



Human Rights Now

Investigative Report of Rohingya Refugee Camps in Bangladesh

**Rohingya Refugees Face Serious Human Rights Violations
in Myanmar and Bangladesh Refugee Camps**

12 April 2018



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I. Introduction

Human Rights Now (HRN), a Tokyo-based international human rights NGO, conducted a fact-finding mission in Kutupalong and Balukhali Rohingya refugee camps, the Sabrang entry point, and the surrounding areas in Cox's Bazar, Bangladesh in January 2018. Through interviews with Rohingya refugees, aid workers, local Bangladeshis, and others, the mission confirmed widespread human rights violations against the Rohingya in Myanmar, including actions amounting to genocide and crimes against humanity, violations of economic, social and cultural rights and civil and political rights. Furthermore, HRN found that many Rohingya continue to face obstacles to enjoying their rights in the refugee camps in Bangladesh.

As the situation in Myanmar is ongoing, and HRN's field mission was limited to a few days, the report should not be viewed as a comprehensive account of the Rohingya situation, but rather a small contribution to the increasing evidence of widespread and systematic violence against the Rohingya in Myanmar.

HRN expresses grave concern over the human rights situation in Myanmar and Bangladesh. We call for the Myanmar government to cease the ongoing human rights violations, and urge the international community to increase its efforts to support the Rohingya.

II. Background

The Rohingya are a Muslim ethnic minority that has been denied citizenship in Myanmar since 1982. An attack on a military outpost by a group of Rohingya rebels on 25 August 2017 led Myanmar security forces to launch a large-scale "clearance" operation targeting the Rohingya.¹ There are consistent reports of the use of force by military personnel and non-state actors against the Rohingya. The military operation is part of a continuous cycle of violence. Similar reports of widespread violence by security forces surfaced in 2016 after armed militants attacked the

¹ Nyan Hlaing Lynn, "President's Office designates northern Rakhine a 'military operations area'" 4 Sept. 2017, <https://frontiermyanmar.net/en/presidents-office-designates-northern-rakhine-a-military-operations-area>.

Myanmar security forces.² Since the violent crackdown in August 2017, nearly 700,000 Rohingya have fled to neighboring Bangladesh. It is currently estimated that an additional 1,000 Rohingya arrive in Bangladesh each week.³

a. Documented Violations

Reports document grave human rights abuses against the Rohingya by the Myanmar military and police and Buddhist extremists, and the “clearance” operations are described as the outcome of “considerable prior military planning and organization.”⁴ These violations include but are not limited to:

- Mass killings, including by beatings, gun shootings, burnings, and stabbings;
- Forced disappearances of men, women, and children as well as arbitrary mass detentions;
- Burning of at least 319 Rohingya villages;
- Looting and other destruction of property;
- Bulldozing razed villages and land previously owned by the Rohingya, as well as one of several uncovered Rohingya mass graves;
- Widespread beatings and torture;
- Widespread violent rape and other forms of sexual violence against women and girls;
- Acts of religious and ethnic discrimination such as burning mosques and Qurans;
- Deprivation of access to food and other means of livelihood, as well as to humanitarian access.⁵

² OHCHR, “Myanmar: UN expert warns of worsening rights situation after “lockdown” in Rakhine State,” 18 Nov. 2016,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20895&LangID=E>.

³ OHCHR, “Statement by Mr. Marzuki DARUSMAN, Chairperson of the Independent International Fact-Finding Mission on Myanmar, at the 37th session of the Human Rights Council,” 12 Mar. 2018, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22798&LangID=E>.

⁴ *Id.*

⁵ OHCHR, “Mission report of OHCHR rapid response mission to Cox’s Bazar, Bangladesh,” 11 Oct. 2017,

http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/MM/CXB/MissionSummaryFindingsOctober2017.pdf&action=default&DefaultItemOpen=1;

Security Council, “Amid ‘Humanitarian and Human Rights Nightmare’ in Myanmar, Secretary-General Urges Full Access for Aid, Safe Return of Displaced Rohingya, End to Military Operations,” 28 Sept.

2017, <https://www.un.org/press/en/2017/sc13012.doc.htm>; OHCHR, “Statement by Mr. Marzuki

b. Myanmar Government Actions

The Myanmar government has not responded in good faith to the global concern over the treatment of the Rohingya. Despite an overwhelming number of testimonies from refugees and displaced Rohingya and condemnations from the international community, Myanmar authorities have consistently denied the accusations and have barred the UN Independent International Fact-Finding Mission on Myanmar as well as UN Special Rapporteur Yanghee Lee from entering the country.⁶ Furthermore, Myanmar authorities have also arbitrarily arrested journalists Wa Lone and Kyaw Soe Oo on 12 December 2017 under the Official Secrets Act for reporting on the refugee situation in Rakhine State.⁷

With regard to the Rohingya refugees who fled to Bangladesh, the process of repatriating those refugees was put on hold by Bangladesh authorities in January 2018.⁸ Nevertheless, discussions between Bangladesh and Myanmar have commenced again to begin the first phase of Rohingya repatriation to Myanmar.⁹ There are serious concerns that the agreement may not fully ensure the voluntary and safe return of the refugees to a stable situation consistent with the principle of non-refoulement.¹⁰ UN Secretary General Antonio Guterres has pointed out the risk of a flawed return plan that would result in the relocation of Rohingya from refugee camps in Bangladesh to displacement camps in Myanmar.¹¹ UN High Commissioner

DARUSMAN,"

<http://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22798&LangID=E>.

⁶ OHCHR, "Independent International Fact Finding Mission on Myanmar concludes visit to Malaysia," 11 Dec. 2017,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22522&LangID=OHCHR>, "UN Special Rapporteur on Myanmar to visit Bangladesh and Thailand – 18 to 30 January," 16 Jan. 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22586&LangID=E>.

