

Burning Homes, Sinking Lives



**A situation report on violence against stateless Rohingya in
Myanmar and their *refoulement* from Bangladesh**

June 2012

The Equal Rights Trust

The Equal Rights Trust (ERT) is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and think tank, ERT focuses on the complex and complementary relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.

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ISBN: 978-0-9560717-6-7

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The Equal Rights Trust is a company limited by guarantee incorporated in England and a registered charity.
Company number 5559173. Charity number 1113288.

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Executive Summary

This situation report provides an overview of violence and human rights abuses against Rohingya within Rakhine State in Myanmar in June 2012. The Rohingya are a stateless, ethnic and religious minority who were arbitrarily deprived of a nationality in 1982, and have suffered systematic arbitrary and discriminatory treatment in Myanmar for many decades.

In this report, ERT presents its findings and observations on the legal obligations of the parties to this crisis, and makes recommendations to the governments of Myanmar and Bangladesh, the UNHCR and the international community. This is not intended to be a comprehensive situation report and it makes no attempt to estimate how many people have been killed, injured or displaced. It however presents recent findings as established within a short period of time through emergency research, in order to alert the international community and the governments concerned, and to demonstrate the need for independent monitoring and a comprehensive human rights and humanitarian assessment of the crisis.

In Myanmar, what began as sectarian violence has evolved into organised and large scale state sponsored violence against the Rohingya. The violence which began on 3 June 2012 has mainly occurred in Sittwe and Maungdaw. On 10 June, a state of military emergency was declared, after which the UN pulled its staff out of the area, leaving no international observers on the ground. On 29 June, it was announced that UNHCR staff had returned to Rakhine State.

It is evident that the military turned a blind eye to violence perpetrated by members of the majority Rakhine and also partook in violence against Rohingya themselves, further heightening this crisis. From 16 June onwards, the military became more actively involved in committing acts of violence and other human rights abuses against the Rohingya including killings and mass scale arrests of Rohingya men and boys in North Rakhine State. This has caused an increased proportion of men and boys to flee the country, resulting in increased incidences of rape of the women left behind, committed by Myanmar security personnel. Internally displaced Rohingya have not received sufficient humanitarian assistance from the state.

The volume and diversity of information collected by ERT, other researchers, numerous journalists and other organisations, collectively provide *prima facie* evidence that serious and widespread violations are taking place in Myanmar. At best, the state may be unable or unwilling to take control of the situation and stop such violations. At worst – and what appears to be most likely on the basis of the available evidence – both state and non-state actors have been responsible for human rights abuses which have been carried out in an organised and a systematic manner.

Bangladesh, in contravention of its international legal obligations, closed its border and has pushed many Rohingya who have fled the violence and persecution back into dangerous waters. The first boat with Rohingya refugees arrived in Bangladesh and was pushed back - *refouled* - on 11 June 2012. On 18 June, 139 persons in 8 boats were pushed back from Teknaf. However, more refugees continue to arrive. There have been no visible steps taken by the government of Bangladesh to provide humanitarian aid for the refugees, thus shifting this burden onto local residents.

The legal obligations of both states require them to protect all persons within their territories or subject to their jurisdictions, regardless of whether they are citizens, stateless or refugees. Both states appear to have violated the right to life, the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and freedom from arbitrary detention, the right to food and shelter including the fundamental right to be free from hunger, and the right to the highest attainable standard of health of Rohingya. Bangladesh has also acted in violation of the rights to seek and to enjoy asylum and not to be subjected to *refoulement* of Rohingya refugees. The severity of the treatment of the Rohingya and the widespread, systematic nature of the violence additionally raises concern of crimes against humanity being committed by Myanmar.

ERT recommendations to the government of Myanmar include that it: urgently takes all necessary steps to end the violence and protect all individuals in Myanmar; fully cooperates with UN agencies to enable independent monitoring of the situation and the provision of humanitarian assistance and support to affected communities; brings martial law in the region to an end as soon as possible; conducts an impartial and transparent enquiry into the causes of the violence; takes all necessary steps to prevent future conflict by ensuring equal access to justice, repealing discriminatory laws, restoring the rights of the Rohingya and other ethnic minorities in Myanmar; and reduces statelessness in Myanmar by establishing clear paths towards the acquisition of citizenship and effective nationality for all stateless persons including the Rohingya.

ERT recommendations to the government of Bangladesh include that it: opens its borders to Rohingya refugees fleeing violence and persecution in Myanmar and refrains from *refoulement* or forcible return of all refugees, asylum seekers and persons of concern; fully cooperates with UN agencies and international NGOs to enable the provision of humanitarian assistance and support to all refugees; and fully cooperates with the international community in providing humanitarian support and protection in a fair and non-discriminatory manner to all long-term Rohingya refugees and persons of concern within Bangladesh.

ERT also makes recommendations **to the UN, Member States and the international community** in this report.

Introduction

On 3 June 2012, ten Muslim pilgrims from Yangon who were travelling by bus in Rakhine State were killed in an attack by a group of around 300 Rakhine Buddhists. The attack was in response to the news that a Rakhine woman had been raped and murdered by three Rohingya men. Since then, violence between Rakhine and Rohingya has spread, resulting in an unknown number of deaths, serious injuries and displacement of both Rohingya and Rakhine. Homes, businesses and mosques have been burnt and looted. As the violence escalated, additional security forces were deployed to control the situation.¹ But evidence points to them turning a blind eye to violence perpetrated by Rakhine and partaking in violence against Rohingya, further deepening this crisis. Despite an appeal for calm by Myanmar President Thein Sein, and immediate calls to restore order coming from the international community – including the UN, individual governments and civil society organisations including the Equal Rights Trust (ERT)² – what began as sectarian violence has evolved into organised and large scale state sponsored violence against the Rohingya.

The violence has mainly occurred in Sittwe – the capital of Rakhine State and Maungdaw, the Rohingya majority township in North Rakhine State. Many Rohingya have fled the violence and persecution to neighbouring Bangladesh across the Naf river from Maungdaw, and by sea in larger boats from Sittwe. In response to the influx of refugees, Bangladesh has, in contravention of its international legal obligations – particularly that of *non-refoulement*, closed its border and pushed refugees back into dangerous waters.

The Rohingya, having been forced to flee their burning villages in Myanmar, find themselves pushed back into dangerous waters by the Bangladeshi authorities. The situation faced by the Rohingya is desperate, in the face of flagrant violations of international refugee and human rights law by both states.

Independent confirmations of research findings are difficult to obtain in the short term, as both countries have clamped down on the presence of international media in the areas of concern (namely Rakhine State in Western Myanmar and Cox's Bazar District in South Eastern Bangladesh). Inside Myanmar, competing claims of atrocities carried out by both sides have been put forward by Rakhine and Rohingya groups alike, and the official figures announced by the government of Myanmar appear to be far below other indications. In the midst of arguments and counter-arguments over numbers, the core issues pertaining to this crisis have been pushed to the background – the responsibility of Myanmar to protect *all* persons within its territory and of Bangladesh to provide refuge and not *refoule* persons to a place where they are at severe risk.

ERT has been conducting research and advocacy work with the objective of securing greater protection for stateless Rohingya since 2008. ERT researchers interviewed over 50 refugees between 13 and 29 June 2012. This information, corroborated by evidence provided by sources from within Rakhine State and by information shared with ERT by other organisations, paints an extremely bleak picture, which demands urgent action to prevent further human rights violations including loss of life, suffering, forced displacement and damage to property.

In this situation report, we present the findings and observations of our researchers and attempt to piece together the events as they have happened. We also present the legal obligations of the parties to

¹ It should be noted that North Rakhine State which has a majority Rohingya population is already heavily militarised, with large camps in the Buthidaung township in particular.

