

Fortify Rights

# Shadow Report

## Universal Periodic Review: Bangladesh's Record on Refugee Rights, 2018-2023

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## Cover:

A Rohingya refugee behind barbed-wire fencing on Bhasan Char an isolated island in the Bay of Bengal in Bangladesh. ©Kateb, 2022.



# FORTIFY RIGHTS

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



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*A row of concrete housing units on Bhasan Char, an island where more than 32,000 Rohingya refugees live. ©Kateb, 2022.*

## Summary

The Universal Periodic Review (UPR) is a process at the U.N. Human Rights Council through which U.N. member states review the human rights record of all other member states approximately every four years.

On November 13, 2023, the U.N. Human Rights Council, as part of the UPR process, will consider Bangladesh’s human rights record between 2018 and 2023. This “shadow report” is intended to support the UPR process by providing specific information on Bangladesh’s record regarding its treatment of refugees since 2018, with recommendations to improve refugee protections based on Bangladesh’s obligations under international human rights laws and standards. This report focuses specifically on Rohingya refugees in Bangladesh and is based primarily on research and monitoring conducted by Fortify Rights during the period under review.

As of March 2023, there are more than 960,500 Rohingya refugees from Myanmar in camps in Cox's Bazar District in southern Bangladesh, according to the U.N. High Commissioner for Refugees (UNHCR).<sup>1</sup> A majority of this population fled to Bangladesh in 2016 and 2017 to escape genocidal attacks led by the Myanmar military.<sup>2</sup>

In 2018, during Bangladesh's last review under the UPR, it received several recommendations relevant to refugees, including recommendations to ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, ensure access to justice, and abide by the principle of *non-refoulement*.<sup>3</sup> Bangladesh accepted only one of the nine recommendations specifically relating to refugees—a recommendation made by the Government of Japan to: “Continue to hold constructive dialogue with Myanmar and make efforts to implement the bilateral agreement, aiming at steady and rapid repatriation of refugees.”<sup>4</sup>

In its national report to the Human Rights Council Working Group on the UPR, dated September 1, 2023, Bangladesh provides a brief overview of the history of Rohingya refugees in the country, referring to them not as refugees but as “Forcibly Displaced Myanmar Nationals (FDMNs).”<sup>5</sup> Bangladesh emphasizes that it “remains committed to the FDMNs right to safe, dignified and voluntary return to their homes in Myanmar” but that a “rigid attitude of the Myanmar regime towards the crisis hinders the resolution thereof through peaceful

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1 U.N. High Commissioner for Refugees (UNHCR), “Bangladesh Country Profile,” 2023, [https://bit.ly/unhcr\\_bangladesh-country-profile](https://bit.ly/unhcr_bangladesh-country-profile).

2 Fortify Rights, “*They Gave Them Long Swords*”: Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar, July 19, 2018, <https://www.fortifyrights.org/mya-inv-2018-07-19/>.

3 UPR Info, “Database Bangladesh,” *website*, [https://bit.ly/upr-info\\_database-bangladesh](https://bit.ly/upr-info_database-bangladesh). See also, Fortify Rights, “What is Non-Refoulement?,” July 30, 2021, [https://www.fortifyrights.org/our\\_films/reg-inv-vdo-2021-07-30/](https://www.fortifyrights.org/our_films/reg-inv-vdo-2021-07-30/).

4 UPR Info, “Database Bangladesh.”

5 U.N. Human Rights Council, *National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21 – Bangladesh*, September 1, 2023, <https://www.ohchr.org/en/hr-bodies/upr/bd-index>. The phrase “Forcibly Displaced Myanmar Nationals (FDMNs)” is terminology representative of the Government of Bangladesh's longstanding refusal to confer deserved refugee status on Rohingya.

talks.”<sup>6</sup> The government also notes that through the provision of “temporary shelter” and other services, it has improved the lives of some 32,565 Rohingya refugees on Bhasan Char—an isolated island in the Bay of Bengal.<sup>7</sup>

This UPR shadow report describes violations of Rohingya refugees’ right to freedom of movement, including through the relocation of refugees to Bhasan Char and the construction of barbed-wire fencing to confine refugees within Cox’s Bazar District mainland camps.<sup>8</sup> The fences have prevented Rohingya refugees from escaping deadly fires, impeded humanitarian aid, and caused psychological distress among refugees.<sup>9</sup>

This report also documents how Bangladesh authorities arbitrarily detained and tortured Rohingya refugees and how non-state actors killed and abducted Rohingya human rights defenders and others in the mainland camps with impunity.

The approximately one million Rohingya refugees in Bangladesh have the right to return to their indigenous homeland in Myanmar. However, this report finds that Bangladesh’s attempts to promote the repatriation of Rohingya to Myanmar are premature and dangerous.

Lastly, Rohingya survivors of genocide, crimes against humanity, and war crimes have a right to remedy for crimes committed against them. The right to remedy in this context includes the rights of victims and survivors to seek justice, accountability, and redress for the harms they have suffered in Myanmar. This report finds that the Government of Bangladesh is meeting its obligations to ensure international justice and accountability for Rohingya people. This report also includes 15 recommendations for the Government of Bangladesh that States reviewing Bangladesh’s human rights record under the UPR process can and should echo.

