

An aerial photograph of a vast, densely packed refugee camp. The ground is covered with a sea of colorful roofs in shades of red, blue, green, and grey, interspersed with patches of dry earth and sparse vegetation. The layout is highly organized yet extremely crowded, with narrow paths and small structures packed closely together. The overall scene conveys a sense of immense scale and human displacement.

**INTERNATIONAL CRIMES AGAINST  
THE ROHINGYA IN BANGLADESH**



# **International Crimes Against the Rohingya in Bangladesh**

A communication to the Prosecutor of the International Criminal Court  
pursuant to Article 15 of the Rome Statute

*in the Situation in the People's Republic of Bangladesh/Republic of the Union of  
Myanmar (ICC-01/09)*

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13 March 2024

Kutupalong refugee camp in Cox's Bazar, Bangladesh - 30 Nov 2018  
Cover Photo by Azim Khan Ronnie, used with photographer's permission



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## Summary

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1. Petra Molnar, Associate Director of the Refugee Law Lab presents this communication pursuant to Article 15 of the Rome Statute ('Statute') to the Office of the Prosecutor of the International Criminal Court ('ICC'). The Refugee Law Lab, hosted at York University's Centre for Refugee Studies, in collaboration with Osgoode Hall Law School, undertakes research and advocacy about legal technologies and their impact on refugees and other people on the move.
2. The Refugee Law Lab's focus on the Rohingya began following the demonstrated impact of social media on the crimes committed against them,<sup>1</sup> the impact of the prolonged and deliberate deprivation of internet access to the Rohingya community in Bangladesh,<sup>2</sup> UNHCR's improper collection and sharing of personal information from Rohingya with Bangladesh,<sup>3</sup> and studies into how the digital gap, including bans on Rohingya owning devices, deepens marginalization of Rohingya refugees more generally.<sup>4</sup> During this research, the Refugee Law Lab compiled the information contained in the present communication from experts and actors also working with the Rohingya community in Bangladesh.
3. The available information provides a reasonable basis to believe that crimes against humanity are being committed against the Rohingya by Bangladeshi officials, including: (i) deportation under Article 7(1)(d) of the Rome Statute; (ii) persecution on ethnic and/or racial grounds under Article 7(1)(h); (iii) the crime of apartheid under Article 7(1)(j); and (iv) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health under Article 7(1)(k). These underlying acts are being committed in the context of a widespread and systematic attack against the Rohingya population by the Bangladesh authorities. These acts fall squarely within the scope of the current investigation by the ICC Office of the Prosecutor, and should be investigated and prosecuted.
4. By way of a brief overview, in August 2017, Rohingya Muslims in Myanmar's Rakhine State were the victims of widespread and systematic crimes committed during 'clearance operations' by the Myanmar security force and members of the local Rakhine Buddhist population, and led by the military (the Tatmadaw). Thousands of Rohingya men, women and children were killed or injured. Rape, including gang-rape, and other forms of sexual violence were perpetrated on a massive scale. Entire villages were razed to the ground. Although not unprecedented, these attacks against the

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<sup>1</sup> Amnesty International, '[Myanmar: The social atrocity: Meta and the right to remedy for the Rohingya](#)', 29 September 2022; Alia Al Ghussain, '[Meta's Human Rights Report ignores the real threat the company poses to human rights worldwide](#)', *Amnesty International*, 22 July 2022; Amy Cheng, '[Rohingya refugees sue Facebook for \\$150 billion, alleging it helped perpetuate genocide in Myanmar](#)', 7 December 2021; Patrice Taddonio, '[As Facebook Addresses Role in Myanmar Violence, a Look Back at Early Warnings](#)', *Frontline*, 6 November 2018; [The Facebook Papers](#), 'We are responsible for Viral Content', 11 December 2019, p. 26; United Nations Independent International Fact-Finding Mission on Myanmar ('FFM'), '[Report of the detailed findings of the Independent International Fact Finding Mission on Myanmar](#)', 17 September 2018, A/HRC/39/CRP.2 ('FFM Report'), paras.1342-1354; 1346.

<sup>2</sup> Verena Hölzl, '[For Rohingya refugees, internet ban severs ties to the outside world](#)', *The New Humanitarian*, 10 March 2020; Human Rights Watch, '[Bangladesh: Internet Ban Risks Rohingya Lives](#)', 26 March 2020.

<sup>3</sup> Kate Hodal, '[UN put Rohingya 'at risk' by sharing data without consent, says rights group](#)', 15 June 2021; Human Rights Watch, '[UN Shared Rohingya Data Without Informed Consent](#)', 15 June 2021.

<sup>4</sup> Kathy Win, '[Digital gap deepens marginalization of Rohingya refugees in Bangladesh](#)', 29 October 2023.

Rohingya were unparalleled in scale, and marked the culmination of decades of restrictions, mistreatment, persecution, and dehumanization of the Rohingya by the Myanmar authorities.

5. The Myanmar government's position was that these 'clearance operations' were a legitimate response to coordinated attacks by the Arakan Rohingya Salvation Army ('ARSA'), an armed Rohingya insurgent group. The clearance operations were grossly disproportionate to the threat posed by ARSA, which was far less equipped and organized than the Myanmar military. Rather than a reaction to ARSA, the operations were pre-planned, with the goal of deporting the Rohingya population from Myanmar. The crimes were committed on a scale which captured international attention, and prompted the ICC Prosecutor to seek leave to open an investigation into this conduct.
6. As a result of these mass atrocities, approximately 750,000 Rohingya, many of whom were injured and extremely vulnerable, fled the territory of Myanmar and into Bangladesh. This was at least the third major exodus of Rohingya to their neighboring state. Earlier waves had followed military assaults on the Rohingya in 1978 and 1991-1992, with smaller numbers of Rohingya also having fled in 2016. Bangladesh, as it has done the past, admitted the fleeing Rohingya onto its territory, winning the appreciation and thanks of the international community. The 750,000 Rohingya joined thousands of others who had remained from the 1990s in crowded camps in Cox's Bazar district in the southeast of Bangladesh. In December 2023, the population of these camps was approximately 972,000,<sup>5</sup> of which around half are children.
7. The situation of the Rohingya in the Bangladesh camps is utterly precarious and deeply alarming to those who interact with them. At the center of this crisis, is the openly held position of the Bangladesh government that the presence of the Rohingya will be short-term, and that they must return to Myanmar as soon as possible. However, having rejected medium or long-term solutions for repatriation, the Bangladesh authorities have instead pursued policies with a "foreseeable result of worsening conditions in the camps and discouraging refugees from staying".<sup>6</sup> These policies include deliberately adopting and entrenching restrictions aimed at excluding the Rohingya from Bangladesh society, and which now impact nearly all their basic human rights.
8. The restrictions range from the seemingly trivial, such as a prohibition on the Rohingya owning a smartphone or laptop, to the extreme: restrictions on freedom of movement, education, and access to adequate food or healthcare. Rohingya are prohibited from employment, engaging in commerce, or moving freely even within the camp. They are unable to live any kind of dignified life, or even consistently interact with the outside world. These restrictions set the backdrop for a more sinister reality, being the complicity and direct involvement of the Bangladesh authorities and police in violent attacks, arbitrary arrests, and widespread extortion. In January 2024, Human Rights Watch identified that Bangladesh police abuses were "rampant" in the camps, in a report which detailed instances of

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<sup>5</sup>UNHCR, '[Country Data: Bangladesh](#)', December 2023 ('UNHCR Bangladesh Country Data').

<sup>6</sup> D. Sullivan, '[Fading Humanitarianism: The Dangerous Trajectory of the Rohingya Refugee Response in Bangladesh](#)', *Refugees International*, 26 May 2021, ('Fading Humanitarianism Report'), p. 7; International Crisis Group, '[Five Years On, Rohingya Refugees Face Dire Conditions and a Long Road Ahead](#)', 22 August 2022 ('ICG Long Road Ahead Report'): "Although it opened its borders to the desperate refugees in 2017, Bangladesh made clear from the beginning that it would not allow them to stay indefinitely and that it expected international support to both host the Rohingya and facilitate their return to Myanmar." See, e.g., Geoffrey Macdonald, '[Conflict Dynamics between Bangladeshi Host Communities and Rohingya Refugees](#)', *United States Institute of Peace*, 12 April 2023; International Crisis Group, '[Bangladesh: A high-stakes and potentially violent election in January 2024](#)', 21 October 2023.

rape and other sexual violence against members of the Rohingya community.<sup>7</sup> These police are the very authorities who should be protecting the Rohingya from the worsening violence from armed and criminal groups who have “firmed up a foothold inside the camps, something that Bangladeshi law enforcement has failed to stop”.<sup>8</sup> More than a dozen different groups are now engaged in turf wars and criminal activities within the camps’ boundaries. Any attempt to characterize these as an internal Rohingya issue is undermined by the active involvement of Bangladesh authorities and police, with reports of Bangladeshi law enforcement and members of armed groups working together in the camps. The victims are – again – the Rohingya, with “a steep rise in killings and abductions” in 2023.<sup>9</sup>

9. Of course, these abuses and persecution are not going on behind closed doors. The camps in Bangladesh are accessed by a wide range of humanitarian actors and NGOs who help oversee their operation. International actors who work with, and in support of, the Rohingya, including those seeking accountability before international and domestic criminal courts for the crimes committed in 2017, are also present in the camps. Each of these groups and actors can witness the situation and have knowledge of the extent of the problem. They are also, however, dependent on the Bangladesh government for access to the Rohingya community. The process of being granted access to the camps by various layers of Bangladesh bureaucracy, is opaque and arbitrary. Criticism or perceived criticism of the Bangladesh government, or its treatment of the Rohingya has led, in some instances, to access being cut. As a result, the treatment of the Rohingya by Bangladesh remains unaddressed, with the focus of accountability actors firmly on the past, and deliberately blinded to the ongoing crimes and abuses that being perpetrated against a population already suffering from the trauma of the 2017 attacks.

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<sup>7</sup> Meenakshi Ganguly, [‘Bangladesh Police Abuses Rampant in Rohingya Camps’](#), *Human Rights Watch*, 24 January 2024 (‘HRW 2024 Police Abuse Report’).

<sup>8</sup> International Crisis Group, [‘Crisis Mounts for Rohingya Refugees in Bangladesh’](#), 6 December 2023 (‘ICG 2023 Report’), p. 3.

<sup>9</sup> ICG 2023 Report, p. 3.

## **A. Investigation of Alleged Crimes in Bangladesh falls within the situation**

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10. In November 2019, Pre-Trial Chamber III of the ICC found reasonable grounds to believe that, since at least 9 October 2016, the Rohingya may have been the victims of coercive acts that could qualify as the crimes against humanity of deportation and persecution in Bangladesh and Myanmar. The Pre-Trial Chamber accordingly authorized the opening of an investigation.<sup>10</sup>
11. The Pre-Trial Chamber framed its November 2019 authorization in the *Bangladesh/Myanmar* situation in broad terms. According to the Pre-Trial Chamber, the Prosecution investigation must be linked to the situation as described, but “is not restricted to the incidents identified in the Request and the crimes set out in the present decision” and “is also not restricted to the persons or groups of persons identified in the Request”.<sup>11</sup>
12. The Prosecutor was also “*authorised to investigate alleged crimes which fall within these parameters irrespective of the nationality of the perpetrators*”.<sup>12</sup> The investigation was not temporally limited to the clearance operations of 25 August 2017, but rather extends back to include crimes committed on or after 1 June 2010 – the date of entry into force of the Rome Statute for Bangladesh.<sup>13</sup>
13. Further, given Bangladesh’s status as a party to the Rome Statute, the Pre-Trial Chamber was able to authorize an investigation “*for crimes committed at least in part on the territory of Bangladesh*”.<sup>14</sup> This followed a prior ruling of the Pre-Trial Chamber authorizing the ICC to exercise jurisdiction in Bangladesh since “*acts of deportation initiated in a State not Party to the Statute (through expulsion or other coercive acts) and completed in a State Party to the Statute (by virtue of victims crossing the border to a State) fall within the parameters of article 12(2)(a) of the Statute*”.<sup>15</sup> The rationale underpinning this determination was considered applicable to any other crimes within the jurisdiction of the ICC; that is, “[i]f it were established that at least an element of another crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party, the Court might assert jurisdiction pursuant to article 12(2)(a) of the Statute”.<sup>16</sup>
14. The jurisdictional criteria outlined above, setting the scope of the investigation into the *Bangladesh/Myanmar* situation are all satisfied in relation to the situation of the Rohingya in Bangladesh. The Prosecutor is authorized to investigate, and does not need to seek an extension of the scope of the current situation.
15. Investigation of the crimes outlined in the present communication would fall within the Office of the Prosecutor’s Policy on Gender Based Crimes (December 2023), which affirmed the Prosecutor’s

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<sup>10</sup> *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar* (Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar) (ICC, Pre-Trial Chamber III, No. ICC-01/19, 14 November 2019) (‘Article 15 Decision’), p. 58.

<sup>11</sup> Article 15 Decision, para. 126.

<sup>12</sup> Article 15 Decision, para. 125.

<sup>13</sup> Article 15 Decision, para. 131.

<sup>14</sup> Article 15 Decision, para. 124.

<sup>15</sup> Request under Regulation 46(3) of the Regulations of the Court (Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”) (ICC, Pre-Trial Chamber I, No. ICC-RoC46(3)-01/18, 6 September 2018) (‘Article 19 Jurisdiction Decision’), para. 73.