² The UN Special Rapporteur on Myanmar issued a statement on the violence in Rakhine State on 13 June 2012. Statements on the violence in Rakhine State and *refoulement* from Bangladesh were also released by Human Rights Watch on 11 and 12 June 2012, International Crisis Group on 12 June 2012, The Equal Rights Trust on 14 June 2012, Asia Pacific Refugee Rights Network on 14 June 2012, Amnesty International on 19 June 2012 (ASA 16/008/2012), and many other organisations.

this crisis and make recommendations to the governments of Myanmar and Bangladesh, the UNHCR and the international community. This is not intended to be a comprehensive situation report and it does not attempt to estimate how many people have been killed, injured or displaced, nor the full extent of the damage. As noted in the ERT statement of 14 June 2012:

Due to the very limited access into North Rakhine State for journalists and the international community, it is difficult to verify the extent of damage caused to lives and property. This has resulted in conflicting reports being presented in the media and the authenticity of such reports being questioned. As long as the area remains closed off, such questions will continue to be asked, and this uncertainty will be exploited to undermine voices calling for an immediate end to the violence. While the exact number of persons killed and injured and properties damaged may only be revealed if an impartial and transparent inquiry is conducted after the violence has ceased, the lack of such information in the present does not detract from the urgency of the crisis at hand, or the responsibility of all parties concerned to bring the situation under control.³

There has been no substantive change since the publication of this statement that would facilitate the verification of numbers or corroboration of testimony. The lack of such evidence does not absolve the parties concerned of their responsibilities under international law. In fact, to the extent that accurate documentation of the situation has not been possible due to the actions and inactions of the Governments of Myanmar and Bangladesh, they have an added obligation to rectify this situation.

The acute discrimination and abuse faced by the Rohingya is a deeply entrenched and long-running problem that has over the years escaped the media attention and international concern it deserves. In fact, the present crisis is only the eruption of a long unaddressed problem with several dimensions. While immediate solutions are essential to protect those at risk of severe harm in the present crisis, concrete and sustained efforts are needed to ensure full respect for all Rohingya both within Myanmar and beyond.

Background to the Current Crisis

The Rohingya are a Muslim community of South Asian descent. In Myanmar, they are an ethnic, religious and linguistic minority. Approximately one million Rohingya live today in Rakhine state of Myanmar, of which over 700,000 are concentrated in the northern region of the state.⁴

The Rohingya have suffered ethnic discrimination and violence in Myanmar for many decades. The 1982 Citizenship Law of Myanmar stripped most of the Rohingya of their nationality, making them stateless.⁵ This law has been the legal basis for systematic arbitrary and discriminatory treatment against the Rohingya community. Furthermore, Myanmar does not recognise the existence of an ethnic community by the name of Rohingya. Their human rights and freedoms have been routinely violated and eroded through a series of draconian policies, arbitrary taxes and controls. Notably, the Rohingya do not have the freedom to move within Myanmar. In fact, those living in North Rakhine State face difficulties in obtaining the required travel permits even to visit a neighbouring village and they are not permitted to travel beyond the three townships of Buthidaung, Maungdaw and Rathedaung. This

³ The Equal Rights Trust, *Myanmar and Bangladesh Must Protect Stateless Rohingya*, 14 June 2012, available at: <http://www.equalrightstrust.org/news140612/index.htm>.

⁴ There are additional communities of Muslims in Rakhine State who identify themselves as “Rakhine Muslims” or “Myanmar Muslims”. The entire Muslim population in Myanmar is about 2.5 million, approximately 4 per cent of the total population of the predominantly Buddhist country.

⁵ Burma Citizenship Law [Myanmar], 15 October 1982, available at: <http://www.unhcr.org/refworld/docid/3ae6b4f71b.html>.

restriction severely impedes their already limited access to employment, education, health and trade. Rohingya who leave Myanmar are denied the right to return; their names are struck off family lists and they face long-term imprisonment if captured upon re-entry. Severe controls implemented by the NaSaKa – Myanmar's border security force – are also placed on Rohingya marriages. A marriage permit must be obtained through a lengthy and expensive process which is rife with corruption, especially bribery. Marriages without a permit can result in up to ten years imprisonment.⁶ The Myanmar security forces have a long history of discrimination and systematic human rights abuses against the Rohingya including extrajudicial killings, arbitrary arrest and detention, restriction of movement, and forced labour.⁷

Hundreds of thousands of Rohingya have fled repression and persecution in Myanmar over the past few decades. Bangladesh – the immediate neighbour of North Rakhine State – has been burdened by an on-going steady flow of Rohingya refugees into the country, and two mass refugee exoduses of about 250,000 Rohingya refugees each in 1978 and 1991-92. Both mass exoduses were followed by repatriation, often under coercion, despite the fact that there was no evidence that the human rights situation in Myanmar had significantly improved.

At present, some 29,000 Rohingya refugees who first arrived in the 1991-92 mass exodus remain in Bangladesh in the two “official” refugee camps of Nayapara and Kutupalong in the Cox's Bazar district of South-East Bangladesh. They benefit from limited protection and humanitarian assistance that UNHCR and a few international and national NGOs are able to provide. A further population of more than 200,000 Rohingya live outside the two official refugee camps. Most have fled to Bangladesh independently of the mass exodus, many after 1992, and have been denied access to the camps.⁸ ERT research indicates that perhaps as many as 50% of these unregistered Rohingya were once camp refugees who had been forcibly repatriated to Myanmar after 1992, where they faced continuing persecution and fled back to Bangladesh.⁹

Bangladesh has thus been home to Rohingya refugees for many decades. It is a significant burden to bear, particularly for one of the poorest districts of Bangladesh. While the reluctance of Bangladesh to allow more refugees to enter can therefore be understood, this does not justify the forcible return – *refoulement* – of refugees to persecution and danger. It is essential that the international community assists Bangladesh by sharing the burden and bearing the costs in the short and long term, just as it is imperative that Bangladesh accepts international assistance in this regard.¹⁰

⁶ For a detailed account of the human rights abuse endured by the Rohingya in Myanmar, see The Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, July 2010, pp. 59 to 63, available at: <http://www.equalrightstrust.org/view-subdocument/index.htm?id=748>.

⁷ NUI Galway, *Crimes against humanity in Western Burma: The situation of the Rohingyas*, 2010, available at: http://www.nuigalway.ie/human_rights/documents/ichr_rohingya_report_2010.pdf.

⁸ Statistics published by UNHCR Bangladesh January 2012, available at: <http://www.unhcr.org/pages/49e487546.html>.

⁹ See above, note 6.

¹⁰ In 2011 Bangladesh rejected a multi-million Euro proposal from the UN and the EU to provide much needed infrastructure development for both the Rohingya population and host community in Cox's Bazar district.

The Situation in Myanmar

There is a long history of ethnic tension in Rakhine State between Rakhine Buddhist groups and Rohingyas. In the months preceding the current crisis, Buddhist Rakhine hardliners had stepped up efforts to instigate anti-Rohingya sentiment including through the organisation of public meetings in Sittwe and the townships in North Rakhine State in late 2011, followed by the publication of a book inciting hatred against Rohingya in February 2012.¹¹

The catalyst for the most recent violence was the rape and murder of a Rakhine woman – allegedly by three Muslim men on 28 May in Ramree – in the southern part of Rakhine State. Images of the rape victim were disseminated and anti-Rohingya protests organised. On 3 June 2012, ten Muslim pilgrims from Yangon travelling by bus in Rakhine State were killed in an attack by a group of around 300 Rakhine Buddhists protestors. An outcry from Muslims living in Yangon against the 3 June killings was responded to by the government in an apparently positive manner by announcing they would hold an inquiry into the deaths, the results of which were due to be made public on 30 June 2012.¹² Despite this announcement and a public address calling for an end to the violence by President Thein Sein on 10 June 2012,¹³ violence between Rakhine and Rohingya spread from 8 June onwards, resulting in an unknown number of deaths, serious injuries and displacement of both groups. Homes, businesses and mosques have been burnt and looted. The violence has primarily been in Sittwe and the North Rakhine township of Maungdaw, with isolated incidents reported from the townships of Buthidaung and Rathedaung.

