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## Responding to Claims of Atrocities Against the Rohingya: Behind the Scenes of the 2018 Rohingya Documentation Project

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RESPONDING TO CLAIMS OF  
ATROCITIES AGAINST THE ROHINGYA:  
BEHIND THE SCENES OF THE 2018  
ROHINGYA DOCUMENTATION  
PROJECT<sup>1</sup>

*Andrew C. Mann\**

*Nicole Carle\*\**

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1. *See generally* DANIEL J. FULLERTON, RALPH KEEFER, MILICA KOSTIC, ANNA TRIPONEL, PAUL R. WILLIAMS & JONATHAN P. WORBOYS, DOCUMENTING ATROCITY CRIMES COMMITTED AGAINST THE ROHINGYA IN MYANMAR’S RAKHINE STATE: THE PUBLIC INTERNATIONAL LAW & POLICY GROUP’S 2018 HUMAN RIGHTS DOCUMENTATION MISSION (2018) [hereinafter PILPG Report]. The Project, its findings, legal analysis, and impact would not have been possible without the extraordinary abilities and efforts of the Project Director, Milica Kostic.

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## I. INTRODUCTION

*“They were hunting us.”*

- A 50-year-old Rohingya woman from Maungdaw<sup>2</sup>

*“There were so many bodies and so much blood in the river, it  
looked like the river was bleeding.”*

- An 18-year-old Rohingya woman from Buthidaung<sup>3</sup>

*“You could hear screaming. The girls were screaming so loud like  
their souls were leaving their bodies.”*

- A 65-year-old Rohingya man from Maungdaw<sup>4</sup>

On August 17, 2018, the U.S. Department of the Treasury imposed sanctions on four Burmese<sup>5</sup> military and border guard commanders and

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2. *Id.* at 41.

3. *Id.* at 47.

4. *Id.* at 35.

5. Edward Wong, *U.S. Imposes Sanctions on Myanmar Military over Rohingya Atrocities*, N.Y. TIMES (Aug. 17, 2018), <https://www.nytimes.com/2018/08/17/us/politics/myanmar-sanctions-rohingya.html> [<https://perma.cc/ZXF4-QL8P>]. Although the United States officially uses Burma as the name of the country, Burma and Myanmar are used interchangeably in this article to refer to the country. See Lin Yang, *Burma or Myanmar: One Country with Two Names?*, VOA (Feb. 4, 2021, 7:27 PM), <https://www.>

two military units for their involvement in ethnic cleansing in Burma's Rakhine State and other human rights abuses in the country's Kachin and Shan States.<sup>6</sup> In a press release, the Department noted that "Burmese security forces have engaged in violent campaigns against ethnic minority communities across Burma, including ethnic cleansing, massacres, sexual assault, extrajudicial killings and other serious human rights abuses."<sup>7</sup> The U.S. State Department responded to the events in Burma and Bangladesh a month later, when it issued its *Documentation of Atrocities in Northern Rakhine State*, noting:

[T]he vast majority of Rohingya refugees experienced or directly witnessed extreme violence and the destruction of their homes . . . . The survey reveals that the recent violence in northern Rakhine State was extreme, large-scale, widespread, and seemingly geared toward both terrorizing the population and driving out the Rohingya residents. The scope and scale of the military's operations indicate they were well-planned and coordinated.<sup>8</sup>

Both announcements were informed by the documentation mission into abuses suffered by the Rohingya in Myanmar, carried out by the Public International Law & Policy Group ("PILPG") from March to April 2018 with funding and support by the State Department's Bureau of Democracy, Human Rights, and Labor ("DRL"). PILPG organized eighteen experienced investigators<sup>9</sup> from around the globe to conduct more than 1,000 interviews in the Rohingya refugee camps in

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voanews.com/a/east-asia-pacific\_burma-or-myanmar-one-country-two-names/6201633.html [https://perma.cc/3G36-46NC].

6. Press Release, U.S. Dept. of Treasury, Treasury Sanctions Commanders and Units of Burmese Security Forces for Serious Human Rights Abuses (Aug. 17, 2018).
7. *Id.*
8. U.S. DEP'T. OF STATE, DOCUMENTATION OF ATROCITIES IN NORTHERN RAKHINE STATE 1-2 (2018). Although this report is dated August 2018, the State Department's declaration was not issued until September 24, 2018. See *Ending Genocide: U.S. Government Genocide Determinations and Next Steps: Hearing Before the U.S. Comm'n on Int'l Religious Freedom*, 117th Cong. 3 (2021) (written testimony of Daniel Fullerton).
9. The investigators were Saadia Aleem, Anonymous, Kristina Filipovich, Adrienne Fricke, Venitia Govender, Stephen Hathorn, Ralph Keefer, Milica Kostic, Andrew Mann, Camille McDorman, Stephanie Morin, Pratima T. Narayan, Gregory P. Noone, Sandra Orlovic, Michael Stefanovic, Larissa Wakim, Jae Chun Won, and Kyle Wood. PILPG Report, *supra* note 1, at i. Neha Bhatia, Debbie Bodkin, Celine Denisot, Sadiyya Haffejee, Stephanie Munro, and Paul R. Williams were also members of the team on the ground in Cox's Bazar at various time during the project. *Id.*

Bangladesh over a five-week period.<sup>10</sup> With substantial assistance by its *pro bono* legal partner Orrick, Herrington & Sutcliffe LLP (“Orrick”), PILPG attorneys and staff<sup>11</sup> coded and analyzed more than 15,000 pages of interview notes to submit a qualitative report to DRL in the summer of 2018 and compile its own factual findings in an October 2018 report. PILPG, again with the assistance of Orrick and with contributions from Dentons, LLP, and international legal experts,<sup>12</sup> supplemented those findings in December 2018 with a legal analysis, which concluded there were “reasonable grounds to believe that crimes against humanity, genocide, and war crimes have been committed against the Rohingya in Myanmar’s northern Rakhine State and that, therefore, a criminal investigation is warranted.”<sup>13</sup>

PILPG presented its factual findings and legal analysis at a press conference and panel discussion at the National Press Club on December 3, 2018,<sup>14</sup> and followed the American release of the report with roundtables, seminars, and presentations in Europe in February 2019.<sup>15</sup> PILPG also shared its work with the U.S. Holocaust Memorial Museum and the Independent International Fact Finding Mission on Myanmar by the U.N. Human Rights Council to assist in their examinations of the abuses suffered by the Rohingya.<sup>16</sup> The

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10. *See id.* at iii.

11. PILPG staff who supported the investigation and drafting of the report included Bridget M. Rutherford, Brett A. Edwards, Margaux Day, Benjamin Julevier, Neha Bhatia, Sarah Baig, Taylor Shields, Juan Manuel Chiesa, Dianne Lake, Sarah Libowshy, Stephen Szrom, and Parker White. *Id.* at i–ii.

12. Expert contributors to the PILPG Report were Nina Bang-Jensen, James C. Johnson, Sandy Hodgkinson, Dr. Gregory P. Noone, William Schabas, Michael P. Scharf, and Jane Stromseth. *Id.*

13. *Id.* at 53.

14. *Expert Roundtables*, PILPG, <https://www.publicinternationallawandpolicygroup.org/thought-leadership-initiative-expert-roundtables> [<https://perma.cc/9D2E-7L6S>].

15. *Upcoming PILPG Europe Events: Documenting Atrocity Crimes Committed Against the Rohingya & Options for Justice and Accountability*, PILPG, <https://www.publicinternationallawandpolicygroup.org/pilpg-europe-rohingya-events> [<https://perma.cc/SJQ5-82R5>].

