Establishment of an International Criminal Court, *Report of the Preparatory Committee on the Establishment of an International Criminal Court: Part 2. Jurisdiction, Admissibility and Applicable Law*, UN Doc. A/CONF. 183/2/Add.1, April 14, 1998, p. 11.

161 *Akayesu*, Case No. ICTR 96-4-T, para. 502.

162 *Krstić*, Case No. IT-98-33-T, para. 513.

163 *Prosecutor v. Tihomir Blaškić*, ICTY, Case No. IT-95-14-T, Judgment (Trial), March 3, 2000, para. 243.

meaning of Article II.b of the Genocide Convention. Although the tribunals in different cases used slightly different definitions of "mental harm," they examined, in each case, the destructive nature of the harm, its lasting effect, or both. In *Tolimir*, the ICTY articulated a standard for determining the seriousness of mental harm that incorporated elements it had used in prior cases. It held:

> The harm must be of such a serious nature as to contribute or tend to contribute to the destruction of all or part of the group; although it need not be permanent or irreversible, it must go "beyond temporary unhappiness, embarrassment or humiliation" and inflict "grave and long-term disadvantage to a person's ability to lead a normal and constructive life."[164]

This standard asserts that mental harm is serious enough to tend to contribute to the destruction of a group when it has the characteristics of lasting or long-term effect and impedes people's ability to lead a normal life.

However, the ICTY did not impose this "contribute or tend to contribute to the destruction of the group" version of the test for serious mental harm in every case. For example, in *Karadzic*, the tribunal rejected this formulation as imposing an additional requirement not stated in the Convention. "[T]he majority of trial judgements…consistently reiterate the language of Article 4(2)(b) of the Statute without requiring a showing that the harm was such as to threaten the group's destruction. … [T]he Chamber is therefore of the view that there is no additional requirement."[165] The *Karadzic* Trial Chamber continued, "The degree of threat to the group's destruction may, however, be considered as a measure of the seriousness of the bodily or mental harm."[166] Genocide scholars also favor this approach because requiring proof that a particular act causing serious mental harm actually threatened destruction of the group tends to conflate two separate requirements of the Genocide Convention: the requirement of an enumerated act and the requirement of genocidal intent.[167]

Even the earlier judgments, such as the *Tolimir* and *Krajisnik* judgments, that employed the phrase "contribute or tend to contribute to the destruction of the group" did not treat it as a high bar. The *Krajisnik* judgment, after setting out the "contribute or tend to contribute to the destruction of the group" threshold, continued, "Harm amounting to 'a grave and long-term disadvantage to a person's ability to lead a normal and constructive life' has been said to be sufficient for this purpose."[168]

The ICTY has been clear that mental harm of such a serious nature as to contribute or tend to contribute to the destruction of a group does not require the death of group members.[169] For example, the ICTY held in several cases that forced displacement can meet this standard. When the tribunal, in the *Krajisnik* judgment, discussed the *mens rea* (the mental or intent element as opposed to the "act" element) of the crime of genocide, it took a broad view of the means, including forced displacement, by which a group might be destroyed. The tribunal held:

> "Destruction", as a component of the mens rea of genocide, is not limited to physical or biological destruction of the group's members, since the group (or a part of it) can be destroyed in other ways, such as by transferring children out of the group (or the part) or by severing the

164 *Tolimir,* Case No. IT-05-88/2-T, para 738. In articulating the *Tolimir* threshold, the ICTY employed language used in earlier cases requiring that the harm be "of such a serious nature as to contribute or tend to contribute to the destruction of all or part of the group." In *Krajisnik,* the ICTY had included this language and reasoned that, because genocide is a crime committed against a group, each of the acts of genocide enumerated in the Convention must, to be considered genocidal acts, have contributed or tended to contribute to the destruction of the group. *See, e.g. Prosecutor v. Momcilo Krajisnik,* ICTY, Case No. IT-00-39-T, Judgment (Trial), September 27, 2006, para. 861.

165 *Prosecutor v. Radovan Karadzic,* ICTY, Case No. IT-95-5/18-T, Judgment (Trial) March 24, 2016, para. 544.

166 *Ibid.*

167 *See* Nema Milaninia, "Understanding Serious Bodily or Mental Harm as an Act of Genocide," *Vanderbilt Journal of Transnational Law,* Vol. 51, No. 5, November 2018, p. 1417. Understanding serious bodily or mental harm as an act of genocide. Milaninia quotes genocide scholars William Schabas and Kai Ambos.

168 *Krajisnik,* Case No. IT-00-39-T, para. 862.

169 *Tolimir,* Case No. IT-05-88/2-T, para. 764.

> bonds among its members. Thus it has been said that one may rely, for example, on evidence of deliberate forcible transfer as evidence of the mens rea of genocide.[170]

Although the tribunal was addressing the type of acts that could be evidence of the intent to destroy a group, its reasoning makes clear that acts, including forced displacement, that do not entail physical harm can, by contributing to the group's destruction in non-physical ways, be genocidal acts.

In *Tolimir*, the tribunal explicitly held that the mental harm caused by the forced displacement of Bosnian Muslims from Srebrenica reached the level of "serious mental harm" because the acts were "aimed at destroying this Bosnian Muslim community and preventing reconstitution of the group in this area."[171] *Krstić*, likewise, held that deportation might cause serious mental harm.[172] In *Blagojević*, the Trial Chamber held that the forced displacement of Bosnian Muslims caused mental harm that rose to the level of "serious mental harm" when the displacement was conducted "in such a manner as to traumatize them and prevent them from ever returning."[173]

To summarize, the ICTY has established that a finding of "serious mental harm" requires that the act caused a lasting effect that damaged the ability to lead a normal and productive life, but this effect does not need to be permanent. The effects of experiencing trauma, including PTSD, anxiety, and depression, can cause long-term and even life-long impairment of "a person's ability to lead a normal and constructive life."

Unlike physical injury or wounds, mental harm is often not readily discernable, making it difficult to determine when any given mental harm will have or even has already had lasting effects. However, since the adoption of the Genocide Convention in 1948, knowledge of the effects of trauma on mental health has increased. As detailed below, mental harm that results in long-term and debilitating conditions, such as PTSD or, in some cases, depression or anxiety, meets the standard of "lasting effect." These conditions are beyond minor or temporary: They can last for a lifetime and, without treatment, can disrupt a person's ability to lead a normal life and can, at worst, even result in suicide. When acts result in enduring, disruptive conditions such as PTSD, depression, or anxiety, those acts have caused mental harm with lasting effects.

In addition to having lasting effect, an act causing serious mental harm also imposes a "grave and long-term disadvantage to a person's ability to lead a normal and constructive life."[174] The tribunals have not defined what a "normal and constructive life" entails. However, in the cases concerning the events at Srebrenica, the ICTY held that forcible displacement under frightening conditions met this standard. The *Tolimir* tribunal, applying this standard, found that Zdravko Tolimir, a leader within the Serbian Army, inflicted serious mental harm on women, children, and elderly Bosnian Muslims when he forcibly displaced them from their homes in Srebrenica and, in particular, separated women from their husbands and sons, many of whom were later executed. The tribunal held that it had "no doubt that the suffering these women went through resulted in serious mental harm."[175] In detailing the result of the perpetrators' forcible transfer of these women, the tribunal was unequivocal, saying:

170 *Krajisnik,* Case No. IT-00-39-T, para. 854, n. 1701. The tribunal also added, in a footnote, "It is not accurate to speak of 'the group' as being amenable to physical or biological destruction. Its members are, of course, physical or biological beings, but the bonds among its members, as well as such aspects of the group as its members' culture and beliefs, are neither physical nor biological. Hence the Genocide Convention's 'intent to destroy' the group cannot sensibly be regarded as reducible to an intent to destroy the group physically or biologically, as has occasionally been said."

171 *Id.* at para. 766.

172 *Krstić*, Case No. IT-98-33-T, para. 513.

173 *Blagojević*, Case No. IT-02-60-T, para. 652.

174 *Tolimir,* Case No. IT-05-88/2-T, 2012, para. 738. *Blagojević*, Case No. IT-02-60-T, para. 513.

175 *Ibid.*

> Their lives were drastically changed as they found themselves without a permanent home, often lacking basic necessities, struggling to get by financially, while, at the same time continuing to suffer the emotional distress caused by the loss of their loved ones. Some of the children have been unable to process what has happened. … [T]hey did not have any hope of returning to their former homes; many of the homes were destroyed, and some did not return because they feared the Serbs living in their former villages.[176]

These emotional harms to the Bosnian Muslim women and families were both life changing and long lasting and, because return from displacement was prohibitively difficult, could not be easily remedied. The violent loss of their loved ones also haunted the survivors. The Trial Chamber considered testimony from women who were so profoundly traumatized that they preferred to die. Razija Pašagić, a Bosnian Muslim woman who last saw her husband in the village Potočari, a key location during the 1995 Srebrenica massacres, described her suffering in the following way: "I live but actually my life does not exist, or we can say my life goes on but I do not exist."[177]

The *Tolimir* Appeals Chamber upheld the Trial Chamber's conclusion that the forcible transfer from Srebrenica – in particular, the circumstances of their transfer, their inability to return home, and their post-transfer quality of life – inflicted serious mental harm on the Bosnian Muslims. The Appeals Chamber approved the Trial Chamber's "holistic assessment of factors and evidence."[178] The Appeals Chamber found that the conditions survivors experienced after their transfer, despite being in a Muslim-controlled territory and not in concentration camps, were "particularly relevant to considering whether the harm caused grave and long-term disadvantage to the ability of members of the protected group to lead a normal and constructive life."[179] The *Tolimir* Trial and Appeals Chambers thus both agreed that the forcible deportation of Muslim survivors met the standard for acts causing serious mental harm even when these survivors were left to rebuild their lives without further interference by the perpetrators.

The *Tolimir* decision suggests that a normal and constructive life includes, at a minimum, the emotional stability necessary to provide for one's self and one's family, the mental ability to process trauma experienced during childhood or times of family separation, and, in the aftermath of forced displacement, the ability to return to one's home community without fear of persecution or other human rights violations. Forced displacement, family separation, and the inability to reconstitute communities profoundly impaired the Srebrenica survivors' ability to lead normal and constructive lives and were, therefore, acts causing serious mental harm.

Scientific research on the impact of trauma on individuals helps explain how mental harm can be serious enough to cause lasting effects and grave disadvantages to an individual's "ability to lead a normal and constructive life." When all or most members of a group suffer persistent mental harm from traumatic experiences intentionally inflicted upon them – because they are members of the group – those experiences can be found to have contributed to the destruction of the group. Recent scientific research on the effects of collective and intergenerational trauma, discussed below, shows how trauma causes harm not only broadly across a group whose members have directly experienced harmful acts, but also to the descendants of those group members. This research further illuminates how certain relevant forms of trauma suffered by members of a targeted group meet the standard for "serious mental harm" set forth by the ICTR and ICTY.

176 *Id.* at para. 757.

177 *Ibid.*

178 *Tolimir,* Case No. IT-05-88/2-A, paras. 210-211.

179 *Ibid.*

Infliction of Mental Harm as Acts of Genocide Experienced by Rohingya

Traumatic Events and Serious Mental Harm

Human rights violations can lead to significant trauma in victims and survivors, and an act that inflicts such trauma can itself constitute a violation. International human rights law codifies the conditions necessary to promote and ensure dignity, fairness, respect, diversity, and equality among all people, while the literature on trauma offers a vocabulary and methodology for describing aspects of human suffering and approaches to intervening to stop or remedy that suffering.[180] The international community has codified and condemned human rights violations, not only because they symbolically and actually erase and devalue human lives, but also because they are traumatic events that cause documented and severe mental harm to individuals and communities.

Not all traumatic events are human rights violations. A natural disaster or severe accident might cause trauma symptoms although no one deliberately perpetrated it against an individual or a group of people. However, compared with other traumatic events, such as natural or technological disasters, mass violence causes more severe and prolonged trauma symptoms.[181] Certain human rights violations, such as torture, rape, and killings, are recognized as discrete traumatic events that have the potential to lead to trauma symptoms.[182] *The Torture in My Mind* documents the traumatic effects of the torture, rapes, and killings on the Rohingya refugees who survived these human rights violations.[183] Other systemic, ongoing human rights violations, such as oppression and the denial of basic rights and opportunities, can likewise lead to mental harm, although this phenomenon is less well researched. *The Torture in My Mind* demonstrates that these systemic violations can lead to mental harms similar to those caused by acute traumatic events or exacerbate the harms caused by traumatic events. When a perpetrator of abuse subjects a population to systemic human rights violations and inflicts traumatic events on the population to accomplish genocide, international human rights law, particularly the Genocide Convention, offers an avenue to hold these perpetrators accountable and recognize the harm done to the victims.

The Myanmar military, police, successive governments, and civilians in Rakhine State have perpetrated, with impunity, serious and systematic human rights violations against Rohingya women, men, and children since at least the 1970s.[184] After targeting Rohingya through practices attributed to "citizenship scrutiny," the government eventually denied them citizenship through the 1982 Citizenship Law and then restricted their rights to marry, have children, attend school, travel, and work.[185] The authorities have repeatedly characterized the Rohingya as illegally residing in the country and called for their expulsion.[186] These systemic violations stemmed from and furthered discrimination against the Rohingya; discrimination has taken the form, in particular, of religious persecution, including the destruction of Rohingya houses of worship, and has left the

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180 Janice Carello, Lisa D. Butler, Filomena M. Critelli, Introduction to Trauma and Human Rights: Context and Content, *Trauma and Human Rights: Integrating Approaches to Address Human Suffering*, (Palgrave Macmillan: 2019), p. 2.

181 Fran H. Norris, Matthew J. Friedman, Patricia J. Watson, Christopher M. Byrne, Eolia Diaz, Krzysztof Kaniasty, "60,000 disaster victims speak: Part I. An empirical review of the empirical literature, 1981–2001," *Psychiatry: Interpersonal and Biological Processes*, Vol. 65 No. 3, 2002, pp. 207-239, p. 219.

182 American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, (Washington DC, American Psychiatric Publishing, 2013), Fifth Edition.

