



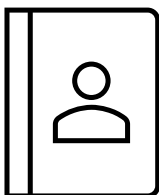
THESIS MONOGRAM
on
The Challenges of Implementing Safe, Voluntary, and Dignified Repatriation of Rohingya Refugees
under International Law

Supervised To:
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To
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Subject: Submission of Research Monograph on “*The Challenges of Implementing Safe, Voluntary, and Dignified Repatriation of Rohingya Refugees under International Law*”

Dear Sir,

With due respect, I am pleased to submit my research monograph entitled “*The Challenges of Implementing Safe, Voluntary, and Dignified Repatriation of Rohingya Refugees under International Law.*” This monograph has been prepared and completed as a partial fulfillment of the requirements for the LL.B. (Honours) Program under the Department of Law, Sonargaon University (SU).

The research has been carried out under your guidance and supervision, and it reflects my sincere effort to analyze the relevant legal frameworks, challenges, and international obligations concerning the repatriation of Rohingya refugees. I have endeavored to follow the prescribed academic guidelines and incorporate relevant international legal principles to the best of my ability.

I would like to express my sincere gratitude for your valuable guidance, constructive suggestions, and continuous support throughout the preparation of this monograph. I hope that this research will meet the academic standards and expectations of the department.

I shall be highly obliged if you kindly accept this monograph for evaluation.

Yours sincerely,

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LETTER OF CERTIFICATION

This is to declare that this thesis entitled “**THE CHALLENGES OF IMPLEMENTING SAFE, VOLUNTARY, and AND DIGNIFIED REPATRIATION OF ROHINGYA REFUGEES UNDER INTERNATIONAL LAW**” is a real work done by Tanveer Ahmed on behalf of the degree of LLB (Bachelor Of Laws) is the greatest of bona fide research carried out under my supervision in the Department of law Sonargoan University. This Thesis, or any part thereof, has not been submitted for any other Degree.

SUNZIDA AKTHER SUYAIBA (Lecturer)

(Supervising Teacher)

LETTER OF DECLARATION

This is to declare that this thesis entitled “**THE CHALLENGES OF IMPLEMENTING SAFE, VOLUNTARY, and AND DIGNIFIED REPATRIATION OF ROHINGYA REFUGEES UNDER INTERNATIONAL LAW**” is a real work done by me on behalf of the degree of LLB (Bachelor Of Laws) is the greatest of bona fide research carried out under my supervision in the Department of law Sonargoan University. This Thesis, or any part thereof, has not been submitted for any other Degree. I further than announce that this research has not been previously established the foundation for the honor of any other program of degree.

Sonargoan University

Tanveer Ahmed

05-01-2025

Acknowledgement

With deep humility and sincere gratitude, I acknowledge the guidance, support, and goodwill that have accompanied me throughout the completion of this research monograph entitled “**The Challenges of Implementing Safe, Voluntary, and Dignified Repatriation of Rohingya Refugees under International Law.**” This work is the result of collective encouragement, intellectual guidance, and compassionate presence.

First and foremost, I respectfully express my profound appreciation to my esteemed supervisor, **Sunzida Akther Suyai**, Lecturer, Department of Law, Sonargaon University (SU), Dhaka, for her scholarly guidance, patience, and unwavering support. Her insightful supervision and thoughtful mentorship have been fundamental in shaping the analytical framework and academic integrity of this research.

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I also extend heartfelt gratitude to my classmates, family members, and friends for their constant support, understanding, and encouragement. Their quiet strength and compassion provided balance and perseverance during moments of difficulty and reflection.

Finally, I humbly dedicate this work to the pursuit of justice and the welfare of all beings, particularly those who endure displacement and statelessness. May this research serve as a modest contribution toward dignity, equality, and the realization of humane and ethical principles within international law.

Tanveer Ahmed

DEDICATION

First of All, I am showing my admiration and gratitude to Almighty God. I like to express my gratitude and love to my Mother and Late Father for their sacrifices as well as to provide me the possibilities for higher study. They are still directing me to be a good human being and encouraging me to devote myself to the people of the world.

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LIST OF ABBREVIATION

Abbreviation	Full Form
UN	United Nations
ICJ	International Court of Justice
ICC	International Criminal Court
UNDP	United Nations Development Programme
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UNHCR	United Nations High Commissioner for Refugees
ASEAN	Association of Southeast Asian Nations
OHCHR	Office of the High Commissioner for Human Rights
R2P	Responsibility to Protect
IOM	International Organization for Migration
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
OIC	Organization of Islamic Cooperation
NVC	National Verification Card
AA	Arakan Army
IIMM	Independent Investigative Mechanism for Myanmar
MEHL	Myanmar Economic Holdings Limited
MEC	Myanmar Economic Corporation
HRW	Human Rights Watch
INGO	International Non-Governmental Organization
NGO	Non-Governmental Organization
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
AICHR	ASEAN Intergovernmental Commission on Human Rights

PREFACE

The plight of the Rohingya people stands as one of the most pressing humanitarian and legal crises of our time. Their forced displacement from Myanmar, marked by systematic persecution, statelessness, and violence, raises profound questions about the adequacy and enforcement of international law. This thesis seeks to critically examine the challenges of implementing safe, voluntary, and dignified repatriation for Rohingya refugees—a principle firmly established in international legal frameworks yet repeatedly undermined in practice.

What began as a broad inquiry into refugee protection under international law soon crystallized into a focused study on the Rohingya, whose ongoing suffering underscores the gap between legal norms and real-world compliance. I am deeply indebted to my supervisor, Sunzida Akther Suyaiba for her invaluable guidance in refining the scope of this research and for her unwavering support throughout the writing process. Her scholarly insight and steady encouragement were essential in navigating the complex legal, historical, and humanitarian dimensions of this crisis.

I also extend my sincere thanks to Barrister Mashiur Rahman Sabuj lecturer of the Department of Law, Sonargaon University, for their thoughtful feedback and academic mentorship. Their expertise in international law and human rights enriched this work significantly,

This thesis is dedicated to the resilience of the Rohingya community and to all those working tirelessly to uphold the principles of justice, dignity, and protection for the forcibly displaced. It is my hope that this research contributes meaningfully to the ongoing legal and policy discourse on refugee repatriation and serves as a call for renewed commitment to international law and human rights. Finally, I acknowledge with gratitude the unwavering support of my family. My mother's steadfast belief in my pursuits and my late father's enduring emphasis on education and justice have been my guiding lights. To their memory, I humbly dedicate this work.

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Abstract

The Rohingya crisis represents one of the most severe humanitarian and legal challenges of the 21st century. Fleeing persecution and statelessness in Myanmar, hundreds of thousands of Rohingya refugees have sought shelter in neighboring countries, primarily Bangladesh. Despite multiple repatriation agreements, returns have repeatedly failed due to unsafe conditions, lack of citizenship, and inadequate international oversight. This thesis examines the legal, humanitarian, and political obstacles to implementing safe, voluntary, and dignified repatriation under international law. It critically analyzes Myanmar's obligations, the responsibilities of host and regional states, and the role of international organizations, including the UN, ICJ, and ICC. Using a case study approach, the thesis evaluates past failed repatriation efforts, highlighting gaps in compliance with non-refoulement, human rights, and statelessness frameworks. Legal analysis demonstrates that the absence of safety guarantees, citizenship, and access to basic services violates fundamental international law principles, rendering repatriation non-voluntary and non-dignified. The thesis concludes with practical recommendations for Myanmar, Bangladesh, ASEAN, and the broader international community, emphasizing coordinated legal, humanitarian, and political strategies. These recommendations aim to ensure that any future repatriation respects international law, protects human rights, and addresses the long-term needs of Rohingya returnees. This research contributes to understanding the complex interplay between state sovereignty, international obligations, and refugee protection, offering a model for managing large-scale displacement crises in line with global legal standards.

Chapter One

Introduction & Methodology

1.1 Background of the study

The Rohingya crisis represents a paradigmatic failure of the international refugee protection regime. Following the Myanmar military's violent crackdown in August 2017, over 700,000 Rohingya Muslims fled to Bangladesh, joining hundreds of thousands displaced in earlier waves of persecution. This mass exodus, widely condemned as ethnic cleansing by United Nations bodies, has created one of the world's most protracted and complex humanitarian emergencies. While repatriation is posited in international law as the preferred durable solution for refugees, all attempts to facilitate the safe, voluntary, and dignified return of the Rohingya to Myanmar have collapsed. This persistent failure exposes a critical chasm between the normative promise of international law and its practical enforcement in the face of sovereign intransigence, structural discrimination, and geopolitical constraints.

This paper argues that the repatriation of Rohingya refugees is legally impossible under prevailing conditions in Myanmar, which systematically violate the core principles of non-refoulement, voluntariness, and human dignity. The primary obstacles are not merely logistical but are rooted in Myanmar's domestic legal architecture—specifically the 1982 Citizenship Law, which renders the Rohingya stateless—and the ongoing conditions of insecurity and persecution in Rakhine State. By critically analyzing these legal barriers and evaluating the shared but often fragmented responsibilities of states and international actors, this study seeks to provide a coherent legal pathway toward a rights-compliant repatriation framework.

1.2 Problem of the study

Despite multiple bilateral agreements and international frameworks designed to enable refugee return, the Rohingya remain in limbo. Past repatriation efforts, notably in 1992 and 2018-2019, failed because they proceeded without addressing the foundational issues of citizenship, safety, and human rights. This raises a profound legal and practical problem: How can the principle of safe, voluntary, and dignified repatriation, as codified in international law, be implemented for a stateless population whose country of origin denies their fundamental rights and identity?

The central research question guiding this paper is: *What are the specific legal, political, and human rights barriers that prevent the safe, voluntary, and dignified repatriation of Rohingya refugees, and how can international law be mobilized to overcome them?*

1.3 Research Objectives

- To address this question, the study pursues the following objectives:
- To analyze the legal and historical foundations of Rohingya statelessness and persecution under Myanmar law.
- To examine the international legal framework governing refugee repatriation, with a focus on the principles of non-refoulement, voluntariness, and dignity.
- To assess the conditions in Myanmar's Rakhine State against international legal standards required for safe return.
- To evaluate the responsibilities and failures of Myanmar, host states (primarily Bangladesh), regional bodies (ASEAN), and the international community.
- To critically analyze past repatriation attempts as case studies of systemic failure.
- To propose a set of integrated legal, political, and humanitarian recommendations for a rights-based repatriation process.

1.4 Significance of the Study

This research contributes to several critical academic and policy debates:

Legal Scholarship: It provides a detailed doctrinal analysis of how statelessness interacts with the non-refoulement principle, offering a nuanced case study on the limits of refugee law when the state of origin is the persecutor.

Policy Relevance: The findings and recommendations are directed at policymakers in Myanmar, Bangladesh, ASEAN, and within UN agencies, offering a concrete blueprint for aligning repatriation processes with international legal obligations.

Broader Implications: The Rohingya crisis serves as a stark test case for the international community's commitment to human rights and accountability. This study illuminates the mechanisms through which international law can be either enforced or rendered impotent, providing lessons for other situations of mass displacement.

1.5 Scope and Limitations

Scope: The paper focuses on the legal obstacles to repatriation arising from international refugee law, human rights law, and Myanmar's domestic jurisprudence. It incorporates a political analysis of state and institutional responsibility, grounded in case studies of failed repatriation efforts from 2017 onward.

