



AN AGENDA FOR A DIGNIFIED AND SUSTAINABLE ROHINGYA REFUGEE RESPONSE IN BANGLADESH

MAY 2021

ACT FOR PEACE
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Editor: Brian Barbour
Report Writing: February-May 2021
Consultation: April-May 2021
Publication: May 2021

Open for Comment for 60 days until: 30 July 2021

Act for Peace welcomes comment and information relevant to this report and the positions and recommendations made. Feedback from Rohingya refugees, other affected persons, refugee-led organisations, and organisations seeking to contribute to protection and solutions is particularly welcome. Act for Peace seeks to provide interested and affected parties with an opportunity to consider the questions, issues, and recommendations put forward in this report, and welcomes constructive feedback through an initial period of 60 days, closing on 30 July 2021. Act for Peace will consider comments made and incorporate feedback either into a revised version of the report, or in future research, analysis, and advocacy work. All feedback received will help inform Act for Peace's strategy moving forward and is greatly appreciated. Please send comments to bbarbour@actforpeace.org.au.

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Cover Photograph: Richard Wainwright, 24 March 2018

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Acronyms

AAP	Accountability to Affected Persons
ADAB	Association of Development Agencies in Bangladesh
ADFM	Asia Dialogue on Forced Migration
ADSP	Asia Displacement and Solutions Platform
AHA Centre	ASEAN Coordinating Centre for Humanitarian Assistance on disaster management
AOR	Areas of Responsibility
ARSA	Arakan Rohingya Salvation Army
ASEAN	Association of Southeast Asian Nations
BDPC	Bangladesh Disaster Preparedness Centre
CCNF	Cox's Bazar CSO-NGO Forum
CERF	Central Emergency Response Fund
CiC	Camp in Charge (Also: ACiC - Assistant Camp in Charge)
CSI	Capacity Sharing Initiative
CSO	Civil Society Organisation
CwC	Communication with Communities
DC	Deputy Commissioner
DEC	Disaster Emergency Committee
DRC	Danish Refugee Council
ECHO	European Civil Protection and Humanitarian Aid Operations
ETS	Emergency Telecommunications Services
FNB	Federation of NGOs in Bangladesh
GBV	Gender-Based Violence
GCM	The Global Compact for Safe, Orderly and Regular Migration
GCR	The Global Compact for Refugees
GIHA	Gender in Humanitarian Action
HAG	Humanitarian Advisory Group
HCTT	Humanitarian Coordination Task Team
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross INGO Emergency Sub-Committee
IFRC	International Federation of Red Cross and Red Crescent Societies
IOM	International Organisation for Migration
IRC	The International Rescue Committee
ISCG	Inter-Sector Coordination Group
JRP	Joint Response Plan
LPG	Liquefied petroleum gas
LTF	Localisation Task Force
MoFA	Ministry of Foreign Affairs
MoHA	Ministry of Home Affairs
MoDMR	Ministry of Disaster Management and Relief
MSF	Médecins Sans Frontières
NAHAB	National Alliance of Humanitarian Actors Bangladesh

NFI	Non-Food Items
NGO	Non-Governmental Organisation
NGOAB	NGO Affairs Bureau
NIRAPAD	Network for Information, Response and Preparedness Activities on Disaster
NPM	IOM's Needs and Population Monitoring (NPM) project
NTF	National Task Force
NYD	New York Declaration for Refugees and Migrants
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
ODI	Overseas Development Institute
PAWG	Protection Advocacy Working Group
PDC	Para Development Committee
PMO	Prime Minister's Office
PRIO	Peace Research Institute Oslo
PWG	Protection Working Group
RRRC	Office of the Refugee Relief and Repatriation Commissioner
SAG	Strategic Advisory Group
SEG	Strategic Executive Group
SMSD	Site Management and Site Development
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNRC	United Nations Resident Coordinator
WASH	Water, Sanitation and Hygiene
WFP	World Food Programme

Acknowledgements

We would like to acknowledge the advice, expertise, and technical guidance provided by a number of individuals, including: Manish Kumar Agrawal (International Rescue Committee); Roshid Alam* (Rohingya refugee researcher); John Bryant and Oliver Lough (Overseas Development Institute); Sharon Edington and James Thomson (Act for Peace); Meghna Guhathakurta (Research Initiatives Bangladesh); Sara Hossain (Advocate, Supreme Court of Bangladesh/Bangladesh Legal Aid and Services Trust); Chris Lewa (Arakan Project); John Quinley (Fortify Rights); Kathryn Strifflino and Rachel Unkovic (Interaction); Daniel Sullivan (Refugees International); Muhammad Mohi-us Sunnah (Independent pro bono lawyer, Bangladesh); and Jeremy Wellard (International Council of Voluntary Agencies).

A number of experts have also anonymously contributed their time and knowledge to provide invaluable insights on this report.

Responsibility for any errors, omissions, or shortcomings rests solely with Act for Peace.

**Name changed to maintain confidentiality.*

Executive Summary

The Government and people of Bangladesh, with the support of many civil society groups, have generously welcomed hundreds of thousands of Rohingya refugees fleeing extreme violence and human rights violations in Myanmar. However, local authorities, communities and available support systems are overwhelmed by the sheer numbers and the level of urgent humanitarian needs. There also continues to be a lack of adequate formal legal and normative frameworks for Rohingya refugees in Bangladesh, and the ad-hoc administrative arrangements that are currently in place, makes the implementation of protection and assistance programmes very challenging.

The scale and magnitude of the crisis, complicates the process of ensuring effective protection, assistance, and solutions for affected persons. This paper examines the extent to which a ‘whole of society approach’ is applied in the Rohingya refugee response in Bangladesh and looks at how the current approach impacts refugee protection outcomes, interfaces with existing coordination mechanisms, intersects with ongoing localisation efforts, and ensures meaningful refugee participation and leadership.

1.1 Rohingya Refugee Response in Bangladesh: Key Gaps and Challenges

Rohingya refugees in Bangladesh are living in difficult conditions in overcrowded camps in Cox’s Bazar with no freedom of movement outside the camps, and restricted access to rights including education and livelihoods. Their lack of legal status as refugees has given rise to insecurity and exclusion with regard to their access to rights and services. The Government-led disaster management structure is responsible for Rohingya refugees. Hybrid humanitarian coordination structures that are currently in place, are not fully aligned with international humanitarian coordination models, nor are they flexible enough to adapt to ever changing field coordination needs. The host communities of Cox’s Bazar are also affected by the large Rohingya presence in terms of rising prices, decreasing wages, environmental degradation as well as growing pressure on existing public services.

Since August 2019, a series of measures¹ taken by the Government of Bangladesh towards Rohingya refugees has resulted in progressive deterioration of the protection environment in the camps and increased humanitarian access barriers. This has created an environment of fear and uncertainty in the refugee camps, compromising refugees’ ability to live a life of dignity and respect and to meaningfully participate in key decisions involving their community.

Operational and access restrictions in the context of COVID-19 have exacerbated existing protection risks by isolating refugee communities from accessing timely information and assistance, increasing aid dependence, reducing self-reliance and community resilience, and increasing hopelessness and insecurity.

¹ Details are provided in Section 3.2.1 below.

The pursuance of short-term strategies potentially exposes both refugee and host communities to greater insecurity, instability, and unpredictability. Idleness, lack of access to education, health, and livelihoods over an extended period of time; along with growing division among communities and humanitarian stakeholders undermine general effectiveness of the Rohingya refugee response, with consequences that compound over time, putting Bangladesh's international goodwill and domestic interests at risk.

While the Rohingya refugee response coordination framework has continued to adjust to the evolving political and operational realities in Bangladesh, the humanitarian landscape is complicated by ad-hoc approaches and gaps in inter-agency collaboration and accountability.

The recent military coup in Myanmar has delayed prospects of peace in Rakhine State and will have a significant impact on Rohingya repatriation and rehabilitation in Myanmar. Further, there has been limited progress towards the development of a comprehensive Rohingya refugee response plan and international and regional responsibility sharing arrangements, including the identification of sustainable solutions. While the international community needs to continue pressuring Myanmar to create conducive conditions for safe, dignified and voluntary refugee returns, Rohingya need protection and assistance in Bangladesh, and around the globe, in the meantime. Their lives and futures will remain in limbo until a durable solution is found in Myanmar or elsewhere.

1.2 The Way Forward: Need for Whole-of-society-approach.

Given the context, the 'multi-stakeholder and partnership approach' or 'whole-of-society-approach' that underpins the recently negotiated Global Compacts could provide a valuable concept in guiding collaborative and complementary approaches to refugee protection in Bangladesh. Bangladesh has formally endorsed the New York Declaration for refugees and migrants, the Global Compact on Refugees (GCR) and the Global Compact on Safe, Orderly, and Regular Migration (GCM), which includes a commitment to the "multi-stakeholder and partnership approach" or the "whole-of-society-approach". To ensure a sustainable and dignified response, however, a nuanced understanding of the contextual sensitivities and local ways of working is required, in order to utilize and benefit from the specific capacities of different stakeholders. Based on that knowledge, wider networks and alliances need to be built to advocate towards achieving shared humanitarian objectives for the improvement of the lives of Rohingya refugees and host communities.

This report aims to analyse and propose a way forward for a dignified and sustainable agenda for the Rohingya response in Bangladesh in accordance with the whole-of-society-approach around three key pillars: ***Refugee Protection, Humanitarian Coordination and Localisation***. A set of recommendations have been put forward around these three core areas of work in the Rohingya refugee response.

Chapter 1: Whole-of-society-approach in the Rohingya Refugee Response in Bangladesh

1.1 What is the ‘whole of society approach’?

On 19 September 2016, the UN General Assembly unanimously adopted the New York Declaration (“NYD”) for Refugees and Migrants. States agreed that a comprehensive refugee response “should involve a multi-stakeholder approach that includes national and local authorities, international organisations, international financial institutions, civil society partners (including faith-based organisations, diaspora organisations and academia), the private sector, the media and refugees themselves.”² The NYD was followed by a two-year process of intergovernmental negotiations towards the development of a global compact for safe, orderly and regular migration (“GCM”), and a global compact on refugees (“GCR”) in 2018. The GCR, “[w]hile recognizing the primary responsibility and sovereignty of States” agreed that “a multi-stakeholder and partnership approach” would be pursued.³ The GCM recognised the “whole-of-society approach” as one of its guiding principles promoting broad multi-stakeholder partnerships to address migration in all its dimensions.⁴ The concept of a whole-of-society-approach in refugee protection has garnered universal consensus through these negotiations.

Refugee protection is operationalised by and with those affected, and usually by a very diverse group of stakeholders with the capacity to meet the relevant needs. Refugees and host communities have diverse needs, are often marginalised and at risk, and may be in particularly vulnerable circumstances. This diverse set of needs requires a diverse set of interventions and substantial expertise, and it is unrealistic for any single actor to deliver protection alone even if they are a government or a large international institution like UNHCR. Instead, what must happen in practice is that a large number of diverse stakeholders (service providers, humanitarian and development actors, policy-makers, media, affected communities, among others) collaborate through referrals networks: identifying needs, vulnerabilities and risks and making referrals to each other on the basis of those actual needs.⁵ As described in a recent research piece on the whole-of-society-approach to the Rohingya refugee crisis in South and South-East Asia:

“Local protection capacity requires, among other things: a broad set of functional capacities that align with the needs, vulnerabilities, and risks faced by displaced and host communities; and a well-coordinated platform for all relevant stakeholders to collaborate effectively across a whole-of-society approach.”⁶

² New York Declaration for Refugees and Migrants, GA Res A/RES/71/1, 19 September 2016, Paragraph 69

³ GCR (n 27) (The non-exhaustive list of stakeholders that were explicitly included in this approach included: refugees themselves, States and national institutions, parliamentarians, host communities, local authorities and local community leaders, UNHCR, international institutions, humanitarian and development actors, financial actors, civil society organisations, faith-based actors, the private sector, academia and research institutions, and sports and cultural facilities.)

⁴ GCM (n 27) (See also the “whole-of-government approach” ensuring “horizontal and vertical policy coherence across all sectors and levels of government”.)

⁵ Brian Barbour, Lilianne Fan and Chris Lewa, “A Whole-of-Society Approach to the Rohingya Refugee Crisis: Strengthening Local Protection Capacity in South and South-East Asia”, Asia Pacific Journal on Human Rights and the Law (forthcoming)

⁶ *Ibid.*

There are increasingly close interactions among individuals, groups, and representatives of various types of institutions and networks at every level: local, national, regional, and international. Developing institutional national and local ownership and capacity requires that many different stakeholders each do their part, in collaboration with the State, international institutions, and each other, to manage refugee protection holistically, effectively, efficiently, and sustainably. That kind of complementarity of practice is how a “whole-of-society approach” can be achieved.

1.2 Relevance and applicability to the Rohingya Refugee Response in Bangladesh

Bangladesh, as host to one of the world’s largest refugee populations, without formally recognising them as such, has been involved in the consultations related to GCR and has formally endorsed the whole-of-society approach and multi-stakeholder and partnership approach frameworks.⁷ In terms of the application of the Global Compacts, particularly the whole-of-society approach, the Bangladesh experience is characterised by a number of challenges and local dynamics that arise from a limited domestic and regional legal and policy framework, a weak and deteriorating refugee protection environment, complex and inadequate humanitarian coordination structures, restricted opportunities for inclusion of refugees or host communities in decision-making and coordination structures, and contested localisation agendas.

Bangladesh’s engagement with the Global Compacts and the whole-of-society approach is further complicated due to the deteriorating situation and dim prospects of peace and justice for Rohingya in Myanmar as well as the absence of a comprehensive regional or global Rohingya refugee response plan, with the international and regional community seeking to contain the problem in Bangladesh, and await resolution in Myanmar, rather than take shared responsibility or offer any particular joint solution.

The Rohingya refugee response does not adequately reflect a whole-of-society approach in practice. A lot more needs to be done in terms of harnessing complementary capacities among a multiplicity and diversity of stakeholders and agendas in the Rohingya response in Bangladesh with collaboration and complementarity as shared fundamental values among all stakeholders.

This report considers that operationalising refugee protection *requires* a ‘whole-of-society’ (or multi-stakeholder and partnership) approach in practice and analyses refugee protection, humanitarian coordination, and localisation from that perspective. The application of a whole-of-society approach is critical for a comprehensive refugee response by ensuring more sustainable approaches that link relief and development as well as ensure the meaningful participation of affected communities. Development actors should be involved at an early stage and investments should be made to strengthen the resilience of both refugee and host communities, including through support to national and local systems.⁸

⁷ Karen Hargrave and Veronique Barbelet, The Global Compact on Refugees-Lessons from Bangladesh, HPG/ODI Briefing Note, 10 December 2019, available at <https://odi.org/en/publications/the-global-compact-on-refugees-lessons-from-bangladesh/>

⁸ UNHCR, Towards a global compact on refugees: a roadmap, available at <https://www.refworld.org/pdfid/59195d0e4.pdf>

Chapter 2: Overview of the Rohingya crisis

Due to decades of state-sponsored persecution, marginalisation and continued cycles of displacement, at least 1.6 million stateless Rohingya refugees are now forcibly displaced from Myanmar⁹ with an estimated 600,000 remaining inside Myanmar. The international community of States, regional governments, and the Government of Myanmar continue to impose restrictive containment policies and exacerbate the challenges placing various barriers and restrictions on the Rohingya community.

In the absence of a clear and comprehensive international and regional response plan, Bangladesh has borne a disproportionate responsibility towards hosting Rohingya refugees. The prolonged presence of more than 800,000 Rohingya refugees in an underdeveloped, disaster-prone and sensitive border district such as Cox's Bazar has exposed the refugee and local population to increased risks related to natural hazards and extreme weather events such as landslides, monsoon flooding and cyclones and heightened social tensions between refugees and host communities due to resource scarcity, increasing prices and labour displacement, among others.¹⁰ Due to limited self-reliance opportunities, high levels of aid dependence and reduced humanitarian presence in the camps, Rohingya refugees are increasingly vulnerable to the whims of rival Rohingya gangs vying for territorial control through illicit means and violent clashes.¹¹

Overlaps between drug trafficking routes and Rohingya migration routes along the Bangladesh-Myanmar border have also resulted in policies and actions that unfairly target all Rohingya refugees, resulting in curtailment of their rights such as freedom of movement, telecommunications access and livelihoods.¹² Rohingya refugees are also victims of the regional geopolitics and other factors that impact their potential repatriation to Myanmar. In Bangladesh, Rohingya refugees have been impacted by the Government of Bangladesh's growing frustration with the Myanmar government with regard to lack of progress on repatriation, demonstrated by the restricted protection environment and humanitarian access challenges. There is a need for enhanced international and regional efforts to refocus on aligning the perspectives and interests of the Rohingya population through systematic community engagement, in resolving the Rohingya crisis.¹³

⁹ UNHCR has registered almost one million Rohingya refugees and asylum-seekers in Asia-Pacific region, mostly in Bangladesh (860,000), Malaysia (101,000) and India (18,000), as well as smaller numbers in Indonesia, Nepal, Thailand, and other countries. An estimated 600,000 Rohingya remain in Rakhine State, Myanmar, of whom 142,000 are internally displaced. See, UNHCR, *The Displaced and Stateless of Myanmar in the Asia-Pacific Region*, January 2021, available at <https://reporting.unhcr.org/sites/default/files/The%20Displaced%20and%20Stateless%20of%20Myanmar%20in%20the%20Asia-Pacific%20Region%20-%20January%202021.pdf>

¹⁰ Ishrat Hossain, *After Humanitarianism: Bangladesh's Evolving Rohingya Policy*. (GIGA Focus Asien, 6; 2020). Hamburg: GIGA German Institute of Global and Area Studies - Leibniz-Institut für Globale und Regionale Studien, Institut für Asien-Studien, <https://www.giga-hamburg.de/en/publications/21686266-after-humanitarianism-bangladesh-evolving-rohingya-policy/>

¹¹ *Ibid.*

¹² Sreeparna Banerjee, *The Rohingya Crisis and its Impact on Bangladesh-Myanmar Relations*, ORF Issue Brief, Issue No. 396, August 2020, available at https://www.orfonline.org/wp-content/uploads/2020/08/ORF_IssueBrief_396_Bangladesh-Myanmar.pdf

¹³ See, Saleh Ahmed, William Paul Simmons, Rashed Chowdhury and Saleemul Huq, *The sustainability–peace nexus in crisis contexts: how the Rohingya escaped the ethnic violence in Myanmar, but are trapped into environmental challenges in Bangladesh*, *Sustainability Science* (2021), available at <https://link.springer.com/article/10.1007%2Fs11625-021-00955-6>

2.1 Rohingya refugee movements into Bangladesh

Bangladesh has been hosting Rohingya refugees since the 1970s. The country has received large numbers of Rohingya refugees in three phases.

First phase (1978): Bangladesh welcomed more than 200,000 Rohingya refugees in 1978 who fled targeted violence by the Myanmar military and provided temporary shelter and support to them. Most of the refugees were repatriated to Myanmar within a short time. Refugees were not consulted prior to repatriation, which was met with strong resistance and resulted in intimidation and withdrawal of food rations from the camps. It is estimated that some 10,000 Rohingya refugees died from malnutrition and illness by the end of 1978.¹⁴ Despite these coercive measures, repatriation continued in contravention of the principle of voluntariness.¹⁵

Second phase (1991-92): More than 250,000 Rohingya refugees were forced to flee Myanmar due to serious state repression. These refugees were temporarily accommodated in 20 camps in Cox's Bazar while efforts continued to return them to Myanmar. Since 1992, the Government of Bangladesh refused to recognise further Rohingya refugee arrivals and UNHCR was no longer allowed to register them. Only two registered camps in Kutapalong and Nayapara with some 25,000 refugees were allowed to operate under UNHCR administration. As of December 2020, the number of registered refugees in these two camps has grown to 35,519.¹⁶ In addition, the Government of Bangladesh estimated that there were 300,000-500,000 unregistered Rohingya living in the vicinity of the registered camps in Cox's Bazar as well as in neighbouring districts.¹⁷ Between 1993-1997, some 230,000 refugees were returned to Myanmar amidst allegations of forced returns.¹⁸ Between 1993-2016, as the levels of violence and oppression against them continued to intensify in Myanmar¹⁹, Rohingya refugees continued to flee in smaller numbers but Bangladesh adopted a pushback policy towards them.

Third phase (2016-17): Since 2012, the conditions in Rakhine State began to deteriorate following inter-communal violence between Rohingya and other groups. More than 100,000 Rohingya were internally displaced within Myanmar at the time. The Arakan Rohingya Salvation Army (ARSA), a Rohingya insurgent group, was reportedly formed in Myanmar after the incidents of 2012. In October 2016, there was an upsurge in violence in Rakhine State when ARSA reportedly attacked border posts

¹⁴ Katy Long, Back to where you once belonged: A historical review of UNHCR policy and practice on refugee repatriation, UNHCR PDES, September 2013, p.8 available at <https://www.refworld.org/pdfid/5226d8f44.pdf>

¹⁵ The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees. The principle of "voluntariness" must be viewed in relation to both: conditions in the country of origin (calling for an informed decision); and the situation in the country of asylum (permitting a free choice). See, Handbook - Voluntary Repatriation: International Protection, UNHCR, January 1996, available at <https://www.unhcr.org/uk/3bfe68d32.pdf>

¹⁶ UNHCR, Rohingya Refugee Response Protection Factsheet, December 2020, available at <https://data2.unhcr.org/en/documents/details/84918>

¹⁷ UNHCR, Bangladesh Factsheet, March 2017, available at <https://www.unhcr.org/50001ae09.pdf>

¹⁸ For details, see, CR Abrar, Repatriation of Rohingya Refugees, available at <http://www.netipr.org/policy/downloads/19970101-Repatriation-Of-Rohingyas-Abrar.pdf>

¹⁹ Sultana Yesmin, Policy Towards Rohingya Refugees: Comparative Analysis of Bangladesh, Malaysia and Thailand, Journal of the Asiatic Society of Bangladesh (Hum.), Vol. 61(1), 2016, pp. 71-100, p. 81, available at http://cgsdu.org/wp-content/uploads/2019/03/4-H_883.pdf

triggering a military crackdown. Between October 2016-July 2017, nearly 87,000 Rohingya were forced to cross over into Bangladesh.²⁰

Bangladesh received close to 700,000 Rohingya refugees in August 2017 following the launch of intensive military operations resulting in widespread violence and mass forced displacement of civilians from Rakhine State in Myanmar, an event that has been characterised as a 'textbook example of ethnic cleansing'.²¹ As of 31 March 2021, there are 884,041 Rohingya living in 34 camps in Ukhiya and Teknaf Upazilas (Sub-district) in Cox's Bazar district in Bangladesh²² with limited access to basic rights and services and with little hope for a safe and sustainable durable solution in the near future.

While a large-scale humanitarian response has been implemented and coordinated under evolving structures, Government policy has continued to focus on short-term humanitarian interventions and expediting refugee returns to Myanmar, since the 1990s.

2.2 International response to the Rohingya situation

The Rohingya crisis has triggered a lot of international criticism and scrutiny but so far, international pressure and diplomatic engagement has not brought about any positive change in Myanmar's approach towards Rohingya, demonstrated through escalation of conflict in Rakhine State, continued internal displacement and prolonged encampment of Rohingya, denial of equal rights and basic services, including citizenship rights and impunity for mass atrocities committed since 2016.²³

2.2.1 The United Nations Security Council

The United Nations Security Council has, thus far, been unable to take any targeted measures against Myanmar despite reports from various human rights bodies²⁴ affirming genocide, crimes against humanity and systemic human rights violations against the Rohingya.

2.2.2 The Rakhine Advisory Commission

The Rakhine Advisory Commission,²⁵ was formed in 2016 at the behest of the Government of Myanmar in collaboration with the Kofi Annan Foundation, and chaired by former UN Secretary General, Kofi Annan, to look into ways of securing the well-being of all communities living in Rakhine State. The release of the final report of the Commission in August 2017 coincided with the outbreak of extreme violence in Rakhine State resulting in mass forced displacement of Rohingya into Bangladesh. The implementation of the recommendations of the Commission was disrupted by the overall lack of political will amidst continued clashes in Rakhine State between Myanmar military and Rakhine rebel groups such as the Arakan Army.

²⁰Start Network, Influx of Rohingya Displacement, Briefing Note, 24 September 2017, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/170924%20Start%20Rohingya%20Refugee%20Influx.pdf>

²¹ See Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, at the 36th Session of the Human Rights Council, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041>

²² UNHCR, Joint Government of Bangladesh – UNHCR Population Factsheet, 31 March 2021, available at <https://data2.unhcr.org/en/documents/details/86233>

²³ APRRN, Three Years On: Rohingya Need Sustainable Solutions, 3 September 2020, available at <http://aprrn.info/wp-content/uploads/2020/09/Final-Three-Years-on-Rohingya-1.pdf>

²⁴ The UN Human Rights Council (HRC) created an Independent International Fact-Finding Mission for Myanmar (IIFFM) in March 2017, which issued a report in September 2018, detailing abuses against the Rohingya and other ethnic communities in three states in Myanmar. In September 2018, the HRC, established an Independent Investigative Mechanism for Myanmar (IIMM), whose aim is to continue the work of the IIFFM and obtain documentation from individuals, groups and organisations that can later be used for the purposes of accountability.