⁷ "Two Reuters Journalists Arrested In Myanmar, Face Official Secrets Charges", Reuters, 13 Dec. 2017, <https://www.reuters.com/article/us-myanmar-journalists/two-reuters-journalists-arrested-in-myanmar-face-official-secrets-charges-idUSKBN1E71CO>.

⁸ Cochrane, "Rohingya Repatriation Delayed by Bangladeshi Officials Just Hours Before It was Due to Begin." ABC News, 23 Jan. 2018, <http://www.abc.net.au/news/2018-01-23/bangladesh-delays-rohingya-repatriation-over-logistics/9350772>.

⁹ "Bangladesh, Myanmar discussing repatriation of Rohingyas on no-man's land," The Daily Star, 20 Feb. 2018, <http://www.thedailystar.net/rohingya-crisis/bangladesh-myanmar-discussing-rohingya-repatriation-no-man-land-1537462>.

¹⁰ UNHCR, "UNHCR Note on the Principle of Non-Refoulement," Refworld, Nov. 1997, <http://www.refworld.org/docid/438c6d972.html>.

¹¹ Paul and Lee, "Bangladesh Agrees with Myanmar to Complete Rohingya Return in Two Years",

for Refugees Filippo Grandi warned the UN Security Council that “conditions in Myanmar are not yet conducive” for voluntary repatriation, and that the “causes of their flight have not been addressed.”¹² The Independent International Fact-Finding Mission on Myanmar remarked, “It is difficult to see how those who returned [could] rebuild their past lives,” and that the Myanmar authorities are not “ensuring that the return is voluntary, safe and dignified—with respect for human rights,” nor allowing the international community to do so.¹³

c. International Community Reactions and Recommendations

On 12 March 2018, the Independent International Fact-Finding Mission on Myanmar stated that the information gathered “points at human rights violations of the most serious kind, in all likelihood amounting to crimes under international law.”¹⁴ The UN Secretary-General, UN Assistant Secretary-General, and UN High Commissioner for Human Rights have characterized the targeting of the Rohingya as ethnic cleansing.¹⁵ The UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein stated on 7 March 2018 that the OHCHR “has strong suspicions that acts of genocide may have taken place,”¹⁶ and UN Special Rapporteur Yanghee Lee has criticized Myanmar as showing “hallmarks of genocide.”¹⁷ On 5 December 2017, the

Reuters, 16 Jan. 2018, <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/bangladesh-agrees-with-myanmar-to-complete-rohingya-return-in-two-years-idUSKBN1F50I2>.

¹² UNHCR, “Restoration of rights key to Myanmar refugee return, UNHCR’s Grandi says,” 13 Feb. 2018, <http://www.unhcr.org/news/latest/2018/2/5a82feb94/restoration-rights-key-myanmar-refugee-return-unhcrs-grandi-says.html>.

¹³ OHCHR, “Statement by Mr. Marzuki DARUSMAN.”

¹⁴ *Id.*

¹⁵ “Apparent ‘Ethnic Cleansing’ Now Unfolding in Myanmar, U.N. Says,” NPR, 11 Sept. 2017, <http://www.npr.org/sections/thetwo-way/2017/09/11/550114414/ethnic-cleansing-now-unfolding-under-a-nobel-peace-prize-winner-u-n-says>; Safi, “Myanmar Treatment of Rohingya Looks Like ‘Textbook Ethnic Cleansing,’ Says UN,” The Guardian, 11 Sept. 2017, https://www.theguardian.com/world/2017/sep/11/un-myanmars-treatment-of-rohingya-textbook-example-of-ethnic-cleansing?CMP=share_btn_tw; OHCHR, “Myanmar: Senior UN human rights official decries continued ethnic cleansing in Rakhine State,” 6 Mar. 2018, <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22761&LangID=E>.

¹⁶ OHCHR, “High Commissioner’s global update of human rights concerns,” 7 Mar. 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22772&LangID=E>.

¹⁷ Miller, Jonathan, “UN Special Envoy claims Aung San Suu Kyi could be guilty of crimes against humanity,” Channel 4 News, 14 Feb. 2018, <https://www.channel4.com/news/un-special-envoy-claims-aung-san-suukyi-could-be-guilty-of-crimes-against-humanity>.

Human Rights Council adopted a resolution condemning “the alleged systematic and gross violations of human rights and abuses committed in Myanmar.”¹⁸

On 24 December 2017, the UN General Assembly adopted a resolution, opposed by Myanmar and 9 other countries, urging the Myanmar government to stop the military campaign against the Rohingya, allow for the safe return of the refugees, grant full citizenship rights to the Rohingya, and allow access for aid workers. It further called for the appointment of a UN special envoy.¹⁹

III. Methodology

HRN and HRN supporters conducted group and in-depth individual interviews from 19 January to 23 January 2018 with over 170 Rohingya refugees, foreign and local medical professionals and NGO staff, members of the Bangladeshi military, and other Bangladeshi residents living along the Bangladesh-Myanmar border. Interviews with nearly 160 Rohingya refugees, most of whom fled after violence erupted in August 2017, were conducted in English directly or through English-Rohingya or Japanese-Rohingya interpreters. Large group interviews were conducted at two schools, one in Kutupalong and one in Balukhali; the former was conducted on a holiday gathering of men and children, and the latter was in session. In-depth interviews were conducted with 15 Rohingya refugees (10 men and boys and 5 women), 11 medical and NGO staff, and 3 local fishermen.

