

# Human Rights Violations against the Rohingya in Myanmar

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## About the Authors

This issues paper was researched and authored by UQ law students **Paivi Adeniyi, Jessica Nimmo, Isabelle Peart** and **Angelina Vukovic** under the supervision of UQ academic **Dr Simon McKenzie**. The paper was prepared for and on behalf of Queensland Rohingya Community Inc., a self-funded volunteer association committed to promoting the welfare of the Rohingya Community.

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## Relevant International Instruments

The *Universal Declaration of Human Rights* ('UDHR') is a declaration adopted by the United Nations and there are several are treaties which incorporate the *UDHR*'s terms. Myanmar is party to:

- *International Covenant on Economic, Social and Cultural Rights* ('ICESCR');
- *Geneva Conventions*
- *Convention on the Elimination of All Forms of Discrimination against Women* ('CEDAW');
- *Convention on the Rights of Persons with Disabilities* ('CRPD');
- *Convention on the Rights of the Child* ('CRC'); and
- *Convention on the Prevention and Punishment of the Crime of Genocide* ('Genocide Convention').

There are a number of treaties that protect human rights and are discussed in this issues paper, which Myanmar is not a party to but nevertheless have substantial international support. These include:

- *International Covenant on Civil and Political Rights* ('ICCPR');
- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('CAT');
- *Rome Statute of the International Criminal Court*; and
- *International Convention on the Elimination of All Forms of Racial Discrimination* ('ICERD').

## Executive Summary

This research was co-ordinated by the UQ Pro Bono Centre and was conducted by four law students under the supervision of Dr Simon McKenzie. The report seeks to provide an overview of the historic and ongoing human rights violations committed against the Rohingya. It focuses on breaches of civil and political rights, rights concerning international recognition and protection, religious and cultural rights, social and economic rights and family rights.

## Background

The Rohingya have faced discrimination in Myanmar for hundreds of years. They have been denied citizenship under the 1982 Citizenship Law and have not been formally recognised as one of Myanmar's 'official' ethnic groups, of which there are 135.<sup>1</sup> From this denial of citizenship flows the denial of numerous fundamental rights.

The situation has deteriorated over the last decade. In 2012, a series of violent incidents broke out between Buddhist ethnic groups and Rohingya in Rakhine State. This eventually escalated into state-sanctioned, coordinated attacks on the Rohingya and other Muslim communities in 13 of 17 townships in Rakhine State.<sup>2</sup>

Tensions between the Rohingya and Buddhist communities in Myanmar's Rakhine State have risen since 2017, marked by a campaign of systemic and brutal violence. In late August 2017, the Tatmadaw (the Myanmar armed forces), assisted by police and civilians, launched a brutal crackdown on Rohingya villages, causing over seven hundred thousand people to flee across the border to Bangladesh. Human rights organisations and Rohingya survivors have recounted indiscriminate killings, burning of Rohingya villages, severe restrictions on movement, property theft, forced labour, human trafficking, torture and sexual violence.<sup>3</sup>

The situation in Rakhine State was characterised by the UN Human Rights Commissioner as 'a textbook example of ethnic cleansing'.<sup>4</sup> Myanmar authorities made 'extensive and systematic preparations' for attacks against the Rohingya, which, according to human rights organisations, constituted crimes against humanity and genocide.<sup>5</sup>

As a result of the violence, over 700,000 Rohingya refugees fled to Bangladesh, with nearly 1 million currently residing in overcrowded and underequipped refugee camps in Bangladesh, Malaysia, India, Thailand, and Indonesia.

## Civil and Political Rights

Civil and political rights are those which derive from the inherent dignity of the human person.<sup>6</sup> Eight different fundamental rights are discussed in this report. This discussion highlights violations of civil and political rights perpetrated against the Rohingya.

The first, which is arguably the most fundamental, is the **Right to Life**, which prohibits unlawful or arbitrary deprivation of life by State authorities and regulates the use of lethal force by law enforcement.<sup>7</sup> Myanmar

<sup>1</sup> Fortify Rights, "Tools of Genocide": National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar (3 September 2019) 9.

<sup>2</sup> Amnesty International, "We Will Destroy Everything": Military Responsible for Crimes Against Humanity in Rakhine State, Myanmar Crimes against Humanity (ASA 16/8630/2018) 9.

<sup>3</sup> Ibid; Human Rights Now, *Investigative Report of Rohingya Refugee Camps in Bangladesh* Rohingya Refugees Face Serious Human Rights Violations in Myanmar and Bangladesh Refugee Camps (12 April 2018) 3–6.

<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, *Myanmar: Senior UN human rights official decries continued ethnic cleansing in Rakhine State* (6 March 2018)

[<http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22761&LangID=E>](http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22761&LangID=E).

<sup>5</sup> Amnesty International, "We Will Destroy Everything": Military Responsible for Crimes Against Humanity in Rakhine State, Myanmar Crimes against Humanity (ASA 16/8630/2018) 8.

<sup>6</sup> ICCPR, preamble.

<sup>7</sup> ICCPR, art 6.

has breached this right by, amongst other things, sanctioning summary executions of civilians by the military, allowing forced labourers to die from injuries resulting from ill-treatment and beatings, targeting ethnic minorities in military operations and using indiscriminate force resulting in mass civilian casualties.<sup>8</sup>

The second fundamental right which is addressed is the **Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment**.<sup>9</sup> The torture and ill-treatment of the Rohingya in Myanmar is systemic and widespread. It includes the severe beatings and torture of male villagers suspected of being insurgents, cruel and inhuman treatment in forced labour camps and prisons, and violent gang rapes routinely perpetrated by the military and law enforcement.<sup>10</sup>

Third is the **Right to Liberty and Security of Person**, which protects people from unlawful and arbitrary arrest and detention and ensures that those in detention are free from intentional infliction of harm by State authorities.<sup>11</sup> Violations of this right in Myanmar include random and unwarranted arrests of civilians targeted on the basis of their ethnicity or religious belief, detention of civilians for forced labour, and the denial of procedural safeguards of detainees.<sup>12</sup>

The fourth right to be discussed is the **Right to Non-Discrimination and Equality before the Law**.<sup>13</sup> State authorities in Myanmar have promulgated and encouraged a deeply exclusionary and dehumanising rhetoric to incite hatred towards the Rohingya population and legitimise their discriminatory treatment before the law.<sup>14</sup> This is related to the fifth right, the **Right to a Fair Trial**, which provides that every person has a right to a fair trial in civil and criminal proceedings and the right to be presumed innocent until proven guilty.<sup>15</sup> This right is denied to the Rohingya both inside and outside the courtroom due to a weak, corrupt and biased justice system.<sup>16</sup>

Sixth is **Freedom of Movement**, which requires that every person lawfully within a State must have the ability to move freely within that State.<sup>17</sup> In Myanmar, extensive and onerous restrictions prevent the Rohingya freely moving both within Rakhine State and throughout Myanmar more broadly.<sup>18</sup>

The seventh right is the **Right to Privacy**, which prohibits any interference with privacy that is arbitrary or unlawful.<sup>19</sup> Myanmar has interfered with this right by subjecting the Rohingya to forced evictions and random inspections of Rohingya households.<sup>20</sup>

The eighth right is the **Right to Peaceful Assembly and to Participate in Public Life**, which encompasses the right to form associations and to peacefully assemble without State interference.<sup>21</sup> Myanmar has introduced oppressive laws, such as restricting public gatherings to five people, which have infringed upon this right.<sup>22</sup>

Finally, this section discusses **Freedom of Expression**, which grants people the right to have, share and receive information and opinions.<sup>23</sup> Myanmar has violated this freedom through seeking to silence the Rohingya and others who are critical of the Government through intimidation and prosecution under oppressive laws.<sup>24</sup> Myanmar has further produced propaganda vilifying and dehumanising the Rohingya.

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<sup>8</sup> See page 9.

<sup>9</sup> *ICCPR*, arts 7 and 10.

<sup>10</sup> See page 10.

<sup>11</sup> *ICCPR*, art 9.

<sup>12</sup> See page 12.

<sup>13</sup> *UDHR*, arts 6–7.

<sup>14</sup> See page 14.

<sup>15</sup> *UDHR*, arts 10–11; *ICCPR*, art 14.

<sup>16</sup> See page 16.

<sup>17</sup> *ICCPR*, art 12; *UDHR*, art 13.

<sup>18</sup> See page 17.

<sup>19</sup> *ICCPR*, art 17.

<sup>20</sup> See page 18.

<sup>21</sup> *UDHR*, art 20; *ICCPR* art 22; *ICESCR*, art 8(1)(a).

<sup>22</sup> See page 19.

<sup>23</sup> *UDHR*, art 19; *ICCPR* art 19; *ICERD*, art 5.

<sup>24</sup> See page 24.

## Rights Concerning International Recognition and Protection

This section focuses on the **Right to Seek Asylum**. Under international law, everyone has the right to leave any country, including their own, and to return to their country.<sup>25</sup> Further, refugees have a right to return to their country of origin.<sup>26</sup> Over one million Rohingya were living in often overcrowded refugee camps as of 2018.<sup>27</sup> Despite this, Myanmar has not committed to repatriating any Rohingya refugees, creating significant uncertainty for these displaced persons.

## Religious and Cultural Rights

Two rights are discussed in this section. The first are **Cultural Rights**, which allow individuals to enjoy and create literary and artistic works.<sup>28</sup> It further protects the cultural practices of minority and indigenous groups.<sup>29</sup> In Myanmar, cultural sites have been destroyed and the Government has refused to acknowledge the Rohingya as a cultural group, thus violating these rights. **Freedom of Religion** ensures that individuals can practice their religious beliefs without discrimination.<sup>30</sup> Myanmar violates the right to freedom of religion by destroying mosques and preventing religious practices, such as prayer and Muslim burials.<sup>31</sup>

## Social and Economic Rights

Eight rights are discussed in this section. The first is the **Right to Work**, which imposes an obligation on States to recognise and take steps to ensure that individuals have the right to work.<sup>32</sup> Rohingya workers are subject to discrimination in Myanmar and are often subject to extortion, forced labour and physical attacks.<sup>33</sup> The second right, **Freedom from Slavery and Forced Labour**, is related to this. It provides that no one shall be held in slavery or servitude.<sup>34</sup> Rohingya in Myanmar are subject to forced labour and are beaten, tortured or starved for noncompliance.<sup>35</sup>

The third right discussed is the **Right to a Nationality**, which provides that everyone has a right to a nationality, and no one shall be arbitrarily deprived of their nationality.<sup>36</sup> The Rohingya were stripped of their citizenship under the 1982 Citizenship Law and have been systematically denied the opportunity to re-register as citizens.<sup>37</sup>

Fourth is the **Right to Social Security**, which protects the right to social security assistance.<sup>38</sup> Despite Myanmar being a developing country where social security is scarce, Myanmar troops divert humanitarian aid intended for the Rohingya, or otherwise restrict their access to this aid.<sup>39</sup>

The fifth right is the **Right to an Adequate Standard of Living**, which provides that every person is entitled to a standard of living adequate to provide for their health and wellbeing.<sup>40</sup> Many Rohingya do not enjoy an adequate standard of living in Myanmar, having had their land and food sources confiscated by Myanmar soldiers or being detained in overcrowded internal camps with inadequate access to food, portable water and hygiene facilities.<sup>41</sup>

<sup>25</sup> UDHR, art 13(2).

<sup>26</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 279 [1176].

<sup>27</sup> See page 25.

<sup>28</sup> UDHR, art 27; ICESCR, art 15(1)(a); ICERD, art 5(e)(vi).

<sup>29</sup> See page

<sup>30</sup> UDHR, arts 18 and 2; ICCPR, arts 19 and 2(1); ICERD, art 5.

<sup>31</sup> See page 26.

<sup>32</sup> UDHR art 23. See also ICESCR, arts 6, 7 and 8

<sup>33</sup> See page 27.

<sup>34</sup> UDHR art 4. See also ICCPR, art 8; ICESCR, art 6(1).

<sup>35</sup> See page 29.

<sup>36</sup> UDHR, art 15. See also ICCPR, art 25; CEDAW, art 9; CRC, art 7.

<sup>37</sup> See page 30.

<sup>38</sup> UDHR, art 22; ICESCR, art 9.

<sup>39</sup> See page 31.

<sup>40</sup> UDHR, art 25(1); ICESR, art 11.

<sup>41</sup> See page 32.

Sixth are **Property Rights**, which provide that all people have the right to own property, free from arbitrary deprivation.<sup>42</sup> In violation of this right, Rohingya have had their homes, crops, land, livestock and other personal property confiscated and destroyed by Myanmar soldiers.<sup>43</sup>

The seventh right discussed is the **Right to Education**, which seeks to ensure that every person has the right to education.<sup>44</sup> Rohingya children are denied this right, being detained in detention camps within Myanmar or refugee camps in Bangladesh without access to education.<sup>45</sup>

The final right in this section is the **Right to Health**, which protects a state of complete, physical, mental and social well-being.<sup>46</sup> The Rohingya's right to health has been impinged by poor access to health services both in Myanmar and in refugee camps throughout Asia. This is reflected in the significantly worse health status of Rohingya refugees in comparison to other ethnic groups.<sup>47</sup>

## Family Rights

Myanmar has violated international obligations protecting family rights, in particular the **Freedom to Marry**,<sup>48</sup> **Reproductive Rights**<sup>49</sup> and **Rights of Children**.<sup>50</sup> Marriage between consenting Rohingya adults has been subject to a restrictive and arbitrary licensing system, making it expensive and difficult for Rohingya to marry.<sup>51</sup> A two-child policy has been imposed on married Rohingya couples, interfering with their right to reproductive freedom.<sup>52</sup> Rohingya children are subject to a range of human rights violations, including being barred from gaining citizenship and accessing social services, subjected to child marriage, recruited as child soldiers and used for forced labour.<sup>53</sup>

## Other violations of international law

While the scope of this research is confined to human rights violations, reports from organisations such as Human Rights Watch<sup>54</sup> and Amnesty International,<sup>55</sup> discuss crimes against humanity and ethnic cleansing being perpetrated in Myanmar. Further, a proceeding before the International Court of Justice is currently underway, charging Myanmar with the crime of genocide.<sup>56</sup>

<sup>42</sup> UDHR, art 17; ICCPR, art 11.

<sup>43</sup> See page 33.

<sup>44</sup> UDHR, art 26; ICESCR, art 13(1).

<sup>45</sup> See page 34.

<sup>46</sup> ICESCR, art 12; UN General Assembly, *Constitution of the World Health Organization*, 17 November 1947, A/RES/131, preamble.

<sup>47</sup> See page 36.

<sup>48</sup> ICCPR, art 23.

<sup>49</sup> CEDAW, art 16(1)(e); ICCPR, art 17.

<sup>50</sup> CRC; ICCPR, art 24.

<sup>51</sup> See page 38.

<sup>52</sup> See page 39.

<sup>53</sup> See page 39.

<sup>54</sup> 'All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State', *Human Rights Watch*, (Report, April 2013).

<sup>55</sup> Amnesty International, "We Will Destroy Everything": Military Responsible for Crimes Against Humanity in Rakhine State, *Myanmar Crimes against Humanity* (ASA 16/8630/2018).

<sup>56</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar), ICJ Case No 178 <<https://www.icj-cij.org/en/case/178>>.

# 1. Civil and Political Rights

## 1.1 Right to Life

### Summary

- The right to life is a prerequisite for the enjoyment of all other fundamental human rights. It prohibits unlawful or arbitrary deprivation of life by State authorities, restricts the use of the death penalty, and regulates the use of lethal force by law enforcement.
- Myanmar substantially violates this right through, amongst other things, the summary executions of civilians by the military, allowing forced labourers to die from injuries resulting from ill-treatment and beatings, targeting ethnic minorities in military operations and using indiscriminate force resulting in mass civilian casualties.