²⁵ Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine, Final Report of the Advisory Commission on Rakhine State, August 2017, available at https://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf

2.2.3 ICC, ICJ and other legal proceedings

There is growing legal pressure on Myanmar at the international level through a series of legal actions that were initiated at the International Criminal Court (ICC),²⁶ International Court of Justice (ICJ)²⁷ and in an Argentinian court.²⁸ In January 2020, the ICJ passed legally binding provisional measures directing Myanmar to take necessary steps to prevent all acts of genocide and report to the Court every six months on its progress on the implementation of the order.²⁹ Targeted sanctions have been issued against Myanmar military leaders by several governments with regard to atrocities committed against the Rohingya as well as in relation to the recent military coup.³⁰ Despite these measures, human rights violations against Rohingya continue.

While these legal actions are a welcome step towards achieving justice and accountability for crimes committed against Rohingya, these proceedings are likely to continue over a long period, and will not provide any immediate relief to the Rohingya community.³¹ The international community should continue to uphold its responsibility towards Rohingya refugees as victims of mass atrocity.³² Containment policies, border closures, boat push-backs, denial of asylum and other human rights, need to be critiqued and good faith responsibility-sharing arrangements should be agreed upon.

2.3 Regional response to the Rohingya situation

There is ongoing domestic pressure within Bangladesh to resolve the Rohingya crisis, with no resolution in sight within Myanmar. Meanwhile, there are increasingly stringent security measures in the Rohingya refugee camps in Bangladesh which are exacerbating security challenges, further

²⁶ In November 2019, the ICC opened an investigation into the Rohingya situation in Bangladesh/Myanmar. Bangladeshi Non-Governmental Representatives (BNGR), an informal group of leading Bangladeshi civil society organisations, humanitarian agencies, eminent jurists and scholars submitted *amicus curiae* observations in the matter in three key areas: i) the circumstances surrounding the presence of members of the Rohingya people from Myanmar on the territory of Bangladesh; ii) the crimes, in addition to deportation, that commenced in Myanmar but were completed in Bangladesh that the Chamber may exercise territorial jurisdiction over; and iii) an overview of Bangladeshi law on territorial jurisdiction over cross-border crimes.

²⁷ In November 2019, Gambia instituted proceedings against Myanmar at the International Court of Justice (ICJ) for perpetrating genocide and failing to prevent it. In September 2020, Canada and the Netherlands formally joined Gambia in their intervention at the ICJ.

²⁸ In November 2019, the Burmese Rohingya Organisation in the United Kingdom (BROUK), together with Latin American human rights groups, filed an application in a federal court in Buenos Aires, Argentina, calling for military and civilian leaders in Myanmar, including Aung San Suu Kyi, to take responsibility for crimes committed against minority groups.

²⁹ Fortify Rights, Myanmar: Comply with World-Court Orders, End Ongoing Atrocities, 23 October 2020, available at <https://www.fortifyrights.org/mya-inv-2020-10-23/>

³⁰ Human Rights Watch, Myanmar, Sanctions and Human Rights, 18 February 2021, available at <https://www.hrw.org/news/2021/02/18/myanmar-sanctions-and-human-rights>

³¹ Katja Creutz, International Responses to the Rohingya crisis in Myanmar-From Political Inaction to Growing Legal Pressure, Finnish Institute of International Affairs, May 2020, available at https://www.fiia.fi/wp-content/uploads/2020/05/bp282_international-responses-to-the-rohingya-crisis-in-myanmar.pdf

³² World Summit Outcome document (hereinafter 'WSO'), GA res. 60/1, paras. 138-9, UN doc. A/Res/60/1, 24 Oct. 2005. ("The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity... We also intend to commit ourselves, as necessary and appropriate, to helping states build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out."). See Also: Brian Barbour and Brian Gorlick, Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims, International Journal of Refugee Law, Volume 20, Issue 4, December 2008, pp. 533–566.

alienating refugees, and increasing a sense of fear and insecurity among both Rohingya refugees and host communities.³³

While the international community has continued to focus on supporting the Rohingya response in Bangladesh and advocating for an expanded protection and operational space, adequate attention has not been paid to acknowledging and addressing the regional dimensions of the Rohingya crisis. In addition to Bangladesh, other countries in South and South-East Asia such as India, Nepal, Thailand, Malaysia and Indonesia, are also hosting Rohingya refugees in lesser numbers, without granting them legal status and access to rights and durable solutions.

The military coup in Myanmar in February 2021 has diminished prospects for safe, voluntary and dignified repatriation of Rohingya refugees.³⁴ A mass deportation order against Rohingya refugees in India³⁵ and boat push-back policies by other States in the region, growing xenophobia and a general lack of any viable solutions points towards the lack of equitable international and regional responsibility sharing arrangements. These regional dynamics have affected Bangladesh's treatment of Rohingya refugees.

2.3.1 UNHCR's Solidarity Approach

In July 2018, UNHCR proposed a Solidarity Approach for the People of Rakhine State, 'wherever they may be'³⁶ which envisioned a comprehensive approach aimed at addressing the root cause of displacement, searching for sustainable solutions and providing a platform for coordinating international efforts. However, the concept of the Solidarity Approach did not enjoy broad-based consensus perhaps due to lack of adequate consultations.³⁷ The Government of Bangladesh was concerned that this approach deflects attention and responsibility from Myanmar to urgently improve conditions in Rakhine State to facilitate Rohingya repatriation.³⁸

2.3.2 Rohingya boat crisis

In 2020, more than 2,400 Rohingya made dangerous journeys by sea to reach safer destinations, less than half of whom were allowed to disembark safely in the region.³⁹ Passengers aboard a mother ship serving as an offshore trafficking camp were held hostage at sea until ransoms were paid on their behalf, and even after payments, the Rohingya faced difficulties disembarking due to State pushback policies.⁴⁰ At least 200 Rohingya refugees lost their lives or disappeared at sea in 2020.⁴¹ This is not a

³³ International Crisis Group (ICG), A Sustainable Policy for Rohingya Refugees in Bangladesh, 27 December 2019, available at <https://www.crisisgroup.org/asia/south-asia/bangladesh/303-sustainable-policy-rohingya-refugees-bangladesh>

³⁴ Alice Cuddy, Myanmar coup: What is happening and why?, BBC News, 1 April 2021, available at <https://www.bbc.com/news/world-asia-55902070>

³⁵ Chander Uday Singh, Supreme Court must rethink its order on deportation of Rohingya refugees, The Indian Express, 26 April 2021, available at <https://indianexpress.com/article/opinion/columns/rohingya-refugees-crisis-india-supreme-court-7288913/>

³⁶ UNHCR, A solidarity approach for the people of Rakhine State: the way forward, Side event of the 69th session of the Executive Committee, 3 October 2018, available at <https://www.unhcr.org/fr/5baa20414.pdf>

³⁷ Karen Hargrave, Kerrie Holloway, Veronique Barbelet and M. Abu Eusuf, The Rohingya response in Bangladesh and the Global Compact on Refugees, HPG Working Paper, April 2020, available at https://cdn.odi.org/media/documents/The_Rohingya_response_in_Bangladesh_and_the_Global_Compact_on_Refugees_lessons_8B4Bg1o.pdf

³⁸ *Ibid.*

³⁹ UNHCR, *supra* n. 16.

⁴⁰ Brian Barbour *et.al*, *supra* n. 5.

⁴¹ *Ibid.*

new phenomenon. In 2015, hundreds of refugees and migrants from Bangladesh and Myanmar perished in the Bay of Bengal and Andaman Sea after being denied lifesaving assistance.⁴²

Despite continued trends of such maritime movements over the years, there exists no clear regional framework for allowing safe disembarkation and reception for refugees rescued at sea. Regional governments have consistently failed to uphold their responsibility-sharing commitments to allow safe disembarkation and provide humanitarian assistance to distressed persons at sea. The Bali Process (2002)⁴³ aimed at addressing issues such as smuggling and trafficking through a collective regional response, developed emergency response mechanisms following the 2015 crisis 'to standardise various national approaches, develop early warning capabilities and coordinate action'.⁴⁴ Some other significant international and regional developments aimed at addressing mass forced displacement, including movements at sea, were the Global Compacts on Refugees and Migrants, Asia Dialogue on Forced Migration (ADFM) and the signing of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).⁴⁵ However, these initiatives did not culminate in coordinated action at the regional level when boat movements increased in early 2020. Furthermore, the COVID-19 pandemic was used as a justification by regional governments to deny refugees' access to territory and safe asylum.⁴⁶

At the recently concluded ASEAN conference in April 2020, leaders agreed on a five- point consensus calling for an end to violence, a constructive dialogue among all parties, facilitation of a dialogue by a special ASEAN envoy, provision of humanitarian assistance by the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) and visit of the ASEAN envoy to Myanmar to meet with concerned parties.⁴⁷

Governments in the region and globally should make efforts to undertake a comprehensive regional refugee response and agree on collective solutions and better responsibility sharing arrangements.⁴⁸ In addition to exploring the option of refugee resettlement for Rohingya, complementary pathways such as humanitarian visas, family reunification, community sponsorship of refugees, education programmes or labour mobility schemes among others, may also be considered as a positive step towards global responsibility-sharing.⁴⁹ As the protracted nature of this crisis is becoming evident four years since the Rohingya influx of 2017, a more practical regional and international solidarity approach

⁴² Inaction has been fatal, says UNHCR, as dozens of Rohingya refugees perish at sea, UN News, 7 September 2020, available at <https://news.un.org/en/story/2020/09/1071812>. See also, Deepmala Mahla and Hassan Noor, Rohingya are being left to die at sea: Who cares?, 17 September 2020, available at <https://www.savethechildren.net/blog/rohingya-are-being-left-die-sea-who-cares>

⁴³ For details, see, The Bali Process, available at <https://www.baliprocess.net/>

⁴⁴ Bali Declaration on People Smuggling, Trafficking in Persons, and Related Transnational Crime, 23 March 2016, available at: <https://www.refworld.org/docid/5799ef3c4.html>

⁴⁵ Caitlin McCaffrie, Andaman Sea Crisis: Is the region really better off in 2020?, Kaldor Centre for International Refugee Law, UNSW, 6 August 2020, available at <https://www.kaldorcentre.unsw.edu.au/publication/andaman-sea-crisis-region-really-better-2020>

⁴⁶ Amnesty International, COVID-19 no excuse to sacrifice Rohingya lives at sea, 17 April 2020, available at <https://www.amnesty.org/en/latest/news/2020/04/covid-no-excuse-sacrifice-lives-more-rohingya-look-safety-boat/>

⁴⁷ ASEAN Secretariat, Chairman's Statement on the ASEAN Leaders' Meeting, 24 April 2021, available at <https://asean.org/storage/Chairmans-Statement-on-ALM-Five-Point-Consensus-24-April-2021-FINAL-a-1.pdf>

⁴⁸ APPRN, *supra* n. 23.

⁴⁹ Brian Gorlick, Rethinking solutions to the Rohingya refugee crisis, 19 December 2019, available at <https://www.openglobalrights.org/rethinking-solutions-to-the-rohingya-refugee-crisis/>

aligned with GCR commitments, and collaboration and complementarity through the whole-of-society-approach, is needed.

With this complex humanitarian setting in mind, the following chapters will analyse the refugee protection context, explore the legal, policy and humanitarian coordination frameworks, ongoing localisation debates, and the key actors and drivers that advance or challenge the advancement of protection and durable solutions objectives in the Rohingya refugee response in Bangladesh. The engagement of refugee and host communities in each of these pillars will also be considered in appreciation of the centrality of community-based approaches in the Rohingya refugee response in Bangladesh.

Chapter 3: Refugee Protection

This chapter analyses the legal and policy framework that underpins the stay and protection of Rohingya refugees in Bangladesh. It provides an overview of the protection situation of refugees in the camps and examine the risks and challenges that restrict their ability to access their rights and live a life of self-reliance and dignity. It also explores the existing gaps and barriers to effective protection advocacy in achieving protection goals.

3.1 Evolving Legal and Policy Framework for Rohingya Refugees in Bangladesh

3.1.1 Bangladesh's obligations under international law

Bangladesh is party to the majority of core international human rights instruments (with a few reservations and declarations) such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). It has also signed the Convention on the Political Rights of Women and the Optional Protocol to the Convention on Elimination of Discrimination against Women.

Bangladesh has not acceded to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol but has been a member of UNHCR's Executive Committee since 1995.⁵⁰ Bangladesh is also not party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and there is no national legislation to address statelessness issues.

Bangladesh has upheld the customary international law principle of *non-refoulement* to a large extent, by providing safety and shelter to Rohingya refugees in the world's largest refugee camp in Cox's Bazar and committing that Rohingya refugees will only be voluntarily repatriated to Myanmar in safe and dignified conditions. At the same time, Bangladesh does not explicitly acknowledge that the Rohingya are refugees and in practice, there have also been several reported instances of border pushbacks of Rohingya refugees over the years. Their lack of formal legal status as refugees entails protection risks associated with refoulement and denial of refugee rights under international law such as freedom of movement, education and livelihoods, among others.

3.1.2 Bangladesh's domestic policy framework

There is no express domestic legislative framework governing refugees in Bangladesh. Some constitutional and other general legal provisions are applicable to all persons on Bangladeshi territory which may also be extended to refugees. During the first and second phases of Rohingya arrivals in Bangladesh (1978 and 1991-92), the Government of Bangladesh granted *prima facie* refugee status to Rohingya refugees under executive orders and invited UNHCR to provide support.⁵¹

⁵⁰ UNHCR, ExCom membership by date of admission of members, available at

<https://www.unhcr.org/en-in/excom/announce/40112e984/excom-membership-date-admission-members.html>

⁵¹ Nour Mohammad, Protection of International Refugee under the Constitution of Bangladesh, Refugee Watch, Vol 39 (2012), p. 154, available at http://www.mcrg.ac.in/rw%20files/RW39_40/12.pdf

⁵² 'A *prima facie* approach means the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum-seekers, their country of former habitual

Since the 1990s, Bangladesh has adopted a much stricter stance towards Rohingya refugees resulting in a series of pushbacks in contravention of the principle of non-refoulement. For instance, in 2012 following inter-communal violence in Rakhine state and displacement of thousands of Rohingya, Bangladeshi borders were sealed, and a push-back policy was implemented putting the lives of more than 1,000 Rohingya at severe risk. In addition, three international aid agencies were ordered to cease life-saving food and medical assistance to Rohingya in Cox's Bazar and neighbouring areas on the ground that the presence of aid agencies is a pull-factor for Rohingya to come to Bangladesh.⁵² As per the Government of Bangladesh, the policy shift was due to the socio-economic burden and potential national security risks caused by the presence of thousands of refugees in an underdeveloped and disaster-prone area such as Cox's Bazar.⁵³

In 2013, Bangladesh adopted the *National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals*⁵⁴ which identifies Rohingya as 'Myanmar nationals' and acknowledges the presence of 300,000-500,000 Rohingya in Bangladesh.⁵⁵ It is worth noting that the Strategy limited use of the term 'refugee' only to those recognised prior to 1991-92 and sustained the use of 'undocumented Myanmar nationals' for the rest. The support of "development-oriented" international organisations "i.e., UNDP, WFP, UNFPA, UNICEF and IOM" was engaged, rather than UNHCR- the mandated international refugee agency. The strategy, formulated from a national security lens, while reiterating Bangladesh's commitment to provide essential humanitarian services to unregistered Rohingya following listing/identification, is premised on the Government's position that the irregular migration of Rohingya must be stopped at the border.⁵⁶

As per the strategy, a National Task Force (NTF) under the leadership of the Ministry of Foreign Affairs/ Foreign Secretary was established, and asked IOM to lead and coordinate assistance for Rohingya/ Undocumented Myanmar Nationals⁵⁷ along with other UN agencies (UNDP, UNICEF, WFP), Bangladeshi Red Crescent and local NGOs.⁵⁸ Areas of support included health, water, sanitation and hygiene and related information materials for Rohingya and host communities in Cox's Bazar district.⁵⁹ As Rohingya were not recognised as refugees in the strategy, refugee protection was not identified as a priority area of intervention and UNHCR was not included as one of the agencies providing support.

Despite its limitations, the National Strategy enabled the gradual expansion of Rohingya's access to basic services. In October 2016, some 80,000 Rohingya fled into Bangladesh escaping a military crackdown following ARSA attacks, putting considerable strain on the newly formed humanitarian

residence'. For more details, see, UNHCR, Guidelines on International Protection No.11, Prima Facie Recognition of Refugee Status, 24 June 2015, available at <https://www.unhcr.org/558a62299.html>

⁵² Human Rights Watch, Bangladesh: Assist, Protect Rohingya Refugees, 22 August 2021, available at <https://www.hrw.org/news/2012/08/22/bangladesh-assist-protect-rohingya-refugees>

⁵³ Sultana Yesmin, *supra* n. 19, p. 84

⁵⁴ Hereinafter 'The National Strategy'. Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh (2014) "National Strategy Paper on Myanmar Refugees and Undocumented Myanmar Nationals in Bangladesh, available at <https://assets.documentcloud.org/documents/1363897/un-hr-bangladesh.pdf>

⁵⁵ C.R. Abrar, Government Strategy Paper on Rohingya, The Daily Star, 21 June 2014, available at <https://www.thedailystar.net/government-strategy-paper-on-rohingyas-29526>

⁵⁶ *Ibid.*

⁵⁷ Lewis Sida, Prof. Ferdous Jahan, Mamun-ur Rashid, Tina Nelis, Rajith Lakshman, Independent evaluation of UNHCR's emergency response to the Rohingya refugees influx in Bangladesh, August 2017–September 2018, Evaluation Report, December 2018, p.8, available at <https://www.unhcr.org/5c811b464.pdf>

⁵⁸ Abrar, *supra* n. 55.

⁵⁹ IOM to Provide Humanitarian Assistance to Undocumented Myanmar Nationals in Bangladesh, 1 August 2015, available at <https://www.iom.int/news/iom-provide-humanitarian-assistance-undocumented-myanmar-nationals-bangladesh>

coordination system. During this time, the Inter Sector Coordination Group (ISCG) led by IOM was established in Cox's Bazar to lead operational humanitarian coordination.⁶⁰

3.1.3 Refugee protection considerations after the 2017 influx

In August 2017, the people and Government of Bangladesh displayed openness and generosity of spirit in welcoming large numbers of Rohingya refugees in the face of a fast-growing humanitarian crisis although some cases of pushbacks were reported in the initial days.⁶¹ No substantial review of the 2013 National Strategy was undertaken at this time despite the dramatic change in the humanitarian context. Rohingya were identified as Forcibly Displaced Myanmar Nationals (FDMNs) (a slight shift from the categorisation as 'Undocumented Myanmar Nationals under the 2013 National Strategy) and not as refugees by the Government of Bangladesh.

By September 2017, a new humanitarian coordination model under the ISCG was put in place by the UN which has gradually created space for UNHCR to exercise its refugee protection mandate.⁶² In early 2018, an inclusive policy level decision-making body called the Strategic Executive Group (SEG) was established at the national (Dhaka) level with a tripartite leadership by the UN Resident Coordinator and the country representatives of IOM and UNHCR and membership of UN agencies, donor groups and NGOs.

Since 2018, refugee protection has been increasingly prioritised by the humanitarian community in the key humanitarian planning and fundraising tools i.e., Joint Response Plans (JRP)⁶³, with significant resource allocations to UNHCR and delivery of protection services. Despite such in-principle progress, the absence of a clear and consistent legal framework for refugee protection widens the scope for ad-hoc and discretionary policies which has restricted Rohingya's access to basic rights and services and created protection risks, increasing their vulnerability to discriminatory treatment, detention and/or expulsion.

3.1.4 Current legal status in Bangladesh

The Rohingya are refugees, by definition, under international law, and the labeling of them as FDMNs, should not have any legal effect on Bangladesh's international obligations. Yet, as a practical matter, the failure of State authorities to recognise their identity as refugees adversely affects their treatment under domestic law and influences public perceptions about them.

In 2019, the Government of Bangladesh and UNHCR completed the joint registration of all Rohingya refugees. This process provided Rohingya refugees with identity documents. These do not, however, give them legal status as refugees or access to work opportunities in Bangladesh. As a result, Rohingya refugees in Bangladesh remain highly dependent on humanitarian aid. The lack of legal status heightens protection risks for many Rohingya refugees and promotes negative coping mechanisms such as taking large debts due to restrictions on livelihoods activities and cash-based programmes,

⁶⁰ Sida *et.al*, *supra* n. 57, p.9

⁶¹ Myanmar: What sparked latest violence in Rakhine?, BBC News, 19 September 2017, available at <https://www.bbc.com/news/world-asia-41082689>

⁶² Sebastien Moretti, Between refugee protection and migration management: the quest for coordination between UNHCR and IOM in the Asia-Pacific region, *Third World Quarterly*, 42:1 (2021), 34-51, p. available at <https://www.tandfonline.com/doi/full/10.1080/01436597.2020.1780910?scroll=top&needAccess=true>

⁶³ The humanitarian community, led by the Inter-Sector Coordination Group in Cox's Bazar and the Strategic Executive Group in Dhaka, has worked closely with the Government to draw up this Joint Response Plan (JRP) for 2018. The JRP lays out a vision for a coordinated response to address the critical needs of the refugees and mitigate the impacts on affected host communities. This support will be essential to ensuring Rohingya refugees and the communities generously hosting them can continue living safe, dignified, and productive lives, until solutions can be found.

dangerous onward movements by sea, increasing trafficking concerns, and child labour, among others.⁶⁴

Moreover, the Rohingya are a *de jure* stateless group as their citizenship rights in Myanmar are not recognised by law. The acknowledgement of their legal identity as stateless persons is a critical first step in addressing the structural and root causes of the Rohingya crisis and formulating effective protection and durable solutions strategies for the group.

3.2 Current protection environment in the camps

In principle, the humanitarian response to the Rohingya crisis in Bangladesh is guided by a protection framework outlined in the Joint Response Plan. The framework comprises of four pillars aimed at securing the identity of Rohingya refugees through registration and documentation; strengthening the protection environment; addressing critical living conditions and preparing for sustainable solutions in Myanmar.⁶⁵ While it is widely acknowledged as a ‘protection crisis’, the fact that the policy framework focuses on short-term temporary assistance premised on speedy repatriation, and provides no access to formal education or income generation opportunities,⁶⁶ nor due regard to the current situation in Myanmar, makes it challenging to secure the rights and well-being of refugees.

3.2.1 Security measures since August 2019

Following a series of events such as the second unsuccessful repatriation attempt, killing of a Bangladeshi youth leader allegedly by a group of Rohingya, and lastly, a large rally organised by Rohingya to mark the second year of their exodus from Myanmar, Bangladeshi authorities took a series of restrictive measures in August 2019, that severely affected Rohingya refugees’ access to basic rights and constrained humanitarian access.

These measures range from transfer of RRRC and camp officials known to be sympathetic to refugees and regarded highly by the humanitarian community,⁶⁷ telecommunications restrictions, restricted volunteer and cash-for-work programmes, crackdowns on Rohingya civil society groups, construction of fencing, relocation to Bhasan Char, growing presence of security forces and increased surveillance and monitoring of camps, as well as bureaucratic barriers for NGO operations, including suspension of activities, increasing ad-hoc information requests and reporting requirements and complex project approvals and completion processes.⁶⁸ These restrictions have been reinforced during the COVID-19 pandemic with additional temporary measures being undertaken to contain the spread of the virus through reduced humanitarian programming and staff presence.

⁶⁴ 2020 Joint Response Plan 2020, Rohingya Humanitarian Crisis Bangladesh, p. 57, available at

https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/jrp_2020_final_in-design_200422_12.2mb.pdf (Hereinafter, JRP 2020).

See also, Navigating at the Margins: Family, Mobility, and Livelihoods amongst Rohingya Refugees in Bangladesh, The Asia Foundation, Centre for Peace and Justice, BRAC University, August 2020, available at

<https://asiafoundation.org/publication/navigating-the-margins-family-mobility-and-livelihoods-amongst-rohingya-in-bangladesh/>

⁶⁵ *Ibid*, JRP 2020, p. 12. The response plan aims to achieve four strategic objectives within the protection framework-strengthening the protection of Rohingya refugees; delivering quality, life-saving assistance to populations in need; fostering the well-being of communities in Ukhiya and Teknaf; and working towards achieving sustainable solutions in Myanmar.

⁶⁶ Ishrat Hossain, *supra* n. 10.

⁶⁷ ICG, *supra* n. 33.

⁶⁸ Daniel Sullivan, A Voice in their Future: The Need to Empower Rohingya Refugees in Bangladesh, Refugees International, February 2020, Refugees International, available at

<https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5e3b490b28c8c8206c947423/1580943632978/Bangladesh+Report+-+February+2020+-+FINAL.pdf>

Together, these restrictions highlight an increasing trend towards securitisation of the Rohingya refugee response.⁶⁹ These are demonstrated by a sharp policy focus on national security and expedited returns to Myanmar. These restrictive policies amidst rising insecurity in the camps, are fueling negative public attitudes towards Rohingya and escalating tensions with host communities.

