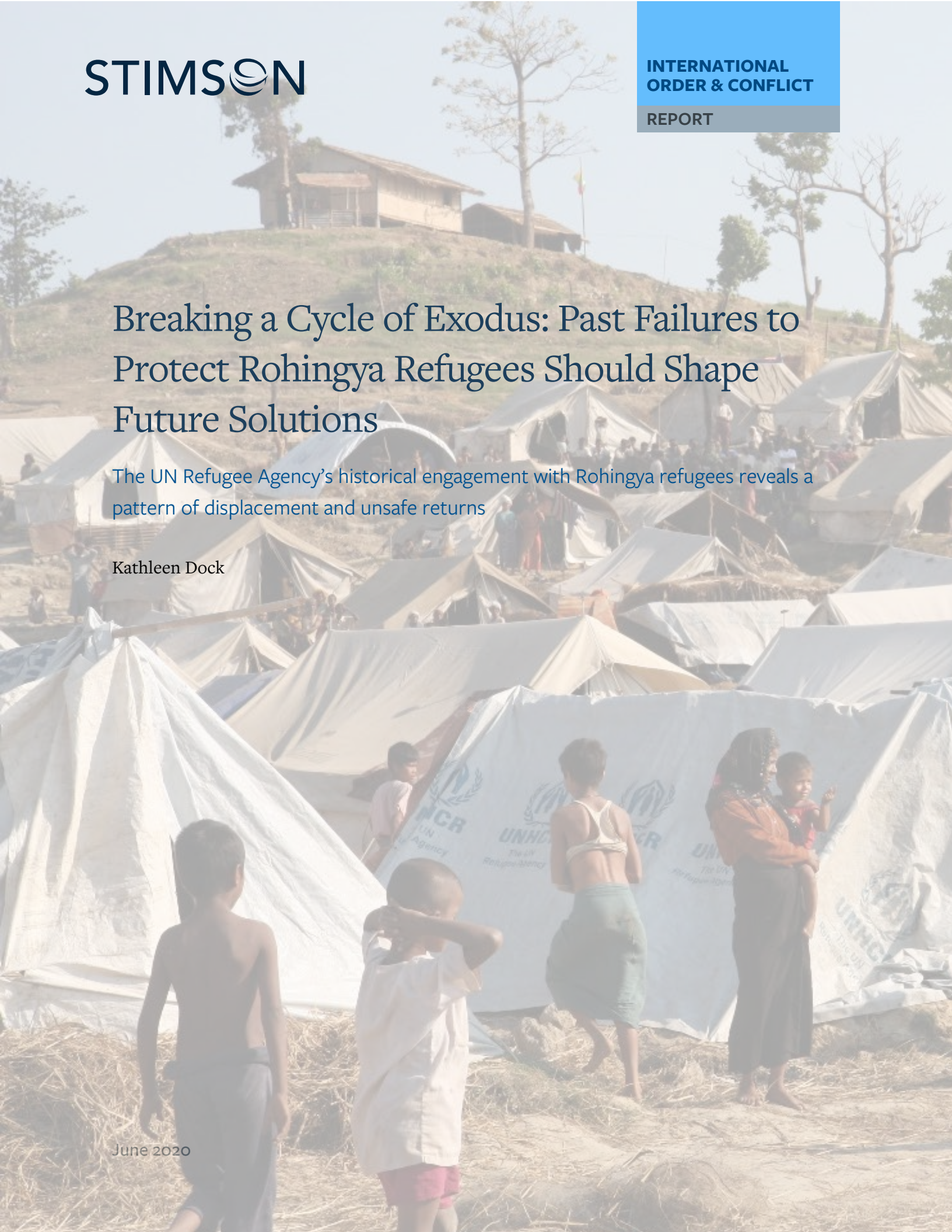# STIMSON

Breaking a Cycle of Exodus: Past Failures to Protect Rohingya Refugees Should Shape Future Solutions

The UN Refugee Agency's historical engagement with Rohingya refugees reveals a pattern of displacement and unsafe returns

Kathleen Dock

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Foreword

As the world faces record forced displacement of more than 70 million people across the globe, the international community must seek new answers to address this challenge. Such displacement has many causes, but in the case of the Rohingya, they have fled atrocities, crimes against humanity, and a nation that treats them as stateless.

The UN reports that two-thirds of roughly 25 million refugees – those escaping conflict and persecution – are from a few nations, including Myanmar. Humanitarian organizations and host nations struggle to provide for these people, and today their appeals are often underfunded. Agencies such as the UNHCR also face political pressures that its member states need to counterbalance for them to protect civilians.

This report is the result of original research by Kathleen Dock, a Scoville Fellow at the Stimson Center. The Herbert Scoville Jr. Peace Fellowship aims to build the next generation of policy and advocacy leaders. The program supports young graduates with a fellowship at leading institutions to learn how to engage on issues of international peace and security and bridge the academic and professional worlds.

Katie Dock has undertaken important, original work to explore this challenge, with an eye on history. Her use of historical records and documents, combined with interviews with experts, helps tell the story of the crisis facing the Rohingya and how it is not new. She explores how the pressures on UN agencies and the international community can lead to repeating past mistakes. The question is, can better choices be made today?

As Katie's supervisor, I believe she has tackled a tough and important set of issues with thoughtful research and useful insights. Since its founding, Stimson has sought to address international crises response and multinational tools, and brought focus to atrocity prevention for more than 15 years. These issues deserve deep attention and new thinking.

We are pleased to support this work, and believe that this paper contributes to a better understanding of how to address the UN's response to this crisis facing the Rohingya and to address the underlying causes of conflict and atrocities.

Victoria K. Holt
Vice President
June 2020

Acknowledgments

The story of this report has been building since I first stepped into the UNHCR archives in May 2018. I was conducting research as an intern for the Centre for Humanitarian Dialogue in Geneva, Switzerland, and it was in this role that I was introduced to the Rohingya people and their history. I am indebted to my colleagues at HD for their encouragement and patience in teaching me about this topic.

I must also thank the staff of the UNHCR archives in Geneva who assisted me in gathering the documents that made this report possible – first in 2018 and again in 2019, when I showed up needing more files in order to complete my senior thesis on UNHCR and Rohingya repatriation at the University of California, Berkeley. I am thankful for those professors that worked diligently with me on the project that so clearly laid the groundwork for this one.

The Scoville Fellowship gave me the chance to translate this academic pursuit into a concrete, action-oriented report. It is with sincere appreciation that I recognize the opportunity this fellowship gave me to work at the Stimson Center and meet colleagues who not only expressed interest in this project, but also supported it through giving their time, expertise, and camaraderie. To these colleagues, and in particular to Victoria Holt, without whose mentorship none of this would be possible – thank you.

I am also particularly grateful to the numerous experts, within and outside of Stimson, who engaged with me on this paper and provided invaluable commentary and insight.

Kathleen Dock
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Executive Summary

In August 2017, the international community watched as hundreds of thousands of Rohingya civilians fled their homes in Rakhine State following a brutal crackdown by the Myanmar military, which included crimes against humanity and acts of genocide. Over one million Rohingya refugees now live in camps in Cox's Bazar, Bangladesh.

This exodus is not without precedent. In 1978 and from 1991-1992, hundreds of thousands of Rohingya fled to Bangladesh following similar violence and persecution by the military. In both the 1970s and the 1990s, the majority of these refugees returned to Myanmar within a few years. These repatriation operations were premature and unsafe despite the presence of the UN Refugee Agency (UNHCR), which is mandated with refugee protection.

This report looks at today's crisis through the lens of these earlier displacements and identifies factors for the international community and United Nations to consider that contributed to a cycle of exodus in the past. This work is based on original research in the UNHCR archives, which reveals that in both the 1970s and the 1990s, UNHCR was unable – and in some cases unwilling – to carry out a safe, voluntary, and dignified repatriation. This research aims to

identify some of the reasons how and why previous protection efforts were insufficient in order to assess how key actors can more effectively respond to the current crisis.

Findings

Pressure on UN agencies will grow.

Currently, UNHCR and the government of Bangladesh remain committed to only carrying out a repatriation operation that is safe, voluntary, dignified, and sustainable. However, there is a gap between how the international community and multilateral agencies have translated norms and principles, such as voluntary repatriation, into practice in the past.

In both the 1970s and the 1990s, there was significant pressure from the government of Bangladesh to return the refugees to Myanmar. This pressure intensified as the crises went on, becoming a rationale for UN agencies to promote the return of refugees although the underlying causes of displacement in Myanmar remained unaddressed.

Political support is needed to maintain protection principles.

UN agencies can only operate in a country with the consent of the host state. As such, there is often a tension for humanitarian offices between maintaining access to a country and upholding a mandate that may call into question the actions of that government. In the 1970s and 1990s, UNHCR made choices that prioritized relationships with the governments of Bangladesh and Myanmar over explicitly addressing human rights and protection concerns facing refugees.