*The right to life is inherent to every human and is fundamental to the enjoyment of all other rights.*

The right to life is a fundamental right and a prerequisite for the enjoyment of all other human rights.<sup>57</sup> It is enshrined in Article 6 of the *ICCPR*, among other international instruments.<sup>58</sup> The right to life prohibits any unlawful or arbitrary deprivation of life by State authorities, such as security forces, as well as non-State actors. The deprivation of life refers to any act or omission that causes intentional, or foreseeable and preventable, harm or injury that threatens the life of a person.<sup>59</sup>

*The right to life is systematically violated by State authorities in Myanmar, including the intentional targeting of civilians by the military.*

In Myanmar, the right to life of Rohingya and other minority groups is violated on a significant scale with the Tatmadaw (the State's military), being the primary perpetrators of unlawful and arbitrary killings. The most common violations of the right to life in Myanmar occur in the context of military operations against insurgent groups. The Independent International Fact-Finding Mission on Myanmar reported that the Tatmadaw 'intentionally, frequently and systematically directed attacks against the civilian population or individual civilians', including women, children and the elderly.<sup>60</sup> The Tatmadaw often attacked villagers in Kachin, Shan and Rakhine States merely in retaliation for attacks by insurgent groups or because the residents of the villages were of the same ethnicity as an insurgent group and were therefore deemed to be supporters.<sup>61</sup> The Tatmadaw has also conducted indiscriminate attacks involving air strikes, shelling and land mines which have resulted in mass civilian casualties.<sup>62</sup> Further, numerous reports detail security forces shooting at large groups of Muslims attempting to flee inter-group hostilities and persecution in Myanmar. In one example, the UN Special Rapporteur in 1992 documented eyewitness accounts of Myanmar security forces, and Rakhine civilians, which the security forces did not try to restrain, shooting and killing Rohingya refugees on crowded boats attempting to cross the Naar River into Bangladesh.<sup>63</sup>

<sup>57</sup> Human Rights Committee, *General Comment No 36: Right to Life*, 124<sup>th</sup> sess, UN Doc CCPR/C/GC/36 (3 September 2019), [2].

<sup>58</sup> See, e.g., *UDHR*, art 3; *CRC*, art 6; *CRPD*, art 10; *ASEAN Human Rights Declaration*, art 11; *European Convention on Human Rights*, art 2.

<sup>59</sup> Human Rights Committee, *General Comment No 36: Right to Life*, 124<sup>th</sup> sess, UN Doc CCPR/C/GC/36 (3 September 2019), [6]. See also *Camargo v Colombia*, [13.2].

<sup>60</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [121].

<sup>61</sup> *Ibid* [122].

<sup>62</sup> *Ibid* [121-128]; 'Caught in the Middle: Abuses Against Civilians Amid Conflict in Myanmar's Northern Shan State', *Amnesty International* (Report, 24 October 2019) 22-23 <<https://www.amnesty.org/en/documents/asa16/1142/2019/en/>>; General Assembly, *Situation of Human Rights in Myanmar*, 73<sup>rd</sup> sess, UN Doc A/73/332 (20 August 2018), [49]; Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, 43<sup>rd</sup> sess, UN Doc A/HRC/43/59 (4 March 2020), [54].

<sup>63</sup> Commission on Human Rights, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 49<sup>th</sup> sess, UN Doc E/CN.4/1993/62 (6 January 1993), 71. See also Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [901].

Additionally, unlawful killings by the Tatmadaw occur outside the context of interstate hostilities, such as extrajudicial killings or deaths resulting from torture or ill-treatment of persons in Tatmadaw custody.<sup>64</sup> In the context of forced labour, the UN has received consistent accounts of individuals being killed by Tatmadaw soldiers for attempting to escape or refusing to participate.<sup>65</sup> In many cases, labourers who collapsed from exhaustion or were no longer able to stand after being beaten were left on the ground to die.<sup>66</sup> Others were beaten to death or shot because they fell over or could no longer carry their load.<sup>67</sup>

Although the right to life imposes a duty upon States to investigate, punish and remedy unlawful or arbitrary deprivation of life,<sup>68</sup> investigations into deaths in custody and accusations of unlawful use of lethal force by security forces are seldom conducted in Myanmar.<sup>69</sup> The widespread and systemic nature of unlawful and arbitrary killings by Myanmar's security forces are facilitated by the overwhelming influence of the military in the justice system as well as the command climate within the Tatmadaw which implicitly or explicitly authorises such conduct.<sup>70</sup> Thus, the Tatmadaw has acted with complete impunity and has never been held to account for its consistent violations of the fundamental right to life.

## 1.2 Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment

### Summary

- No person may be subjected to torture or other cruel, inhuman and degrading treatment or punishment by State authorities.
- In violation of this right, the Rohingya have been subjected to cruel and inhuman treatment in forced labour camps and prisons, violent gang raping perpetrated by military and law enforcement, severe beatings and torture.

### *Under international law torture is not permissible under any circumstances*

No person may be subjected to torture and other cruel, inhuman and degrading treatment or punishment (ill-treatment).<sup>71</sup> Torture is also prohibited under sections 330-331 of the *Myanmar Penal Code*.

Torture is defined as any act that intentionally causes severe pain or suffering, whether physical or mental, committed for a specific purpose with the direct or indirect involvement of a State official.<sup>72</sup> Acts that lack the requisite purpose or intensity to amount to torture are classified as ill-treatment.<sup>73</sup> For example, beating a detainee will generally constitute inhuman treatment,<sup>74</sup> however severe forms of beating inflicted over a prolonged period and without medical treatment amount to torture.<sup>75</sup>

<sup>64</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [139], [1447].

<sup>65</sup> Ibid [154], [1450].

<sup>66</sup> Commission on Human Rights, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 49<sup>th</sup> sess, UN Doc E/CN.4/1993/62 (6 January 1993), 65.

<sup>67</sup> Ibid.

<sup>68</sup> See Human Rights Committee, *General Comment No 36: Right to Life*, 124<sup>th</sup> sess, UN Doc CCPR/C/GC/36 (3 September 2019), [27].

<sup>69</sup> 'No One can Protect Us: War Crimes and Abuses in Myanmar's Rakhine State', *Amnesty International* (Report, 29 May 2019) 27 <<https://www.amnesty.org/en/documents/asa16/0417/2019/en/>>; 'All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State', *Human Rights Watch*, (Report, April 2013) 56 <[https://www.hrw.org/reports/burma0413\\_FullForWeb.pdf](https://www.hrw.org/reports/burma0413_FullForWeb.pdf)>.

<sup>70</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [1380]–[1384].

<sup>71</sup> UDHR, art 7; ICCPR, art 10. See also CRC, art 37(a); ASEAN Human Rights Declaration, art 14; Geneva Conventions, common art 3; European Convention on Human Rights, art 3.

<sup>72</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art 1.

<sup>73</sup> Economic and Social Council, *Civil and Political Rights, Including the Questions of Torture and Detention*, 62<sup>nd</sup> sess, UN Doc E/CN.4/2006/6 (23 December 2005), [35].

<sup>74</sup> See, eg. *Tomasi v France* (European Court of Human Rights, Chamber, Application No 12850/87, 27 August 1992); *Tekin v Turkey* (European Court of Human Rights, Chamber, Application No 22496/93, 9 June 1997).

<sup>75</sup> See, eg. *Selmouni v France* (European Court of Human Rights, Grand Chamber, Application No 25803/94, 28 July 1999); *Dikme v Turkey* (European Court of Human Rights, Application No 20869/92, 11 July 2000).

*The freedom from torture and ill-treatment is violated in Myanmar on a significant scale, including in villages, forced labour camps and prisons.*

The Tatmadaw (Myanmar's military) is primarily responsible for the widespread violations of the freedom from torture and ill-treatment committed against the Rohingya and other ethnic minorities in Myanmar.<sup>76</sup> The Tatmadaw have arbitrarily tortured men, children and elderly persons on the basis of their ethnicity, claiming they have suspected involvement with insurgent groups.<sup>77</sup>

In forced labour camps, Muslim workers (men, women and children) are routinely subjected to ill-treatment including food and water deprivation, being tied up at night and sleeping on the ground with no blanket, lack of access to sanitary facilities or medical care, death threats, verbal abuse and beatings (including with bamboo sticks, iron rods and rifle butts).<sup>78</sup> This ill-treatment of labourers has in many cases led to death.<sup>79</sup> Torture was also a means of coercing villagers into forced labour. For example, the UN Special Rapporteur in 1992 reported that "men who would flee in order to evade porter duty would have female members of their family taken in their place to the military camp and raped, often being held as hostages until the return of the men."<sup>80</sup>

In the context of detention, inhuman conditions reported by victims in unofficial places of detention include sleeping on the ground without shelter or bedding, lack of food and safe drinking water, no contact with families, and no access to sanitary facilities or medical care.<sup>81</sup> The torture of detainees is also common practice, including beatings, isolation in 'dog cells', stress positions, and sexual violence.<sup>82</sup> For example, the UN reported that guards in the Buthidaung prison raped Rohingya men and boys, burned their genitals and subjected to other forms of sexual humiliation such as forced nudity in the presence of other inmates including family members.<sup>83</sup> As is the case in many other prisons and detention centres throughout Myanmar, a significant number of Rohingya detainees died as a result of the torture and ill-treatment they were subjected to in the Buthidaung prison.<sup>84</sup>

*Sexual violence against Rohingya and other ethnic minorities is a recurrent feature of the military's targeting and intimidation of civilian populations.*

Significantly, patterns of rape and other forms of sexual violence have been a recurrent feature of the targeting of the civilian population, especially Muslim minorities, in Rakhine, Kachin and Shan States for decades.<sup>85</sup> The brutality and scale of sexual violence, accompanied by extreme physical violence and other forms of torture, committed by the Tatmadaw "reflects a widespread culture of tolerance, if not an explicit policy, towards humiliation and the deliberate infliction of suffering on civilians".<sup>86</sup> Moreover, during the

<sup>76</sup> Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [170]–[187].

<sup>77</sup> Ibid [164]–[168].

<sup>78</sup> Commission on Human Rights, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 49<sup>th</sup> sess, UN Doc E/CN.4/1993/62 (6 January 1993), 65–67; Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [187], [259], [267]–[270].

<sup>79</sup> Commission on Human Rights, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 49<sup>th</sup> sess, UN Doc E/CN.4/1993/62 (6 January 1993), 67–8.

<sup>80</sup> Ibid 65.

<sup>81</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [186], [238–242].

<sup>82</sup> Ibid [241]–[242]; 'Burma's Forgotten Prisoners', *Human Rights Watch*, (Report, September 2009) 8 <[https://www.hrw.org/reports/burma0909\\_brochure\\_web.pdf](https://www.hrw.org/reports/burma0909_brochure_web.pdf)>; 'All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State', *Human Rights Watch*, (Report, April 2013) 36–37 <[https://www.hrw.org/reports/burma0413\\_FullForWeb.pdf](https://www.hrw.org/reports/burma0413_FullForWeb.pdf)>.

<sup>83</sup> Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [676].

<sup>84</sup> Ibid [677].

<sup>85</sup> Ibid [1371]–[1374]. See, eg, Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Myanmar*, 42<sup>nd</sup> sess, UN Doc CEDAW/C/MMR/CO/3 (7 November 2008), [24]–[25]; Security Council, *Conflict-related sexual violence: Report of the Secretary-General* UN Doc S/2015/203 (25 March 2015), [41]; Security Council, *Report of the Secretary-General on conflict-related sexual violence*, UN Doc S/2018/250 (23 March 2018), [55]–[60].

<sup>86</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [218], [1374].

Tatmadaw's 'clearance operations', sexual violence including, rape, gang rape, sexual slavery, forced nudity, sexual humiliation, mutilation and sexual assault were perpetuated on an unprecedented scale and frequently followed by the killing of victims.<sup>87</sup> The widespread use of brutal sexual violence as a tactic of war was intended to terrorise the Rohingya community, weaken their social cohesion and facilitate the destruction of the group and their way of life.<sup>88</sup> Mass gang rape was a notable pattern with 80% of rapes of women and girls being gang rapes, 82% of which were committed by the Tatmadaw.<sup>89</sup> Sexual violence against Rohingya women and girls, including pregnant women, was perpetrated with particular cruelty, with rape often accompanied by penetration with sharp objects, genital mutilation, acts of sexual humiliation, other physical and mental torture such as murdering the victim's children in their presence.<sup>90</sup> Rohingya women who survived sexual violence at the hands of the Tatmadaw reported the use of derogatory and dehumanising insults, such as "Kalar" (unwanted person) and being told "We are going to kill you this way, by raping. We are going to kill Rohingya. This is not your country".<sup>91</sup> Additionally, women and girls were abducted and detained in military and police compounds where they were subjected to extreme sexual violence by officers.<sup>92</sup> These violations of the prohibition of torture, as well as the right to life, liberty and security of person, and other norms of international humanitarian law, have and continue to be committed with absolute impunity by the military and other law enforcement authorities in Myanmar.

### 1.3 Right to Liberty and Security of Person

#### Summary

- Every person has a right to liberty, including freedom from unlawful and arbitrary arrest and detention.
- Every person has a right to security of the person, meaning freedom from intentional infliction of harm by State authorities regardless of whether a person is detained or not.
- Myanmar's violations of these rights include random and unwarranted arrests of civilians targeted on the basis of their ethnicity or religious belief, detention of civilians for forced labour or other unlawful purposes such as the extortion of bribes, and the denial of procedural safeguards of detainees.

*Every person has the right to liberty and security of person which prohibits unlawful and arbitrary arrest, detention and infliction of harm by State authorities.*

Every human has the right to liberty and security of person.<sup>93</sup> Liberty of person means freedom from physical confinement of the body without consent.<sup>94</sup> Security of person means freedom from the intentional infliction of harm to the body or mind, regardless of whether the person is detained or not.<sup>95</sup> Additionally, no person may be subjected to unlawful or arbitrary arrest or detention.<sup>96</sup>

Examples of deprivation of liberty include police custody and imprisonment after conviction. An arrest or detention violates the right to liberty if it is unlawful, meaning it is inflicted without being prescribed by law, or

<sup>87</sup> Ibid [920]–[921], [927].

<sup>88</sup> Ibid [941].

<sup>89</sup> Ibid [932].

<sup>90</sup> Commission on Human Rights, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 49<sup>th</sup> sess, UN Doc E/CN.4/1993/62 (6 January 1993), 68-70; Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [925].

<sup>91</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [1378].

<sup>92</sup> Ibid [929]–[931].

<sup>93</sup> UDHR, art 3; ICCPR, art 9.

<sup>94</sup> Human Rights Committee, *General Comment No 35: Article 9 Liberty and Security of Person*, 112<sup>th</sup> sess, UN Doc CCPR/C/GC/35 (16 December 2014), [6].

<sup>95</sup> Human Rights Committee, *General Comment No 35: Article 9 Liberty and Security of Person*, 112<sup>th</sup> sess, UN Doc CCPR/C/GC/35 (16 December 2014), [9].

<sup>96</sup> UDHR, art 9; ICCPR, art 9; CRC, art 37(b); CAT, art 11; ICRMW, art 16(1), (4), (9); CRPD art 14; CPED, art 17; ASEAN Human Rights Declaration, art 12; European Convention on Human Rights, art 5.

it is arbitrary in the sense of being unjust, inappropriate, unreasonable or disproportionate in the circumstances.<sup>97</sup>

*The rates of arbitrary arrest and detention in Myanmar are extremely high, particularly in periods of heightened inter-state hostilities.*

The UN's Independent International Fact-Finding Mission on Myanmar has documented a pattern of widespread and systematic arbitrary arrest and detention of Rohingya such that it has become a routine aspect of the life of the Rohingya.<sup>98</sup> These discriminatory arrests, perpetrated by the Tatmadaw and other law enforcement agencies, are unlawful and arbitrary because they target Rohingya randomly and without evidence.<sup>99</sup> The rates of arbitrary arrest and detention reported to the Mission were extremely high and increased significantly during periods of heightened inter-state hostilities where mass arrests of over 1000 persons at a time occurred.<sup>100</sup> The levels of arbitrary arrest and detention highlight the collective suspicion and punishment suffered by the Rohingya at the hands of State authorities in Myanmar.<sup>101</sup>

Targeting civilians because of their ethnicity and religious belief are typical examples of arbitrariness. For example, the Tatmadaw frequently conducted sweeps of villages in Shan, Kachin and Rakhine States during which Muslim men and boys were arrested, detained and questioned on their involvement in ethnic armed groups, on the basis of their ethnicity alone or the physical proximity of their villages to recent attacks.<sup>102</sup> Individuals belonging to ethnic or religious minority groups are often the victims of enforced disappearances.<sup>103</sup> This gross violation of the right to liberty and security, and indeed the right to life, involves a person being taken into unacknowledged detention by agents of the State, resulting in the eventual confirmed death of the disappeared person or the concealment of their fate or whereabouts.<sup>104</sup>

*Rohingya are frequently arrested and detained for forced labour and corrupt practices such as the extortion of bribes.*

It is also commonplace for Rohingya to be detained for forced labour<sup>105</sup> or corrupt practices such as extorting bribes.<sup>106</sup> For example, one victim recounted being detained for possession of a mobile phone and remaining in detention for seven months because his family could not afford the bribe demanded by the police.<sup>107</sup> In 2012, Human Rights Watch reported that 2,000-2,500 Rohingya in Northern Rakhine State were arbitrarily arrested on vague offences, such as repairing their homes without permission, and extorted by the notoriously corrupt border control forces.<sup>108</sup> In another example, the Fact-Finding Mission reported that a group of Tatmadaw soldiers entered a village and arrested eight men who were subsequently detained and tortured for five days; half of the men were released upon payment of a significant bribe by village elders

<sup>97</sup> Human Rights Committee, *General Comment No 35: Article 9 Liberty and Security of Person*, 112<sup>th</sup> sess, UN Doc CCPR/C/GC/35 (16 December 2014), [6].