Limitations: Primary data collection inside Myanmar or from recently returned Rohingya was not feasible due to severe access restrictions and security risks. Consequently, the research relies on a robust body of secondary sources, including UN reports, rulings from international courts (ICJ, ICC), documentation from reputable NGOs (Amnesty International, Human Rights Watch), and scholarly literature. This reliance on verified secondary evidence is standard and appropriate for a legal analysis of this nature.

1.6 Theoretical and Methodological Framework

This study is grounded in a legal realist perspective, which acknowledges that law operates within political and social contexts. It employs a qualitative, multi-method approach:

Doctrinal Legal Research: This forms the core of the analysis. It involves the systematic examination of:

Primary Sources: International treaties (1951 Refugee Convention, ICCPR, ICESCR, Statelessness Conventions), UNHCR guidelines, and relevant case law from international tribunals.

Domestic Law: Critical analysis of Myanmar's 1982 Citizenship Law and related regulations.

Case Study Analysis: Two major repatriation attempts (1992 and 2018-2019) are analyzed as intrinsic case studies to identify points of legal and procedural failure, applying the doctrinal framework to real-world scenarios.

Comparative Analysis: Brief comparative references to other refugee situations (e.g., Afghan refugees) are used to highlight unique or shared challenges, strengthening the analytical framework.

1.7 Literature Review: Situating the Study in Scholarly Discourse

Existing scholarship on the Rohingya crisis can be categorized into three main strands, each contributing to but not fully capturing the integrated legal-political analysis required for understanding repatriation failure.

1.7.1 Historical and Legal Analyses of Rohingya Persecution

A robust body of work details the historical marginalization and legal erasure of the Rohingya. Scholars such as Cheesman¹ (2017) and Crouch² (2016) have meticulously documented how Myanmar's 1982 Citizenship Law institutionally excludes the Rohingya, rendering them stateless.

¹ Cheesman N, 'How in Myanmar "National Races" Came to Surpass Citizenship and Exclude Rohingya' (2017) 47(3) *Journal of Contemporary Asia* 461.

² Crouch M, 'The Layers of Legal History in Myanmar: A Case Study of The Muslim Ladies' Marriage Act' in Andrew Harding and Khin Khin Oo (eds), *Law and Society in Myanmar* (Routledge 2016).

This literature establishes the domestic legal foundation of the crisis but often stops short of fully tracing its implications for international repatriation law (Southwick, 2019).³ The historical narrative is clear: Rohingya persecution is state-sanctioned and systematic.

1.7.2 International Legal Frameworks and Protection Gaps

A second strand focuses on international law. Authors like Hathaway (2021)⁴ and Goodwin-Gill (2018)⁵ provide authoritative analyses of the 1951 Refugee Convention, the non-refoulement principle, and the rights to nationality under the 1961 Statelessness Convention.

UNHCR guidelines on voluntary repatriation (1996)⁶ are frequently cited as the operational standard. However, this literature often adopts a doctrinal or normative perspective, highlighting what the law should do rather than empirically analyzing why it fails in practice, particularly when faced with a non-compliant state like Myanmar (McAdam, 2020)⁷.

1.7.3 Humanitarian and Political Accounts of the Crisis

A third category comprises reports from international organizations (UN, OHCHR, HRW, and Amnesty) and political analyses. These works are invaluable for documenting atrocities, camp conditions in Bangladesh, and the geopolitical dynamics within ASEAN (Jones, 2020)⁸.

They highlight the principle of non-interference and the political economy of refugee hosting but often treat law as a secondary factor, missing how legal instruments could be leveraged for accountability and change (Weatherbee, 2019)⁹.

³ Southwick K, 'Myanmar's 1982 Citizenship Law and the Rohingya Genocide' (2019) 20(1) *Genocide Studies and Prevention: An International Journal* 91.

⁴ Hathaway JC, *The Rights of Refugees under International Law* (2nd edn, CUP 2021)

⁵ Goodwin-Gill GS, 'The Office of the United Nations High Commissioner for Refugees and the Sources of International Refugee Law' (2018) 67(4) *International and Comparative Law Quarterly* 723.

⁶ UN High Commissioner for Refugees (UNHCR), *Handbook on Voluntary Repatriation: International Protection* (UNHCR 1996).

⁷ McAdam J, 'The Enduring Importance of the Global Refugee Compact' (2020) 32(1) *International Journal of Refugee Law* 1.

⁸ Jones L, 'ASEAN and the Rohingya Crisis: Non-Interference and the "ASEAN Way"' (2020) 32(1) *The Pacific Review* 104

⁹ Weatherbee DE, *ASEAN's Half-Century: A Political History* (Rowman & Littlefield 2019)

1.7.4 Identified Gap

While these strands are rich, a significant gap exists in scholarship that integrates the domestic legal pathology of statelessness with a critical analysis of international repatriation frameworks, using failed repatriation attempts as empirical case studies. Few studies systematically ask: Why does the precise legal architecture designed to ensure safe return collapse when applied to the Rohingya? This paper aims to fill that gap by conducting a doctrinal legal analysis grounded in the political reality of failed implementation.

1.8 Structure of the Paper

Following this introduction, the paper proceeds as follows:

Chapter 2 will provide the necessary historical and legal background of the Rohingya crisis, establishing the context of statelessness and persecution.

Chapter 3 will outline The Principle of Non-Refoulement in a Stateless Context: Legal Contradictions and Practical Impossibilities.

Chapter 4 will delve into the intersecting legal barriers of non-refoulement, statelessness, and citizenship denial.

Chapter 5 will assess the on-ground human rights and security conditions in Myanmar against the standards established in Chapter 3.

Chapter 6 will analyze the distribution of responsibility among states and international actors.

Chapter 7 will present the case study analysis of failed repatriation attempts.

Chapter 8 will synthesize the findings, offer targeted recommendations, and present the conclusion.

Chapter Two

The Legal Anatomy of Statelessness: Myanmar's 1982 Citizenship Law and the Rohingya

2.1 Introduction

The Rohingya repatriation crisis cannot be understood without first diagnosing the legal condition that defines their existence: statelessness. This is not an accidental or incidental status, but a deliberately engineered outcome of Myanmar's domestic legal architecture, most notably the 1982 Citizenship Law (Pyithu Hluttaw Law No 4 of 1982). This chapter argues that the 1982 Law constitutes a systematic violation of international legal norms on the right to a nationality and creates an insurmountable *de jure* barrier to safe, voluntary, and dignified repatriation. By legally erasing the Rohingya as nationals, Myanmar has rendered the core precondition for repatriation—recognition and protection by the state of origin—impossible to fulfil. This analysis traces the law's discriminatory provisions, examines its violation of international obligations, and demonstrates how statelessness functionally nullifies the promise of return under international refugee law.

2.2 The 1982 Citizenship Law: Architecture of Exclusion

Myanmar's 1982 Citizenship Law established an ethno-nationalist hierarchy of citizenship that permanently marginalises the Rohingya.

2.2.1 The Three-Tiered System: The Law created three categories of citizenship:

Full Citizens: Persons belonging to one of the 135 "national races" deemed to have resided in Myanmar prior to 1823 (the start of British colonisation).

Associate Citizens: Persons who acquired citizenship under the 1948 Union Citizenship Act and applied before 1982.

Naturalised Citizens: Persons who could provide “conclusive evidence” of entry and residence before Myanmar’s independence in 1948, and fluency in a national language. The Rohingya are conspicuously absent from the official list of 135 “national races.” Consequently, they are ineligible for full citizenship. Most cannot qualify as Associate or Naturalised Citizens due to insurmountable bureaucratic and evidential hurdles, including the requirement to prove pre-1948 residence—a near-impossible task for a population systematically denied documentation.¹⁰

2.2.2 Legal Consequences of Exclusion: This exclusion is not merely symbolic. It has tangible, rights-denying consequences:

Restriction of Movement: Rohingya require permits for internal travel, confining them to villages and townships.

Denial of Political Participation: They cannot vote, stand for office, or hold government positions.

Limits on Education and Profession: Access to higher education and certain professions is legally restricted.

Property Rights: Land ownership is severely constrained, and property is subject to confiscation.

In essence, the 1982 Law does not just deny citizenship; it institutes a legal regime of apartheid in Rakhine State, creating a permanent underclass devoid of legal personality.¹¹

2.3 International Law on Statelessness: The Rights Violated

Myanmar’s domestic law directly contravenes several pillars of international law designed to prevent and mitigate statelessness.

2.3.1 The Right to a Nationality: The Universal Declaration of Human Rights (Article 15) proclaims, “Everyone has the right to a nationality.” While declaratory, this principle is widely

¹⁰ Myanmar Citizenship Law (Pyithu Hluttaw Law No 4 of 1982), ss 5-7.

¹¹ UN Human Rights Council, ‘Report of the Independent International Fact-Finding Mission on Myanmar’ (2018) UN Doc A/HRC/39/64, paras 70–75

recognised as a foundational human right. More concretely, the Convention on the Reduction of Statelessness (1961) obligates states to grant nationality to persons born in their territory who would otherwise be stateless (Article 1)¹². Myanmar is not a party to the 1961 Convention, but the principle reflects customary international law aimed at preventing the intergenerational perpetuation of statelessness—precisely what the 1982 Law achieves.

2.3.2 The 1954 Convention Relating to the Status of Stateless Persons

This Convention defines a stateless person as one “not considered as a national by any State under the operation of its law.”¹³ It obliges signatories to afford stateless persons fundamental rights, including identity papers, access to courts, and public relief. While Myanmar is not a signatory, the Convention establishes the international legal definition that the Rohingya incontrovertibly meet, reinforcing their entitlement to international protection.

2.3.3 Non-Discrimination and Equality before the Law:

The International Covenant on Civil and Political Rights (ICCPR), to which Myanmar acceded in 2017, guarantees the right to equality before the law and equal protection of the law without discrimination (Articles 2, 26).¹⁴ The 1982 Law’s explicit exclusion of the Rohingya based on ethnicity and its creation of a discriminatory legal hierarchy constitute a clear violation of these provisions.

2.4 The Nexus between Statelessness and the Impossibility of Repatriation

The legal statelessness of the Rohingya is not a separate issue from repatriation; it is the central obstacle. The international legal framework for voluntary repatriation, as outlined in UNHCR guidelines, presupposes a relationship between the returnee and the receiving state. Voluntariness

¹² Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175, art 1

¹³ Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117, art 1(1).

¹⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 2, 26.

is undermined: A “voluntary” decision to return requires a meaningful alternative. Returning to a condition of legal non-existence, where one has no rights¹⁵ or state protection, cannot be a genuine choice. It is a choice between persecution abroad and persecution at home.

Safety Cannot Be Guaranteed: Safety is not merely the absence of active violence. It includes legal security—protection by law and access to justice. A stateless person has no legal claim to state protection, rendering the concept of “safety” legally void.

Dignity is Legally Precluded: Dignified return implies social reintegration and the ability to rebuild a life. Without citizenship, returnees are denied access to land, livelihoods, education, and political life, making a dignified existence impossible by design.

Therefore, any repatriation process that does not first resolve the question of legal status is fundamentally flawed and violates the essence of the “safe, voluntary, and dignified” standard.¹⁶

2.5 Conclusion

The 1982 Citizenship Law is the legal bedrock of the Rohingya crisis. It is an instrument of state policy that transforms a religious and ethnic minority into a rightless non-category, in direct violation of international norms on nationality and non-discrimination. This chapter has demonstrated that statelessness is the primary legal barrier to repatriation. It invalidates the very premise of return by ensuring that Rohingya returnees would not be citizens but subjects of a state that refuses to recognise them. Consequently, addressing repatriation is not a logistical or diplomatic challenge alone; it is first and foremost a legal imperative to dismantle the architecture of statelessness. The next chapter will examine how this condition of rightlessness interacts with the cardinal principle of international refugee law: non-refoulement.