<sup>16</sup> Article 19 Jurisdiction Decision, para. 74.

commitment to the rigorous investigation and prosecution of gender-based crimes to help remedy the historical neglect of these crimes. Given that approximately half of the Rohingya living in Bangladesh are children, investigation would also be coherent with the Office of the Prosecutor's Policy on Children (2023), which seeks not only to remedy the under-representation and lack of engagement of children in international criminal justice processes, but to emphasize that all Rome Statute crimes may be committed against children, or otherwise affect them.

16. Importantly, public statements from ICC Prosecutor Karim A.A. Khan demonstrate his concern for the current situation of the Rohingya in Bangladesh, in addition to the 2017 crimes which first prompted his office to seek to open an investigation in 2019. During his second visit to the camps in July 2023, Prosecutor Khan said that he was “profoundly impacted by the fact that from March this year, families in the camps can only be given enough food for two meals a day, in comparison to the three they used to receive. This is an issue that has implications not just on a humanitarian level but for security, stability, and safety in the camps, and requires urgent action”.<sup>17</sup> This action can and should include investigation into potential crimes arising from the ongoing treatment of the Rohingya in Bangladesh, which would only reinforce the Office of the Prosecutor's stated commitment “to delivering meaningful accountability for the suffering they have endured”.

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<sup>17</sup> Office of the Prosecutor, [‘ICC Prosecutor Karim A. A. Khan KC concludes second visit to Bangladesh: “The Rohingya must not be forgotten. Together, we can deliver on their legitimate expectations of justice.”](#), 10 July 2023.



## **B. Overview of the Current Situation for the Rohingya in Bangladesh**

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17. Bangladesh currently hosts approximately 972,000 Rohingya refugees, who live in the world's largest refugee settlement in Cox's Bazar.<sup>18</sup> Approximately half of this number are children. A further 32,500 Rohingya refugees have been moved by the Bangladeshi authorities from Cox's Bazar to the island of Bhasan Char in the Bay of Bengal, around 60km away from the mainland.<sup>19</sup> For a period of time during 2016 and 2017, Bangladesh opened its border with Myanmar to allow the Rohingya to enter the country<sup>20</sup> This ability to enter Bangladesh was one of the only benefits afforded to members of this marginalized group. Since then, Bangladesh has again closed its border to further Rohingya entrants from Myanmar, has consistently and increasingly restricted the rights of Rohingya on its territory, and has adopted a securitized containment approach which exacerbates the challenges for the Rohingya and deprives this group of even basic human rights.<sup>21</sup> At the center of this treatment, is the classification of the Rohingya as 'foreign illegal aliens' under Bangladeshi immigration law, rather than asylum-seekers and refugees, which itself facilitates the deprivation of the rights to which refugees are entitled. This status, which also means Rohingya children born in the camps remain unregistered and without a legal identity or status, further increases the vulnerability of this community to human rights abuses.
18. As described in Section C of this submission, these policies reflect the primary goal of the Bangladesh government, which is the swift repatriation of the Rohingya to Myanmar. Bangladeshi officials continue to insist that hosting the Rohingya will be short-term, and they should return to Myanmar as soon as possible. Officials "have rejected medium- to long-term solutions and increasingly pursued policies that have the foreseeable result of worsening conditions in the camps and discouraging refugees from staying."<sup>22</sup>
19. As a result of this policy, the situation for the Rohingya in Bangladesh is one of daily crisis, fear, and despair, placing them directly at risk of being victims of a number of offences. For ease, the conduct underlying potential international crimes has been grouped into the following themes: (1) Failure to Recognize the Rohingya as Refugees (2) Attacks and Victimization by Bangladesh Police; (3) The Security Void; (4) Restrictions on Employment and Livelihood; (5) Restriction on Movement; (6) Restriction on Education; (7) Digital deprivation and other technological repression; and (8) Vulnerability to Natural Disasters and Fires.

### **(1) Failure to Recognize the Rohingya as Refugees**

20. Bangladesh is not a state party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons, or the 1961 Convention on the Reduction of Statelessness. There is no national asylum system. Instead, the

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<sup>18</sup> UNHCR Bangladesh Country Data.

<sup>19</sup> [Rohingya Refugee Response/Bangladesh: Bhasan Char Population Factsheet](#), Government of Bangladesh and UNHCR, 31 January 2024.

<sup>20</sup> G. Macdonald, I. Mekker & L. Mooney, '[Conflict Dynamics between Bangladeshi Host Communities and Rohingya Refugees](#)', *USIP Special Report No. 519*, April 2013, ('USIP Report'), p. 4.

<sup>21</sup> Fading Humanitarianism Report, p. 3.

<sup>22</sup> Fading Humanitarianism Report, p. 7. See also, ICG Long Road Ahead Report: "Although it opened its borders to the desperate refugees in 2017, Bangladesh made clear from the beginning that it would not allow them to stay indefinitely and that it expected international support to both host the Rohingya and facilitate their return to Myanmar."

Rohingya are considered as ‘foreign illegal aliens’ under Bangladeshi immigration law, rather than as asylum-seekers and refugees. Those refugees who arrived in 2017 are identified by the Bangladesh government, jointly with UNHCR, as ‘Forcibly Displaced Myanmar Nationals’. This recognition enables the Rohingya to access aid and services in the camp, but does not confer formal refugee status,<sup>23</sup> and stymies any efforts to integrate the population.<sup>24</sup> In fact, “[t]his makes them vulnerable to denial of freedom of movement, access to public services, and formal education as well as to arrest and exploitation. Refugees cannot have births, deaths or marriages formally registered and no formal certification is allowed for those with access to education.”<sup>25</sup> This status also means that Rohingya have no access to the domestic judicial system, and instead have been placed under the jurisdiction of the ‘Camp in Charge’ officers, known as ‘CICs’ who, as civil servants based in the camp, have the authority to arrest and punish Rohingya. Some CICs have used corporal punishment against perpetrators, and undertake their own investigations, including into allegations of sexual and gender-based violence. Only the most serious matters are referred to police authorities.

21. As such, Rohingya children are not registered when they are born in refugee camps, and are not provided with a legal identity or refugee status.<sup>26</sup> Continued lack of identification hinders the basic human rights of all people, but particularly Rohingya children.
22. While the protection against *refoulement* under international human rights law prevents the Rohingya from being returned to Myanmar, this does not automatically entitle them to be granted refugee status and be afforded all the rights that refugees are entitled to. However, a state must still respect, protect and fulfil the human rights of all persons under its jurisdiction, until a durable solution is found;<sup>27</sup> in the context set out above, Bangladesh is manifestly failing to do this. This failure compounds all of the existing issues, and makes the Rohingya vulnerable to the human rights violations being committed by the Bangladesh authorities.

## **(2) Attacks and Victimization by Bangladesh Police**

23. Violence and security incidents inside the Cox’s Bazar Rohingya refugee camps have risen exponentially since the beginning of 2022. While a large proportion of violence on the ground in the camps is caused by a growing presence of armed groups and gangs discussed directly below,<sup>28</sup> acts of violence, harassment and arbitrary arrest and detention are also directly attributable to the Bangladesh Armed Police Battalion (‘APBn’).
24. In July 2020, the Bangladesh Army ceded responsibility for law and order in the camps to two armed APBn battalions overseen by the Ministry of Home Affairs, with a combined 1,176 members at full

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<sup>23</sup> A. de Chickera, [‘Stateless and Persecuted: What Next for the Rohingya?’](#), Migration Policy Institute, 18 March 2021 (‘Migration Policy Institute Report’).

<sup>24</sup> Atlantic Council, South Asia Center, [‘Assessing the Treatment of Rohingya Refugees in Bangladesh’](#), September 2019 (‘Atlantic Council Report’), p. 1.

<sup>25</sup> K.H. Arif, ‘The Rohingya Refugees in Bangladesh: Non-refoulement and Legal Obligation under National and International Law’, Vol. 27(4) (2020) *International Journal on Minority and Group Rights* (‘Arif Article’), p. 867.

<sup>26</sup> M. Van de Poel, [‘The Rohingya’s torment: thousands of children endangered in Myanmar and Bangladesh’](#), *Humanium*, 25 April 2023; Atlantic Council Report, p. 2.

<sup>27</sup> Arif Article, p. 874.

<sup>28</sup> ACAPS Briefing Note, [‘Bangladesh: rising violence, insecurity and protection concerns in Cox’s Bazar refugee camps’](#), 12 May 2023 (‘ACAPS Briefing Note’), p. 1.

strength.<sup>29</sup> The United Nations (UN) has advocated for the transfer of security responsibility to a civilian force, in line with the humanitarian principle of maintaining the civilian character of refugee camps, but have been unsuccessful.<sup>30</sup> The lack of resources given to the APBn mean that they never had a hope of properly policing the camps. Battalion commanders conceded that most officers are unmotivated and have poor service records.<sup>31</sup>

25. Rather than acting to protect the Rohingya refugees, the APBn officers regularly harass and attack them.<sup>32</sup> An International Crisis Group (ICG) report explains that the APBn, “which has been responsible for camp security since July 2020, not only lacks the resources to protect refugees, but also appears to be complicit in their troubles”.<sup>33</sup> A 2023 Human Rights Watch report revealed the true extent of actions committed by the APBn against the Rohingya such that “[a]buses by police in the Cox’s Bazar camps have left Rohingya refugees suffering at the hands of the very forces who are supposed to protect them”.<sup>34</sup>
26. As a starting point, extortion is rampant. Refugees are regularly detained by APBn officers on fabricated grounds of trafficking drugs or violence-related offences.<sup>35</sup> If a person is not present in their designated shelter when the APBn arrives to arrest them, family members are then arrested in their place.<sup>36</sup> APBn police generally demand 10,000-40,000 taka (US\$100-400) to avoid arrest, and 50,000-100,000 taka (US\$500-1,000) for the release of a detained family member.<sup>37</sup> These sums are unaffordable for the vast majority of the camp-based Rohingya, who are prohibited from working and are entirely dependent on humanitarian assistance. Even where they are able to pay bribes,<sup>38</sup> the agreement may not be honored. The Youth Congress Rohingya has also documented the widespread APBn practice of falsifying evidence against Rohingya as an impetus for further extortion in the form of ‘fines’ for these falsified offences.<sup>39</sup> A 2023 investigation by Fortify Rights found that Bangladesh police “beat Rohingya refugees from Myanmar with batons and choked and used other torture methods against them to extort payments”, documenting numerous instances of violent torture of Rohingya at the hands of the APBn.<sup>40</sup>
27. Local checkpoints and patrols inside the camps have been instituted to facilitate this widespread practice. When stopped at checkpoints, APBn officers regularly confiscate identity cards and

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<sup>29</sup> Mohammad Ali Jinnat, Mohammad Jamil Khan, ‘[Armed Police Battalions take charge of Rohingya camps in Cox’s Bazar](#)’, *The Daily Star*, 2 July 2020.

<sup>30</sup> ICG 2023 Report, p. 7.

<sup>31</sup> Mohammad Zillur Rahman, ‘Rohingya Influx, Security and Capability of Bangladesh Police in Rohingya Camps: An Assessment’, *Asian Journal of Social Science and Management Technology*, Vol. 5(2), March-April 2023.

<sup>32</sup> S. Bauchner, ‘[Bangladesh Police Beating Rohingya Refugees](#)’, *Human Rights Watch*, 11 May 2022.

<sup>33</sup> ICG 2023 Report.

<sup>34</sup> H. Pope, ‘[Bangladesh: HRW Reports Police Oppression against Rohingya Refugees](#)’, *OCCRP*, 18 January 2023 (‘OCCRP Report’).

<sup>35</sup> OCCRP Report.

<sup>36</sup> OCCRP Report.

<sup>37</sup> Human Rights Watch, ‘[Bangladesh: Rampant Police Abuse of Rohingya Refugees](#)’, 17 January 2023 (‘HRW 2023 Police Abuse Report’).

<sup>38</sup> HRW 2023 Police Abuse Report.

<sup>39</sup> Youth Rohingya Congress, ‘[This Persecution is the Worst There is: Restrictions on Rohingya Freedom of Movement in Bangladesh](#)’, September 2023, p. 9 (‘Youth Rohingya Congress Report’).

