



On the Margins: Women and Minors in Lawless Spaces

Part II

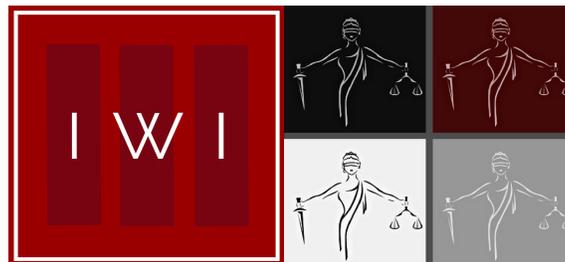
The Plight of the Rohingya

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Abstract

Rohingya men, women and children face severe discrimination and violence in Myanmar. The Rohingya are routinely denied access to justice, and impunity for serious human rights violations persists. Since the 1970s, several cycles of attacks prompted an exodus of Rohingya to Bangladesh, followed by premature repatriation and renewed persecution in Myanmar. The latest attacks have forced over 700,000 Rohingya into Bangladesh. Policies ensuring Rohingya's safety and dignity have not been implemented, resulting in increased vulnerability and deadly violence. In order to develop appropriate solutions that effectively repatriate and protect refugees, the root causes of the crises must be understood. This report investigates institutional discrimination against the Rohingya, brutal violence perpetrated by security forces with impunity, particular vulnerabilities of refugee women and children, and risks associated with refugees' premature return to Myanmar. Alternative, sustainable solutions must be implemented to ensure that the Rohingya can rebuild their lives with hope for a dignified future.

1. Introduction

Two-thirds of the world's refugees come from just five countries: Syria, Afghanistan, South Sudan, Somalia and Myanmar. In most cases, refugees cannot return home or are afraid to do so because of persecution, war or violence in their country of origin.¹ In Myanmar, the current dire situation is characterised by a complex combination of vulnerabilities caused by natural disasters, food and nutrition insecurities, human rights violations, armed conflicts, inter-communal tensions, statelessness, displacement and human trafficking. This is compounded by underlying structural inequalities which exacerbate the vulnerabilities of affected populations.²

The crisis is particularly severe in Myanmar's northern Rakhine State, where violence has dramatically escalated in recent years. An estimated 706,000 Rohingya have been forced to flee across the border into Bangladesh between August 2017 and August 2018, becoming refugees.³ According to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereinafter jointly referred to as "the 1951 Refugee Convention"), a refugee is any person who is unable or unwilling to return to or avail him/herself of the protection of his/her country of origin due to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.⁴ The 1951 Refugee Convention, the core instrument of international refugee law, establishes the legal protection, assistance and rights that a refugee should receive from the host country.⁵ A core principle of refugee protection is *non-refoulement*, which means that refugees should not be returned to a country where they will face serious threats to life or freedom.⁶

Bangladesh, the host country for most Myanmar refugees, is not a party to the 1951 Refugee Convention and has no specific law governing the status and protection of refugees within its territory.⁷ However, Bangladesh has ratified or acceded to a number of international instruments

¹ UN High Commissioner for Refugees (UNHCR) 'What is a refugee' (not dated) <<https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>> accessed 1 November 2018.

²For further discussion, see the first part of this report: Rossi, C.A. 'Country Profile: Myanmar. A Historical and Political Background on Migration Flows, Human Rights Violations and Internal Conflicts.' *International Women's Initiative Global Legal Review*. (5 October 2018) <https://globallegalreview.org/2018/10/on-the-margins-women-and-minors-in-lawless-spaces/> accessed 26 November 2018.

³ Inter Sector Coordination Group 'Situation Report Rohingya Refugee Crisis' (16 August 2018) <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/iscg_situation_report_16_august_2018.pdf> accessed 21 August 2018.

⁴Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954), 189 UNTS 137 art 1, and Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol).

⁵ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954), 189 UNTS 137, and Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol).

⁶ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954), 189 UNTS 137 art 33, and Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol).

⁷ Mohammad, N. 'Refugee Protection Under the Constitution of Bangladesh: A Brief Overview' *University Chittagong - Bangladesh Refugee Watch* (June 2012) <http://www.mcrg.ac.in/rw/%20files/RW39_40/12.pdf> accessed 4 November 2018.

indirectly promoting the rights of refugees, such as the 1948 Universal Declaration of Human Rights (UDHR),⁸ the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁹ and the 1989 Convention on the Rights of the Child.¹⁰ Moreover, *non-refoulement* as a fundamental norm of refugee protection is considered to be part of customary international law, thus binding on all states whether or not they are party to the 1951 Refugee Convention.¹¹

Within this limited legal framework, Bangladesh has offered Rohingya asylum in the emergency phase of their escape from persecution in Myanmar. However, Bangladesh's government has made clear that it is unable and unwilling to sustain thousands of individuals in desperate need. Long-term, sustainable solutions must be developed and implemented by the international community to truly protect Rohingya refugees. It is of utmost importance to analyse the factors triggering the Rohingya flight from Myanmar and the vulnerability of persons – especially women and children – on the move. The needs of the most vulnerable must be addressed, and their voices heard.

2. Rohingya Exodus: Root Causes and Factors

On August 25, 2017, violence dramatically escalated in Myanmar's northern Rakhine State, after insurgents staged a major coordinated attack against security force outposts.¹² The ensuing military 'clearance operations' killed thousands of people and forced an estimated 706,000 Rohingya refugees to flee into Bangladesh between August 2017 and August 2018.¹³ The refugees, mostly

⁸ The UDHR is the first international document which recognizes that everyone has the right to seek and enjoy asylum from persecution. Universal Declaration of Human Rights (adopted 10 December 1947, UNGA Res 217 A(III) (UDHR).

⁹ Signed and ratified by Bangladesh in 1990, Article 3(2) of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that a consistent pattern of gross and massive violations of human rights should be taken into account by the State when deciding on expulsion. The monitoring body of this convention, the Committee against Torture, has established some fundamental principles relating to the expulsion of refused asylum seekers. It offers important protection to refugees and their right not to be returned to a place where they fear persecution. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

¹⁰ Acceded by Bangladesh in 1998, Article 22(1) of the Convention on the Rights of the Child establishes that states shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance. Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

¹¹ The view that the principle of *non-refoulement* has become a rule of international customary law is based on a consistent practice combined with a recognition on the part of States that the principle has a normative character. This conclusion is supported by the fact that the principle has been incorporated in international treaties adopted at the universal and regional levels to which a very large number of states have now become parties. UN High Commissioner for Refugees (UNHCR), 'The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93' (31 January 1994) <<http://www.refworld.org/docid/437b6db64.html>> accessed 4 November 2018.

¹² Lone, W. & Naing, S., 'At least 71 killed in Myanmar as Rohingya insurgents stage major attack', *Reuters* (25 August 2017) <<https://www.reuters.com/article/us-myanmar-rohingya/at-least-71-killed-in-myanmar-as-rohingya-insurgents-stage-major-attack-idUSKCN1B507K>> accessed 11 October 2018.

¹³ Inter Sector Coordination Group 'Situation Report Rohingya Refugee Crisis' (16 August 2018) <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/iscg_situation_report_16_august_2018.pdf> accessed 21 August 2018; Safi, M. 'Myanmar burned Rohingya villages after refugee deal, says rights group', *The Guardian* (18 December 2017) <<https://www.theguardian.com/world/2017/dec/18/myanmar-burned-rohingya-villages-after-refugee-deal-says-rights-group>> accessed 21 August 2018.

women and families with children, arrived in Bangladesh traumatized, exhausted, hungry and desperate for shelter.¹⁴ More than half of them now live in squalid conditions, crammed into makeshift sites composed of plastic sheets, without clean drinking water or sanitation.¹⁵

Rohingya witnesses and victims documented that ‘clearance operations’ mostly involved the Tatmadaw (Myanmar military) indiscriminately burning Rohingya villages and opening fire on residents; in some instances villagers joined security forces.¹⁶ Survivors described systematic and coordinated attacks against civilians, as well as massive, targeted burnings of villages.¹⁷ Some of the injured Rohingya refugees reported attacks in their homes, while others said they were shot when running for safety from their villages or hiding from soldiers in fields.¹⁸ Many Rohingya women denounced widespread sexual and gender based violence.¹⁹ As discussed below, the heinous attacks against the Rohingya in northern Rakhine State were both predictable and preventable.²⁰

2.1 Institutionalised Discrimination

The latest wave of deadly violence targeting the Rohingya minority did not happen in a vacuum. Not only has the Tatmadaw targeted Rohingya with ‘unprecedented’ violence since October 2016,²¹ but for decades, Myanmar authorities have developed an oppressive system aimed at denying Rohingya existence.²² Myanmar’s 2008 Constitution contains clauses infringing upon

¹⁴ United Nations High Commissioner for Refugees (UNHCR) ‘Bangladesh: Refugee camp capacity exhausted; thousands in makeshift shelters’ (8 September 2017) <http://www.unhcr.org/en-my/news/briefing/2017/9/59b24a074/bangladesh-refugee-camp-capacity-exhausted-thousands-makeshift-shelters.html>> accessed 14 June 2018.

¹⁵ Khalid, S. ‘Cox’s Bazar: Chaos all around at Rohingya camps’, *Al Jazeera* (18 September 2017) <<https://www.aljazeera.com/news/2017/09/chaos-rohingya-camps-bangladesh-170918034033137.html>> accessed 15 July 2018; Weir, R. ‘“Safe Zones” for Rohingya Refugees in Burma Could Be Dangerous’, *Human Rights Watch* (23 September 2017) <<https://www.hrw.org/news/2017/09/23/safe-zones-rohingya-refugees-burma-could-be-dangerous>> accessed 15 July 2018.

¹⁶ Head, J. ‘Myanmar conflict: Fake photos inflame tension’, *BBC* (2 September 2017) <<https://www.bbc.com/news/world-asia-41123878>> accessed 21 August 2018.

¹⁷ Amnesty International ‘Myanmar: Scorched-earth campaign fuels ethnic cleansing of Rohingya from Rakhine State’ (14 September 2017) <<https://www.amnesty.org/en/latest/news/2017/09/myanmar-scorched-earth-campaign-fuels-ethnic-cleansing-of-rohingya-from-rakhine-state/>> accessed 21 August 2018.

¹⁸ Human Rights Watch ‘Burma: Rohingya Describe Military Atrocities - Military’s ‘Unfinished Business’ Has Hallmarks of ‘Ethnic Cleansing’ (8 September 2017) < <https://www.hrw.org/news/2017/09/08/burma-rohingya-describe-military-atrocities>> accessed 21 August 2018.

¹⁹ United Nations Office of the High Commissioner for Human Rights (OHCHR) ‘Report of OHCHR mission to Bangladesh - Interviews with Rohingyas fleeing from Myanmar since 9 October 2016’ (3 February 2017) <<https://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>> accessed 5 October 2018.

²⁰ United Nations ‘Myanmar: UN rights chief says violence in Rakhine state ‘predictable and preventable’’, *UN News* (29 August 2017) <<https://news.un.org/en/story/2017/08/564032-myanmar-un-rights-chief-says-violence-rakhine-state-predictable-and-preventable>> accessed 23 August 2018.

²¹ United Nations Office of the High Commissioner for Human Rights (OHCHR) ‘Report of OHCHR mission to Bangladesh - Interviews with Rohingyas fleeing from Myanmar since 9 October 2016 – FLASH REPORT’ (3 February 2017) <<https://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>> accessed 23 August 2018.