16. *See generally* Max Jungreis, ‘Genocide’ Evidence in Case of Myanmar’s Rohingya Growing, VOA (Dec. 3, 2018, 2:45 PM), <https://www.voanews.com/a/genocide-evidence-in-case-of-myanmar-rohingya-growing/4684928.html> [<https://perma.cc/Z9YZ-QZA2>]. The State Department and PILPG entered into an agreement indicating who would own the data collected during the mission and how it could be shared under certain conditions. *See id.* Furthermore, PILPG’s data sharing was in accordance with the interviewees’ informed consent to

International Criminal Court cited the PILPG Report when it authorized the Prosecutor to proceed with an investigation into the alleged crimes in November 2019.<sup>17</sup> U.S. Senator Edward Markey also referenced the PILPG analysis in his proposed bill, the Rohingya Genocide Determination Act of 2021.<sup>18</sup>

The purpose of the PILPG mission “was to provide an accurate accounting of the patterns of abuse and atrocity crimes perpetrated against the Rohingya . . . and to help inform the [U.S.] policy decisions related to accountability in Myanmar.”<sup>19</sup> This article provides an overview of the 2018 Rohingya Documentation Project, highlighting its challenges with methodology, interpretation, camp movement, and analysis, and identifying lessons from that effort.<sup>20</sup>

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share responses with organizations working toward justice and accountability.

17. Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19, Authorisation of Investigation, 7–8 (Nov. 14, 2019).
18. S. 1142, 117th Cong. § 2 (2021).
19. PILPG Report, *supra* note 1, at iii.
20. PILPG was not alone in documenting the plight of the Rohingya. *E.g.*, Off. of the U.N. High Comm’r for Hum. Rts., *Mission Report of OHCHR Rapid Response Mission to Cox’s Bazar, Bangladesh* (2017); AMNESTY INT’L, MY WORLD IS FINISHED”: ROHINGYA TARGETED IN CRIMES AGAINST HUMANITY IN MYANMAR (2017); FORTIFY RTS. & U.S. HOLOCAUST MEM’L MUSEUM, “THEY TRIED TO KILL US ALL”: ATROCITY CRIMES AGAINST ROHINGYA MUSLIMS IN RAKHINE STATE, MYANMAR (2017); HUM. RTS. WATCH, MASSACRE BY THE RIVER: BURMESE ARMY CRIMES AGAINST HUMANITY IN TULA TOLI (2017); XCHANGE, THE ROHINGYA SURVEY 2017 (2017). Although PILPG engaged with many of the organizations involved in other Rohingya documentation efforts, PILPG’s factual findings and legal analysis were based solely upon the information gathered during the Rohingya Documentation Project mission. *See* PILPG Report, *supra* note 1 at iii.

## II. HISTORY OF THE ROHINGYA CRISIS<sup>21</sup>

*“F\*\*king Bengali, you have to go to Bangladesh, what you have here is not yours, it’s ours.”<sup>22</sup>*

– A non-Rohingya attacker

The Rohingya people are an ethnic Muslim minority group in Myanmar (a predominantly Buddhist country), settled primarily in the country’s western coastal Rakhine State.<sup>23</sup> They are descendants of Muslims who have lived in the area (also known as Arakan) for centuries<sup>24</sup> and have actively participated in Burmese politics.<sup>25</sup> Many in Myanmar, however, think of the Rohingya as illegal Bengali immigrants from the British colonial era<sup>26</sup> who pose a national security

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21. Given the complexity of the history of the region, this section is a brief, admittedly incomplete, review of relevant historical events. There are other interpretations of the events recounted here. For example, the Myanmar government disputes many of the facts in this section. See Marlise Simons & Hannah Beech, *Aung San Suu Kyi Defends Myanmar Against Genocide Accusations*, N.Y. TIMES (May 24, 2021), <https://www.nytimes.com/2019/12/11/world/asia/aung-san-suu-kyi-rohingya-myanmar-genocide-hague.html> [<https://perma.cc/B8YK-22AG>].
  22. PILPG Report, *supra* note 1, at 32–33 (“When the attackers referred to the Rohingya, it was almost always racially or ethnically discriminatory and disparaging.”).
  23. *Id.* at 5. It is estimated more than one million Rohingya lived in Myanmar in 2017. Most of that population lived in the north of Rakhine State, a rural and impoverished area, with three main population centers: Maungdaw, Buthidaung, and Rathedaung Townships. See generally *Myanmar Rohingya: What You Need to Know About the Crisis*, BBC (Jan. 23, 2020), <https://www.bbc.com/news/world-asia-41566561> [<https://perma.cc/FH3B-K26M>].
  24. *Who Are the Rohingya?*, AL JAZEERA (Apr. 18, 2018), <https://www.aljazeera.com/features/2018/4/18/who-are-the-rohingya> [<https://perma.cc/3MFV-DXVP>]. See also WARZONE INITIATIVE, ROHINGYA BRIEFING REPORT 3 (2015).
  25. See *The 17 Rohingya, Including a Woman, in the Burmese Parliament*, DHAKA TRIB. (Sept. 15, 2017, 1:34 PM), <https://archive.dhakatribune.com/bangladesh/foreign-affairs/2017/09/15/rohingya-woman-myanmar-parliament> [<https://perma.cc/EFR8-DVVN>].
  26. See PILPG Report, *supra* note 1, at 32–33; *Human Rights Watch, Myanmar: End ‘Ethnic Cleansing’ of Rohingya Muslims*, HUM. RTS. WATCH (April 22, 2013, 12:00 AM), <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims> [<https://perma.cc/J5X5-5XQM>]. But see THE ADVISORY COMMISSION ON RAKHINE STATE, TOWARDS A PEACEFUL, FAIR AND PROSPEROUS FUTURE FOR THE PEOPLE OF RAKHINE STATE—FINAL REPORT 18 (2017) (stating the size of the Muslim community in the Rakhine State increased rapidly during the colonial period due to British policies to expand

threat.<sup>27</sup> While early Burmese independence leaders hoped for a unified, inclusive Burma, successive Burmese governments exacerbated ethnic and religious tensions after the country's 1948 independence from Great Britain.<sup>28</sup> For example, the 1948 Union Citizenship Act did not include the Rohingya as one of the ethnicities that could gain citizenship.<sup>29</sup> The Emergency Immigration Act of 1974 made the Rohingya eligible only for Foreign Registration Cards, which limited access to jobs and educational opportunities.<sup>30</sup> The 1982 Citizenship Law<sup>31</sup> limited citizenship to members of "national races," the 135 ethnic groups deemed to be indigenous to Burma.<sup>32</sup> It did not include the Rohingya and denied them access to any of the law's three citizenship categories, effectively making them stateless.<sup>33</sup> It also failed to include the Rohingya language as one of the country's recognized languages.<sup>34</sup> The "Race and Religious Protection Laws" of 2015<sup>35</sup> attacked cultural practices of non-Buddhists like the Rohingya.

A militant group, currently known as the Arakan Rohingya Salvation Army ("ARSA"), organized in this environment and carried

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rice cultivation by bringing Bengali workers into Burma). The Advisory Commission was established by the Myanmar Government with former U.N. Secretary General Kofi Annan as its Chair to examine conditions in the Rakhine State and propose appropriate responses. *Id.* at 7–8.