<sup>40</sup> Fortify Rights, ‘[Bangladesh: Ensure Accountability for Police Corruption, Torture of Rohingya Refugees](#)’, 10 August 2023.



smartphones, and also carry out “beatings, verbal harassment, as well as sexual harassment and abuse.” The Youth Rohingya Congress reported that many Rohingya felt the APBn was more of a threat to Rohingya than the armed groups who routinely terrorize camp residents, with one Rohingya reporting that “[e]ven the gang ARSA [...] is not anything bad to us. It is only the police who are torturing us intentionally... [The camp] has become like a prison only because of them.”<sup>41</sup>

28. Hand in hand with this extortion, is arbitrary detention. In October 2022, for example, the APBn initiated “Operation Root Out” in response to targeted killings by armed groups, arresting large numbers of Rohingya in the camps. Refugees alleged to be innocent by their family members are often labelled as gang members and wrongfully arrested.<sup>42</sup> In January 2023, Human Rights Watch reported that 900 Rohingya had been arrested in the camps since mid-2022.
29. Extortion and arbitrary arrest are widespread, but other criminal conduct is also alarmingly prevalent. Refugees International reported in March 2023 that the camps’ deteriorating infrastructure and isolation gave rise to an escalating risk of sexual violence from APBn officers, citing to concerns from Rohingya women and girls that a lack of safe spaces for sanitation and bathing put them at risk. This is in addition to the widespread occurrence of domestic and intimate partner violence (discussed further below), which victims then do not feel able to report to the APBn police who are perpetrating the same exactions.<sup>43</sup> In January 2024, Human Rights Watch reported a direct link between the “climate of impunity for ongoing abuses including sexual assault” and the failure of Bangladesh authorities to “hold the police in the camps to account for human rights violations”.<sup>44</sup>

### **(3) The security and justice void**

30. The lack of effective law enforcement in the camps has allowed armed and criminal groups to gain a firm foothold within the camps. Though the Bangladesh authorities launch campaigns with the stated aim of cracking down on armed elements in the camp, in reality, these groups operate with impunity. Security in the camps has worsened significantly since 2020. Violence has “escalated rapidly” in 2023, “with up to a dozen different groups now engaged in turf wars and criminal activity, leading to a steep rise in killings and abductions”.<sup>45</sup> For most groups, an important goal is to gain a share of the profits from the lucrative trade in methamphetamine tablets known as *yaabaa*, which arrive in large quantities from Myanmar, mainly across the Naf River, before being transported further into Bangladesh and elsewhere in the region. These groups also make money in other ways; kidnapping, extortion, and people smuggling. The impact of these criminal activities on the Rohingya population is acute, and occurs with the complicity or direct involvement of the Bangladesh authorities.
31. The largest of these criminal groups is still ARSA, which enjoyed the status as the dominant group in the camp until at least 2020. ARSA engages in the drug trade, human trafficking, and other criminal activities. ARSA was formed in Myanmar, where in 2016 and 2017 it launched occasional attacks

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<sup>41</sup> Youth Rohingya Congress Report, p. 34.

<sup>42</sup> R. Paul, S. Ganguly & K. Das, ‘[Surging crime, bleak future push Rohingya in Bangladesh to risk lives at sea](#)’, 24 January 2023; Daniel P. Sullivan, ‘[Hope amid Despair: Finding Solutions for Rohingya in Bangladesh](#)’, *Refugees International*, 13 December 2022 (‘Hope amid Despair Report’), p. 10.

<sup>43</sup> Refugees International and Women’s Peace Network, ‘[The Situation of the Rohingya and Deadly Sea Crossings](#)’, 1 March 2023 (‘Refugees International 2023 Report’).

<sup>44</sup> HRW 2024 Police Abuse Report.

<sup>45</sup> ICG 2023 Report, p. 3.

against police and military targets.<sup>46</sup> Since 2018, the group has moved away from a ‘Myanmar-facing insurgent model’, operational primarily in Myanmar, to an organization that is vying for power and control in the camp in Bangladesh.<sup>47</sup> In an interview conducted on 24 February 2022, Ataullah, ARSA’s leader, claimed that the group had a membership of 2,000 in Myanmar and 14,000 in Bangladesh.<sup>48</sup>

32. By 2018, ARSA had also started to terrorize the Rohingya population in Bangladesh, and conduct abductions, torture and assassinations of camp residents who spoke out against them. ‘Night guards’ – Rohingya civilians who stay up through the night in an attempt to protect their shelters from external threats, such as gangs and the regular arson attacks – were particularly vulnerable. In some instances, Rohingya civilians are forced, by Bangladesh camp officials or APBn to serve as ‘night guards’, despite the risk this places them at. Those who ARSA considered as a threat to its power and authority, such as human rights activists or people seen to be working with international actors, were regularly targeted by ARSA with threats, kidnappings, and assassinations. As has been reported by the UN Special Rapporteur on the situation of human rights in Myanmar (‘UN Special Rapporteur’), because of these threats of violence, “a once vibrant Rohingya civil society is now barely functioning.”<sup>49</sup> ARSA targets those considered to be a threat to its power with threats, kidnapping and assassinations. This includes majhees (community leaders) who refuse to join its cause.
33. The relationship between ARSA and the Bangladesh authorities is complex and has changed over time. The impunity with which ARSA has operated in the camps since 2017 always suggested that some Bangladesh authorities were tolerant of the group’s activities, including its documented attacks and violence against perceived Rohingya opponents. ARSA initially enjoyed good relationships with the APBn and the Directorate General of Forces Intelligence and National Security Intelligence, and these officials provided ARSA with space to operate “in the expectation that ARSA would directly or indirectly support various Bangladeshi policy objectives, including Rohingya relocation to Bhasan Char and repatriation to Myanmar.”<sup>50</sup>
34. Notably, when the UN Special Rapporteur raised ARSA’s attacks against Rohingya with the Bangladesh Government in 2022, senior Bangladesh officials were reported to be “dismissive of the claim” and attributed security issues in the Cox’s Bazar camps to “criminal gangs and miscreants”. These officials insisted there is “no ARSA presence” in the camps in Cox’s Bazar.<sup>51</sup> The UN Special Rapporteur himself reported having spoken with numerous Rohingya who had either been kidnapped or intimidated by ARSA, or had family members killed by ARSA, as well as numerous Rohingya civil

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<sup>46</sup> International Crisis Group, [‘The Rakhine State Danger to Myanmar’s Transition’](#), 2017.

<sup>47</sup> Iftekharul Bashar, ‘Rohingya Crisis and Western Myanmar’s Evolving Threat Landscape’, *Counter Terrorist Trends and Analyses*, Vol. 11(6), (2019), pp. 14-18; G. Bhattacharjee, [‘Bangladesh-Myanmar: Arakan Rohingya Solidarity Army Menace – Analysis’](#), *Eurasia Review*, 2022 (‘ARSA Report’).

<sup>48</sup> ARSA Report.

<sup>49</sup> A/HRC/49/76, [‘Report of the Special Rapporteur on the situation of human rights in Myanmar. Thomas H. Andrews’](#), April 2022 (‘Special Rapporteur 2022 Report’), Annex II, para 11.

<sup>50</sup> International Institute for Strategic Studies, [‘Competing armed groups pose new threat to Rohingya in Bangladesh’](#), 11 December 2023 (‘IISS 2023 Report’).

<sup>51</sup> Special Rapporteur 2022 Report, Annex II, para. 12. See also Radio Free Asia, [‘UN rapporteur: Rohingya militants kill, abuse refugees in Bangladesh camps’](#), 20 December 2021.

society members and human rights defenders who had “particular and very serious security concerns”.<sup>52</sup>

35. These 2022 claims by the Bangladesh authorities that ARSA had no presence in the camp were patently not credible, and were undermined by other public statements by Bangladeshi officials blaming ARSA for, *inter alia*, the murder of Rohingya civil society leader Mohibullah in the same year.<sup>53</sup> Importantly, a link can be drawn between the ongoing crimes by ARSA and the Bangladeshi authorities’ tolerance and support of the group.<sup>54</sup> Rohingya living in the camp attest that the Bangladesh authorities allow ARSA’s criminal activities to continue.
36. Even with this support from the authorities, ARSA’s status as the dominant group in the camps did not last. Other criminal groups – comprising both members of the Bangladesh host community and Rohingya population – trade in narcotics, arms, and gold, participate in human trafficking, and move constantly into each other’s perceived “territory”. From 2020, ARSA started to come into conflict with these other armed groups, some established by its own former members. In particular, Bangladesh’s support appeared to move away from ARSA towards an older Rohingya armed group, the Rohingya Solidarity Organization (‘RSO’). RSO re-emerged as an important player in the camps in 2022,<sup>55</sup> and with the apparent backing of the Bangladesh authorities. In addition to RSO’s sudden reappearance in 2022, it is permitted to carry out its activities during the day, when APBn police are also regularly patrolling, whereas ARSA operated predominantly at night. Bangladesh law enforcement and RSO members have also been seen working together in the camps.<sup>56</sup> Leaked documents have been reported as showing that, in January 2023, Myanmar and Bangladesh security forces collaborated to direct a January 2023 RSO attack against the ‘No Man’s Land’ refugee encampment between Myanmar and Bangladesh territory, which destroyed the camp and displaced around 4,500 refugees who had been living there.<sup>57</sup>
37. The result is regular violent exchanges as the groups fight for dominance.<sup>58</sup> The victims of these violent exchanges are the Rohingya refugees themselves.<sup>59</sup> Gun fights between the groups have resulted in deaths and serious injuries to the involved parties and those Rohingya who often simply find themselves in the way.<sup>60</sup> 85 Rohingya homicides were reported between August 2022 and August 2023, a figure unlikely to reflect the full extent of the violence.<sup>61</sup> Insecurity has dramatically increased, with murders, drug-related crime, and other violent acts experiencing a sharp increase throughout

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<sup>52</sup> Special Rapporteur 2022 Report, Annex II, para. 12.

<sup>53</sup> Al Jazeera, [‘Bangladesh charges 29 Rohingya over murdered activist Mohib Ullah’](#), 13 June 2022.

<sup>54</sup> ICG 2023 Report, p. 3.

<sup>55</sup> Radio Free Asia, [‘In Bangladesh’s border with Myanmar, 2 Rohingya militant groups fight for dominance’](#), 2 February 2022.

<sup>56</sup> ICG 2023 Report, p. 4.

<sup>57</sup> S. Rahman, [‘The Disappearance and Arbitrary Detention of Rohingya Refugee Leader Dil Mohammed’](#), *The Diplomat*, 7 September 2023.

<sup>58</sup> See, e.g., Sumon Corraya, [‘Violent feud breaks out again between armed groups in Rohingya refugee camps in Cox’s Bazar’](#), *Asia News*, 12 June 2023; IISS 2023 Report.

<sup>59</sup> MD Mufassir Rashid, [‘How Cross-Border Crime Ensnarers and Endangers Rohingya Refugees in Bangladesh’](#), *The Diplomat*, 2021.

<sup>60</sup> Shaikh Azizur Rahman, [‘Seven Rohingya Refugees Killed in Violence in Bangladesh’](#), VOA, 8 July 2023; Azad Majumder, [‘Backlash against Rohingya group in Bangladesh amid surge in crimes’](#), *EFE*, 5 October 2023.

<sup>61</sup> Abdur Rahman, [‘Separatist groups behind escalating violence in Rohingya camps’](#), *Dhaka Tribune*, 25 August 2023.



the course of 2023. While violence previously occurred mainly at night, armed group members with “knives and locally made guns now roam the camps during the day, threatening residents and killing rivals.”<sup>62</sup>

38. While it is difficult to quantify the impact of the Bangladesh authorities’ support for the various armed groups on the violence against the Rohingya, this support combined with the increasingly firm foothold of armed criminal groups in the camps as a direct result of failures and complicity of the APBn, is undoubtedly the dominant factor in the sharp rise in insecurity, violence and killings.
39. In addition to crimes of physical violence, there are reports of other serious crimes becoming widespread in the camps. It is reported that human trafficking from the camps is rife and increasing. An Anti-Trafficking Working Group established by humanitarian agencies reported that, during 2023, it had identified 419 victims of human trafficking.<sup>63</sup> It seems certain that the number of victims not identified must far exceed this figure.
40. Not all of the violence occurring in the camps is necessarily organized. Humanitarian agencies report that gender-based violence is widespread within the camps, especially intimate-partner violence. A study of Rohingya adolescents published in late 2023 reported that 40% of married females had experienced intimate partner violence during the previous 12 months.<sup>64</sup> The same study found that the proportion of the adolescent population which has experienced sexual violence could be as high as 35% among married girls; 28% among unmarried girls; and 20% among boys.<sup>65</sup>
41. While much of this violence is likely perpetrated by individuals or groups without the encouragement or tacit support of Bangladesh, nonetheless, Bangladesh is responsible for ensuring that victims of crime have avenues for complaint and protection. Currently these are virtually non-existent for Rohingya refugees living in the Cox’s Bazar camps.<sup>66</sup> While informal dispute resolution systems operate within the camps, they are affected by significant corruption and abuse of power, such as problematic power structures resulting in the marginalization of women and the dominance of armed groups.<sup>67</sup> Access to the formal justice system only exists for crimes designated sufficiently serious (which in practice does not include domestic violence)<sup>68</sup> and occurs only through CICs, who are Bangladeshi civil servants, and who are thus able to act as gatekeepers.<sup>69</sup> In practice, very few of the many serious crimes committed in the camps result in prosecutions. The consequence is that those

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<sup>62</sup> Sanchita Bhattacharya, ‘[Bangladesh: ARSA’s Sanguinary Footprints – Analysis](#)’, *Eurasia Review*, 12 December 2023.

<sup>63</sup> Anti-Trafficking Working Group (‘ATWG’), [Human Trafficking Analysis Dashboard January-March 2023](#); ATWG, [Human Trafficking Analysis Dashboard April-June 2023](#); ATWG, [Human Trafficking Analysis Dashboard July-September 2023](#); ATWG, [Human Trafficking Analysis Dashboard October-December 2023](#).

<sup>64</sup> S. Guglielmi, J. Seager, K. Mitu and N. Jones, ‘[“Safe is the grave”: adolescent girls’ risk of gender-based violence in the Rohingya refugee camps in Bangladesh](#)’, *Gender and Adolescence Global Evidence*, Policy Brief, December 2023, p. 3.

<sup>65</sup> *Ibid.*, p. 6.

<sup>66</sup> K. Ahmed, ‘[For Rohingya refugees, patchwork justice leaves crimes unpunished](#)’, *The New Humanitarian*, 17 September 2020; S. Goodyear, ‘[As violence surges in Rohingya camps, victims have no path to justice](#)’, *CBC Radio*, 9 July 2023.

<sup>67</sup> International Rescue Committee, ‘[Access to Justice for Rohingya and host Community in Cox’s Bazar](#)’, February 2019, pp. 30-31.

<sup>68</sup> *Ibid.*, p. 31.