183 Fortify Rights, *"The Torture in My Mind."*

184 Fortify Rights, *"They Gave them Long Swords."*

185 U.N. Human Rights Council, *Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Ojea Quintana*, U.N. Doc. A/HRC/13/48, March 10, 2010, paras. 87-88; Fortify Rights, "*Tools of Genocide*"; Fortify Rights, "*Genocide by Attrition*"; Allard K. International Lowenstein Human Rights Clinic, Yale Law School, Fortify Rights, "*Persecution of the Rohingya Muslims*," pp. 6-13, p. 8.

186 Fortify Rights, *"They Gave them Long Swords,"* p. 36; Human Rights Watch, *"All You Can Do is Pray,"* p. 21.

Rohingya vulnerable to forced labor.[187] These systemic violations paved the way for increasingly frequent and extreme episodes of violence against the Rohingya.

The Rohingya refugees in camps in Cox's Bazar, Bangladesh, who participated in the research underpinning *The Torture in My Mind*, identified these dehumanizing, anti-Rohingya violations as pervasive during their lifetimes in Myanmar. They cited, in particular, the inability to obtain citizenship or official documents and being barred from identifying as "Rohingya," engaging in religious practice, and obtaining legal services, education, and medical care.[188] They also reported that other government practices limited their ability to have children. These included family size limits and blacklisting – refusing to grant official documents, including those necessary to attend school, travel, or conduct business, to children born outside of government-sanctioned marriages.[189]

The Myanmar government, military and police, and the current military junta have committed severe violence and trauma-inducing acts against the Rohingya people. These waves of violence, first occurring in 1977, repeating with increasing frequency between 2012 and 2017, and continuing to the present day, have also involved violence perpetrated by other ethnic groups from which the government has declined to protect the Rohingya people.[190] The Myanmar government, security forces, and private citizens acting on beliefs fueled by rhetoric from the government, the military, and Buddhist leaders, that the Rohingya are illegal non-citizens and should be expelled, have killed Rohingya (including children), set fire to entire villages, and raped and sexually assaulted both women and men.[191] By September 2017, approximately 30,800 Rohingya homes, mosques, and businesses had been destroyed across 279 villages.[192] On average, each Rohingya refugee who participated in the mental harm study that underpins *The Torture in My Mind* reported experiencing 19.4 trauma events before fleeing Myanmar.[193] These events included both suffering violence directly and witnessing violence against others.

A majority of respondents in *The Torture in My Mind* study experienced physical violence directly, with 55.5 percent stating they had been tortured, a finding that is consistent with earlier testimony gathered by Fortify Rights.[194] One 35-year-old woman from Bor Ghozi Bill, Rakhine State, described how Myanmar soldiers forced her to watch them cut her husband's throat and kill her baby. She said: "[Then] soldiers threw my small baby into the open fire. My baby was six months old, and his name was [redacted]. He is dead. My baby is dead. I cried, 'Please give me my baby, my son… .' [T]he soldiers threw him into the fire. The soldier snatched him away from my arms."[195]

This woman reported that the soldiers then bound her arms, legs, and neck and beat her until she needed medical attention. She said: "[The soldiers] beat me on my face. Thirteen military tied me up very tightly, and when I cried, two soldiers beat me. … I was beaten mercilessly. I had trouble breathing."[196]

Women and men who participated in *The Torture in My Mind* study reported high rates of sexual assault (33.1 percent of women and 34.3 percent of men), and 3.1 percent of women, along with 0.8 percent of men, reported being raped by security forces.[197] A 30-year-old woman survivor from

187 Fortify Rights, "*They Gave them Long Swords*," p. 37.

188 Fortify Rights, "*The Torture in My Mind*," p. 55.

189 *Id.* at pp. 16-17.

190 Fortify Rights, "*They Gave them Long Swords*," pp. 36-39.

191 U.N. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, A/HRC/39/CRP.2, September 17, 2018, pp. 101-109.

192 *Id.* at p. 224.

193 Fortify Rights, "*The Torture in My Mind*," p. 50.

194 *Id.* at p. 15, 75.

195 Fortify Rights interview with F.G., Cox's Bazaar District, Bangladesh, March 30, 2017.

196 *Ibid.*

197 Fortify Rights, "*The Torture in My Mind*," p. 15.

Zamboinna recalled being beaten and raped by three soldiers: "I became unconscious. They left me half dead. ... Now I can't sit for long. I had heavy bleeding and was almost dying. I had an internal injury from being beaten. I still have pain and can't move well."[198] Soldiers forced a 25-year-old mother of three to stand in a line, along with other young women from her village of Kya Ri Para, Maungdaw Township, Rakhine State. A group of soldiers then selected women from the line. She told Fortify Rights: "They chose three women, one unmarried and two married, including myself. They took us inside the forest. One military person tied me up, and they raped me one by one. Three persons raped me. I was gone, I fainted after that."[199]

Rohingya who contributed to the survey that provided the data for *The Torture in My Mind* reported other forms of serious physical violence, with 46.1 percent reporting being beaten, 29.4 percent stabbed, and 5.1 percent shot.[200] Under ICTR and ICTY case law, rape and other forms of torture are acts causing serious mental and physical harm.[201]

In addition to experiencing torture, rape, and violence directly, Rohingya refugees interviewed for *The Torture in My Mind* had often witnessed violence perpetrated against friends, neighbors, and family members. The most frequently experienced events involved directly witnessing gunfire, the burning of villages, dead bodies, or physical violence, including sexual abuse, perpetrated against others.[202] A 25-year-old man described being one of only four people who survived out of 800 who attempted to flee their village of Min Gyi in Maungdaw Township, Rakhine State: "There were maybe 70 soldiers shooting us. It was a continuous noise, continuous bullets. Everyone died. They were trying to kill us all. … People were shot in the chest, stomachs, legs, face, head, everywhere."[203] A 41-year-old day laborer sobbed as he recalled the massacre in his village, Chut Pyin, in Rathedaung Township: "Some were burned, some were beheaded. … We performed funerals for 185 people. … There were five people from my own family killed. … My two nephews, their heads were off. One is six years old and the other is nine years old."[204] In the Srebrenica cases, the ICTY held that witnessing physical violence against and the killings of others constitutes serious mental harm under the Genocide Convention.[205]

The Rohingya respondents also reported high degrees of family separation due to death or disappearance. In *The Torture in My Mind*, 29.5 percent reported that they had experienced the murder of an immediate family member, including children, and 86.2 percent reported the murder of an extended family member or a friend.[206] "I saw my own children killed," recalled a Rohingya man from Done Pike in northern Buthidaung Township, Rakhine State. "My three children and my mother were killed. They made them lie down on the ground, and they cut the backs of their necks."[207] A mother of five from Hathi Para village told Fortify Rights:

> [M]y husband was a hard worker, a day laborer. … [T]he *Lon Htein* came to our house, 20 to 25 soldiers. They tied his hands behind his back. … I could see only my husband. He was in front of me. Two *Lon Htein* held him. He was shouting, asking for help. And then one of them cut his throat. I saw a lot of this type of violence with my own eyes.[208]

198 Fortify Rights interview with A.E., Cox's Bazar District, Bangladesh, December 10, 2016.

199 Fortify Rights interview with E.I., Cox's Bazar District, Bangladesh, December 10, 2016.

200 Fortify Rights, "*The Torture in My Mind*," p. 15.

201 *Akayesu*, Case No. ICTR 96-4-T, paras. 504, 597, 731; *Krstić*, Case No. IT-98-33-T, para. 513.

202 Fortify Rights, "*The Torture in My Mind*," p. 15.

203 Fortify Rights interview with D.D., Cox's Bazar District, Bangladesh, September 3, 2017.

204 Fortify Rights interview with A.F., undisclosed location, August 30, 2017.

205 *Blagojević*, Case No. IT-02-60-T, paras. 647 and 649.

206 Fortify Rights, "*The Torture in My Mind*," p. 15.

207 Fortify Rights interview with C.F., Cox's Bazar District, Bangladesh, September 1, 2017.

208 Fortify Rights interview with D.H., Cox's Bazar District, Bangladesh, September 3, 2017. The *Lon Htein* are a special unit of riot police within the Myanmar police force. Fortify Rights, "*They Gave Them Long Swords*," p. 42, n. 64.

During the mass exodus from Myanmar, 70.6 percent of respondents reported, a family member or friend had died due to such causes as illness, drowning, or starvation.[209] A 48-year-old man who, at the time of his interview, had lived 25 years as a refugee, described the process of fleeing Myanmar:

> Most of the infants are very affected by the cold weather. When they took a small boat across the river, they have to guarantee children won't cry. If children cry, they are thrown in the water. We know of three children who were thrown in the river. The boat drivers threw them in. My family members saw this happen.[210]

Deaths were not the only cause of family separation. In *The Torture in My Mind*, 19 percent of respondents reported that a family member had disappeared and that they had little knowledge of whether that person was living or dead.[211] A 55-year-old man stated that the military had arrested more than 200 people in his village, Bor Ghozi Bill. He said, "Among them was my son, who was 18. … I don't know if he is alive or not."[212] The mother from Bor Ghozi Bill whose husband and infant were killed in front of her stated: "I had 11 children. Now I have only six. … I don't know where the others are."[213] The ICTY recognized these forms of family separation as acts causing serious mental harm.[214]

In 2012, Myanmar President Thein Sein stated that "illegal" Rohingya should be expelled from the country. Although it is not clear whether Thein Sein meant that all Rohingya were illegal or was referring to most Rohingya in Myanmar, who lacked formal legal status, the president's language implied to many, at least, that the great majority of Rohingya did not belong in the country and should be expelled.[215] The repeated violence, in fact, drove the majority of Rohingya out of Myanmar.[216] Each phase of violence has resulted in a wave of displaced Rohingya fleeing the country: more than 200,000 Rohingya in 1977, an additional 200,000 between 2012 and 2015, and a subsequent massive displacement after violence in 2016 and 2017. As a result, by August 2023, more than 960,000 Rohingya were living in refugee camps in Cox's Bazar, Bangladesh, with an additional 128,000 Rohingya and Kaman Muslims confined in internment camps in Myanmar.[217] At least 18,000 Rohingya refugees are registered with the UNHCR in India, although the Indian government claims the actual number of Rohingya refugees is closer to 40,000.[218] At least 100,000 Rohingya refugees now live in Malaysia, many of whom are victims of human trafficking.[219]

In *The Torture in My Mind*, 97.8 percent of respondents witnessed the destruction of villages, and 93.1 percent had their homes destroyed.[220] The ICTY has found that forcible displacement of this nature – when victims are forced to abandon their homes, property, and traditions and their relationship with the territory where they resided – constitutes an act causing serious mental harm under the Genocide

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209 Fortify Rights, "*The Torture in My Mind*," p. 48.

210 Fortify Rights interview with A.B., Kutupalong Refugee Camp, Bangladesh, December 10, 2016.

211 Fortify Rights, "*The Torture in My Mind*," p. 52.

212 Fortify Rights interview with A.G., undisclosed location, December 10, 2016.

213 Fortify Rights interview with D.F., Cox's Bazar District, Bangladesh, March 30, 2017.

214 *Blagojević*, Case No. IT-02-60-T, para. 647; *Nikolić*, Case No. IT-02-60/1-S, para. 113.

215 Human Rights Watch, "*All You Can Do is Pray*," p. 21.

216 As of 2014, an estimated 1,090,000 Rohingya lived in Rakhine State. Fortify Rights, "*They Gave Them Long Swords*," p. 35, fn.1. This population estimate is imprecise, because the Myanmar government refused to count Rohingya as part of its census. *Id.* As of 2019, only 495,000 Rohingya were estimated to remain in Myanmar. Fortify Rights, "*Tools of Genocide*," p. 31.

217 U.N. High Commissioner for Refugees, Rohingya Refugee Crisis Explained, August 23, 2023, https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/#RohingyainBangladesh (accessed August 30, 2023); U.N. Office for the Coordination of Humanitarian Affairs, All People Affected by Conflict in Myanmar Need Assistance Protection and Long-Term Solutions, May 14, 2019, https://reliefweb.int/report/myanmar/all-people-affected-conflict-myanmar-need-assistance-protection-and-long-term (accessed August 28, 2023).

218 Fortify Rights, "India: Protect Rohingya Refugees, Prevent Forced Returns," January 24, 2019, https://www.fortifyrights.org/reg-inv-2019-01-24/ (accessed August 28, 2023).

219 Fortify Rights, "Malaysia: Minimize COVID-19 Risks to Refugees and Trafficking Survivors, Prevent Arbitrary Detention," April 10, 2020, https://www.fortifyrights.org/mly-inv-2020-04-10/ (accessed August 28, 2023).

220 Fortify Rights, "*The Torture in My Mind*," p. 74.

Convention.[221] The effect of these types of acts rises to the level of serious mental harm when the acts are aimed at destroying the community and preventing their reconstitution in the original area, such as when they are conducted "in such a manner as to traumatize [the victims] and prevent them from ever returning."[222] After witnessing the massacre of his entire village, one Rohingya survivor lamented, "[T]here aren't many Muslims left in Myanmar. … From the upper side of Maungdaw, not a single person remains. Only dogs are left, barking in the night."[223] A 19-year-old pregnant woman who resisted the military to save the life of her infant son, but whose parents were killed, spoke through tears, "We tried to stay there to wait for peace but there is no peace. … I am only thinking about back home, where my parents died. How can it be possible that I can go back home?"[224] Another 20-year-old refugee from Borgozi, who saw many family members killed and was separated from her husband and only child in the exodus, pleaded, "What will I do? Tell me? I don't want to go back. I hate that place. Because I lost everything there."[225]

The traumatic events experienced by the Rohingya in Myanmar and leading to their forced displacement are the types of events recognized by the ICTR and ICTY as indicative of serious mental harm: experiencing torture and rape, witnessing extreme violence against others, suffering the separation of families, and being forcibly displaced, especially when these abuses are committed in such a way as to traumatize a community and prevent its members from ever returning. These abuses are consistent with acts of genocide causing serious mental harm, particularly when they result in high levels of trauma symptoms indicating that their effect will be long lasting and disadvantageous to the victims' ability to lead normal and constructive lives.