27. Katie Hunt, *How Myanmar's Buddhists Actually Feel About the Rohingya*, CNN (Sept. 20, 2017, 12:05 AM), <https://www.cnn.com/2017/09/19/asia/myanmar-yangon-rohingya-buddhists/index.html> [<https://perma.cc/G8JR-MSM7>].
28. *See* AL JAZEERA, *supra* note 24.
29. *Id.* The Union Citizenship Act allowed families who had lived in Burma for at least two generations, like the Rohingya, to apply for identification cards. These 'white cards' did not confer citizenship, however. *Id.*
30. *See* Gregory Poling, *Separating Fact from Fiction About Myanmar's Rohingya*, CTR. FOR STRATEGIC & INT'L STUD. (Feb. 13, 2014), <https://www.csis.org/analysis/separating-fact-fiction-about-myanmar-s-rohingya> [<https://perma.cc/x9EU-VA7K>]; AL JAZEERA, *supra* note 24.
31. Burma Citizenship Law (Pyithu Hluttaw Law No. 4 of 1982) (1982) (Myan.).
32. AL JAZEERA, *supra* note 24.
33. *Id.*
34. JOSEPH LO BIANCO, BUILDING A NATIONAL LANGUAGE POLICY FOR MYANMAR: A BRIEF PROGRESS REPORT 3 (2016).
35. *See* Shameema Rahman & Wendy Zeldin, *Burma: Four "Race and Religion Protection Laws" Adopted*, LIBR. OF CONG. (Sept. 14, 2015), <https://www.loc.gov/item/global-legal-monitor/2015-09-14/burma-four-race-and-religion-protection-laws-adopted/> [<https://perma.cc/DXP2-2U3B>].

out raids against the Burmese police and border guards.<sup>36</sup> Following a reported October 2016 attack by Rohingya insurgents killing nine police officers in northern Maungdaw (Rakhine State), there was an escalation of state violence against the Rohingya.<sup>37</sup> International organizations reported ethnic cleansing and other violence against the Rohingya, which caused displacement internally within Burma and into Bangladesh.<sup>38</sup> Following an August 25, 2017 ARSA attack on military outposts, Myanmar security forces launched a series of widespread and systematic attacks against the Rohingya population in Rakhine State.<sup>39</sup> On September 5, the United Nations High Commissioner for Refugees (“UNHCR”) called for “life-saving assistance” as more than 125,000 Rohingya refugees fled to Bangladesh.<sup>40</sup> Three days later, the numbers swelled to 270,000; more than 415,000 refugees arrived by September 19.<sup>41</sup>

Within a few months, over 700,000 Rohingya had fled their homes to seek refuge in sprawling and overcrowded refugee camps and settlements in eastern Bangladesh.<sup>42</sup> These Rohingya men, women, and children fled to escape mass shootings and aerial bombardments, gang

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36. *Myanmar: New Evidence Reveals Rohingya Armed Group Massacred Scores in Rakhine State*, AMNESTY INT’L (May 22, 2018, 5:31 PM), <https://www.amnesty.org/en/latest/news/2018/05/myanmar-new-evidence-reveals-rohingya-armed-group-massacred-scores-in-rakhine-state/> [<https://perma.cc/TX4X-43PQ>].
37. *Myanmar Says Nine Police Officers Killed by Insurgents on Bangladesh Border*, THE GUARDIAN (Oct. 9, 2016, 10:29 PM), <https://www.theguardian.com/world/2016/oct/10/myanmar-nine-police-killed-insurgents-bangladesh-border> (last visited Mar. 2, 2022).
38. See Eleanor Albert & Lindsay Maizland, *The Rohingya Crisis*, COUNCIL ON FOREIGN RELS. (Dec. 7, 2017), <https://www.cfr.org/backgrounder/rohingya-crisis> [<https://perma.cc/B4PK-CL7N>]; Eric Schwartz, *The Rohingya Crisis in Myanmar*, COUNCIL ON FOREIGN RELS. (Oct. 20, 2017), <https://www.cfr.org/event/rohingya-crisis-myanmar> [<https://perma.cc/7LTL-GMEU>].
39. See Albert & Maizland, *supra* note 38.
40. *100 Days of Horror and Hope: A Timeline of the Rohingya Crisis*, UNHCR (Dec. 1, 2017), <https://www.unhcr.org/en-us/news/stories/2017/12/5a1c313a4/100-days-horror-hope-timeline-rohingya-crisis.html> [<https://perma.cc/LJW3-RK6A>].
41. *Id.*
42. *Rohingya Refugee Crisis*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS., <https://www.unocha.org/rohingya-refugee-crisis> [<https://perma.cc/H3AH-W828>].

rapes and severe beatings, torture and burning, and attacks from flamethrowers and grenade launchers.<sup>43</sup>

### III. THE 2018 MISSION

Aware of allegations of serious human rights abuses driving the large numbers of the Rohingya into refugee camps in southern Bangladesh, the U.S. Embassy in Dhaka provided a small grant to a local NGO to collect refugee stories within the camps.<sup>44</sup> The Embassy shared the results with a visiting congressional aide and the State Department, where support swiftly built for a systematic examination of the abuses suffered by the Rohingya in Myanmar.<sup>45</sup>

In late 2017, shortly after the cessation of the major attacks in northern Rakhine State, DRL reached out to PILPG and other organizations to determine who would be able to undertake an investigation of abuses suffered by the Rohingya on short notice. Quick action was needed because DRL wanted to ensure fresh memory of the events was captured and produce a report by mid-2018. There was also a concern on the ground: interviews in the refugee camps needed to be completed before the beginning of monsoon season (estimated to occur by the end of April or the beginning of May). It was determined PILPG was the only organization that could complete the task under those constraints.<sup>46</sup> Throughout the rest of 2017, PILPG worked with DRL and the State Department's Bureau of Intelligence and Research ("INR") to shape the scope of the mission. Principal concerns were assembling a team of experienced investigators, adapting an existing

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43. PILPG Report, *supra* note 1, at iv. *See also id.*; Alyssa Ayers, *The World's Fastest-Growing Humanitarian Crisis*, COUNCIL ON FOREIGN RELS. (Dec. 4, 2017, 4:30 PM), <https://www.cfr.org/blog/worlds-fastest-growing-humanitarian-crisis> [<https://perma.cc/YPJ5-XDN8>].

44. Conversations with U.S. Embassy Dhaka officials (March 7, 2018) (notes on file with authors).

45. *Id.*

46. A component of the mission was the State Department's desire for an assessment of how a collection process could be undertaken to establish a database of missing, disappeared, and presumed dead ("MDPD") victims in Myanmar's Rakhine State. Such an assessment would complement any transitional justice process and support family reunification and notification in the future. PILPG partnered with Fundación de Antropología Forense de Guatemala ("FAFG") to undertake the assessment. A representative of FAFG participated in the advance team visit to Dhaka and Cox's Bazar in March 2018. FAFG then spent nine days in the refugee camps and resettlement areas around Cox's Bazar in April and May 2018. This scoping team conducted 268 interviews with relatives of MDPD victims and provided an assessment report to the State Department in August 2018. That significant effort is not covered in this article.

questionnaire to the Rohingya situation to elicit the information to be analyzed, adapting the suggested State Department methodology for collecting the data to the situation among the Rohingya refugees in Bangladeshi refugee camps to ensure unbiased reporting, and preparing for logistics of the mission.

This was not the first time the State Department had assembled a team of investigators to collect data on the perpetration of mass atrocity crimes.<sup>47</sup> In 2004, the State Department turned to the Coalition for International Justice to conduct a mission to produce a large, credible sample of data to determine the nature of the crimes occurring in Darfur in order to inform U.S. policy decisions.<sup>48</sup> That team interviewed Darfuris in refugee camps in Sudan and eastern Chad.<sup>49</sup> The results of that mission influenced Secretary of State Colin Powell to declare in his testimony before the U.S. Senate that the U.S. position was that genocide had occurred in Darfur.<sup>50</sup> A similar mission was undertaken in South Sudan in 2011 but was cut short due to security concerns.<sup>51</sup> These missions guided the State Department and PILPG in developing the methodology, updating the questionnaire, and recruiting experienced investigators.

#### A. *Assembling a Team*

In late 2017, PILPG Senior Peace Fellow Nina Bang-Jensen, who was Executive Director at the Coalition for International Justice at the time of the Darfur mission, began compiling a list of investigators from the Darfur and South Sudan missions who might be available for the

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47. U.S. Embassy personnel in many countries collected witness statements throughout refugee camps in 1992 and 1993 to provide information to the U.N.'s Commission of Experts on atrocities committed during the conflict in Yugoslavia. That effort, however, was not conducted by experienced investigators or structured to provide statistically valid data. *See* S.R. Res. 780 (Oct. 6, 1992); M. Cherif Bassiouni, *The Commission of Experts Established Pursuant to Security Council Resolution 780: Investigating Violations of International Humanitarian Law in the Former Yugoslavia*, 5 CRIM. L.F. 279, 290 (1994).