The shortcoming of this approach, however, is that protection practices and norms, such as individually interviewing refugees prior to return, were often sidelined in favor of maintaining these relationships. Local UNHCR offices need greater political support from UNHCR headquarters and from UN member states to counterbalance and push back against a government's coercive tactics while still maintaining essential access.

Disjunction within UN agencies weakens protection efforts.

In the past, different priorities and incoherent communication between UNHCR offices in Bangladesh, Myanmar, and Geneva also contributed to discrepancies in protection policy on the ground. The hierarchical structure of the agency meant that policy concerns in Geneva superseded reservations raised by field staff. In these cases, the decision to push for early repatriation despite protection concerns came from the top.

Alternatives to repatriation need consideration.

Returning refugees to unchanged conditions from which they fled can increase the likelihood of another future exodus. This pattern has done little to create permanent solutions for the Rohingya or Bangladeshi host communities. Repeating this history could injure civilians, further burden host nations, and harm UN and international efforts to support lasting peace – the costs are significant in lives, dollars, and effort.

For the current crisis, several factors – such as the text of the repatriation agreements, conditions in Bangladesh and Myanmar, and UN engagement – are reminiscent of past trends that contributed to premature and unsafe returns. Increased international attention and elevated refugee engagement are promising trends for a different outcome, but the international community still hails the return of refugees as soon as possible as the ideal solution to the crisis. A new approach is critical.

Key actors, and in particular, UNHCR, can adopt practices that avoid past mistakes and learn from them. Pursuing hasty repatriation in lieu of real change in Rakhine State was not a sustainable solution in the 1970s or the 1990s — and it would not be a sustainable solution today.

Recommendations

For UNHCR and Other UN Actors

Addressing modern displacement crises is challenging, but protection efforts, which should be backed by those concerned with addressing the broader crisis, can be improved by implementing lessons learned from the past. These lessons include:

Maintain a commitment to protection principles
- Continue UNHCR's standard practice of individually interviewing refugees to maintain safe and voluntary returns.
- Negotiate any future repatriation agreements as tripartite, between the government of Bangladesh, the government of Myanmar, and UNHCR.
- Use UNHCR good offices as an advocate for refugees and, as needed, privately and publicly criticize or praise the actions of governments that violate or uphold the norms of refugee protection.

Improve transparency
- Continue UNHCR practice of informing refugees of their rights and conditions in Rakhine State.
- Demonstrate transparency to both refugees and member states about any limits in the agency's capacity to protect refugees or eventual returnees.

Improve UN coordination

- Communicate information, analysis, and decision-making clearly and efficiently both horizontally and vertically across agencies and organizations.
- Decentralize decision-making and empower officers on the ground with greater authority. UN officials at all levels must take information from the field seriously.

Engage and consult with refugees and local leaders

- Shape proposed solutions around the desires of the Rohingya. Refugees should be included in negotiations and should inform decision-making at all levels.
- Seek and empower representative Rohingya civil society to ensure that those representing the community reflect an inclusive and diverse picture of that society.
- Offer, if and when conditions appear conducive to return, UNHCR's support and assistance to refugees through "go and see" visits to Rakhine State.

For Foreign States and Policymakers

Addressing this crisis requires member states and policymakers to back the UN humanitarian response and to provide support resolving the greater underlying causes of displacement. Measures include:

- **Exert diplomatic pressure** on the governments of Bangladesh or Myanmar to prevent any signs of coercion or forced return from occurring.
- **Fully fund the 2020 Joint Response Plan** for the Rohingya humanitarian crisis to alleviate the burden on Bangladesh and deter pressure for repatriation.
- **Demand the government of Myanmar allow international monitors and humanitarian actors** into Rakhine State and support international efforts for accountability.
- **Work with the government of Bangladesh to find intermediate solutions,** such as providing refugees with avenues to legitimate employment and education.

Introduction

"[This] exodus is a replay of 1978. If return follows the same pattern as 1979, refugees will reintegrate into the closed, conservative and segregated communities they left behind... They will not integrate into Arakanese or Burmese society or economy. They might be left in comparative peace for a few years, as they were after 1979, but real or imagined persecution will eventually resurface."[i] – UNHCR Report, 1993

In 1993, a report by the UN Refugee Agency (UNHCR) predicted that the oppression of Rohingya Muslims in Myanmar would persist following a UNHCR-facilitated repatriation from Bangladesh. Robert Cooper, a British diplomat and the report's author, wrote that though "not carved in stone," persecution would resurface and likely amount to another exodus.[ii]

Cooper's prediction proved true. Persecution of the Rohingya in Rakhine State continued throughout the 1990s and 2000s. Outbursts of violence against the Rohingya increased in 2012 and 2016 and reached unprecedented levels in August 2017 when the Myanmar military razed hundreds of villages, killed thousands of civilians, and engaged in rampant sexual and gender-based violence. While Myanmar has framed this campaign as a response to attacks on security posts by Rohingya militants, the operation appeared premeditated, highly organized, and heavily disproportionate.[iii] Since then, an estimated 745,000 Rohingya have fled to Bangladesh.[iv]

While this ongoing crisis has received international coverage, few reports have afforded much attention to the fact that this is not the first-time hundreds of thousands of Rohingya have fled to Bangladesh. The 1970s and the 1990s also saw massive forced displacements from Myanmar's Rakhine State. These exoduses, albeit on a smaller scale, closely parallel the one we see today, yet they are often relegated to a historical footnote when constructing the larger narrative.

In both the 1970s and the 1990s, the majority of those Rohingya that fled to Bangladesh returned to Myanmar within a few years. Both of these repatriations are still remembered by many UNHCR staff as some of the most difficult and disturbing moments in the agency's history.[v] Previous incidents established a cycle from exodus to repatriation, to intensified persecution, and to exodus again — and this cycle may be continuing. Almost as soon as refugees began crossing into Bangladesh in August 2017, governments and key international actors framed repatriation as the necessary and ideal solution. Bangladesh and Myanmar signed a bilateral agreement on repatriation in January 2018, and both Bangladesh and Myanmar have separate Memorandums of Understanding (MOUs) with UNHCR.[vi] Though the

first two repatriation exercises between Bangladesh and Myanmar did not return any refugees, the discussion is ongoing.

UNHCR has issued strong statements that repatriation must only happen at the refugees' freely expressed wish and that conditions in Myanmar are not yet conducive to a voluntary, safe, dignified, and sustainable return. Yet the most recent crisis is less than three years old, and as the fatigue of hosting over one million refugees grows deeper, there is a possibility that just like in the past, attempts at quick solutions will become more desperate. As such, it is critical to examine the past to ensure that a cycle of premature and involuntary return is not further perpetuated.

This research is largely based on original documents from the UNHCR archives in Geneva, Switzerland, which include, inter-alia, official financial reports, internal meeting notes, official agreements, media clippings, resettlement statistics, and cables between governments, UNHCR, and other agencies. This report identifies key challenges from past failures to protect and safely repatriate Rohingya refugees. It highlights political and structural obstacles facing protection efforts and identifies recommendations for addressing those obstacles. Returning refugees to unchanged conditions has not achieved durable peace for the Rohingya in the past — new and creative solutions are critical.

The current crisis demonstrates wide-ranging impacts that are not merely a matter of concern for the Rohingya, Bangladesh, and Myanmar. The level of violence and suffering caused by the Myanmar military is reason for international outcry, and the cycle of which this crisis is a part has broader implications. This history reveals a significant gap between how the international community and multilateral agencies translate norms and principles, such as voluntary repatriation, into practice. This gap needs to be acknowledged, recognized, and remedied as new solutions are considered today.

The Rohingya: A History of Persecution

The Rohingya – a distinct, predominantly Muslim ethnic group living in Myanmar's westernmost Rakhine State – have faced generations of systematic discrimination. Rakhine State, or Arakan, was an independent kingdom before the Burman empire conquered the land in 1784. The Rohingya claim to be descendants of these original Arakanese who encountered Islam in the 9th century by mixing with Muslim traders, warriors, and slaves from the Arab peninsula, Central Asia, and Bengal.[vii]

In 1885, the British incorporated Burma into their empire, and colonization exacerbated already existing ethnic divides. Tensions were heightened during World War II, as the Rohingya allied with the British, while the ethnic Rakhine population allied with the Japanese. Following Burma's independence in 1948, the new government recognized the Rohingya as Burmese nationals. Yet in 1962, when General Ne Win seized control of the country and established a military dictatorship, ethnic- and religious-based nationalism began to rise. Authorities accused the Rohingya of being illegal immigrants who first settled in Burma during British rule. Particularly as the Burmese identity became increasingly tied to Buddhism, the government and public have increasingly viewed the Muslim Rohingya as "invaders," and "outsiders."[viii]

Rohingya have been subject to forced labor, land seizures, restrictions on freedom of movement, and denial of education and employment. Most significantly, Myanmar's 1982 Citizenship Law grants citizenship based on membership in one of the "national races," which recognizes 135 ethnic groups. The Rohingya are not on the list, effectively rendering most Rohingya stateless.[ix] The government will not use the word 'Rohingya,' denying their identity and existence as a distinct ethnic group.