IV. Findings & Legal Implications

a. Situation Inside Myanmar

i. HRN's Findings

HRN's interviews confirm and expand upon the reported acts of persecution by the Myanmar military. Rohingya interviewees recounted widespread killing, aerial attacks, torture, arbitrary arrests, rape, and looting and burning of houses and entire villages. The following summaries of interviews illustrate this point:

¹⁸ Human Rights Council, “Resolution adopted by the Human Rights Council on 5 December 2017”, A/HRC/RES/S-27/1, 8 Dec. 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/358/08/PDF/G1735808.pdf?OpenElement>.

¹⁹ “U.N. adopts resolution slamming Myanmar crackdown in Rohingya, defies opposition from China and Russia,” Japan Times, 25 Dec. 2017, <https://www.japantimes.co.jp/news/2017/12/25/asia-pacific/social-issues-asia-pacific/u-n-adopts-resolution-slamming-myanmar-crackdown-rohingya-defies-opposition-china-russia/>.



Photo 1: A refugee showing a gunshot wound in his left arm.

Male, age 35, Kutupalong (photo 1)

A man recounted simultaneous attacks on his village by the military, police, and Ma Ba Tha monks. After an aerial bombing by the military, the police with guns and the Ma Ba Tha with knives started attacking and killing the fleeing villagers, shouting, "You are illegal aliens." "They locked the doors to the mosque while people were inside praying and bombed it. They poured gasoline around it and set it on fire. There were children in there as young as 5 years old," he said. "They burned the Quran in front of our eyes," he continued, and recounted orders to not leave their homes, and people entering and killing those inside. "If you escaped, they would shoot you... They killed women, children, and the elderly. It smelled." They killed his mother and father. Like several other refugees HRN interviewed, he fled separately from his family by hiding in a crate. He was shot in the arm while escaping. When crossing the Myanmar border into Bangladesh via the Naf River, he witnessed other fleeing Rohingya drowning when an aiding fisherman's boat malfunctioned. "Many [of those who drowned] were women and children," he remarked.

Male, age 15, Kutupalong

Furthermore, a boy cooking in a Kutupalong snack shop told HRN that his brother and father had both been killed in Myanmar, and that his entire village and house were burned. He was prevented from going to school, and escaped in the night with his mother and three sisters, but with no money.



Photo 2: A young woman who was separated from her remaining living family members when her village was attacked.

Female, age 18, Sabrang entry point (photo 2)

A woman recounted losing her parents to the violence that erupted in 2016, but only fled her village in 2017 after it was attacked. She recounted that the military and local monks came to her and the neighboring villages, looted the houses of valuables, killed many of the men in the houses, and arrested many of the villagers. She was separated from her siblings, and heard that they also fled to Bangladesh, but has not been able to hear from them.

Male, age 31, Kutupalong

A man recounted being arrested by the military, reportedly under suspicion of being a member of the insurgent Arakan Rohingya Salvation Army (ARSA). He reported that the authorities realized he was not ARSA, but they nevertheless imprisoned him for six months. 900 people, including children

as young as 12 or 13 years of age, were in the same prison, often without release. He reported torture such as being hit with rods and being denied adequate amounts of food and hygiene. “Every one or two weeks, someone died from sickness or torture,” he recounted. About 150 prisoners were women and girls. “When they air-bombed the village, the men were able to escape, but the women couldn’t. They raped, killed, or imprisoned the women left behind... They told the women, because they tried to escape, ‘Your husband is a member of ARSA, so make him come here and we’ll trade you for him,’ but everyone was so scared, and no one went.” HRN also heard cases of Rohingya being imprisoned for ransom to their families. The man fled with family members two months after he was released, in September 2017. They decided to flee after hearing of many instances of neighbors being raped and killed.

Female, age 70, Kutupalong

“I didn’t know if he was dead or alive,” the mother of the 31-year-old man (above), stated regarding the time of his arrest. She told HRN that one of her daughters also fled with her married family, but one is still remaining in Myanmar unable to flee. “I heard there were village burnings, so I am worried about her,” she stated. She heard of many instances of rapes and killings in neighboring villages, and knew she had to flee after her son was released.

Female, age 55, Kutupalong

A woman said that one of her sons was arrested by the police, and she is not sure if he is dead or alive. Her daughter’s husband was likewise arrested. She fled in early September 2017 to Bangladesh after her village was attacked. The perpetrators used aerial attacks, injuring and killing many of her relatives and neighbors, and burned down all of the buildings. She also mentioned hearing of many rapes in nearby villages. She fled on foot, and as she was with five small children, the journey took four days longer than usual. They had no water or food with them.

Male, age unknown, Kutupalong

A young man recounted perpetrators arbitrarily arresting Rohingya, as well as entering houses and attacking those inside. He was shot in the leg in his house, and escaped by hiding in a crate and being carried out of his village.

Male, age 29, Kutupalong

A man recounted a similar situation. He escaped on foot with his family after the military looted and burned houses and shot villagers. They had to flee through the mountains during the rainy season, and could not take anything with them, including food or rain cover.



Photo 3: Students surround a young refugee who witnessed her father being shot and was also shot in the leg.



Photo 4: “They slit my mother’s throat in front of me,” a young boy testifies.

Male & female, ages 4-15²⁰ (children), age unknown (schoolteacher), Kutupalong & Balukhali

At least five children interviewed in Kutupalong and Balukhali schools stated that at least one of their parents had been killed in the violence, and one of the boys was shot in the leg while fleeing. Of another young student, a teacher explained, “They shot her father, and then she got shot in the leg” (photo 3). A boy aged five or six years old stated, “They slit my mother’s throat in front of me. She may have been raped, but I’m not sure. They were in a different room then” (photo 4). Furthermore, one teacher at Kutupalong lost 11 family members, including his sons and brothers, to the violence.

