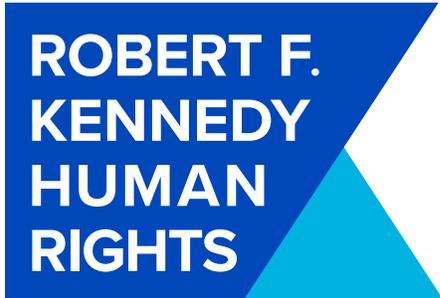


BELONGING

FINDINGS OF THE ROBERT F. KENNEDY
HUMAN RIGHTS DELEGATION TO
MYANMAR AND BANGLADESH





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MARCH 2019

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INTRODUCTION

Starting in August 2017, Myanmar began a campaign to systematically kill and drive out the Rohingya Muslim minority in the country. The military executed men, women and children, raped women and girls, burned villages, and pushed hundreds of thousands of surviving Rohingya across the border into Bangladesh. The large-scale and premeditated slaughter amounted to genocide, and the Rohingya that were able to make it to Bangladesh have been forced to live in what is now the largest refugee camp network in the world. Robert F. Kennedy Human Rights has been working on human rights issues in both Myanmar and Bangladesh for several years, including conducting human rights trainings and supporting civil society organizations. Though not directly related to our previous work in either country, the scale and the severity of the human rights and humanitarian crisis unfolding in Myanmar and Bangladesh demand our attention and that of the international community as a whole.

From July 9 to July 19, 2018, Robert F. Kennedy Human Rights organized a delegation of experts to Myanmar and Bangladesh, in order to gain a detailed and updated understanding of the Rohingya crisis. The delegation was led by Kerry Kennedy, President of Robert F. Kennedy Human Rights and included: Michael Posner, former Assistant Secretary of State for Democracy, Human Rights, and Labor; Tom Andrews, former Member of Congress; Christopher Nickelson, staff member at Global Citizen; Cara Kennedy Cuomo, Granddaughter of Robert F. Kennedy; as well as Robert F. Kennedy Human Rights staff members Michael Schreiber, Chief Operating Officer, Angelita Baeyens, Director of the International Advocacy and Litigation program, David McKean, Asia Program Officer, and Monsieree de Castro, Program Associate. The delegation was also accompanied by a group of documentarians from HUMAN during parts of the mission.

The delegation traveled to Yangon, Sittwe, and Naypyidaw in Myanmar, and to Dhaka and Cox's Bazar in Bangladesh. Meetings were conducted with government officials, civil society organizations, community leaders, and individual refugees. Within the Myanmar government, the delegation met with officials from the Ministry of Home Affairs, the Ministry of Education, and the Ministry of Ethnic Affairs, as well as the Coordinator of the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine. In Bangladesh, the delegation met with Prime Minister Sheikh Hasina and senior members of her staff, as well as the Foreign Secretary and staff members of the Foreign Ministry.



While the delegation looked at broader human rights challenges in Myanmar, including violence and discrimination against several ethnic groups and the situation of former political prisoners, this report focuses on the findings of the delegation related to the Rohingya crisis. It captures the conversations and findings that resulted from numerous formal and informal meetings, and offers recommendations to the many stakeholders as to what can and should be done to move towards providing the Rohingya with their fundamental human rights, including citizenship, freedom of movement, and access to education.

Starting in the 1960s under Myanmar's military junta, Myanmar's laws, policies, and public messaging have worked to deprive the Rohingya of their human rights, including their citizenship. Violence against Rohingya has been part of long-standing government policy in Myanmar.

The Context of the Rohingya Crisis

The Rohingya are a Muslim ethnic-minority group indigenous to Myanmar. Prior to the latest exodus in 2017, they constituted the largest percentage of Muslims in the country, with a population of approximately 1.1 million.¹ Rohingya self-identify as a distinct ethnic group with their own language and culture, and live predominantly in northern Rakhine State. The Myanmar government refuses to recognize the Rohingya as citizens, referring to Rohingya as “Bangladeshi” or “Bengali”, falsely claiming that they are recent illegal arrivals from neighboring Bangladesh. The Rohingya regard these terms as insults. The vast majority of Rohingya are not allowed to leave Rakhine State, or even their home villages, without government permission, ostensibly for their own safety.² Those who have not fled overland to Bangladesh or by boat to other countries, such as Malaysia and Thailand, are largely confined to internment camps known as “Internally Displaced Persons” camps, without access to basic services, including health care, education, or work opportunities.³

Starting in the 1960s under Myanmar's military junta, Myanmar's laws, policies, and public messaging have worked to deprive the Rohingya of their human rights, including their citizenship. Violence against the Rohingya has been part of long-standing government policy in Myanmar.⁴ For instance, in 1978, the Myanmar military launched Operation Dragon King, violently driving out an estimated 200,000-250,000 Rohingya into Bangladesh.⁵ This violence has been partnered with dehumanizing government propaganda and scapegoating, as well as formalized legal discrimination.⁶

In 1982, the Myanmar military government promulgated a new Citizenship Law, which named all the ethnic groups that the government would recognize as citizens.⁷ The Rohingya were not identified in the law, thereby stripping them of citizenship and leaving them stateless. The stateless Rohingya could in theory apply to regain their citizenship, as long as they could speak an officially-recognized language and had proof their family had lived in Myanmar since before independence.⁸ The vast majority of Rohingya were never granted the paperwork to prove

¹ *The 2014 Myanmar Population and Housing Census: Rakhine State*, The Republic of the Union of Myanmar Ministry of Immigration and Population, (May 2015), at page 8, available at, <https://myanmar.unfpa.org/sites/default/files/pub-pdf/Rakhine%20State%20Census%20Report%20-%20ENGLISH.pdf>.

² *Myanmar 2018 Humanitarian Needs Overview*, United Nations and Partners Humanitarian Country Team, (November 2017), available at, <https://reliefweb.int/sites/reliefweb.int/files/resources/2018%20Myanmar%20Humanitarian%20Needs%20Overview.pdf>.

³ *Id.*

⁴ *Report of the Independent Int'l Fact-Finding Mission on Myanmar*, United Nations Human Rights Council Report on its Thirty-Ninth Session, U.N. Doc. A/HRC/39/64 8 (September 12, 2018), at para. 20 - 21, available at, https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf.

