



## ASIA JUSTICE COALITION SUBMISSION TO THE SPECIAL RAPPORTEUR ON RIGHTS TO PEACEFUL ASSEMBLY AND OF ASSOCIATION

In response to a [call for input](#) by the Special Rapporteur for the freedoms of peaceful assembly and of association (Special Rapporteur), the Asia Justice Coalition (Coalition)<sup>1</sup> provides its observations on the protection of human rights in the context of peaceful protests during overlapping military, humanitarian, and social and political crises in and related to Myanmar. This input broadly covers the aforementioned categories outlined in the Questionnaire provided in the call.<sup>2</sup> Specifically, this input addresses violations to the right to peaceful assembly and other interrelated human rights during peaceful protests in two contexts:

- (i) The February 2021 coup in Myanmar
- (ii) Rohingya refugees in Bangladesh refugee camps

### I. INTRODUCTION

1. The military, humanitarian, and social and political crises in Myanmar are interconnected and intertwined. Human rights violations committed by Myanmar security forces against ethnic minorities in Myanmar over the decades have had dire humanitarian consequences for the country. Some of these violations may amount to war crimes, crimes against humanity, and genocide. Notably, the security forces' 'clearance operations' against the Rohingya in 2017 resulted in approximately 10,000 civilian deaths and displaced over 700,000 people over to Bangladesh.<sup>3</sup>

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<sup>1</sup> In drafting this submission, the Coalition harnessed the expertise of its Members in two ways. First, confidential first-hand information and public publications from our Members serve as a basis for the fact pattern of alleged human rights violations and international crimes. Second, the Coalition sought substantive input and feedback on the content herein from its Members. However, this submission shall be attributed to the Asia Justice Coalition Secretariat; its contents may not necessarily reflect the position of a specific Member and/or all Members of this Coalition.

<sup>2</sup> See generally Questions 1, 2, and 8.

<sup>3</sup> Human Rights Council [HRC], '[Report of the Independent International Fact-Finding Mission on Myanmar](#)' (12 September 2018) UN Doc A/HRC/39/64. Paragraph 33: 'By mid-August 2018, nearly 725,000 Rohingya had fled to Bangladesh'. Paragraph 36: 'Information collected [...] suggests that the estimate of up to 10,000 deaths is a conservative one'; '[Oral Update by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar at the 38<sup>th</sup> Session of the Human Rights Council](#)' (OHCHR, 27 June 2018): 'In Cox's Bazar [...] over 700,000 having arrived since August 2017'.

## A. Myanmar

2. The February 2021 military coup d'état in Myanmar launched political turmoil and triggered a wave of peaceful protests – the civil disobedience movement (CDM) across the country. Myanmar security forces have responded using disproportionate and often lethal force against peaceful protestors.<sup>4</sup> The coup has also exacerbated the human rights situation of ethnic minorities and the related humanitarian crisis, owing to an escalation of armed conflicts between the security forces and various ethnic armed organizations, as well as attacks by the security forces' on the civilian population.<sup>5</sup> UN reports evince mass displacement, starvation, and disease in various states in Myanmar, and that the so-called 'State Administrative Council' (SAC) obstructed the provision of aid to these states by way of military blockades.<sup>6</sup> This situation has also fueled protests in those areas.
3. On 8 February 2021, the SAC issued an emergency order prohibiting marches, protests, and gatherings of five or more persons in public areas, in addition to a curfew from 20:00 to 04:00; a violation thereof is punishable by up to six months in prison under Section 188 of the Penal Code.<sup>7</sup> Security forces have also employed disproportionate use of force to quash the protests. Reports indicate the indiscriminate use of live ammunition, rubber bullets, tear gas, and water cannons against protestors.<sup>8</sup> As of early July 2021, the UN reported that nearly 900 individuals have been killed across Myanmar since the coup on 1 February 2021.<sup>9</sup> Thousands of others have been injured, some severely.<sup>10</sup>
4. Nearly 6,000 persons have been detained since February 2021.<sup>11</sup> In that month alone, at least 15 people were detained under Section 19 of Myanmar's Peaceful Assembly and Peaceful Procession Law for staging protests against the military.<sup>12</sup> Among the thousands detained, some have reported incidences of torture and/or

<sup>4</sup> Myanmar's 'security forces' apparatus includes the Tatmadaw, police force, and intelligence services.