²² Perlez, J. ‘Myanmar Policy’s Message to Muslims: Get Out’, *The New York Times* (4 November 2014) < <https://www.nytimes.com/2014/11/07/world/asia/rohingya-myanmar-rakhine-state-thailand-malaysia.html>> accessed 29 October 2018; Myint Y. Y. ‘Maungtaw-Rathedaung probe committee submits final report’, *Myanmar Times* (22 March 2017) <<https://www.mmtimes.com/national-news/25410-maungtaw-rathedaung-probe-committee-submits-final-report.html>> accessed 29 October 2018.

fundamental human rights and preserving authoritarian laws.²³ Legislation has become increasingly discriminatory in formulation and arbitrary in application.²⁴

Rohingya's extreme vulnerability is a direct consequence of institutional actions aimed at the marginalisation of Rohingya and other Muslim minorities. The cornerstone of this oppressive system is the lack of legal status for Rohingyas.²⁵ Myanmar's 1982 Citizenship Law established race and ethnicity as determining factors of citizenship classes.²⁶ Full citizenship is conferred only to persons who belong to one of the 135 officially recognized 'national ethnicities'; second-class citizenships require proof of presence in Myanmar prior to 1948.²⁷ However, most of the Rohingya and other minorities living in rural areas do not possess proper documentation due to administrative or structural barriers.²⁸ Prospects of securing any class of citizenship for the Rohingya have been significantly narrowed by successive discriminatory implementations of the 1982 Citizenship Law. For example, in 1989, a "first citizenship inspection" established that persons found to meet the new citizenship requirements had their National Registration Cards (NRCs) replaced with new Citizenship Scrutiny Cards (CSCs). Officials seized old documents but never issued the Rohingya with the new ones, rendering them de facto stateless. Since 1995, Myanmar authorities have issued Temporary Residency Card (TRCs or "white cards") to undocumented Rohingya residents.²⁹ Then, in April 2014, Myanmar's first nationwide census in thirty years excluded an estimated 1.09 million Rohingya from Rakhine State, who were not allowed to self-identify as Rohingya and severely beaten if they tried to do so.³⁰ Further 'data collection' exercises were then implemented with security forces arbitrarily arresting, sexually

²³ For further discussion on Myanmar abusive legislation, see Rossi, C. A., 'Country Profile: Myanmar – A Historical and Political Background on Migration Flows, Human Rights Violations and Internal Conflicts', *Global Legal Review* (5 October 2018) <<https://globallegalreview.org/2018/10/on-the-margins-women-and-minors-in-lawless-spaces/>> accessed 28 October 2018.

²⁴ Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar', Thirty-ninth session 10–28 September 2018 (24 August 2018) UN Doc. A/HRC/39/64 at 6.

²⁵ *Ibid.*

²⁶ Objective criteria that comply with the principle of non-discrimination, such as birth in the territory and descent, must instead be implemented. Citizenship Law, 1982 (Myanmar).

²⁷ Citizenship Law, 1982 (Myanmar).

²⁸ Zarni, M. & Cowley, A., *The Slow-Burning Genocide of Myanmar's Rohingya*, in *Pacific Rim Law & Policy Journal*, vo. 23 no.3 (June 2014) <<https://digital.lib.washington.edu/dspace-law/handle/1773.1/1377>> accessed 29 September 2018.

²⁹ Advisory Commission on Rakhine State 'Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine - Final Report of the Advisory Commission on Rakhine State' (August 2017) at 29 <http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf> accessed 3 October 2018.

³⁰ Kaladan News 'Security forces tortured Rohingya for claiming Rohingya as their ethnicity' (31 March 2014) <<http://www.kaladanpress.org/index.php/census/4478-security-forces-tortured-rohingya-for-claiming-rohingya-as-their-ethnicity.html>> accessed 29 October 2018; UNFPA (30 Aug 14) 'Myanmar releases population count from census' (30 August 2014) <<https://myanmar.unfpa.org/en/news/unfpa-press-release-myanmar-releases-population-count-census>> accessed 29 October 2018; Human Rights Council (20 Jun 16) Report of the United Nations High Commissioner for Human Rights, Human rights violations and abuses against Rohingya Muslims and other minorities in Myanmar' Thirty-second Session (28 June 2016) UN Docs. A/HRC/32/18.

assaulting, and torturing Rohingya.³¹ The government invalidated all TRCs in 2015, preventing Rohingya from voting in the national elections.³²

Through a process of gradual marginalisation, the Rohingya have ended up in a particularly vulnerable position. Non-recognition of citizenship negates the legal basis for exercising many civil and political rights. Lack of legal status also denies fundamental human rights – including freedom of movement, access to health care, education, and employment, freedom of religion, marriage and family planning, and access to justice.

Freedom of Movement

Freedom of movement is one of the most important issues hindering progress and stability in Rakhine State, with movement restrictions reducing access to education, health and services, strengthening segregation, and reduced livelihood opportunities.³³ Since the 1990s, authorities have restricted Rohingya's movement within Rakhine State to other parts of the country and abroad. Travel permissions are required to travel between villages and townships. Special permission to travel beyond Rakhine State is sometimes authorized for emergency medical treatment, but it involves a financially burdensome process. Local authorities have also used travel permission for extortion purposes.³⁴ Unauthorized travel can lead to up to five years' imprisonment.³⁵

After violence erupted in 2012, harassment of Rohingya at road checkpoints and curfew regulations further restricted Rohingya movement, and prevented them from working or seeking urgent medical treatment at night.³⁶ The 2014 'Rakhine State Action Plan' – aimed at addressing humanitarian and development issues in the region – suggested permanent segregation of Muslim and Buddhist communities through forced resettlement of Muslims. 'Vigorous security measures'

³¹ Kaladan News 'Rohingyas detained, forced to take part in so called data collection' (11 August 2014)

<<http://www.kaladanpress.org/index.php/news/372-news2014/august-2014/4627-rohingyas-detained,-forced-to-take-part-in-so-called-data-collection.html>> accessed 29 October 2018; Kaladan News 'Security force killed one, more injure for rejecting the so-called population data collection program in Maungdaw' (29 August 2014) <<http://www.kaladanpress.org/index.php/news/372-news2014/august-2014/4639-security-force-killed-one,-more-injure-for-rejecting-the-so-called-population-data-collection-program-in-maungdaw.html>> accessed 29 October 2018.

³² Advisory Commission on Rakhine State 'Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine - Final Report of the Advisory Commission on Rakhine State' (August 2017) at 29 <http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf> accessed 3 October 2018.

³³ *Id.* at 33.

³⁴ The Arakan Project 'Key issues concerning the situation of stateless Rohingya women and girls in Rakhine State, Myanmar - Submission to the Committee on the Elimination of Discrimination against Women' (10 June 2016) at 7

<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MMR/INT_CEDAW_NGO_MMR_24280_E.pdf> accessed 7 July 2018.

³⁵ Section 13(1) the Immigration (Emergency Provisions) Act, 1847 (Myanmar). Although the Immigration Act applies to unauthorized travel outside Myanmar, Rohingya were sentenced for violating the Immigration Act for travelling without permission within Myanmar.

³⁶ The Arakan Project 'Key issues concerning the situation of stateless Rohingya women and girls in Rakhine State, Myanmar - Submission to the Committee on the Elimination of Discrimination against Women' (10 June 2016) at 7-8

<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MMR/INT_CEDAW_NGO_MMR_24280_E.pdf> accessed 7 July 2018.

were envisioned as the solution to problems in Rakhine State.³⁷ Violence in 2016 resulted in intensified, oppressive measures against the Rohingya that further constrained freedom of movement and restricted remaining Rohingya to their homes.³⁸

Access to Healthcare, Education and Livelihood

Lack of mobility strongly impacts Rohingya's access to healthcare, education and employment. Rural villages have very few health facilities and services in northern Rakhine State. Travel permissions and bribes at checkpoints prevent most Rohingya from receiving adequate medical treatment. In addition to movement constraints, they face obstacles due to language barriers and refusal by some health facilities to treat Muslim patients.³⁹

Education for Rohingyas has always been neglected, and discrimination against Rohingya students has been widely reported. Most Rohingya students do not have access to state-run schools beyond primary education due to lack of citizenship rights and/or documentation. Scarcity and absenteeism of teachers, lack of infrastructure, and school supply shortages restrict Rohingya access to primary education.⁴⁰

Lack of education further impacts employment opportunities and working conditions. Institutional extortion and physical restrictions enforced by local orders against the Rohingya aggravate scarce employment options in Rakhine State, including limitations on fishing, prohibition on gathering firewood, and the imposition of informal taxes.⁴¹ Lack of citizenship adversely affects opportunities for investment and business development for Rohingya and bars them from securing civil service positions.⁴²

Freedom of Religion, Marriage and Family Planning

³⁷ The New Light of Myanmar 'Rakhine State Government Announcement (1/2014)' (23 July 2014) <https://issuu.com/myanmarnewspaper/docs/24_july_14_nlm> accessed 29 October 2018; Bookbinder, A. 'Senior UN officials head to Arakan' *DVB* (9 September 2014) <<http://www.dvb.no/news/un-takes-a-more-holistic-look-at-arakan-burma-myanmar/43962>> accessed 29 October 2018; Human Rights Watch 'Burma: Government Plan Would Segregate Rohingya' (3 October 2014) <<https://www.hrw.org/news/2014/10/03/burma-government-plan-would-segregate-rohingya>> accessed 29 October 2018.

³⁸ Human Rights Council 'Report of Independent International Fact-finding Mission on Myanmar' (12 September 2018) Thirty-ninth session 10–28 September 2018, UN Docs. A/HRC/39/64.

³⁹ The Arakan Project 'Key issues concerning the situation of stateless Rohingya women and girls in Rakhine State, Myanmar - Submission to the Committee on the Elimination of Discrimination against Women' (10 June 2016) at 9-10 <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MMR/INT_CEDAW_NGO_MMR_24280_E.pdf> accessed 7 July 2018.

⁴⁰ *Id.*, at 10-11; Advisory Commission on Rakhine State 'Interim Report and Recommendations' (March 2017) <<http://www.rakhinecommission.org/app/uploads/2017/03/Advisory-Commission-Interim-Report.pdf>> accessed 3 June 2018.

⁴¹ The Arakan Project 'Key issues concerning the situation of stateless Rohingya women and girls in Rakhine State, Myanmar - Submission to the Committee on the Elimination of Discrimination against Women' (10 June 2016) <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MMR/INT_CEDAW_NGO_MMR_24280_E.pdf> accessed 7 July 2018; Advisory Commission on Rakhine State 'Interim Report and Recommendations' (March 2017) <<http://www.rakhinecommission.org/app/uploads/2017/03/Advisory-Commission-Interim-Report.pdf>> accessed 3 June 2018.

⁴² Human Rights Watch 'Burma/Bangladesh, Burmese Refugees in Bangladesh: Still No Durable Solution' (1 May 2000) <<https://www.hrw.org/report/2000/05/01/burmese-refugees-bangladesh/still-no-durable-solution>> accessed 29 October 2018.

Religious freedom in Myanmar is hampered by a set of ‘Race and Religion Protection Laws’ that Parliament adopted in 2015 against a backdrop of increased anti-Rohingya and anti-Muslim propaganda. The ‘Population Control Healthcare Law’ allows regional authorities to arbitrarily limit reproductive freedom by imposing a 36-month ‘birth spacing’ requirement in areas of rapid population growth.⁴³ The ‘Religious Conversion Law’ established a State-regulated system for religious conversion that violates freedom of religion.⁴⁴ The ‘Monogamy Law’ criminalises polygamy and prohibits extramarital affairs, which runs counter to minorities’ polygamous traditions. Violators of the law could be punished by up to seven years’ imprisonment.⁴⁵ The ‘Buddhist Women’s Special Marriage Law’ (Interfaith Marriage Law), arguably the most contentious of the four laws, institutionalises both religious and gender discrimination by requiring Buddhist women and men of other faiths to formally request permission to marry from local authorities. Local registrars publicly post marriage applications for 14 days, to determine whether there are any objections to the proposed unions. A couple may get married only if there are no objections; if there are objections, the issue is taken to court. Disproportionate penalties of up to three years’ imprisonment are imposed for failure to comply with the law’s provisions.⁴⁶

Religious based discrimination manifests in hate speech and crimes targeting non-Buddhists and especially Muslims. Security forces rarely intervene to either prevent attacks or punish those who attack religious minorities and destroy homes or businesses.⁴⁷ On the contrary, authorities have regularly placed restrictions on religious minorities’ activities.⁴⁸ For instance, in 2016, Rakhine authorities declared that they were working to demolish all mosques and other buildings constructed without permission in accordance with the law, in deference to a discriminatory ban on Muslim structures imposed by the military in 1962.⁴⁹

Moreover, local regulations in northern Rakhine State required Rohingya to obtain permission to marry through a financially draining process. Officials obliged many women to undergo pregnancy tests as part of the marriage application process, which in some instances - lasted as long as two

⁴³ Population Control Healthcare Law, 2015 (Myanmar).