⁵ *They Gave them Long Swords, Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar*, Fortify Rights, (July 2018), at page 36, available at https://www.fortifyrights.org/downloads/Fortify_Rights_Long_Swords_July_2018.pdf.

⁶ Paul Mozur, *A Genocide Incited on Facebook, with Posts from Myanmar's Military*, N.Y. TIMES, (October 15, 2018), available at, <https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html>; see also, *Myanmar's Apartheid Campaign Against the Rohingya*, Amnesty International UK, (May 29, 2018), available at, <https://www.amnesty.org.uk/myanmar-apartheid-campaign-against-rohingya-burma>.

⁷ Burma Citizenship Law, October 15, 1982.

⁸ *Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Commission on Rakhine State*, Advisory Commission on Rakhine State, (August 2017), at pages 29 - 31, available at, http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf.

their indigenous presence in the country, and were never able to successfully regain their citizenship.⁹

In 2015, the Myanmar government invalidated the temporary identification cards possessed by many Rohingya, preventing them from voting in the 2015 parliamentary elections, and prohibited Rohingya political parties and candidates from participating in the elections.¹⁰ Also in 2015, Myanmar passed four “Race and Religion Protection Laws” that clearly targeted the Rohingya.¹¹ The laws ban cohabitating with someone who is not a spouse, require government approval for interfaith marriages, as well as for the conversion to Islam within a marriage, and require that women living in regions with a high percentage of Muslim households space pregnancies at least 36 months apart. Because Rohingya are not citizens, they are also denied access to education.¹² They cannot work for any level of government, including the military or the police.¹³ Their freedom of movement is also severely restricted, with many Rohingya forced to live in internment camps, which they cannot leave without government permission.¹⁴

The relationship between the Rohingya and the Rakhine has oscillated over the years, having at times been peaceful, with commerce and social interaction taking place, to at times becoming violently combative.

In June 2012, reports circulated that a Rakhine Buddhist woman had been raped and killed in the town of Ramri, allegedly by three Muslim men.¹⁵ After details of the crime were circulated locally in an incendiary pamphlet, widespread rioting and clashes by the Rakhine against the Rohingya broke out, ultimately leaving approximately 200 people dead.¹⁶ 200,000 Rohingya fled over the border into Bangladesh, and 120,000 were forced into internment camps.¹⁷ The government declared a state of emergency, allowing the military to take over administrative control of the region.¹⁸

On October 9, 2016, a small group of Rohingya militants attacked three police outposts, killing nine police officers.¹⁹ According to a press conference held by the Government on the same day, eight attackers were also killed and two were captured.²⁰ The area was reportedly sealed off and people’s movement restricted. Humanitarian agencies were denied access to this lockdown area, in which the military indicated that it was conducting “area clearance operations.”²¹ The military burned and destroyed villages, and engaged in extrajudicial killings, rapes, and mass arrests. More than 90,000 Rohingya were forcibly displaced by February 2017.²²

The military then began preparations for a more sustained and systematic attack on the Rohingya.²³ Starting in November 2016, the military began training and arming non-Rohingya residents of northern Rakhine State. They also began to confiscate anything from the Rohingya that could be used as a weapon, including sharp and blunt objects, as well as prevented humanitarian organizations from operating in the region, cutting off access to food aid. In early August, 2017, the Myanmar military deployed additional troops to the region, concerning many Rohingya in the area.²⁴

9 *Id.*

10 *Id.* at 30.

11 *Myanmar: Parliament Must Reject Discriminatory ‘Race and Religion’ Laws*, Amnesty International, (March 3, 2015), available at, <https://www.amnesty.org/download/Documents/ASA1611072015ENGLISH.pdf>

12 Advisory Commission Report, *supra* note 8, at 40.

13 *Id.* at 46.

14 *Id.* at 33.

15 *Myanmar Conflict Alert: Preventing communal bloodshed and building better relations*, International Crisis Group, (June 12, 2012), available at, <https://www.refworld.org/docid/4fd85cdd2.html>.

16 Tim Hume, *Dalai Lama to Myanmar, Sri Lanka Buddhists: Stop Violence Against Muslims*, CNN, (July 7, 2014), available at <https://www.cnn.com/2014/07/07/world/asia/dalai-lama-muslim-violence/>.

17 Jason Motlagh, *These Aren’t Refugee Camps, They’re Concentration Camps, and People are Dying in them*, TIME, (June 17, 2014), available at, <http://time.com/2888864/rohingya-myanmar-burma-camps-sittwe/>.

18 Thomas Fuller, *Crisis in Myanmar over Buddhist-Muslim Clash*, N.Y. TIMES, (June 10, 2012), available at, <https://www.nytimes.com/2012/06/11/world/asia/state-of-emergency-declared-in-western-myanmar.html>.

19 Jane Perlez & Wai Moe, *Violence Escalates Between Myanmar Forces and Rohingya*, N.Y. TIMES, (November 13, 2016), available at, <https://www.nytimes.com/2016/11/14/world/asia/violence-escalates-between-myanmar-forces-and-rohingya.html>.

20 *Interviews with Rohingyas fleeing from Myanmar since 9 October 2016*, United Nations Human Rights Office of the High Commissioner, Flash Report, (February 3, 2017), pages 7 - 8, available at, <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>.

21 *Id.*

22 *Id.* at 7.