<sup>5</sup> ['Bachelet Issues Strong Warning of Imminent Further Bloodshed and Suffering in Myanmar'](#) (OHCHR, 11 June 2021).

<sup>6</sup> ['"Mass Deaths" Alert in Myanmar as 100,000 Flee Junta's Heavy Weapons'](#) (UN, 9 June 2021); ['Bachelet Issues Strong Warning of Imminent Further Bloodshed and Suffering in Myanmar'](#) (OHCHR, 11 June 2021); OCHA, ['Myanmar Humanitarian Update No.7'](#) (27 May 2021).

<sup>7</sup> HRC, ['Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Thomas H. Andrews'](#) (4 March 2021) UN Doc A/HRC/46/56 para 84.

<sup>8</sup> ['Several Injured as Security Forces Violently Quash Peaceful Protests'](#) (Amnesty International, 9 February 2021); ['Evidence Police Deployed Sub-Machine Guns Against Peaceful Protestors, Despite Denials'](#) (Amnesty International, 11 February 2021); Siobhan Robbins, ['Ex-Myanmar Police Officers Reveal How They Were Told to Shoot Protestors – and Why They Defected'](#) (Sky News, 2 June 2021).

<sup>9</sup> ['Statement by Michelle Bachelet, UN High Commissioner for Human Rights'](#) (OHCHR, 6 July 2021); ['Statement by Thomas H. Andrews, UN Special Rapporteur on the Situation of Human Rights in Myanmar'](#) (OHCHR, 7 July 2021).

<sup>10</sup> ['End Lethal Force against Protestors'](#) (Human Rights Watch, 3 March 2021).

<sup>11</sup> ['Statement by Thomas H. Andrews, UN Special Rapporteur on the Situation of Human Rights in Myanmar'](#) (OHCHR, 7 July 2021).

<sup>12</sup> HRC, ['Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Thomas H. Andrews'](#) (4 March 2021) UN Doc A/HRC/46/56 para 86. Peaceful Assembly and Peaceful Procession Law Section 19: Section 19 criminalizes the failure to obtain prior permission for a protest and criminalizes behaviour that could 'destroy the government, public, or private properties or pollute the environment' and also criminalizes 'say[ing] things or behave[ing] in a way that could affect the country or the Union, race, or religion, human dignity and moral principles'.

inhumane or degrading treatment and punishments.<sup>13</sup> There are also reports that hundreds of those arrested were forcibly disappeared.<sup>14</sup> Additionally, given the exponential increase in the number of confirmed COVID-19 cases and deaths in Myanmar in 2021,<sup>15</sup> detainees face the threat of COVID-19 in overcrowded and unsanitary prisons and detention facilities that are ill-equipped to handle an outbreak.<sup>16</sup>

5. The Special Rapporteur on the Situation of Human Rights in Myanmar, Mr. Tom Andrews, the UN High Commissioner for Human Rights, and the Independent Investigative Mechanism for Myanmar (IIMM) stated that the security forces' actions appear to fulfil the legal elements of crimes against humanity.<sup>17</sup> Crimes against humanity require that acts committed are widespread or systematic, and that such acts are directed at a civilian population, with knowledge of the attack.<sup>18</sup> Reports strongly suggest that the security forces' acts, including killings and deprivation of liberty of protestors, were carried out nationwide and in an organized manner.<sup>19</sup>

## B. Bangladesh

6. As of the end of 2020, the UN High Commissioner for Refugees (UNHCR) recorded at least 866,457 Rohingya refugees in Bangladesh refugee camps.<sup>20</sup> Rohingya refugees who fled Myanmar to Bangladesh face perilous conditions of life in refugee camps there. Reports show that camps are overcrowded and refugees live in makeshift shelters with poor sanitation, healthcare facilities, education, and livelihood options.<sup>21</sup> Bangladeshi authorities also imposed restrictions on their movement and internet services for almost a year, hindering the refugees' ability to communicate and access information.<sup>22</sup> Recently, the well-being of Rohingya refugees in the camps have further deteriorated owing to outbreaks of large fires and the prevalence of COVID-19 in the camps.<sup>23</sup>

<sup>13</sup> [‘Statement by the Secretary-General’s Special Envoy on Myanmar’](#) (UN Secretary General, 14 March 2021); [‘As Aung San Suu Kyi Goes on Trial, ASEAN’s Indecision is Enabling Military Rampage’](#) (Amnesty International, 15 June 2021); [‘Urgently Investigate NLD Official’s Death in Custody’](#) (Human Rights Watch, 9 March 2021).