48. *See generally* Nina Bang-Jensen & Stefanie Frease, *Creating the ADT: Turning a Good Idea into Reality*, in GENOCIDE IN DARFUR: INVESTIGATING THE ATROCITIES IN THE SUDAN 45 (Samuel Totten & Eric Markusen eds., 2007).

49. *Id.* at 45–46.

50. *The Crisis in Darfur: Hearing Before the Sen. For. Rel. Comm.*, 108th Cong. (2004) (statement of Colin L. Powell, Sec'y of State of the United States). *See also* Rebecca Hamilton, *Inside Colin Powell's Decision to Declare Genocide in Darfur*, THE ATLANTIC (Aug. 17, 2011), <https://www.theatlantic.com/international/archive/2011/08/inside-colin-powells-decision-to-declare-genocide-in-darfur/243560/> [perma.cc/67FS-LZXB].

51. Source is on file with the authors.

Rohingya project. PILPG also reached out to its network of prosecutors and investigators who had worked at international tribunals. Those who could not participate often recommended other experienced individuals who might be available. With the dates for the mission not set and initially needing a commitment of three weeks on the ground, PILPG's efforts to secure investigators was a challenge, even with the assistance of DRL. PILPG was also committed to having geographic and gender diversity among the investigators. By February 2018, PILPG, with DRL engagement, had assembled a gender-balanced investigation team of eighteen highly experienced and trained international investigators from eleven countries<sup>52</sup> to join the mission. They included investigators from the Darfur and South Sudan missions and international tribunals, as well as military, security, and Burma experts, in addition to international criminal accountability experts. The first group of investigators arrived March 24, 2018 in Dhaka, and the second group of eight investigators arrived on April 11, 2018.

#### *B. Methodology of Data Collection*

The most important step in the mission preparation was designing the methodology process to guide the investigators in the field. The goal was to collect first-hand accounts from Rohingya refugees. The sample had to be large enough, randomly selected, and collected from multiple refugee camps and settlement areas to be able to draw conclusions that were statistically objective, credible, neutral, transparent, and defensible (predictable and repeatable) against claims of “cherry picking” data or bias. Statisticians within INR developed the methodology. They decided more than 1,000 interviews would provide a representative sample if they were collected from a wide cross-section of the camps.<sup>53</sup> INR gave PILPG maps of the camps. PILPG then worked with INR on how to implement the methodology based on the maps to ensure proper geographic coverage (*i.e.*, how many camps to be surveyed, how many interviews in each camp).

The methodology, a hybrid of classical survey and criminal investigation methods, relied upon (1) using a team of experienced investigators and trained interpreters to conduct the interviews; (2) ensuring a random selection of interviewees throughout all of the camps by using recognized polling methods such as skip pattern and random birthday choice;<sup>54</sup> (3) interviewing only persons above the age of eighteen; (4) limiting interviews to respondents who had fled Myanmar

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52. Investigators came from the United Kingdom, South Korea, Brazil, South Africa, Canada, New Zealand, Kenya, South Sudan, Iraq, Serbia, and the United States. *See* PILPG Report, *supra* note 1, at iv, 10.

53. *Id.* at 9.

54. *Id.* *See also infra* Section III.G.5.

since October 2016; (5) collecting only first-hand accounts (not documenting hearsay); (6) using a standardized interview format and approach to information gathering; and (7) coding the information from the interviews according to alleged perpetrator, crime, and location.<sup>55</sup>

Coding is a process for turning information gathered in a documentation interview into “codes” that allow for computerized analysis of the data, enhancing the ability to identify patterns of activity.<sup>56</sup> For example, an interviewee might say she\* witnessed her male\* neighbor\* being cut\* with a knife\* by a man\* wearing what appeared to be a uniform with insignia\* on a particular date\* in a particular location\*. Each of the asterisks indicates an “item” or “event” that receives a code or designator. These designators can then be grouped into categories, such as witness/victim, perpetrator, event/action, location, or date. The notes of each interview have to be reviewed and coded. The coding then needs to be double-checked before it is put into a digital platform which allows for numeric analysis of the data. Aggregating such information can help one discern patterns of events, activities, perpetrators, location, and timing. PILPG contracted with Research Control Systems, a subsidiary of D3, to design a documentation software specifically for this project, which would aggregate the coded information and ultimately transmit the information to DRL.

### *C. Questionnaire*

The questionnaire was adapted from the previous Darfur and South Sudan missions and went through multiple rounds of editing between PILPG and experts at the State Department. PILPG fine-tuned the questionnaire to be more responsive to legal definitions of international humanitarian crimes. The questionnaire consisted of an introduction, consent script, demographic information, sixteen questions, and nine places for investigator observations.<sup>57</sup>

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55. PILPG Report, *supra* note 1, at 9.

56. See MATTHEW B. MILES ET AL., *QUALITATIVE DATA ANALYSIS: A METHODS SOURCEBOOK* (4th ed. 2019).

57. Despite efforts to refine the questionnaire, some investigators found it rigid and constraining. While appreciating the purpose of the mission and the need for its strict methodology, they were used to interviewing witnesses by engaging in open-ended discussions and asking follow-up questions, rather than following a box-ticking script. Nonetheless, all the investigators used the questionnaire. Additional information obtained during the interviews was not used in the qualitative analysis of the data but was used and incorporated in PILPG’s report narrative. The questionnaire was supposed to be “tested” during the advance team’s time in Cox’s Bazar. That was not possible due to the travel limitations arising from visa restrictions. PILPG overcame this challenge by testing the questionnaire during the

#### D. Logistics

During this preparatory time, PILPG reached out to the UN and other organizations actively involved in the refugee camps or who had conducted previous documentation missions involving the Rohingya, such as Médecins Sans Frontières/Doctors Without Borders, Human Rights Watch, and Physicians for Human Rights. Universally, they commented on the need for strong interpreter services. PILPG, therefore, undertook a major effort to locate qualified interpreters. It also made security, transportation, fiscal, and lodging arrangements.

#### E. Getting to the Field

An advance team arrived in Bangladesh in early March 2017 to evaluate conditions in the camps and lay the groundwork for the arrival of the investigation teams. Starting in Dhaka, the team met with U.S. Embassy staff who facilitated meetings with senior Bangladeshi officials, particularly at the Ministry of Foreign Affairs, and with organizations working in the refugee camps. The team met individually with representatives of the U.S. Agency International Development (“USAID”), the Canadian High Commission, United Nations High Commissioner for Refugees (“UNHCR”), and the International Committee of the Red Cross (“ICRC”). The various representatives asked how PILPG planned to address the problem of revictimization of witnesses. PILPG stressed it was a concern it took seriously and explained it hoped to prevent revictimization by using experienced investigators to conduct the interviews, ensuring the investigators are made aware of the concern during training, providing psychosocial counseling and support to investigators and interpreters, and having information on health and social services within the camps available for the interviewees. The representatives also noted the lack of trained interpreters and private space within the camps for conducting the interviews.

The team then traveled to Cox’s Bazar, the city in south Bangladesh closest to the camps and settlements, to assess the operational environment, conduct test interviews with the

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interpreters’ training and with a smaller sample than anticipated. PILPG then updated the questionnaire based on feedback from that testing. *See infra* Sections III.F, III.G. Still, issues remained. For example, most investigators felt sexual violence was underreported during the mission. Yet, after an interview with a woman in mid-April, the woman told the investigator in private she had been raped with a group of women. As a result of this information, the investigator and team’s psychologist conducted two separate, more detailed group interviews (focus groups). Nine additional women participated in the group interviews. The information provided by the women was not included in the quantitative data or the qualitative analyses in PILPG’s reports since the groups fell outside the established methodology.

questionnaire, visit the camps, meet with local officials, and consult with representatives of UN organizations and international NGOs operating in the camps. The team was soon joined by PILPG's logistical support team who set up operations.<sup>58</sup> The Office of the Refugee Relief and Repatriation Commissioner ("RRRC"), the Bangladeshi government office that oversaw the camps, hosted a meeting of the PILPG team and representatives of the State Department with the Camp Officers in Charge ("CiC") where PILPG and the State Department officials explained the mission and answered questions. The RRRC agreed to facilitate the mission whenever necessary. PILPG indicated it would keep the RRRC generally informed of the mission's progress and undertook to inform the individual CiCs when PILPG interviewers would be working in their camps of responsibility. Such a "heads up" permitted the CiCs to minimize interference with the team's work by camp personnel; otherwise, there was no interaction between the team and the CiCs.<sup>59</sup> The team also met with the local representatives of UNHCR and the International Organization for Migration ("IOM") who managed the refugee camps and they provided insights into camp operations and services.