Women’s group interview, age 45 & unknown, Kutupalong

A HRN supporter interviewed a group of 10 women from Kharang Khali Thana Bullingong Village. An in-depth interview was conducted with one woman,²¹ who recounted her husband and her 25-year-old son being

²⁰ Ages are estimated by HRN where unknown.

²¹ Age 45. The ages of the nine other women are unknown.

arbitrarily detained by the military. “I don’t know if they are alive or dead. My husband and I were burning waste outside our shop when the military came and asked, ‘Who gave you permission to burn here?’ They charged us four chickens, but we only could give them two, so they took my husband and son. I had no way to feed my five other children, so I had to beg door to door. I was told that they would be released soon, but they never were. When I went to the military station to talk to them, the military told me they didn’t know where they were. They then arrested me for two days and beat me. They forced my relatives to pay them 50,000 taka²² to release me.” She escaped with her five children and neighbors but says her mother was too old to flee and is still in Myanmar.

The group of women recounted monks and military attacking the village. They killed people of all ages, including the young and elderly, set fire to buildings, and arrested civilians. One woman’s husband was shot while fleeing and died. The husband of another woman was kidnapped and arrested while walking on a farm; she believes him to be dead. Another woman’s husband was killed by the military and monks while he was on a farm. One woman was arrested for multiple days and was raped during that time. She also witnessed the military killing other prisoners.

In addition to interviewing refugees about the situation inside Myanmar, HRN and HRN supporters were able to speak to physical and mental medical care staff treating refugees. The staff were able to speak to the atrocities happening in Myanmar:

Mental health specialist, Multi-Sectoral Programme on Violence Against Women, Kutupalong

A HRN supporter interviewed a staff member at a mental health service center for the Multi-Sectoral Programme on Violence Against Women in Kutupalong. Among the clients were a woman with a serious brain injury, who lost 19 people of her family, including her husband and 3 children, and a man who was imprisoned in a Myanmar jail. There were 7 clients participating in a morning therapy session; among them, one woman was raped, and one’s husband and son were captured by the Myanmar military.

²² Roughly 600 USD.

Doctor, Malnutrition health care center, Kutupalong

Furthermore, a doctor at a malnutrition health care center in Kutupalong stated that since starting in December, she had seen at least 70 or 75 women who were victims of rape and wanting abortions. Last year she was working in a hospital in Cox's Bazar and saw many people who were injured by guns, knives, or fire, among them many women and children.

HRN also spoke to several local fishermen at the Myanmar-Bangladesh border. The fishermen confirmed the unstable situation inside Myanmar:

Fishermen (3), Sabrong entry point

"We can hear bombs and gunfire and see smoke on the Myanmar side," one fisherman stated. "As a human being, it is painful to see that, but we can't do anything else [besides helping the refugees cross the river in our boats]." They last helped refugees cross about a month ago. The fishermen reported being injured by slipping in the mud during the rainy season, and also noted that they had filled the boats to 200% capacity during the height of the crisis.

Fisherman, border control station

Another fisherman at the border control station stated that he has heard bombs and gunfire on the Myanmar side all hours of the day and last saw fire and smoke about one week previously.



Photo 5: A boat of a fisherman like the ones used to help refugees cross the Naf River.

ii. Legal Implications

1. International Criminal Law

The Myanmar government's actions may amount to crimes against humanity and genocide under international criminal law.

a. Crimes against Humanity

The acts of the Myanmar military may amount to crimes against humanity, which entail widespread or systematic crimes such as murder, extermination, forcible transfer of population, torture, rape, persecution, and inhumane acts causing great suffering.²³

Interviewee accounts with Rohingya refugees and international aid personnel, combined with other reports of violence against the Rohingya people such as the Associated Press' 1 February 2018 confirmation of five previously unreported mass graves containing Rohingya persons and documentation of the August 2017 military clearance operations, support such a finding. Reports include the Myanmar military's targeted killing of the Rohingya in the form of aerial bombings, setting fire to villages, and village raids resulting in fatal shootings and knife stabbings. If verified, these support a finding of widespread and systematic violence against Rohingya, including murder, extermination, torture, and inhumane acts causing great suffering, which would constitute crimes against humanity.

Additionally, the woman in the group interview, the 31-year-old man's account of the imprisonment and rape of women, the 70-year-old and 55-year-old women's accounts, and the Multi-Sectoral Programme on Violence Against Women and malnutrition health care center staff experiences all support a finding of widespread and systematic rape against the Rohingya. The widespread or systematic perpetration of rape is also a recognized crime against humanity.

b. Genocide

The actions of the Myanmar military against the Rohingya could possibly amount to genocide, as defined under both the 1948 Genocide Convention and the Rome Statute of the International Criminal Court.²⁴

The targeted killings described above in the "Crimes Against Humanity" section show that the Myanmar military and police acted within the conception of "killing members of the group" under the Genocide Convention and Rome Statute.²⁵

²³ Rome Statute of the International Criminal Court (hereinafter "Rome Statute"), Article VII.

²⁴ Convention on the Prevention and Punishment of the Crime of Genocide (*hereinafter* "Genocide Convention"), Article II. Rome Statute, *id.*, Article VI.

Even if the acts of targeted killing did not result in actual fatalities (which is not the case, given the documentation of Rohingya deaths), those acts still may cause serious bodily or mental harm or amount to a deliberate infliction of conditions in life calculated to bring about physical destruction of the Rohingya—both acts recognized under international law that could amount to genocide.²⁶

The interviewees' accounts, when considered in the context of consistent reports of mass killings, the burning down of abandoned Rohingya villages so that refugees cannot return to their prior homes, and other violence taken against the Rohingya as described above in the introduction, could support a finding of an "intent to destroy" an ethnic group, in accordance with Article II of the Genocide Convention.