⁴⁴ Religious Conversion Law, 2015 (Myanmar).

⁴⁵ Monogamy Law, 2015 (Myanmar).

⁴⁶ Buddhist Women’s Special Marriage Law, 2015 (Myanmar).

⁴⁷ Human Rights Watch ‘Burma: Mass Arrests, Raids on Rohingya Muslims’ (5 July 2012) <<https://www.hrw.org/news/2012/07/05/burma-mass-arrests-raids-rohingya-muslims>> accessed 29 October 2018; Swe Win ‘Kristallnacht in Myanmar’ The New York Times (29 March 2013) <<https://latitude.blogs.nytimes.com/2013/03/29/violence-against-muslims-in-meiktila-myanmar/>> accessed 29 October 2018; Burma Human Rights Network ‘Report: Several Anti-Muslim Incidents Signal Worrying Trend in Yangon’ (15 May 2017)

<<http://www.bhm.org.uk/en/report/18-report-several-anti-muslim-incidents-signal-worrying-trend-in-yangon.html>> accessed 29 October 2018.

⁴⁸ *Ibid.*

⁴⁹ Myint, M. ‘Illegal Mosques to be demolished in Arakan State’, The Irrawaddy (21 September 2016)

<<https://www.irrawaddy.com/news/burma/illegal-mosques-to-be-demolished-in-arakan-state.html>> accessed 28 October 2018.

years. Failure to comply with requirements could result in imprisonment.⁵⁰ Regulations further stipulated that Rohingya couples could not have more than two children in certain areas of Rakhine State. Disobeying the two-child policy has been punished with imprisonment and fines.⁵¹

Access to Justice

Access to justice for victims of human rights violations has been sorely lacking throughout Myanmar, with the military enjoying impunity for abuses.⁵² Corruption remains endemic and the executive branch exercises improper influence on the judiciary, which lacks independence and often renders decisions based on government directions.⁵³ Rohingya and other minorities face additional hurdles in accessing the judicial system due to language barriers (Burmese is the only language recognized by the courts), and a prevailing lack of legal awareness.⁵⁴ Additional barriers are geography and fear of reprisals.⁵⁵ The judicial harassment of victims of human rights violations is commonplace in Myanmar when victims, their families or lawyers seek remedies or reparation. Rohingya have been repeatedly detained and charged for denouncing abuses committed by security forces.⁵⁶

2.1.2 Hate Speech & Propaganda

Hate speech and incitement to violence against Rohingya and other Muslim minorities have been ‘cultivated for decades’ in the minds of the people and tolerated by authorities across the country, as repeatedly indicated by the UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee.⁵⁷ Since 2017, anti-Rohingya and anti-Muslim rhetoric has been on the rise.⁵⁸ Both digital analysts and human rights groups warned about the dangers of the increasingly systematic

⁵⁰ Human Rights Watch ‘Burma: Revoke ‘Two-Child Policy’ For Rohingya - Coerced Birth Control Reflects Broader Persecution of Muslim Minority’ (28 May 2013) <<https://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>> accessed 8 October 2018.

⁵¹ *Ibid.*

⁵² Human Rights Council ‘Report of Independent International Fact-finding Mission on Myanmar’ (12 September 2018) Thirty-ninth session 10–28 September 2018, UN Docs. A/HRC/39/64.

⁵³ International Commission of Jurists, ‘Redress and Accountability in Myanmar: Baseline Study’ (January 2018) at 19 <<https://www.icj.org/wp-content/uploads/2018/01/Myanmar-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2018-ENG.pdf>> accessed 8 October 2018.

⁵⁴ UN Women and Justice Base ‘Voices from the Intersection: Women’s Access to Justice in the Plural Legal System of Myanmar’ (22 April 2016) <http://www.burmalibrary.org/docs22/Justice_Base-2016-04-22-Women_in%20Myanmar-Plural_legal_systems.pdf> accessed 29 October 2018.

⁵⁵ Human Rights Council ‘Report of Independent International Fact-finding Mission on Myanmar’ (12 September 2018) Thirty-ninth session 10–28 September 2018, UN Docs. A/HRC/39/64.

⁵⁶ International Commission of Jurists ‘Achieving Justice for Gross Human Rights Violations in Myanmar - Baseline Study’ (January 2018) at 31 <<https://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2018-ENG.pdf>> accessed 4 December 2018.

⁵⁷ UN News ‘Crisis in Rakhine ‘decades in the making’ and reaches beyond Myanmar’s borders – UN rights expert’ (26 October 2017) <<https://news.un.org/en/story/2017/10/569382-crisis-rakhine-decades-making-and-reaches-beyond-myanmars-borders-un-rights>> accessed 29 October 2018.

⁵⁸ Boom, K. R. ‘Anti-Rohingya Propaganda Relying On Fake Images Of Children’ *The Quint* (25 September 2017) <<https://www.thequint.com/news/webqoof/anti-rohingya-propaganda-fake-news-children-images>> accessed 29 October 2018; Safi, M.

‘Revealed: Facebook hate speech exploded in Myanmar during Rohingya crisis’ *The Guardian* (3 April 2018) <<https://www.theguardian.com/world/2018/apr/03/revealed-facebook-hate-speech-exploded-in-myanmar-during-rohingya-crisis>> accessed 5 November 2018.

and militarized propaganda; Facebook recently confirmed those long-held suspicions by denouncing a covert military-led propaganda operation hosted on its platform.⁵⁹ An internal investigation launched in early 2018 identified dozens of Tatmadaw accounts created to disseminate pro-military propaganda and misleading, incendiary, and false information about the Rohingya.⁶⁰

In addition to covert military-led propaganda, Myanmar's government failed to take notice of reports by thousands of civilians trapped amidst the violence, and ultimately denied any military abuse and violations.⁶¹ In both 2016 and 2017, authorities rejected accounts of serious human rights violations committed by security forces in northern Rakhine State, and claimed that the Rohingya victims were spreading fake news and images on social media.⁶² Allegations of military-led arson in northern Rakhine State were denied by accusing the victims of razing their own houses.⁶³ Accounts of sexual violence were downplayed by insinuating that Rohingya women were too unattractive to merit attention from Tatmadaw soldiers.⁶⁴ The President spokesperson rejected the entire Rohingya exodus declaring that the refugees were 'plotting against the government by misleading [the international community] that there is a mass migration' and by accusing the Rohingya of dishonesty for fleeing despite governmental promises of safety in Myanmar.⁶⁵

The social media campaign hardened attitudes on both sides, ultimately worsening the conflict. The power of this misleading information has been further fueled by the government's denial of access to northern Rakhine State to international observers, including the Independent Fact-finding Mission established by the UN Human Rights Council to probe the allegations of human rights

⁵⁹ *Ibid.*

⁶⁰ Long, K. 'Facebook Investigated Myanmar's Military-Linked Accounts. It Found a Covert Propaganda Campaign' *Time* (1 September 2018) <<http://time.com/5383780/myanmar-facebook-propaganda-rohingya/>> accessed 5 November 2018.

⁶¹ BBC 'Myanmar conflict: The view from Yangon' (6 September 2017) <<https://www.bbc.com/news/world-asia-41163655>> accessed 29 October 2018.

⁶² Lone, W. & Lewis, S. 'Exclusive: Rohingya women say Myanmar soldiers raped them amid crackdown on militants' *Reuters* (28 October 2016) <<https://uk.reuters.com/article/uk-myanmar-rohingya-exclusive-idUKKCN12S0AN>> accessed 5 November 2018; BBC 'Myanmar conflict: The view from Yangon' (6 September 2017) <<https://www.bbc.com/news/world-asia-41163655>> accessed 29 October 2018.

⁶³ The Irrawaddy 'Govt Rejects Human Rights Report on Arakan State Violence' (16 November 2016) <<https://www.irrawaddy.com/news/burma/govt-refutes-human-rights-report-on-arakan-state-violence.html>> accessed 29 October 2018.

⁶⁴ Head, J. 'Rohingya crisis: Seeing through the official story in Myanmar' *BBC* (11 September 2017) <<https://www.bbc.com/news/world-asia-41222210>> accessed 14 October 2018; BBC 'Rohingya crisis: Suu Kyi says 'fake news helping terrorists'' (6 September 2017) <<https://www.bbc.com/news/world-asia-41170570>> accessed 14 October 2018.

⁶⁵ Naing Zaw, H. 'Mass Exodus of Muslims from Rakhine 'Not Honest': Govt Spokesperson' *The Irrawaddy* (6 October 2017) <<https://www.irrawaddy.com/news/burma/mass-exodus-muslims-rakhine-not-honest-govt-spokesperson.html>> accessed 29 October 2018.

abuses in Myanmar.⁶⁶ Journalists investigating the crisis have been arrested and jailed for allegedly violating state secrets by pursuing the truth.⁶⁷

2.2 Targeted Attacks

Myanmar security forces have repeatedly committed serious crimes against the Rohingya since the 1970s. The systematic government denial of Rohingya existence, legal status and fundamental rights has made the entire Rohingya community vulnerable to abuse in different forms, including arbitrary killings, torture, rape and other forms of sexual violence, property destruction and pillaging. Justice remains elusive for the Rohingya and the other victims of Myanmar security forces, because authorities consistently fail to investigate and prosecute perpetrators. Impunity for atrocity crimes⁶⁸ validates oppressive and discriminatory conduct, silences victims, and enables recurring violence.

Even after the deadly 2017 ‘clearance operations’ targeting all Rohingya, including women, girls, and infants, the Myanmar Home Affairs Minister blamed the victims for the violence and declared, “the Rohingya do not exist in Myanmar. There is no Rohingya among our ethnic groups. [What] we have seen are the Bengalis in this region who have tried to destroy Myanmar’s rule of law.”⁶⁹

2.2.1 Early Patterns of Violence

Prior to the 1962 military coup, the Rohingya enjoyed some degree of recognition, but the situation quickly deteriorated under that regime. Bouts of military-led anti-Rohingya violence were reported as early as 1978 and 1991, when systematic and widespread targeted attacks forced more than 200,000 refugees to cross the border into Bangladesh.⁷⁰ Two waves of religious and ethnic

⁶⁶ BBC ‘Myanmar conflict: The view from Yangon’ (6 September 2017) <<https://www.bbc.com/news/world-asia-41163655>> accessed 29 October 2018; UN Office of the High Commissioner for Human Rights (OHCHR) ‘End of Mission Statement by Special Rapporteur on the situation of human rights in Myanmar’ (21 July 2017)

<<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21900&LangID=E>> accessed 29 October 2018.

⁶⁷ Reuters ‘Two Reuters journalists arrested in Myanmar, face official secrets act’ (13 December 2017) <<https://www.reuters.com/article/us-myanmar-journalists/two-reuters-journalists-arrested-in-myanmar-face-official-secrets-charges-idUSKBN1E71CO>> accessed 29 October 2018.

⁶⁸ In the 2005 World Summit Outcome Document (at paras 138-139), United Nations Member States made a commitment to protect populations from atrocity crimes, a principle referred to as the Responsibility to Protect. Atrocity crimes refer to the three legally defined international crimes of genocide, war crimes, and crimes against humanity, as well as to ethnic cleansing (which has not been recognized as an independent crime under international law, but includes acts that are serious violations of international human rights and humanitarian law that may themselves amount to one of the recognized atrocity crimes). See, United Nations ‘Framework of Analysis for Atrocity Crimes – A tool for Prevention’ (2014) at 1 <http://www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf> accessed 4 December 2018.

