

ROHINGYA REFUGEE CRISIS

# Why the ICJ order is not enough to solve the crisis and what we can do about it



**T**HE International Court of Justice (ICJ) order on provisional measures issued unanimously by a full bench of seventeen Judges on January 23, 2020 in the matter of *The Gambia v Myanmar* is historically

significant and an important development of international law. It recognises and highlights the need for protective measures for the Rohingya residing in Myanmar, and by extension those several hundred thousand Rohingya refugees seeking asylum in Bangladesh. While this preliminary ICJ decision has been applauded by several governments and countless jurists and activists and of course the Rohingya community, it will not solve the Rohingya refugee crisis.

Indeed, international justice measures before the ICJ and International Criminal Court (ICC) may paradoxically make finding a return solution more challenging by creating contradictory pressures on the Myanmar authorities. Putting Myanmar and its military leadership on notice that they will be held to account for potential crimes or failure to ensure the human rights protection of the Rohingya—an ethnic group which is not recognised by the government—may result in the military-as-an-institution digging in and refusing to relinquish power. As noted by Australian researcher Morten Pedersen, the Myanmar generals “will be well aware of what happened to, for example, General Pinochet, and that the only way for them to remain safe is to be in power.”

Assuming power alliances in Myanmar remain intact, the current prospects of return are extremely remote given the Rohingya's demands for citizenship, reparations, human rights and physical protection by the Myanmar authorities. And while many



Rohingya refugees in Bangladesh waiting to receive aid.

FILE PHOTO: REUTERS/MOHAMMAD PONIR HOSSAIN

*Of course, the international community cannot overlook the serious violations of human rights experienced by the Rohingya. Some measures of accountability and seeking justice for the Rohingya are essential and will remain on the agenda.*

Rohingya have expressed the desire to return “home”, it is unconscionable to expect they will do so in light of the preliminary finding by the World Court that “plausible” genocide has taken place and a risk of harm remains. Similar to the exodus of Jews from fascist Europe, Rwandans after the Rwandan genocide, or Bosnians and other refugees from the former Yugoslavia, the Rohingya cannot be expected to return to a territory where they are demonised, disenfranchised, and most importantly, remain unprotected. Delivering on the Rohingya's demands requires commitment from Myanmar, and from the perspective of the Rohingya, may be essential before any move to return. But such commitment is currently lacking and may not materialise.

The issue of refugee return was specifically addressed by the ICJ in referencing Myanmar's statement during oral proceedings

that it is currently engaged in repatriation initiatives to facilitate the return of the Rohingya. Myanmar further submitted that it intends to promote ethnic reconciliation, peace and stability in Rakhine state, and to make the military accountable for violations of international law. However, the ICJ rejected this plea and noted that Myanmar had not presented “any concrete measures aimed specifically at recognising and ensuring the right of the Rohingya to exist as a protected group under the Genocide Convention.” The ICJ went on to cite the UN General Assembly's December 2019 resolution on Myanmar that “the situation has not improved in Rakhine state to create the conditions necessary for refugees and other forcibly displaced persons to return to their places of origin voluntarily, safely and with dignity.”

An additional consideration for safe return is the role of the United Nations. The UN continues to have a limited operational presence, political leverage and opportunities to expand its role with a human rights and refugee protection focus in Myanmar. How the UN can engage in a repatriation scheme with a credible monitoring role in Myanmar and robust advocacy for the Rohingya is unclear at best, and remains unlikely given the current and foreseeable politics.

Further, why the events of August 2017 which gave rise to the mass exodus of Rohingya refugees to Bangladesh did not prompt decisive action by the UN Security Council in what may be considered a textbook case envisioned by the “Responsibility to Protect” regime can be summed up in a few words: *lack of collective political will*. The Security Council's permanent members China and Russia in particular have not to date agreed to any Council action against Myanmar. Despite the current impasse, as an executive organ with authority to adopt enforcement measures under the UN Charter, the Council should have a clear obligation to act when credible allegations of genocide or crimes against humanity are brought before it. While some have suggested UN peacekeepers or international observers or monitors be deployed to ensure the safety and security of the Rohingya upon return, that is a far reach

without the full agreement of all Council members.

Two and a half years on since the latest mass influx, the Rohingya refugee crisis remains an enormous challenge for the international community and in particular Bangladesh. The current political climate on the Rohingya issue isn't easy and there is a legitimate concern that the international community may lose interest which can impact delivery of available resources. Bangladesh would then face the challenge of coping without continued international support, and it is unlikely to absorb a million of its neighbour's would-be citizens.

Against this background, the following options could be taken by the Bangladesh government and the international community to help alleviate the suffering of the Rohingya refugees and pressure on Bangladesh. While neither novel nor unprecedented, these proposals have received limited attention to date.