#### *F. Interpretation*

From the mission's inception, through the planning in Washington and the advance team's meetings in Dhaka, and while setting up operations in Cox's Bazar, everyone PILPG talked to reiterated the need for high quality interpretation for the mission to succeed. Unfortunately, finding interpreters in Cox's Bazar who were well-suited for the mission proved to be a challenge. First, there was a limited pool of trained interpreters, with fierce competition for the most capable.<sup>60</sup> Because PILPG did not have a continuing presence in the camps, the

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58. Neha Bhatia and Stephanie Munro supported the project by handling finances, office operations, and logistics. In addition, Ms. Bhatia was the methodology expert for the project. She monitored the collection of data to ensure statistical rigor and to maintain the integrity of the project. Ms. Munro was dedicated to working with the interpreters. She managed their schedules, arranged transport, and dealt with any conflicts that arose during the arduous mission. Their contributions were a key element to the mission's success.

59. At the end of the mission, on one of its last days, Bangladesh security stopped one of the mission's vans while it was transporting the team over a misunderstanding. The Project Director was able to resolve the matter promptly by calling the RRRC Commissioner who secured the team's release.

60. A major complication was the low literacy rate among the Rohingya. It was estimated almost three quarters of the population (73%) was illiterate in any language. ANAHI AYALA IACUCCI ET AL., INFORMATION NEEDS ASSESSMENT: COX'S BAZAR—BANGLADESH 4, 8, 15 (2017).

interpreters available had to be hired on an *ad hoc* basis. PILPG also reached out to the Rohingya diaspora prior to arrival in Bangladesh to solicit suggestions. It continued to ask the UN and other human rights organizations for recommendations once the team was in Cox's Bazar. Second, the Rohingya spoke a unique language, and there were few non-native interpreters who spoke the language to communicate clearly with those in the camps. Furthermore, Rohingya is not written, adding another level of complexity to the interviews.<sup>61</sup>

Once in Cox's Bazar, the PILPG logistics team swung into action, collecting names of potential interpreters.<sup>62</sup> PILPG brought in an international field interpretation expert with experience with the International Criminal Court to assess the local candidates and conduct a two-day training workshop with the collaboration of a sociolinguist with Translators Without Borders. Thirty-three candidates were invited. They were trained on fundamental principles of interpreting, the importance of neutrality, interviewing techniques, terminology, documentation best practices, note taking, gender dynamics, ethical dilemmas, and the importance of self-care. An investigator led a session on working with interpreters from an investigator's point of view and previewed the mission and its methodology. At the end of the training, PILPG engaged the ten best interpreters based on their participation in the training, level of English, demeanor, and understanding of the fundamental principles of interpreting. PILPG maintained another list of substitute interpreters for a call up on an as needed basis. Eventually, eighteen of the trained interpreters were used.<sup>63</sup>

### G. *Overcoming Hurdles*

The mission was a success. From April 1 to 22, PILPG's investigators conducted interviews with 1,024 Rohingya refugees across thirty-four camps and settlements in the Cox's Bazar area, resulting in

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61. The Rohingya speak Rohingya, also called Ruáingga. While the language is unique in Myanmar, it is similar to Bengali dialects, in particular the Chittagongian language spoken in and around Cox's Bazar. *Id.* at 4–5; Christine Ro, *The Linguistic Innovation Emerging from Rohingya Refugees*, FORBES (Sept. 13, 2019, 11:01 AM), <https://www.forbes.com/sites/christinero/2019/09/13/the-linguistic-innovation-emerging-from-rohingya-refugees/?sh=4f07517c5e42> (last visited Mar. 2, 2022) (describing the mutual intelligibility between Rohingya and Chittagongian); Agence France-Presse, *Language of the Rohingya to be Digitised: 'It Legitimises the Struggle'*, THE GUARDIAN (Dec. 18, 2017, 11:40 PM), <https://www.theguardian.com/world/2017/dec/19/language-rohingya-digitised-legitimises-struggle-emails> [<https://perma.cc/T459-FFVX>].

62. *See supra* note 58.

63. Two of the interpreters were native Rohingya who were able to assist other interpreters in understanding differences between Ruáingga and Bengali dialects. *See* PILPG Report, *supra* note 1, at iv.

more than 15,000 pages of notes with 13,000 coded instances of violence and violations. This allowed for an analysis of patterns of systemic abuse. Ultimately, the U.S. Government imposed sanctions on some senior Myanmar security officials and it recognized that atrocities had occurred.<sup>64</sup> Yet, as with any large-scale project, there were obstacles to overcome from the outset.

### 1. Visas

Securing the appropriate visas for the PILPG team was an unexpected complication. While the U.S. Embassy and Bangladeshi officials suggested tourist visas obtained on arrival would be sufficient for the mission, official Bangladesh policy stressed the need for international NGO community workers in the refugee camps to secure NGO worker visas (or researcher, official duty, or business/work visas, as appropriate). While some humanitarian workers in the camps operated with tourist visas,<sup>65</sup> PILPG, as an international legal NGO, abided by Bangladesh laws and regulations. The U.S. Embassy and the State Department assisted PILPG with obtaining the proper visas. At the embassy's urging, the Foreign Ministry interceded with the Interior Ministry, and visas were eventually issued. Still, the three-week delay caused PILPG to postpone the mission, preventing some investigators from participating due to scheduling constraints, and limited the advance team from testing the collection methodology and questionnaire as thoroughly as planned. PILPG used the time while the proper visas were being processed to train the investigators on the questionnaire and methodology as well as review security protocols and the mission's purpose.

### 2. Work Demands

Once the visa situation was resolved, investigators went into the camps in teams of two investigators, with each investigator paired with

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64. David Brunnstrom & Lesley Wroughton, *U.S. Imposes Sanctions on Myanmar Military Leaders over Rohingya Abuses*, REUTERS (July 16, 2019, 5:37 PM), <https://www.reuters.com/article/us-usa-myanmar/u-s-imposes-sanctions-on-myanmar-military-leaders-over-rohingya-abuses-idUSKCN1UB2QM> [<https://perma.cc/4E83-V9U9>].

65. *See Bangladesh Police Free Detained Foreign Aid Workers*, REUTERS (Feb. 24, 2018, 7:41 AM), <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-ngo/bangladesh-police-free-detained-foreign-aid-workers-idUSKCN1G80HY> [<https://perma.cc/TG6W-Y43E>]; Tarek Mahmud & Adil Sakhawat, *39 Foreign Aid Workers Detained Without Papers Outside Rohingya Camps*, DHAKA TRIB. (Mar. 11, 2018, 2:28 PM), <https://archive.dhakatribune.com/bangladesh/law-rights/2018/03/11/crackdown-foreign-aid-rohingya> [<https://perma.cc/R5DC-UTZE>].

an interpreter and local guide.<sup>66</sup> Each team had at least one female member—either a female investigator or interpreter—to ensure gender sensitivity when female respondents were interviewed. INR had provided interview targets (number of interviews) per camp. The PILPG team then gave daily deployment plans to each investigative team, together with maps of medical and psychosocial referral points in the area.