This systematic discrimination has periodically escalated to active violence. In 1977, the military launched an operation to register citizens and prosecute illegal immigrants. Mass arrests, violence, and brute force caused over 200,000 Rohingya to flee to Bangladesh. In 1991, operations in Rakhine State picked up once again – this time, under the premise of targeting

Rohingya people in Rakhine (Arakan) State in Myanmar

◉ - Rohingya majority

◯ - Rohingya minority

Rohingya Muslim extremists. 250,000 Rohingya poured into Bangladesh, recounting forced labor, rape, extrajudicial killings, and torture.

These instances of heightened violence against the Rohingya triggered an exodus, soon followed by repatriation – cycles that will be explored further in this report.

WHAT IS VOLUNTARY REPATRIATION?

In both the 1990s and today, UNHCR and the government of Bangladesh committed to only carrying out repatriation that is voluntary, safe, and dignified. To understand this commitment to voluntary repatriation – and how this commitment has been previously compromised – it is necessary to discuss UNHCR's mandate and what exactly 'voluntary repatriation' means.[x]

UNHCR's mandate for voluntary repatriation has evolved since the inception of the agency. The UNHCR Statute, adopted by the General Assembly on 14 December 1950, mandates the agency with seeking permanent solutions for refugees including "to facilitate the voluntary repatriation of such refugees." Additionally, the High Commissioner is "to assist governmental and private efforts to promote voluntary repatriation."[xi] This text introduced the concept that repatriation can be both facilitated and promoted, but it must be voluntary.

The 1951 Convention Relating to the Status of Refugees does not explicitly address voluntary repatriation. The convention does, however, codify the principle of non-refoulement, which strongly reinforces the concept of voluntary repatriation by stating that "no contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened."[xii] While neither Bangladesh nor Myanmar have ratified the 1951 Refugee Convention, the principle of non-refoulement has become so fundamental that it is considered customary international law, meaning the norm applies to all persons and all states at all times.

In 1980, UNHCR's Executive Committee Conclusion 18 recognized that the "voluntary character of repatriation should always be respected."[xiii] UNHCR should be involved in establishing the voluntary character of repatriation, arranging for guarantees to be provided by the country of origin, informing refugees of conditions in their country of origin, and monitoring, receiving, and assisting returnees once they are in their country of origin.

In 1985, Executive Committee Conclusion 40 elaborated on the definition of voluntariness: repatriation should only occur "at their [the refugees'] freely expressed wish" and should be carried out "under conditions of absolute safety."[xiv] Additionally, both Conclusion 18 and Conclusion 40 called for the practice of establishing a tripartite commission to facilitate voluntary repatriation, consisting of the countries of origin and asylum and UNHCR. Tripartite agreements on repatriation are standard practice for UNHCR and

have been implemented in several cases, including in agreements with Afghanistan and Pakistan, the Central African Republic and Sudan, and Uganda and Rwanda.

In this case, however, there has never been a tripartite agreement. Repatriation in the 1990s was instead implemented through three separate agreements: one between Bangladesh and Myanmar, one between Bangladesh and UNHCR, and one between Myanmar and UNHCR. The same arrangement is true today, though the UNHCR-Myanmar MOU now also includes the United Nations Development Programme (UNDP). Still, there is no tripartite agreement between Bangladesh, Myanmar, and UNHCR.

While these conclusions recognize that UNHCR has the mandate to both facilitate and promote repatriation, the agency is to promote repatriation only once conditions in the country of origin are deemed conducive to return. In 1996, the UNHCR Handbook on Voluntary Repatriation defined these "essential preconditions" for an environment to be considered conducive to return as: (1) an "overall, general improvement in the situation in the countr y of origin," (2) all parties be committed to respecting the voluntary character of repatriation, (3) the country of origin must have provided a formal guarantee or adequate assurances for the safety of returnees, (4) "UNHCR must have free and unhindered access to refugees and returnees," and (5) a formal repatriation agreement between UNHCR and the authorities concerned.[xv]

It is noteworthy that UNHCR issued this handbook as the repatriation of Rohingya refugees in the 1990s was ongoing. As will be shown in this report, that repatriation did not meet several of these conditions. Likewise, it is widely recognized that these conditions are far from being met today.

Past Challenges

Repatriation in the 1970s

In 1977, the Burmese military launched *Operation Nagamin* to register citizens and prosecute illegal immigrants. Mass arrests, violence, and brute force caused over 200,000 Rohingya to flee to Bangladesh. After 16 months, these refugees returned to Rakhine State following a bilateral agreement between the governments of Myanmar and Bangladesh. This process failed to meet the norms of safe and voluntary repatriation.

Food and Politics

In June 1978 – a little over a month after Rohingya refugees had initially fled to Bangladesh – the governments of Bangladesh and Burma signed a bilateral agreement, outlining a plan for the immediate return of those refugees deemed to be legal residents of Burma. In July 1978, UNHCR reported interviewing several refugees, none of whom were aware of the agreed repatriation operation. Those interviewed clearly expressed that they did not wish to return and "would only do so if they have no other alternative left, meaning that the Government of Bangladesh compels them to leave the country."[xvi] Yet by the fall of 1978, conditions in the camps had become dire, and thousands of refugees were ostensibly volunteering to return. Under the eyes of UNHCR, the government of Bangladesh restricted humanitarian assistance and food provisions to push refugees into the decision to return.

From the onset of the crisis, the objective of the government of Bangladesh was that the refugees should return to Burma as quickly as possible. The government worried about potential negative effects the influx could have on its population and did not have the resources to support hosting the refugees for an extended period. Given the initial unwillingness of the refugees to return, the government of Bangladesh was, according to a report written by the head of UNHCR's sub-office in Cox's Bazar at the time, "prepared to go to considerable lengths, and ultimately, it seemed, to use force if necessary" to promote return.[xvii] Accordingly, there were incidents of confrontation between the refugees and Bangladeshi officials, sometimes escalating to physical violence, over the issue of repatriation. The government imposed stricter policies on refugees and confined their movement to the camps.

UNHCR made several suggestions to the government of Bangladesh on how to implement and monitor voluntary repatriation. For example, the agency offered to have refugees sign a document attesting that their return to Burma was voluntary.[xviii] Another UNHCR officer

proposed that refugee leaders from Bangladesh could visit Burma to verify the reception arrangements for returnees.[xix] The government of Bangladesh rejected both suggestions as unnecessary.

Ultimately, rapidly deteriorating conditions in the camps provided the greatest impetus for refugees to return. On paper, the Bangladeshi government and UNHCR agreed upon the number of food rations provided to refugees. In practice, the government frequently withheld food and other crucial assistance to incentivize return. As one Bangladeshi official put it, "food has gotten mixed up with politics."[xx] Malnutrition and disease plagued the camps; by December 1978, the annual mortality rate in the camps was 17 percent – eight and a half times the Bangladeshi average.

In January 1979, UNHCR publicly acknowledged that over 10,000 refugees had died in the camps, yet the agency evaded assigning responsibility. A UNHCR Policy Development and Evaluation Service (PDES) report from 1979 argues the agency was complicit:

> *Can there be any excuses for an international organization like the United Nations High Commissioner for Refugees – whose brief is refugee welfare – to acquiesce in a policy which results in more than nine-thousand unnecessary deaths among a group of refugees?[xxi]*

According to the report, in a meeting with Bangladeshi officials, none of the U.N. agency heads present objected to using food as a political weapon.[xxii] At the time, UNHCR did not employ a single nutritionist in headquarters or at the field or regional level, but a nutritionist with the UN Food and Agriculture Organization in Bangladesh wrote several nutritional situation reports. These reports detailed the deteriorating situation in the camps and were provided to all UN agencies and government departments concerned. His advice was generally ignored, and ultimately, his contract was not renewed.[xxiii]

The PDES report acknowledges that the Bangladeshi government's policy had "become one in fact of starving the refugees into leaving."[xxiv] UNHCR failed to deter this policy and instead supported the government's goal of quick repatriation. The support for repatriation within UNHCR was based in part on a firm belief that conditions in Bangladesh would not improve, and therefore, it was better for the Rohingya to return. Some UNHCR staff also expressed skepticism about the real level of persecution that the Rohingya faced in Rakhine State.[xxv]

The experience of the Rohingya in the 1970s highlights that forced return does not exclusively occur as a result of physical force or violence. When asked why the number of volunteers for repatriation was increasing, a UNHCR officer replied: "Refugees were disturbed by the repeated serious incidents in the camps which had led to a number of deaths. They realized

they really had no future in Bangladesh."[xxvi] A choice between return and death from violence, malnutrition, or disease cannot be construed as voluntary.