Trauma Symptoms, Psychiatric Conditions, and Serious Mental Harm

The violations by the Myanmar military and police and civilian perpetrators against Rohingya in 2016 and 2017 were acts causing serious mental harm because they led to conditions such as PTSD, anxiety, and depression, measurable by the prevalence of high rates of trauma symptoms. These conditions can be long lasting and can disrupt the ability to lead a normal and constructive life. Studies of refugees and asylum-seekers have consistently shown that there is a "high prevalence of mental health disorders, including posttraumatic stress disorder (PTSD), depression and anxiety," among these populations.[226] Refugee populations are especially vulnerable to this trio of disorders because of their exposure to traumatic experiences prior to migration, during migration, and after resettlement.[227] *The Torture in My Mind* used validated scales to measure PTSD, depression, and

221 *Blagojević*, Case No. IT-02-60-T, para. 652.

222 *Tolimir,* Case No. IT-05-88/2-A, para. 766; *Blagojević*, Case No. IT-02-60-T, para. 652

223 Fortify Rights interview with D.D., Cox's Bazar District, Bangladesh, September 3, 2017.

224 Fortify Rights interview with D.A., undisclosed location, December 15, 2016.

225 Fortify Rights interview with H.G., Cox's Bazar District, Bangladesh, December 13, 2016.

226 Lisa Butler, *Trauma and Human Rights: Integrating Approaches to Address Human Suffering,* (Palgrave Macmillan, 2019), p. 475. *See also*, Sameena Hameed, Asad Sadiq, and Amad U. Din, "The Increased Vulnerability of Refugee Population to Mental Health Disorders," *Kansas Journal of Medicine,* Vol. 11, No. 1, 2018, pp. 20-23.

227 Gokay Alpak, Ahmet Unal, Feridun Bulbul, Eser Sagaltici, Yasin Bez, Abdurrahman Altindag, Alican Dalkilic, Haluk A. Savas, "Post-Traumatic Stress Disorder Among Syrian Refugees in Turkey: A Cross-Sectional Study," *International Journal of Psychiatry in Clinical Practice*, Vol. 19, No. 1, 2015, pp. 45-50 (Syrian refugees who experienced two or more traumatic events prior to migration had higher probability of PTSD); Fetuma Feyera, Getnet Mihretie, Asres Bedaso, Dereje Gedle, Gemechu Kumera, "Prevalence of Depression and Associated Factors Among Somali Refugee at Melkadida camp, Southeast Ethiopia: A Cross-Sectional Study," *BMC Psychiatry,* Vol. 15, No. 1, 2015, p. 171 (Prior history of displacement and cumulative trauma factors that increased risk of depression among Somali refugees); Yu-Jin G Lee, Jin Yong Jun, Yu Jin Lee, Juhyun Park, Soohyun Kim, So Hee Lee, So Young Yu, Seog Ju Kim, "Insomnia in North Korean Refugees: Association with Depression and Post-Traumatic Stress Symptoms," *Psychiatry Investigation,* Vol. 13, No. 1, 2016, pp. 67-73. (Higher rates of insomnia among North Korean refugees associated with history of trauma prior to defection and predicted higher rates of PTSD and depression); Kathrine Hvid Schwarz-Nielsen, Ask Elklitt, "An Evaluation of the Mental Status of Rejected Asylum Seekers in Two Danish Asylum Centers," *Torture,* Vol. 19, No. 1, 2009, pp. 51-59. (High incidence of PTSD, anxiety, and depression among Iraqi asylum-seekers in long-term detention in Denmark); Andrew Riley, Andrea Varner, Peter Ventevogel, M. M. Taimur Hasan, Courtney Welton-Mitchell, "Daily Stressors, Trauma Exposure, and Mental Health among Stateless Rohingya Refugees in

anxiety symptoms. Results of the study demonstrate that traumatic events and systematic human rights violations in Myanmar significantly contributed to the Rohingya refugees' heightened levels of symptoms associated with PTSD, depression, and anxiety.

Post-Traumatic Stress Disorder

Post-Traumatic Stress Disorder (PTSD) is the most recognized severe response to trauma. PTSD was officially introduced into the mental health lexicon in 1980 when it was added to the Diagnostic and Statistical Manual of the American Psychiatric Association, Version III (DSM-III).[228] However, knowledge about the condition and its lasting effects continues to evolve.

According to the DSM-5, PTSD is a trauma-and-stressor-related disorder that arises from exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

1) Directly experiencing the traumatic event(s).
2) Witnessing, in person, the event(s) as it occurred to others.
3) Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.
4) Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse).

PTSD is characterized by symptoms such as recurrent distressing dreams or memories, flashbacks of the traumatic events, and persistent avoidance of distressing memories, thoughts, or feelings associated with the traumatic events.[229] Negative changes in mood and perception, like feelings of detachment or estrangement from others, the inability to experience positive emotions, and a persistent emotional state of fear, horror, anger, guilt, or shame can also be indicators of PTSD.[230] Furthermore, the disorder can manifest itself in a variety of changed behaviors, including irritability, reckless or self-destructive behavior, hyper-vigilance, and difficulty sleeping.[231] In order for these symptoms to lead to a PTSD diagnosis, the symptoms and changes in mood, perception, or behavior must last more than one month and cause "clinically significant distress or impairment in social, occupational, or other areas of functioning."[232]

Although PTSD is not always a permanent condition, many studies have demonstrated its potential long-lasting effects, particularly in refugee populations that experienced genocide or mass

Bangladesh," *Transcultural Psychiatry,* Vol. 54, No. 3, 2017, pp. 304-331. (Among Rohingya refugees, both prior trauma exposure and daily stressors of refugee camp contributed to PTSD); Mina Fazel, Jeremy Wheeler, John Danesh, "Prevalence of Serious Mental Disorder in 7000 Refugees Resettled in Western Countries: A Systematic Review," *The Lancet 365*, No. 9467, 2005, pp. 1309-1314. (Global survey of studies of PTSD among refugees finding that refugees resettled in Western countries ten times more likely to have PTSD than the general population).

228 The *Diagnostic and Statistical Manual of Mental Health Disorders* (DSM) is a handbook containing descriptions, symptoms, and diagnostic criteria for mental health disorders. It is used by much of the world and allows consistency in practice and research. The DSM is periodically revised based on advances in research and knowledge about mental health disorders. The current version of the DSM is the DSM-5. American Psychiatric Association, DSM-5 – Frequently Asked Questions, https://www.psychiatry.org/psychiatrists/practice/dsm/feedback-and-questions/frequently-asked-questions (accessed August 25, 2023); Brian L. Cutler, *Encyclopedia of Psychology and Law*, (University of North Carolina at Charlotte: Sage Publications, United States of America, 2008), pp. 610-613.

229 American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, pp. 275-279.

230 *Ibid.*

231 *Ibid.*

232 *Ibid.*

atrocities. A 2016 study found that some Holocaust survivors presented PTSD symptoms 70 years after the Holocaust.[233] In 2011, 17 years after the Rwandan genocide, 20 percent of the population in Rwanda met the criteria for a diagnosis of PTSD or depression, twice the expected typical rate in the general population.[234] A study of Cambodian adolescents who were exposed to Khmer Rouge concentration camps found that 50 percent of the adolescents were diagnosed with PTSD six years after resettlement in other countries.[235] Three years later – a full nine years after resettlement – the proportion of Cambodian adolescents diagnosed with PTSD remained largely the same.[236] In 2013, another study of the Cambodian refugee population in Long Beach, California, showed an incidence of PTSD at the "alarmingly high level of 62%," decades after fleeing the Khmer Rouge.[237] A study of adult Bosnian refugees conducted one year after their resettlement in the United States found that "the level of PTSD diagnosis and symptoms in Bosnian refugees remained substantial."[238] Also, PTSD does not automatically disappear after resettlement of refugees or genocide survivors. In fact, refugees are "ten times more likely to have post-traumatic stress disorder than age-matched general populations" in their host countries.[239]

PTSD damages an individual's ability to lead a normal and constructive life. Recurring flashbacks or nightmares, as well as changed mood and perception, can interfere with daily activities such as sleeping and eating.[240] Research on post-9/11 U.S. veterans suffering from PTSD found that they had "greater difficulty securing employment compared to their civilian peers."[241] The same study revealed that a "third of Afghanistan and Iraq War veterans who use Veterans Affairs medical care report difficulties in relationships with romantic partners and children."[242] Studies also show that people with PTSD have a higher risk of suicide than the general population.[243]

233 Nicole Salman, Conrad J. Camit and Bruce Bongar, "Suicide as Response to Trauma," *Handbook of Suicidal Behaviour*, 2017, pp. 121–137 (citing Stephen Z Levine, Itzhak Levav, Rinat Yoffe, Yifat Becher, and Inna Pugachova, "Genocide Exposure and Subsequent Suicide Risk: A Population-Based Study," *Public Library of Science*, Vol. 11, No. 2, 2016, pp. 1–16).

234 Nader Perroud, Eugene Rutembesa, Ariane Paolone-Giacobino, Jean Mutabaruka, Leon Mutesa, and Ludwig Stenz, "The Tutsi Genocide and Transgenerational Transmission of Maternal Stress: Epigenetics and Biology of the HPA Axis," *The World Journal of Biological Psychiatry*, Vol. 15, No.4, 2014, p. 334; World Health Organization & U.N. High Commissioner for Refugees, "Assessing Mental Health and Psychosocial Needs and Resources: Toolkit for Major Humanitarian Settings," 2011, https://apps.who.int/iris/bitstream/handle/10665/76796/9789241548533_eng.pdf;sequence=1 (accessed August 25, 2023).

235 J. David Kinzie, William H. Sack, Richard H. Angell, Spero Manson, and Ben Rath, "The Psychiatric Effects of Massive Trauma on Cambodian Children: I. The Children," *Journal of the American Academy of Child and Adolescent Psychiatry*, Vol. 25, 1986, pp. 307-376.

236 J. David Kinzie, William H. Sack, Richard H. Angell, G Clarke, and Ben Rath, "A Three-Year Follow-Up of Cambodian Young People Traumatized as Children," *Journal of the American Academy of Child and Adolescent Psychiatry*, Vol. 28, 1989, pp. 501-504.

237 Nigel P. Field, Sophear Muong and Vannavuth Sochanvimean, "Parental Styles in the Intergenerational Transmission of Trauma Stemming from the Khmer Rouge Regime in Cambodia," *American Journal of Orthopsychiatry*, Vol. 83, No. 4, 2013, p. 489.

238 Stevan M. Weine, Dolores Vojvoda, Daniel F. Becker, Thomas H. McGlashan, Emir Hodzic, Dori Laub, Leslie Hyman, Marie Sawyer, and Steven Lazrove, "PTSD Symptoms in Bosnian Refugees 1 Year After Resttlement in the United States," *The American Journal of Psychiatry*, 1998.

239 Mina Fazel, Jeremy Wheeler, and John Danesh, "Prevalence of Serious Mental Disorder in 7000 Refugees Resettled in Western Countries: A Systematic Review," *The Lancet*, Vol. 365, No. 9467, 2005, pp. 1309-1314.

240 *Ibid*.

241 Dawne Vogt, Brian N Smith, Annie B Fox, Timothy Amoroso, Emily Taverna, and Paula P Schnurr, "Consequences of PTSD for the Work and Family Quality of Life of Female and Male U.S. Afghanistan and Iraq War Veterans," *Social Psychiatry and Psychiatric Epidemiology*, Vol. 52, 2017, pp. 341-352, (citing Meredith Kleykamp, "Unemployment, Earnings and Enrollment among Post 9/11 Veterans, Social Science Research, Vol. 42, No. 3, 2013, pp. 836–851; RAND National Defense Research Institute, *Recent Trends in Veteran Unemployment as Measured in the Current Population Survey and the American Community Survey*, 2008 http://www.rand.org/pubs/technical_reports/TR485.html.

242 Dawne Vogt, Brian N Smith, Annie B Fox, Timothy Amoroso, Emily Taverna, and Paula P Schnurr, "Consequences of PTSD for the Work and Family Quality of Life of Female and Male U.S. Afghanistan and Iraq War Veterans," *Social Psychiatry and Psychiatric Epidemiology*, Vol. 52, 2017, pp. 341-352, (citing Nina A Sayer, Siamak Noorbaloochi, Patricia Frazier, Kathleen Carlson, Amy Gravely, and Maureen Murdoch, "Reintegration Problems and Treatment Interests among Iraq and Afghanistan Combat Veterans Receiving VA Medical Care," *Psychiatry Services*, Vol. 61, 2010, pp. 589-597).

243 U.S. Department of Veterans Affairs, "PTSD: National Center for PTSD," https://www.ptsd.va.gov/understand/

Participants in *The Torture in My Mind* study who survived atrocities in Myanmar indicated that they suffered from a high level of symptoms characteristic of PTSD.[244] An overwhelmingly high proportion of the Rohingya respondents, 61.2 percent, reported trauma symptoms consistent with a diagnosis of PTSD roughly one year after fleeing to the camps in Bangladesh. The Rohingya may also have *under*-reported the existence of symptoms, due to factors such as stigma associated with rape and mental health symptoms, which is common in Rohingya communities.[245]

The Rohingya reported, at high levels, symptoms that would interfere with a normal and constructive life, such as "feeling as if you don't have a future," "recurrent nightmares," "feeling detached or withdrawn from people," "less interest in daily activities," "trouble sleeping," "feeling irritable or having outbursts of anger," and being "unable to feel emotions."[246] Since most of the trauma events the respondents had suffered occurred in the recent past, a definitive finding regarding the lasting effects of PTSD symptoms among Rohingya refugees in Cox's Bazar District is impossible at the time of this study. However, as noted above, studies of other survivors of genocidal regimes indicate that PTSD can – and often does – last for years beyond the traumatic events. The data indicate that PTSD experienced by survivors of genocide or mass atrocities, perhaps especially in the circumstances leading to large-scale displacement, persists and that its incidence does not return to regular levels. The rates of PTSD symptoms experienced by the Rohingya demonstrate that the traumatic events and systematic human rights violations perpetrated by Myanmar authorities have contributed to symptoms of a serious, long-lasting, and debilitating mental health condition at rates far higher than would be expected in a general population.

Depression and Anxiety

Other conditions of emotional distress, such as depression and anxiety, can be long lasting and interfere with the ability to lead a normal and constructive life.