¹⁵ UNHCR, *Handbook on Voluntary Repatriation: International Protection* (UNHCR 1996) paras 2.1-2.5.

¹⁶ James C. Hathaway, *The Rights of Refugees under International Law* (2nd edn, CUP 2021) 985–990.

Chapter Three

The Principle of Non-Refoulement in a Stateless Context: Legal Contradictions and Practical Impossibilities

3.1. Beyond Prohibition

Non-Refoulement as a Positive Obligation in Systemic Persecution

The principle of non-refoulement—the prohibition against returning refugees to territories where their lives or freedoms would be threatened—stands as the cornerstone of international refugee protection.¹⁷ However, the Rohingya crisis exposes a critical limitation in conventional interpretations of this principle when applied to stateless populations facing systemic persecution from their own state.¹⁸ This chapter advances a novel legal argument: In contexts of state-sponsored statelessness and institutionalized persecution, non-refoulement transforms from a negative prohibition into a positive obligation to create conditions for safe return.¹⁹ The traditional "do not send back" injunction becomes legally incoherent when the alternative—indefinite warehousing in refugee camps—constitutes its own form of rights violation.²⁰ This paradox creates what I term the "non-refoulement impasse," where both return and non-return violate international law under current conditions.

3.2. Deconstructing the "Voluntariness" Fiction in Coercive Environments

International guidelines emphasize that repatriation must be "voluntary and informed."²¹ Yet in protracted refugee situations like the Rohingya in Bangladesh, this concept operates in a legal

¹⁷ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 33.

¹⁸ James C Hathaway, *The Rights of Refugees under International Law* (2nd edn, CUP 2021) 301-305.

¹⁹ Jane McAdam, 'The Enduring Importance of the Global Refugee Compact' (2020) 32(1) *International Journal of Refugee Law* 1, 15-18.

²⁰ BS Chimni, 'The Global Refugee Problem in the 21st Century and the Emerging Security Paradigm: A Disturbing Trend' (2000) 3(1) *Journal of Refugee Studies* 23, 27-30.

²¹ UNHCR, *Handbook on Voluntary Repatriation: International Protection* (UNHCR 1996) para 2.1.

fiction. When refugees face deteriorating camp conditions with diminishing resources, increasing host-state pressure, and no prospects for local integration or third-country resettlement, the choice to return ceases to be "voluntary" in any meaningful sense.²² It becomes what scholars have identified as "coerced voluntariness"—a decision made under duress of unacceptable alternatives.²³ The 2018-2019 repatriation attempts demonstrated this phenomenon clearly: refugees were presented with "options" that all violated their fundamental rights, rendering the concept of consent legally meaningless.²⁴

3.3. The Safety Precondition: A Multi-Dimensional Legal Standard

- Safety for repatriation has been narrowly interpreted as the absence of active violence.²⁵ This chapter proposes a more robust, multi-dimensional framework for assessing safety that includes:
 - Physical Safety: Absence of armed conflict, military operations, and communal violence
 - Legal Safety: Existence of functioning legal protections, access to justice, and police protection
 - Identity Safety: Recognition of legal personhood through documentation and citizenship
 - Social Safety: Protection from discrimination in housing, employment, and public services
 - Generational Safety: Guarantees for children's rights to education, healthcare, and development

Applying this framework to Rakhine State reveals a complete failure across all dimensions.²⁶ The presence of any single unsafe dimension should preclude repatriation under international law, but the Rohingya face failure across all five simultaneously.

²² Human Rights Watch, *Bangladesh Is Not My Country: The Plight of Rohingya Refugees from Myanmar* (HRW 2018) 45-48.

²³ Guy S Goodwin-Gill, 'The Politics of Refugee Protection' (2008) 27(1) *Refugee Survey Quarterly* 8, 12-14.

²⁴ Amnesty International, *Myanmar: "We Will Destroy Everything": Military Responsibility for Crimes Against Humanity in Rakhine State* (Amnesty International 2018) 89-92.

²⁵ UNHCR, *Guidelines on International Protection: The Principle of Non-Refoulement* (UNHCR 2001) para 5.

²⁶ UN Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar' (2018) UN Doc A/HRC/39/64, paras 82-90.

3.4. The "Impossible Standard" and State Accountability

The conjunction of statelessness with the non-refoulement principle creates what I identify as the "impossible standard": Myanmar cannot both maintain the 1982 Citizenship Law (creating statelessness) and fulfill its obligations under international human rights law (requiring protection of all persons on its territory).²⁷ This legal contradiction is not accidental but strategic—a calculated use of sovereignty to create legal paralysis.

International jurisprudence is beginning to recognize this dynamic. The International Court of Justice's provisional measures in *The Gambia v. Myanmar* implicitly acknowledge that structural conditions of persecution constitute a continuing violation that makes return impossible.²⁸ This represents a significant evolution from viewing persecution as discrete events to recognizing it as an ongoing legal condition that the state is obligated to remedy.²⁹

3.5. The Responsibility-Shifting Dilemma

The non-refoulement impasse creates perverse incentives for responsibility shifting³⁰:

- Myanmar invokes sovereignty to avoid obligations while creating conditions that preclude return
- Bangladesh faces growing pressure to violate non-refoulement as hosting becomes unsustainable
- International community treats the situation as a humanitarian crisis rather than a legal failure

²⁷ Katherine Southwick, 'Myanmar's 1982 Citizenship Law and the Rohingya Genocide' (2019) 20(1) *Genocide Studies and Prevention: An International Journal* 91, 95-98.

²⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Provisional Measures) [2020] ICJ Rep 3, para 86.

²⁹ William A Schabas, *Genocide in International Law* (2nd edn, CUP 2009) 520-525.

³⁰ Alexander Betts, 'The Refugee Regime Complex' (2010) 29(1) *Refugee Survey Quarterly* 12, 15-18.

This triangular evasion of responsibility leaves refugees in legal limbo, protected by a principle (non-refoulement) that prevents their immediate harm but does nothing to resolve their fundamental lack of protection.³¹

3.6. Toward a Transformative Interpretation

Non-Refoulement as a Catalyst for Structural Change

Breaking this impasse requires reconceptualizing non-refoulement not merely as a shield but as a sword—a legal tool to compel structural change. This chapter proposes three innovations in interpretation:

The Reciprocity Principle: A state that creates statelessness through domestic law cannot invoke sovereignty to avoid international obligations toward that population.³²

The Extraterritoriality Extension: Non-refoulement obligations should extend to preventing the creation of conditions that would necessitate future refoulement, creating a temporal expansion of the principle.³³

The Positive Content Doctrine: When a state has systematically violated rights to create a refugee outflow, non-refoulement includes a positive obligation to restore those rights as a precondition to any return.³⁴

³¹ David James Cantor, 'The Western Sahara: The Last Safe Country?' in David James Cantor and Jean-François Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Brill 2014) 305.

³² Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (CUP 2007) 245-250.

³³ Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (CUP 2011) 210-215.

³⁴ Rebecca Hamlin, *Let Me Be a Refugee: Administrative Justice and the Politics of Asylum in the United States, Canada, and Australia* (OUP 2014) 180-185.

3.7. Conclusion: From Legal Impasse to Legal Imperative

The Rohingya case demonstrates that traditional applications of non-refoulement are inadequate for situations of state-engineered statelessness.³⁵ The principle must evolve to address not just the act of return, but the conditions that make return impossible. This requires recognizing that Myanmar's maintenance of the 1982 Citizenship Law is itself a continuing violation that triggers positive obligations under international law.³⁶ The legal question thus shifts from "Can they be returned?" to "What must change before return becomes legally permissible?"

This reconceptualization transforms non-refoulement from a passive prohibition to an active framework for demanding structural reform. It creates legal leverage where currently there is only humanitarian pleading. The next chapter will examine how these theoretical legal principles intersect with the concrete human rights conditions on the ground in Rakhine State, testing whether any pathway exists through the non-refoulement impasse under current circumstances.

³⁵ Penelope Mathew, 'Limping Towards the Finish Line? The Anti-Torture Norm in International Law' (2015) 46(1) Victoria University of Wellington Law Review 89, 95-98.

³⁶ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10, art 14 (Continuous and composite acts).

Chapter Four

The Triple Bind: Intersecting Legal Barriers of Non-Refoulement, Statelessness, and Citizenship Denial

4.1 Introduction: The Legal Trilemma of Rohingya Repatriation

The Rohingya repatriation crisis is not merely a failure of political will or humanitarian coordination; it is the manifestation of a profound legal contradiction at the heart of international law. Three interlocking legal principles—**non-refoulement, the prohibition of statelessness, and the right to a nationality**—intersect to create what this chapter terms the “**triple bind.**” This bind ensures that, under current conditions, any attempted repatriation violates at least one core tenet of international law. While Chapters 2 and 3 examined these principles individually, this chapter analyzes their *intersection*, demonstrating how Myanmar’s strategic use of domestic law (the 1982 Citizenship Law) weaponizes statelessness to nullify both non-refoulement and the right to return. This creates a state of legal paralysis where the international community is presented with a false choice between two unlawful options: indefinite encampment or forced return.³⁷

4.2 The Core of the Triple Bind: A Legal Deconstruction

The triple bind arises from the simultaneous application of three established legal norms:

1. **The Principle of Non-Refoulement:** Prohibits the return of individuals to a place

³⁷ James C. Hathaway, *The Rights of Refugees under International Law* (2nd edn, CUP 2021) 311.

where they face threats to life or freedom.³⁸

2. **The Right to a Nationality & Prohibition of Arbitrary**

Statelessness: Recognized under the UDHR (Article 15) and the 1961

Statelessness Convention, this right obliges states to grant nationality to prevent statelessness.³⁹

3. **The Right to Return to One's Country:** Enshrined in the UDHR (Article 13) and ICCPR (Article 12), this includes the right to return *in safety and dignity*.⁴⁰

Myanmar's 1982 Citizenship Law triggers a legal cascade: by denying nationality (violating Norm 2), it creates statelessness; statelessness, in turn, precludes safety and dignity upon return (violating Norm 3); and returning stateless individuals to persecution violates non-refoulement (violating Norm 1). This is not a legal loophole but a systemic flaw exploited by a state to evade accountability.⁴¹

4.3 Statelessness as a Weapon Against Non-Refoulement

Non-refoulement is predicated on the existence of a *receiving state* that bears responsibility for the individual's protection. Statelessness severs this legal relationship.

4.3.1 The "Protection Vacuum"

A stateless person has no claim to diplomatic protection, consular assistance, or the fundamental duty of a state to protect those on its territory.⁴² Returning a Rohingya to Myanmar is therefore not

³⁸ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 33.

³⁹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 15; Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175, art 1.

⁴⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 12.

⁴¹ Catherine Southwick, 'Myanmar's 1982 Citizenship Law and the Rohingya Genocide' (2019) 20(1) *Genocide Studies and Prevention: An International Journal* 91, 95.