<sup>69</sup> *Ibid.*, p. 32.

perpetrating crimes have no reason to desist from their behavior, and victims have no hope of any form of support or justice. This impunity interacts with the growing power of organized criminal groups, and the lack of options for lawful livelihoods (discussed below) to create skyrocketing rates of criminality.

#### **(4) Restrictions on employment and livelihood**

42. It is illegal for the Rohingya refugees to work in Bangladesh.<sup>70</sup> This prohibition is premised on the purported discouragement of integration of the Rohingya into Bangladesh society, because it could allegedly harm employment prospects of local Bangladeshis.<sup>71</sup>
43. In practice, many Rohingya work within the camps, including many who are employed as paid “volunteers” by international agencies. However, Bangladesh authorities have sporadically enforced the prohibition on working. From late 2021, Bangladesh officials destroyed thousands of shops and informal marketplaces, which had become vital sources of income for covering basic needs and supplementing aid rations.<sup>72</sup> In many cases, Bangladesh officials provided no notice, arriving with bulldozers to destroy shops, without allowing the owners to salvage remaining products. Attempts by some Rohingya to continue operating businesses from their own shelters were also shut down.<sup>73</sup> When asked about the destruction of shops and informal marketplaces, a senior Bangladesh government official said “[l]ivelihood opportunity is not the responsibility of Bangladesh” and that “if we allow unauthorized shops, they bring *yaabaa* [...] these shops are the real centers of *yaabaa*.”<sup>74</sup>
44. The prohibition on refugees doing paid work means the Rohingya are dependent on humanitarian assistance. As recognized by Human Rights Watch, “Bangladesh is understandably burdened with hosting nearly one million Rohingya refugees, but cutting them off from opportunities to work and study is only compounding their vulnerability and dependence on aid”.<sup>75</sup>
45. The situation is compounded by continued cuts to food rations. The UN World Food Programme (‘WFP’) announced a reduction in the monthly food ration for Rohingya in refugee camps in Bangladesh. Rations were cut from US\$12 vouchers to US\$10, starting on 1 March 2023.<sup>76</sup> The vouchers are used to purchase 13 kilos of rice per person, as well as other food products. In the face of continuing funding shortfalls, WFP then announced in May 2023 that the food vouchers would be cut again to just US\$8 per month.<sup>77</sup> WFP acknowledged that “with less food to get by, refugees have little choice but to resort to negative coping mechanisms”, such as child marriage, risks of exploitation and abuse through illegal employment, tensions in the refugee camps, and risking

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<sup>70</sup> Atlantic Council Report, p. 2.

<sup>71</sup> Fading Humanitarianism Report, p. 9.

<sup>72</sup> Human Rights Watch, [‘Bangladesh: New Restrictions on Rohingya Camps’](#), 4 April 2022, (‘HRW New Restrictions Report’).

<sup>73</sup> HRW New Restrictions Report.

<sup>74</sup> Special Rapporteur 2022 Report, para 26.

<sup>75</sup> HRW New Restrictions Report.

<sup>76</sup> World Food Programme, [‘Lack of funds forces WFP to cut rations for Rohingya in Bangladesh’](#), 17 February 2023.

<sup>77</sup> World Food Programme, [‘Rohingya refugees in Bangladesh face grim choices as more cuts to food assistance imminent’](#), 26 May 2023.

perilous journeys. Recently WFP announced that rations would return to US\$10 per month,<sup>78</sup> but they are yet to return to the original level of US\$12, which had been set to meet minimum calorie intake levels.

46. The consequences of the ration cut are readily observable, with Rohingya in the camps reporting that “people are going hungry and children are becoming malnourished.”<sup>79</sup> WFP itself anticipated that the cuts would lead to “dire consequences of nutrition for women and children”, echoing Rohingya in the camp who reported that the cuts would mean “we will have to starve”.<sup>80</sup> Food shortages are among the primary concerns now raised by Rohingya refugees, even in the face of rampant physical violence. As well as obvious impacts on health and physical wellbeing, desperation for food increases refugees’ vulnerability to various forms of exploitation including human trafficking, involvement in narcotics trade and armed groups, and childhood marriage for girls. Sources suggest that some refugees are beginning to consider repatriation to junta-controlled internment camps in Myanmar as a means of survival.
47. While the decision to reduce the rations available to the Rohingya was a decision of the WFP based on budget availability and priorities, responsibility lies with Bangladesh for dependency on WFP rations. Restrictions on livelihood necessarily lead to dependency on aid. Normally in a humanitarian crisis, donor funding will decline as the situation stabilizes and the affected community are able to start to support themselves. The annual ‘Joint Response Plan’ for the Rohingya demonstrates that the funding required for food security in the camps in fact continues to grow.<sup>81</sup> As such, by depriving the Rohingya of the right to work and support their families, Bangladesh has created an unsustainable situation which is resulting in the gradual starvation of this already vulnerable population.

##### **(5) Restrictions on movement and assembly**

48. In addition to not being able to work, Rohingya are also not permitted to move outside of a confined area. The Bangladesh government has forbidden the Rohingya from leaving the camps, and have also placed restrictions on their movement within the camps’ borders. The precise restrictions in place, which are overseen by the government-appointed CICs, are largely unclear as a result of inconsistent messaging and arbitrary enforcement. Essentially however, the restrictions limit travel to other camps within the larger Kutapalong camps, or even movement within a Rohingya’s own camp of residence.
49. A curfew is also in place. Rohingya are not allowed to be out of their shelters, or cross any checkpoints after 6pm. They are also prohibited from spending the night in another shelter, which is particularly disruptive to Rohingya family and community life. If family members live far from each other, curfew restrictions preclude them from ever being able to see each other. APBn officers have affirmed that movement restrictions are “official APBn policy”.<sup>82</sup>

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<sup>78</sup> United News of Bangladesh, [‘WFP to increase food ration from US\\$8 to US\\$10 for all Rohingya refugees in Cox’s Bazar’](#), 31 December 2023.

<sup>79</sup> Ro Yassin Abdumonab, [‘Flipping the Narrative: What food ration cuts mean for Rohingya refugees’](#), *The New Humanitarian*, 28 August 2023.

<sup>80</sup> Anjana Sankar, [‘Fear of hunger plagues Rohingya after WFP slashes food ration to \\$8’](#), *The National*, 7 July 2023.

<sup>81</sup> ISCG, [‘2023 Joint Response Plan, Rohingya Humanitarian Crisis’](#), January-December 2023.

<sup>82</sup> Youth Rohingya Congress Report, p. 25.



50. The Bangladesh government narrative is that restrictions on movement are necessary to protect the Rohingya.<sup>83</sup> In reality, the restrictions are a significant contributing factor to the overall coercive environment in the camps. In a study conducted by the Youth Rohingya Congress, 72% of Rohingya respondents believed that the restrictions on movement were in place to encourage Rohingya to return to Myanmar or to agree to move to Bhasan Char.<sup>84</sup>
51. To ensure compliance with these restrictions on movement, in 2019, the Bangladesh government commenced construction of over 30 kilometers of barbed wire fences which now surround and divide the camps in significant part. The Bangladesh authorities have also built checkpoints at the camp entrances and on the roads nearby, and watchtowers throughout the camps. While these barbed wire fences are a visual representation of the increasingly securitized response of the Bangladesh authorities, it also has the practical consequence of denying refugees' freedom of movement and placing the Rohingya at serious risk during emergencies, as discussed further below.<sup>85</sup>
52. Importantly, the enforcement of movement restrictions provides the backdrop for punishments and abuse of Rohingya by the APBn. Rohingya face "relentless extortion when attempting to pass through checkpoints, transport goods or necessities" or even to move to celebrate religious or cultural events.<sup>86</sup> Rohingya regularly report threats, curfews and harassment at checkpoints,<sup>87</sup> as well as difficulty in even gaining permission to move within the camps, requiring the payment of bribes.<sup>88</sup>
53. In addition to restrictions on movements and a curfew, Rohingya are also restricted from assembling in groups, which precludes organizing or participating in events such as weddings, religious celebrations, or even commemorative days such as World Refugee Day or the annual commemoration of the clearance operations in August.<sup>89</sup> This is compounded by the introduction of a prohibition on Rohingya using vehicles as a means of transport in the camp, which impacts on travel, transportation of goods, and access to emergency services, particularly on those with mobility difficulties.<sup>90</sup>
54. The restrictions on movement, assembly, and vehicle use have an enormous and pervasive impact on the daily life of the Rohingya, and preclude them from accessing other basic rights such as healthcare, acquiring daily necessities, and participating in social, religious, or cultural events. For Rohingya who are in crisis, such as patients with emergency medical needs or those fleeing violence or seeking safety from fires, these restrictions can be fatal. Not to be discounted, is the impact on mental health which arises from being unable to move at will, and being caged in one corner of an even larger cage, with Rohingya expressing "extreme hopelessness and despair" as a result of the increasing restrictions.<sup>91</sup> In reality, therefore, movement restrictions compound the vulnerability of

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<sup>83</sup> Youth Rohingya Congress Report, p. 9.

<sup>84</sup> Youth Rohingya Congress Report, p. 9.

<sup>85</sup> Fading Humanitarianism Report, pp. 3, 7.

<sup>86</sup> Youth Rohingya Congress Report, p. 9.

<sup>87</sup> HRW New Restrictions Report.

<sup>88</sup> Hope amid Despair Report, p. 17.

<sup>89</sup> Forum Asia, '[Bangladesh: Restore freedom of movement and communication of Rohingya](#)', 14 November 2019; John Quinley III, '[Rohingya cry for justice deserves to be heard](#)', *Financial Times*, 19 August 2020.

<sup>90</sup> Youth Rohingya Congress Report, p. 27.

<sup>91</sup> Youth Rohingya Congress Report, p. 10.

the Rohingya in the camps, and their dependence on aid and other assistance from humanitarian organizations.

## **(6) Restrictions on education**

55. Restrictions have been placed on education in the camps, depriving the Rohingya and their children of the opportunity to learn and build a meaningful future. The Bangladesh authorities have consistently restricted humanitarian agencies from constructing a functioning education system in the Cox's Bazar camps, instead providing irregular informal education in "learning centers", which were given limited resources.<sup>92</sup> These learning centers were only permitted to teach the formal Myanmar curriculum, prohibiting the teaching of the Bangla language or the national curriculum, in order to prevent the Rohingya from integrating, and to deter their continued or permanent presence in Bangladesh.<sup>93</sup> Rohingya were also prohibited from working in the learning centers, which meant they were staffed by Bangladeshi rather than Rohingya teachers. Being unable to teach in Bangla meant these teachers were required to teach an unfamiliar curriculum in what little English they knew, often not more than a beginner level.
56. The poor quality of the authorized learning centers and prohibition on Rohingya teachers led to informal home-based programs run by Rohingya teachers. In response, in December 2021, the Bangladesh authorities shut down Rohingya-led home-based schools in the camps, stating that camp-based schools were illegal and did not have official permission to operate.<sup>94</sup> It is reported that this affected as many as 60,000 Rohingya students. The schools were then converted into shelters for refugee families brought from other camps.<sup>95</sup> Bangladesh officials also threatened to confiscate any identity documents or forcibly relocate refugees to Bhasar Chan if they violated this arbitrary ban.<sup>96</sup>
57. Consequently, Bangladesh effectively prohibits all education for Rohingya beyond basic, primary-level classes which are taught by humanitarian groups. The progression in the intensity of restrictions on education was succinctly described by one commentator: "First the government blocked meaningful education for Rohingya children, then it closed the schools Rohingya set up for themselves, and now it threatens to banish teachers and students to a prison-like island".<sup>97</sup>
58. The education programs remaining in the camps are not accredited, and have left the Rohingya with very limited access to education.<sup>98</sup> This results in fewer opportunities for advancement for older children (including no pathway to higher education) and children being married off at an earlier age. Again, such restrictions only exacerbate the vulnerability of the Rohingya, and perpetuate negative cycles. In addition to growing criminality, the Rohingya population's lack of education is a factor hindering the readiness of third states to provide resettlement opportunities. Entrenching a

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<sup>92</sup> K. Win, '[Cox's Bazaar: Insecurity, Criminality and Rohingya Women](#)', LSE, 6 February 2023 ('LSE Report').

<sup>93</sup> Human Rights Watch, '[Bangladesh: Officials Threaten Rohingya for Setting Up Schools](#)', 21 March 2022 ('HRW Schools Report'); Dr S.R. Khan, '[How the Rohingya are Faring in Bangladesh](#)', *Human Rights Pulse*, 17 October 2021 ('Human Rights Pulse Report'); Human Rights Watch, '[Are we not Human? Denial of Education for Rohingya Refugee Children in Bangladesh](#)', 3 December 2019.

<sup>94</sup> LSE Report.

<sup>95</sup> HRW Schools Report.

<sup>96</sup> HRW Schools Report.

<sup>97</sup> HRW Schools Report.

<sup>98</sup> Hope amid Despair Report, p. 12.

population-wide lack of education in this way contributes to the long-term hopelessness of the Rohingya situation.

