

# "TOOLS OF GENOCIDE"

**National Verification Cards** and the  
**Denial of Citizenship** of Rohingya  
Muslims in Myanmar

SEPTEMBER 2019





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Denial of Citizenship** of Rohingya  
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## Cover:

D.M., 65, shows a family photo taken by Myanmar authorities during an annual household survey. D.M. fled Myanmar with his three sons following Myanmar Army-led attacks in 2016. Cox's Bazar, Bangladesh, August 2019.

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

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"A.Z., 78, shows proof of his residence in Myanmar: "I have the family photo. I have my documents for my land. I have my family card." He fled Myanmar Army-led attacks in northern Rakhine State 16 days after they began. "They were burning villages," he recalled. "I did not take the NVC card. Once you take it, you become Bengali... [O]ur movements [in Myanmar] were seriously restricted. We were not even allowed to go to the next neighborhood."

©Saiful Huq Omi, Counter Foto,  
Cox's Bazar District, Bangladesh, August 2019

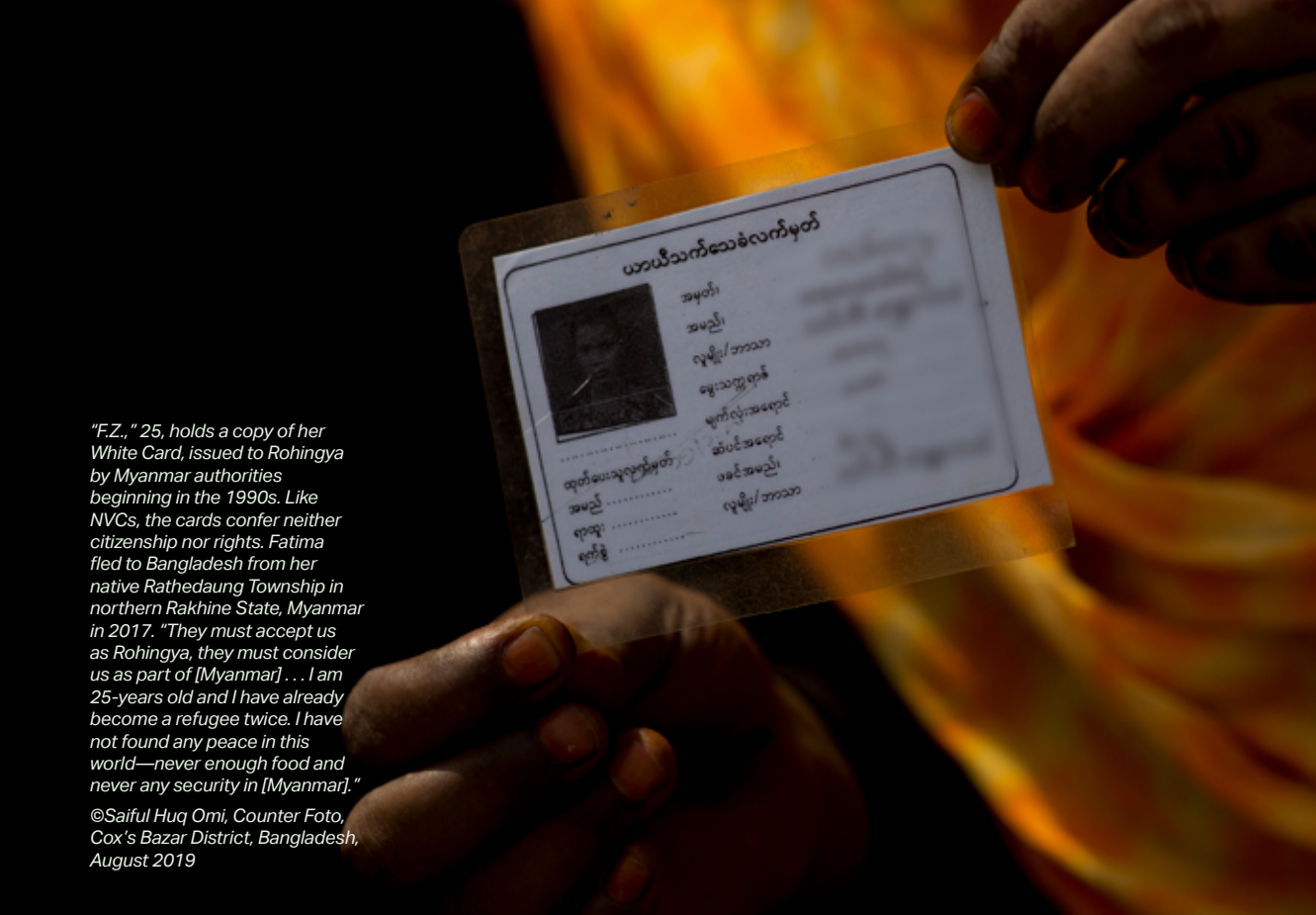


Handwritten Burmese text on a form, including a circled date and a table with Burmese labels.

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မတ်ပုံတင်အမှတ်စဉ်	နိုင်ငံသား	နိုင်ငံခြားသား	လူမျိုး	နိုင်ငံသား	ဘာသာ	မှတ်ချက်
၁၁	၁၂	၁၃	၁၄	၁၅	၁၆	





*"F.Z., " 25, holds a copy of her White Card, issued to Rohingya by Myanmar authorities beginning in the 1990s. Like NVCs, the cards confer neither citizenship nor rights. Fatima fled to Bangladesh from her native Rathedaung Township in northern Rakhine State, Myanmar in 2017. "They must accept us as Rohingya, they must consider us as part of [Myanmar]... I am 25-years old and I have already become a refugee twice. I have not found any peace in this world—never enough food and never any security in [Myanmar]."*

*©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, August 2019*

## SUMMARY

The United Nations Office on Genocide Prevention warns of certain indicators that “provide an environment conducive to the commission of atrocity crimes,” including “increased politicization of identity” and discriminatory “measures or legislation” targeting protected groups. In addition to certain prohibited acts, such as killing members of a group, genocidal States often use legal and administrative tools to facilitate the destruction of a targeted group “in whole or in part.”

In Myanmar, successive governments have implemented measures and legislation to erase Rohingya Muslims’ identity and rights, creating an enabling environment for genocide.

This report documents how the Government of Myanmar is using discriminatory administrative measures to deny Rohingya the right to nationality. The government has forced or coerced Rohingya to accept National Verification Cards (NVCs), which effectively identify Rohingya as “foreigners,” and Myanmar authorities tortured Rohingya and imposed restrictions on Rohingya freedom of movement in the context of implementing the NVC process.

*N.F., 20, fled from Rathedaung Township in Myanmar's northern Rakhine State. She is single and alone in Bangladesh, depending entirely on humanitarian aid.*

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This report finds that the NVC process violates customary international law as well as core human rights treaties to which Myanmar is a party, including the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women, and may have contributed to the commission of genocide and crimes against humanity.

The Rohingya are a predominantly Muslim ethnic minority group indigenous to Buddhist-majority Myanmar. Using a citizenship law entered into force in 1982, the government denies access to full citizenship for individuals who do not belong to “national” ethnic groups determined by the State. The State relies on an arbitrary and disputed list of 135 recognized national ethnic groups. As Rohingya are not among the “national ethnic groups” specified by the Myanmar government, the law effectively strips them of access to full citizenship rights.

Over the years, successive governments in Myanmar also created a series of administrative “citizenship scrutiny” processes to progressively limit rights for Rohingya.

The latest iteration of these processes is the NVC.

*N.F. holds a copy of her White Card issued by the Myanmar government.*

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Implemented under the Aung San Suu Kyi government, the NVC process requires Rohingya to register as “Bengali” or another foreign identity, relegating Rohingya to the status of “foreigner,” denying them access to full citizenship and contributing to their administrative erasure.

“On the NVC form it asked, ‘Where are you from?’ ‘Which border did you enter?’ ‘How did you come to Myanmar?’,” a 30-year-old Rohingya man from Maungdaw Township in Myanmar’s Rakhine State told Fortify Rights. “We are not migrants. The document that you have to fill out for the NVC makes us feel shame. It says we are outsiders.”

This report is based on 628 interviews from 2014 to 2019 conducted by Fortify Rights, including with 304 Rohingya women, in Rakhine State, Myanmar; Cox’s Bazar District, Bangladesh; and Kuala Lumpur, Malaysia. Fortify Rights interviewed eyewitnesses and survivors of human rights violations in Myanmar as well as members of civil society organizations and humanitarian aid workers.

“The NVC is a tool of genocide,” a Rohingya refugee in Bangladesh told Fortify Rights in English, later adding, “We want our citizenship restored first, and there should be equality, safety, and security in our motherland.”

## **NATIONAL VERIFICATION CARDS, HUMAN RIGHTS VIOLATIONS, AND ATROCITY CRIMES**

The Myanmar government has used the NVC process to violate the rights of Rohingya, and the process itself has resulted in human rights violations.

“I was beaten everywhere— my head, back, chest, and all over my body,” a Rohingya farmer, 62, told Fortify Rights, describing beatings by Myanmar authorities. The same authorities threatened the man to accept an NVC, saying, “If you don’t accept the NVC, we will kill you.”

In another instance, on July 17, 2017, Myanmar Army soldiers and government officials entered Baw Tu Lar village—also known as Bandola village—in Rakhine State’s Maungdaw Township and forced groups of Rohingya to accept NVCs, in some cases at gunpoint.

“[The soldiers] closed the door and surrounded us, holding guns,” a Rohingya man, 61, told Fortify Rights. Myanmar authorities forced him and four of his seven family members to accept the NVC. “They separated men and women . . . The threats to receive an NVC are real. It’s a horrible situation for us.”

Just weeks later, in August 2017, the Myanmar military began attacking civilians in northern Rakhine State, forcing at least some Rohingya residents of Baw Tu Lar village to flee to Bangladesh.

Beginning in October 2016 and August 2017—in response to Rohingya militant attacks on police—Myanmar security forces and civilian perpetrators razed several hundred Rohingya villages and committed massacres and mass rape of Rohingya women, men, and children throughout northern Rakhine State, forcing nearly 800,000 Rohingya to flee to Bangladesh. In July 2018, Fortify Rights exposed how Myanmar authorities made “extensive and systematic preparations” for the attacks against Rohingya and that the crimes constituted genocide and crimes against humanity.



Likewise, in September 2018, the Independent International Fact-Finding Mission on Myanmar (FFM), established by the United Nations Human Rights Council in March 2017 to investigate crimes committed by Myanmar security forces, concluded that there was “sufficient information to warrant the investigation and prosecution of senior officials in the Tatmadaw [military] chain of command” for the crime of genocide and crimes against humanity against Rohingya in Rakhine State.

As part of its findings, the FFM reported how “[p]ressure to accept the NVC increased in the months leading up to August 2017” and that Border Guard Police and Myanmar Army soldiers held a “series of more targeted and aggressive meetings” with Rohingya elders in mid-August 2017, demanding residents accept NVCs. According to the FFM, these meetings took place in villages where “some of the most brutal ‘clearance operations’ subsequently took place.”

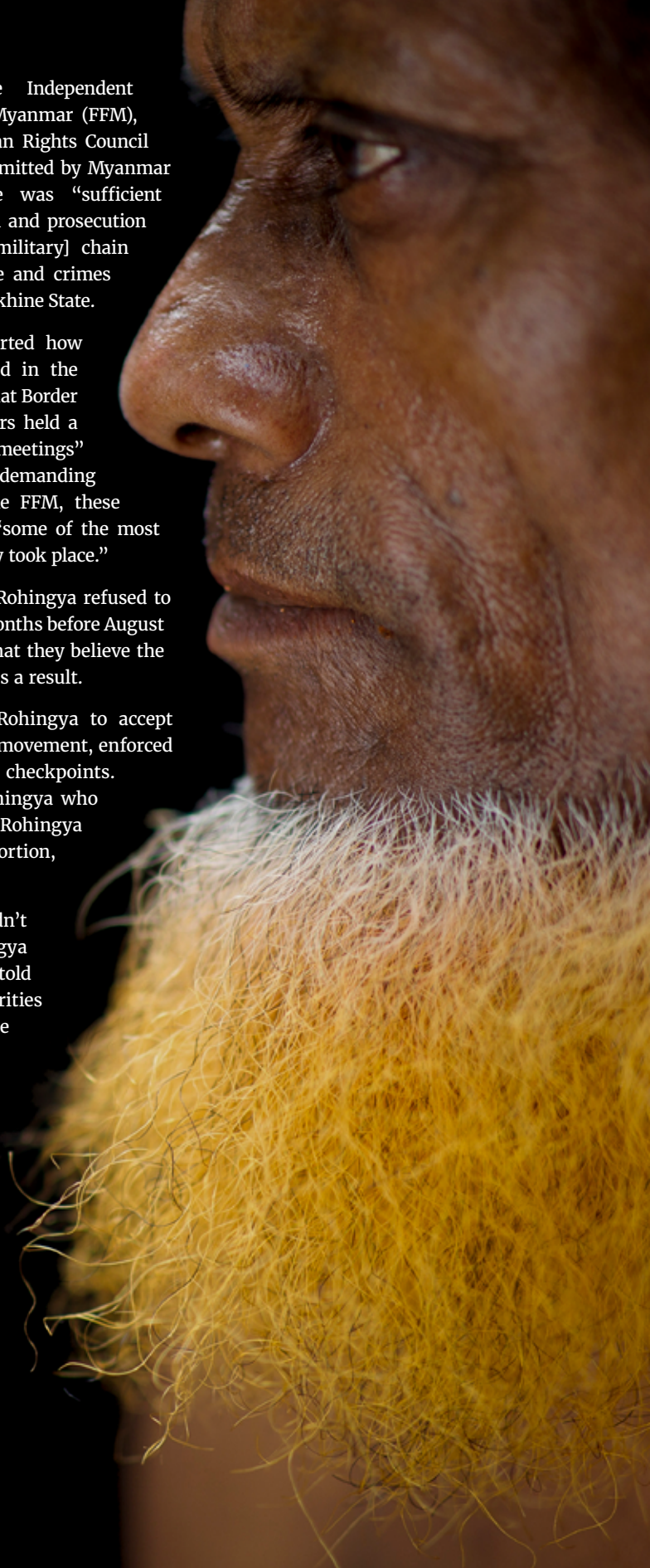
In cases documented by Fortify Rights, Rohingya refused to accept NVCs *en masse* in the weeks and months before August 2017, and Rohingya told Fortify Rights that they believe the Myanmar Army attacked them, in part, as a result.

The authorities continue to pressure Rohingya to accept NVCs by imposing added restrictions on movement, enforced through ubiquitous military and police checkpoints. Security forces do not always grant Rohingya who hold NVCs with permission to pass, and Rohingya often encounter violence, threats, extortion, and other abuses at the checkpoints.

“[T]he security forces beat me as I couldn’t show them an NVC,” a 58-year-old Rohingya man from Maungdaw Township told Fortify Rights, describing how the authorities stopped him at a checkpoint while he was attempting to travel to another township. “They tortured me with a rod, they extorted money, and they sent me back, threatening me that I must take the NVC.”

*O.M. is a 55-year-old Rohingya father of eight children, and a landowner in Rakhine State, Myanmar. Before fleeing Myanmar to escape military-led attacks in 2017, he was a farmer. “Some years ago, the army gave us documents before the last election. They asked us to vote for them and promised that if we did, then we wouldn’t be tortured . . . But right after the vote ended, they started to torture us again . . . [W]hen the immigration people came to our village and asked us to take the NVC cards, we didn’t want to take it. We ran away from the village and took shelter in the nearby hills.”*

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Cox’s Bazar District, Bangladesh, August 2019





Furthermore, Rohingya are increasingly only able to access livelihoods if they hold an NVC, creating severe economic pressure on any Rohingya who refuse to identify as a “Bengali” or other foreign identity.

“Last year, in September 2018, the authorities told me I could not fish,” a Rohingya fisher, 30, told Fortify Rights. “Without the NVC, we cannot move or work, so I had no choice but to take the NVC.”

Even with NVCs, Rohingya are systematically denied freedom of movement. The government continues to confine nearly 500,000 Rohingya to isolated, poor villages and to 24 squalid internment camps located in five townships in Rakhine State.

## NATIONAL VERIFICATION CARDS, HUMANITARIAN ORGANIZATIONS, AND ROHINGYA IDENTITY

The Myanmar government-imposed restrictions to force Rohingya to accept NVCs also impact the work of international humanitarian aid organizations operational in northern Rakhine State. Rohingya aid workers are required by the government to hold an NVC to travel and carry out their work. Fortify Rights documented how at least five humanitarian aid organizations coerced Rohingya to accept NVCs.

“My country director said, ‘How can you stay with [our organization] without travel authorization?’ I was advised that it is better to take the NVC to carry out my duties,” a Rohingya aid worker in northern Rakhine State told Fortify Rights. “[The agency] said, if not, they will not hire me again next year. I started considering my job security, and if I talk to you honestly, I had to take the NVC.”

*N.M., 75, shows his original White Card receipt. The Myanmar government issued the receipts to Rohingya after revoking their White Cards in March 2015. Like the White Card, the receipts confer no rights. “[Myanmar soldiers] asked us to take the NVC cards. We refused and said, ‘We can only take the card if you write down that we are Rohingya.’ The security forces said, ‘We cannot do it as you are just Bengalis,’ but we made it very clear to them that even if we are beaten to death, we would not take the NVC.”*

*©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, August 2019*



Rohingya and foreign aid workers in northern Rakhine State also told Fortify Rights that Rohingya staff were unable to identify as Rohingya within their organizations and in the workplace.

“I was not able to say I was Rohingya in my place of work,” a 37-year-old Rohingya told Fortify Rights. “I was unable to say it at meetings or to people I would work with.”

Current senior staff of humanitarian organizations operational in northern Rakhine State spoke about an ongoing “culture of silence” and “an environment of self-censoring” and said that the incidents documented by Fortify Rights are not the result of explicit policies within the organizations.

However, senior U.N. officials and diplomats have privately and publicly supported the NVC process and its earlier iterations, despite that the process violates the Rohingya right to a nationality, the principle of non-discrimination, and other fundamental rights. Most recently, in January 2019, U.N. Special Envoy to Myanmar Christine Schraner Burgener issued a statement in which she failed to use the term “Rohingya” and “encouraged the internally displaced people she met to consider applying for [NVC] registration.”

The FFM, on the other hand, described the NVC process in September 2018 as “protracted, cumbersome and increasingly coercive.”

*H.K., 75, from Maungdaw Township in Myanmar's Rakhine State shows a copy of her household list provided by Myanmar authorities as part of annual household surveys, which are commonly abusive exercises. Many Rohingya have no other form of identification. "I saw no one was taking the NVC... I was afraid and also decided not to take it."*

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H.K., 75.

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"F.Z.," 25.

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August 2019







N.M., 75.

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*During Myanmar military-led attacks against Rohingya that began in August 2017, 35 members of M.S.'s family were killed, and others were seriously harmed. "I have my identity card with me," he said. "My family members have the family photo, family cards, and we even have the documents for the land. While all these prove my life in [Myanmar], the NVC would call me Bengali. But I am a Rohingya. I am not a Bengali, and I will never except the NVC. I will only go back [to Myanmar] if three of our demands are met—they give us our citizenship as a Rohingya; they give us compensation for all the destruction they have caused; and complete security of life is ensured for us. Unless we have that, we are not going back."*

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*M.S. holds his White Card issued by the Myanmar government.*

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## JUSTICE AND ACCOUNTABILITY

The human rights violations documented in this report should be taken into consideration by investigators evaluating potential international crimes committed by Myanmar state security forces.

In a historic decision on September 6, 2018, the International Criminal Court (ICC) granted the Office of the Prosecutor jurisdiction to investigate and possibly prosecute the crime against humanity of deportation of Rohingya to Bangladesh as well as the crimes against humanity of persecution and other inhumane acts. Furthermore, in March 2019, the Organization of Islamic Cooperation (OIC) passed a resolution to bring a case, led by the Government of The Gambia, against Myanmar to the International Court of Justice (ICJ) for the crime of genocide against Rohingya.

Nevertheless, the Government of Myanmar consistently denies allegations of human rights violations against Rohingya and has failed to properly investigate and prosecute perpetrators of mass atrocity crimes. The government continues to refuse to cooperate with international human rights monitors, including the FFM and U.N. Special Rapporteur Yanghee Lee.





D.M., 65, holds his original household list from an annual household survey conducted by the Myanmar authorities. For many Rohingya, this is their only form of identification. D.M. and his three sons fled to Bangladesh following Myanmar Army-led attacks in 2016. "All my family members are from [my] village in Maungdaw. My father was born there, I was born there, my great grandfather was also born there . . . Those of us who can read saw that the NVC card [application] mentions that we would be called Bengalis if we take the card," he said. He and his three sons refused to take the card. "Then October 9 [2016] happened. The Army came to our village and burned all our homes. I am grateful to Bangladesh for giving us shelter and a home."

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## KEY RECOMMENDATIONS

As Myanmar approaches elections in 2020, issues of citizenship and ethnic identity will continue to factor prominently in the national discourse.

In order to address the protracted crisis and prevent further atrocities in Rakhine State, the Government of Myanmar should immediately abolish the NVC process and restore equal access to full citizenship rights for Rohingya through a speedy administrative process developed in meaningful consultation with the Rohingya community in Myanmar, Bangladesh, and the diaspora.

As part of this process, the government should amend the 1982 Citizenship Law to bring it in line with international law and standards and ensure equal access to full citizenship rights, regardless of ethnicity, race, or religion.

Until Myanmar makes appropriate changes in its law and policies to provide Rohingya equal access to full citizenship, the Government of Bangladesh with support from the United Nations High Commissioner for Refugees should suspend plans to return Rohingya refugees to Myanmar. Plans

to facilitate refugee returns should be predicated on access to full citizenship and basic rights and freedoms for Rohingya in Myanmar.

To address crimes committed against Rohingya and pave the path for future protections, the international community should ensure justice for atrocity crimes in Myanmar and press the U.N. Security Council to refer Myanmar to the ICC or, alternatively, to establish an *ad hoc* international criminal tribunal. The international community should impose an arms embargo on the Myanmar military and targeted sanctions against military-owned enterprises and those found to be responsible for human rights violations in Rakhine State.

International humanitarian agencies operational in northern Rakhine State should establish a common position and a coordinated, rights-respecting response to the NVC process in order to protect the rights of Rohingya and other communities and enable Rohingya to opt out of the NVC process, if they choose, without fear of reprisals or loss of opportunities.

Rohingya human rights defenders in Myanmar and throughout the world are advocating for these and other objectives. Their work is described in chapter IV of this report.

*A.R., 85, was a farmer in Myanmar and is the father of six. Two of his sons were killed during the Myanmar Army-led attacks in August 2017. "Once you take the [NVC] card, you become just a guest in [Myanmar]. I can feed you rice now, but even before you are done eating, I can ask you to leave my home, as you are just a guest a for us. I did not want to become a guest."*

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Cox's Bazar, Bangladesh, August 2019







# METHODOLOGY



This report is based on 628 interviews, including interviews with 304 women, conducted from 2014 to 2019 by Fortify Rights in Rakhine State, Myanmar; Cox's Bazar District, Bangladesh; and Kuala Lumpur, Malaysia. This includes 104 qualitative interviews conducted by Fortify Rights from October 2018 to August 2019 with eyewitnesses and survivors of human rights violations in Myanmar as well as with members of civil society organizations and humanitarian aid workers. This figure also includes 29 previously unpublished testimonies collected by Fortify Rights from Rohingya confined to internment camps in Sittwe Township, Rakhine State and located in other parts of Myanmar, Bangladesh, and Malaysia in 2014 and 2015.

Lastly, the report draws on select findings from forthcoming research conducted in July and August 2018 by a team of Rohingya researchers supported and guided by Fortify Rights in Cox's Bazar District, Bangladesh. The Rohingya research team interviewed a total of 495 Rohingya refugees, including 264 women, residing in 33 different sections of the refugee camps in southeastern Bangladesh.

Fortify Rights conducted qualitative interviews with Rohingya in the Rohingya language with the assistance of an English-Rohingya interpreter. Everyone interviewed for this report gave free, prior, and informed consent to be interviewed and for their testimony to be publicized. No one interviewed for this report received compensation, and all were informed of the purpose of the interview, its voluntary nature, and how the information might be used. Fortify Rights reimbursed the modest travel costs for three Rohingya to meet in a secure location. The locations of some interviews, names of survivors, eyewitnesses, and others, the location details of the interviews, and other identifying details are withheld or changed in this report for security reasons.



On August 7, 2019, Fortify Rights sent a letter to the Government of Myanmar requesting further information on the NVC process. Myanmar President Win Myint, State Counsellor Aung San Suu Kyi, Commander Major General Teza Kyaw of the Myanmar Army Northern Command, Minister of Social Welfare, Relief and Resettlement Dr. Win Myat Aye, Minister for Labor, Immigration and Population Thein Swe, and the Chairperson of Myanmar National Human Rights Commission Win Mra received a copy of the letter. At the time of writing, Fortify Rights had not received a response. The letter is included as Annex III of this report.

A.R., 30.

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A.R., 85.

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N.B., 25.

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# MAP OF MYANMAR AND BANGLADESH





# QUANTITATIVE-DATA SNAPSHOTS

In July and August 2018, Fortify Rights supported a team of Rohingya researchers in Cox's Bazar District, Bangladesh to collect and analyze quantitative data related to the situation of Rohingya in Myanmar and Bangladesh. The group surveyed 495 Rohingya refugees, including 264 women, residing in 33 different sections of the refugee camps in southeastern Bangladesh. Below are select findings of this Rohingya-led research related specifically to the denial of citizenship and National Verification Cards (NVCs).<sup>1</sup>

## Denial of Documentation

100 percent of Rohingya respondents reported being prevented from obtaining official documentation in Myanmar (i.e. documentation that would confer rights, such as a National Registration Card).



100%

## Coercive Documentation

99.8 percent of Rohingya respondents reported feeling pressure to accept unwanted documentation (e.g., NVCs or other unwanted documentation).



99.8%

## Denial of Citizenship

100 percent of Rohingya respondents reported being prevented from obtaining citizenship in Myanmar.



100%

## Restrictions on Movement

99.6 percent of Rohingya respondents reported being prevented from traveling in Myanmar (e.g., not being able to travel from one township to another without authorization or permission from the State).



99.6%

## Prevented from Working

99.6 percent of Rohingya respondents in Bangladesh reported being prevented from working in Myanmar (for example prevented from accessing fields, fishing boats, etc., or prevented from travelling to work).



99.6%

<sup>1</sup> Fortify Rights, forthcoming participatory research study conducted in Cox's Bazar, Bangladesh, July and August 2018.

# CHRONOLOGY OF EVENTS:

## ROHINGYA CITIZENSHIP, 1948-2019

Myanmar passes the Union Citizenship Act, 1948, through which Rohingya have access to citizenship, reflected in the issuing of National Registration Cards (NRCs). Prime Minister U Nu recognizes Rohingya as indigenous to Myanmar.

1948

### 1970s

The Myanmar government issues Foreign Registration Cards (FRCs) to some Rohingya under the Emergency Immigration Act, ostensibly to address unauthorized migration from India and Bangladesh. FRC holders are recognized as foreigners.

1977

The Myanmar military initiates Operation *Naga Min* (Dragon King) to identify and register residents of three states and two divisions as either citizens or foreigners. Beginning in Rakhine State in February 1978, the Myanmar Army reportedly razes Rohingya villages and commits severe human rights violations, forcing more than 200,000 Rohingya into Bangladesh. Myanmar authorities, at the time, blame the situation on "wild Muslim extremists" and "rampaging Bengali mobs."

1978

Myanmar President Senior General Ne Win agrees to "repatriate" Rohingya refugees from Bangladesh. Bangladesh and Myanmar force hundreds of thousands of Rohingya back to Myanmar.

Myanmar passes new 1982 Citizenship Law effectively denying Rohingya full citizenship. Former President Senior General Ne Win says the law was intended to "clarify the position of guests and mixed bloods" and that "only pure-blooded nationals will be called citizens."

1982

The Myanmar government begins issuing Citizenship Scrutiny Cards, Associate Citizenship Scrutiny Cards, and Naturalized Citizenship Scrutiny Cards in line with the ethnic-based 1982 Citizenship Law. The government refuses to provide cards to Rohingya.

1989

19  
80

○ Myanmar holds multiparty national elections, in which the Rohingya vote, contributing to the victory of the National League for Democracy (NLD). The Myanmar military fails to acknowledge the results and puts NLD-leader Aung San Suu Kyi under house arrest.

19  
91

○ The Myanmar military launches Operation *Pyi Thaya* (Clean and Beautiful Nation) in Rakhine State, committing killings and rape and razing villages and mosques, forcing tens of thousands of Rohingya to Bangladesh.

19  
92

○ Beginning in September, the governments of Myanmar and Bangladesh as well as the United Nations Office of the High Commissioner for Refugees (UNHCR) force more than 150,000 Rohingya refugees back to Myanmar.

19  
95

○ The Government of Myanmar begins issuing Temporary Registration Cards (TRCs), also known as "White Cards," to Rohingya and other minorities. The cards confer no citizenship rights but later enable Rohingya to participate in the 2010 nationwide elections.

20  
08

○ The military holds a widely criticized national referendum on a military-drafted constitution, leading the military to establish a formal role in the political life of the nation.

20  
18

○ Aung San Suu Kyi is released from a final stint under house arrest.

The military-backed Union Solidarity and Development Party wins flawed national elections and former military general Thein Sein becomes President.

Violent incidents between Buddhists and Muslims in Rakhine State spiral into targeted, state-sanctioned attacks on Rohingya and other Muslims in 13 of 17 townships in the state, ultimately displacing more than 200,000 Rohingya. More than 125,000, mostly displaced Rohingya, are confined to dozens of internment camps throughout the state.

Myanmar authorities under President Thein Sein begin a "citizenship verification" process targeting displaced Rohingya in Rakhine State, identifying them as "Bengali" or "Bengali/Islam."

Myanmar conducts a national census that deliberately excludes Rohingya Muslims.

## 2012-2015

More than 170,000 mostly Rohingya flee Rakhine State and the Bangladesh border area, boarding ships largely operated by human trafficking syndicates.

Mass graves of Rohingya trafficking victims discovered in Thailand and Malaysia.

## JUNE 25

Myanmar government begins issuing Identity Cards of National Verification (ICNV), ostensibly to identify applicants who meet requirements for citizenship under the 1982 Citizenship Law. Some Rohingya are coerced to accept the cards, that confer no rights

Myanmar government bars Rohingya from voting or running for office in national elections, and the opposition National League for Democracy (NLD) fails to field a single Muslim candidate. The NLD wins in a landslide victory, gaining a parliamentary majority.

Myanmar's NLD transitions to power. Aung San Suu Kyi becomes State Counsellor, *de facto* head of state, circumventing the 2008 military-drafted constitution that effectively barred her from the presidency. The NLD government rebrands the ICNV process as National Verification Cards (NVCs) and establishes the Rakhine State Peace and Development Central Committee to issue NVCs.

## OCTOBER 9

Rohingya militants kill nine Myanmar police officers in Maungdaw and Rathedaung townships. Myanmar security forces raze dozens of villages in Maungdaw Township, killing, raping, and arresting Rohingya *en masse*, forcing the displacement of more than 90,000 Rohingya to Bangladesh during the next two months.



## NOVEMBER 2016 TO AUGUST 2017

Myanmar authorities increase military presence in northern Rakhine State, systematically train and arm non-Rohingya residents, confiscate sharp and blunt objects from Rohingya civilians, and evict humanitarian agencies, laying the groundwork for genocide and crimes against humanity.

### MARCH 24

The U.N. Human Rights Council establishes the Independent International Fact-Finding Mission (FFM) on Myanmar to investigate human rights violations and abuses in Rakhine, Kachin, and Shan states. The Myanmar government refuses to cooperate.

### AUGUST 24

The government-appointed Advisory Commission on Rakhine State, led by former U.N. Secretary General Kofi Annan, makes 88 recommendations to improve the situation in Rakhine State.

### AUGUST 25

Rohingya militants, rebranded as the Arakan Rohingya Salvation Army (ARSA), attack police outposts in northern Rakhine State, reportedly killing 12 officials. The Myanmar military responds, killing thousands of Rohingya civilians throughout northern Rakhine State in a matter of days and razing hundreds of villages. More than 700,000 Rohingya flee to Bangladesh—the fastest refugee outflow since the Rwandan genocide. Rohingya militants also kill and threaten civilians.