<sup>98</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [609].

<sup>99</sup> Ibid [608].

<sup>100</sup> Ibid [228], [607]-[609].

<sup>101</sup> Ibid [608]; 'Caught in the Middle: Abuses Against Civilians Amid Conflict in Myanmar's Northern Shan State', *Amnesty International* (Report, 24 October 2019) 17 <<https://www.amnesty.org/en/documents/asa16/1142/2019/en/>>.

<sup>102</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [226], [608]; 'Caught in the Middle: Abuses Against Civilians Amid Conflict in Myanmar's Northern Shan State', *Amnesty International* (Report, 24 October 2019) 17 <<https://www.amnesty.org/en/documents/asa16/1142/2019/en/>>.

<sup>103</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [246-252]; 'Caught in the Middle: Abuses Against Civilians Amid Conflict in Myanmar's Northern Shan State', *Amnesty International* (Report, 24 October 2019) 20 <<https://www.amnesty.org/en/documents/asa16/1142/2019/en/>>.

<sup>104</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [1467].

<sup>105</sup> Ibid [226].

<sup>106</sup> Ibid [229]; 'Caught in the Middle: Abuses Against Civilians Amid Conflict in Myanmar's Northern Shan State', *Amnesty International* (Report, 24 October 2019) 28 <<https://www.amnesty.org/en/documents/asa16/1142/2019/en/>>.

<sup>107</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [661].

<sup>108</sup> See, eg. 'All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State', *Human Rights Watch*, (Report, April 2013) 78-9 <[https://www.hrw.org/reports/burma0413\\_FullForWeb.pdf](https://www.hrw.org/reports/burma0413_FullForWeb.pdf)>.

while the other half were never heard from again.<sup>109</sup> As well as violating a person's fundamental human rights, the arbitrary deprivation liberty for extortion has disastrous economic impacts on victims and families, with almost half of the population in Rakhine State living below the poverty line.<sup>110</sup>

#### *Procedural safeguards of detainees are routinely violated.*

Individuals are typically detained in unofficial places of detention, such as military bases, without compliance with procedural safeguards. For example, victims were not informed of the reasons for their arrest nor brought before a court, and most were held incommunicado, meaning they were not able to inform their families of their location or access a lawyer.<sup>111</sup> Whilst in detention, victims have also been forced to sign pre-written statements such as statements falsely asserting that they had not been subjected to ill-treatment or statements admitting guilt.<sup>112</sup>

## **1.4 Right to Non-Discrimination and Equality before the Law**

### *Summary*

- All human beings are born free and equal and are therefore entitled to enjoy fundamental human rights and freedoms without discrimination.
- Violations of the right to equality and non-discrimination against the Rohingya are as fundamental as the denial of their legal status and identity in Myanmar as well as their participation in political life.
- State authorities in Myanmar have promulgated and encouraged a deeply exclusionary and dehumanising rhetoric to incite hatred towards the Rohingya population and legitimise their discriminatory treatment before the law.

*All persons are entitled to the protection of their fundamental human rights without discrimination and to equality before the law.*

The *UDHR* proclaims that “all human beings are born free and equal in dignity and rights” and that every person is entitled, by virtue of their humanity, to the fundamental rights and freedoms enshrined in the *UDHR* without discrimination of any kind.<sup>113</sup> Additionally, everyone has the right to be recognised as a person before the law, to be equal before the law, and to be afforded the equal protection of the law without discrimination.<sup>114</sup>

*The right to equality and non-discrimination of the Rohingya are violated by the systemic denial of their legal status and identify in Myanmar, which is legitimised by anti-Rohingya propaganda.*

The myriad violations of the right to non-discrimination and equality before the law against the Rohingya begin with the denial of their legal status and identity in Myanmar. For example, the military regime created eight major ethnic group categories, which are divided into 135 ‘national races’.<sup>115</sup> The division has no scientific basis and is entirely arbitrary; it prioritises Bamar-Buddhist identity and interests whilst undermining ethnic and religious minority groups.<sup>116</sup> Those who fall outside of one of these national races are considered

<sup>109</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [1162].

<sup>110</sup> Ibid [610]; ‘All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State’, *Human Rights Watch*, (Report, April 2013) 80 <[https://www.hrw.org/reports/burma0413\\_FullForWeb.pdf](https://www.hrw.org/reports/burma0413_FullForWeb.pdf)>.

<sup>111</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [232-236]; ‘Caught in the Middle: Abuses Against Civilians Amid Conflict in Myanmar’s Northern Shan State’, *Amnesty International* (Report, 24 October 2019) 9, 22 <<https://www.amnesty.org/en/documents/asa16/1142/2019/en/>>.

<sup>112</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [237].

<sup>113</sup> *UDHR*, arts 1-2.

<sup>114</sup> *UDHR*, arts 6-7.

<sup>115</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [85].

<sup>116</sup> Ibid [1375].

aliens or outsiders regardless of how many generations they may have lived in Myanmar.<sup>117</sup> The Rohingya are not considered a national race, indeed State authorities consistently assert that the Rohingya do not exist in Myanmar and refer to the group as “Bengali” or illegal immigrants from Bangladesh.<sup>118</sup> This deeply exclusionary and dehumanising rhetoric and divisive narratives promulgated by State authorities incites hatred towards the Rohingya population and legitimises their discriminatory treatment before the law.

*Laws pertaining to citizenship, birth registration and political participation discriminate against the Rohingya.*

Laws and policies relating to citizenship and legal status have become increasingly exclusionary and have been applied in a manner that is both arbitrary and discriminatory. For example, the concept of national races is further reinforced by the 1982 Citizenship Law, which establishes a citizenship hierarchy in which full citizenship is reserved for national ethnic groups.<sup>119</sup> The lack of citizenship status means that Rohingya are not afforded equal protection under the *Constitution of Myanmar*, which guarantees a number of human rights protections to citizens only.<sup>120</sup> Accordingly, discriminatory restrictions are imposed on the Rohingya on basic rights such as freedom of movement, marriage, education, employment, property ownership and freedom of religion.<sup>121</sup> This citizenship framework, and its targeting of Rohingya specifically, violates the right to non-discrimination and equality before the law, both in the way it defines citizens and its reservation of legal and universal rights to certain classes of citizens.<sup>122</sup>

Other critical examples of the discriminatory State practice and policies implemented to marginalise the Rohingya, and gradually erode their enjoyment of basic human rights, include the denial birth registration and political participation. In the 1990s, a sudden and unexplained change in policy resulted in the cessation of birth certificates being issued to Rohingya children in Rakhine State, violating the right of every child to acquire a nationality and leaving them stateless.<sup>123</sup> In 2015, the gradual disenfranchisement of the Rohingya from the political process in Myanmar culminated in the Constitutional Court ruling that it was unconstitutional for those with ‘temporary registration certificates’ or ‘white cards’, the vast majority of which were Rohingya, to vote or participate in elections.<sup>124</sup> Myanmar’s laws pertaining to birth registration, citizenship and membership of the political community are key examples of discrimination on the basis of race, ethnicity and religion, which constitute serious violations of the State’s obligations under international law to protect fundamental human rights of all persons within its territory and reflect the systemic oppression and persecution of the Rohingya in Myanmar.

<sup>117</sup> ‘All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State’, *Human Rights Watch*, (Report, April 2013) 16, 112, 122 <[https://www.hrw.org/reports/burma0413\\_FullForWeb.pdf](https://www.hrw.org/reports/burma0413_FullForWeb.pdf)>; General Assembly, *Situation of Human Rights in Myanmar*, 73<sup>rd</sup> sess, UN Doc A/73/332 (20 August 2018), [58-59].

<sup>118</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [460], [475], [496]; ‘Tools of Genocide: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar’, *Fortify Rights*, (Report, 3 September 2019) 44-45 <<https://www.fortifyrights.org/mya-bgd-rep-2019-09-03/>>.

<sup>119</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [477-479]; All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State’, *Human Rights Watch*, (Report, April 2013) 16, 30, 113 <[https://www.hrw.org/reports/burma0413\\_FullForWeb.pdf](https://www.hrw.org/reports/burma0413_FullForWeb.pdf)>.

<sup>120</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [66-69], [1293].

<sup>121</sup> ‘All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State’, *Human Rights Watch*, (Report, April 2013) 16, 77-80, 143. <[https://www.hrw.org/reports/burma0413\\_FullForWeb.pdf](https://www.hrw.org/reports/burma0413_FullForWeb.pdf)>; General Assembly, *Situation of Human Rights in Myanmar*, 73<sup>rd</sup> sess, UN Doc A/73/332 (20 August 2018), [61].

<sup>122</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [491]-[492].

<sup>123</sup> Ibid [463]; All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State’, *Human Rights Watch*, (Report, April 2013) 113 <[https://www.hrw.org/reports/burma0413\\_FullForWeb.pdf](https://www.hrw.org/reports/burma0413_FullForWeb.pdf)>.

<sup>124</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [489]-[490], [495].

## 1.5 Right to a Fair Trial

### *Summary*

- Every person has a right to a fair trial in civil and criminal proceedings. This includes the right to be presumed innocent until proven guilty and minimum procedural guarantees.
- The right to a fair trial denied to the Rohingya before they even enter a courtroom due to significant barriers in access to justice including the pervasive occurrence of extra-judicial punishment, inability to afford legal fees, and deep-seated mistrust in the justice system.
- Even inside a courtroom, the right to a fair trial and associated procedural guarantees are undermined by a weak, corrupt and biased judicial system.

*Every person has the right to a fair trial, including the right to be presumed innocent.*

Every person is entitled to a fair trial in civil and criminal proceedings.<sup>125</sup> The right to a fair trial is integral to the protection and enforcement of all other human rights and a critical procedural safeguard of the rule of law. Additionally, every person has the right to be presumed innocent until proven guilty according to the law.<sup>126</sup>

*The right to a fair trial is violated due to a lack of access to justice for Rohingya and other ethnic minorities and the weak, corrupt and biased justice system.*

In Myanmar, violations of the right to a fair trial occur before victims or those accused of criminal offences ever see the inside of a courtroom. It is commonplace for Rohingya suspected of committing crimes, such as being involved with insurgent groups or for vague offences like possession of a mobile phone, to be imprisoned, executed or otherwise subjected to punishment by the military and law enforcement agencies without recourse to judicial process.<sup>127</sup> Moreover, access to justice for most Rohingya victims of criminal offences is undermined by their dire economic circumstances, as well as a deep-seated mistrust in the justice system, which deters victims from utilizing the formal court system.<sup>128</sup>

Once inside a courtroom, the right to a fair trial and all associated minimum procedural guarantees are subverted by the weakness and lack of independence of the judiciary.<sup>129</sup> Investigations by the UN High Commissioner for Human Rights have revealed gross systemic failures denying Rohingya the right to a fair trial, including:<sup>130</sup> the overt influence of the military over court proceedings and investigations; widespread corruption; the prevalence of 'secret trials';<sup>131</sup> denial of access to legal representation or the presence of officers during meetings with legal counsel;<sup>132</sup> the reluctance of prosecutors to accept petitions from victims of serious human rights violations to initiate criminal proceedings against State officials; intimidation and reprisals against lawyers, victims and families; and, discrimination against lawyers belonging to or representing ethnic and religious minorities.<sup>133</sup>

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<sup>125</sup> UDHR, art 10; ICCPR, art 14.

<sup>126</sup> UDHR, art 11.

<sup>127</sup> See, e.g., Commission on Human Rights, Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 49th sess, UN Doc E/CN.4/1993/62 (6 January 1993), 71-72; Burma's Forgotten Prisoners', Human Rights Watch, (Report, September 2009) 8 <[https://www.hrw.org/reports/burma0909\\_brochure\\_web.pdf](https://www.hrw.org/reports/burma0909_brochure_web.pdf)>;

<sup>128</sup> Human Rights Council, Situation of human rights of Rohingya Muslim minority and other minorities in Myanmar, 40th sess, UN Doc A/HRC/43/18 (27 January 2020), [20].

<sup>129</sup> Ibid. See also Human Rights Council, Situation of human rights of Rohingya Muslim minority and other minorities in Myanmar, 40th sess, UN Doc A/HRC/43/18 (27 January 2020), [20].

<sup>130</sup> Human Rights Council, Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, 39th sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), [1585-1593].

<sup>131</sup> Burma's Forgotten Prisoners', Human Rights Watch, (Report, September 2009) 7, 23, 30 <[https://www.hrw.org/reports/burma0909\\_brochure\\_web.pdf](https://www.hrw.org/reports/burma0909_brochure_web.pdf)>;

<sup>132</sup> Ibid 7.

<sup>133</sup> Ibid 31.

## 1.6 Freedom of Movement

### Summary

- The freedom of movement requires every person lawfully within a State to have the ability to move freely within that State.
- Extensive restrictions prevent the Rohingya from freely moving within Myanmar, with special travel permits required for the Rohingya to travel both within Rakhine State and more broadly throughout Myanmar.

*Under international law, everyone lawfully within the territory of a State shall have the liberty of movement within that territory.*

Everyone lawfully within the territory of a State shall have the right to liberty of movement within that territory.<sup>134</sup> The effect of this is that a person lawfully within a State shall not have restrictions placed on their movement within that State, unless the restrictions are necessary to protect matters such as national security.<sup>135</sup>

*The Rohingya must carry an expensive and difficult to obtain travel permit to move within Rakhine State and criminal sanctions have been imposed on those found travelling without a permit.*

Extensive restrictions exist to prevent the Rohingya from moving within Myanmar.<sup>136</sup> Rohingya must carry a special travel permit, called 'Form 4', to be allowed to travel internally within Rakhine State.<sup>137</sup> There is an onerous and lengthy process to obtain Form 4,<sup>138</sup> and often bribes need to be paid to officials.<sup>139</sup> Often the documentation required to obtain the permit is inaccessible or does not exist for Rohingya, such as identity documents and proof of citizenship.<sup>140</sup>

Travel restrictions are enforced at security checkpoints throughout northern Rakhine State by the Border Guard, Myanmar Police Force and the Tatmadaw.<sup>141</sup> At checkpoints, Rohingya are frequently subject to harassment and are sometimes required to pay arbitrary, and often substantial, 'transit fees'.<sup>142</sup> Freedom of movement is further restricted in northern Rakhine State by curfew orders being imposed on towns such as Maungdaw and Buthidaung.<sup>143</sup>

Rohingya found to be travelling without permits are frequently arrested and charged.<sup>144</sup> Reports indicated that if convicted, Rohingya face prison sentences.<sup>145</sup> For example, in October 2019, thirty Rohingya were convicted for attempting to travel from Rakhine State to Rangoon without permits.<sup>146</sup> Twenty-one were sentenced to two years' imprisonment and eight, who were children, were sent to a detention centre.<sup>147</sup> The youngest was five years old at the time.<sup>148</sup>

<sup>134</sup> ICCPR, art 12. See also UDHR, art 13.

<sup>135</sup> United Nations, 'Human Rights Committee, General Comment 27: Freedom of movement (Art. 12)' (2 November 1999, CCPR/C/21/Rev.1/Add.9).

<sup>136</sup> United States Department of State, 'Country Reports on Human Rights Practices for 2019: Burma' (Report, 2019) < <https://www.state.gov/wp-content/uploads/2020/02/BURMA-2019-HUMAN-RIGHTS-REPORT.pdf>> 23.