As the PDES report also notes, this example reveals UNHCR's ability to exercise political pressure on sovereign governments – if and when the agency decides to do so. As soon as UNHCR publicly announced that the death toll had reached over 10,000, the government of Bangladesh – though publicly denying the accusation – increased food rations, instituted special emergency feeding programs, and allowed foreign medical professionals to work in the camps. The death rate in the camps in February and March 1979 was cut in half.[xxvii]

This example shows that public pressure from UNHCR, and particularly from UNHCR headquarters in Geneva, can be effective in altering government policy. The agency, though often hesitant to be so outspoken as to strain its relationship with host countries, can sometimes have more room to maneuver than it chooses to use.

Repatriation in the 1990s

From 1991-1992, 250,000 Rohingya once again fled Rakhine State due to persistent abuse and a new wave of security operations. Under the premise of targeting Rohingya Muslim extremists, the Myanmar army subjected Rohingya civilians to forced labor, rape, extrajudicial killings, and torture.[xxviii]Once more, the governments of Bangladesh and Myanmar quickly prioritized swift repatriation. Hoping to avoid the humanitarian disaster of the 1970s, UNHCR insisted on an increased role by directly facilitating the return of refugees. Sending a strong signal, the agency withdrew from the process entirely in December 1992 over concerns that the government of Bangladesh was once again forcibly repatriating refugees.

The agency reengaged with the government in May 1993 after signing an MOU that allowed UNHCR to individually interview refugees and verify voluntariness. In November 1993, the agency also signed an MOU with the government of Myanmar, giving UNHCR a presence on both sides of the border.

In August 1994, the agency officially declared conditions in Myanmar as safe for return, and UNHCR abandoned the individual interviews it had insisted be included in the MOU. Instead, the agency began a mass repatriation program. In just a few years, almost all the refugees had returned to Myanmar. Several NGOs and human rights organizations, including Médecins sans Frontières and Human Rights Watch, warned the repatriation was premature, involuntary, and unsafe.

This section highlights research and findings in three broad categories: the relationship between the government of Bangladesh and UNHCR, UNHCR's lack of access in and

relationship with Myanmar, and internal disjunction with UNHCR. These factors encapsulate several dynamics that contributed to the involuntary nature of the repatriation. The following sections will further expand on this history.

Host Country Tensions: UNHCR and the Government of Bangladesh

Bangladesh's strong desire that the Rohingya refugees return quickly was one of the biggest challenges facing voluntary repatriation in the 1990s. It is typical for repatriation to begin once UNHCR has established a presence in a country and can facilitate movements, yet in this case, the government of Bangladesh had already returned thousands of refugees before engaging with the agency. Additionally, the operation was not based on the standard practice of a tripartite agreement. As a result of these circumstances, UNHCR lacked control over the operation.

Even once UNHCR engaged in the repatriation program, the government of Bangladesh continued to return refugees without consulting the agency. A UNHCR Situation Report found that 84 percent of repatriations during November and December 1992 took place without UNHCR supervision.[xxix] These returns raised significant protection concerns. Refugee families reported having identification documents confiscated until they agreed to return to Myanmar, while others described threats and physical violence. One refugee reported that the Bangladesh Camp-in-Charge told him that UNHCR was present in Myanmar and was waiting to receive returnees, though, at the time of that statement, UNHCR had no presence in Myanmr.[xxx]

Additionally, Bangladeshi officials blamed UNHCR for the slow pace of repatriation and many argued against any engagement with the agency. Officials alleged that UNHCR and international NGOs had an incentive to perpetuate the refugee problem to maintain their relevance, an allegation that is being repeated by some officials today. Ultimately, in protest over rising protection concerns and their deteriorating relationship with the host government, UNHCR withdrew from the repatriation program entirely.

UNHCR officials in favor of this withdrawal warned against acting as a "rubber stamp," claiming that the agency's public association with the repatriation implied that they approved the operation as safe and voluntary. Protection concerns were so apparent that one UNHCR officer in Cox's Bazar warned, "UNHCR's international credibility is at stake."[xxxi]

The government of Bangladesh reengaged with the agency after facing harsh international criticism over the agency's withdrawal. On 12 May 1993, the government signed an MOU with UNHCR, ensuring that repatriation would be safe and voluntary, allowing UNHCR to conduct individual interviews and information sessions, and guaranteeing UNHCR free access to all refugees. Yet once individual interviews began, repatriation stalled. Interviewing each refugee who volunteered to return home took time. Growing impatient, the government of Bangladesh

told UNHCR that while voluntary return remained important, the need for early repatriation was "equally pressing."[xxxii]

In March 1994, the Bangladeshi Minister of Home Affairs wrote to UNHCR saying there needed to be a new approach to repatriation, including the "involuntary return of refugees."[xxxiii] Accusations that UNHCR was intentionally slowing down repatriation resurfaced. Officials told UNHCR that any UN or NGO staff not cooperating with government policy – i.e. the earliest possible return of refugees – would be asked to leave the camps or even the country.

By the end of April 1994, the government of Bangladesh was threatening not to renew its MOU with UNHCR. Some UNHCR officials began advocating for a larger-scale approach to repatriation to "starve off pressure and a lack of cooperation" from Bangladesh.[xxxiv] Yet at the same time, protection concerns were still abundant. Refugees International (RI) reported in June 1994 that some families who said 'no' to voluntary repatriation at transit camps in Bangladesh were transferred back to their original camps where "under the eyes of UNHCR staff, they were deprived of food and water and forced to stand on one leg and beaten until they fell repeatedly."[xxxv] When asked about coercive tactics, refugees interviewed by RI gave concerning responses: "they jailed my son," "they came at night," "they beat us all the time," "they deprive us of food," and "they send us by force to the transit camp."[xxxvi]

When asked why so many refugees had volunteered for repatriation, one refugee responded, "if they do not, they will be imprisoned, beaten or killed. For survival's sake, the answer must be 'yes.'" [xxxvii] Agreeing to repatriate under duress does not meet the conditions outlined in UNHCR Executive Committee Conclusion 40 that repatriation should only occur at the refugees' "freely expressed wish" and under "conditions of absolute safety."

As reports of this coercion persisted, some UNHCR officials argued that if the agency could not effectively protect the refugees in Bangladesh, then it was better to have them return to Myanmar. This stance was a drastic shift from 1992 when the agency withdrew from the operation over coercive measures and threats of involuntary repatriation. Additionally, this approach assumes that conditions in Myanmar would be safer than conditions in Bangladesh. Even if true – which the next section calls into doubt – this approach violates the refugees right to voluntarily and independently make that determination. Nonetheless, the idea developed that if refugees would be repatriated regardless of UNHCR's role, then it was better to have UNHCR facilitate the process and offer as much protection as possible along the way.

The agency was not transparent about this calculation. The government of Bangladesh wanted to remove guarantees for voluntary repatriation from the MOU, but UNHCR maintained that such provisions in the text were non-negotiable. Removing these fundamental principles from the MOU would have likely led to severe criticism from within the agency and from UN

member states. Instead, UNHCR senior officials suggested that changing the "pragmatic approach" to repatriation could speed up the process, thereby placating the government of Bangladesh without renegotiating the MOU and risking criticism.[xxxviii]

On 24 July 1994, UNHCR headquarters gave the Cox's Bazar office "full authority to make operations to substantially increase numbers for repatriation." UNHCR announced an assessment that "conditions have been created to allow all refugees to return Myanmar," and the agency began actively promoting repatriation.[xxxix] Though the principle of voluntariness was never removed from the MOU, the agency suspended individual interviews and replaced them with mass registration sessions. Success was defined as returning as many refugees as possible, as quickly as possible.

Presence over Protection: UNHCR and the Government of Myanmar

UNHCR's relationship, or lack thereof, with the government of Myanmar proved to be another significant challenge to conducting safe and voluntary repatriation. When the crisis began in 1991, the government of Myanmar routinely rejected any offers of UNHCR financial or technical assistance, maintaining that the situation should be handled bilaterally between Myanmar and Bangladesh. A high-level Burmese official stated that a UNHCR presence in Rakhine State could set a dangerous precedent – disenfranchised groups would "make all sorts of complaints and demands" upon UN officials, putting the organization in an uncomfortable position concerning internal Burmese issues. The high-level official warned against an "undesirable situation of confrontation" between the Myanmar government and the UN.[xl]

When the government of Myanmar did begin to open up to the agency, UNHCR was eager to maintain whatever relationship possible. Senior officials argued that any access to the country, even if limited, was better than no access at all.