23 Fortify Rights, *supra* note 5, at 41 - 52.

24 *Id.*



The August 2017 military operations

On August 25, 2017, a group known as the Arakan Rohingya Salvation Army (ARSA) carried out attacks on more than 30 police posts in northern Rakhine. Although the attacks were poorly coordinated, the attackers were armed with knives and homemade bombs and killed twelve members of the security forces.²⁵ In response, the Myanmar military immediately began “clearance operations” in Maungdaw, Buthidaung, and Rathedaung townships. They systematically targeted Rohingya, indiscriminately killing thousands of men, women and children, raping women and girls, and driving over 700,000 Rohingya into Bangladesh over the course of the following months.²⁶

The United Nations Independent International Fact-Finding Mission on Myanmar delivered its report detailing its main findings, conclusions and recommendations on August 27, 2018. It concluded that, “The nature, scale and organization of the operations suggests a level of preplanning and design on the part of the Tatmadaw [Myanmar Military] leadership...” and that “The ‘clearance operations’ constituted a human rights catastrophe.”²⁷ According to the report, at least 392 villages were totally or partially destroyed, representing 40 percent of all the settlements in northern Rakhine State. The operations were distinctive for the targeting of civilians, the widespread use of sexual violence and rape as a weapon, and the physical and permanent destruction of Rohingya homes, villages and places of worship. After reviewing all the available information and facts, the Mission concluded that there was enough information to warrant the investigation and prosecution of senior officials for genocide, crimes against humanity, and war crimes.²⁸ For its part, the Myanmar government, including State Counsellor and *de facto* leader Aung San Suu Kyi, has maintained the nearly complete denial of any wrongdoing by the government or the military, despite overwhelming evidence to the contrary. Aung San Suu Kyi’s first public statements after the crisis falsely claimed that “All people living in the Rakhine State have education and healthcare services without discrimination.”²⁹ She later blamed neg-

25 Independent International Fact-Finding Mission Report, *supra* note 4, at page 8.

26 *Id.*

27 *Id.*

28 *Id.* at 1.

29 *Rohingya crisis: Suu Kyi does not fear global ‘scrutiny’*, BBC (September 19, 2017), available at, <https://www.bbc.com/news/world-asia-41315924>.

The Myanmar military systematically targeted Rohingya, indiscriminately killing thousands of men, women and children, raping women and girls, and driving over 700,000 Rohingya into Bangladesh over the course of the following months.

ative press coverage and international attention on “hate narratives” from outside Myanmar.³⁰ Members of her civilian government, as well as the military, have said outright that the Rohingya burned their own homes and fled for unknown reasons.³¹ There is no indication that the government has any intention of holding perpetrators accountable.

Myanmar is not a State Party to the Rome Statute, and thus the International Criminal Court does not have jurisdiction over officials in Myanmar who may be responsible for these crimes. However, the Office of the Prosecutor of the International Criminal Court requested and received an advisory opinion from a pre-trial chamber of the Court, seeking clarification on the question of whether Bangladesh, as a State Party to the Rome Statute, provides jurisdiction for crimes committed Myanmar where an element of that crime took place in Bangladesh. The pre-trial chamber concluded that, where an element of a crime is committed within a member state, the Court has jurisdiction over that crime, and therefore can investigate and prosecute the perpetrators of that crime.³² This pertains to a very limited set of crimes, including deportation and persecution in the context of deportation.³³



³⁰ ‘Hate narratives’ from abroad drive Myanmar communities apart, *Suu Kyi says*, Reuters (June 21, 2018, 2:26 AM), available at, <https://www.reuters.com/article/us-myanmar-rohingya/hate-narratives-from-abroad-drive-myanmar-communities-apart-suu-kyi-says-idUSKBN1JH0I9>.

³¹ Members of the Ministry of Home Affairs provided this explanation directly to the delegation.

³² ICC-RoC46(3)-01/18, *Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’*, (September 6, 2018), available at, https://www.icc-cpi.int/CourtRecords/CR2018_04203.PDF.

³³ *Id.*

MYANMAR

The View from Myanmar Civil Society

Over the course of meetings with over two dozen leaders of different Myanmar civil society organizations and groups, it was clear there was some discomfort with the military’s actions against the Rohingya in Rakhine State. However, that sympathy for the Rohingya did not necessarily translate to a belief that Myanmar needed to undertake large-scale reforms, including with respect to citizenship, or that the Rohingya were part of an indigenous Myanmar ethnic group. With several notable exceptions, most refrained from using the term “Rohingya,” even when members of the delegation introduced the term and used it exclusively. Instead, civil society leaders referred opaquely to the “Rakhine” issue or the “muslim” issue. When pressed on why civil society organizations were not making their discomfort known, there was a widespread perception that it would be impossible to condemn the government and the military for what happened, even if they were not pressing for any broader reforms. Their assessment was that it would have no effect on the government, and that it would expose them to significant criticism, and potentially violence, not only from the authorities but also from the Burmese public, hardline monks, and other members of civil society.

Doing anything to support the Rohingya was viewed as involving risk. A leader of a local development organization based in Sittwe recounted that he faced death threats because he continues to provide aid within the “internally displaced persons” camps. The organization’s role is purely logistical, providing transportation and delivery of aid shipments into the camps.

Organizations that would like to do something in response to the crisis are left in a complicated position. One civil society organization the delegation spoke with has significant experience providing psycho-emotional support to its constituency. It knows that these services would be valuable to provide to Rohingya and to the Rakhine who were involved in violence, but that becoming involved in the issue in any way could be problematic for them as an organization. The organization’s leaders expressed that their constituency is likely not supportive of engaging with the Rohingya, and it would likely face significant criticism from others in the civil society community. In order to avoid this backlash, the leaders are exploring ways that the organization can quietly provide support in a neutral way. However, this idea of providing some level of support has not been fully developed—let alone implemented—over a year after the last wave of violence concluded.



Many civil society leaders--especially those based in Sittwe--expressed their view that the 2012 communal violence was instigated and inflamed by behind-the-scenes government actors. After reflecting on the actions of the Rakhine community in 2012, there was a sense that the Rakhine were manipulated by the military into committing acts of violence. Several civil society leaders related personal experiences of observing military members or security officials directing civilians to target or refrain from targeting specific homes, religious buildings, or organizations. One leader observed a police official make sure that a local NGO did not have any foreign staff inside before directing a group of civilians to attack those inside and approving the destruction of the building.

Among the more progressive civil society leaders who wanted accountability for the violence, there was significant frustration that the United Nations was not doing more. They recognized that organizations inside Myanmar were limited in what they could say or do, and they therefore were relying on the international community to press for accountability and reforms. There was a clear view that--if it were left only to Myanmar political leaders and civil society--there would be no accountability for the military's attacks against the Rohingya, and that there would likely be continued persecution of the remaining Rohingya population and other minority groups.