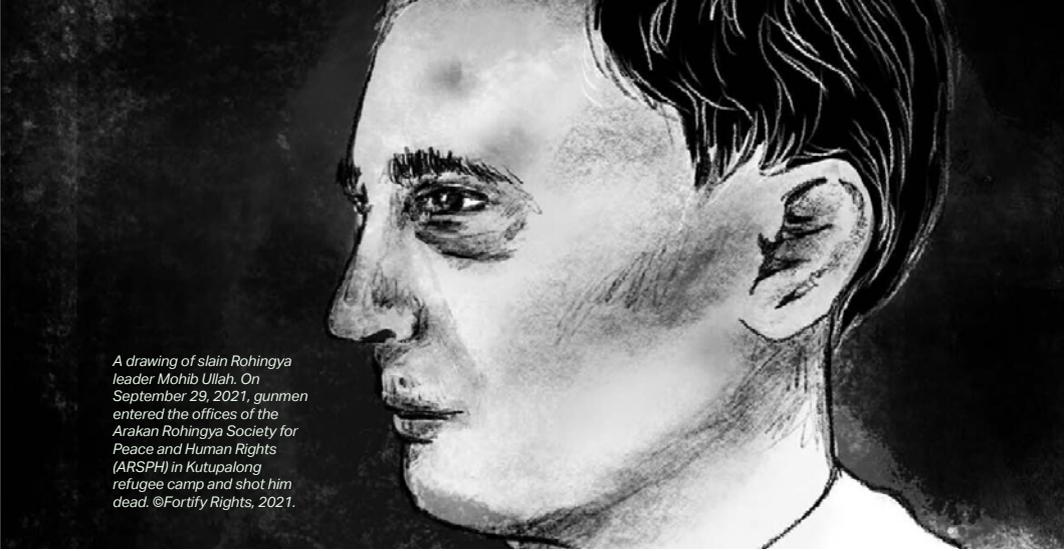
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6 *Ibid.*

7 *Ibid.*

8 Fortify Rights, “Bangladesh: Remove Fencing That Confines Rohingya to Refugee Camps,” October 9, 2020, <https://www.fortifyrights.org/bgd-inv-2020-10-09-2/>.

9 Fortify Rights, “Bangladesh: Remove Fencing, Support Fire-Affected Refugees,” May 5, 2021, <https://www.fortifyrights.org/bgd-inv-2021-05-05/>.



A drawing of slain Rohingya leader Mohib Ullah. On September 29, 2021, gunmen entered the offices of the Arakan Rohingya Society for Peace and Human Rights (ARSPH) in Kutupalong refugee camp and shot him dead. ©Fortify Rights, 2021.

## I. Killings and Abductions of Human Rights Defenders and Others

On September 29, 2021, gunmen entered the offices of the Arakan Rohingya Society for Peace and Human Rights (ARSPH) in Kutupalong refugee camp and shot dead Mohib Ullah, ARSPH’s founder and a prominent Rohingya human rights defender.<sup>10</sup> Mohib Ullah’s brutal assassination was not only a desperate loss to the Rohingya community but also stands as a symbol of the continued and unmitigated threats faced by Rohingya human rights defenders targeted by non-state armed groups in the refugee camps.<sup>11</sup>

More than two years after Mohib Ullah’s death, the security situation in the camps has worsened. Fortify Rights spoke to dozens of Rohingya human rights defenders, religious leaders, and others during the past years whom camp-based non-state armed groups have threatened and forced into hiding.

In early January 2023, men believed to be affiliates of the Arakan Rohingya Salvation Army (ARSA)—a Rohingya militant group operational in the camps in Cox’s Bazar Cox District—attacked a *majhi*—a Rohingya community

<sup>10</sup> Fortify Rights, “Bangladesh: Investigate Assassination of Rohingya Human Rights Defender Mohib Ullah,” September 29, 2021, <https://www.fortifyrights.org/bgd-inv-2021-09-29/>.

<sup>11</sup> John Quinley, “Remembering Mohib Ullah and the Need for Refugee Protection,” *Daily Star*, October 15, 2022, <https://www.thedailystar.net/opinion/views/news/mohib-ullahs-killers-remain-large-3143376>.

leader—because they suspected him of cooperating with Bangladesh authorities to arrest ARSA members.<sup>12</sup> According to the *majhi*, approximately a week after a senior ARSA member threatened him over a phone call, ARSA members opened fire at him in a refugee camp in broad daylight. The man told Fortify Rights that he visited a teashop near his shelter when ARSA members confronted him: “[F]our [ARSA] members wearing face masks arrived, three among them had guns. Two among these four were from my block [in the refugee camp], and one of them shot at me while I was seated [in the teashop] . . . One bullet hit my right thigh.”<sup>13</sup>

During the reporting period, camp-based militants also targeted Rohingya women aid workers and their families. In 2019, several Rohingya women told Fortify Rights that Rohingya militants abducted them or their family members because of the jobs that the women held with aid organizations in the Bangladesh refugee camps.<sup>14</sup> Rohingya militants committed these attacks with impunity to intentionally prevent the women from exercising their rights to work and freedom of expression.

Bangladesh has a responsibility to protect all persons in its territory, including refugees, from human rights violations committed by non-state actors and state actors. Article 2 of the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh is a State Party, obligates State Parties to “guarantee to all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant without discrimination.”<sup>15</sup> Article 2(3) also guarantees the right to an effective remedy for violations committed against a person.