Violence against Rohingya

By 9 June, a curfew had been imposed in North Rakhine State. According to Tun Khin of the Burmese Rohingya Organisation – UK (BROUK), only the Rohingya were forced to remain in their homes, while Rakhines were allowed to loot and burn Rohingya properties with impunity.¹⁴ On 10 June, a state of military emergency was declared under Section 413 of the 2008 Constitution. This left the sole responsibility for the restoration of peace with the military, which has a long history of discrimination and systematic human rights abuses against the Rohingya including extrajudicial killings, arbitrary arrest and detention, restriction of movement and forced labour.¹⁵

This testimony of a Muslim from Sittwe provides insight into the nature of the attacks:

On 9 June they attacked one Muslim village. The Rakhine people came from a nearby Rakhine village to the Muslim village and they burned the houses.¹⁶ When the Muslims came out to fight the fire and protect their houses, the police shot at them and four Muslims died that night from the gunshot wounds. A whole village of around 200 households was burned that night. They attacked two Muslim wards. They did not burn the houses in one village because in this village Muslim houses and Rakhine houses are mixed. So they just entered

¹¹ The Arakan Project, an NGO considered to be a leading source of information on the Rohingya, confirmed this to ERT at a briefing in London on 28 June 2012.

¹² Reuters, “Myanmar: Inquiry begun in killing of Muslims”, 08 June 2012, available at: <http://www.nytimes.com/2012/06/08/world/asia/myanmar-inquiry-begun-in-killing-of-muslims.html>.

¹³ Mizzima News, “Thein Sein in TV address asks for calm”, 11 June 2012, available at: <http://www.mizzima.com/news/inside-burma/7289-thein-sein-in-tv-address-asks-for-calm.html>.

¹⁴ Parliamentary briefing in UK parliament by Christian Solidarity Worldwide, BROUK and Chris Lewa, 27 June 2012. This was confirmed independently to ERT by the Arakan Project at a briefing in London on 28 June 2012.

¹⁵ For further details see above, note 7.

¹⁶ Information including the names of interviewees, places where interviews were conducted and certain places and persons named by interviewees have been withheld from this report in order to ensure that persons cannot be identified, and the safety and security of interviewees is maintained.

the houses and killed people and destroyed the houses. They even raped women. The place I lived in is the biggest Muslim ward in Sittwe and we also have other ethnic groups. In the afternoon they started to burn four or five places at the same time.

My family ran away from our house, and at 12 at night we were part of a group of people running away from one place to another and fire came from here and there. My brothers and sisters and I ran out of the house. We requested to the police and military officers to take us to a safe ward or to a place with many Muslim people, but they did not allow us to get out of the ward, so we were just moving from one place to another within the ward. The Rakhine people could enter the ward and kill us at any time. We were so scared of being killed. They did not enter the ward to kill that night, they just put up fire. At midnight my father phoned us to tell us to get home as our house was not burned. So we got back to the house and stayed there for the night. The next morning at 10 o'clock they started fires again, four places at the same time. They took away the belongings of the people, and in front of the ward many people were killed - cut by swords and even the dead bodies were left in the ward and burned. So many people were killed but we cannot estimate the numbers. We were taken from the ward at 11:30 in the morning and we arrived here at 8 in the night. We were on foot so we could not carry anything, we only tried to save our lives.¹⁷

Another interviewee who fled the violence in Maungdaw to Bangladesh provided the following testimony:

The riot began at noon. It was time for Friday prayer. People were approaching the mosque. They opened fire on the four Imams (Spiritual leaders) who were approaching the mosque to offer the Friday prayer. When Imams are killed, everyone protests. Then Muslims caught the killers and killed them. This fuelled the riot further. People killed each other whenever they got the chance. I saw with my own eyes that they were killing people on Friday. Ten to twelve people were killed on that very day.

Police also opened fire on us. They torched the mosques and houses. This arson continued for the whole day. It continued for the next day and the next. It continued for days. A lot of people were killed.

They also slashed our children. They put a sharp chopper on the ground, held the infants above the chopper and then let the infants fall upon the chopper. Those infants were breast-fed kids. The rioters let the infants fall upon the chopper. I saw them kill one infant that way. But I can estimate many of the children could have been killed this way. I was watching from a distance. One cannot watch properly from a distance.

At this point, the violence also continued even at night. People started to flee for Bangladesh.

They looted and burnt down our homes. We could not cook our meal. If one cannot cook a meal, how it will be possible for him to live there? I do not know where the other members of my family are staying now! I could not find my children and wife. I don't know where they are now. Don't know if they found any shelter or not. I do not know how far they have travelled. Now I do not know where my children are, where my wife is. I cannot even take my meal, I feel so guilty inside that I left them. It was night. Nobody knows where they have gone. I could not sleep at all last night. Where my children went? Where my wife went?

¹⁷ Interview conducted by ERT and Goodmorningbeautiful Films, 21 June 2012. Place of interview withheld.

*Though I am talking to you, I cannot stop thinking of them! Where will I look for them? Will it make any meaning to me living alone without them? Where is my wife? Where are my children? I have five children. Four sons and a daughter. I cannot even cry.*¹⁸

Following the declaration of a state of emergency, the UN pulled its staff out of the area, leaving no international observers on the ground. The lack of access for journalists and international observers has contributed to the widely divergent reports regarding the death toll, number of serious injuries and displacement. According to Associated Press, the government claimed that the number of the dead was 62 on 21 June.¹⁹ However, according to some Rohingya sources, the death toll was above 10,000.²⁰ During a briefing in the UK parliament, Tun Khin of BROUK stated that at least 650 Rohingyas have been killed by Rakhine and government forces, and at least 1,200 were missing. More than 80,000 Rohingyas are displaced, 22 villages have been burned down and 14 mosques destroyed.²¹

The Involvement of State Actors

A further issue under dispute is the degree to which the government is implicated or directly involved in the violence. The state media has portrayed the unrest as sectarian violence between Muslim Rohingya and Buddhist Rakhines, which they are attempting to bring under control. However, from 16 June onwards, ERT sources and other organisations have found evidence that the military became more actively involved in committing acts of violence and other human rights abuses against the Rohingya. This includes the mass scale arrest of Rohingya in North Rakhine State. As stated by one ERT researcher:

*Every person that I interviewed has something in common to say. They speak about the violence, they speak about the torching of their houses, destroying of mosques and most importantly they all confirmed that security forces were directly involved in the killing and violence. These forces, according to them, include NaSaKa (the border force) as well as the military, and police.*²²

The displaced person from Sittwe whose testimony appears above also spoke of the involvement of security forces in the violence, and commented on the organised nature of the riots and their suspicion that the state government was involved:

On 10 June the Prime-Minister of Rakhine state and other officers came to my ward and called for a meeting with the elders. My father attended that meeting. They said there would not be any more attacks. But before they left, a ward was burned in front of my ward. We don't trust the state government, we strongly believe that they are involved and have planned these riots.

The Rakhine people announced they would come and destroy our ward in front of policemen. The policemen did not allow Muslims to protect their houses. They allowed Rakhine people to burn Muslim houses. The policemen even burned some houses. The Rakhine people who came to burn houses were well-prepared with fuel and gas. They held swords. The military just watched. In front of my ward there were 15 military officers and

¹⁸ Interview conducted by ERT and Goodmorningbeautiful Films, 20 June 2012. Place of interview withheld.

¹⁹ See for example, Associated Press, "Myanmar Official says 62 died in recent communal unrest", *The Washington Post*, 21 June 2012., available at: http://www.washingtonpost.com/world/asia_pacific/myanmar-official-says-62-died-in-recent-communal-unrest-in-the-west/2012/06/21/gJQA876fsV_story.html.

²⁰ NDPHR cited on *The Sail*, 20 June 2012, available at: <http://thesail.wordpress.com/2012/06/20/12-days-report-of-ongoing-ethnic-cle%80%8Bansing-against-defenceles%80%8Bs-unarmed-rohingya-8-19-june/>.

²¹ See above, note 14.

²² Internal situation report submitted to ERT by a researcher in Cox's Bazar, 25 June 2012.

around 30 policemen. The military, they did not do anything. I even asked one of them whether, when these Rakhine people holding swords announced they would attack, they could shoot at the Rakhine people. They said they did not receive any instructions to shoot these people.