Several other civil society leaders expressed the opposing view that the more pressing issue was preserving Myanmar's recent democratic gains. In this view, the Rohingya--while not necessarily all bad--were a population through which Islamic terrorists could enter the country or from which home-grown terrorists could develop. If those terrorists were not stopped, they could carry out an attack in Yangon or Naypyidaw, and the military would then have popular support to declare martial law. In this view, failing to confront terrorists, even if it meant violent excesses, was the real danger to Myanmar democracy and rule of law.

Rohingya activists and political figures in Myanmar related that they were under extreme pressure. The delegation met with several key Rohingya leaders living and working in the country, and all of them recounted recent and credible threats against them and their families. The violent threats typically came from unknown telephone callers; the legal threats to stop engaging in their activism were delivered by security officials and local political figures. All of the activists expressed that the underlying issue was citizenship, and that the violence was organized and planned by the Myanmar military. None of them believed that it was possible that the military could have carried out the attacks without informing the civilian government, and Aung San Suu Kyi was singled out for specific frustration for her refusal to speak out against the violence and acknowledge the military's involvement. All of the activists were committed to carrying on with their work.

The View from the "Internally Displaced Persons" Camps

Through a number of channels, the delegation requested access to the "internally displaced persons" (IDP) camps near Sittwe, in Rakhine state, but were not granted access to enter the camps unannounced and unaccompanied. The delegation consulted with camp residents to assess whether entering without approval would be possible. The delegation was told that it would likely be possible, but that camp residents could face severe punishment, including physical beatings, if they were discovered to have facilitated access into the camps to people without formal authorization and a government escort. In order to have private conversations with people in the camps without jeopardizing their personal safety, the delegation worked with a camp resident who arranged for several other residents to speak with the delegation by phone.

The residents the delegation spoke with described the relative peace that existed before 2012, with routine interaction and commerce with Rakhine people. However, since being placed in the camps following the violence in 2012, the residents have been forced to live in very difficult conditions. The residents sought to highlight several significant challenges:

LACK OF ACCESS TO MEDICAL CARE

The medical care available within the camp is completely insufficient to the size and the needs of the population. The residents confirmed that most humanitarian aid groups have been evicted from the camps. For an estimated population of 120,000, the residents knew of one aid organization that was allowed in for two hours a day, two days a week. Camp authorities did not allow the aid organization to distribute medicine or medical supplies to the camp residents, requiring all medications and treatment to be administered by aid workers directly. The only medicines available in the camp were smuggled in.

In extreme emergencies, residents could seek authorization to travel to nearby Sittwe Hospital. The residents expressed extreme frustration that the authorization process took several hours, even in cases where a severe injury or the eminent delivery of a child made access to immediate care critical. The residents each had stories of people dying waiting for authorization while camp authorities worked unhurriedly through a bureaucratic process. They also expressed resentment at having to pay bribes in the course of seeking authorization.

More fundamentally, the residents expressed extreme distrust of Sittwe Hospital. According to the residents, the hospital keeps Rohingya patients separated from others at the hospital, and provides care at a lower level to Rohingya than it provides to other patients. The residents expressed worry that the care they would receive at Sittwe Hospital would actually make them sicker, or would even lead to their death. That fear, they said, leads many Rohingya in the camps to endure whatever medical situation they face without seeking formal medical attention.

LACK OF ACCESS TO EDUCATION

Myanmar has denied education to Rohingya since well-before 2012, but according to the residents, there is little access to education in the camps. They described a single high-school-level facility at the camp, which cannot come close to meeting the educational needs of the high-school-aged population. Supplies and educational materials were also cited as in very short supply.

For those seeking education beyond high school, there were no options. Sittwe University is located adjacent to the camp, but Rohingya from the camp are not permitted to matriculate. Due to restrictions on freedom of movement, they are unable to attend another university in Myanmar or abroad.

One of the residents the delegation spoke to was a mother of three young children. The lack of access to education was her primary concern when she considered what the future would hold for her family. She knows that her children are not getting an adequate education, and once the children realize there is no way to pursue an education, and no way to put their education to productive use, many children stop attending school. She wants her children to receive a quality education through university, and to be able to leave the camp to find a job that suits their educational level. This desire was echoed by the other residents to whom the delegation spoke.

FREEDOM OF MOVEMENT

The residents described significant restrictions to freedom of movement enforced by camp authorities. Camp residents cannot leave the camp without authorization, and can only leave for emergency situations, usually to obtain medical care at Sittwe Hospital. Authorization to leave the camp can take hours to obtain, even in a medical emergency, and requires several hundred Kyat (an often prohibitive amount) in bribes to camp authorities. The residents the delegation spoke to all had previously lived less than an hour away from the camp. They expressed a strong desire to return to their homes, though they acknowledged that doing so would likely be very dangerous, as they may face violence from the surrounding community. They also had heard that many homes were now occupied by Rakhine families, so it was unclear to the residents if returning home was even possible.

Within the camps, movement is severely restricted as well. Residents cannot freely move from village to village within the camp, and a curfew is imposed starting at 5:00 PM every evening.

The View from the Government

The delegation met with several senior members of the Ministry of Home Affairs, including Permanent Secretary Tin Myint, Director General of the General Administration Department, and Police Brigadier General Myo Swe Win, Deputy Chief of Police. Several members of the Myanmar military were also present, but did not identify themselves.

The Myanmar officials presented an alternative reality of what they maintain took place in Rakhine State. In spite of overwhelming evidence to the contrary, Myanmar officials told the delegation that they undertook no preparations for a planned attack on the Rohingya community, and that instead, security forces carried out a proportionate response to the ARSA attack on police outposts. They categorically denied that civilians were targeted or harmed, and they denied that any of their forces engaged in rape or sexual assault. Instead, they asserted the Rohingya had burned their own homes in order to trick the international community into thinking that the Myanmar military was attacking the Rohingya, and then returned to Bangladesh, their true home country.

Ministry officials also told the delegation that many Rohingya refugees would like to come back to Myanmar, and that they are welcomed to do so at any time, if they can prove that they are citizens. According to the Ministry, the reason that Rohingya have not come back is because the Bangladesh government has failed to inform the Rohingya that returning is a possibility, and that those who do seek to return are prevented from doing so by Bangladesh government forces or killed by ARSA forces operating in the camps.

Throughout the conversation, Ministry officials typically referred simply to “muslims” instead of using the term “Rohingya.” Occasionally, however, during heated exchanges, Ministry officials would slip and use the term “Bengali.”