<sup>14</sup> [‘Press Briefing Notes on Myanmar’](#) (OHCHR, 11 May 2021); [‘Hundreds Forcibly Disappeared’](#) (Human Rights Watch, 2 April 2021).

<sup>15</sup> [‘Myanmar Situation’](#) (World Health Organization).

<sup>16</sup> [‘Reduce Prison Populations to Limit COVID-19’](#) (Human Rights Watch, 3 April 2021).

<sup>17</sup> [‘Statement by Thomas H. Andrews UN Special Rapporteur on the Situation of Human Rights in Myanmar’](#) (OHCHR, 11 March 2021); [‘Intensifying Widespread, Systematic Slaughter by Myanmar Military Must Be Halted – Bachelet’](#) (OHCHR, 13 April 2021); Independent Investigative Mechanism for Myanmar [IIMM], [‘Bulletin’](#) (July 2021).

<sup>18</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 art 7.

<sup>19</sup> IIMM, [‘Bulletin’](#) (July 2021).

<sup>20</sup> [‘Bangladesh’](#) (UNHCR).

<sup>21</sup> See generally Human Rights Watch, [‘Are We Not Human? Denial of Education for Rohingya Refugee Children in Bangladesh’](#) (3 December 2019); [‘I Don’t Know How My Future Will Be Without Education’](#) (Amnesty International, 24 January 2021).

<sup>22</sup> [‘Internet Blackout on Rohingya Refugees’](#) (Human Rights Watch, 13 September 2019); [‘Internet Ban Risks Rohingya Lives’](#) (Human Rights Watch, 26 March 2020); Mohammed Tofail, [‘The World Should Not Leave Us Behind, Caged in a Camp Like This’](#) (Amnesty International, 20 June 2020).

<sup>23</sup> [‘Refugee Camp Fencing Cost Lives in Blaze’](#) (Human Rights Watch, 25 March 2021); [‘Rohingya Refugees Traumatized Again, After Devastating Camp Fire’](#) (UN, 25 April 2021); Fortify Rights, [‘Bangladesh: Remove Fencing, Support Fire-Affected Refugees’](#) (5 May 2021).

7. Since December 2020, Bangladesh has moved approximately 20,000 Rohingya refugees to Bhasan Char, a remote silt island in the Bay of Bengal, with a view to ultimately relocate 100,000 Rohingya there.<sup>24</sup> Civil society organizations have raised concerns regarding whether relocations of Rohingyas were voluntary and carried out with their informed consent.<sup>25</sup> The island is remotely located and is susceptible to extreme weather conditions, posing a significant security risk and challenges to the transport of aid, including medical supplies and food.<sup>26</sup> Refugees on Bhasan Char have reported food shortages and inadequate education and healthcare services.<sup>27</sup> Bangladesh also shared confidential information collected by the UNHCR since 2018, including analog photographs, thumbprint images, and other biographic data, with the Myanmar government for possible repatriation.<sup>28</sup>
8. Since at least 2018, Rohingya refugees have been organizing peaceful protests to voice their concerns regarding the aforementioned issues. Reports evince a pattern of abuse and repression of peaceful assembly by Bangladeshi authorities. Most recently, Rohingya refugees protesting conditions of the Bhasan Char camp were injured after Bangladeshi police officers reportedly beat them.<sup>29</sup>