⁶⁹ Radio Free Asia ‘Myanmar Boosts Measures to Take on Rohingya Militants in Rakhine’ (29 August 2017)

<<https://www.rfa.org/english/news/myanmar/myanmar-boosts-measures-to-take-on-rohingya-militants-in-rakhine-08292017162910.html>> accessed 29 October 2018.

⁷⁰ Advisory Commission on Rakhine State ‘Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine - Final Report of the Advisory Commission on Rakhine State’ (August 2017) at 29 <http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf> accessed 3 October 2018.

violence swept Rakhine State in June and October 2012, affecting 12 townships. Evidence emerged of brutal anti-Rohingya and anti-Muslim attacks implicating Myanmar security forces, who either failed to intervene or actively participated in killing and torturing the Rohingya, as well as destroying their properties. Witnesses described security forces shooting indiscriminately at Rohingya and conducting arbitrary mass arrests. Over 140,000 Rohingya and Kaman Muslims⁷¹ were displaced by the violence, as well as some Rakhine Buddhists. Currently, 128,000 Rohingya and Kaman Muslims remain segregated and confined in Myanmar's internally displaced person ("IDP") camps without freedom of movement, access to adequate health care, education or livelihood.⁷² Sectarian violence also occurred in September and October of 2013, causing seven deaths and displacing an estimated 500 civilians and the arson of over 100 Muslim homes and mosques.⁷³ In January 2014, dozens of Rohingya were reportedly killed by security forces in retaliation for the death of a policeman.⁷⁴

More recently, brutal military-led counter-insurgency operations targeting the entire Rohingya community devastated northern Rakhine State after three police outposts in Maungdaw Township were attacked by unknown assailants on October 9, 2016, leaving nine police officers dead.⁷⁵ The government identified 400 members of Islamic organisation Aqa Mul Mujahidin as responsible for the attack and denied all allegations of Tatmadaw crimes.⁷⁶ Meanwhile, the international community characterized the Myanmar's military crackdown as crimes against humanity, ethnic cleansing and genocide.⁷⁷

⁷¹ It is not only Rohingya that are facing abuses in Rakhine State. The Kaman Muslims, despite being recognized as a national race of Myanmar, have been targeted and discriminated against in different forms. All Muslim minorities continue to be oppressed because of their faith. See, Frontier Myanmar, 'Displaced by violence, Kaman Yearn for home as hopes dim' (27 May 2017) <<https://frontiermyanmar.net/en/displaced-by-violence-kaman-yearn-for-home-as-hopes-dim>> accessed 4 December 2018.

⁷² Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar', Thirty-ninth session 10–28 September 2018 (24 August 2018) UN Doc. A/HRC/39/64 at 7.

⁷³ BBC 'Burma's Rakhine Clashes Kill Five as Thein Sein visits' (2 October 2013) <<https://www.bbc.com/news/world-asia-24371623>> accessed 29 October 2018; UN Office for the Coordination of Humanitarian Affairs (OCHA) 'Report on Findings and Recommendations by Inter-Agency Mission to Thandwe Township in Rakhine State' (6 October 2013) <<https://reliefweb.int/report/myanmar/report-findings-and-recommendations-inter-agency-mission-thandwe-township-rakhine>> accessed 29 October 2018.

⁷⁴ UN News 'Top UN officials call for probe into latest violence in Myanmar's Rakhine state' (23 January 2014) <<https://news.un.org/en/story/2014/01/460282-top-un-officials-call-probe-latest-violence-myanmars-rakhine-state>> accessed 29 October 2018; Human Rights Watch 'Burma: Investigate New Killings of Rohingya' (23 January 2014) <<https://www.hrw.org/news/2014/01/23/burma-investigate-new-killings-rohingya>> accessed 29 October 2018.

⁷⁵ Myanmar Times 'Rakhine border raids kill nine police officers' (10 October 2016) <<https://www.mmtimes.com/national-news/22992-rakhine-border-raids-kill-nine-police-officers.html>> accessed 29 October 2018.

⁷⁶ Myanmar Times 'No choice but to shoot them,' official says of Rakhine manhunt for militants' (18 October 2016) <<https://www.mmtimes.com/national-news/23157-no-choice-but-to-shoot-them-official-says-of-rakhine-manhunt-for-militants.html>> accessed 29 October 2018.

⁷⁷ The Guardian 'Malaysia PM urges world to act against genocide of Myanmar's Rohingya' (4 December 2016) <<https://www.theguardian.com/world/2016/dec/04/malaysia-pm-urges-world-to-act-against-genocide-of-myanmars-rohingya>> accessed 23 August 2018; BBC 'Rohingya Myanmar: Nobel winners urge action over ethnic cleansing' (30 December 2016) <<https://www.bbc.com/news/world-asia-38470232>> accessed 23 August 2018.

According to the United Nations (UN), this wave of military-led violence caused nearly 1,000 deaths and displaced over 69,000 Rohingya who crossed the border into Bangladesh between October 2016 and February 2017 to save their lives. On February 3, 2017, the Office of the High Commissioner for Human Rights (OHCHR) released a chilling flash report on human rights violations taking place in northern Rakhine State.⁷⁸ According to OHCHR, all Rohingya testimonies referred to abuses perpetrated by Myanmar's security forces and/or Rakhine villagers acting jointly or with the acceptance of military authorities. They reported indiscriminate shooting of civilians, targeting of religious and community leaders, and deaths by stabbing, beating and burning.⁷⁹ In several cases, mothers witnessed the killing of their children. A twenty-five years old woman from Yae Khat Chaung Gwa Son described the murder of her 8-month-old baby for crying as she was being gang-raped by Myanmar security officers. More than half of the women and girls interviewed reported surviving rape or other sexual violence. The majority of victims were gang raped, usually by three or four officers but sometimes up to eight. Pregnant women were also raped.⁸⁰ Many surviving Rohingya experienced beatings, torture and other forms of cruel, inhumane or degrading treatment by security forces during 'clearance operations' in homes, mosques, as well as detention centers.⁸¹ The report expressed serious concerns about a purposeful policy of ethnic cleansing and crimes against humanity.⁸²

The Myanmar government mandated various commissions to investigate and address the simmering violence in Rakhine State between 2012 and 2016. However, these initiatives constantly downplayed allegations of human rights abuses against the Rohingya as 'false news' intended to discredit the government and/or to destabilize the country. Additionally, the commissions refused to recognize the Rohingyas' right to self-identify, declined to provide protection to witnesses or victims, and contradicted international human rights standards. Denial of and impunity for serious human rights violations have aggravated hostilities, silencing victims and increasing the vulnerability of marginalized communities.⁸³

⁷⁸ United Nations Office of the High Commissioner for Human Rights (OHCHR) 'Report of OHCHR mission to Bangladesh - Interviews with Rohingyas fleeing from Myanmar since 9 October 2016 – Flash Report' (3 February 2017) <<https://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>> accessed 23 August 2018.

⁷⁹ *Id.* at 13-18.

⁸⁰ *Id.* at 20-24.

⁸¹ *Id.* at 25-31

⁸² *Id.* at 40.

⁸³ ALTSEAN-Burma 'Burma/Myanmar: Flawed Domestic Investigations Necessitate UN Commission of Inquiry on Serious Crimes' (3 March 2017) <<https://progressivevoicemyanmar.org/2017/03/07/burmayanmar-flawed-domestic-investigations-necessitate-un-commission-of-inquiry-on-serious-crimes/>> accessed 11 October 2018.

After an apparent break in the conflict between February and May 2017, the Tatmadaw began to resume clearance operations in June 2017 and went to full strength on 10 August 2017, after several cases of murder and disappearance inflamed tensions.⁸⁴

2.2.2 The 2017 Crisis

On August 25, 2017, insurgents staged a major coordinated attack against various police and military targets in Maungdaw and Buthidaung townships. The little-known Arakan Rohingya Salvation Army (ARSA) claimed responsibility for the offensive and warned of more attacks, with ARSA leader Atallah Abu Ammar Jununi – also known as Ata Ullah – announcing that their objective was “to liberate [the Rohingya] people from dehumanized oppression perpetrated by all successive Burmese regimes”.⁸⁵ Once more, the Tatmadaw began conducting ‘clearance operations’ against so-called ‘extremist terrorists’ and gave accounts of several clashes involving hundreds of Rohingya insurgents in the following days.⁸⁶ Independent reports documented that, similarly to the violence that devastated the region in 2016, most of the clashes involved the Tatmadaw indiscriminately burning Rohingya villages and opening fire on residents (with some instances of villagers joining the fighting).⁸⁷ Meenakshi Ganguly, South Asia Director of Human Rights Watch, commented, “Lawful operations against armed groups do not involve burning the local population out of their homes.”⁸⁸

Refugees testified that as survivors fled, Myanmar security forces and Buddhist mobs set fire to their houses and villages.⁸⁹ Some of the injured victims recounted how the military burned down their homes while they were inside. Other eyewitnesses declared that soldiers burned their relatives alive.⁹⁰ Satellite imagery corroborated that at least 354 villages were partially or

⁸⁴ Lone, W. & Naing, S., ‘At least 71 killed in Myanmar as Rohingya insurgents stage major attack’, *Reuters* (25 August 2017) <<https://www.reuters.com/article/us-myanmar-rohingya/at-least-71-killed-in-myanmar-as-rohingya-insurgents-stage-major-attack-idUSKCN1B507K>> accessed 11 October 2018.

⁸⁵ Abuza, Z. ‘Who Are the Arakan Rohingya Salvation Army?’, *Radio Free Asia* (1 September 2017)

<<https://www.rfa.org/english/commentaries/arsa-commentary-09012017155658.html>> accessed 11 October 2018.

⁸⁶ Ruma, P. ‘Gunfire heard near Bangladesh border as thousands flee Myanmar violence’ *Reuters* (27 August 2017)

<<https://www.reuters.com/article/us-myanmar-rohingya/gunfire-heard-near-bangladesh-border-as-thousands-flee-myanmar-violence-idUSKCN1B706O>> accessed 29 October 2018; Radio Free Asia ‘Nearly 400 Rohingya Insurgents Killed in Rakhine Violence: Myanmar Military Chief’ (1 September 2017) <<https://www.rfa.org/english/news/myanmar/toll-09012017153437.html>> accessed 29 October 2018.

⁸⁷ Head, J. ‘Myanmar conflict: Fake photos inflame tension’, *BBC* (2 September 2017) <<https://www.bbc.com/news/world-asia-41123878>> accessed 21 August 2018.

⁸⁸ Human Rights Watch ‘Burma: Rohingya Describe Military Atrocities - Military’s ‘Unfinished Business’ Has Hallmarks of ‘Ethnic Cleansing’ (8 September 2017) <<https://www.hrw.org/news/2017/09/08/burma-rohingya-describe-military-atrocities>> accessed 21 August 2018.

⁸⁹ *Ibid.*; Amnesty International ‘Myanmar: Scorched-earth campaign fuels ethnic cleansing of Rohingya from Rakhine State’ (14 September 2017) <<https://www.amnesty.org/en/latest/news/2017/09/myanmar-scorched-earth-campaign-fuels-ethnic-cleansing-of-rohingya-from-rakhine-state/>> accessed 21 August 2018.