The delegation also met with the Ministry of Education and the Ministry of Ethnic Affairs—two ministries that could be having a positive influence on the Rohingya crisis. Unfortunately, neither Ministry demonstrated any interest in becoming engaged or grappling with the issues involved.

At the Ministry of Education, the delegation met with the Union Minister of Education, Mr. Myo Thein Gyi. He was eager to share with the delegation the progress that the Ministry was making in updating the national curriculum to incorporate human rights as a subject matter at all grade levels. This is a welcomed development, but the Minister made clear that the human rights component would not address rights issues related to the Rohingya. He also asserted that the reason Rohingya children are less likely to be educated at government schools is that they refuse to learn the Burmese language.

Mr. Hla Maw Oo, Director General of the Ministry of Ethnic Affairs, presented similar disinterest in speaking about how the Ministry could actually improve the human rights situation of Myanmar’s ethnic minorities. The Delegation pointed out that the “Ethnic Rights Protection Law,” which serves as the legal framework for the Ministry, mandates the Ministry to work to “obtain equal citizens’ rights for all ethnic groups” and “to promote solidarity, mutual rarity and respect, and mutual assistance among ethnic groups”.³⁴ Delegation members reminded the Ministry that armed conflict in several states prevents the ability of ethnic groups from realizing their rights to socio-economic development, education, and health, and that the Ministry could play a critical role in highlighting the ways in which military actions and armed conflict prevent the achievement of their mandate. Unfortunately, the Ministry demonstrated no interest in taking this portion of their mandate seriously.

There were government actors who seemed to have a much better sense of the challenges, but it was clear that their ability to affect outcomes was limited. The delegation met with Dr. Aung Tun Thet, Coordinator of the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine. Mr. Aung Tun Thet had traveled recently to Cox’s Bazar and to northern Rakhine State, and framed the violence as attacks against a persecuted minority population. He explained that he understood there was a great deal of work to do before the Rohingya—a term he used freely—would come back to Myanmar. However, he still seemed to view the problem primarily of community conflict, and not a decades-long effort by the Myanmar military and government to dehumanize and discriminate against the Rohingya. The solutions he proposed involved building community trust and rebuilding homes and villages. He was much less eager to discuss systematic reforms that would allow the Rohingya to live in Myanmar as a recognized ethnic group with full citizenship rights. On accountability, Dr. Aung Tun Thet insisted that some ‘corrective’ measures had been taken regarding some members of the military involved in the events of August 2017.

The View from the U.S. Mission in Myanmar

In the absence of the United States Ambassador Scot Marciel, who was out of the country, the delegation was kindly received by Deputy Chief of Mission George Sibley. Mr. Sibley provided a detailed and accurate assessment of the violence that took place in Rakhine State, and was clear that the United States believed that the military was responsible for atrocities. He did not respond, however, to whether the Embassy believed that the atrocities constituted genocide or crimes against humanity.³⁵ The delegation pushed for what the United States was doing to seek accountability, push for reforms, and ensure that the Rohingya could return voluntarily to a country where they are safe from attack and enjoy their basic human rights. The response was disappointing, claiming that the United States had little leverage in Myanmar, and that the best approach was to try to facilitate cross-community dialogues to build trust and mutual understanding. These efforts were described as important, but ultimately “small-ball.”³⁶

According to the Ministry, the reason that Rohingya have not come back is because the Bangladesh government has failed to inform the Rohingya that returning is a possibility, and that those who do seek to return are prevented from doing so by Bangladesh government forces or killed by ARSA forces operating in the camps.

³⁴ The Ethnic Rights Protection Law, Pyidaungsu Hluttaw Law No.8 (2015) (Myan.), https://www.pointmyanmar.org/sites/pointmyanmar.org/files/document/the_ethnic_rights_protection_laweng-myan.pdf

³⁵ The State Department has since released its report entitled “Documentation of Atrocities in Northern Rakhine State, available at, <https://www.state.gov/documents/organization/286307.pdf>. It similarly concludes that the military was responsible for mass atrocities, but declines to make a conclusion as to whether those actions constitute genocide or crimes against humanity.

³⁶ Michael Posner, *As Human Rights Deteriorate In Myanmar, U.S. Leadership Is Lacking*, Forbes (July 18, 2018), available at <https://www.forbes.com/sites/michaelposner/2018/07/18/as-human-rights-deteriorate-in-myanmar-u-s-leadership-is-lacking/#67504bc37982>

BANGLADESH

The View from the Government

In Bangladesh, the delegation was welcomed by Prime Minister Sheikh Hasina and her team, as well as Foreign Secretary Md. Shahidul Haque and senior members of the Foreign Ministry. The conversations were open and frank discussions about how Bangladesh planned to meet the challenge of having over a million Rohingya living within Bangladesh, as well as what it could be doing to improve conditions in the camps.

The government expressed its commitment to the principle of voluntary return, and that it would not force anyone to go back to Myanmar who did not wish to return freely. Both the Prime Minister and the Foreign Secretary expressed frustration that, given Myanmar's unwillingness to make reforms regarding citizenship and other rights, it was unlikely that any significant part of the Rohingya population living in Bangladesh would be willing to return to Myanmar in the near term. There was also a sense of frustration that Myanmar was not acting as a good faith partner in the effort to provide for the voluntary repatriation of the Rohingya. The Prime Minister was clear that State Counsellor Aung San Suu Kyi was not engaging on this issue at all.

The delegation raised concerns about Bangladesh's plan to relocate 100,000 Rohingya to to an island in the Bay of Bengal, known as Bhashan Char ("floating island"). The island appeared less than 20 years ago, and continues to sit barely above sea level. The government is reportedly spending \$276 Million to build a retaining wall against rising tides and cyclone storm surges, as well as housing and other amenities.³⁷ Among the different elements of concern that were raised by the members of the delegation about this proposal, were the fact that the island is isolated from aid groups and economic opportunities, and that people would be trapped on the island should the retaining wall fail or prove insufficient during a major storm.