## **(7) Digital deprivation and other technological repression**

59. Technological repression is a also major factor that exacerbates the ongoing Rohingya refugee situation. Prolonged and deliberate internet shutdowns continue to plague the camps, and mass online misinformation and disinformation campaigns, including by major global players like META (formerly known as Facebook) have led to the stoking of hateful sentiments, discrimination, and sharing of harmful materials with virtually no safeguards. For example, Amnesty International as well as local civil society organizations have reported that META was not a passive sharer of hateful materials but rather “proactively amplified and promoted content” that could be classified as hate speech against the Rohingya, targeting users in Bangladesh, Indonesia, and Malaysia.<sup>99</sup>
60. Cybersecurity and privacy concerns around the sensitive personal data also remain a concern for Rohingya refugees. For example, in 2021, the United Nations High Commissioner for Refugees shared personal information from Rohingya refugees with the Myanmar government. While the UN agency’s public statements around this issue suggest that this sharing was inadvertent, it remains unclear what remedial measures have been put in place and according to Human Rights Watch also constitute a clear breach of the established principle of free and informed consent.<sup>100</sup>
61. Discrimination and social exclusion of Rohingya refugees in Bangladesh is also compounded by people’s inability to access reliable mobile phones and wifi, and even the inability to obtain a Bangladeshi SIM card due to lack of ID, in what scholars have termed “digital deprivation.”<sup>101</sup>

## **(8) Vulnerability to Natural Disasters and Fires**

62. The location of the camps in Bangladesh puts the Rohingya in the path of cyclonic weather, resulting in floods, landslides and destruction of shelters. The impact of this weather is exacerbated by the living conditions of the Rohingya in the camps, and particularly by the prohibition by the Bangladesh authorities on their building permanent structures.<sup>102</sup> Rather than permanent or semi-permanent structures, the Rohingya live in shelters constructed largely of bamboo and tarpaulin, and sleep on plastic sheets or papers on a mud/dirt floor. The average household size in 2020 was 4.6 people in one shelter, usually around 14m<sup>2</sup>.<sup>103</sup> These shelters fall far below international standards for living

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<sup>99</sup> Amnesty International, ‘[Myanmar: The social atrocity: Meta and the right to remedy for the Rohingya](#)’, 29 September 2022.

<sup>100</sup> Human Rights Watch, ‘[UN Shared Rohingya Data Without Informed Consent, Bangladesh Provided Myanmar Information that Refugee Agency Collected](#)’, 15 June 2021.

<sup>101</sup> Hussain, F., & Lee, Y., ‘[Navigating Digital Borderscapes: A Case Study from Rohingya Refugee Settlements in Bangladesh. \*Asiascape\*](#)’ *Digital Asia*, 8(3), (2021), 190-210.

<sup>102</sup> Amy Sood, ‘[In Bangladesh, climate dangers menace ‘extremely vulnerable’ Rohingya refugee camp](#)’, *South China Morning Post*, 9 October 2023.

<sup>103</sup> M. Nuruzzaman Khan, M. Moziful Islam & M. Mashiur Rahman, ‘Risks of COVID19 outbreaks in Rohingya refugee camps in Bangladesh’. *Public Health in Practice*, Vol. 1 (2020).



conditions, and lack structural integrity. They leave the Rohingya almost entirely exposed during cyclone season,<sup>104</sup> with loss of life inevitably resulting.

63. Most sinister, however, is the Bangladesh government's restrictions placed on Rohingya, even when potentially fatal cyclones are imminent, such as the refusal of the Bangladesh authorities to allow the Rohingya to congregate in the shelters designated for the Bangladeshi community during cyclones, including the cyclone Mocha in May 2023. Moreover, as cyclone Mocha approached Cox's Bazar in May 2023, Bangladesh's Home Minister was explicit that Rohingya would be prevented from leaving the camp.<sup>105</sup> The Bangladesh government's response to these extreme weather events increases the number of preventable deaths.<sup>106</sup>
64. The death toll from fires in the camps has also been increased by actions of the Bangladesh authorities. Widespread and destructive fires in the camps are commonplace, particularly during the dry season from November to April, and are also driven by violence between the armed groups. In March 2023, a large fire destroyed 2,000 shelters. Two years earlier, at least 15 Rohingya were killed and 50,000 left homeless after a blaze in the same camp. Thousands were again left homeless in January 2024 from fires which were thought to be deliberately lit.<sup>107</sup>
65. The death toll from fires in the camps has increased as a result of the Bangladesh authorities' decision to construct 30 kilometers of barbed wire fencing around parts of the camp. When a fire breaks out, this fencing prevents Rohingya, including women and children, from escaping the fires, and impedes the efforts of fire and rescue services, again causing preventable deaths of Rohingya.<sup>108</sup> A joint statement from the UN, and local and international aid agencies following the 2021 fires, noted that this fencing hampered rescue efforts. The Bangladesh Refugee Commissioner Shah Rezwana Hayat denied that the fences had any impact, and claimed they were necessary for security.<sup>109</sup> In reality, the fences infringe on basic freedoms and contribute to injury and death.
66. Notably, and discussed further below, in 2022, the Bangladesh authorities began reacting to the fires by prohibiting those Rohingya whose structures were destroyed from rebuilding their shelters. Instead, they have been relocated to Bhasan Char, a remote, flood and cyclone-prone island in the Bay of Bengal.<sup>110</sup> This is corroborative of reports from within the camps that the fires are being deliberately lit as a way of encouraging the Rohingya to re-locate from the main camp.<sup>111</sup>

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<sup>104</sup> Michael Safi, "[Lives will be lost': 700,000 Rohingya face cyclone season under tarpaulin](#)", *The Guardian*, 27 April 2018; Sm Najmus Sakib, "[Rohingya camps hit by Cyclone Midhili in Bangladesh: 33,000 Rohingya relocated from world's largest refugee camp on southeastern coast of Cox Bazar](#)", *Andalou Agency*, 18 November 2023.

<sup>105</sup> Ahammad Foyez, "[Rohingya must stay at camps despite approaching cyclone, Bangladesh govt says](#)", *Benar News*, 13 May 2023.

<sup>106</sup> Human Rights Watch, "[Cyclone Mocha Devastates Myanmar's Rohingya](#)", 24 May 2023.

<sup>107</sup> Al Jazeera, "[Blaze at Bangladesh refugee camp leaves thousands of Rohingya homeless](#)", 7 January 2024.

<sup>108</sup> Irwin Loy, "[Rohingya camp fire: Barbed-wire fences blocked escape, witnesses say](#)", *The New Humanitarian*, 23 March 2021.

<sup>109</sup> Al-Jazeera, "[Bangladesh defends use of fences after deadly Rohingya camp fire](#)", 24 March 2023

<sup>110</sup> CNA, "[Aid Workers Struggle to Reunite Rohingya Children Separated by Deadly Fire](#)," 24 March 2023 ('CNA Reunification Article').

<sup>111</sup> Shaikh Azizur Rahman, "[Rohingya Refugees in Bangladesh Fear Deadly Fires](#)", VOA, 10 April 2021; Deutsche Welle, "[Fire destroys homes in Rohingya refugee camps: UN](#)", 14 January 2021.

## C. Repatriation and Relocation; Forced and Uninformed

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67. The conditions described above are not accidental. Nor are they simply the unavoidable consequence of a large refugee influx in a poor nation. Rather, they are part of a deliberate policy by Bangladesh, intended to coerce the repatriation, or at least relocation, of Rohingya refugees. This can be seen not only from the adoption of policies which have no connection with resource availability, such as the ban on education and safe or “permanent” structures in the camps. It is also evident from Bangladesh’s history of similarly treating previous Rohingya refugee influxes.
68. The mass deportation of Rohingya from Myanmar to Bangladesh in 2017 was not the first movement of its kind. In 1978, approximately 200,000 Rohingya fled Bangladesh after being targeted by Myanmar military operations. In the early 1990s, 250,000 Rohingya also fled to the perceived safety of Bangladesh. In both instances, Myanmar, acting under a military dictatorship, quickly reached bilateral repatriation agreements with Bangladesh.
69. In 1978, the Bangladesh government’s approach to the influx of Rohingya was openly hostile. A senior official said, “we are not going to make the refugees so comfortable that they won’t go back to Burma.”<sup>112</sup> Without food or aid, 12,000 Rohingya died in the refugee camps in less than a year, a mortality rate more than eight times higher than the rest of Bangladesh. The threat of starvation, “combined with physical violence and intimidation by Bangladeshi security actors, ultimately compelled most Rohingya to return to Myanmar”.<sup>113</sup> This was repeated in the 1990s, after Bangladeshi officials withheld aid from the Rohingya, causing famine-like levels of acute malnutrition.<sup>114</sup> In a period of weeks in 1992, Bangladesh police and soldiers killed at least 20 and injured dozens of Rohingya who were protesting against repatriation.<sup>115</sup> Mirroring the late 1970s, “most Rohingya were coerced into returning to Myanmar within a few years.”<sup>116</sup>
70. Following the 2017 Rohingya influx, Bangladesh’s leadership followed the same playbook. By early 2018, Bangladesh had entered into bilateral repatriation agreements with Myanmar, similar to the agreements of 1992.<sup>117</sup> Since then, Bangladesh has consistently called for early repatriation, with the Foreign Minister telling the UN it was his government’s top priority.<sup>118</sup> Since 2018, repeated high-profile public initiatives have been agreed between Bangladesh and Myanmar to initiate

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<sup>112</sup> Alan C. Lindquist (UNHCR) ‘[Report on the 1978-1979 Bangladesh Refugee Relief Operation](#)’, June 1979.

<sup>113</sup> IISS 2023 Report.

<sup>114</sup> IISS 2023 Report., citing Médecins Sans Frontières, ‘[10 Years for the Rohingya Refugees in Bangladesh: Past, Present and Future](#)’, March 2002.

<sup>115</sup> IISS 2023 Report, citing Asia Watch, ‘[Bangladesh: Abuse of Burmese Refugees from Arakan](#)’, Vol. 5(17), October 1993.

<sup>116</sup> IISS 2023 Report.

<sup>117</sup> See IISS 2023 Report; [Arrangement on Return of Displaced Persons from Rakhine State between the Government of the People’s Republic of Bangladesh and the Government of the Republic of the Union of Myanmar](#), 23 November 2017; [Terms of Reference \(TOR\) for the Joint Working Group on the Repatriation of Displaced Myanmar Residents from Bangladesh](#), 19 December 2017; [Physical Arrangement for Repatriation of Displaced Myanmar Residents from Bangladesh Under the Arrangements on Return of Displaced Persons from Rakhine State](#), 16 January 2018.

<sup>118</sup> Prothom Alo English Desk, ‘[Early repatriation of Rohingyas top priority: Momen to UN expert](#)’, 20 December 2021.

repatriation.<sup>119</sup> All have failed because the vast majority of Rohingya refugees refuse to return to Myanmar without guarantees of safety and the return of their fundamental rights there.<sup>120</sup>

71. In parallel to repeatedly seeking to initiate formal return mechanisms, Bangladesh adopts the same approach to the Rohingya refugees; that is, making their life as uncomfortable as possible to coerce them back across the border to Myanmar. The restrictions, negligence, violence, and persecution of the Rohingya detailed in the sections above, are the outcomes of the successful implementation of this policy.
72. In March 2023, it was widely reported that Bangladesh intended to send a group of 1,140 Rohingya back to Myanmar as part of a “pilot project” agreed upon by both governments. UNHCR released a statement saying that it was not involved in and did not support the process. Human Rights Watch and other NGOs condemned the initiative, saying that returnees would be at great risk. Importantly, reports quickly emerged about Rohingya having been coerced into being part of the program. Seven Rohingya who were interviewed shared experiences of being pressured or coerced by the Myanmar junta and Bangladesh authorities to be part of the process, and cited coercive practices by CICs.<sup>121</sup> The UN Special Rapporteur also released a statement saying there were reports that Bangladesh authorities were using deceptive and coercive measures to compel Rohingya refugees to return to Myanmar, and calling on Bangladesh to immediately suspend the pilot program.<sup>122</sup> Rohingya have also reported that Bangladesh authorities have used aggressive and coercive measures to compel people to return to Myanmar, including authorities going door-to-door, telling people, “this is not your home, you have to leave now”. As such, decisions on repatriation are being taken against a backdrop of coercion and misinformation.
73. Regardless, conditions in the camp have made Rohingya desperate to find a way out. With rations now below internationally recognized minimum standards, terror caused by murders of community leaders, generalized violence, extortion and arson, as well as the lack of accountability for such crimes, and the continued denial of even basic education or access to livelihoods, the Rohingya are being placed in an impossible position. This has prompted hundreds “and possibly thousands” feeling they have no choice but to return to Myanmar informally.<sup>123</sup> As articulated by Human Rights Watch’s Asia division, Bangladesh is actively “squeezing the Rohingya camp residents economically, abusing their rights, and making the refugees as miserable and desperate as possible” in the hope they will accept to repatriate to Myanmar. As such, the Rohingya are facing an “out of the frying pan, and into

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<sup>119</sup> See, e.g.: Human Rights Watch, [‘Myanmar/Bangladesh: Halt Rohingya Returns’](#), 20 August 2019; H. Ellis-Petersen and S. Azizur Rahman, [‘Rohingya Refugees turn down second Myanmar repatriation effort’](#), *The Guardian*, 22 August 2019.

<sup>120</sup> F. Mahmud, ‘Empty buses in Bangladesh as no Rohingya turn up for [repatriation](#)’, *Al Jazeera*, 22 August 2019.

<sup>121</sup> Burma Human Rights Network, [‘Bangladesh-Myanmar End Coercive Repatriation of Rohingya Refugees’](#), 31 October 2023.

<sup>122</sup> OHCHR, [‘Bangladesh must suspend pilot project to return Rohingya refugees to Myanmar: UN expert’](#), 8 June 2023.