⁹⁰ Shafi, S. ‘Inside the hospital treating Rohingya refugees’ *Al Jazeera* (25 September 2017)

<<https://www.aljazeera.com/indepth/inpictures/2017/09/hospital-treating-rohingya-refugees-170917091455989.html>> accessed 29 October 2018.

completely destroyed between August and December 2017. At least 118 of those villages were damaged after September 5, 2017, when the Myanmar government declared concluded the 2017 military ‘clearance operations’ in northern Rakhine State. Approximately forty villages were destroyed between October and November of 2017. Dozens of buildings were burned the same week that Myanmar and Bangladesh agreed to start the return of refugees.⁹¹ Myanmar Minister for Social Development, Relief and Resettlement, Win Myat Aye, declared that the government would take over the burned land as, according to Myanmar law, “burnt land becomes government-managed land”.⁹² There was no mention of any access to villages, lands or sources of livelihood returning Rohingya could expect. An economic zone is planned for Maungdaw Township.⁹³

On October 11, 2017, OHCHR released a report of its rapid response mission to Bangladesh aimed at disclosing the truth about the latest wave of violence devastating northern Rakhine State. OHCHR findings confirmed systematic human rights violations against the Rohingya committed by Myanmar security forces and Rakhine Buddhist residents in a well-organised and coordinated manner, challenging the assertion that the reported violence was merely collateral damage of the security operations.⁹⁴ The report highlighted indiscriminate shootings, as well as the burning of Rohingya victims inside their houses, including children and elderly people. Information related to rape and sexual violence was also collected and corroborated by medical staff treating Rohingya refugees in Cox’s Bazar: “Girls as young as 5 to 7 years of age [were] raped, often in front of their relatives, and sometimes by three to five men taking turns, all dressed in army uniforms.”⁹⁵ Many women, even those who were pregnant, were raped. One statement referred to “a woman whose stomach was slit open after she was raped. Witnesses stated that her “unborn baby” was killed by the alleged perpetrator with a knife and her nipples were cut off.”⁹⁶

On September 19, 2018, the UN Independent Fact-Finding Mission confirmed that security forces committed atrocities in Rakhine, Shan and Kachin states.⁹⁷ On the same day, the International

⁹¹ Human Rights Watch ‘Burma: 40 Rohingya Villages Burned Since October’ (17 December 2017)

<<https://www.hrw.org/news/2017/12/17/burma-40-rohingya-villages-burned-october>> accessed 29 October 2018.

⁹² Lewis, S. ‘Government will take over burned Myanmar land: minister’ *Reuters* (27 September 2017) <<https://www.reuters.com/article/us-myanmar-rohingya/government-will-take-over-burned-myanmar-land-minister-idUSKCN1C200U>> accessed 29 October 2018.

⁹³ *Ibid.*

⁹⁴ United Nations Office of the High Commissioner for Human Rights (OHCHR) ‘Mission report of OHCHR rapid response mission to Cox’s Bazar, Bangladesh’ (11 October 2017) at 10-11

<<https://www.ohchr.org/Documents/Countries/MM/CXBMissionSummaryFindingsOctober2017.pdf>> accessed 14 October 2018.

⁹⁵ *Id.* at 3-8.

⁹⁶ *Ibid.*

⁹⁷ Human Rights Council ‘Report of Independent International Fact-finding Mission on Myanmar’, (12 September 2018) Thirty-ninth session 10–28 September 2018, UN Docs. A/HRC/39/64, at 18.

Criminal Court launched a preliminary investigation of the events.⁹⁸ Unless impunity for these atrocity crimes is addressed, further violence can be expected to continue with catastrophic consequences.⁹⁹

3. Rohingya Refugees: Risks & Vulnerabilities

The 2017 military ‘clearance operations’ prompted a new exodus of Rohingya refugees to Bangladesh. On August 31, 2017, UN sources estimated that more than 27,000 people had crossed the border, while 20,000 more remained stuck in unoccupied areas between the two countries.¹⁰⁰ On September 3, 2017, the estimated number of new arrivals to Bangladesh was 73,000,¹⁰¹ and by September 8 it was over 270,000.¹⁰² As of August 2018, reports put the figure at 706,000, but high mobility makes it nearly impossible for aid agencies to verify these numbers.¹⁰³

The new waves of refugees added to the pre-existing displaced population, estimated at around 164,000 by the Inter Sector Coordination Group (ISCG) – chaired by the International Organization for Migration (IOM).¹⁰⁴ Among them, nearly 34,000 long-term displaced Rohingya were officially registered as refugees at Kutupalong and Leda camps in Cox's Bazar, Bangladesh, and approximately 87,000 arrived as a result of the clearance operations following the October 2016 attacks in Maungdaw Township.¹⁰⁵

The vast majority of refugees were women and families with children, who were exhausted, hungry and desperate for shelter.¹⁰⁶ The hazardous conditions intensified due to some of the worst

⁹⁸ Wintour, P. ‘Myanmar Rohingya crisis: ICC begins inquiry into atrocities’ *The Guardian* (19 September 2018)

<<https://www.theguardian.com/world/2018/sep/19/myanmar-rohingya-crisis-icc-begins-investigation-into-atrocities>> accessed 5 November 2018.

⁹⁹ Human Rights Council ‘Report of Independent International Fact-finding Mission on Myanmar’, (12 September 2018) Thirty-ninth session 10–28 September 2018, UN Docs. A/HRC/39/64, at 18.

¹⁰⁰ United Nations ‘Myanmar: UN expert urges efforts to break ‘worsening cycle of violence’ in Rakhine’ *UN News* (31 August 2017)

<<https://news.un.org/en/story/2017/08/564202-myanmar-un-expert-urges-efforts-break-worsening-cycle-violence-rakhine>> accessed 27 August 2018.

¹⁰¹ Al Jazeera ‘Rohingya exodus continues after 73000 flee Myanmar’ (3 September 2017) <<https://www.aljazeera.com/news/2017/09/rohingya-exodus-continues-73000-flee-myanmar-170903082612403.html>> accessed 27 August 2018.

¹⁰² Das, N. K. ‘Exodus of Rohingya to Bangladesh reaches 270,000 – UNHCR’ *Reuters* (8 September 2017) <<https://www.reuters.com/article/us-myanmar-rohingya/exodus-of-rohingya-to-bangladesh-reaches-270000-unhcr-idUSKCN1BJ0ZX>> accessed 27 August 2018.

¹⁰³ Inter Sector Coordination Group ‘Situation Report Rohingya Refugee Crisis’ (16 August 2018)

<https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/iscg_situation_report_16_august_2018.pdf> accessed 21 August 2018.

¹⁰⁴ Inter Sector Coordination Group (ISCG) ‘Situation Report: Influx - August 2017’ (11 September 2017)

<https://reliefweb.int/sites/reliefweb.int/files/resources/170911_ISCG%20SitRep_Influx%20August%202017.pdf> accessed 16 June 2018.

¹⁰⁵ Human Rights Watch ‘Burma: Ensure Aid Reaches Rohingya’ (11 September 2017) <<https://www.hrw.org/news/2017/09/11/burma-ensure-aid-reaches-rohingya>> accessed 13 September 2018; UN High Commissioner for Refugees (UNHCR) ‘Bangladesh: Refugee camp capacity exhausted; thousands in makeshift shelters’ (8 September 2017) <<http://www.unhcr.org/en-my/news/briefing/2017/9/59b24a074/bangladesh-refugee-camp-capacity-exhausted-thousands-makeshift-shelters.html>> accessed 13 September 2018.

¹⁰⁶ UN High Commissioner for Refugees (UNHCR) ‘Bangladesh: Refugee camp capacity exhausted; thousands in makeshift shelters’ (8 September 2017) <<http://www.unhcr.org/en-my/news/briefing/2017/9/59b24a074/bangladesh-refugee-camp-capacity-exhausted-thousands-makeshift-shelters.html>> accessed 13 September 2018.

monsoon floods in recent years.¹⁰⁷ The surge of refugees, many sick or wounded, strained the resources of aid agencies and communities.¹⁰⁸ More than half of the refugees now live in squalid conditions, crammed into makeshift sites composed of plastic sheets, lacking clean drinking water and sanitation. The scale of the crisis is virtually impossible to describe.¹⁰⁹

3.1 Perilous Journey to Safety

While the Myanmar government claimed that ‘clearance operations’ ended on September 5, 2017, its military engagement continued well into October 2017, with thousands of displaced Rohingya trapped in areas surrounding Rathedaung and Buthidaung townships. Many hid in fields and hills without food, medical care or other humanitarian assistance.¹¹⁰

In the few remaining Rohingya villages and neighborhoods across the region, further restrictions on freedom of movement forced Rohingya families into their houses, with limited access to markets and livelihood.¹¹¹ They reported malnutrition in addition to attacks by Myanmar security forces and Buddhist mobs, including sexual violence, intimidation, looting and extortion. Rohingya families were terrified, starving, and begging for a secure passage to safety, but no protection was provided to them.¹¹²

The humanitarian catastrophe created by Myanmar security forces in Rakhine State has been multiplied by the authorities’ unwillingness to provide access to humanitarian agencies, which have been forced to suspend all operation for several months.¹¹³ Anti-Muslim and anti-Rohingya tensions have also prevented and/or delayed local communities and international agencies from delivering vital supplies to the Rohingya. Incidents include villagers beating up and publicly humiliating a Rakhine woman for giving food rations to Rohingya in Myebon Township, attacking

¹⁰⁷ Dash, J. & Paul, R. ‘Worst monsoon floods in years kill more than 1,200 across South Asia’ *Reuters* (25 August 2017) <<https://www.reuters.com/article/us-southasia-floods/worst-monsoon-floods-in-years-kill-more-than-1200-across-south-asia-idUSKCN1B510Z>> accessed 14 September 2018.

¹⁰⁸ UN High Commissioner for Refugees (UNHCR) ‘Bangladesh: Refugee camp capacity exhausted; thousands in makeshift shelters’ (8 September 2017) <<http://www.unhcr.org/en-my/news/briefing/2017/9/59b24a074/bangladesh-refugee-camp-capacity-exhausted-thousands-makeshift-shelters.html>> accessed 13 September 2018.

¹⁰⁹ Khalid, S. ‘Cox’s Bazar: Chaos all around at Rohingya camps’ *Al Jazeera* (18 September 2017) <<https://www.aljazeera.com/news/2017/09/chaos-rohingya-camps-bangladesh-170918034033137.html>> accessed 13 September 2018; Weir, R. ‘Safe Zones’ for Rohingya Refugees in Burma Could Be Dangerous’, *Human Rights Watch* (23 September 2017) <<https://www.hrw.org/news/2017/09/23/safe-zones-rohingya-refugees-burma-could-be-dangerous>> accessed 15 July 2018.

¹¹⁰ Human Rights Watch ‘Burma: Ensure Aid Reaches Rohingya’ (11 September 2017) <<https://www.hrw.org/news/2017/09/11/burma-ensure-aid-reaches-rohingya>> accessed 13 September 2018.

¹¹¹ Human Rights Council ‘Report of Independent International Fact-finding Mission on Myanmar’, (12 September 2018) Thirty-ninth session 10–28 September 2018, UN Docs. A/HRC/39/64, at 10.

¹¹² Rasheed, Z. & Sakhawat, A. ‘Myanmar’s Rohingya beg for help: ‘People are starving’’ (6 October 2017) <<https://www.aljazeera.com/indepth/features/2017/10/myanmar-rohingya-beg-people-starving-171004111105976.html>> accessed 13 September 2018.