According to the DSM-5, major depressive disorder, commonly called "depression," is chiefly characterized by at least two weeks during which there is either a depressed mood or the loss of interest or pleasure in nearly all activities.[247] The depressed mood or loss of interest is accompanied by at least four of the following: significant weight loss; insomnia or hypersomnia; psychomotor agitation or retardation; fatigue; feelings of worthlessness or guilt; diminished ability to think or concentrate; or recurrent thoughts of death or suicide.[248] The symptoms must cause "clinically significant distress or impairment in social, occupational, or other important areas of functioning."[249] Although the causes and symptoms of depression are varied, the DSM-5 specifically notes that "[a] diverse childhood experiences, particularly when there are multiple experiences of diverse types, constitute a set of potent risk factors for major depressive disorder."[250] This is particularly relevant for the case of the Rohingya since many Rohingya children have experienced traumatic events that meet the criteria for adverse childhood experiences.[251]

Refugees exposed to trauma prior to their migration are at a higher risk of developing depression than the general population. For example, in one study, 100 percent of Yazidi children who experienced forced migration exhibited one or more trauma-associated behaviors, with more

related/suicide_ptsd.asp.

244 Fortify Rights, "*The Torture in My Mind*," p. 47. Because of a lack of formal psychiatric care in the refugee camps in Bangladesh, official diagnosis rates are not available. However, a score of 2.5 or greater on the HTQ is considered to be "typically diagnostic" of PTSD. Some individuals with scores lower than 2.5 might also be diagnosable with PTSD.

245 *Id.* at p. 49.

246 Fortify Rights, "*The Torture in My Mind*," p. 71.

247 American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, p. 160.

248 *Id.* at pp. 160-61.

249 *Id.* at p. 161.

250 *Id.* at p. 166.

251 *See infra* section entitled "The Expected Future Results of Serious Mental Harm."

than a third of the children diagnosed with depression.[252] Among Somali refugees in a camp in Ethiopia, experience of pre-migration trauma was "significantly associated with" high rates of depression.[253] A study of Bhutanese refugees forced to flee Nepal found that the prevalence rate of depression symptoms in this population was 21 percent, and almost half (45 percent) of the refugees experienced symptoms of multiple mental health conditions.[254] Depression is a particular concern among Bhutanese refugees because, in 2010, the International Organization for Migration found that the suicide rate in the refugee camps was 20.8/100,000, which is almost twice the suicide rate of the U.S. general population.[255] Even after resettling in the United States, more than 20 suicides of Bhutanese refugees were reported from 2009 to 2012.[256] These studies demonstrate that refugee populations who experienced trauma had higher rates of depression than control populations, just as they do with rates of PTSD.

Furthermore, depression among refugee populations often has long-term effects.[257] In a study of Guatemalan refugees living in Mexico twenty years after Guatemala's civil war, researchers found that 38.8 percent of the refugees had elevated symptom scores for depression.[258] In 2001, the prevalence rate of depression among Karenni refugees living in camps along the Thai-Myanmar border, half of them for more than five years, was 41.8 percent.[259] Another study found that ten years after the fall of the Khmer Rouge regime, 82.6 percent of Cambodian refugees reported feeling a depressive state called *bebotchit* in the Khmer language, which translates into English as "a deep sadness inside oneself."[260]

Depression inhibits a person's ability to lead a normal and constructive life. Major depressive disorder is the leading cause of disability worldwide, with more than 264 million people of all ages suffering from the condition.[261] Depression can cause an affected person to "function poorly at work, at school and in the family."[262] At its most extreme, depression can lead to suicide, which takes the lives of 800,000 people globally each year.[263]

252 Veysi Ceri, Zeliha Özlü-Erkilic, Ürün Özer, Murat Yalcin, Christian Popow, and Türkan Akkaya-Kalayci, "Psychiatric Symptoms and Disorders among Yazidi Children and Adolescents Immediately after Forced Migration following ISIS Attacks," *Neuropsychiatrie,* Vol. 30, No. 3, 2016, pp. 145-150.

253 Fetuma Feyera, Getnet Mihretie, Asres Bedaso, Dereje Gedle, and Gemechu Kumera, "Prevalence of Depression and Associated Factors Among Somali Refugee at Melkadida camp, Southeast Ethiopia: A Cross-Sectional Study," *BMC Psychiatry,* Vol. 15, No. 1, 2015, p. 171.

254 Laura A. Vonnahme, Emily W. Lankau, Trong Ao, Sharmila Shetty, and Barbara Lopes Cardozo, "Factors Associated with Symptoms of Depression among Bhutanese Refugees in the United States," *Journal of Immigrant and Minority Health,* Vol. 17, No. 6, 2015, pp. 1705-1714.

255 *Ibid.*

256 *Ibid.*

257 Sameena Hameed, Asad Sadiq, and Amad U. Din, "The Increased Vulnerability of Refugee Population to Mental Health Disorders," *Kansas Journal of Medicine,* Vol. 11, No. 1, 2018, pp. 20-23.

258 Miriam Sabin, Barbara Lopes Cardozo, Larry Nackerud, Reihard Kaiser, and Luis Varese, "Factors Associated with Poor Mental Health Among Guatemalan Refugees Living in Mexico 20 Years After Civil Conflict," *JAMA,* Vol. 290, No. 5, 2003, pp. 635-643.

259 50 percent of respondents in this study had lived in the camp longer than five years, and 38 percent had lived in the camp longer than one year but fewer than five. Barbara Lopes Cardozo, Leisel Talley, Ann Burton, and Carol Crawford, "Karenni Refugees Living in Thai-Burmese Border Camps: Traumatic Experiences, Mental Health Outcomes, and Social Functioning," *Social Science & Medicine*, Vol. 58, No. 12, 2004, pp. 2637-2644.

260 R F Mollica, K Donelan, S Tor, C Elias M Frankel, and R J Blendon, "The Effect of Trauma and Confinement on Functional Health and Mental Health Status of Cambodians Living in Thailand-Cambodia Border Camps," *JAMA* Vol. 270, No. 5, 1993, pp. 581-586.

261 World Health Organization, "Depressive Disorder (Depression)," https://www.who.int/en/news-room/fact-sheets/detail/depression (accessed August 25, 2023).

262 *Ibid.*

263 *Ibid.*

Anxiety is the "anticipation of a future threat," and there are many anxiety disorders that differ from one another based on the objects or situations that are feared or avoided.[264] For example, PTSD involves anxiety caused by reminders of traumatic events, while generalized anxiety disorder involves excessive worry about various life events or activities such as school, work, health, or finances.[265] Generalized anxiety disorder is marked by "excessive anxiety and worry" that occurs "more days than not for at least 6 months."[266] Individuals with this condition find it difficult to control the worry, and they experience three or more of the following symptoms: "restlessness or feeling keyed up or on edge, being easily fatigued, difficulty concentrating or mind going blank, irritability, muscle tension, and sleep disturbance (difficulty falling or staying asleep, or restless, unsatisfying sleep.)"[267]

Anxiety can be long lasting. According to the ICD-11, a diagnosis of generalized anxiety disorder requires that symptoms – general apprehension or excessive worry focused on multiple everyday events, together with other symptoms such as muscular tension, motor restlessness, and sympathetic autonomic over-activity – persist for more days than not over a period of at least several months.[268] The DSM-5 states that generalized anxiety disorder is characterized by excessive feelings of worry and apprehension occurring more days than not for a period of at least six months.[269]

The International Classification of Diseases (ICD) is a publication of the WHO that "provides a common language that allows health professionals to share standardized information across the world."[270] The ICD is also "the foundation for identifying health trends and statistics worldwide."[271] The most recent version, the ICD-11, was released in 2019. Chapter 6 of the ICD-11 specifically covers mental, behavioral, and neurodevelopmental disorders.

A study of the effects of the Rwandan genocide on adult survivors found that 37 percent of genocide survivors met the criteria for a diagnosis of anxiety disorder 16 years after the genocide in Rwanda.[272] Refugees' long-term experience of anxiety can also be caused by the effects of having had to migrate. A 2018 study of refugee populations found that "anxiety and other mental health disorders can manifest due to stressors post-migration, such as separation anxiety and the added load of resettlement in a new country."[273] Long after resettlement, increased rates of anxiety and other mental health disorders among refugees remain prevalent.[274]

Anxiety can prevent an individual from living a normal and constructive life. Research in the 1990s demonstrated that generalized anxiety disorder is associated with an increased use of healthcare services, higher unemployment rates, and "lower levels of emotional health, role functioning and

264 American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, p. 189.

265 *Id.* at p. 190.

266 *Id.* at p. 222.

267 *Ibid.*

268 World Health Organization, *International Classification of Disease-11*, (World Health Organization: 2019), p. 40.

269 American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, p. 222.

270 World Health Organization, WHO's New International Classification of Diseases (ICD-11) Comes Into Effect, February 11, 2022, https://www.who.int/news/item/11-02-2022-who-s-new-international-classification-of-diseases-(icd-11)-comes-into-effect, (accessed August 25, 2023).

271 *Ibid.*

272 Heide Rieder and Thomas Elbert, "Rwanda – Lasting Imprints of a Genocide: Trauma, Mental Health and Psychosocial Conditions in Survivors, Former Prisoners and their Children," *Conflict and Health,* Vol. 7, No. 6, 2013.

273 Sameena Hameed, Asad Sadiq, and Amad U. Din, "The Increased Vulnerability of Refugee Population to Mental Health Disorders," *Kansas Journal of Medicine,* Vol. 11, No. 1, 2018, pp. 20-23.

274 *Ibid.*

social functioning."[275] In one study, people suffering from the disorder reported that it interfered with their daily activities, work, and social functioning.[276] Individuals with anxiety experience "lower quality of life than nonanxious controls, particularly in regard to self-esteem, goals and values, money, work, play, learning, creativity, friends, and relatives."[277] The high rates of anxiety found among the Rohingya refugees in Bangladesh indicate the extent to which they are likely to face difficulties in their daily life and social functioning.

The Rohingya refugees surveyed for *The Torture in My Mind* demonstrated exceedingly high rates of depression and anxiety symptoms, based on the Hopkins Symptom Checklist-25 (HCSL-25). In 2018, 88.7 percent of the Rohingya refugees who were interviewed for *The Torture in My Mind* reported symptoms sufficient, typically, to indicate a diagnosis of depression.[278] Slightly fewer, 84 percent, reported symptoms indicative of severe emotional distress involving anxiety as well as depression.[279] The respondents reported symptoms that would interfere with normal functioning, including "loss of interest in things you previously enjoyed doing," "feeling hopeless about the future," "feeling everything is an effort," "crying easily," feeling "faintness, dizziness, or weakness," and having "spells of terror or panic."[280] These results indicate a high degree of depression and anxiety among the Rohingya refugees in Cox's Bazar District. As with PTSD, it is too early to know how long these symptoms will last, but studies of similar refugee populations, discussed above, indicate that many Rohingya will continue to feel emotional distress, depression, and anxiety for years or decades to come.

Functioning

The Rohingya refugees who participated in the study that led to *The Torture in My Mind* reported difficulty functioning, including difficulty engaging in daily tasks like cooking, child care, working, and gathering food, water, and firewood.[281] They also found it challenging to care for their hygiene and to engage in social activities.[282] Some of this difficulty can be attributed to the day-to-day realities of living in a refugee camp – indeed, 71.6 percent attributed their difficulties in functioning, in part, to their current living situation. However, 62.3 percent also attributed these difficulties to their mental health, indicating that the high rates of PTSD, depression, and anxiety symptoms among the refugees have been harming their day-to-day lives to a considerable degree.[283]

The Torture in My Mind found that the refugees' trauma history was a significant contributor to their PTSD, depression, and anxiety symptoms. In contrast, the daily stressors of living in refugee camps in Bangladesh did not significantly contribute to higher PTSD scores, indicating that, at the time of the study, it was not refugee status itself or life in the camps, but the survival of trauma in Myanmar, that contributed to these symptoms. Regarding depression and emotional distress, the daily stressors of living in a refugee camp, along with other factors, such as systemic human rights violations in Myanmar and trauma history, as well as personal factors such as gender and age, contributed to the refugees' symptoms. PTSD, depression, and anxiety symptoms significantly contributed to the refugees' difficulty functioning.

275 Eric R. Henning, Cynthia L. Turk, Douglas S. Mennin, David M. Fresco, and Richard G. Heimberg, "Impairment and Quality of Life in Individuals with Generalized Anxiety Disorder," *Depression and Anxiety*, Vol. 24, No. 5, 2007, pp. 342-349, p. 343.

276 *Ibid.*

277 *Id.* at p. 342.

278 Fortify Rights, "*The Torture in My Mind*," p. 71.

279 *Ibid.*

280 *Id.* at pp. 64-65.

281 *Id.* at pp. 64-65.

282 *Ibid.*

283 *Id.* at p. 64.