### SEPTEMBER 6

The International Criminal Court (ICC) rules that it may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh.

### SEPTEMBER 18

The FFM releases a 444-page report cataloging Myanmar military-led atrocity crimes in Myanmar and calls for the ICC or an international criminal tribunal to investigate and prosecute Myanmar security forces for genocide, war crimes, and crimes against humanity against Rohingya, Kachin, Shan, and others.

### AUGUST 5

The FFM issues a report exposing the Myanmar military's financial ties, calls for targeted sanctions and arms embargoes.

### AUGUST 22

The FFM issues a report on rape and sexual violence committed by Myanmar security forces with genocidal intent.

Bangladesh and Myanmar governments announce "repatriations" of Rohingya refugees will begin August 22. No Rohingya were consulted, and as of the time of writing, none have returned to Myanmar under the plan.



# BACKGROUND

Myanmar is an ethnically diverse country of approximately 55 million people, bordering Bangladesh, India, China, Laos, and Thailand.<sup>2</sup> The Rohingya are an indigenous, predominantly Muslim ethnic people who have traditionally resided primarily in what is now Rakhine State, Myanmar.<sup>3</sup> The Government of Myanmar has denied the existence of the Rohingya for decades and denies Rohingya equal access to citizenship.<sup>4</sup>

There are an estimated 2.5 million Rohingya globally and an estimated 495,000 Rohingya remaining in Rakhine State, where they face severe restrictions on freedom of movement, access to livelihoods, and other basic rights.<sup>5</sup>

<sup>2</sup> The Government of Myanmar excluded Rohingya and other marginalized ethnic minorities from the 2014 national census. The Republic of the Union of Myanmar Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census: Rakhine State*, May 2015, p. 8, <https://myanmar.unfpa.org/sites/default/files/pub-pdf/Rakhine%20State%20Census%20Report%20-%20ENGLISH-3.pdf> (accessed August 23, 2019).

<sup>3</sup> Although the Rohingya identify as Rohingya, comprised almost two percent of Myanmar's total population prior to the 2017 attacks and forced deportations, and materials dating back to the 17th century reference a Muslim population calling itself "Rooingya" in what is now Rakhine State, the government refuses to recognize the Rohingya as an ethnic minority or a "national race." The government in Myanmar insists that Rohingya are "Bengali" interlopers or descendants of agricultural workers imported by British colonial powers and that they do not belong in Myanmar. See, Francis Buchanan, "A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire," *Asiatic Researches*, Vol. 5, 1799, p. 234, [www.soas.ac.uk/sbbr/editions/file64276.pdf](http://www.soas.ac.uk/sbbr/editions/file64276.pdf) (accessed August 23, 2019). See also, Moshe Yegar, "The Muslims of Burma: A Study of a Minority Group," *Schriftenreihe des Sudasien-Instituts der Universität Heidelberg*, 1972.

<sup>4</sup> Burma Citizenship Law, Pyithu Hluttaw Law No. 4, October 15, 1982; Human Rights Watch, "All You Can Do Is Pray": *Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, April 22, 2013, p. 112, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims> (accessed August 23, 2019); Human Rights Watch, *Burma: The Rohingya Muslims: Ending a Cycle of Exodus?*, September 1996, p. 29, <https://www.hrw.org/reports/pdfs/b/burma/burma969.pdf> (accessed August 23, 2019); Poppy Elena McPherson and Simon Lewis, "Exclusive: Myanmar Rejects Citizenship Reform at Private Rohingya Talks," *Reuters*, June 26, 2018, <https://www.reuters.com/article/us-myanmar-rohingya-meeting-exclusive/exclusivemyanmar-rejects-citizenship-reform-at-private-rohingya-talks-idUSKBN1JNoD7> (accessed August 7, 2019).

<sup>5</sup> The Rohingya population globally is conservatively estimated to include 947,000 in Bangladesh, 500,000 in Saudi Arabia, 484,000 in Myanmar, 350,000 in Pakistan, 150,000 in Malaysia, 50,000 in the United Arab Emirates, 40,000 in India, 5,000 in Thailand, and 1,000 in Indonesia. See, "Myanmar Rohingya: What You Need to Know About the Crisis," *BBC*, April 24, 2018, <https://www.bbc.com/news/world-asia-41566561> (accessed August 23, 2019). A U.N. official in Myanmar told Fortify Rights the working figure of Rohingya in the country is 495,000. Fortify Rights electronic communication with U.N. official in Myanmar, 2019.

In 2012, a series of violent incidents between Buddhist and Muslim residents in Rakhine State escalated into state-sanctioned, coordinated attacks on Rohingya and other Muslims in 13 of 17 townships in Rakhine State. At the time of writing, the Government of Myanmar continues to confine more than 128,000 Rohingya displaced by the 2012 violence to 24 internment camps located in five townships of Rakhine State.<sup>6</sup>

In 2016 and 2017, following two coordinated attacks against security forces in Rakhine State by previously unknown Rohingya militants, the Myanmar Army, police, and civilian perpetrators committed massacres, mass rape, and mass arson attacks against Rohingya men, women, and children in the three townships of northern Rakhine State, forcing nearly 800,000 Rohingya into Bangladesh, where more than one million Rohingya remain confined to ill-equipped refugee camps at the time of writing.<sup>7</sup> Fortify Rights published a 160-page report in July 2018 detailing how Myanmar authorities made “extensive and systematic preparations” for attacks against Rohingya civilians in Rakhine State in 2017 that constituted genocide and crimes against humanity.<sup>8</sup> The report named 22 military and police officials involved in the attacks, whom should be investigated and possibly prosecuted for genocide and crimes against humanity.<sup>9</sup>

At the time of writing, the Government of Myanmar is implementing and further pursuing policies that violate the human rights of Rohingya in Rakhine State. The government continues to deny Rohingya equal access to citizenship and rights to freedom of movement and livelihoods.<sup>10</sup> The Myanmar authorities have also spread or failed to counter dangerous speech, suggesting Rohingya do not exist, do not belong in Myanmar, and that the people claiming to be Rohingya pose an existential threat to the country.<sup>11</sup>

6 U.N. Office for the Coordination of Humanitarian Affairs (OCHA), “Myanmar: IDP Sites in Rakhine State (as of January 31, 2019),” February 18, 2019, [https://themimu.info/sites/themimu.info/files/documents/Affected\\_Map\\_IDP\\_Rakhine\\_OCHA\\_Jan2019\\_A4.pdf](https://themimu.info/sites/themimu.info/files/documents/Affected_Map_IDP_Rakhine_OCHA_Jan2019_A4.pdf) (accessed August 23, 2019). See also, “Myanmar Government in Talks to Close Four More Rohingya IDP Camps in Rakhine State,” *Radio Free Asia*, July 6, 2018, <https://www.rfa.org/english/news/myanmar/myanmar-government-in-talks-to-close-more-rohingya-idp-camps-07062018162910.html/> (accessed August 23, 2019).

7 Attacks in October 2016 displaced at least 94,000 Rohingya and attacks in August 2017 displaced more than 700,000. See, 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](https://www.fortifyrights.org/downloads/Fortify_Rights_Long_Swords_July_2018.pdf) (accessed August 23, 2019). 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,” [http://www.fortifyrights.org/downloads/THEY\\_TRIED\\_TO\\_KILL\\_US\\_ALL\\_Atrocity\\_Crimes\\_against\\_Rohingya\\_Muslims\\_Nov\\_2017.pdf](http://www.fortifyrights.org/downloads/THEY_TRIED_TO_KILL_US_ALL_Atrocity_Crimes_against_Rohingya_Muslims_Nov_2017.pdf) (accessed August 23, 2019); 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, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A\\_HRC\\_39\\_CRP.2.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf) (accessed August 23, 2019); The Public International Law and Policy Group, *Documenting Atrocity Crimes Committed Against the Rohingya in Myanmar’s Rakhine State*, December 2018, <https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/5c058268c2241b5f71a0535e/1543864941782/PILPG+-+ROHINGYA+REPORT+-+Factual+Findings+and+Legal+Analysis+-+3+Dec+2018+%281%29.pdf> (accessed on August 23, 2019); Burmese Rohingya Organization U.K., “*I Thought I Would Die*: Physical Evidence of Atrocities Against the Rohingya, November 2017” <https://burmacampaign.org.uk/media/I-THOUGHT-I-WOULD-DIE-BROUK-Report.pdf> (August 23, 2019); Azeem Ibrahim, *The Rohingyas: Inside Myanmar’s Hidden Genocide*, (London: Hurst, 2016).

8 Fortify Rights, “*They Gave Them Long Swords*.”

9 The list of 22 names of police and military officials includes Senior General Min Aung Hlaing, Commander-in-Chief of the Myanmar military. *Id.* at p. 134. In 2015, in partnership with the Lowenstein International Human Rights Clinic at Yale Law School, Fortify Rights published one of the first reports focusing on the crime of genocide against Rohingya, also documenting the decades-long denial of citizenship. Fortify Rights and the Lowenstein International Human Rights Law Clinic, Yale Law School, *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](https://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf) (accessed August 23, 2019).

10 Fortify Rights, “Myanmar: Protect Civilians Trapped in Armed Conflict in Rakhine State, Ensure Humanitarian Access,” June 4, 2019, <https://www.fortifyrights.org/publication-20190604.html> (accessed August 23, 2019).

11 Francis Wade, *Myanmar’s Enemy Within: Buddhist Violence and the Making of a Muslim “Other,”* (London: Zed Books, 2017); Christian Solidarity Worldwide, “Burma’s Identity Crisis: How Ethno-Religious Nationalism has Led to

Further complicating the situation, the Myanmar Army and the Arakan Army—a non-state armed group comprised largely of ethnic Rakhine Buddhists—have been engaged in armed conflict in Rakhine State since 2015, displacing an estimated 60,000 predominantly Buddhist, ethnic Rakhine civilians in seven townships since January 2019.<sup>12</sup> The Myanmar Army have killed Rakhine civilians, used forced labor in armed conflict, and arbitrarily arrested and detained Rakhine civilians—violations that rise to the level of war crimes.<sup>13</sup> On June 21, 2019, the government ordered the shutdown of internet services in nine townships—eight in Rakhine State and one in Chin State—severely impeding humanitarian aid, business, media access, and human rights monitoring.<sup>14</sup>

The most recent attacks against the Rohingya have been perpetrated by the Myanmar military but also involved the civilian leadership of Nobel-laureate Aung San Suu Kyi, who came into power in 2016 after her party, the National League for Democracy (NLD), won the 2015 national elections in a landslide. Following the elections, Aung San Suu Kyi took up the role of State Counsellor, a position created to enable her to become the *de facto* head of state and circumvent provisions in the 2008 military-drafted constitution that barred her from the presidency.<sup>15</sup> Like the former administration of President Thein Sein and military-led regimes before that, the NLD-led government's process to address Rohingya citizenship is based on the 1982 Citizenship Law, which does not meet international standards and predicates access to citizenship on ethnicity.<sup>16</sup> The law stipulates that only members of certain “national ethnic groups”—not including Rohingya—who settled within Myanmar before the British conquest in 1824 are eligible for full citizenship.<sup>17</sup>

The government has not attempted to hide its plan to erase the Rohingya identity. On May 13, 2016, approximately five months before the instigation of mass atrocities in Rakhine State, Myanmar's military Commander-in-Chief Senior General Min Aung Hlaing stated that there were no Rohingya in Myanmar, referring to Rohingya instead as “Bengalis,” adding that “the term Rohingya does

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Religious Intolerance, Crimes Against Humanity and Genocide,” May 21, 2019, <https://www.csw.org.uk/2019/05/21/report/4339/article.htm> (accessed August 23, 2019); Victoria Milko, “Red Robes, White Roses: Religious Discrimination in Myanmar,” *New Naratif*, August 7, 2019, <https://newnaratif.com/journalism/red-robos-white-roses-religious-discrimination-in-myanmar/> (accessed August 23, 2019).

<sup>12</sup> See, “Refugees, UNHCR Raise Concerns Over Rushed Rohingya Repatriation Bid,” *Frontier Myanmar*, August 20, 2019, <https://frontiermyanmar.net/en/refugees-unhcr-raise-concerns-over-rushed-rohingya-repatriation-bid> (accessed August 23, 2019); Fortify Rights, “Myanmar: Protect Civilians Trapped in Armed Conflict,” Amnesty International, “No one can protect us”: War crimes and abuses in Myanmar's Rakhine State, May, 2019, <https://www.amnesty.org/download/Documents/ASA1604172019ENGLISH.PDF> (accessed August 23, 2019).

<sup>13</sup> Fortify Rights, “Myanmar: Protect Civilians Trapped in Armed Conflict”; Fortify Rights, “Myanmar: Investigate Forced Labor of Rakhine Buddhists in Western Myanmar,” March 15, 2016, <https://www.fortifyrights.org/publication-20160315.html>; Amnesty International, “No one can protect us.”

<sup>14</sup> Fortify Rights, “Myanmar: Lift Internet-Blackout in Rakhine and Chin States,” July 22, 2019, <https://www.fortifyrights.org/publication-20190722.html> (accessed August 23, 2019); Human Rights Watch, “Myanmar: Internet Shutdown Risks Lives,” June 28, 2019, <https://www.hrw.org/news/2019/06/28/myanmar-internet-shutdown-risks-lives> (accessed August 25, 2019).

<sup>15</sup> Euan McKirdy, “New Government Role Created for Myanmar's Aung San Suu Kyi,” *CNN*, April 7, 2016, <http://edition.cnn.com/2016/04/06/asia/aung-san-suu-kyi-state-counsellor-role-created/index.html> (accessed August 23, 2019).

<sup>16</sup> Yale Law School and Fortify Rights, *Persecution of the Rohingya Muslims*, pp. 6–8.

<sup>17</sup> Burma Citizenship Law Art. 3; United Nations High Commissioner for Refugees (UNHCR), *Citizenship and Statelessness Myanmar: An Analysis of International Standards and the Myanmar Citizenship Legal Framework*, April 2018, on file with Fortify Rights; Human Rights Watch, “All You Can Do Is Pray”; Fortify Rights, *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*, February 24, 2014, [https://www.fortifyrights.org/downloads/Policies\\_of\\_Persecution\\_Feb\\_25\\_Fortify\\_Rights.pdf](https://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf) (accessed August 23, 2019); Verena Hölzl, “Identity and Belonging in a Card: How Tattered Rohingya IDs Trace a Trail Toward Statelessness,” *The New Humanitarian*, March 1, 2018, <https://www.irinnews.org/feature/2018/03/01/identity-and-belonging-card-how-tattered-rohingya-ids-trace-trail-toward> (accessed August 23, 2019); Azeem Ibrahim, “Myanmar Wants to Track Rohingya, Not Help Them,” *Foreign Policy*, August 1, 2019, <https://foreignpolicy.com/2019/08/01/myanmar-wants-to-track-rohingya-not-help-them/> (accessed August 23, 2019).

not exist and we will not accept it.”<sup>18</sup> In a Facebook post on September 2, 2017, at the height of the military’s attacks against Rohingya civilians, Senior General Min Aung Hlaing stated that “the Bengali problem was a longstanding one which has become an unfinished job despite the efforts of the previous governments to solve it.”<sup>19</sup> Senior General Min Aung Hlaing also stated that the Rohingya “do not have any characteristics or culture in common with the ethnicities of Myanmar,” and went on to say that the current conflict was “fueled because the Bengalis demanded citizenship.”<sup>20</sup>

Prior to the 1982 Citizenship Law, Rohingya had access to citizenship in Myanmar, and Myanmar’s first government following independence in 1948 under the leadership of Prime Minister U Nu recognized the Rohingya as indigenous to Myanmar.<sup>21</sup>

## 1947-1981: EARLY EFFORTS TO RESTRICT ROHINGYA CITIZENSHIP

The Government of Myanmar, previously known as Burma, first initiated a process to identify and recognize its citizens in 1949, shortly after the country gained independence from the United Kingdom in 1948.<sup>22</sup> The 1947 Constitution and the 1948 Union Citizenship Act based citizenship on ethnic identity, but also provided citizenship to any person “descended from ancestors who for two generations at least” resided in Myanmar and anyone “whose parents and himself were born in any of such territories.”<sup>23</sup> The government at the time required individuals seeking citizenship to register through the Residents of Burma Registration Act.<sup>24</sup> Successful applicants, who registered under the Act, received National Registration Cards (NRCs), which provided *de facto* citizenship.<sup>25</sup>

After 1962, when Myanmar underwent a military coup, Rohingya claim that it became increasingly difficult to obtain NRCs, even for those who met the criteria for citizenship under the existing laws.<sup>26</sup> In the 1970s, the Myanmar government issued Foreign Registration Cards (FRC) to some Rohingya, identifying them as “foreigners” residing in Myanmar.<sup>27</sup>

18 “Burma: Military Chief Denies Existence of ‘Rohingya’ Term,” *Asian Correspondent*, May 16, 2016, <https://asiancorrespondent.com/2016/05/burma-military-chief-denies-existence-of-rohingya-term/> (accessed August 23, 2019).

19 Michael H. Fuchs, “It’s Time to Hold Myanmar Accountable,” *Foreign Policy*, August 31, 2018, <https://foreignpolicy.com/2018/08/31/its-time-to-hold-myanmar-accountable/> (accessed August 23, 2019). Also quoted in U.N. Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, p. 8.

20 Poppy Elena McPherson and Simon Lewis, “Exclusive: Myanmar Rejects Citizenship Reform at Private Rohingya Talks,” *Reuters*.

21 “Burma: Military Chief Denies Existence of ‘Rohingya’ Term,” *Asian Correspondent*. This report uses the terms “foreigners” or “foreign nationals” only when referencing ways in which Myanmar authorities have characterized Rohingya. For years, the Myanmar government have asserted that the Rohingya do not exist as a people or as an ethnic group in Myanmar. The NVC process is a part of this “othering” process. For more on how Myanmar has denied the Rohingya identity, see, Yale Law School and Fortify Rights, *Persecution of the Rohingya Muslims*.

22 Nyi Nyi Kyaw, “Unpacking the Presumed Statelessness of Rohingyas,” *Journal of Immigrant and Refugee Studies*, Vol. 15, No. 3, August 25, 2017, p. 276.

23 Burma Union Citizenship Act, Act No. LXVI, 1948 (amended December 1, 1960), Art. 4(2).

24 José María Arraiza and Olivier Vonk, European University Institute, *Report on Citizenship Law: Myanmar*, October 2017, p. 6, [https://cadmus.eui.eu/bitstream/handle/1814/48284/RSCAS\\_GLOBALCIT\\_CR\\_2017\\_14.pdf?sequence=1](https://cadmus.eui.eu/bitstream/handle/1814/48284/RSCAS_GLOBALCIT_CR_2017_14.pdf?sequence=1) (accessed August 23, 2019).

25 Nyi Nyi Kyaw, “Unpacking the Presumed Statelessness of Rohingyas,” p. 276; Natalie Brinham, “Looking Beyond Invisibility: Rohingyas’ Dangerous Encounters with Papers and Cards,” *Tilburg Law Review*, Vol. 24, No. 2, July 2, 2019, pp. 156–169, <https://tilburglawreview.com/article/10.5334/tilr.151/#> (accessed August 23, 2019).

26 Human Rights Watch, *Burma: The Rohingya Muslims*.

27 UNHCR, *Citizenship and Statelessness Myanmar: An Analysis of International Standards and the Myanmar Citizenship Legal Framework*.

In 1977, the Myanmar military initiated operation *Naga Min*, or Dragon King in English, to identify and register residents of three states (Rakhine, Chin, and Kachin states) and two divisions (Mandalay and Sagaing divisions) as either citizens or foreigners.<sup>28</sup> The operation began in Rakhine State in February 1978, targeting Rohingya in northern Rakhine State.<sup>29</sup> During the operation, the Myanmar Army reportedly razed Rohingya villages and committed severe human rights violations, forcing more than 200,000 Rohingya into Bangladesh.<sup>30</sup> Myanmar authorities at the time denied allegations of abuses and blamed the situation on “wild Muslim extremists” and “rampaging Bengali mobs.”<sup>31</sup>

In June of 1978, Myanmar President General Ne Win and the Foreign Minister of Bangladesh met, and the following month the two governments moved forward with a plan to forcibly return Rohingya refugees to Myanmar.<sup>32</sup> The authorities subsequently forced tens of thousands of Rohingya back to northern Rakhine State.<sup>33</sup>

## 1982-2011: CITIZENSHIP DENIED

Four years after *Naga Min* and three years after forced repatriations began, the military government passed the 1982 Citizenship Law, which effectively denied Rohingya equal access to citizenship rights and eventually stripped a majority of Rohingya of their Myanmar citizenship. The timing, content, and commentary on the 1982 law demonstrate that it deliberately targeted Rohingya on racial and religious grounds, though the authorities did not fully enforce it for several years.<sup>34</sup> For instance, on October 8, 1982, General Ne Win, the President of Myanmar from 1962 to 1981, delivered a speech about the incoming citizenship law at a meeting held at the President’s House in Yangon, saying:

We, the natives or Burmese nationals, were unable to shape our own destiny . . . [s]o at the time of independence there were not only true nationals, but also guests . . . We are, in reality, not in a position to drive away all those people who had come at different times for different reasons from different lands . . . we have therefore designated them *eh-naing-ngan-tha* (associate citizens) in this law.<sup>35</sup>

<sup>28</sup> William L. Scully and Frank N. Trager, “Burma 1978: The Thirtieth Year of Independence,” *Asian Survey*, Vol. 19, No. 2, in *A Survey of Asia in 1978: Part II* (Oakland: The University of California Press, February 1979), pp. 147–156.

<sup>29</sup> In Rakhine State, *Naga Min* reportedly degenerated into violent attacks on Rohingya by both the Myanmar army and local civilian perpetrators. See, Human Rights Watch, *Burma: The Rohingya Muslims*, p. 11; Bertil Lintner, “Diversions Tactics: Anti-Muslim Campaign Seen as Effort to Rally Burmans,” *Far Eastern Economic Review*, August 29, 1991.

<sup>30</sup> The feature-length documentary film *The Venerable W.*, directed by Barbet Schroeder, includes rare historical footage of Rohingya survivors of *Naga Min* in Bangladesh. *The Venerable W.*, directed by Barbet Schroeder, 2017. See also, Human Rights Watch, *Burma: Rohingya Muslims*, p. 12.

<sup>31</sup> Quoted in Martin Smith, *Burma: Insurgency and the Politics of Ethnicity*, (London: Zed Books, October 1999), p. 241. See also, Human Rights Watch, “All You Can Do Is Pray.”

<sup>32</sup> William L. Scully and Frank N. Trager, “Burma 1978: The Thirtieth Year of Independence,” *Asian Survey*, pp. 147–156.

<sup>33</sup> Carl Grundy-Warrand and Elaine Wong, “Sanctuary Under a Plastic Sheet: The Unresolved Problem of Rohingya Refugees,” *Durham University Centre for Borders Research*, Vol. 5, No. 3, 1997, pp. 79–91 [http://www.mcgr.ac.in/WC\\_2015/Reading/D\\_Unresolved\\_Problem\\_Rohingya\\_Refugees.pdf](http://www.mcgr.ac.in/WC_2015/Reading/D_Unresolved_Problem_Rohingya_Refugees.pdf) (accessed August 23, 2019); Human Rights Watch, *Perilous Plight: Burma’s Rohingya Take to the Seas*, May 26, 2009, <https://www.hrw.org/report/2009/05/26/perilous-plight/burmas-rohingya-take-seas> (accessed June 10, 2018), p. 6; Human Rights Watch, “All You Can Do Is Pray.”

<sup>34</sup> Nick Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” *Journal of Contemporary Asia*, Vol. 47, No. 3, pp. 461–483, <https://www.tandfonline.com/doi/full/10.1080/00472336.2017.1297476?scroll=top&needAccess=true> (accessed August 26, 2019). 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); Brinham, “Looking Beyond Invisibility,” *Tilburg Law Review*, pp.156–169.

<sup>35</sup> General Ne Win, “Speech by General Ne Win: Meeting Held in the Central Meeting Hall, President House, Ahlone Road,” *The Working People’s Daily*, unofficial translation, October 9, 1982, <https://www.scribd.com/document/162589794/Ne-Win-s-Speech-1982-Citizenship-Law>. Ashley South and Marie Lall, eds., *Citizenship in Myanmar: Ways of Being in and from Burma* (Singapore: ISEAS-Yusof Ishak Institute, 2017), p. 234.



Although associate citizens would be allowed “rights to a certain extent,” including “the right to live” and “to carry on a livelihood,” General Ne Win emphasized that “[w]e will . . . not give them full citizenship and full rights.”<sup>36</sup> General Ne Win further described the 1982 law as a way to “clarify the position of guests and mixed-bloods.” He explained that “foreigners who had settled in Burma [Myanmar] at the time of independence have become a problem” and that those who could demonstrate long-term residency would be given “associate” citizenship under the law in order to prevent them from obtaining any role in government.<sup>37</sup>

A week after General Ne Win’s controversial speech, on October 15, Myanmar passed the proposed citizenship law, which remains in force at the time of writing.<sup>38</sup>

The 1982 Citizenship Law creates three categories of citizenship—full, associate, and naturalized citizens—each with varying rights and accompanying identification cards. Under the law, anyone belonging to one of the eight specified “national ethnic groups” identified in the law are considered full citizens by birth, as are persons belonging to ethnic groups that are considered to have settled in the country prior to 1823.<sup>39</sup> Moreover, the 1982 Citizenship Law provides authority to the government to “decide whether any ethnic group is national or not.”<sup>40</sup> Since at least 1989, Myanmar government officials have claimed that there are officially 135 ethnic groups in Myanmar—a dubious and highly disputed claim.<sup>41</sup> The Rohingya are not recognized under the law or by the government as a “national ethnic group” of Myanmar.<sup>42</sup>

<sup>36</sup> General Ne Win, “Speech by General Ne Win: Meeting Held in the Central Meeting Hall, President House, Ahlone Road,” *The Working People’s Daily*; South and Lall, eds., *Citizenship in Myanmar*

<sup>37</sup> *Ibid.*

<sup>38</sup> José María Arraiza and Olivier Vonk, European University Institute, Report on Citizenship Law: Myanmar, October 2017. See also, Michelle Foster, Hélène Lambert, International Refugee Law and the Protection of Stateless Persons (Oxford: Scholarship Online, May 2019), p. 150.

<sup>39</sup> The 1982 Citizenship Law provides that citizens are: “Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D.” Burma Citizenship Law.

<sup>40</sup> Burma Citizenship Law, Art. 4.

<sup>41</sup> See, Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” *Journal of Contemporary Asia*, pp. 468–469. See also, Bertil Lintner, “A Question of Race in Myanmar,” *Asia Times*, June 3, 2017, <https://www.asiatimes.com/2017/06/article/question-race-myanmar/> (accessed August 23, 2019).

<sup>42</sup> Burma Citizenship Law, art. 3. See also, for example, Burmese Rohingya Organisation UK, “Myanmar’s 1982 Citizenship Law and Rohingya,” December 2014, <https://burmacampaign.org.uk/media/Myanmar%E2%80%99s-1982-Citizenship-Law-and-Rohingya.pdf> (accessed August 23, 2019).



## Myanmar's Three Levels of Citizenship

Myanmar's 1982 Citizenship Law provides for the following three categories of citizenship:

**Citizen:** Members of the eight national ethnic groups specified in the 1982 Citizenship Law and members of ethnic groups recognized by the Myanmar government and who settled in Myanmar's territory before 1823 are citizens under the 1982 Citizenship Law.<sup>43</sup> Since at least 1989, the Government of Myanmar has recognized 135 national ethnic groups—and the list does not include Rohingya.<sup>44</sup> Under the law, persons who were citizens on the date the law entered into force continued to be citizens.<sup>45</sup> The law also specified how the children of citizens may acquire full citizenship by descent if their parents are either citizens or if they are one of two specific combinations of categories of citizenship.<sup>46</sup>

**Associate Citizen:** Those who applied for citizenship under the Union Citizenship Act, 1948 but did not receive a decision before the enactment of the 1982 Citizenship Law and do not belong to one of the “national ethnic groups” are eligible to apply for associate citizenship under the 1982 Citizenship Law.<sup>47</sup> “Associates” are provided the rights of full citizens but “with the exception of the rights stipulated from time to time by the Council of State.”<sup>48</sup>

**Naturalized Citizen:** Persons with “conclusive evidence” that they entered and resided in Myanmar prior to January 4, 1948, or have at least one parent with some form of citizenship, may apply for naturalized citizenship under the 1982 Citizenship Law.<sup>49</sup> Applicants must also be at least 18, able to “speak well” one of the “national

<sup>43</sup> Burma Citizenship Law, arts. 3, 4. The eight ethnic groups comprise Kachin, Karenni, Karen, Chin, Burman, Mon, Rakhine, and Shan. The 1982 Citizenship Law does not use the term “full citizen,” instead referring only to “citizens.” However, this class of citizenship is often referred to as “full citizen” to distinguish it from the other two classes of citizenship. This report uses “full citizen” to refer to the class of citizenship referred to as “citizen” in the 1982 Citizenship Law.

<sup>44</sup> At a press conference on July 5, 1989, Myanmar military junta chairperson General Saw Maung “made a passing reference to the 135 national-race groups”; however, “it was not until the following year that the junta began referring to the number routinely.” In 2013, Myanmar's Deputy Minister for Immigration and National Registration referenced the September 26, 1990 edition of the *Working People's Daily*, asserting that the 1983 national census used a list of 135 ethnic groups; however, “the advice and data from which the number was derived remain obscure.” Moreover, a government publication from 1945 listed a total of “about 160” ethnic groups. Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” *Journal of Contemporary Asia*, pp. 461–483. The government reportedly produced the first official list of 135 ethnic groups just prior to the 2014 census, and “[e]thnic lines are blurred in nearly all the classifications” on the list. Bertil Lintner, “A Question of Race in Myanmar,” *Asia Times*.

<sup>45</sup> Burma Citizenship Law, Art. 6.

<sup>46</sup> Burma Citizenship Law, Art. 7. The combinations can be summarized as follows: “(i) children acquire citizenship if one parent is a citizen and the other parent either a citizen, associate citizen or naturalised citizen; or (ii) children acquire citizenship if their parents are associate or naturalised citizens – which means that at least one set of grandparents are also associate or naturalised citizens – which means the second generation of offspring of people with these other forms of citizenship become full citizens by descent.” International Crisis Group, “Myanmar: The Politics of Rakhine State,” October 22, 2014, <https://d2071andvipowj.cloudfront.net/myanmar-the-politics-of-rakhine-state.pdf> (accessed on August 22, 2019).

<sup>47</sup> Burma Citizenship Law, Ch. 3.

<sup>48</sup> Burma Citizenship Law, Art. 30.

<sup>49</sup> According to Articles 42 to 44 of the 1982 Citizenship Law, the qualifications entail: “(42) Persons who

languages,” and possess “good character” and “sound mind.”<sup>50</sup> Similar to associate citizens, naturalized citizens are subject to exceptions to their rights as citizens as “stipulated from time to time by the Council of State.”<sup>51</sup>

Under the 1982 Citizenship Law, the government may revoke the “citizenship or associate citizenship or naturalized citizenship of any person, except a citizen by birth.”<sup>52</sup> While a decision of revocation may be repealed, “no reason need be given” for the revocation.<sup>53</sup> Article 22 of the 1982 Citizenship Law further states that “[a] person whose citizenship has ceased or has been revoked shall have no right to apply again to citizenship or associate citizenship or naturalized citizenship.”<sup>54</sup>

Most Rohingya lack formal or historical documentation, making it exceedingly difficult to provide “conclusive evidence” that they entered Myanmar before 1948.<sup>55</sup> This is especially the case after the Myanmar Army, police, and civilian perpetrators razed hundreds of Rohingya villages in 2016 and 2017, destroying personal possessions *en masse* and forcing the displacement of nearly 800,000 civilians.<sup>56</sup>

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have entered and resided in the State prior to 4th January, 1948, and their children born within the State may, if they have not yet applied under the Union Citizenship Act, 1948, apply for naturalized citizenship to the Central Body, furnishing conclusive evidence. 43) The following persons, born in or outside the State, from the date this Law comes into force, may also apply for naturalized citizenship: (a) persons born of parents one of whom is a citizen and the other a foreigner; (b) persons born of parents, one of whom is an associate citizen and the other a naturalized citizen; persons born of parents, one of whom is an associate citizen and the other a foreigner; (d) persons born of parents, both of whom are naturalized citizens; (e) persons born of parents, one of whom is a naturalized citizen and the other a foreigner. 44) An applicant for naturalized citizenship shall have the following qualifications: (a) be a person who conforms to the provisions of section 42 or section 43; (b) have completed the age of eighteen years; be able to speak well one of the national languages; (d) be of good character; (e) be of sound mind.” Rohingya have themselves also written about the 1982 law. *See, for example*, Aman Ullah, “A Citizenship Law that was Most Controversial and Vague,” *The Stateless Rohingya*, May 13, 2016, <https://www.thestateless.com/2016/05/a-citizenship-law-that-was-most-controversial-and-vague.html> (accessed August 23, 2019); Nay San Lwin, “Making Rohingya Statelessness,” *New Mandala*, October 29, 2012, <https://www.newmandala.org/making-rohingya-statelessness/> (accessed August 23, 2019).