The interpreters who lived in Cox's Bazar were picked up every morning at a central location and transported to a meeting point at the camp. The investigators and support team stayed at a hotel closer to the camps. Nonetheless, it took approximately 45 minutes to an hour for the investigators and more than an hour for the interpreters to drive to the camps. When the investigation shifted to the southern camps, driving time increased by almost one hour each way. The investigators and interpreters were provided lunch and water. Upon arrival at the camp, the investigators and interpreters joined up with their camp guide at the meeting point and then went to their designated areas to conduct interviews. The plan was to get to the camps around 9:00 AM and depart (due to curfew) at 4:00 PM. There were regular after-work-hours debrief sessions at the hotel, when the investigators were given their camp assignments for the next day and administrative matters were discussed. Investigators were also expected to review their interviews each night and code the information.

The pace was demanding. With the period to collect interviews shortened due to visa problems, the necessary output for each interviewer increased.<sup>67</sup> In order to achieve the desired 1,000+ interviews, each investigator was expected to conduct five to six interviews a day. Travel within the camps was challenging, often taking thirty minutes or more for each team after they had met up with their camp guide at the meeting point to get to its designated area of coverage for the day. There was one break day each week, but the investigators often used that day to catch up on coding.

PILPG had arranged for a psychologist trained in therapeutic care to spend two weeks with the mission to provide psychosocial support to the team. The psychologist met with each investigator at least once and conducted debriefing sessions with two groups of interpreters. She

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66. The camp guide was expected to help the investigator and interpreter move within the camps as well as keep strangers and the curious from disturbing the interview once it began. PILPG Report, *supra* note 1 at 10.

67. *See generally id.* The planned five-week collection period for the mission shrank to only twenty-two days. Because of the visa delay, some investigators who had planned to participate in the mission had to cancel. Illness among the investigators and a day of rain also limited time in the camps for interviewing, resulting in the need to conduct more interviews in the remaining time.

also shadowed two special interview sessions for rape victims, working with the investigator to conduct the sessions and helping the victims address the trauma they were experiencing during the sessions.

### 3. Movement Within the Camps

The size and terrain of the camps was a lingering security concern for the logistics and leadership teams. The camps were large and hazardous (steep hills, excessive dust, open latrines, etc.), and there were limited ways to communicate with investigators once they entered the camps. Nonetheless, PILPG needed to know which parts of the camps had been covered by each interviewing team to ensure the integrity of the survey and to map the next day's interviewing schedule and territory. PILPG also needed to know where each individual team member was throughout the day in case he or she needed to be extracted in an emergency.<sup>68</sup> PILPG learned the UN and NGO groups working within the camps relied upon radio, irregular mobile phone service, and Wi-Fi. PILPG needed greater fidelity to ensure everyone's safety. It looked into using satellite phones, but they were prohibited by the government. PILPG examined personal tracking devices, but ultimately found none suited for the mission's needs. PILPG considered adding a security officer for each team, but the security company could not guarantee enough officers would speak the local language or dialect. After procuring local SIM cards and data plans, PILPG settled on using the Find My Friends app<sup>69</sup> initially, then switched to the Galileo<sup>70</sup> overlay on Google Maps, which proved invaluable in tracking movements and confirming walk patterns. PILPG supplemented the technology by hiring a local camp guide for each investigator. The system worked well, as the technology tracked the investigators' movements and the guides served as a complementary communication system for the teams.<sup>71</sup>

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68. *Id.* at 9. At the busiest time of the mission, PILPG had seven teams of investigators scattered throughout the camps; in total, eighteen investigators conducted interviews in thirty-four refugee camps and settlement areas.

69. Apple, *Find My Friends*, <https://apps.apple.com/us/app/find-my-friends/id466122094> [<https://perma.cc/JF2Z-K76D>].

70. The Galileo app was renamed Guru Maps in 2019. *See Guru Maps: Formerly Known as "Galileo Offline Maps"*, GURU MAPS: OFFLINE MAPS & NAVIGATION, <https://gurumaps.app/> [<https://perma.cc/X4SY-7UQ7>].

71. Security was a prime consideration of the mission's leadership. Each investigator was briefed on the security situation, proper security protocol, and reporting requirements prior to arrival. PILPG instituted a "buddy" system, requiring investigators to accompany one another each time someone left the hotel compound. The leadership monitored security notifications among the U.N., the U.S. Embassy, and the international non-governmental organization community within the camps and sent back twice daily messages to PILPG management in Washington, D.C.

## 4. Money

The handling of money was problematic. Often, goods and services in the Cox's Bazar area, outside of the large hotels, were on a cash-only basis. PILPG relied upon regular wire transfers through Western Union. It was not an ideal situation with high security risk, but it worked, and all funds were accounted for.

## 5. Methodology: Beautiful in the Abstract, but Challenging in Implementation

The methodology was designed to capture a diverse snapshot of the camps, which would allow the State Department to draw conclusions about what happened among the population as a whole. A key component of the methodology was ensuring the randomness of the sampling. The camps were allocated a certain number of interviews to be achieved that were proportional to their population size. PILPG would then assign an investigation team a location in a camp (using GPS coordinates). At the location, the team would choose a starting point (such as a mosque, bridge, or food distribution point). The team would then divide at the starting point, with each investigator going in opposite directions, turning to the left to prevent overlap by investigators in the same area. The investigator would use a code to determine randomly at which household to start. After the initial household, the investigator would turn to his or her left and choose every third household (skip pattern). Once at the household, the investigator and interpreter would seek permission to enter. If permission was granted, the investigator would seek informed consent by the household.<sup>72</sup> Then, the investigator would ask how many persons over the age of 18 lived in the household. Using a random birthday table, the investigator would select the person in the household to

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72. *See generally* PUB. INT'L L. POL'Y GRP., FIELD GUIDE FOR CIVIL SOCIETY DOCUMENTATION OF SERIOUS HUMAN RIGHTS VIOLATIONS (2016). The PILPG advance team in Cox's Bazar worked with the State Department, investigators, and interpreters to develop informed consent and confirmation to consent language that was understandable and informative. The informed consent form used by PILPG on the mission read:

Hello, my name is \_\_\_\_\_ and I work for the Public International Law & Policy Group ("PILPG"). We are talking with refugees about their experience in Myanmar. We would like to talk to a member of your family, from this home, if they are willing. I will be choosing them at random. Taking part in this survey is voluntary. Whoever speaks with me can stop the interview at any time and can refuse to answer any questions they are not comfortable with. Your family will not receive anything for speaking with me. We understand you and your family may not want to talk about your experiences and if so, we respect your decision. Do you have any questions about what I just told you?

interview. This randomness ensured no group, such as senior males, heads of households, or the person with the “best” story, dominated the sampling. No substitutes of persons were permitted. If the selected person was not present, the interviewer would leave the household and continue to the next household in the skip pattern. After selecting the person to be interviewed, the investigator would conduct the interview, reconfirm the person’s consent,<sup>73</sup> and leave. PILPG had a protocol for receiving evidence if offered, but collecting evidence was not the mission’s purpose. Ultimately, very few items of evidence were collected during the mission.

The methodology, while necessary to ensure the results’ credibility, was difficult in accommodating the nature and geography of the camps. The lanes in the camp were short, or turning left might require the investigator, interpreter, and guide to go up and over hills in hopes of finding the next household. In addition, it was often confusing to a household when, after just having given an unknown investigator permission to enter and engage in an interview, the investigator and interpreter would have to leave without conducting an interview because the “random birthday” selected individual was not at home. They wondered why someone else could not speak, but that would interfere with the randomness of the survey. Nonetheless, the experienced interviewers persevered in adhering to the methodology despite the obstacles to ensure the reliability of the documentation effort.