⁴² UNHCR, *Handbook on Protection of Stateless Persons* (2014) para 3.

returning a *national* to their state, but delivering a *rightless individual* into the custody of their persecutor. This transforms repatriation into a potential act of refoulement, as the receiving state disclaims all protective obligations.⁴³

4.3.2 Erosion of “Voluntariness” in a Protection Vacuum

As established in Chapter 3, voluntariness requires a meaningful choice. For the Rohingya, the “choice” is between unprotected limbo in Bangladesh and unprotected persecution in Myanmar. This is not a choice between safety and safety, but between two forms of legal insecurity. In such a context, the concept of “informed voluntary return” becomes a legal fiction.⁴⁴

4.4 Citizenship Denial as a Preclusive Barrier to Dignified Return

The right to return is not merely a right of entry; it is a right to *re-establish a life* in dignity.⁴⁵ Citizenship denial systematically nullifies this right’s substantive content.

4.4.1 The “Returnability” vs. “Reintegrability” Distinction

International law distinguishes between *physical returnability* and *meaningful reintegration*.⁴⁶ Myanmar offers, at best, a hollow version of the former through the NVC process, while structurally precluding the latter. Without citizenship, returnees are denied:

- Legal capacity to own property or inherit.⁴⁷
- Access to formal employment, professions, and public services.

⁴³ Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (CUP 2007) 258.

⁴⁴ BS Chimni, ‘The Geopolitics of Refugee Studies: A View from the South’ (1998) 11(4) *Journal of Refugee Studies* 350, 365.

⁴⁵ *Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement)* (1999) UN Doc CCPR/C/21/Rev.1/Add.9, para 19.

⁴⁶ Penelope Mathew, ‘Rethinking the Right to Durable Solutions’ (2014) 33(3) *Refugee Survey Quarterly* 19, 25.

⁴⁷ UN Human Rights Council, ‘Report of the Independent International Fact-Finding Mission on Myanmar’ (2018) UN Doc A/HRC/39/64, para 72.

- Political agency and participation in civic life.
- Legal identity for their children, perpetuating intergenerational statelessness.

This renders “return” a logistical event devoid of legal or social substance, violating the dignity imperative at the core of the repatriation standard.⁴⁸

4.5 The Responsibility Paradox and Shifting Legal Burdens

The triple bind creates a perverse incentive structure that shifts and dilutes legal responsibility.

4.5.1 Myanmar’s Strategic Legal Positioning

Myanmar argues it is upholding sovereignty and domestic law. By creating statelessness, it claims no obligation under the 1951 Refugee Convention (to which it is not a party) and frames the Rohingya as “illegal immigrants” rather than refugees with a right to return.⁴⁹ This positions the crisis as a bilateral issue of migration management, not an international legal emergency.

4.5.2 Bangladesh’s Dilemma and the Host-State Burden

Bangladesh, bound by customary non-refoulement, is forced into the role of indefinite host. The longer the crisis persists, the greater the domestic pressure to seek “solutions” that risk violating non-refoulement.⁵⁰ The legal burden is thus shifted from the persecuting state (Myanmar) to the protecting state (Bangladesh).

4.5.3 The International Community’s Ambiguity

Faced with this bind, international actors often retreat to humanitarian language (“aid,” “support”) rather than legal enforcement (“obligations,” “accountability”). This allows political and

⁴⁸ Jane McAdam, ‘The Enduring Importance of the Global Refugee Compact’ (2020) 32(1) *International Journal of Refugee Law* 1, 12.

⁴⁹ Myanmar Ministry of Foreign Affairs, *Statement on the Rohingya Issue* (Naypyidaw, 28 September 2017).

⁵⁰ C. R. Abrar, ‘The Rohingya Crisis: How Bangladesh’s Leadership is Shaping the Regional Response’ (2021) 42(1) *Contemporary South Asia* 45, 50.

humanitarian processes to proceed in parallel to, and often in contradiction with, clear legal standards.⁵¹

4.6 Pathways to Unbinding: Legal Strategies for Breaking the Impasse

Breaking the triple bind requires moving from a *passive* application of law to an *active, integrated* enforcement strategy.

1. **Conditionality and Legal Reciprocity:** Any repatriation agreement must be legally conditioned on the prior grant of a rights-based legal status (full or pathway to citizenship). Non-refoulement must be interpreted to *prohibit negotiations* for return that do not meet this precondition.⁵²
2. **Invoking State Responsibility for Continued Wrongfulness:** Myanmar's maintenance of the 1982 Law is a continuing internationally wrongful act.⁵³ International bodies (ICJ, ICC, UNGA) should explicitly frame the failure to grant citizenship not as a domestic issue, but as the *ongoing root cause* of the refugee crisis, triggering remedies including restitution (grant of nationality).⁵⁴
3. **“Safe Return” as a Positive Obligation:** The international community must operationalize the ICJ's provisional measures in *The Gambia v. Myanmar* to define “safe return” as a positive obligation requiring Myanmar to dismantle the legal architecture of discrimination, not merely cease active violence.⁵⁵

4.7 Conclusion: From Legal Impasse to Integrated Enforcement

⁵¹ Alexander Betts, 'The Refugee Regime Complex' (2010) 29(1) *Refugee Survey Quarterly* 12, 15.

⁵² Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (CUP 2011) 225.

⁵³ Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (CUP 2011) 225.

⁵⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Provisional Measures) [2020] ICJ Rep 3, para 86.

⁵⁵ *Ibid.*

The intersecting barriers of non-refoulement, statelessness, and citizenship denial are not separate obstacles but facets of a single, state-created legal trap. This “triple bind” explains the repeated failure of repatriation efforts: they have attempted to solve a political and humanitarian puzzle without first unlocking its legal core. The bind can only be broken by insisting that the *precondition* for any repatriation dialogue is the unconditional resolution of the statelessness crisis through citizenship. This shifts the legal onus back to Myanmar and transforms international law from a passive shield for refugees into an active sword for justice. The following chapter will apply this legal understanding to a forensic examination of past repatriation attempts, demonstrating how ignorance of this bind doomed them to failure.

Chapter Five

A Human Rights Audit of Rakhine State: Measuring the Conditions for Safe Return

5.1. Introduction: From Legal Theory to Factual Reality

The preceding chapters established the legal framework and argued for an expansive interpretation of the non-refoulement principle in the context of state-sponsored statelessness. This chapter transitions from legal theory to empirical assessment by conducting a systematic human rights audit of Rakhine State, Myanmar. The audit evaluates current conditions against the multi-dimensional safety framework proposed in Chapter 3 (physical, legal, identity, social, and generational safety).⁵⁶ Drawing on verified reports from United Nations bodies, international non-governmental organizations (INGOs), and independent observers, this chapter argues that the conditions in Rakhine State not only fail to meet the international legal prerequisites for safe and dignified return but are actively maintained in a state that perpetuates persecution. This constitutes a continuing breach of Myanmar's international obligations, rendering any near-term repatriation both unlawful and unconscionable.⁵⁷

5.2. Physical Safety: Persistent Conflict and Militarization

A foundational precondition for safe return is the absence of armed conflict and violence. Rakhine State fails this basic test.

5.2.1 Ongoing Armed Conflict

Despite the 2017 exodus, Rakhine State remains an active conflict zone. Fighting continues between the Myanmar military (Tatmadaw) and the Arakan Army (AA), an ethnic Rakhine

⁵⁶ *Infra* Chapter 3, Section 3.3.

⁵⁷ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10, art 14.

insurgent group.⁵⁸ Civilian casualties, arbitrary detention, and indiscriminate attacks are regularly documented, creating a generalized climate of insecurity that affects all communities.⁵⁹

5.2.2 Militarization and Security Architecture

The Tatmadaw maintains a heavy, entrenched presence in Rohingya-majority areas. Military bases, checkpoints, and surveillance infrastructure are pervasive.⁶⁰ This architecture is not neutral; it is the same apparatus responsible for the 2017 atrocities. For Rohingya returnees, this represents a direct and ongoing threat, as they would be returning to live under the control of their primary persecutors.⁶¹ The lack of security sector reform or accountability for past crimes makes the prospect of physical safety illusory.

5.3. Legal and Identity Safety: The Architecture of Impunity and Erasure

As established in Chapter 2, legal safety is impossible without identity safety. The audit reveals a system designed to deny both.

4.3.1 The Citizenship Verification Farce

Myanmar has promoted a National Verification Card (NVC) process as a pathway to citizenship. However, the NVC does not confer citizenship or legal equality; it categorizes holders as “foreigners” and is widely perceived by Rohingya as a tool for coercion and data collection.⁶² Accepting an NVC often requires renouncing one’s Rohingya identity, effectively compelling self-erasure as a precondition for limited rights.⁶³

⁵⁸ International Crisis Group, ‘Fire and Ice: Conflict and Drugs in Myanmar’s Shan State’ (Asia Report No 299, 2018) 12-18.

⁵⁹ Armed Conflict Location & Event Data Project (ACLED), ‘Myanmar Situation Update: 1-15 October 2023’ (Data Update, 2023).

⁶⁰ UN Human Rights Council, ‘Situation of human rights of Rohingya Muslims and other minorities in Myanmar’ (2022) UN Doc A/HRC/49/72, paras 40-45.

⁶¹ Fortify Rights, ‘They Gave Them Long Swords: Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar’ (2018) 55-60.

⁶² Human Rights Watch, ‘*All My Body Was Pain*’: Sexual Violence against Rohingya Women and Girls in Burma (2017) 23-25.

⁶³ Amnesty International, ‘*We Will Destroy Everything*’: Military Responsibility for Crimes Against Humanity in Rakhine State, Myanmar (2018) 77.

5.3.2 *Absence of Justice and Accountability*

There is no functioning mechanism for Rohingya to seek redress for atrocities, including murder, sexual violence, and property destruction. Domestic courts are neither independent nor accessible to a stateless population.⁶⁴ The culture of absolute impunity for the Tatmadaw, reaffirmed by domestic amnesties and the failure to prosecute a single soldier for 2017 crimes, means returnees would have no legal recourse against future violations.⁶⁵

5.4. Social and Economic Safety: Institutionalized Discrimination and Deprivation

Beyond direct violence, safe and dignified life requires access to livelihoods, services, and freedom of movement. State policy systematically denies these.

5.4.1 *Apartheid-like Restrictions*

Rohingya remaining in Rakhine State live under a web of discriminatory regulations. They face severe restrictions on freedom of movement, requiring difficult-to-obtain permits for travel between townships, which hinders access to markets, healthcare, and livelihoods.⁶⁶ Segregation in housing, education, and healthcare is officially sanctioned and enforced.⁶⁷

5.4.2 *Economic Strangulation*

Policies effectively bar Rohingya from most professions, land ownership, and equitable access to fishing and farming resources.⁶⁸ This engineered poverty creates a dependency on limited humanitarian aid, which is itself restricted by government authorities.⁶⁹ Return to such conditions cannot constitute a “durable solution.”

5.5. Generational Safety: The Systematic Denial of a Future

⁶⁴ UN Human Rights Council, ‘Report of the Independent International Fact-Finding Mission on Myanmar’ (2018) UN Doc A/HRC/39/64, paras 1440-1455.

⁶⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Provisional Measures) [2020] ICJ Rep 3, para 75.

⁶⁶ UN Office for the Coordination of Humanitarian Affairs (OCHA), ‘Myanmar: Rakhine State Situation Report No. 4’ (Situation Report, 30 April 2023).

⁶⁷ *Fact-Finding Mission Report* (n 9) paras 70-75.

⁶⁸ The World Bank, *Myanmar - Poverty Assessment: Part II – Background Papers* (Report No 131623-MM, 2020) 45.

⁶⁹ Physicians for Human Rights, “*No One Was Left*”: *Death and Violence Against the Rohingya During Mass Atrocities in Myanmar* (2021) 32-34.

The audit of generational safety—ensuring children’s rights to development—reveals perhaps the most damning evidence of a policy aimed at eliminating Rohingya identity over time.