<sup>50</sup> Burma Citizenship Law, Art. 44.

<sup>51</sup> Burma Citizenship Law, Art. 30.

<sup>52</sup> Burma Citizenship Law, Art. 8(b). Also, associate and naturalized citizens are still often still referred to as “mixed blood” throughout Myanmar. *See*, Fortify Rights interview with A.W.B., undisclosed location, April 3, 2019. Fortify Rights interview with A.W.C., undisclosed location, April 5, 2019. Fortify Rights interview with A.W.F., Cox’s Bazar District, Bangladesh, June 19, 2019.

<sup>53</sup> Burma Citizenship Law, arts. 70, 71.

<sup>54</sup> Burma Citizenship Law, Art. 22. *See also, for example*, International Commission of Jurists, “Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible, A Legal Briefing,” June 2019, p. 2, <https://www.icj.org/wp-content/uploads/2019/06/Myanmar-Citizenship-law-reform-Advocacy-Analysis-Brief-2019-ENG.pdf> (accessed August 23, 2019).

<sup>55</sup> *See, for example*, Fortify Rights interview with I.A., Cox’s Bazar District, Bangladesh, August 14, 2019; Fortify Rights interview with G.B., Cox’s Bazar District, Bangladesh, June 19, 2019. *See also*, Human Rights Watch, “All You Can Do Is Pray,” p. 112.

<sup>56</sup> Fortify Rights, “They Gave Them Long Swords,” pp. 55–80.

In 1989, the Myanmar government conducted a “nationwide citizenship scrutiny exercise” to apply the 1982 Citizenship Law and its 1983 Procedures.<sup>57</sup> The government issued Citizenship Scrutiny Cards (CSC) to applicants who fulfilled the requirements of the law.<sup>58</sup> The CSCs provided full citizenship to holders and replaced the NRCs.<sup>59</sup> The authorities also issued Associate Citizenship Scrutiny Cards (ACSCs) and Naturalized Citizenship Scrutiny Cards (NCSCs).<sup>60</sup> Individuals considered to be members of the 135 recognized “national ethnic groups” retained their citizenship status, while the government refused to issue CRCs to Rohingya and others.<sup>61</sup>

In 1991, similar to 1978, the Myanmar military launched Operation *Pyi Thaya*—in English, “Clean and Beautiful Nation”—in Rakhine State, committing killings, rape, and razing villages and mosques, forcing an estimated 270,000 Rohingya to Bangladesh.<sup>62</sup> The operation was “designed to deny the Rohingya their claims to residence in Myanmar.”<sup>63</sup>

In September 1992, the governments of Myanmar and Bangladesh and the United Nations Office of the High Commissioner for Refugees (UNHCR)—the U.N. agency mandated to ensure protection for refugees, internally displaced persons, and stateless persons—began facilitating refugee returns “characterized by the use of force and coercion.”<sup>64</sup> As of early February 1995, the governments with support from UNHCR reportedly returned 155,000 Rohingya refugees to Myanmar, with more than 4,000 effectively forced back per week.<sup>65</sup>

In 1995, the Government of Myanmar began issuing Temporary Registration Cards (TRCs), also known as “White Cards,” to Rohingya and other minorities not officially recognized among the “national ethnic groups.”<sup>66</sup> The authorities gave White Cards to large numbers of Muslims, including Rohingya in Rakhine State.<sup>67</sup> The White Cards did not confer citizenship rights and, as the name indicated, were meant to be temporary.<sup>68</sup>

57 UNHCR, *Study on Community Perceptions of Citizenship, Documentation and Rights in Rakhine State*, August 2016, p. 6, [https://themimu.info/sites/themimu.info/files/assessment\\_file\\_attachments/Community\\_Perceptions\\_FINAL.PDF](https://themimu.info/sites/themimu.info/files/assessment_file_attachments/Community_Perceptions_FINAL.PDF) (accessed August 23, 2019).

58 *Ibid*; Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” *Journal of Contemporary Asia*, p. 472.

59 *Ibid*.

60 Trevor Gibson, Helen James, and Lindsay Faley, eds., *Rohingyas: Insecurity and Citizenship in Myanmar* (Chiang Mai: Thaksin University Press, 2016), pp. 87–88. See also, 1983 Procedures to the Myanmar Citizenship Law.

61 UNHCR, *Study on Community Perceptions of Citizenship*, p. 6.

62 Brown, *No Place on Earth*; Nicholas Farrelly, “Muslim Political Activity in Transitional Myanmar” in *Islam and the State in Myanmar* (New Delhi: Oxford University Press, 2016), p. 107.

63 Farrelly, “Muslim Political Activity in Transitional Myanmar,” p. 107.

64 U.S. Committee for Refugees, *The Return of the Rohingya Refugees to Burma: Voluntary Repatriation of Refoulement?*, March 1995, p. 1, [https://refugees.org/wp-content/uploads/2019/02/The-Return-of-the-Rohingya-Refugees-to-Burma\\_Voluntary-Repatriation-or-Refoulement\\_March-1995\\_Curt-Lambrecht.pdf](https://refugees.org/wp-content/uploads/2019/02/The-Return-of-the-Rohingya-Refugees-to-Burma_Voluntary-Repatriation-or-Refoulement_March-1995_Curt-Lambrecht.pdf) (accessed August 23, 2019).

65 *Ibid*.

66 Although Myanmar authorities began issuing White Cards in 1995, the cards came into force under 1949 Registration Act. Amnesty International, “Caged Without a Roof:” *Apartheid in Myanmar’s Rakhine State*, November 2017, p. 29, <https://www.amnesty.org/download/Documents/ASA1674842017ENGLISH.PDF> (accessed August 23, 2019).

67 UNHCR, which was working in Rakhine State at the time and was advocating for documentation for Rohingya, did not publicly condemn the process. See, Brinham, “Looking Beyond Invisibility,” *Tilburg Law Review*, pp. 156–169.

68 Chris Lewa, “North Arakan: An Open Prison for the Rohingya in Burma,” *Forced Migration Review*, 2009, p. 12.

## 2012-PRESENT: BUILDING TO THE NVC PROCESS

As early as 2012, the Government of Myanmar initiated efforts to identify Rohingya in official documents as “Bengali.”<sup>69</sup> Under President Thein Sein in 2014, the Myanmar authorities initiated a pilot “citizenship verification process” in Taung Pyo internment camp in Rakhine State’s Myebon Township in an attempt to register Muslims holding White Cards, including Rohingya and ethnic Kaman—a predominantly Muslim ethnic group recognized by the government.<sup>70</sup> The government at the time registered Rohingya “applicants” as “Bengali” or “Bengali/Islam.”<sup>71</sup> As a result, the government effectively required Rohingya residents in Myebon Township to officially disavow their ethnic identity. While the authorities forced some Rohingya to participate, the process was met with resistance and, consequently, it stalled.<sup>72</sup>

In 2014, the government used the Rohingya lack of citizenship to exclude them from the U.N.-supported national census, which the governments of the United States, the United Kingdom, and others funded.<sup>73</sup>

The White Card, held by many Rohingya at the time of the 2010 elections, enabled Rohingya to vote as well as join and create Rohingya-led political parties. The cards officially expired nationwide on March 31, 2015, ahead of national elections, and the government announced that all holders of “temporary identity cards” should surrender their cards to the government authorities and submit to the citizenship “verification” process.<sup>74</sup>

Beginning in June 2015, through the citizenship verification process, the government issued Identity Cards of National Verification (ICNV), ostensibly to identify applicants who meet the eligibility requirements to become a citizen of Myanmar.<sup>75</sup> While the cards did not mention race or religion, the application forms required applicants to specify their “race” and “religion.”<sup>76</sup> Like before, the

69 See, Todd Pitman, “AP Exclusive: Myanmar Verifying Muslim Citizenship,” *Associated Press*, November 30, 2012, <https://news.yahoo.com/ap-exclusive-myanmar-verifying-muslim-citizenship-07222n996.html>; Fortify Rights, *Policies of Persecution*; Human Rights Watch, “All You Can Do Is Pray.”

70 Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, para. 482.

71 Human Rights Watch, “All You Can Do Is Pray,” p. 110.

72 Fortify Rights, *Submission to United Nations Periodic Review: Myanmar*, November 2015, [https://www.fortifyrights.org/downloads/FR\\_UPR%20Submission\\_September\\_2015.pdf](https://www.fortifyrights.org/downloads/FR_UPR%20Submission_September_2015.pdf) (accessed August 23, 2019); San Yamin Aung, “Burmese Govt Resumes Citizenship Verification of Rohingyas,” *The Irrawaddy*, June 16, 2014, <https://reliefweb.int/report/myanmar/burmese-govt-resumes-citizenship-verification-rohingyas> (accessed August 23, 2019).

73 United Nations Population Fund (UNFPA), “UNFPA Concerned about Decision Not to Allow Census Respondents to Self-Identify as Rohingya,” April 1, 2014, <https://myanmar.unfpa.org/news/statement-unfpa-concerned-about-decision-not-allow-census-respondents-self-identify-rohingya> (accessed August 23, 2019).

74 Guy Dinmore, “Uncertain Future for Hundreds of Thousands as White Cards are Revoked,” *Myanmar Times*, April 1, 2015, <https://www.mmtimes.com/national-news/13852-uncertain-future-for-hundreds-of-thousands-as-white-cards-are-revoked.html> (accessed August 23, 2019); Amnesty International, “Caged Without a Roof,” p. 29.

75 Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, para. 484.

76 See, Annex II: National Verification Card (NVC) Application Form. The terms “race” and “ethnicity” are often used interchangeably in Myanmar. More broadly, race is commonly regarded as reflecting objective biological or genetic traits, whereas ethnicity is regarded as reflecting subjective cultural or religious traits. However, international jurisprudence increasingly looks to subjective understandings of groups in conjunction with an analysis of objective elements. The Genocide Convention lists four types of protected groups: national, ethnic, racial, and religious. As expressed by the ICTY in the case of *Jelisić*, there is increasing skepticism of the accuracy of objective definitions of the four protected groups under the Genocide Convention, particularly the ethnic, racial, and national categories. *Prosecutor v. Goran Jelisić*, International Criminal Tribunal for the Former Yugoslavia (ICTY), Case No. ICTY-95-10-T, Judgment (Trial), December 14, 1999, para. 70. See also, *Prosecutor v. Rutaganda*, International Criminal Tribunal for Rwanda (ICTR), Case No. ICTR-96-3-T, Judgment (Trial), December 6, 1999, para. 56 (“[M]embership of a group is, in essence, a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction. In some instances, the victim may perceive himself/herself as belonging

authorities did not accept the term Rohingya and required Rohingya to register as “Bengali” or other foreign identities.<sup>77</sup>

In addition to replacing the White Cards—which allowed Rohingya voting rights in the 2010 elections—with ICNVs, the government also preemptively excluded Rohingya in Myanmar from voting in national elections in 2015, barred them from running for office, and prevented Rohingya-led political parties, including the Democracy and Human Rights Party and the National Democratic Party for Development, from taking part in the elections.<sup>78</sup> The NLD, which fielded no Muslim candidates for office, won in a landslide victory and transitioned to power in February 2016.<sup>79</sup>

In 2016, the NLD government slightly revised the process, rebranding the ICNVs as National Verification Cards (NVCs) and establishing the Rakhine State Peace and Development Central Committee for the purpose of issuing NVCs.<sup>80</sup> In 2016, the government began issuing the NVCs to former White Card holders and White Card receipt holders, as well as a limited number of holders of the FRC, which the government issued in the 1970s.<sup>81</sup> In addition to the Rohingya, the Myanmar authorities also reportedly issued NVCs to other communities in Shan and Karen states.<sup>82</sup>

According to the Advisory Commission on Rakhine State, led by the late Kofi Annan, by August 2017, the Government of Myanmar issued an estimated 10,000 NVCs to Muslims in Rakhine State.<sup>83</sup>

to the said group.”) *Prosecutor v. Stakic*, ICTY, Case No. IT-97-24-T, Judgment (Trial), July 31, 2003, para. 25 (noting that the jurisprudence does not allow for the consideration of subjective definitions alone without reference to objective elements). Moreover, tribunals typically refer to the subjective perceptions of the perpetrators, though some have left room for perceptions of the survivors or others in society. *See, for example, Jelisić*, ICTY, Case No. ICTY-95-10-T, Judgment (Trial), para. 70 (referring to the “stigmatisation of the group as a distinct national, ethnical or racial unit” and the propriety of evaluating groups “from the point of view of those persons who wish to single that group out from the rest of the community”); *Prosecutor v. Kayishema and Ruzindana*, ICTR, Case No. ICTR-95-1-T, Judgment (Trial), May 21, 1999, para. 98 (defining an ethnic group as “one whose members share a common language and culture; or, a group which distinguishes itself, as such (self identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others)”), quoted in Fortify Rights, “*They Gave Them Long Swords*,” p. 87.

<sup>77</sup> Fortify Rights interviews with Rohingya refugees, Cox’s Bazar District Bangladesh, 2018 and 2019. *See also*, Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, para. 484; Advisory Commission on Rakhine State, *Towards a Peaceful, Fair, and Prosperous Future for the People of Rakhine*, Final Report of the Advisory Commission on Rakhine State, August 2017, p. 27, [http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport\\_Eng.pdf](http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf) (accessed August 23, 2019).

<sup>78</sup> For decades, the government has also denied Rohingya local-level representation by preventing them from being Village Tract Administrators or village heads in Rakhine State. Rohingya villages are typically represented by ethnic Rakhine or Burman administrators and village heads, while Rohingya appoint *yar ein hmu* or “persons-in-charge” to liaise with local administrators and represent their interests. On the exclusion of Rohingya in the lead-up to the 2015 elections, *see*, Clayton Swisher, “America in Myanmar: Jim Crow-Style Democracy,” *Huffington Post*, October 30, 2015, [https://www.huffpost.com/entry/america-in-myanmar-jim-cr\\_b\\_8425872](https://www.huffpost.com/entry/america-in-myanmar-jim-cr_b_8425872) (accessed August 23, 2019).

<sup>79</sup> Matthew Smith and David Baulk, “Ethnic minorities in Myanmar Denied Vote as Aung San Suu Kyi Claims Power,” *The Guardian*, November 26, 2015, <https://www.theguardian.com/global-development-professionals-network/2015/nov/26/myanmar-millions-of-ethnic-minorities-denied-vote-as-aung-san-suu-kyi-claims-power-rohingya> (accessed August 23, 2019).

<sup>80</sup> Republic of the Union of Myanmar, Office of the President, “Formation of the Steering Committee for Issuance of National Verification Card (NVC) in Rakhine State for Those Who Will Undergo Verification for Citizenship,” Notification No. 21/2017, February 8, 2017, <https://www.moi.gov.mm/moi:eng/?q=announcement/14/11/2018/id-9873>.

<sup>81</sup> As of February 2017, the Rakhine State Peace and Development Central Committee has seven members. *Ibid.* According to Human Rights Watch, in 1974, Rohingya were offered FRCs, which many refused to accept. FRCs are white in color and many Rohingya at the time used “family lists,” as proof of residence in the country. *See*, Human Rights Watch, *Burma: Rohingya Muslims*.

<sup>82</sup> The FFM noted, “[a]s of January 2017, over 16,000 NVCs had been issued in Shan State and 3,500 in Kayin. In both states, more than a quarter of the population do not have identity documents.” Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, p. 117, fn. 1082.

<sup>83</sup> Advisory Commission on Rakhine State, *Towards a Peaceful, Fair, and Prosperous Future*, p. 26.

<b>2014 to present: National Verification Card (NVC)/Identity Card for National Verification (INVC)</b>	The National Verification Card is a temporary identification document for “foreigners.” The card is light blue in color and states, in English and Burmese language, “[h]olding this identity card does not testify that the card holder is [sic] Myanmar citizen.” <sup>84</sup> Under the Thein Sein administration, a similar card was known as an Identity Card for National Verification.
<b>1948 to 1982: National Registration Card (NRC), known as the “three-fold card”</b>	The Myanmar government issued the National Registration Card, also known as the “three-fold card,” to citizens under the 1949 Residents of Burma Registration Act and its 1951 Rules. Cards issued to men were green and pink for women. The NRC provided full citizenship rights.
<b>1993 to 2015: Temporary Registration Card (TRC), known as the “White Card”</b>	The Myanmar government issued the Temporary Registration Card, also known as the “White Card,” under the 1949 Residents of Burma Registration Act to replace lost or damaged NRCs. In 1955, the government began issuing the White Card to Rohingya, which allowed them to vote in the 2010 national elections. However, the government revoked the White Cards in March 2015, ahead of the national elections and issued White Card receipts to Rohingya who surrendered their White Card. Like the cards, the receipts conferred no rights.
<b>1989 to present: Citizenship Scrutiny Card (CSC)</b>	The Myanmar government began issuing the CSC to citizens after 1989. The CSCs are color-coded based on citizenship status—pink for full citizens, blue for associate citizens, and green for naturalized citizens. These also included the Associate Citizenship Scrutiny Card (ACSC) and the Naturalized Citizenship Scrutiny Card (NCSC). <sup>85</sup> The government has, for the most part, excluded Rohingya from obtaining a CSC.
<b>1970s Foreign Registration Cards (FRC)</b>	In the 1970s, the Myanmar government reportedly issued Foreign Registration Cards (FRC) to Rohingya, identifying them as “foreigners” residing in Myanmar. FRCs were issued in accordance with the Emergency Immigration Act ostensibly to address unauthorized migration from India and Bangladesh to Myanmar. At this time, the authorities required all citizens to carry identity cards, mainly the NRC. However, the government issued FRCs to Rohingya, which many refused.

<sup>84</sup> See, Annex I: National Verification Card (NVC).

<sup>85</sup> There were also brown color cards for Buddhist monks. See, Thant Myint-U, *The Making of Modern Burma*, (Cambridge: Cambridge University Press, 2001), p. 245.



# I. HUMAN RIGHTS VIOLATIONS AND NATIONAL VERIFICATION CARDS

Through the application of the 1982 Citizenship Law and the implementation of the various "citizenship scrutiny" processes, the Government of Myanmar effectively stripped more than one million Rohingya Muslims of citizenship status and continues to deny Rohingya equal access to citizenship.<sup>86</sup> The NVC, which requires Rohingya to identify as "Bengali" or other foreign identities, is the latest iteration of these processes.

This chapter documents how the Myanmar authorities are using NVCs to deny Rohingya the right to nationality and all other rights.<sup>87</sup> This chapter also documents how the Myanmar authorities force Rohingya to accept the NVC, including through the use of torture, and rely on the NVC to further restrict the rights of Rohingya to move freely and access livelihoods.

Rohingya believe the NVC is a tool to erase their identity. "The NVC is a tool of genocide," a Rohingya refugee in Bangladesh stated in English, later adding, "We want our citizenship restored first, and there should be equality, safety, and security in our motherland."<sup>88</sup>

<sup>86</sup> The government excluded Rohingya from the 2014 national census. The government's report on the census in Rakhine State "estimated that a population of 1,090,000 was likely not to have been counted during the enumeration." Department of Population, Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census: Rakhine State*, p. 8, <https://myanmar.unfpa.org/sites/default/files/pub-pdf/Rakhine%20State%20Census%20Report%20-%20ENGLISH-3.pdf> (accessed August 26, 2019). See, Todd Pitman, "AP Exclusive: Myanmar Verifying Muslim Citizenship," *Associated Press*, November 30, 2012, <https://news.yahoo.com/ap-exclusive-myanmar-verifying-muslim-citizenship-072224996.html>; Fortify Rights, *Policies of Persecution*; Human Rights Watch, "All You Can Do Is Pray."

<sup>87</sup> The International Court of Justice defined nationality as a legal bond between a State and an individual, which has as its basis "a social fact of attachment, a genuine connection of existence, interests and sentiments." *Liechtenstein v. Guatemala*, (Second Phase), International Court of Justice, Judgment, April 6, 1955, p. 4. See also, Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/25/28, December 19, 2013. The terms "citizenship" and "nationality" under international law are used interchangeably. Inter-Parliamentary Union and UNHCR, *Nationality and Statelessness: A Handbook for Parliamentarians*, No. 11, 2005, p. 3, <https://www.un.org/ruleoflaw/files/Nationality%20and%20Statelessness.pdf> (accessed August 23, 2019).

<sup>88</sup> Fortify Rights interview with E.C.A., Cox's Bazar District, Bangladesh, January 22, 2019; Fortify Rights interview with E.C.B., Cox's Bazar District, Bangladesh, June 20, 2019.



## RESTRICTIONS ON THE RIGHT TO NATIONALITY

In a March 2019 report on the human rights situation of the Rohingya in Rakhine State, the U.N. High Commissioner for Human Rights stated that Myanmar has, under the current legal framework, “systematically denied the right of citizenship to members of the Rohingya community, effectively rendering them stateless.”<sup>89</sup>

The Government of Myanmar asserts that NVCs are “the first step before the scrutinisation of citizenship, in accordance with the 1982 Citizenship Law.”<sup>90</sup> However, the NVC itself does not guarantee citizenship in Myanmar, and holders are still required to apply for citizenship under the 1982 Citizenship Law.<sup>91</sup> On the back of the card, the NVC states in the English and Burmese languages “[h]olding this identity card does not testify that the card holder is [sic] Myanmar citizen,” as well as “[t]his identity card holder is a person who need [sic] to apply for citizenship in accordance with the Myanmar Citizenship Law.”<sup>92</sup>

The 1982 Citizenship Law effectively denies Rohingya full citizenship and, as mentioned above, was drafted with discriminatory intent to deny Rohingya access to full citizenship.<sup>93</sup>

As recently as July 29, 2019, the Ministry of Foreign Affairs Permanent Secretary Myint Thu affirmed that Rohingya with the NVC would be ineligible for full citizenship and would instead be considered “foreign nationals,” saying Rohingya at a later date could be granted “naturalized citizenship” in Myanmar.<sup>94</sup>

The authorities do not allow Rohingya to identify as Rohingya when applying for NVCs, which also contributes to the decades-long administrative erasure of the Rohingya ethnic identity.<sup>95</sup> A pamphlet distributed in July 2019 by government officials says that the NVC physical card will be “without mention of ethnicity or religion.”<sup>96</sup> While information on “race” and “religion” is not recorded on the physical NVC, Rohingya applicants, at the time of writing, are still required to provide their “race” and “religion” in the application for an NVC.<sup>97</sup>

Rohingya who applied for the NVC told Fortify Rights that “Rohingya” is not an accepted option for “race” on the form, and the Myanmar authorities instead require Rohingya to register as “Bengali,” or another foreign identity.<sup>98</sup> Also, a June 2019 report by Burma Human Rights states,

<sup>89</sup> Many Rohingya reject the term “stateless,” saying they already have a “State” and are indigenous to Myanmar.

<sup>90</sup> The Republic of the Union of Myanmar President Office, “NV Process is First Step Towards Citizenship,” October 29, 2017, <http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-7868> (accessed August 23, 2019).

<sup>91</sup> *Ibid.*

<sup>92</sup> See, Annex I: National Verification Card (NVC)

<sup>93</sup> *Ibid.* For more information about the intent of the drafters of the 1982 Citizenship Law, see General Ne Win, “Speech by General Ne Win: Meeting Held in the Central Meeting Hall, President House, Ahlone Road,” *The Working People’s Daily*. See also, South and Lall, eds., *Citizenship in Myanmar*, p. 234.

<sup>94</sup> “Myanmar to Consider Rohingyas as Foreigners,” *Daily Star*, July 29, 2019, <https://www.thedailystar.net/backpage/news/myanmar-consider-rohingyas-foreigners-1778449> (accessed August 23, 2019).

<sup>95</sup> On October 29, 2017, the Myanmar President’s Office clarified that the NVC process is the “first step before the scrutinisation of citizenship, in accordance with the 1982 Citizenship Law.” The Republic of the Union of Myanmar President Office, “NV Process is First Step Towards Citizenship.”

<sup>96</sup> The Republic of the Union of Myanmar, “Benefits of Taking the National Verification Card,” pamphlet on file with Fortify Rights. The same pamphlet also indicates the authorities will collect biometric data from returnees, including a “Facial scan,” “10-digit fingerprint scan,” and an “Iris scan,” suggesting a potential digitized NVC.

<sup>97</sup> There appear to be multiple NVC application forms with varying questions. See, Annex II: National Verification Card (NVC) Application Form.

<sup>98</sup> Fortify Rights interviews with Rohingya refugees, Cox’s Bazar District Bangladesh, 2018 and 2019. Corroborating this a Myanmar civil society leader explained how the Myanmar government make Rohingya identify as other races on immigration forms. He told Fortify Rights: “In immigration offices, they always favor Buddhists . . . I have Rohingya friends. They already have citizenship cards, but in the cards, their race is India and Burmese or Bengali. Most Rohingya do not like the NVC . . . My Rohingya friends tell me that’s the reason they do not want to be verified again in Myanmar.

“The authorities [in Myanmar] refuse to allow participants to self-identify as Rohingya on these identity cards.”<sup>99</sup> For example, a 30-year-old Rohingya village leader from Maungdaw Township who saw the NVC application form many times said: “On the NVC form it asked, ‘Where are you from? What border did you enter? How did you come to Myanmar?’ We are not migrants. The document that you have to fill out for the NVC makes us feel shame. It says we are outsiders.”<sup>100</sup>

The application form also includes questions such as, “[d]ate and place of arrival in Myanmar,” “[t]ype of vehicles and route taken (to Myanmar),” “[r]ace (ethnicity) and citizenship (nationality),” and other biographic details, indicating that the NVC is intended for foreigners, not members of a community indigenous to Myanmar.<sup>101</sup>

Several Rohingya said that previous government-issued identity documents and documents held by their ancestors specified their legal status in Myanmar as “full citizens.”<sup>102</sup> A 45-year-old Rohingya refugee woman from Buthidaung Township, who refused to exchange her White Card receipt for an NVC, told Fortify Rights:

The NVC is another policy of our government to persecute us in a new way. It’s like many of the old polices and old cards that didn’t give us benefits . . . The NVC is for [foreigners] not for Rohingya. I had a three-fold card [NRC citizenship card]. [The Myanmar government] then gave me a White Card, and after, the [Myanmar government] replaced it with a White Card receipt. I don’t need a new card.<sup>103</sup>

Another Rohingya woman told Fortify Rights:

The NVC is for guests. We are native people in Myanmar . . . My parents had three-fold [NRC citizenship card] cards. When I was born, I held a White Card, then [the government] replaced it with a receipt paper. My receipt paper, including [household] family list, were burned when the army forces set fire to my house during the violence in August 2017.<sup>104</sup>

A displaced Rohingya woman, 26, from Buthidaung Township, who fled to Bangladesh after military-led attacks in 2017, explained how the NVC process is complicating the situation for refugees in Bangladesh: “We don’t trust Myanmar . . . Our forefathers were verified citizens in Myanmar. My grandfather was a police officer in Maungdaw [in northern Rakhine State]. I will not return unless we have rights and are granted citizenship.”<sup>105</sup>

An internal UNCHR document from April 2016 further explained that, “communities are reluctant to accept them [the NVC]” because the “legal status, rights and citizenship verification” attached to the NVC are “unclear.”<sup>106</sup> As of August 2017, the Government of Myanmar had issued an estimated 10,000 NVCs in Rakhine State and recognized as citizens or naturalized citizens only 4,000—less than 0.5 percent—of the estimated one million Rohingya people in Rakhine State at the time.<sup>107</sup>

They are already citizens.” See, Fortify Rights interview with A.W.C., undisclosed location, April 5, 2019. See also, Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, para. 484.

<sup>99</sup> Burma Human Rights Network, *National Verification Cards: A Barrier to Rohingya Repatriation*, July 2019, p. 10, <http://www.bhrn.org.uk/en/report/1090-national-verification-cards-a-barrier-to-rohingya-repatriation-full-report.html> (accessed August 23, 2019).

<sup>100</sup> Fortify Rights interview with F.G., Cox’s Bazar District, Bangladesh, June 17, 2019. See, Annex II: National Verification Card (NVC) Application Form.

<sup>101</sup> Annex II: National Verification Card (NVC) Application Form (unofficial translation).

<sup>102</sup> The authorities have conducted annual household surveys of Rohingya households in northern Rakhine State since the 1990s. See the textbox “Household-Lists and Annual Surveys” in this report.

<sup>103</sup> Fortify Rights interview with I.K., Cox’s Bazar District, Bangladesh August 14, 2019.

<sup>104</sup> Fortify Rights interview with I.A., Cox’s Bazar District, Bangladesh August 14, 2019.

<sup>105</sup> Fortify Rights interview with H.C., Cox’s Bazar District, Bangladesh, August 7, 2019. See also, Ibrahim, “Myanmar Wants to Track Rohingya, Not Help Them,” *Foreign Policy*.

<sup>106</sup> UNHCR, *Movement Restrictions for Stateless Residents in Rakhine State, Myanmar*, internal report, April 2016, on file with Fortify Rights.

<sup>107</sup> Advisory Commission on Rakhine State, *Towards a Peaceful, Fair, and Prosperous Future*, p. 29.

## Refugee Returns and the NVC Process

On July 27 and 28, 2019, a delegation of Myanmar and officials from the Association of Southeast Asian Nations (ASEAN)—an intergovernmental organization aimed at promoting economic growth and regional stability within Southeast Asia—visited the Rohingya refugee camps in Bangladesh to speak to refugees about potential returns to Myanmar.<sup>108</sup> The delegation distributed information pamphlets about NVCs to Rohingya refugees.<sup>109</sup> A Rohingya woman who attended the meetings told Fortify Rights that the Myanmar delegation said, “refugees had to accept the NVC upon return.”<sup>110</sup> She told Fortify Rights, “I told [the Myanmar delegation] in the meeting that we don’t want the NVCs. All we want is to be Myanmar citizens. I told them we should receive citizen cards, not NVCs.”<sup>111</sup>

Since 2017, Myanmar and Bangladesh announced several times that they would begin processes to return Rohingya refugees currently in Bangladesh to northern Rakhine State, with the NVC process envisioned as a major component of the plan.<sup>112</sup> The Bangladesh authorities’ previous attempts to return Rohingya refugees in November 2018 involved coercive practices, including Bangladesh authorities assaulting and threatening Rohingya refugee leaders and giving to the Myanmar authorities the biographical details of Rohingya refugees on a “repatriation list” without the consent of those named on the list.<sup>113</sup>

<sup>108</sup> ASEAN members include official representatives from Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Viet Nam, Lao People’s Democratic Republic, Myanmar, and Cambodia. Association of Southeast Asian Nations, “About ASEAN,” website, <https://asean.org/asean/about-asean/>. Fortify Rights interview with H.A., Cox’s Bazar District, Bangladesh, July 30, 2019. See also, Joshua Carroll, “Rohingya Activists Slam ASEAN’s Call for Dialogue with Myanmar,” *Al Jazeera*, August 3, 2019, <https://www.aljazeera.com/news/2019/08/rohingya-activists-slam-asean-call-dialogue-myanmar-190802134052481.html> (accessed August 23, 2019); Ibrahim, “Myanmar Wants to Track Rohingya, Not Help Them,” *Foreign Policy*; “Rohingya Suspicious as Myanmar Touts Repatriation Plan,” *Al Jazeera*, July 30, 2019, <https://www.aljazeera.com/news/2019/07/breakthrough-rohingya-cautiously-repatriation-bid-190729142159991.html> (accessed August 23, 2019).

<sup>109</sup> The Republic of the Union of Myanmar, “Benefits of Taking the National Verification Card,” pamphlet on file with Fortify Rights.