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<sup>12</sup> Fortify Rights interview with B.Z., Cox’s Bazar District, Bangladesh, January 27, 2023.

<sup>13</sup> *Ibid.*

<sup>14</sup> Fortify Rights, “ARSA: End Abductions, Torture, Threats Against Rohingya Refugees and Women Aid Workers,” March 14, 2019, <https://www.fortifyrights.org/mya-inv-2019-03-14/>.

<sup>15</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, Art. 2.

## Recommendations:

- **FULLY** investigate the assassination of Mohib Ullah and others murdered in the refugee camps and hold those responsible to account in line with international fair-trial standards;
- **COOPERATE** with the U.N. High Commissioner for Refugees and humanitarian actors to increase protective spaces in the refugee camps, including safe houses for Rohingya refugees and their families at risk from non-state actors; and
- **WORK** with other governments and the U.N. High Commissioner for Refugees to increase third-country resettlement numbers for Rohingya refugees, especially for those targeted by non-state actors.

*Police officers from the Armed Police Battalion (APBn), a specialized combat unit of the Bangladesh police force operational in Rohingya refugee camps. APBn has systematically detained, tortured, and extorted Rohingya refugees. ©Kateb, 2022.*



## II. Detention, Torture, Ill-Treatment, and Extortion

From 2018 to 2023, Bangladesh authorities arbitrarily detained, tortured, and violated the fundamental rights of Rohingya refugees in the mainland camps and on Bhasan Char. For example, between March and June 2023, Bangladeshi police officers from the Armed Police Battalion (APBn)—a specialized combat unit of the Bangladesh police force—systematically detained, tortured, and extorted refugees.<sup>16</sup> APBn officers beat Rohingya refugees with batons and metal sticks and choked and used other torture methods against them to extort payments, sometimes amounting to the equivalent of thousands of U.S. dollars.<sup>17</sup> In 2022, Fortify Rights also documented abuses by the APBn, including beatings and arbitrary detention of Rohingya children.<sup>18</sup>

<sup>16</sup> Fortify Rights, “Bangladesh: Ensure Accountability for Police Corruption, Torture of Rohingya Refugees,” August 10, 2023, <https://www.fortifyrights.org/bgd-inv-2023-08-10/>.

<sup>17</sup> *Ibid.*

<sup>18</sup> Fortify Rights, “Bangladesh: Investigate Refugee-Beatings by Police, Lift Restrictions on Movement,” May 26, 2022, <https://www.fortifyrights.org/bgd-inv-2022-05-26/>.

Testimonies from Rohingya refugees and aid workers also suggest an institutionalized culture of corruption and abuse within the APBn. A humanitarian aid worker in the refugee camps in Bangladesh, speaking to Fortify Rights on the condition of anonymity, said: “The entire camp is a pyramid scheme of extortion. ... [Refugees] have to pay money to armed groups and are extorted by APBn.”<sup>19</sup>

A Rohingya man, 45, told Fortify Rights that APBn beat, detained, and extorted money and other valuables from him on multiple occasions since January 2023. The police accused him of selling “*yaba*”—a synthetic stimulant drug containing a mixture of methamphetamine and caffeine—which he denied. The APBn detained the man for two nights, and they tortured him. He explained: “There’s a senior officer at APBn. He took me to their offices and detained me for two days. ... They charged me 360,000 Bangladeshi Taka (approximately US\$3,300) to be released from them. My family had to manage the money.”<sup>20</sup>

He continued:

[APBn officers] beat me badly with a metal stick while I was taken [to the police office]. They threatened me, saying that they would send me to jail for ten years if I didn’t pay them. They said they’d make a *yaba* case [against me], and then they told my family to pay the money. My family borrowed money from people because I used up my savings.<sup>21</sup>

Customary international law and Article 9 of the ICCPR protects the right to liberty. This right extends to migrants and refugees. The U.N. Human Rights Committee affirmed that the rights covered in the ICCPR should apply “without discrimination between citizens and aliens,” including refugees.<sup>22</sup>

Bangladesh is also a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which prohibits torture and requires accountability for perpetrators of torture,

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19 Fortify Rights, “Bangladesh: Ensure Accountability for Police Corruption, Torture of Rohingya Refugees.”

20 *Ibid.*

21 *Ibid.*

22 U.N. Human Rights Committee, “CCPR General Comment No. 15: The Position of Aliens Under the Covenant,” April 11, 1986, <https://www.refworld.org/pdfid/45139acfc.pdf>.

and the International Convention on the Elimination of All Forms of Racial Discrimination, which protects the “right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by an individual group or institution.”<sup>23</sup>

International law bans torture in every context. Under the CAT, torture includes any act causing severe mental or physical pain or suffering intentionally inflicted by a public official or by someone with the consent or acquiescence of a public official for a specific purpose, such as obtaining information, punishment, intimidation, coercion, or discrimination.<sup>24</sup>

Following its accession to the CAT, Bangladesh enacted the Torture and Custodial Death (Prohibition) Act in 2013, which lays down the procedure for investigating torture complaints, punishment, witness protection, and compensation.<sup>25</sup>

Moreover, although not legally binding, the Basic Principles for the Treatment of Prisoners and Standard Minimum Rules for the Treatment of Prisoners also provide fundamental guidelines for U.N. member states regarding the fair and humane treatment of individuals in custody.<sup>26</sup> The principles and minimum standards emphasize the importance of respecting the human dignity of detainees and safeguarding them against torture or ill-treatment.<sup>27</sup>

Public officials in Bangladesh also have a legal mandate to prevent corruption and promote accountability for corrupt practices. For example, the U.N. Convention against Corruption, to which Bangladesh is a state party, requires “measures to prevent and combat corruption more efficiently and effectively.”<sup>28</sup> Article 5 of U.N. Convention against Corruption says that state parties should “develop and implement or maintain effective, coordinated

<sup>23</sup> Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), adopted December 10, 1984, G.A. Res. 39/46, U.N. Doc. A/39/51; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), U.N. Doc. A/6014.