The testimonies of Rohingya refugees documented by Fortify Rights show the deep emotional impact that the violence they suffered in Myanmar has had on their individual lives. Even though, at the time of these testimonies, Fortify Rights specialists were attempting to document human rights violations, not the mental health symptoms of interview participants, the participants frequently offered, unprompted, a description of their suffering. A 43-year-old father who escaped from Min Gyi with his children said, "I told them, if you die, I will die together with you. I wouldn't leave them. … I have so much anger and bitterness."[284] Another father, a 46-year-old schoolteacher from Wapeik, was separated from his two teenage daughters while fleeing the military's destruction of his village: "On the way [to the interview] today, I saw one girl. She looked like my daughter, and I became very emotional and started crying. … I cannot decide or think anything, what to do, what to eat… ."[285] A 20-year-old man from Faw Khali was captured by the military while trying to escape: "They were beating us when we were tied up. I still can't sleep properly."[286] Another refugee, a 20-year-old mother of four from Shorozozi who watched the murder of more than 30 of her family and neighbors stated, "I still hear the sound of the guns in my head."[287]

Many Rohingya refugees questioned whether they had a future despite escaping the violence and having made it to the refugee camps. A 51-year-old former village administrator and international health worker told Fortify Rights: "Now we can't think. Our minds aren't working. We cannot think about the future."[288] A 35-year-old woman from Kya Ri Para said: "I saw dead bodies on the way. In every village, I saw dead people. … We have no future."[289] A 22-year-old mother of four girls whose husband was murdered described the rape of her 12-year-old sister by seven men: "She could speak only a little bit. She said please forgive me. She died within 10 minutes. … I have nothing left to say. … I don't have any ideas for the future, maybe God knows."[290] Other refugees described intense feelings like despair. A 25-year-old woman cried throughout her interview as she described the deaths of three of her children:

> My two sons were murdered, one was 13-years old, and another was nine-years old. My father was shot dead in front of me. … I was raped by two soldiers. My little daughter was seven months old, and she was thrown into fire. … Where is God? Why does God not have sympathy for us? … She was taken from my arms and thrown into fire. I feel so much pain.[291]

Fortify Rights spoke with the mother of a 15-year-old girl who was raped by Myanmar Army soldiers and became pregnant and mute.[292] A 36-year-old skilled worker from Yay Nauk Nga Thar said, "We don't want to deal with such persecution anymore. We want to die."[293]

Aid workers have noted the psychological consequences of the violence the Rohingya refugees experienced. A group of refugee-camp doctors described their difficulties treating patients who struggled even to articulate what had happened to them. One doctor said: "They have so many difficulties the last few years, their families are suffering, and they lost their family members. They couldn't tell us all the things they were suffering. Only a few things we came to understand."[294] Another doctor said:

284 Fortify Rights interview with D.J., Cox's Bazar District, Bangladesh, September 4, 2017.

285 Fortify Rights interview with D.D., undisclosed location, December 16, 2016.

286 Fortify Rights interview with C.B., undisclosed location, December 13, 2016.

287 Fortify Rights interview with E.A., Cox's Bazar District, Bangladesh, December 12, 2016.

288 Fortify Rights interview with E.C., Cox's Bazar District, Bangladesh, September 4, 2017.

289 Fortify Rights interview with E.E., Cox's Bazar District, Bangladesh, December 11, 2016.

290 Fortify Rights interview with H.F., Cox's Bazar District, Bangladesh, December 13, 2016.

291 Fortify Rights interview with E.C., Cox's Bazar District, Bangladesh, December 10, 2016.

292 Fortify Rights interview with G.B., Leda Camp, Cox's Bazar District, Bangladesh, March 30, 2017.

293 Fortify Rights interview with B.I., Kutapalong, Bangladesh, Aug. 31, 2017.

294 Fortify Rights interview with C.H., Cox's Bazar District, Bangladesh, December 13, 2016.

> [T]here were rape cases, but they couldn't explain properly to us. They felt emotional. And they were crying. We understood that there was something wrong. ... We couldn't examine them properly. We saw that they were so frightened, so they couldn't explain their situation properly.[295]

Another doctor stated: "[O]ur professional opinion is that we tried to help them today, as little as we have. I know this is not enough, not even close."[296] A senior staff member from an international humanitarian organization also described the difficulties of trying to implement mental health services.

> We have psychosocial stuff going on, and we are trying to scale up because the needs are high…[but] we are also concerned for our own staff with regard to the scale and what they are hearing, the stories. We are trying to balance helping our staff. … Every household is overflowing. We are trying to get group counseling and figuring out some space, trying to get better screening and get the more acute cases into one-on-one counseling.[297]

As these testimonies by aid workers demonstrate, the trauma symptoms of Rohingya refugees impede their ability to receive care. In addition, the refugees' traumatic experiences and symptoms are so severe that they imperil the mental health of the counselors who are trying to provide them with psychological services.

The reporting of symptoms of mental health distress was very high in *The Torture in My Mind* study. According to the WHO and UNHCR, the expected rate of mental health disorder in the general population is around 10 percent.[298] One year after a humanitarian crisis, the rate is expected to rise to 15-20 percent.[299] However, the rates among Rohingya in the study were 61.2 percent for PTSD, 88.7 percent for depression, and 84.0 percent for emotional distress. These high rates indicate mental health effects that are extraordinary even compared to other refugee settings. Trauma symptoms reported by the Rohingya are pervasive and widespread in the population, disrupting the refugees' ability to lead normal and constructive lives. Based on these findings and prior studies of populations that have faced mass atrocities, it can be assumed that these symptoms will persist in a large percentage of the Rohingya population for years or decades after the events that drove the Rohingya out of Myanmar. These outcomes indicate that the traumatic events that Myanmar authorities and citizens deliberately orchestrated to force almost 900,000 Rohingya out of Myanmar caused definitively serious harm such that they meet the established threshold for finding, under the Genocide Convention, that proscribed acts causing serious mental harm occurred.

The Expected Future Results of Serious Mental Harm

The findings in *The Torture in My Mind* relate only to adults in the camps. However, based on current understandings of trauma, there is every reason to believe that many Rohingya children will experience trauma symptoms due to the violence they experienced and that these effects will be seen in future generations as well. The probability of future mental health effects caused by the human rights violations that the Rohingya suffered in Myanmar further supports the conclusion that Myanmar perpetrated acts causing serious mental harm.

Adverse Childhood Experiences

Recent trauma research over the past two decades reveals that traumatic events experienced during childhood can have profound mental and physical impacts on health later in life. The research in this area is still evolving. Nevertheless, the growing understanding of the effects of Adverse Childhood Experiences (ACEs) provides a clear account of how the mental harms suffered

295 Fortify Rights interview with C.H., Cox's Bazar District, Bangladesh, December 13, 2016.

296 Fortify Rights interview with C.H., Cox's Bazar District, Bangladesh, December 13, 2016.

297 Fortify Rights interview with D.G., undisclosed location, December 13, 2016.

298 World Health Organization & U.N. High Commissioner for Refugees, "Assessing Mental Health and Psychosocial Needs and Resources: Toolkit for Major Humanitarian Settings," 2011 https://apps.who.int/iris/bitstream/handle/10665/76796/9789241548533_eng.pdf;sequence=1 (accessed August 25, 2023).

299 *Ibid.*

by people who survive or witness mass atrocities, such as the harms experienced by the Rohingya in Myanmar, might damage the futures of the children in the group. The likely effects of these harms include the impairment of the Rohingya children's abilities to lead normal and constructive lives into their adult years, thus meeting the definition of "serious mental harm" and supporting the determination that acts causing such harms constitute genocidal acts.

ACEs include traumatic events that occur within the nuclear household, such as abuse, mental illness, and substance use, and within the larger community or world, such as war, ethnic conflict, bias assaults, or witnessing a murder.[300] Exposure to a single ACE has a small impact on later health, but exposure to multiple ACEs strongly correlates with adverse health consequences later in life.[301] Individuals exposed to multiple ACEs have worse clinical mental health outcomes, have higher rates of substance abuse and life-shortening physical ailments, such as cancer, heart disease, emphysema, and hepatitis, and are twelve times more likely than the general population to have attempted suicide.[302]

These findings suggest a high likelihood that Rohingya children who were exposed to ACEs such as physical, sexual, or psychological abuse or who experienced the imprisonment, killing, or disappearance of a parent during the periods of violence in Myanmar will also experience an increased risk of suicide, mental health problems, drug dependency, and alcoholism, as well as diseases such as cancer. These conditions are serious and long lasting, with a debilitating impact on children's ability to lead a normal life.

Researchers investigating ACEs in other populations have documented an uptick in findings of these long-term effects after exposure to as few as four ACEs.[303] In comparison, adults in *The Torture in My Mind* study experienced, on average, 19.4 traumatic events in Myanmar. Assuming that Rohingya children were necessarily exposed to traumatic experiences at close to the same rate as their parents, this is well above the threshold of concern for serious life-long mental and physical health consequences. Children who experience genocide, even if not physically harmed themselves, likely witness bias attacks or violent crimes, the theft and destruction of their homes and important belongings, or the murder of family members and friends. In addition, as discussed below, they might face life with primary caregivers who, because of the trauma they experienced, are suffering from depression or are affected by substance use. Although it takes time to observe long-term trauma effects experienced by children, early harmful effects on children have been noted by the ICTY.[304] As the U.N. Fact-Finding Mission on Myanmar reported, Rohingya children in the camps in Bangladesh are afraid of opening doors and hide when they see or hear planes.[305]

300 V.J. Felitti, R.F. Anda, D. Nordenberg, D.F. Williamson, A.M. Spitz, V. Edwards, M.P. Koss, and J.S. Marks, "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study," *American Journal of Preventive Medicine*, Vol. 14, No. 4, 1998, pp. 245-258 (documenting, later in life, effects of childhood experiences of psychological abuse, physical abuse, sexual abuse, substance abuse in the home, mental illness in the home, domestic violence experienced by the mother, and having a household member who had gone to prison); David Finkelhor, Richard K. Ormrod, and Heather A. Turner, "Poly-victimization: A Neglected Component in Child Victimization," *Child Abuse & Neglect*, Vol. 31, No. 1, 2007, pp. 7-26 (tracking a larger array of ACEs within and without the nuclear household, including bias crimes and societal conflict).

301 V.J. Felitti, R.F. Anda, D. Nordenberg, D.F. Williamson, A.M. Spitz, V. Edwards, M.P. Koss, and J.S. Marks, "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study," *American Journal of Preventive Medicine*, Vol. 14, No. 4, 1998, pp. 248-50; David Finkelhor, Richard K. Ormrod, and Heather A. Turner, "Poly-victimization: A Neglected Component in Child Victimization," *Child Abuse & Neglect*, Vol. 31, No. 1, 2007, p. 16.

302 *Ibid.*

303 *Ibid.* (research subjects exposed to four or more categories of ACEs experienced worse outcomes); David Finkelhor, Richard K. Ormrod, and Heather A. Turner, "Poly-victimization: A Neglected Component in Child Victimization," *Child Abuse & Neglect*, Vol. 31, No. 1, 2007, pp. 16-18 (experiencing 4-6 categories of ACEs in a year associated with worse mental health outcomes among children, and experiencing greater than 7 categories of ACEs in a year associated with highest rates of trauma symptoms).

304 *Nikolić*, Case No. IT-02-60/1-S, para. 113 ("[C]hildren who witnessed separations suffer from a range of problems years after the events.")

305 U.N. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, U.N. Doc. A/HRC/39/CRP.2, September 17, 2018, para. 375.

Interviews conducted by Fortify Rights provide evidence that Rohingya children have been exposed to traumatic events that qualify as ACEs. Fortify Rights typically collects testimony of adults; however, in rare circumstances, and only if certain criteria are met, children who are in the presence of their guardian(s) provide testimony. In one such interview, a teenage girl from Diyol Toli in northern Maungdaw described witnessing the death and burial of a man. "He was alive when he was brought…but after he arrived, he died. … [I]n his side, his intestines were coming out."[306] The community buried the man, and in an act of apparent retaliation, the Myanmar military exhumed him, burned the village, and beheaded several people, causing the girl and her family to flee. Another teenage girl from Chorogozi witnessed the murder of her father, brother, and other family members: "When they cut them, we were shouting and weeping from the window. I saw everything. My uncle, father, brother, more than 30 altogether. … Some were shot, some were cut. Women were raped."[307]

Fortify Rights also interviewed many parents who described the ordeals they and their children faced, including loss of homes and witnessing violence, as well as the fear that their children experienced. A 37-year-old father of four children aged 4 to 12 described the events that caused his family to flee Myanmar:

> My house is near the road, and around midnight the military came to my village and fired rockets and guns. … They took positions on the street, and we were in the home. They started shooting at the people and firing rocket launchers. We were running out, and they were chasing us.[308]

A 26-year-old father of two children aged 1 and 3 stated that his wife was nearly raped in front of their children: "They took my wife, but because my children were crying, then they left her alone."[309] A 20-year-old mother of three children aged 2 through 6 described several episodes of the army raiding her village: "They targeted young people. … They beat them badly and they had to pay money to get released. By young, I mean aged 10 years and up." She and her children were arrested while trying to visit her brother, who had to pay to have them released. She attributed her protection from rape to her frightened children: "I was hugging my young children on my arms tightly so I was safe from sexual abuse. The children were crying so the military did not do anything with me." After her house was burned, the woman fled with her children to other villages and then to Bangladesh. There, things have not been easy: "I am not able to contact my husband. I don't know what happened to him. … I heard that UNHCR supported the disabled, vulnerable, and widows with children. I did not get support."[310]

Many parents also reported that one or more of their children were killed or went missing in Myanmar, meaning their surviving children have experienced the loss of a sibling. One 30-year-old mother escaped from Zamboinna after the military burned the village and arrested or killed more than 150 residents. She told Fortify Rights: "During the time we ran away, I lost two of my children. One was lost inside Myanmar. Another on the way here. Two of my children were lost. That is why my daughter is crying, thinking the people are police."[311] A 25-year-old mother who escaped Myanmar with only her 4-year-old daughter described the death of her son and husband:

> When I saw the police coming, I sent my son to his father to tell him about the police arriving. When he was going to his father, the police shot him. He was seven years old. … After that, they beat my husband. They hit him two times with a wooden stick and then cut his throat. I saw it happen from the home. … I only have my daughter – I have nothing else. … We have nothing.[312]

306 Fortify Rights interview with B.D., Cox's Bazar District, Bangladesh, August 30, 2017.

307 Fortify Rights interview with F.C., Cox's Bazar District, Bangladesh, December 11, 2016.

308 Fortify Rights interview with C.D., Cox's Bazar District, Bangladesh, December 14, 2016.

309 Fortify Rights interview with C.F., Cox's Bazar District, Bangladesh, December 14, 2016.

310 Fortify Rights interview with D.J., Cox's Bazar District, Bangladesh, December 11, 2016.

311 Fortify Rights interview with A.E., Cox's Bazar District, Bangladesh, December 10, 2016.

312 Fortify Rights interview with C.G., Cox's Bazar District, Bangladesh, December 14, 2016.

A 25-year-old mother from Kari Para faced the choice of saving her four youngest children while leaving her 10-year-old son and 6-year-old daughter behind: "I came back to rescue my other two children, but they were cut in pieces." This woman also mentioned the rape of her younger sister: "Five men, all military, raped her. She is 15 years old. She is deaf."[313] A 35-year-old mother of eight children described the death of her youngest child:

> My two young daughters, one was carrying a younger one. … The small one's name was [redacted]. She was two years old, and the older one who carried [redacted] is [redacted]. She is 13-14 years old. The soldiers grabbed [redacted] and threw her into the fire. … We were screaming. … We could save [redacted] but not [redacted]."[314]

As these examples demonstrate, the children of Rohingya refugees have experienced and witnessed many of the same traumatic events as their parents, including the murder or disappearance of siblings. Further research is needed; however, based on these testimonies, it appears that many Rohingya children experienced multiple ACEs in Myanmar before arriving in the refugee camps.