¹¹³ Human Rights Watch ‘Burma: Ensure Aid Reaches Rohingya’ (11 September 2017) <<https://www.hrw.org/news/2017/09/11/burma-ensure-aid-reaches-rohingya>> accessed 13 September 2018.

an international aid shipment headed to Maungdaw Township, and bombing a mosque in Buthidaung Township.¹¹⁴

Marzuki Darusman, chair of the UN Independent Fact-finding Mission on Myanmar, confirmed that an estimated 250,000 to 400,000 remaining Rohingya continue to suffer the most severe restrictions and repression in Rakhine State as late as October 2018.¹¹⁵ As a result of the dire humanitarian and security crises, Rohingya refugees have continued to flee to Bangladesh at an average rate of 1,733 per month since January of 2018.¹¹⁶ Those who arrived in Bangladesh reported thousands of Rohingya still waiting on the Myanmar coast to cross to safety. Refugees told stories of dead bodies on the shore, hunger, and people drinking seawater to survive.¹¹⁷ With the region racked by torched villages and abandoned paddy fields, Rohingya camped at a beach near Ale Than Kyaw village felt they were trapped in a place where they could not survive. Eighteen-year-old Ro Shi Armad said, “We’re not worried if we die on the way over. What else can we do now?”¹¹⁸

Most of the Rohingya refugee population crossed the border into neighboring Bangladesh. They walked for days through jungles, staggered through shallows on the Naf river, or braved short but perilous sea voyages across the Bay of Bengal. Some attempted the dangerous sea crossing on makeshift rafts made of bamboo and plastic jerry cans, having been unable to find a boat to take them to safety.¹¹⁹

¹¹⁴ Kwanyo, W. ‘Arakanese woman publicly humiliated for being a ‘traitor’ *DVB* (18 September 2017) <<http://www.dvb.no/news/arakanese-woman-publicly-humiliated-traitor/77435>> accessed 13 September 2018; The Bangkok Post ‘Myanmar Buddhist mob attacks aid shipment for Rohingya’ (21 September 2017) <<https://www.bangkokpost.com/news/asean/1328491/myanmar-buddhist-mob-attacks-aid-shipment-for-rohingya>> accessed 13 September 2018; Noreen, N. ‘Bomb explodes at Buthidaung mosque’ *DVB* (22 September 2017) Kwanyo, W. ‘Arakanese woman publicly humiliated for being a ‘traitor’ *DVB* (18 September 2017) <<http://www.dvb.no/news/arakanese-woman-publicly-humiliated-traitor/77435>> accessed 13 September 2018; The Bangkok Post ‘Myanmar Buddhist mob attacks aid shipment for Rohingya’ (21 September 2017) <<https://www.bangkokpost.com/news/asean/1328491/myanmar-buddhist-mob-attacks-aid-shipment-for-rohingya>> accessed 13 September 2018; Noreen, N. ‘Bomb explodes at Buthidaung mosque’ *DVB* (22 September 2017)

¹¹⁵ Al Jazeera ‘UN investigator says Myanmar genocide against Rohingya ‘ongoing’’, (25 October 2018) <<https://www.aljazeera.com/news/2018/10/investigator-myanmar-genocide-rohingya-ongoing-181025035804009.html>> accessed 28 October 2018.

¹¹⁶ Human Rights Council ‘Report of Independent International Fact-finding Mission on Myanmar’, (12 September 2018) Thirty-ninth session 10–28 September 2018, UN Docs. A/HRC/39/64, at 10.

¹¹⁷ Tan, V. ‘Thousands’ of Rohingya waiting to sail to safety in Bangladesh’ *UN High Commissioner for Refugees* (2 November 2017) <<http://www.unhcr.org/en-my/news/latest/2017/11/59fb19744/thousands-rohingya-waiting-sail-safety-bangladesh.html>> accessed 13 September 2018; Lee, Y. ‘Rights groups say outside monitors needed for Rohingya return to Myanmar’ *Reuters* (24 November 2017)

<<https://www.reuters.com/article/us-myanmar-rohingya/rights-groups-say-outside-monitors-needed-for-rohingya-return-to-myanmar-idUSKBN1DO0GW>> accessed 13 September 2018.

¹¹⁸ ASEAN Plus ‘Rakhine exodus leaves ghostland behind’ (15 November 2017)

<<https://www.thestar.com.my/news/regional/2017/11/15/rakhine-exodus-leaves-ghostland-behind/>> accessed 13 September 2018.

¹¹⁹ Cameron-Moore, S., ‘Myanmar warns U.N. scolding could harm talks with Bangladesh on Rohingya crisis’, *Reuters* (8 November 17)

<<https://www.reuters.com/article/us-myanmar-rohingya/myanmar-warns-u-n-scolding-could-harm-talks-with-bangladesh-on-rohingya-crisis-idUSKBN1D809P>> accessed 1 October 2018.

Many Rohingya refugees drowned during escape attempts. Between August 25 and September 14, 2017, nearly 100 people died in boat disasters along the Myanmar-Bangladesh coastline and the Naf River.¹²⁰ On September 28, 2017, another boat capsized in rough waters. The bodies of twenty-three people were recovered, but forty others were missing and presumed drowned. Many were likely to be children too weak for the strong currents.¹²¹ In October 2017, the refugee death toll rose further when overcrowded boats attempting to reach Bangladesh sank in harsh weather conditions, shattering the hopes of men, women and children searching for a future across the waters.¹²²

Other Rohingya attempt hazardous journeys to Thailand, Malaysia or Indonesia by boat, raising concerns of the reopening of dangerous sea migration routes. In April 2018, a vessel from central Rakhine State landed in Thailand following a heavy storm, but authorities forced the Rohingya men, women and children back to sea with the hope of eventually reaching Malaysia.¹²³ Another group sailed to Malaysia but unintentionally landed back on a beach in Myanmar in June 2018, after bad weather wrecked their boat.¹²⁴ Fortify Rights documented other arrivals-by-sea of Rohingya refugees in both Malaysia and Thailand in 2018.¹²⁵

The emergence of boats recalls the 2015 Rohingya refugee crisis, when thousands of Rohingya asylum-seekers also attempted to reach Thailand, Malaysia or Indonesia by boat. The governments of all three countries initially reacted by pushing the boats back to sea. Malaysia and Indonesia later permitted boats to land, but many Rohingya died after being kept hostage and/or abandoned at sea without food or water by human traffickers and smugglers. The abuses continued on land, with traffickers holding in camps, beating and torturing Rohingya asylum-seekers and other

¹²⁰ UN High Commissioner for Refugees (UNHCR) 'Bangladesh: Refugee camp capacity exhausted; thousands in makeshift shelters' (8 September 2017) <<http://www.unhcr.org/en-my/news/briefing/2017/9/59b24a074/bangladesh-refugee-camp-capacity-exhausted-thousands-makeshift-shelters.html>> accessed 13 September 2018; Channel News Asia 'Rohingya boat toll nears 100 as bodies wash ashore' (13 September 2017) <<https://www.channelnewsasia.com/news/asia/rohingya-boat-toll-nears-100-as-bodies-wash-ashore-9212876>> accessed 14 September 2018.

¹²¹ Agence France Presse 'Boat capsize compounds tragedy for Rohingya refugees; 60 feared dead' *Coconuts Yangon* (29 September 2017) <<https://coconuts.co/yangon/features/boat-capsize-compounds-tragedy-rohingya-refugees/>> accessed 14 September 2018.

¹²² Al Jazeera 'Dozen die, scores missing as Rohingya boat capsizes' (9 October 2017) <<https://www.aljazeera.com/news/2017/10/die-scores-missing-rohingya-boat-capsizes-171008193404634.html>> accessed 14 September 2018; Tan, V. 'Four Rohingya refugees die as boat capsizes off Bangladesh' *UN High Commissioner for Refugees* (31 October 2017) <<http://www.unhcr.org/en-my/news/latest/2017/10/59f87e754/four-rohingya-refugees-die-boat-capsizes-bangladesh.html>> accessed 14 September 2018.

¹²³ The Straits Times 'UN voices concern after Thai authorities allegedly force Rohingya back to sea' (3 April 2018) <<https://www.straitstimes.com/asia/se-asia/un-voices-concern-after-thai-authorities-allegedly-force-rohingya-back-to-sea>> accessed 5 October 2018.

¹²⁴ Radio Free Asia 'Myanmar to Repatriate Rohingya Boat People, Return 12 to Bangladesh' (13 June 2018) <<https://www.rfa.org/english/news/myanmar/myanmar-to-repatriate-rohingya-boat-people-return-12-to-bangladesh-06132018170545.html>> accessed 5 October 2018.

¹²⁵ Fortify Rights 'Thailand/Malaysia: Protect Rohingya Refugees, Urge ASEAN to Take Action - Thai authorities push Rohingya refugees back out to sea, putting lives at risk' (2 April 2018) <<https://www.fortifyrights.org/publication-20180402.html>> accessed 5 October 2018.

migrants for ransom. Hundreds of mass graves were found along Thai and Malaysian migration transit routes.¹²⁶

3.2 Refugee Crisis in Bangladesh

As more Rohingya arrived, conditions have continued to deteriorate in the Bangladeshi refugee camps of Kutupalong-Balukhali Expansion Camp and Leda Makeshift Settlement. Kutupalong-Balukhali Expansion Camp, sometimes referred to as the ‘mega camp’, is now the world’s largest refugee camp of its kind, with more than 600,000 people living in an area of just 13 square kilometres. The camp was built quickly and haphazardly on a hilly jungle. Now, there are no trees to keep the clay-sand mix underneath the packed tents from eroding. Residents of the camp remain highly vulnerable to catastrophic natural events such as cyclones and storm-surge flooding.¹²⁷

Difficult living conditions persist in the overcrowded and muddy Bangladeshi camps. Lack of drinking water and scarcity of latrines constitute significant issues; camp security is inadequate. Rohingya refugees fear trafficking, missing children, and general safety at night. Women and girls do not go out alone at night because of harassment, sexual assault or abduction.¹²⁸ At least thirty persons were murdered in Bangladeshi camps between August 2017 and August 2018.¹²⁹

However, Human Rights Watch reported that many refugees were reluctant to express any criticism of Bangladesh, or suggest that conditions were better in Myanmar. Even refugees perched precariously on steep, sandy slopes with rain pouring down during the interviews, would say, “I feel safe,” when asked. These views about security need to be considered in the light of the violence which they have previously experienced in Rakhine State. In general, Rohingya refugees who arrived in Bangladesh have experienced high levels of trauma. Such traumatic experiences are still raw for many of them. Female-headed Rohingya households are common because of deaths and disappearances of men; whereas many women and girls either have been raped or have witnessed rape or other forms of sexual violence.¹³⁰

¹²⁶ Human Rights Watch ‘Southeast Asia: Accounts from Rohingya Boat People - Denial of Rights in Burma, Bangladesh Lead to Trafficking and Dangerous Sea Voyages’ (27 May 2015) <<https://www.hrw.org/news/2015/05/27/southeast-asia-accounts-rohingya-boat-people>> accessed 5 October 2018.

¹²⁷ Human Rights Watch ‘Bangladesh is not my country – The plight of Rohingya refugees in Bangladesh’ (August 2018) at 1-2 <https://www.hrw.org/sites/default/files/report_pdf/bangladesh0818_web2.pdf> accessed 5 October 2018.

¹²⁸ *Id.* at 28-32.

¹²⁹ Radio Free Asia, ‘UNICEF: 500,000 Rohingya refugee children face bleak future in Bangladesh’, (24 August 2018) <<http://www.refworld.org/docid/5bb72e1134.html>> accessed 18 October 2018.

¹³⁰ Human Rights Watch ‘Bangladesh is not my country – The plight of Rohingya refugees in Bangladesh’ (August 2018) at 24-26 <https://www.hrw.org/sites/default/files/report_pdf/bangladesh0818_web2.pdf> accessed 5 October 2018.