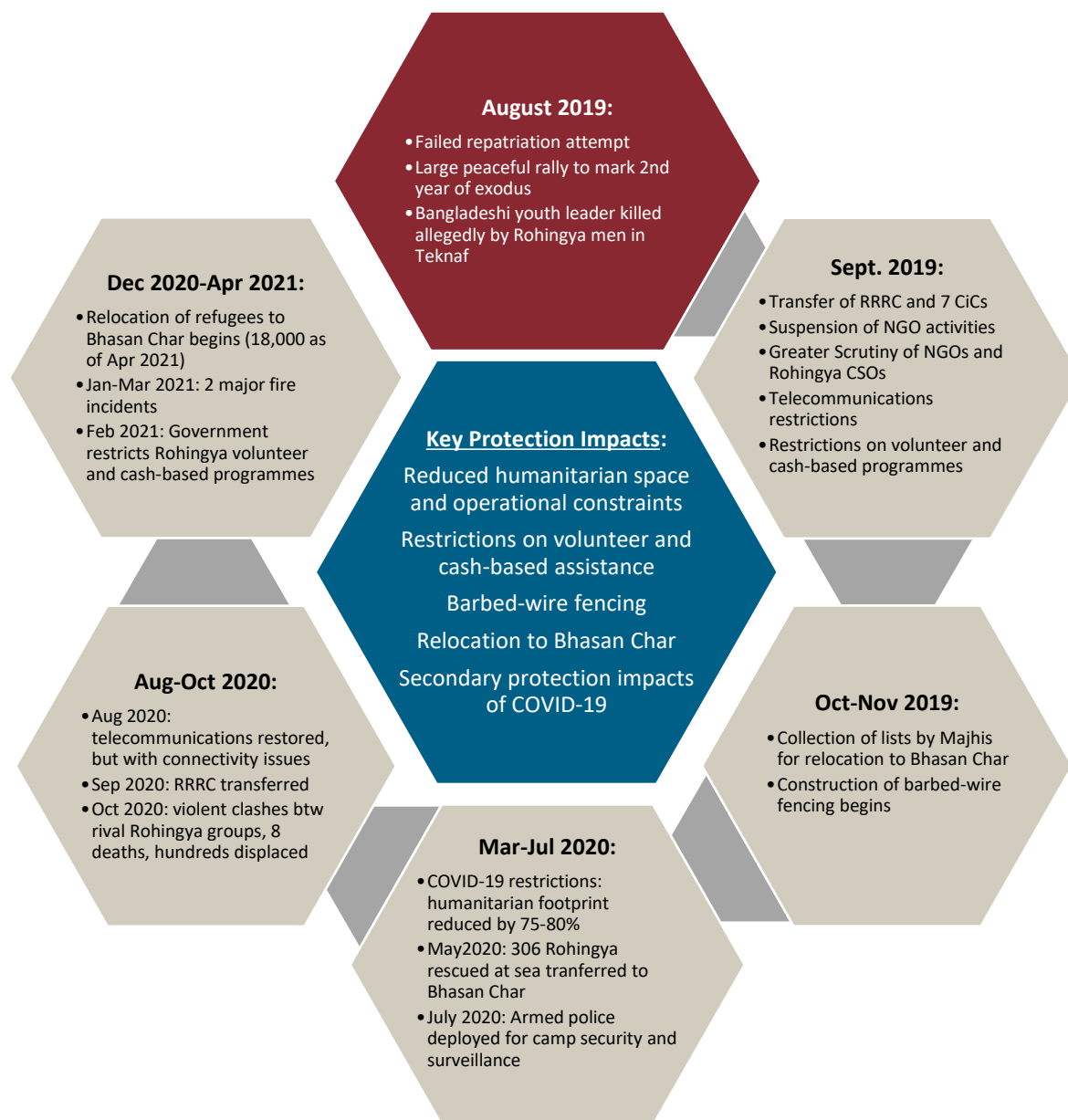


Figure 2: August 2019-April 2021: Aid restrictions and Protection Impacts

3.2.1.1 Telecommunications restrictions

Due to their lack of legal status as refugees in Bangladesh, Rohingya refugees do not have the necessary identity documents to purchase local SIM cards. They face difficulties in accessing

⁶⁹ Dylan Driscoll, Bangladesh Rohingya crisis -Managing risks in securitisation of Refugees, K4D Help Desk Report, 20 October 2017, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/224-Managing-risks-in-securitisation-of-refugees.pdf>

information, reporting issues, making urgent service referrals and maintaining contact with their relatives and friends in Myanmar and elsewhere. Many were able to access SIM cards through irregular channels.⁷⁰

Between September 2019 and August 2020, telecommunications restrictions were in place in the Rohingya camps following directions from Bangladeshi authorities to restrict 3G/4G services and stop sale of SIM cards to Rohingya refugees.⁷¹ SIM cards were confiscated from Rohingya refugees on the grounds of unauthorised access and allegations of involvement of Rohingya in criminal activities over the internet.⁷² These restrictions have also affected surrounding host community's access to telecommunications.

These restrictions impacted communities' ability to access humanitarian services, particularly during medical emergencies and monsoon/cyclone response. Such restrictions also prevented Rohingya refugees from contacting their families and friends in Myanmar and accessing accurate information about prevailing conditions in Rakhine State to make well-informed decisions about their future possibility of return to Myanmar.⁷³ In August 2020, these restrictions were officially lifted by the Government of Bangladesh⁷⁴ but connectivity remained slow continuing to affect mobile and internet access in the camps and neighbouring areas.

During the initial months of the COVID-19 pandemic when it was unsafe to conduct door-to door information and awareness campaigns, non-availability of telecommunications services⁷⁵ contributed to the spread of rumours and misinformation, increased fear of stigma and discrimination due to confidentiality breaches of personal health-related information and discriminatory public perceptions of Rohingya being carriers of the virus, lack of clarity on isolation and treatment facilities and fear of family separation. These factors along with pre-existing concerns such as trust deficit in healthcare systems/ providers, quality of dignified and effective care and negative encounters with the Myanmar healthcare system, discouraged Rohingya refugees from accessing health services, reporting COVID-19 symptoms and consent to testing.

3.2.1.2 Restrictions on volunteer and cash-based programmes

Since 2017, Rohingya refugees have been supporting the humanitarian response through volunteer and cash-for-work programmes. These programmes include a wide range of essential activities such as sanitation work, road construction and maintenance, disaster preparedness and response, assisting with food and aid distribution, community mobilisers, health workers and supporting vulnerable refugees in accessing services. This provides a rare opportunity for Rohingya women to participate in

⁷⁰ Karen McVeigh, Bangladesh imposes mobile phone blackout in Rohingya refugee camps, The Guardian, 5 September 2019, available at <https://www.theguardian.com/global-development/2019/sep/05/bangladesh-imposes-mobile-phone-blackout-in-rohingya-refugee-camps>

⁷¹ No SIM card for Rohingyas, The Daily Star, 3 September 2019, available at <https://www.thedailystar.net/frontpage/no-bangladeshi-sim-card-for-rohingyas-1794595>

⁷² Muktadir Rashid, 12,000 SIMs seized in Rohingya camps in Bangladesh, New Age Bangladesh, 7 December 2019, available at <http://www.newagebd.net/article/92885/12000-sims-seised-in-rohingya-camps>

⁷³ Human Rights Watch, Bangladesh: Internet Blackout on Rohingya Refugees, 13 September 2019, available at <https://www.hrw.org/news/2019/09/13/bangladesh-internet-blackout-rohingya-refugees>

⁷⁴ Humayun Kabir Bhuiyan, 3G, 4G internet restored in Rohingya camps, Dhaka Tribune, 28 August 2020, available at <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2020/08/28/3g-4g-internet-restored-in-rohingya-camps>

⁷⁵ For details, See, ACAPS COVID-19 Explained Series, available at <https://www.acaps.org/country/bangladesh/special-reports#container-1515>

community-based initiatives and decision-making processes from which they have traditionally been excluded.⁷⁶

Rohingya refugees are best placed to conduct these activities due to their knowledge of the Rohingya language and high trust levels with their own community. Their engagement also makes it easier to disseminate information and collect feedback on the humanitarian response. As Rohingya refugees do not have access to formal education and employment in Bangladesh,⁷⁷ volunteer work in the camps enhances their sense of purpose and agency and contributes towards camp security and stability. Small cash stipends earned through volunteer work allow them to supplement the food assistance provided by the humanitarian community and also help endure any other economic shocks.

In September 2019, the NGO Affairs Bureau (NGOAB)⁷⁸ issued an order prohibiting cash-based programmes in the camps and prioritising the hiring of Bangladeshi nationals in the Rohingya refugee response instead of Rohingya refugees. As per Bangladeshi authorities, these measures were taken to stop the Rohingya from using cash for illicit activities such as securing fake identity documents.⁷⁹

Since 2019, the humanitarian community has advocated with Bangladeshi authorities to continue volunteer and cash-based programming in the camps given the critical need for Rohingya volunteers to deliver life-saving assistance in the camps. As negotiations were ongoing and the modalities for volunteer programmes were being finalised, these activities continued with caution. Rohingya volunteers played a particularly important role during COVID-19 when the humanitarian presence in the camps was significantly reduced.

It must be noted that thousands of Bangladeshi volunteers also support the humanitarian response and receive higher stipends than Rohingya volunteers. This is in addition to the employment of Bangladeshi nationals as staff of humanitarian agencies serving in the response, who constitute a large majority of humanitarian workers in Cox's Bazar district.

After long negotiations on the scope of refugee volunteer work in the response, a recent Government directive⁸⁰ has restricted the recruitment of Rohingya refugees in all sectors except as sanitation workers and night guards and limited the scope of cash-for-work programmes.

3.2.1.3 Barbed-wire fencing

Rohingya refugees' freedom of movement is restricted due to a government policy of encampment. Some Bangladeshi authorities have stated that 'the main objective of erecting the fences is to ensure that the Rohingyas do not leave the camp and join our community'.⁸¹

⁷⁶ Kaamil Ahmed, Cash ban stokes worry among Rohingya volunteers, *The New Humanitarian*, 17 December 2019, at <https://www.thenewhumanitarian.org/news/2019/12/17/Rohingya-cash-World-Vision-livelihoods-education-refugees-WFP>

⁷⁷ *Ibid.*

⁷⁸ NGOAB Framework for NGOs, 23 September 2019, available at http://ngoab.portal.gov.bd/sites/default/files/files/ngoab.portal.gov.bd/notices/7158baa6_dac4_4f3b_8ff1_9ef680d32f71/Framework-for%20NGOs.pdf

⁷⁹ Kaamil Ahmed, *supra* n. 76.

⁸⁰ Humayun Kabir Bhuiyan, Govt decides to regulate all Rohingya recruitment, *Dhaka Tribune*, 3 March 2021, available at <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2021/03/03/govt-decides-to-regulate-all-rohingya-recruitment>

⁸¹ Arifur Rahman Rabbi, Home minister: Barbed wire fencing underway around Rohingya camps, *Dhaka Tribune*, 15 February 2020, available at <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2020/02/15/home-minister-barbed-wire-fencing-underway-around-rohingya-camps>

The construction of barbed wire fencing around the camps further limits their free movement⁸², affects their safety and access to humanitarian services. It was reported⁸³ that thousands of Rohingya refugees were trapped by the fencing as they tried to escape a massive fire that broke out across three camps in March 2021. On-ground testimonials reveal that there was a single exit route as all other access points were fenced in, which affected the ability of older persons, children and persons with disabilities to flee as well as blocked access for fire trucks and other emergency vehicles.

There were no prior consultations with affected communities and humanitarian actors to establish the security risks, assess the need and proportionality of additional security measures and explore alternative, community-based approaches towards strengthening camp security.⁸⁴ The negative consequences of fencing such as barriers to humanitarian access and harmful impacts on peaceful co-existence between Rohingya refugees and host communities were not considered, thus, stigmatising Rohingya as security risks and increasing fear and mistrust between refugees, host communities, local authorities and humanitarian actors.

Introducing additional security measures, such as fencing, risks compromising the humanitarian and civilian character of the camps and triggering psychological trauma and distress among Rohingya refugees who were forced to escape similar restrictions in Myanmar. Further, the decision to erect fences along with measures to restrict telecommunications in the camps and neighbouring areas, have adversely affected humanitarian access and aid delivery to both refugees and host communities,⁸⁵ including the provision of lifesaving information and critical services during the COVID-19 pandemic.⁸⁶

3.2.1.4 Relocation to Bhasan Char

Despite strong advocacy at the national and global level by multiple actors, including donor governments, UN, humanitarian agencies and human rights groups, the Government of Bangladesh has relocated some 18,000 Rohingya refugees to Bhasan Char,⁸⁷ a remote, uninhabited, low lying island in the Bay of Bengal. Concerns about the risks of separation from family and community networks have been raised. 100,000 Rohingya refugees are planned to be relocated to the island in a phased manner.

A group of 306 Rohingya, including women and children, rescued from a ship stranded at sea in May 2020, are also currently held on the island. Their request for being returned to the Cox's Bazar camps and reunited with their families has not yet been fulfilled.⁸⁸

⁸² Restrictions on freedom of movement are only permissible in international law for a limited number of purposes and only where it can be demonstrated that the restrictions are necessary, proportionate, and related to identified security concerns. See, Articles 9 and 12 of the International Covenant on Civil and Political Rights (ICCPR).

⁸³ Human Rights Watch, Bangladesh: Refugee Camp Fencing Cost Lives in Blase, 25 March 2021, available at <https://www.hrw.org/news/2021/03/25/bangladesh-refugee-camp-fencing-cost-lives-blase>

⁸⁴ Fortify Rights, Bangladesh: Remove Fencing That Confines Rohingya to Refugee Camps, 9 October 2020, available at <https://www.fortifyrights.org/bgd-inv-2020-10-09-2/>

⁸⁵ Human Rights Watch, Bangladesh: Halt Plans to Fence-In Rohingya Refugees, 30 September 2019, available at <https://www.hrw.org/news/2019/09/30/bangladesh-halt-plans-fence-rohingya-refugees>

⁸⁶ COVID-19: Access to full mobile data and telecommunications in Myanmar and Bangladesh is essential to save lives, say 26 major aid groups, 15 April 2020, available at <https://reliefweb.int/report/bangladesh/covid-19-access-full-mobile-data-and-telecommunications-myanmar-and-bangladesh>

⁸⁷ UNB, No disagreement, only few recommendations on Bhasan Char from UN team: Shahriar Alam, The Daily Star, available at <https://www.thedailystar.net/rohingya-crisis/news/no-disagreement-only-few-recommendations-bhasan-char-un-team-shahriar-alam-2081277>

⁸⁸ Fortify Rights, Bangladesh: Free Rohingya Refugees Detained on Isolated Island, 12 November 2020, available at <https://www.fortifyrights.org/bgd-inv-2020-11-12/>

The relocations proceeded amidst calls for an independent technical and protection assessment of the island by the United Nations to explore the habitability of the island, access to services and feasibility of humanitarian operations. As the relocations started in December 2020, a UN statement said that refugees ‘...must be able to make a free and informed decision about relocating to Bhasan Char based upon relevant, accurate, and updated information,’ and urged Bangladesh to ‘respect this important commitment.’⁸⁹

The Government’s view is that such relocation is aimed at reducing overcrowding in the camps and addressing the law-and-order situation. Some NGOs are currently providing limited services on the island in the short-term with support from the Government of Bangladesh and a few donor governments.

Concerns have also been raised about the voluntariness of these relocations, with insufficient data and lack of a credible, centralised source of information triggering rumours and misinformation, and the lack of consultations with refugees and humanitarian actors. The decisions of some refugee families may have been driven by the increasing restrictions and security concerns in the camps. According to some human rights organisations, at least some of the relocations may not have been entirely voluntary or with informed consent, evidenced by reports of false promises being made to refugees to secure consent and ill-treatment of those already on the island at the hands of security forces.⁹⁰

After months of discussions, an 18-member UN team was able to visit the island in March 2021. The mission was facilitated and accompanied by Bangladeshi government officials. While detailed technical assessments were not conducted, the mission looked at the current situation and facilities on Bhasan Char, appraised the needs of the Rohingya refugees relocated there, and held discussions with the authorities and others working there. The mission took a positive view of the conditions and facilities in Bhasan Char and proposed further discussions with the Government of Bangladesh regarding the UN’s operational engagement on the island and the policies concerning the stay and well-being of refugees on the island.⁹¹ Following the UN’s visit, representatives of the diplomatic community also visited the island.⁹²

The Government of Bangladesh has welcomed the positive observations made by the UN team following their visit and expects that ten per cent of the funding for the Rohingya refugee response in Bangladesh is allocated for providing services in Bhasan Char.⁹³

⁸⁹ United Nations Bangladesh, United Nations Statement on the Relocation of Rohingya Refugees to Bhasan Char, 2 December 2020, available at <https://bangladesh.un.org/en/103285-press-statement>

⁹⁰ Human Rights Watch, Bangladesh: Halt Rohingya Relocations to Remote Island, 4 December, 2020, available at <https://www.hrw.org/news/2020/12/03/bangladesh-halt-rohingya-relocations-remote-island>.

Fortify Rights, Bangladesh: Halt Relocation of Rohingya Refugees to Bhasan Char, 3 December 2020, available at <https://www.fortifyrights.org/bgd-inv-2020-12-03/>

Human Rights Watch, Bangladesh: Rohingya Refugees Allegedly Tortured, 27 April 2021, available at <https://www.hrw.org/news/2021/04/27/bangladesh-rohingya-refugees-allegedly-tortured>

⁹¹ UNHCR, Bangladesh Operational Update, March 2021, available at <https://data2.unhcr.org/en/documents/details/86333>

⁹² UNB, Foreign envoys visit Bhasan Char, The Daily Star, 3 April 2021, available at <https://www.thedailystar.net/rohingya-crisis/news/foreign-envoys-visit-bhasan-char-2071421>

⁹³ UNB, Foreign Minister: Bangladesh to demand 10% of funds for Rohingyas in Bhashan Char, Dhaka Tribune, 16 April 2021, available at <https://www.dhakatribune.com/bangladesh/2021/04/16/foreign-minister-bangladesh-to-demand-10-of-funds-for-rohingyas-in-bhasan-char>

3.2.2 Physical safety and security

Refugees have expressed serious concerns about the security situation in the camps. Since the COVID-19 service restrictions were put in place in March 2020, tensions between refugees and host communities have increased over access to limited resources and services.⁹⁴ There were reports of rising distrust and stigmatisation of Rohingya refugees as ‘carriers of the virus’ as well as a growing anti-Rohingya sentiment.⁹⁵

An increase in criminal activities in the camps has been reported culminating in violent clashes between rival Rohingya gangs in October 2020 resulting in eight deaths and forcibly displacing more than 2,000 refugees to other camps.⁹⁶ Some reports point towards the proliferation of groups like ARSA⁹⁷ in the camps which operate with impunity and seek to vie for control of the camps through illicit means such as kidnappings, extortions, extra-judicial killings, drug and human trafficking etc.⁹⁸ Bangladeshi authorities, however, have denied the existence of ARSA or similar outfits in the camps.⁹⁹ Some human rights reports indicate that between August 2017 and July 2020 more than 100 Rohingya refugees were victims of extrajudicial killings who died in ‘crossfire’/‘gun fights’,¹⁰⁰ most of whom were allegedly involved in the drug trade.¹⁰¹

There is a great need for community-based safety and security programmes through increased community participation in decision-making processes in the camps. In 2020, a community safety programme¹⁰² was piloted jointly by UNDP, UNHCR and IOM, to promote closer engagement between Rohingya refugees and the police. This project is planned for expansion across 10 camps in 2021.

Fire safety¹⁰³ in the camps has emerged as a key security concern over the past few years and fire incidents have become more common. Between January and March 2021, an average of three fire

⁹⁴ ACAPS, 4 Months of COVID-19 programming restrictions, COVID-19 Explained, Edition 8, 25 August 2020, available at https://www.acaps.org/sites/acaps/files/products/files/20200825_covid_19_explained_edition_8.pdf

⁹⁵ AZM Anas, COVID-19 fuels tensions between Rohingya refugees and Bangladeshi hosts, 27 July 2020, available at <https://www.thenewhumanitarian.org/news-feature/2020/07/27/Bangladesh-Rohingya-refugee-host-coronavirus-aid>

⁹⁶ Amnesty International, Bangladesh: authorities must protect Rohingya refugees from gang violence, 9 October 2020, available at <https://www.amnesty.org.uk/press-releases/bangladesh-authorities-must-protect-rohingya-refugees-gang-violence>

⁹⁷ Veronica Pedrosa, Reign of Terror, Philstar Global, 17 October 2020, available at <https://www.philstar.com/opinion/2020/10/17/2050158/reign-terror>

⁹⁸ Amnesty International, Bangladesh: Rohingya refugees’ safety must be ensured amid violent clashes in Cox’s Bazaar, 9 October 2020, available at <https://www.amnesty.org/en/latest/news/2020/10/bangladesh-rohingya-refugees-safety-must-be-ensured-amid-violent-clashes-in-coxs-bazaar/>

⁹⁹ Humayun Kabir Bhuiyan, Govt officials: No existence of ARSA in Rohingya camps, Dhaka Tribune, 18 August 2020, available at <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2020/08/18/govt-officials-no-existence-of-arsa-in-rohingya-camps>

¹⁰⁰ “Different terminologies have been used by (Bangladeshi) law enforcement agencies to distract from extrajudicial killings; such as, deaths during ‘cross-fire’, ‘encounter’, ‘gunfight’ etc.” See, Odhikar, Extrajudicial killings, available at <http://odhikar.org/extrajudicial-killings/>

¹⁰¹ Scores of Rohingya Refugees Victimized by Extrajudicial Killings in Bangladesh, Amnesty Alleges, Radio Free Asia, 17 September 2020, available at <https://www.rfa.org/english/news/myanmar/killings-09172020212128.html>.

See also, Amnesty International, Stop Extrajudicial Executions of Rohingya Refugees and End Restrictions to their Freedom of Movement, 4 November 2019, available at <https://www.amnesty.org/download/Documents/ASA1313172019ENGLISH.pdf>

¹⁰² UNHCR, *supra* n. 16.

¹⁰³ For details, see, ACAPS-NPM, Bangladesh: Rohingya refugee response – fire in camps 8E, 8W and 9, Briefing Note 25 March 2021, available at https://reliefweb.int/sites/reliefweb.int/files/resources/20210324_acaps_npm_rohingya_refugee_response_fire_in_camps_0.pdf

incidents per week were reported in the camps. On 22 March 2021, a huge fire swept across three camps leaving 11 persons dead, 500 in need of medical assistance, 400 missing, and affecting the lives of some 90,000 persons. 10,000 shelters and 1,600 facilities were reportedly destroyed or damaged. Hundreds of host community structures were also affected. There were rumours in the community that the fires were started deliberately.¹⁰⁴ The fires have further exacerbated the protection and security risks faced by Rohingya refugees and impacted the ability of humanitarian actors to meet additional needs with overstretched resources amidst a restricted programming space. Such incidents highlight the need for investigating the cause of fires, reliable information sharing mechanisms and strengthening fire prevention, evacuation and emergency response strategies/capacities in the camps.

3.2.3 Sexual and gender-based violence

Nearly 52 per cent of the total Rohingya refugee population in Bangladesh are women and girls. Gender roles in Rohingya society are strictly defined and certain gendered practices are normalised, including different forms of gender-based violence (GBV) like domestic violence, sexual harassment and assault. Rohingya refugees have experienced widespread sexual and gender-based violence perpetrated by Myanmar security forces before and during their mass forced displacement to Bangladesh in August 2017.

Lower levels of well-being¹⁰⁵ were recorded in female-headed households or households with no male members of working age due to socio-cultural norms, insecurity, GBV and lack of gender-responsive facilities. Cultural practices like *purdah* in a woman's honour (*izzot*) enforces seclusion of women and is seen as a marker of Rohingya values and identity. Women and girls commonly report incidents of violence and harassment which restricts their ability to access public services and facilities, including WASH facilities and water collection points, and free movement around the camps. The lack of safety and security also affects their employment prospects outside their homes.

Despite the scaling up of gender-responsive services and significant gender mainstreaming efforts, there remains a high prevalence of GBV in the Rohingya refugee camps. Data from International Rescue Committee (IRC)¹⁰⁶ shows that nearly one in every four Rohingya refugee women and girls who consented to GBV screening at their centres reported experiencing GBV. These figures likely represent only a small fraction of the overall number of such incidents, as GBV is hugely under-reported due to stigma, threat of retribution, and lack of access to quality GBV response services.¹⁰⁷

COVID-19 related restrictions rendered most gender-based programmes in the camps as non-essential except GBV support services and sexual and reproductive health programmes which continued at reduced speed and coverage. Despite the availability of sexual and reproductive health (SRH) services, women and girls reportedly refrained from seeking medical services in SRH facilities due to

¹⁰⁴ BBC Media Action, Translators without Borders, Centre for Peace and Justice, New difficulties and despair: Rohingya people share their concerns following the tragic fire of 22 March 2021, What Matters: Humanitarian Feedback Bulletin on Rohingya Response (Special Edition on the Post-fire situation), 7 April 2021, available at <https://app.box.com/s/s4xbl628yrxbvmr43u42n9cn74qbj8i6>

¹⁰⁵ For details, see, ACAPS, ACAPS-NPM, What are the characteristics that contribute to household vulnerability, 4 October 2020, available at https://www.acaps.org/sites/acaps/files/products/files/20201004_acaps_thematic_review_vulnerable_households_rohingya_refugee_response_0.pdf

¹⁰⁶ International Rescue Committee (IRC), The Shadow Pandemic: Gender-Based Violence among Rohingya refugees in Cox's Bazar, May 2020, available at <https://www.rescue-uk.org/sites/default/files/document/2247/theshadowpandemicbangladesh.pdf>

¹⁰⁷ *Ibid.*

reprioritisation of essential health services, shift in public messages away from SRH, movement constraints, fear of transmissions and negative perceptions of health care facilities.¹⁰⁸

Women and girls have been burdened with additional caregiving responsibilities and domestic care during the COVID-19 pandemic while at the same time, having reduced access to reporting mechanisms and referrals services due to the shift to remote, phone-based communications and reduced female humanitarian staff presence.¹⁰⁹ Female Rohingya volunteers have faced stigmatisation and harassment from their own community by undertaking non-traditional roles in the public sphere and challenging traditional gender norms.¹¹⁰

The rising insecurity in the camps amidst programmatic restrictions during COVID-19 disproportionately impacted women and girls who are at greater risk of GBV, mainly intimate partner violence, due to 'increased time spent in shelters, as well as economic pressures and overall stress and anxiety'.¹¹¹ Overstretched health facilities during COVID-19 response were unable to provide gender - segregated spaces and services¹¹², constraining women and girls' access to appropriate services.