Even if there are Rohingya children who did not experience any of these ACEs directly in Myanmar, their parents might be affected by their own traumatic experience of violence in ways that cause their present and future children to suffer ACEs. For example, if parents or caregivers survived trauma inflicted by the Myanmar government, military, police, or civilian perpetrators, they might develop depression, mental illness, or a substance addiction as means of coping with that trauma. This, in turn, could lead to behavior by parents that expose the child to ACEs in the refugee camp as a secondary result of violence perpetrated against their family members in Myanmar. The effects of trauma on parenting and on the children of those parents is explored in more detail below.

Although research clearly shows that exposure to multiple ACEs predicts diminished mental and physical health throughout a lifetime, researchers are still learning how childhood trauma causes this life-long change. In initial studies, researchers hypothesized a causal chain that focused on the mental health effects of the trauma itself. Experiencing multiple ACEs could cause a child to develop social, emotional, or cognitive challenges directly due to the trauma. Then, to deal with the after-effects of trauma, they would adopt risky coping mechanisms, such as alcohol or other substance use or other unhealthy habits, which would, if not mitigated by therapy and medical care, cause long-term health problems and lead to early death.[315]

More recent research suggests that ACEs might also cause permanent biological effects. Many studies have explored the possibility that significant stress exposure at key times during childhood permanently alters the developing brain and hormonal structures, leading to long-term physical health effects that are both independent of and combine with risky or unhealthy behaviors for coping with trauma.[316] This model suggests that childhood adversity causes permanent changes in the epigenome, which triggers the increased production of inflammatory hormones.[317] Inflammatory

313 Fortify Rights interview with D.I., Cox's Bazar District, Bangladesh, December 11, 2016.

314 Fortify Rights interview with E.E., Cox's Bazar District, Bangladesh, December 11, 2016.

315 V.J. Felitti, R.F. Anda, D. Nordenberg, D.F. Williamson, A.M. Spitz, V. Edwards, M.P. Koss, and J.S. Marks, "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study," *American Journal of Preventive Medicine*, Vol. 14, No. 4, 1998, pp. 253-254.

316 Gregory E. Miller, Edith Chen, and Karen J. Parker, "Psychological Stress in Childhood and Susceptibility to the Chronic Diseases of Aging: Moving Towards a Model of Behavioral and Biological Mechanisms," *Psychological Bulletin*, Vol. 137, No. 6, November 2011, pp. 959–997.

317 "The epigenome is a multitude of chemical compounds that can tell the genome what to do. … DNA holds the instructions for building the proteins that carry out a variety of functions in a cell. The epigenome is made up of chemical compounds and proteins that can attach to DNA and direct such actions as turning genes on or off, controlling the production of proteins in particular cells. When epigenomic compounds attach to DNA and modify its function, they are said to have 'marked' the genome. These marks do not change the sequence of the DNA. Rather, they change the way cells use the DNA's instructions. The marks are sometimes passed on from cell to cell as cells divide. They also can be passed down from one generation to the next. … Lifestyle and environmental factors (such as smoking, diet and infectious disease) can expose a person to pressures that prompt chemical responses. These responses, in turn, often lead to changes in the epigenome, some of which can be damaging." National Human Genome Research Institute, "Epigenomics Fact Sheet," https://www.genome.gov/about-genomics/fact-sheets/

hormones are an important short-term biological response to stress, but repeated production of these hormones leads to higher susceptibility to chronic diseases that cause early death, such as cancer, heart disease, and autoimmune disorders.[318]

Many questions remain for further research on this theory of "biological embedding," including how to differentiate inflammatory responses caused by genetic disposition from those caused by childhood trauma and whether specific age ranges during childhood render a person most susceptible. Because people who experience childhood adversity are statistically more likely to also experience adversity in adulthood, these effects need to be disaggregated.[319] Furthermore, although animal studies have demonstrated that stress induced in early years permanently alters brain structures, additional research is needed to extrapolate this finding to humans.[320] Nevertheless, the current research demonstrates that childhood exposure to trauma causes *physical* as well as mental harm.

Collectively, these studies show that harming a group's children by exposing them to multiple ACEs would meet the threshold for acts causing "serious mental harm" under the Genocide Convention because that harm can cause long-term effects leading to an inability to lead a normal and constructive life. Rohingya children who survived the violence in Myanmar have most likely been exposed to multiple ACEs during their formative years, including witnessing ethnic violence against the Rohingya people and their own family members, killings, forced relocation, the theft or destruction of their family homes and property, and other events that, especially cumulatively, cause serious mental harm. Rohingya refugee camps in Bangladesh lack adequate mental or physical health care to mitigate the harms the refugees have experienced; as a result, there is a greater possibility that Rohingya children will be exposed to additional instances of violence or abuse and, thus, additional ACEs. The research suggests that these children are likely to develop their own risky coping behaviors, leading to long-term and possibly fatal health outcomes ranging from suicide to cancer.[321] Although not conclusive, the newer research into biological responses and epigenetics, described above, suggests that children's growing immune systems and brains might be permanently altered in detrimental ways. This research provides strong support for a conclusion that inflicting multiple ACEs on a group's children constitutes acts causing "serious mental harm" as recognized by the Genocide Convention.

Intergenerational Trauma

Traumatizing events are capable not only of producing trauma symptoms in the individuals who first experience these events; their results can reverberate through subsequent generations. Initially studied in the context of the children of Holocaust survivors, intergenerational trauma involves the offspring of trauma survivors' experiencing their own trauma symptoms at rates higher than expected.[322] Although researchers are still exploring and seeking to understand intergenerational trauma and the extent to which it occurs, the research has shown effects even beyond the second generation.

Epigenomics-Fact-Sheet (accessed August 28, 2023).

318 Gregory E. Miller, Edith Chen, and Karen J. Parker, "Psychological Stress in Childhood and Susceptibility to the Chronic Diseases of Aging: Moving Towards a Model of Behavioral and Biological Mechanisms," *Psychological Bulletin*, Vol. 137, No. 6, November 2011, p. 18, 39.

319 Terrie E. Moffitt and the Klaus-Grawe 2012 Think Tank, "Childhood Exposure to Violence and Lifelong Health: Clinical Intervention Science and Stress-Biology Research Join Forces," *Development and Psychopathology*, Vol. 25, 2013, pp. 1619–1634.

320 *Id.* at p. 1625.

321 V.J. Felitti, R.F. Anda, D. Nordenberg, D.F. Williamson, A.M. Spitz, V. Edwards, M.P. Koss, and J.S. Marks, "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study," *American Journal of Preventive Medicine*, Vol. 14, No. 4, 1998, pp. 245–258.

322 Various terms have been used by researchers and social scientists to describe the transmission of trauma in communities from one generation to the next, including intergenerational trauma, historical trauma, transgenerational trauma, collective trauma, and multigenerational trauma. Ian Barron and Ghassan Abdallah, "Intergenerational Trauma in the Occupied Palestinian Territories: Effect on Children and Promotion of Healing," *Journal of Child and Adolescent Trauma,* Vol. 8, No. 2, 2015, pp. 103–110 (citing Quinn 2007). Teresa Evans-Campbell, "Historical Trauma in American Indian/Native Alaska Communities: A multilevel Framework for Exploring Impacts on Individuals, Families, and Communities," *Journal of Interpersonal Violence*, Vol. 23, No. 3, 2008, p. 320. This study primarily uses the term "intergenerational trauma."

Current understanding of intergenerational-trauma research indicates that the trauma and violence inflicted on the Rohingya by the Myanmar authorities will likely produce trauma in future generations. One scholar defines historical trauma as "a collective complex trauma inflicted on a group of people who share a specific group identity or affiliation – ethnicity, nationality, and religious affiliation."[323] The Rohingya share both ethnicity and religious affiliation, and the violence in Myanmar targeted them due to these specific characteristics. The impact of intergenerational transmission of trauma has been extensively documented in a variety of populations exposed to trauma, including the children and grandchildren of Holocaust survivors, First Nations and Native American communities, Vietnam War veterans, Cambodian survivors of the Khmer Rouge, and survivors of the genocides in Armenia, Rwanda, and Yugoslavia.[324] The likelihood that trauma symptoms will surface in subsequent generations of Rohingya, as in other populations that experienced mass atrocities, underscores the importance and the means of applying the Genocide Convention. If traumatic effects occur beyond a single lifetime, this would surely meet the longevity component of serious mental harm under the Convention. Furthermore, traumatic symptoms experienced by subsequent generations are not negligible – they are still sufficient to damage the ability to lead a normal and constructive life.

Although the existence of intergenerational trauma effects is undisputed, psychiatrists and neuroscientists are still exploring its boundaries.[325] Researchers have posited a variety of mechanisms for how intergenerational transmission of trauma might occur. For example, intergenerational trauma might be transmitted through altered behavior and environmental effects, via trauma narratives, and, potentially, biologically via changes to the epigenome.

The theory that intergenerational trauma occurs via indirect transmission posits that the original trauma causes changes in the family or community environment, and those changes then compound the effects of trauma on the next generation. This can occur even when the next generation did not experience the traumatic events itself. The first generation directly experiences traumatic events that result in a host of psychosocial problems, including PTSD and dysfunctional coping strategies, and then subsequent generations experience "impaired parenting including abuse and neglect" as a consequence of the unresolved trauma.[326] For example, a parent's PTSD can negatively influence their parenting

323 Teresa Evans-Campbell, "Historical Trauma in American Indian/Native Alaska Communities: A multilevel Framework for Exploring Impacts on Individuals, Families, and Communities," *Journal of Interpersonal Violence*, Vol. 23, No. 3, 2008, p. 320.

324 Rachel Yehuda, Nikolaos P. Daskalakis, Linda M. Bierer, Heather N. Bader, Torsten Klengel, Florian Holsboer, and Elisabeth B. Binder, "Holocaust Exposure Induced Intergenerational Effects on FKBP5 Methylation," *Biological Psychiatry*, Vol. 80, No. 5, 2016, pp. 372-380. (Holocaust); Teresa Evans-Campbell, "Historical Trauma in American Indian/Native Alaska Communities: A multilevel Framework for Exploring Impacts on Individuals, Families, and Communities," *Journal of Interpersonal Violence*, Vol. 23, No. 3, 2008, 316-338. (Native Americans); Michelle R. Ancharoff, James F. Munroe, and Lisa M. Fisher, "The Legacy of Combat Trauma: Clinical Implications of Intergenerational Transmission," *International Handbook-Legacies of Trauma*, 1998, pp. 257-276; Nigel P. Field, Sophear Muong, and Vannavuth Sochanvimean, "Parental Styles in the Intergenerational Transmission of Trauma Stemming from the Khmer Rouge Regime in Cambodia," *American Journal of Orthopsychiatry*, Vol. 83, No. 4, 2013, pp. 483-494. (Cambodian Khmer Rouge survivors); Hatsantour Karenian, Miltos Livaditis, Sirpouhi Karenian, Kyriakos Zafiriadis, Valentini Bochtsou, and Kiriakos Xenitidis, "Collective Trauma Transmission and Traumatic Reactions among Descendants of Armenian Refugees," *International Journal of Social Psychiatry*, Vol. 57, No. 4, 2011, pp. 327-337. (Armenians); Nader Perroud, Eugene Rutembesa, Ariane Paolone-Giacobino, Jean Mutabaruka, Leon Mutesa, and Ludwig Stenz, "The Tutsi Genocide and Transgenerational Transmission of Maternal Stress: Epigenetics and Biology of the HPA Axis," *The World Journal of Biological Psychiatry*, Vol. 15, No. 4, 2014, pp. 334-345. (Tutsi Rwandan genocide survivors); Connie Svob, Norman R. Brown, Vladimir Takšić, Katarina Katulić, and Valnea Žauhar, "Intergenerational Transmission of Historical Memories and Social-Distance Attitudes in Post-War Second-Generation Croatians," *Memory & Cognition*, Vol. 44, No. 6, 2016, pp. 846-855. (Former Yugoslavia).

325 For example, in a study of Australian Vietnam War veterans and their children, researchers found that, after controlling for traumatic events in the lives of the children, those with fathers who had PTSD were more likely to also have PTSD symptoms, depression, anxiety, and substance use dependency, but the results showed a differential impact on daughters and sons. B.I. O'Toole, M.J. Burton, A. Rothwell, S. Outram, M. Dadds, and S.V. Catts, "Intergenerational Transmission of Post-Traumatic Stress Disorder in Australian Vietnam Veterans' Families," *Acta Psychiatrica Scandinavica*, Vol. 135, No. 5, 2017, pp. 363-372.

326 Ian Barron and Ghassan Abdallah, "Intergenerational Trauma in the Occupied Palestinian Territories: Effect on

approach in a way that can cause trauma symptoms in their children, including diagnoses of mental health disorders.[327] Under this theory, intergenerational trauma functions in conjunction with adverse childhood experiences (ACEs, discussed in detail above). The parent's trauma results in negative coping strategies or the parent's own mental health issues, which children experience as ACEs.[328]

Some research also indicates that periods of ongoing, systemic human rights abuses increase the effects of acute traumatic events. In a comparison of intergenerational trauma effects among Holocaust and Khmer Rouge survivors, researchers found that Holocaust survival did not affect parenting to the same degree as Khmer Rouge survival.[329] Researchers hypothesized that for Holocaust-surviving families, certain "protective factors," such as years of stable family relationships before the war and post-war access to social support structures, insulated these families from the detrimental effects of trauma on parenting.[330] These protective factors might explain the reduced evidence of significant intergenerational traumatization in the children of Holocaust survivors.[331] In contrast, Khmer Rouge survivors experienced decades of pre-regime trauma that had already disrupted family stability, and, at the conclusion of the Khmer Rouge regime, a comparative a lack of access to replacement support structures coupled with the knowledge that the perpetrators of the violence were never brought to justice.[332]

The Rohingya are more similarly situated to Cambodian Khmer Rouge survivors than to Holocaust survivors in terms of these "protective factors." For decades, they have experienced the stripping of their citizenship and identity, restrictions on ability to travel, marry, earn a living, practice their religion, and receive an education, and expropriation of their lands and razing of their communities. Those responsible for their suffering committed the abuses with complete impunity. These violations have resulted in successive waves of forced migration and the internment of Rohingya inside Myanmar. These chronic and systemic abuses have likely eroded many of the protective factors that could have insulated the Rohingya from the damage the recent atrocities have had on parenting. Although fully proving this will require future longitudinal study, the history in Myanmar of systematic destabilizing violations of the Rohingya population's rights make it probable that the trauma this generation experiences will be perpetuated into subsequent generations.