As a state party to Genocide Convention, Myanmar has an obligation to prevent and punish perpetrators of genocide, including its individuals and groups acting in an official capacity.

2. International Human Rights Law

a. Economic, Social, and Cultural Rights

The Myanmar government's actions toward the Rohingya have also resulted in violations of several rights protected under the International Convention on Economic, Social, and Cultural Rights (ICESCR). These include the protection of the family unit as "the natural and fundamental group unit of society" (ICESCR Article 10), the right to an adequate standard of living (ICESCR Article 11), and the right to physical and mental health (ICESCR Article 12).²⁷ These rights are also specially protected as children's rights under the Convention on the Rights of the Child, under the Preamble, Article 27, and Article 24, respectively.²⁸

HRN's interviews with the Rohingya refugees confirmed that the Myanmar government's targeted attacks against the Rohingya have consistently broken up their families. For example, the five children interviewed in Kutupalong and Balukhali schools all lost family members to violence targeted at the Rohingya.

²⁵ Genocide Convention, Article II(a).

²⁶ *Id.* at Article II(b) and (c).

²⁷ International Convention on Economic, Social and Cultural Rights (*hereinafter* "ICESCR"), Article 10(1), 11(1), and 12(1).

²⁸ Convention on the Rights of the Child (*hereinafter*, "CRC"), Preamble, Article 27 and 24.

The interviews also confirmed that the Myanmar's actions are denying the Rohingya the right to an adequate standard of living and to physical and mental health. The targeted killings, arbitrary detention, torture, and hostility against the Rohingya as practicing Muslims creates an atmosphere of instability and danger that undermines their mental and physical well-being.

b. Civil and Political Rights

Myanmar has a duty to respect and protect civil and political rights established as customary international law under the Universal Declaration of Human Rights (UDHR).²⁹

UDHR Article 3 guarantees the right to life, liberty, and security of person, the most urgent civil and political right related to the situation recounted by the Rohingya interviewees. All reports of killings of and acts of violence against Rohingya, if verified, are clear violations of this non-derogable duty which Myanmar must respect and protect.

UDHR Article 9 further guarantees the right to freedom from arbitrary detention. The 31-year-old man's experience of being detained for 6 months under suspicion of being an ARSA supporter, as well as his account of the imprisonment of women for being married to suspected ARSA members shows that the Myanmar government is subjecting the Rohingya to arbitrary detention, in violation of the Rohingya's right to liberty and security of person. The women's group interview, in which the 45-year-old woman recounted the detention of her husband and son, supports a finding of the practice of arbitrary detention by the Myanmar government as well.

Other civil and political rights implicated by the Rohingya refugees' situation include the right to movement and freedom to choose residence (UDHR Article 13(1)) and the protection of the family unit (UDHR Article 16(3); also ICESCR Article 10).³⁰

²⁹ See explanation of the debate regarding the Universal Declaration of Human Rights' status as customary international law at Max Planck Encyclopedia of International Law, "Universal Declaration of Human Rights," Oxford University Press, available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e887>, paras. 14-16.

³⁰ ICCPR, Article 12; Universal Declaration of Human Rights (*hereinafter*, "UDHR"), Article 13(1); ICCPR, Article 23; UDHR Article 16(3).

b. Situation In Refugee Camps

i. HRN's Findings

HRN's visit to the refugee camps in Bangladesh revealed that the Rohingya continue to face deprivation of their human rights after they flee from Myanmar.

1. Health and Sanitation Issues

In interviews with clinics and other organizations operated by international governments, Bangladeshi NGOs, and international NGOs, HRN found serious health and sanitation issues in the camps. Respiratory illnesses, such as pneumonia and bronchitis, as well as skin diseases, including scabies and ringworm, were common concerns. Other concerns mentioned included HIV, hepatitis, the common cold, and other chronic diseases. The TMSS medical hospital told HRN they provided primary care to about 300 patients per day, the majority being women and children. Multiple organizations cited the lack of proper sanitation habits (including hand washing techniques and how to use a toilet) and unsafe water in nearby rivers exacerbated these issues, although the organizations were making efforts to promote health education in the Rohingya communities. One 45-year-old Rohingya woman (see IV.a.i) remarked that a challenge to living in the camp is poor water quality and sanitation.



Photo 6: Various diseases are rife and easily communicable in the camps.

Several organizations, including the International Office for Migration (IOM), Oxfam, and Doctors Without Borders, were also combatting diphtheria and cholera epidemics. A representative from a clinic operated by the health sector of the IOM said that the clinic received about 30 to 40 patients a day; roughly half were cases of diphtheria, and half suffering from other respiratory tract infections. As diphtheria is a communicable disease, it spreads quickly within families and is easily transmittable in the densely populated camps. Furthermore, two representatives from Oxfam cited their primary activities included providing education sessions about diphtheria, cholera, and other water-born diseases, as well as proper hand washing technique, to help combat the spread of the illnesses.



Photo 7: Despite efforts, there are still many sanitation issues in the camps.

Many Rohingya suffer from psychological issues as well. The spokesperson for the Mental Health Service Centre run by the Multi-Sectoral Programme on Violence Against Women (see IV.a.i) cited depression, PTSD, and anxiety disorders to be common. Sufficient awareness about mental health is also lacking. The spokesperson stated that when the patients first arrived, they had serious trauma, but months later they begin having anxiety from day-to-day issues, housing concerns, or a lack of rations, nutrition, or money. Boredom from being unable to work or go to school causes mental strain on many refugees interviewed by HRN. The 55-year-old female refugee (see IV.a.i) stated, “I feel I am just existing here. If it were for a short period, it would be fine, but we won't be able to go home soon. I don't know how to continue living here.”