3.2.1 Vulnerabilities of Women and Minors

Myanmar security forces have systematically harassed, sexually assaulted, and raped Rohingya women and girls both during and prior to attacks on their villages. Humanitarian organisations working with refugees in Bangladeshi camps report receiving hundreds of victims and treating injuries that suggested violent and aggressive attacks, including forced penetration, beating and cutting of genitals.¹³¹ In October 2017, Cooperative for Assistance and Relief Everywhere (CARE) warned that nearly half a million refugees were in urgent need of assistance as they had either witnessed or experienced sexual and gender-based violence (SGBV).¹³² However, due to lack of knowledge about the medical consequences of SGBV, the pressures of day-to-day survival and social stigmas, many survivors do not come forward to seek assistance; therefore, the actual number of cases is likely underreported.¹³³

SGBV carries severe physical, psychological and emotional consequences for victims. Victims are in urgent need of medical and psychological support to deal with the trauma resulting from this violence. SGBV survivors are among the most vulnerable of Rohingya refugees in Bangladeshi camps. Healthcare workers note challenges with assisting these particular women and girls due to how brutal their experiences have been.¹³⁴ They require specialised support, but often do not seek help due to the risks of additional victimisation and persecution. SGBV survivors fear that their families will marginalise them for being ‘damaged goods’.¹³⁵ For many Rohingya women and girls, pregnancy outside of marriage is socially impossible. Pregnant survivors of sexual violence and children born from rape carry additional needs that must be carefully met.¹³⁶ Healthcare workers believe that some survivors hide rapes and pregnancies, not just from authorities, but from their own communities and families. Young girls especially fear the stigmatisation resulting from unintended pregnancies and therefore do not access care, giving birth in secret and/or abandoning their babies.¹³⁷ The UN Children’s Fund (UNICEF) reported that, of all babies born in Bangladeshi

¹³¹ Lewis, S. and Wilkes, T., ‘U.N. medics see evidence of rape in Myanmar army ‘cleansing’ campaign’, *Reuters* (24 September 2017) <https://www.reuters.com/article/us-myanmar-rohingya-rape-insight/u-n-medics-see-evidence-of-rape-in-myanmar-army-cleansing-campaign-idUSKCN1BZ06X>> accessed 21 August 2018.

¹³² CARE ‘Bangladesh: At least 448,000 refugees from Myanmar witnessed or experienced gender-based violence’ (17 October 2017) <<https://reliefweb.int/report/bangladesh/bangladesh-least-448000-refugees-myanmar-witnessed-or-experienced-gender-based>> accessed 21 August 2018.

¹³³ Doctors Without Borders ‘Rohingya refugees: still searching for safety’ (31 July 2018) <<https://www.doctorswithoutborders.org/rohingya-refugees-still-searching-safety>> accessed 21 August 2018.

¹³⁴ *Ibid.*

¹³⁵ Beech, H. ‘I’m Struggling to Survive: For Rohingya Women, Abuse Continues in Camps’ (23 December 2018) <<https://www.nytimes.com/2017/12/23/world/asia/rohingya-women-abuse-myanmar.html>> accessed 21 August 2018.

¹³⁶ Doctors Without Borders ‘Rohingya refugees: still searching for safety’ (31 July 2018) <<https://www.doctorswithoutborders.org/rohingya-refugees-still-searching-safety>> accessed 21 August 2018.

¹³⁷ Ahmed, K. ‘Nine months on, a race against time to find pregnant Rohingya rape survivors’, *IRIN* (16 April 2018) <<https://www.irinnews.org/feature/2018/04/16/nine-months-race-against-time-find-pregnant-rohingya-rape-survivors>> accessed 21 August 2018.

camps between August 2017 and May 2018, only about 3,000 – or one in five – were delivered in health facilities. The ‘invisibility’ of non-registered children increases their vulnerability and the risk of additional marginalisation and neglect. Another urgent but often overlooked priority is providing newborn children with birth registration.¹³⁸

Rohingya women arriving at Bangladeshi camps alone or otherwise lacking male protection present significant vulnerabilities in a highly patriarchal society that sees only one role for women, childbearing. Lack of education, child and forced marriages, extreme poverty and domestic violence are common features in Rohingya women’s lives. Without access to livelihood opportunities, sexual and labour exploitation, trafficking and survival sex are serious risks for single women. Even women who left Myanmar with their families intact are not guaranteed safety. Experts working in Bangladeshi camps say that domestic abuse is common among the Rohingya as a product of patriarchal customs and decades of marginalisation, discrimination and violence, which is then exacerbated by the high pressure environment of refugee camps. Women feel vulnerable going out alone to access toilets, collect water or fetch firewood in the jungle, where they can easily suffer additional violence. Women are often beaten up at home. Over one six-day period in October 2017, UN staff recorded 306 incidents of SGBV in the Bangladeshi camps. Most of those attacks required a referral to emergency medical services.¹³⁹

Thousands of undocumented Rohingya children live in Bangladeshi refugee camps. More than half a million are denied access to education. Rohingya children face a very real danger of becoming a ‘lost generation,’ lacking in skills to cope with life in Bangladeshi camps or to contribute to society when they return to Myanmar.¹⁴⁰

Approximately 40,000 children in Bangladeshi camps are believed to be without at least one parent. Kabir Ahmed – father of three and uncle of four - recounted how his nephews and nieces, aged two to eight, lost their parents. His brother and children’s father, Jafar, was shot dead after soldiers blockaded the village of Boli Fara in Maungdaw Township. Jafar tried to sneak out to go fishing because families were starving, and he was caught by the Tatmadaw and never returned home. The children’s mother was left behind when soldiers started burning houses in mid-

¹³⁸ UNICEF ‘More than 60 Rohingya babies born in Bangladesh refugee camps every day– UNICEF’ (17 May 2018) <https://www.unicef.org/press-releases/more-60-rohingya-babies-born-bangladesh-refugee-camps-every-day%E2%80%93unicef> accessed 21 August 2018.

¹³⁹ Beech, H. ‘I’m Struggling to Survive: For Rohingya Women, Abuse Continues in Camps’ (23 December 2017) <https://www.nytimes.com/2017/12/23/world/asia/rohingya-women-abuse-myanmar.html> accessed 21 August 2018.

¹⁴⁰ Radio Free Asia ‘UNICEF: 500,000 Rohingya refugee children face bleak future in Bangladesh’ (24 August 2018) <http://www.refworld.org/docid/5bb72e1134.html> accessed 20 October 2018.

September 2017. Having just given birth, she was too weak to flee on her own and Kabir Ahmed could not carry them all. Many Rohingya children will never find their parents in Bangladesh, and the dead in Myanmar remain unaccounted for.¹⁴¹

While many orphaned or separated children have been taken by relatives, others arrived in Bangladesh alone. There are at least 6,013 unaccompanied and separated Rohingya minors living in Bangladeshi camps, where they face food shortages and serious risks of exploitation and abuse, according to Save the Children. These children are some of the most vulnerable on the planet, and they have to carve out an entirely new existence in the camps, without their mother, father or extended family. The lack of any protection makes these children more vulnerable to trafficking, early marriage and other forms of exploitation.¹⁴²

Women and children face acute vulnerabilities and high risk of sexual and labour exploitation. While it is impossible to provide exact numbers due to the secretive nature of the crime, evidence shows that thousands of Rohingya refugees risk ending up in the hands of human traffickers. IOM identified and supported seventy-eight victims of trafficking between September 2017 and July 2018, but this figure accounts for just a fraction of the actual number of men, women and children trafficked during that period due to the complex and clandestine nature of the crime.¹⁴³ Women and children endure the highest risk of being targeted by human traffickers. Traffickers prey upon vulnerable women and children fleeing violence by exploiting their will to survive. While some victims are lured and abused, others trade sex as the only means of survival.¹⁴⁴

3.3 Refugee Repatriation

Deteriorating living-conditions in camps and increasing hostilities between the local community and refugees have increased pressure on the Bangladeshi government to take action to avoid the clashes that occurred in the 1990s between the local community and roughly 300,000 Rohingya

¹⁴¹ McPherson, P. ‘‘I miss them so much’’: Myanmar’s lost Rohingya children plead for their parents’, *The Guardian* (5 November 2017) <<https://www.theguardian.com/world/2017/nov/05/i-miss-them-so-much-myanmars-lost-rohingya-children-plead-for-their-parents>> accessed 21 August 2018.

¹⁴² Radio Free Asia ‘UNICEF: 500,000 Rohingya refugee children face bleak future in Bangladesh’ (24 August 2018) <<http://www.refworld.org/docid/5bb72e1134.html>> accessed 20 October 2018.

¹⁴³ IOM ‘Thousands at Risk of Trafficking Amid Rohingya Refugee Crisis: IOM’ (31 July 2018) <<https://www.iom.int/news/thousands-risk-trafficking-amid-rohingya-refugee-crisis-iom>> accessed 21 August 2018.

¹⁴⁴ Amnesty International ‘From violence to exploitation: Sex trafficking of Rohingya children in Bangladesh’ (14 June 2018) <<https://www.amnesty.org.uk/blogs/childrens-human-rights-network-blog/violence-exploitation-sex-trafficking-rohingya-children>> accessed 21 August 2018; IOM ‘Thousands at Risk of Trafficking Amid Rohingya Refugee Crisis: IOM’ (31 July 2018) <<https://www.iom.int/news/thousands-risk-trafficking-amid-rohingya-refugee-crisis-iom>> accessed 21 August 2018.

refugees who had fled persecution in Myanmar.¹⁴⁵ Bangladeshi authorities have sought help to deal with the refugee influx, calling for Myanmar to allow their safe repatriation. The Bangladeshi government offered to create ‘safe zones’ for Rohingya in Rakhine State, but human rights groups warned that safety could not be ensured and segregation would only worsen the conflict.¹⁴⁶

As early as October 12, 2017, Aung San Suu Kyi announced the establishment of the high-level Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD) with the aim of allowing the government and all aid agencies to work together towards refugee return and resettlement.¹⁴⁷ Meanwhile, Myanmar and Bangladesh signed a bilateral repatriation deal and created a joint working group to solve the refugee crisis. The deal was based on the 1992-1993 repatriation agreement between the two countries and read that Myanmar would accept those refugees who could present identity documents. Acceptable identity documents include the currently distributed national verification cards and the now withdrawn ‘white cards’, as well as receipts received for the return of the ‘white cards’.¹⁴⁸ In January 2018, the Myanmar government alleged that it was completely ready to welcome the returnees, that all necessary measures had been taken to provide them shelter, food and employment, and that every effort would be made to resettle them in places close to their former communities.¹⁴⁹ The repatriation process has been delayed and has stalled since.¹⁵⁰ The latest attempt at implementation, in mid-November 2018, has been halted as a result of opposition by Rohingya refugees, UNHCR and human rights groups.¹⁵¹

According to various Myanmar officials, returnees were to be initially received at the newly established Ngakhura and Taung Pyo Letwe centers and then transferred for some months to Hla

¹⁴⁵ Perria, S. ‘Rohingya Muslim refugees face fresh misery as Bangladesh welcome runs out’, *The Independent* (30 December 2018) <<https://www.independent.co.uk/news/world/asia/rohingya-muslims-myanmar-burma-bangladesh-refugees-local-clashes-workers-food-border-a8121231.html>> accessed 23 September 2018.

¹⁴⁶ Al Jazeera ‘Bangladesh PM wants Rohingya safe zones in Myanmar’ (22 September 2017) <<https://www.aljazeera.com/news/2017/09/hasina-seeks-return-rohingya-refugees-myanmar-170922053435567.html>> accessed 27 September 2018; Weir, R. ‘“Safe Zones” for Rohingya Refugees in Burma Could Be Dangerous’, *Human Rights Watch* (23 September 2017) <<https://www.hrw.org/news/2017/09/23/safe-zones-rohingya-refugees-burma-could-be-dangerous>> accessed 27 September 2018.

¹⁴⁷ Mizzima ‘Aung San Suu Kyi thanks people for their support, calls for refugee repatriation’ (12 October 2017) <http://www.mizzima.com/news-domestic/aung-san-suu-kyi-thanks-people-their-support-calls-refugee-repatriation>> accessed 27 September 2018.

¹⁴⁸ Aung, T. T. and Lee, Y. ‘Myanmar, Bangladesh ink Rohingya return deal amid concern over army’s role’, *Reuters* (23 November 2017) <<https://www.reuters.com/article/us-myanmar-rohingya/myanmar-bangladesh-ink-rohingya-return-deal-amid-concern-over-armys-role-idUSKBN1DN0HA>> accessed 27 September 2018.

¹⁴⁹ Mizzima ‘Myanmar blames Bangladesh for delayed Rohingya return’ (24 January 2018) <http://www.mizzima.com/news-regional/myanmar-blames-bangladesh-delayed-rohingya-return>> accessed 27 September 2018.