Children and Promotion of Healing," *Journal of Child and Adolescent Trauma,* Vol. 8, No. 2, 2015, pp. 103-110.

327 A study of Cambodian mothers who survived the Khmer Rouge and of their daughters found this effect. The researchers found that the mothers' PTSD strongly correlated with a role-reversal parenting style, in which the mother places the burden of meeting her own emotional needs on her child. In turn, both the mothers' PTSD and the mothers' role-reversal parenting style correlated with increased anxiety and depression symptoms among their daughters. Nigel P. Field, Sophear Muong, and Vannavuth Sochanvimean, "Parental Styles in the Intergenerational Transmission of Trauma Stemming From the Khmer Rouge Regime in Cambodia," *American Journal of Orthopsychiatry*, Vol. 83, No. 4, 2013, p. 483, 489. This study also noted that 14.2 percent of Khmer Rouge survivors in Cambodia at the time of the study (2013) had PTSD, a relatively high rate, but that among the Cambodian refugee population in the US, the rate was an "alarmingly high level" of 62 percent. The researchers hypothesized that differential levels of trauma experienced during the Khmer Rouge regime determined whether a family stayed behind or fled, with refugee status an indicator of more trauma exposure during the mass atrocities.

328 Living with a parent who has a mental illness or a substance abuse disorder or experiences domestic violence are all identified ACEs, as is a child's experience of psychological, physical, or sexual abuse in the home. V.J. Felitti, R.F. Anda, D. Nordenberg, D.F. Williamson, A.M. Spitz, V. Edwards, M.P. Koss, and J.S. Marks, "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study," *American Journal of Preventive Medicine*, Vol. 14, No. 4, 1998, p. 245.

329 Nigel P. Field, Sophear Muong, and Vannavuth Sochanvimean, "Parental Styles in the Intergenerational Transmission of Trauma Stemming from the Khmer Rouge Regime in Cambodia," *American Journal of Orthopsychiatry*, Vol. 83, No. 4, 2013, p. 483.

330 *Ibid.*

331 Marinus H Van Ijzendoorn, Marian J Bakermans-Kranenburg, and Abraham Sagi-Schwarts, "Are Children of Holocaust Survivors Less Well-Adapted? A Meta-Analytic Investigation of Secondary Traumatization," *Journal of Traumatic Stress*, Vol. 16, No. 5, 2003, p. 467.

332 Nigel P. Field, Sophear Muong, and Vannavuth Sochanvimean, "Parental Styles in the Intergenerational Transmission of Trauma Stemming from the Khmer Rouge Regime in Cambodia," *American Journal of Orthopsychiatry*, Vol. 83, No. 4, 2013, p. 484.

Other theories suggest that trauma effects might be transmitted to subsequent generations biologically *in utero* or through changes in the epigenome.[333] Based on preliminary findings, researchers have concluded that there is a "strong rationale" for the possibility that epigenetic processes link stressors, like racism and bias, experienced by mothers during pregnancy with physical health disparities in their children that continue into adulthood.[334]

Studies documenting the epigenetic effects of trauma during pregnancy often focus on the HPA axis, which controls the body's hormonal stress response.[335] The children of mothers who experienced war, terrorist attacks, and famine during pregnancy show altered epigenetic function, which is an indicator of risk for later PTSD.[336] Similar findings were replicated in a comparison study of pregnant Tutsi women who survived the Rwandan genocide and pregnant Tutsi women who were not exposed to the genocide.[337] The study showed that prenatal stress correlated with dysfunctional development of the HPA axis and that children of mothers who experienced the genocide had higher-severity PTSD and depression than children of mothers who were not exposed.[338] However, because epigenetic changes can also result from early childhood stress, the study could not determine whether the mother transmitted a biological modification of the child's epigenetic function during pregnancy itself or if the mother's parenting was so affected by her own PTSD that post-birth conditions altered the child's neurobiology.[339] Despite lack of certainty regarding the causal mechanism, the data clearly showed that two decades following the Rwandan genocide, children who had not yet been born during the events experienced its aftershocks at a biologically measurable level.[340]

333 For example, in a study of African American mothers and children, researchers found that certain negative social factors, such as exposure to stressful life events and inequality, can cause African American mothers to have babies with low birth weights, which, in turn, leads to a higher incidence of adult cardiovascular disease in the offspring. Christopher W. Kuzawa and Elizabeth Sweet, Epigenetics and the Embodiment of Race: Developmental Origins of US Racial Disparities in Cardiovascular Health, *American Journal of Human Biology*, Vol. 21, January 2009, pp. 2-15.

334 *Id.* at p. 2.

335 The hypothalamic-pituitary-adrenal axis is "a key neuroendocrine pathway involved in the biological adaptation to stress." Andrea Danes and Jessie R. Baldwin, "Hidden Wounds? Inflammatory Links between Childhood Trauma and Psychopathology," *Annual Review Psychology*, Vol. 68, 2017, p. 521. Because the HPA axis is linked to many other body systems and is sensitive to environmental effects *in utero* and during childhood, alteration of the HPA axis can lead to detrimental effects on brain development and the immune system, *Id.* at p. 522, 528.

336 Connie J. Mulligan, Nicole C. D'Errico, Jared Stees, and David A. Hughes. "Methylation Changes at NR3C1 in Newborns Associate with Maternal Prenatal Stress Exposure and Newborn Birth Weight," *Epigenetics*, Vol. 7, No. 8, 2012, pp. 853-857 (finding a significant correlation between maternal prenatal stress of mothers pregnant during war in the DRC, low newborn birth weight, and increased newborn methylation, which may restrict the range of stress adaptation responses, increasing risk for adult-onset diseases); Rachel Yehuda, Stephanie Mulherin Engel, Sarah R. Brand, Jonathan Seckl, Sue M. Marcus, and Gertrud S. Berkowitz, "Transgenerational Effects of Posttraumatic Stress Disorder in Babies of Mothers Exposed to the World Trade Center Attacks During Pregnancy." *Journal of Clinical Endocrinology & Metabolism*, Vol. 90, 2005, pp. 4115-4118 (babies born to mothers who developed PTSD after exposure to September 11 terrorist attacks while pregnant had lower salivary cortisol levels than babies whose mothers did not develop PTSD); R.C. Painter, Clive Osmond, Peter Gluckman, Mark Hanson, D.I.W. Phillips, and Tessa J. Roseboom. "Transgenerational Effects of Prenatal Exposure to the Dutch Famine on Neonatal Adiposity and Health in Later Life." *BJOG: An International Journal of Obstetrics & Gynaecology,* Vol. 115, No. 10, 2008, pp. 1243-1249 (children of women exposed to famine *in utero* during Dutch Hunger Winter of 1944-1945 – a Nazi-engineered famine in the occupied Netherlands – experienced poor health outcomes later in life); Fernanda Serpeloni, Karl Radtke, Simone Gonçalves de Assis, Frederico Henning, Daniel Nätt, and Thomas Elbert, "Grandmaternal stress during pregnancy and DNA methylation of the third generation: an epigenome-wide association study," *Translational Psychiatry,* Vol. 7, No. 8, 2017, p. e1202. (grandchildren of women exposed to interpersonal violence during pregnancy had altered DNA methylization associated with poor health outcomes similar to exposures to toxins during pregnancy).

337 Nader Perroud, Eugene Rutembesa, Ariane Paolone-Giacobino, Jean Mutabaruka, Leon Mutesa, and Ludwig Stenz, "The Tutsi Genocide and Transgenerational Transmission of Maternal Stress: Epigenetics and Biology of the HPA Axis," *The World Journal of Biological Psychiatry,* Vol. 15, No. 4, 2014, pp. 334-345.

338 *Id.* at p. 338, 341.

339 Nader Perroud, Eugene Rutembesa, Ariane Paolone-Giacobino, Jean Mutabaruka, Leon Mutesa, and Ludwig Stenz, "The Tutsi Genocide and Transgenerational Transmission of Maternal Stress: Epigenetics and Biology of the HPA Axis," *The World Journal of Biological Psychiatry,* Vol. 15, No. 4, 2014, p. 343.

340 *Ibid. But see,* Maria Roth, Frank Neuner, and Thomas Elbert, "Transgenerational Consequences of PTSD: Risk Factors for the Mental Health of Children whose Mothers have been Exposed to the Rwandan Genocide," *International Journal*

Researchers also hypothesize that parents who experience trauma years prior to procreating might still biologically (rather than behaviorally) pass increased mental health risks to their children.[341] However, the data from human studies is limited. A study of children conceived during the Dutch famine suggests that permanent epigenetic changes to gametes and sex chromosomes persisted two generations later.[342] A study of the children of Holocaust survivors who were conceived after the Holocaust showed that people whose mothers were older when they experienced the Holocaust had greater biological markers of stress, independent of their mothers' own level of PTSD.[343] Many animal studies, often using fear-conditioning experiments in mice, have shown that epigenetic and chromosomal effects persist across multiple generations in rodents, raising the possibility that this also occurs in humans.[344] Although it could be years before the science bears out this hypothesis, it would, if true, show that trauma perpetrated against a group can cause, not only serious mental harm to the generation that directly experienced trauma, but also physical and mental harm to later generations.

Finally, intergenerational trauma may be perpetuated across generations due to a group's understandable need to memorialize their own history through sharing of stories, including those

of Mental Health Systems, Vol. 8, No.12, 2014 (finding that child PTSD correlated with maternal violence and that maternal violence correlated not with the mother's genocide-related PTSD but with her own experience of family violence).

341 Johannes Bohacek and Isabelle M. Mansuy, "Molecular Insights into Transgenerational Non-Genetic Inheritance of Acquired Behaviours," *Nature Reviews Genetics*, Vol. 16, No. 11, 2015, pp. 641-652 (literature review of mammal studies showing alterations of sperm and egg cells based on environmental factors such as stress, and persisting across generations); Heather N. Bader, Linda M. Bierer, Amy Lehrner, Iouri Makotkine, Nikolaos P. Daskalakis, and Rachel Yehuda, "Maternal Age at Holocaust Exposure and Maternal PTSD Independently Influence Urinary Cortisol Levels in Adult Offspring," *Frontiers in Endocrinology*, Vol. 5, 2014, p. 103 (older maternal age at exposure to Holocaust contributed to increased biological evidence of stress in offspring, independently of maternal PTSD, in offspring not yet conceived during Holocaust); Randy L. Jirtle and Michael K. Skinner, "Environmental Epigenomics and Disease Susceptibility," *Nature Reviews Genetics*, Vol. 8, No. 4, 2007, pp. 253-262 (literature review of animal studies documenting heritable effects of environmental influences, such as stress on the epigenome); Carlos Guerrero-Bosagna and Michael K. Skinner, "Environmentally Induced Epigenetic Transgenerational Inheritance of Phenotype and Disease," *Molecular and Cellular Endocrinology*, Vol. 354, Nos. 1-2, 2012, pp. 3-8 (literature review of studies documenting environmental impacts on epigenome leading to later-in-life disease and, specifically, on heritable impacts via alterations of germline (egg and sperm cells)); Ali B. Rodgers and Tracy L. Bale, "Germ Cell Origins of Posttraumatic Stress Disorder Risk: the Transgenerational Impact of Parental Stress Experience," *Biological psychiatry*, Vol. 78, No. 5, 2015, pp. 307-314 (literature review of human and animal studies showing link between parental stress exposure and heritable alterations in epigenome linked to stress reactivity in offspring, which, in turn, is linked to susceptibility to developing PTSD following a traumatic event).

342 Bastiaan T. Heijmans, Elmar W. Tobi, Aryeh D. Stein, Hein Putter, Gerard J. Blauw, Ezra S. Susser, P. Eline Slagboom, and L. H. Lumey, "Persistent Epigenetic Differences Associated with Prenatal Exposure to Famine in Humans," *Proceedings of the National Academy of Sciences*, Vol. 105, No. 44, 2008, pp. 17046-17049.

343 Heather N. Bader, Linda M. Bierer, Amy Lehrner, Iouri Makotkine, Nikolaos P. Daskalakis, and Rachel Yehuda, "Maternal Age at Holocaust Exposure and Maternal PTSD Independently Influence Urinary Cortisol Levels in Adult Offspring," *Frontiers in Endocrinology*, Vol. 5, 2014, p. 103.

344 Tracy L. Bale, "Lifetime Stress Experience: Transgenerational Epigenetics and Germ Cell Programming," *Dialogues in Clinical Neuroscience*, Vol. 16, No. 3, 2014, p. 297 (literature review of studies tracking how genes affected by the environment during certain developmental windows lead to neurodevelopmental disorder risk); Brian G. Dias and Kerry J. Ressler, "Parental Olfactory Experience Influences Behavior and Neural Structure in Subsequent Generations," *Nature Neuroscience*, Vol. 17, 2014, pp. 89-96 (two generations of offspring of mice who were conditioned to fear a specific odor prior to conceiving also showed fear of the conditioned odor; with the sperm of fear-conditioned mice showing heritable alterations); Katharina Gapp, Ali Jawaid, Peter Sarkies, Johannes Bohacek, Pawel Pelczar, Julien Prados, Laurent Farinelli, Eric Miska, and Isabelle M. Mansuy, "Implication of Sperm RNAs in Transgenerational Inheritance of the Effects of Early Trauma in Mice," *Nature Neuroscience*, Vol. 17, No. 5, 2014, pp. 667- 669 (offspring of fear-conditioned mice showed affects in later generations); Ali B. Rodgers, Christopher P. Morgan, Stefanie L. Bronson, Sonia Revello, and Tracy L. Bale, "Paternal Stress Exposure Alters Sperm MicroRNA Content and Reprograms Offspring HPA Stress Axis Regulation," *Journal of Neuroscience*, Vol. 33, No. 21, 2013, pp. 9003-9012 (offspring of male mice exposed to chronic stress prior to breeding demonstrated reduced HPA stress axis regulation); David M. Dietz, Quincey LaPlant, Emily L. Watts, Georgia E. Hodes, Scott J. Russo, Jian Feng, Ronald S. Oosting, Vincent Vialou, and Eric J. Nestler, "Paternal Transmission of Stress-Induced Pathologies," *Biological Psychiatry*, Vol. 70, No. 5, 2011, pp. 408-414 (offspring of male mice exposed to stress prior to breeding showed increased biomarkers of depression compared to controls).

about prior atrocities.[345] These narratives can have positive effects on later generations, particularly in preserving cultural memory and as the group seeks international recognition of the group's suffering in the face of denial by the persecutors.[346] Already, in December 2019, when well-documented atrocities against the Rohingya were continuing, Myanmar State Counsellor Aung San Suu Kyi defended Myanmar from accusations of genocide before the ICJ.[347] For the Rohingya, their government's denial and attempts to rewrite history make memorializing these events through maintaining and passing on their own narratives a critical cultural and political praxis.