<sup>110</sup> Fortify Rights interview with H.E., Cox’s Bazar District, Bangladesh, July 27, 2019.

<sup>111</sup> *Ibid.*

<sup>112</sup> The governments of Myanmar and Bangladesh have devised at least four “repatriation” agreements since 2017: 1) two agreements between the governments of Myanmar and Bangladesh; 2) one agreement between UNHCR and the Government of Bangladesh; and 3) one agreement between the UNHCR, the U.N. Development Programme (UNDP), and the Government of Myanmar. See, Government of the People’s Republic of Bangladesh Ministry of Foreign Affairs and Government of the Republic of the Union of Myanmar Ministry of the Office of the State Counsellor, “Arrangement on Return of Displaced Persons from Rakhine State Between the Government of the People’s Republic of Bangladesh and the Government of the Republic of the Union of Myanmar,” November 23, 2017, [http://www.theindependentbd.com/assets/images/banner/linked\\_file/20171125094240.pdf](http://www.theindependentbd.com/assets/images/banner/linked_file/20171125094240.pdf) (accessed August 23, 2019); Government of Bangladesh, “Physical Arrangement for Rohingya Return Finalized,” 16 January 16, 2018; UNHCR, “Bangladesh and UNHCR agree on Voluntary Returns Framework for When Refugees Decide Conditions are Right,” April 13, 2018; The Ministry of Labour, Immigration and Population of the Government of the Republic of the Union of Myanmar, UNDP, and UNHCR, “Memorandum of Understanding,” May 3, 2018, <https://progressivevoicemyanmar.org/wp-content/uploads/2018/05/382854287-The-MOU-between-Myanmar-Government-and-UNDP-and-UNHCR.pdf> (accessed August 23, 2019).

<sup>113</sup> Fortify Rights interview with Z.H., A.K., and B.B., Cox’s Bazar District, Bangladesh, 2018. See also, Fortify Rights, “Bangladesh: Protect Rohingya Refugees, End Threats and Intimidation,” November 12, 2018, <https://www.fortifyrights.org/publication-20181112.html> (accessed August 23, 2019); Joshua Carroll, “Violence Stalks UN’s Identity Card Scheme in Rohingya Camps,” *Al Jazeera*, November 23, 2018, <https://www.aljazeera.com/news/2018/11/violence-stalks-identity-card-scheme-rohingya-camps-181122075307535.html> (accessed August 23, 2019); “Rohingya Face ‘Intimidation, Violence’ in Bangladesh Camps,” *Voice of America*, November 20, 2018, <https://www.voanews.com/south-central-asia/rohingya-face-intimidation->

Rohingya refugees told Fortify Rights they are hesitant to provide any biometric information to the Bangladesh government, fearing it will be shared with the Myanmar government and used to force them to accept the NVC.<sup>114</sup> This fear is not unfounded: on July 29, 2019, the Bangladesh government handed over 25,047 names representing 5,089 Rohingya refugee families to a Myanmar visiting delegation during a bilateral meeting in Dhaka.<sup>115</sup> In August 2019, the Myanmar government added 3,540 Rohingya refugee names to a “repatriation list” from a list of more than 22,000 names recently sent to them by Bangladesh, reportedly without the consent of those refugees named.<sup>116</sup>

Fortify Rights spoke with six Rohingya refugees, including two women, whose names were listed on the August 2019 government “repatriation list.”<sup>117</sup> None wanted to return to Myanmar under the current conditions.<sup>118</sup> A 25-year-old Rohingya woman on the list told Fortify Rights:

Two days ago, the Camp-in-Charge [a Bangladesh military officer overseeing the camp] and *Majhi* [a Rohingya camp leader] came to tell me I was on a list to be sent back . . . I don't want to go back until there is safety and rights for us. Last night, I was fearful and could not sleep. I have not been eating a lot and worry.<sup>119</sup>

The Government of Myanmar established two “reception centers” in Nga Khu Ra and Taung Pyo Letw villages in Maungdaw Township as well as a “transit center” located in Hla Phoe Kaung village in Maungdaw Township.<sup>120</sup> The Myanmar government also constructed 625 units of communal shelters to accommodate an estimated 5,000 families at a given time.<sup>121</sup> The reception and transit centers are surrounded by barbed-wire perimeter fencing and security outposts, similar to internment camps in central Rakhine State where the government has confined more than 128,000 mostly Rohingya since 2012.<sup>122</sup>

violence-bangladesh-camps (accessed August 23, 2019); CJ Werleman, “Rohingya Muslims Need the World to Prevent Another Slaughter,” *Middle East Eye*, November 26, 2018, <https://www.middleeasteye.net/opinion/rohingya-muslims-need-world-prevent-another-slaughter> (access August 23, 2019).

<sup>114</sup> Fortify Rights interview with A.E., A.G., and E.B., Cox's Bazar District, Bangladesh, November 2018.

<sup>115</sup> A photograph of the process is on file with Fortify Rights. Arnel Capili, “25,047 names representing 5,089 families validated by Government of Bangladesh handed over to the Myanmar delegation for further verification, during the high level bilateral meeting today in Dhaka,” Twitter message, July 29, 2019, <https://twitter.com/ArnelCapili/status/1155764445462716416> (accessed August 23, 2019).

<sup>116</sup> Fortify Rights, “Myanmar/Bangladesh: Prevent Forced Returns, Protect Rohingya Refugees,” August 21, 2019, <https://www.fortifyrights.org/publication-20190821.html> (accessed August 23, 2019); Thu Thu Aung, Poppy McPherson, and Ruma Paul, “Exclusive: Myanmar, Bangladesh Agree To Start Repatriation Next Week,” *Reuters*, August 15, 2019, <https://www.reuters.com/article/us-myanmar-rohingya-exclusive/exclusive-myanmar-bangladesh-agree-to-start-rohingya-repatriation-next-week-idUSKCN1V5105> (accessed August 23, 2019).

<sup>117</sup> Fortify Rights interview with I.A., I.B., I.C., I.D., I.E., and I.F., Cox's Bazar District, Bangladesh August 22, 2019.

<sup>118</sup> *Ibid.*

<sup>119</sup> Fortify Rights interview with I.B., Cox's Bazar District, Bangladesh August 22, 2019. Majhi's are unelected Rohingya leaders in the refugee camps in Cox's Bazar District, Bangladesh. There are Majhi's who oversee camps as well as blocks within camps.

<sup>120</sup> ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre), *Preliminary Needs Assessment for Repatriation in Rakhine State, Myanmar*, May 2019, on file with Fortify Rights.

<sup>121</sup> *Id.* at p. 3.

<sup>122</sup> The government closed and consolidated several internment camps since 2017. As of January 2019, the Myanmar authorities confined 128,000 internally displaced persons, who are mostly Rohingya, to 24 internment camps in five townships of Rakhine State, Myanmar. OCHA, “Myanmar: IDP Sites in Rakhine State (as of January 31, 2019).” See also, “Myanmar Government in Talks to Close Four More Rohingya IDP Camps in Rakhine State,” *Radio Free Asia*.

According to a report by the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre), immigration officials will interview Rohingya at the centers, and “the process in the Reception Centre will take 7 minutes per individual. Of which, 4 minutes will be spent by an individual in going through Step 1 to Step 7 (general administration to NVC issuance).”<sup>123</sup>

Given the ongoing armed conflict between the Myanmar military and Arakan Army, the lack of solutions and restrictions on aid and services for the more than 128,000 Rohingya confined to 24 internment camps in Rakhine State, and the government’s continuing denial of basic rights and freedoms for Rohingya, conditions for a safe, voluntary, and dignified return of refugees to Myanmar are not in place.<sup>124</sup>

Despite this, the most recent proposal to facilitate Rohingya refugee returns, which the Government of Myanmar developed with support from UNHCR and the U.N. Development Program (UNDP) involved no meaningful consultations with Rohingya refugees. The agreement states that after Myanmar has carried out the “necessary verifications” the authorities will issue “appropriate identification papers” and provide a “pathway to citizenship to those eligible.”<sup>125</sup>

The direct or indirect threat of forced returns, exacerbated by pressure to accept NVCs, has created protection concerns for refugees in Bangladesh. For instance, on November 3, 2018, a Rohingya refugee man, 60, from Maungdaw Township attempted suicide by drinking cleaning detergent after hearing from a Rohingya refugee camp leader that his family was potentially on a list to be sent back to Myanmar during the November 15, 2018 plans.<sup>126</sup>

Restoration of their citizenship rights in Myanmar is a major precondition to consider returning to Myanmar for many Rohingya refugees. A Rohingya refugee, 45, in Cox’s Bazar District, Bangladesh told Fortify Rights: “The only reason why I fled to Bangladesh is because [the Myanmar government] were forcing us to accept NVCs.”<sup>127</sup> Another Rohingya refugee, 37, told Fortify Rights: “I won’t jump back into the fire. Until the Myanmar government provides us with citizenship rights and justice, we will not go back.”<sup>128</sup>

<sup>123</sup> AHA Centre, *Preliminary Needs Assessment for Repatriation in Rakhine State, Myanmar*, p. 29. The FFM report also found that Rohingya returning will have to take the NVC. “It would also allow for the systematic imposition of NVC cards, on which a return is made conditional.” See, Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, para. 1435.

<sup>124</sup> Fortify Rights, “Myanmar: Lift Internet-Blackout in Rakhine and Chin States,” Amnesty International, “No one can protect us,” OCHA, “Myanmar: IDP Sites in Rakhine State (as of January 31, 2019).” See also, “Myanmar Government in Talks to Close Four More Rohingya IDP Camps in Rakhine State,” *Radio Free Asia*.

<sup>125</sup> The Ministry of Labour, Immigration and Population of the Government of the Republic of the Union of Myanmar, UNDP, and UNHCR, “Memorandum of Understanding,” para. 15. UNHCR, UNDP and Government of the Union of Myanmar extended the MoU on May 27, 2019 for another year. See, UNDP, “UNHCR, UNDP and Government of the Union of Myanmar Extend MoU,” May 28, 2019, <http://www.mmm.undp.org/content/myanmar/en/home/presscenter/pressreleases/2019/unhcr-undp-government-of-the-union-of-myanmar-extend-mou.html> (accessed August 23, 2019).

<sup>126</sup> Fortify Rights interview with E.B., Cox’s Bazar District, Bangladesh, November 5, 2018. The man told Fortify Rights: “All my paternal family were killed in Myanmar during the attacks. If you include my relatives, maybe 20 people died from my family . . . I don’t want to go back to Myanmar. I would rather die or be killed than be sent back. When I heard my name was on the list, I felt angry and scared. There was a heavy, restless sense in my soul.” Fortify Rights referred the man to relevant health workers in Cox’s Bazar District, Bangladesh.

<sup>127</sup> Fortify Rights interview A.B., Cox’s Bazar District, Bangladesh, November 3, 2018.

<sup>128</sup> Fortify Rights interview with A.G., Cox’s Bazar District, Bangladesh, November 9, 2018.

## TORTURE AND ILL-TREATMENT

Fortify Rights documented how Myanmar authorities beat and threatened Rohingya residents to accept the NVC, and beat, threatened, and deprived Rohingya prisoners of food in order to force them to accept NVCs.<sup>129</sup> For example, a 32-year-old Rohingya man from Maungdaw Township, whom the authorities charged and imprisoned with “illegal border crossing” in 2015, told Fortify Rights:

Prison guards beat me in the face and on my chest. I was bleeding . . . I kept refusing [the NVC]. They did not feed me. They stopped feeding me for not taking the NVC . . . They [forced me to take the NVC] in June 2017. [The immigration police] took a photo [of me] and told me I had to take [the NVC]. After I refused to take the NVC, they stopped feeding me food in prison. I was hungry.<sup>130</sup>

The authorities released the man from prison on April 18, 2019 after he accepted the NVC. During his time in prison, he witnessed prison guards torture and kill other detainees: “[The prison guards] tortured many people. I was very lucky. I know some people who died. I saw people die in front of my eyes from torture.”<sup>131</sup>

A Rohingya farmer, 62, from Maungdaw Township, imprisoned for three-and-a-half years, told Fortify Rights how authorities threatened to kill him if he refused to take the NVC card:

I was imprisoned because I was accused of being a terrorist. I am only a farmer, not a terrorist. I was in prison for 42 months. I was put in prison with five other Rohingya men. One of the five men died in prison because he was beaten to death . . . I was also beaten. I was beaten so badly that I lost [some of] my teeth . . . I was beaten everywhere—my head, back, chest, and all over my body. All my clothes were red with blood. I threw up blood when they beat me . . . In jail, I was threatened to take the NVC. One [officer] told me, “If you don’t accept the NVC, we will kill you.”<sup>132</sup>

He went on to tell Fortify Rights: “I feel very sad that I had to accept the NVC. I didn’t want to. It is not for Rohingya people . . . We are indigenous to the Myanmar land. If I did not take the NVC, I would have either been kept in prison, killed, or imprisoned again upon my release.”<sup>133</sup>

Another Rohingya man, 33, imprisoned in 2014, told Fortify Rights how the authorities tortured him in prison and predicated his release on accepting the NVC, saying:

In 2014, authorities came to our village and took me and some other men away. I don’t know why I was arrested. They burned me and beat me. See my arms and my legs still have scars. They burned me with an iron rod. It was so painful. I was screaming . . . Before I was released from prison, I was forced to take the NVC. I didn’t want an NVC. I had to take it. The prison authorities said, “If you don’t take the NVC, then you’ll have to stay in prison for many more years.” I was scared.<sup>134</sup>

<sup>129</sup> Fortify Rights interview with A.C., Cox’s Bazar District, Bangladesh, November 4, 2018. Fortify Rights interview with B.C., Cox’s Bazar District, Bangladesh, November 30, 2018. Fortify Rights interviews with D.D. and D.E., Cox’s Bazar District, Bangladesh, March 10, 2019. Fortify Rights interview with F.B., Cox’s Bazar District, Bangladesh, June 16, 2019. Fortify Rights interview with F.H., Cox’s Bazar District, Bangladesh, June 17, 2019. Fortify Rights interview with G.C. Cox’s Bazar District, Bangladesh, June 18, 2019. Refugees International also documented cases of Rohingya having to take NVC once they are released from prison. See, Refugees International, *Abuse or Exile: Myanmar’s Ongoing Persecution of the Rohingya*, April 2019, p. 15, <https://static1.squarespace.com/static/506c8eae4b01d9450dd53f5/t/5cdc6b489b747a1e0f237fe4/1557949259439/Bangladesh+FINAL.pdf> (accessed August 23, 2019).

<sup>130</sup> Fortify Rights interview with G.C., Cox’s Bazar District, Bangladesh, June 18, 2019.

<sup>131</sup> *Ibid.*

<sup>132</sup> Fortify Rights interview with A.C., Cox’s Bazar District, Bangladesh, November 4, 2018.

<sup>133</sup> *Ibid.*

<sup>134</sup> Fortify Rights interview with F.H., Cox’s Bazar District, Bangladesh, June 17, 2019.



In August 2018, Human Rights Watch documented how Myanmar officials pardoned 62 Rohingya prisoners, took them to a Border Guard Police (BGP) compound in the village tract of Nga Khu Ya in Maungdaw Township, and forced them to take NVCs, threatening them with re-arrest if they attempted to leave the compound.<sup>135</sup> A Rohingya man, 51, from Maungdaw Township imprisoned in Buthidaung Prison for five years similarly told Fortify Rights how the BGP brought him to the Nga Khu Ya transit point and forced him to accept an NVC.<sup>136</sup> He said:

[The BGP] kept me [at the Nga Khu Ya transit point] for five days and forced me and others to take the NVC. They told me that I was coming from Bangladesh and had to receive the NVC. In the end, I was made an immigrant from Bangladesh. They forced me to receive it. They threatened me. I was unable to deny it and did not want to go back to jail. In May 2018, my NVC was issued.<sup>137</sup>

In some cases, the authorities reportedly threatened Rohingya with re-imprisonment if they did not accept the NVC. For example, a Rohingya man from Nyaung Chaung village in Maungdaw Township told Fortify Rights:

I was in prison from August 2016 until May 2017. I was forced to take the NVC. I told the Myanmar authorities, "I don't want this. I am from Myanmar." The authorities threatened me, saying, "If you don't take it, we'll throw you back in prison." I was angry. I was sad.<sup>138</sup>

He described his treatment in detention, saying: "The authorities beat me. They kicked my back and chest. I think I experienced over 50 beatings by police in jail. I still feel pain in my chest from the beatings."<sup>139</sup>

The authorities also issued NVCs to Rohingya upon their release from detention without discussion or violence. For example, a 52-year-old Rohingya man from Maungdaw Township imprisoned in Kyauk Pyu Prison in Kyauk Pyu Township between 2015 and March 2018, said:

When I was released from prison, they gave me an NVC. I knew it was an NVC. I didn't say anything, out of fear. There in prison, they can do to us what they wish and [would have] tortured me again . . . I received the NVC without saying anything because I wanted to see my family.<sup>140</sup>

The man also described being tortured while imprisoned in Kyauk Pyu Prison, saying: "I was made to lay on the ground . . . There was a [soldier]. He punched my chest three times . . . He took a big rod and rolled it on my knees. I lost my control then. It was unbearable."<sup>141</sup>

<sup>135</sup> Human Rights Watch, "Myanmar: Security Forces Torture Rohingya Returnees," August 21, 2018, <https://www.hrw.org/news/2018/08/21/myanmar-security-forces-torture-rohingya-returnees> (accessed August 23, 2019).

<sup>136</sup> Some Rohingya refer to Nga Khu Ya transit point as "Nga Khu Ra."

<sup>137</sup> Fortify Rights interview with B.C., Cox's Bazar District, Bangladesh, November 30, 2018.

<sup>138</sup> Fortify Rights interview with F.B., Cox's Bazar District, Bangladesh, June 16, 2019.

<sup>139</sup> *Ibid.*

<sup>140</sup> Fortify Rights interview with D.E., Cox's Bazar District, Bangladesh, March 10, 2019.

<sup>141</sup> *Ibid.*



## Border Controls, “Counter-Terrorism,” and the NVC

Rohingya interviewed by Fortify Rights, whom Myanmar authorities forced to accept NVCs while imprisoned or upon release from prison, faced torture and lengthy prison sentences for alleged immigration violations or “terrorism”-related charges. Rohingya and other Muslims in Myanmar, who are generally viewed as “foreigners,” “terrorists,” or, at best, “terrorist sympathizers” by the Myanmar authorities, are particularly at risk of imprisonment under such charges despite the lack of evidence.<sup>142</sup>

The Myanmar authorities have used the development of the Arakan Rohingya Salvation Army (ARSA), a Rohingya militant group formally known as *Harakh al Yaqin*, to bolster their claims and justify the NVC process. The authorities have long warned of perceived threats posed by Muslims. For example, a Myanmar military powerpoint that was reportedly used to train military cadets and obtained by *Al Jazeera*, claims the country faces “the danger of being swallowed up by Bangladeshi Chittagonian Indian Muslims,” using the ethnic slur “*kalar*” in reference to Rohingya.<sup>143</sup> Moreover, on November 7, 2017, Director of the Rakhine State Immigration and Population Department Aung Min, said: “[ARSA members] have seriously threatened villagers not to get the NVC. They have made death threats to villagers. These threats prompt villagers here not to apply for the card. The reason is the NVC cards can help distinguish between local people and immigrants. They don’t want that.”<sup>144</sup>

On November 23, 2017, the President’s Office released a statement, saying, “This work [issuing NVCs] was already being conducted in recent months but was delayed due to the ARSA extremist terrorists attack of 25 August.” The statement went on to say the authorities “will take action against anyone who threatens villagers under the Counter-Terrorism Law.”<sup>145</sup>

The government is not wrong in its conclusion that ARSA is opposed to the NVC process. On February 3, ARSA released a 69-page report via Twitter in the English language, stating, “Today, the Burmese terrorist military and government are on the course of destruction of the Rohingya as a whole.”<sup>146</sup> ARSA publicly condemned the NVC process, calling the cards “meaningless and illegitimate.”<sup>147</sup> The group also said the Myanmar government is “forcing repatriated Rohingya to accept the National Verification Card (NVC) despite the fact that Rohingya [are an] indigenous native ethnic community of Arakan State.”<sup>148</sup>

<sup>142</sup> In documents obtained by Fortify Rights, local officials testified that Rohingya “snuck” over the border from Bangladesh into Rakhine State, armed and connected to international terrorist organizations, and planned to occupy Rakhine State. Director General Kyaw Soe, *Submission on the Development of Rakhine State*, October 15, 2013, on file with Fortify Rights. See also, Yale Law School and Fortify Rights, *Persecution of the Rohingya Muslims*.

<sup>143</sup> “Genocide Agenda: Documents Presented as Evidence,” *Al Jazeera*, October 25, 2015, <https://www.aljazeera.com/indepth/features/2015/10/genocide-agenda-documents-presented-evidence-151025142655214.html> (accessed August 23, 2019).

<sup>144</sup> “Threats to NV Card Applicants by Terrorists: Rakhine Villagers,” *Global New Light of Myanmar*, November 8, 2017, <http://www.burmalibrary.org/docs23/NLM-2017-11-08-NRS.pdf> (accessed August 23, 2019).

<sup>145</sup> The Republic of the Union of Myanmar President Office, “Threats Against NVC Applicants Won’t be Tolerate,” undated, <http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8023>.

<sup>146</sup> Arakan Rohingya Salvation Army, *Reviving the Courageous Hearts: A Report by Arakan Rohingya Salvation Army*, February 3, 2019, <https://www.scribd.com/document/398814696/Report-1> (accessed August 23, 2019).

<sup>147</sup> Arakan Rohingya Salvation Army, “Turning Ambush Against the Burmese Terrorist Army,” January 7, 2018.

<sup>148</sup> Arakan Rohingya Salvation Army, “Burmese Terrorist Government and its Terrorist Military Regime Plan for the Ultimate Annihilation of Rohingya,” January 27, 2018.

An internal UNHCR document obtained by Fortify Rights from February 2018 said that “there continues to be reports that whilst further ICNVs [also referred as NVC] are issued, they are not always issued on the basis of a voluntary application.”<sup>149</sup> In 2018, the U.N. High Commissioner for Human Rights Zeid Ra’ad Al Hussein said his team reported allegations that state security forces in Rakhine State systematically demanded that Rohingya accept NVCs, saying:

Many refugees interviewed by my staff have said unbearable pressure was placed on them to accept the NVCs. One man stated that he was tied up and beaten by authorities who demanded that he accept the NVC; he refused. Another man said that his son was kidnapped by security forces and held hostage until he could convince other Rohingya in his village to accept the NVC. Recent arrivals describe villagers being forced to accept NVCs at gunpoint. One refugee told us just days ago that Rohingya can now only stay in Rakhine if they accept the NVC.<sup>150</sup>

Fortify Rights also documented how Myanmar authorities forced, in some cases at gunpoint, Rohingya residents in Rakhine State to accept NVCs. Six former residents of Baw Tu Lar village, also known Bandola village, in Maungdaw Township, described coercive NVC registration exercises conducted by the Myanmar authorities one month before the military razed hundreds of Rohingya villages.<sup>151</sup> Myanmar security forces reportedly set up registration stations in the village in mid-July 2017 and called Rohingya village elders to exchange their White Cards for the NVC. One such elder, a 61-year-old Rohingya man, told Fortify Rights:

When we were [at the registration station], [the authorities] closed the door and surrounded us, holding guns . . . They separated men and women . . . I refused to sign the paper. I didn’t know what was written on there. Soon, [the military officer] accused me of being a member of *al Yaqin* [ARSA]. I was afraid . . . The threats to receive an NVC are real. It’s a horrible situation for us.<sup>152</sup>

He went on to tell Fortify Rights that Myanmar authorities forced five out of seven of his family members to accept the NVC.<sup>153</sup>

Another Rohingya man similarly reported being threatened by Myanmar authorities during the registration exercise in Baw Tu Lar village, in mid-July 2017, saying:

The immigration officers started to call households in, family-by-family, anyone over 18-years old. They took our White Card receipt . . . When they called me to sign on, I took a look and read that it was the NVC . . . I stopped signing. An officer asked me why I was not signing. I replied that I cannot sign on as it is an NVC. It’s not for us. We have been living here since a long time ago . . . The officer threatened me, saying that they would send me to prison if I didn’t sign and accept the NVC. . . Soon, the immigration officer grasped my hands and forced me to sign the card. I had to receive it. Five out of 10 of my family members had to receive the NVC.<sup>154</sup>

Several residents of Baw Tu Lar village confirmed that the authorities conducted the exercise by gunpoint.<sup>155</sup> For example, a 62-year-old Rohingya resident of Baw Tu Lar village explained how the military called a meeting to force residents to accept the NVC: “In the meeting with many of the

<sup>149</sup> UNHCR, *Citizenship Verification Exercise in Rakhine State Update Advocacy Note*, internal report, February 2018, on file with Fortify Rights.

<sup>150</sup> Human Rights Council, *Oral Update of the High Commissioner for Human Rights on Situation of Human Rights of Rohingya People*, U.N. Doc. A/HRC/38/CRP.2, July 3, 2018, para. 39.

<sup>151</sup> Fortify Rights interviews with D.F., D.G., and D.H., Cox’s Bazar District, Bangladesh, March 10, 2019. Fortify Rights interview with G.D., G.F., and G.G., Cox’s Bazar District, Bangladesh, June 22, 2019.

<sup>152</sup> Fortify Rights interview with D.F., Cox’s Bazar District, Bangladesh, March 10, 2019.

<sup>153</sup> *Ibid.*

<sup>154</sup> Fortify Rights interview with D.G., Cox’s Bazar District, Bangladesh, March 10, 2019.

<sup>155</sup> Fortify Rights interview with D.F., G.D., G.F., and G.G., Cox’s Bazar District, Bangladesh, March 10, 2019.

village members, they threatened everyone. They didn't give us time to think. The authorities had guns . . . I think about 200 to 300 people had to fill out the forms in our village.”<sup>156</sup>

He also told Fortify Rights that Myanmar soldiers kicked a Rohingya woman during the process of filling out the requisite forms:

We all had to go together at the same time and in the same place. Women and men. We all had to line up and one woman fell out of line and she was kicked by one of the authorities. She was kicked on the back. She was from near my house. I saw this with my own eyes.<sup>157</sup>

Another Rohingya resident of Baw Tu Lar village, 50, told Fortify Rights how the authorities arrested residents who refused the NVC, saying:

Many villagers took the NVC at the same time. We had to take it. It was not our choice. They are making us outsiders. They are rejecting us from Myanmar. The authorities had guns. They forced us. Many people were fearful. They called us very rude words. I saw two men refuse the NVC and both were taken to prison. One got released later after years in jail, and the other is still in jail. I know both men . . . In reality, the NVC gives us no rights as citizens.<sup>158</sup>

After the authorities forced many residents in Baw Tu Lar village to accept the NVC, the residents largely fled together to Bangladesh on August 31 to escape the military-led attacks.<sup>159</sup>

Several Rohingya forced back to Myanmar from India similarly told Fortify Rights how the Myanmar BGP forced them to accept the NVC upon their return under threat of imprisonment.<sup>160</sup> For example, a 20-year-old Rohingya returnee said:

[The Indian government] took us to the border and handed us over to the Myanmar BGP on the October 4, [2018] . . . When we refused to accept the NVC, [the BGP] said we would have to be in jail for three more months. I was so afraid to go to jail again, so I accepted the NVC . . . I cannot move anywhere or do anything with the NVC. It does not make life any better.<sup>161</sup>

Another Rohingya returnee, 35, spent a protracted time in prison in India before being returned to Myanmar. He said: “The government [of Myanmar] threatened us, saying that we had to go to the jail again if we refused the NVC. At that time, I could not say a word as they had so much power. I was afraid to go to jail again. I was in jail for six-and-a-half years in India.”<sup>162</sup>

He believed his citizenship would be restored in Myanmar, saying: “The Myanmar authorities told us they would give us our rights and citizenship back. However, I was forcibly given the NVC.”<sup>163</sup>

<sup>156</sup> Fortify Rights interview with G.G., Cox's Bazar District, Bangladesh, June 22, 2019.

<sup>157</sup> *Ibid.*

<sup>158</sup> Fortify Rights interview with G.D., Cox's Bazar District, Bangladesh, June 22, 2019.

<sup>159</sup> Fortify Rights interview with G.F., Cox's Bazar District, Bangladesh, June 22, 2019.

<sup>160</sup> Fortify Rights with A.F. and A.I., Rakhine State, Myanmar, November 9, 2018. Fortify Rights with B.K. and B.A., Rakhine State, Myanmar, November 10, 2018. *See also*, Fortify Rights, “India: Protect Rohingya Refugees, Prevent Forced Returns,” January 24, 2019. Indian forced Rohingya refugees as well as ethnic Rakhine refugees back to situations of persecution in Myanmar. Fortify Rights received mobile-phone footage showing Indian security forces dragging an unknown Rakhine refugee woman from a bamboo hut and carrying an infant child in Mizoram State. Fortify Rights also received photos of Rakhine refugee homes that were destroyed. An Indian official in Lawngtlai, a district in south Mizoram, told reporters on July 3, 2019 that Rakhine refugee homes had “been destroyed,” corroborating the photos on file with Fortify Rights. Indian authorities acknowledged they forced Rakhine refugees back to Myanmar. *See*, Fortify Rights, “India: Protect Refugees, Prevent Forced Returns,” July 5, 2019, <https://www.fortifyrights.org/publication-20190705.html> (accessed August 23, 2019); Fortify Rights, “Rakhine Buddhist Refugees Forced Back to Myanmar,” July 5, 2019, <https://www.fortifyrights.org/video-20190705.html> (accessed August 23, 2019).

<sup>161</sup> Fortify Rights interview with A.F., Rakhine State, Myanmar, November 9, 2018.

<sup>162</sup> Fortify Rights interview with B.K., Rakhine State, Myanmar, November 10, 2018.

<sup>163</sup> *Ibid.*

Similarly, a 20-year-old Rohingya man in Rakhine State told Fortify Rights:

The Indian government told us that the Myanmar government accepted us and would give us our citizenship back, so I was happy . . . But when we got back to Myanmar, they did not give us our citizenship. They forcibly gave us NVCs . . . They said we would have to be in jail again for three months to be able to get in Rakhine State if we did not accept NVC.<sup>164</sup>

## RESTRICTIONS ON FREEDOM OF MOVEMENT

*“With the NVC [alone], there is no movement.”*

—32-year-old Rohingya woman, northern Rakhine State, Myanmar.<sup>165</sup>

*“The [government] authorities are blocking Rohingya from traveling. They do not treat us Rohingya like humans. We cannot go anywhere or get treatment.”*

—38-year-old Rohingya from Ah Lel Kyun village, also known as Ally Gyun village, Kyauktaw Township, describing how the Myanmar military opened fire on their village in May 2019 and prevented the injured from obtaining medical treatment.<sup>166</sup>

Since the 1990s, Myanmar authorities have enforced discriminatory restrictions on the right to freedom of movement against Rohingya Muslims in Rakhine State through a series of orders, which remain in effect at the time of writing.<sup>167</sup> Local administrators and state security forces in Rakhine State are responsible for overseeing and implementing restrictions on travel, resulting in some variation across locations. The government is coercively telling Rohingya they will have freedom of movement if they accept NVCs; however, at the time of writing, most Rohingya in Rakhine State are denied the ability to move freely—even those holding NVCs.<sup>168</sup>

A constellation of military checkpoints in northern Rakhine State ensure the enforcement of the documentation requirements and restrictions on free travel for Rohingya. Prior to the violence in Maungdaw Township in 2016, Physicians for Human Rights identified 86 checkpoints operated by state security forces in northern Rakhine State, noting that the total number of checkpoints is likely greater.<sup>169</sup> Rohingya in northern Rakhine State regularly encounter these checkpoints in carrying out daily activities, including accessing markets, schools, and clinics. Security forces do not always grant Rohingya permission to pass, and Rohingya often encounter violence, threats, extortion, and other abuses at the checkpoints.<sup>170</sup>

Rohingya without the required documents are particularly subject to abuse by security forces at the checkpoints. For example, a Rohingya man, 58, from Maungdaw Township traveling to Buthidaung without an NVC told Fortify Rights:

<sup>164</sup> Fortify Rights interview with A.I., Rakhine State, Myanmar, November 9, 2018.

<sup>165</sup> Fortify Rights interview with Z.F., northern Rakhine State, Myanmar, November 2, 2019.

<sup>166</sup> Fortify Rights interview with E.H., Rakhine State, Myanmar, May 30, 2019.