2. Population Density in Camps and Impact on Access to Services

Representatives from the aid organizations also mentioned that the population density in the refugee camps undermines the well-being of the Rohingya. For example, they stressed that their efforts to combat the diseases noted above

required the entire Rohingya refugee community to be conscious of proper hygiene maintenance.



Photo 8: Population density is a serious concern in the refugee camps.

Additionally, while free medical services and free medicine are available, the high population density in the camps hampers their accessibility. The 55-year-old Rohingya woman (see IV.a.i) stated that while she would like to receive medicine for her illness, the free clinics are very crowded. She explained that it takes one to two hours to receive one or two days' worth of medicine, and that she would return home in worse condition than when she left.

The refugees also do not have proper clothing or shelter. Many refugees, including the children at the Balukhali school (see IV.a.i) cited not having enough clothes because they fled with only the clothes on their back, and the camps have not supplied enough blankets or winter clothing. The temporary houses do not have proper flooring, only mats, which adds to the cold from the winter. A 45-year-old woman (see IV.a.i) as well as the other women in the group interview mentioned that their houses are too small for their families.

Furthermore, the woman said that the Bangladesh army and International Organization for Migration provide clothes, bamboo, mats, and mosquito protection goods, but they are not standardized or sufficient in quantity. When asked what items she needs, she mentioned plates, more oil, soap, clothes, blankets, and mosquito protection goods. She also said that she does not receive enough fuel to make fires.

3. Nutrition

Nutrition was also a frequent area of concern. Because the food rations consist only of rice and beans, and the refugees are unable to obtain a variety of nutrients. The 55-year-old woman (see IV.a.i) said that she is prone to illness because of an imbalanced diet. Another 70-year-old male refugee (see IV.b.i.7) informed HRN that families are given 25 kilograms of rice a month, which is not enough for larger families. The 45-year-old woman (see IV.a.i) explained that upon arrival, families were provided with three liters of oil, a half kilogram of salt, two kilograms of *daal*, and a half kilogram of sugar, meant to last one month. She confirmed that afterwards families were only given 25 kilograms of rice every 15 days, but that often they were given this ration only once a month. Protein is sometimes provided by other organizations, but it is not enough. She would like to eat more vegetables and fish, but the market is too far, and she has no money or opportunities to make money to purchase food. The other women in the group interview agreed that lack of food is a major challenge to living in the camps.

4. Limited Livelihood

The Rohingya are denied access to money and are not permitted to work by the Bangladeshi authorities, so many resort to selling items distributed to them on black markets in order to purchase other necessities and goods. HRN witnessed one such black market right outside the Kutupalong camp selling a variety of distributed goods, including UNHCR mats for as low as 200 taka (\$2.40 USD). The doctor at a malnutrition health care center (see IV.a.i) acknowledged resorting to black markets as an issue, and expressed her worries that the Rohingya will resort to criminal behavior as a means to make a living.



Photo 9: UNHCR mats being sold on the black market.

5. Limited Access to Education

While many refugees (both adults and children) expressed a desire to receive education, and some zones have access to schools, access to education is not uniform across the camps. A group of teachers, with the support of NGOs, started a school in Kutupalong themselves. However, they mentioned that they cannot name the school and make it official, as they would then be required to register it with the Bangladeshi government and likely be turned down. Students at a Balukhali school (see IV.a.i) stated that they lack basic items such as sufficient notebooks, pencils, and textbooks. “We have a lot of time here not doing anything, so we would like to use it to study,” multiple groups of refugees stated. “We want to study languages like English and Burmese so we can tell our stories of what we experienced in our own words, and tell the people in Burma that we are being unfairly discriminated against.”

6. Environmental Conditions

Environmental conditions make the camps prone to natural disasters. The area of much of the camps used to be jungle, but more and more trees were cut down to create temporary housing. Some Rohingya resort to entering the jungles to illegally cut trees, which they then sell to earn money. This creates a variety of environmental concerns. Much of the camps are in danger of landslides and flooding from monsoons and typhoons. The dry season could see rise to more fires, according to a spokesperson from the Adventist Development and Relief Agency (ADRA), which would spread quickly in the densely packed camps of wooden housing. The camps have furthermore destroyed the living environment and blocked the space where elephants often roamed, leading elephants to sometimes enter into the camps; while HRN was in Cox's Bazar, one man was killed and a woman's face crushed after an elephant entered their house.



Photo 10: The camps were previously jungle, and are prone to various natural disasters, including landslides and flooding.

7. Repatriation

All of the refugees HRN interviewed expressed strong opposition to repatriation to Myanmar if conditions to guarantee their safety and dignity were not met. These included a cessation of the violence, as well as a guarantee of citizenship, recognition as an ethnic minority, freedom of movement, access to education, and the return of land and homes that had been seized by the Myanmar government after their departure. Most expressed a hypothetical desire to return, but none expressed optimism about their situations. The following quotes come from HRN's field interviews with the Rohingya refugees:

Female, age 55, Kutupalong (see IV.a.i)

"I want to go back and live on my rice fields. But I want citizenship. I want them to return my land and my house. Without that, I will not go back. I will probably die here. If the [Myanmar] government treats us well, I'd want to go back."

Male, age 29, Kutupalong (see IV.a.i)

"It's too dangerous [to go back]." He mentioned that Rohingya were continuing to flee to Bangladesh. "They are trying to [send us back to Myanmar and] put us in controlled camps. We don't [want] that."