There is a well-organised gang against Rohingya Muslims here and they have a Master at the top. Their weapons are distributed to them from a truck, so this is well-organised and well-planned. I also have experience of riots in 2001 and at that time also half of my ward was burned. But at that time it was not as planned, it just happened and people just organised here and there. But this time it is not like previous times. They are well-organised and the weapons they use look the same.²³

According to Amnesty International, Rohingya are still fleeing arbitrary arrest by border forces.²⁴ At least ten persons in Bangladesh and three persons in Myanmar interviewed by ERT have spoken of the role played by the military in arresting and disappearing Rohingya. According to their testimony, the military and NaSaKa go from door to door with family lists to confirm that all householders have not left their homes. Those who are not at home are noted and mass roundups are then conducted to arrest such persons. Arrested persons are tied up and put on military trucks. Those who can afford to bribe the authorities are released and the rest are taken away. Those interviewed estimate that approximately 100–200 persons – primarily men and boys aged 15 to 30 – had been forcibly disappeared from their respective villages through such arrests. This has caused an increased proportion of men and boys to flee the country. Sources within Myanmar claim that the incidences of rape committed by Myanmar security personnel have greatly increased since the flight of men to Bangladesh. This has also been confirmed by research conducted by the Arakan Project.²⁵

According to one 17 year old boy interviewed by ERT on 28 June, a group consisting of military, NaSaKa personnel and Rakhine villagers entered their village in Maungdaw on 24 June from the west, firing their automatic weapons at the Rohingya villagers. The villagers ran away towards the east, where a canal blocked their escape. Those who could not cross the canal were beaten and attacked by Rakhine civilians carrying sharp weapons, while the military fired on them. The interviewee witnessed two women being raped; they were about 30 feet away from him at the time. He and seven others were among the persons who managed to cross the canal, but six of them were gunned down by the military when they reached the far bank. He and one other managed to escape together, and crossed over to Bangladesh on 25 June.²⁶ Rohingya interviewed by ERT have also claimed that those who tried to help the injured were shot at. Injured persons who could walk were tied up, put into military trucks and taken away. Those who could not walk were left to be “dealt with” by Rakhine villagers.²⁷

ERT’s research findings regarding the involvement of state security forces in the violence have been corroborated by interviews conducted by journalists with Rohingya who witnessed the recent violence. They relate that state security forces were acting together with mobs of Rakhine civilians, attacking Rohingya people, their villages and property.²⁸ As Salim Ullah of Arakan Rohingya National Organisation (ARNO) pointed out to the Democratic Voice of Burma, the number of Rohingya seeking medical care in Myanmar and Bangladesh with bullet wounds, in a situation where vigilantes are

²³ See above, note 17.

²⁴ Reuters, “US praise Myanmar response to sectarian clashes”, 19 June 2012, available at: <http://uk.reuters.com/article/2012/06/19/uk-myanmar-violence-usa-idUKBRE85I0VQ20120619>.

²⁵ See above, note 11.

²⁶ ERT Interview with A, 28 June 2012, Place of interview withheld.

²⁷ *Ibid.*

²⁸ See for example, “Dangerous Waters for Burma’s Rohingya Minority”, *Channel 4*, 25 June 2012, available at: <http://www.channel4.com/news/dangerous-waters-for-rohingyas-forgotten-people>.

thought to be using rudimentary weapons, indicates that security forces are responsible for at least part of the violence.²⁹

According to reports on Radio Free Asia and Channel 4 News, some Rohingya attempting to flee the violence in Rakhine State to neighbouring Bangladesh claimed they saw other boats full of people catch fire, having been fired on by Myanmar military helicopters.³⁰ These claims cannot be confirmed due to the lack of access to the area by neutral parties. However, ERT did interview a family who testified to the involvement of helicopters in the same incident reported by Channel 4 and Radio Free Asia.

Humanitarian Assistance and Support

Recent reports from Arakan State indicate that while tensions remain high, in Sittwe, the capital of the region, “an uneasy calm prevails”.³¹ Displaced people are being accommodated in camps across the region and the UN are preparing for a three month operation. The official government figure of displaced persons is 52,200 accommodated in 66 camps, but unofficial estimates put the figure at 80,000 – 90,000.³² A team led by the World Food Program Myanmar Deputy Country Director arrived in Sittwe to help scale up the operation there. The team has since travelled to Maungdaw and Buthidaung in order to expand deliveries there. An assessment mission is being organised, which may provide a clearer picture of the extent of needs in the affected area.³³

Information from internally displaced Rohingya indicates that they have not received sufficient humanitarian aid:

I am now staying in a relative's house with around 100 refugees,³⁴ relatives and friends. In this area there are refugees from six villages, who don't have enough food, no shelter, no medical care. We don't have people here from other townships - only from Sittwe area. The conditions are really bad. And it is raining here. Many people are still outside and not in the shelter and are hungry. There is diarrhoea in the refugee camp and four people died of diarrhoea.

Now the WFP is providing food, but it is not enough. My family have been here for nine days and we have received three kilos of rice. In the main refugee camp WFP is providing rice, but it is not enough, yet. Even the government provides some rice, but it is not enough. We don't know what will happen in a few days, but maybe the refugees will be sent back, we don't know. It is very unsure.

People are injured from attacks, from fights and also from running from places. Many people are without medical care. From the government's side the temporary medical centres are open for just one hour. They just provide some medical care for one hour. There are no doctors though.

²⁹ Allchin, J., “The Rohingya, Myths and Misinformation”, *Democratic Voice of Burma*, 22 June 2012, available at: <http://www.dvb.no/analysis/the-rohingya-myths-and-misinformation/22597>.

³⁰ See above, note 28. See also, “Helicopters fire on Rohingya Refugees”, *Radio Free Asia*, 20 June 2012, available at: <http://www.rfa.org/english/news/burma/refugees-06202012193820.html>.

³¹ IRIN (Humanitarian News and Analysis), “Myanmar: Uneasy calm in Rakhine”, 25 June 2012, available at: <http://www.irinnews.org/Report/95722/MYANMAR-Uneasy-calm-in-Rakhine>.

³² UN Office for the Coordination of Humanitarian Affairs, “Myanmar: Displacement in Rakhine, Situation Report 2”, 20 June 2012, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Situation%20Report%202_Rakhine.pdf.

³³ World Food Program, “WFP scales up response to Rakhine displacement in Myanmar”, 19 June 2012, available at: <http://www.wfp.org/news/news-release/wfp-scales-response-rakhine-displacement-myanmar>.

³⁴ The interviewee uses the term “refugee” but is in fact an “internally displaced person” (IDP).

*Our worry is firstly food. And also we want to go back to our own place, our own ward, we don't want to stay here for a long time. We want to go back and build our home. This is our concern.*³⁵

The reference in this testimony to the impact of bad weather on the IDPs is significant as it is currently monsoon season. During this season, the implications of loss of shelter or housing are particularly severe.

Other persons from Maungdaw interviewed by ERT have claimed that after attacks, medical treatment had been withheld from Rohingya and that medical centres only provide treatment to Rakhine.³⁶

Other Developments

A further issue of concern has been the response to the violence by the Myanmar public and figures within the political opposition movement. While there are moderate voices from within Myanmar and examples of tolerance, racist discourse has been prevalent across the media and social networking sites. The state media has referred to the Rohingya by the racist term “Kalar”³⁷ and calls for violence and genocide have spread across the internet.³⁸ In an environment of open and widespread racism against the Rohingya it is difficult for moderate and progressive leaders within Myanmar to publicly condemn the ongoing violence without losing public support.

On 18 June, three Rohingya men were sentenced to death for the rape and murder of the Rakhine woman on 28 May. One of the three died in custody prior to sentencing, officially a suicide. According to Human Rights Watch, due to a lack of transparency in the legal system, it is not clear whether the accused were given a fair trial.³⁹

Meanwhile, the inquiry into the killing of the ten Muslim men on 3 June continues, headed by a Minister and Senior Police Chief appointed by the government.⁴⁰ According to the Arakan Project, over 100 persons were questioned about the killings in Sittwe. The government of Myanmar announced that the inquiry report would be published on 30 June 2012, after which it may be easier to assess the impartiality, effectiveness and transparency of the inquiry.