<sup>167</sup> Fortify Rights, *Policies of Persecution*.

<sup>168</sup> Some elderly Rohingya described to Fortify Rights how, as children, they remember being able to travel more easily in the country. Also, Amnesty International found that some Rohingya in the past could travel freely to Yangon. See, Amnesty International, “*Fleeing My Whole Life*,” *Older People’s Experience of Conflict and Displacement in Myanmar*, June 2019, p. 24, <https://www.amnesty.org/en/documents/asa16/0446/2019/en/> (accessed August 23, 2019).

<sup>169</sup> Physicians for Human Rights, *Where There is Police, There is Persecution: Government Security Forces and Human Rights Abuses in Myanmar’s Northern Rakhine State*, October 2016, <https://phr.org/wp-content/uploads/2016/10/Burma-Rakhine-State-Oct-2016.pdf> (accessed August 23, 2019).

<sup>170</sup> *Ibid.*



At the Three-Mile checkpoint in Maungdaw, the security forces beat me as I couldn't show them an NVC. They tortured me with a rod, they extorted money, and they sent me back threatening me that I must take the NVC . . . Then they started torturing me with the rod, yelling and asking why I did not receive the NVC. Soon, they released me after extorting 10,000 Myanmar Kyat (US\$7).<sup>171</sup>

A 22-year-old Rohingya confirmed abuse at the checkpoints in Rakhine State, saying: "I have seen Rohingya people get beat at checkpoints. Sometimes, at the checkpoints, even with the NVC, you have to pay bribes."<sup>172</sup>

Several Rohingya without the NVC told Fortify Rights how the security forces extort money from them to pass through the checkpoints.<sup>173</sup> For example, a Rohingya, 35, told Fortify Rights:

At the checkpoints near the entrance of Maungdaw downtown, BGPs always ask for the NVC. Since I did not accept it, they threaten me to take the NVC. They extort 500 to 1,000 Myanmar Kyat (US\$0.33 to 0.66) each time. Not only from me but from everyone who is Rohingya. Every time, they stop me at checkpoints . . . They grab my chickens . . . In a week, I used to do the trip four times. Every time, they extorted money from me. Sometimes, the [BGP] beat me when they were drunk . . . I had to cross four checkpoints and paid four times [per week] . . . Without running my business, my family could face starvation, so we have no option.<sup>174</sup>

An 85-year-old Rohingya man from in Sittwe Township similarly told Fortify Rights: "We cannot travel freely. I have to pay the police and military 1,000 to 5,000 Myanmar Kyat (US\$1 to 4). If I travel, I have to pay the authorities."<sup>175</sup>

Another Rohingya man told Fortify Rights that the security forces would not allow him to pass through a checkpoint without the NVC:

In October 2016, I was stopped at a checkpoint. I was told I couldn't go through the checkpoint. I was not allowed to pass. I only had a White Card, and it was not enough. I wasn't able to get through the checkpoint, so I went another, longer way without the BGP knowing. It is dangerous.<sup>176</sup>

In some cases, Rohingya without NVCs reported being threatened with imprisonment by security forces at checkpoints. A Rohingya man, 21, living in Maungdaw Township said Myanmar security forces forced him to take the NVC after threatening to arrest him at a checkpoint. He said:

I was stopped at a checkpoint in the village of Dar Gwardil [also known as Kyauk Hlay Kar village]. The BGP and immigration stopped me and said I couldn't pass. They threatened me. They said, "You cannot go to your hometown unless you accept an NVC." They said that, "In Myanmar, Rohingya must have an NVC." They threatened me, saying, "If you don't accept the NVC, we will throw you in jail." I was very fearful and sad. I didn't want to go to jail, and I didn't want to accept the NVC. They gave me the NVC right then. I feel very sad. I don't want to take it. It's not for us Rohingya people. I am a citizen of Myanmar.<sup>177</sup>

<sup>171</sup> Fortify Rights interview with G.B., Cox's Bazar District, Bangladesh, June 19, 2019. He told Fortify Rights further how he fled violence after his home was burned down in 2017 and how he witnessed Myanmar security forces kill Rohingya civilians.

<sup>172</sup> Fortify Rights interview with G.K., Cox's Bazar District, Bangladesh, June 19, 2019.

<sup>173</sup> Fortify Rights interview with A.H., Cox's Bazar District, Bangladesh, November 9, 2018; Fortify Rights interview with C.K., Sittwe Township, Rakhine State, Myanmar, January 12, 2019; Fortify Rights interview with E.H. Kyauktaw Township, Rakhine State, Myanmar, May 30, 2019.

<sup>174</sup> Fortify Rights interview with A.H., Cox's Bazar District, Bangladesh, November 9, 2018.

<sup>175</sup> Fortify Rights interview with C.K., Sittwe Township, Rakhine State, Myanmar, January 12, 2019.

<sup>176</sup> Fortify Rights interview with A.E., Cox's Bazar District, Bangladesh, November 6, 2018.

<sup>177</sup> Fortify Rights interview with D.B., Maungdaw Township, Rakhine State, Myanmar, March 9, 2019.

In April 2018, Myanmar Minister of Social Welfare, Relief and Resettlement Win Myat Aye said: “When NVC holders want to travel, they just need to fill out Immigration Form No. 4 and submit it to immigration officials. After that, they can travel wherever they want.”<sup>178</sup> In 2018, Union Solidarity and Development Party (USDP) spokesperson Dr. Nanda Hla Myint explained the purpose of Form Four, saying: “We use Form Four as a control mechanism for non-citizens, similar to how we used to use the Guest Registration Law or State Surveillance Law. If everyone is allowed to travel freely around the country, we lose that control . . . How can we prevent extremists from entering our country if we no longer have this mechanism?”<sup>179</sup>

An internal UNHCR document from April 2016 states that in order for Rohingya to obtain a Form Four, “it is necessary to provide to immigration the ‘White Card’ receipt or the ICNV [NVC], the Village Departure Certificate and a copy of the household list.”<sup>180</sup> The UNHCR document further states that: “Rohingya residents are currently not permitted to travel from Maungdaw or Buthidaung to Rathedaung or to Sittwe citing security reasons. This does not apply to non-Rohingya residents of the same areas.”<sup>181</sup> Moreover, Rohingya “are required” to hold an NVC in order get permission to travel outside of Rakhine State.<sup>182</sup>

In July 2019, the Myanmar government issued pamphlets to refugees in Bangladesh, clarifying that “NVC holders in Rakhine State can freely travel in their townships of residence, and they can travel within the Rakhine State in accordance with the regional instructions of the Rakhine State Government.”<sup>183</sup>

Furthermore, English and Burmese language text on the NVCs instructs cardholders to carry the card: “[W]henever you travel, it must be shown whenever authorities request.”<sup>184</sup>

In June 2016, the U.N. High Commissioner for Human Rights reported to the U.N. Human Rights Council: “The procedures [for Rohingya in northern Rakhine State] to secure travel are onerous and time-consuming. Failure to comply with requirements can result in arrest and prosecution.”<sup>185</sup>

A report by the Burma Human Rights Network in June 2019 also found that even with the NVC, Rohingya in Rakhine State face restrictions on their right to freedom of movement.<sup>186</sup>

<sup>178</sup> “Myanmar Lifts Travel Restrictions on Rohingya with ‘Verification Cards,’” *Radio Free Asia*, April 19, 2018, <https://www.refworld.org/docid/5b2221fd4.html> (accessed August 23, 2019).

<sup>179</sup> Moe Myint, “Despite Govt Efforts, Divide Persists Over Rohingya Freedom of Movement,” *The Irrawaddy*, April 26, 2018, <https://www.irrawaddy.com/news/burma/despite-govt-efforts-divide-persists-rohingya-freedom-movement.html> (accessed August 23, 2019).

<sup>180</sup> UNHCR, *Movement Restrictions for Stateless Residents in Rakhine State*.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> Republic of the Union of Myanmar Ministry of Labour, Immigration and Population Department, “National Verification Card Relevant Facts.”

<sup>184</sup> See, Annex I: National Verification Card (NVC).

<sup>185</sup> Human Rights Council, *Report of the United Nations High Commissioner for Human Rights: Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar*, U.N. Doc. A/HRC/32/18, June 29, 2016, p. 8. Violations may be punishable under the Section 188 of the Myanmar Criminal Code, which prohibits “disobedience to order duly promulgated by public servant” and carries a sentence of up to one-month imprisonment and/or a fine of 20,000 Myanmar Kyat (US\$14). Myanmar Criminal Code, January 5, 1861 (amended July 1, 2016).

<sup>186</sup> Burma Human Rights Network, *National Verification Cards*, p. 20.

## Household Lists and Annual Surveys

The government requires residents in Myanmar to maintain household lists, also known as “Form-66/6,” in accordance with the 1949 Residents of Burma Registration Act.<sup>187</sup> The authorities, including Immigration officials and the BGP, have conducted annual household surveys of Rohingya households in northern Rakhine State since the 1990s to update the household lists and photograph family members.<sup>188</sup> Rohingya are also required to report any changes to their family situation—including births, deaths, relocations, and marriages—to their respective Township Administration Office.<sup>189</sup>

The information collected through the NVC process replicates information collected from Rohingya residents through the annual household surveys, negating the government’s claims that the NVC process is necessary for identification verification or registration purposes.<sup>190</sup>

For many Rohingya, the household lists comprise some of their only forms of official documentation from the Myanmar government.<sup>191</sup> For example, a 57-year-old Rohingya refugee in Bangladesh told Fortify Rights: “The family list and the White Card are what I have to prove I am from Myanmar. I have an old household list. I wasn’t able to renew it. This can create problems for me when I return to Rakhine State, if I ever go back.”<sup>192</sup>

Months after the 2016 and 2017 Myanmar military-led attacks in northern Rakhine State that forced nearly 800,000 Rohingya to Bangladesh, the Myanmar government surveyed households in northern Rakhine State, raising concerns about the exclusion of displaced Rohingya from the household lists. An internal UNHCR document obtained by Fortify Rights from February 2018 states:

<sup>187</sup> European University Institute, *Report on Citizenship Law: Myanmar*, p. 9.

<sup>188</sup> These surveys are known as “Swe Tin Sit” or a “Map Record Check” in English. Burma Human Rights Network, *National Verification Cards*, p. 11. In contrast to Rohingya families, Myanmar residents elsewhere in Myanmar only need inform officials when there are changes to their households. The authorities do not conduct annual surveys of households as performed in northern Rakhine State. Fortify Rights interview with F.D., Cox’s Bazar District, Bangladesh, June 18, 2019. Also, some Rohingya families who Fortify Rights spoke with said some people faced difficulties adding births to household lists. According to the February 2018 internal UNHCR document, “In some cases, villagers were reportedly charged MMK 20,000 to 30,000 per new-born (below 1 to 2 years old) to add their names onto the household lists.” See, UNHCR, *Citizenship Verification Exercise in Rakhine State*.

<sup>189</sup> European University Institute, *Report on Citizenship Law: Myanmar*.

<sup>190</sup> Tan Sri Syed Hamid Albar, Laetitia Van Den Assum, Kobsak Chutikul, and Dinna Wisnu wrote in an op-ed from August 2019 about the household list, “[T]he Rohingya are one of the world’s most frequently enumerated people. For years, entire families have been forced to undergo annual verification for the so-called household list system. Myanmar has archives that go back many years and even decades. The government continued to update these lists after the flight of hundreds of thousands in 2016 and 2017. So it knows who left Rakhine and who stayed behind. It should accept responsibility for much of the burden of proof.” See, Tan Sri Syed Hamid Albar, Laetitia Van Den Assum, Kobsak Chutikul, and Dinna Wisnu, “Asean Needs a Viable Rakhine Agenda,” *Bangkok Post*, August 19, 2019, <https://www.bangkokpost.com/opinion/opinion/1732707/asean-needs-a-viable-rakhine-agenda> (accessed August 23, 2019); Azeem Ibrahim, “Myanmar Wants to Track Rohingya, Not Help Them,” *Foreign Policy*.

<sup>191</sup> Rohingya refugees in Bangladesh showed Fortify Rights photographs of their families taken during household-list exercises, which they carried with them when they fled.

<sup>192</sup> Fortify Rights interview with F.D., Cox’s Bazar District, Bangladesh, June 18, 2019.

[The] household list updating exercise has been underway in Maungdaw and Buthidaung townships and there are reports that those absent in some cases have been struck off the list, posing concern for how this may affect eligibility for potential voluntary repatriation of refugees in the future, and the extent to which they could rely on government records to have their citizenship status determined should they wish to apply.<sup>193</sup>

Fortify Rights spoke with three Rohingya refugees who returned to Myanmar, at great personal risk, to be registered in the household survey. One 22-year-old Rohingya refugee told Fortify Rights:

I went back to Myanmar once, to get on the annual family list. The counting took place in February 2018 . . . Now people can't go back unless you are repatriated or you're on the household list. You can go to jail if you are not on the list and go back. You'll be labeled an illegal person.<sup>194</sup>

He went on to describe the poor treatment of Rohingya by the authorities during the registration exercises, saying:

People are treated in awful ways during the family counting exercise. The soldiers make some women take off their head covers, and religious men have to take off their religious head covers . . . This is shameful and disrespectful. They make you hold a sign with a number on it. During the household counting they treat us like animals that need to be counted.<sup>195</sup>

Myanmar authorities also extort money from Rohingya in exchange for inclusion on household lists.<sup>196</sup>

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<sup>193</sup> UNHCR, *Citizenship Verification Exercise in Rakhine State*.

<sup>194</sup> Fortify Rights interview with F.C., Cox's Bazar District, Bangladesh June 16, 2019.

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

## RESTRICTIONS ON ACCESS TO LIVELIHOODS

*“Taking the NVC was the only way I could feed my children.”*

—Rohingya fisher, 30, confined to an internment camp in central Rakhine State.<sup>197</sup>

Rakhine State is one of Myanmar’s poorest.<sup>198</sup> Some 43 percent of residents of Rakhine State rely on a combination of fishing or aquaculture and agriculture as their source of income.<sup>199</sup> Data on Rohingya participation in these markets is difficult to come by; however, one study found Rohingya made up less than 30 percent of fishers in two townships in Rakhine State.<sup>200</sup> Rohingya told Fortify Rights they earn subsistence livelihoods through fishing, agricultural industries, and small businesses.<sup>201</sup> Now, the authorities are using access to livelihoods as a coercive means to force Rohingya to accept NVCs.

In 2017, the Myanmar government distributed pamphlets to Rohingya in northern Rakhine State, providing the following guidance: “If you want do fishing, apply for the NV card first,” and “[f]or social and economic activities, hold the NV card.”<sup>202</sup>

Various government officials have reiterated this message since 2017, most recently in pamphlets provided to refugees in Bangladesh by the Myanmar government in July 2019.<sup>203</sup> The pamphlets stated that, “NVC holders in possession of the fishery license, just like holders of any other type of ID card recognized by Myanmar, will be allowed to go fishing.”<sup>204</sup> In October 2017, the Fishery Ministry, Water Transport Ministry, and the Immigration Department also announced that “fishing licenses can be renewed only if you hold an NVC.”<sup>205</sup>

<sup>197</sup> Fortify Rights interview with C.B., Sittwe Township, Rakhine State, Myanmar, January 14, 2018. See also, the July 2019 report by Burma Human Rights Network, that documents Rohingya accepting NVCs to fish. “Rohingya fishermen in particular report having been pressured to accept NVCs. Fishing provides essential income for many Rohingya and around Sittwe it is key to survival for many Rohingya,” see Burma Human Rights Network, *National Verification Cards*, p. 23.

<sup>198</sup> The Republic of the Union of Myanmar Ministry of Health and Sports, *Myanmar Demographic and Health Survey 2015–16*, March 2017, <https://dhsprogram.com/pubs/pdf/FR324/FR324.pdf> (accessed August 23, 2019). See also, for example, World Food Programme, *Myanmar – Food Security Assessment in the Northern Part of Rakhine State*, July 2017, [https://docs.wfp.org/api/documents/WFP-0000019264/download/?\\_ga=2.239002240.1266574955.1566721927-1087402828.1566721927](https://docs.wfp.org/api/documents/WFP-0000019264/download/?_ga=2.239002240.1266574955.1566721927-1087402828.1566721927) (accessed August 23, 2019).

<sup>199</sup> Saw Eh Htoo, “Small Scale Fishermen in Rakhine State,” *Journal of Burmese Scholarship*, Volume 1, Iss. 1, August 2016, p. 10.

<sup>200</sup> The two townships are Pauktaw and Myebon. *Id.* at pp. 14–15.

<sup>201</sup> Fortify Rights interview with B.H., C.B., and C.C., Sittwe Township, Rakhine State, Myanmar, 2019.

<sup>202</sup> Republic of the Union of Myanmar Ministry of Labour, Immigration and Population Department, “National Verification Card Relevant Facts.”

<sup>203</sup> For example, according to the Fact-Finding Mission on Myanmar, “On 5 March 2017, the Maungdaw District Fisheries Department issued a letter regarding a decision of the District Administration Office in Maungdaw that only NVC holders could go fishing, and fishermen would be examined at security checkpoints.” See, Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, para. 1128. The Office of the President in 2018 reiterated the NVC requirement to engage in fishing and other economic activities, saying: “[T] hose who already possess the cards can use it as an official fishing license. Moreover, they can overcome the difficulties of procuring food, clothing and shelter by holding this card.” The Republic of the Union of Myanmar President’s Office, “Union Minister Inspects of Issuing NVCs in Sittway,” January 15, 2018, <http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8341> (accessed August 23, 2019). See also, Republic of the Union of Myanmar Ministry of Labour, Immigration and Population Department, “National Verification Card Relevant Facts.”

<sup>204</sup> Republic of the Union of Myanmar Ministry of Labour, Immigration and Population Department, “National Verification Card Relevant Facts.”

<sup>205</sup> Republic of the Union of Myanmar Ministry of Livestock, Fisheries, and Rural Development, Ministry of Transport, and the Immigration Department, “Announcement about Fishing, Fishing Vessels, and Boats,” October 2017, unofficial translation, on file with Fortify Rights. According to an internal UNHCR report, Myanmar immigration officials reiterated this message during a meeting in December 2017 with 200 Rohingya representatives of two village tracts in Sittwe Township. UNHCR, *Citizenship Verification Exercise in Rakhine State*.



An internal UNHCR report from February 2018 said that the requirement of the NVC “to renew the fishing boat licenses continues to impact the livelihood, food security and overall protection environment of the Muslim community and is still the main issue of concern of IDPs [internally displaced persons] in central Rakhine.”<sup>206</sup>

A 45-year-old Rohingya man living in a village in Sittwe Township explained to Fortify Rights the consequences of the NVC requirement on his access to livelihood in Rakhine State:

The government makes fishing very restrictive . . . I can’t travel for work or go outside. I have a very small paddy field. I was fishing before, but now I cannot since I did not take the NVC. I can’t travel. It’s very difficult. I sell [rice] to the Rohingya village close by. If I don’t have the NVC, I can’t do anything. It’s very difficult if we don’t have permission to travel or work.”<sup>207</sup>

Several Rohingya told Fortify Rights that they had to accept the NVC in order to maintain their livelihoods. For example, a Rohingya fisher, 30, in an internment camp in Rakhine State, said:

Last year, in September 2018, the authorities told me I could not fish. Without the NVC, we cannot move or work, so I had no choice but to take the NVC. The government authorities told me, I must take the NVC or I can no longer fish. This was the police and immigration. I cannot travel outside the camp. I can only go fishing. I can only go once a week. It’s very difficult to sustain my life. Taking the NVC was the only way I could feed my children.”<sup>208</sup>

Another Rohingya fisher, 32, in an internment camp in Sittwe Township similarly said:

I have had the [NVC] for one year. I had to take the card, or I would not be able to fish . . . [The authorities] told me personally, “If you don’t take the NVC, you cannot fish any longer.” It was the only choice I had. The situation here is very difficult . . . Before I took the NVC, I also had to pay between 5,000 to 10,000 Myanmar Kyat (US\$3 to 6) to the police every two or three days.”<sup>209</sup>

Rohingya without the NVC are subject to extortion by the Myanmar authorities. For example, a Rohingya man in his 20s from Sittwe and now confined to an internment camp, told Fortify Rights:

Inside our camp, we have only one business, which is fishing. Just a few months ago, the immigration [authorities] stopped all the fishing boats and told us we are not able to fish. It happened in Sittwe after August 25, [2018]. People didn’t accept the NVC cards, so when people tried [to conduct their] business, they couldn’t survive. There are nearly 500 [fishing] boats, and in one boat, there are nearly 10 people. If you count 10 people in 500 boats, you can get an idea of how many [fishers] accepted the card.”<sup>210</sup>

The government-imposed restrictions extend to Rohingya engaged in other livelihood activities as well. For example, a 22-year-old Rohingya shopkeeper running an electric shop in Maungdaw Township said:

I was stopped at the checkpoint by police. They checked everything that I bought for my electric business and asked me why I didn’t have an NVC if I was running a business as a Rohingya. They said they would take all my goods away unless I paid them. They said I couldn’t be running a business without an NVC. I had to pay 20,000 Myanmar Kyat (US\$14) to make it past the checkpoint . . . It is very difficult to run a business now in Myanmar without the NVC.”<sup>211</sup>

<sup>206</sup> UNHCR, *Citizenship Verification Exercise in Rakhine State*.

<sup>207</sup> Fortify Rights interview with B.H., Sittwe Township, Rakhine State, Myanmar, January 11, 2019.

<sup>208</sup> Fortify Rights interview with C.B., Sittwe Township, Rakhine State, Myanmar, January 14, 2018. *See also*, the July 2019 report by Burma Human Rights Network that documents Rohingya accepting NVCs to fish. “Rohingya fishermen in particular report having been pressured to accept NVCs. Fishing provides essential income for many Rohingya and around Sittwe it is key to survival for many Rohingya.” *See*, Burma Human Rights Network, *National Verification Cards*, p. 23.

<sup>209</sup> Fortify Rights interview with C.C., Sittwe Township, Rakhine State, Myanmar, January 14, 2018.

<sup>210</sup> Fortify Rights interview with J.S.S., location undisclosed, December 13, 2018.

<sup>211</sup> Fortify Rights interview with D.A., Maungdaw Township, Rakhine State, Myanmar, March 8, 2019.

Fortify Rights received reports of authorities extorting money or in-kind materials even from Rohingya with NVCs each time they passed through checkpoints.<sup>212</sup>

Another Rohingya business owner, 52, with shops that sell and trade bamboo and other small ventures told Fortify Rights how the authorities coerced him to accept the NVC in February 2015 to maintain his business in Maungdaw Township:

A higher-level government official, who was one of my business stakeholders, forced me to accept the NVC. Many officers in different departments in Maungdaw Township told me to accept the NVC. I would usually meet them regarding the business I was running. I am not happy about accepting the NVC. I am the only one from my family who accepted the NVC, and it was just to protect my business.<sup>213</sup>

## MASS ATROCITY CRIMES AND NATIONAL VERIFICATION CARDS

In October 2016 and August 2017, the Myanmar Army led mass-scale attacks on Rohingya civilians in response to militant attacks that reportedly killed nine and 12 officials, respectively.<sup>214</sup> Myanmar Army soldiers, police, and civilian perpetrators massacred thousands of Rohingya in the first few weeks alone, raped untold women and girls, and razed hundreds of villages, displacing nearly 800,000 Rohingya to Bangladesh.<sup>215</sup> Similar state-sanctioned targeted violence against Rohingya and other Muslims occurred in 2012 in 13 of 17 townships in Rakhine State, forcibly displacing more than 140,000 civilians, mostly Rohingya, many of whom were subsequently confined to internment camps, where they remain today.<sup>216</sup>

In the weeks and months prior to Myanmar Army-led attacks in 2016 and 2017, Fortify Rights documented an uptick in Myanmar authorities' efforts to coerce or force Rohingya to accept NVCs. Evidence suggests a positive correlation between Myanmar authorities' efforts to force Rohingya to accept NVCs and their efforts to destroy the Rohingya as a group. These findings demonstrate that the NVC process has not been a response to the crisis in Rakhine State, as the government suggests, but rather a fundamental part of the crisis.

For example, Fortify Rights documented how Myanmar authorities ordered Rohingya village heads—*yar ein hmu* or “persons-in-charge”—and religious leaders in Rakhine State to accept NVCs in the weeks and months prior to attacks. A Rohingya *yar ein hmu* in Ta Man Thar village, also known as Shaab Bazaar village, in Maungdaw Township told Fortify Rights how authorities came to his village multiple times in 2016 ahead of the military-led attacks on Rohingya households in October, pressuring leaders to accept the NVC. He said:

The immigration officers said, “If you take [the NVC], it will solve all the problems.” As a Rohingya leader, I refused. They said the same thing about the White Card and that was not true. It’s the same with the NVC. It does not give us rights . . . Once a month, there was a meeting with district administrators and township administrators. Many were Rakhine and many people from the government, including others like police and immigration, would come to the meetings.<sup>217</sup>

<sup>212</sup> Fortify Rights interview with D.B., Maungdaw Township, Rakhine State, Myanmar, March 9, 2019. Fortify Rights interview with J.S.S., location undisclosed, December 13, 2018.

<sup>213</sup> Fortify Rights interview with A.D., Cox’s Bazar District, Bangladesh, November 6, 2018.

<sup>214</sup> Fortify Rights, “*They Gave Them Long Swords.*”

<sup>215</sup> *Ibid.*

<sup>216</sup> Human Rights Watch, “*All You Can Do Is Pray.*” At the time of writing, the government is confining more than 128,000 Rohingya to 24 internment camps in five townships of Rakhine State.

<sup>217</sup> Fortify Rights interview with F.G., Cox’s Bazar District, Bangladesh, June 17, 2019. See also, Natalie Brinham, “‘Genocide cards’: Rohingya Refugees on Why They Risked Their Lives to Refuse ID Cards,” *Open Democracy*, October 21, 2018, <https://www.opendemocracy.net/en/genocide-cards-why-rohingya-refugees-are-resisting-id-cards/> (accessed August 23, 2019).

A Rohingya village leader, 42, from Doe Tan village, also known as Ludaing village, in Maungdaw Township told Fortify Rights how security forces beat him ahead of the 2016 attacks for refusing to cooperate with the demands of the security forces, saying:

In October 2016, before the violence, the military came to my village. They called together many village leaders, including myself, to meet with them. They told us that we had to tell our fellow villagers to take the NVC. In the meeting, not many people disagreed with the soldiers, but I did. They came to me and said, “You must accept the NVC, or we will kill you.” I told them, “I’ll never accept the NVC.” After that they beat me in front of everyone to show that they didn’t want villagers to disagree with them.<sup>218</sup>

Another Rohingya man, 26, from San Go Daing village, also known as San Goe Taung village, in Rathedaung Township told Fortify Rights:

In 2016, immigration officers came to our village to make us—the village leaders—accept the NVCs. The whole village did not want to accept them. In August 2017, before the attacks, the military and immigration called the elders, educated people, and religious leaders together in the morning. The authorities said, “You must accept the NVC.” We did not listen. They kept us in the town hall until 8 p.m., but soon they realized we were not going to accept the cards, and then they set us free.<sup>219</sup>

In August, 2017, the Myanmar Army attacked surrounding villages, and many Rohingya residents from San Go Daing village fled to Bangladesh.<sup>220</sup>

Further illustrating correlations between the military-led campaign of atrocities against the Rohingya and the NVCs, the Independent International Fact-Finding Mission (FFM) on Myanmar—the U.N. mechanism mandated by the U.N. Human Rights Council to investigate human rights violations perpetrated by the Myanmar military in Rakhine, Kachin, and northern Shan states—documented how a Myanmar Army commander of the 33rd Light Infantry Division, accompanied by an ethnic Rakhine village head, told Rohingya residents of Chut Pyin village, also known as Chu Wa Parang village, in Rathedaung Township on August 22, 2017 that they must accept the NVC “or else they would be killed.”<sup>221</sup> Residents of Chut Pyin village refused to accept the NVC, and the FFM as well as Fortify Rights documented how, on August 27, Myanmar state security forces and local armed-residents massacred Rohingya Muslim men, women, and children in Chut Pyin village, razed the village, and committed other atrocities, such as rape and mutilation.<sup>222</sup> Many Rohingya survivors of the Chut Pyin massacre fled to Bangladesh, where they now face pressure to accept the NVC as part of bilateral government plans between Bangladesh and Myanmar to return refugees to Myanmar.<sup>223</sup>

The FFM reported how “[p]ressure to accept the NVC increased in the months leading up to August 2017” and that Border Guard Police and Myanmar Army soldiers held a “series of more targeted and aggressive meetings” with Rohingya elders in mid-August 2017, demanding residents accept NVCs.<sup>224</sup> According to the FFM, these meetings took place in villages where “some of the most brutal ‘clearance operations’ subsequently took place.”<sup>225</sup>

<sup>218</sup> Fortify Rights interview with Z.G., Cox’s Bazar District, Bangladesh, November 2, 2018.

<sup>219</sup> Fortify Rights interview with Z.E., northern Rakhine State, Myanmar, November 1, 2018.

<sup>220</sup> *Ibid.* See also, Fortify Rights electronic communication with aid worker, August 18, 2019.

<sup>221</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, p. 267.

<sup>222</sup> *Ibid.* Fortify Rights, “Myanmar: End Attacks in Rakhine State, Protect Civilians,” September 1, 2017, <https://www.fortifyrights.org/publication-20170901.html> (accessed August 23, 2019); Fortify Rights, “They Gave Them Long Swords.”

<sup>223</sup> See, the textbox “Refugee Returns and the NVC Process” in chapter 1 of this report.

<sup>224</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, p. 266, para. 1131.

<sup>225</sup> *Ibid.*

## II. HUMANITARIAN ORGANIZATIONS, ROHINGYA IDENTITY, AND NATIONAL VERIFICATION CARDS

The Myanmar government makes it exceedingly challenging for international humanitarian aid organizations to operate in Rakhine State. Aid agencies struggle with government-imposed restrictions on their activities, movement, and access to communities in need.<sup>226</sup> To serve affected communities, facilitate their operations, and ensure the security of their staff and those they serve, international humanitarian aid organizations often need to navigate challenging government policies and practices without compromising their work or codes of conduct.

Discriminatory government policies and practices against Rohingya, including the NVC process, have posed particular challenges for humanitarian organizations operational in northern Rakhine State. For example, the government requires Rohingya aid workers, who have to travel for their work, to hold an NVC in order to carry out their work. A 29-year-old Rohingya woman, who worked with a humanitarian organization in Maungdaw Township, told Fortify Rights:

Myanmar authorities said that we have to hold the NVC to travel, to go to downtown, or to work for NGOs. I couldn't go to the office, so I had to receive the NVC . . . I was stopped at a check post of the Border Guard Police at the entrance of the downtown area. They asked me why I had not taken the NVC. I provided the receipt of my White Card. They were furious . . . I was told to go to the compound where the team of immigration and authorities were and receive an NVC . . . People are trapped. No one is allowed to go to work downtown without the NVC.<sup>227</sup>

Fortify Rights also documented how staff of at least five humanitarian organizations currently operating in northern Rakhine State have coerced Rohingya staff members to accept the NVC.<sup>228</sup> For example, a Rohingya aid worker told Fortify Rights that he accepted an NVC in 2017 for job security, saying:

<sup>226</sup> A senior staff member with a humanitarian organization operational in northern Rakhine State told Fortify Rights that in recent months, local authorities issued travel authorizations on a "week-to-week bases." Fortify Rights communication with humanitarian aid worker, August 2019. See also, Fortify Rights, "Myanmar: Protect Civilians Trapped in Armed Conflict."

<sup>227</sup> This aid worker also said that the Myanmar authorities also refuse to grant travel authorizations to Rohingya staff members to travel to certain townships in northern Rakhine State for their work. Fortify Rights interview with Z.F., northern Rakhine State, Myanmar, March 5, 2018.

<sup>228</sup> Fortify Rights spoke with 16 current and former Rohingya and international aid workers involved with U.N. or international humanitarian aid organizations in northern Rakhine State, including seven current and five former Rohingya aid workers and four international aid workers currently working or with previous experience working with U.N. or international humanitarian aid organizations in northern Rakhine State.