UNHCR and the government of Myanmar signed an MOU on 5 November 1993. The MOU granted UNHCR full access to all returnees and guaranteed the issuance of identity cards and freedom of movement for the Rohingya upon return. The provisions in the MOU did not translate to the UNHCR presence on the ground or the actual rights of returnees.

For example, while the MOU guaranteed freedom of movement, it did so "in conformity with the existing laws and regulations." One UNHCR official noted this distinction but dismissed the qualifying clause as a "minor technical issue."[xli] This qualifying clause proved detrimental to the rights of returnees, as the existing laws and regulations prevented freedom of movement for the majority of Rohingya. Under the 1982 Citizenship Law, most Rohingya were classified as stateless or foreign residents and accordingly, did not have the right to freedom of movement under the 1864 (amended in 1940) Foreigners Act. As such, the MOU's promise of "freedom of movement" meant little for returnees in practice.

Similarly, while the MOU guaranteed "appropriate identification papers," an internal UN report during the negotiations confirmed that the government chose this vague language because they "did not wish to spell out national identification papers... as they consider it may give rise to political implications through the country."[xlii] UNHCR officials at the office in Yangon expressed that they did not know what the difference between 'identity paper' and 'identity documents' would mean for refugee rights or potential citizenship.

Nonetheless, following the signing of the MOU, UNHCR announced that "the returnees will be issued with the appropriate identification papers and that the returnees will enjoy the same freedom of movement as all other nationals."[xliii] At best, these statements were an overly optimistic and perhaps naïve assessment of the circumstances returnees would face in Rakhine State. At worst, these statements show a deliberate twisting of reality to justify a transition to mass repatriation.

Not only was the text of the MOU intrinsically flawed concerning protection for returnees, but UNHCR headquarters consistently overstated the agency's presence and capacity in Myanmar. While UNHCR used this presence in Myanmar as a means to guarantee safe returns, the logistical capacity of the agency's operation was grossly insufficient to make such assurances. One UN field officer recognized the challenge: "the terrain to be covered... will place considerable demands on them, limiting their ability to address effectively the various issues which will be before them at the outset of the operation."[xliv]

UNHCR staff in Yangon warned against creating "high expectations" when informing potential returnees about the conditions in Rakhine State. The Yangon sub-office emphasized that small-scale projects proposed for reintegration, such as improving health, water, sanitation, and education, had not been set up yet, and "it would be incorrect to assume that each and every returnee would be able to directly benefit from these projects."[xlv]

Again, UNHCR was not transparent with the refugees about these conditions, maintaining instead that the signing of the MOU meant the agency was operational in Rakhine State and prepared to receive returnees. Refugees heard from family members and friends still in Myanmar who reported that despite the MOU, they had never seen a UNHCR office or person in their villages. One UNHCR officer noted that, though the refugees themselves were excluded from the decision-making process, "the refugees possess[ed] better country of origin information than UNHCR."[xlvi]

Despite this reality, UNHCR officials were eager to maintain the agency's relationship with the government of Myanmar, regardless of how limited. UNHCR's presence and capacity on the ground were insufficient to meet the guarantees being given to refugees about the conditions they would face once they returned to Rakhine State.

Disjunction and Disagreement within UNHCR

Compounding these challenges, UNHCR offices were disparate and uncoordinated in addressing the crisis. A lack of communication between local offices in Myanmar and Bangladesh contributed to incoherence, frustration, and premature movements of refugees. Moreover, UNHCR officials in Geneva imposed policies on the agency's local and field offices despite internal resistance. The hierarchical structure of the agency meant that political concerns in Geneva superseded those protection concerns raised by staff on the ground in Bangladesh and Myanmar. Revealing of the agency's approach, a senior UNHCR official in 1993 stated, "these are primitive people… at the end of the day, they will go where they are told to go."[xlvii]

UNHCR staff in Cox's Bazar expressed concern over coercive tactics used by Bangladeshi officers and "seriously question[ed] the advisability of continuing UNHCR's repatriation."[xlviii] One local officer wrote to headquarters saying he was "mystified" that headquarters displayed "a total lack of knowledge" regarding the program in Bangladesh.[xlix]

The Dhaka office consistently reached out to officials in Geneva for clarification on crucial issues following the signing of the MOU between UNHCR and the government of Myanmar: "Will the issuance of identity documents be tantamount to the restoration of citizenship rights? Will there be a general amnesty for returnees? When will UNHCR colleagues arrive in Rakhine State?"[l]Headquarters expected the agency's office in Bangladesh to brief refugees in information sessions about the situation in Rakhine State so that refugees could make informed decisions about their return. UNHCR staff on the ground, however, evidently lacked the necessary information to answer questions of paramount importance to the refugees.

Further, while UNHCR headquarters used the agency's presence in Myanmar to justify promoting returns, as noted in the previous section, officials on the ground in Yangon and Rakhine warned against prematurely informing returnees of UNHCR's role before relief projects and protection measures were properly established in Myanmar. Key posts were not filled and logistical arrangements were not complete.

Nonetheless, some UNHCR officials in Bangladesh – under pressure to accelerate repatriation from the Government of Bangladesh – dismissed these concerns: "Our approach is to provide refugees with factual information as indicated in the [Government of Myanmar – UNHCR MOU]. While we recognize the limitations of this approach, it is deemed fair as it does not raise expectations or discourage refugees from opting to return to Myanmar."[li] Refugees made decisions about return based on these information sessions, yet officials in Yangon were clear that the information indicated in the MOU did not reflect the reality returnees would face.

Seemingly aware of the weaknesses of these information sessions, UNHCR staff in Bangladesh voiced concerns about the voluntary nature of the repatriation, specifically calling for the continuation of individual interviews of heads of families to assess voluntariness. Staff in Cox's Bazar told UNHCR headquarters that stopping the standard practice of interviews risked "losing credibility with the refugees during the large-scale repatriation operation and being viewed by the international community as lacking the integrity to abide by its own protection principles."[lii]Dhaka requested greater political support from Geneva to resist the government of Bangladesh's coercive tactics despite "policy concerns" at headquarters. Staff in Bangladesh went so far as to warn the agency of being complicit in refoulement:

> A *decision by UNHCR not to verify the refugees' voluntariness in individual voluntary repatriation interviews would allow the* [*Government of Bangladesh*] *to insist that refugees return and to force the refugees to return to Myanmar… this approach would present a substantial risk of refoulement.*[liii]

Nonetheless, headquarters replaced individual interviews with mass registration.

A 2013 review of UNHCR repatriation policy found that UNHCR headquarters had a culture that measured the success of repatriation movements in terms of numbers. Reports emphasized targets, quotas, and deadlines. UNHCR officials defended the quantification of repatriation as necessary for logistical planning, but this culture also carried the risk of prioritizing reaching a target number of returnees over the interests and safety of the refugee population.[liv]

As of August 1994, UNHCR headquarters declared that an overwhelming 95 percent of refugees expressed a wish to return to Myanmar, and therefore, the mass repatriation operation was voluntary.[lv]Yet according to a Human Rights Watch report, this figure was misleading. Individual interviews had stopped. Instead, loudspeakers were used in camps to disseminate information about conditions in Rakhine, informing refugees that conditions had improved and they should return. As a further incentive, officials warned refugees that if they were to return to Myanmar after the official repatriation process, they could be arrested for illegal departure and imprisoned for three years.[lvi] Additionally, UNHCR had not informed many refugees of their alternatives to repatriation. When MSF conducted an alternate awareness survey to verify UNHCR's findings, they instead found that 63 percent of refugees did not want to return to Myanmar, and 65 percent were not aware of their right to refuse repatriation.[lvii]

The decision to push for repatriation in 1994 was a political calculation made primarily by senior officials in Geneva. This decision was imposed on those in the field, despite frequent expressions of concern. The disregard for the advice and information from those at the local level is problematic, as these officials had the greatest understanding of the reality facing

refugees. To avoid the mistakes made in the 1990s, a more direct and coherent pipeline is needed between the field and headquarters. Local concerns must be taken into serious account when political and strategic calculations are made at the highest level.

1970s and 1990s: Persistent Challenges

Both the repatriation operations in the 1970s and the 1990s were deeply flawed and violated principles of voluntary return. In the 1970s, coercive tactics, such as the denial of food aid and the use of physical abuse, violated international norms of refugee protection. UNHCR, though not directly involved in the operation, was passive in the face of such violations.