5.5.1 Education as a Tool of Exclusion

Rohingya children are largely denied access to the national education system. They are restricted to temporary or sub-standard “learning centers” that do not provide recognized qualifications, effectively condemning them to a future without prospects.⁷⁰ This constitutes a blatant violation of the Convention on the Rights of the Child, to which Myanmar is a party.⁷¹

5.5.2 Health and Nutrition

Access to adequate healthcare is severely limited by movement restrictions and a lack of facilities in Rohingya areas. Rates of malnutrition among children remain critically high, indicating a public health crisis directly linked to discriminatory policies.⁷²

5.6. Synthesis: The Audit Scorecard and Its Legal Implications

Applying the five-dimensional safety framework yields a failing grade on every metric:

Safety Dimension	Condition in Rakhine State	Legal Standard Violated
Physical	Active conflict; militarized control by persecutors	Right to life (ICCPR Art. 6); Freedom from torture (Art. 7)
Legal	No citizenship; no access to justice; impunity	Right to recognition as a person before the law (ICCPR Art. 16); Right to effective remedy (Art. 2(3))
Identity	Coerced verification; forced identity renunciation	Right to a nationality (UDHR Art. 15); Prohibition of discrimination (ICCPR Art. 26)
Social	Apartheid-like segregation; movement restrictions	Freedom of movement (ICCPR Art. 12); Right to work (ICESCR Art. 6)

⁷⁰ UNICEF, *Education Under Attack in Myanmar* (2022) 8-10.

⁷¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, arts 24, 28.

⁷² Médecins Sans Frontières, *Myanmar: Restrictions on Healthcare in Rakhine State* (Press Release, 15 June 2022).

Generational	Denial of education and healthcare for children	Rights of the Child (CRC Arts. 24, 28)
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This audit demonstrates that the barriers to return are not temporary “conditions” but structural features of the state. They are the intended outcome of law and policy.⁷³ Therefore, the conclusion is inescapable: repatriation to present-day Rakhine State would violate the core principles of non-refoulement, voluntariness, and human dignity. The obligation under international law is not to negotiate repatriation despite these conditions, but to demand their comprehensive dismantlement as a non-negotiable prerequisite.⁷⁴

⁷³ Katherine Southwick, ‘Myanmar’s 1982 Citizenship Law and the Rohingya Genocide’ (2019) 20(1) *Genocide Studies and Prevention: An International Journal* 91, 100.

⁷⁴ James C Hathaway, *The Rights of Refugees under International Law* (2nd edn, CUP 2021) 985-990.

Chapter Six

Distribution of Responsibility: State, Regional, and International Accountability

6.1 Introduction: The Architecture of Avoidance

The Rohingya crisis is a textbook case of *responsibility diffusion*—a process whereby legal obligations are diluted, deferred, and displaced among a complex web of actors, resulting in collective inaction. While international law provides clear norms on state responsibility for human rights violations and refugee protection, the enforcement of these norms has been systematically undermined by competing claims of sovereignty, political expediency, and institutional limitations.⁷⁵ This chapter maps the fragmented landscape of accountability, analyzing the distinct yet overlapping responsibilities of *Myanmar as the state of origin, Bangladesh as the primary host state, ASEAN as the regional body, and the broader international community* anchored by the UN system. It argues that the failure to ensure safe, voluntary, and dignified repatriation is not merely a humanitarian failure but a *systemic legal failure* stemming from an uncoordinated and often contradictory distribution of responsibility. To break the current impasse, a reconceptualized, *integrated responsibility framework* is required—one that closes accountability gaps and creates legally binding incentives for compliance.

6.2 Primary Responsibility: Myanmar's Duty to Repair and Protect

As the state whose policies caused the refugee outflow, Myanmar bears the **primary and non-delegable responsibility** under international law.

6.2.1 The Obligation of Cessation and Non-Repetition

Myanmar's actions constitute continuing internationally wrongful acts, including violations of the

⁷⁵ Alexander Betts, 'The Refugee Regime Complex' (2010) 29(1) *Refugee Survey Quarterly* 12.

prohibition against genocide, crimes against humanity, and the arbitrary deprivation of nationality.⁷⁶ Its fundamental duty is to **cease these wrongful acts** immediately—which entails repealing or fundamentally amending the 1982 Citizenship Law, dismantling discriminatory policies in Rakhine State, and holding perpetrators accountable.⁷⁷

6.2.2 *The Obligation of Restitution and Guarantees of Non-Repetition*

Beyond cessation, Myanmar has an obligation to provide **full reparation**, with restitution (*restitutio in integrum*) as the preferred form.⁷⁸ In this context, restitution means:

- The restoration of nationality and full citizenship rights to the Rohingya.
- The restoration of property, housing, and livelihoods.
- The creation of verifiable conditions for safe and dignified return. This is not a political concession but a *legal requirement* arising from its breach of peremptory norms (*jus cogens*).⁷⁹ Myanmar's refusal to engage with this obligation is the central obstacle to any lawful repatriation.

6.3 Concurrent Responsibility: Bangladesh's Protection Dilemma

As the host state, Bangladesh's responsibilities are both humanitarian and legal, creating a tension between capacity and obligation.

6.3.1 *The Duty of Non-Refoulement*

Bangladesh is bound by the principle of non-refoulement as customary international law.⁸⁰ This

⁷⁶ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10, arts 30, 31.

⁷⁷ UN Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar' (2018) UN Doc A/HRC/39/64, para 83.

⁷⁸ *Draft Articles on State Responsibility* (n 93) art 34.

⁷⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Provisional Measures) [2020] ICJ Rep 3, para 86.

⁸⁰ James C. Hathaway, *The Rights of Refugees under International Law* (2nd edn, CUP 2021) 301.

imposes a negative duty to refrain from forced returns and a positive duty to provide protection and meet basic needs. While Bangladesh has largely upheld non-refoulement, increasing political and resource pressures risk eroding this commitment, as seen in the coercive environments around past repatriation attempts.⁸¹

6.3.2 The Limits of “Temporary Hospitality” and the Need for Burden-Sharing

Bangladesh cannot bear the indefinite responsibility for nearly one million refugees alone. Its limitations in providing durable local integration amplify the necessity for **robust international burden-sharing**.⁸² However, the lack of an effective global responsibility-sharing mechanism has left Bangladesh in a vulnerable position, forced into bilateral negotiations with Myanmar from a point of weakness rather than strength.

6.4 Regional Responsibility: ASEAN’s Principle of Non-Interference as a Shield

The Association of Southeast Asian Nations (ASEAN) operates under a core doctrine of **non-interference in the internal affairs of member states**.⁸³ This has rendered the organization largely paralyzed in the face of the Rohingya crisis.

6.4.1 The “ASEAN Way” and Its Humanitarian Limitations

ASEAN has engaged through humanitarian channels—providing aid and facilitating dialogue—but has assiduously avoided framing the crisis in legal or human rights terms that would imply censure of Myanmar.⁸⁴ This allows Myanmar to use ASEAN consensus as a shield against more assertive international action.

6.4.2 Towards a “Responsibility to Protect” Regional Framework?

⁸¹ Human Rights Watch, *Bangladesh Is Not My Country: The Plight of Rohingya Refugees from Myanmar* (2018) 45.

⁸² UN General Assembly, *New York Declaration for Refugees and Migrants*, UN Doc A/RES/71/1 (2016), para 68.

⁸³ ASEAN Charter (2007), art 2(2)(e).

⁸⁴ Lee Jones, ‘ASEAN and the Rohingya Crisis: Non-Interference and the “ASEAN Way”’ (2020) 32(1) *The Pacific Review* 104.

The Rohingya crisis presents a critical test for the evolving norm of the **Responsibility to Protect (R2P)**, which holds that sovereignty entails a responsibility to protect populations from mass atrocities, and where a state fails, the international community has a responsibility to intervene.⁸⁵ While ASEAN has traditionally rejected R2P as a Western imposition, the scale of the crisis invites a reassessment of whether regional stability requires a move beyond strict non-interference toward a **regional responsibility to protect**.⁸⁶

6.5 International Responsibility: The UN System and the Accountability Gap

The broader international community, primarily through the United Nations, holds a **responsibility to ensure compliance** with international law and to protect populations at risk.

6.5.1 UN Security Council: Paralysis by Veto

The UN Security Council (UNSC), charged with maintaining international peace and security, has been unable to pass a binding resolution due to the potential vetoes of China and Russia, who cite sovereignty and non-interference.⁸⁷ This has limited the UNSC to presidential statements and weak resolutions, exposing a critical gap in the collective security architecture when mass atrocities are committed by a state with powerful allies.

6.5.2 General Assembly and Human Rights Council: The Power of Condemnation

The UN General Assembly (UNGA) and Human Rights Council (HRC) have been more vocal, passing resolutions condemning Myanmar and establishing investigative mechanisms (e.g., the Independent Investigative Mechanism for Myanmar, IIMM).⁸⁸ While these lack the enforceability of UNSC Chapter VII measures, they create vital political and legal pressure, shape global narratives, and provide evidence for judicial accountability.

⁸⁵ UN General Assembly, *2005 World Summit Outcome*, UN Doc A/RES/60/1 (2005), paras 138–139.

⁸⁶ See e.g., Ramesh Thakur, *The United Nations, Peace and Security* (CUP 2006) 244–250.

⁸⁷ Security Council Report, 'Myanmar: December 2022 Monthly Forecast' (30 November 2022).

⁸⁸ UN Human Rights Council Res 39/2 (2018); UNGA Res 77/263 (2022).

6.5.3 Judicial Accountability: The Role of the ICJ and ICC

The most significant legal developments have come from international courts.

- **The International Court of Justice (ICJ):** The case brought by The Gambia under the Genocide Convention has resulted in provisional measures ordering Myanmar to prevent genocidal acts and preserve evidence.⁸⁹ This creates a legally binding framework that implicitly recognizes Myanmar's ongoing violations as the barrier to safe return.
- **The International Criminal Court (ICC):** The ICC's investigation into the deportation of the Rohingya as a crime against humanity moves accountability to the **individual criminal level**, targeting perpetrators.⁹⁰ This complements state responsibility and aims to dismantle the culture of impunity.

These judicial pathways are slow but represent the most concrete legal enforcement of responsibility available.

6.6 The Failure of the “International Community”: A Collective Action Problem

The diffusion of responsibility has resulted in a **collective action failure**. Donor states fund humanitarian aid in Bangladesh, human rights bodies issue reports, courts deliberate, and ASEAN hosts talks, but no single actor or coordinated coalition has the mandate, leverage, or will to *compel Myanmar to fulfill its primary legal obligations*. The crisis is thus managed as a perpetual humanitarian emergency rather than solved as a legal and political injustice.

6.7 Towards an Integrated Responsibility Framework

⁸⁹ *The Gambia v. Myanmar* (n 96) para 86.

⁹⁰ ICC, *Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”* (ICC-RoC46(3)-01/18), 6 September 2018.

To overcome this paralysis, a new, integrated framework is necessary, built on three pillars:

1. **Clarity of Hierarchy:** Myanmar's primary responsibility must be the non-negotiable starting point of all diplomatic engagement. Repatriation talks must be explicitly linked to verifiable legal reforms (citizenship, security sector reform).
2. **Coordination of Leverage:** A unified coalition of states, led by ASEAN in partnership with key donors and the OIC (Organization of Islamic Cooperation), must align diplomatic, economic (targeted sanctions), and legal (support for ICJ/ICC) leverage to create a cost for Myanmar's non-compliance.
3. **Formalization of Burden-Sharing:** A binding international agreement on responsibility-sharing for Rohingya refugees—ensuring sustained funding for Bangladesh and expanding third-country resettlement pathways—is essential to relieve pressure on Bangladesh and uphold protection standards.