Significantly, there has been no announcement of an inquiry into the mass violence that has occurred with impunity since the murder of the ten Muslims on 3 June 2012.

On 29 June, it was announced that UNHCR staff have returned to Rakhine State to help address the humanitarian needs there. The UN also confirmed reports that some of its staff had been detained by the authorities in Rakhine State for questioning, and that the UN was continuing to engage in efforts to

³⁵ See above, note 17.

³⁶ See above, note 26.

³⁷ “Kalar” is a derogatory and racist term used in Myanmar to refer to persons of Muslim or South Asian descent. The government issued a retraction of this language on 6 June 2012. However, its initial use in mainstream media served to sanction racist discourse.

³⁸ Sai Latt, “Islam, Intolerance and the Internet”, *New Mandala*, Australian National University, 10 June 2012, available at: <http://asiapacific.anu.edu.au/newmandala/2012/06/10/intolerance-islam-and-the-internet-in-burma-today/>.

³⁹ Hindstrom, H., “Three men given death sentence for murder that sparked riots”, *Democratic Voice of Burma*, 18 June 2012, available at: <http://www.dvb.no/news/three-men-given-death-sentence-for-murder-that-sparked-riots/22512>.

⁴⁰ Reuters, “Myanmar: Inquiry begun in killing of Muslims”, 8 June 2012, available at: <http://www.nytimes.com/2012/06/08/world/asia/myanmar-inquiry-begun-in-killing-of-muslims.html>.

access them.⁴¹ Despite this development, there is no indication that better access will be granted to international observers for the purposes of monitoring and documenting any further violence.

The Legal Obligations of Myanmar

The human rights abuses against the Rohingya, including systematic discrimination suffered at the hands of Myanmar authorities on a day-to-day basis for many years are well documented.⁴² The events described above demonstrate in no uncertain terms how vulnerable the Rohingya are to abuse and how volatile their security situation has always been. Mass violence drove large numbers of Rohingya out of Myanmar in the 1970s and 1990s as well, but they were returned (often forcibly) without adequate steps being taken to ensure their safety and security inside Myanmar. Perhaps it was just a matter of time before history repeated itself as it has, with severe human rights and humanitarian consequences. The current crisis highlights the need to address the root causes of the volatile security situation for Rohingya and their vulnerabilities.

The arbitrary deprivation of nationality does not diminish the responsibility of the state of Myanmar to protect Rohingya from human rights abuse. Under international law, all persons within the territory or subject to the jurisdiction of Myanmar must be protected by the state, regardless of their nationality or lack thereof.

The declaration of a state of emergency in North Rakhine State does not diminish the obligation to protect the fundamental rights of all persons living there. Indeed, in the context of a state of emergency, the importance of scrupulous respect for human rights should increase. This is particularly so when the stated purpose of the state of emergency is to stop the violence from spreading.

As noted in the introduction to this report, the absence of international and/or neutral observers to monitor and document the situation makes it difficult to verify testimonies and reports or to identify those responsible for human rights abuse and violence. However, the volume and diversity of information collected by ERT, researchers, numerous journalists and other organisations, collectively provide *prima facie* evidence that serious and widespread violations are taking place. At best, the state may be unable or unwilling to take control of the situation and stop such violations. At worst – and what appears most likely, based on the testimony received – both state and non-state actors have been responsible for human rights abuses which have been carried out in an organised and a systematic manner.

The obligations of Myanmar towards Rohingya women and children are entrenched in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)⁴³ and the Convention on the Rights of the Child (CRC)⁴⁴ respectively, which have both been ratified by Myanmar. Myanmar has not ratified any other principal human rights treaties including the International Covenant on Civil and Political Rights (ICCPR),⁴⁵ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁴⁶ the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or

⁴¹ UN Secretary Generals Noon Briefing, 29 June 2012. Available at: http://www.un.org/sg/spokesperson/highlights/index.asp?HighD=6/29/2012&d_month=6&d_year=2012.

⁴² See above, notes 6 and 7.

⁴³ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180 (1979).

⁴⁴ Convention on the Rights of the Child (CRC), G.A. Res. 44/25 (1989).

⁴⁵ International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI) (1966).

⁴⁶ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966).

Punishment (CAT)⁴⁷ or the Convention on the Elimination of all forms of Racial Discrimination (CERD).⁴⁸

However, Myanmar is a Member of the United Nations and is obligated by the Charter of the United Nations to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.⁴⁹ The human rights and fundamental freedoms referred to in Article 55 (c) of the UN Charter are specified in the Universal Declaration of Human Rights (UDHR).⁵⁰ Many of the human rights entrenched in the UDHR are also recognised as principles of customary international law and are therefore universally applicable.

Some of the key human rights which appear to have been violated by Myanmar are specified below:

The right to life, liberty and security of the person enshrined in Article 3 of the UDHR, prohibits the arbitrary deprivation of life in any circumstances. Furthermore, Article 6 of the CRC recognises the inherent right to life of every child. The many accounts of widespread killings by Rakhine and military personnel of Rohingya adults and children alike are violations of this most fundamental right.

The right to be free from torture or cruel, inhuman or degrading treatment or punishment is enshrined in Article 5 of the UDHR, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁵¹ and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵² Article 37 of the CRC prohibits the torture or cruel, inhuman or degrading treatment or punishment of any child. This right is recognised as a peremptory norm of customary international law and is therefore universally applicable. Reports of security personnel raping, beating and attacking Rohingya adults and children, as well as allowing civilians to perpetrate racially-motivated violence against the Rohingya under their watch, amount to violations of this right under international law.

The right to liberty and freedom from arbitrary detention is enshrined in Article 9 of the UDHR. The alleged mass arrests and incommunicado detention of the Rohingya by the military forces amounts to arbitrary and unlawful detention in violation of Myanmar’s human rights obligations. Suspicions relating to the disappearance of arrested persons raise additional human rights concerns.

The right to non-discrimination and equality under Article 2 of the UDHR obligates States to guarantee human rights without discrimination on various grounds including race and national or social origin. Articles 13(1)(b) and 55(c) of the Charter of the United Nations also enshrine the right to non-discrimination. Similarly, Articles 2 of the CRC and CEDAW prohibit discrimination on any grounds against children and women respectively. The alleged partisan attitude of the authorities and military personnel towards Rakhine who have been allowed to commit violent acts against Rohingya with impunity is a clear example of discrimination. Other examples include the alleged withholding of medical aid to Rohingya and the failure to provide sufficient humanitarian aid to Rohingya IDPs.

⁴⁷ Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 (1984).

⁴⁸ Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106A (XX) (1965).

⁴⁹ Article 55 (c) of the Charter of the United Nations. According to Article 56 of the Charter, It is the obligation of all member states of the UN to take “joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”.

⁵⁰ Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948).

⁵¹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173 (1988).

⁵² Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452 (XXX) (1975).

The right to an adequate standard of living including food, clothing, housing and medical care is protected by Article 25(1) of the UDHR. Article 24 of the CRC protects the right to the highest attainable standard of health of all children and article 27 enshrines “the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development”. The failure to adequately provide for the basic needs of IDPs including children, in particular, the failure to provide adequate shelter to IDPs during the monsoon season, leaving them exposed to extreme weather conditions, as well as acts of burning down the homes of Rohingya and the denial of access to emergency health care are serious violations of this right.

In addition to the human rights violations listed above, the severity of the treatment of the Rohingya and the widespread, systematic nature of the violence raises concern of crimes against humanity being committed by Myanmar. One academic study has argued that the treatment of Rohingya by the state of Myanmar even in “normal” times amounted to crimes against humanity.⁵³ In the present situation, these concerns are further heightened and require serious attention and investigation.