<sup>137</sup> Ibid.

<sup>138</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 122 [505].

<sup>139</sup> United Kingdom Home Office, 'Country Policy and Information Note – Burma: Rohingya' (2<sup>nd</sup> ed., March 2019) 44.

<sup>140</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 122 [507].

<sup>141</sup> Ibid 123 [510].

<sup>142</sup> Ibid 123 [510]–[511].

<sup>143</sup> Ibid 123 [509].

<sup>144</sup> United Kingdom Home Office, 'Country Policy and Information Note – Burma: Rohingya' (2<sup>nd</sup> ed., March 2019) 45.

<sup>145</sup> United States Department of State, 'Country Reports on Human Rights Practices for 2019: Burma' (Report, 2019) < <https://www.state.gov/wp-content/uploads/2020/02/BURMA-2019-HUMAN-RIGHTS-REPORT.pdf>> 23.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

## 1.7 Right to Privacy

### Summary

- The right to privacy prohibits any interference with privacy that is arbitrary or unlawful.
- While the 2008 Constitution of Myanmar recognises citizens' right to privacy, it is inaccessible to Rohingya who have been stripped of their citizenship.
- Myanmar has interfered with this right by subjecting the Rohingya to forced evictions and random inspections of Rohingya households.

*Although the right to privacy is protected under Myanmar law, it does not extend to the Rohingya.*

Article 17 of the *ICCPR* prohibits Any interference with privacy that is arbitrary or unlawful. An interference will be 'unlawful' if it is not prescribed by transparent and accessible law.<sup>149</sup> Although the right to privacy is enshrined in Chapter VIII of the 2008 Constitution of Myanmar, it is reserved only for 'citizens' of Myanmar and is therefore inaccessible to the Rohingya people.<sup>150</sup> Further, although laws in Myanmar formally protect the privacy of the home, these protections are poorly enforced.<sup>151</sup>

*Forced evictions and regular, unannounced household checks occur in northern Rakhine State are examples of Myanmar's interference with the right to privacy.*

Forced evictions by the Tatmadaw from Rohingya villagers across Rakhine State interferes with the right to privacy.<sup>152</sup> The Human Rights Council's Independent International Fact-Finding Mission on Myanmar reported in 2018 found a pattern of the Tatmadaw forcibly evicting Rohingya and arbitrarily appropriating their land.<sup>153</sup> Interferences with privacy occur when officials enter a home or land without prior notification for the purposes of removing the individual or family from their property.<sup>154</sup>

Further interferences with privacy have been committed by the Myanmar Government authorities, when inspecting households in northern Rakhine State.<sup>155</sup> Every household is required to keep an updated 'household list' of its permanent residents, which is often the only form of personal identification held by Rohingya.<sup>156</sup> Authorities conduct yearly inspections of households in Rakhine State to ensure household lists are up to date.<sup>157</sup> Many of these inspections occur late at night and without notice.<sup>158</sup> Rakhine State is the only region in Myanmar where such inspections are conducted.<sup>159</sup> Invasive practices have been reported during these inspections. Permanent residents of households must be photographed holding a card representing their 'serial number'.<sup>160</sup> Further, in accordance with an order issued by the border guard, Nasaka, where there is suspicion about whether a child genuinely belongs to the household, its mother may be forced to breastfeed the child as proof.<sup>161</sup>

<sup>149</sup> Human Rights Council, 'General Comment No 16: Article 17', UN Doc HRI/GEN/1/Rev.9 (Vol.1) (8 April 1988) [3], [8].

<sup>150</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 112 [462].

<sup>151</sup> United States Department of State, 'Country Reports on Human Rights Practices for 2019: Burma' (Report, 2019) <<https://www.state.gov/wp-content/uploads/2020/02/BURMA-2019-HUMAN-RIGHTS-REPORT.pdf>> 11.

<sup>152</sup> OHCHR, 'Forced Evictions – Fact Sheet No 25/Rev 1' (2014) 6.

<sup>153</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018), 106 [429].

<sup>154</sup> OHCHR, 'Forced Evictions – Fact Sheet No 25/Rev 1' (2014) 6.

<sup>155</sup> United States Department of State, 'Country Reports on Human Rights Practices for 2019: Burma' (Report, 2019) <<https://www.state.gov/wp-content/uploads/2020/02/BURMA-2019-HUMAN-RIGHTS-REPORT.pdf>> 12.

<sup>156</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 140 [583]–[584].

<sup>157</sup> Ibid.

<sup>158</sup> Ibid 141 [586].

<sup>159</sup> Ibid [583].

<sup>160</sup> Ibid 141 [585].

<sup>161</sup> Ibid.

## 1.8 Right to Peaceful Assembly and to Participate in Public Life

### Summary

- The right to participate in public life includes both a right to form associations and to peacefully assemble.
- The right to freedom of association allows people to form associations without state interference.
- The right to peaceful assembly facilitates participation in public life by protecting the right of individuals and associations to gather for the purpose of taking part in the democratic process.
- Myanmar violates the right to participate in public life by infringing upon these rights through oppressive laws. Examples include restricting gatherings to no more than five and the *Unlawful Associations Act*, which grants broad powers to Myanmar authorities to determine and detain unlawful associations.

*The right to participate in public life includes both a right to form associations and to peacefully assemble. Freedom of association allows people to form associations without state interference.*

There are two related rights which ensure participation in public life. The first is the right to freedom of association.<sup>162</sup> Associations are collective entities with a common objective such as trade unions, political parties and religious communities.<sup>163</sup> The freedom of association prevents state interference of individuals' activities, including the right not to be compelled to join organizations.<sup>164</sup> The freedom also gives individuals the right to form associations, and express and pursue common objectives.<sup>165</sup>

*The right to peaceful assembly facilitates participation in public life by protecting the right of individuals and associations to gather for the purpose of taking part in the democratic process.*

The second right is freedom of assembly, which enables people to come together for a specific purpose.<sup>166</sup> Different kinds of assemblies are protected under different articles of the *ICCPR*.<sup>167</sup> The right to peaceful assembly is confined to assemblies which address the public (taking part in the democratic process) and are free of violence.<sup>168</sup> The freedom of assembly can be limited where the restriction is imposed in conformity with the law, it serves a legitimate purpose and is necessary in a democratic society.<sup>169</sup>

*Myanmar violates the right to participate in public life through oppressive laws targeting the right to freedom of association and peaceful assembly.*

The Myanmar Government has ordered prohibitions of public gatherings of more than five people.<sup>170</sup> These orders are intended to target the Rohingya as congregations of more than five are prohibited in mosques but not in temples or monasteries.<sup>171</sup> In addition to inhibiting freedom of religion, these orders are a violation of the right to peaceful assembly and freedom of association. The oppressive restrictions on freedom of movement also indirectly affect the right of the Rohingya to peaceful assembly where assembling require travel between townships or villages.<sup>172</sup>

<sup>162</sup> *UDHR*, art 20; *ICCPR* art 22; *ICESCR*, art 8(1)(a).

<sup>163</sup> Ana Paula Barbosa-Fohrmann, 'Association, Freedom of, International Protection', *Max Planck Encyclopedia of International Law* (online at 28 September 2020) [2].

<sup>164</sup> *Ibid* [3].

<sup>165</sup> *Ibid*.

<sup>166</sup> *UDHR*, art 20; *ICCPR*, arts 18(1), 17 and 21; *ICERD*, art 5(ix).

<sup>167</sup> See, eg, art 18(1) for religious assembly, art 22 for assemblies of associations; art 17 for meetings for social purposes and art 25 for campaign events.

<sup>168</sup> *UDHR*, art 20; *ICCPR*, arts 18(1), 17 and 21; *ICERD*, art 5(ix).

<sup>169</sup> *ICCPR*, art 21.

<sup>170</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 160.

<sup>171</sup> *Ibid*.

<sup>172</sup> *Ibid*.

The legal framework in Myanmar facilitates authorities violating the right to peaceful assembly of the entire population, primarily through the *Peaceful Assembly Act* and the unlawful assemblies provisions of the *Penal Code*. Further, violations of right to the freedom of association occur under the *Unlawful Associations Act* which infringes upon the Rohingya's right by granting broad discretion to authorities to determine and prosecute unlawful associations.<sup>173</sup> Under this act, Myanmar authorities are empowered to arrest and detain Rohingya and other ethnic minorities, with individuals deemed in any way associated with an unlawful association facing between two to five years imprisonment.<sup>174</sup> The act has been used by Myanmar authorities to silence political activists. The United Nations has consistently expressed concern about the legislation's implications for international human rights such as the freedom of association.

Given the grave threat the Rohingya living in Myanmar face, there are limited records of Rohingya attempting to exercise their right to peaceful assembly or freedom of association. However, given the socio-political climate, coupled with Myanmar's restrictive legislation, the Rohingya would likely be subject to the use of excessive force and imprisonment that other demonstrators have experienced at the hand of Myanmar authorities.<sup>175</sup>

## 1.9 Freedom of Expression

### Summary

- Freedom of expression grants people the right to have, share and receive information and opinions. It prohibits state authorities from interfering with people's communications, even where they are offensive.
- Myanmar violates the right to freedom of expression of the Rohingya and others who are critical of the Government through oppressive laws. This includes intimidation and prosecution under oppressive laws.
- Myanmar has produced, and failed to condemn others', communications vilifying and dehumanizing the Rohingya. These communications constitute discriminatory propaganda and are prohibited under international law.

*The freedom of expression grants people the right to have, share and receive information and opinions.*

The freedom of expression protects the right of individuals to both hold and share opinions.<sup>176</sup> It also includes the right to receive information, including having access to the internet.<sup>177</sup> The freedom of expression creates a positive obligation on states to protect the right as between individuals and to refrain from interfering with the mediums and methods used to communicate.<sup>178</sup>

*The freedom of expression can be restricted where the restriction is permissible under international law.*

There are permissible restrictions on the freedom of expression. An example of a permissible restriction is the prohibition of certain forms of propaganda. Forms of communication which can fall under the umbrella of propaganda are hate speech, incitement of genocide and the dissemination of fake news or disinformation.<sup>179</sup> States have a responsibility to stop propaganda.<sup>180</sup>

<sup>173</sup> Amnesty International, "Caught in the Middle" Abuses Against Civilians Amid Conflict in Myanmar's Northern Shan State (Report, 2019), 20.

<sup>174</sup> Ibid 20.

<sup>175</sup> Ibid 320.

<sup>176</sup> UDHR, art 19; ICCPR, art 19; ICERD, art 5(viii).

<sup>177</sup> UDHR art 19; ICCPR, art 19.

<sup>178</sup> UDHR art 19; ICCPR, art 19; ICERD, art 5(viii).

<sup>179</sup> Eric De Brabandere, 'Propaganda', Max Planck Encyclopedia of International Law (online at 25 September 2020) [7].

<sup>180</sup> ICERD, art 4.

*The right to freedom of expression is violated by the Myanmar Government through intimidation and oppressive laws.*

The people of Myanmar have had their right to freedom of expression denied for decades under vaguely worded legislation, which grants extensive powers to the Myanmar Government concerning the regulation of free speech.<sup>181</sup> Key legislation in Myanmar<sup>182</sup> denies individuals their right to freedom of expression by allowing officials to arrest, detain and imprison individuals who criticise the Myanmar Government, including in relation to the mistreatment of the Rohingya people.<sup>183</sup> In addition, Myanmar authorities have attempted to censor those criticising the Myanmar Government by intimidating individuals with increased periods of detention and imprisonment.<sup>184</sup> This has primarily been achieved through charging individuals multiple times in different jurisdictions, for multiple offences for the same act.<sup>185</sup>

Journalists in Myanmar reporting on the human rights violations committed by the Myanmar Government against the Rohingya have had their freedom of expression threatened. Myanmar security forces have filed criminal complaints against journalists under legislation such as Myanmar's *Telecommunications Act (2013)* which carry prison terms for "online defamation".<sup>186</sup> Another example is the prosecution of two Reuters journalists under the *Official Secrets Act of 1923* for their reporting on a massacre at Inn Din village in northern Rakhine State in 2017.<sup>187</sup> In violation of the right to freedom of expression, journalists and media outlets have also been the subject of threats and intimidation by both the Myanmar Government and the Arakan Army to compromise the freedom of the press.<sup>188</sup>

The Myanmar Government has also violated the freedom of expression by targeting leaders of organisations campaigning for justice.<sup>189</sup> Rohingya leaders were sentenced to eight years imprisonment in 2015 for rioting under the *Penal Code* despite the evidence indicating the men did not use or incite violence.<sup>190</sup> Reports indicate that the men were prosecuted due to their position as Rohingya community leaders in an attempt by authorities to weaken any movements criticising the Myanmar Government.<sup>191</sup>

The Myanmar Government has attempted to censor those who recognise the Rohingya as a Myanmar ethnic group. For example, six men were prosecuted for printing a calendar asserting that Rohingya are an ethno-religious minority from Myanmar.<sup>192</sup> Further, since the violence in Rakhine State in 2017 the Myanmar Government has ended domestic broadcasting of the British Broadcasting Corporation and Radio Free Asia due to their use of the 'Rohingya'.<sup>193</sup> In addition, the Myanmar Government have attempted to censor the Rohingya directly. In violation of the right to freedom of expression, as at 6 March 2020 there was a total suspension of mobile internet services in some townships in Rakhine.<sup>194</sup>

*Myanmar and its citizens are producing discriminatory propaganda vilifying the Rohingya violating international law.*

In violation of international law, the Rohingya have been the victims of discriminatory propaganda. They have been subjected to an extensive campaign of discrimination, dehumanization and hate speech by the

<sup>181</sup> Amnesty International, "New Expression Meets Old Repression" Ending the Cycle of Political Arrests and Imprisonment in Myanmar (Report, 2016) 11.

<sup>182</sup> See *Telecommunications Law 2013, Unlawful Associations Act 1908, Right to Peaceful Assembly and Peaceful Procession Law 2011, Official Secrets Act of 1923* and sections 130(b), 295(a) and 505(b) of the *Penal Code*.

<sup>183</sup> Amnesty International, "New Expression Meets Old Repression" Ending the Cycle of Political Arrests and Imprisonment in Myanmar' (Report, 2016) 12.

<sup>184</sup> Ibid 16-20.

<sup>185</sup> Ibid.

<sup>186</sup> Amnesty International, "No One can Protect Us" War Crimes and Abuses in Myanmar's Rakhine State' (Report, 2019) 39.

<sup>187</sup> United Nations General Assembly, *Situation of Human Rights in Myanmar*, UN Doc GA Res A/73/332 (20 August 2018) [6].

<sup>188</sup> Amnesty International, "No One can Protect Us" War Crimes and Abuses in Myanmar's Rakhine State (Report, 2019) 39.

<sup>189</sup> Amnesty International, 'New Expression Meets Old Repression" Ending the Cycle of Political Arrests and Imprisonment in Myanmar' (Report, 2016) 20.

<sup>190</sup> Ibid 21.

<sup>191</sup> Ibid 21.

<sup>192</sup> Ibid 31.

<sup>193</sup> United Nations General Assembly, *Situation of human rights in Myanmar* UN Doc GA Res A/73/332 (20 August 2018) [4].

<sup>194</sup> Human Rights Council, *Reports of the Special Rapporteur on the Situation of Human Rights in Myanmar*, UN Doc HRC Report A/HRC/43/59 (4 March 2020) [10].