<sup>24</sup> CAT, Art. 1.

<sup>25</sup> Torture and Custodial Death (Prohibition) Act, 2013.

<sup>26</sup> Basic Principles for the Treatment of Prisoners, adopted December 14, 1990, Resolution No. A/RES/45/111; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted on January 8, 2016, G.A. resolution A/RES/70/175.

<sup>27</sup> *Ibid.*

<sup>28</sup> U.N. Convention Against Corruption, adopted October 31, 2003, G.A. Res. 58/4, U.N. Doc. A/58/422, Article 1(a). On February 27, 2007, the Bangladesh government acceded to the legally binding Convention.

anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”<sup>29</sup> Bangladesh’s Penal Code further criminalizes specific actions by a public servant, including accepting, agreeing to accept, or attempting to obtain remuneration other than legal remuneration to perform or omit their official duties. Violations under the act include imprisonment and/or a fine.<sup>30</sup>

## Recommendations:

- **INVESTIGATE** and, where appropriate, prosecute Armed Police Battalion officers responsible for torturing Rohingya refugees;
- **LAUNCH** a broader inquiry into institutionalized corruption and abuse within the Armed Police Battalion, and hold accountable officers responsible for extorting payments from Rohingya refugees; and
- **ENHANCE** coordination between government offices, security forces, humanitarian organizations, and Rohingya refugees to ensure a cohesive and collaborative approach to rights-based security in the refugee camps.

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<sup>29</sup> U.N. Convention Against Corruption, Article 5(1).

<sup>30</sup> The Penal Code (Act No. XLV), October 6, 1860, Chapter IX.



Barbed-wire fencing and a newly constructed watchtower on Bhasan Char. ©Kateb, 2022.

### III. Restrictions on Freedom of Movement

Bangladesh erected barbed-wire fencing around refugee camps in Cox's Bazar District since September 2019 when the government first announced plans to construct watchtowers, install video surveillance, and fence off more than 30 Rohingya refugee camps.<sup>31</sup> In 2020, the Bangladesh authorities accelerated the construction of barbed-wire fencing confining Rohingya refugees inside the Kutupalong-Balukhali mega camp in Cox's Bazar District, completing it in 2021.<sup>32</sup> The government says the fencing is in response to security concerns and to control the movement of Rohingya in and out of the camps.<sup>33</sup>

According to evidence collected by Fortify Rights, the barbed-wire fencing restricts the movement of Rohingya refugees and creates psychological distress for the Rohingya refugee population.<sup>34</sup> In a 2020 report by Fortify Rights, 65

<sup>31</sup> Fortify Rights, "Bangladesh: Remove Fencing That Confines Rohingya to Refugee Camps," October 9, 2020, <https://www.fortifyrights.org/bgd-inv-2020-10-09-2/>.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

percent of Rohingya refugees in Bangladesh cited restrictions on freedom of movement—including problems moving between camps, checkpoints, and extortion at these checkpoints—as a “chronic stressor.”<sup>35</sup>

Fortify Rights also collected evidence suggesting that the fencing hampers humanitarian aid and prevents the provision of essential services. For example, following a string of devastating fires in the refugee camps in Bangladesh during the first half of 2021, 13 refugee eyewitnesses and other Rohingya testified to Fortify Rights that the barbed-wire fencing enclosing the camps hampered efforts to escape fires and directly contributed to injuries and at least one death during a major blaze on March 22, 2021.<sup>36</sup>

Bhasan Char is a newly developed silt island off the coast of Bangladesh, where the authorities have transferred more than 32,000 Rohingya refugees.<sup>37</sup> In 2021 and 2022, testimonial evidence collected by Fortify Rights indicated that some of these transfers were coerced and involuntary, lacking informed consent.<sup>38</sup>

On December 19, 2021, the U.N. Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, concluded a weeklong visit to Bangladesh, where he visited Bhasan Char. In his concluding statement, he said: “Bangladesh’s commitment to voluntariness must be carried out at every level, meaning also that Rohingya are fully informed of conditions and there is no coercion.”<sup>39</sup>

35 Fortify Rights, *“The Torture in My Mind”: The Right to Mental Health for Rohingya Survivors of Genocide in Myanmar and Bangladesh*, December 2020, <https://www.fortifyrights.org/downloads/The%20Torture%20in%20My%20Mind%20-%20Fortify%20Rights%20-%20December-10-2020.pdf>.

36 Fortify Rights, “Bangladesh: Remove Fencing, Support Fire-Affected Refugees,” May 5, 2021, <https://www.fortifyrights.org/bgd-inv-2021-05-05/>.