The Situation in Bangladesh

Fleeing persecution and violence in Myanmar, boatloads of Rohingya refugees have attempted to cross the border into Bangladesh. The Government of Bangladesh responded by sealing the border and strengthening the presence of border guards. Foreign Minister Dipu Moni is reported to have stated on 12 June that:

[T]he recent Rohingya influx does not help our interests. We're in consultation with Myanmar, to send back the Rohingya refugees to their homeland (...) The presence of Rohingyas is taking its toll on society, environment and the law and order situation⁵⁴.

Asked whether Bangladesh is concerned about the situation in Myanmar, she replied: “There is no special cause for concern. But, we're only concerned about the violent situation across the border, which is only natural.”⁵⁵ The Foreign Minister also stated that Bangladesh had no legal obligation to provide refuge to the fleeing Rohingya as it is not party to the 1951 Convention Relating to the Status of Refugees or its Protocol,⁵⁶ thus demonstrating a lack of understanding of the nature of Bangladesh's obligations under international law.

Human rights activists and civil society within Bangladesh have made strong statements drawing attention to the legal obligations of Bangladesh, and have urged the government to protect the fleeing Rohingya.⁵⁷ The main opposition party – the Bangladesh Nationalist Party and its biggest ally Jamat-e-

⁵³ See above, note 7.

⁵⁴ Cited in “Dhaka takes firm stance over Rohingya influx”, *The Independent*, 13 June 2012, available at: <http://www.theindependentbd.com/paper-edition/frontpage/129-frontpage/115054-dhaka-takes-firm-stand-over-rohingya-influx.html>.

⁵⁵ *Ibid.*

⁵⁶ Cited by Hussein, M., “Rohingya refugees leave Burma to seek help in Bangladesh”, *The Guardian*, 22 June 2012, available at: <http://www.guardian.co.uk/global-development/video/2012/jun/22/rohingya-refugees-burma-bangladesh-video>.

⁵⁷ See, for example, Lohani, K, Hossain, H, Kamal, S, et al., “Bangladesh citizens call for opening borders for Myanmar refugees on humanitarian grounds”, 13 June 2012; and Abrar, C.R., “Opening Doors for the Rohingya: Duty not Charity”, 19 June 2012. Also see, *The Daily Star*, 26 June 2012; A.B.M. Musa, *Bangladesh Protidin*, 20 June 2012; Hana Shams Ahmed, *New Age* (a national English daily), 28 June 2012, Moshahida Sultana Ritu, etc.

Islami – an Islamic political party, have also criticised the government position and have staged street demonstrations demanding a change in policy.⁵⁸

There are currently approximately 29,000 registered Rohingya refugees in Bangladesh and more than 200,000 unregistered persons of concern who are without adequate protection and denied access to humanitarian support. Forced repatriations and push-backs of Rohingya refugees by Bangladeshi authorities have occurred since the 1990s.⁵⁹

The Refoulement of Refugees

The first boat with Rohingya refugees arrived and was pushed back - *refouled* - on 11 June 2012. Journalists and researchers were able to access the area with relative ease during this time. The following testimony sheds light on the journey undertaken by Rohingya fleeing violence in Myanmar:

Riots broke out at the night. We could not stay there anymore. The fishing boats were beached on the shore. Terrified people rushed into those boats. We did not hire them, we just found them and used them. Those boats belonged to Burmese people. There were more or less 100 people in the boat with all the kids and females.

We sailed to the sea at night. I do not know what happened to the others. We were in the middle of the sea for three days. On the fourth day we beached on the shore. One of the members of the local government council (Bangladesh) gave us rice to eat. After that it started to rain.

However, we were not allowed to take shelter in Bangladesh. They pushed us back to the sea. After we were pushed out, we tried to get to the shore individually at one's own risk. Nobody knows if everyone made it. We were all on our own. And we had to swim for some time to reach Bangladesh. So I do not know who went in which direction.⁶⁰

A ten year old girl told researchers how she arrived in Bangladesh with her grandmother. They fled Myanmar on a boat when fighting broke out. The Bangladeshi border guard did not allow their boat to get close to the shore, so they drifted further along and when they found an appropriate place near the embankment, they decided to swim for the shore. In the process, the girl said that some adults and children including toddlers who were on the same boat drowned in the river Naf. She was unsure how many finally made it to Bangladesh, as it was dark when they arrived.⁶¹

According to media reports, around 1,500 Rohingya refugees had been forcibly turned away from Bangladesh by 12 June 2012, and Bangladesh had pushed back at least 16 boats from Sittwe.⁶² By 14 June, media access was much more restricted, perhaps as a result of criticism levelled at Bangladesh after news of the push backs broke.

On 18 June, ERT researchers were able to document in detail the push back of 139 persons in eight boats from Teknaf. The refugees who had arrived earlier in Bangladesh were detained, provided with water and food, then asked to get back on their boats and escorted back into Myanmar waters. This happened despite the pleas of the Rohingya that they would be killed if returned, as well as the

⁵⁸ Article in Bangla, *Dainik Amaradesh*, 17 June 2012.

⁵⁹ Human Rights Watch, *Burma: The Rohingya Muslims: Ending a Cycle of Exodus?*, 1 September 1996, C809, available at: <http://www.unhcr.org/refworld/docid/3ae6a84a2.html>.

⁶⁰ ERT Interview with B, 21 June 2012, Place of interview withheld.

⁶¹ ERT Interview with C, 20 June 2012, Place of interview withheld.

⁶² See Associated Press, "Rights Group urges Bangladesh to keep border open", 12 June 2012, available at: <http://www.google.com/hostednews/ap/article/ALeqM5hydUJnhjddHINV-04ciNKyGdyPEw?docId=db7162c60c3546f68b69daf8c3ae42a3>

extremely unsafe condition of some of their boats. In order to avoid being arrested upon entry to Myanmar, the boats went out to high sea with the intention of making their way back to Bangladesh during the night. On 19 June, ERT researchers learned that only two boats carrying 33 persons arrived safely back in Bangladesh. No information on the plight of the six other boats has been received and, given the condition of some of them, it is feared that they may have sunk.

Interviews with Bangladesh Border Guards reveal that many of them were carrying out their orders to push the Rohingya back against their conscience, as they felt it was inhuman to do so. As one Guard stated in response to a question: "Why do you ask me, ask the minister, ask the government. If they do not understand, what can I do? I just have to save my job."⁶³

ERT research also indicates that the demographic of the Rohingya arrivals has changed. Initially, the arrivals seeking refuge in Bangladesh were primarily women and children, accompanied by a few men. Since 16 June, it has primarily been men and boys who have been attempting to enter the country. This coincides with the change in practice in Myanmar described above, with Rohingya men and boys aged 15-30 being increasingly targeted for arrests and disappearances after 16 June.

Despite the Bangladeshi policy to push back – *refoule* – Rohingya refugees, more continue to arrive in desperation, fleeing the violence in Myanmar. As stated by one Rohingya interviewed within Myanmar:

*We know that we are not allowed to enter Bangladesh. But people want to run away and we understand that that is not our home. We don't want to settle here, we just want a peaceful life at our own place. But this is very upsetting and we don't know what will happen. People are worried and scared that they will be killed at any time. The general community, they don't trust the government and now we cannot trust the Rakhine people so we don't know where to go, we don't have a safe place now.*⁶⁴

Another refugee stated that:

*Death by NaSaKa is also waiting for us if we are pushed back to Burma. NaSaKa will kill us just like a street dog. We prefer to die here, we will get the proper funeral that a Muslim should get. Even if the police kill us here, they will properly bury us religiously. We will never go back to Burma. There we will not get even a tiny place for a grave.*⁶⁵

The Treatment of Refugees

Not surprisingly, given the long and porous nature of the border between Bangladesh and Myanmar, many refugees have found ways to get into the country. As stated by a researcher:

*Most of the boats were trying to reach Bangladesh near the island of Shahpuri Dip. But the border guards and coast guards are strictly protecting that area. As a consequence, after 18 June, for a few days, there were no boats. The rough sea also played a role in this. But the Rohingya are now using many different routes to get into Bangladesh. The number entering the country could be 200-300 people a day.*⁶⁶

Some Rohingya that have entered Bangladesh have been given shelter by sympathetic local residents. Initially the police announced that Bangladeshi's who gave shelter to Rohingya would be arrested and prosecuted, but there is no evidence that any such arrests have been made. However, despite significant goodwill and charity being shown towards the Rohingya by many residents of Cox's Bazar

⁶³ ERT Interview with Bangladesh Border Guard, 18 June 2012, Cox's Bazar.