## II. MYANMAR SECURITY FORCES' CRACKDOWN ON PEACEFUL PROTESTORS VIOLATE INTERNATIONAL HUMAN RIGHTS LAW

9. Myanmar is not a State Party to the International Covenant on Civil and Political Rights (ICCPR). However, Myanmar ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 22 July 1997, the International Covenant on Economic, Social and Cultural Rights on 6 October 2017, the Convention on the Rights of the Child (CRC) on 15 July 1991, both optional protocols to the CRC on 16 January 2012 and 27 September 2019, and the Convention on the Right of Persons with Disabilities (CRPD). Myanmar has an international obligation to respect, protect, and fulfil rights under international instruments to which they are a State Party. Myanmar is also bound by norms that have attained the status of customary international law and *jus cogens*. While the Universal Declaration of Human Rights (UDHR) is not binding, it remains authoritative.
10. The SAC's blanket prohibition on gatherings of more than five people and imposition of a curfew violate protestors' right to peaceful assembly as articulated in article 20 of the UDHR.<sup>30</sup> While under international human rights law, certain rights, including the right to peaceful assembly can be limited, the freedom must

<sup>24</sup> Human Rights Watch, '[An Island in the Middle of the Sea](#)' (7 June 2021).

<sup>25</sup> Ibid; '[Transfer of Rohingya Refugees to Bay of Bengal Island "Must Be Voluntary": UN Refugee Agency](#)' (UN, 7 December 2020).

<sup>26</sup> Human Rights Watch, '[An Island in the Middle of the Sea](#)' (7 June 2021); '[Reunify Rohingya Refugee Families](#)' (Human Rights Watch, 15 September 2020).

<sup>27</sup> Meenakshi Ganguly, '[Bangladesh's Unplanned Relocation of Rohingya Refugees to Bhasan Char Island is Risky](#)' (Human Rights Watch, 7 June 2021).

<sup>28</sup> '[UN Shared Rohingya Data Without Informed Consent](#)' (Human Rights Watch, 15 June 2021).

<sup>29</sup> '[Rohingya Refugees on Island Fear Monsoon](#)' (Human Rights Watch, 7 June 2021).

<sup>30</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) art 20 (UDHR).

be considered the rule and the restriction, the exception.<sup>31</sup> Any limitations must: (i) conform with the law; *and* (ii) be necessary in a democratic society.<sup>32</sup> They must also be proportionate and cannot ‘impair the essence of the right’.<sup>33</sup>

11. Violence against protestors and repression of their human rights are neither ‘necessary in a democratic society’, nor do they serve any legitimate interests. On the contrary, they effectively prohibit any kind of meaningful peaceful assembly, one of the tenets of democracy and the rule of law.<sup>34</sup> Additionally, they violate fundamental freedoms and rights of the people of Myanmar, including the rights to life, liberty and security, and freedom from torture.<sup>35</sup> These rights are universal, indivisible, interdependent, and interrelated.<sup>36</sup> The following section highlights four thematic human rights issues that warrant further attention.

### A. No Place for a Child: Torture and Ill-treatment of Children

12. The UN reported that as of 31 March 2021, at least 75 children have been killed and 1,000 children and young persons detained resulting from their participation in peaceful protests.<sup>37</sup> Some have been held without access to legal counsel.<sup>38</sup> A source in Myanmar reported that two children were tried for offences as adults before Myanmar courts. Some judges also purportedly encouraged children to confess to crimes in exchange for a more lenient sentence.<sup>39</sup>
13. There are credible reports of torture and ill-treatment of children detained in Myanmar prisons. A 17-year-old boy arrested for allegedly leading a protest group, was subsequently detained. He described consistent beatings, burning of skin with

<sup>31</sup> Human Rights Committee [HRCCommittee], ‘[General Comment No 37 on the Right of Peaceful Assembly](#)’ (17 September 2020) UN Doc CCPR/C/GC/37 para 23; HRC, ‘[Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai](#)’ (21 May 2012) UN Doc A/HRC/20/27 para 16.

<sup>32</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 21 (ICCPR); HRC, ‘[Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai](#)’ (14 April 2014) UN Doc A/HRC/26/29 para 21.

<sup>33</sup> HRCCommittee, ‘[General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#)’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 6; HRC, ‘[Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai](#)’ (21 May 2012) UN Doc A/HRC/20/27 para 16; HRCCommittee, ‘[General Comment No 27: Article 12 \(Freedom of Movement\)](#)’ (1 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 para 13; HRC, ‘[Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai](#)’ (14 April 2014) UN Doc A/HRC/26/29 para 21.