In the 1990s, coercive tactics by Bangladeshi officials persisted. Though officially involved in the process, UNHCR failed to be transparent with refugees about the level of protection they could offer, instead prioritizing the agency's relationships with the governments of Bangladesh and Myanmar. UNHCR was uncoordinated and concerns from field officers were often ignored in decision-making. The refugees returned to a situation that had hardly improved from the one from which they fled, sowing the seeds for future displacement.

Continuing the Cycle?

Applying these Findings to Today

The essential question remains whether patterns of the past – pushing Rohingya refugees to return to unchanged conditions only to have them face persecution, violence, or displacement once more – will happen again. Many of the same factors that previously contributed to such an outcome persist. Repatriation continues to dominate the discourse on solutions. However, the current situation is not a mirror image of its precedents; several important factors – some hopeful and others worrisome – distinguish this crisis from the past.

Similar Patterns

Agreements

Currently, the framework of agreements on repatriation is essentially the same as in the 1990s. Although it remains to be implemented in any significant way, the bilateral agreement signed by Myanmar and Bangladesh on repatriation in November 2017 is almost verbatim from the 1992 Joint Statement. Officials from both Bangladesh and Myanmar have stated that repatriation would be carried out using guidelines from 1992. Furthermore, the texts of UNHCR's MOUs with the respective governments are also similar. Language that intentionally restricted Rohingya rights in the 1990s is yet again included. For example, the MOU between UNHCR, UNDP and the government of Myanmar signed in June 2018 still includes a provision for freedom of movement "in conformity with existing laws and regulations." The laws and regulations that inherently prohibit the Rohingya's right to freedom of movement—such as their citizenship status—have not changed, so returnees would still face this restricted reality.

Conditions in Bangladesh

Bangladesh deserves significant acknowledgment of and praise for its goodwill in accepting hundreds of thousands of refugees since the onset of the crisis, and the country's generosity has likely saved many lives. Nonetheless, as Bangladesh continues to bear the burden of hosting around one million refugees, pressure from within the country to repatriate the refugees may become more forceful.

As stated, conditions in Bangladesh were a primary reason for premature repatriation in the 1970s and 1990s. Many officials argued that if UNHCR could not adequately protect refugees in Bangladesh, then it was better to help them return. Reminiscent of this past, bouts of tension

between Bangladeshi officials and international agencies are once again present, as are protection concerns over the treatment of Rohingya in the camps.

Bangladeshi government policies towards the Rohingya have become increasingly strict, particularly since August 2019. The failed attempts at repatriation, upticks in crime, and demonstrations by Rohingya civil society have contributed to a significant shift in public opinion. Instead of being viewed as asylum seekers and survivors, the Rohingya are now primarily viewed by host communities as a security threat.[lviii]

Accordingly, the government has imposed harsher restrictions on the camps by limiting freedom of movement, cutting cellphone and network access, and beginning to construct fencing around the camps. In a positive development, the government decided in January 2020 to expand access to education for Rohingya youth, but this policy seems to be an exception among the broader trend towards restrictions.[lix]

There have been crackdowns on Rohingya civil society leaders, and NGOs have faced increasing pressure not to engage with these groups. Rohingya volunteer and cash-for-work programs have been limited, and some NGOs have had their access to the camps revoked entirely.[lx] Officials have accused NGOs of 'malpractice' and conducting anti-repatriation activities – similar to the rhetoric used in the 1990s that scapegoated UNHCR for the stalling of repatriation.

In an interview on 4 September 2019, the Bangladeshi Foreign Minister stated that if UN agencies did not support relocating refugees to Bhasan Char, a potentially uninhabitable island in the Bay of Bengal, then the agencies should leave the country. About the Rohingya, he said, "We are willing to send them anywhere."[lxi] The Foreign Minister has also suggested that the government would purposefully make conditions in the camps less comfortable to incentivize Rohingya to repatriate.[lxii]

Despite these comments, the Bangladeshi government has not moved forward with plans to relocate Rohingya refugees to Bhasan Char. Nevertheless, authorities did not adequately consult nor inform refugees about the possible relocation, allowing misinformation and fear to disseminate. There have been reports of camp authorities adding the names of Rohingya refugees to lists of 'volunteers' for relocation without notifying them. Even if these plans are currently on pause, they reveal concerning patterns for the future inclusion and security of the refugees in these processes.

Likewise, the first two attempts to begin repatriation were chaotic and ineffective. In November 2018, the governments declared that 2,200 Rohingya were on lists for voluntary repatriation, announcing the operation just a few days before it was to begin. UN agencies were

not given much warning about the announcement and were excluded from preparation. Refugees were not informed whose names were on the list, and there was widespread panic that they may be forced to return. Ultimately, the exercise was unsuccessful. The government sent buses to the camps to facilitate the return, but no refugees showed up. Though no Rohingya were returned, the impacts were significant. Humanitarian agencies reported spikes in mental health concerns and at least one attempted suicide.

The second repatriation attempt, in August 2019, was slightly more coordinated, though it also did not result in any returns. Given a few more days' notice, UNHCR was able to consult with those refugees on the list for repatriation and identified that no Rohingya wanted to voluntarily return. The lack of advanced notice and inconsistent distribution of information during both operations establish problematic practices for any future repatriation attempts.

Conditions in Myanmar

As in the past, Myanmar is reluctant to engage with international agencies. The government frequently denies human rights abuses, including those accusations laid out by the UN's Independent Fact-Finding Mission in 2018, which found that past abuses include acts of genocide, crimes against humanity, and egregious levels of systematic sexual and gender-based violence.[lxiii] The government has restricted access to Rakhine State and has blocked some UN officials, such as members of the Fact-Finding Mission and UN Special Rapporteur Yanghee Lee, from entering the country.[lxiv]

Abuses in Rakhine State continue. In September 2019, a UN Fact-Finding Mission report found persistent abuse by the Myanmar military in Rakhine State and warned of a continued threat of genocide against the Rohingya.[lxv] In January 2020, the International Court of Justice, in a case accusing Myanmar of genocide, found sufficient cause to call upon "provisional measures," requiring Myanmar to take steps to prevent acts of genocide against the Rohingya and to preserve evidence of possible genocide.

The BBC has reported widespread destruction of Rohingya villages; where homes once stood, satellite images show security bases and government facilities.[lxvi] Since January 2019, new conflict in Rakhine State has erupted between the military and another ethnic group native to the state, the Rakhine. Conditions in Rakhine State are not improving; they may be deteriorating. While the government of Myanmar has presented conditions as conducive to return, it appears that any repatriation operation would be unsafe and premature.

Nonetheless, the government of Myanmar, the government of Bangladesh, significant donor states, and UNHCR discuss repatriation as if it is the ideal solution and should happen as soon as possible. Without concrete change in Myanmar, orienting the conversation about solutions towards speedy repatriation is dangerous.

The current approach to assessing conditions conducive to return in Rakhine State is repeating mistakes of the past. Political and structural change in Myanmar is deadlocked, offering little hope for expanded rights for the Rohingya. Instead, international actors operating in Rakhine State have emphasized development and humanitarian aid. A UNHCR press release announced: "UNHCR is supporting the Government of Myanmar's efforts through the implementation of quick impact projects to improve conditions for all communities in Rakhine State and promote social cohesion between them, so that the voluntary return and reintegration of refugees is possible."[lxvii]

Development is essential to improving conditions in Rakhine State. However, these 'quick impact projects' alone will not achieve sustainable reintegration in the absence of addressing the root causes of the crisis. As one refugee in 1992 stated, "UNHCR will give us two months of food, but how important do you think that is compared to the lack of justice, peace, and security?"[lxviii] The same 1990s report asked refugees if UNHCR assistance projects on the other side of the border were an incentive to return. Not one person gave a positive reply. While aid and development are crucial components of durable solutions, these projects on their own cannot guarantee long time peace and security, nor are these the solutions the refugees desire. Since August 2017, refugees in Cox's Bazar have organized very specific lists of demands for return, including guarantees of citizenship and accompanying political and civil rights.[lxix] These measures cannot be achieved through quick impact projects.

As past crises have demonstrated, repatriating the Rohingya without significant political reform is not sustainable. Solutions must focus on pushing Myanmar to alter its discriminatory and violent policies while understanding that the Rohingya need intermediate solutions until substantive change occurs in Rakhine State.

United Nations Engagement

UN agencies can only operate in a country with the consent of the host state, and as such, there is often a tension between maintaining access to the country and abiding by a mandate that may call into question the actions of that government. In both the 1970s and 1990s, UNHCR – an agency mandated with refugee protection – prioritized relationships with the governments of Bangladesh and Myanmar over explicitly addressing human rights and protection concerns facing refugees. There are signs that this approach continues across the UN system to the detriment of the safety and security of the Rohingya.