The delegation meets with Foreign Secretary Md. Shahidul Haque and senior members of the Foreign Ministry



³⁷ *Bangladesh Project to House Rohingya on Flood-Prone Island Ready to Open*, Radio Free Asia (October 12, 2018), available at <https://www.rfa.org/english/news/myanmar/project-10122018175508.html>; see also, Jared Ferrie, *Aid agencies fear for Rohingya refugees in Bangladesh's island relocation plan*, Reuters (April 17, 2018), available at, <https://www.reuters.com/article/us-bangladesh-rohingya-refugees/aid-agencies-fear-for-rohingya-refugees-in-bangladeshs-island-relocation-plan-idUSKBN1HO1VP>.



The Prime Minister responded to these concerns by showing the delegation a glossy and beautifully-produced book detailing the plans of the island, including computer-generated images showing an idyllic life that residence of the island could expect to enjoy. Both the Prime Minister and the Foreign Secretary were dismissive of concerns, insisting that the government would not force anyone to move, but that they expected to have such a high demand for relocating to the island that they would have to establish a mechanism for choosing who would get to move.

When asked about resettlement to third-party countries, the Prime Minister made clear that she did not want her government playing a role in this alternative, partly out of a concern that the Bangladesh government could not ensure that the people applying to go to third-parties were not being trafficked. The delegation found this position confusing, and raised the point that this concern could be resolved by bringing in UNHCR to serve its usual resettlement role. Bangladesh is not a State party the 1951 Convention Relating to the Status of Refugees³⁸ or the 1967 Protocol Relating to the Status of Refugees.³⁹

The Foreign Secretary provided a clearer—if deeply concerning—explanation of why the government opposes third-country resettlement. With over a million Rohingya living in camps, the international community is paying attention to the issue and providing some resources. If some large number, but not all, of the Rohingya are resettled, then the attention and the resources will disappear, and Bangladesh will be stuck with a population it cannot absorb or afford to support. Therefore, according to the government, there must either be complete resettlement of the Rohingya to third-party countries, or there should be none at all. As long as the Rohingya remain together as a population, Bangladesh feels that it has the attention and at least some of the resources it needs, as well as the support of the international community to push Myanmar to make the reforms needed that would allow the Rohingya to return.

38 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150.

39 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

The View from the Refugee Camps

The delegation spent two days visiting with refugees and civil society groups within the camps in the Cox's Bazar region. Conversations typically took place in small groups or with individuals, and were geared toward meeting with refugees from different backgrounds. In addition to conducting interviews with refugees of different ages and genders, this also included meeting with Rohingya who had recently arrived in the camps after fleeing violence in Myanmar, as well as people who had fled Myanmar decades ago and who have been waiting in the camps ever since for a safe time to return to their homeland.

The conditions in the camps are dire. Housing is constructed out of bamboo and plastic tarps with little anchoring to the muddy hillsides on which they are built. Many shelters are particularly prone to mudslides and flooding. The delegation was in the camps during the rainy season, and regular storms turned the unpaved footpaths between shelters into deep, swiftly flowing canals. Refugees expressed concerns that the materials they were provided to build shelters were insufficient given the rains, and that they were engaged in a constant process of patching or rebuilding parts of their shelters that were damaged by the weather. During several mo-

Rohima's Story

Rohima Khatun is 35 years old. She had four children between 5 and 18 months-old. Two of her children died when Rohima and her family escaped the attacks of August 25. When the delegation met with her at her very precarious lodging in Cox's Bazar, her son Mujibor Rahaman was clearly sick and malnourished. Rohima shared her struggles to get proper medical attention for her and her son and how the meager rations her family was receiving were so insufficient to feed them all that she could not breastfeed him anymore. For Rohima's father, Nojir Ahmad (50 years-old) this was the fourth time that he had to flee Myanmar to escape from violence and discriminations. As he put it to the delegation "I'm not going back to my homeland, four times is too much. I cannot deal with it anymore, even if our conditions here at the camp are so hard."