⁶⁴ See above, note 17.

⁶⁵ ERT Interview with D, 24 June 2012. Place of interview withheld.

⁶⁶ See above, note 22.

district, many Bangladeshis hold the view espoused by mainstream media that Bangladesh cannot and should not accommodate any more Rohingya. They are often branded as “intruders”.⁶⁷ There have also been increased tensions between the Rohingya that have been living for some time in camps in Cox’s Bazar and local politicians as a result of the new influx of Rohingya attempting to seek refuge in Bangladesh. For example, in Kutupalong camp, on 20 June, a human chain against the Rohingya was organised by a group of politically motivated locals to demonstrate their support for the government policy of sealing the borders.⁶⁸

In the face of heavy criticism both domestically and internationally, Bangladesh has allowed particularly vulnerable refugee families with young children to enter the country. On 24 June, ERT interviewed three such families (13 people in total) who had been put up, clothed and fed in shelters run by the border guard in Teknaf. Another family of five that fled Sittwe was also in the custody of the Border Guard. One of the three children was a new-born boy named Sangram (meaning “struggle”), who was born on or around 13 June on St Martin’s Island in Bangladesh, after the family was detained. Others who arrived on the same boat were sent back to Myanmar.

After a state of heightened security in the district from 14 to 25 June, some temporary check points have been removed in Cox’s Bazar district. However, the number of border guards patrolling the Naf river has increased over the past few days and push backs continue to occur, albeit on a smaller scale. This may be attributed to the fact that Rohingya are now entering Bangladeshi territory in smaller groups than before.

The official position of Bangladesh has not changed. While badly injured refugees have received medical treatment, there have been no other visible steps taken by the government of Bangladesh to provide humanitarian aid for the refugees, thus shifting this burden onto local residents.

The Legal Obligations of Bangladesh

Historically, Bangladesh has been for Rohingya both a place of refuge and of human rights abuse. Many of those who arrived in large numbers in the 1970s and 1990s were forcibly removed and those who remain in Bangladesh lack adequate access to protection or humanitarian aid, and thus live in impoverished conditions with little security. The experience of the new refugees is similar in many ways, but the desperation of their situation is heightened by the acute violence they are fleeing and consequently there is a very immediate threat to life and freedom, and a danger of irreparable harm to those who are forcibly returned.

Under international law, all persons within the territory or subject to the jurisdiction of Bangladesh must be protected by the state. A state has a right to control its borders but it may not violate fundamental human rights in doing so.

Bangladesh is a Member of the United Nations and a state party to the principal human rights treaties, notably the ICCPR, ICESCR, CRC, CEDAW, ICERD and CAT. Some of the key human rights which appear to have been violated by Bangladesh in the present situation are summarised below:

The rights to seek and to enjoy asylum and not to be subjected to refoulement are entrenched principles of customary international law. Accordingly, everyone has the right to seek and to enjoy in other countries asylum from persecution and no persons may be expelled into a territory where they would be at risk of persecution. Article 14 of the UDHR and Article 22 of the CRC provide this right which is particularly relevant to the history of Bangladesh, as the war of liberation in 1971 created approximately 10 million refugees who were given asylum in India. The right is also enshrined in the Convention Relating to the Status of Refugees 1951 and its Protocol of 1967. While Bangladesh is not party to the Convention, it is a member to the Executive Committee of the UNHCR and may be

⁶⁷ Prothom Alo, 12 June 2012

⁶⁸ Internal situation report submitted to ERT by researcher, 29 June 2012.

expected to uphold the highest standards of refugee protection. The Executive Committee has appealed to Governments “to follow, or continue to follow, liberal practices in granting permanent or at least temporary asylum to refugees who have come directly to their territory”.⁶⁹ It has also extended coverage of international protection for women asylum seekers and refugees who are to be considered as a “particular social group”.⁷⁰ The actions of Bangladesh described in this report amount to violations of this right.

The right to be free from torture or cruel, inhuman or degrading treatment or punishment under Article 7 of the ICCPR and Article 3 CAT is an absolute right which cannot be derogated from in any circumstances. Article 37 CRC protects all children from torture or cruel, inhuman or degrading treatment or punishment. This right is recognised as a peremptory norm of international law and is therefore universally applicable. The principle of *non-refoulement* has been incorporated in human rights law and Article 3 CAT provides that no state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that s/he would be in danger of being subjected to torture. The basic criterion for this is: “to take into account various relevant considerations, such as consistent patterns of gross, flagrant or mass violation of human rights”.⁷¹ Therefore, Bangladesh has acted in violation of its obligation to protect and specifically not to *refoule* Rohingya fleeing inhuman or degrading treatment or punishment in Myanmar.

The right to life of all persons is protected under Articles 6 of the ICCPR and CRC; the arbitrary deprivation of life is prohibited in any circumstances. Article 32 of the Bangladesh Constitution also guarantees the right to life and personal liberty for all persons, regardless of nationality or lack thereof. Pushing back – *refouling* - Rohingya refugees, including children in boats that are not seaworthy, to a situation where they are at heightened risk of being killed is a violation of the right to life.

The right to liberty and freedom from arbitrary detention as articulated under Article 9(1) of the ICCPR ensures to all persons the right to liberty and security of the person and prohibits any discrimination in the enjoyment and exercise of the right not to be subjected to arbitrary arrest or detention. In addition, Article 9(5) provides that any persons unlawfully detained have an enforceable right to compensation. Article 33 of the Bangladesh Constitution enshrines this right for all persons in Bangladesh. The detention of Rohingya refugees prior to push backs may amount to a violation of this right.

The right to food and shelter including the fundamental right to be free from hunger is protected by Article 11 of the ICESCR and Article 27 of the CRC. The failure to provide adequately for the basic needs of refugees including refugee children is a violation of this right.

The right to the highest attainable standard of health is enshrined in Article 12 ICESCR and Article 24 CRC. The failure to provide primary healthcare to Rohingya refugees including children is a violation of this right.

⁶⁹ UN High Commissioner for Refugees, *Asylum*, No. 5 (XXVI) – 1977.

⁷⁰ UN High Commissioner for Refugees, *Refugee Women and International Protection*, No. 39 (XXXVI) – 1985.

⁷¹ Trakroo, R., Bhat A., and Nandi, S., *Refugees and the Law*, New Delhi: Human Rights Law Network, UD, 2005, p. 50.

Conclusion and Recommendations

Drawing from ERT's own independent research, media reports and the research of other organisations, this report documents the severity of the human rights abuses suffered by Rohingya within Myanmar – including mass violence, killings and attacks, the burning and destruction of property, arbitrary arrests, detention and disappearances, the deprivation of emergency healthcare and humanitarian aid. Such human rights abuses are being carried out with impunity by civilians and agents of the state alike. The organised and widespread nature of this state sponsored violence raises serious questions of crimes against humanity being committed by Myanmar.

This report also documents the *refoulement* of Rohingya refugees from Bangladesh and related human rights violations, including the push-back of boats carrying Rohingya into dangerous waters and the failure to provide refuge, shelter and humanitarian aid to those fleeing persecution.

Historically, the Rohingya have faced acute discrimination and human rights abuse in Myanmar, and Rohingya refugees fleeing persecution to Bangladesh have faced severe hardships including the lack of humanitarian aid, shelter and security. This present crisis is a tragic reminder of the vulnerabilities of stateless people when their countries of habitual residence and the international community fail to protect them. Urgent action is required to end the violence, protect the victims and bring those responsible to justice. Of equal importance is the need for a long-term process of reinstating Myanmar nationality to Rohingya who were arbitrarily deprived of a nationality in 1982, resolving ethnic conflicts and protecting the human rights and freedoms of Rohingya within Myanmar and in other countries.