37 U.N. Human Rights Council, *National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21 – Bangladesh*, September 1, 2023, <https://www.ohchr.org/en/hr-bodies/upr/bd-index>.

38 Fortify Rights, “Bangladesh: Prevent Coercive and Involuntary Transfers of Rohingya Refugees,” January 30, 2022, <https://www.fortifyrights.org/bgd-inv-2022-01-30/>.

39 U.N. Special Rapporteur on the Situation of Human Rights in Myanmar, Tom Andrews, “End of Mission Statement: Mission to Bangladesh 13 - 19 December 2021,” December 19, 2021, <https://www.ohchr.org/en/statements/2022/03/mission-bangladesh-13-19-december-2021?LangID=E&NewsID=28001>.

Refugees on the island report facing widespread human rights violations, including severe restrictions on freedom of movement. Many refugees Fortify Rights spoke with described prison-like conditions on the island. For instance, one Rohingya man, 29, originally from Maungdaw Township, said:

In the refugee camps, even though we were refugees, we felt as if we were living in our homeland, Myanmar. We could visit the other refugee camps. Here on Bhasan Char, I haven't been able to go anywhere outside. It is like a prison here. ... [W]e don't want to live here at all, let alone for years. People can't just leave because of the Navy guards and control by the authorities. If there is no guard or control, not a single person will remain here. All will leave this place.<sup>40</sup>

A Rohingya community leader on Bhasan Char confirmed to Fortify Rights that Bangladeshi authorities ordered him and other community leaders to prevent Rohingya from leaving the island saying, "They ordered us to control the people from leaving the island, otherwise they said they would beat us or send us to jail."<sup>41</sup>

International human rights law protects refugees' right to freedom of movement. It authorizes governments only to impose restrictions equally applicable to other non-citizens within the country's borders. The ICCPR applies "without discrimination" to refugees and protects the right to freedom of movement.<sup>42</sup> The U.N. Human Rights Committee has recognized that the ICCPR should apply "without discrimination between citizens and aliens," including refugees. The confinement of refugees is discriminatory and infringes on Rohingya refugees' right to freedom of movement in contravention of international law. The Government of Bangladesh, therefore, is responsible for ongoing violations of the right to freedom of movement for Rohingya refugees.

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<sup>40</sup> Fortify Rights interview with #23, Bhasan Char, Noakhali District, Bangladesh, March 2, 2021.

<sup>41</sup> Fortify Rights interview with #58, Bhasan Char, Noakhali District, Bangladesh, August 19, 2021.

<sup>42</sup> ICCPR, Art. 2 para. 1.

## Recommendations:

- **REMOVE** fencing from around Rohingya refugee camps in Cox's Bazar District and protect the right to freedom of movement for Rohingya refugees in Bangladesh;
- **ENSURE** all refugees on Bhasan Char can move on and off and within the island freely; and
- **ENSURE** all transfers from the mainland to Bhasan Char are conducted non-coercively and with informed consent.

"N.M.," 75, shows his original White Card receipt. Myanmar authorities issued the receipts to Rohingya after revoking their White Cards in March 2015. Like the White Card itself, the receipts confer no rights. ©Saiful Huq Omi, Counter Foto, Cox's Bazar District, Bangladesh, August 2019.



## IV. Rohingya Right to Return to Myanmar

According to UNHCR, as of March 2023, more than 960,500 Rohingya refugees from Myanmar reside in camps in Cox's Bazar District in southern Bangladesh.<sup>43</sup> Since 2018, the governments of Bangladesh and Myanmar have signed several agreements and memorandums of understanding (MoUs) related to the repatriation of Rohingya refugees, beginning just months after the 2017 genocidal attacks in Myanmar.<sup>44</sup> Bangladeshi authorities reached, publicized, and acted upon several agreements during the review period for Bangladesh's 2023 UPR. For example, on January 16, 2018, the governments of Bangladesh and Myanmar signed an agreement on the "Physical Arrangement" to return Rohingya refugees to Myanmar.<sup>45</sup> UNHCR was not a party to that agreement.<sup>46</sup> As part of the Physical Arrangement agreement,

43 UNHCR, "Bangladesh Country Profile."

44 These initiatives include the creation in 2017 of a Joint Working Group on repatriation.

45 U.N. Human Rights Council, "Oral update of the High Commissioner for Human Rights on Situation of Human Rights of Rohingya People," A/HRC/38/CRP.2, July 5, 2018, [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Documents/A\\_HR\\_38\\_CRP.2.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Documents/A_HR_38_CRP.2.docx).

46 *Ibid*; "Bangladesh Agrees with Myanmar to Complete Rohingya Return in Two Years," *Reuters*, January 16, 2018, <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/Burma%20or%20a%20-agrees-with-myanmar-to-complete-rohingya-return-in-two-years-idUSKBN1F50I2?feedType=RSS&feedName=worldNews>.

the Government of Bangladesh provided the names of more than 8,000 Rohingya to the Government of Myanmar “for verification and return.”<sup>47</sup> The Bangladesh authorities did not consult the refugees included on these lists, and those included had not sought voluntary return to Myanmar.<sup>48</sup>

In April 2018, Bangladesh and Myanmar signed another agreement, specifying that the repatriation process should begin and be completed within two years.<sup>49</sup> That same month, Bangladesh and UNHCR signed a MoU “relating to voluntary returns of Rohingya refugees once conditions in Myanmar are conducive.”<sup>50</sup>