3.2.4 Access to justice

In the absence of a clear domestic legal framework for refugees, Rohingya refugees are governed by a complex web of formal and informal justice systems delivered through a variety of administrative and discretionary rules and regulations.¹¹³ Due to their lack of a formal status as well as structural and socio-cultural barriers, Rohingya refugees have very limited access to formal justice systems in practice and are largely reliant on informal justice mechanisms. It is important to note that such barriers are not just limited to refugees; poorer Bangladeshi populations including host communities of Cox's Bazar district also report challenges in accessing state legal systems which are overburdened and expensive.¹¹⁴

Refugees often rely on informal justice mechanisms and raise complaints with *majhis* (unelected Rohingya representatives selected by Bangladeshi authorities) who decide whether a mediation process should be facilitated through community leaders¹¹⁵ for matters ranging from petty thefts to

¹⁰⁸ ACAPS-NPM, Rohingya Response- Impact of COVID-19 on gender programming, 8 June 2020, available at https://www.acaps.org/sites/acaps/files/products/files/20200608_acaps_coxs_bazar_analysis_hub_rohingya_response_covid19_and_gender_0.pdf

¹⁰⁹ 2020 Mid-Term Review Rohingya Humanitarian Crisis, January-July 2020, p. 14, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/2020_jrp_mtr_final.pdf

¹¹⁰ ACAPS-NPM, *supra* n. 108.

¹¹¹ International Rescue Committee (IRC), GBV Trends Among Rohingya Refugees in Cox's Bazar, January 2021, available at https://www.rescue.org/sites/default/files/document/5553/gbvtrendsamongrohingyarefugeesincoxs_bazar-covid-19update.pdf. See also, ISCG, ACAPS-NPM, Care, Oxfam and UN Women, In the Shadows of the Pandemic: The Gendered Impact of COVID-19 on Rohingya and host communities, October 2020, available at https://asiapacific.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2020/10/ap-drr-in-the-shadows-of-the-pandemic_gendered-impact_october2020-s.pdf?la=en&vs=2357

¹¹² 2020 JRP Mid-Term Review, *supra* n. 109, p.16.

¹¹³ Faustina Pereira, Jessica Olney and Azizul Hoque, Community perspectives on access to civil justice after cross-border displacement: The needs of Rohingya refugees in Bangladesh, Policy Brief, February 2021, available at https://asiafoundation.org/wp-content/uploads/2021/02/X-Border_Community-Perspectives-on-Access-to-Civil-Justice-after-Cross-Border-Displacement-The-needs-of-Rohingya-Refugees-in-Bangladesh.pdf

¹¹⁴ International Rescue Committee (IRC), Access to Justice in Crisis: Legal Empowerment for Rohingya refugees living in Cox's Bazar, Bangladesh, October 2019, available at <https://www.rescue-uk.org/sites/default/files/document/2078/accesstojusticeincrisis.pdf>

¹¹⁵ *Ibid.*

family disputes and sexual violence.¹¹⁶ This system usually led by male majhis is designed to manage conflict rather than provide justice¹¹⁷ and reinforces harmful gender-based power dynamics.¹¹⁸ Community perspectives on camp-based justice systems reflect the prevalence of corruption and bribery, delays in the justice process, difficulties in accessing information and the unpredictability of support received from relevant actors.¹¹⁹ Some studies show that refugees resort to seeking the support of armed groups in the camps, such as ARSA, to solve disputes.¹²⁰ While ARSA's role in the camps is much weaker than in Myanmar, there is some evidence to demonstrate their influence over majhis, their members and supporters serving as volunteers in the camps as well as religious leaders.¹²¹

Access to formal justice is only available to Rohingya for serious crimes such as murder, rape, kidnapping etc, subject to camp-in-charge (CiC) approval and discretion. Under Bangladeshi law, CiCs have limited judicial authority to influence justice processes in the camps. They regularly mediate disputes and dispense wide-ranging punishments ranging from detentions, imprisonment and imposition of fines to public beatings/floggings and public shaming.¹²² CiC approvals are needed for police investigations and refugees' access to legal services outside the camps. UNHCR and its legal partners have reported difficulties in registering complaints with the police despite advocacy with law enforcement authorities and the judiciary.¹²³ Access to formal justice is further impeded by the lack of civil documentation such as birth, death and marriage registration for Rohingya.¹²⁴

While legal empowerment programmes and legal awareness sessions are ongoing across all the camps, access to formal justice systems and timely and appropriate interventions by camp authorities and law enforcement agencies remains a challenge.¹²⁵ While some NGOs help fill gaps in access to justice, the absence of a cohesive camp-wide justice mechanism leads to ad-hoc dispensation of justice at the hands of non-legal actors such as CiCs and majhis who are not adequately prepared and trained to serve this critical function.¹²⁶ This was particularly evident during the COVID-19 pandemic when reduced protection presence coincided with increasing crime and insecurity in the camps. This 'patchwork' system that does not adhere to rule of law, principles of equity, fairness, justice and accountability, fosters a culture of impunity in the camps.¹²⁷

International justice and accountability for crimes against Rohingya in Myanmar are being pursued with the proceedings in the International Court of Justice (ICJ) and International Criminal Court (ICC). While these measures have sparked a ray of hope amongst the Rohingya refugees, there are

¹¹⁶ Kaamil Ahmed, For Rohingya refugees, patchwork justice leaves crimes unpunished, 17 September 2020, The New Humanitarian, available at <https://www.thenewhumanitarian.org/news/2020/09/17/Bangladesh-Rohingya-justice-system-crimes>

¹¹⁷ *Ibid.*

¹¹⁸ International Rescue Committee (IRC), Access Justice for Rohingya and Host Community in Cox's Bazar, February 2019, available at <https://www.rescue.org/sites/default/files/document/3929/accessingjusticeassessmentexternalfinalsmall.pdf>

¹¹⁹ Pereira *et al.*, *supra* n. 113.

¹²⁰ *Ibid.*

¹²¹ International Crisis Group (ICG), The Long Haul Ahead for Myanmar's Rohingya Refugee Crisis, 16 May 2018, available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/296-long-haul-ahead-myanmars-rohingya-refugee-crisis>

¹²² IRC, *supra* n. 118.

¹²³ UNHCR, *supra* n. 16.

¹²⁴ Pereira *et al.*, *supra* n. 113.

¹²⁵ UNHCR, *supra* n. 16. See also, Bangladesh Legal Aid and Services Trust (BLAST) and Refugee Solidarity Network (RSN), Beyond Refuge: Advancing Legal Protections for Rohingya Communities in Bangladesh (forthcoming)

¹²⁶ Pereira *et al.*, *supra* n. 113.

¹²⁷ Kaamil Ahmed, *supra* n. 116.

unrealistic expectations within the community about the impact of these proceedings on citizenship and repatriation etc.¹²⁸

The gaps in information related to international justice mechanisms have a bearing on refugees' ability to make informed decisions about their future. Given the focus on refugee repatriation, humanitarian agencies have so far been reluctant to be involved in awareness raising on international justice mechanisms lest they be perceived to be engaging in actions discouraging returns despite the demonstrated need for more information in this regard.¹²⁹

3.2.5 Secondary protection impacts of the COVID-19 pandemic.

The COVID-19 pandemic has further exacerbated pre-existing protection risks for Rohingya refugees in Bangladesh. Since April 2020, the humanitarian footprint in the camps, including protection presence, has been significantly reduced in order to manage the spread of COVID-19, with only critical life-saving programmes being allowed such as health, food distribution, LPG distributions, COVID-19 information hubs and reception of new refugee arrivals.¹³⁰ Services related to protection, site-management, shelter repairs, livelihoods and education were deemed as 'non-essential' during this period.

In August 2020, following strong advocacy by the humanitarian community for gradual expansion of services, the RRRC allowed the implementation of a few protection activities such as reporting of safety and security concerns, GBV referrals, anti-trafficking messaging, addressing individual cases, psychosocial support etc.¹³¹ In April 2021, due to the overall deterioration of the COVID-19 situation in Bangladesh, the RRRC office directed that the total humanitarian presence in the camps be reduced by 50 per cent and the scope of activities be limited again.¹³²

The spread of COVID-19 has so far been contained in the camps, with 465 reported cases and 10 deaths as of April 2021.¹³³ Rohingya refugees have also been included in national vaccination plans, with prioritised access for the most vulnerable groups, such as the elderly, frontline health workers, volunteers and teachers.¹³⁴ However, the overall living conditions in the camps have deteriorated increasing their vulnerability and contributing to feelings of insecurity.¹³⁵ Multi-sector needs assessments from mid-2020 show that priority needs during COVID-19 were access to shelter

¹²⁸ Verena Holzl, Three years after Rohingya exodus, mismatched expectations of justice, The New Humanitarian, 24 August 2020, available at <https://www.thenewhumanitarian.org/news-feature/2020/08/24/Bangladesh-Myanmar-Rohingya-international-justice>

¹²⁹ *Ibid.*

¹³⁰ ACAPS-NPM, COVID-19 and Secondary Impacts, 7 July 2020, available at https://www.acaps.org/sites/acaps/files/products/files/20200707_acaps_covid-19_secondary_impacts_in_rohingya_refugee_camps.pdf

¹³¹ RRRC memo of 24 August 2020 available on file with the author.

¹³² RRRC memo of 2 April 2020 available on file with the author.

¹³³ WHO, Rohingya Crisis Situation Report #7, 16 March 2021, available at https://cdn.who.int/media/docs/default-source/searo/bangladesh/bangladesh---rohingya-crisis---pdf-reports/sitreps/2021/who-cox-s-bazar-situation-report-7.pdf?sfvrsn=a53fffc2_11

¹³⁴ Louise Donovan and Iffeath Yasmine, Rohingya refugees and local Bangladeshis benefit from inclusive COVID-19 response, UNHCR, 18 March 2021, available at <https://www.unhcr.org/news/stories/2021/3/60531db51d/rohingya-refugees-local-bangladeshis-benefit-inclusive-covid-19-response.html>

¹³⁵ ACAPS, *supra* n. 94.

materials, food and livelihoods opportunities.¹³⁶ As the pandemic continued, refugee concerns shifted from the threat of COVID-19 to the greater threat to their overall well-being.¹³⁷

Lessons learnt in the past year from the COVID-19 response in the camps demonstrate the need for proportional and balanced measures aimed at achieving both health and protection outcomes. The reduced humanitarian presence and limited availability of quality services during COVID-19 severely impacted community resilience as protection risks grew, community networks and camp security broke down, and economic vulnerabilities increased. It also depleted refugees' trust in camp authorities and humanitarian service providers. The incremental expansion of the availability of services for Rohingya refugees, including protection related services, may help rebuild community trust and engagement, and reduce the use of negative coping strategies.¹³⁸

3.2.6 Humanitarian space and operational constraints

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), "humanitarian space" refers to an operational environment that allows humanitarian actors to provide assistance and services according to humanitarian principles and in line with international humanitarian law.¹³⁹ Some humanitarian agencies have also defined 'humanitarian space' as the ability of affected populations to access protection and services.

A recent study by ACAPS¹⁴⁰ categorised Bangladesh as a country with 'very high' humanitarian access constraints across three key areas-access of people in need to humanitarian aid; access of humanitarian actors to affected population and security and physical constraints.

Since 2019, Bangladeshi public opinion and national media narrative towards Rohingya refugees have shifted -portraying them as criminals, drug traders and security threats.¹⁴¹ Humanitarian agencies, mainly NGOs, are faced with several bureaucratic barriers at different operational stages in the Rohingya refugee response especially since the events of August 2019 marking the second anniversary of Rohingya influx from Myanmar. A series of restrictive and reactive measures were taken by the Bangladeshi authorities such as suspension of NGO activities,¹⁴² increased surveillance and persistent information requests including confidential data such as patient data in COVID-19 cases, as well as personal data of Rohingya volunteers and humanitarian staff, from multiple government actors, denial/delays in visas for humanitarian staff, and telecommunications restrictions among others. There was also a crackdown on Rohingya civil society groups operational in the camps as well as those agencies which support them.¹⁴³

¹³⁶ For details, see, Joint Multi-Sector Needs Assessment (J-MSNA): Bangladesh, Rohingya refugees, July-August 2020, available at https://reliefweb.int/sites/reliefweb.int/files/resources/msna_2020_factsheet_refugee.pdf

¹³⁷ ACAPS, *supra* n. 94.

¹³⁸ ACAPS, *supra* n. 130.

¹³⁹ OCHA, Humanitarian Space, available at <https://www.ochaopt.org/theme/humanitarian-space>

¹⁴⁰ ACAPS, Humanitarian Access Overview, December 2020, available at https://www.acaps.org/sites/acaps/files/products/files/20201214_acaps_humanitarian_access_overview_december_2020_0.pdf

¹⁴¹ See, Mushfique Wadud, How Narratives of Rohingya Refugees Shifted in Bangladesh Media, August 2020, available at https://www.researchgate.net/publication/344486855_How_Narratives_of_Rohingya_Refugees_Shifted_in_Bangladesh_Media.

¹⁴² Bangladesh withdrew 41 NGOs from Rohingya camps for 'malpractices', 31 August 2019, available at <https://bdnews24.com/bangladesh/2019/08/31/bangladesh-withdrew-41-ngos-from-rohingya-camps-for-malpractices#:~:text=The%20authorities%20withdrew%2041%20non,Foreign%20Minister%20AK%20Abdul%20Momen>.

¹⁴³ Sullivan, *supra* n. 68.

The humanitarian community under SEG/ISCG leadership was able to advocate for resolution of some of these access constraints, for example, through centralisation of information requests through a common reporting format endorsed by the MoDMR/RRRC office. Yet, many NGOs consistently report non-compliance by camp and district authorities, resulting in restricted humanitarian access/service delivery to affected communities, delays in project approvals/closures and threats/harassment of humanitarian workers. Further, the introduction of additional security measures in the camps such as barbed wire fencing and others listed earlier have greatly limited the ability of refugees to access rights and services and hinder timely and effective delivery of humanitarian assistance to communities in need.

The Government has expressed its intention to reduce the presence of NGOs in Cox's Bazar and international humanitarian staff, for streamlining response management and 'lessening comfort'¹⁴⁴ in the camps to incentivise repatriation and relocation. Although the number of international humanitarian workers in the Rohingya refugee response have progressively reduced since 2017 with a simultaneous increase in national capacity, NGOs continue to face challenges in securing organisational registrations and timely work visa/work permits for technical experts and managerial staff, resulting in loss of financial and human resources and risking the quality and integrity of projects.

In practical terms, there is lack of clarity and consistency between the different government authorities entrusted with policy level and operational decision-making for the response. NGOs have to navigate multiple levels of approvals and permissions procedures to start and close their projects in the Rohingya refugee response starting from the NGO Affairs Bureau right up to the camp authorities with several layers in-between involving various Government actors such as the security and intelligence agencies, RRRC office and district/sub-district administration.

As a result, there is duplication of processes and overlapping paperwork at the central, district and camp level, causing confusion and delays in NGO registration, project approvals and closures, and slow implementation. Despite the one-year duration of the Joint Response Plan, NGOs continue to receive project permissions (FD7s) for a six-month period amidst many delays. NGOs have specifically reported facing denials or delays in approvals for protection related activities in the camps.¹⁴⁵

NGOs need to have regular and predictable interlocutors within the Government of Bangladesh. The NTF and National Committee led by MoHA should ensure that Government agencies involved in the Rohingya refugee response have a systematic process of consultation with the humanitarian community on key issues and concerns. The simplification and streamlining of existing processes that align with the operational realities through provision of clear, written guidelines will enable humanitarian access for both refugees and humanitarian actors, ensure a predictable and efficient response and help maintain the high level of international support for Rohingya refugees and host communities in Cox's Bazar district.

3.2.7 Refugee repatriation focused policy and its impacts

Rohingya refugees and humanitarian stakeholders are in agreement with the Government of Bangladesh that there must be continued international pressure on Myanmar to create conducive

¹⁴⁴ Foreign Minister for Lessening Comfort at Rohingya Camps, Daily Sun, 22 August 2019, available at <https://www.daily-sun.com/post/417288/2019/08/22/Foreign-Minister-for-lessening-comfort-at-Rohingya-camps>.

¹⁴⁵ COAST Trust, DG NGOAB discussed NGO concerns in Rohingya Response in Cox's Bazar, 10 February 2018, available at <http://coastbd.net/dg-ngoab-discussed-ngo-concerns-in-rohingya-response-in-coxs-bazar/>

conditions for safe, dignified and voluntary return. Refugees continue to express their strong desire to return home but express concerns about their rights and security upon return to Myanmar at this time.¹⁴⁶

A few early attempts by the Government of Bangladesh to facilitate their return to Myanmar were put on hold in 2018 and 2019. Following the military coup in Myanmar in February 2021, there is more uncertainty with regard to the future of Rohingya refugees in the country and in the region. Despite strong indications that the Rohingya crisis will not be resolved in the near future, the Government of Bangladesh has continued its calls for speeding up Rohingya repatriation while imposing stricter restrictions on refugees and humanitarian operations in the Cox's Bazar camps.

The current policy focus on short-term humanitarian planning and expedited repatriation in Bangladesh will not automatically foster a political solution in Myanmar and address the root causes of the conflict. Neither will the restrictions placed on Rohingya refugees and curbs on humanitarian access in the camps deter forced displacement of Rohingya refugees from Myanmar into Bangladesh.¹⁴⁷

Sustainable solutions in Myanmar will not be found by depriving Rohingya of their rights and the opportunity to develop their skills and capacities to reintegrate in Myanmar when the conditions so allow, including access to education and livelihoods.¹⁴⁸ Without formal status and legal rights, Rohingya refugees will remain dependent on shrinking humanitarian aid, vulnerable to exploitation and inter-community conflicts further affecting overall security and stability in the camps and Cox's Bazar district.¹⁴⁹

Most importantly, meaningful Rohingya participation, including women and youth, in key decisions about their daily lives and futures through formal community representative structures, community consultations and empowerment of Rohingya civil society groups is critical.¹⁵⁰ This will likely lead to better protection outcomes, more fit-for-purpose programs and policies, and ensure greater compliance and shared ownership of programs and policies. Government-facilitated support for refugee rights, increased refugee self-reliance, and growing trade relations between refugee and host communities will also have a positive impact,¹⁵¹ contributing to 'peaceful coexistence' between communities who will engage with each other on terms of trust, dignity and respect.

3.3 Refugee protection advocacy

Within a shrinking protection space, it is critical that refugee protection advocacy is scaled up. In the context of the Rohingya refugee response in Bangladesh, independent assessments of the response from the point of view of three key humanitarian actors-UNHCR, IOM and UNICEF, illustrates the

¹⁴⁶ JRP 2020, *supra* n. 64.

¹⁴⁷ Nisath Salsabil Rob, OP-ED: A wake-up call for Bangladesh?, Dhaka Tribune, 25 April 2021, available at <https://www.dhakatribune.com/opinion/op-ed/2021/04/25/op-ed-a-wake-up-call-for-bangladesh>

¹⁴⁸ JRP 2020, *supra* n. 64.

¹⁴⁹ Helen Dempster and Nurul Huda Sakib, Few Rights and Little Progress: The Rohingya in Bangladesh., 21 January 2021, Centre for Global Development, available at <https://www.cgdev.org/blog/few-rights-and-little-progress-rohingya-bangladesh>. See also, JRP 2020, *supra* n. 64.

¹⁵⁰ Sullivan, *supra* n. 68.

¹⁵¹ Nisath Rob, *supra* n. 147.

different understandings of protection in the humanitarian response resulting in uneven and fragmented delivery of protection services.¹⁵²

While protection mainstreaming trainings have been delivered, implementation remains an ongoing challenge with varying degrees of refugee protection expertise and prioritisation among humanitarian partners.¹⁵³ Focal points for protection, child protection, GBV and Protection against Sexual Exploitation and Abuse (PSEA) along with Protection Emergency Response Units (PERU) are deployed at camp-level to ensure camp-level coordination, community engagement and identification/referral of protection cases.¹⁵⁴

Protection mainstreaming can also be strengthened through greater engagement with human rights mechanisms and actors in line with GCR commitments and the whole-of-society-approach. Globally, UNHCR's alliances with human rights systems has yielded positive protection outcomes such as changes in national legislations and policies, improved programming and coordination as well as follow-up and referrals in individual cases.

The complex humanitarian coordination structure in the Rohingya refugee response in a restrictive protection environment has affected protection delivery. It is imperative that technical expertise is complemented by innovative programming, strong networks, operational partnerships and diversified/independent funding streams for protection NGOs in order to successfully prioritise and centralise refugee protection.¹⁵⁵

3.3.1 Leadership and meaningful participation of affected communities

Independent evaluations of UNHCR, UNICEF and IOM's response to the Rohingya crisis in Bangladesh found gaps¹⁵⁶ in accountability to affected populations (AAP).¹⁵⁷ Since 2019, the Joint Response Plans have incorporated an Accountability Manifesto¹⁵⁸ to ensure that timely and accurate information is provided, feedback collected from refugee and host communities through multiple channels and effective resolution of feedback/complaints by relevant actors. The manifesto is to be implemented across camps and sectors by the Communications with Communities (CwC) Working Group. However, concerns have been raised about the quality of accountability mechanisms and awareness of the manifesto among different stakeholders, including affected communities.

¹⁵² Lewis Sida and Ed Schenkenberg, Synthesis of Rohingya Response Evaluations of IOM, UNICEF and UNHCR, December 2019, p. 14, available at <https://www.unhcr.org/5e453ea64.pdf>

¹⁵³ Sida *et.al*, *supra* n. 57.

¹⁵⁴ 2020 COVID-19 Response Plan, Addendum to the Joint Response Plan, Rohingya Humanitarian Crisis, April-December 2020, available at https://rohingyaconference.org/doc/BGD_JointResponsePlan_Covid19_Addendum.pdf

¹⁵⁵ Sida *et.al*, *supra* n. 57, p. 64

¹⁵⁶ Sida and Schenkenberg, *supra* n. 152, p.29

¹⁵⁷ Accountability to Affected People (AAP) is the active commitment of humanitarians to ensure communities themselves have the power and influence to determine and act on their own priorities for preparedness, response and recovery. See, OCHA, Accountability to Affected People, Global Humanitarian Overview 2021, available at [https://gho.unocha.org/delivering-better/accountability-affected-people#:~:text=Accountability%20to%20Affected%20People%20\(AAP,for%20preparedness%2C%20response%20and%20recovery.&text=Systematically%20sharing%20timely%2C%20relevant%20and%20actionable%20information%20with%20communities](https://gho.unocha.org/delivering-better/accountability-affected-people#:~:text=Accountability%20to%20Affected%20People%20(AAP,for%20preparedness%2C%20response%20and%20recovery.&text=Systematically%20sharing%20timely%2C%20relevant%20and%20actionable%20information%20with%20communities)

¹⁵⁸ CwC Working Group Cox's Bazar, The Accountability to Affected Populations Manifesto (AAP) Manifesto: Strengthening Accountability through Communication and Community Engagement, January 2019, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/accountability_manifesto_cwc_wg_20190801.pdf

The CwC Working Group through its partners has been successful in expanding information and outreach, including during COVID-19 and training refugee community volunteers. However, there needs to be a fundamental shift from messaging to meaningful participation of Rohingya, through Rohingya-to-Rohingya engagement, community-based representation structures, broader and inclusive consultations by age, gender and diversity considerations.¹⁵⁹ A survey by Ground Truth Solutions in early 2020 showed that while trust levels are high between Rohingya refugees and humanitarian workers, there is much work to be done with regard to increasing awareness of available services and feedback and complaints mechanisms among both refugees and host communities.¹⁶⁰ Only 19% of those aware of complaints mechanisms had filed a complaint due to reliance on community justice mechanisms.¹⁶¹

The complaints and feedback mechanisms currently operational in the camps need to be followed up by establishing a consistent and open dialogue with a diversity of actors in the Rohingya community, including men, women, youth, persons with disabilities etc, and critical self-reflection by the humanitarian community about gaps in services and accountability, in the spirit of mutual trust, respect and understanding.

In 2017-18, Rohingya civil society organisations (CSOs) were beginning to grow within the Cox's Bazar camps to advocate for their rights, including women and youth groups tackling diverse issues ranging from community representation, education, livelihoods and international justice and accountability. This advocacy space was however, clamped down by Bangladeshi authorities following the events of August 2019, along with greater scrutiny of agencies supporting Rohingya CSOs.¹⁶²

These groups coped with these developments by gradually shifting their focus from political and rights-based advocacy towards community development. They work with limited resources and struggle for community-wide outreach. Their engagement with Bangladeshi authorities, humanitarian actors and host communities remain limited.¹⁶³ A stakeholder mapping exercise by CwC Working Group (2020) shows that out of the 77 community-based groups working with refugees and host communities in Ukhiya and Teknaf, only 26 were receiving in-kind or financial support from humanitarian agencies¹⁶⁴ despite supporting their work on awareness raising and implementation of programmes.