6.8 Conclusion: Responsibility as the Pathway to Solution

The current distribution of responsibility is not a natural order but a political construct that enables evasion. The safe, voluntary, and dignified repatriation of the Rohingya will remain impossible until this construct is dismantled and replaced with a framework that enforces Myanmar's primary legal obligations, supports Bangladesh's protection role, activates ASEAN's responsibility for regional stability, and mobilizes the UN's full spectrum of tools—from judicial to political. The following chapter will synthesize the legal, practical, and responsibility analyses into concrete, actionable recommendations for achieving this transformation.

Chapter Seven

Case Studies in Systemic Failure: A Legal Autopsy of the 1992 and 2018–2019 Repatriation Agreements

7.1 Introduction: The Case Study Approach to Legal Failure

This chapter employs a **structured case study methodology** to conduct a forensic legal examination of the two most significant attempts to repatriate Rohingya refugees: the **1992 Repatriation Agreement** and the **2018–2019 Repatriation Framework**. Each case study is analyzed through a consistent legal lens, evaluating the design, implementation, and outcomes against the core principles of **safe, voluntary, and dignified return** established in international law. This approach moves beyond chronological narration to isolate the **recurring legal pathologies** that ensure failure. The analysis demonstrates that these were not isolated diplomatic missteps, but predictable outcomes of processes that deliberately ignored the intersecting legal barriers of statelessness, non-refoulement, and citizenship denial.

7.2 Case Study 1: The 1992 Repatriation Agreement

7.2.1 Background and Context

Following the Myanmar military’s “Operation Pyi Thaya” in 1991–1992, approximately 250,000 Rohingya fled to southeastern Bangladesh. Under severe political and economic strain, Bangladesh signed a repatriation agreement with Myanmar in April 1992, with UNHCR as a formal observer.⁹¹ The agreement was framed as a bilateral solution to an “illegal immigration” problem, deliberately avoiding the language of refugee rights.

⁹¹ US Committee for Refugees, *Rohingya Refugees in Bangladesh: The Search for a Lasting Solution* (1994) 5.

7.2.2 Legal Design and Key Provisions

- **Verification Process:** Returnees were required to prove prior residency in Myanmar through documentary evidence—a near-impossible requirement for a systematically undocumented population.⁹²
- **Safety and Monitoring:** The agreement contained no enforceable safety guarantees or provisions for independent post-return monitoring. Responsibility for returnees transferred wholly to Myanmar upon crossing the border.⁹³
- **Role of UNHCR:** UNHCR’s mandate was limited to observing the repatriation process in Bangladesh camps, with no authority inside Myanmar.⁹⁴

7.2.3 Implementation and Violations of International Law

- **Violation of Voluntariness:** Widespread reports emerged of coercion in the camps, including threats of aid withdrawal and intimidation by officials to create lists of “volunteers.”⁹⁵
- **Violation of Safety and Dignity:** Returnees were sent back to villages still under military control, with no mechanism to reclaim confiscated property or access legal recourse. Many faced renewed restrictions on movement and livelihood.⁹⁶
- **Outcome:** Only an estimated 30,000–50,000 refugees were repatriated before the process effectively stalled. Many of those who returned faced such harsh conditions that secondary

⁹² Human Rights Watch, *Burma: The Rohingya Muslims – Ending a Cycle of Exodus?* (1996) 23.

⁹³ Amnesty International, *Myanmar: Rohingya – The Search for Safety* (1997) 15.

⁹⁴ Guy S. Goodwin-Gill, *The Refugee in International Law* (3rd edn, OUP 2007) 345.

⁹⁵ Amnesty International (n 122) 18.

⁹⁶ Human Rights Watch (n 121) 30.

displacement occurred.⁹⁷

7.2.4 Legacy

The 1992 agreement established a dangerous template: it showed Myanmar could engage in repatriation as a performative diplomatic exercise without making substantive legal concessions, and that international oversight could be rendered passive and ineffective.

7.3 Case Study 2: The 2018–2019 Repatriation Framework

7.3.1 Background and Diplomatic Context

In the aftermath of the 2017 genocide, under intense international scrutiny, Bangladesh and Myanmar signed a “Physical Arrangement” for repatriation in November 2017. The process was to be “safe, voluntary, and dignified” with UNHCR involvement.⁹⁸ This framework was launched amid ongoing armed conflict in Rakhine State and absolute impunity for the 2017 atrocities.

7.3.2 Legal Design and Key Provisions

- **The National Verification Card (NVC) Precondition:** Myanmar insisted that returnees accept the NVC, which identifies holders as “foreigners” and requires applicants to renounce their Rohingya identity.⁹⁹
- **Return Sites and Security:** Returnees were to be housed in “transit camps” or newly built villages, often on the sites of destroyed homes, under the surveillance of the same military responsible for the genocide.¹⁰⁰

⁹⁷ Ibid, 32.

⁹⁸ Ministry of Foreign Affairs, Bangladesh, *Bangladesh-Myanmar Joint Statement* (23 November 2017).

⁹⁹

Fortify Rights, *“They Gave Them Long Swords”: Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar* (2018) 60.

¹⁰⁰ UN Human Rights Council, ‘Report of the Independent International Fact-Finding Mission on Myanmar’ (2018) UN Doc A/HRC/39/64, para 87.

- **Verification Lists:** Myanmar provided a list of individuals it would accept for return, based on flawed “family lists” that excluded many and contained inaccuracies.¹⁰¹

7.3.3 Implementation and Violations of International Law

- **Violation of the Right to Nationality and Dignity:** The NVC precondition transformed repatriation into a process of **coerced identity erasure**, directly violating the right to a nationality and the principle of dignified return.¹⁰²
- **Violation of Safety:** UNHCR and other independent assessments concluded that conditions in Rakhine State were not conducive to safe return, citing ongoing conflict, discrimination, and lack of accountability.¹⁰³
- **Violation of Voluntariness:** In the lead-up to scheduled return dates, refugees in Cox’s Bazar reported sophisticated coercion, including misinformation, threats, and the manipulation of humanitarian assistance to create “volunteers.”¹⁰⁴

7.3.4 Outcome and Collapse

Faced with universal refusal by refugees to return under these terms and mounting international condemnation, the process was suspended indefinitely in 2019 without a single refugee being repatriated through the formal framework.¹⁰⁵ The failure was total and exposed the hollowness of diplomatic engagement that sidestepped core legal issues.

¹⁰¹ Ministry of Labour, Immigration and Population, Myanmar, *Procedures for Refugee Return* (2018).

¹⁰² Amnesty International, *Myanmar: “We Will Destroy Everything”: Military Responsibility for Crimes Against Humanity in Rakhine State* (2018) 77.

¹⁰³ UNHCR, *Assessment of Conditions in Northern Rakhine State* (October 2018).

¹⁰⁴ Amnesty International (n 131) 89–92.

¹⁰⁵ BBC News, ‘Rohingya repatriation: Why no one wants to return to Myanmar’ (22 August 2019).

7.4 Comparative Legal Analysis: Identifying the Recurring Pathologies

A systematic comparison reveals that both case studies failed for identical legal reasons:

Analytical Category	1992 Agreement	2018–2019 Framework	Unified Legal Failure
Treatment of Statelessness	Ignored; treated as an administrative problem	Weaponized via the NVC as a precondition	Failure to address the right to nationality
Safety Guarantees	None; return to militarized control	None; return to active conflict & persecutors	Violation of non-refoulement & right to life
Voluntariness	Undermined by coercion in camps	Undermined by coercion & lack of alternatives	Violation of free and informed consent
International Oversight	UNHCR role passive and limited	UNHCR assessments ignored; no enforcement power	Lack of binding monitoring & accountability
State Responsibility	Myanmar's obligations unenforced; Bangladesh bore burden	Myanmar imposed illegal terms; international community failed to uphold law	Diffusion and evasion of primary legal responsibility

7.4.1 Comparative Legal Analysis: Patterns of a Doomed Design

A side-by-side forensic comparison reveals a persistent pattern of legal disregard across three decades:

Legal Principle Violated	Manifestation in 1992 Agreement	Manifestation in 2018–2019 Framework
Voluntariness	Coercion in camps; no free or informed choice	Coerced “volunteering”; choice between two rights violations
Safety (Physical/Legal)	Return to militarized control; no protection guarantees	Return to conflict zone; NVC denies legal identity & protection
Dignity / Right to Nationality	Return to apartheid conditions; no citizenship pathway	Forced identity renunciation via NVC; apartheid maintained
Role of International Oversight	UNHCR passive observer; no post-return monitoring	UNHCR assessment ignored; no access or enforcement power
State Responsibility	Myanmar evaded obligations; Bangladesh bore unilateral burden	Myanmar imposed unlawful preconditions; international community failed to enforce law

This pattern demonstrates that the failures were not isolated but *systemic*: both agreements were engineered to prioritize political expediency and state sovereignty over refugee rights.

7.4.2 *The Complicit Role of Diplomatic Process*

These case studies reveal a darker truth: the diplomatic negotiation of repatriation can itself become a vehicle for legitimizing violations. By engaging in processes that are legally doomed, the international community inadvertently:

- **Normalizes Illegality:** Treating Myanmar’s unlawful preconditions (like the NVC) as legitimate topics for negotiation erodes the peremptory status of the right to a nationality.
- **Shifts the Burden of Proof:** The debate becomes mired in procedural details (verification lists, transit camp conditions) rather than focusing on Myanmar’s primary obligation to grant citizenship and ensure safety.
- **Wears Down Refugee Agency:** Protracted, cyclical negotiations create “repatriation fatigue,” pressuring refugees to accept less than their full rights.

7.5 Conclusion: The Case for Legally-Preconditional Diplomacy

These case studies provide empirical proof that repatriation processes cannot succeed if they are negotiated *around* international law rather than *through* it. The consistent failures across three decades stem from a refusal to make Myanmar’s fulfillment of its primary legal obligations—**granting citizenship, ensuring safety, and providing accountability**—the non-negotiable precondition for any diplomatic dialogue. Future efforts must therefore abandon the cyclical model of “agreement-collapse-agreement” and adopt a **legally-preconditional approach**: no talks without tangible, verifiable legal reforms. The final chapter will translate this imperative into a concrete action framework.

Chapter Eight

Conclusion and Recommendations – A Legal Pathway to Dignified Repatriation

8.1 Introduction: Synthesizing the Legal Impasse

This thesis has systematically dissected the legal, political, and humanitarian anatomy of the Rohingya repatriation crisis. From the **architectural exclusion** embedded in Myanmar's 1982 Citizenship Law (Chapter 2) to the **triple bind** of non-refoulement, statelessness, and citizenship denial (Chapter 4), and through the empirical evidence of **systemic diplomatic failure** across three decades (Chapter 7), a consistent and unequivocal conclusion emerges: **the safe, voluntary, and dignified repatriation of Rohingya refugees is legally impossible under Myanmar's current domestic legal and political order.**¹⁰⁶

The crisis is not a temporary humanitarian emergency but a *permanent legal condition* engineered by the state. Myanmar's strategic use of sovereignty to create statelessness has effectively weaponized domestic law to nullify international obligations, creating a protection vacuum that traps refugees between indefinite encampment and unlawful return.¹⁰⁷

The international community's response, while rich in humanitarian aid and condemnatory rhetoric, has been fatally deficient *in legal enforcement and accountability*. This concluding chapter synthesizes the core findings and translates them into a concrete, actionable, and legally-robust framework for breaking the impasse.