Rohima Khatun with her father and child

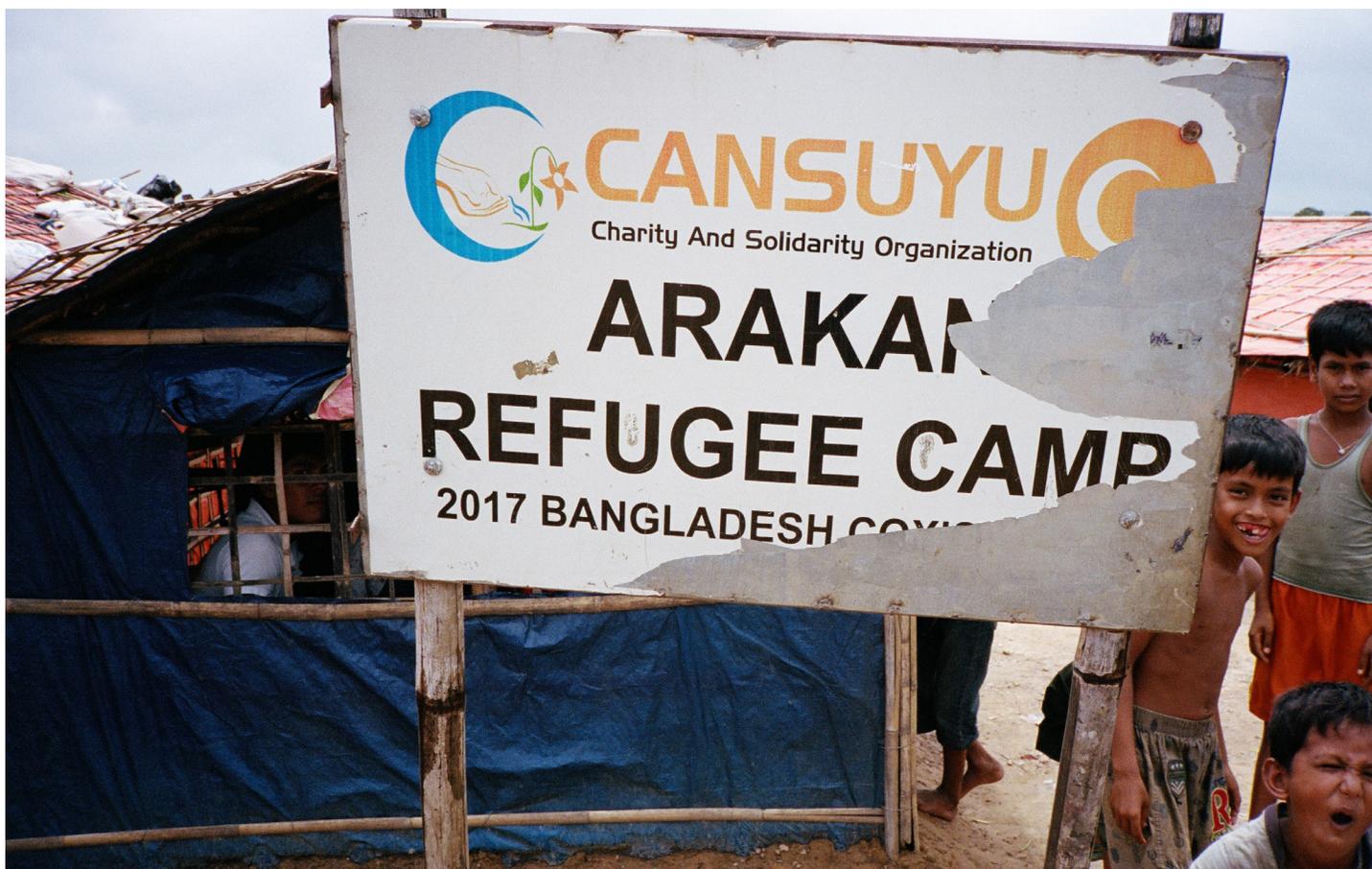


ments of intense storm, the sound of the rain beating on the plastic tarp roofing was so loud that it made conversation impossible. Several shelters the delegation visited had concrete floors, but most were simple dirt floors covered with fabric, rugs, or mattress roles. All shelters contained multiple individuals, and several that the delegation visited contained more than one family crammed together.

The refugees that the delegation met with expressed satisfaction with the level of sanitation facilities and potable water supplies available in the camps at latrine stations and water pumps. However, many refugees expressed frustration with the amount of food rations provided, as well as the variety of the food available. Many described selling part of their rations in order to purchase different food stuffs. New mothers related heightened concern that the rations provided for babies were not sufficient, and reported borrowing from family or community members to ensure that their young children had adequate nutrition. Similarly, there was frustration expressed at the lack of access to medical care available within the camps,

Kyaw's Story

Kyaw, approximately 56, initially fled Myanmar in the early 1990s due to communal violence. He has not been back since, and is officially registered as a refugee with the United Nations. He proudly showed off his refugee card to the delegation. He expressed genuine sympathy for the refugees that had been arriving over the past year, and he had spoken to many of them who came from his village or surrounding villages in order to understand what happened and why they were forced to flee. However, he also expressed significant concern that the new wave of Rohingyas in Bangladesh would place a strain on the resources available to long-term residents, and that living standards would decline for the residents of the camps who had been suffering for decades. He wanted the international aid organizations and the United Nations to distinguish between the long-term residents and those who just arrived, and ensure that those who had been suffering in the camps the longest were treated fairly.



especially for non-emergency medical care. Medications for chronic conditions were difficult to obtain, and wait times to see a medical provider could be weeks long.

The primary concern reported by the refugees was the lack of access to education at nearly all levels. There are some learning centers in the camps, but the refugees the delegation spoke with reported that many of the facilities are understaffed and under-resourced. Beyond basic early primary schooling, the refugees reported that there was virtually no access to secondary education or universities. This lack of access to education contributed significantly to the sense of hopelessness that many refugees expressed. Without education, those the delegation met with lamented that there is little chance that their children will be able to escape the poverty of the camps or advance economically if and when they are able to return to Myanmar.

The other major concern was the restrictions on the freedom of movement that the Bangladesh Government placed on camp residents. The delegation obtained camp passes from the local authorities, but never saw a checkpoint or any other restriction on those entering or exited the camps. Camp residents, however, maintained that this lack of restriction was unusual. Refugees are not permitted to leave the camps to enter the surrounding communities. Several refugees reported restrictions on the ability to move around within individual camps after dark.

All of the refugees the delegation met with expressed a strong desire to return to their homes and their communities in Myanmar. However, they made clear that they could not return under current conditions. In order to voluntarily return, the refugees expressed that they wanted Myanmar to restore their citizenship and provide them with proper identification indicating that their ethnicity was Rohingya. They wanted Myanmar to grant them all the rights and privileges of citizenship, including the right to freedom of movement and access to education. They also wanted Myanmar to ensure that, in the event of communal violence, the police or security forces would protect the Rohingya community to the same extent as they protected the Rakhine community.

Mohammed's Story

Mohammed, 27, described his escape from the clearance operations by the Myanmar military in 2017. He woke up to the sounds of gunfire and shouting, and realized that his village was being attacked. He was able to get his elderly mother out of their house and escape the gunfire. They travelled for two days with no food or water to reach the border with Bangladesh, only to find that the river was impassable due to swift, deep water. His mother was ailing and he feared that they did not make the crossing soon, she would die. After watching several groups successfully make the crossing, he convinced his mother that they could make the crossing as well. She agreed, but as they made their way, the current proved stronger than expected and he could no longer hold her head above water. As he was near drowning, he lost his grip on his mother and watched desperately as she was swept down river. He has never heard from her again, and believes that she is dead. He wept openly at the idea that he forced her to try to make the crossing, and that he could not hold on to her.

with no mention of their Rohingya ethnicity in the document itself. More broadly, they shared concerns about how the bio-data collected for this form of identification could be shared with the Myanmar government for repatriation and the latter could misuse it to label refugees as ARSA members. This continues to be an extremely problematic issue, and was at the heart of a massive three-day strike on November 28, 2018.⁴¹

The delegation met with representatives of the Center for Social Integrity (CSI), an international organization that works on protection, peace-building and the promotion of pluralism and tolerance among Myanmar's diverse ethnic communities, with a focus in Rakhine State.⁴⁰ CSI has been working at the different refugee camps (Kutupalong, Balukhali and Thangkhali) in the Cox's Bazar area as a community-based network, including by promoting health and emergency preparedness, as well as providing non-formal education to children and youth.