¹⁵⁰ Ruma, P. ‘Bangladesh calls for pressure on Myanmar on Rohingya repatriation’, *Reuters* (9 September 2018) <<https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/bangladesh-calls-for-pressure-on-myanmar-on-rohingya-repatriation-idUSKCN1LP0GQ>> accessed 13 October 2018.

¹⁵¹ Siddiqui, Z. ‘Exclusive: Rohingya repatriation, relocation plans set to be pushed back to 2019 – government official’, *Reuters* (18 November 2018) <<https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-exclusive/rohingya-repatriation-relocation-plans-pushed-back-to-2019-government-official-idUSKCN1NN0FC>> accessed 4 December 2018.

Phoe Khaung IDP camp before their new houses are built, raising concerns of permanent Rohingya segregation in Rakhine State.¹⁵² The Rohingya fear that relocation to Myanmar IDP camps could lead to a similar situation to that in 2012, where camps in Sittwe, the capital of Rakhine State, still remain home to 120,000 displaced people over five years after resettlement.¹⁵³ Human rights groups warned the Myanmar government about the dangers of segregating Rohingya returnees into new camps, saying they must be allowed to settle in their original homes and not forced into ghetto-like conditions.¹⁵⁴ Official plans seen by Reuters also showed that returning Rohingya were unlikely to be able to reclaim their land and crops. When questioned about this, the Rakhine State Minister for Agriculture, Livestock, Forestry and Minerals, Kyaw Lwin, replied, “It depends on them. There is no land ownership for those who don’t have citizenship”.¹⁵⁵

Over one year after the most recent Rohingya exodus, it is clear that conditions in Myanmar are still not suitable for a safe, voluntary, and sustainable return, as indicated, amongst others, by UN Secretary-General António Guterres in August 2018.¹⁵⁶ Despite the signing of a repatriation deal between the Myanmar government and the UN in June 2018 – which was rejected by the Rohingya community for not involving them in the drafting process and not addressing their key concerns,¹⁵⁷ Myanmar has not made investments in reconstruction, reconciliation or respect for human rights necessary for all communities to safely live in Rakhine State. Accountability for the atrocities committed by Myanmar security forces constitutes an essential prerequisite for regional security and stability, as well as the implementation of dignified solutions allowing people to return home. These require an end to discrimination and violence, and the re-establishment of the rule of law.¹⁵⁸

Currently, few Rohingya living in Bangladesh have expressed any desire to return to violence and discrimination. Many declared they would rather die in Bangladesh than return to oppression in

¹⁵² Piper, E. ‘Myanmar says temporary camp will house 30,000 Rohingya targeted for repatriation’, *Reuters* (15 January 2018) <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/myanmar-says-temporary-camp-will-house-30000-rohingya-targeted-for-repatriation-idUSKBN1F40SF> accessed 27 September 2018.

¹⁵³ Htusan, E., McDowell, R. ‘No sign Rohingya will be allowed to return home’, *The Associated Press* (23 December 2017) <https://www.thestar.com/news/world/analysis/2017/12/23/analysis-no-sign-rohingya-will-be-allowed-to-return-home.html> accessed 28 September 2018.

¹⁵⁴ Agence France-Presse ‘Refugees would ‘rather die’ than return to oppression in Myanmar’ (16 December 2017) <https://www.manilatimes.net/rohingya-rather-die-return-oppression-myanmar/368844/> accessed 28 September 2018.

¹⁵⁵ Lewis, S., Aung, T. T., Soe Oo, K., ‘Exclusive: Returning Rohingya may lose land, crops under Myanmar plans’, *Reuters* (22 October 2017) <https://www.reuters.com/article/us-myanmar-rohingya-repatriation-exclusi/exclusive-returning-rohingya-may-lose-land-crops-under-myanmar-plans-idUSKBN1CR0AS> accessed 28 September 2018.

¹⁵⁶ UN News Service, ‘UN chief calls for Security Council to work with Myanmar to end ‘horrendous suffering’ of Rohingya refugees’, (28 August 2018) <http://www.refworld.org/docid/5bc49539a.html> accessed 16 October 2018.

¹⁵⁷ Rahman, S. A. ‘Rohingya refugees reject UN-Myanmar repatriation agreement’, *The Guardian* (6 July 2018)

<https://www.theguardian.com/world/2018/jul/06/rohingya-refugees-reject-un-myanmar-repatriation-agreement> accessed 29 September 2018.

¹⁵⁸ UN News Service, ‘UN chief calls for Security Council to work with Myanmar to end ‘horrendous suffering’ of Rohingya refugees’, (28 August 2018) <http://www.refworld.org/docid/5bc49539a.html> (accessed 16 October 2018).

Myanmar's Rakhine State.¹⁵⁹ Some said they would commit suicide if forcibly repatriated before their safety and equal rights are guaranteed. Fatima Sultan, a twenty-year-old Rohingya refugee, said, "I want to go back to my home – when we are treated as citizens, when there is no violence, when women are not tortured and kidnapped, when at last we can be free".¹⁶⁰

Rohingya refugees have called for essential needs to be met before they agree to return to Myanmar. Their demands include, as non-negotiable preconditions for repatriation, that the Myanmar government recognize Rohingya ethnicity and citizenship, grant equal rights, compensate losses, ensure safety and hold the military accountable for its crimes.¹⁶¹ There can be no return without the transparency, accountability and safety, as well as the restoration of civil and political rights, an end to segregation of returnees in IDP camps, the return of land, and the rebuilding of destroyed homes and villages.¹⁶²

¹⁵⁹ Agence France-Presse 'Refugees would 'rather die' than return to oppression in Myanmar' (16 December 2017) <https://www.manilatimes.net/rohingya-rather-die-return-oppression-myanmar/368844/> accessed 28 September 2018.

¹⁶⁰ Oxfam 'Rohingya refugees say no return to Myanmar without equal rights' (14 December 2017) <https://www.oxfam.org/en/pressroom/pressreleases/2017-12-14/rohingya-refugees-say-no-return-myanmar-without-equal-rights> accessed 28 September 2018.

¹⁶¹ Siddiqui, Z. 'Rohingya refugee leaders draw up demands ahead of repatriation' *Reuters* (19 January 2018) <https://www.reuters.com/article/us-myanmar-rohingya-petition-exclusive/exclusive-rohingya-refugee-leaders-draw-up-demands-ahead-of-repatriation-idUSKBN1F80SE> accessed 28 September 2018; Siddiqui, Z. 'Exclusive: Rohingya repatriation, relocation plans set to be pushed back to 2019 – government official', *Reuters* (18 November 2018) <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-exclusive/exclusive-rohingya-repatriation-relocation-plans-pushed-back-to-2019-government-official-idUSKCN1NN0FC> accessed 4 December 2018.

¹⁶² Lee, Y. 'Rights groups say outside monitors needed for Rohingya return to Myanmar' *Reuters* (24 November 2017) <https://www.reuters.com/article/us-myanmar-rohingya/rights-groups-say-outside-monitors-needed-for-rohingya-return-to-myanmar-idUSKBN1DO0GW> accessed 28 September 2018.

4. Concluding Remarks

In the aftermath of previous violence that forced Rohingya residents across the border into Bangladesh, large numbers of refugees were returned to Myanmar in a manner that was premature, involuntary and unsafe. In the 1970s and 1990s, early repatriation was the priority of the Bangladeshi government. According to some sources, pressure was placed on the refugees in an attempt to quickly meet that target, with restrictions on food and use of force.¹⁶³ Refugees were not consulted about repatriation plans, and some UNHCR staff were not convinced that the refugees actually wanted to return or that the conditions for voluntary repatriation could be met. However, most Rohingya refugees were repatriated to Myanmar, where they continued facing severe discrimination and violence for decades.¹⁶⁴

The present course of events is coming dangerously close to repeating these past tragedies. Given the lack of sustainable solutions to ensure the safety and dignity of returning Rohingya refugees, a speedy repatriation of over 700,000 individuals to Myanmar cannot be considered an optimal solution to the crisis. Furthermore, Rohingya refugees have developed a deeper understanding, informed by previous experience, of the risks of premature repatriation and have expressed no desire to return to Myanmar until essential demands of safety, freedom and dignity are met.

Premature return to a troubled country of origin indicates the failure of the international community to protect refugees. Voluntary repatriation can only occur if individual safety, freedom and dignity of refugees is restored.¹⁶⁵ As of today, no such guarantee has been provided to the Rohingya refugees. Repatriation would constitute a mere relocation that once more exposes them to the recurrent risks of severe discrimination, marginalisation and violence. Bangladesh cannot afford to receive and sustain mass influxes of desperate Rohingya refugees on its own. Historical evidence suggests that, after over half a century of persecution by Myanmar authorities, Rakhine State will not miraculously become safe for the Rohingya. Ultimately, prosperity and peace for Rakhine State will be the solution, whenever that become reality. Meanwhile, several past cycles of Rohingya repatriation and subsequent persecution demonstrate that it is time to rethink the approach towards solving the current refugee crisis.

¹⁶³ Crisp, J. 'Primitive people': the untold story of UNHCR's historical engagement with Rohingya refugees' *Humanitarian Practice Network* (October 2018) <<https://odihpn.org/magazine/primitive-people-the-untold-story-of-unhcrs-historical-engagement-with-rohingya-refugees/>> accessed 28 October 2018.

¹⁶⁴ *Ibid.*

¹⁶⁵ Stein, B. N. 'Refugee Repatriation, Return, and Refoulement During Conflict' *USAID Conference Promoting Democracy, Human Rights, and Reintegration in Post-conflict Societies* (30 October 1997) <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.500.8396&rep=rep1&type=pdf>> accessed 28 October 2018.

A re-examination of refugee policies to avoid the consequences of another premature repatriation of the Rohingya community and to challenge the current trend of unsafe returns affecting refugees globally. Scholars and experts argue that alternatives exist. Refugees are not passive objects, but skilled human beings constrained by cruel circumstances; they should be treated as responsible actors. Host countries must let refugees help themselves and rebuild their lives. If people's ability to contribute in exile are nurtured, their long-term welfare will be enhanced.¹⁶⁶ Greater opportunities for refugee self-reliance should include access to education, employment, electricity, connectivity, transportation and, ideally, full participation in the socio-economic life of the host state.¹⁶⁷ In particular, refugees should be allowed to access the labor market and participate in the national economy of the host country. This would help refugees to be self-sufficient, support their families and enhance their quality of life. Risks of refugee trafficking and exploitation would be reduced by eliminating the immense challenges that restrictions on the right to work create. At the same time, refugees would provide social and economic contributions to their host communities.¹⁶⁸

While working to put an end to the severe discrimination and violence that forced over 700,000 Rohingya to flee their homes, the international community must work to develop a strong refugee support system truly capable of protecting refugees by recognising their rights and enhancing their self-reliance. This must include granting Rohingya access to asylum, reuniting families, scaling up resettlement to third countries, helping integration of newcomers and ensuring access to education, healthcare and work. These actions will ensure that the Rohingya and other individuals seeking asylum from persecution are afforded the best outcomes, and will help to alleviate the challenges our world currently faces.

¹⁶⁶ Posner, M. & Clancy, D. 'A Human Rights-based Approach to Refugee Assistance' (not dated) <http://www.humanrightsfirst.org/wp-content/uploads/pdf/approach_refugess.pdf> accessed 5 November 2018; Betts, A. & Collier, P. 'Refuge – Rethinking Refugee Policy in a Changing World' (Oxford University Press, 2017) at 143.

¹⁶⁷ Betts, A. & Collier, P. 'Refuge – Rethinking Refugee Policy in a Changing World' (Oxford University Press, 2017) at 143-148.

¹⁶⁸ Asylum Access, 'Global Refugee Work Rights Report' (2014) <http://asylumaccess.org/wp-content/uploads/2014/09/FINAL_Global-Refugee-Work-Rights-Report-2014_Interactive.pdf> accessed 5 November 2018.



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