Male, age 37, Kutupalong

A man stated that he would like to continue living in Bangladesh because he has an identity card there, while he has no nationality or identity in Myanmar.

Female, age 18, Sabrang entry point (see IV.a.i)

"I want the Myanmar government to receive us with dignity and full rights, and then I would like to go back."

Male, age 35, Kutupalong (see IV.a.i)

"Even if life here is tough, it's safe. I want the UN, the UNHCR, and [international] governments to put pressure on the [Myanmar] government."

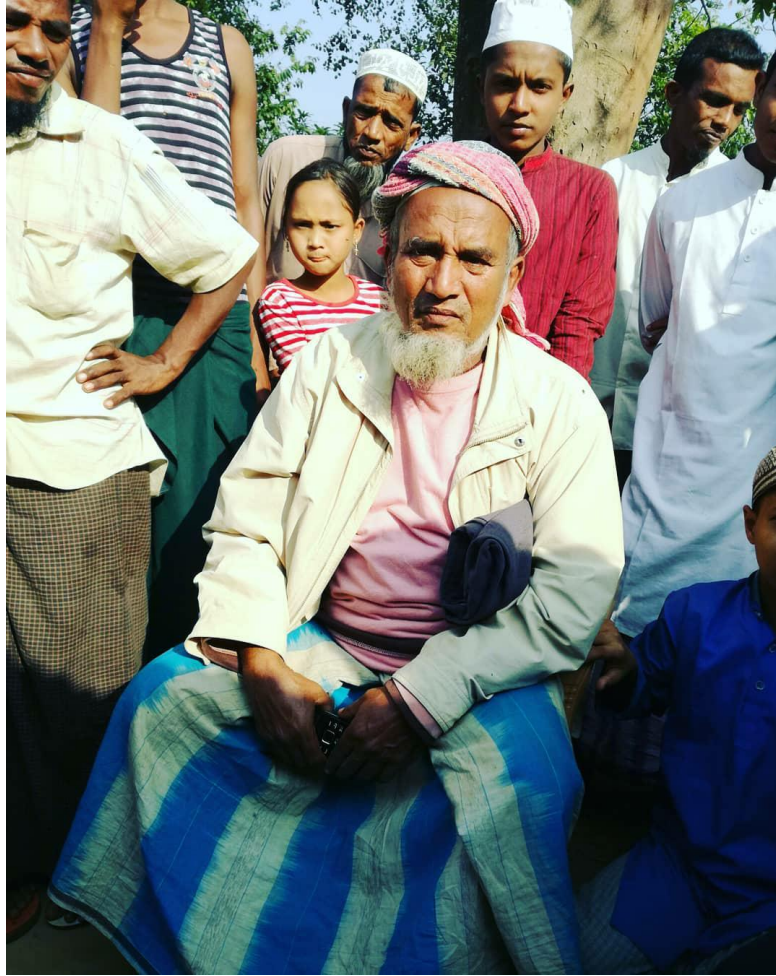


Photo 11: All of the refugees HRN spoke to were against repatriation without first finding sustainable solutions.

Male, 70, Kutupalong (photo 11)

“It’s part of their game.” He compared the crisis to domestic violence: “[If my daughter were being beaten by her husband,] I would not [send her back to] him again without a solution... Now we are the daughters of Bangladesh.” He said that he would only return with the guarantee of his full fundamental rights and citizenship, with full sincerity that it was not a trap by the Myanmar government to further persecute the Rohingya. The international community needs to ensure long-term solutions.

Women’s group, ages 45 & unknown, Kutupalong (see IV.a.i)

“We all want to go back, but only if we are given our full dignity and citizenship as Rohingya, but we are afraid of returning without any solution. It is at least safe here, unlike in Myanmar where the military kidnap, arrest, and kill people. We can sleep here because there is no tension. If they tried to

return us without a solution, it would be better for us to be killed here in Bangladesh. Let them kill us here.”

ii. Legal Implications

1. International Human Rights Law

a. Economic, Social, and Cultural Rights

i. Right to Physical and Mental Health and Adequate Standard of living.

First, the international community is not adequately providing services to support the Rohingya refugees’ right to physical and mental health. To expand upon the right to enjoy the “highest attainable standard of physical and mental health,” the ICESCR notes that States Parties should take steps to “[create] conditions which would assure to all medical service and medical attention in the event of sickness.”³¹ Similarly, the ICESCR also recognizes the right to an adequate standard of living, “including adequate food, clothing and housing, and to the continuous improvement of living conditions.”³²

The right to physical and mental health is also specially protected as a children’s right under several provisions of the Convention on the Rights of the Child. For example, Article 24 protects the right to the highest attainable standard of health and access to health care services.³³ Similarly, Article 27 of the CRC guarantees the right of every child to “a standard of living adequate for the child’s mental, spiritual, moral and social development.”³⁴ Additionally, the Convention guarantees protection from all forms of physical and mental violence.³⁵

The inability of the refugee camps to fully service the Rohingya with medical services, proper nutrition, and adequate housing shows that the international community is falling short in its obligations under the ICESCR.

³¹ ICESCR, Article 12(d).

³² ICESCR, Article 11(1).

³³ Convention on the Rights of the Child (*hereinafter*, “CRC”), Article 24.

³⁴ *Id.* at Article 27.

³⁵ *Id.* at Article 19.

b. Children's Rights

The international community is also not fulfilling its obligations to protect the Rohingya child refugees. The Convention on the Rights of the Child explicitly requires that states “take appropriate measures” with regards to child refugees to ensure that they still enjoy the rights protected under the CRC and the broader body of human rights law.³⁶ Aside from the rights to health and adequate standard of living, noted above, there are a few duties particular to the protection of the child that states are not implementing. Primarily, this entails protecting the child’s right to education under CRC Article 28.