Rakhine Nationalities Development Party (RNDP), radical Buddhist monk organizations and government officials.<sup>195</sup> It is also widespread amongst members of the public. The campaign has represented the Rohingya as an existential threat to Myanmar and Buddhism.<sup>196</sup> The Rohingya have been labelled ‘illegal immigrants’, ‘terrorists’, a threat to Myanmar due to their ‘incontrollable birth rates’ which risk ‘swallow[ing] other races’.<sup>197</sup> Hate speech has occurred both offline and online and has targeted the Rohingya on national, racial and religious grounds.<sup>198</sup>

Arakan monks have strongly advocated for the segregation and discriminatory treatment of the Rohingya people, even handing out pamphlets to the Arakan people urging them not to sell to, buy from or associate with the Rohingya Muslim community.<sup>199</sup> Other organisations like the RNDP have called for a “final solution” to the Rohingya problem, even praising Hitler and arguing that “inhuman acts were sometimes necessary to maintain a race”.<sup>200</sup> The MaBaTha have also emphasised racial purity and superiority and the need for ordinary people to “protect the nation”.<sup>201</sup> The MaBaTha in particular have been linked to producing discourse such as sermons, leaflets and online social media messages constituting advocacy of hatred, inciting discrimination or violence.<sup>202</sup>

The Myanmar Government has failed to comply with its responsibilities under international law due to its failure to condemn the racial and religious statements directed at the Rohingya.<sup>203</sup> Furthermore, the Myanmar Government has contributed to the discriminatory propaganda and the incitement of hatred and violence, mirroring the narrative created by organisations like the MaBaTha.<sup>204</sup> The motto of the Ministry of Labour, Immigration and Population is “the earth will not swallow a race to extinction but another race will” while the national elementary school curriculum includes lessons emphasising racial superiority.<sup>205</sup> Distorted representations of events by the Myanmar Government have also been used to generate hate. An example of this is conflict between Rohingya and ethnic Rakhine communities in June 2012. Despite stones being thrown by both sides and security forces firing weapons, footage distributed by the Government of the event only showed the Rohingya’s violence and was described as ‘rioting’ and ‘terrorists’.<sup>206</sup> Arguably most concerning is the incitement of violence and hatred by government officials such as the statement by the Chairman of the Peace and Diversity Party to “shoot and kill them”.<sup>207</sup>

<sup>195</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 7.

<sup>196</sup> Human Rights Council, *Reports of the Special Rapporteur on the Situation of Human Rights in Myanmar*, UN Doc HRC Report A/HRC/43/59 (4 March 2020) [696].

<sup>197</sup> Ibid [25].

<sup>198</sup> Ibid [73].

<sup>199</sup> Human Rights Watch, “*The Government Could Have Stopped This*” Sectarian Violence and Ensuing Abuses in Burma’s Arakan State, (Report, August 2012) 40–1.

<sup>200</sup> Human Rights Council, *Reports of the Special Rapporteur on the Situation of Human Rights in Myanmar*, UN Doc HRC Report A/HRC/43/59 (4 March 2020) [713].

<sup>201</sup> Ibid [1323].

<sup>202</sup> Amnesty International, “*New Expression Meets Old Repression*” Ending Political Arrests and Imprisonment in Myanmar (Report, 2016) 29–30.

<sup>203</sup> Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, UN Doc HRC Report A/HRC/43/59 (4 March 2020) [10].

<sup>204</sup> Ibid [1329].

<sup>205</sup> Human Rights Council, *UNHRC Report of the Special Rapporteur* UN Doc HRC Report A/HRC/40/68 (2 May 2019) [52]; Human Rights Council, *Reports of the Special Rapporteur on the situation of human rights in Myanmar*, UN Doc HRC Report A/HRC/43/59 (4 March 2020) 698]–[699].

<sup>206</sup> Human Rights Council, *Reports of the Special Rapporteur on the Situation of Human Rights in Myanmar*, UN Doc HRC Report A/HRC/43/59 (4 March 2020) [631]–[634].

<sup>207</sup> Ibid [1328].

## 2. Rights Concerning International Recognition and Protection

### 2.1 Right to Seek Asylum

#### *Summary*

- Under international law, refugees have a right to return their country of origin.
- As of 2018, over one million Rohingya were living in refugee camps. The conditions in these refugee camps are often overcrowded, unsanitary and do not provide adequate security for displaced Rohingya.
- Myanmar has not committed to repatriating Rohingya refugees.

*Refugees have a right under international law to return to their country of origin.*

Under Article 13(2) of the *UDHR*, everyone has the right to leave any country, including their own, and to return to their country. This extends to a right of refugees to return to their country of origin.<sup>208</sup> As of 2018, over one million Rohingya were living in refugee camps.<sup>209</sup> The conditions in the camps are dire and do not offer a sustainable solution for displaced Rohingya.

*Rohingya are subject to overcrowded and unsanitary living conditions in many refugee camps in Bangladesh.*

Human Rights Watch reported that the Kutupalong-Balukhali Expansion Camp near Cox's Bazar in Bangladesh is severely overcrowded.<sup>210</sup> While the international standard for average useable space per person in refugee camps is 45 square meters per person, in the Expansion Camp there is on average 10.7 square meters per person.<sup>211</sup> The camp's population density raises the risk of communicable diseases, violence and tension, and exacerbates the impact of natural disasters in the region.<sup>212</sup>

*Myanmar does not have a legal framework for recognising the rights of refugees and is highly unlikely to allow Rohingya refugees to return safely to Myanmar.*

The Myanmar Government has not established a system for providing protection for refugees and the law in Myanmar does not allow asylum or refugee status to be granted.<sup>213</sup> Myanmar has not consistently cooperated with the UN High Commission for Refugees and other humanitarian agencies providing support to refugees and asylum seekers.<sup>214</sup> In particular, the Government routinely denied humanitarian organisations access to Rakhine State.<sup>215</sup>

While Myanmar has officially committed to repatriating Rohingya refugees,<sup>216</sup> it is highly unlikely that these refugees will be able to safely return to Myanmar.<sup>217</sup> As long as systematic discrimination against Rohingya in the Rakhine State along with widespread human rights violations continues, repatriation of Rohingya refugees will remain impossible.

<sup>208</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 279 [1176].

<sup>209</sup> Ibid 279 [1174].

<sup>210</sup> Human Rights Watch, "Bangladesh is Not My Country": The Plight of Rohingya Refugees from Myanmar' (Report, 5 August 2018) < <https://www.hrw.org/report/2018/08/05/bangladesh-not-my-country/plight-rohingya-refugees-myanmar#>>.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> United States Department of State, 'Country Reports on Human Rights Practices for 2019: Burma' (Report, 2019) < <https://www.state.gov/wp-content/uploads/2020/02/BURMA-2019-HUMAN-RIGHTS-REPORT.pdf#>> 25.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> Republic of the Union of Myanmar - Office of the President, (Press Release, 7 September 2018) <<http://www.president-office.gov.mm/en/?q=briefing-room/news/2018/09/07/id-8986>>.

<sup>217</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 280 [1180]–[1181].

### 3. Religious and Cultural Rights

#### 3.1 Cultural Rights

##### *Summary*

- Cultural rights allow individuals to enjoy and create cultural, literary and artistic works, and protect the cultural practices of minorities and indigenous groups.
- Cultural sites have been destroyed in Myanmar and the Government refuses to acknowledge the Rohingya as a cultural group.

*Cultural rights protect the cultural practices of minorities and indigenous groups.*

Individuals have a right to take part in cultural life.<sup>218</sup> This includes the right to both enjoy and create cultural, literary and artistic works and values.<sup>219</sup> The right to take part in cultural life also protects the rights of minorities and indigenous groups to practice their traditional ways of life.<sup>220</sup> The protection of cultural rights imposes an obligation on states to preserve cultural heritage, including conserving cultural property by protecting it from destruction, damage and theft.<sup>221</sup> The right further imposes an obligation on states to remove barriers and foster the preservation and growth of minority and indigenous cultures.<sup>222</sup>

*Myanmar fails to protect the cultural rights of the Rohingya including by destroying cultural sites.*

The ongoing conflict between the Myanmar Army and the Arakan Army has damaged temples within Rakhine state, violating cultural rights in the region.<sup>223</sup> Mrauk-U, the capital of the ancient kingdom of Arakan contains a number of temples and other monuments of significance.<sup>224</sup> In 2019, temples were used by the Myanmar Army as a base, firing guns and mortar rounds at the Arakan Army, which have left bullet holes in the temples.<sup>225</sup> Archaeologists have expressed concern that the temples are at risk of structural damage due to the vibrations from firing artillery and the use of sites to build bunkers.<sup>226</sup> Rohingya cultural rights have also been violated with the destructions of mosques.<sup>227</sup>

The protection of Rohingya cultural rights have also been threatened by orders aimed at controlling marriages in the Maungdaw Township.<sup>228</sup> During the mandatory interview, women have been asked to remove their *hijab* while male applicants have had to shave their beards, acts which aim to humiliate and considered in some regions to be inconsistent with cultural practices.<sup>229</sup>

The Myanmar Government's very treatment of the Rohingya people may constitute a violation of the right to cultural life. There is clear evidence that Myanmar authorities deny the very existence of the Rohingya as a Myanmar ethnic group, from the prosecution of those that mention the Rohingya to discriminatory propaganda which labels the Rohingya as "illegal Bengali immigrants".<sup>230</sup> Such treatment is inconsistent with the positive obligations of states under international law to protect and promote the culture of minorities.

<sup>218</sup> UDHR, art 27; ICESCR, art 15(1)(a); ICERD, art 5(e)(vi).

<sup>219</sup> UDHR, art 27(1).

<sup>220</sup> ICESCR, art 15(1)(a); ICERD, art 5(e)(vi)

<sup>221</sup> ICESCR at 15(2)

<sup>222</sup> ICESCR art 15(2); ICERD, art 5(e)(vi).

<sup>223</sup> Amnesty International "No One can Protect Us" War Crimes and Abuses in Myanmar's Rakhine State (Report, 2019) 20.

<sup>224</sup> Ibid 20.

<sup>225</sup> Ibid 20.

<sup>226</sup> Ibid 21.

<sup>227</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018).

<sup>228</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) [590].

<sup>229</sup> Ibid; The United Nations Refugee Agency, "Culture, Context and Mental Health of Rohingya Refugees" A review for staff in mental health and psychosocial support programmes for Rohingya refugees (Review, 2018) 19 ('Culture, Context and Mental Health of Rohingya Refugees Review').

<sup>230</sup> Ibid [25].

## 3.2 Freedom of Religion

### Summary

- Freedom of religion allows individuals to practice their religious beliefs without discrimination.
- Myanmar violates the right to freedom of religion of the Rohingya by destroying mosques and preventing religious practices such as prayer and Muslim burials.

*The right to freedom of religion allows individuals to practice their religious beliefs without discrimination.*

The freedom of religion protects the right of individuals to freely exercise religion and prohibits discrimination on religious grounds.<sup>231</sup> To realise this, the incitement of religious hatred is also prohibited.<sup>232</sup>

*Myanmar violates the right to freedom of religion of the Rohingya by destroying mosques and preventing religious practices such as prayer and Muslim burials.*

In Myanmar all organizations, including religious organizations, are required to register to gain legal recognition.<sup>233</sup> Official status is necessary to conduct religious activities and to obtain permits to construct or repair religious buildings.<sup>234</sup> The registration process is reportedly used to discriminate against religious minorities, including the Rohingya people.<sup>235</sup> Examples of this are increased difficulties for non-Buddhist groups to obtain restrictions and lengthy delays.<sup>236</sup> This has delayed and prevented repairs to religious buildings and left Rohingya religious organizations vulnerable to harassment or closure by government officials.<sup>237</sup> This is exacerbated by the Ministry of Religious Affairs and Culture restricting the practicing of non-Buddhist religions to government buildings and preventing religious practice in private homes.<sup>238</sup>

Rohingya who have witnessed the conflict and violence in Rakhine State claim that authorities have denied Rohingya proper Muslim burial, instead they have been cremated in Buddhist cremation centres.<sup>239</sup> This has caused immense distress to the Muslim community.<sup>240</sup> The closure of Muslim prayer sites and the forced ending of prayers is a further violation of the Rohingya's freedom of religion.<sup>241</sup> This has been due to orders preventing the congregation of more than five people in mosques as well as mobs of nationalists threatening worshippers, forcing them to flee from mosques in fear of their safety.<sup>242</sup> This is a grave violation of the right to freedom of religion given the significance of congregational prayers in mosques to Muslims.<sup>243</sup> The Myanmar Government has prevented Rohingya and other Muslims from celebrating religious holidays.<sup>244</sup> There have also been reports that there have been religiously motivated attacks on the Rohingya.<sup>245</sup>

<sup>231</sup> UDHR, arts 18 and 2; ICCPR, arts 19 and 2(1); ICERD, art 5.

<sup>232</sup> ICCPR, art 20(2).

<sup>233</sup> US Department of State, *International Religious Freedom: Burma* (Report, 2019) <<https://www.state.gov/reports/2019-report-on-international-religious-freedom/burma/>>.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

<sup>239</sup> Human Rights Watch, "The Government Could Have Stopped This" Sectarian Violence and Ensuing Abuses in Burma's Arakan State (Report, August 2012) 31 ('The Government Could Have Stopped This' Report).

<sup>240</sup> Ibid.

<sup>241</sup> United Nations General Assembly, *Situation of human rights in Myanmar* UN Doc GA Res A/74/342 (30 August 2019) [25]; Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) [630].

<sup>242</sup> United Nations General Assembly, *Situation of human rights in Myanmar* UN Doc GA Res A/74/342 (30 August 2019) [25]; Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) [684].

<sup>243</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) [684].

<sup>244</sup> US Department of State, *International Religious Freedom: Burma* (Report, 2019) <<https://www.state.gov/reports/2019-report-on-international-religious-freedom/burma/>>.

<sup>245</sup> Amnesty International, "New Expression Meets Old Repression" Ending the Cycle of Political Arrests and Imprisonment in Myanmar (Report, 2016) 29–30.

## 4. Social and Economic Rights

### 4.1 Right to Work

#### *Summary*

- The right to work requires States to recognise and take steps to ensure that individuals have the right to work.
- Rohingya workers are subject to discrimination in Myanmar. They are often subject to extortion, forced labour and physical attack.
- Work opportunities are severely limited in refugee camps, arising from a lack of working rights, restrictions on movement and language barriers. Labour is often restricted to informal markets and refugees are highly vulnerable to trafficking and recruitment into illegal organisations.

#### *Every person has the right to work as protected by the UNDR and ICESCR.*

The right to work is a universally applicable human right.<sup>246</sup> State Parties must recognise and take steps to safeguard the right to work.<sup>247</sup> Although this does not amount to a guarantee of full employment, it does include the right to free choice and acceptance of work, favourable working condition, non-discrimination on the basis of sex, race, language, religion, nationality or other status and the right to not be unjustly deprived of work.<sup>248</sup> There is a further right to favourable working conditions, including fair wages, equal remuneration for equal work, safe and healthy working conditions and the reasonable limitation of working hours.<sup>249</sup>

#### *The Rohingya are denied the right to work and associated protections in Myanmar.*

Myanmar is a relatively poor country with widespread poverty, poor infrastructure and a lack of meaningful social security. Myanmar's GDP per capita in 2019 was \$1,407 USD. While favourable working conditions and economic security is lacking for Myanmar's population generally, these economic difficulties exacerbate the persecution experienced by the 1 million Rohingya still living in Myanmar. Through persistent propaganda campaigns, citizens of Myanmar are encouraged to blame the Rohingya people for the country's economic difficulties, ostensibly because the 'illegal Rohingya' are said to impose a burden on the Myanmar's resources.

The violation of the right to work for the Rohingya community in Myanmar stems from the fact they are denied citizenship and are not recognised among Myanmar's 135 official ethnic groups. In particular, the Rohingya community face significant restrictions on free movement, including a ban from travelling or working outside their village without previous authorisation (requiring prohibitive fees of up to US\$1000). This prevents the Rohingya from seeking economic opportunities outside of their township.

Pervasive discrimination means that members of the Rohingya community are denied opportunities to work on an arbitrary basis. Rohingya businesses are often not patronised by members of other ethnic groups due to such extensive and socially accepted discrimination. Indeed, these businesses are subject to extortion and physical attack from military soldiers and private citizens alike.<sup>250</sup>

In addition, the Rohingya are subject to forced labour and unsafe working conditions by the Tatmadaw. This occurs in Myanmar townships bordering Bangladesh, where Rohingya men and boys are forced to carry supplies for the Myanmar Army, also known as 'portering'.<sup>251</sup> Forced labour, inadequate working conditions

<sup>246</sup> UDHR art 23. See also ICESCR, arts 6, 7 and 8.

<sup>247</sup> ICESCR art 6.

<sup>248</sup> ICESCR art 6. See also UDHR art 23(1).

<sup>249</sup> ICESCR art 7. See also UDHR art 23(2)–(3).

<sup>250</sup> Anthony Ware and Costas Laoutides, *Myanmar's 'Rohingya' Conflict* (Oxford University Press, 2018) 165-9.

