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Joint written statement* submitted by Asian Legal Resource Centre, a non-governmental organization in general consultative status, and ODHIKAR – Coalition for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2019]

* Issued as received, in the language(s) of submission only.



Myanmar: protect rights, ensure dignified repatriation and justice of the Rohingyas

The Asian Legal Resource Centre (ALRC) and ODHIKAR - Coalition for Human Rights draw special attention of the Human Rights Council and the Special Procedures to the acts of violence, persecution, extrajudicial executions, torture and inhuman treatment against the Rohingya population, who fled the genocide committed by the Myanmar Military in the Rakhine state (Arakan) of Myanmar and took refuge in Bangladesh. Odhikar carried out fact-finding missions on the atrocities committed on the Rohingya, both in Myanmar and in Bangladesh. It continues to monitor the human rights situation of the Rohingya in the refugee camps. Odhikar and ALRC seek immediate, effective measures from the UN and ICC to protect the rights of the Rohingya and ensure a dignified repatriation and justice.

Odhikar's fact-finding team spoke to survivors and the families of the victims of genocide from different villages in the Rakhine state of Myanmar and learnt of the horrific massacre fields, the torching of houses, mass graves, enforced disappearances, torture; and acts of violence against women and children, including gang rape and mass rape in the villages. Survivors of the brutality described their own experience and of witnessing acquaintances being murdered by the Myanmar military.

Rohingyas have been suppressed by the Myanmar Military and Buddhist extremists for a long time. They were familiar with the looting, extortion, vandalizing of houses and shops. However, after 9 October 2016 and 25 August 2017, these atrocities escalated. In the Rakhine state, village after village was set on fire, including their mosques and madrassas. Former residents of different Rohingya dominated villages in the Rakhine state of Myanmar told Odhikar that the Military along with Buddhist extremists entered their villages with knives, sticks and guns and went on a mass killing spree. Many of the victims were gunned down, slaughtered and burned to death. The Myanmar Army and Buddhist extremists' committed acts of sexual violence against Rohingya women and girls. Violations included gang rape, raping girls in front of their parents and siblings; and raping wives in front of their husbands, killing of children while raping mothers, burning of homes and mass shootings.

Situation of Rohingyas in Refugee camps in Bangladesh

The Rohingya refugees have taken shelter in Cox's Bazaar district in Bangladesh. There are 14 registered and unregistered camps in the Ukhiya and Teknaf areas, such as the Kutub Palong camp, Taingkhali camp and Nayapara camp. There are also extensions to those camps. Rohingyas are living in crowded, unhygienic and highly vulnerable conditions. Many are living in makeshift huts in crevices in the hills. Safe water and sanitation facilities are inadequate. During the establishment of the camps, aid organizations built many sanitary toilets and constructed many tube wells; however, a number of those are already out of service. Many families are living on the top of hills and have to come down to collect drinking water. Rohingyas are at high risk of suffering deteriorating mental health due to lack of sufficient trauma counselling facilities. It was learnt that many Rohingya children living in the camps are suffering from malnutrition. A few NGOs are providing a non-formal education facility for children.

Living condition: healthcare, safe water and sanitation

Though there were many initiatives taken to improve the overall conditions of Rohingyas; nevertheless, the unregistered camps remained unsanitary and vulnerable to the monsoon weather. The fact-finding team visited the camps in Kutub Palong and Thayingkhali in Cox's Bazar, the largest and most populated refugee camps in the world. A majority of their makeshift structures were tent-like; therefore, they seem almost impossible to survive a storm or a flood. Besides, the possibility of landslides in the hilly areas and flooding in the valleys made living conditions riskier.

In terms of access to health care, the team observed that several aid organisations were providing primary medical support to the Rohingya refugees. Rohingyas were getting

treatment during the day, although it was inadequate, given the huge population of refugees. In the case of injured victims, aid organisations were unable to provide adequate treatment and hence referred them to hospitals in Cox's Bazar. However, most of them did not have enough money to survive outside the camp. Moreover, due to their vulnerability, single women or women headed families are facing more difficulties. Some survivors said they relive the incidents in their minds and they cannot sleep. Some feel very irritated, some angry and some sad. It is clear that the victims are suffering from Post-Traumatic Stress Disorder (PTSD) and they need help from psychologists or psychiatrists.