In the years since the 2018 agreements, the Government of Bangladesh has continued to prioritize the issue of repatriation of Rohingya, including following the deadly *coup d'état* launched by the Myanmar military in February 2021. In its national report to the Human Rights Council Working Group on the UPR, Bangladesh cites a “repatriation deal” between Bangladesh and Myanmar, clarifying that it “formed a Joint Working Group (JWG)” with Myanmar on November 23, 2021.<sup>51</sup> However, Bangladesh notes:

Myanmar has not yet taken any initiative to take its citizens back. Rigid attitude of the Myanmar regime towards the crisis hinders the resolution thereof through peaceful talks. Tripartite meetings between Bangladesh, Myanmar and China didn't bear fruit due to the attitude of the Myanmar regime.<sup>52</sup>

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47 U.N. Human Rights Council, “Oral update of the High Commissioner for Human Rights on Situation of Human Rights of Rohingya People,” A/HRC/38/CRP.2.

48 *Ibid.*

49 Ruma Paul and Yi-mou Lee “Bangladesh Agrees with Myanmar to Complete Rohingya Return in Two Years,” *Reuters*, January 16, 2018, <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/bangladesh-agrees-with-myanmar-to-complete-rohingya-return-in-two-years-idUSKBN1F50l2?feedType=RSS&feedName=worldNews>.

50 UNHCR, “Bangladesh and UNHCR Agree on Voluntary Returns Framework for When Refugees Decide Conditions are Right,” April 13, 2018, <https://www.unhcr.org/us/news/news-releases/Burmara-and-unhcr-agree-voluntary-returns-framework-when-refugees-decide>.

51 U.N. Human Rights Council, *National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21 – Bangladesh*.

52 *Ibid.*

Between 2018 and 2021, the Bangladesh government sent at least 830,000 names of Rohingya refugees to Myanmar without the refugees' informed consent, including personal biometric information of refugees for repatriation eligibility assessments.<sup>53</sup> Thereafter, Myanmar reportedly agreed to allow about 42,000 Rohingya to return to Rakhine State.<sup>54</sup>

Most recently, in March 2023, the Government of Bangladesh and the Myanmar military junta launched a "bilateral pilot project" on Rohingya refugee returns to Myanmar.<sup>55</sup> China reportedly brokered the deal.<sup>56</sup> UNHCR is not involved in the pilot project.

Since 2018, Rohingya refugees have consistently reported to Fortify Rights their concerns about forced repatriation to Myanmar.<sup>57</sup> In a 2018 film produced by Fortify Rights, entitled "No Man's Land", Rohingya refugees explained their concerns with repatriation to Myanmar. For example, a Rohingya refugee woman in Bangladesh who fled Myanmar military-led atrocities in Buthidaung Township, Rakhine State, Myanmar, said: "You can throw us into the sea, but please don't send us back. ... We will not go back to Myanmar."<sup>58</sup>

On November 3, 2018, a Rohingya refugee man, 60, from Maungdaw Township attempted suicide by drinking cleaning detergent after hearing from a *majhi* that his family was potentially on the list to be sent back to Myanmar.<sup>59</sup> "I

53 Human Rights Watch, "UN Shared Rohingya Data Without Informed Consent," June 15, 2021, <https://www.hrw.org/news/2021/06/15/un-shared-rohingya-data-without-informed-consent>.

54 "Bangladesh Provides List of 230,000 Rohingya to Myanmar for Repatriation," *The Financial Express*, January 13, 2021, <https://thefinancialexpress.com.bd/national/bangladesh-provides-list-of-230000-rohingya-to-myanmar-for-repatriation-1610459181>.

55 UNHCR, "UNHCR Statement on Bangladesh, Myanmar Bilateral Pilot Project on Rohingya Returns," March 19, 2023, <https://www.unhcr.org/us/news/press-releases/unhcr-statement-bangladesh-myanmar-bilateral-pilot-project-rohingya-returns>.

56 "Myanmar Seeking to Repatriate Rohingya Refugees from Bangladesh," *Al Jazeera*, October 31, 2023, <https://www.aljazeera.com/news/2023/10/31/Burmar-176>.

57 Fortify Rights, "Myanmar/Bangladesh: Prevent Premature Repatriation, Ensure Rights for Rohingya," January 22, 2018, <https://www.fortifyrights.org/mya-bgd-inv-2018-01-22/>; Fortify Rights, "Bangladesh: Protect Rohingya Refugees, End Threats and Intimidation," November 12, 2018, <https://www.fortifyrights.org/bgd-mya-inv-2018-11-12/>; Fortify Rights, Myanmar/Bangladesh: Prevent Forced Returns, Protect Rohingya Refugees, August 21, 2019, <https://www.fortifyrights.org/mya-bgd-inv-2019-08-21/>.