<sup>34</sup> HRCCommittee, ‘[General Comment No 37 on the Right of Peaceful Assembly](#)’ (17 September 2020) UN Doc CCPR/C/37 para 1.

<sup>35</sup> The right to life and prohibition of torture are norms of customary international law and jus cogens respectively.

<sup>36</sup> Vienna Declaration and Programme of Action (adopted 25 June 1993) art 5.

<sup>37</sup> ‘[Myanmar Crisis Risks Damaging Entire Generation of Children, UN Child Rights Committee Warns](#)’ (OHCHR, 16 July 2021); ‘[Brutal Violence by Security Forces in Myanmar Leaves Dozens Dead, Including Multiple Children](#)’ (UNICEF, 28 March 2021); ‘[Joint Statement by UN Special Representative of the Secretary-General for Children and Armed Conflict & the UN Special Representative of the Secretary-General on Violence against Children](#)’ (UN, 1 April 2021); ‘[Five-year-old Among Almost 100 Killed by Security Forces](#)’ (Amnesty International, 27 March 2021). The Convention on the Rights of the Child defines children as ‘every human being below the age of eighteen years’. See Convention on the Rights of the Child (adopted 20 November 1989, entry into force 2 September 1990) 1577 UNTS 3 art 1 (CRC).

<sup>38</sup> ‘[Brutal Violence by Security Forces in Myanmar Leaves Dozens Dead, Including Multiple Children](#)’ (UNICEF, 28 March 2021).

<sup>39</sup> Information obtained from a credible source affiliated with a civil society organization, who is currently in Myanmar. The source of the information is withheld to protect their identity and security. More information may be available upon request.

lit cigarettes, other forms of infliction of pain during interrogation, prolonged stress positions, and sexual and gender-based violence (SGBV) in prison.<sup>40</sup> He was forced into a pit and buried in a mock burial. Prison authorities also denied him and others food and water for four days. In total, he was held for seven days and was only released after signing a false confession.<sup>41</sup> According to a source in Myanmar, two male children aged 15 and 17 respectively were subjected to SGBV in detention. During interrogation, security forces personnel touched their genitals and asked invasive questions regarding their sexual activity and orientation. They subsequently showed pornographic videos to them. Both children reported suffering from trauma after their release.<sup>42</sup>

14. Experts on torture state that the threshold for pain and suffering is lower in children than in adults due to children's position of vulnerability. This vulnerability compounds the significant physical and emotional damage of torture and ill-treatment on children.<sup>43</sup>
15. The security forces' actions against children do not only constitute a violation of children's right to peaceful assembly as enshrined in article 15 of the CRC, they also deprive children's right to life, freedom from arbitrary arrests and detentions, right to a fair trial, and freedom of opinion and expression.<sup>44</sup> Treatment inflicted upon the children in prison and detention centers, described in paragraph 13, and similar treatment inflicted upon others, amount to torture and/or ill-treatment. The infliction of severe pain and suffering by security forces served to punish detainees for their participation in the protests and/or to obtain a confession.<sup>45</sup> Torture and cruel, inhumane, or degrading treatment or punishment are prohibited under international law as a *jus cogens* norm.<sup>46</sup> Myanmar as a State Party to the CRC has breached the obligation to ensure that 'no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'.<sup>47</sup> Under domestic

<sup>40</sup> OHCHR, '[Sexual and Gender-Based Violence in the Context of Transitional Justice](#)' (October 2014). OHCHR defines SGBV as 'any harmful act directed against individuals or groups of individuals on the basis of their gender. It may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices'.

<sup>41</sup> '[Teenager Describes Torture, Mock Burial](#)' (*Human Rights Watch*, 22 June 2021).

<sup>42</sup> Information obtained from a credible source affiliated with a civil society organization, who is currently in Myanmar. The source of the information is withheld to protect their identity and security. More information may be available upon request.

<sup>43</sup> OHCHR, '[How Can Children Survive Torture?](#)' (April 2016) 6 and 8. See also '[Violence Against Children](#)' (WHO, 8 June 2020).