Living Condition: food, shelter and fuel

The Rohingyas get rice, lentils, cooking oil, and some vegetables. Some Rohingyas also get tokens from international NGOs to buy vegetables. However, a majority of the people reported that they were unable to buy proteins, such as fish or meat. This is especially evident in single, woman-headed households, as unlike the men, the women cannot find unofficial/undocumented work such as mending roads. Therefore, they cannot earn money to afford more protein. The fact-finding team also noticed that the Rohingya houses were cramped and dark. The Rohingyas also said that insects and rain water enter the huts, especially in the monsoon season, and there was no way to drain the water. A lot of the interviewees also mentioned that firewood was often scarce. Many Rohingyas said that they had to sell rice and lentils they were given, in order to buy firewood.

Deprivation from right to education and work

Right to Education with no discrimination for all has been ensured in Article 261 of the UN Universal Declaration of Human Rights. However, the Bangladesh Government is expelling Rohingya students from schools instead of ensuring their right to education. Human Rights Watch has stated that the Bangladesh government has expelled Rohingya refugee students, who lack Bangladeshi citizenship, from schools near the refugee settlement in southeast of Bangladesh since January 2019. The expelled students were born in Bangladesh after their parents fled Myanmar as refugees in the early 1990s.²

The Bangladesh government has not allowed formal schooling in the camps, from January 2017, because the government believes that it will encourage the refugees to stay in Bangladesh. The government only allows basic Child Friendly Spaces (CFS) and Learning Centres, which mainly offer a place to play and some very basic lessons. It can be seen that instead of going to school, the children are selling fruits and vegetables in the markets and roaming around. Rohingya children are being deprived of the right to education.

Rohingyas living in refugee camps in Cox's Bazar do not have the opportunity to avail of legitimate livelihood schemes; and the aid-oriented idle life of active adult men and women can lead them to commit various criminal offences. According to UNHCR, 42 percent of the Rohingya refugees who have sheltered in Ukhiya and Teknaf are adult.³ If they remain unemployed, then this idle and frustrated life may well bring further mentally damage.

Impact of war on drugs against Rohingya

Rohingyas are becoming victims of extrajudicial killings by the Bangladeshi law enforcement agencies mostly during the 'anti-drugs drives'. At least 28 Rohingyas, including two women, were killed in reported incidents of gunfight with law enforcement agencies and four others were found killed in Cox's Bazar over their suspected involvement in drug peddling, robbery, abductions and human trafficking between January and August 16, 2019.

¹ <https://www.un.org/en/universal-declaration-human-rights/>.

² Bangladesh: Rohingya Refugee Students Expelled, April 1, 2019; <https://www.hrw.org/news/2019/04/01/bangladesh-rohingya-refugee-students-expelled>.

³ https://data2.unhcr.org/en/situations/myanmar_refugees.

The law enforcers, mainly the police, said that the reported gunfights occurred as crime suspects opened fire at them while Rohingya leaders alleged that many of the deceased were held or detained earlier and then killed in ‘gunfights’.⁴

Relocation of Rohingyas

The Bangladesh government has planned to relocate Rohingyas in Bhasanchar Island, which is a disaster prone area, despite objections from the Rohingya people. The UN Special Rapporteur on Myanmar, Yanghee Lee, while visiting Bhasanchar on 24 January 2019, said that the Rohingyas should not be hurriedly transferred there without assessing the situation in the case of occurrences of natural disasters such as a cyclone; and without adequate scrutiny of the island’s facilities.⁵ However, a document published by Reuters shows that the United Nations is making plans to help the government relocate thousands of Rohingya refugees to remote Bhasanchar. If the Rohingyas are transferred to the disaster prone area, they might face worst natural calamities and their repatriation process will likely to be interrupted.