It is necessary to note that UNHCR has remained committed to voluntary repatriation since the onset of this most recent crisis and is working to provide refugees with essential assistance and protection. As previously discussed, during the repatriation exercise in August 2019, UNHCR interviewed refugees and upheld their right to refuse repatriation. The agency

frequently reiterates that any repatriation of refugees must be voluntary, safe, and dignified and has declared that it does not believe conditions in Myanmar are conducive to return.

Nonetheless, on a broader structural level, the United Nations Independent Fact-Finding Mission found that the approach to Myanmar by many UN agencies – an approach that prioritizes quiet diplomacy, humanitarian access, and development goals – "demonstrably failed" to adequately address human rights concerns. Further, the report found "few signs of any lessons learned," pointing to the absence of human rights considerations in any of the recent agreements signed between the UN and the government of Myanmar.

At the recommendation of the Fact-Finding Mission, the UN commissioned Ambassador Gert Rosenthal, a Guatemalan diplomat, to conduct an independent inquiry into the United Nations' involvement in Myanmar from 2010 to 2018. His report finds instances of discord not unlike the ones UNHCR faced in the 1990s.

The report identifies this central tension in the UN's work:

> *The United Nations is armed with its moral authority… but it has limited political space in countries whose governments forcefully invoke sovereignty and non-intervention in their internal affairs as a cover for not meeting their commitments to abide by international humanitarian and human rights laws and norms.[lxx]*

In the past, both the governments of Bangladesh and Myanmar have emphasized sovereignty when international agencies or bodies critiqued their conduct. The same is true today.

Rosenthal reports that the government of Myanmar since 2010 has invited many UN agencies to set up offices, though UN officials and staff remain under scrutiny and can face harassment or intimidation by the government. Those agencies with human rights mandates, such as the Office for the High Commissioner for Human Rights (OHCHR), must fight for visa authorization for their staff and are denied access to the country more frequently than other agencies.

The report acknowledges that UN officials frequently disagreed on how to engage with the government of Myanmar. Some favored a robust advocacy approach – one more openly critical of the government's actions – while others pushed for principled engagement, similar to those officials who argued in the past that it was better to maintain a relationship with the government in order to have political space to exert influence. In part because of these tensions, the UN lacked a clear, unified strategy.

Also reminiscent of the past, the report reveals a lack of systematic and unified analysis coming from the field. Higher-ups were sometimes told what they wanted to hear, not what they needed to know. For appropriate and decisive solutions to be employed, information from the

center and peripheries of the UN system must flow effectively in both directions. UNHCR failed to do this in the 1990s in Bangladesh and Myanmar, and according to Ambassador Rosenthal's assessment, the broader UN system still struggles to make these changes.

Notable Differences

International Attention

International and media attention on the crisis today is much higher than in the 1970s or the 1990s. Indeed, the displacement of the Rohingya is still not remembered as one of the most significant efforts of UNHCR in the 1990s. For example, in Sadako Ogata's memoir, aptly titled *The Turbulent Decade: Confronting the Refugee Crises of the 1990s,* the Rohingya case is not mentioned once.[lxxi] Today, the situation is quite different. While the world is still dealing with many competing crises, the atrocities committed against the Rohingya have received international public attention and made headlines. A search of *The New York Times* archives from 1990-1999 for the word 'Rohingya' comes up with only five results; broadening the search to 'Burmese refugees' produces ten hits. Yet since just August 2017, searching the word 'Rohingya' comes up with over 600 results.[lxxii]

Additionally, today there is a movement for international justice and accountability that did not exist in the 1990s. The International Court of Justice and the International Criminal Court are both looking at cases with regard to the actions of the Burmese military since 2017. While the Security Council has not acted on the topic, world powers, such as the United States and the European Union, have imposed sanctions on numerous Burmese military commanders, including Senior General Min Aung Hlaing.

Given the significant international attention still tuned on this ongoing crisis, it is unlikely that the government of Bangladesh could take the same actions to coerce refugees to return that it did in past cases without facing significant international backlash. The risk of coercion could resurface, however, should international attention or diplomatic pressure wane.

Refugee Engagement

Another encouraging development is the engagement of the refugees themselves. Rohingya refugees in Cox's Bazar are increasingly making demands and advocating for the conditions under which they would return to Rakhine State.

As noted earlier, a Médecins sans Frontières report in 1994 found that 65 percent of refugees were not aware of their right to refuge repatriation, resulting in refugees 'volunteering' for repatriation, though they did not actually wish to return. This awareness has changed dramatically, demonstrated most clearly by the fact that no refugees agreed to return in the

bilateral repatriation attempts in November 2018 and August 2019. Additionally, in a survey of the refugee camps in 2017 conducted by Xchange, 99 percent interviewed said they would only go back to Myanmar if "certain conditions were met."[lxxiii] The majority mentioned citizenship, freedom of movement and religion, and the restoration of their rights and dignity.

These acts of resistance show an increased understanding and empowerment of the Rohingya's rights as refugees, even if Bangladesh refuses to recognize them as such. Rohingya leaders are utilizing social media and local organizing, and refugees are able to share their experiences and demands with a wide international audience. This engagement is important and should be supported, as ultimately, the refugees' desires should be prioritized in any solution. Yet while the refugee voice is louder than it was in the 1990s, the Rohingya have not been included in any formal agreements on repatriation, and recent restrictions by Bangladesh are quieting Rohingya civil society groups in the camps.

Political Transition in Myanmar

Myanmar has undergone significant political and economic change in the past decade. In 2010, a military-backed civilian government replaced military rule in Myanmar. Since then, the world has cautiously watched the democratic opening of the country, particularly since 2015 when the National League for Democracy (NLD) – the party of Aung San Suu Kyi, who was put under house arrest by the military regime for years – won the majority of seats in both houses of parliament. In 2016, Aung San Suu Kyi was designated "State Councellor," the de-facto leader of the civilian part of the government. While the army still controls many levels of power and possesses an automatic veto in parliament, this transition was widely celebrated as a sign of hope for a country that had suffered under military rule for decades.

Yet despite this seemingly positive trend, human rights abuses in Myanmar did not subside. Crackdowns in 2012 and 2016 preceded what were the most horrific crimes against the Rohingya in 2017. Abuses at the hands of the military have also continued against Myanmar's other ethnic minorities, such as the Shan and Kachin.

Therefore, while the political context in Myanmar is different from that of the 1990s, there has not been any indication that the government is willing to address its discriminatory policies towards ethnic and religious minorities. The civilian government has actively defended the military's actions, and in December 2019, Aung San Suu Kyi led the country's argument in front of the International Court of Justice against accusations of genocide. Aung San Suu Kyi and the National League for Democracy refuse to recognize the Rohingya by name, while continuously whitewashing the crimes committed against them and other minorities by the military.

Shared Mandate with the International Organization for Migration

In the 1990s, though other agencies were present in the camps, UNHCR was the focal point for coordinating and distributing aid, managing movements, and protecting refugees. This role for UNHCR is standard in any refugee response, but the current humanitarian response architecture in Cox's Bazar is unlike any other in the world.

UNHCR now shares a mandate for managing the camps with the International Organization of Migration (IOM). Due to past relations with UNHCR and a reluctance to categorize the Rohingya as refugees, Bangladesh appointed IOM as its lead partner in its 2014 "National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals." UNHCR was confined to working only with the 30,000 Rohingya refugees living in officially registered camps left over from the 1990s, though in 2014 there were over 200,000 unregistered Rohingya in Bangladesh.

UNHCR pushed for a larger role for the agency in the response, particularly in leading protection efforts beyond the officially recognized refugee camps. IOM supported the expansion of UNHCR's role, particularly in the protection sector, as IOM does not have a mandate for refugee protection. To manage the different actors in the response, the Inter-Sector Coordination Group was created, eventually led by the Strategic Executive Group (SEG), which is chaired by the IOM Chief of Mission, the UNHCR Representative, and the UN Resident Coordinator.

According to a 2018 report, about half of the refugees lived in camps managed by IOM, while half lived in camps managed by UNHCR based on a geographic division of responsibility.[lxxiv] The report describes that there was no single entity in charge, leading to "fierce and unhelpful competition" between the two agencies. This division of leadership led to tension, service fragmentation, and a loss of efficiency. Due to the agencies' policy and process differences, such as IOM's lack of a protection mandate, UNHCR has found it increasingly challenging to satisfy certain humanitarian principles.

As shown in this report, UNHCR has had challenges implementing its protection mandate in the past. Yet the existence of this mandate across the entire response operation is vital. As such, splitting operations with IOM could have significant ramifications. As a UNHCR report states, "there are consequences for people if the established UN architecture is not used… humanitarian principles may even be compromised in such situations. The overall protection conditions remain precarious."[lxxv]

The Role of China

Another significant difference from earlier cases is the role of China. In recent years, China's foreign policy has become much more active, particularly concerning its neighbors and countries where it has economic interests. Myanmar is no different, as the construction of the China-Myanmar Economic Corridor is a flagship component of China's Belt and Road Initiative. President Xi Jinping traveled to Myanmar in January 2020 to promote bilateral relations between the countries.