<sup>251</sup> Kerrie Holloway and Lianne Fan, 'Dignity and the displaced Rohingya in Bangladesh "Ijjot is a huge thing in this world"' *Humanitarian Policy Group Working Paper* (August 2018) 8, 13.

and inadequate remuneration is also common amongst mine sites in the states of Kachin, Shan and Kayin, and in the Tanintharyi Region.<sup>252</sup> Non-compliance often results in food deprivation, as well as being shackled and beaten.

In 2018 the Special Rapporteur noted the concerning development of 400,000 informal gemstone “pickers” operating in jade mines in northern Myanmar.<sup>253</sup> Myanmar supplies 90% of the world’s jade, and these jade mines are secured by armed actors, including the Tatmadaw, militias aligned to the Tatmadaw and the Kachin Independence Army.<sup>254</sup> Aside from Rohingya workers receiving far short of the standard wage, child labour, drug trafficking and the spread of infectious disease are rampant. Additionally, unsafe workplace conditions have resulted in deadly landslides.<sup>255</sup>

#### *The right to work has been violated in South Asia more broadly.*

Most surrounding countries such as Bangladesh, Malaysia and Thailand have ratified the ICESCR. The vast number of Rohingya refugees are living in Bangladeshi refugee camps. To date, there are over 1.1 million Rohingya refugees living in Bangladesh. This has resulted in rising costs of living and an oversupply of labour in the region, making it incredibly difficult for many refugees to find meaningful employment.<sup>256</sup> This is exacerbated by refugee camp restrictions on phone ownership and seeking help from external administrators.<sup>257</sup> Most significantly, movement away from the camps is tightly restricted.<sup>258</sup> Rohingya who are able to travel outside their camps typically earn less than \$2 per day, compared with the minimum wage ranging from \$2 to \$8 per day.

Therefore, Rohingya employment in Bangladesh is generally limited to informal labour markets. As the movement of Rohingya men is restricted due to previous violence, women often become the breadwinners of the family, performing menial work to supplement (often inadequate and infrequent) humanitarian aid.<sup>259</sup> However, this reversal of traditionally observed gender roles in Muslim society can leave women and girls vulnerable to humiliation and even violence both inside and outside the home.<sup>260</sup>

Some refugees, especially men, have resorted to illegal means to obtain Bangladeshi passports to find work abroad. Approximately 50,000 Rohingya have travelled to Saudi Arabia as foreign workers using Bangladeshi passports.<sup>261</sup> Further, unemployed refugees are susceptible to recruitment and exploitation by terrorist groups, and arms and drug trafficking rings.<sup>262</sup>

In March 2017, Malaysia introduced a project allowing Rohingya people to work legally in the country. Rohingya refugees who are UNHCR cardholders and have undergone requisite health and security screening can be employed in the manufacturing and plantation industries.<sup>263</sup>

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<sup>252</sup> Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar* (2 May 2019, UN Doc A/HRC/40/68) 1 [4].

<sup>253</sup> Ibid 2 [6].

<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

<sup>256</sup> Fahmida Khatun, ‘Implications of the Rohingya crisis for Bangladesh’ (2017) Centre for Policy Dialogue (CPD) Dhaka <<https://cpd.org.bd/wp-content/uploads/2017/11/Presentation-on-Implications-of-the-Rohingya-Crisis-for-Bangladesh.pdf>> 24.

<sup>257</sup> Kerrie Holloway and Lianne Fan, ‘Dignity and the displaced Rohingya in Bangladesh “Ijjot is a huge thing in this world”’ *Humanitarian Policy Group Working Paper* (August 2018) 8, 16.

<sup>258</sup> Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar* (2 May 2019, UN Doc A/HRC/40/68) 8–9 [41].

<sup>259</sup> Oxfam, ‘One Year on: Time to Put Women and Girls at the Heart of the Rohingya Response’ Briefing Paper (September 2018) 8–9; Shamima Akhter and Kyoko Kusakabe, ‘Gender-based violence among documented Rohingya refugees in Bangladesh’ (2014) 21(2) *Indian Journal of Gender Studies* 225, 230.

<sup>260</sup> Oxfam Report, ‘One year on: Time to Put Women and Girls at the Heart of the Rohingya Response’ Oxfam Briefing Paper (September 2018) 8–9.

<sup>261</sup> Hassan Faruk Al Imran and Md Nannu Mian, ‘The Rohingya refugee in Bangladesh: A vulnerable group in Law and policy’ 2014 8(2) *Journal of Studies in Social Sciences* 226, 238.

<sup>262</sup> United Nations High Commissioner for Refugees, ‘Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees’ (May 2007) 14.

<sup>263</sup> Natasha Naidu, ‘The Right to Employment for the Stateless? Labour Laws and the Rohingya People’, *Global Rights Compliance* (Research Report, 15 September 2017) <<https://www.globalrightscompliance.com/en/news/the-right-to-employment-for-the-stateless-labour-laws-and-the-rohingya-people#:~:text=In%20March%202017%2C%20Malaysia%20introduced,companies%20in%20manufacturing%20and%20plantation.>>>.

## 4.2 Freedom from Slavery and Forced Labour

### *Summary*

- The freedom from slavery provides that no one shall be held in slavery or servitude. Further, free choice of employment is protected under international law.
- Rohingya in Myanmar are subject to discriminatory forced labour and are beaten, tortured or starved for noncompliance.
- Both in Myanmar and throughout South Asia, women and girls are particularly vulnerable to sex trafficking.
- The lack of available work opportunities in refugee camps makes Rohingya refugees particularly vulnerable to forced labour and trafficking in camps.

### *Slavery and forced labour are prohibited under international law.*

Under international law, no one shall be held in slavery or servitude, and slavery and the slave trade are prohibited.<sup>264</sup> Similarly, the 'free choice of employment' is protected,<sup>265</sup> and States are required to prohibit forced labour.<sup>266</sup>

### *The Rohingya are subject to slavery and forced labour in Myanmar.*

The Rohingya are subject to forced labour by the Tatmadaw, despite the Tatmadaw proclaiming in 2012 that such practices would end. This forced labour is discriminatory in nature, as it is only imposed on the Rohingya and not other ethnic communities.<sup>267</sup> Forced labour is not remunerated, and workers must provide their own food. The type of labour includes: the construction and maintenance of Army (Nasaka) camps, road building, repair, sentry duty, the establishment of new settlers' villages, cultivation in military-owned plantations and shrimp farms, brick-baking, and the collection of wood and bamboo. The construction of the border fence along the Myanmar-Bangladesh border was predominantly forced labour. In Myanmar townships bordering Bangladesh, Rohingya men and boys are forced to carry supplies for the Tatmadaw, also known as 'portering'.<sup>268</sup> Forced labour, inadequate working conditions and inadequate remuneration is also common amongst mine sites in the states of Kachin, Shan and Kayin, and in the Tanintharyi Region.<sup>269</sup>

Non-compliance often results in food deprivation, as well as being shackled and beaten.<sup>270</sup> In some cases, Rohingya people have been killed by the Tatmadaw in the context of forced labour.<sup>271</sup> Tatmadaw soldiers have also kidnapped Rohingya women and girls as sex slaves.<sup>272</sup> Forced labour also prevents Rohingya children from accessing education.<sup>273</sup>

### *The Rohingya are subject to slavery and forced labour throughout South Asia.*

Rohingya refugees are vulnerable to human trafficking in and around refugee camps, especially in Bangladesh. Individuals are typically lured in by a false promise of lucrative employment either within the country or overseas. Such human trafficking operations are expansive and often involve traffickers operating from within Rakhine state. These traffickers prey on the vulnerability of Rohingya people in

<sup>264</sup> UDHR art 4. See also ICCPR, art 8; ICESCR, art 6(1).

<sup>265</sup> Ibid art 23(1).

<sup>266</sup> ICESCR art 6(1); UN Committee on Economic, Social and Cultural Rights (24 November 2005, UN Doc E/C.12/GC/186) [23], [32].

<sup>267</sup> The Arakan Project, 'Submission to the Committee on the Rights of the Child: Issues to be raised concerning the situation of stateless Rohingya children in Myanmar (Burma) (January 2012, CRC/C/MMR/3-4) 11.

<sup>268</sup> Kerrie Holloway and Lianne Fan, 'Dignity and the displaced Rohingya in Bangladesh "ijjot is a huge thing in this world"' *Humanitarian Policy Group Working Paper* (August 2018) 13.

<sup>269</sup> Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar* (2 May 2019, UN Doc A/HRC/40/68) 1 [4].

<sup>270</sup> Ibid 12 [61].

<sup>271</sup> Ibid 12 [60].

<sup>272</sup> Ibid 12, 15 [62], [79].

<sup>273</sup> Human Rights Watch, *Are We not Human?: Denial of Education for Rohingya Refugees in Bangladesh*, 5, 51, 65.

Rakhine state through a commonly used ploy of promising Rohingya people safe passage to Bangladesh, Indonesia, Malaysia or Thailand.

The International Organization for Migration identified 99 cases of human trafficking during the year beginning September 2017, although it stated the actual figure was likely much higher. According to the IOM report, 35 of the victims were girls and 31 were women. Thirty-one of the girls and 26 of the women ended up in forced labour, along with twenty men and eight boys. The remaining five women and four girls were said to have ended up in "situations of sexual exploitation".<sup>274</sup>

At least 60% of the Rohingya population arriving in Bangladesh is under 18 and susceptible to coercion and exploitation. Rohingya refugees typically face intractable economic hardship – not only from Myanmar, but also as they arrive as refugees in Bangladesh, Thailand and Indonesia. This economic desperation and the lack of gainful job opportunities in overpopulated refugee camps can make these individuals susceptible to dubious guarantees of employment.<sup>275</sup>

Refugees' movement from camps is often restricted, further entrenching the Rohingya in poverty and decreasing their chances of finding meaningful work. The endemic violence and chaos leading to urgent mass human displacement in Myanmar. Families often arrive at different times and struggle to reunite. This often means children are left alone and are highly vulnerable to trafficking.<sup>276</sup>

These people are then smuggled onto boats. Upon arriving at the final transit point, they are often locked up in camps surrounded by armed guards and forced to perform unpaid, menial work. They are not allowed to leave, they receive insufficient food and water, and sexual violence is rife. Women and girls have been taken out of campsites by traffickers and security guards to be raped and sexually assaulted. The male Rohingya are often harassed and beaten to extort what little money they may have.<sup>277</sup>

## 4.3 Right to a Nationality

### Summary

- Everyone has a right to a nationality, and no one shall be arbitrarily deprived of their nationality.
- The Rohingya were stripped of their citizenship under the 1982 Citizenship Law and have been systematically denied the opportunity to re-register as citizens.

*Under international law, the right to nationality is recognised as a fundamental human right.*

Under international law, everyone has the right to a nationality and that no one shall be arbitrarily deprived of their nationality.<sup>278</sup>

*The right to a nationality is violated in Myanmar, with practical and legal barriers preventing the Rohingya from gaining access to citizenship.*

Although Myanmar's 1947 Constitution and 1982 Citizenship Law do not include specific provisions to deny the Rohingya citizenship, selective application of the law along with violations committed by authorities, has effectively rendered the Rohingya stateless.<sup>279</sup> The 1982 Citizenship Law requires membership to one of eight recognised 'national races' the primary basis for gaining citizenship.<sup>280</sup> Rohingya and Rakhine ethnicity

<sup>274</sup> International Organisation for Migration Bangladesh, 'Rohingya Refugee Crisis Response - Situation Overview of Human Trafficking' (October 2018) 1–3.

<sup>275</sup> Human Rights Watch, *Are We not Human?: Denial of Education for Rohingya Refugees in Bangladesh*, 5, 51, 65.

<sup>276</sup> UNICEF, Evaluation of UNICEF's Response to the Rohingya Refugee Crisis in Bangladesh, November 2018, vol 2, Annex 4, 'Summary of Response Against Core Commitments for Children' 22.

<sup>277</sup> International Organisation for Migration Bangladesh, 'Rohingya Refugee Crisis Response - Situation Overview of Human Trafficking' (October 2018) 1–3.

<sup>278</sup> UDHR, art 15; ICCPR, art 24; CEDAW, art 9; CRC, art 7.

<sup>279</sup> United Kingdom Home Office, 'Country Policy and Information Note – Burma: Rohingya' (2nd ed, March 2019) 15.

<sup>280</sup> Nick Cheesman, 'How in Myanmar "National Races" Came to Surpass Citizenship and Exclude Rohingya' (2017) 47(3) *Journal of Contemporary Asia* 12.

are not included in the list.<sup>281</sup> Although some Rohingya are eligible for full citizenship under this law, the process of obtaining citizenship is restrictively difficult and expensive, and often requires substantial bribes to government officials.<sup>282</sup>

After the introduction of the 1982 law, ethnic Rohingya were required to re-register as citizens by exchanging their old identification documents for updated documents under the new law.<sup>283</sup> However, instead of receiving citizenship, the Rohingya were systematically registered as temporary residents over a twenty-year period.<sup>284</sup> Coupled with Rohingya children being systematically denied birth registration,<sup>285</sup> this policy has rendered the Rohingya stateless. The consequence of this is that most Rohingya do not have standing in Myanmar courts and have restricted access to economic opportunities, education and property ownership.<sup>286</sup>

In 2015, Myanmar introduced a citizenship verification process to address concerns about citizenship issues in northern Rakhine State.<sup>287</sup> However, members of the Rohingya ethnic group who refuse to identify as 'Bengali' have been arbitrarily excluded from the process.<sup>288</sup>

## 4.4 Right to Social Security

### Summary

- The right to social security protects the right to social security assistance, and has been recognised as being crucial for guaranteeing a life in dignity.
- Despite Myanmar being a developing country where social security is scarce, Myanmar troops divert humanitarian aid intended for the Rohingya, or otherwise restrict their access to this aid.
- In South Asian refugee camps, such as those in Bangladesh, refugees do not benefit from social security and have to rely on scarce and insufficient humanitarian assistance.

*The right to social security is protected under the UDHR and ICESCR.*

Under international law, everyone has the right to social security.<sup>289</sup> This right extends under ICESCR to ensuring measures of protection and assistance for families and mothers.<sup>290</sup> The Rohingya have been barred from accessing social security both in Myanmar and surrounding countries.

*The Rohingya have been denied social security in Myanmar.*

Myanmar is a relatively poor country where social security is not widely available, even for recognised ethnic groups. However, the Rohingya, owing to their denial of citizenship by the Myanmar government, are legally barred from accessing such government aid. The effects of this are more acute considering the Rohingya are also legally, structurally and socially restricted in their rights to work, receive education, own property and move freely.<sup>291</sup>

<sup>281</sup> Ibid.

<sup>282</sup> United States Department of State, 'Country Reports on Human Rights Practices for 2019: Burma' (Report, 2019) < <https://www.state.gov/wp-content/uploads/2020/02/BURMA-2019-HUMAN-RIGHTS-REPORT.pdf>> 26.

<sup>283</sup> Ibid 2.

<sup>284</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 117 [479].

<sup>285</sup> Ibid 119 [491].

<sup>286</sup> Fortify Rights, 'Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State' (Yale Law School, Research Paper, October 2015) 7.

<sup>287</sup> Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports on Myanmar' (CEDAW/C/MMR/CO/4-5, 25 July 2016) 10.

<sup>288</sup> Ibid.

<sup>289</sup> UDHR, art 22; ICESCR, art 9.

<sup>290</sup> ICESCR, art 10.

<sup>291</sup> Human Rights Watch, *Are We not Human?: Denial of Education for Rohingya Refugees in Bangladesh*, 25.

Arakanese communities have restricted and obstructed the delivery of humanitarian aid to affected Muslim populations since the violence broke out in June.<sup>292</sup> Nasaka troops are known to obstruct humanitarian assistance until aid officers pay bribes.<sup>293</sup>

*The Rohingya have been denied social security in South Asia more broadly.*

Rohingya refugees are similarly disadvantaged outside of Myanmar. In Bangladesh for example, refugees and asylum seekers do not benefit from laws and regulations governing social security. Foreign aid is infrequent and usually inadequate for Rohingya families to meet adequate standards of living. This leaves Rohingya refugees vulnerable to infectious disease, other health complications, forced labour, human trafficking, recruitment into criminal organisations and other exploitative situations.<sup>294</sup>

## 4.5 Right to an Adequate Standard of Living

*Summary*

- Every person is entitled to a standard of living adequate to provide for their health and wellbeing.
- Many Rohingya do not enjoy an adequate standard of living in Myanmar, having had their land and food sources confiscated by Myanmar soldiers or being detained in overcrowded internal camps with inadequate access to food, portable water and hygiene facilities.
- The Rohingya suffer from similarly poor standards of living in refugee camps, such as those in Bangladesh.