When I started my work again after the attacks on August 25, [2017], the government didn't allow us to carry out our duties as humanitarian workers without NVCs. I was not allowed three times to pass checkpoints in Buthidaung Township to carry out my duties . . . My country director said, "How can you stay with [our organization] without travel authorization?" I was advised that it is better to take the NVC to carry out my duties. [My employer] said, if not, they will not hire me again next year. I started considering my job security, and if I talk to you honestly, I had to take the NVC.<sup>229</sup>

A Rohingya aid worker with an international humanitarian organization operational in northern Rakhine State similarly described how his employer pressured him about the NVC:

My supervisor asked me to take the NVC. He is a Rakhine Buddhist. He asked me more than ten times just since the end of 2018 and 2019. He asked me directly to take it. I am now on a month-to-month contract. If I take the NVC, then [they] will give me a year-long contract.<sup>230</sup>

Another Rohingya aid worker with an international humanitarian organization told Fortify Rights:

When I worked for [the organization], my boss asked me to accept the NVC. It was a higher-level Rakhine person. It happened many times in 2015 and once in 2016 . . . When my supervisor asked that I take the NVC, I felt sad. I had been working for [the organization] for many years. They did not ask in official ways for us to take the NVC, like through a statement, but in practice, they wanted us to take the NVC. It was like a secret policy.<sup>231</sup>

A member of senior management with a humanitarian organization operational in northern Rakhine State explained to Fortify Rights that Rohingya field staff are required to travel and that the government prevents Rohingya without NVCs from traveling. She said, "If it is a [Rohingya] field staff position, you can see the dilemma."<sup>232</sup>

Rohingya aid workers said that international humanitarian organizations in northern Rakhine State considered whether applicants have NVCs in their recruitment processes. For example, one Rohingya aid worker with an international humanitarian organization told Fortify Rights:

[The organization] told me that they can recruit me if I accept the NVC but, if not, then they cannot hire me . . . My human resource manager at [the organization] told me to get the NVC. It was a foreigner who told me to get an NVC . . . The exact words of the human resource person were, "If you keep the NVC, then we will keep you. Otherwise, we cannot keep you. The Myanmar government pressures us. If you would like to accept the NVC card, then we can keep you. If not, we cannot."<sup>233</sup>

Following this conversation, the Rohingya aid worker obtained a NVC.<sup>234</sup>

A Rohingya former aid worker told Fortify Rights: "[The organization] would bring people to Yangon. My boss would say, 'If you have an NVC, you can go to Yangon for training'. . . When you apply for jobs, [the organizations] ask you attach the NVC to your application. This is common practice, and if you don't have an NVC document attached, you will not get called in for an interview."<sup>235</sup>

Current senior staff from several humanitarian organizations operational in northern Rakhine State said that the incidents documented by Fortify Rights were not the result of explicit policies within their respective organizations.<sup>236</sup>

<sup>229</sup> Fortify Rights interview with Z.B., northern Rakhine State, Myanmar, October 3, 2018.

<sup>230</sup> Fortify Rights interview with E.K., northern Rakhine State, Myanmar, January 22, 2019.

<sup>231</sup> Fortify Rights interview with F.F., Cox's Bazar District, Bangladesh, June 17, 2019.

<sup>232</sup> Fortify Rights electronic communication with senior management of a humanitarian organization operational in northern Rakhine State, August 2019.

<sup>233</sup> Fortify Rights interview with Z.A., northern Rakhine State, Myanmar, October 2, 2018.

<sup>234</sup> *Ibid.*

<sup>235</sup> Fortify Rights interview with F.F., Cox's Bazar District, Bangladesh, June 17, 2019.

<sup>236</sup> Fortify Rights communications with senior management of humanitarian organizations operational in northern Rakhine State, August 2019.



Fortify Rights also spoke to Rohingya aid workers who had previously worked for international humanitarian organizations in Rakhine State, who said their respective organizations did not allow the use of the term “Rohingya” within the organization.<sup>237</sup> One Rohingya aid worker said: “Talking about being a Rohingya was not practiced. We did not feel comfortable to call each other Rohingya.”<sup>238</sup>

Another Rohingya aid worker, 37, told Fortify Rights: “I was not able to say I was Rohingya in my place of work. I was unable to say it at meetings or to people I would work with. As Rohingya staff, we could talk to each other, but it was not allowed normally.”<sup>239</sup> An international aid worker working with the same organization in northern Rakhine State in 2017 said that the policy extended to international staff members as well: “It was very sensitive to even identify as Rohingya within [the organization]. There was a policy that was from the very top where we could not use the term Rohingya.”<sup>240</sup>

An internal assessment of an international humanitarian organization working in northern Rakhine State conducted before military-led attacks in northern Rakhine State in 2017 found that “67.6 percent of Rohingya staff did not feel free to use their preferred ethnic name in [name of organization redacted].”<sup>241</sup> In contrast, 100 percent of non-Rohingya staff felt free to use their preferred ethnic name in the organization.<sup>242</sup> The report concluded that the organization caused mental stress for Rohingya staff.<sup>243</sup> The assessment also said that the “discrepancy between Rohingya and Non-Rohingya staff seems to contradict the [organization’s] core principle of Non-Discrimination.”<sup>244</sup>

Current senior staff of three humanitarian organizations operational in northern Rakhine State spoke to Fortify Rights about an ongoing “culture of silence” and “an environment of self-censoring.”<sup>245</sup>

A June 2018 report by FieldView Solutions—an independent organization that analyzes and advances best practices for organizations working in conflict areas and regions with significant human rights violations—found that the practice among Myanmar-based international humanitarian organizations in “avoiding the word ‘Rohingya’ [is] assisting in the destruction of ethnic identity.”<sup>246</sup> The report continues: “The label shift became so ingrained that international actors in Myanmar go so far as to avoid the word even when talking only among each other about the Rohingya, and when talking to the Rohingya themselves.”<sup>247</sup>

From at least 2012 to the time of writing, the U.N. response to the citizenship verification process, including the NVCs, has been mixed. Some senior U.N. officials, including the U.N. Office of the High Commissioner for Human Rights, the experts appointed to the FFM, and U.N. Special Rapporteurs, have been outspoken about problems with the NVC process and attendant human rights violations. However, other U.N. officials publicly and privately endorsed the NVC process and

<sup>237</sup> Fortify Rights interviews with Z.A., E.F., E.I., F.E., and G.E. in 2018 and 2019. See also, three communications with senior management of humanitarian organizations operational in northern Rakhine State, August 15, 16, and 19, 2019; Liam Mahony, Fieldview Solutions, *Time to Break Old Habits: Shifting from Complicity to Protection of the Rohingya in Myanmar*, June 2018, [http://www.fieldviewsolutions.org/fv-publications/Time\\_to\\_break\\_old\\_habits.pdf](http://www.fieldviewsolutions.org/fv-publications/Time_to_break_old_habits.pdf) (accessed August 23, 2019).

<sup>238</sup> Fortify Rights interview with F.F., Cox’s Bazar District, Bangladesh, June 17, 2019.

<sup>239</sup> Fortify Rights interview with E.I., Cox’s Bazar District, Bangladesh, June 16, 2019.

<sup>240</sup> Fortify Rights interview with A.W.H., undisclosed location, July 3, 2019.

<sup>241</sup> International humanitarian organization [name redacted], *Ethnic Names Preferences Assessment: Myanmar North Rakhin State (Maungdaw & Buthidaung)*, August 2017, on file with Fortify Rights.

<sup>242</sup> *Ibid.* One Rohingya respondents in the internal assessment was quoted in the report saying, “I feel that we are not free and cannot have our rights as no one uses our ethnic name in [organization name withheld].”

<sup>243</sup> *Ibid.*

<sup>244</sup> *Ibid.*

<sup>245</sup> Fortify Rights communications with senior management of humanitarian organizations operational in northern Rakhine State, August 2019.

<sup>246</sup> Fieldview Solutions, *Time to Break Old Habits*, p. 27.

<sup>247</sup> *Ibid.*

its earlier iterations, despite that the processes repeatedly failed to restore citizenship to Rohingya or ensure the right to freedom of movement or other basic rights.<sup>248</sup>

For instance, as mentioned above, on January 29, 2019, U.N. Special Envoy Christine Schraner Burgener issued a statement in which she failed to use the term “Rohingya” and “encouraged the internally displaced people she met to consider applying for [NVC] registration.”<sup>249</sup> The statement also parroted government rhetoric that NVCs are “a first step towards citizenship.”<sup>250</sup>

Ms. Burgener’s predecessor, U.N. Special Envoy Vijay Nambiar, took a similar position. Mr. Nambiar reportedly pressured Rohingya leaders in Myanmar to abandon their ethnic identity in exchange for associate citizenship status, mentioning that it would facilitate freedom of movement.<sup>251</sup>

Moreover, for several years, U.N. officials in Myanmar, Geneva, and New York effectively endorsed the NVC process, suggesting that the government was undertaking it in good faith or that it was a pragmatic option in a difficult context.<sup>252</sup> In some cases, U.N. officials publicly endorsed the government’s strategy, as in 2014, when a U.N. official in Rakhine State told the Myanmar news media: “The government is engaged in trying to find solutions for the people in the camps, and that solution is through the verification and the citizen process. This is something that the government is very much leading on.”<sup>253</sup>

Despite ongoing human rights violations related to the process, mixed responses continued year-to-year. An internal U.N. strategy document obtained by Fortify Rights, mapping the U.N. country team’s strategy in Rakhine State for 2015 to 2017 under the former U.N. Resident Coordinator, noted “the positive aspects of the citizenship verification drive,” including that the “process has been voluntary,” which it was not.<sup>254</sup> However, subsequent internal documents from UNHCR were critical of the NVC process and the 1982 Citizenship Law.<sup>255</sup>

<sup>248</sup> The government of Myanmar has repeatedly stated that NVCs or their previous iterations would bring Rohingya freedom of movement; however, the government simultaneously clarified that cardholders would still require permission from relevant authorities to travel outside their village or township. For instance, in November 2018, the Director-General of Immigration and Population Department Htay Hlaing claimed the NVC allows free movement within a township—which, of course, is not freedom of movement. See, “Gov’t Affirms Readiness to Repatriate Displaced People from Rakhine State”, *Global New Light Of Myanmar*, November 12, 2018, <http://www.burmalibrary.org/docs25/GNLM2018-11-12-red.pdf> (accessed August 23, 2019).

<sup>249</sup> U.N. Information Centre, On Behalf of the Office of the Secretary General’s Special Envoy on Myanmar, “Dialogue Will Make Myanmar Stronger,” January 29, 2019, <https://yangon.sites.uniconnetwork.org/2019/01/30/on-behalf-of-the-office-of-the-secretary-general-s-special-envoy-on-myanmar/> (accessed August 23, 2019).

<sup>250</sup> *Ibid.*

<sup>251</sup> Fortify Rights interview with M.S.N., Yangon, Myanmar, August 2015; Fortify Rights electronic communication with M.S.N., August 25, 2019; Fortify Rights electronic communication with the office of the Special Envoy, 2014.

<sup>252</sup> Fortify Rights meeting with senior officials, U.N. High Commissioner for Refugees, Geneva, Switzerland, December 13, 2014; Fortify Rights meeting with the office of the U.N. Special Envoy, New York, New York, March 2014. Early U.N. communications about the citizenship scrutiny process that began in 2012 expressed concern. For instance, the U.N.’s November 2012 Rakhine Response Plan stated: “In early November 2012, community members living in Pauk Taw Township informed that Government officials had commenced a nationality verification exercise. Lack of clear communication to the community on the overall objective of the verification exercise, coupled with reports of intimidation faced by the communities, might increase tensions within the community, and trigger further inter-communal violence and displacement.” UNOCHA, *Rakhine Response Plan (July 2012 – June 2013)*, November 16, 2012, p. 28, <https://reliefweb.int/sites/reliefweb.int/files/resources/Revised%20Rakhine%20Response%20Plan%20%28amended%29.pdf> (accessed August 23, 2019).

<sup>253</sup> Myanmar International TV, “Humanitarian Aid: IDP in Sittwe,” September 6, 2014, [https://www.youtube.com/watch?v=fghro\\_O1RDU](https://www.youtube.com/watch?v=fghro_O1RDU) (accessed August 23, 2019).

<sup>254</sup> The document also noted risks involved in the process. Office of the U.N. Resident Coordinator, Myanmar, “Framework for U.N. Support to Rakhine State,” internal document, provided to Fortify Rights May 13, 2016, on file with Fortify Rights.

<sup>255</sup> UNHCR, *Movement Restrictions for Stateless Residents in Rakhine State*; UNHCR, *Citizenship Verification Exercise in Rakhine State*; UNHCR, *Citizenship and Statelessness Myanmar*.

### III. LEGAL FRAMEWORK AND ANALYSIS

This chapter considers treaty-based and customary law frameworks of international human rights law and international criminal law to examine the legal implications of the NVC process. The criminal dimensions are evaluated based on standards set forth in the Rome Statute of the International Criminal Court (ICC) as well as *ad hoc* tribunals established by the U.N. Security Council, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).<sup>256</sup> This analysis considers the facts documented both as standalone violations and violations that may have contributed to crimes against humanity and genocide committed during the military-led attacks on Rohingya civilians in Rakhine State in 2016 and 2017.

Under international human rights law, Myanmar is obligated to uphold rights guaranteed under customary international law as well as core human rights treaties to which Myanmar is a party, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>257</sup> Myanmar is also a signatory to the Universal Declaration of Human Rights (UDHR) and recently affirmed its commitment to the rights articulated by the UDHR with its adoption of the ASEAN Human Rights Declaration in 2012.<sup>258</sup> In line with its commitments under international human rights law, Myanmar has a responsibility to ensure rights to nationality, non-discrimination, protection from torture or ill-treatment, freedom of movement, and an adequate standard of living.<sup>259</sup>

<sup>256</sup> The scope of jurisdiction of the International Criminal Court (ICC) is limited to when a crime is committed within a country or by a national of a country that is a party to the Rome Statute, when a state agrees to ICC jurisdiction, or when a situation is referred to the Office of the Prosecutor by the U.N. Security Council. See, Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 1998, U.N. Doc. A/CONF.183/9, 2002.

<sup>257</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, ratified by Myanmar on October 6, 2017; Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. A/RES/61/106, U.N. Doc. A/61/49, acceded by Myanmar December 7, 2011; Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/44/49, ratified by Myanmar July 15, 1991; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, U.N. Doc. A/34/46, ratified by Myanmar July 22, 1997.

<sup>258</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810, voted in favor by Myanmar; ASEAN Human Rights Declaration, November 19, 2012, <https://asean.org/asean-human-rights-declaration/> (accessed August 23, 2019).

<sup>259</sup> In addition to treaty-based law, the UDHR serves as a "common standard of achievement for all peoples and all nations" and includes the right to a nationality, the principle of non-discrimination, the prohibition against torture or ill-treatment, the right to freedom of movement, and the right to an adequate standard of living. Hurst Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law," *Georgia Journal of International and Comparative Law*, Vol. 25, 1996, p. 290, ("The Universal Declaration remains the primary source of global human rights standards, and its recognition as a source of rights and law by states throughout the world distinguishes it from conventional obligations.")

## THE RIGHT TO NATIONALITY

The terms “citizenship” and “nationality” under international law are used interchangeably.<sup>260</sup> Under international law, the right to nationality is a fundamental human right, known as the “right to have rights.”<sup>261</sup> Everyone holds this right without distinction, and it includes the right of each individual to acquire, change, and retain a nationality.<sup>262</sup> The right to nationality is found in most human rights treaties, several of which Myanmar has ratified, and is a norm of customary international law.<sup>263</sup>

While States bear the duty of determining who is a national of their country, this right is not absolute.<sup>264</sup> States must uphold the principle of non-discrimination to prevent the loss or deprivation of nationality on the basis of race, ethnicity, or national origin.<sup>265</sup> Moreover, a state may not arbitrarily deprive persons of their nationality or create situations of statelessness.<sup>266</sup>

Myanmar’s 1982 Citizenship Law is discriminatory in its intent, purpose, and implementation. The law limits access to citizenship rights based on categories of ethnicity and provides the state with arbitrary discretion to determine which ethnic groups qualify for citizenship.<sup>267</sup> By predicated the basis for determining citizenship on ethnicity, the 1982 Citizenship Law deprives certain ethnic groups of nationality rights in violation of the principle of non-discrimination.

The government also has the authority to revoke the citizenship rights of associate and naturalized citizens without providing a reason, providing the foundations for the arbitrary loss or deprivation of nationality.<sup>268</sup>

The NVC process further facilitates the arbitrary and discriminatory loss of citizenship for Rohingya. While Rohingya are eligible to apply for naturalized citizenship, a host of legal and extralegal barriers prevent them from doing so.<sup>269</sup> By design, the NVC process is one of the only pathways to legal status in Myanmar for Rohingya, which requires Rohingya to identify as “Bengali” or another foreign identity.<sup>270</sup> By requiring Rohingya to obtain NVCs, including Rohingya recognized by previous governments as full citizens, the process appears, at best, intended to administratively

<sup>260</sup> Inter-Parliamentary Union and UNHCR, *Nationality and Statelessness*, p. 3.

<sup>261</sup> Hannah Arendt, “The Rights of Man; What Are They?” *In Modern Review*, 1949, pp. 24–37, (describing the right to nationality as “the right to have rights.”)

<sup>262</sup> See, for example, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), U.N. Doc. A/6014, not ratified by Myanmar, Art. 5(d)(iii); ICCPR, Art. 24(3); CRC, arts. 7, 8; CEDAW, Art. 9; Convention on the Reduction of Statelessness, adopted August 30, 1961, not ratified by Myanmar; and the Convention relating to the Status of Stateless Persons, adopted September 28, 1954, Art. 18.

<sup>263</sup> CRC, Art. 7; CEDAW, Art. 9; CRPD, Art. 18. See also, for example, U.N. Committee on the Rights of the Child, *General Comment No. 11: Indigenous Children and Their Rights Under the Convention*, U.N. Doc. CRC/C/GC/11, February 12, 2009; U.N. Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 21: Equality in Marriage and Family Relations*, U.N. Doc. A/49/38, April 12, 1994.

<sup>264</sup> Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/13/34, December 14, 2009, para. 57.

<sup>265</sup> *Id.* at para. 58.

<sup>266</sup> *Id.* at para 59. Convention on the Reduction of Statelessness. See also, Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/25/28, para. 4.

<sup>267</sup> Burma Citizenship Law, arts. 3, 4.

<sup>268</sup> See, Burma Citizenship Law, arts. 8, 17. The Law allows the Council of State to “revoke the citizenship or associate citizenship or naturalized citizenship of any person, except a citizen by birth [in the case of cessation of citizenship.]”

<sup>269</sup> “Documentary requirements may compound the problems confronting stateless persons, especially women and children. Wars, other conflicts, and administrative mistakes often create obstacles to verifying date and place of birth, marriage, parentage, or residence.” UNHCR, *NGO Manual on International and Regional Instruments Concerning Refugees and Human Rights*, Volume 4.2, July 1998.

<sup>270</sup> The Republic of the Union of Myanmar President Office, “NV Process is First Step Towards Citizenship,” October 29, 2017, <http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-7868> (accessed August 23, 2019). See also, for example, chapter 1, “Human Rights Violations and National Verification Cards” of this report.

erase the Rohingya identity and deprive Rohingya of equal nationality rights. The Government of Myanmar has also failed to identify a legitimate purpose for restricting Rohingya rights to nationality, and the restrictions are neither narrowly construed nor proportionate to justify the loss. Therefore, the process is also arbitrary. Moreover, both the 1982 Citizenship Law and the NVC process have led to situations of statelessness, contravening international law.<sup>271</sup>

## THE PRINCIPLE OF NON-DISCRIMINATION

The principle of non-discrimination is protected under customary international law and is included in almost all core international human rights instruments.<sup>272</sup> It is considered a fundamental right that all States are legally bound to uphold.<sup>273</sup> The principle of non-discrimination, as defined by the U.N. Human Rights Committee, includes:

[A]ny distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>274</sup>

In general, discrimination requires demonstrating: (1) unfavorable treatment; (2) based on one or more protected grounds; and (3) without a legitimate aim.<sup>275</sup> By meeting these three requirements, the 1982 Citizenship Law and the NVC process can be shown to violate the principle of non-discrimination.

In examining whether unfavorable treatment has occurred, human rights bodies look to both intentional or purposeful discrimination as well as discrimination manifested through the disparate impact or effect of facially-neutral laws or regulations.<sup>276</sup>

Prior to the enactment of the 1982 Citizenship Law, Rohingya had access to citizenship in Myanmar and all the benefits of citizenship.<sup>277</sup> As stressed above, following the law's enactment, Rohingya

<sup>271</sup> U.N. Secretary General, *Guidance Note of the U.N. Secretary-General: The United Nations and Statelessness*, June 2011, p. 3, (“States must make every effort to avoid statelessness through legislative, administrative and other measures.”) <https://www.un.org/ruleoflaw/files/FINAL%20Guidance%20Note%20of%20the%20Secretary-General%20on%20the%20United%20Nations%20and%20Statelessness.pdf> (accessed August 23, 2019).

<sup>272</sup> UDHR, Art. 2; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, not ratified by Myanmar, arts. 4(1), 20(2), 24(1), and 26; ICESCR, Art. 2(2); Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), adopted December 10, 1984, G.A. Res. 39/46, U.N. Doc. A/39/51, not ratified by Myanmar, Art. 1(1); ICERD; CEDAW; CRC, arts. 2(1) and 2(2). See also, for example, U.N. General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, U.N. Doc. A/36/684, November 25, 1981, para. 3. While not a binding legal instrument, this Declaration reflects global consensus on standards for freedom from discrimination on the basis of religion and notes the legal burden on states to prevent discrimination on the basis of religion and reaffirming, *inter alia*, such discrimination “constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations and shall be condemned as a violation of the human rights.”

<sup>273</sup> International Law Commission, *State Responsibility: Articles and Commentaries, Commentary to Draft Article 26*, June 9, 2001, para. 5 (stating, “peremptory norms that are clearly accepted and recognised include the prohibition of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination.”) [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001). (accessed August 23, 2019).

<sup>274</sup> Human Rights Committee, *General Comment No. 18: Non-discrimination*, U.N. Doc. HRI/GEN/1/Rev.9, November 10, 1989, para. 7.

<sup>275</sup> *Ibid.* CERD, *General Recommendation 14: Definition of Racial Discrimination*, U.N. Doc. No. A/48/18, 1993, (explaining that: “In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.”) This approach is also followed by other human rights bodies.

<sup>276</sup> CERD Committee has explained that making purposeful distinctions based on race or ethnicity will constitute direct discrimination, while indirect discrimination occurs when an action “has an unjustifiable disparate impact upon a group distinguished by” race or ethnicity. *Ibid.*

<sup>277</sup> UNHCR, *Citizenship and Statelessness Myanmar*.



had their citizenship rights progressively stripped away. The law effectively singles out the Rohingya in its failure to include Rohingya as a recognized “national ethnic group” deserving of full citizenship, instead relegating the group to *eh-naing-ngan-tha*, associate citizens. In turn, the authorities have restricted Rohingya access to freedom of movement and livelihoods as well as the right to form and belong to political parties and run for political office, among other rights. Thus, the 1982 Citizenship Law results in unfavorable treatment to the Rohingya.

The NVC process similarly subjects Rohingya to unfavorable treatment as outlined above in detail. In sum, the NVC process requires Rohingya to register as “Bengali” or other foreign identity, relegating Rohingya to the status of foreigners and effectively denying them access to full citizenship in Myanmar. Moreover, without subjecting themselves to the NVC process, Rohingya are further denied free movement and access to livelihoods.

Second, the 1982 Citizenship Law and NVC process target the Rohingya based on the protected ground of ethnicity. On its face, the law’s criteria for establishing full citizenship accommodates only certain “national ethnic groups”—not including Rohingya—who purportedly settled within Myanmar before 1824. Moreover, as demonstrated by commentary provided by framers of the 1982 Citizenship Law, the law was intended to exclude Rohingya from equal access to full citizenship on ethnic grounds.<sup>278</sup> The NVC process, likewise, also targets the Rohingya based on their ethnicity; it is a process aimed at administratively erasing the Rohingya ethnic group.

Third, the Myanmar government has failed to provide any legitimate aim to justify the impact of the 1982 Citizenship Law nor the NVC process on the Rohingya population. Instead, Government officials have provided vague statements justifying the three-tier citizenship system and restrictions implemented through the NVC process to enforce border controls and combat “extremists.”<sup>279</sup> These justifications fail to justify the impact on Rohingya, who are an indigenous population in Myanmar.<sup>280</sup>

## THE PROHIBITION AGAINST TORTURE AND OTHER FORMS OF ILL-TREATMENT

The right to be free from torture and other forms of ill-treatment is protected by international criminal law, treaty-based law, and customary international law.<sup>281</sup> It is also a fundamental right that all States are legally bound to uphold.<sup>282</sup>

Torture is defined as “severe pain or suffering, whether physical or mental,” intentionally inflicted for a specific purpose, such as punishment, intimidation, or coercion, “or for any reason based on

<sup>278</sup> General Ne Win, “Speech by General Ne Win: Meeting Held in the Central Meeting Hall, President House, Ahlone Road,” *The Working People’s Daily*.

<sup>279</sup> See, Moe Myint, “Despite Govt Efforts, Divide Persists Over Rohingya Freedom of Movement,” *The Irrawaddy*; “Genocide Agenda,” *Al Jazeera*.

<sup>280</sup> Notably, the Rohingya also are one of the few ethnic groups in Myanmar who have long existed in Myanmar without a non-state ethnic army. From 1982 to 2016, no Rohingya ethnic armed group existed. The Arakan Rohingya Salvation Army, calling itself *Harakh al Yaqin*, emerged publicly in October 2016 when it attacked Myanmar police, killing nine. However, ARSA is generally poorly equipped and lacks adequate resources, training, and organization. See Fortify Rights, “Myanmar: Protect Civilians in Rakhine State, Investigate Fatal Shootings,” October 12, 2016, <https://www.fortifyrights.org/publication-20161012.html> (August 23, 2019); Fortify Rights, “*They Gave Them Long Swords*,” pp. 73–80.

<sup>281</sup> Rome Statute, Art. 7(1)(f); UDHR, Art. 5; ICCPR, Art. 7; CAT, Art. 1. For an in-depth discussion of torture as a violation of customary international human rights law, see *Prosecutor v. Anto Furundzija*, ICTY, Case No. IT-95-17/1-T, Judgment (Trial), December 10, 1998, paras. 143–146.

<sup>282</sup> International Law Commission, *State Responsibility: Articles and Commentaries*, para. 5 (“Those peremptory norms that are clearly accepted and recognised include the prohibition of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination.” (Emphasis added)). See also, for example, UDHR, Art. 5; ICCPR, Art. 7; CAT, Art. 1.

discrimination of any kind.”<sup>283</sup> Under the Convention Against Torture, torture is committed “when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>284</sup>

Fortify Rights documented how Myanmar officials acting in their official capacity intentionally inflicted physical and mental harm on Rohingya to coerce them into accepting the NVC or to punish those who refused the NVC. Rohingya described how Myanmar officials threatened them with death and imprisonment.<sup>285</sup> One Rohingya detainee reported how Myanmar authorities denied him food after he refused to accept the NVC—a form of punishment that the U.N. Human Rights Committee found amounted to “cruel and inhuman treatment.”<sup>286</sup> Rohingya who experienced coercive threats by Myanmar authorities described fearing for their lives and experiencing uncertainty about their ability to survive in Myanmar, amounting to mental suffering.<sup>287</sup>

## THE RIGHT TO FREEDOM OF MOVEMENT

The right to freedom of movement is enshrined in the UDHR and ICCPR as well as two human rights treaties to which Myanmar is a state party—CEDAW and CRPD.<sup>288</sup> The U.N. Human Rights Committee has elaborated on the right to freedom of movement, saying: “[P]ersons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place.”<sup>289</sup>

The U.N. Guiding Principles on Internal Displacement, which specifically relate to protections for internally displaced persons, such as Rohingya protractedly confined to 24 internment camps in Rakhine State since 2012, also provides that “[e]very internally displaced person has the right to liberty of movement and freedom to choose his or her residence” and that “[i]n particular, internally displaced persons have the right to move freely in and out of camps or other settlements.”<sup>290</sup>

<sup>283</sup> CAT, Art. 1(1). The ICTY noted that torture, as defined by the CAT “reflects customary international law.” *Prosecutor v. Anto Furundzija*, ICTY, Case No. IT-95-17/1-A, Judgment (Appeals), July 21, 2000, para. 111.

<sup>284</sup> CAT, Art. 1(1).

<sup>285</sup> See, for example, Fortify Rights interview with G.C., Cox’s Bazar District, Bangladesh, June 18, 2019; Fortify Rights interview with A.C., Cox’s Bazar District, Bangladesh, November 4, 2018; Fortify Rights interview with G.G., Cox’s Bazar District, Bangladesh, June 22, 2019; Fortify Rights interview with D.G., Cox’s Bazar District, Bangladesh, March 10, 2019 (threatening the person with imprisonment); Fortify Rights interview with F.H., Cox’s Bazar District, Bangladesh, June 17, 2019 (threatening the incarcerated person with an extended sentence); Fortify Rights interview with F.B., Cox’s Bazar District, Bangladesh, June 16, 2019 (threatening another prison sentence); Fortify Rights interview with A.C., Cox’s Bazar District, Bangladesh, November 4, 2018; Fortify Rights interview with B.C., Cox’s Bazar District, Bangladesh, November 30, 2018; Fortify Rights interview with A.F., Rakhine State, Myanmar, November 9, 2018; Fortify Rights interview with B.K., Rakhine State, Myanmar, November 10, 2018; Fortify Rights interview with A.I., Rakhine State, Myanmar, November 9, 2018.

<sup>286</sup> Fortify Rights interview with G.C., Cox’s Bazar District, Bangladesh, June 18, 2019. Human Rights Committee, *Essono Mika Miha v. Equatorial Guinea*, U.N. Doc. CCPR/C/51/D/414/1990, August 10, 1994, para. 6.4.

<sup>287</sup> While “mental suffering” is not defined in the CAT or the ICCPR and the treaty bodies do not provide lists of such acts in their cases, the Human Rights Committee has found that threats of death or torture can constitute severe mental suffering (referred to as psychological torture.) See, Human Rights Committee, *Estrella v. Uruguay*, Communication No. 74/1980, U.N. Doc. CCPR/C/OP/2, March 29, 1983, paras. 8.3, 8.4, 10. For example, Rohingya told Fortify Rights, “I feel very sad that I had to accept the NVC”; “I was angry. I was sad”; and “I lost my control then. It was unbearable.” See, Fortify Rights interview with A.C., Cox’s Bazar District, Bangladesh, November 4, 2018; Fortify Rights interview with F.B., Cox’s Bazar District, Bangladesh, June 16, 2019; Fortify Rights interview with D.E., Cox’s Bazar District, Bangladesh, March 10, 2019.

<sup>288</sup> UDHR, Art. 13; CRPD, Art. 18. See also, ICCPR, Art. 12(1).

<sup>289</sup> Human Rights Committee, *General Comment 27: Article 12 (Freedom of Movement)*, U.N. Doc. CCPR/C/21/Rev.1/Add.9, November 2, 1999, para. 5.

<sup>290</sup> U.N. Economic and Social Council, *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2, February 11, 1998, Principle 14.

While States are obligated to protect the right to freedom of movement, restrictions on that right are allowed under international law if the restriction is considered necessary to achieve certain legitimate aims—such as the protection of national security and public order—and are proportionate to achieving that aim.<sup>291</sup> The U.N. Human Rights Committee found that States may restrict the movement of individuals who are not lawfully within the territory; however, those whose “status has been regularized, must be considered to be lawfully within the territory” and granted freedom of movement under international human rights law.<sup>292</sup>

Despite Myanmar’s claims that all Rohingya are “Bengali” or “foreigners,” the government has effectively “regularized” the status of Rohingya through various forms of recognition. For example, the government permitted Rohingya to form political parties and vote in multiparty elections in 1990 and 2010, as well as the constitutional referendum in 2008.<sup>293</sup> The government repatriated 155,000 Rohingya refugees from Bangladesh beginning in 1992, and in 1995, Myanmar began issuing White Cards to repatriated Rohingya.<sup>294</sup> The authorities have also maintained household lists of Rohingya families for several decades, as Myanmar does for all residents.<sup>295</sup> All of these factors suggest the Myanmar authorities “regularized” Rohingya, despite ongoing human rights violations.