Many people cite China as the reason why no resolution on the Rohingya has made it to the Security Council. The country has consistently rebuked what it sees as attempts to "complicate" or "internationalize" the issue. Since 2017, China has played a mediation role between Myanmar and Bangladesh and has actively pushed for repatriation.

On 23 September 2019, Myanmar, Bangladesh, and China agreed to form a tripartite working group to push ahead Rohingya repatriation. The three points of consensus were: the strong will of the three parties to realize the repatriation as soon as possible; the agreement to establish a China-Myanmar-Bangladesh Joint Working Group on the issue; and that development is fundamental to resolving the issue in Rakhine.[lxxvi]

Again, like the other repatriation agreements signed, nothing concrete has come of this working group. Repatriation is effectively stalled, yet it is concerning that governments are engaging outside of cooperation with UNHCR to push ahead return as an immediate solution.

The Way Forward: Recommendations

The central lesson from this research is that premature and involuntary repatriation took place in the 1970s and the 1990s – and that this history matters when addressing a similar crisis today. As governments and some UN actors continue to herald quick repatriation as the best solution to protracted displacement situations around the world, it is clear that this approach has not always been safe or sustainable in the past. Not only does pursuing hasty repatriation often jeopardize the rights of refugees, but also, returning refugees to unchanged conditions from which they fled can increase the likelihood of a future exodus. Repeating that cycle of violence and displacement injures civilians, burdens host nations, and harms UN and international efforts to support lasting peace – the costs are significant in lives, dollars, and effort.

Therefore, solutions to address this crisis must be two-fold. Return – to safe conditions and at the refugees' freely expressed wish – should remain an ultimate goal. At the same time, there needs to be a non-temporary solution for those refugees living in Cox's Bazar, understanding that a return to safe conditions in Myanmar will not likely happen soon.

Key actors, and in particular, UNHCR, can adopt practices that avoid past mistakes and learn from them. All stakeholders must resist any attempts at premature repatriation, encourage and empower refugee participation, support accountability mechanisms, and pursue medium- and long-term solutions for those refugees in limbo in Cox's Bazar.

For UNHCR and Other UN Actors

Maintain commitment to protection principles

UNHCR can maintain its commitment to its protection principles – in particular, the safe and voluntary nature of repatriation – by continuing the standard practice of interviewing refugees and supporting their desire not to return until certain conditions are met in Rakhine State. Any future memoranda of understanding on repatriation should be tripartite, between Bangladesh, the government of Myanmar, and UNHCR.

UNHCR is an advocate for refugees and, as needed, should privately and publicly criticize or praise the actions of governments that violate or uphold norms of refugee protection. As seen in both the 1970s and 1990s, when UNHCR chose to exert pressure and acknowledge problematic practices, it could be effective in altering government policy. To be successful, UNHCR headquarters in Geneva can give local offices crucial political backing to resist government pressure.

The agency can be further supported in this effort by advocating member states for strong public support for only engaging in repatriation operations that are in line with its norms and mandate. Being a part of or complicit in premature or involuntary returns undermines the legitimacy of UNHCR.

If UNHCR-facilitated repatriation does take place, success is best defined with metrics beyond only numbers. Targets, quotas, and deadlines for return should be de-emphasized, and assessments of voluntariness and protection must be prioritized. The agency must continue to provide services and meet the needs of those not ready to return.

Improve transparency

UNHCR's commitment to transparency needs to be clear in its operations. In the 1990s, the agency did not sufficiently inform refugees of their rights, of conditions to expect in Rakhine State, or of the agency's capacity to protect them. Unfortunately, this lack of transparency persists today. The Memorandum of Understanding between UNHCR, UNDP, and Myanmar was not made public. Refugees were not consulted on the terms of the MOU, and the name Rohingya was not mentioned in the text. Greater transparency in these processes could help deliver on the UN's goals by increasing the legitimacy of UNHCR in the eyes of refugee communities, as well as enhance the ability of refugees to make free and informed decisions about return.

Greater transparency from UNHCR could also manage the expectations of concerned governments and donor states. The agency should push back against the notion that the monitoring presence of a few staff in Myanmar or the implementation of quick impact projects can address the roots of conflict in Rakhine State and prevent future flights. A more candid assessment of what UNHCR can and cannot guarantee would remove pressure for the agency to find quick solutions and promote an unrealistic repatriation.

Improve UN coordination

As identified in the Rosenthal Report, systematic problems among UN agencies concerning the pipeline of information from the peripheries of the system to the center and vice versa are not new nor are they unique to UN operations in Myanmar. In the UNHCR's historical engagement with Rohingya refugees, the disjunction between and within agencies has proven particularly detrimental to guaranteeing sufficient protection for this community. Information, analysis, and decision-making must be communicated clearly and efficiently both horizontally and vertically across agencies and organizations.

In 2017, Secretary-General António Guterres announced reform proposals in the areas of management, peace and security, and the development system. These reform processes are still

ongoing and could address some of these issues. Particularly relevant to this report are the proposals to establish a new organizational architecture at the highest levels to "improve coordination, monitoring, accountability, systematic analysis of unfolding crisis, situations, and a more rapid response" and to decentralize decision-making closer to the point of delivery, giving greater authority to officers on the ground.[lxxvii] Information from the field must be taken seriously, even when politically inconvenient, so that protection concerns may be effectively addressed.

Additionally, given the unique humanitarian context in Bangladesh, enhanced coordination and cooperation between actors is paramount to understanding and improving the conditions on the ground. Despite the division of responsibility between IOM and UNHCR, protection should remain a foundation of the entire response. UNHCR should lead protection efforts in all camps, and refugee protection standards must be universal and clearly communicated across the entire operation.

Consult with refugees and local leaders

Any proposed solution should be shaped around the desires of the Rohingya themselves. Refugees should be in negotiations over their options and inform decision-making at all levels. Rohingya leaders should be invited to participate in global forums and particularly during any discussion of repatriation or relocation. Empowering Rohingya civil society is necessary and will better ensure that those representing the community reflect an inclusive and diverse picture of that society.

If and when conditions appear conducive to return, UNHCR could support and assist refugees in "go and see" visits to Rakhine State, so that they may assess conditions before making the decision to return.

For Foreign States and Policymakers:

Exert diplomatic pressure and fund humanitarian response to resist premature return

UNHCR cannot uphold its mandate and protection principles without sustained political support. In particular, the agency needs backing from member states to resist pressure from the governments of Bangladesh or Myanmar to pursue repatriation before conditions are conducive to return. Foreign governments could assist the agency by exerting strong diplomatic pressure on Bangladesh and Myanmar if coercion or signs of forced return occur.

Additionally, it is essential to recall that involuntary repatriation does not only happen when physical force is used to push refugees back into their country of origin. Failing to provide basic needs, creating desperate conditions, and giving refugees conflicting or false information also diminish a refugee's ability to make a free and informed decision about return under conditions of absolute safety.

As such, the international community must assist Bangladesh to ensure that these conditions are met. States can alleviate the burden on Bangladesh by fully funding the needs laid out in the 2020 Joint Response Plan for the Rohingya humanitarian crisis.

Demand Myanmar allow international monitors and humanitarian actors into Rakhine State

Myanmar should provide key actors with full and free access to Rakhine State to provide humanitarian assistance and assess whether or not conditions are conducive to a safe, voluntary, and sustainable return. Additionally, states can call on Myanmar to grant access to UN agencies, such as the Office of the High Commissioner for Human Rights (OHCHR), which are frequently denied entry to the country.

Work with the government of Bangladesh to find intermediate solutions

The stress on Bangladesh is real, and repatriation should not be abandoned as a goal. However, major political and structural reforms in Myanmar are necessary to ensure the safety of returnees. These conditions, such as guarantees of citizenship and accompanying rights, are far from being created. Returning the Rohingya to Rakhine State before these issues are addressed will only continue the cycle of discrimination and exodus. In the interim, assisting Bangladesh in providing the Rohingya with longer-term solutions, such as avenues to legitimate employment and education, must be an international priority. Though outside the scope of this report, several other actors have done extensive research on how to implement interim solutions and alleviate the burden felt by Bangladeshi host communities.[lxxviii]

Ultimately, the responsibility for the perpetuation of this crisis falls singularly on Myanmar, and both the Rohingya and Bangladesh deserve a sustainable solution to a problem that was not of their making. Nevertheless, pursuing hasty repatriation in lieu of real change in Rakhine State was not a sustainable solution in the 1970s or the 1990s — and it would not be a sustainable solution today.

About the Author

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