*The right to an adequate standard of living is enshrined in the UDHR and ICESCR.*

Article 25(1) of the *UDHR* proclaims that everyone has the right to a standard of living adequate for the health and wellbeing of them and their family.<sup>295</sup> This is reflected in Article 11 *ICESCR*, which recognises the right of everyone to an adequate standard of living, including adequate food, clothing and housing and to the continuous improvement of living conditions.<sup>296</sup>

While Myanmar and surrounding countries such as Bangladesh are developing and living standards are generally poor, the Rohingya's right to an adequate standard of living is systemically undermined. Adequate dwelling structures is of particular importance, since Myanmar, Bangladesh and surrounding countries are prone to monsoons, landslides and flooding.<sup>297</sup>

*The right to an adequate standard of living is violated for Rohingya living in Myanmar.*

As a consequence of a severe and widespread campaign of violence, hundreds of thousands of Rohingya are displaced in Myanmar, with the majority residing in Rakhine state. Since January 2018, whole villages of burned Rohingya houses as well as the surrounding trees and other vegetation have been bulldozed. Livestock, crops and cooking materials have also been stolen by Tatmadaw soldiers.<sup>298</sup>

<sup>292</sup> Amnesty International, "We Will Destroy Everything": Military Responsible for Crimes Against Humanity in Rakhine State, Myanmar Crimes against Humanity (ASA 16/8630/2018) 73.

<sup>293</sup> Ibid 101.

<sup>294</sup> United Nations High Commissioner for Refugees, 'Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees' (May 2007) 34–5.

<sup>295</sup> *UDHR* art 25(1).

<sup>296</sup> *ICESCR* art 11.

<sup>297</sup> Human Rights Now, *Investigative Report of Rohingya Refugee Camps in Bangladesh* Rohingya Refugees Face Serious Human Rights Violations in Myanmar and Bangladesh Refugee Camps (12 April 2018) 25.

<sup>298</sup> Amnesty International, "Caught in the Middle": Abuses Against Civilians Amid Conflict in Myanmar's Northern Shan State (October 2019) 25.

Shortly before the onset of the rainy season, soldiers confiscated wood from bamboo farmers. They have also confiscated chickens, bamboo, truckloads of timber, vegetables, oil, meat, and other foodstuffs and cooking materials.<sup>299</sup> This jeopardises the food supply of Rohingya living in Myanmar.

Additionally, these individuals have experienced protracted displacement in internal camps, dwelling in deteriorating, hastily built shelters with limited access to food, water, hygiene products or adequate toilet facilities. While Myanmar insists such camps were not intended to be long-term shelters for the Rohingya, the Government has not proposed any timeline, concrete plan or taken any apparent preliminary steps to return the Rohingya to their homes or rehouse them in adequate shelters.<sup>300</sup>

*The right to an adequate standard of living is violated for Rohingya seeking refuge in South Asia.*

In Bangladesh, available land in Cox's Bazar district is severely limited, resulting in densely populated living areas. The rapid influx of Rohingya refugees meant that shelters as well as water, hygiene and sanitation facilities were built hurriedly and with little structural integrity. Water, hygiene and sanitation facilities are vital for preventing disease but are also important for the protection and dignity of the Rohingya, especially girls and women.<sup>301</sup> Overcrowding exacerbates many safety risks, such as physical and sexual abuse.<sup>302</sup>

Food security is also poor in the camps with 91% of Rohingya refugees being entirely dependent on humanitarian assistance to access food.<sup>303</sup> This is exacerbated by the restrictions on work and travel away from the camps. Recent food security assessments indicate that 33% of Rohingya refugees have an unacceptable food consumption score.<sup>304</sup> Food distribution packages are often lacking in diversity, contributing to malnutrition and stunted development in children. Access to cooking oil and firewood is also limited.<sup>305</sup> Many refugees fled with only the clothes on their back and lack proper clothing. The camps consistently have insufficient quantities of blankets and winter clothing.<sup>306</sup>

## 4.6 Property Rights

### *Summary*

- All people have the right to own property, free from arbitrary deprivation.
- In violation of this right Rohingya have had their homes, crops, land, livestock and other personal property confiscated and destroyed by Myanmar soldiers.

*No person should be arbitrarily deprived of their property.*

Everyone has the right to own property both alone and in association with others, and no one shall be arbitrarily deprived of their property.<sup>307</sup> Property ownership can also contribute to an adequate standard of living, also a protected right.<sup>308</sup>

<sup>299</sup> Ibid.

<sup>300</sup> Amnesty International, "We Will Destroy Everything": Military Responsible for Crimes Against Humanity in Rakhine State, Myanmar Crimes against Humanity (ASA 16/8630/2018) 106.

<sup>301</sup> Kerrie Holloway and Lianne Fan, 'Dignity and the displaced Rohingya in Bangladesh "Ijjot is a huge thing in this world"' *Humanitarian Policy Group Working Paper* (August 2018) 8, 10.

<sup>302</sup> United Nations Office for the Coordination of Humanitarian Affairs, *Joint Response Plan for Rohingya Humanitarian Crisis* (2018) 13

<sup>303</sup> Ibid 15.

<sup>304</sup> Ibid.

<sup>305</sup> Ibid.

<sup>306</sup> Human Rights Now, *Investigative Report of Rohingya Refugee Camps in Bangladesh* Rohingya Refugees Face Serious Human Rights Violations in Myanmar and Bangladesh Refugee Camps (12 April 2018) 22, 28.

<sup>307</sup> UDHR, art 17.

<sup>308</sup> ICCPR, art 11.

*Property rights of the Rohingya have been violated in Myanmar with widespread destruction and confiscation of Rohingya property.*

Tatmadaw soldiers have confiscated the personal property of Rohingya such as livestock and household items.<sup>309</sup> Rohingya property was also destroyed in waves of violence in October 2012 and August/September 2017, with many Rohingya fleeing as their homes and land were burnt. In four villages alone there 2,304 structures destroyed in the violence of October 2012.<sup>310</sup>

First account reports and satellite images have revealed the Tatmadaw is claiming the land owned by the Rohingya forced to flee. New military bases and roads have been erected, replacing the land where Rohingya homes once stood and preventing refugees from returning to their homes.<sup>311</sup> For example Ah Htet Nan Yar village has been replaced by a new road while three new military bases have been erected on Rohingya land in Maungdaw Township and Buthidaung Township. Eyewitnesses have also claimed that the military have forcibly evicted Rohingya people from certain areas to construct the largest of the new bases in Ah Lel Chaung village in Buthidaung Township.<sup>312</sup>

Property rights are also infringed through extortion, land confiscation and arbitrary evictions. Such abuses are particularly harmful since the Rohingya are the poorest population in Myanmar's second-poorest state. Relatively wealthy members of the Rohingya community – a very small minority – have been targeted specifically since October 2012. These individuals have been fined up to 10 million kyat (\$12,000 USD), and in some cases as high as 20 million kyat (\$24,000 USD).<sup>313</sup> Such finds are often demanded periodically. In return, the victim gets to keep their land or livestock, property that is legally theirs.

## 4.7 Right to Education

*Summary*

- Everyone has a right to education which respects human rights and fundamental freedoms.
- Rohingya children are denied this right, being detained in detention camps within Myanmar or refugee camps in Bangladesh without access to education.

*The right to education is enshrined in the UDHR and ICESCR.*

The right to education for all is protected by Article 26 of the *UDHR*.<sup>314</sup> This is reflected in Article 13 of the *ICESCR*. Article 13(1) requires State Parties to recognise the right of everyone to education and that education should strengthen respect for human rights and fundamental freedoms.<sup>315</sup> Article 13(2)(a) requires primary education to be compulsory and available free to all and Article 13(2)(b) requires secondary education to be generally available and accessible to all.<sup>316</sup>

Education is pivotal to the economic and social empowerment of the Rohingya people, but Rohingya children are consistently denied access to primary education in both Myanmar and across South-East Asia.

*The Rohingya have been denied access to education in Myanmar.*

Rohingya children's lack of access to education in Myanmar stems from their wrongful denial of citizenship by the Myanmar government.<sup>317</sup> Rohingya children who still reside in Myanmar (especially those in Rakhine

<sup>309</sup> Ibid 10–11 [49].

<sup>310</sup> 'All You can do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State', *Human Rights Watch*, (Report, April 2013), 7, 10–11.

<sup>311</sup> Ibid 11 [50].

<sup>312</sup> Human Rights Watch interview with SM, Displacement Site, Sittwe, Arakan State, October 2012.

<sup>313</sup> Ibid 80.

<sup>314</sup> UDHR art 26.

<sup>315</sup> ICESCR art 13. See also UDHR art 26(1).

<sup>316</sup> See also UDHR art 26(1).

<sup>317</sup> Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar (2 May 2019, UN Doc A/HRC/40/68) 12 [57].

State) have faced serious and persistent restrictions on access to schooling since the violent outbreaks of 2012.<sup>318</sup> Since then, over 60,000 Rohingya children have been detained in open-air detention camps where formal education is “minimal to non-existent”. Rohingya children are often kept in separate facilities and unable to attend mainstream schools. While the Myanmar government claims barring Rohingya children from education is necessary to prevent violence from other ethnic groups, no legitimate alternative arrangements for formal education have been made.<sup>319</sup> Older Rohingya youths are barred from attending university. Rohingya children in Rakhine State suffer ‘full deprivation of education’ with student-to-teacher ratios as high as 123:1.<sup>320</sup>

The provision of education in Rohingya villages has been largely informal, hampered by ever-present violence, disruption and discrimination. Even where some formal schooling is available, abject poverty forces many children to work to provide for their families instead of attending schools. Older girls in particular commonly take on domestic, caring and housekeeping duties and can be subject to violence on route to school.<sup>321</sup> One study found that 54% of Rohingya children had successfully completed one year of school, compared to 92% for ethnically Rakhine children (who are recognised among Myanmar’s 135 official ethnic groups).<sup>322</sup> Only 12% of Rohingya boys and 6% of Rohingya girls had completed grade 5, in contrast to over 50% of Rakhine children.<sup>323</sup>

Rohingya children who do attend formal school are subject to discrimination and humiliation by teachers, often being forced to sit separately from students of other ethnicities. Lessons are taught in Burmese, typically a second or third language for Rohingya children. Only 27% of Rohingya people are literate in Burmese.<sup>324</sup>

This denial of formal education perpetuates intergenerational poverty, making it more difficult for Rohingya communities to rebuild and potentially escape their oppression.

#### *The Rohingya have been denied access to education in Bangladesh.*

From 2017, Bangladesh has accepted over 1.1 million Rohingya refugees into the country. However, Bangladesh has become increasingly resistant to these refugees remaining in the country and has deliberately prevented them from assimilating into Bangladeshi society. In doing so, Bangladesh has been accused of violating the right to education of almost 400,000 Rohingya children in Cox’s Bazar alone.<sup>325</sup>

There is already significant pressure on the Bangladeshi education system with respect to Bangladeshi children.<sup>326</sup> However, these accessibility challenges are amplified for Rohingya refugees in the country. The Bangladeshi government requires Rohingya refugees to live in camps and bars Rohingya children from enrolling in local schools or taking national school examinations.<sup>327</sup> It prohibits teaching Rohingya children Bangla, Bangladesh’s national language.<sup>328</sup> Reportedly, educators who teach Rohingya children in Bengali

<sup>318</sup> United Nations High Commissioner for Refugees, ‘Culture, Context and Mental Health of Rohingya Refugees: A review for staff in mental health and psychosocial support programmes for Rohingya refugees’ (2018).

<sup>319</sup> Human Rights Watch, Are we not human?: Denial of Education for Rohingya Refugees in Bangladesh 23 (‘HRW’); Amnesty International, “Caged Without A Roof”: Apartheid in Myanmar’s Rakhine State, 69, <<https://www.amnesty.org/download/Documents/ASA1674842017ENGLISH.PDF>>

<sup>320</sup> Human Rights Watch, Are we not human?: Denial of Education for Rohingya Refugees in Bangladesh (2018) 22.

<sup>321</sup> Ibid.

<sup>322</sup> Ibid; United Nations Development Program, 2016 Human Development Report, Table 9, “Educational Achievements” 232 <[http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)>

<sup>323</sup> Centre for Diversity and National Harmony, Rakhine State Needs Assessment, September 2015, 95, <[https://www.themimu.info/sites/themimu.info/files/documents/Report\\_Rakhine\\_State\\_Needs\\_Assessment.pdf](https://www.themimu.info/sites/themimu.info/files/documents/Report_Rakhine_State_Needs_Assessment.pdf)> ;Education Needs Assessment: Rohingya Refugee in Cox’s Bazar, 17, <[https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/cxb\\_jena\\_assessment\\_report-180607.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/cxb_jena_assessment_report-180607.pdf)>; Internews, Information Needs Assessment Cox’s Bazar – Bangladesh, November 2018, 17, <[https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/assessments/internews\\_coxs\\_bazar\\_publication\\_web.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/assessments/internews_coxs_bazar_publication_web.pdf)>; International Rescue Committee, Gender-Based Violence Among Displaced Communities in Sittwe Township, Rakhine State, 2016, 17, <<https://reliefweb.int/sites/reliefweb.int/files/resources/IRC%20GBV%20KAP%202016.pdf>>

<sup>324</sup> Human Rights Watch, Are We not Human?: Denial of Education for Rohingya Refugees in Bangladesh.

<sup>325</sup> Ibid 26.

<sup>326</sup> Ibid.

<sup>327</sup> Ibid 29-30.

<sup>328</sup> Ibid 48.

will be imprisoned for 6 months.<sup>329</sup> Further, the Bangladeshi government bans using the Bangladeshi curriculum to educate Rohingya children on the assumption that Rohingya children will be repatriated within two years.<sup>330</sup> According to humanitarian organisations and camp authorities, Myanmar has not agreed to recognise its school curriculum if used in external camps.<sup>331</sup> Formal accreditation and examinations, in particular, are vital for Rohingya children to access secondary and even tertiary education.

The government provides no education within the camps, and also actively bars internationally funded NGOs and UN humanitarian agencies from providing Rohingya children with any formal, accredited education.<sup>332</sup> Effectively, for Rohingya refugee children in Bangladesh, who have already lost more than two years of schooling, there are no prospects formal, recognised, quality education.

#### *Humanitarian Organisations have intervened to help education.*

NGOs such as UNICEF operate 'learning centres' aimed at delivering 'informal education programs' staffed by 'volunteer facilitators'. Lessons at these learning centres are taught in Burmese languages and English, with a focus on mathematics, Burmese language and life skills (including health awareness), and English literacy.<sup>333</sup> Many children also attend privately-funded Islamic religious schools that teach Quranic memorisation, known as moktabs.<sup>334</sup> While these classes have filled some gaps in learning, there are issues concerning lack of facilitator training, lack of lesson-planning and cumulative curricula, large age ranges in classes, low teacher-to-student ratios and lack of formal accreditation.<sup>335</sup> As in Myanmar, many girls face violence when attending school,<sup>336</sup> students with disabilities are not catered for<sup>337</sup> and many children do not attend school as they are financial providers for their families.<sup>338</sup>

## 4.8 Right to Health

### *Summary*

- Everyone has a right to health.
- The Rohingya's right to health has been impinged by poor access to health services both in Myanmar and in refugee camps throughout Asia. This is reflected in the significantly worse health status of Rohingya refugees in comparison to other ethnic groups.

### *The right to health is protected under the UDHR and ICESCR.*

All people have a right to health.<sup>339</sup> This right protects 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'.<sup>340</sup> Moreover, 'the enjoyment ... is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition'.<sup>341</sup>

<sup>329</sup> Ibid 49.

<sup>330</sup> Ibid 30-32.

<sup>331</sup> Ibid 2.

<sup>332</sup> Ibid 31-33.

<sup>333</sup> Ibid 34-35.

<sup>334</sup> Ibid 35.

<sup>335</sup> Ibid 34-60.

<sup>336</sup> Ibid 60-62.