However, the Government of Myanmar imposes severe restrictions on the freedom of movement of Rohingya in Rakhine State, including by confining displaced Rohingya to internment camps and blocking Rohingya travelers through more than 86 military and police checkpoints established throughout northern Rakhine State as of 2016 and through at least six new military facilities built since August 2017.<sup>296</sup> These restrictions are neither necessary nor proportionate to a legitimate aim recognized under international law.

The government-imposed restrictions on the right to exercise freedom of movement are also overtly discriminatory: they are applied only against Rohingya in Rakhine State and are guided by policies that target Rohingya on the basis of their ethno-religious identity. As such, the restrictions also violate the principle of non-discrimination.

<sup>291</sup> ICCPR, arts. 19(3) and 21. See also, Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add. 13, May 26, 2004, para. 6; Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rhein: N.P. Engel, 1993), p. 387.

<sup>292</sup> Human Rights Committee, *General Comment No. 27*, para. 4.

<sup>293</sup> Council on Foreign Relations, “The Rohingya Crisis,” December 5, 2018, <https://www.cfr.org/backgrounder/rohingya-crisis> (accessed August 23, 2019).

<sup>294</sup> Advisory Commission on Rakhine State, *Towards a Peaceful, Fair, and Prosperous Future*, p. 30; U.S. Committee for Refugees, *The Return of the Rohingya Refugees to Burma: Voluntary Repatriation of Refoulement?*, p. 1.

<sup>295</sup> Although the Myanmar authorities require household lists for all residents, the requirements and practice of maintaining the lists for Rohingya households are more comprehensive. See, textbox “Household Lists and Annual Surveys” in chapter 1 of this report. See also, for example, Benjamin Zawacki, “Defining Myanmar’s Rohingya Problem,” *American University Washington College of Law Human Rights Brief*, Vol. 20, No. 3, 2013, pp. 18–25. <https://digitalcommons.wcl.american.edu/hrbrief/vol20/iss3/2> (accessed August 23, 2019).

<sup>296</sup> Prior to the violence in Maungdaw Township in 2016, Physicians for Human Rights identified 86 checkpoints operated by state security forces in northern Rakhine State, noting that the total number of checkpoints is likely greater. Rohingya in northern Rakhine State regularly encounter these checkpoints in carrying out daily activities, including accessing markets, schools, and clinics. Security forces do not always grant Rohingya permission to pass and Rohingya often encounter violence and humiliation at checkpoints. See, Physicians for Human Rights, *Where There is Police*. Furthermore, there are at least six new military facilities that have been built on Rohingya land since August 2017 in Rakhine State. See, Nathan Ruser, Elise Thomas, and Mali Walker, “Mapping Conditions in Rakhine State,” *Australian Strategic Policy Institute*, July 24, 2019, <https://pageflow.aspi.org.au/rakhine-state/#211793> (accessed August 23, 2019).

## THE RIGHT TO LIVELIHOODS

The right to livelihoods is not an explicit right within human rights law. Rather, the right is implied through several distinct rights that, when taken in the aggregate, form the right to livelihoods. These rights include the “right of everyone to an adequate standard of living” for themselves and their families, including “adequate food, clothing, and housing” and the “continuous improvement of living conditions.”<sup>297</sup> The principle of non-discrimination also applies to these rights.

The Government of Myanmar violated the rights of Rohingya by conditioning access to livelihoods on the disavowal of their ethnic identity through the acceptance of the NVC. Many Rohingya rely on fishing for their livelihood and as a source of adequate food for their families.<sup>298</sup> However, in 2017, the government of Myanmar distributed pamphlets in Rakhine State, telling Rohingya that they must have an NVC in order to fish. The authorities then proceeded to enforce the policy, effectively requiring Rohingya fishers to choose between their ethnic identity or their livelihoods.<sup>299</sup> The authorities also not only required Rohingya in internment camps and elsewhere to acquire NVCs in order to fish, but also extorted relatively exorbitant fees in exchange for NVCs.<sup>300</sup> By conditioning access to fishing and other livelihoods on the acceptance of the NVC, the Myanmar government violated the rights of Rohingya.

## MASS ATROCITY CRIMES

The Myanmar authorities committed the violations documented in this report in the context of Myanmar military-led attacks against Rohingya civilians in Rakhine State that began in October 2016 and August 2017.<sup>301</sup> Fortify Rights previously found “reasonable grounds” to believe that the Myanmar military, police, and civilian perpetrators committed the crime of genocide against Rohingya civilians in Rakhine State through at least three criminal acts of genocide: killings, serious bodily and mental harm, and the infliction of conditions of life calculated to bring about the physical destruction of the group.<sup>302</sup> The FFM similarly found “sufficient information to warrant the investigation and prosecution of senior officials in the [military] chain of command” for the crime of genocide against Rohingya in Rakhine State.<sup>303</sup> Fortify Rights and the FFM also found evidence of crimes against humanity.<sup>304</sup>

On September 6, 2018, the International Criminal Court (ICC) Pre-Trial Chamber I ruled that the ICC may exercise jurisdiction over the alleged deportation of Rohingya from Myanmar to Bangladesh, marking the first time the Court has exercised jurisdiction over crimes involving Myanmar.<sup>305</sup> The ruling came as a result of the ICC Prosecutor’s request to investigate and possibly prosecute the

<sup>297</sup> ICESCR, Art. 11(1).

<sup>298</sup> Fortify Rights interview with B.H., C.B., and C.C., Sittwe Township, Rakhine State, Myanmar, 2019; Saw Eh Htoo, “Small Scale Fishermen in Rakhine State,” p. 10.

<sup>299</sup> Republic of the Union of Myanmar Ministry of Labour, Immigration and Population Department, “National Verification Card Relevant Facts.”

<sup>300</sup> Fortify Rights interview with J.S.S., location undisclosed, December 13, 2018.

<sup>301</sup> See, Fortify Rights, “*They Gave Them Long Swords*,” pp. 59–72; Human Rights Watch, “*All You Can Do Is Pray*”; Fortify Rights and the United States Holocaust Memorial Museum, “*They Tried to Kill Us All*.”

<sup>302</sup> Fortify Rights, “*They Gave Them Long Swords*.”

<sup>303</sup> OHCHR, “Myanmar: Tatmadaw Leaders Must Be Investigated For Genocide, Crimes Against Humanity, War Crimes–UN Report,” August 27, 2018, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23475&LangID=E> (accessed August 23, 2019).

<sup>304</sup> Fortify Rights, “*They Gave Them Long Swords*,” pp. 102–116; Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, pp. 364–380.

<sup>305</sup> ICC, *Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, (Pre-Trial Chamber I), September 6, 2018*, para. 61.

crime of deportation of members of the Rohingya people, despite the fact that Myanmar is not a State party to the Rome Statute.<sup>306</sup> The Prosecutor argued that because an element of the crime of deportation—the crossing of a border—occurred on the territory of Bangladesh, a State Party to the Rome Statute, the Court has jurisdiction.<sup>307</sup> The Court agreed and further held that the Court may also exercise its jurisdiction with regard to “other crimes within the jurisdiction of the Court,” such as the crimes against humanity of persecution and other inhumane acts against the Rohingya.<sup>308</sup>

The violations documented in this report associated with the NVC process and the denial of citizenship are, therefore, within the jurisdiction of the Court to consider in its investigation into potential crimes committed against the Rohingya in Myanmar, as they involve both the deportation of the Rohingya and other acts constituting persecution.

The Organization of Islamic Cooperation (OIC), through the Government of the Gambia, intends to bring a case regarding the crime of genocide against Rohingya to the International Court of Justice (ICJ), providing another opportunity to conduct investigations into these violations.<sup>309</sup>

Evidence documented in this report raises important questions as to whether violations with regards to the NVC process and the 1982 Citizenship Law caused serious mental harm to Rohingya and/or deliberately inflicted on the group conditions of life calculated to bring about its physical destruction in whole or in part. Furthermore, evidence in this report raises important questions as to whether the Government of Myanmar used the NVC process as a coercive measure to forcibly deport Rohingya and single them out on discriminatory grounds.

Given the close links between deadly Myanmar Army-led attacks against Rohingya and the NVC process and the denial of citizenship, the violations documented in this report bolster the findings already made by the FFM and Fortify Rights regarding genocide and crimes against humanity. As such, this chapter discusses the violations in terms of these frameworks, highlighting the need for further attention.

## Genocide

In accordance with Article 6 of the Rome Statute, the crime of genocide requires: (1) the commission of one of five prohibited criminal acts enumerated by the Statute (2) against a protected national, ethnic, racial, or religious group (3) with the intent to destroy the group in whole or part.<sup>310</sup> For the purposes of establishing the crime of genocide, the Rohingya are considered a distinct ethnic group, and the Myanmar state security forces and non-Rohingya citizens have been found to hold the requisite intent to destroy the Rohingya in whole or in part.<sup>311</sup> Evidence documented in this

<sup>306</sup> ICC, “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute,” April 9, 2018, para. 28.

<sup>307</sup> *Ibid.*

<sup>308</sup> ICC, *Decision on the “Prosecution’s Request for a Ruling,”* para. 74.

<sup>309</sup> “Atrocities on Rohingyas: OIC for Suing Myanmar at ICJ,” *The Jakarta Post*, June 4, 2019, <https://www.thejakartapost.com/seasia/2019/06/04/atrocities-on-rohingyas-oic-for-suing-myanmar-at-icj.html> (accessed August 23, 2019); Organization of Islamic Cooperation, Resolutions on Muslim Communities and Muslim Minorities in the Non-OIC Member States, adopted by the 46th session of the Council of Foreign Ministers, March 1–2, 2019, Doc. No. OIC/CFM-46/2019/MM/RES/FINAL, <https://www.oic-oci.org/docdown/?docID=4447&refID=1250> (accessed August 26, 2019).

<sup>310</sup> The five prohibited acts are: killing members of the identified protected group; causing serious bodily or mental harm to members of the protected group; deliberately inflicting on the protected group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the protected group; forcibly transferring children of the protected group to another group. Rome Statute, Art. 6.

<sup>311</sup> This chapter analyzes whether the violations documented in this report qualify as one or more of the prohibited criminal acts to establish the crime of genocide. For a full analysis of the other two elements—establishing that the crime was committed against a protected national, ethnic, racial, or religious group and with the intent to destroy the group in whole or part, see, Fortify Rights, “*They Gave Them Long Swords.*” See also, Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*.



report raises important questions as to whether and how the NVC process and the 1982 Citizenship Law relate to two prohibited acts of genocide: (1) causing serious mental harm to Rohingya, and (2) deliberately inflicting on Rohingya conditions of life calculated to bring about its physical destruction in whole or in part.

### Causing Serious Mental Harm as a Prohibited Act of Genocide

For an act or omission to qualify as serious mental harm for the purposes of establishing genocide, the harm must be intentionally inflicted.<sup>312</sup> Tribunals have held that serious mental harm centers on harm that is “more than a minor or temporary impairment of mental faculties.”<sup>313</sup> While such harm need not be “permanent or irremediable,” it must result in “grave and long-term disadvantages to a person’s ability to lead a normal and constructive life” going beyond “temporary unhappiness, embarrassment or humiliation.”<sup>314</sup>

International tribunals have noted the difficulty of finding “causing serious mental harm” as a prohibited act of genocide due, in part, to evidentiary standards used by the courts in determining if the perpetrators possessed the requisite knowledge of the impact of their actions. Documentation of the knowledge must be “established by clear and public proof,” and the harm must have been deliberate and not accidental.<sup>315</sup>

Tribunals undertake this assessment on a case-by-case basis with particular regard to the circumstances of each situation.<sup>316</sup> The International Criminal Tribunals for both Rwanda and the former Yugoslavia interpreted serious mental harm to encompass “acts of torture, inhuman or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and deportation,” as well as persecution.<sup>317</sup> Detaining individuals in conditions designed to cause “degradation, deprivation of . . . rights as human beings and to . . . cause . . . inhumane suffering and torture” may also constitute serious mental harm.<sup>318</sup>

Fortify Rights documented how Myanmar authorities tortured imprisoned Rohingya who refused to accept the NVC, potentially causing “serious mental harm.” One Rohingya detainee said the authorities stopped feeding him after he refused to accept the NVC.<sup>319</sup> Myanmar authorities also explicitly or implicitly threatened Rohingya with death if they did not accept the NVC.<sup>320</sup> These threats often came after the person being threatened already experienced physical violence, such as beatings, by the authorities and/or witnessed the authorities beat or kill other Rohingya.<sup>321</sup> Myanmar authorities also threatened Rohingya with imprisonment or extending the term of imprisonment

<sup>312</sup> *Prosecutor v. Brdanin*, ICTY, Case No. ICTY-99-36-T, Judgment (Trial), September 1, 2004, para. 690.

<sup>313</sup> See also, for example, *Prosecutor v. Semanza*, ICTR, Case No. ICTR-97-20-T, Judgment (Trial), May 15, 2003, para. 321.

<sup>314</sup> *Prosecutor v. Radislav Krstić*, ICTY, Case No. IT-98-33-T, Judgment (Trial), August 2, 2001, para. 513; *Prosecutor v. Akayesu*, ICTR, Case No. ICTR-96-4-T, Judgment (Trial), September 2, 1998, para. 502.

<sup>315</sup> *Krstić*, ICTY, Case No. IT-98-33-T, Judgment (Trial), para. 95.

<sup>316</sup> *Id.* at para. 502.

<sup>317</sup> *Prosecutor v. Blagojevic and Jokic*, ICTY, Case No. ICTY-02-60-T, Judgment (Trial), January 17, 2005, para. 646 (citing ICTY and ICTR cases). See also, for example, *Akayesu*, ICTR, Case No. ICTR-96-4-T, Judgment (Trial), para. 504 (holding that “serious bodily or mental harm [ . . . ] to mean acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution.”) (Emphasis added).

<sup>318</sup> *Krstić*, ICTY, Case No. IT-98-33-T, Judgment (Trial), para. 508.

<sup>319</sup> Fortify Rights interview with G.C., Cox’s Bazar District, Bangladesh, June 18, 2019.

<sup>320</sup> *Ibid.* See also, for example, Fortify Rights interview with A.C., Cox’s Bazar District, Bangladesh, November 4, 2018; Fortify Rights interview with G.G., Cox’s Bazar District, Bangladesh, June 22, 2019.

<sup>321</sup> See, for example, Fortify Rights interview with G.C., Cox’s Bazar District, Bangladesh, June 18, 2019; Fortify Rights interview with A.C., Cox’s Bazar District, Bangladesh, November 4, 2018.

to coerce Rohingya into accepting an NVC.<sup>322</sup> Several Rohingya told Fortify Rights that they had no choice but to accept the NVC after being threatened by the authorities.<sup>323</sup>

Moreover, the decades-long denial of nationality to Rohingya may also constitute serious mental harm. For decades, the Government of Myanmar subjected Rohingya to wholesale denials of their ethnic identity, claiming Rohingya do not exist while denying them citizenship and all the rights attached to citizenship.<sup>324</sup> Rohingya told Fortify Rights that the government's longstanding denial of citizenship rights contributed to serious mental anguish, fear, and uncertainty about their fate in Myanmar and beyond.<sup>325</sup> Between 2012 and 2015, this uncertainty led more than 170,000, mostly Rohingya, to board ships operated by a transnational human trafficking syndicate, facing possible harm or death, to escape persecution in Myanmar.<sup>326</sup> The prospect of being sent back to Myanmar led one Rohingya refugee in Bangladesh to attempt suicide by drinking cleaning detergent.<sup>327</sup>

The ICTR and ICTY found that similar acts—including death threats—qualified as serious mental harm.<sup>328</sup> In the context of the ongoing genocide in Myanmar, it is likely that the acts documented in this report led to “grave and long-term disadvantages” for the mental faculties of the survivors to lead “normal and constructive lives.” Therefore, it is likely that the mental impairment inflicted by the documented acts qualifies as serious mental harm—a prohibited criminal act enumerated by the Rome Statute for the purposes of establishing the crime of genocide. As such, investigative bodies tasked with examining the violations of Rohingya rights should include and prioritize serious mental harm as a potential prohibited act of genocide.

### Inflicting Conditions of Life Calculated to Bring About Physical Destruction as a Prohibited Act of Genocide

Deliberately inflicting on a protected group conditions of life calculated to bring about its physical destruction is a prohibited criminal act of genocide that includes “methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction.”<sup>329</sup> The act may also include “the creation of circumstances that would

<sup>322</sup> Fortify Rights interview with D.G., Cox's Bazar District, Bangladesh, March 10, 2019 (threatening the person with imprisonment); Fortify Rights interview with F.I., Cox's Bazar District, Bangladesh, June 17, 2019 (threatening the incarcerated person with an extended sentence); and Fortify Rights interview with F.B., Cox's Bazar District, Bangladesh, June 16, 2019 (threatening another prison sentence); Fortify Rights interview with A.C., Cox's Bazar District, Bangladesh, November 4, 2018; Fortify Rights interview with B.C., Cox's Bazar District, Bangladesh, November 30, 2018; Fortify Rights interview with A.F., Rakhine State, Myanmar, November 9, 2018. Fortify Rights interview with B.K., Rakhine State, Myanmar, November 10, 2018; Fortify Rights interview with A.I., Rakhine State, Myanmar, November 9, 2018.

<sup>323</sup> See, Fortify Rights interview with D.F., Cox's Bazar District, Bangladesh, March 10, 2019; Fortify Rights interview with G.C., Cox's Bazar District, Bangladesh, June 18, 2019. Fortify Rights interview with A.C., Cox's Bazar District, Bangladesh, November 4, 2018; Fortify Rights interview with F.H., Cox's Bazar District, Bangladesh, June 17, 2019; Fortify Rights interview with B.C., Cox's Bazar District, Bangladesh, November 30, 2018. Fortify Rights interview with A.F., Rakhine State, Myanmar, November 9, 2018; Fortify Rights interview with B.K., Rakhine State, Myanmar, November 10, 2018. Fortify Rights interview with A.I., Rakhine State, Myanmar, November 9, 2018.

<sup>324</sup> “Burma: Military Chief Denies Existence of ‘Rohingya’ Term,” *Asian Correspondent*, (denying the existence of the people “Rohingya”). See, “Background” chapter of this report.

<sup>325</sup> See, chapter 1, “Human Rights Violations and National Verification Cards” in this report.

<sup>326</sup> Fortify Rights and the National 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/downloads/Fortify%20Rights-SUHAKAM%20-%20Sold%20Like%20Fish.pdf> (accessed August 23, 2019).

<sup>327</sup> Fortify Rights interview with G.B., Cox's Bazar District, Bangladesh, November 5, 2018.

<sup>328</sup> *Akayesu*, ICTR, Case No. ICTR-96-4-T, Judgment (Trial), paras. 711–722. *Prosecutor v. Tolimir*, ICTY, Case No. IT-05-88/2-A, Judgment (Appeal), April 8, 2015, paras. 206, 210.

<sup>329</sup> *Akayesu*, ICTR, Case No. ICTR-96-4-T, Judgment (Trial), paras. 505–506.

lead to the slow death” of the protected group.<sup>330</sup> While it is not necessary that the conditions actually destroy the group in whole or in part, the conditions must be inflicted deliberately.<sup>331</sup>

In as much as the NVC process serves as an administrative step in applying the 1982 Citizenship Law, which effectively denies Rohingya full citizenship rights and access to all the rights and protections guaranteed to full citizens, the NVC process may have created conditions of life calculated to bring about the physical destruction of the Rohingya in whole or in part. By requiring the NVC to engage in certain necessary activities, such as the ability to move freely and access livelihoods, the Myanmar government has deliberately designed a situation in which Rohingya must surrender their ethnic identity and future claims to full citizenship rights in order to access basic necessities and exercise basic functions of everyday life, including free movement and access to livelihoods.<sup>332</sup> Moreover, the government requires Rohingya to disavow their ethnic identity and identify as “Bengali” or other foreign identities to obtain NVCs.<sup>333</sup> This appears to be an attempt to destroy those Rohingya who insist on identifying as Rohingya.

Moreover, from 2012 to 2015, more than 170,000 Rohingya fled Myanmar by sea to Thailand and Malaysia, many of whom were avoiding human rights violations relating to the denial of citizenship.<sup>334</sup> In some cases, Myanmar authorities directly or indirectly pushed Rohingya out to sea to undertake a journey widely known to be deadly involving transnational human trafficking syndicates.<sup>335</sup> The authorities’ willingness to push Rohingya out to sea, where they faced a well-known risk of death, indicates possible intent to inflict conditions of life likely to result in the Rohingyas’ destruction.

## Crimes against Humanity

Under Article 7 of the Rome Statute, crimes against humanity comprise the commission of one or more of 11 enumerated prohibited criminal acts committed in the context of a “widespread or systematic attack directed against any civilian population” by perpetrators with knowledge of the attack.<sup>336</sup> For the purposes of establishing a crime against humanity, the military-led attacks on Rohingya civilians in northern Rakhine State that began in 2016 and 2017 qualify as a “widespread or systematic attack.”<sup>337</sup>

The acts documented in this report related to the NVC process and the denial of citizenship may contribute to finding prohibited criminal acts of “deportation” as well as “persecution.” Given that perpetrators committed these acts with knowledge of a broader attack on the Rohingya population, the Myanmar authorities may have committed the crimes against humanity of deportation and persecution against Rohingya in 2016 and 2017.

<sup>330</sup> *Stakic*, ICTY, Case No. ICTY-97-24-T, Judgment (Trial), para. 517

<sup>331</sup> *Brdanin*, ICTY, Case No. IT-99-36-T, Judgement (Trial), paras. 691–92.

<sup>332</sup> See, Fortify Rights interview with F.K., Cox’s Bazar District, Bangladesh, June 16, 2019; Fortify Rights interview with E.H., Kyauktaw Township, Rakhine State, Myanmar, May 30, 2019; Fortify Rights interview with A.H., Cox’s Bazar District, Bangladesh, November 9, 2018; Fortify Rights interview with C.B., Sittwe Township, Rakhine State, Myanmar, January 14, 2018.

<sup>333</sup> See, Fortify Rights interview with C.B., Sittwe Township, Rakhine State, Myanmar, January 14, 2018; Ministry of Livestock, Fisheries, et al., “Announcement about Fishing,”

<sup>334</sup> Fortify Rights and SUHAKAM, “Sold Like Fish.”

<sup>335</sup> *Ibid.*

<sup>336</sup> Rome Statute, Art. 7(1).

<sup>337</sup> Fortify Rights, “*They Gave Them Long Swords*,” p. 102.

## Deportation

The Rome Statute defines the crime against humanity of deportation or forcible transfer of a population as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”<sup>338</sup> The ICC has clarified that the crime of deportation concerns “the displacement of persons lawfully residing in an area to another State,” whereas “such displacement to a location within the borders of a State must be characterised as forcible transfer.”<sup>339</sup> However, both crimes are “open-conduct crimes,” meaning that “various types of conduct may . . . qualify as expulsion or other coercive acts for the purposes of the crime against humanity of deportation, including deprivation of fundamental rights.”<sup>340</sup>

The denial of Myanmar citizenship to Rohingya likely constitutes a coercive act as the right to nationality is a fundamental human right.<sup>341</sup> The Office of the Prosecutor of the ICC argued as much in her request for a ruling from the ICC on jurisdiction over the crime of deportation, noting that “Members of the Rohingya minority have suffered years of persecution within Myanmar, and during that time they have been increasingly deprived of various fundamental rights, including eventually being stripped of their Myanmar citizenship.”<sup>342</sup> A Rohingya refugee in Bangladesh told Fortify Rights, “The only reason why I fled to Bangladesh is because [the Myanmar government] were forcing us to accept NVCs.”<sup>343</sup>

The 1982 Citizenship Law strips the Rohingya of Myanmar nationality, and the NVC process seeks to facilitate this violation. If proven to the established relevant threshold, both could qualify as “coercive acts” for the purposes of the crime against humanity of deportation.

## Persecution

The Rome Statute defines the crime against humanity of persecution as the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”<sup>344</sup> The crime of persecution may include acts that, on their own, constitute a prohibited criminal act within the crime against humanity framework.<sup>345</sup> However, the crime of persecution also requires the targeting of victims based on political, racial, national, ethnic, cultural, religious, or gender grounds, or “other grounds that are universally recognized as impermissible under international law.”<sup>346</sup> In addition to the enumerated prohibited criminal acts, other discriminatory acts may constitute persecution when considered cumulatively and in the context that they were committed.<sup>347</sup> The Rome Statute also requires that the conduct is committed in connection with another prohibited act or “any crime within the jurisdiction of the [ICC].”<sup>348</sup>

<sup>338</sup> Rome Statute, Art. 7(2)(d).

<sup>339</sup> ICC, *Decision on the “Prosecution’s Request for a Ruling”*, para. 61.

<sup>340</sup> *Ibid.*

<sup>341</sup> The Human Rights Council has held that the right to nationality of every human person is a fundamental human right. Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/RES/7/10, March 27, 2008, Art. 1.

<sup>342</sup> ICC, *Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute*, ICC, Case No. ICC–RoC46(3)–01/18–1, April 9, 2018, para. 9.

<sup>343</sup> Fortify Rights interview A.B., Cox’s Bazar District, Bangladesh, November 3, 2018.

<sup>344</sup> Rome Statute, Art. 7(2)(g).

<sup>345</sup> See, *Prosecutor v. Kordic*, ICTY, Case No. ICTY–95–14/2–T, Judgment (Trial), February 26, 2001, para. 198; *Prosecutor v. Kvočka*, ICTY, Case No. IT–98–30/1–T, Judgment (Trial), November 2, 2001, para. 186, 190.

<sup>346</sup> Rome Statute of the ICC, *Elements of Crimes*, 2011, art. 7(1)(h).

<sup>347</sup> *Prosecutor v. Kupreskic*, ICTY, Case No. IT–95–16–T, Judgment (Trial), January 14, 2000, para. 622.

<sup>348</sup> *Id.* at para. 580–81. Rome Statute, Art. 7(1)(h).

The right to nationality provides the basis for a myriad of other rights and protections. The U.N. Human Rights Council has held that “the right to nationality of every human person is a fundamental human right,” the arbitrary deprivation of which on racial or ethnic grounds constitutes “a violation of human rights and fundamental freedoms.”<sup>349</sup> Therefore, restrictions on the right to nationality through the NVC process and the 1982 Citizenship Law qualify as a severe deprivation of a fundamental right contrary to international law.<sup>350</sup>

The government has also discriminatorily imposed these restrictions against Rohingya as a group on the basis of their race, ethnicity, and religion.<sup>351</sup> Myanmar’s legal framework regarding citizenship, in design and implementation, relies on ethnic and racial grounds, both in their definition of “citizens” and the disparate rights that are allotted to each class of citizen.<sup>352</sup> Moreover, the Myanmar authorities have implemented the NVC process within an environment in which Rohingya face other discriminatory policies and violent acts targeting them as a group. Due to Myanmar’s discriminatory citizenship laws, less than 0.5 percent of the estimated one million Rohingya people in Rakhine State in August 2017 were recognized as citizens or naturalized citizens.<sup>353</sup>

Finally, the Myanmar authorities singled out Rohingya, subjecting them to other “connected” acts prohibited by the crimes against humanity provision of the Rome Statute or other criminal acts falling within the jurisdiction of the ICC. The restrictions on the right to nationality have occurred within the wider context of mass murders, rapes and gang-rapes, arbitrary arrests, and other violent behavior targeting the Rohingya as part of a widespread and systematic attack and with knowledge of the attack. Thus, a judicial body tasked with investigating these acts may find that the denial of citizenship—a fundamental right—and the NVC process also rise to the threshold for persecution under the Rome Statute. Fortify Rights believes this argument merits further investigation.

<sup>349</sup> Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/RES/7/10, Art. 1; Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin, U.N. Doc. A/HRC/10/13, February 9, 2009, Art. 1; Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/RES/13/2, April 14, 2010, Art. 1; Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/RES/20/5, July 16, 2012, Art. 1; Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/RES/26/14, July 11, 2014, Art. 1.

<sup>350</sup> While ICC case law has not evaluated the deprivation of the right to nationality as a potential persecutory act, the right to nationality is well-recognized as a fundamental human right protected by international law. Indeed, the Human Rights Council has adopted five resolutions in which the Council reaffirms that the right to a nationality of every human person is a fundamental human right. Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/RES/7/10, Art. 1; Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/RES/13/2, Art. 1; Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/RES/20/5, Art. 1; Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/RES/26/14, Art. 1. See also, for example, the section of this chapter entitled, “The Right to Nationality.” See also, for example, Hannah Arendt, *The Rights of Man*, pp. 24–37, (describing the right to nationality as “the right to have rights.”)

<sup>351</sup> For a full discussion of these elements, see Fortify Rights, *Policies of Persecution*, pp. 46–47.

<sup>352</sup> See, Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, p. 118, para. 492.

<sup>353</sup> Advisory Commission on Rakhine State, *Towards a Peaceful, Fair, and Prosperous Future*.





## IV. ROHINGYA HUMAN RIGHTS DEFENDERS

This chapter examines the often-overlooked efforts of Rohingya human rights defenders working to promote and protect human rights.<sup>354</sup> It is by no means exhaustive but includes descriptions of some of the Rohingya-led organizations working in Myanmar, Bangladesh, and internationally. Rohingya human rights defenders throughout the world, including in Myanmar and Bangladesh, are actively engaged in advancing accountability and promoting rights for Rohingya, including the right to nationality and all other rights that stem from the right to nationality.<sup>355</sup> Many are unnamed here. Their collective work is a testament to resiliency.

### ROHINGYA REFUGEE-LED GROUPS IN BANGLADESH

The Arakan Rohingya Society for Peace and Human Rights (ARSPH), Rohingya Women Education Initiative (RWEI), and Rohingya Youth for Legal Action (RYLA) are some of the many Rohingya-led community-based groups in Cox's Bazar District, Bangladesh.

#### Arakan Rohingya Society for Peace and Human Rights

ARSPHR is one of the first Rohingya-led human rights organizations to form in the refugee camps in Bangladesh in the aftermath of the 2016 and 2017 attacks in Rakhine State. The organization advocates for the restoration of full citizenship rights for Rohingya in Myanmar as well as increased Rohingya agency in the administrative and humanitarian operations of the refugee camps in Bangladesh, among other objectives. In a public statement in March 2019, ARSPHR stated:

[The NVC] is the latest step of genocide against the Rohingya. The Myanmar Government Minister and officials say the card is for those who are subject to undergo citizenship verification. [The] Government has been forcing Rohingya to take NVCs since 2015. They arrest and use violence and prevent Rohingya from working and traveling without [the] NVC. But still we refuse to take [the] document.<sup>356</sup>

<sup>354</sup> John Quinley III, "The Rohingya are More Than Victims," *Asia Times*, August 27, 2018, <https://www.asiatimes.com/2018/08/opinion/the-rohingya-are-more-than-victims/> (accessed August 23, 2019).

<sup>355</sup> John Quinley III, "The Rohingya Diaspora is Crucial to Achieving Justice in Myanmar," *TIME*, February 14, 2019, [https://time.com/5529321/rohingya-myanmar-genocide-fortify-rights-diaspora/?fbclid=IwAR3v3EvnokGjqCuEc5cOIjmrTM66\\_CATDl2HLHLhqpJa7PZajDbXZUHR6KU](https://time.com/5529321/rohingya-myanmar-genocide-fortify-rights-diaspora/?fbclid=IwAR3v3EvnokGjqCuEc5cOIjmrTM66_CATDl2HLHLhqpJa7PZajDbXZUHR6KU) (accessed August 23, 2019).

<sup>356</sup> Arakan Rohingya Society for Peace and Human Rights, "History of Rohingya citizenship in Myanmar," March 2019.