Bangladesh (and other countries hosting Rohingya refugees) should grant them access to public schools and temporary work rights in addition to ensuring health care including psycho-social support, family planning and reproductive health services. Bangladesh is permitting some of this type of assistance already as the UN and dozens of domestic and international NGOs are present there and working on a range of protection and assistance programmes in the camps. But full access to education is particularly important—over 70 percent of Rohingya are illiterate and innumerate, so the recent announcement that Bangladesh will permit access to schools for Rohingya refugee children is highly commendable. Hopefully, this move by the Bangladesh government will encourage other countries in the Asia region to adopt a similar approach.

The World Bank and UN development actors have committed to upscale the welfare and economic absorption and co-existence of the Rohingya with local communities. Delivering services requires considering an end to encampment and permitting refugees to be hosted in communities outside of Cox's Bazar. Registration of the refugee population with a national authority and international

organisation would similarly meet the law and order concerns of the Bangladesh authorities.

Apart from providing services, it should be acknowledged that refugees have skills and want to work and help themselves. While the Rohingya may currently find limited work in the informal economy in Bangladesh, the absence of legal protection makes them vulnerable to exploitation and abuse. Permitting them to work legally in areas with labour needs contingent on being registered would be a significant step forward. Engaging the International Labour Office in supporting skills training and creating job opportunities, similar to initiatives for Syrian refugees in Jordan, could also be explored.

Another solution is resettlement. Canada is one country which has communicated its interest to resettle Rohingya refugees from Bangladesh. A properly managed resettlement programme with UNHCR support can avoid risks of fraud or so-called “pull factors”. Any resettlement would initially be modest and prioritise urgent protection cases such as women victims of violence, the medically at risk, and separated or unaccompanied family members. Malaysia, for example, generously permits an estimated 150,000 Rohingya refugees to *de facto* reside in the country; it also, with UN support, facilitated over 10,000 Rohingya to be resettled to several countries including Canada, the United States, Japan and New Zealand over the last decade.

Resettlement and other options to move abroad should be explored in the Asia region and beyond. There is public sympathy for the plight of the Rohingya, and several Southeast Asian and Gulf states have vibrant economies which can and do provide work opportunities, including for many Bangladeshis. Regional solidarity through a managed programme of moving Rohingya refugees from Bangladesh to neighbouring countries would be a positive example of global responsibility-sharing envisioned by the UN New York Declaration on Refugees and Migrants and the Global Compact on Refugees which have received strong diplomatic and political support from Bangladesh. Similar to the Comprehensive Plan of Action adopted for

Indo-Chinese refugees, there are various options which could be adopted including temporary protection in a third country; temporary protection and stay with eventual resettlement; or repatriation under international supervision with an option of applying for asylum if conditions require.

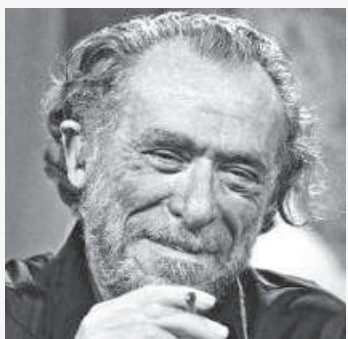
Of course, the international community cannot overlook the serious violations of human rights experienced by the Rohingya. Some measures of accountability and seeking justice for the Rohingya are essential and will remain on the agenda. The investigation underway by the ICC and proceedings before the ICJ are important steps, but a resolution of these international justice measures will take several years. Beyond individual criminal and state accountability, and of more immediate impact, UN human rights monitors have suggested an embargo on business interests tied to the Tatmadaw to cut off financial and other support. There are also options to impose sanctions against military officers and family members. Identifying and seizing hidden assets outside Myanmar is another area that national departments of justice can explore.

The immediate task is to continue to support Bangladesh and the Rohingya refugees with humanitarian assistance. Looking ahead, inclusive and systematic refugee representation in important decisions which affect them, especially about repatriation, is a must. Failure to engage with and include the Rohingya will limit or prevent buy-in to whatever is negotiated on their behalf.

The humanitarian dimension of the current crisis can continue to be well managed with sound leadership, strategic planning, creative diplomacy and advocacy and a degree of political good luck. But luck alone is insufficient and will not lead to solutions the Rohingya deserve, and Bangladesh and the international community legitimately demand. The options discussed above deserve urgent attention.

Brian Gorlick is a human rights lawyer and tutor on Gender, Sexual Identity and Age in the Refugee Context at the Refugee Law Initiative, School of Advanced Study, University of London. Previously, he worked with the Office of the United Nations High Commissioner for Refugees (UNHCR) and UN Secretariat for over twenty-five years.

QUOTABLE Quote



**CHARLES BUKOWSKI**  
(1920-1994)

German-American poet, novelist, and short story writer

*We are here to laugh at the odds and live our lives so well that death will tremble to take us.*

CROSSWORD BY THOMAS JOSEPH

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YESTERDAY'S ANSWERS

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BEETLE BAILEY

by Mort Walker

BABY BLUES

by Kirkman & Scott