<sup>337</sup> Ibid 63; United Nations High Commissioner for Refugees, "Bangladesh Refugee Emergency: Population factsheet," May 31, 2019; Center for Disability in Development (CDD) and CBM, "Inclusive Humanitarian Actions for Rohingya Refugees and Host Communities," January 2019, 2, <[https://cdd.org.bd/wp-content/uploads/2019/04/CDD\\_CBM-Rohingya-Response-Brochure-January-Final.pdf](https://cdd.org.bd/wp-content/uploads/2019/04/CDD_CBM-Rohingya-Response-Brochure-January-Final.pdf)>

<sup>338</sup> Human Rights Watch, *Are we not human?: Denial of Education for Rohingya Refugees in Bangladesh* (2018) 64-64.

<sup>339</sup> *ICESCR*, art 12.

<sup>340</sup> UN General Assembly, *Constitution of the World Health Organization*, 17 November 1947, A/RES/131, preamble.

<sup>341</sup> International Health Conference, *Constitution of the World Health Organization* 1946, *Bulletin of the World Health Organization*, (2002)80 (12), 983 - 984. World Health Organization.

*The right to health of the Rohingya is violated in Myanmar through the denial of basic health care and hygienic conditions, resulting in the uncontained spread of diseases.*

Due to the Myanmar government denying citizenship and therefore medical care to the Rohingya, many refugees arrive in camps with pre-existing medical conditions.<sup>342</sup> The health status of the Rohingya both in and outside of Myanmar is worse than the majority population for multiple health indicators.<sup>343</sup> Compared to other ethnic groups in Rakhine State, the Rohingya have higher rates of mortality in children under 5 years (135–224 per 1000 livebirths compared to 77 per 1000 livebirths), of global acute malnutrition (14% higher), and of diarrhoeal disease in children (five times greater).<sup>344</sup> In Bangladesh, nearly 20% of Rohingya children have wasting and 60% are stunted, 50% higher than the Bangladeshi population.<sup>345</sup> Rohingya refugees also have an extremely low routine immunisation coverage (under 3%).<sup>346</sup>

There is increasing concern about the health conditions in Rohingya refugee camps, which are characterised by a lack of access to medical care and inadequate hygiene practices. Many Rohingya refugees suffering from diseases are not registered and may be carrying several unidentified communicable diseases, typically hepatitis B, tuberculosis, dysentery, respiratory illnesses, skin diseases, and malaria.<sup>347</sup>

One particular concern is that the infectious diseases could devastate the health support in refugee camps, as well as the possibility of being spread among local people due to the movement of Rohingya outside the camps for work.<sup>348</sup> Such individuals can be particularly difficult to trace if they illegally obtain a Bangladeshi passport and citizenship.

Most camp areas are in critically unhygienic conditions. Of particular concern are the primitive toilet facilities that create contaminated drinking and bathing water and environs.<sup>349</sup> The resulting dysentery and other gastro-intestinal diseases are a significant cause of illness and death in these camps, especially in children. Dental care is also virtually non-existent in the camps.<sup>350</sup>

Reproductive issues are endemic in refugee camps, especially lack of awareness regarding family planning, which increase birth and infant mortality rates, early marriage and other health challenges, as well as sexually transmitted infections. Furthermore, drug addiction and related diseases, such as HIV and hepatitis are also serious health problems.<sup>351</sup>

Mental health issues are also prevalent. One study estimates that over 17% of Rohingya refugee children are suffering 'severe mental health impacts'.<sup>352</sup>

## 5. Family Rights

### *Summary*

- Myanmar has violated international obligations protecting family rights, in particular freedom to marry, reproductive rights and rights of children.

<sup>342</sup> Advisory Commission on Rakhine State, Interim Report and Recommendations (March 2017) 9.

<sup>343</sup> Syed S Mahmood, Emily Wroe, Arlan Fuller, Jennifer Leaning, 'Recognising the Rohingya people' (3-9 December 2016) 388(10061) *The Lancet* 2714.

<sup>344</sup> Ibid.

<sup>345</sup> Ibid.

<sup>346</sup> United Nations Office for the Coordination of Humanitarian Affairs, *Joint Response Plan for Rohingya Humanitarian Crisis* (2018) 14.

<sup>347</sup> United Nations High Commissioner for Refugees, 'Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees' (May 2007) 29.

<sup>348</sup> Ibid.

<sup>349</sup> Ibid.

<sup>350</sup> Ibid.

<sup>351</sup> Syed S Mahmood, Emily Wroe, Arlan Fuller, Jennifer Leaning, 'The Rohingya people of Myanmar: health, human rights, and identity' (1 December 2016) 389(10081) *The Lancet* 1841, 1846, 1848.

<sup>352</sup> Human Rights Watch, *Are we not human?: Denial of Education for Rohingya Refugees in Bangladesh*, 5, 51, 63.

- Marriage between consenting Rohingya adults has been subject to a restrictive and arbitrary licensing system, making it expensive and difficult for Rohingya to marry.
- A two-child policy has been imposed on married Rohingya couples, interfering with their right to reproductive freedom.
- Rohingya children are subject to a range of human rights violations. Many of these overlap with broader human rights violations committed against the Rohingya, however, international instruments recognise the rights of children as a distinct group.

## 5.1 Freedom to Marry

*In Myanmar, the Rohingya have had their freedom to marry significantly restricted by an expensive and arbitrary licensing system.*

The freedom to marry provides that no marriage shall be entered into without the free and full consent of both intending spouses.<sup>353</sup> The right to marry is unduly restricted between consenting Rohingya adults due to financial and bureaucratic barriers. The Myanmar government has required the Rohingya people to obtain marriage licenses through military and immigration authorities, in a process which often requires identity checks, long waiting times and large bribes to be paid to officials.<sup>354</sup> The Rohingya are the only ethnicity required to obtain such a license in Myanmar.<sup>355</sup> To obtain marriage licenses, the Rohingya have reportedly been required to follow rules, which conflict with their religious beliefs.<sup>356</sup> For instance, men have been required to shave their beards and women have been required to remove religious head coverings for the licence photographs.<sup>357</sup>

In 2015, Myanmar adopted 'laws on the protection of race and religion', including a criminal penalty of 10 years imprisonment for unmarried couples who cohabit.<sup>358</sup> This means that only married couples may live openly and start a family, exacerbating the impact the restrictive marriage licencing system has on the Rohingya community.

In 2018, the Myanmar Government abolished orders requiring the Rohingya to seek government permission to marry, however the UN Fact-Finding Mission has noted that it remains to be seen whether the orders are also abolished in practice.<sup>359</sup>

## 5.2 Reproductive Rights

*A two-child policy imposed by the Myanmar Government on the Rohingya has interfered with the basic right of couples to decide freely the number, spacing and timing of their children.*

The CEDAW protects the 'basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children'.<sup>360</sup>

Since 2005, a condition of Rohingya couples obtaining a marriage license is that they agree to have no more than two children.<sup>361</sup> Couples who violate this restriction face 10 years' imprisonment.<sup>362</sup> Children born in contravention of this restriction, and children born to parents who have not received an official permission to

<sup>353</sup> ICCPR arts 23(2) and (3).

<sup>354</sup> Sigma et al, 'Marriage and Sexual and Reproductive Health of Rohingya Adolescents and Youth in Bangladesh: A Qualitative Study' (Population Council, Research Report, 2018) 5.

<sup>355</sup> United States Department of State, 12.

<sup>356</sup> United Kingdom Home Office, 'Country Policy and Information Note – Burma: Rohingya' (2nd ed, March 2019) 21.

<sup>357</sup> Ibid.

<sup>358</sup> Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports on Myanmar' (CEDAW/C/MMR/CO/4-5, 25 July 2016) 15.

<sup>359</sup> United Kingdom Home Office, 20.

<sup>360</sup> CEDAW art 16(1)(e). See also ICCPR, art 17.

<sup>361</sup> Fortify Rights, 'Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State' (Yale Law School, Research Paper, October 2015) 51.

<sup>362</sup> Ibid.

marry, may be added to a ‘black-list’ or ‘illegitimate children form’, affecting their ability to access education, healthcare and social services.<sup>363</sup> In May 2015, new restrictions were introduced by the Myanmar government requiring a gap of 36 months between births.<sup>364</sup>

Although it has been reported that these prohibitions have been arbitrarily enforced,<sup>365</sup> these restrictions clearly infringe on the freedom of Rohingya couples to decide the number, spacing and timing of their children.

*Reports indicate that reproductive and sexual violence is deployed against women to interfere with their productive rights.*

It is reported that local authorities have forced Rohingya women in hospital to take birth control, either through pills or injections.<sup>366</sup> Further, rape and the deliberate mutilation of genitalia are commonly deployed against Rohingya women with the effect that these women are less likely to be able to have children.<sup>367</sup> Women who have experienced sexual violence face cultural stigma and may be unable to marry or rejected by their husbands as a result of the violence.<sup>368</sup>

The consequence of this reproductive and sexual violence, often perpetrator by members of Myanmar security forces, effectively removes a women’s choice about starting a family and having children.<sup>369</sup>

### 5.3 Rights of Children

*International treaties specifically recognise the rights of children as fundamental human rights, which must be protected by the international community.*

The CRC creates a range of human rights obligations on Myanmar with respect to children. Further, Article 24 of the ICCPR provides that every child shall be protected by their family, society and the State as required by their status as a minor, shall be registered immediately after birth, and has the right to acquire a nationality. Amongst these obligations owed to children in Myanmar, four key breaches can be identified – failure to properly register Rohingya children, the prevalence of child marriage, the use of child soldiers and the use of child labour.

*Barriers exist to registering Rohingya babies and children, often preventing them from gaining citizenship and accessing social services.*

All children have the right to be registered immediately after birth.<sup>370</sup> Although procedures formally exist for Rohingya children to be registered, the process is complex and difficult to navigate.<sup>371</sup> It has been reported that since the 1990s, authorities have not issued birth certificates to Rohingya children in northern Rakhine.<sup>372</sup> The Advisory Committee on the Rakhine State noted that nearly half of residents in the Rakhine State lacked birth documentation.<sup>373</sup> Additionally, certain Rohingya children have been added to a ‘black-

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<sup>363</sup> United Kingdom Home Office, ‘Country Policy and Information Note – Burma: Rohingya’ (2<sup>nd</sup> ed, March 2019) 22.

<sup>364</sup> Fortify Rights, ‘Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar’s Rakhine State’ (Yale Law School, Research Paper, October 2015) 51.

<sup>365</sup> United States Department of State, ‘Country Reports on Human Rights Practices for 2019: Burma’ (Report, 2019) < <https://www.state.gov/wp-content/uploads/2020/02/BURMA-2019-HUMAN-RIGHTS-REPORT.pdf>>.

<sup>366</sup> Fortify Rights, ‘Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar’s Rakhine State’ (Yale Law School, Research Paper, October 2015) 51.

<sup>367</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 358 [1410].

<sup>368</sup> Ibid.

<sup>369</sup> Ibid.

<sup>370</sup> CRC, art 7; ICCPR, art 24.

<sup>371</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 112 [462].

<sup>372</sup> Ibid.

<sup>373</sup> Advisory Commission on Rakhine State, Interim Report and Recommendations (March 2017), p. 12

listed form' or 'illegitimate children form'.<sup>374</sup> It was reported that 5,111 children were blacklisted as of April 2011; however, it is suspected that this figure is actually much larger.<sup>375</sup>

*Child marriage is reported to be prevalent among the Rohingya both in Myanmar and refugee camps.*

Men and women of marriageable age have the right to marry and found a family.<sup>376</sup> Although State's have been left some discretion to determine the age of legal majority, the UN Commission on Human Rights has expressed concern about the minimum marriageable age being below 16.<sup>377</sup>

Child marriage is a common practice within the Rohingya community indicating system breach of this right.<sup>378</sup> In Myanmar, the minimum age requirement for marriage is 16 for non-Buddhist boys and 15 for girls.<sup>379</sup> Marriage is perceived to be very important for Rohingya women, who are discouraged from working and therefore marry for economic and social security.<sup>380</sup>

A survey of Rohingya refugees in Bangladesh indicated a strong preference for girls being married as children so to provide economic, social and sexual security for the child.<sup>381</sup> Child-marriage is more prevalent in refugee camps where there is no age restriction for marriage.<sup>382</sup> According to a 2016 UNHCR report, 41 per cent of women who had fled Myanmar were married before the age of 18, and 18 per cent had married before reaching 16.<sup>383</sup>

*Myanmar's military have been historically found to have forcibly recruited child soldiers.*

States are prohibited from recruiting any person below the age of fifteen years into their armed forces.<sup>384</sup> The UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict has noted that the use of children in armed combat roles constitutes a grave violation of international humanitarian law and amounts to a war crime.<sup>385</sup> The Tatmadaw has been reported to forcibly recruit children.<sup>386</sup> As a result, the Tatmadaw has historically been included by the UN General Assembly in a list of perpetrators of the recruitment and use of children in armed conflict.<sup>387</sup> In 2020, the Tatmadaw was delisted by the UN in recognition of a continued significant decrease in recruitment, and for prosecuting military officials who engaged in recruiting child soldiers.<sup>388</sup> Nonetheless, the Tatmadaw remain listed for the violations of sexual violence, and killing and maiming children, during armed conflict.<sup>389</sup>

<sup>374</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 113 [465].

<sup>375</sup> Ibid 113 [446].

<sup>376</sup> UDHR, art 16; ICCPR, art 23(2).

<sup>377</sup> Paul M Taylor, 'A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights' (Cambridge University Press, 2020) 648.

<sup>378</sup> Sigma et al, 'Marriage and Sexual and Reproductive Health of Rohingya Adolescents and Youth in Bangladesh: A Qualitative Study' (Population Council, Research Report, 2018) 1.

<sup>379</sup> United States Department of State, 'Country Reports on Human Rights Practices for 2019: Burma' (Report, 2019) <<https://www.state.gov/wp-content/uploads/2020/02/BURMA-2019-HUMAN-RIGHTS-REPORT.pdf>> 33.

<sup>380</sup> Inter-Sector Coordination Group, 'Gender Profile 1: For Rohingya Refugee Crisis Response' (Report, 3 December 2017) <<https://www2.unwomen.org/-/media/field%20office%20easia/docs/publications/2017/12/iscg-gender-profile-rohingya-refugee-crisis.pdf?la=en&vs=5258>> 1.

<sup>381</sup> Ibid 13.

<sup>382</sup> Ibid 15.

<sup>383</sup> United Nations High Commissioner for Refugees, 'Mixed-Movements in South East Asia' (April 2016) <[http://reporting.unhcr.org/sites/default/files/UNHCR%20-%20Mixed%20Movements%20in%20South-East%20Asia%20-%202016%20--%20April%202017\\_0.pdf](http://reporting.unhcr.org/sites/default/files/UNHCR%20-%20Mixed%20Movements%20in%20South-East%20Asia%20-%202016%20--%20April%202017_0.pdf)> 11.

<sup>384</sup> CRC, art 38(3).

<sup>385</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 'Child Recruitment and Use' (Web Page, 2020) <<https://childrenandarmedconflict.un.org/six-grave-violations/child-soldiers/>>.

<sup>386</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 71 [273].

<sup>387</sup> Ibid.

<sup>388</sup> United Nations General Assembly, 'Children and Armed Conflict: Report of the Secretary General' (9 June 2020, A/74/845-S/2020/525) 32 [239].

<sup>389</sup> Ibid.

*Rohingya children have been used for forced or compulsory labour by the Myanmar military.*

States are required to ensure children are protected from economic exploitation by, amongst other things, requiring State to provide a minimum age for admission to employment.<sup>390</sup> It is reported that the Tatmadaw consistently use Rohingya people for forced or compulsory labour.<sup>391</sup> In 2019, 196 children from Rakhine were verified as having been used by the Tatmadaw for labour such as camp maintenance, brick carrying and harvesting rice paddies.<sup>392</sup> Children have also been used as 'porters' to carry heavy packs of weapons and supplies for Tatmadaw patrols.<sup>393</sup> Porters are often required to walk long distances carrying heavy loads without rest, and are often subject to physical abuse and ill-treatment.<sup>394</sup>

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<sup>390</sup> CRC, art 32; ICESCR, art 6(1).

<sup>391</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 102 [412].

<sup>392</sup> United Nations General Assembly, 'Children and Armed Conflict: Report of the Secretary General' (9 June 2020, A/74/845-S/2020/525) 17 [124].

<sup>393</sup> Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, 39<sup>th</sup> sess, UN Doc A/HRC/39/CRP.2 (17 September 2018) 102 [413].

<sup>394</sup> Ibid 103–4 [419], [422].

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