The difficulty in establishing official schooling in the camps, as well as the dearth of basic school supplies, suggests that Bangladesh and the broader international community can do more to fulfil their obligations to the Rohingya refugees.

2. Refugee Law

HRN is also concerned that plans to repatriate Rohingya may not align with state obligations under refugee law. In particular, concerns have been raised that the repatriation agreement between the Myanmar and Bangladesh governments may not fully ensure the voluntary and safe return of the refugees to a stable situation consistent with the principle of non-refoulement, recognized as customary international law.³⁷ As discussed in the Background section, above, the UN Secretary General has noted that the Rohingya may be moved from refugee camps in Bangladesh to closed camps in Myanmar.³⁸ Additionally, the repatriation solution proposed by Myanmar does not offer long term solutions, such as citizenship and housing, to the Rohingya. Moreover, authorities have rejected opportunities to collaborate with the UNHCR and IOM to craft a repatriation process that could comply with the obligation to uphold non-refoulement.

As a side note, as mentioned above, Myanmar’s policies are also inconsistent with UDHR Article 13(a) addressing the freedom of movement of the Rohingya.

³⁶ CRC, Article 22.

³⁷ UNHCR, “UNHCR Note on the Principle of Non-Refoulement,” Refworld, Nov. 1997, <http://www.refworld.org/docid/438c6d972.html>.

³⁸ Paul and Lee, “Bangladesh Agrees with Myanmar to Complete Rohingya Return in Two Years”, Reuters, 16 Jan. 2018, <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/bangladesh-agrees-with-myanmar-to-complete-rohingya-return-in-two-years-idUSKBN1F50I2>.

Specifically, the policy requiring the Rohingya to produce official documentation upon repatriation will likely hamper the Rohingya's ability to return to their homes in Myanmar, due to their lack of citizenship status, noted above.

HRN's interviews with the Rohingya refugees confirmed the possibility that many Rohingya may be forced to return to Myanmar against their volition. For example, the 55-year-old woman, the 29-year-old man, and the 70-year-old man, all expressed reluctance to return to Myanmar unless they had guarantees of certain rights (i.e. citizenship, living freely outside of a camp, and citizenship with fundamental rights, respectively). The 37-year-old man and the 35-year-old man both mentioned concern for lack of citizenship as a reason they do not want to return to Myanmar. Given the interviewees' explicit expressions of fear and reluctance to return to Myanmar, HRN is skeptical that a repatriation process that does not provide comprehensive protection of the Rohingya rights would be in compliance with international legal standards regarding the treatment of refugees.

V. Recommendations

Human Rights Now is gravely concerned with the allegations of systematic and gross violations of human rights and humanitarian law directed against Rohingya in Myanmar and with the urgency of the situation of displaced Rohingya. The Burmese military's atrocities in Rakhine State include summary executions, rape, expulsion and the mass burning of villages. These abuses amount to crimes against humanity and resulted in widespread deaths and the displacement of over 650,000 Rohingya.

Despite the severity and scale of the violations, there is a culture of pervasive impunity for these crimes which the Myanmar government has failed to address. After HRN conducted field research in the Bangladesh refugee camps, the UN called for a full and independent investigation of the reports of human rights violations. Credible and independent criminal justice mechanisms should be set up to hold those responsible for these crimes accountable. HRN echoes this call and urges the following recommendations be taken to address the situation.

To Myanmar Military and Civilian Authorities:

- Immediately cease all military operations and human rights abuses in Rakhine State.
- Release journalists Wa Lone and Kyaw Soe Oo for reporting on the massacre of Rohingya Muslims.
- Conduct independent investigations of alleged crimes and hold accountable any official or non-state actor responsible for criminal acts in an independent and credible criminal justice process, including acts related to the reported mass graves.
- Allow unfettered access to all relevant international officers and organizations in affected areas of Myanmar and work alongside international actors to ensure the safe and voluntary return of refugees to Myanmar and their access to humanitarian aid.
- Restore or provide full compensation for stolen or destroyed property of Rohingya.
- Allow the fact-finding mission set in place by the Human Rights Council in March 2017 to enter Myanmar and investigate the alleged abuses.³⁹
- Implement the Governmental Advisory Commission's recommendations released in August 2017 in order to solve the structural issues in Myanmar.
- Reexamine the 1982 Nationality Law to give proper citizenship to the Rohingya population and respect their civil liberties.

To the UN Security Council:

- Refer the Rohingya situation in Myanmar to the International Criminal Court to ensure an independent and credible criminal justice process to hold violating parties accountable.
- Impose a comprehensive arms embargo on Myanmar that covers direct and indirect supply, sale or transfer of all weapons and other military security equipment.
- Impose targeted financial sanctions against senior officials responsible for serious violations international human rights and international criminal law.

³⁹ OHCHR, "Independent international fact-finding mission on Myanmar", 24 Mar 2017, <http://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/Index.aspx>.

- Demand the Myanmar government should immediately halt the demolition of Rohingya villages, which should be treated as crime scenes that should be preserved until the UN Fact-Finding Mission is given access to the area to carry out investigations.
- Demand the Myanmar government immediately ceases its land-grabbing practice and accommodate the return of Rohingya refugees in line with the standards of refugee and human rights law.

To the International Community:

- Dedicate greater financial and other resources to providing for the well-being of displaced Rohingya in refugee camps and other locations.
- Encourage the governments of Myanmar and Bangladesh to ensure that implementation of the repatriation scheme for displaced Rohingya is sustainable and includes access to citizenship and an adequate standard of living outside of Rohingya camps.