## 6. Mapping

In order for the State Department to be able to analyze the data received properly and to determine where events happened, it was important for the interviewees to identify where they were from and where the events they experienced or witnessed occurred. This was difficult because many of the interviewees were illiterate, so they could not spell or identify a location’s name. Also, locations had different names in Burmese and Ruáingga. Furthermore, many of them had never traveled far from their villages. This complicated the investigators’ work, often frustrating them because being precise with a location was important for the mission, but obtaining it took up a lot of time during an interview. The teams found the map atlas (which

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### 73. The confirmation of consent script read:

Before I leave, I’d like to reconfirm how we will be using your information and that you are comfortable with providing this information. Your responses will be shared in a report to help improve international understanding about the issues affecting your community. If you no longer wish to share your story, please let me know.

broke northern Rakhine State into a grid covering areas identified in open sources, provided by the State Department) unwieldy which limited its use—in addition, many of the interviewees could not read a map. Investigators and interpreters resorted to having the interviewees identify locations phonetically or having the interviewees describe locations in relation to fixed points (like a river, or big town). When PILPG obtained the UN naming convention for Rakhine State locations in both languages (Burmese and Ruáingga), the task became easier. Using the State Department map atlas with grids, the UN list, input from the interpreters, and discussions among the investigators themselves, the investigators were able to identify most locations. State Department analysts were eventually able to locate approximately nine out of every ten locations identified by the investigators and conducted geospatial analysis based on the overall grid.

### 7. Coding and Analysis

Using the State Department-designed questionnaire, the investigators were expected to perform a qualitative analysis on the data collected in each interview. At the end of each day, the investigator was to note manually onto a coding sheet attached to each questionnaire information on (1) whether the interviewee was a victim or a witness of a purported violation; (2) the violation or “event” documented; (3) the perpetrators’ unit or ethnic identity and weapons used;<sup>74</sup> (4) the date of the violation; (5) the number of victims of the reported “event”; and (6) the location of the violation or event. The codes for events and perpetrators had been determined in advance, although they were expanded during the mission. Eventually, there were 60 “event” codes and 21 “perpetrator” codes, and more than 13,000 documented incidents of abuse or grave violations.<sup>75</sup> The results were then supposed to be entered daily onto a secure, specially designed documentation software, with the data later transmitted to the State Department. It quickly became apparent this would not be able to be done on a real time basis, despite the best efforts of the investigators and PILPG logistics and leadership teams (the mission had initially included extra time for coding activities, but the delay in starting the mission due to the visa problems eliminated that time). DRL and PILPG decided the investigators would instead fill out the coding

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74. DOCUMENTATION OF ATROCITIES IN NORTHERN RAKHINE STATE, *supra* note 8, at 19 (“The presence of ARSA in the refugee camps likely gave pause to some refugees who might otherwise identify ARSA as perpetrators. ARSA’s involvement in the violence thus is likely under-reported. However, based on other credible research into the attacks in northern Rakhine State, we have no reason to conclude the group was responsible for more than a small fraction of the violence.”).

75. PILPG Report, *supra* note 1, at iii.

sheets manually and attach them to the individual questionnaires. The hard copies of the questionnaires with the coding sheets would be returned to the U.S. after the mission (with chain of custody tracking). Then the PILPG team in the United States would go through them to input the coded data into the database, which provided an opportunity to double check the coding.

Upon conclusion of the mission and return of the questionnaires to PILPG offices in Washington, D.C., PILPG began processing the documents. It soon reached out to its *pro bono* partner Orrick to help with digitally scanning and securely storing digital copies of the questionnaire. This enabled a larger team of reviewers to access the documents. Ultimately, Orrick provided 90 lawyers to assist the dozens of PILPG staff members with the coding and analyzing of the questionnaires and inputting the data.<sup>76</sup>

#### IV. WRITING THE REPORT

*“In sum, there are too many coincidences in the nature and similarity of the attacks across the mapped area of Rakhine to suggest anything other than a carefully planned military operation designed to terrorize the refugees into leaving their homeland.”<sup>77</sup>*

– PILPG Report

The writing of both the factual findings and legal analysis was an evolutionary process because neither was originally planned. PILPG was to provide a qualitative factual report to DRL for the State Department, which it could use to do its own analysis and reach its policy recommendations. To prepare its report to the State Department, a team of PILPG lawyers reviewed the reports each investigator completed at the end of their time in Bangladesh. PILPG quickly identified key themes and patterns from the investigators’ reports: (1) pre-attack pattern of violence and human rights abuses targeting the Rohingya over many years; (2) patterns of escalating violence throughout 2016 and 2017; and (3) violence and violations beginning in August 2017, which signified the security forces’ assault that prompted the massive Rohingya refugee flows into Bangladesh, referred to by many interviewees as “massacre day.” PILPG then applied the stories from the Rohingya refugees to information already

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76. Orrick also provided its own qualitative and legal analysis of the data. The mission’s data transmission to the State Department and PILPG’s findings and analysis would have been significantly delayed without the substantial commitment by Orrick to this endeavor.

77. PILPG Report, *supra* note 1, at 50.

documented about the military to put together a draft.<sup>78</sup> This drafting process exposed a greater number of clear patterns of violence than PILPG or DRL initially expected. Because of this, DRL granted PILPG permission to produce its own public report that included a legal analysis.<sup>79</sup> PILPG's public factual findings were similar to the PILPG qualitative report submitted to DRL. PILPG brought in a larger team, along with an expert consultation group, to assist with the legal analysis.

To complete the legal analysis, PILPG's drafters consulted with a group of international human rights lawyers. PILPG designated a drafter for each section (crimes against humanity, genocide, war crimes) with other team members and expert consultants working across all three sections. For three months, the team worked to uncover patterns and make connections that matched the elements of each crime, calling into question one another's arguments and inferences. One of the challenges was to discern the requisite intent to determine whether genocide occurred. PILPG ultimately determined there were

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78. PILPG also hired an expert on the Burmese army to examine the Burmese military structure, chain of command authority, and insignia of different military groups. He also reviewed the data collected utilizing his analysis to identify potential units and perpetrators as described by the interviewees. The military analysis was provided separate from the PILPG qualitative analysis provide to the State Department. Source is on file with the authors.

79. The PILPG report was split into two: a factual finding and a legal analysis. The finding was released in early October to complement the State Department Rohingya documentation report released in late September 2018. *See* DOCUMENTATION OF ATROCITIES IN NORTHERN RAKHINE STATE, *supra* note 8. It was followed by a detailed legal analysis released in December. *See* PILPG Report, *supra* note 1.

“reasonable grounds to believe”<sup>80</sup> crimes against humanity, war crimes, and genocide had been committed against the Rohingya.<sup>81</sup>

## V. CONCLUSION

The 2018 Rohingya Mission was a special type of documentation mission. At the behest of the State Department, PILPG brought together international investigators for a short period of time to conduct a data collection mission looking at alleged atrocities occurring in a particular location (Myanmar’s Rakhine State) over a set period (October 2016 to March 2018). Because of its methodology, the State Department and international legal experts could draw statistically valid conclusions about the violence the Rohingya had suffered. Most documentation efforts are more modest and localized, usually conducted by civil society organizations in the same country where the atrocities occur. Nonetheless, there are valuable lessons to be drawn from the Rohingya Documentation Project that can be applied to other human rights documentation missions. Many of them seem obvious, but they bear repeating.

- *Understand the purpose of the documentation effort.* There are many reasons for documentation: transitional justice for accountability purposes, truth seeking, institutional reform, education and awareness-raising, and sharing of stories for closure and healing.<sup>82</sup> Some of these reasons may be able to be pursued jointly during a mission, but keeping the purpose of the documentation at the forefront of the mission will help ensure its

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80. See PILPG Report, *supra* note 1, at vii. There are a range of standards that can be applied throughout international criminal proceedings, but the “reasonable grounds to believe” standard is applied by the International Criminal Court when deciding whether to open an investigation into alleged crimes. See, e.g., Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC/-01/09, ¶¶ 92, 110 (Nov. 14, 2019) (finding a “reasonable basis” to believe that crimes against humanity were committed and authorizing an investigation thereof). See also Rep. of the Indep. Int’l Fact-Finding Mission on Myan., Hum. Rts. Council, Thirty-Ninth Session, Sept. 10–28, 2018, ¶ 83 (finding “reasonable grounds to conclude that serious crimes under international law have been committed that warrant criminal investigation and prosecution” in Myanmar); STEPHEN WILKINSON, STANDARDS OF PROOF IN INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS FACT-FINDING AND INQUIRY MISSIONS 9 (2014).