The Equal Rights Trust makes the following urgent and long-term recommendations to the governments of Myanmar and Bangladesh and to the UNHCR and international community.

ERT Recommendations to the Government of Myanmar

Urgent Recommendations

- Urgently take all necessary steps to end the violence and protect all individuals within the territory or subject to the jurisdiction of Myanmar, in an equal and non-discriminatory manner.
- Immediately prevent and punish all human rights abuses and crimes committed by security forces against Rohingya.
- Fully cooperate with, and allow timely access to UN agencies and other representatives of the international community, to enable independent monitoring of the situation and freedom of information.
- Fully cooperate with UN agencies and international NGOs to enable the provision of humanitarian assistance and support to affected communities.
- Treat all IDPs in accordance with the provisions of the Guiding Principles on Internal Displacement.
- Bring martial law in the region to an end as soon as possible and take steps to ensure that state security forces assigned to the region act with impartiality and treat all persons in accordance with the principles of equality and non-discrimination.
- Conduct an impartial and transparent enquiry into the causes of the violence, with the objective of identifying and bringing those responsible to justice, whether agents of the state or private individuals, compensating the victims and restoring damaged property.

Long-term Recommendations

- Take all necessary steps to prevent future conflict by ensuring equal access to justice, repealing discriminatory laws, restoring the rights of the Rohingya and other ethnic minorities in Myanmar.
- Integrate the principles of human rights, equality and non-discrimination into the legal reform process in Myanmar.
- Reform the citizenship laws to ensure all races and ethnicities are given equal and fair access to nationality without discrimination.
- Reduce statelessness in Myanmar by establishing clear paths towards the acquisition of citizenship and effective nationality for all stateless persons with legitimate claims to Myanmar nationality including the Rohingya who were arbitrarily deprived of their nationality by the 1982 citizenship law.
- Reform the immigration laws of Myanmar to make them compatible with international human rights and ensure that they are implemented in a manner which does not discriminate against minority groups or opponents of the state.
- Ratify and take all necessary steps to implement the ICCPR, ICESCR, CAT, CERD and other core human rights treaties.
- Ratify and take all necessary steps to implement the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

ERT Recommendations to the Government of Bangladesh

Urgent Recommendations

- Refrain from *refoulement* or forcible return of all refugees, asylum seekers and persons of concern.
- Take all necessary steps to prevent further escalation of this humanitarian tragedy by opening its borders to Rohingya refugees fleeing violence and persecution in Myanmar.
- Fully cooperate with UN agencies and international NGOs to enable the provision of humanitarian assistance and support to all refugees.

Long-term Recommendations

- Fully cooperate with the international community in providing humanitarian support and protection in a fair and non-discriminatory manner to all long-term Rohingya refugees and persons of concern within Bangladesh.
- Ratify and take all necessary steps to implement the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

ERT Recommendations to the UNHCR

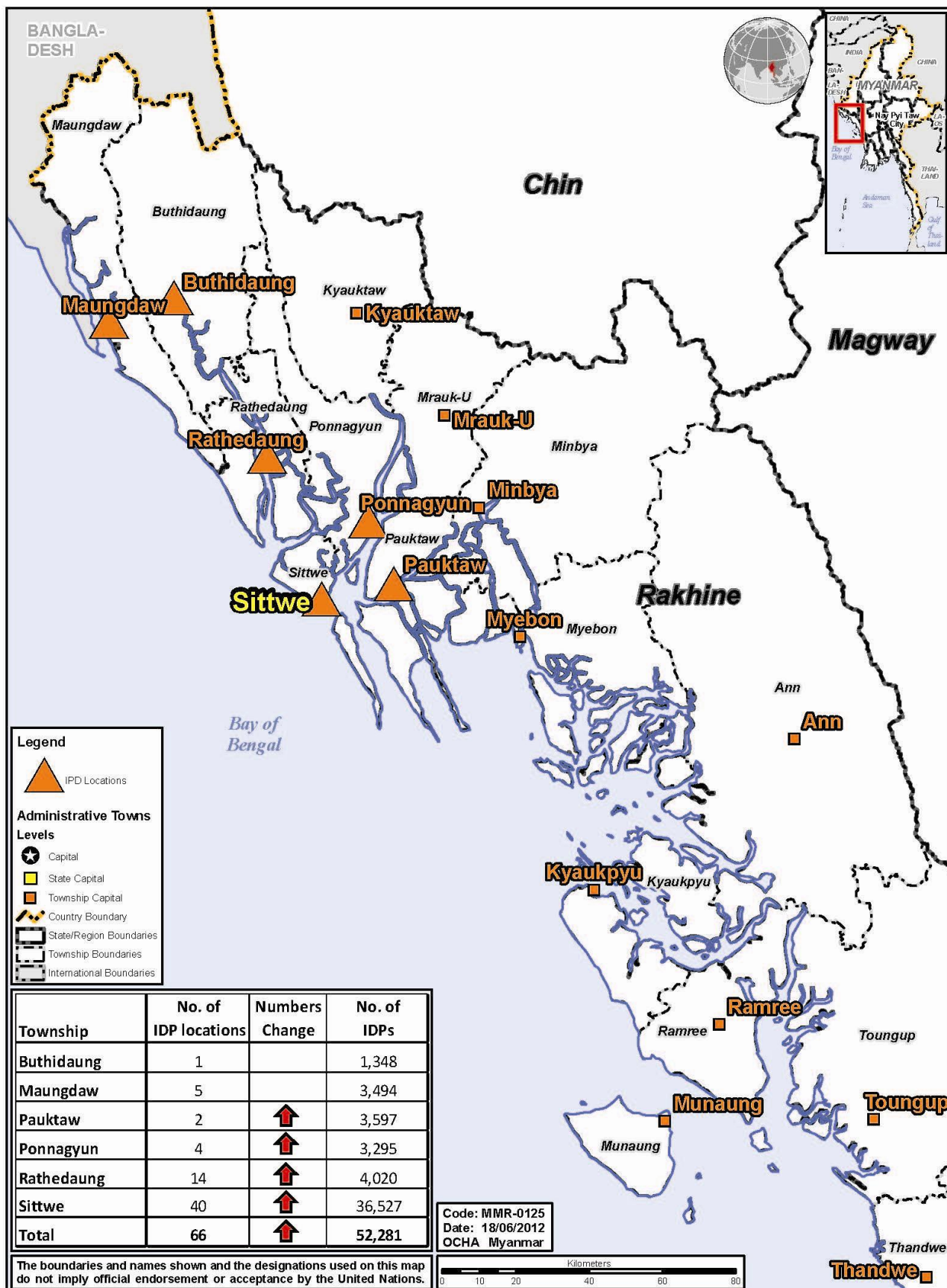
- Continue to engage with the governments of Myanmar and Bangladesh to ensure the protection of stateless persons and refugees.
- Monitor and document the situation in Rakhine state and enable their officers to implement fully the mandate to protect during this time of crisis.

ERT Recommendations to the UN, Member States and the International Community

- Act in accordance with the doctrine of responsibility to protect, to investigate and prevent the committing of crimes against humanity by Myanmar.
- Engage with and assist the government of Myanmar in taking immediate steps to end the violence in Rakhine State, and long-term steps towards the reduction of statelessness, building the rule of law and integrating equality and respect for human rights into their reform processes.
- Engage with the government of Myanmar to ensure that this conflict does not result in increased military control and extended periods of martial law in this time of reform.
- Engage with the government of Bangladesh to open its borders to refugees fleeing the violence and to stop *refouling* Rohingya refugees.
- Support the government of Bangladesh in providing protection to Rohingya refugees both in the short and long-term.
- Assist the government of Bangladesh by sharing the burden of refugee protection, including by offering voluntary resettlement to Rohingya refugees outside Bangladesh.

Annex 1: Map of IDPs in Rakhine State

Reported IDP figures, Status: 18 June 2012, Source: RRD Rakhine State  OCHA



Annexe 2: Photographic Documentation of 18 June 2012 Pushback from Bangladesh*



* All photographs courtesy Saiful Huq Omi.