¹⁰⁶ James C. Hathaway, *The Rights of Refugees under International Law* (2nd edn, CUP 2021) 985–990.

¹⁰⁷ Katherine Southwick, 'Myanmar's 1982 Citizenship Law and the Rohingya Genocide' (2019) 20(1) *Genocide Studies and Prevention: An International Journal* 91, 100.

8.2 Summary of Key Findings

1. **Statelessness as the Foundational Barrier:** The 1982 Citizenship Law is not merely discriminatory but constitutes a **continuing internationally wrongful act** that violates peremptory norms, including the right to a nationality and the prohibition of racial discrimination.¹⁰⁸ It is the primary de jure obstacle to repatriation.
2. **The Non-Refoulement Impasse:** In contexts of state-sponsored persecution, non-refoulement must evolve from a **negative prohibition** into a **positive obligation** to create conditions for safe return. Myanmar's maintenance of unsafe and discriminatory conditions triggers this positive duty.¹⁰⁹
3. **The Five-Dimensional Safety Standard:** Safe return requires guarantees across **physical, legal, identity, social, and generational** dimensions. Current conditions in Rakhine State fail catastrophically on all five, rendering return a violation of international law.¹¹⁰
4. **Diffusion of Responsibility:** Accountability has been fragmented among Myanmar (which evades), Bangladesh (which is overburdened), ASEAN (which hides behind non-interference), and the international community (which privileges humanitarianism over legal enforcement). This **collective action failure** perpetuates the crisis.¹¹¹
5. **The Pathology of Failed Agreements:** Past repatriation attempts failed because they were **structurally designed to fail**—negotiating around rights rather than for them, and treating symptoms (verification, transit camps) instead of the disease (statelessness,

¹⁰⁸ UN Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar' (2018) UN Doc A/HRC/39/64, para 70.

¹⁰⁹ Jane McAdam, 'The Enduring Importance of the Global Refugee Compact' (2020) 32(1) *International Journal of Refugee Law* 1, 15–18.

¹¹⁰ *Infra* Chapter 5, Table 5.1; UNHCR, *Handbook on Voluntary Repatriation: International Protection* (UNHCR 1996) para 2.1.

¹¹¹ Alexander Betts, 'The Refugee Regime Complex' (2010) 29(1) *Refugee Survey Quarterly* 12, 15–18.

impunity).¹¹²

8.3 A Paradigm Shift: From Humanitarian Management to Legal Enforcement

The central argument of this thesis is that the current paradigm—treating the Rohingya crisis as a *humanitarian challenge* to be managed through aid and cyclical diplomacy—has reached its legal and moral limits.

A paradigm shift is urgently required, repositioning the crisis as a legal and accountability emergency demanding enforcement, not empathy.¹¹³

This shift entails three fundamental changes in approach:

1. **From Sovereignty as Shield to Sovereignty as Responsibility:** Myanmar's claim of sovereign prerogative over citizenship must be challenged by its **sovereign responsibility** to protect all persons on its territory. Sovereignty cannot be invoked to justify violations of jus cogens norms.¹¹⁴
2. **From Voluntary Return to Rightful Return:** The focus must move from securing refugees' "consent" to return under unsafe conditions, to **enforcing their right** to return in safety and dignity. This shifts the onus from refugee choice to state obligation.¹¹⁵
3. **From Bilateral Negotiation to Multilateral Enforcement:** Isolated Bangladesh-Myanmar talks have proven legally barren. The process must be **internationalized and judicialized**, with leverage pooled through coordinated multilateral action.¹¹⁶

¹¹² See Chapter 7, Comparative Legal Analysis.

¹¹³ Penelope Mathew, 'Rethinking the Right to Durable Solutions' (2014) 33(3) *Refugee Survey Quarterly* 19, 25.

¹¹⁴ UN General Assembly, *2005 World Summit Outcome*, UN Doc A/RES/60/1 (2005), paras 138–139.

¹¹⁵ Guy S. Goodwin-Gill, 'The Politics of Refugee Protection' (2008) 27(1) *Refugee Survey Quarterly* 8, 12

¹¹⁶ Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (CUP 2011) 225.

8.4 Integrated Recommendations for a Rights-Compliant Repatriation Framework

The following recommendations are sequenced, interdependent, and designed to operationalize the paradigm shift. They are directed at distinct actors but are conceived as parts of a unified strategy.

8.4.1 For Myanmar: *The Non-Negotiable Preconditions*

Any dialogue on repatriation must be **conditionally preceded** by verifiable actions:

1. **Repeal and Replace the 1982 Citizenship Law:** Enact a new nationality law compliant with the 1961 Statelessness Convention, guaranteeing citizenship to all Rohingya based on birth or habitual residence, without discriminatory criteria.¹¹⁷
2. **Grant Full Citizenship and Restore Rights:** Issue citizenship documents proactively; restore property rights through a transparent claims process; lift all discriminatory restrictions on movement, marriage, education, and employment.¹¹⁸
3. **Dismantle the Architecture of Persecution:** Demilitarize Rohingya-majority areas; disband the “NaSaKa” border force; allow unfettered humanitarian and human rights access to Rakhine State.¹¹⁹
4. **Ensure Accountability:** Cooperate fully with the ICJ, ICC, and IIMM; prosecute perpetrators of atrocities domestically under international standards; provide reparations to victims.¹²⁰

¹¹⁷ Convention on the Reduction of Statelessness (1961), art 1.

¹¹⁸ International Covenant on Civil and Political Rights (1966), arts 12, 26.

¹¹⁹ Fortify Rights, “*They Gave Them Long Swords*” (2018) 55–60.

¹²⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Provisional Measures) [2020] ICJ Rep 3, para 86

8.4.2 For the International Community: From Condemnation to Coercion

The international community must move beyond statements to **structured, escalatory pressure:**

1. **UN Security Council Action:** Pursue a Chapter VII resolution imposing a **global arms embargo on Myanmar**, targeted sanctions on military conglomerates (MEHL, MEC), and a referral of the situation to the ICC for full investigation (complementing the current limited mandate).¹²¹
2. **Support and Strengthen Judicial Accountability:**
 - **ICJ:** All states party to the Genocide Convention should formally intervene in *The Gambia v. Myanmar* to amplify the case and ensure compliance with provisional measures.¹²²
 - **ICC:** Increase funding and political support for the ICC investigation; encourage member states to arrest persons subject to ICC warrants.¹²³
3. **Coordinate Universal Jurisdiction Prosecutions:** States with universal jurisdiction laws (e.g., Germany, Argentina) should initiate investigations and prosecutions against Myanmar military officials for crimes against humanity and genocide.¹²⁴
4. **Condition All Engagement:** Make **all diplomatic and economic engagement** with Myanmar conditional on tangible progress on the preconditions listed in Section 8.4.1.¹²⁵

¹²¹ Security Council Report, 'Myanmar: December 2022 Monthly Forecast' (30 November 2022).

¹²² ICJ Statute, art 63.

¹²³ ICC, *Situation in Bangladesh/Myanmar*, ICC-01/19.

¹²⁴ Amnesty International, *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World* (2011) 12–15

¹²⁵ European Union, *Council Regulation (EU) 2022/328 concerning restrictive measures in view of the situation in Myanmar* (2022).

8.4.3 For ASEAN: From Non-Interference to Constructive Intervention

ASEAN must evolve its role from passive facilitator to active protector of regional stability:

1. **Invoke the ASEAN Charter’s Human Rights Provisions:** Utilize Article 1(7) and the ASEAN Human Rights Declaration to frame the crisis as a threat to regional “peace, stability, and prosperity,” warranting collective action.¹²⁶
2. **Establish an ASEAN Commission on Rohingya Repatriation:** A dedicated, expert-led commission with a mandate to verify conditions in Rakhine State, monitor any future returns, and report publicly on compliance.¹²⁷
3. **Leverage Economic Integration:** Use Myanmar’s dependence on regional trade and investment as leverage, linking ASEAN economic benefits to measurable legal reforms.¹²⁸

8.4.4 For Bangladesh and Host States: Protection with Leverage

Bangladesh’s strategy must shift from bearing unilateral burden to wielding multilateral leverage:

1. **Formalize a “Protection with Leverage” Doctrine:** Publicly declare that any future repatriation talks will be contingent on the international community’s commitment to a **tripartite strategy**: (a) enforceable pressure on Myanmar, (b) equitable burden-sharing for hosting, and (c) expanded third-country resettlement.¹²⁹
2. **Demand a Binding International Burden-Sharing Agreement:** Lead negotiations for a new multilateral compact that guarantees **predictable, multi-year funding** for refugee assistance and establishes a **quota-based resettlement program** with concrete

¹²⁶ ASEAN Charter (2007), art 1(7); ASEAN Human Rights Declaration (2012), art 4.

¹²⁷ Proposed model based on the ASEAN Intergovernmental Commission on Human Rights (AICHR) but with a specific thematic and investigative mandate.

¹²⁸ Lee Jones, ‘ASEAN and the Rohingya Crisis: Non-Interference and the “ASEAN Way”’ (2020) 32(1) *The Pacific Review* 104, 115.

¹²⁹ C. R. Abrar, ‘The Rohingya Crisis: How Bangladesh’s Leadership is Shaping the Regional Response’ (2021) 42(1) *Contemporary South Asia* 45, 52.

commitments from UN member states.¹³⁰

3. **Uphold Protection Standards:** Resist all pressure for forced or coerced returns; improve camp conditions with a focus on education, livelihoods, and security, in line with the Global Compact on Refugees.¹³¹

8.4.5 for the UN and Humanitarian Actors: Rights-Based Humanitarian Action

Humanitarian action must be explicitly linked to legal objectives:

1. **UNHCR – From Observer to Guardian:** UNHCR should publicly decline participation in any repatriation process that does not meet its *Handbook* standards and should be granted a **mandate with investigative and reporting authority** inside Rakhine State.¹³²
2. **Integrate Legal Advocacy into Humanitarian Programming:** All aid agencies should incorporate systematic human rights monitoring and legal empowerment programs for refugees into their operations, building evidentiary records for accountability.¹³³
3. **Support Refugee-Led Advocacy:** Directly fund and amplify the voices of Rohingya refugee-led organizations in all policy discussions about their future.¹³⁴

8.5 A Proposed Roadmap and Timeline

To translate recommendations into action, a clear, phased roadmap is essential:

- **Phase 1: Pressure and Preconditions (0–12 Months):** International coalition forms; targeted sanctions and ICJ/ICC processes intensify; Myanmar is presented with the non-

¹³⁰ UN General Assembly, *New York Declaration for Refugees and Migrants*, UN Doc A/RES/71/1 (2016), para 68.

¹³¹ Global Compact on Refugees (2018), para 15.

¹³² UNHCR, *Handbook on Voluntary Repatriation* (1996), paras 2.1–2.5; UNHCR Statute, para 8

¹³³ OHCHR, *Rights-Based Approach to Humanitarian Action* (2018) 7–9.

¹³⁴ M. Bradley, 'Rohingya Refugee Leadership and the Durability of Displacement' (2023) 45(1) *Journal of Refugee Studies* 112, 120.

negotiable preconditions.