<sup>44</sup> CRC arts 6, 13, 37(b), and 40.

<sup>45</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entry into force 26 June 1987) 1465 UNTS 85 art 1: 'For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'.

<sup>46</sup> The status of the prohibition of torture as a *jus cogens* norm has been declared in multiple judgments before international tribunals and courts. See *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep 422 para 99; *Prosecutor v Furundzija* (Judgment) IT-95-17/1-T (10 December 1998) para 153.

<sup>47</sup> CRC art 37(a); Committee on the Rights of the Child [CommRC], '[General Comment No 8](#)' (2 March 2007) UN Doc CRC/C/GC/8 para 18; CommRC, '[General Comment No 13: The Right of the Child to Freedom from All Forms of Violence](#)' (18 April 2011) UN Doc CRC/C/GC/13 para 26.

law, Myanmar's Penal Code expressly prohibits the use of torture during interrogations.<sup>48</sup> The security forces' actions therefore contravene both international and Myanmar domestic legal frameworks.

## **B. Women Targeted: Sexual and Gender-Based Violence by the Myanmar Security Forces**

16. Women face a heightened risk of SGBV for exercising their right to peaceful assembly owing to cultural, ideological, and political factors.<sup>49</sup> In Myanmar, reports indicate that women protestors, who make up a majority of front-line protestors,<sup>50</sup> face targeted violence by security forces as an intimidation strategy.<sup>51</sup> As of March 2021, the UN noted that over 600 women, including young women and LGBTQIA+ persons, were arrested.<sup>52</sup> The UN also expressed concern at the prevalence of sexual assault, torture, and physical and verbal abuse at detention sites.<sup>53</sup> Additionally, prominent female leaders of civil society organizations and CDM leaders were targeted and arrested, all within a week.<sup>54</sup>
17. One woman recalled that seven male police officers beat and kicked her during a protest before being remanded at Insein prison. There, she was detained alongside 500 women in facilities normally occupied by male detainees. Access to sanitation was effectively non-existent as the women had to share two toilets with no water or doors. She was also denied menstrual supplies there.<sup>55</sup>
18. Another woman revealed that she was molested by a male police officer during interrogation. At a detention center in the north of Yangon, she described seeing bruises over the bodies of female detainees.<sup>56</sup> A female protestor told Al Jazeera that during protests, security forces will 'try to grope your breasts from behind to physically remove you or, at the very least, will try to unbutton your blouse with their baton'. She added that women in custody 'have been subjected to unnecessarily prolonged strip and search, as well as groping'.<sup>57</sup>

<sup>48</sup> Myanmar Penal Code arts 330 and 331.

<sup>49</sup> UN General Assembly, '[Rights to Freedom of Assembly and of Association: Note by the Secretary-General](#)' (20 July 2020) UN Doc A/75/184 para 10; Committee on the Elimination of Discrimination Against Women [CommEDAW], '[General Recommendation No 35 on Gender-Based Violence Against Women](#)' (13 July 2017) UN Doc CEDAW/C/GC/35 para 14.

<sup>50</sup> Michelle Onello and Akila Radhakrishnan, '[Myanmar's Coup is Devastating for Women](#)' (*Foreign Policy*, 23 March 2021).

<sup>51</sup> '[Statement on Myanmar by Phumzile Mlambo-Ngcuka, UN Under-Secretary General and Executive Director of UN Women](#)' (*UN Myanmar*, 12 March 2021); '[Open Letter to the United Nations \(UN\) Security to Immediately Intervene to Protect Civilians from the Burma/Military and Security Forces' Use of Violence, and End Cycle of Impunity](#)' (various, 3 March 2021).

<sup>52</sup> '[Statement on Myanmar by Phumzile Mlambo-Ngcuka, UN Under-Secretary General and Executive Director of UN Women](#)' (*UN Myanmar*, 12 March 2021).

<sup>53</sup> '[UN Special Representative Patten Expresses Grave Concern over Reports of Sexual Violence in Detention Setting in Myanmar](#)' (*UN Secretary-General*, 25 June 2021).