58 Fortify Rights, "Myanmar/Bangladesh: Prevent Premature Repatriation, Ensure Rights for Rohingya."

59 Fortify Rights, "Bangladesh: Protect Rohingya Refugees, End Threats and Intimidation."

don't want to go back to Myanmar,' the man told Fortify Rights on November 5 while recovering. "I would rather die or be killed than be sent back. When I heard my name was on the list, I felt angry and scared. There was a heavy, restless sense in my soul."<sup>60</sup> Fortify Rights referred the man to relevant health workers in Cox's Bazar District.<sup>61</sup>

Since 2018, Rohingya refugee concerns about returning to Myanmar have not changed. In a 2020 report by Fortify Rights based on quantitative data, 94.7 percent of Rohingya refugees in Bangladesh reported a desire to return to Myanmar in the future.<sup>62</sup> However, Rohingya refugees in Bangladesh identified certain rights and protections that would need to be restored or guaranteed in Myanmar before they would return to the country, including citizenship (92.5 percent), compensation for losses (85.9 percent), protection (e.g., a U.N. security force) (75.4 percent), and freedom (e.g., of movement, to attend school, etc.) (71.7 percent).<sup>63</sup>

The junta of Myanmar plans to house returnees in "transit centers," where Rohingya will be required to accept National Verification Cards (NVCs), which do not confer citizenship or allow Rohingya to self-identify. Instead, NVCs identify Rohingya as "Bengali" or, more generally, as "foreigners."<sup>64</sup>

The military junta is not the Government of Myanmar under international laws and standards, and its claims to legitimacy are fraudulent.<sup>65</sup> It is, therefore, an inappropriate interlocutor or partner on matters relating to Rohingya repatriation to Rakhine State. The Association of Southeast Asian Nations, the regional bloc to which Myanmar belongs, continues to refuse

60 *Ibid.*

61 *Ibid.*

62 Fortify Rights, "The Torture in My Mind."

63 *Ibid.*

64 Fortify Rights, *Genocide by Attrition: The Role of Identity Documents in the Holocaust and the Genocides of Rwanda and Myanmar*, June 2022, <https://www.fortifyrights.org/downloads/Genocide%20by%20Attrition%20-%20Fortify%20Rights%20Report.pdf>; Fortify Rights, "Not a Verified Citizen: The Myanmar Junta's Erasure of Rohingya Identity"; film, August 24, 2023, [https://www.fortifyrights.org/our-films/#post\\_id=20854](https://www.fortifyrights.org/our-films/#post_id=20854).

65 U.N. Special Rapporteur on the Situation of Human Rights in Myanmar Tom Andrews, *Illegal and Illegitimate: Examining the Myanmar Military's Claim as the Government of Myanmar and the International Response*, A/HRC/52/CRP.2, January 31, 2023, <https://www.ohchr.org/sites/default/files/documents/countries/mm/2023-01-27/crp-sr-myanmar-2023-01-31.pdf>.

to invite representatives of the Myanmar junta to its high-level meetings and functions.<sup>66</sup> Moreover, the Myanmar junta, including individuals and institutions it unlawfully commandeered, continues to be the subject of an increasing body of punitive sanctions from U.N. member states due to its illegal coup and mass atrocity crimes that directly pertain to the situation in Rakhine State, further demonstrating why the junta should not be involved in discussions on refugee returns.<sup>67</sup>

Since the Myanmar military *coup d'état* on February 1, 2021, it has commenced a widespread and systematic attack on the civilian population nationwide, including the civilian population in Rakhine State, where Rohingya are one of several indigenous ethnic groups.<sup>68</sup> The junta in Myanmar continues to confine several hundred thousand Rohingya to internment camps and isolated villages in Rakhine State and deny them freedom of movement, access to citizenship, and other basic rights. The junta continues to be responsible for acts of genocide against Rohingya.<sup>69</sup> None of the military officials in Myanmar responsible for the Rohingya genocide or post-coup mass atrocity crimes have been held accountable.<sup>70</sup>

Fortify Rights has reason to believe the junta is seeking returns of Rohingya to strengthen its defense at the International Court of Justice, where it faces an ongoing trial for genocide against Rohingya people in Myanmar in a case brought by The Gambia in 2019.

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66 “Myanmar Junta Hits Back at ASEAN After Being Barred from Meetings,” *Reuters*, August 18, 2022, <https://www.reuters.com/world/asia-pacific/myanmar-junta-hits-back-asean-after-being-barred-meetings-2022-08-17/>.

67 See, for example, U.S. Department of State, “Burma Sanctions,” webpage, <https://www.state.gov/Burma-sanctions/>.

68 Fortify Rights and the Schell Center for International Human Rights at Yale Law School, “Nowhere is Safe”: *The Myanmar Junta’s Crimes Against Humanity Following the Coup d’État*, March 24, 2022, <https://www.fortifyrights.org/mya-inv-2022-03-24/>.

69 See, for example, Fortify Rights, *Genocide by Attrition*.

70 In “*They Gave Them Long Swords*,” a 160-page report, Fortify Rights found “reasonable grounds” for the International Criminal Court to issue arrest warrants for 22 Myanmar military and police officials responsible for genocide and crimes against humanity against Rohingya. At the time of writing, not a single Myanmar military official has faced justice. Fortify Rights, “*They Gave Them Long Swords*.”

In conclusion, the Government of Bangladesh's initiatives to promote Rohingya returns to Myanmar are premature and dangerous and cause unnecessary psychological distress among Rohingya refugees.

The right of refugees to return to their places of origin is enshrined in international laws and standards and is considered customary international law binding on all states.<sup>71</sup> Refugee returns must be voluntary, safe, and dignified.<sup>72</sup>

Regarding possible returns of Rohingya refugees to Myanmar, the Government of Bangladesh does not acknowledge the Rohingya as refugees, and the Myanmar junta continues to deny the existence of the Rohingya ethnicity and does not acknowledge the refugees as Rohingya. This calls into question the fundamental basis of potential returns.