<sup>123</sup> ICG Long Road Ahead Report: “The combination of prolonged displacement and deteriorating camp conditions has prompted some refugees to take difficult decisions about where their future lies. An unknown number – almost certainly in the hundreds, but possibly in the thousands – have returned to Myanmar informally. Others have paid hefty sums to traffickers to embark on dangerous boat journeys to Malaysia, which hosts the largest Rohingya refugee population after Bangladesh, while a smaller number seek passage to Indonesia.”

the fire' situation, with Bangladesh officials apparently threatening they will face violence if they stay."<sup>124</sup>

74. By contrast, Myanmar has circulated information about the conditions awaiting the Rohingya in Rakhine State, stating that international agencies will monitor returns, but not being open about the fact that returnees will be confined to fenced-in camps, and making implausible claims about healthcare, livelihoods and education which are belied by the conditions faced by those Rohingya who remain in Myanmar.
75. Of course, Myanmar is not the only option to clear the Rohingya out of the Cox's Bazar camps. In December 2020, Bangladesh also began relocating thousands of Rohingya refugees to Bhasan Char, a remote, flood and cyclone-prone island in the Bay of Bengal. The Bangladesh government has been open in its desire to eventually relocate 100,000 Rohingya onto the isolated island, a process that has not involved the UN.<sup>125</sup> One commentator described this as "refugee 'warehousing' – the practice of indefinitely keeping refugees in situations of restricted mobility".<sup>126</sup> Advocates and human-rights groups have raised concerns about various aspects of the relocation, including that it will "significantly restrict Rohingyas' liberty and movement and leave them in conditions that may amount to cruel, inhuman, or degrading treatment."<sup>127</sup> As noted above, one of the consequences of the widespread fires in the camps, is that a prohibition on re-building shelters has forced many families to have no choice but to relocate to Bhasan Char.<sup>128</sup>
76. The island reportedly lacks suitable infrastructure, and the refugees describe living in 'prison-like' conditions with limited access to healthcare, education, work, or protection. Reports of a particularly high suicide rate among the Rohingya on Bhasan Char are particularly concerning. This follows from the reports that the Bangladesh government reneged on pledges that no refugees would be relocated to the island until independent humanitarian and technical experts had the chance to assess its emergency preparedness, habitability and safety.<sup>129</sup> While some reports indicate that living conditions may be improving, the island remains exposed to climate events, and restrictions on liberty remain; for example, refugees apparently face arrest if they attempt to leave.<sup>130</sup> Local authorities also stated that all of the refugees relocated gave their consent to the move, but media reports instead suggest little information was provided prior to the relocation and many felt coerced to move, including through beatings, intimidation or the promise of money.<sup>131</sup>
77. Rohingya have also consistently relayed that the decision to move to Bhasan Char has often been the result of coercion<sup>132</sup> – including allegations that the Bangladesh authorities have colluded with violent groups within the camp to frighten residents into relocating to the island.

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<sup>124</sup> Shaikh Azizur Rahman, '[Activists Concerned About Reports of Rohingya Refugees Being Coerced to Repatriate to Myanmar](#)', 14 June 2023.

<sup>125</sup> Migration Policy Institute Report.

<sup>126</sup> H. Nguyen & T. Lewis, '[Bhasan Char and Refugee 'Warehousing'](#)', *The Diplomat*, 8 February 2022.

<sup>127</sup> Migration Policy Institute Report.

<sup>128</sup> CNA Reunification Article.

<sup>129</sup> Human Rights Pulse Report.

<sup>130</sup> Hope amid Despair Report, p. 20.

<sup>131</sup> Al Jazeera, '[Bangladesh begins moving second group of Rohingya to Bhasan Char](#)', 28 December 2020.

<sup>132</sup> Human Rights Watch, '[An Island Jail in the Middle of the Sea](#)': Bangladesh's Relocation of Rohingya Refugees to Bhasan Char', 7 June 2021; Hope amid Despair Report, p. 21.



78. Other Rohingya have died trying to escape Bhasan Char by boat, with UNHCR speaking publicly about its concern about “reports of refugees being arrested and detained for attempting to leave Bhasan Char”.<sup>133</sup> Again, therefore, with Bhasan Char being anything but an improved or even reasonable alternative to the Cox’s Bazar camps, the pressure to informally return to Myanmar, or risk death at sea being trafficked to a third State, remains firmly in place.
79. The conditions in both Cox’s Bazar and Bhasan Char have left most Rohingya refugees desperate to leave Bangladesh. However, resettlement options are almost non-existent. Public information on resettlements is limited, but numbers cited by Bangladesh in November 2023 suggested that only around 600 Rohingya had been able to access third country resettlement.<sup>134</sup> The process for accessing resettlement is controlled by Bangladesh and UNHCR and has been criticized as untransparent and arbitrary.<sup>135</sup> This combination of factors has meant that, for many Rohingya, smuggling routes out of Bangladesh appear to be the only option for a better life. Waves of refugees have attempted to flee by boat. UNCHR reports that during 2023, 2288 Rohingya people reached Indonesia by boat.<sup>136</sup> The number of Rohingya persons taking this course of action is particularly striking given the dangers involved: during 2022 and 2023 nearly 1000 Rohingya died attempting to make the sea journey.<sup>137</sup>

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<sup>133</sup> Al Jazeera, [‘Dozens of Rohingya refugees missing as boat sinks off Bangladesh’](#), 14 August 2021.

<sup>134</sup> M. Rashid, [‘Rohingya Resettlements From Bangladesh Increase While Myanmar Instability Grows’](#), *The Irawaddy*, 27 November 2023.

<sup>135</sup> BBC, Our World, [‘The Rohingya Camps: Let Down by the UN’](#), December 2023.

<sup>136</sup> UNHCR Indonesia, [‘Emergency Update: Rohingya Boat Arrivals’](#), 30 January 2024.

<sup>137</sup> *Ibid.*

## D. International Crimes

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80. The available information provides a reasonable basis to believe that the following crimes against humanity were committed, at least in part on the territory of Bangladesh: (i) deportation under article 7(I)(d) of the Rome Statute; (ii) persecution on ethnic and/or racial grounds under article 7(I)(h) of the Rome Statute; and (iii) other inhumane acts under article 7(I)(k) of the Rome Statute.

### (I) Deportation and forcible transfer – Article 7(I)(d)

81. The evidence supports an argument that the Bangladesh authorities have, or are in the process of, forcibly deporting Rohingya from Bangladesh, either to Myanmar or other locations abroad, through coercive acts as part of a widespread and systematic attack against this population. Other Rohingya have been coerced into relocating within Bangladesh, from the camps in Cox's Bazar to Bhasan Char.

82. The commission of the crime against humanity of forced deportation or forcible transfer under Article 7(I)(d) of the Rome Statute requires the demonstration of the following elements:

- (i) The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
- (ii) Such person or persons were lawfully present in the area from which they were so deported or transferred.
- (iii) The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
- (iv) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
- (v) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>138</sup>

83. Elements (i) to (iii) are addressed directly below, while elements (iv) and (v) comprise the general contextual elements for crimes against humanity and are addressed for all possible crimes together (see section titled 'Contextual Elements of Crimes Against Humanity').

84. Relevantly, while the protected interests underlying the prohibition against deportation and forcible transfer consist of the right of victims to stay in their homes, this is not just restricted to a victim's physical home. Rather, the "prohibition would also apply and protect an individual from *further* displacement where he has already been coercively moved from his place of origin to a place of refuge or relative safety."<sup>139</sup> Thus, the prohibition applies to those Rohingya who sought refuge in Bangladesh after having already been deported from Myanmar.

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<sup>138</sup> See Article 7(I)(d) 'Crime against humanity of deportation or forcible transfer of population', in ICC Elements of Crimes, pp. 4-5.

<sup>139</sup> Guénaél Mettraux, *International Crimes: Law and Practice, Volume II: Crimes against Humanity* (OUP, 2020) ('Mettraux Crimes Against Humanity'), p. 432 (emphasis in original).

**(i) Deported or forcibly transferred one or more persons to another State or location by coercive acts, without grounds permitted under international law**

Deported or forcibly transferred one or more persons to another state or location

85. The information available demonstrates that many Rohingya refugees are being forced to leave Bangladesh as a result of the coercive actions taken by the Bangladesh authorities against them, detailed in the above submissions.
86. While there are no comprehensive figures on the number of Rohingya fleeing Bangladesh, reporting demonstrates they are fleeing in large and increasing numbers. Those crossing back across the border into Myanmar are doing so informally, unofficially, and quietly. Regardless, reports now put the number of returnees in the thousands.<sup>140</sup> Many are also fleeing in boats, although reported figures include those fleeing from both Bangladesh and Myanmar. In January 2023, it was reported that in the last year more than 3,500 Rohingya had fled Bangladesh and Myanmar in 39 boats. This amounted to a 360% increase on 2022.<sup>141</sup> It was also reported that 384 people died or went missing at sea during the same period.<sup>142</sup>
87. Additionally, since 2020, around 35,000 Rohingya have been relocated from the camps in Cox's Bazar to the island of Bhasan Char.

By expulsion or other coercive acts

88. Establishing that the deportation was undertaken through coercive acts requires demonstrating that the acts of the perpetrator – in this case, the Bangladesh authorities – have the effect of forcing the victims into another country. Coercive acts may include “fear of violence, duress, detention, psychological oppression, and other such circumstances may create an environment where there is no choice but to leave, thus amounting to the forcible displacement of people.”<sup>143</sup>
89. The worsening conditions in the camps, caused or perpetuated by the Bangladesh authorities and their securitized policies of containment and oppression towards the Rohingya, and the prohibitions on livelihood, movement, congregation and education, suggest that Bangladesh authorities are acting deliberately to coerce refugees to leave Bangladesh, either to flee to a different country or to

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<sup>140</sup> ICG Long Road Ahead Report: “The combination of prolonged displacement and deteriorating camp conditions has prompted some refugees to take difficult decisions about where their future lies. An unknown number – almost certainly in the hundreds, but possibly in the thousands – have returned to Myanmar informally. Others have paid hefty sums to traffickers to embark on dangerous boat journeys to Malaysia, which hosts the largest Rohingya refugee population after Bangladesh, while a smaller number seek passage to Indonesia.”

<sup>141</sup> UN News, ‘[Steep increase in deadly boat journeys reflects Rohingyas’ desperation: UNHCR](#)’, 1 January 2023.

<sup>142</sup> K. Gelineau, ‘[A boat carrying 180 Rohingya refugees vanished. A frantic phone call helped untangle the mystery](#)’, *Associated Press*, 6 June 2023 (‘Gelineau 6 June Article’).

<sup>143</sup> *Prosecutor v Krajišnik*, (Judgement) (ICTY, Trial Chamber I, Case No IT-00-39-T, 27 September 2006) (‘*Krajišnik Judgement*’), para. 724; *Prosecutor v. Stanišić & Simatović*, (Judgement) (ICTY, Trial Chamber I, Case No IT-03-69-T, 30 May 2013), paras. 992-993; *Prosecutor v. Karadžić*, (Judgement), (ICTY, Trial Chamber, Case No IT-95-5/18-T, 24 March 2016) (‘*Karadžić Trial Judgement*’), paras. 488-490.

repatriate to Myanmar.<sup>144</sup> The conditions imposed on Rohingya in the camps in Bangladesh have been described as “a key contributing factor to the deadly sea crossings”.<sup>145</sup>

90. The coercive acts leading to the displacement of the Rohingya have been set out in detail above. In summary, the actions taken by the Bangladesh authorities may comprise the following coercive acts: (i) violence, detention, threats and extortion perpetrated by APBn officials against Rohingya refugees; (ii) deportation and threats of deportation to Myanmar; (iii) the denial of basic services and adequate humanitarian aid, and the consequent creation of harsh or inhuman living conditions; and (iv) measures taken to limit the ability of the Rohingya to stay in Bangladesh, including destruction of homes and livelihoods, denial of access to education, and denial of freedom of movement. In totality, these circumstances are not conducive to remaining in Bangladesh, such that the Rohingya are left with no choice but to leave.
91. In addition, even more overt and direct acts of coercion have been alleged in respect of the movement of Rohingya people to Bhasan Char. As described above, some of these movements were compelled after the destruction of shelters by fires. Rohingya people also report movement to Bhasan Char being compelled in other ways: especially through extortion or threats, including threats of violence or the confiscation of ration cards. Most of those who have relocated to Bhasan Char have not been permitted to return to the Cox’s Bazar camps, although a number have tried to do so, some drowning in the attempt.<sup>146</sup>

#### Absence of genuine choice

92. The absence of genuine choice is demonstrated by reports from Rohingya themselves. Whether to avoid abuse, extortion, or arbitrary detention by the APBn, or because of the uncontrolled and increasingly grave violence in the camps, or simply because of their inability to provide any kind of healthy or dignified life for their children and the real risks of starvation, illness and malnutrition, Rohingya are making a decision to relocate in the absence of any genuine choice.<sup>147</sup> One Rohingya man stated that leaving Bangladesh was his only option, because “I am already 18. This is the time I

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<sup>144</sup> HRW New Restrictions Report.

<sup>145</sup> Refugees International 2023 Report (internal footnote references omitted):

“According to Refugees International and its years-long, extensive fieldwork at the camps, several structural changes have affected the Rohingya community, whose outlook on their future has increasingly been one of hopelessness. As refugees, Rohingya in Bangladesh remain denied reliable access to healthcare, formal education, employment opportunities, and other essential services. This limitation will pose deadly, long-term consequences to Rohingya, especially given the recent funding shortfall of the World Food Programme’s food aid; according to the United Nations (UN) Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on the right to food, children under the age of five, adolescent girls, and pregnant and breastfeeding women will be among those who will bear the brunt of this looming disaster.