Thousands of Rohingya refugees serve as volunteers and frontline responders in the camps supporting critical service delivery and provision of lifesaving information to communities in need. Yet, humanitarian agencies are not allowed to hire them as staff due to their tenuous legal status. They are not recognised as legitimate humanitarian actors and their valuable insights and perspectives are missing from daily programming decisions to larger operational prioritisation.

¹⁵⁹ Sida and Schenkenberg, *supra* n. 152, p.29

¹⁶⁰ Ground Truth Solutions (GTS), Bangladesh: Strengthening accountability to affected people, Q1 2020, available at <https://groundtruthsolutions.org/wp-content/uploads/2020/07/GTS-Bangladesh-report-R4.pdf>

¹⁶¹ <https://groundtruthsolutions.org/wp-content/uploads/2020/07/GTS-Bangladesh-report-R4.pdf>

¹⁶² Sullivan, *supra* n. 68.

¹⁶³ CPJ-BRAC University, Civil society, governance and security dynamics in Rohingya refugee camps, Policy Brief (2020), available at https://cpj.bracu.ac.bd/wp-content/uploads/2020/09/CPJ-Camp-Civil-Society-Analysis-COVID-19-Response-Policy-Brief_Final.pdf

¹⁶⁴ CwC Working Group, Stakeholder Mapping - Ukhiya & Teknaf Upazila, Cox's Bazar Bangladesh (2020), available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/stakeholder_mapping_dashboard_cbos_presence_map_20201126.pdf

In the past year, Rohingya volunteers, especially female volunteers have reported instances of harassment and threats, at the hands of their own community, to prevent their engagement with the humanitarian response. Many Rohingya volunteers were forced to withdraw from their roles as teachers, health workers and community mobilisers citing safety concerns, impacting service delivery in the camps.¹⁶⁵

Rohingya refugees in Bangladesh have faced restrictions since 1992 and have devised creative solutions to address their community's needs over the years. These skills and capacities have not been adequately mapped and mainstreamed within the humanitarian response, allowing other actors such as humanitarian agencies, human rights groups, researchers, academia and media, among others, to routinely claim that space and represent Rohingya voices, overlooking the community's role as legitimate humanitarian actors.¹⁶⁶

3.3.2 Divisions and the need for joint advocacy

Since August 2019, severe restrictions were imposed on NGOs working in the Rohingya camps curbing their ability to deliver humanitarian aid effectively as well as engage in collective advocacy and action on critical protection concerns. Many NGO activities were suspended¹⁶⁷ some NGOs were banned¹⁶⁸ from operating in the camps while others were warned against conducting anti-repatriation and anti-government activities and encouraging longer-term stay of Rohingya refugees.¹⁶⁹

A large majority of humanitarian workers are Bangladeshi nationals, mainly from Cox's Bazar district. Yet, there is growing anti-NGO sentiment, and this includes a particular opposition to the presence of international actors, who are accused of prioritising Rohingya over host communities and taking away local jobs. This growing division among communities and among humanitarian stakeholders is concerning, and there is a need to promote solidarity and collaboration as a priority and as a fundamental and non-negotiable principle of work.

In recent years, the civic space in Bangladesh has shrunk with many reported instances of crackdowns against NGOs. This has also led to the polarisation of civil society movements along nationalistic and political party lines.¹⁷⁰ While service delivery by NGOs is tolerated, their involvement in policy-making processes is curtailed.¹⁷¹ The restrictive provisions of the Foreign Donations (Voluntary Activities) Regulation Act, 2016 and the draft Volunteer Social Welfare Organisations (Registration and Control) Act, 2019, have raised serious concerns about the ability of NGOs to deliver their mandate in an

¹⁶⁵ Protection Working Group (PWG) and Gender in Humanitarian Action (GIHA) Working Group Cox's Bazar, Strategy to Enhance the Protection of Volunteers in the Camps, March 2021, available at https://fscluster.org/rohingya_crisis/document/protection-sector-strategy-enhance

¹⁶⁶ Jessica Olney, Nurul Haque and Roshid Mubarak, We Must Prevent a Lost Generation Community-led education in Rohingya refugee camps, PRIO (2019), available at <https://www.prio.org/utility/DownloadFile.ashx?id=1838&type=publicationfile>

¹⁶⁷ Rohingya Camps in Cox's Bazar: Activities of 41 NGOs halted for 'misdeeds', The Daily Star, 1 September 2019, available at <https://www.thedailystar.net/frontpage/rohingya-camps-coxs-bazar-activities-41-ngos-halted-misdeeds-1793728>

¹⁶⁸ Abdul Aziz, 2 NGOs banned for backing anti-Rohingya repatriation campaign, The Dhaka Tribune, 4 September 2019, available at <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2019/09/04/bangladesh-bans-two-ngos-for-financing-running-anti-repatriation-campaign-among-rohingyas>

¹⁶⁹ Sullivan, *supra* n. 68.

¹⁷⁰ Jasmin Lorch, Elite capture, civil society and democratic backsliding in Bangladesh, Thailand and the Philippines, Democratization, Vol. 28, Issue 1: Democratic Regressions in Asia, available at <https://www.tandfonline.com/doi/pdf/10.1080/13510347.2020.1842360>

¹⁷¹ *Ibid.*

independent and transparent manner.¹⁷² Reports also indicate that the provisions of the Digital Security Act, 2018 are being used against media and civil society groups to curtail their freedom of speech and expression.¹⁷³

The Government's short-term strategy focused on repatriation, within a politicised operational environment, shapes collective public-facing NGO engagement in the humanitarian response. Certain government actions have created an environment of fear and uncertainty. These include bans and suspensions on NGO activities, direct and indirect threats to NGO operations, delayed project approvals and completion processes, and increased surveillance and scrutiny of camp projects and staff. This has made it increasingly tough for NGOs to balance the humanitarian imperative with advocacy goals, in line with the core humanitarian principle of 'do no harm'. This has resulted in situations of self-censorship and cautious protection and operational advocacy initiatives, in order to preserve humanitarian access.¹⁷⁴

A study by Asia Displacement and Solutions Platform (ADSP) highlights the partisan context that NGOs in Cox's Bazar operate in. NGO operations in the Rohingya refugee response in Cox's Bazar are influenced by Bangladesh's dual political imperative with regard to Rohingya refugees-temporariness of stay and prompt repatriation. Their role, mandates and capacities are mediated by several factors, such as the complex administrative and policy frameworks, increasing limitations and controls on the scope of humanitarian operations, and delicate relationships with local authorities and political actors.¹⁷⁵ The NGO space is also dominated by a contested localisation debate which hinders prospects for strong NGO partnerships and coordination often at the cost of advancing refugee protection.¹⁷⁶ As NGOs try to work around these controls, the lack of strong collective advocacy and coordination contributes, in part, to the reinforcement of a restrictive operational environment.¹⁷⁷

For example, relocation to Bhasan Char led to tensions between the Bangladeshi authorities and the humanitarian community. This event presented an ethical dilemma for the aid community who are struggling to strike a fine balance between advocating for easing restrictions and improvement of overall camp conditions for a large majority of Rohingya refugees in Cox's Bazar and negotiating for access to the island where a smaller group of refugees have been relocated.

Despite these obstacles, humanitarian agencies have undertaken joint advocacy initiatives in collaboration with their counterparts in Myanmar and the region, on highlighting the general plight of

¹⁷² Human Rights Watch, Bangladesh: New Law Will Choke Civil Society, 19 October 2016, available at

<https://www.hrw.org/news/2016/10/19/bangladesh-new-law-will-choke-civil-society>

NGOs protest proposed social welfare law, Dhaka Tribune, 30 June 2019, available at

<https://www.dhakatribune.com/bangladesh/law-rights/2019/06/30/ngos-decry-proposed-social-welfare-law>

¹⁷³ Ashutosh Sarkar, It's now a gag on the media, free speech, 7 May 2020, available at

<https://www.thedailystar.net/frontpage/news/its-now-gag-the-media-free-speech-1900231>

¹⁷⁴ Caitlyn Wake and John Bryant, Capacity and complementarity in the Rohingya response in Bangladesh, HPG Working Paper, Overseas Development Institute, December 2018, P.22, available at <https://cdn.odi.org/media/documents/12554.pdf>

¹⁷⁵ ADSP, Rohingya in South East Asia: Opportunities for engagement, March 2020, p. 22, available at https://adsp.ngo/wp-content/uploads/2020/11/ADSP_2020_ROHINGYA-IN-SOUTHEAST-ASIA_COUNTRY_PROFILES_V2.pdf

¹⁷⁶ *Ibid*, p. 25.

¹⁷⁷ Wake and Bryant, *supra* n. 174, p.22

Rohingya refugees,¹⁷⁸ lifting telecommunications restrictions during COVID-19¹⁷⁹, expanding education and livelihoods opportunities,¹⁸⁰ Rohingya boat crises¹⁸¹ and localisation of aid¹⁸² among others. More recently, empirical research jointly conducted by UN agencies and NGO partners have also enabled evidence-based advocacy on thematic and multi-sectoral issues, including the impact of COVID-19.¹⁸³ Some of the protection advocacy gaps by Cox's Bazar based agencies and networks have been addressed by the efforts of international human rights groups¹⁸⁴ and regional¹⁸⁵ and global¹⁸⁶ humanitarian platforms.

Alongside continued global advocacy for justice and accountability for crimes against Rohingya in Myanmar, and the creation of sustainable conditions of return, the humanitarian and diplomatic community must harness their capacities and resources, in order to amplify advocacy messages, as well as to mobilise international and regional protection and displacement solutions for Rohingya refugees. Such efforts may gradually ease the pressure on Bangladesh culminating in the roll-back of restrictive policies and expansion of refugee protection space.

With regard to collective advocacy and its impacts, there are important lessons to be learnt from the Myanmar experience. Despite the strong commitment of humanitarian, development and international actors working in Rakhine State amidst mounting pressures and challenges, the operational and advocacy strategies chosen by these agencies consistently prioritised smooth relationships with Myanmar authorities, diluting respect for human rights and humanitarian principles in the process.¹⁸⁷

The humanitarian community in Bangladesh must collectively strive to negotiate for a space where they can hold the Government accountable in line with international human rights standards and humanitarian principles, while at the same time, maintaining a cordial and respectful relationship with them as humanitarian partners.¹⁸⁸ While difficult and risky, this can be achieved through collective engagement balancing quiet diplomacy with public advocacy efforts. Consistent information sharing, evidence-based research and targeted advocacy initiatives at global, regional and local levels will help counter negative government reactions and gradually foster a culture of transparency and accountability, also enhancing the legitimacy and credibility of humanitarian actors in the process.

¹⁷⁸ Two Years On: Rohingya Deserve Justice, A Place at the Table, 21 August 2019, available at

<https://reliefweb.int/report/bangladesh/two-years-rohingya-deserve-justice-place-table>

¹⁷⁹ COVID-19: Access to full mobile data and telecommunications in Myanmar and Bangladesh is essential to save lives, say 26 major aid groups, 15 April 2020, available at <https://reliefweb.int/report/bangladesh/covid-19-access-full-mobile-data-and-telecommunications-myanmar-and-bangladesh>

¹⁸⁰ International Rescue Committee (IRC), No Time to Lose: An Urgent Call for Access to Quality Education for Rohingya children in Cox's Bazar, 24 August 2020, available at <https://www.rescue.org/report/no-time-lose-urgent-call-access-quality-education-rohingya-children-coxs-bazar>

¹⁸¹ ASEAN must prevent another "Rohingya boat crisis, 10 November 2020, available at <https://reliefweb.int/report/myanmar/asean-must-prevent-another-rohingya-boat-crisis>

¹⁸² Details available at <http://www.cxb-cso-ngo.org/resource-publication/>

¹⁸³ ISCG *et al.*, *supra* n. 111.

¹⁸⁴ Advocacy efforts by Human Rights Watch, Fortify Rights and Amnesty International available at <https://www.hrw.org/tag/rohingya>; https://www.fortifyrights.org/all-our-work/?gb_search=rohingya; <https://www.amnesty.org/en/search/?q=rohingya&q=rohingya&ref=&year=&lang=en&adv=1&sort=relevance>

¹⁸⁵ APRRN, *supra* n. 23.

¹⁸⁶ Interaction, Joint Humanitarian NGO Statement: Rohingya Donor Conference, 22 October 2020, available at <https://www.interaction.org/blog/joint-humanitarian-ngo-statement-rohingya-donor-conference/>

¹⁸⁷ Fieldview Solutions, Time to break old habits: Shifting from Complicity to Protection of the Rohingya in Myanmar, June 2018, available at https://www.fieldviewsolutions.org/fv-publications/Time_to_break_old_habits.pdf

¹⁸⁸ *Ibid.*

3.3.3 Need for sector-specific and response-wide advocacy strategies

An example of successful protection advocacy in the Rohingya refugee response is the agreement of the Government of Bangladesh to allow schooling for Rohingya children in the camps in early 2020 through a pilot programme of the Myanmar curriculum.¹⁸⁹ Due to COVID-19 restrictions, the pilot project could not be implemented in 2020 and is aimed to be initiated in 2021. In 2020, the education Sector in Cox's Bazar, co-led by UNICEF and Save the Children, has developed a clear advocacy strategy for 2020-21 to strengthen refugee children's and youth's access to academic education and technical/vocational education and training, in collaboration with a working group comprised by UN agencies and NGO partners.

The education sector's advocacy strategy, premised on actualising a set of policy decisions of the Government, may provide important lessons for other sectors, including protection, to engage with their partners and advance similar advocacy plans within the sector strategy framework aimed at influencing the policy and practice on refugee protection.

There is a need to develop a response-wide protection advocacy strategy under SEG's leadership, in line with the objectives of the Joint Response Plan and guided by the protection framework. An advocacy strategy developed through consultations among humanitarian partners will likely create space to secure an open engagement with the Bangladeshi authorities and will be a positive step towards achieving a common understanding on refugee protection with diverse stakeholders and gradually achieve positive protection outcomes.

3.4 Conclusion

The short-term policy approach towards Rohingya refugees in Bangladesh has enabled the delivery of humanitarian aid in a complex setting where adherence to humanitarian and human rights principles and the quality and accountability of humanitarian protection and assistance stands compromised. Other regional governments may also benefit from this status quo, as onward movement of Rohingya to their countries are somewhat contained, allowing them to avoid their obligations under international law. Nevertheless, such a short-term outlook based on pursuing temporary strategies aimed at refugee repatriation, in the fourth year of the response, does harm to Bangladesh's longer term economic, security and political interests, thereby exposing both Rohingya and host communities to greater insecurity and instability. The potential for future tensions and further displacement is intensified by the presence of an idle, aid dependent population with limited access to education, livelihoods, and justice. Declining trust and growing divisions between refugees, host communities and humanitarian stakeholders undermines security, as well as protection and the general effectiveness of the response. The shifting policy landscape in Bangladesh demonstrated by an increased prioritisation of national security interests does not acknowledge the identity of Rohingya as stateless persons and refugees. The lack of meaningful inclusion and participation of the Rohingya themselves in cooperative mechanisms and decision-making processes erodes their sense of dignity and security.

¹⁸⁹ JRP 2020, *supra* n. 64.

The fragile protection and security situation of Rohingya refugees in Bangladesh underscores the need for a robust legal and policy framework for refugees and strong inter-sectoral coordination with clear accountability mechanisms. Bangladesh needs strong support of the international community in sharing responsibility for the protection of Rohingya refugees and pushing for accountability in Myanmar. Regional cooperation in the Rohingya crisis must also be pursued.

Chapter 4: Humanitarian Coordination

4.1 Coordination architecture in the Rohingya Refugee Response in Bangladesh

Bangladesh has rich experience and national and local capacity to deal with disaster risk reduction and response. Since 2012, a Humanitarian Coordination Task Team (HCTT) is in place under the Government's Local Consultative Group-Disaster Emergency Response, mandated to work during natural disasters. However, due to the restrictive approach towards Rohingya refugees since the 1990s allowing a very limited set of international humanitarian actors in the camps, national and local agencies and their staff have far less experience and engagement with humanitarian action in a forced displacement setting, such as in the aftermath of the Rohingya refugee influx of 2017.¹⁹⁰

A 2017 report by Refugees International¹⁹¹ observed as follows:

The reluctance of the Government of Bangladesh to recognise Rohingya as refugees has led to a humanitarian response structure unlike any other in the world, one in which the national structure is not aligned with the international response and the international response not consistent with global best practices.

Coordination in the Rohingya refugee response is complex and reflects the inter-agency dynamics and the policy environment in Bangladesh.¹⁹² Such coordination plays out at three levels-national, Cox's Bazar and camp level, with the Government of Bangladesh, humanitarian partners comprised of United Nations agencies, Bangladesh and international NGOs, donors, host communities and Rohingya refugees themselves, as key stakeholders.

4.1.1 National Level

4.1.1.1 Government of Bangladesh

At the national level, the National Task Force (NTF)¹⁹³ chaired by the Ministry of Foreign Affairs was established in accordance with the "National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals" (2013). The NTF provides overall oversight and strategic guidance to the response. In parallel, the NGO Affairs Bureau (NGOAB) under the Prime Minister's Office (PMO) is a key player who gives permissions to NGOs receiving foreign funding to operate in Cox's Bazar.¹⁹⁴

In December 2020, the Government of Bangladesh formed a 17-member national level Committee (hereinafter National Committee) under the leadership of the Ministry of Home Affairs (MoHA) for

¹⁹⁰ UNICEF, Evaluation of UNICEF's Response to the Rohingya Refugee Crisis in Bangladesh, December 2018, p. 24, available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF-Rohingya_Response_Evaluation_VOLUME_I-2018-003.pdf

¹⁹¹ Daniel Sullivan, Reluctant Refuge: Rohingya safe but not secure in Bangladesh, p. 6, Refugees International, July 2017, available at <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5966805d2e69cff9b5e410ae/1499889771253/2017.7.10Bangladesh.pdf>

¹⁹² Sida *et al*, *supra* n. 57.

¹⁹³ NTF is chaired by the Foreign Secretary of Bangladesh and includes 29 Ministries and entities. The NTF is primarily a Government body with limited scope for humanitarian engagement (Sometimes, SEG Co-Chairs and ISCG Senior Coordinator may be invited to provide information/inputs on key issues).

¹⁹⁴ Types of permission include FD 1 (for foreign NGO registration); FD6 (longer-term programmes); FD7 (short term emergency projects, including camp-based projects and special COVID-19 related projects)

the coordination of law and order and management of Rohingya camps and repatriation related activities. The committee was given the power to observe and review the decisions taken by NTF and other related government bodies on Rohingya refugees.¹⁹⁵

4.1.1.2 United Nations and Strategic Executive Group (SEG)

The humanitarian actors receive policy and strategic guidance from the Strategic Executive Group (SEG) co-chaired by the UN Resident Coordinator (UNRC) and country representatives of IOM and UNHCR. The SEG is represented by Heads of UN agencies, MSF, IFRC, ICRC, Bangladeshi/international NGOs¹⁹⁶ as well as the donor group representatives. Within the SEG, there are two working groups, the Localisation Task Force (LTF)¹⁹⁷ and Protection Advocacy Working Group (PAWG)¹⁹⁸ represented by UN agencies, donors and Bangladeshi/international NGOs. The SEG is accountable for the Rohingya refugee response in Bangladesh.

4.1.1.3 NGO coordination mechanisms

At the national level, there are a number of NGO networks for Bangladeshi and international NGOs. Bangladeshi NGO fora such as National Alliance of Humanitarian Actors Bangladesh (NAHAB), NIRAPAD, BDPC, Association of Development Agencies in Bangladesh (ADAB), Federation of NGOs in Bangladesh (FNB) etc include humanitarian actors as members but are focused on disaster preparedness and response and not on Rohingya refugee related issues.

The INGO Forum is a voluntary group of INGOs operating in Bangladesh. The INGO Emergency Sub-Committee (INGO ESC) consists of senior staff of INGOs with humanitarian operations,¹⁹⁹ including in the Rohingya refugee response.

Given the diversity of NGO coordination networks at the national level and the need to streamline NGO engagement and advocacy, the Civil Society Organisation (CSO) Alliance was recently formed in December 2020, inviting both Bangladeshi and international NGOs to join as members. It is hoped that the alliance will grow to play an important role in creating stronger linkages between NGO networks at the national and Cox's Bazar level, pave greater opportunities for trust-building between stakeholders and expand the scope of joint advocacy and action.

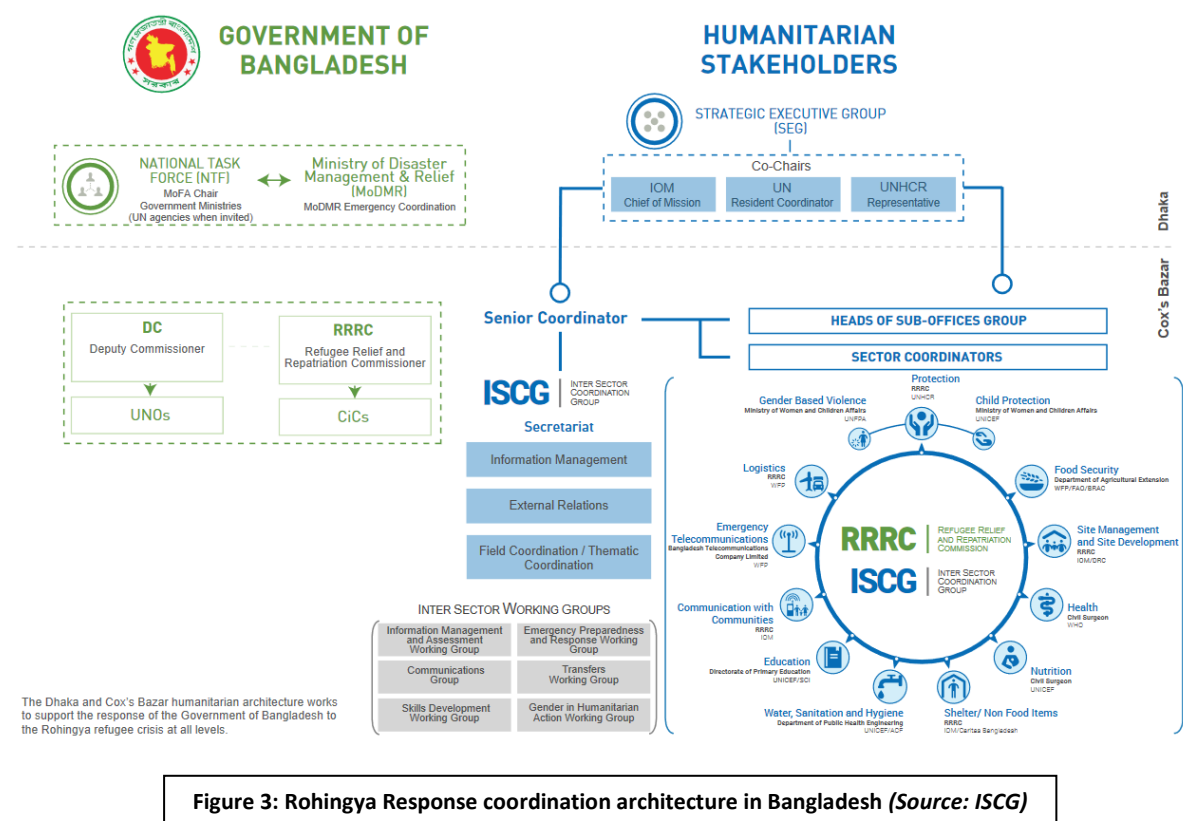
¹⁹⁵ Bangladesh forms committee to deal with Rohingya issues, New Age Bangladesh, 24 December 2020, available at <https://www.newagebd.net/article/125124/bangladesh-forms-committee-to-deal-with-rohingya-issues>

¹⁹⁶ At present, the NGO community at SEG is represented by Bangladesh Rohingya Response NGO Platform (NGO Platform), 2 international NGOs (International Rescue Committee (IRC) and Plan International) and 1 Bangladeshi NGO (COAST Trust).

¹⁹⁷ To advance Grand Bargain commitments on localisation, in May 2019, the Terms of Reference for the Localisation Task Force (LTF) were endorsed by the SEG. The LTF is co-chaired at the Dhaka level by UNDP and IFRC. The objective of the LTF is to improve humanitarian outcomes in Cox's Bazar, by recommending a practical localisation strategy, including maximizing the indirect benefits of the operation to Bangladeshi communities through, for example, local procurement.

¹⁹⁸ PAWG was established in 2020 as a subsidiary of the SEG with membership of UN, donors and Bangladeshi/international NGOs to collate and analyse protection trends in Cox's Bazar, identify priority protection issues that are best addressed and followed up at the national level, and develop advocacy strategies taking full advantage of diverse actors including high level interlocutors.

¹⁹⁹ Bangladesh Emergency Response Preparedness Plan, 2014, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/bgd_bkgd_emerg-resp-plan_2014_0.pdf



4.1.2 Cox's Bazar level

4.1.2.1 Government of Bangladesh

At the Cox's Bazar level, the Ministry of Disaster Management and Relief (MoDMR) represented by the Office of the Refugee Relief and Repatriation Commissioner (RRRC) is mandated to oversee the refugee operations in the camps. The Deputy Commissioner (DC) along with the Union Parishads and Upazila Nirbahi Officers (UNOs) lead the civil administration of the district (Zila) and sub-districts (Upazilas) and are responsible for the operational coordination of efforts for Bangladeshi host communities, disaster relief and for ensuring security and law and order.²⁰⁰

4.1.2.2 United Nations/ISCG

The Inter-Sector Coordination Group (ISCG) led by the Senior Coordinator²⁰¹ ensures humanitarian coordination with partners, RRRC and authorities at the district and sub-district level. The ISCG Senior Coordinator reports to the SEG Co-Chairs and convenes the Sector Coordinators in the Rohingya refugee response-Protection (including child protection and gender-based violence), Site Management and Site Development (SMSD), Food Security, Health, Education, Nutrition, Shelter/Non-Food Items (NFI), Water, Sanitation and Hygiene (WASH), Communication with Communities (CwC), Logistics and Emergency Telecommunications Services (ETS) and Coordination. The Senior Coordinator chairs meetings of the Heads of Sub-Office group (HoSoG) that brings together Heads of UN agencies, Bangladeshi/international NGOs and donor representatives based in Cox's Bazar.