This meeting also included a group of eight Rohingya camp leaders that CSI is supporting to develop their capacity as advocates for their community. As camp leaders, part of their role is to interact with international organizations and agencies, including UNHCR, to voice the community's demands, needs and concerns. However, part of their main concern referred precisely to their lack of participation in key discussions between the international agencies--UNHCR in particular--and the Government of Bangladesh, about the settlement conditions of the Rohingya refugees.

One particular point of contention raised by the camp leaders during the meeting was the issuance of the "Smart Cards", a UNHCR-sponsored identity card that identifies Rohingya Refugees as a "Forcibly Displaced Myanmar National"

Almost a year after the August 2017 wave of violence against Rohingya communities in Myanmar, groups of individuals continued to arrive, pushing the camps in Cox's Bazar to their physical limits. Another challenge included properly attending to the needs of children, as an estimated 55% of the camps population are minors.

⁴⁰ To learn more about CSI, visit: <https://www.centerforsocialintegrity.org/>

⁴¹ Faisal Mahmud, *Rohingya refugees protest against Smart Card*, Asia Times, (November 28, 2018), available at, <http://www.atimes.com/article/rohingya-refugees-protest-against-smart-card/>; see also, Joshua Carroll, *Violence stalks UN's identity card scheme in Rohingya camps*, Al Jazeera, (November 22, 2018), available at, <https://www.aljazeera.com/news/2018/11/violence-stalks-identity-card-scheme-rohingya-camps-181122075307535.html>.

Meeting with UNHCR representatives

The delegation met with Kevin Allen, UNHCR Head of Operations for the Rohingya Refugee Emergency, as well as other members of his team. Allen highlighted the unusual setting of this particular refugee situation in terms of population dimensions and underlying political and historical context. Almost a year after the August 2017 wave of violence against Rohingya communities in Myanmar, groups of individuals continued to arrive, pushing the camps in Cox's Bazar to their physical limits. Given that the visit was taking place in the monsoon season, one of the challenges was that UNHCR was facing “an emergency within the emergency,” and was trying to take quick measures to adapt the precarious camps to minimize the risk of landslides and other damage that the heavy rains could cause, while still trying to cover the basic needs of the population. Other challenges included properly attending to the needs of children, as an estimated 55% of the camps population are minors.

UNHCR recognized the importance of supporting the host community in order to avoid push-back to the massive influx of refugees. Similarly, there was a need to support long-standing Rohingya refugees who were suddenly seeing their conditions dramatically changed by the increase in the camps' population.

UNHCR recognized that conditions for Rohingya refugees to return to Myanmar were not right. The agency also had serious concerns about the potential relocation of refugees to Bhashan Char Island. UNHCR had conveyed to the Government that any consideration of relocation of refugees to that island should be preceded by critical steps, including: conducting a thorough and independent technical and protection assessments by UNHCR and other humanitarian actors to determine the feasibility and desirability of such relocation; holding a consultative and inclusive process with refugees and nearby host communities; and the decision to move there should rest on the refugees themselves in an informed and free way. If the previous conditions were met, then the refugees relocating to the island should have effective freedom of movement within the island and to and from the mainland; effective access to basic rights and services and meaningful livelihood opportunities on or beyond Bhashan Char.



RECOMMENDATIONS

To the Government of Myanmar:

- Acknowledge responsibility and involvement of the Military in the widespread human rights abuses committed against the Rohingya population, in particular for the events that began on August 25th, 2017;
- Cooperate fully with efforts to hold the perpetrators of such abuses accountable, including efforts by the International Criminal Court;
- Provide for the voluntary, safe, and dignified return of Rohingya who were forced to flee Myanmar;
- Dismantle the “internally displaced persons” camps, and provide for the safe and dignified return of Rohingya who were detained in the camps to their home villages;
- End hate speech campaigns carried out by the Military or any other State organ against the Rohingya, including those carried out using platforms such as Facebook; work to counter existing bias and hate of the Rohingya that currently exists throughout the country, due in large part to decades of government efforts to dehumanize and scapegoat the Rohingya;
- Reform the 1982 Citizenship Law to provide full citizenship to the Rohingya; provide for all the rights of citizenship, including freedom of movement and access to education.

To the Government of Bangladesh:

- Ratify the 1951 Convention on the Status of Refugees, and allow the United Nations Office of the High Commissioner for Refugees begin to register those living in the camps as refugees, including refugee children born in Bangladesh;
- Allow unrestricted access to the camps for aid workers, including health and education workers, as well as for rights groups; provide for the rights of refugees, including the right to freedom of movement, as well as the right to health, education, and work;
- Give full respect to the principle of non-refoulement; stop any efforts aimed at returning Rohingya to Myanmar before the necessary conditions have been met such that the returns will be voluntary, safe, and dignified;
- Abandon the plan to move part of the refugee population to Bashar Char Island, or to any other location that would limit the rights of the Rohingya or would limit access to aid workers or other actors working to support the Rohingya;
- Continue to support efforts by the International Criminal Court to seek accountability for international crimes committed in Myanmar.

To the United Nations System:

- The Security Council should immediately refer the situation to the International Criminal Court to investigate, prosecute and hold accountable any person responsible for international crimes covered by the Rome Statute;
- The General Assembly should ensure that adequate funding and resources are allocated to the Independent Mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, established by the Human Rights Council;
- The Human Rights Council should continue to extend the mandate of the UN Special Rapporteur on the situation of human rights in Myanmar and insist that Myanmar cooperate with the mandate;
- United Nations Country Teams and Resident Coordinators should implement the Human Rights Up Front approach in Myanmar and Bangladesh, including by ensuring that Rohingya are consulted on and given an opportunity to participate in discussions related to decisions that affect the Rohingya.

To Members of the International Community, including the United States:

- Increase financial assistance to humanitarian relief efforts in the refugee camps in Bangladesh, as well as the “internally displaced persons” camps in Myanmar to the level of need identified by the United Nations;
- Impose targeted financial, travel and other sanctions on individuals and entities determined to have been responsible for or participated in serious human rights violations against the Rohingya;
- Push for a Security Council referral to the International Criminal Court or for the creation of an *ad hoc* accountability mechanism;
- Support, including through additional funding, the recently created independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011.

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