At the same time, Rohingya’s civil society space and already precarious level of safety and protection in the camps is rapidly decreasing. This has been demonstrated by the Bangladesh authorities’ random imposition of curfews, delays, and harassment at checkpoints; threats against Rohingya attempting to transport themselves across the camps; maintenance of the 2019-installed barbed wire fencing and watchtowers around the camps; and forced transfer to Bhashan Char, a remote island in the Bay of Bengal. [...]”

<sup>146</sup> Shaikh Azizur Rahman, ‘[Desperate Rohingya Drown While Fleeing Remote Bangladesh Island](#)’, *Voice of America*, 23 August 2021.

<sup>147</sup> As to why the absence of genuine choice makes displacement unlawful, see: *Prosecutor v. Stakić* (Judgement) (ICTY, Appeals Chamber, Case No IT-97-24-A, 22 March 2006), para. 279.



should start earning for my family [...] But under the restrictions of the camp I am not allowed to go outside to earn my livelihood for my family”.<sup>148</sup>

93. The absence of genuine choice expressed by the Rohingya is corroborated by the reality of the risks that they are taking in order to leave their situation of utter despair and crisis in Bangladesh. Those returning informally to Myanmar face a wealth of risks, ranging from the conflict between the Arakan Army and the Myanmar military, the limited international presence in Rakhine State, the failure of the military to address the root causes of the 2017 crisis or provide guarantees of citizenship, safety, or a right to return to their homes, and the overarching concern that, should they return, Rohingya will be confined to camps similar to those around Sittwe, where at least 120,000 have been imprisoned since 2012. The fact that returning despite these risks is increasingly being viewed as preferable to conditions in Bangladesh speaks to the coercive nature of the Bangladesh government’s actions and the lack of a genuine choice on their behalf.
94. Of particular importance in demonstrating the lack of genuine choice is the fact that some Rohingya are willing to risk dangerous sea voyages in the hope of better conditions. These journeys are utterly perilous. In 2023, Refugees International reported that “[u]nseaworthy vessels and inadequate supplies, especially lack of water and sanitation facilities, have often resulted in the deaths of a significant number of Rohingya”.<sup>149</sup> Put simply, these sea crossings are deadly. ACAPS similarly reported that:<sup>150</sup>

*The combination of a lack of livelihood and educational opportunities, rising food insecurity and malnutrition concerns, poor living conditions, inadequate access to health and WASH facilities, and surging crime, violence, and insecurity in the Rohingya refugee camps is pushing refugees to undertake risky, and often deadly, sea journeys in unsuitable boats. Some refugees state that it is better to undertake sea journeys than to endure the current situation in refugee camps or go back to Myanmar. Reports indicate that human traffickers have increased their operations and are continuously looking for refugees willing to cross the sea to other countries, especially Malaysia. The recent surge in violence and insecurity and an aid funding shortfall will further push the refugees to undertake risky sea journeys as a last resort.*

95. Another author paints a similarly stark picture of the dire circumstances leading to the “life-or-death gamble”<sup>151</sup> taken by many of the Rohingya:<sup>152</sup>

*The reasons so many Rohingya have boarded these boats are written on face after gaunt face in Bangladesh’s squalid refugee camps, where around 1 million Rohingya have been living for years in sweltering, overcrowded huts [...]*

*Beyond the spiraling security situation is worsening hunger. The Rohingya are banned from working and rely on food rations, which have been slashed due to a drop in global donations.*

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<sup>148</sup> S. Rahman & R. Ratcliffe, [‘Rohingya refugees bet lives on boat crossings despite rising death toll’](#), *The Guardian*, 8 January 2023.

<sup>149</sup> Refugees International 2023 Report

<sup>150</sup> ACAPS Briefing Note, p. 3.

<sup>151</sup> Gelineau 6 June Article.

<sup>152</sup> K. Gelineau, [‘Takeaways of AP investigation into a missing boat of 180 Rohingya refugees’](#), *Associated Press*, 7 June 2023.

*Meanwhile, a military coup in 2021 in Myanmar has made any safe return home at best a distant dream.*

*Many of those aboard the boat at the heart of AP's investigation were terrified for their lives, including its captain, Jamal Hussein. And so, out of options, they headed out into the Bay of Bengal in the hopes of ultimately reaching Malaysia, via Indonesia.*

As this same author stated, “out of options, they do again what they have done before: They flee”.<sup>153</sup> This is very definition of a lack of genuine choice, caused by coercive acts of the Bangladesh authorities.

96. There are other risks. The voyages themselves are run by a transnational network of human smugglers and traffickers who operate, facilitate, and profit from these journeys, which often incorporate “torture, forced labor, sexual violence, death, and other severe abuses.”<sup>154</sup> Women and girls in particular are targeted with sexual harassment, sexual exploitation, rape, and other forms of sexual violence by their vessels’ captains and crew members, most of whom are adult men.<sup>155</sup>
97. The reality that, despite these known risks, Rohingya continue to subject themselves and their families to these perilous journeys by the hundreds and potentially thousands, is indicative of the absence of a genuine choice to remain in squalid, hopeless, deteriorating, and dangerous conditions in Bangladesh.

*Without grounds permitted under international law*

98. Nothing in the information or evidence available indicates the deportation of the Rohingya from Bangladesh is justified under international law. For example, there is no reasonable argument that can be made that an ‘evacuation’ of the Rohingya population is required for genuine security or military reasons.<sup>156</sup> In any event, the evidence does not suggest that the Bangladesh authorities are carrying out the deportation in a way that does not infringe the basic rights of the Rohingya, and ensures it is subject to due process.<sup>157</sup>

***(ii) Persons were lawfully present***

99. The available evidence indicates that the Rohingya are lawfully present in Bangladesh. The term ‘lawfully present’ should be given its common meaning and should not be equated to the legal concept

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<sup>153</sup> Gelineau 6 June Article.

<sup>154</sup> Refugees International 2023 Report.

<sup>155</sup> Natasha Yacoub, Nikola Errington, Wai Wai Nu, and Alexandra Robinson, ‘[Rights Adrift: Sexual Violence Against Rohingya Women on the Andaman Sea](#),’ *Asia-Pacific Journal on Human Rights and the Law*. Vol. 22(1): 96-114; Sarah Aziz, ‘[Dream of Normal Life Drives Rohingya to Perilous Sea Voyage](#),’ VOA, January 4, 2023; Mixed Migration Centre, ‘[Protection risks for Rohingya women and children: from departure country to arrival in Malaysia](#),’ March 2022.

<sup>156</sup> See, e.g., *Karadžić Trial Judgment*, para. 492.

<sup>157</sup> See, *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar* (Request for authorisation of an investigation pursuant to article 15) (ICC, Office of the Prosecutor, No. ICC-01/19-7, 4 July 2019) (‘Prosecution Request for Authorisation’), para. 118, and the sources cited therein.

of 'lawful residence'.<sup>158</sup> It can include persons who have established temporary homes after being displaced from their original communities.<sup>159</sup>

100. Notwithstanding the label adopted by the Bangladesh authorities, the Rohingya may be considered refugees in Bangladesh and are lawfully present under international law. As noted above, Bangladesh is not a party to the 1951 Refugee Convention or the 1967 Additional Protocol. However, the Rohingya in Bangladesh may still be protected by the principle of non-refoulement, which is widely considered to be *jus cogens*, a norm from which no derogation is permitted, and part of customary international law. In addition, the Bangladesh courts have also engaged with the 1951 Refugee Convention in their jurisprudence, citing its apparent customary status and therefore its applicability. For example, in 2017, the Supreme Court observed that:

*Though Bangladesh has not formally ratified the Convention Relating to the Status of Refugees, yet all the refugees and asylum-seekers from scores of countries of the world to other countries have been regulated by and under this Convention for more than 60(sixty) years. This Convention by now has become a part of customary international law which is binding upon all the countries of the world, irrespective of whether a particular country has formally signed, acceded to or ratified the Convention acceded to or ratified the Convention or not.*<sup>160</sup>

101. Moreover, Bangladesh is a signatory to several other core treaties that enshrine basic protections, including for refugees.<sup>161</sup> As a result, it recognizes a body of international law which provides the framework for protecting refugees, and has an obligation to protect them accordingly. It is therefore clear that Bangladesh has obligations and responsibilities to protect the Rohingya refugees and not force their return to Myanmar.
102. The protection of this provision is directly intended to cover those such as the Rohingya in Bangladesh, who had established temporary homes after being uprooted from their original community in Myanmar. The available evidence is that the Rohingya were lawfully occupying the parts of the camps where they resided, and they had attempted to create lives for themselves in Bangladesh, including through attempting to work, otherwise creating livelihoods for themselves, educating their children, and building communities. Consequently, the Rohingya who leave Bangladesh are lawfully present in the areas they were residing.

### **(iii) Aware of factual circumstances establishing lawfulness of presence**

103. Bangladesh is aware of the horrific and widespread clearance operations of 2016 and 2017 which caused the Rohingya to flee from Myanmar into Bangladesh territory, and the continued dangers which prevent them from returning. As such, they are aware of the factual circumstances establishing the lawfulness of the Rohingya presence in Bangladesh. On this basis, the refusal of the Bangladesh authorities to label the Rohingya as refugees is not determinative of the lawfulness of their presence.

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<sup>158</sup> *Karadžić Trial Judgment*, para. 491; *Prosecutor v. Ntaganda (Judgment)* (ICC, Trial Chamber VI, Case No. ICC-01/04-02/06, 8 July 2019) ('*Ntaganda Trial Judgment*'), para. 1069.

<sup>159</sup> *Ntaganda Trial Judgment*, para. 1069.

<sup>160</sup> *Refugee and Migratory Movements Research Unit (RMMRU) v. Government of Bangladesh*, Writ petition no. 10504 of 2016, Bangladesh: Supreme Court, 31 May 2017, pp. 9-10.

<sup>161</sup> For example, Bangladesh is a signatory to the Convention Against Torture, Article 3 of which requires that "[n]o state party shall expel, return ("*refouler*") or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture".

In fact, choosing a new label for the Rohingya refugees demonstrates Bangladesh's awareness of its obligations, and the lawfulness of the presence of the Rohingya on Bangladesh territory. The Bangladesh authorities have also permitted UNHCR to operate on their territory, implicitly accepting the presence of refugees and their obligations towards them.

**(2) Persecution – Article 7(1)(h)**

104. The evidence also supports the conclusion that Bangladesh authorities are committing the crime against humanity of persecution against the Rohingya. The commission of the crime against humanity of persecution under Article 7(1)(h) of the Rome Statute requires the demonstration of the following elements:

- (i) The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
- (ii) The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
- (iii) Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
- (iv) The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.
- (v) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
- (vi) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>162</sup>

105. Elements (i) to (iv) are addressed directly below, while elements (v) and (vi) comprise the general contextual elements for crimes against humanity and are addressed for all possible crimes together (see section titled 'Contextual Elements of Crimes Against Humanity').

106. The object of the crime against humanity of persecution is "the protection of individuals against acts of discrimination that seriously interfere with or affect the normal enjoyment of their fundamental rights". Protection is guaranteed against discriminatory acts committed against individuals by reason of their membership in a group.<sup>163</sup>

**(i) Severe deprivation of fundamental rights**

107. As detailed above, Rohingya in Bangladesh are being subjected to a campaign designed to deprive them of their basic rights and exclude them from society. Bangladesh authorities have steadily been intensifying restrictions on livelihoods, movement, and education, creating a coercive environment

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<sup>162</sup> See Article 7(1)(h) 'Crime against humanity of persecution', in ICC Elements of Crimes, p. 7.

<sup>163</sup> Mettraux Crimes Against Humanity, p. 572.



designed to force people to consider leaving Bangladesh. More specifically, this has been carried out through the following acts:<sup>164</sup>

- (i) Arbitrary arrests and detention, and violent assault and ill treatment by the APBn, including the intentional destruction of shops and businesses;
- (ii) Acts of economic discrimination, including prohibiting the Rohingya to work in Bangladesh and removing all alternate sources of livelihood;
- (iii) Measures interfering with freedom of movement and assembly;
- (iv) Policies which prevent Rohingya children from accessing even basic education; and
- (v) The establishment and perpetuation of inhumane living conditions, including through forced reliance on humanitarian assistance, and deprivation of the necessities of life.

108. Compounding these violations is the lack of any meaningful avenues for complaint and protection, or access to formal justice systems other than through the government-appointed CICs. This barrier to justice leads to impunity for criminal behavior, and increasing rates of violence and abuse against the Rohingya.

109. Some of these acts constitute violations of fundamental human rights even when taken in isolation. For example, international human rights law establishes rights to basic education and to freedom of movement and assembly. In other cases, the conditions cumulatively created by Bangladesh contribute to violations of fundamental rights: conditions which remove livelihoods and limit food intake, and which prohibit the construction of safe housing and water and sanitation systems, violate the human rights to food, health care and an adequate standard of living. Family divisions created by movement restrictions and cramped living conditions likely violate the rights to family life and privacy.

110. The required standard of gravity for persecution (a “severe” deprivation of fundamental rights) can be met when rights violations are considered in conjunction with one another.<sup>165</sup> They should be assessed by reference to “their context and their cumulative effect, and not in isolation”.<sup>166</sup> In this instance, the gravity threshold may therefore be satisfied by considering the cumulative effect of these various violations, and particularly taking into account their impact on the approximately one million Rohingya in Bangladesh.<sup>167</sup>

### **(ii) & (iii) Targeting of a group on impermissible grounds**

111. The conduct by the Bangladesh authorities identified above is directed against an identifiable group or collectivity: the Rohingya refugees in Bangladesh. The available information provides a reasonable

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<sup>164</sup> Note that each of these underlying acts have previously been found by internationalized criminal tribunals to constitute acts of persecution, see: Mettraux *Crimes Against Humanity*, pp. 628-636 and the sources cited therein.