²⁰⁰JRP 2020, *supra* n. 64.

²⁰¹ The role of the ISCG is explained in detail in JRP 2020, *Ibid*.

Protection mainstreaming focal points have so far been embedded in three sectors- WASH, SMSD and Health.²⁰²

4.1.2.3 NGO coordination

Alongside the Bangladeshi authorities, the local community of Cox's Bazar and Bangladeshi NGOs within and outside Cox's Bazar district and community-based organisations (CBOs), played a critical role in providing immediate support to Rohingya refugees in the days following the August 2017 influx. At the time, a handful of international NGOs were operational in Cox's Bazar. Over the next few weeks, UN agencies and more international NGOs stepped in to support the humanitarian emergency. In 2020, 117 partners were part of the Joint Response Plan, including 8 UN agencies, 61 Bangladeshi NGOs and 48 international NGOs. The Red Cross and Red Crescent movement and Medecins Sans Frontiers (MSF) are also supporting the response along with many other civil society, faith-based organisations and government agencies.²⁰³

During the early phase of the emergency response in 2017, the ISCG had an NGO liaison function²⁰⁴ within its Secretariat to support NGO coordination. Subsequently, responding to the need expressed by some agencies to have an independent NGO coordination mechanism as is common in many humanitarian emergencies, the Bangladesh Rohingya Response NGO Platform was established in mid-2018, with the objective of strengthening NGO coordination and joint advocacy in the response.

In parallel, the Cox's Bazar CSO NGO Forum (CCNF), a network of more than 50 Bangladeshi CSOs working in the Rohingya refugee response in Cox's Bazar is also playing a critical role in NGO coordination. CCNF focuses on strengthening local civil society and, upholding localisation and accountability principles. CCNF also works in close coordination with Bangladeshi authorities. Several of the CCNF member organisations are local Cox's Bazar based NGOs and many of them are also members of the NGO Platform. COAST Trust, one of the CCNF Co-Chairs, is a member of the SEG and represents NGO issues in humanitarian coordination along with the NGO Platform Coordinator and two other international NGOs.

4.1.3 Camp level

4.1.3.1 Government of Bangladesh

At the camp level, civil servants are appointed on a rotational basis as Camp-in-Charges (CiCs) by RRRC.²⁰⁵ The CiCs are drawn from different government departments for the daily administration and delivery of assistance in the camps. CiCs are the key decision-makers at the camp level and exert significant influence over all camp-based actors. In principle, they are accountable to the RRRC. However, humanitarian agencies have reported challenges at the camp level wherein discretionary and ad-hoc decisions by CiCs in relation to arbitrary information requests inconsistent with agreed reporting guidelines with RRRC, imposition of new and uncertain rules for camp-based operations and project implementation, temporary or permanent blockage of activities and organisations without

²⁰² 2020 COVID-19 Plan, *supra* n. 154.

²⁰³ 2018 Joint Response Plan- Rohingya Humanitarian Crisis Bangladesh, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/JRP%20for%20Rohingya%20Humanitarian%20Crisis%20-%20FOR%20DISTRIBUTION.PDF>

²⁰⁴ ISCG, NGO Coordination and Support Cell – Terms of Reference and Work Plan, 7 November 2017, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/tor_ngo_coordination_and_support_cell.pdf

²⁰⁵ ACAPS-NPM, Rohingya Crisis-Governance and community participation, July 2018, available at https://www.acaps.org/sites/acaps/files/products/files/20180606_acaps_npm_report_camp_governance_final_0.pdf

providing adequate reasons or notice etc. The frequent turnover of CiCs also serves as a barrier to smooth delivery of humanitarian services in the camps.

As of July 2020, the Armed Police Battalion (APBn), a special Unit of the Bangladesh police, has taken over the responsibility of maintaining safety and security of all the camps.²⁰⁶ The Bangladeshi army plays a critical role in overseeing food and NFI distributions and maintaining safety and security in the camps. A Camp Commander coordinates military activities in the camp.

Closer civil-military coordination and clearer demarcation of roles and responsibilities between humanitarian and security actors will help preserve the civil and humanitarian character through a holistic security risk management system that aims to protect refugees from violence and insecurity and enable smooth humanitarian access.²⁰⁷

4.1.3.2 United Nations/ Site Management and Site Development Sector (SMSD)

Since the influx in 2017, a new system was devised by IOM and OCHA that divided the responsibility of camp management between IOM and UNHCR also known as Areas of Operation (AOR).²⁰⁸ The Site Management and Site Development (SMSD) sector co-led by RRRC office together with IOM and the Danish Refugee Council (DRC) supports the CiCs in managing camp operations.²⁰⁹

While inter-agency camp coordination has improved with ISCG engagement through goodwill and pragmatic arrangements,²¹⁰ there is a need to develop more streamlined, efficient and accountable structures and processes at the camp-level to build a fit-for-purpose coordination structure.²¹¹

²⁰⁶ UNHCR, *supra* n.16.

²⁰⁷ See, UNHCR, Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum, December 2018, available at <https://www.refworld.org/pdfid/452b9bca2.pdf>

²⁰⁸ Sida *et.al*, *supra* n. 57.

²⁰⁹ *Ibid*

²¹⁰ *Ibid*, p. 86

²¹¹ JRP 2020, *supra* n. 64, p. 38

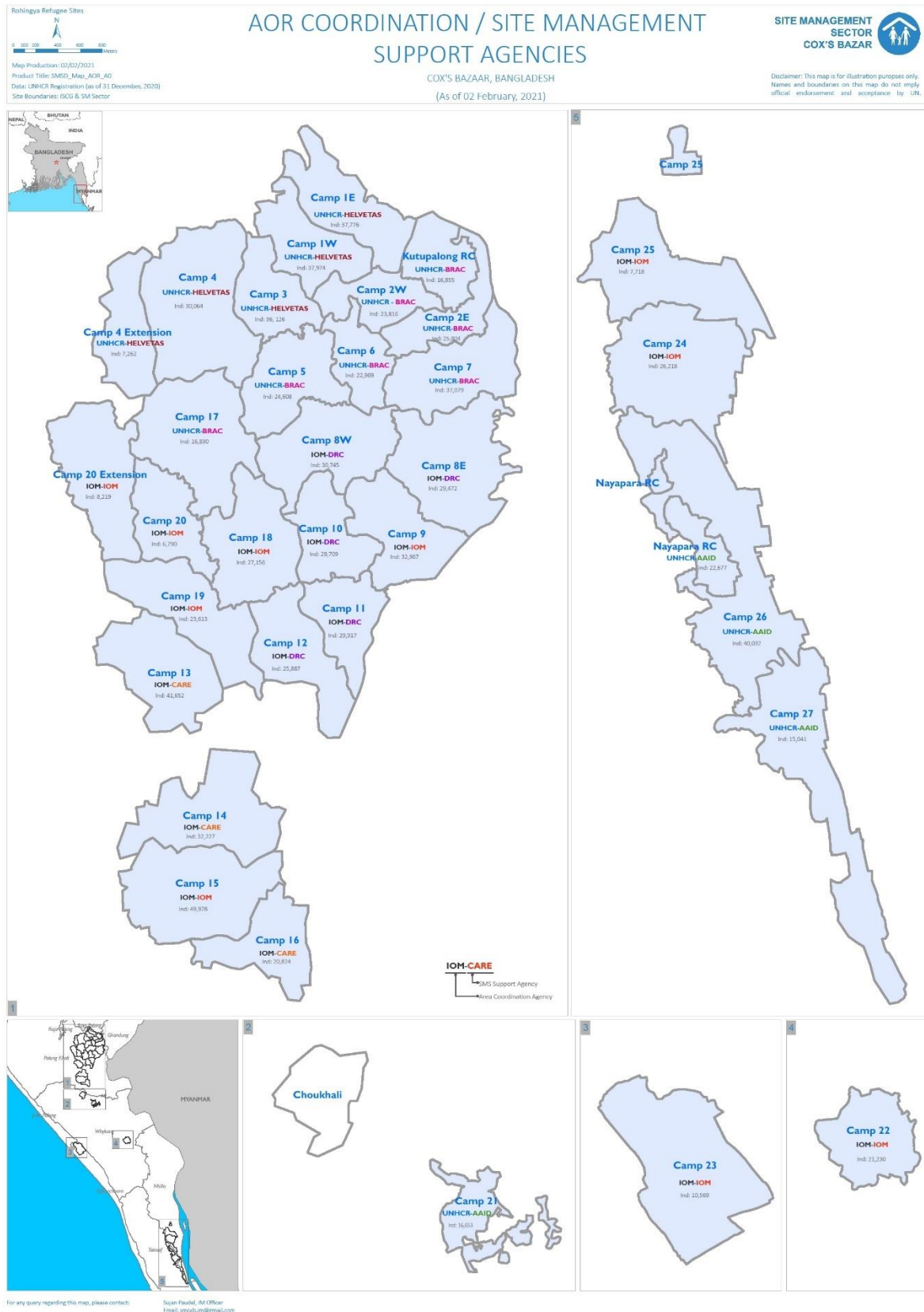


Figure 3: Map showing Areas of Operation (AOR) in Site Management of Rohingya camps (Source: SMSD sector)

4.1.3.3 NGO coordination

Camp level sector focal points drawn from operational agencies participate in the camp coordination meetings chaired by CiCs and help to coordinate service delivery within the camp. CiCs and SMSD sector team work together with sector focal points to ensure issues are identified and addressed in a timely manner at the camp level.²¹²

4.1.3.4 Refugee community structures

The Bangladeshi army set up the 'majhi system'²¹³ in the 1990s to organise humanitarian assistance for Rohingya refugees. The *majhi* (directly translated in English as 'boat steersman') is a Rohingya community representative, usually a man, informally selected by camp authorities to support officials in maintaining law and order and act as a focal point for camp management activities. The majhi system was abolished in 2007 in the two UNHCR registered camps due to allegations of corruption and abuse of authority but continued to be operational in the unregistered settlements near the UNHCR camps where humanitarian presence was limited.

Following the influx of August 2017, the majhi system was re-introduced to manage large-scale humanitarian assistance. The majhi oversees one block representing 50-200 households divided into sub-blocks. Above the majhi is a head majhi who directly reports to the CiC. The selection process for majhis is not formalised and they are accountable to camp authorities and not to the refugee community.²¹⁴

The majhis help manage the large refugee influx by estimating the population, identifying immediate needs, organising aid distribution and referring them to relevant service providers. Over time, the CiCs and army have used majhis as informal camp focal points therefore vesting them with a certain level of power and influence over their community.²¹⁵ In spite of undertaking such a wide range of duties requiring a lot of time and effort, majhis do not receive any remuneration for performing these tasks.

The lack of accountability and disproportionate power relations have resulted in information gaps, corruption, exclusion of persons from accessing aid, manipulation of distribution lists and sexual exploitation and abuse.²¹⁶ The majhis act as a buffer between refugees and humanitarian agencies, thereby hindering identification of protection risks, understanding the root causes and responding to them in a timely manner.²¹⁷

In the two registered camps managed by UNHCR, elected camp/ block committees have replaced the majhi system since 2015-16.²¹⁸ The committees are represented by elected refugee representatives, including women, through a transparent and consultative process conducted jointly by UNHCR and RRRC.²¹⁹ In July 2018, the SMSD sector convened a task force to develop guidelines for community-

²¹² *Ibid*, p. 39

²¹³ ACAPS-NPM, *supra* n. 206.

²¹⁴ IRC, *supra* n. 118.

²¹⁵ ACAPS-NPM, *supra* n. 206.

²¹⁶ IRC, *supra* n. 118.

²¹⁷ Protection Sector Working Group Cox's Bazar, Protection Considerations on the 'Majhi System', 30 Jun 2018, available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/protection_considerations_on_the_majhi_system_pswg_fv_june_2018.pdf

²¹⁸ *Ibid*.

²¹⁹ ACAPS-NPM, *supra* n. 206.

based camp representation structures in line with UNHCR's efforts in the registered camps, which are yet to be endorsed by the RRRC. At present, community representative structures have only been established in a few camps.²²⁰ Some reports²²¹ point out that majhis themselves are opposed to the shift to the new system and have allegedly made attempts to disrupt the process through harassment and threats to community members. Yet, where the new process was piloted, only very few of the existing majhis who stood for the committee elections were elected.²²²

In Teknaf, where refugees and host communities are living in close proximity in 'para' (neighbourhoods), Para Development Committees (PDCs)²²³ have been constituted to facilitate interactions between both communities, identify common needs and resolve disputes in collaboration with Bangladeshi authorities and the humanitarian community. The PDCs were set up by the Site Management and Site Development (SMSD) sector and partners. As of 2019, there were 10 PDCs with 11 members each (6 host community members and 5 Rohingya refugee members). There are 3 women representatives in each PDC.²²⁴ This particular model warrants further exploration to better understand the impact on social cohesion and extent of meaningful community participation in decision-making processes.

There are several community-based groups operational in the camps but due to increased Government scrutiny, shrinking funding and telecommunications restrictions, the scope of their activities and engagement with humanitarian actors remains limited. Expansion of community representative structures is urgently required to build and support Rohingya leadership and ensure their meaningful participation in decision-making processes.

There is a need to explore Rohingya community structures and dynamics in the camps in greater depth to better understand how they identify and organise themselves in a displacement context. A study by IOM (2020) shows that Rohingya in the camps identify and organise themselves along three lines—*gusshi* (clan), *shomaz* (community) and *koum* (ethnic group or nation).²²⁵ These factors have informed the formation of Rohingya civil society groups and claims of community leadership. Closer interactions with these structures will deepen understanding of the differences and divisions within the Rohingya community as well as help identify cultural similarities between Rohingya and host communities and how humanitarian programming can help re-establish social ties and community engagement mechanisms without perpetuating harmful social norms like exclusion of women representatives and other marginalised groups.²²⁶

²²⁰ JRP 2020, *supra* n. 64, p. 53.

²²¹ IRC, *supra* n. 118.

²²² *Ibid.*

²²³ ACAPS-NPM, *supra* n. 206.

²²⁴ MD Smith and L. Tejeda Frem, Women's Participation and Leadership in the Rohingya Refugee Response: Lessons from the Women's Committee, IOM (2020), p.15, available at <https://womenindisplacement.org/sites/default/files/2020-10/WPP%20Learning%20Report%20-%20Rohingya%20Response.pdf>

²²⁵ Daniel Coyle, Abdul-Kadar Rahim, Mohammed Abdullah Jainul, Clan, Community, Nation: Belonging Among Rohingya Living in Makeshift Camps, IOM (2020), available at https://www.researchgate.net/publication/338645066_CLAN_COMMUNITY_NATION_Belonging_among_Rohingya_living_in_makeshift_camps

²²⁶ *Ibid.*

	National Level	Cox's Bazar Level	Camp Level
Gov't	<ul style="list-style-type: none"> - National Committee (under MoHA) - National Task Force - Ministry of Disaster Management and Relief (MoDMR) - NGO Affairs Bureau (NGOAB) 	<ul style="list-style-type: none"> - Office of the Refugee Relief and Repatriation Commissioner (RRRC) - District/Sub-district Admin. - Police - Army 	<ul style="list-style-type: none"> - Camp in Charge (CiC) (ACiCs) - Armed Police Battalion - Bangladeshi Army
UN	<ul style="list-style-type: none"> - Strategic Executive Group (SEG) - Localisation Task Force (LTF) - Protection Advocacy Working Group (PAWG) 	<ul style="list-style-type: none"> - Inter Sector Coordination Group (ISCG) - Heads of Sub-Office Group (HoSoG) - Sectors 	<ul style="list-style-type: none"> - Site Management and Site Development Sectors (SMSD) - ISCG/Sectors
Donors	<ul style="list-style-type: none"> - Members of SEG (including LTF and PAWG) - Bilateral engagement with govt authorities, UN and NGOs 	<ul style="list-style-type: none"> - Members of HoSoG, participate in Sector Coordination Meetings - Bilateral engagement with RRRC, district authorities, UN, and NGOs 	---
NGOs	Formal and informal INGO/Bangladesh NGO networks <ul style="list-style-type: none"> - Disaster Preparedness (NAHAB; NIRAPAD; BDPC; ADAB; FNB) - Rohingya response (The INGO Forum and INGO ESC; CSO Alliance) 	NGO Networks: <ul style="list-style-type: none"> - Bangladesh Rohingya Response NGO Platform (NGO Platform) - Cox's Bazar CSO-NGO Forum (CCNF) - Sector leads/members 	<ul style="list-style-type: none"> - Camp level sector focal points - Service delivery
Refugees	---	---	<ul style="list-style-type: none"> - Majhis camp and block level committees in some camps - Para Development Committees (refugees and host communities) - other informal community-based networks - Religious leaders

Figure 4: Levels/Actors in Rohingya Response Coordination

4.2 Effectiveness of the humanitarian coordination model

The effectiveness of humanitarian coordination is dependent on a number of factors such as the legal and protection policy environment, the dynamics between the government, humanitarian community and refugees, and the relationship/cooperation between humanitarian partners themselves. The government coordination structures sometimes operate in parallel to the UN-led coordination structures, engaging with humanitarian actors and taking ad-hoc decisions related to the response, outside of the scope of the JRP and the designated humanitarian coordination fora. Overall, while the Government of Bangladesh is leading the Rohingya refugee response with support from UN and NGO

partners, the lines of accountability remain unclear, as no single entity can be held entirely responsible for any potential failures.²²⁷

As per the findings from a Disaster Emergency Committee (DEC) Review of the Response (2018)-²²⁸

The lack of a refugee response framework or strategy, focusing on the rights of refugees, from the start has had an impact on the quality of the response. Humanitarian action cannot be focused exclusively on the delivery of services. It must be provided with a Protection mind-set from the outset. In addition, organisations must also analyse the coordination framework in which they are working. The UN – particularly UNHCR and IOM – could have worked with the government to ensure clarity on the coordination model.... The mixture between the two models has created greater confusion. The Review Team feels that too few NGOs have a clear understanding of the models behind the UN's humanitarian coordination – or the legal mandate of UNHCR (in comparison to IOM).

4.2.1 Inter-agency coordination and its limits

4.2.1.1 United Nations led coordination structure

In terms of camp-level coordination, half the refugee population living in the camps is managed by IOM while the other half is managed by UNHCR based on a geographic division of responsibility or areas of operation (AOR). Such division of labour at the camp level has created service delivery gaps across camps and highlighted the need for harmonisation of camp management and stronger inter-sectoral coordination.²²⁹

The ISCG established prior to August 2017 was initially led by IOM and resembles the cluster approach that is in place globally for internal displacement (IDP) settings. Following the influx in August 2017, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) deployed a Coordinator reporting to IOM and to the UN Resident Coordinator. Since January 2018, following the formation of SEG, the ISCG Senior Coordinator was seconded from UNHCR and the ISCG Secretariat was comprised of staff and thematic experts from different UN agencies. The sectors were led by UN agencies, with NGO co-lead roles in some sectors (education, WASH, Shelter/NFI, Site Management). Traditionally, UNHCR is the lead agency for refugee responses around the world. However, in the context of the Rohingya refugee response in Bangladesh, a silo-ed cluster/sectoral approach is adopted that has impacted integrated humanitarian coordination.²³⁰

The hybrid coordination structure described earlier has continued to adjust itself to the evolving protection and operational environment in Bangladesh. However, the continued reluctance of the Government of Bangladesh in recognising Rohingya as refugees and the absence of a clear and predictable operational framework in the response runs the risk of diluting responsibility and accountability principles and limits the scope of achieving refugee rights and protection.²³¹

4.2.1.2 Complexity of NGO Coordination

More than 130 Bangladeshi (national and local) and international NGOs are supporting Rohingya refugees and host communities in Cox's Bazar. Many of them are part of the formal humanitarian

²²⁷ DEC, UK AID, Here Geneva, Responding to the needs of refugees and host communities: Review of the DEC Phase 1 responses, March 2018, p.29, available at

https://www.dec.org.uk/sites/default/files/PDFS/dec_rohingya_crisis_appeal_response_review_report270318.pdf

²²⁸ *Ibid*, p. 33

²²⁹ Sida and Schenkenberg, *supra* n. 152, p. 16

²³⁰ DEC Review, *supra* n.228, p. 28

²³¹ Sida *et.al*, *supra* n. 57, pp. 8-9

coordination structures, a few as members of decision-making bodies like HoSoG and SEG, a few as sector co-leads and others as sector partners and UN implementing partners. The access and inclusion of NGOs in the coordination system remains uneven depending on their size, programme focus areas, funding, partnerships etc. Representation of NGOs, especially Bangladeshi NGOs, remain limited in sectors, as co-leads and Strategic Advisory Group (SAG) members. Language is a key barrier for local NGOs to actively participate in these roles as English remains the main language of communication in the response with limited translation facilities in the local language. Complex documents and use of jargon also exclude many NGO partners.²³²

As described earlier, a number of NGO coordination bodies are currently operational in Bangladesh, both at the Dhaka and Cox's Bazar level, that includes many, if not all NGOs working in the Rohingya refugee response, with the broader common objective of strengthening NGO cooperation and easing delivery of programmes. Yet, these diverse mechanisms do not adequately interact with and complement each other to build synergies and common positions on key issues of concern. Some factors that undermine collective NGO engagement and action are as follows:

- a. ***a. Challenging operational environment:*** Humanitarian agencies are working in a challenging operational context in a deteriorating environment. Restrictive government policies and practices undermine their ability to operate and deliver programmes efficiently and effectively. It also limits the scope for collective NGO advocacy and action on refugee protection and humanitarian access thereby continuing the cycle of restrictive programming.
- b. ***Competing objectives:*** The Government of Bangladesh has a short-term view of the Rohingya crisis with a focus on expedited refugee repatriation. This has made it difficult for humanitarian partners to plan for multi-year interventions in the Rohingya refugee response despite the growing needs in a protracted displacement context. Amidst growing tensions between refugees and host communities, local NGOs/CSOs reported facing challenges in balancing their programmes for Rohingya refugees and host communities. While there is a need to consider the needs of host communities as an integral part of the Rohingya refugee response, the growing pressure on the humanitarian community to allocate additional funds towards meeting longer-term development needs within the short-term humanitarian response framework, without conducting prior assessments and consultations with affected communities could be inefficient and inexpedient.
- c. ***Dynamics between international and Bangladeshi NGOs:*** There are many strong partnerships between international agencies (UN and international NGOs) and Bangladeshi NGOs in the Rohingya refugee response but there are differing perspectives on capacities of both international and local actors, and ways of collaboration. There is general agreement in the wider humanitarian community on the need for localisation of the response but the road to building consensus on the way forward remains contested (discussed in detail in Chapter 5).

Many Bangladeshi NGOs have been supporting the Government-led disaster response but their role becomes complex in a sensitive refugee context (where refugees are not formally recognised

²³² IFRC, Mission Report: Grand Bargain Localisation Workstream Demonstrator Country Field Mission Bangladesh, 8 -13 September 2018, p. 9, available at <http://media.ifrc.org/ifrc/wp-content/uploads/sites/12/2018/11/Mission-Report-Bangladesh-Final.pdf>

as such by the host country), when advocating for the rights of affected populations in line with international humanitarian principles.²³³ Similarly, international NGOs, while having strong technical capacity and financial resources, may be constrained by their limited understanding of the local context and their inability to build collaborative linkages with local stakeholders.²³⁴

The dynamic between international and Bangladeshi NGOs is also affected by their need to secure additional funding or gain recognition or visibility in the response as preferred Government/UN/donor/partners. The competition for scarce resources in a fast-evolving aid landscape and lack of trust hinders NGOs' capacity to fulfil their primary role in meeting the needs and upholding the rights of affected communities.²³⁵

At present, NGO coordination comprises of parallel systems at the Dhaka and Cox's Bazar level operating without a shared understanding of issues and alignment of goals. Individual NGO networks have consistently made key advocacy interventions, for example, CCNF on localisation of aid or the NGO Platform on humanitarian access constraints or refugee protection concerns. However, the impact of these efforts has been thwarted by divergent priorities and fragmentation of rich and diverse knowledge and capacity. Moving into the fourth year of the Rohingya refugee response, creating a space for fostering an honest dialogue between NGOs while gradually shifting the discourse from individual/ group interests to securing the rights of affected refugee and host communities would be a welcome step in the right direction.

4.3 Conclusion

A review of the overall coordination structure in the Rohingya refugee response²³⁶ in Bangladesh was undertaken in late 2018 jointly by UNHCR, IOM, UNDP and ICVA. The review team identified the need for clarification of accountability and leadership in the response, simplification of coordination mechanisms and alignment with government structures, among others, and proposed changes to the coordination structure at the Dhaka and Cox's Bazar level. The recommendations of the review are yet to be implemented.

Despite the unusual humanitarian coordination structure in the Rohingya refugee response and related systemic constraints, the humanitarian community has been successful in working together to provide life-saving assistance to more than 800,000 Rohingya refugees in a challenging environment with limited resources, including during the COVID-19 pandemic. Given the diversity of actors and agendas in the response, there is much to be achieved by harnessing and complementing capacities. The "whole-of-society approach" or "multi-stakeholder and partnership approach", is consistent with the concept of "collaboration and complementarity" and is a necessary and fundamental starting point for effective inter-agency and inter-sectoral coordination in the Rohingya refugee response.