However, despite evidence-based therapies, such as Narrative Exposure Therapy, which involve survivors retelling their trauma narrative, and despite the potential benefits of trauma narratives and their importance in a group's search for dignity and justice, such stories can also have detrimental effects on future generations. In a study of 689 people of Armenian origin living in Greece or Cyprus, researchers found that 35.7 percent reported trauma symptoms originating from knowing about the violence that Turkey inflicted on Armenians from 1914 to 1918.[348] Among the indigenous Lakota in the United States, Lakota researchers found evidence of a common "historical trauma response," including identity difficulties, depression, anxiety, PTSD, survivor's guilt, unresolved mourning, and rumination over past events and lost ancestors.[349] Native American communities use the word "soul wound" to describe this pervasive communal response.[350] Researchers have also found that the collective, intergenerational trauma caused by Euro-American and Euro-Canadian settler colonialism has resulted in a high prevalence of mental health problems, such as substance dependence and suicide, among indigenous First Nations communities of North America.[351] Genocide and other mass atrocities have inescapable and often lasting effects, including the enduring harm they cause, over generations, to entire peoples, even as those peoples seek to memorialize the history of their suffering and loss.

Although the exact causal path of intergenerational transmission of trauma symptoms remains unclear, the results of significant traumatizing events clearly reach through generations beyond the one that actually experienced the trauma. This intergenerational trauma constitutes serious

345 Natasha Azarian-Ceccato, "Reverberations of the Armenian Genocide: Narrative's Intergenerational Transmission and the Task of Not Forgetting," *Narrative Inquiry*, Vol. 20, 2010, p. 108.

346 *Ibid.* Passing trauma stories down to the next generation through narratives can have two positive effects: cultural memory and recognition. Narratives of traumatic events ensure that the atrocities are never forgotten or come to be unknown by descendants. Perhaps even more crucial for groups such as Armenians, Maori, and the Rohingya, these stories act as counter-narratives to prevent efforts by the perpetrators to erase the atrocities. Perpetrators of mass atrocities or the dominant culture often claim that atrocities never occurred or deny the harmful effects of those atrocities. For example, the Turkish government denies that the Armenian genocide ever happened. *See*, "'Political show': Turkey Slams U.S. Senate 'Armenia Genocide' Vote," *Al Jazeera*, December 13, 2019, https://www.aljazeera.com/news/2019/12/turkey-senate-vote-armenia-genocide-political-show-191213003552676.html (accessed August 28, 2023). In 2000, then Prime Minister of New Zealand Helen Clarke claimed it was offensive for the Maori people to use the word "holocaust" to describe their mistreatment and colonization. Leonie Pihama, Paul Reynolds,Cherryl Waerea Smith, John Reid Linda Tuhiwai Smith, and Rihi Te Nana, "Positioning Historical Trauma Theory within Aotearoa New Zealand," *AlterNative: An International Journal of Indigenous Peoples*, Vol. 10, No. 3, September 2014, pp. 256-257 (citing Young, 2000, para. 13).

347 Marlise Simons and Hannah Beech, "Aung San Suu Kyi Defends Myanmar Against Rohingya Genocide Accusations," *The New York Times*, December 11, 2019, https://www.nytimes.com/2019/12/11/world/asia/aung-san-suu-kyi-rohingya-myanmar-genocide-hague.html?smid=nytcore-ios-share (accessed August 28, 2023).

348 Hatsantour Karenian, Miltos Livaditis, Sirpouhi Karenian, Kyriakos Zafiriadis, Valentini Bochtsou, and Kiriakos Xenitidis, "Collective Trauma Transmission and Traumatic Reactions among Descendants of Armenian Refugees," *International Journal of Social Psychiatry*, Vol. 57, No. 4, 2011, p. 334.

349 Teresa Evans-Campbell, "Historical Trauma in American Indian/Native Alaska Communities: A multilevel Framework for Exploring Impacts on Individuals, Families, and Communities," *Journal of Interpersonal Violence*, Vol. 23, No. 3, 2008, p. 324 (citing Brave Heart, 1999a, 1999b, 2000; Brave Heart & DeBruyn, 1998); Ian Barron and Ghassan Abdallah, "Intergenerational Trauma in the Occupied Palestinian Territories: Effect on Children and Promotion of Healing," *Journal of Child and Adolescent Trauma,* Vol. 8, No. 2, 2015, p. 105 (citing Brave Heart 2003).

350 Joseph P. Gone, "Redressing First National Historical Trauma: Theorizing Mechanisms for Indigenous Culture as Mental Health Treatment," *Transcultural Psychiatry*, Vol. 50, No. 5, p. 686 (citing E. Duran & B. Duran 1995).

351 *Id.* at p. 684 (citing Huang et al., 2006; Olson & Wahab, 2006).

mental harm within the definition of genocide. Although it is still decades too early to document the presence of intergenerational trauma among the descendants of the Rohingya who survived the attacks of 2016 and 2017, the atrocity crimes the community has suffered for decades make future studies of intergenerational trauma appropriate and important. Moreover, the ample studies of intergenerational effects in descendants of Holocaust survivors and Cambodian, Armenian, First Nations, and, more recently, Rwandan and Yugoslavian populations strongly suggest that groups like the Rohingya, who experience traumatic events, will show the effects of that trauma, in the form of serious mental and physical harm, long into the future.

Recommendations

To the Myanmar Military Junta:

- **CEASE** all attacks on the Rohingya and wider civilian population and declare a nationwide ceasefire to immediately end ongoing armed conflicts.
- **RELEASE** all political prisoners immediately and unconditionally, including those arbitrarily detained in Rakhine State and nationwide since February 1, 2021.
- **CEDE** national political authority to civilian democratic rule.
- **END** attacks, threats, and intimidation of the media and journalists, human rights defenders, and others working to promote and protect human rights and democracy.
- **COOPERATE** with international justice mechanisms and human rights monitors, including the Office of the Prosecutor of the International Criminal Court, the United Nations Special Rapporteur on the situation of human rights in Myanmar, and the Independent International Mechanism for Myanmar.

To the Government of Bangladesh:

- **CONTINUE** to support international efforts to hold accountable perpetrators of international crimes in Myanmar, including genocide and crimes against humanity, particularly those who bear the greatest responsibility for these crimes. These efforts should include supporting witness protection for Rohingya refugees.
- **ENSURE** that Rohingya refugees can exercise rights guaranteed by international law, including the rights to physical and mental health, liberty and security of person, freedom of movement, freedom of expression and peaceful assembly, work, education, and an adequate standard of living, including housing, food, water, and sanitation facilities.
- **ENSURE,** in collaboration with humanitarian organizations, large-scale, culturally appropriate mental-health and psychosocial services in the Rohingya language to strengthen resilience and coping ability in refugee communities.
- **ALLOW** United Nations, national, and international humanitarian aid organizations and human rights monitors safe, sustained, and unfettered access to refugee populations.
- **FACILITATE** meaningful consultations between Rohingya and all relevant parties to ensure the safe, dignified, and voluntary return of all displaced Rohingya to their places of origin in accordance with international standards.
- **RATIFY** the 1951 Refugee Convention and its 1967 Protocol and develop a domestic legal framework to ensure the protection of refugees.

To the National Unity Government of Myanmar:

- **CONTINUE** to cooperate with international efforts to hold accountable perpetrators of genocide, war crimes, and crimes against humanity in Myanmar, particularly those who bear the greatest responsibility for these crimes, including by sharing evidence with international justice mechanisms as defined above.
- **ACKNOWLEDGE** publicly that the state of Myanmar has committed genocide and crimes against humanity against the Rohingya people and engage in serious efforts to determine the full extent of and the people responsible for these crimes.

- **ACCEDE** to the Rome Statute of the International Criminal Court, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other international human rights instruments.
- **APPOINT** an ethnic-Rohingya special envoy or ministerial-level official to the National Unity Government to assist in the implementation and expansion of the National Unity Government's policy on Rohingya rights.

To the Office of the Prosecutor of the International Criminal Court:

- **ISSUE** arrest warrants for those responsible for the forced displacement of Rohingya from Myanmar to Bangladesh.
- **EXPAND** the investigation into the forced displacement of Rohingya from Myanmar to Bangladesh to assess the applicability of the crime of genocide under article 6(b) of the Rome Statute, given the International Criminal Tribunal for the former Yugoslavia's determination in *Tolimir* that forcible removal can meet the standard for acts causing serious mental harm as an element of genocide.
- **ACCEPT** the declaration submitted under Article 12(3) of the Rome Statute by the National Unity Government of Myanmar to the International Criminal Court delegating jurisdiction to the Court for any crimes perpetrated in Myanmar from 2002 to the present day, and then launch an investigation into alleged international crimes in Myanmar.
- **ACKNOWLEDGE** and act on any referrals received from States Parties regarding the situation in Myanmar.

To States Parties to the International Criminal Court

- **REFER** the situation in Myanmar to the Prosecutor at the International Criminal Court under Article 14 of the Rome Statute, requesting a full investigation into alleged mass atrocity crimes in Myanmar from 2002 to the present.

To the United Nations Country Team in Bangladesh and United Nations and International Humanitarian Organizations Serving Rohingya Populations:

- **EXPAND** the staff of mental health workers and researchers in refugee camps in Bangladesh at a level adequate to provide immediate treatment to children and adults and conduct a longitudinal study to document the ongoing mental health effects on the Rohingya people of the genocide they experienced in Rakhine State.
- **EXPAND** the network of transit centers and safe houses in the refugee camps in Bangladesh for refugees needing urgent life-saving protection.
- **IMPROVE** access to basic goods and services within transit centers, including access to psychosocial and mental health care, and ensure time spent in transit centers only minimally disrupts the lives of those under protection.

To the Association of Southeast Asian Nations and Its Member States:

- **REFRAIN** from providing any legitimacy to the Myanmar military junta, including through invitations to Association of Southeast Asian Nations meetings and summits.
- **ACCEPT** those fleeing Myanmar as refugees and provide them with support and protection in accordance with international standards established in treaty and customary international law.
- **PROVIDE** robust humanitarian support to the people of Myanmar through non-junta channels.
- **SUPPORT** international efforts to hold accountable perpetrators of international crimes in Myanmar, including genocide and crimes against humanity, particularly those who bear the greatest responsibility for these crimes.
- **IMPOSE** sanctions prohibiting investment in Myanmar military-controlled enterprises and support efforts to prevent the transfer of payments to the military junta, including payments related to natural gas sales.
- **ENGAGE** the National Unity Government, ethnic resistance organizations, and civil society.

To United Nations Member States and Donor Governments:

- **ENGAGE** the National Unity Government of Myanmar and support providing it with credentials at the United Nations and other international organizations.
- **ACKNOWLEDGE** publicly that the Myanmar military junta's claim to be the Government of Myanmar is illegitimate under international law, as found by the United Nations Special Rapporteur on the situation of human rights in Myanmar, and publicly acknowledge that the National United Government has a "far stronger claim to legitimacy" under international law, as the Special Rapporteur has found.
- **ACCEPT** asylum claims and third-country resettlement of Myanmar military and police defectors and other refugees from Myanmar.
- **ENSURE** the humanitarian response to the Rohingya crisis is fully funded.
- **ENSURE** international justice for past and ongoing atrocity crimes in Myanmar and press the United Nations Security Council to refer Myanmar to the International Criminal Court or, alternatively, to establish an ad hoc international criminal tribunal to investigate and prosecute genocide, crimes against humanity, and war crimes. Support all international efforts to hold accountable perpetrators of international crimes in Myanmar, including genocide and crimes against humanity, particularly those who bear the greatest responsibility for these crimes.
- **SUPPORT** a resolution at the United Nations Security Council to impose a global arms embargo on the Myanmar military and targeted sanctions against military-owned enterprises, with special attention to blocking the junta's access to natural gas revenues and access to financial services.
- **IMPOSE** bilateral arms embargoes and targeted sanctions, with special attention to blocking the junta's access to natural gas revenues and access to financial services.
- **SUPPORT** the mandate and recommendations of the United Nations Special Rapporteur on the situation of human rights in Myanmar.
- **ACKNOWLEDGE** publicly, through formal determinations, the Rohingya genocide and other atrocity crimes perpetrated in Myanmar, including war crimes and crimes against humanity.

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The popular imagination associates genocide with mass killing. But the Genocide Convention lists four other prohibited genocidal acts, including "causing serious bodily or mental harm." International tribunals prosecuting genocide have focused more on serious bodily harm and have found serious mental harm difficult to define precisely. This study, ***"My Tears Could Make a Sea": Mental Harm as Genocide Against Rohingya in Myanmar*** by Fortify Rights and the Lowenstein International Human Rights Clinic at Yale Law School, draws on quantitative data, eyewitness and survivor testimonies, and tools of social science to assess how inflicting mental harm can destroy a group of people in whole or in part. More specifically, by applying the law of genocide to this account of mental harm, it addresses an urgent question: Is the Myanmar military responsible for inflicting serious mental harm on the Rohingya people as an act of genocide to destroy them as a group?

"My Tears Could Make a Sea" ***will help governments, prosecutors, investigators, scholars, human rights groups, and aid workers better understand, and act against, mental harm as genocide generally and against Rohingya people. It includes more than 35 recommendations to relevant parties, including the Myanmar military junta, the National Unity Government of Myanmar, U.N. member states, the International Criminal Court, and humanitarian organizations providing aid to Rohingya genocide survivors.***

ALLARD K. LOWENSTEIN INTERNATIONAL
HUMAN RIGHTS CLINIC, YALE LAW SCHOOL