Repatriation to Myanmar

For proper repatriation to Myanmar, the Rohingyas need guarantees for their rights, including freedom of movement, safety and security as well as citizenship rights and justice. Bangladesh and Myanmar signed a bilateral repatriation agreement in November 2017. There were some attempts by the governments to send the Rohingyas to Myanmar, but they refused to go without their citizenship rights, security and justice. Moreover, the UN says conditions in Myanmar have not been conducive for sustainable, voluntary and dignified return of the Rohingyas.⁶

Myanmar and Bangladesh governments attempted to repatriate thousands of Rohingyas on 22 August 2019 while none of the refugees agreed to return in unsecured condition.⁷ A total of 3,450 refugees are cleared for return by Myanmar, from a list of over 22,000 names recently sent by the Bangladesh government. Bangladesh had earlier handed Myanmar lists of some 30,000 Rohingyas for verification of their identity, but only 8,000 of them were verified. Repatriation could not begin as scheduled on 15 November 2018 as the refugees refused to go. Rohingya refugees say they want to return to Myanmar, but seek the guarantee of citizenship, UN-backed safe zones in Rakhine, recognition of their ethnicity as Rohingya and a return to the place from where they were driven out.⁸

According to UNHCR, the UN officials are asked to survey the refugees verified by Myanmar, to determine whether they want to return. Meanwhile tens of thousands of Rohingyas remain inside Myanmar, confined to camps and villages across Rakhine state where they are denied citizenship and their movements restricted. A UN investigator said in July that human rights violations against civilians by security forces may amount to fresh crimes, citing reports of deaths during army interrogations. Myanmar authorities have blocked most humanitarian agencies, including the UN, from the area.⁹

⁴ New Age, 18 August 2019; <http://www.newagebd.net/article/81754/28-rohingyas-killed-in-gunfights-in-2019>.

⁵ BBC Bangla news, 25 January 2019; <https://www.bbc.com/bengali/news-47003349>

⁶ The Daily Star, 4 May 2019, “Remove all barriers to repatriation: Bangladesh asks Myanmar at JWG meeting on Rohingya”; <https://www.thedailystar.net/rohingya-crisis/rohingyareturn/remove-all-barriers-repatriation-1738375>.

⁷ REUTERS, 22 August 2019, Bangladesh bid to repatriate Rohingya stalls as refugees refuse to return to Myanmar; <https://www.reuters.com/article/us-myanmar-rohingya/bangladesh-bid-to-repatriate-rohingya-stalls-as-refugees-refuse-to-return-to-myanmar-idUSKCN1VC1FN>.

⁸ The Daily Star, 16 August 2019; “Rohingya Repatriation: First batch to return Aug 22”, <https://www.thedailystar.net/rohingya-crisis/news/rohingya-repatriation-first-batch-return-aug-22-1785979>.

⁹ Ibid.

Initiatives taken by the ICC

The International Criminal Court (ICC) has moved ahead on the investigation into allegations of crimes against humanity, in the wake of hundreds of thousands of Rohingya victims who fled genocide in Myanmar and took refuge in Bangladesh. In a statement on 26 June 2019, the ICC stated that after receiving an application from the Prosecutor Fatou Bensouda, a three-member panel of judges was formed. In a statement, Prosecutor Bensouda said that she will seek permission from the judges for a complete investigation, highlighting the argument that Bangladesh is a party to the ICC.¹⁰

On 4 July 2019, the ICC Prosecutor requested the judges to authorise an investigation into alleged crimes against humanity and persecution against the Rohingyas. The Prosecutor has determined that there is a reasonable basis to believe that at least 700,000 Rohingyas were deported from Myanmar to Bangladesh through a range of coercive acts and that great suffering or serious injury has been inflicted on the Rohingya through violating their right to return to their state of origin. Prosecutor Bensouda said although the coercive acts forcing the Rohingya population to flee took place on the territory of Myanmar, the victims crossed the border – an essential element for the crime of deportation – by entering into Bangladesh.¹¹

¹⁰ The Daily Star, 27 June 2019; “Rohingya Crisis: ICC lawyer seeks probe into atrocities”, <https://www.thedailystar.net/backpage/news/rohingya-crisis-icc-prosecutor-seeks-full-probe-myanmar-atrocities-1762933>

¹¹ International Criminal Court, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1465>