A representative of ARSPHR told Fortify Rights: “We will never accept the NVC. Accepting the NVC means giving them license to kill us. The NVC permits genocide.”<sup>357</sup>

Discussing the process proposed by the governments of Myanmar and Bangladesh to facilitate the return of Rohingya refugees from Bangladesh to Myanmar, the ARSPHR representative said:

We disagree with it. It is not impartial. We were not consulted during the process. We are representatives. We are educated. Now, the international community only is trying to take photos and videos of us. They provide aid for us. We don’t need aid. We need political solutions for Rohingya.<sup>358</sup>

In July 2019, ARSPHR Chairperson Mohib Ullah met U.S. President Donald Trump in the Oval Office of the White House and spoke at the U.S. Secretary of State’s Ministerial meeting to advance freedom of religion in Washington, D.C.<sup>359</sup> In early 2019, Mohib Ullah also presented information on the situation of Rohingya refugees in Bangladesh during the March 2019 session of the Human Rights Council.<sup>360</sup> He said in his remarks:

For decades, we faced systemic genocide in Myanmar . . . They burned our houses and took our land . . . Today, we are branded as “kalar” [a pejorative term in the Burmese language used to describe Muslims, Indians, or those of South Asian descent]. They call us “illegal immigrants,” “Bengali,” and “Muslim terrorist.” We are not any of this. We are citizens of Myanmar. We are not stateless. Stop calling us that. We have a state. It is Myanmar. We want to go home to Myanmar with our rights and citizenship.<sup>361</sup>

## Rohingya Women Education Initiative

RWEI is a Rohingya women-led group working to support education, art, and empowerment for Rohingya women in the refugee camps in Bangladesh. Shamima Bibi, a founder and director of RWEI, described the work of RWEI to Fortify Rights, saying: “There are sources to empower our women in the camps. However, there is no one to educate our women. We can empower, only if we educate. That is what we work towards at RWEI.”<sup>362</sup>

Speaking about the rights of women, Shamima Bibi told Fortify Rights: “We need fundamental rights; this includes nationality rights, citizenship rights, the right to freedom of movement, and the right to an education.”<sup>363</sup>

## Rohingya Youth for Legal Action

RYLA is a network of Rohingya youth working to promote awareness of human rights among Rohingya youth in the refugee camps in Bangladesh and to engage Rohingya youth on advocating for their rights.<sup>364</sup> RYLA conducts workshops on basic human rights and the national laws of Myanmar.

<sup>357</sup> Fortify Rights interview with E.C., Cox’s Bazar District, Bangladesh, June 20, 2019.

<sup>358</sup> *Ibid.*

<sup>359</sup> Susanna Heller, “Trump asked ‘Where is that?’ when a Rohingya refugee asked him if he was doing anything to stop the Rohingya genocide in Myanmar,” *Business Insider*, July 18, 2019, <https://www.businessinsider.com/trump-asked-rohingya-refugee-where-myanmar-is-2019-7> (accessed August 23, 2019).

<sup>360</sup> Simon Lewis, Poppy McPherson, Ruma Paul, “In Rohingya camps, a political awakening faces a backlash,” *Reuters*, April 24, 2019, <https://www.reuters.com/article/us-myanmar-rohingya-politics-insight/in-rohingya-camps-a-political-awakening-faces-a-backlash-idUSKCN1S000D> (accessed August 23, 2019).

<sup>361</sup> Poppy McPherson, “For the first time, a Rohingya refugee from the camps, Mohibullah, addresses the U.N. And he’s cut off (time limit is 2 mins) just as he starts to talk about how the U.N. has had “countless discussions” about their future without consulting them,” Twitter message, March 12, 2019, <https://twitter.com/poppymcp/status/1105365563398774784?lang=en> (accessed August 23, 2019).

<sup>362</sup> Fortify Rights interview with H.C., Cox’s Bazar District, Bangladesh, August 7, 2019.

<sup>363</sup> *Ibid.*

<sup>364</sup> See, “Youth\_RYLA,” twitter profile, [https://twitter.com/Youth\\_RYLA](https://twitter.com/Youth_RYLA) (accessed August 23, 2019).

Speaking to Fortify Rights on the NVC process and Rohingya rights, a 23-year-old member of RYLA said:

The NVC is for migrants who have no documents in Myanmar. It is not appropriate for Rohingya since we have been verified and provided with the NRC three-fold [citizenship] cards. Before [Rohingya refugees in Bangladesh] are repatriated, all Rohingya in [the internally displaced person] camps inside Myanmar should be allowed to return in their original places. When we are repatriated, we should have our citizenship restored and be provided with the freedom of movement, education rights, health services, and equal rights like other groups in Myanmar. We should have our right to vote restored and be able to be elected without discrimination.<sup>365</sup>

## ROHINGYA-LED NETWORKS

Rohingya leaders and communities around the world have been actively engaged in advocating for accountability and citizenship rights for the Rohingya people.<sup>366</sup> To facilitate information-sharing, discuss priority concerns affecting their community, and identify potential solutions, Rohingya leaders and activists created several evolving networks, including the Rohingya National Forum (RNF) and a Rohingya women's network.

The Rohingya National Forum (RNF) is comprised of a diverse network of more than 50 Rohingya community leaders and activists from more than 15 countries, including Myanmar and Bangladesh.<sup>367</sup> The network formed after Rohingya leaders came together following the October 2016 military-led attacks on Rohingya communities in Maungdaw Township in northern Rakhine State to discuss strategies to address the attacks and promote rights and protections for Rohingya. Soon after the formation of the RNF, the Myanmar military waged fresh attacks on Rohingya civilians throughout northern Rakhine State. Since its start, the RNF has been committed to non-violence and dedicated to identifying constructive solutions to address human rights concerns affecting the Rohingya community.

Razia Sultana is a member of the RNF, founder of the RW Welfare Society, and a recipient of the U.S. Secretary of State's International Women of Courage Award. She has been a global advocate for Rohingya women and girls, particularly survivors of sexual violence. She said: "We Rohingya want guarantees of democratic rights for all citizens, political equality for all nationalities . . . The only policy reform is to review and recognize the Rohingya as citizens and provide them with justice."<sup>368</sup>

In February 2019, Rohingya women involved with the RNF organized a gathering to bring together Rohingya women working with Rohingya communities throughout the world to share experiences, learn from each other, and identify ways to "find solutions to end genocide and protect our basic human rights."<sup>369</sup> A statement issued by the women in April 2019, clarified the important role of women in human rights advocacy, saying:

Rohingya women have suffered for decades, but we are more than victims . . . We are working to find solutions to end genocide and protect our basic human rights. We don't only seek solidarity among ourselves. We seek solidarity with other ethnic groups in and from Myanmar, wherever we are. The suffering is similar. We desire to rebuild friendships and ties with other communities.<sup>370</sup>

<sup>365</sup> Fortify Rights interview with H.F., Cox's Bazar District, Bangladesh, August 9, 2019.

<sup>366</sup> John Quinley III, "The Rohingya Diaspora Is Crucial to Achieving Justice in Myanmar," *TIME*, February 14, 2019, [https://time.com/5529321/rohingya-myanmar-genocide-fortify-rights-diaspora/?fbclid=IwAR3v3EvnokGJqCuEc5cOljmRTM66\\_CATDl2HLHLhqpJa7PZaJDbXZUHR6KU](https://time.com/5529321/rohingya-myanmar-genocide-fortify-rights-diaspora/?fbclid=IwAR3v3EvnokGJqCuEc5cOljmRTM66_CATDl2HLHLhqpJa7PZaJDbXZUHR6KU) (accessed August 23, 2019).

<sup>367</sup> RNF was previously called the Rohingya Consultative Body.

<sup>368</sup> Fortify Rights interview with G.H., undisclosed location, July 26, 2019.

<sup>369</sup> Rohingya Vision, Statement by Rohingya Women, "We are Real, We Exist, and Our Voices Should be heard." April 10 2019, [https://www.facebook.com/permalink.php?id=1682119378600769&story\\_fbid=168511354898238](https://www.facebook.com/permalink.php?id=1682119378600769&story_fbid=168511354898238) (accessed August 23, 2019).

<sup>370</sup> *Ibid.*

Dr. Anita Schug, a member of the Rohingya women's network who also serves as the Head of Women and Children Affairs with the European Rohingya Council (ERC), described her work, saying: "Since [ERC] came into existence, we have been tirelessly working at the governmental levels in Europe and elsewhere to restore Rohingya's full citizenship rights."<sup>371</sup>

She went on to describe the challenges posed by the ongoing restrictions on the right to nationality and the NVC process, saying: "The 1982 Citizenship Law only was made to exclude. The 1982 Citizenship Law was made and implemented by the genocidal military and is not in line with international norms."<sup>372</sup>

Dr. Schug also spoke about the NVC process: "The Myanmar military is investing heavily in rewriting Rohingya history. [Myanmar] denies Rohingya existence by denying us Rohingya's identity. In short, the NVC is a trap made to force Rohingya to deny their ethnic identity by themselves. [We] Rohingya are not fools to give up our identity."<sup>373</sup>

Sharifah Shakirah, another member of the Rohingya women's network and founder of the Rohingya Women Development Network (RWDN)—a Rohingya women-led organization that serves as a first point of contact for many Rohingya refugee women and girls in need of protection and services in Kuala Lumpur, Malaysia—has also publicly advocated for Rohingya rights. Speaking about the NVC process, she told Fortify Rights:

The NVC is for the foreign people that want to apply for Burmese citizenship, not for the Rohingya people . . . If Rohingyas are subject to a national verification process, the same process should be applied to everyone in the country, including Aung San Suu Kyi.<sup>374</sup>

## ROHINGYA FACT-FINDERS AND BLOGGERS

Rohingya fact-finders and bloggers are vigilant monitors of the situation for Rohingya communities and contribute critical information on human rights violations. The information these human rights defenders collect and share influences policy-decisions and contribute to international news media and dialogue on the situation affecting Rohingya.

Rohingya fact-finders, who often conduct their work in secret, at great personal risk, and without recognition or reward, have been integral in amassing evidence, including films and photographs, documenting the Myanmar military's crimes. They are often unnamed guardians of the truth.

Rohingya bloggers take other personal risks to report and expose human rights violations committed against Rohingya. Nay San Lwin is a prominent Rohingya blogger and member of Free Rohingya Coalition. He initiated and contributes to several blogs, including *Rohingya Today*, to provide regular updates and information on the situation of the Rohingya. Speaking to Fortify Rights on the issue of Rohingya citizenship, he said:

We, Rohingya are not demanding [the Myanmar government] to grant us citizenship. We are demanding [the government] to restore our citizenship. We were regarded as citizens and had full rights equal to all other Myanmar nationals. Our identity as Rohingya was officially recognized until the 1982 Citizenship Law was enacted. Myanmar must agree to restore both ethnic rights and citizenship rights if they want to bring back more than a million genocide survivors from Bangladesh. The National Verification Card and naturalized citizenship are not solutions. Rohingyas will never compromise to accept these cards.<sup>375</sup>

<sup>371</sup> Fortify Rights electronic communication with Dr. Anita Schug, August 8, 2019.

<sup>372</sup> *Ibid.*

<sup>373</sup> *Ibid.*

<sup>374</sup> Fortify Rights electronic communication with Sharifah Shakirah, August 13, 2019.

<sup>375</sup> Fortify Rights electronic communication with Nay San Lwin, August 6, 2019.



Another Rohingya blogger, Aung Aung, similarly reports on human rights violations and shares information about the situation of Rohingya through his blog, “Aung Aung Sittwe: Blogging from Open Concentration Cell of Arakan.”<sup>376</sup> Aung Aung has often reported on the problems of the NVC and its impact. For example, in December 2017, he wrote about how Sittwe town administrators, immigration officials, and BGP threatened Rohingya confined to internment camps to “receive NVC or starve yourself to death.”<sup>377</sup>

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<sup>376</sup> See, “Aung Aung Sittwe: Blogging from Open Concentration Cell of Arakan,” <https://aungaungsittwe.com/> (accessed August 23, 2019).

<sup>377</sup> Aung Aung, “NVC program may kill thousands of Rohingya,” *Aung Aung Sittwe*, January 9, 2018, <https://aungaungsittwe.com/nvc-program-may-kill-thousands-rohingya/> (accessed August 23, 2019).



# RECOMMENDATIONS

## TO THE GOVERNMENT OF MYANMAR

- **IMMEDIATELY** abolish the National Verification Card process and restore equal access to full citizenship rights for Rohingya through a speedy administrative process developed in meaningful consultation with the Rohingya community in Myanmar, Bangladesh, and the diaspora. Accept all forms of documentation, including National Verification Cards, National Registration Cards, White Cards, household lists, and other previous government-issued and U.N.-issued identity documents, as well as alternative forms of evidence, such as testimonial evidence, to support applications for citizenship.
- **AMEND** the 1982 Citizenship Law to bring it in line with international laws and standards and to ensure equal access to full citizenship rights, regardless of ethnic identity, race, or religion. In particular:
  - Provide for a single status of full citizenship as opposed to three;
  - Cease basing access to citizenship on ethnic categories; and
  - Ensure Rohingya children have the right to acquire a nationality in accordance with Article 7 of the Convention on the Rights of the Child.
- **REPEAL** all laws, policies, and orders that require the possession of an National Verification Card to engage in activities protected by international human rights law, including rights to liberty, freedom of movement, and livelihoods. Order Myanmar officials, including Border Guard Police, immigration officials, members of the Myanmar security forces, and others, to immediately cease from requiring Rohingya to hold an National Verification Card to engage in protected activities. Publicly announce that Rohingya are not required to accept or hold National Verification Cards.
- **INVESTIGATE** allegations of violence, threats, coercion, and extortion by Myanmar authorities in implementing the National Verification Card process and take appropriate and demonstrable action to ensure accountability for past violations and misconduct and to prevent future violations and misconduct.
- **ENSURE** the safe, dignified, and voluntary return of all displaced Rohingya to their places of origin in accordance with international standards. Prior to facilitating returns, restore Rohingya rights to full citizenship and lift discriminatory restrictions on basic rights and freedoms, including the right to freedom of movement.
- **CEASE** military-led attacks on civilian populations, order state security forces to promote and protect human rights, and ensure protections for all civilians in Myanmar, regardless of race, ethnicity, or religion.
- **COOPERATE** fully with current and future international efforts to hold to account perpetrators of international crimes, including genocide and crimes against humanity. Support the mandate and work of the Independent International Mechanism for Myanmar to collect, consolidate, preserve, and analyze evidence for future criminal proceedings.

- **IMPLEMENT** recommendations from credible advisory and investigatory bodies, including the Independent International Fact-Finding Mission on Myanmar and the late and former U.N. Secretary General Kofi Annan's Advisory Commission on Rakhine State, to address violations of international law.
- **ISSUE** a standing invitation to Myanmar to the U.N. special procedures, in particular the Special Rapporteurs on minority issues, on the rights of indigenous peoples, and on the situation of human rights in Myanmar. Finalize, without delay, an agreement with the U.N. Office of the High Commissioner for Human Rights to establish a Country Office in Myanmar with a full mandate for human rights protection, promotion, and technical support.
- **RATIFY** the Rome Statute of the International Criminal Court, the International Covenant on Civil and Political Rights, the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and their respective protocols as well as other international human rights instruments.

## TO THE UNITED NATIONS AND INTERNATIONAL ORGANIZATIONS IN MYANMAR AND BANGLADESH

- **ESTABLISH** a common position and a coordinated, rights-respecting response to the National Verification Card process that protects the rights of Rohingya and other communities and enables Rohingya to opt out of the National Verification Card process, if they choose, without fear of reprisals or loss of opportunities.
- **DEVELOP**, communicate, and implement policies and practices to prevent discrimination, particularly with regard to race, ethnicity, and religion, within organizational operations and program implementation. Take appropriate disciplinary measures against staff members who violate organizational policies and/or are involved in activities that violate the rights of others within the organization or the communities served by the organization.
- **CONDUCT** assessments of organizational operations to identify policies and practices that contravene the principle of non-discrimination and implement corrective measures based on assessment recommendations.
- **TRAIN** all new and existing country-based staff members on the right to nationality and the principle of non-discrimination. Ensure information as well as organizational policies and practices designed to protect those rights are incorporated into orientation materials and discussions with new staff members.
- **COLLECTIVELY** re-introduce and actively employ the term "Rohingya" into the organizational vocabulary, including when engaging Myanmar authorities.
- **OPERATIONALIZE** the Human Rights Up Front Action Plan, especially with regard to work in Rakhine State and the delivery of humanitarian aid to displaced communities throughout Myanmar, to promote and protect human rights and avoid complicity in human rights violations.
- **CONTINUE** to work with the international community to support current and future international efforts to hold to account perpetrators of international crimes, including genocide and crimes against humanity. Support the mandate and work of the Independent International Mechanism for Myanmar to collect, consolidate, preserve, and analyze evidence for future criminal proceedings.

## TO THE INTERNATIONAL COMMUNITY AND UNITED NATIONS MEMBER STATES

- **ENGAGE** the Government of Myanmar with concrete, time-bound benchmarks to develop and implement efficient, rights-respecting administrative procedures to restore equal access to full citizenship rights for Rohingya.
- **ENGAGE** the Government of Myanmar with concrete, time-bound benchmarks to amend the 1982 Citizenship Law and other laws, policies, and orders that violate the right to nationality to bring them in line with international laws and standards and to ensure equal access to full citizenship rights, regardless of ethnic identity, race, or religion.
- **PROVIDE** financial and technical support to promote training for civilian government officials and lawmakers on the right to nationality, the principle of non-discrimination, and other international human rights standards.
- **PASS** a resolution at the U.N. Human Rights Council requesting the Special Rapporteur to report to the Council on restrictions on the right to nationality in Myanmar, with a particular focus on the National Verification Card process, the 1982 Citizenship Law, and other laws, policies, and orders that deny equal access to full citizenship rights.
- **ENSURE** international justice for ongoing atrocity crimes in Myanmar and press the U.N. 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.
- **IMPOSE** an arms embargo on the Myanmar military and targeted sanctions against military-owned enterprises and those found to be responsible for human rights violations in Rakhine State.
- **SUPPORT** the mandate and recommendations of the U.N. Special Rapporteur on the Situation of Human Rights in Myanmar and the establishment of a U.N. Office of the High Commissioner for Human Rights Country Office in Myanmar.





# ACKNOWLEDGEMENTS

This report is based on research conducted by Fortify Rights from October 2018 to August 2019. Fortify Rights Human Rights Specialist John Quinley III is the lead researcher and author of this report. The writing, research, and editing team included Fortify Rights CEO Matthew Smith, Executive Director Amy Smith, and Legal Fellow Jacob Bogart. Fortify Rights Communication Associate Thanaporn Saleephol reviewed and provided editing support. A Rohingya-led research team in Bangladesh and Fortify Rights consultant Andrew Riley provided quantitative data that informed the report. Consultant Mayyu Ali and two Rohingya researchers, not named here for security reasons, provided research assistance and logistical support.

Several interpreters and translators, also not named here for security reasons, assisted with secondary transcriptions of audio files of eyewitness and survivor testimony to enable Fortify Rights to triangulate findings and double-check initial interpretations for accuracy.

Fortify Rights' Visual Design Specialist Iuri Kato created the layout and design of the report. Award-winning photographer Saiful Huq Omi from Counter Foto provided photographs for the report with assistance from Shantanu Majumder.

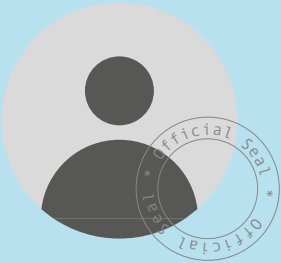

Fortify Rights extends a special thanks to Rohingya survivors and eyewitnesses as well as human rights defenders, aid workers, and others who contributed to the research and documentation and generously shared their time, energy, and experiences with Fortify Rights. Many are unnamed here. Fortify Rights also extends solidarity and support to Myanmar and Bangladesh civil society and Rohingya who are engaged in local, national, and international-level human rights activism and advocacy, often at great personal risk.

Special thanks to the generous supporters of Fortify Rights who make our work possible.

# ANNEX I:

## NATIONAL VERIFICATION CARD

Date of Issue

  
  
Applicant's signature and  
left-hand thumb print

Serial No. A 999999

1. Name

2. Father's Name

3. Sex

4. Date of Birth


5. Place of Birth


6. Occupation

7. Marital Status

8. Visible Mark

9. Address

  
Signature of Staff

  
Name  
Position

Instructions

(1) This identity card must be concomitantly carried whenever you travel, it must be shown whenever authorities request.

(2) This identity card is not transferable.

(3) No mark is allowed on the identity card and nothing is allowed to be changed except by the authorities.

(4) This identity card holder is a person who need to apply for citizenship in accordance with Myanmar Citizenship Law.

THE REPUBLIC OF THE UNION OF MYANMAR

Identity Card for National Verification

Note:

Holding this identity card does not testify that "the card holder is Myanmar Citizen"

# ANNEX II:

## NATIONAL VERIFICATION CARD APPLICATION FORM - UNOFFICIAL TRANSLATION

**Application Form for the applicants to get decision to get verified whether or not eligible for  
Citizen/ Associate Citizen/ Naturalized Citizen**

Through

Township Officer

\_\_\_\_\_ Office of the Township Immigration and National Registration

\_\_\_\_\_ Township

To

Central Committee

Subject: Application for the determination verification whether or not eligible for (Full) Citizenship/  
Associate Citizenship/ Naturalized Citizenship

1. I \_\_\_\_\_ submitted the following bio-data/ information to apply for the  
determination and verification whether or not I am eligible for Citizenship/ Associate  
Citizenship/ Naturalized Citizenship in accordance with Section 65 of Myanmar Citizenship  
Law.

**(A) Bio-data/ Information of the applicant**

- (1) Full name \_\_\_\_\_
- (2) Other name (if any) \_\_\_\_\_
- (3) Date of birth \_\_\_\_\_
- (4) Place of birth \_\_\_\_\_
- (5) Male/Female (Gender) \_\_\_\_\_
- (6) Race (ethnicity) and citizenship (nationality) \_\_\_\_\_
- (7) Religion \_\_\_\_\_
- (8) (ID) number of the (current) ID card and (issued) date \_\_\_\_\_
- (9) Educational qualification \_\_\_\_\_
- (10) Occupation \_\_\_\_\_
- (11) Address \_\_\_\_\_
- (12) Date and place of arrival in Myanmar \_\_\_\_\_
- (13) Type of vehicles and route taken (to Myanmar) \_\_\_\_\_

**(B) Information about Father**

- (1) Full name \_\_\_\_\_
- (2) Other name (if any) \_\_\_\_\_
- (3) Names of parents of the father \_\_\_\_\_
- (4) Date of birth \_\_\_\_\_
- (5) Place of birth \_\_\_\_\_
- (6) Race (ethnicity) and citizenship (nationality) \_\_\_\_\_
- (7) Religion \_\_\_\_\_
- (8) (ID) number of the (current) ID card and (issued) date \_\_\_\_\_
- (9) Educational qualification \_\_\_\_\_
- (10) Occupation \_\_\_\_\_
- (11) Address \_\_\_\_\_
- (12) Date and place of arrival in Myanmar \_\_\_\_\_
- (13) Type of vehicles and route taken (to Myanmar) \_\_\_\_\_
- (14) Passport ID # and (issued) Date \_\_\_\_\_
- (15) Alive/ Deceased \_\_\_\_\_
- (16) If deceased, date and place of death \_\_\_\_\_

**(C) Information about Mother**

- (1) Full name \_\_\_\_\_
- (2) Other name (if any) \_\_\_\_\_
- (3) Names of parents of the **father** \_\_\_\_\_  
(Remark: It should be "mother" instead of "father" but on the original document , it is mentioned "father" .)
- (4) Date of birth \_\_\_\_\_
- (5) Place of birth \_\_\_\_\_
- (6) Race (ethnicity) and citizenship (nationality) \_\_\_\_\_
- (7) Religion \_\_\_\_\_
- (8) (ID) number of the (current) ID card and (issued) date \_\_\_\_\_
- (9) Educational qualification \_\_\_\_\_
- (10) Occupation \_\_\_\_\_
- (11) Address \_\_\_\_\_
- (12) Date and place of arrival in Myanmar \_\_\_\_\_
- (13) Type of vehicles and route taken (to Myanmar) \_\_\_\_\_
- (14) Passport ID and (issued) Date \_\_\_\_\_
- (15) Alive/Deceased \_\_\_\_\_
- (16) If deceased, date and place of death \_\_\_\_\_



**(D) Information about Spouse**

	(First- wife)	(Second-wife)	(Third-wife)
(1) Full name	_____		
(2) Other name (if any)	_____		
(3) Names of parents of the father	_____		
(4) Date of birth	_____		
(5) Place of birth	_____		
(6) Race (ethnicity) and citizenship (nationality)	_____		
(7) Religion	_____		
(8) (ID) number of the (current) ID card and (issued) date	_____		
(9) Date of Marriage	_____		
(10) Educational qualification	_____		
(11) Occupation	_____		
(12) Address	_____		

**(E) Children**

Sr.	Name	Date of Birth	Place of birth	Father's name
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**NATIONAL VERIFICATION CARD TOWNSHIP LEVEL  
APPLICATION FORM - UNOFFICIAL TRANSLATION**

To

Head of Township  
Labor Immigration and Civil Ministry  
Pauktaw Township

Date:

**Subject:     Applying for (NV Card) to be verified for citizenship**

I am a resident of \_\_\_\_ hamlet in \_\_\_\_ village tract, applying for an NV Card.

Name:  
Father's Name:  
Hamlet/Village Tract:  
Township:

*Stamp of*

Village Administration Office  
Village Tract  
Pauktaw Township, Rakhine State  
Date:

**Recommendation**


I approve that \_\_\_\_ the son of \_\_\_\_ a resident of hamlet in village tract, Pauktaw Township, who came to report and needs to hold an NV Card to be verified for citizenship.

Signature  
Administrator

Pauktaw Township

Serial No. \_\_\_\_\_ (Act of Law 7) Building No. \_\_\_\_\_  
 State/Division House No. \_\_\_\_\_  
 Flat No. \_\_\_\_\_  
 Room No. \_\_\_\_\_

Township Township/Village Place  
 -----  
 Police Station Ward Road

1. Household No. \_\_\_\_\_
  2. Name \_\_\_\_\_
  3. Father's Name/Identity No. \_\_\_\_\_  
 And full address \_\_\_\_\_
  4. Mother's Name/Identity No. \_\_\_\_\_  
 And full address \_\_\_\_\_
  5. Father's elder Brother, young brother, elder sister, young sister and their address
    - (a) \_\_\_\_\_
    - (b) \_\_\_\_\_
    - (c) \_\_\_\_\_
    - (d) \_\_\_\_\_
    - (e) \_\_\_\_\_
    - (f) \_\_\_\_\_
    - (g) \_\_\_\_\_
  6. Mother's elder Brother, young brother, elder sister, young sister and their address
    - (a) \_\_\_\_\_
    - (b) \_\_\_\_\_
    - (c) \_\_\_\_\_
    - (d) \_\_\_\_\_
    - (e) \_\_\_\_\_
    - (f) \_\_\_\_\_
    - (g) \_\_\_\_\_
- 
7. Male/Female: \_\_\_\_\_
  8. Born year ( ), ( ) month ( ) day
  9. Full address of birth place: \_\_\_\_\_
  10. Race: \_\_\_\_\_
  11. Religion: \_\_\_\_\_
  12. Indigenous citizen or foreign \_\_\_\_\_
  13. Identity Card No. or Foreigner Registration Card No: \_\_\_\_\_
  14. Current Occupation: \_\_\_\_\_
  15. Proficient profession: \_\_\_\_\_
  16. Have you before or currently serving under any military forces (Army, Air, Navy) or reserved forces?  
 \_\_\_\_\_
  17. Health Condition: \_\_\_\_\_
  18. Education Qualification: \_\_\_\_\_
  19. Married (Yes/No), if yes, spouse's name and full address \_\_\_\_\_
  20. Household leader (Yes/No): \_\_\_\_\_
  21. Adopted: \_\_\_\_\_

22. (a) Children

Name	Date of Birth	Symbol and identity No.	Remark	Name	Date of Birth	Symbol and identity No.	Remark

23. Identified mark

24. Signature of those who applied for identity except less than 12 years

25. Thumb finger prints of those who applied

(a) Right-hand    Thumb                      Second                      Middle                      Second Little    Little

(b) Left-hand    Thumb                      Second                      Middle                      Second Little    Little

26. Date of applied

I hereby identify and sign that the above information, signature and thumb finger prints are real.

Identified Person \_\_\_\_\_  
Address \_\_\_\_\_  
Date \_\_\_\_\_  
Date of identity card issued as  
submitted to relevant official \_\_\_\_\_  
Date \_\_\_\_\_

Recipient  
-----  
Collector

Regional Officer/Township Officer  
-----  
(Assistant Officer)

Transfer

Serial	Address	Occupation	Health	Education	Marital	Clerk's name and date	Other information
1							
2							
3							
4							
5							
6							
7							

# ANNEX III:

## LETTER FROM FORTIFY RIGHTS TO MYANMAR PRESIDENT WIN MYINT



### President Win Myint

Office of the President  
Naypyidaw  
Republic of the Union of Myanmar

August 7, 2019

Dear President Win Myint,

Fortify Rights is a nongovernmental organization based in Southeast Asia. We support human rights defenders, investigate human rights violations, and engage governments and others on solutions.

Fortify Rights is preparing a report about the National Verification Card (NVC) process and citizenship rights for Rohingya Muslims in Myanmar. Our research focuses on human rights violations related to the NVC process, including torture, threats, intimidation, and restrictions on freedom of movement and livelihoods. The report will include recommendations to the Government of Myanmar to ensure the government upholds its human rights obligations under Myanmar law and international law.

Our findings are based on first-person interviews with Rohingya in Myanmar, Bangladesh, and Malaysia and with local and international humanitarian workers, and others. We are writing to ensure that our reporting accurately represents the policies and practices of the Myanmar government with regard to the citizenship process, including NVCs.

Fortify Rights endeavors to produce objective human rights publications based on all available information. We hope your office will respond at your earliest opportunity to the attached questions so that we may reflect your views in our reporting. Please also feel free to include any additional information, materials, or statistics that might be relevant to our research.

To fully incorporate your views in our forthcoming publication, we would appreciate a response no later than August 16, 2019. If an in-person meeting would be preferable, we would be happy to discuss our research in detail at a time that is most convenient for your schedule.

Thank you for your time and consideration of this matter. We look forward to engaging with your office to further advance human rights protections in Myanmar.

Sincerely,

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Enclosures (1)

cc:  
State Counselor Aung San Suu Kyi  
Ministry of the Office of the State Counsellor  
Naypyidaw  
Republic of the Union of Myanmar  
  
Dr. Win Myat Aye  
Minister of Social Welfare, Relief and Resettlement  
Naypyidaw  
Republic of the Union of Myanmar  
  
U Thein Swe  
Union Minister for Labour, Immigration and Population  
Naypyidaw  
Republic of the Union of Myanmar  
  
U Win Mra  
Chair of the Myanmar National Human Rights Commission  
27 Pyay Road Hlaing Township  
Yangon  
Republic of the Union of Myanmar

Questions from Fortify Rights to the Government of the Republic of the Union of Myanmar

1. Could you please explain the full process for issuing National Verification Cards (NVC)? Who are NVCs intended for and why?
2. What information is required of applicants to the NVC on the NVC immigration form?
3. How long are NVCs valid before expiration and what is the next step in the process for card holders who lack citizenship?
4. Why did the government withdraw “White Cards” from Rohingya in Rakhine State? Why did the government issue “White Cards” in the first place?
5. What biodata does the government already have on record for Rohingya Muslim residents in Rakhine State through decades of household lists? How, if at all, is the existing information different from what is being sought through NVC applications and cards?
6. How many NVCs have been issued to Rohingya Muslims and any other residents in Myanmar to date?
7. How do NVCs differ from the process implemented under former President Thein Sein’s administration?
8. Have any NVC applicants subsequently obtained citizenship? What class of citizenship was granted to them and on what grounds?
9. Will Rohingya refugees in Bangladesh be able to return to their original homelands in Rakhine State? What preconditions are necessary to facilitate safe, voluntary, and dignified returns?
10. What construction projects are currently underway in northern Rakhine State, and by whom?
11. What is the legislative basis for denying Rohingya in Rakhine State freedom of movement?
12. How many Rohingya men and boys are imprisoned in Myanmar particularly in Maungdaw, Rathedaung, and Buthidaung townships in northern Rakhine State? Is the government issuing NVCs to Rohingya who are imprisoned?

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*Genocidal States often use legal and administrative tools to facilitate the destruction of a targeted group "in whole or in part."*

Based on more than 600 interviews from 2014 to 2019, ***"Tools of Genocide": National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar*** exposes how the Government of Myanmar tortured or otherwise forced or coerced Rohingya to accept National Verification Cards (NVCs) that effectively deny their right to nationality and contribute to the erasure of their ethnic identity.

Coming in the wake of Myanmar Army-led attacks against Rohingya in Rakhine State, this report raises important questions about how NVCs and the denial of citizenship may have contributed to the commission of genocide and crimes against humanity. Through 24 detailed recommendations, it provides a pathway for the international community and the Government of Myanmar to address the root cause of the crisis: the restoration of equal access to full citizenship rights for Rohingya Muslims in Myanmar.