<sup>165</sup> See, e.g., *Prosecutor. Gotovina et al., (Trial Judgment)*, (ICTY, Trial Chamber I, IT-06-90-T, 15 April 2011), para. 1830; *Prosecutor v. Dordević et al., (Trial Judgment)* (ICTY, Trial Chamber II, Case No. IT-05-87/I-T, 23 February 2011), para. 1757.

<sup>166</sup> *Prosecutor v. Naletilić & Martinović, (Trial Judgment)* (ICTY, Case No. IT-98-34-T, 31 March 2003), para. 637.

<sup>167</sup> *Ibid.*

basis to believe that the victims were targeted because of their membership in the Rohingya group, which may be characterized potentially in ethnic or racial terms.<sup>168</sup>

I 12. That these measures are directed against the Rohingya on a discriminatory basis is clear from the composition of the victimized population, as well as the patterns of coercive acts and the context in which the acts are taking place. First, the conduct of, and measures imposed by, the Bangladesh authorities, are concentrated in the refugee camps. This includes the enforcement of rules regarding movement and the erection of barbed wire fencing and checkpoints; prohibitions on the construction of safe housing and water and sanitation infrastructure in the camps; the destruction of shops and small businesses belonging to the Rohingya; and other measures which solely affect the Rohingya by virtue of their living in the camps. Second, the Bangladesh authorities have implemented clear, specific, and public policies which target the Rohingya directly. Examples include the ban under Bangladesh law of registering marriages of unregistered refugees, designed to prevent Rohingya persons acquiring Bangladesh residency or citizenship by marriage;<sup>169</sup> crackdowns on Rohingya children who had been accessing education outside the camps;<sup>170</sup> and the near total absence of any access to justice for Rohingyas who are victims of crimes.<sup>171</sup> The position is also made clear more generally by the public position of the Bangladesh authorities of denying the Rohingya the title of ‘refugees’ and on this basis claiming that they are not entitled to basic rights or protections under Bangladesh law.

**(iv) Conduct committed in connection with another act in Article 7(1) or other act of similar gravity**

I 13. The conduct of the Bangladesh authorities is committed in connection with the crimes elucidated above, and particularly forcible transfer, deportation, and other inhumane acts.

**(3) Other Crimes against Humanity**

I 14. In addition to forcible transfer, deportation and persecution, the treatment of the Rohingya in Bangladesh may also give rise to other crimes against humanity contained in Article 7(1) of the Rome Statute, including other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health under Article 7(1)(k),<sup>172</sup> or the crime of apartheid under Article 7(1)(j). The focus of the above analysis should not be understood as limiting the scope of potential crimes under Article 7(1) of the Rome Statute, rather, as illustrative of the international crimes which are being committed.

**(4) Contextual Elements of Crimes against Humanity**

I 15. Crimes against humanity involve acts listed in Article 7(1), “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. For each

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<sup>168</sup> Prosecution Request for Authorisation, para. 174.

<sup>169</sup> UNHCR, ‘[Registration of the Marriages and Divorces of Refugees](#)’, April 2018.

<sup>170</sup> Human Rights Watch, ‘[“Are We Not Human?": Denial of Education for Rohingya Refugee Children in Bangladesh](#)’, 3 December 2019, pp. 33, 68.

<sup>171</sup> See paragraph 41 above.

<sup>172</sup> See, for example, the arguments made by victims’ lawyers in 2019: *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar* (Representations of victims from Tula Toli), (ICC, Legal Representatives of Victims, Case No. ICC-01/19, 23 October 2019), para. 70.

of the crimes against humanity, as indicated in the Elements of Crimes, the conduct must therefore have: (1) been ‘committed as part of a widespread or systematic attack directed against a civilian population’; and (2) while the perpetrator knew that this conduct was part of such an attack. These requirements have been interpreted as requiring proof of the following elements.

**(1) Attack directed against a civilian population**

116. An attack does not necessarily equate with a ‘military attack’.<sup>173</sup> Instead, an attack refers more generally to a campaign or operation conducted against the civilian population; according to Article 7(2)(a) of the Rome Statute, an “attack directed against any civilian population” means “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population [...]”. An attack can therefore involve any serious mistreatment of the civilian population.<sup>174</sup>
117. The available information provides a reasonable basis to believe that the actions carried out by the Bangladesh authorities against the Rohingya population comprise or encompass a course of conduct within the meaning of Article 7(2)(a), in which the authorities may be found to have committed multiple crimes against the Rohingya in Bangladesh, in the context of a campaign or operation against them. This includes the coercive acts identified above, and particularly: widespread persecution of the Rohingya; their real and threatened detention and ill-treatment by the APBn; their real and threatened forcible transfer or deportation; and other inhumane acts and treatment, including the imposition of increasingly severe restrictions on rights and destruction of property.
118. The acts described are not the mere aggregate of isolated and random incidents. Rather, they share common features in terms of the nature and characteristics of the acts, the population targeted and the alleged perpetrator(s). These common features are evidenced through patterns of coercive actions, including arbitrary detentions, systematic denials of various rights, destruction of property, and imposition of inhumane conditions.
119. The Rohingya civilian population in the refugee camps in Bangladesh were the primary target of the attacks conducted by the Bangladesh authorities. There is nothing to suggest the targets of the attack were anyone other than Rohingya civilians.

**(2) In furtherance of a state policy**

120. Article 7(2)(a)’s definition of an “attack directed against any civilian population” also incorporates the further specific requirement that the attack must be done “pursuant to or in furtherance of a State or organizational policy to commit such an attack.” This element does not require the policy

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<sup>173</sup> ICC Elements of Crimes, ‘Article 7, Crimes Against humanity’, p. 3; C. Hall & K. Ambos, ‘Article 7’, in O. Triffterer & K. Ambos (eds), *The Rome Statute of the International Criminal Court* (2016, OUP) (‘Ambos’), p. 165.

<sup>174</sup> See, e.g., *Prosecutor v. Stakić*, (Trial Judgment), (ICTY, Trial Chamber, Case No. IT-97-24-T, 31 July 2003), para. 623.

to be 'explicitly defined or formalised'.<sup>175</sup> It is met where the attack is "planned, directed or organized - as opposed to spontaneous or isolated acts of violence."<sup>176</sup>

121. The totality of the circumstances demonstrates organized state action towards Rohingya persons in Bangladesh so as to create an environment causing them to leave the Cox's Bazar camps. This is most clearly exhibited in three ways. First, repatriation has been a central priority of Bangladesh government approach towards Rohingya refugees. To that end, the Bangladesh authorities have consistently implemented policies which deny the Rohingya the ability to integrate into Bangladesh society, including by refusing to issue them with identity documents, denying them the ability to work and denying them access to education. Second, and relatedly, the Bangladesh authorities have adopted an explicit policy of referring to the Rohingya as 'forcibly displaced Myanmar nationals' rather than 'refugees'. This ensures that the Rohingya do not have any recognized legal status in Bangladesh, makes them vulnerable to exploitation, and "puts them on precarious legal footing under domestic law".<sup>177</sup> Finally, the Bangladesh authorities have adopted an increasingly securitized containment approach towards the Rohingya, imposing ever-harsher restrictions on their livelihood, movement, education, and freedoms, with the intention of excluding them from Bangladesh. These measures are clearly planned, directed, and organized, and are overseen by a State.

### **(3) Widespread or systematic nature of the attack**

122. The starting point is that these criteria are disjunctive: an attack may be widespread or systematic.<sup>178</sup>

#### Widespread

123. The term 'widespread' refers to "the large-scale nature of the attack and the large number of targeted persons".<sup>179</sup> Attacks of such scale may be "massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims".<sup>180</sup> This threshold may be met by "an attack carried out over a large geographical area or an attack in a small geographical area directed against a large number of civilians."<sup>181</sup>
124. In simplest terms, the pattern of conduct by the Bangladesh authorities is directed against all Rohingya in Bangladesh: as noted at the outset, this comprises around one million people, and rising. This large number of victims is a clear indicator the attack may be considered 'widespread'.

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<sup>175</sup> *Prosecutor v. Gbagbo* (Public redacted version of "Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo"), (ICC, Pre-Trial Chamber III, No. ICC-02/11-01/11-9-Red, 30 November 2011), para. 37.

<sup>176</sup> *Prosecutor v. Gbagbo*, (Decision on the confirmation of charges against Laurent Gbagbo) (ICC, Pre-Trial Chamber I, No. ICC-02/11-01/11-656-Red, 12 June 2014), para. 215.

<sup>177</sup> Arif Article, p. 867.

<sup>178</sup> Ambos, p. 167.

<sup>179</sup> *Prosecutor v. Bemba*, (Judgment pursuant to Article 74 of the Statute) (ICC, Trial Chamber III, No. ICC-01/05-01/08-3343, 21 March 2016), para. 163 and sources cited therein.

<sup>180</sup> *Ibid.*

<sup>181</sup> *Prosecutor v. Bemba*, (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo) (ICC, Pre-Trial Chamber II, No. ICC-01/05-01/08-424, 15 June 2009), para. 83.



### Systematic

125. In addition, it is likely that the attack may be considered systematic. Systematic refers to “the organised nature of the acts of violence and the improbability of their random occurrence”, and can “often be expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis.”<sup>182</sup>
126. The above-described alleged acts evidence a high-degree of organization by the Bangladesh authorities, demonstrated by factors such as the amount and type of resources employed (such as the deployment of the APBn to control the Rohingya population), and the careful, systematic, and exclusive targeting of the Rohingya population through clear policies and restrictions. The clearest expression is the stated intention of the Bangladesh authorities that its efforts towards the Rohingya are dedicated to ensuring their eventual removal from Bangladesh, and to prevent their integration into society. This stated intention indicates the policies and conduct against the Rohingya are not random, but guided by the envisaged object: the Rohingya.<sup>183</sup> In practice, there is therefore consistent, non-accidental, patterns of conduct on a regular basis.

#### **(4) Nexus between identified crimes and the attack**

127. The underlying acts charged under Article 7(1) must be committed “as part” of the widespread or systematic attack directed against any civilian population, requiring proof of a nexus between individual acts and the attack.
128. The available information provides a reasonable basis to believe that there is a nexus between the identified crimes (deportation and persecution) and the attack on the basis of factors including: (i) the geographical and temporal overlap between the attack and the identified crimes; and (ii) the fact that the same people, the Rohingya population, were both the object of the attack and the victims of the identified crime.
129. As noted by the previous Prosecutor in respect of crimes committed by the Myanmar military, “[i]n all cases, the identified crimes were clearly connected with the attack on the Rohingya population in Rakhine State, not only insofar as they led to at least 700,000 Rohingya persons being deported to Bangladesh, but also because they had the effect of consolidating and securing those deportations. The identified crimes were clearly not isolated acts distinguishable from the attack itself.”<sup>184</sup> The same is true of Bangladesh’s current conduct.

#### **(5) Knowledge of the attack**

130. Article 7 requires that the perpetrator must commit the act with knowledge of the broader widespread or systematic attack on the civilian population.

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<sup>182</sup> See, e.g., *Prosecutor v. Kunarac et al.* (Trial Judgment), (ICTY, Trial Chamber, Case No. IT-96-23-7 & IT-96-23/1-T, 22 February 2001), para. 429; *Situation in the Republic of Kenya* (Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya), (ICC, Pre-Trial Chamber II, No. ICC-01/09-19-Corr, 31 March 2010), para. 96; *Prosecutor v. Katanga and Ngudjolo* (Decision on the confirmation of charges) (ICC Pre-Trial Chamber I, No. ICC-01/04-01/07-717, 30 September 2008), para. 394.

<sup>183</sup> Ambos, p. 171.

<sup>184</sup> Prosecution Request for Authorisation, para. 212.

131. The Bangladesh authorities instigated and perpetuated the coercive acts and circumstances outlined above, including through adopting specific policies imposing increasingly severe restrictions on the Rohingya. In doing so, the Bangladesh authorities were well aware that such actions were in furtherance of a mandated state policy to exclude or remove the Rohingya from Bangladesh.

## **E. Conclusion**

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132. It is not an exaggeration that the deliberate death by a thousand cuts being inflicted on the Rohingya by Bangladesh authorities should be of concern to the international community as a whole. It is also now clear that this is not an anomaly resulting from an overburdened host Government, but part of a larger historical cycle of persecution and victimization of the Rohingya by the very authorities to whom they have fled for sanctuary.

133. Since arriving in Bangladesh, the Rohingya have been stripped of any chance of a dignified life for themselves, or their children. They live in fear of violence, fires, threats, natural disasters, arbitrary arrest and detention, ill treatment, and death. They are now being deliberately starved, while the rights to which they are entitled, and which could act as a framework to advocate for basic necessities, remain out of their reach.

134. The ICC Office of the Prosecutor's extensive efforts to achieve justice for crimes committed against the Rohingya by Myanmar, legally extends to perpetration of the same crimes by a different authority. While an investigation into crimes against humanity committed by the Bangladesh authorities against the Rohingya may result in the ICC being prevented from accessing Bangladesh, there are procedural mechanisms in place to address lack of cooperation by a State Party. The ease of continued investigations into crimes committed by Myanmar authorities cannot justify the continued deliberate circumnavigation of these ongoing crimes.

135. On this basis, we urge the Office of the Prosecutor to investigate and prosecute the crimes against humanity being committed against the Rohingya by the Bangladesh authorities.