<sup>54</sup> Sarah Johnson, '[Myanmar Military Junta Arrests Prominent Trade Union Leader](#)' (*The Guardian*, 19 April 2021); '[Killing of Ah Khu and Arbitrary Detention of Thin Thin Aung and Myo Aye](#)' (*FIDH*, 23 April 2021); '[Security Forces Arrest Prominent Anti-Coup Activist](#)' (*Deutsche Welle*, 15 April 2021).

<sup>55</sup> Manny Maung, '[Rights of Women Violated in Myanmar Prisons](#)' (*Human Rights Watch*, 8 June 2021).

<sup>56</sup> '[Myanmar Teen Describes Junta's Brutal Treatment of Detained Women](#)' (*The Straits Times*, 14 May 2021).

<sup>57</sup> Umayma Khan, '[The Women of Myanmar: "Our Place is in the Revolution"](#)', (*Al Jazeera*, 25 April 2021).

19. Targeted violence against women in the context of the coup is an extension of the Myanmar security forces' weaponization of SGBV in their military operations.<sup>58</sup> Reports and evidence of SGBV against protestors and activists must be seen through the lens of the security forces' decades-long pattern of using such violence against Myanmar's ethnic communities. The UN Independent International Fact-Finding Mission on Myanmar (FFM) found that SGBV was a 'particularly egregious and recurrent feature of the targeting of the civilian population in Rakhine, Kachin and Shan States since 2011'.<sup>59</sup> It is evident that the security forces are employing various forms of SGBV as a 'deliberate, well-planned strategy to intimidate, terrorize, and punish' female protestors to repress dissent.<sup>60</sup> Complete and long-standing impunity has allowed for the normalization and unabated continuation of SGBV.<sup>61</sup>
20. Myanmar security forces' intentional targeting of and gender-specific tactics against women protestors infringe on women's rights to exercise and enjoy 'human rights and fundamental freedoms on a basis of equality with men'.<sup>62</sup> Further, differential and violent treatment of women protestors and detainees by State actors on the basis of sex and gender constitutes discrimination prohibited under the CEDAW and necessarily violates article 1 of the Convention.<sup>63</sup> Additionally, reports that women are denied access to sanitation, privacy, and menstrual hygiene products in detention do not only raise right to health issues under the CEDAW and International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>64</sup> but concern human dignity and may even constitute ill-treatment or torture.<sup>65</sup>

<sup>58</sup> HRC, '[Report of the Independent International Fact-Finding Mission on Myanmar](#)' (12 September 2018) UN Doc A/HRC/39/64 paras 18, 23, 24, 36, 38, 39, 52, 62, 79; HRC, '[Report of the Special Rapporteur on the Situation of Human Rights in Myanmar](#)' (29 April 2020) UN Doc A/HRC/43/59 paras 62-63. See generally HRC, '[Sexual and Gender-Based Violence in Myanmar and the Gendered Impact of its Ethnic Conflicts](#)' (22 August 2019) UN Doc A/HRC/42/CRP.4.

<sup>59</sup> HRC, '[Report of the Independent International Fact-Finding Mission on Myanmar](#)' (12 September 2018) UN Doc A/HRC/39/64 para 79.

<sup>60</sup> '[UN Fact-Finding Mission on Myanmar Calls for Justice for Victims of Sexual and Gender-Based Violence](#)' (OHCHR, 22 August 2019); Akila Radhakrishnan and Grant Shubin, '[Beyond the Coup in Myanmar: A Crisis Born from Impunity](#)' (*Just Security*, 18 May 2021).

<sup>61</sup> *Ibid.*

<sup>62</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entry into force 3 September 1981) 1249 UNTS 13 art 3 (CEDAW).

<sup>63</sup> CEDAW art 1; CommEDAW, '[General Recommendation No 23: Political and Public Life](#)' (1997) UN Doc A/52/38 para 3; CommEDAW, '[General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the CEDAW](#)' (16 December 2010) UN Doc CEDAW/C/GC/28 para 19.

<sup>64</sup> Both the CEDAW and ICESCR enshrine the right to the highest attainable standard of health, including sexual and reproductive health, to both men and women equally; see CEDAW art 12 and International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 art 14 (ICESCR). See also United Nations Rules for the Treatment of Women Prisoners (adopted by the General Assembly on 21 December 2010) Rule 5: 'The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating'.