81. See generally PILPG Report, *supra* note 1.

82. See, e.g., INT’L COAL. OF SITES OF CONSCIENCE, [www.sitesofconscience.org](http://www.sitesofconscience.org) [<https://perma.cc/D2SN-7QDB>]; HERSTORIES, [www.herstories.org](http://www.herstories.org) [<https://perma.cc/M5K8-VTVR>].

focus and success. It is essential to communicate the purpose of the mission to the interviewee. Otherwise, it is impossible to secure informed consent to the interview.

A clear purpose will influence how the entire mission will be carried out. The PILPG mission did not track down leads it received of possible perpetrators, which often frustrated the investigators. That was not the purpose of the documentation mission. To have done so would have disrupted the methodology and potentially jeopardized the integrity of the statistical conclusions.

- *Do not underestimate the value of advance planning.* Some missions by necessity must be put together in a hurry, and there will always be changes once the team is in the field (see below—*Be flexible*). Nonetheless, spending time before the mission to sort through logistics, consider options, ponder possible problems, and develop contingencies will give mission leadership the ability to be nimble once it faces challenges in the field.
- *Be flexible.* Even the best laid plans are likely to change on a mission, especially because most documentation work occurs under difficult conditions. It is not just the mission leadership who must be flexible, but individual team members must also adapt. Despite substantial effort to sort out camp communications before arriving in Cox's Bazar, PILPG went through several tracking options (satellite phones, SIM cards, personal trackers, additional security guards) once the team was on the ground. Finally, the team decided upon the Galileo App, which was suggested by one of the investigators. Additionally, when one of the investigators was presented with an unexpected opportunity to work on focus groups dealing with allegations of rape, the other investigator on her team agreed to conduct more interviews to free her up. This allowed the mission to achieve its numeric interview goals. Being flexible allows you to support your team.
- *Support your team.* There are several aspects of team support. (1) Provide clear direction. The PILPG mission had a strong Project Director who was able to give the investigators the clear guidance they needed to do their jobs, while managing the logistical demands in Washington. (2) Take care of details. The logistics team made sure the investigators had the materials they needed to get the job done. They arranged lodging, transport, and security so the investigators could concentrate on the difficult task at hand. Mission leadership also arranged for group meals away from the camps and hotel to build camaraderie. (3) Train, train, train. Ensure members of the team receive the necessary

training to do the mission properly. Even with experienced investigators, like the ones on this mission, PILPG trained them in the methodology, coding, random selection methods (the birthday table and skip pattern), the questionnaire, and informed consent. In addition, PILPG brought in an interpretation expert to train the interpreter candidates to make sure they understood the basic elements of interpreting. It takes time and resources, but investing in training will help everyone do the work at the same standard, ensuring consistency of result. (4) Look after the entire team. The PILPG mission achieved what it did because the investigators and interpreters worked cohesively. Making sure the interpreters knew the purpose of the mission and importance of the methodology made them feel part of the entire effort. In addition, the logistics staff arranged secure transportation for the interpreters as well as provided lunches and water. PILPG also ensured they had access to the psychologist for support during the mission.

- *Do not ignore psychosocial support.* This is crucial. Documentation work is exhausting—both physically and mentally—especially when dealing with atrocities in challenging environments. Even for experienced investigators, the work takes a heavy toll on the people asking questions and the interpreters serving to engage the interviewees. Few people are prepared to listen to stories of horror all day long. It is important they have the opportunity to address personal issues that come up during and after a mission. By providing clear direction and taking care of details, you help build a resilient team able to respond to inevitable challenges and work together to achieve the mission's goals.
- *Do not ignore technology.* Technology can be a great help for any mission, and it is important to assess possible technology tools during the planning period. For example, PILPG, as it planned for the mission and heard of the difficulty in obtaining trained translators, considered using apps to assist with translation. The interviewer would tape the interview and then run the tape through translation apps. It would save time and, perhaps, ensure greater fidelity in translation. PILPG decided not to go with that approach since it would have required additional equipment (tape recorders) and intrusion upon the interviewee (would the person consent to having his or her statement recorded?). That approach would have also raised the issue of storage and chain of custody of the recordings. Nonetheless, PILPG considered technology options to address the challenges confronting the mission.

Ultimately, the Rohingya mission was a hybrid of low technology (paper questionnaires) and more advanced technology (the

Galileo app). Not every documentation effort will be able to utilize smart phones and laptops, but even “low tech” missions are increasingly turning to computerized coding to analyze data and digitize files for security purposes. New software and applications can be immensely useful for such efforts.<sup>83</sup>

- *Be sure to know the end use of the data.* PILPG and the State Department had an agreement on data “ownership” and sharing arrangements. From the outset, it is important to determine who controls the information and physical documentation material. Documenters should also consider what happens to the data once the project ends: Where does it go? Who “owns” it? Who has access to it? How will it be stored? What is the impact of personal privacy rules on the use of the information? If possible, it is best to think through these issues at the beginning of a mission rather than the end.

**Finally, it is important for victims and witnesses to be heard and have their say.** To obtain true informed consent, they need to know how the information (or data for technology purposes) will be used. This is an essential part of the trust building between the investigator and the interviewee.

This is not the end to the story of the Rohingya.<sup>84</sup> The State Department has funded another documentation project among the Rohingya through the Global Initiative for Justice, Truth and

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83. PILPG and its partners have identified gaps in applicability to expediting or simplifying transitional justice processes as part of an ongoing project to develop a new documentation solution. There are challenges on both the documenters/civil society organization side and developers’ side to develop, establish, maintain accessible, and secure technology systems supportive of transitional justice. See PUB. INT’L L. POL’Y GRP. ET AL., HUMAN RIGHTS DOCUMENTATION BY CIVIL SOCIETY: TECHNOLOGICAL NEEDS, CHALLENGES & WORKFLOWS (2020).

84. As this article goes to print, Secretary of State Antony Blinken announced on March 21, 2022 the U.S. Government had concluded “members of the Burmese military committed genocide and crimes against humanity against Rohingya.” Antony J. Blinken, U.S. Sec’y of State, Genocide and Crimes Against Humanity in Burma, Address at the Holocaust Memorial Museum in Washington, D.C. (Mar. 21, 2022), <https://www.state.gov/secretary-antony-j-blinken-at-the-united-states-holocaust-memorial-museum/> [<https://perma.cc/Q3D3-7RWS>]. The finding was based on a review of multiple reports and analysis and included the Department’s own “rigorous fact finding.” *Id.* Secretary Blinken said the findings in the Department’s 2018 report, see DOCUMENTATION OF ATROCITIES IN NORTHERN RAKHINE STATE, *supra* note 8, which were based on the Rohingya Documentation Project conducted by PILPG, were a “key part” in arriving at his determination. *Id.*

Reconciliation.<sup>85</sup> This project started in January 2019 and aims to train and mentor the Rohingya community to document and share their stories about the violence and human rights violations they endured in Myanmar.<sup>86</sup> PILPG is proud to participate in that effort.

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85. *See Our Work*, GLOB. INITIATIVE FOR JUST., TRUTH & RECONCILIATION, <https://gijtr.org/our-work/> [https://perma.cc/G5SV-2R76].

86. *Documenting Human Rights Violations with Rohingya Communities*, INT'L COAL. OF SITES OF CONSCIENCE (2019), <https://www.sitesofconscience.org/en/2019/12/documenting-human-rights-violations-with-rohingya-communities/> [https://perma.cc/AN26-NCCQ].