²³³ Wake and Bryant, *supra* n. 174, p.16

²³⁴ *Ibid*, pp.17-18

²³⁵ *Ibid*, p.19

²³⁶ Review of the coordination structure of the refugee response in Bangladesh, 8 January 2019, available at https://www.icvanetwork.org/system/files/versions/0801Final_Coordination_Mission%20Report_Bangladesh.PDF

Chapter 5: Localisation of the Rohingya refugee response

5.1 Introduction

Localisation can be broadly understood as a process *ensuring that humanitarian preparedness and response capacity sits with those nearest to the crisis affected-populations as they are best placed to respond quickly and appropriately – and stay longest.*²³⁷ However, the concept of ‘local’ is not homogenous and remains a contested idea.

While localisation debates were ongoing for many years, it garnered international attention at the World Humanitarian Summit (2016). It has since triggered a series of initiatives aimed at localisation such as the Grand Bargain²³⁸ (localisation workstream seeking to engage and enhance partnerships with local and national partners) and the Global Compact on Refugees (GCR)²³⁹ which emphasised the role of ‘multi-stakeholder and partnership approach’ and mentions ‘local actors. Seven dimensions of localisation have been identified- funding, partnerships, capacity, participation, coordination, visibility and policy.’²⁴⁰

Bangladesh has proven expertise of many years in disaster preparedness and response. In recent years, localisation projects such as Shifting the Power²⁴¹ and Start Fund²⁴² supported by donors such as DFID and ECHO supported local and national actors to improve disaster preparedness and response in Bangladesh.²⁴³ A UN study of localisation in Bangladesh’s flood response (2019)²⁴⁴ generated strong evidence of national leadership but limited evidence of adequate funding and technical capacity of national and local civil society partners as well as equitable partnerships between international, national and local actors. Challenges were also noted with regard to local communities influencing policies as well as community participation and decision-making.

²³⁷ K. Van Brabant & S. Patel, Seven Dimensions of Localisation-Emerging Indicators and Practical Recommendations, Global Mentoring Initiative (GMI), p.3, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/Localisation-In-Practice-Full-Report-v4.pdf>

²³⁸ IASC, More support and funding tools for local and national responders, available at

<https://interagencystandingcommittee.org/more-support-and-funding-tools-for-local-and-national-responders>

²³⁹ UNHCR, The Global Compact on Refugees, available at <https://www.unhcr.org/the-global-compact-on-refugees.html>

²⁴⁰ Van Brabant and Patel, *supra* n. 238.

²⁴¹ The Shifting the Power project aimed to strengthen the capacity of local and national organisations so they can play a leading role in decision making during humanitarian crises. The project supported around 50 local and national NGO partners across five countries including Bangladesh, Ethiopia, the Democratic Republic of Congo (DRC), Kenya and Pakistan. The project was implemented between 2014-17 with 11 Bangladeshi NGOs as members and was led by Christian Aid. In addition to building capacity of partner agency staff, community members and youth volunteers, the project also led to the creation of in terms of a National Alliance of Humanitarian Actors, Bangladesh (NAHAB).

²⁴² Start Fund Bangladesh (SFB) is a £10m rapid emergency response fund that was created in 2017 collectively managed by NGOs. It is accessible to local, national, and international member non-governmental organisations (NGOs) operating in Bangladesh to respond to humanitarian emergencies. As of December 2020, there are 20 international NGOs and 27 Bangladeshi (national and local) NGOs who are part of the network.

²⁴³ LTWG, Background of Localisation in Humanitarian Response, available at

https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/background_of_localisation.pdf

²⁴⁴ United Nations Bangladesh, Nirapad, HAG, Elevating Evidence: Localisation in the 2019 Bangladesh Flood Response, Baseline Report, April 2020, available at https://humanitarianadvisorygroup.org/wp-content/uploads/2020/12/Elevating-Evidence-Localisation-in-the-2019-Bangladesh-flood-response_Final_electronic.pdf

Other research has shown that despite the existence of district level administrative mechanisms with clear responsibilities for each phase of disaster cycles, decision-making on disaster governance remains largely centralised at the national level with limited participation of affected communities.²⁴⁵

This chapter seeks to explore the nature and scope of localisation debates in the Rohingya refugee response in Bangladesh and understand why and how it is contested by different actors in the response. It will also attempt to explain and critically analyse the different types of 'capacity' contributing towards implementation of the response. Lastly, the key areas of commonality and collaboration between different stakeholders will be identified for building and supporting a localised Rohingya refugee response that is complementary and sustainable.

5.2 Perspectives on localisation

Cox's Bazar district has received Rohingya refugees since the 1970s but the rapid increase and large-scale presence of Rohingya refugees in Cox's Bazar since 2017 had a considerable socio-economic and environmental impact,²⁴⁶ particularly in Ukhiya and Teknaf Upazilas (sub-districts) hosting a large majority of the refugees. Understandably, the COVID-19 pandemic and related restrictions exacerbated the needs of both refugee and Bangladeshi communities in the district.²⁴⁷ Since 2017, the humanitarian response in Cox's Bazar has evolved from addressing the immediate needs of Rohingya communities to also considering the impacts of the humanitarian crisis on the district as a whole.

While the Rohingya refugee response in Cox's Bazar is situated within the national disaster management framework, it operates on a completely parallel track of governance creating risks and challenges for humanitarian coordination, accountability and localisation.²⁴⁸

Within this governance paradigm, the localisation landscape in the Rohingya refugee response presents conflicted and contested understandings of localisation and how it should be achieved. These different perspectives and interpretations may be broadly categorised as follows:

5.2.1 Actor and location-centred approaches

5.2.1.1 National leadership

One of the key Grand Bargain commitments was to promote and support national and local leadership in humanitarian action. The GCR also calls for government leadership for an effective refugee response. The Rohingya refugee response in Bangladesh is led and coordinated by the Government with support of donors and humanitarian partners. At the national level, the National Task Force led by the Ministry of Foreign Affairs and comprising 22 Ministries is the key policy-making body in the response and at the Cox's Bazar level, the RRRC has oversight over the Rohingya refugees in the camps

²⁴⁵ Shohid Mohammad Saidul Huq, "Community Based Disaster Management Strategy in Bangladesh: Present Status, Future Prospects and challenges", *European Journal of Research in Social Sciences* 5:2, 2016

²⁴⁶ ACAPS-NPM, *supra* n. 105.

²⁴⁷ As per recent assessments, 93% of Bangladeshi households in Ukhiya and Teknaf reported loss of income/livelihoods during the pandemic with food consumption scores declining from 72 to 43% as compared to 2019. 99% of Bangladeshi households reported adapting emergency/ crisis coping strategies, particularly female headed households, small households and households with persons with disabilities. See, ISCG, Joint Multi-Sector Needs Assessment (J-MSNA)- Bangladesh Host Community, July-August 2020, available at

https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/msna_2020_factsheet_host_communities.pdf

²⁴⁸ Alistair Cook and Yen Ne Foo, Towards 'shared' and 'complex' disaster governance in Bangladesh: The 2017 Rohingya Exodus, *International Journal of Disaster Risk Reduction* 39, July 2019, p. 4, available at https://www.researchgate.net/publication/334281046_Towards_'shared'_and_'complex'_disaster_governance_in_Bangladesh_The_2017_Rohingya_Exodus

while the district administration coordinates the needs of Bangladeshi communities and ensures law and order.²⁴⁹ Efforts are ongoing to reinforce the capacity of Government-appointed camp officials by the humanitarian community/ Site Management sector through the Joint Capacity Sharing Initiative (CSI).²⁵⁰

The rights of non-citizens are recognised by the Constitution of Bangladesh but the policy framework does not recognise Rohingya as refugees and limits their access to rights, and restricts the scope of humanitarian operations.²⁵¹ Despite such strong national leadership, the Rohingya refugee response modalities do not fit well within the government coordinated disaster management structures at the local level with overlapping roles and responsibilities for the RRRC, district administration and the army.²⁵²

5.2.1.2 NGO actors- Who and where?

Along with the Bangladeshi authorities, local communities, national and local NGOs, UN, INGOs present in the area and the Red Cross and Red Crescent movement, were the first responders to the Rohingya influx of 2017.²⁵³

By early 2018, more than 120 agencies were engaged in the response. While Bangladeshi NGOs implemented projects, the main players in terms of policy influence and financial resources were the UN agencies, a few INGOs and BRAC, one of the largest NGOs in the world that was started in Bangladesh.²⁵⁴ Between 2017-2020, the number of Bangladeshi NGOs delivering projects under the JRP had marginally increased but progress has been slow in terms of their inclusion in sector co-leadership roles and overall coordination. Language barriers, use of excessive jargon, the pace of meetings, limited feedback opportunities and lack of coordination capacity²⁵⁵ constrained participation of local NGOs and CSOs in the existing humanitarian coordination system.

Of note, there is a distinction made within some sections of the NGO community between national and local NGOs. As per a report by COAST Trust (2019)-²⁵⁶

Local NGOs (LNGOs) refers to the NGOs whose leadership come from a particular local area. For example, the NGOs whose leadership are from Cox's Bazar or/and the NGOs that started its journey from Cox's Bazar are LNGOs for Cox's Bazar. National NGOs (NNGOs) are those that started their journey from any other part of Bangladesh other than Cox's Bazar, or/and whose leadership are not from Cox's Bazar.

The self-identification of 'local NGOs' in the Rohingya refugee response has been used in the context of relative distribution of power and resources as well as to legitimise the role of some actors in the

²⁴⁹ JRP 2020, *supra* n. 64, p. 37

²⁵⁰ Presentation - Capacity Sharing Initiative Cox's Bazar, available at <https://ccmcluster.org/documents/presentation-capacity-sharing-initiative-coxs-bazar>

²⁵¹ See, BLAST and RSN, *supra* n. 125. HAG and Nirapad, When the Rubber Hits the Road: Local Leadership in the first 100 days of the Rohingya Crisis Response, December 2017, available at <https://resourcecentre.savethechildren.net/node/17192/pdf/when-the-rubber-hits-the-road.pdf>.

²⁵² Cook and Foo, *supra* n. 249.

²⁵³ HAG and Nirapad, *supra* n. 252.

²⁵⁴ Van Brabant and Patel, *supra* n. 238.

²⁵⁵ *Ibid.*

²⁵⁶ COAST Trust, Study on Localisation of Humanitarian Aid in Bangladesh, Focusing Rohingya Response- Business as usual or breaking the status quo?, December 2018, available at <https://coastbd.net/wp-content/uploads/2020/12/Aid-Transparency-1.pdf>

Rohingya refugee response while delegitimising others.²⁵⁷ There is debate among local NGOs about the 'local' nature of agencies as follows: the time period for which an agency has been operational in Cox's Bazar; the location of its main office; areas of operation and where the staff are from, giving rise to further divisions between 'local' and 'more local' (district/sub-district level).²⁵⁸

Overall, the distinction between international, national and local actors remains contested. The term 'local' may constitute a range of actors such as national and local authorities, national and local civil society organisations, and affected communities.²⁵⁹

In the Bangladesh context, 'local' may sometimes refer to international, national and local agencies who have a long presence in Bangladesh, as is the case of many international NGOs who have been operational in Bangladesh since its independence or over a period of 20 years working on poverty reduction, development, disaster preparedness and response and more recently, with Rohingya refugees.²⁶⁰ A good example in this regard is the case of BRAC, a large NGO that originated in Bangladesh in 1972 and is now operational in more than 10 countries. Despite its strong international presence, BRAC is considered to be a national Bangladeshi NGO and is represented as such in humanitarian coordination structures, mainly due to its origins and policy-making influence in Bangladesh, perhaps at the cost of excluding smaller Bangladeshi agencies engaged in the response.

Despite concerns raised about the internationalisation of the Rohingya refugee response by localisation advocates in Bangladesh, research shows that the status of NGOs (international, national, local), is not relevant for Rohingya refugees as long as their basic needs are being met.²⁶¹

A localisation discourse focused around 'national/local versus international actors' is unlikely to achieve much progress in an overcrowded and competitive aid landscape where many humanitarian actors are trying to access funding from a few sources. Rather, a more pragmatic approach would be to embrace the diversity of Bangladeshi civil society acknowledging their comparative advantages in understanding the context and establishing Government relations and advocate for an equal and partnership-oriented approach that balances quality and inclusion.²⁶²

5.2.1.3 Affected communities

A lot of the debates around localisation of the Rohingya refugee response are focused on the role and capacity of national and local NGOs/CSOs. Much less attention has been devoted to understanding localisation from the perspective of affected communities at the centre of the humanitarian situation as agents of change. In the context of localisation of the Rohingya refugee response, we must ask what is the purpose of localisation. It must be noted that while local Bangladeshi agencies are local to the

²⁵⁷ Kristina Roepstorff, *Localisation Requires Trust: An Interface Perspective on the Rohingya Response in Bangladesh*, 24 March 2021, available at <https://doi.org/10.1111/disa.12483>

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ Smruti Patel, *Going the Extra Mile!, Start Network* (2017), available at <https://static1.squarespace.com/static/58256bc615d5db852592fe40/t/5a9ad053f9619a449822b94e/1520095320908/Start+Network+-+Bangladesh+Localisation+Review+SCREEN.pdf>

²⁶¹ This distinction is perhaps more applicable to host communities who may feel better served and represented by local NGOs/CSOs who have a stronger understanding of the context as well as their needs. See, Kerrie Holloway, *Dignity and 'localisation': Rohingya refugees in Bangladesh*, Humanitarian Exchange Number 73, October 2018, available at <https://odihpn.org/magazine/dignity-and-localisation-rohingya-refugees-in-bangladesh/>

²⁶² Patel, *supra* n. 261.

host communities, they are international to and different from Rohingya refugees from Myanmar despite some cultural and linguistic similarities.²⁶³

With reduced humanitarian footprint in the camps during the COVID-19 pandemic, Rohingya refugee volunteers along with their Bangladeshi counterparts were at the frontline supporting lifesaving programmes such as health, water and sanitation, food distribution and COVID-19 awareness. Yet, they were not recognised as legitimate humanitarian actors and noted a lack of trust and open communication with humanitarian actors and did not feel included in decision-making processes that affected their daily lives.²⁶⁴

Restrictions on access to basic rights such as education and livelihoods has increased the burden on Bangladesh to provide care and maintenance, increased insecurity, needs and vulnerabilities, prolonged the cycle of abuse and discrimination and disempowered the Rohingya from building and using important life skills productively that would contribute to self-sufficiency, empowerment, and eventual achievement of durable solutions. The lack of meaningful participation of refugees in key initiatives has eroded trust and posed challenges for programme implementation increasing tensions and instability in the camps. Declining engagement with community-based and community-led initiatives by Bangladeshi authorities and humanitarian actors is a barrier towards promoting a community-based protection approach, a key goal of the JRP.

Within the scope of the humanitarian programmes, there is space for identifying and expanding community representation and leadership by recognising and supporting grassroots initiatives and gradually mainstreaming their participation in formal camp-level and sector coordination mechanisms.

To address the impact of the large-scale presence of Rohingya refugees in the district, there is a need for more in-depth consultations with the host communities living in Ukhiya and Teknaf to gain a stronger understanding of their needs which are distinct from the needs of Rohingya refugees who are living with restricted access to rights and services in camp settings. To ensure optimal use of limited resources, the effectiveness of such short-term interventions in addressing the broader developmental needs of the district must also be duly assessed.

The Grand Bargain and Global Compact on Refugees (GCR) recognise the positive impact that the systematic engagement of community-based organisations can have in supporting humanitarian responses. The current humanitarian framework has to make significant adjustments to its strict vetting processes and partnership standards to ensure the formal inclusion of refugee and host community voices in decision-making processes and redress the imbalances in the relationship between refugees and aid providers.²⁶⁵

²⁶³ Holloway, *supra* n. 262.

²⁶⁴ Saiful Haque, Zahid Uddin and Arshat Ullah, *Rohingya Experiences of Covid-19 in Cox's Bazar Camps*, Flash Report, Political Settlements Research Programme (PSRP), July 2020, available at <https://www.politicalsettlements.org/wp-content/uploads/2020/07/Flash-report-Rohingya-Experiences-Full-Report-14-July-2020.pdf>

²⁶⁵ Diana Alberghini, *Refugee-led Organizations: The Time Is Now*, Refugee Law Initiative, 5 August 2020, available at <https://rli.blogs.sas.ac.uk/2020/08/05/refugee-led-organizations-the-time-is-now/>

5.2.2 Issue-centred approaches

5.2.2.1 Funding and human resources

The current policy environment constrains localisation goals in the Rohingya refugee response. Short-term planning and resource allocations along with the aid restrictions in place, precludes humanitarian agencies from implementing longer-term inclusive social cohesion programmes to build refugee self-reliance and address host community needs.²⁶⁶

Many UN agencies and international NGOs with longstanding presence in Bangladesh have strong relationships with local partners, including government agencies, and by working together over a period of time, they have strengthened overall national response capacity. Yet, many donors, despite their localisation commitments, continue to channel the bulk of their funds through UN agencies and to a lesser extent, through international NGOs due to their pre-existing institutional protocols and the overall risks associated with the bureaucratic barriers for NGO operations in Bangladesh. A combination of these factors results in local actors becoming sub-contractors of UN agencies or international NGOs in the response, thereby hindering a complementary approach.

In Bangladesh, the JRP was 59.4% funded in 2020, as compared to 75.2% in 2019. As reported by UN OCHA (2020),²⁶⁷ 62.4% of the funding was received by the UN agencies and 30.6% by NGOs (34.7% to international NGOs, 26% to national NGOs, 7.6% to affiliated organisations and no funding to local NGOs). Reporting on funding, however, remains partial or incomplete.

UN and NGO pooled funds combining different donor contributions and providing flexible funding towards emergency response is not yet available for the Rohingya refugee response in Bangladesh. Exceptionally, Central Emergency Response Fund (CERF) funding was made available in 2020 to 24 NGOs (4 per country/ one-third national NGOs) in six countries, including Bangladesh, to address life-saving health and water and sanitation needs during COVID-19.²⁶⁸ A total of 3 million USD was allocated to 3 Bangladeshi and 2 international NGOs working in the Rohingya refugee response in Bangladesh.²⁶⁹ The Grand Bargain commitments on localisation were taken into consideration while disbursing these funds, and one additional local NGO was identified to benefit from this emergency funding opportunity. However, questions were raised about the CERF process by localisation advocates like CCNF who argued that local NGOs were excluded from accessing these funds due to the short application deadline and complex application process.²⁷⁰

Localisation debates in the Rohingya refugee response are also centred around the use of local human resources. The Bangladeshi public sector has experienced human resource shortages as skilled health

²⁶⁶ Abu Faisal Md. Khaled, Do No Harm in refugee humanitarian aid: the case of the Rohingya humanitarian response, Journal of International Humanitarian Action volume 6, Article number: 7 (2021), available at <https://jhumanitarianaction.springeropen.com/articles/10.1186/s41018-021-00093-9>

²⁶⁷ OCHA FTS, Bangladesh: 2020 Joint Response Plan for Rohingya Humanitarian Crisis (January-December), available at <https://fts.unocha.org/appeals/906/recipient-types>

²⁶⁸ IOM/OCHA: UN Humanitarian Chief Releases USD 25 Million in CERF Funding to IOM for NGO COVID-19 Responses, 23 June 2020, available at <https://reliefweb.int/report/world/iomocha-un-humanitarian-chief-releases-usd-25-million-cerf-funding-iom-ngo-covid-19>

²⁶⁹ United Nations, CERF allocates \$3 million to NGOs for the COVID-19 response in Bangladesh, 21 July 2020, available at https://reliefweb.int/sites/reliefweb.int/files/resources/Press%20Statement%20_CERF%20allocates%20%243%20million%20to%20NGOs%20for%20the%20COVID-19%20response%20in%20Bangladesh_21Jul20%20%281%29.pdf

²⁷⁰ Working in Cox's Bazar: Local NGOs question UN's fund allocation, The Daily Star, 29 July 2020, available at <https://www.thedailystar.net/city/news/working-coxs-bazar-local-ngos-question-uns-fund-allocation-1937837>

and education workers moved to work for humanitarian agencies creating disruptions in delivery of public services.²⁷¹ Local NGOs have also expressed concerns that staff poaching by UN agencies and international NGOs at higher salaries are affecting their sustainability.²⁷² Tensions between host community and international actors have grown over the alleged prioritisation of Rohingya over locals²⁷³ and the lack of availability of jobs for Cox's Bazar residents in the Rohingya refugee response.²⁷⁴ While significant resources have been allocated by development and humanitarian partners in Cox's Bazar within and outside the scope of the JRP,²⁷⁵ more analysis is needed on the impact of humanitarian sector's hiring practices on the local job market.

5.2.2.2 Local Capacity

In the absence of a clear definition of 'local capacity', it is difficult to measure the capacity of local actors in a humanitarian response. In the Rohingya refugee response too, there has been no systematic and substantive efforts at mapping the different stakeholders and their capacity to respond, creating subjective and conflicting understandings and perspectives among different actors.

Independent UN evaluations of the Rohingya refugee response has acknowledged that Bangladeshi NGOs have strong capacity in responding to natural disasters but do not have comparative advantage in terms of delivering refugee protection.²⁷⁶ An important piece of research by Overseas Development Institute²⁷⁷ (ODI) explores the diversity of views expressed by local and international actors with regard to 'capacity'. While international NGOs were seen to have technical expertise, financial resources and capacity to scale up operations, local and national actors were strong in terms of contextual and cultural knowledge, understanding of host community needs and leadership structures of national and local authorities and the ability to navigate them.²⁷⁸ Systematic capacity exchange is needed between local and international actors on international humanitarian principles and practices, displacement related vulnerabilities, contextual analysis as well as local ways of working.

Independent UN evaluations²⁷⁹ have shown that Bangladeshi NGOs are used to working in collaboration with authorities and find it difficult to engage on protection advocacy which requires a certain degree of independence. Divergent mandates and operational priorities and different approaches on refugee protection may also limit prospects for collective advocacy. Protection and gender mainstreaming efforts across sectors are trying to reconcile these challenges to a limited extent by creating a common understanding of humanitarian principles and operational priorities.²⁸⁰

ODI found evidence of international agencies engaging in different levels of capacity strengthening of local partners to make their programmes compliant with international humanitarian standards and processes without simultaneously conducting a capacity assessment of these actors to accurately

²⁷¹ Khaled, *supra* n. 267.

²⁷² COAST Trust, *supra* n. 257, p.6.

²⁷³ Bangladeshis protest against foreign NGOs employing Rohingya, 28 December 2020, available at <https://bdnews24.com/bangladesh/2020/12/28/bangladeshis-protest-against-foreign-ngos-employing-rohingya>

²⁷⁴ JRP 2020, *supra* n. 64, p. 35

²⁷⁵ *Ibid.*

²⁷⁶ Sida and Schenkenberg, *supra* n.152, p.12

²⁷⁷ For more details, see Chapter 3, Wake and Bryant, *supra* n. 174.

²⁷⁸ *Ibid.*

²⁷⁹ Sida and Schenkenberg, *supra* n.152, p.12

²⁸⁰ JRP 2020, *supra* n. 64.

identify their organisational strengths, gaps and needs.²⁸¹ This demonstrates the need to establish more equitable partnerships that are ‘as local as possible, as international as necessary’.²⁸² While progress on localisation is difficult to measure, the JRP 2020 included a few proxy indicators to track advances in localisation such as “Number of national non-governmental organisations active in the Sector (receiving funds, regularly participating in meetings, reporting to 4W)” and “Number of Government and National NGO staff engaged in capacity sharing”²⁸³

Similarly, as explained in preceding sections, the role and capacity of Rohingya refugees as key stakeholders in the response remains under-explored. The humanitarian community’s engagement with Rohingya CSOs remains limited in the current climate. Rohingya CSOs are not able to register, receive direct funds or distribute aid. Humanitarian agencies conduct many consultations with Rohingya, but refugees are not systematically made aware of how their feedback has informed or reformed humanitarian programming. They are also not able to participate in humanitarian policy and decision-making fora.

5.2.2.3 Promoting a whole-of-society approach: Complementarity of humanitarian action.

The complex humanitarian arena of the Rohingya refugee response in Cox’s Bazar requires a broader understanding of humanitarian capacity and pursuing localisation objectives beyond the binaries of local and international. The needs of affected communities will be effectively addressed within a sustainable policy framework only if diverse capacities are harnessed and optimised.

Complementarity may be defined as *an outcome where all capacities at all levels – local, national, regional, international – are harnessed and combined in such a way to support the best humanitarian outcomes for affected communities*.²⁸⁴ The Rohingya refugee response is situated within a restrictive policy environment amidst the interplay of a number of state and non-state stakeholders with different roles and agendas. Whether a whole-of-society approach is effectively implemented in humanitarian action will be measured by the extent to which these actors interact and collaborate with each other.

The Government’s contradictory policy approach towards Rohingya, which on one hand, seeks to shelter and extend humanitarian assistance, while on the other, discourages any planning to secure their access to rights, by pushing for early repatriation, impacts prospects for coordination and complementarity.²⁸⁵

Despite valid criticisms from local actors regarding inequitable partnerships with international agencies, it is important to recognise the centrality of partnerships in delivering the Rohingya refugee response. The implementation of the JRP is predicated upon the partnership between UN agencies, international and Bangladeshi NGOs. The Bangladesh experience shows that all actors will need to

²⁸¹ Wake and Bryant, *supra* n. 174.