## Recommendations:

- **ENSURE** the repatriation of Rohingya refugees takes place through a voluntary, safe, and dignified process and only when Myanmar authorities have restored the rights of Rohingya;
- **SUSPEND** the bilateral project with the Myanmar junta on the repatriation of Rohingya refugees to Myanmar; and
- **COOPERATE** directly with Rohingya refugees and the U.N. High Commissioner for Refugees on any matters related to future repatriations of Rohingya to Myanmar.

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<sup>71</sup> The right to return and the standard for refugee returns to be voluntary, safe, and dignified are rooted in several international legal instruments, principles, and guidelines that collectively form the basis for the protection and treatment of refugees. These include the 1951 Refugee Convention, the Universal Declaration of Human Rights, UNHCR guidelines, and treaties to which Bangladesh is a state party, including the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). *See also*, UNHCR, "Voluntary Repatriation," webpage, <https://www.unhcr.org/us/what-we-do/build-better-futures/long-term-solutions/voluntary-repatriation>.

<sup>72</sup> *Ibid.*



The Peace Palace of the International Court of Justice in The Hague. ©Fortify Rights, 2019.

## V. The Right to Remedy

The Rohingya people are experiencing an ongoing genocide in Myanmar, and at the time of writing, no perpetrators from Myanmar have been brought to justice.<sup>73</sup>

International legal instruments and customary international law guarantee the right to an effective remedy for victims of human rights violations, including those related to atrocity crimes, like genocide and crimes against humanity.<sup>74</sup> It includes the rights of victims and survivors to seek justice, accountability, and redress for harm suffered.<sup>75</sup>

On November 14, 2019, the Pre-Trial Chamber III at the International Criminal Court (ICC) authorized the Prosecutor to investigate alleged forced deportation and other crimes against Rohingya within the ICC's jurisdiction.<sup>76</sup>

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<sup>73</sup> For resources on the Rohingya genocide, see Fortify Rights, “Resources on the Rohingya Genocide,” <https://www.fortifyrights.org/res-rohingya-genocide/webpage>.

<sup>74</sup> The right to remedy is encompassed by the Universal Declaration of Human Rights, the ICCPR, the CAT, as well as in international criminal law, including the Rome Statute, to which Bangladesh is a state party.

<sup>75</sup> *Ibid.*

<sup>76</sup> International Criminal Court, “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,” November 14, 2019, [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019\\_06955.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_06955.PDF).

As a fellow member of the Organization for Islamic Cooperation, Bangladesh supported The Gambia's efforts to hold the State of Myanmar accountable for the genocide.<sup>77</sup> As an ICC member state, Bangladesh has cooperated with the ongoing investigation by the Office of the Prosecutor at the ICC into the crime against humanity of forced deportation, evidenced by the Prosecutor's visits to Bangladesh and public pronouncements.<sup>78</sup> Furthermore, in 2019, two Myanmar military soldiers confessed to crimes of genocide and made their way to Bangladesh, where they presented themselves to Bangladesh authorities.<sup>79</sup> The Government of Bangladesh cooperated with interested parties, including the ICC, to facilitate the transfer of the perpetrators to The Hague.<sup>80</sup>

To these ends, the Government of Bangladesh is meeting its obligations to ensure the Rohingya right to remedy, taking concrete measures to increase the prospect of international justice for the Rohingya people. This is important not only for Rohingya survivors but also for all people of Myanmar who are experiencing similar atrocity crimes throughout the country.

## Recommendations:

- **CONTINUE** to support all efforts to ensure accountability for genocide, crimes against humanity, and war crimes in Myanmar;

77 See, "World Islamic Group Votes to Take Myanmar Rohingya Abuses to International Court of Justice," *Radio Free Asia*, March 5, 2019, <https://www.rfa.org/english/news/myanmar/world-islamic-group-votes-03052019165111.html>.

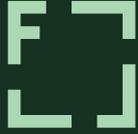
78 International Criminal Court, "ICC Prosecutor, Karim A. A. Khan QC, Concludes First Visit to Bangladesh, Underlines Commitment to Advance Investigations into Alleged Atrocity Crimes Against the Rohingya," March 1, 2022, <https://www.icc-cpi.int/news/icc-prosecutor-karim-khan-qc-concludes-first-visit-bangladesh-underlines-commitment-advance>; International Criminal Court, "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,'" July 10, 2023, <https://www.icc-cpi.int/news/icc-prosecutor-karim-khan-kc-concludes-second-visit-bangladesh-rohingya-must-not-be-forgotten>.

79 Fortify Rights, "International Criminal Court: Prosecute and Offer Witness Protection to Myanmar Army Deserters," September 8, 2020, <https://www.fortifyrights.org/mya-inv-2020-09-08/>.

80 *Ibid.*

- **COOPERATE** fully with the Independent Investigative Mechanism for Myanmar, which the U.N. Human Rights Council created to collect and preserve evidence of international crimes in Myanmar for future prosecution; and
- **ENSURE** the protection of Rohingya human rights defenders in Bangladesh and their indispensable role in ensuring justice and accountability for crimes against Rohingya.





# FORTIFY RIGHTS

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