- **Phase 2: Verification and Reform (12–24 Months):** Upon Myanmar enacting citizenship law reforms, an independent international commission verifies changes on the ground. Humanitarian access becomes full and unfettered.
- **Phase 3: Pilot Return and Monitoring (24–36 Months):** A small-scale, fully monitored pilot repatriation of volunteers occurs only after verification. A permanent international monitoring mechanism is established in Rakhine State.
- **Phase 4: Scaled Return and Integration (36+ Months):** Upon successful pilot, scaled voluntary repatriation begins, synchronized with massive investment in reintegration and reconciliation in Rakhine State, funded by an international trust fund.¹³⁵

8.6 Concluding Reflection: Justice as the Only Durable Solution

The Rohingya crisis is ultimately a crisis of justice. The international legal system, for all its treaties and courts, has been outmaneuvered by a state that understands how to use law as a tool of exclusion rather than protection. The safe, voluntary, and dignified return of the Rohingya will not be achieved through more compassion or better-run camps. It will be achieved only when the international community finds the political will to **enforce the law it has created**.¹³⁶

This requires courage—to impose costs on a defiant state, to invest in judicial mechanisms whose results are slow, and to insist that the right to a nationality is not a bargaining chip but a bedrock human right.¹³⁷ The Rohingya have been told to wait for politics to align. They have waited through genocide and generations in exile. It is time to demand that politics align with law.

¹³⁵ This phased approach adapts the UNHCR's "Framework for Return to Rakhine State" (2018) but makes legal preconditions explicit and non-negotiable.

¹³⁶ James C. Hathaway (n 135) 992.

¹³⁷ Universal Declaration of Human Rights (1948), art 15.

Repatriation is the preferred durable solution not because it is the easiest, but because it restores the fundamental bond between a people and their homeland. For the Rohingya, that bond was severed by law. It can only be restored by law. This thesis concludes with the conviction that the pathway to repatriation is the same as the pathway to justice: **unyielding legal accountability, enforced by collective political will.**¹³⁸ There is no shortcut, and no alternative.

¹³⁸ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10, art 30.

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APPENDICES

APPENDIX A: MAPS AND VISUALS

1. **Map 1:** Administrative Map of Rakhine State, Myanmar
Source: United Nations Cartographic Section
2. **Map 2:** Location of Rohingya Refugee Camps in Cox’s Bazar, Bangladesh
Source: UNHCR Operational Data Portal
3. **Timeline of Key Events:**
 - 1982: Enactment of Myanmar Citizenship Law
 - 1991–1992: First major Rohingya exodus
 - 2012: Rakhine State riots
 - August 2017: Military crackdown and mass displacement
 - November 2017: Bangladesh–Myanmar repatriation agreement
 - 2019–2020: ICJ provisional measures in *The Gambia v. Myanmar*
 - 2022–2023: Ongoing armed conflict in Rakhine State

APPENDIX B: LEGAL DOCUMENTS (EXCERPTS)

1. **Myanmar Citizenship Law (1982) – Relevant Sections**
 - Sections 3–7: Classification of citizens
 - Sections 42–44: Procedures for naturalization and verification
2. **Bangladesh–Myanmar Joint Statement (23 November 2017)**
 - Key clauses on repatriation framework

3. UNHCR Handbook on Voluntary Repatriation (1996) – Extracts

- Paragraphs 2.1–2.5: Principles of voluntariness, safety, and dignity

4. ICJ Provisional Measures Order (The Gambia v. Myanmar, 2020)

- Paragraphs 75–86: Obligations of Myanmar to prevent genocide and preserve evidence

APPENDIX C: DATA TABLES

Table C1: Demographic Overview of Rohingya Refugees in Bangladesh (2023)

Indicator	Number	Source
Total refugees	~960,000	UNHCR
Women and girls	~52%	UNFPA
Children under 18	~55%	UNICEF
Registered households	~200,000	RRRC
Camps	33	ISCG

Table C2: Conditions in Rakhine State – Human Rights Indicators (2022–2023)

Indicator	Status	Source
Access to healthcare	Severely restricted	MSF, WHO
Access to education	Limited to temporary centers	UNICEF
Freedom of movement	Highly restricted	OHCHR
Citizenship verification (NVC)	Ongoing, coercive	Fortify Rights

Security situation	Active conflict (Tatmadaw vs AA)	ACLED
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APPENDIX D: INTERVIEW GUIDES & SURVEY TEMPLATES

1. **Semi-Structured Interview Guide for Legal Experts**
 - Questions on non-refoulement, statelessness, and accountability mechanisms
2. **Focus Group Discussion Guide for Rohingya Refugees**
 - Themes: perceptions of return, safety concerns, legal identity
3. **Survey Template for Humanitarian Workers**
 - Topics: camp conditions, protection risks, repatriation readiness

APPENDIX E: GLOSSARY OF KEY TERMS

- **Non-refoulement:** The principle of not forcing refugees to return to a country where they face persecution.
- **Statelessness:** The condition of having no nationality or citizenship.
- **National Verification Card (NVC):** A Myanmar-issued identity document that does not confer citizenship.
- **ASEAN Way:** The principle of non-interference in internal affairs of member states.
- **Jus cogens:** Peremptory norms of international law from which no derogation is permitted.

APPENDIX F: ADDITIONAL CHARTS & DIAGRAMS

1. **Diagram 1:** The “Triple Bind” of Rohingya Repatriation
(Visual representation of intersecting legal barriers)
2. **Chart 1:** Flow of International Accountability Mechanisms
(UN → ICJ/ICC → ASEAN → National Courts)
3. **Figure 1:** Phased Roadmap for Repatriation (as proposed in Chapter 8)
(Timeline with milestones and verification checkpoints)

APPENDIX G: LIST OF RELEVANT UN RESOLUTIONS & REPORTS

1. UN General Assembly Resolution 77/263 (2022)
 2. UN Human Rights Council Resolution 39/2 (2018)
 3. Report of the Independent International Fact-Finding Mission on Myanmar (A/HRC/39/64)
 4. UN Security Council Presidential Statements on Myanmar (2017–2023)
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APPENDIX H: CASE LAW SUMMARIES

I. INTERNATIONAL COURT OF JUSTICE (ICJ)

1. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)

- **Case No.:** General List No. 178
- **Year:** 2019–ongoing
- **Parties:** The Gambia (Applicant) v. Myanmar (Respondent)
- **Legal Basis:** Genocide Convention (1948)
- **Key Issues:**
 - Whether Myanmar’s acts against the Rohingya constitute genocide
 - Whether Myanmar violated obligations under the Genocide Convention
 - Request for provisional measures to prevent further genocidal acts
- **Provisional Measures Ordered (23 January 2020):**
 - Myanmar must take all measures to prevent genocidal acts
 - Myanmar must ensure military and police do not commit genocide
 - Myanmar must preserve evidence of alleged violations
 - Myanmar must submit regular reports to the ICJ
- **Significance:**
 - First case where a state is held accountable for genocide against the Rohingya
 - Legally binding order creates ongoing obligations for Myanmar
 - Strengthens the argument that conditions in Rakhine State are unsafe for return

II. INTERNATIONAL CRIMINAL COURT (ICC)

2. *Situation in Bangladesh/Myanmar*

- **Case No.:** ICC-01/19
- **Year:** 2019–ongoing
- **Jurisdiction:** Alleged deportation of Rohingya to Bangladesh (a state party to the Rome Statute)
- **Key Issues:**
 - Whether the ICC has jurisdiction over crimes committed partly in Bangladesh
 - Whether deportation, persecution, and other inhumane acts amount to crimes against humanity
- **Pre-Trial Chamber I Decision (6 September 2018):**
 - Confirmed ICC jurisdiction over deportation as a crime against humanity
 - Authorized investigation into alleged crimes since 2016
- **Current Status:**
 - Investigation ongoing
 - Warrants for arrest may be issued against military officials
- **Significance:**
 - First international criminal investigation into Rohingya atrocities
 - Focuses on individual criminal responsibility, complementing ICJ's state responsibility approach

III. DOMESTIC COURTS & UNIVERSAL JURISDICTION CASES

3. *Argentina – Rohingya Genocide Case*

- **Court:** Federal Criminal Court of Argentina
- **Year:** 2021–ongoing
- **Legal Basis:** Universal jurisdiction under Argentine law
- **Key Issues:**
 - Whether Argentine courts can prosecute crimes against humanity committed in Myanmar
 - Admissibility of evidence from UN reports and NGOs

- **Status:**
 - Case filed by Rohingya organizations
 - Under preliminary investigation
- **Significance:**
 - Demonstrates use of universal jurisdiction to pursue accountability
 - Complements international court proceedings

4. Myanmar – Domestic Prosecution of Military Officials

- **Court:** Myanmar Military Tribunals
- **Year:** 2022
- **Allegations:** Atrocities in Rakhine State (2017)
- **Outcome:**
 - Limited convictions of low-ranking soldiers for “violations of discipline”
 - No senior officials held accountable
 - Widely criticized as a sham to avoid international justice
- **Significance:**
 - Highlights impunity and lack of genuine accountability in Myanmar
 - Reinforces need for international judicial mechanisms

IV. REGIONAL HUMAN RIGHTS BODIES

5. ASEAN – Lack of Judicial Mechanism

- **Note:** ASEAN has no regional human rights court
- **Relevant Body:** ASEAN Intergovernmental Commission on Human Rights (AICHR)
- **Action Taken:**
 - Limited to diplomatic statements and humanitarian coordination
 - No binding decisions or investigations
- **Significance:**
 - Illustrates institutional weakness of ASEAN in human rights enforcement
 - Reflects the “ASEAN Way” of non-interference

V. UNITED NATIONS HUMAN RIGHTS COMMITTEE

6. *Communication No. 2641/2015 – Myanmar*

- **Year:** 2020
- **Complainant:** Rohingya individuals
- **Allegations:** Violations of ICCPR rights (life, liberty, non-discrimination)
- **Committee Findings:**
 - Myanmar failed to protect Rohingya from violence
 - Violated rights to life and non-discrimination
 - Recommended investigation, prosecution, and reparations
- **Significance:**
 - Confirms Myanmar’s breaches of human rights treaty obligations
 - Adds to body of evidence for international cases

SUMMARY TABLE OF KEY CASES

Case	Court/Body	Key Legal Issue	Outcome/Status
<i>The Gambia v. Myanmar</i>	ICJ	Genocide and provisional measures	Provisional measures ordered; case ongoing
<i>Situation in Bangladesh/Myanmar</i>	ICC	Crimes against humanity (deportation)	Investigation authorized; ongoing
<i>Argentina Universal Jurisdiction</i>	Argentine Courts	Universal jurisdiction for crimes against humanity	Preliminary stage; under investigation

<i>Myanmar Military Tribunals</i>	Domestic (Myanmar)	Accountability for 2017 atrocities	Limited sham prosecutions; impunity persists
<i>UN Human Rights Committee</i>	UN Treaty Body	Violations of ICCPR	Findings against Myanmar; no enforcement mechanism

VI. RELEVANT PRECEDENTS FROM OTHER JURISDICTIONS

7. *Prosecutor v. Jean-Paul Akayesu* (ICTR, 1998)

- **Significance:** Established rape as act of genocide—relevant to sexual violence against Rohingya women.

8. *Bosnia and Herzegovina v. Serbia and Montenegro* (ICJ, 2007)

- **Significance:** Clarified state responsibility for genocide—relevant to Myanmar’s obligations under the Genocide Convention.

9. *Obligation to Prosecute or Extradite (Belgium v. Senegal)* (ICJ, 2012)

- **Significance:** Reinforced duty to prosecute international crimes—supports universal jurisdiction cases against Myanmar officials.

END