²⁸² *Ibid*, p.22

²⁸³ JRP 2020, *supra* n. 64, p. 38

²⁸⁴ Veronique Barbelet, Rethinking capacity and complementarity for a more local humanitarian action, HPG, October 2019, p.5, available at

http://www.w.cib-uclg.org/sites/default/files/odi_-_rethinking_capacity_and_complementarity_for_a_more_local_humanitarian_action_0.pdf

²⁸⁵ Wake and Bryant, *supra* n. 174, p. 23.

learn to share space and build new partnership models based on a strong understanding of the roles, dynamics and leverage of different stakeholders, in line with GCR commitments.²⁸⁶

Efforts at strengthening a whole-of-society approach is impeded by the lack of trust between humanitarian actors which prevents effective communication and developing a shared vision of localisation in the Rohingya refugee response. The trust-deficit must not only be addressed by pursuing equitable partnership models but by addressing the structural and systemic power imbalances that shape humanitarian action.²⁸⁷

Most importantly, the voices of Rohingya refugees remain on the margins in terms of influencing key decisions affecting their daily lives in the camps as well as future return to Myanmar. Coordination and localisation debates solely focused on strengthening capacity and funding for humanitarian agencies without institutionalising refugee participation and downward accountability will be counterproductive. Amnesty International²⁸⁸ has documented that the current restrictions in the camps such as communications restrictions, violence against women, erection of fences, relocation to Bhasan Char, barriers to education, gaps in information on health services and rising tensions with host communities, is a result of the lack of meaningful participation of refugees with regard to policies and decisions directly affecting them.

Taking all this into consideration, a Localisation Roadmap²⁸⁹ for the Rohingya refugee response is being formulated by the Centre for Peace and Justice, BRAC University at the request of the UN., following multi-stakeholder consultations at the national and Cox's Bazar level.

5.3 Conclusion

The complex and contested terrain of localisation in the Rohingya refugee response operates within a tough policy environment and a multi-layered humanitarian coordination structure in Bangladesh. The whole-of-society approach demands engaging with this complexity and navigating this landscape with a nuanced and sensitive understanding of the evolving context-specific challenges and the dynamics between various stakeholders.

Localisation debates, often framed in binary terms of local versus international, fail to capture the diversity and complexity of humanitarian capacity, and have a tendency to pit one kind of actor against another in a contest over resources and legitimacy. Localisation could also be understood as the capacity to understand and respect the local context, navigate local politics and ways of working, engage refugees and host communities themselves in decision-making and coordination structures, and ultimately to meet the actual needs, vulnerabilities, and risks of refugees and host communities.

²⁸⁶ Sida *et.al*, *supra* n. 57, pp. 13-14

²⁸⁷ Roepstorff, *supra* n. 258.

²⁸⁸ Amnesty International, Let Us Speak for Our Rights- Human Rights Situation of Rohingya Refugees in Bangladesh (2020), available at <https://www.amnesty.org/download/Documents/ASA1328842020ENGLISH.PDF>

²⁸⁹ Formulation of a Roadmap for further Localisation of Humanitarian Response in Cox's Bazar, available at <https://cpj.bracu.ac.bd/cpj-research/formulation-of-a-roadmap-for-further-localisation-of-humanitarian-response-in-coxs-bazar-2/>

As aptly observed in a Humanitarian Policy Group (HPG) report:²⁹⁰

The context in Bangladesh demonstrates that a successful multi-stakeholder approach is not measured simply by the number of actors involved, but the dynamics between them, modalities for working together, consensus-building and the extent to which various actors work together towards shared goals. In a context dominated by competing interests and perspectives, this has proved challenging.

²⁹⁰ Hargrave *et.al*, *supra* n. 37, p. 9.

Chapter 6: The Way Forward: Key Recommendations

While it is true that the long-term solution of the Rohingya crisis lies in Myanmar, it must also be acknowledged that safe, dignified and voluntary repatriation of Rohingya refugees to Myanmar is not feasible in the short-term. Therefore, appropriate plans need to be developed to ensure that stateless Rohingya refugees can live a life of dignity and hope in countries of asylum, including Bangladesh, while also preparing them for achieving sustainable solutions in the longer term.

Together with humanitarian partners, the Government of Bangladesh should pursue sustainable plans taking into account the needs of both refugees and host communities and provide more opportunities for affected communities to participate in planning of the response, creating trust and hope and a sense of agency. A dignified and sustainable strategy for the Rohingya refugee response in line with a whole-of-society approach will need stronger cooperation and coordination among stakeholders as follows:

1. Refugee Protection

- a. The Government of Bangladesh should undertake an urgent review of the 2013 National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals.

Current government policy is not fit-for-purpose in light of the large movement of hundreds of thousands of stateless Rohingya refugees in 2017, and the recent military coup in Myanmar. A clear policy framework should be developed for the Rohingya refugee response that is State-owned, and consistent with existing domestic human rights obligations and humanitarian principles, and that:

- Establishes a clear, transparent and predictable framework of cooperation for the Rohingya refugee response that is designed to include affected communities.
- Ensures that people in need of protection are not pushed-back at the borders and can access protection and humanitarian assistance.
- Acknowledges the Rohingya identity and their Myanmar nationality; recognising the fact that the Rohingya are refugees and their experiences of persistent persecution and marginalisation in Myanmar, in line with Bangladesh's obligations under international law.

- b. The Government of Bangladesh should work to improve camp security and build community resilience, on the basis of consultations with affected communities and humanitarian stakeholders.

Security in the camps is best achieved in consultation with affected communities themselves, who are best placed to understand existing risks, with input from all relevant stakeholders who can support the design of appropriate strategies and preserve the civil and humanitarian character of the camps. Security can also be improved by:

- Improving refugees' access to and participation in formal and protection-sensitive and community-centred informal justice systems through stronger engagement with legal actors.
- Designing formal education and skills training projects benefiting both refugees and host communities, to reduce aid dependence, enhance self-reliance and reduce social tensions.²⁹¹
- Prioritising multi-sectoral GBV support and outreach services for Rohingya refugee and host communities.
- Engaging the support of camp authorities (CiCs/ACiCs, Bangladeshi Army, ApBN) in recognising protection needs, vulnerabilities, and risks; making effective referrals; and managing data ethically and securely as part of the Joint Capacity Sharing Initiative led by the Site Management sector.
- Lifting restrictions on Rohingya volunteer and cash-based programmes in the camps, acknowledging their role as legitimate humanitarian actors and helping them use existing skills and build new skills to foster productivity and a sense of hope and agency.
- Ensuring continued telecommunications access in accordance with the Government's 'Digital Bangladesh' Vision to ensure efficient and effective information dissemination by the government and humanitarian actors, particularly in a pandemic setting, help maintain family and social/community networks, and counter misinformation, vulnerability to manipulation, and insecurity in and around the camps.
- Preserving protection related services for those most at risk, even amidst COVID-19 restrictions.

- c. The Government of Bangladesh should ensure an efficient, effective and predictable humanitarian response.

The humanitarian community is supporting the Government of Bangladesh in delivering the Rohingya refugee response. Predictable administrative arrangements and unrestricted humanitarian access are critical for meeting the most urgent needs of refugees and host communities. Humanitarian partners face significant operational challenges within the existing system, resulting in delays, loss of resources and negative impacts on the well-being of affected communities. The current framework can be strengthened as follows:

- Ensuring regular dialogue between the government and all relevant actors through clear and established channels to build mutual trust and understanding.

²⁹¹ IRC, *supra* n. 180.

- Providing clear, written guidelines for humanitarian operations, streamlining, clarifying and expediting project approval procedures, reducing paperwork, and ensuring transparency and consistency in processes.
 - Extending FD-7 approvals for at least 1-year consistent with the JRP timeframe, and in some cases multi-year implementation should be possible where appropriate.
 - Expediting issuance of visas and work permits for international humanitarian staff in line with approved projects in order to ensure timely and high-quality service delivery to affected communities.
 - Ensuring regular dialogue between the government and all relevant actors to build mutual trust and understanding.
- d. Donors and the humanitarian community (including all international, national, and local stakeholders) alongside affected communities, should prioritise consensus-building, taking a differentiated but harmonised approach to advocacy aimed at strengthening refugee protection.

Such an approach should build upon unified advocacy positions²⁹² on key areas of common interest and concern and utilise the complementary roles and capacities of each stakeholder (connections, access, experience navigating existing bureaucracies, languages, technical capacities, resources, etc.) to achieve greater advocacy impact. The humanitarian community should also strengthen its engagement with human rights actors and human rights mechanisms and Bangladeshi civil society (academics, researchers, think tanks, media etc).

- e. The humanitarian community (including all international, national, and local stakeholders) alongside affected communities, should consider establishing a Humanitarian Access Working Group.

The working group could be established under ISCG leadership and provide a safe platform to discuss and analyse access constraints and propose strategic solutions. Simple and user-friendly tracking tools in English, Bangla, and Rohingya languages should be developed to ensure secure and confidential data sharing, reporting, analysis and tracking of access challenges.

²⁹² International and Bangladesh NGOs can play a leading role in establishing strong collective evidence-based advocacy positions on specific issues based on their expertise and areas of influence and building on their field presence, contextual understanding and access to data and information. For example, international protection agencies can guide joint advocacy on key refugee protection issues while local agencies with strong understanding and networks with camp-based authorities, police, security agencies and district officials may help shape the humanitarian access advocacy agenda to address aid restrictions and bureaucratic barriers for all NGOs working in the response.

- f. The humanitarian community should connect regionally and internationally to inform and strengthen efforts at securing responsibility-sharing and better protection outcomes (including possible solutions) for stateless Rohingya refugees displaced throughout the region and globe.

This should include pro-actively and systematically engaging existing processes (the Bali Process, ASEAN, the Global Refugee Forum) to set the agenda, guide discussions and influence outcomes.

- g. The Strategic Executive Group and Inter-Sector Coordination Group should commission an independent and consultative evaluation of the Rohingya refugee response in Bangladesh.

Previous independent evaluations of the Rohingya refugee response in Bangladesh conducted in 2018 provided valuable insights into the role of different agencies serving in the response and made important recommendations to inform the response going forward. Many of the findings remain valid even today. However, these evaluations did not assess and review the inter-sectoral and collective humanitarian action in the Rohingya refugee response in Bangladesh. Given that the context has significantly evolved with a few improvements and many emerging gaps and challenges, there is a demonstrated need for an independent and consultative evaluation of the overall response. Such an evaluation should assess the extent to which the response is able to meet protection and assistance needs of refugees, highlight lessons learnt, identify good practices and propose strategic and operational recommendations that promote stronger complementarity among stakeholders.

2. Humanitarian Coordination

- a. The Strategic Executive Group and Inter-Sector Coordination Group should facilitate a comprehensive review exercise to address complexity and gaps in humanitarian coordination.

The review should be inclusive and involve consultation with all relevant stakeholders, including in particular diverse voices within the Rohingya refugee community. It should consider all existing networks and coordination structures, address perceptions of inclusion and exclusion of specific actors, identify existing gaps and overlaps, and conflict or lack of clarity among stakeholders. The review should:

- Seek to address and build on recommendations made by previous evaluations and review processes.
- Include a broad-based mapping and stakeholder analysis (UN agencies, international/national/local NGOs, NGO networks, local authorities, groups among the

host and Rohingya communities) to gain a better understanding of their individual roles/ and capacities, assess exclusion/inclusion of actors from intersectional perspectives and identify gaps/ and overlaps, in order to build more effective and efficient structures.

- Consolidate a shared “referrals guide” to enhance common understanding of complementary roles and capacities in the Rohingya refugee response and build trust between diverse humanitarian stakeholders.

- b. The humanitarian community should establish clear and consistent standards for information exchange both for Government counterparts and humanitarian staff.

The humanitarian community, led by SEG/ISCG, should agree on a common data sharing framework agreement with the Government of Bangladesh in line with humanitarian principles international humanitarian standards and domestic laws/policies, to establish clear and consistent standards for information exchange both for Government counterparts and humanitarian staff.

3. Localisation of the Rohingya Refugee Response

- a. Donors should rethink and revise their practices by harmonising and simplifying partnership arrangements to promote complementarity in humanitarian action.

Donors have the responsibility to ensure that smaller national organisations and refugee-led organisations are able to access funding, in line with the Grand Bargain commitments, without compromising on quality and accountability standards. The donor community in Bangladesh should recognise the risks of divisions in the sector due to the complex and unequal power dynamics between humanitarian stakeholders and use their power and influence in the Rohingya refugee response by:

- Ensuring that humanitarian partnership arrangements are equal, constructive and transparent and recognise the diversity and inter-dependence of humanitarian partners, through early consultations, improved information sharing, inclusive coordination mechanisms and financial transparency.
- Simplifying procedures and harmonising donor practices, increasing funding and support for multi-year investment in local protection capacity, and considering diversified funding streams such as country-based pool funds, direct funding, consortium support, etc., in line with the Grand Bargain commitments.
- Ensuring transparent and systematic tracking of funding as one piece of critical evidence to measure progress in aid localisation.

- b. The Strategic Executive Group and Inter-Sector Coordination Group should lead the development of a shared localisation strategy.

The Strategic Executive Group and Inter-Sector Coordination Group should aim at achieving solidarity among diverse stakeholders and improving protection outcomes for affected communities with enhanced and accountable local participation and leadership through an inclusive localisation strategy, building on the Localisation Roadmap that has been developed. At the level of humanitarian coordination, it should translate into the inclusion of diverse humanitarian stakeholders, including affected communities and international, national, and local humanitarian actors, by mainstreaming their participation in sectors and other decision-making bodies. To address language barriers, investments should be made in consistent, quality and ethical translation and interpretation support in Bangla and Rohingya languages.

- c. The NGO community (including all international, national, and local agencies), should prioritise complementary and coordinated NGO action to achieve the best humanitarian outcomes for affected communities.

The starting point for localisation in the Rohingya refugee response is understanding the needs of stateless Rohingya refugees and host communities, and then, developing local protection capacity to meet those needs.²⁹³ Capacity cannot be understood outside of context, and it requires specific knowledge, experience, relationships, ways of working, and social and cultural understanding, in addition to technical expertise.²⁹⁴ In the context of the Rohingya refugee response, the NGO community should reflect and take steps to collaborate and coordinate in order to effectively and sustainably deliver humanitarian support by:

- Collectively contribute to a broad-based mapping and stakeholder analysis and development of a shared referrals guide, led by SEG/ISCG, to build trust and enhance common understanding of complementary capacities in the response. (See Recommendation 1 on Humanitarian Coordination).
- Promoting NGO leadership and engagement in the Rohingya refugee response by strengthening existing NGO coordination mechanism/s by building closer linkages between international, national and local NGO networks, aimed at promoting the humanitarian agenda over individual or organisational interests.

²⁹³ Brian Barbour *et.al*, *supra* n. 5.

²⁹⁴ Humanitarian twinning programmes currently in place in other humanitarian settings like Afghanistan and Somalia along with consortium approaches, aimed at increasing the participation of national actors in the response and build their capacity to access more funding and enhance capacity-sharing between international and national NGOs, can also be applied in the Rohingya response to nurture an inclusive and complementary response. See, ACBAR, Humanitarian Twinning Program, available at <http://www.acbar.org/page/7.jsp?title=Humanitarian-Twinning-Program>; and Somalia NGO Consortium, Twinning Program, available at <http://www.somaliangoconsortium.org/services/twinning-program/>

4. Cross-Cutting Issue: Engagement with Affected Communities

- a. The Government of Bangladesh and the humanitarian community should centralise Rohingya representation in humanitarian decision-making.

The Rohingya have lived for many years in Myanmar and Bangladesh under difficult conditions and without access to basic rights and services. Over the years, they have developed strong community networks and innovative coping strategies and capacities to address their problems. Community-centred approaches to humanitarian programming and decision-making will lead to inclusive and positive humanitarian outcomes based on trust, respect and dignity. The Government of Bangladesh with the involvement of the humanitarian community should support community self-representation and leadership by:

- Advocating for an inclusive legal and operational space that will help elevate Rohingya voices by encouraging and supporting formal and informal Rohingya civil society initiatives and systematically help build leadership and representative structures in the community.
- Fostering meaningful participation of Rohingya and host community representatives (from among elected representatives, teachers, community mobilisers, faith-based leaders etc) in key sector humanitarian coordination and humanitarian decision-making fora, including through greater access to digital communication tools.
- Creating a safe space for Rohingya refugee volunteers, by putting in place community-based safeguarding measures such as community policing, safety audits, strong reporting and referrals mechanisms and sensitivity trainings for the community, camp authorities and security actors.²⁹⁵
- Establishing community-based representative structures in the form of camp and block level committees replacing the existing majhi system, across all the camps, in collaboration with RRRC and CiCs.

- b. The Government of Bangladesh and the humanitarian community should promote social cohesion through host community engagement.

The socio-economic and environmental challenges faced by local populations of Cox's Bazar, one of the most underdeveloped and disaster-prone districts of Bangladesh, have been compounded by the presence of more than 800,000 Rohingya refugees. The lack of a clear longer-term framework for the Rohingya refugee response has created uncertainty for both refugee and host communities, resulting in tensions. The Government of Bangladesh with the involvement of the humanitarian community must continue to support host communities in addressing gaps in access to basic needs and services, determined through a consultative process by:

- Conducting structured consultations with diverse voices in the host community to assess their needs, vulnerabilities, and risks; their perceptions; and challenges and opportunities for positive interaction between Rohingya and local communities continuing impact of the

²⁹⁵ PWG/GiHA, *supra* n. 165.

presence of more than 800,000 Rohingya refugees in the district as well as develop a better understanding of their needs and priorities.

- Providing accurate information on a regular basis to the local community to build awareness on the host community initiatives implemented by the humanitarian community in Cox's Bazar and assess its impacts.
- Facilitating direct engagement between host communities and Rohingya refugees, including through the use of digital communications tools, where possible, to identify common concerns and resolve disputes in an amicable manner, with the support of Bangladeshi authorities and humanitarian actors.

5. Specific issues

5.1 Relocation to Bhasan Char

- a. *The Government of Bangladesh should constructively engage with Rohingya refugees and humanitarian community to address legitimate concerns regarding the relocations to Bhasan Char.*

Some 18,000 Rohingya refugees have been relocated to Bhasan Char, amidst concerns expressed by humanitarian and human rights groups. A group of 306 Rohingya refugees who have been on the island since being rescued at sea in May 2020, are yet to be permitted to return to their families in the Cox's Bazar camps, despite repeated requests.

Along with the Bangladeshi authorities, many humanitarian partners are already operational on the island providing basic services. UN teams and donor missions have concluded initial visits to the island, shared their recommendations and offered to discuss the possibility of future operations with the Government of Bangladesh. Despite these developments, concerns continue to be expressed by refugees, humanitarian agencies and human rights groups regarding the adequacy of the protection environment, voluntariness of relocations, accessibility of emergency medical care and justice mechanisms, and the general conditions on the island. The Government of Bangladesh should:

- Facilitate the return and family reunification of 306 Rohingya refugees being held in Bhasan Char since May 2020 to Cox's Bazar camps.
- Allow the UN to conduct independent, detailed technical assessments of the habitability of the island, physical safety/ protection environment and feasibility of humanitarian operations to ensure the well-being of Rohingya refugees on the island and facilitate future humanitarian engagement and support.

- b. The humanitarian community should advocate for voluntariness of all future relocations and availability of basic rights and services for refugees in Bhasan Char.*

Under the leadership of the Strategic Executive Group, the humanitarian community, including donors, should remain constructively engaged with the Government of Bangladesh to discuss the parameters of humanitarian involvement in Bhasan Char. In addition to advocating for the above-mentioned outcomes (Recommendation 1 under Relocation to Bhasan Char), the humanitarian community should:

- Support the Government of Bangladesh in ensuring voluntariness of future relocations to Bhasan Char, through consultations with refugees and the humanitarian community, provision of accurate and verifiable information delivered through trusted channels, counselling on protection risks and communication/other restrictions if any, and enabling informed consent of refugees prior to proposed relocation.
- Conduct a mapping of available rights and services available on the island, including identifying gaps and risks.

5.2 Situation in Myanmar

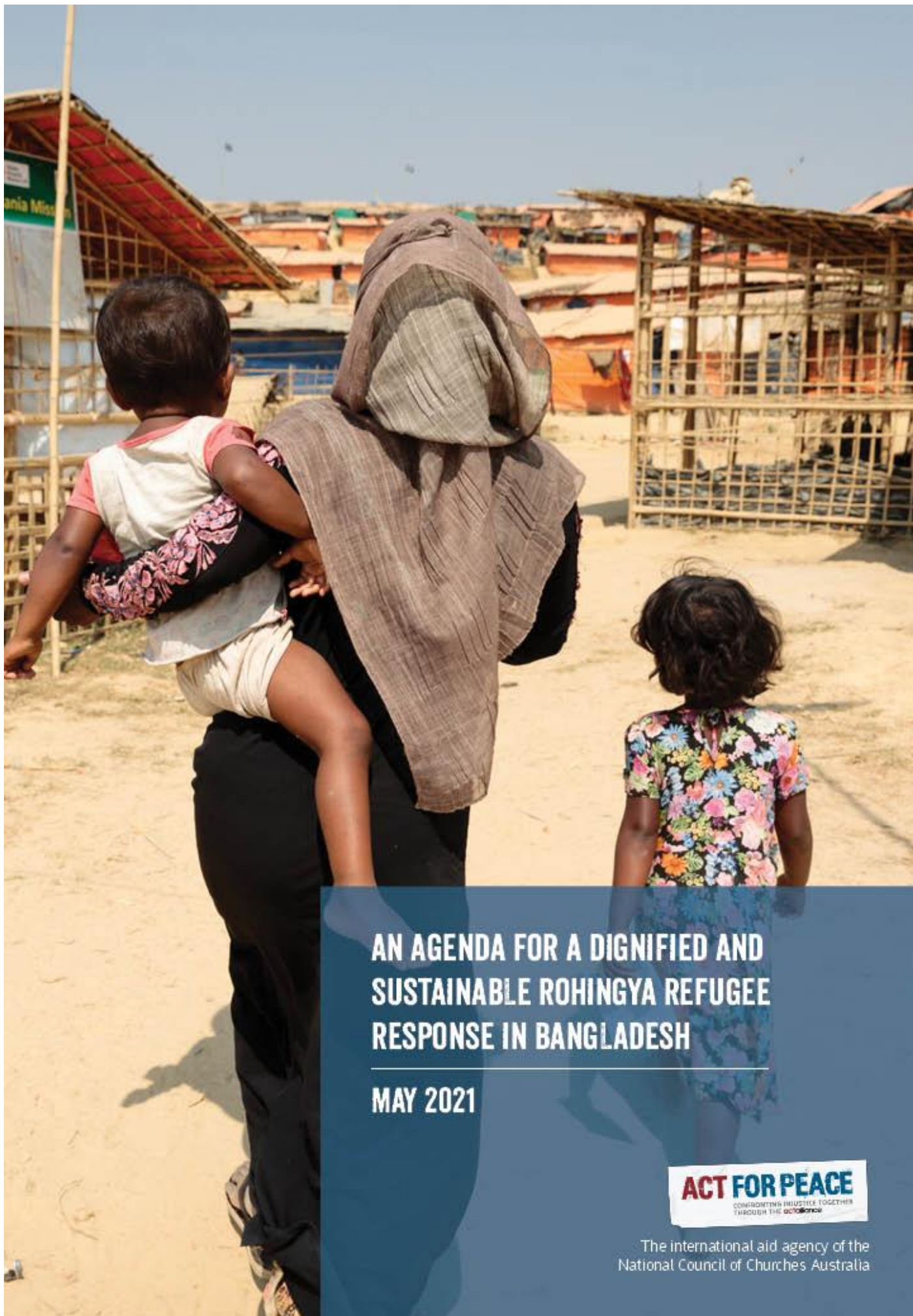
- a. The Government of Bangladesh should continue its efforts at pursuing justice and accountability in Myanmar.*

Bangladesh has displayed strong leadership in championing international efforts at securing justice for Rohingya victims of mass atrocities in Myanmar. In partnership with humanitarian, human rights and diplomatic actors, the Government of Bangladesh should continue to support justice and accountability through the ICJ and the ICC, join efforts by regional actors and international bodies to disrupt cycles of violence and forced displacement, ensure access to safety for those fleeing persecution, prevent instances of refoulement through the implementation of push back policies and ensure meaningful participation of the Rohingya community at all stages.

- b. The humanitarian community should continue its strong advocacy on safe, dignified and voluntary returns of Rohingya refugees to Myanmar in line with international standards.*

Following the recent military coup in Myanmar, the situation of Rohingya in Rakhine State has further deteriorated with increasing violence and restrictions on access to rights and services. The prospects for Rohingya refugee repatriation are uncertain at this time. Yet, many countries of asylum continue to adopt policies and practices that routinely push back Rohingya refugees and/or focus on their speedy repatriation and exclude them from humanitarian assistance and protection. The humanitarian community should:

- Respect and advocate for the human rights of stateless Rohingya refugees to be upheld in Myanmar and all countries of asylum, including Bangladesh. violations.
- Respond to calls for swift repatriation of Rohingya refugees by advocating for safe, dignified and voluntary returns only when conditions are conducive, in line with international standards and in accordance with Rohingya refugees' wishes.



AN AGENDA FOR A DIGNIFIED AND SUSTAINABLE ROHINGYA REFUGEE RESPONSE IN BANGLADESH

MAY 2021



The international aid agency of the
National Council of Churches Australia