<sup>65</sup> HRC, '[Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)' (5 January 2016) UN Doc A/HRC/31/57 para 26; HRC, '[Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health](#)' (10 April 2018) UN Doc A/HRC/38/36 para 80.



### C. Media and Information Crackdown: Quelling the Right to Protest

21. The SAC's multifaceted efforts to repress dissent include imposing a crackdown on the media and rights groups, and controlling the flow of information into and out of Myanmar. Shortly after the coup, the SAC implemented intermittent but prolonged internet blackouts and shutdown of 4G telecommunication services throughout the country.<sup>66</sup> The Ministry of Transport and Communication also directed the blocking of social media services such as Facebook, Instagram, and WhatsApp,<sup>67</sup> which are a vital means of communication and information sharing in Myanmar. These measures are deliberately designed to impede protestors' efforts to organize, and to facilitate and conceal the security forces' abuses. It further prevents the documentation of such abuses and the transmission to the public.
22. On 4 May 2021, the SAC banned satellite television on the basis that 'illegal organizations and news agencies were broadcasting programs that threatened state security. Those using satellite dishes to watch television faced up to one year in prison or a fine amounting to \$320.<sup>68</sup> The same day, the SAC also banned a number of media outlets.<sup>69</sup> As of 27 May 2021, at least eight independent media organizations have had their license revoked; 88 journalists have been arrested and 52 journalists remain in detention.<sup>70</sup> On 12 May 2021, one journalist was sentenced to three years in prison.<sup>71</sup> The Home Ministry of the SAC also threatened a civil society organization with 'severe action' for causing 'state service personnel and public panic' for reporting on the SAC's crackdown in Myanmar.<sup>72</sup>
23. The SAC additionally dictated revisions to the Penal Code to criminalize certain forms of speech. New offences include Section 505A that penalizes comments that 'cause fear' and those that spread 'fake news, agitates directly or indirectly a criminal offence against a Government employee'; violation thereof is punishable by up to three years in prison. The definition of treason under Section 124 was broadened to effectively criminalize criticism of the military or its personnel, whereby a violation is punishable up to 20 years in prison. Newly added Section 124C imposes imprisonment of up to 20 years for those who intend to 'sabotage or hinder the performance of the defence services and law enforcement organizations who are engaged in preserving the stability of the state'. Section 124D prescribes imprisonment of up to seven years for persons hindering a government employee from executing their duties. These provisions are

<sup>66</sup> ['New Internet Blackout "Heinous and Reckless"'](#) (*Amnesty International*, 6 February 2021); Richard Weir, ['Myanmar Junta Expands Crackdown Following Bloodbath'](#) (*Human Rights Watch*, 15 March 2021); Fortify Rights, ['Internet Shutdown in Myanmar'](#) (16 March 2021).

<sup>67</sup> ['End Crackdown on Media, Communications'](#) (*Human Rights Watch*, 5 February 2021).

<sup>68</sup> ['Junta Bans Satellite Television'](#) (*Human Rights Watch*, 6 May 2021).

<sup>69</sup> *Ibid.*

<sup>70</sup> ['Statement by Michelle Bachelet, UN High Commissioner for Human Rights'](#) (*OHCHR*, 24 June 2021); ['Highlights of the Noon Briefing by Stéphane Dujaric'](#) (*Office of the Spokesperson for the UN Secretary-General*, 25 May 2021); Fortify Rights, ['Myanmar Junta Targets Journalists'](#) (1 March 2021).

<sup>71</sup> ['Highlights of the Noon Briefing by Stéphane Dujaric'](#) (*Office of the Spokesperson for the UN Secretary-General*, 25 May 2021).

<sup>72</sup> ['End Threats against Rights Group'](#) (*Human Rights Watch*, 30 April 2021).

impermissibly broad and vague, and can be weaponized to target persons exercising their rights to freedom of expression.

24. Aforementioned measures are an assault on the right to freedom of expression and opinion guaranteed under article 19 of the UDHR, which includes the ‘freedom to hold opinions without interference and to seek, impart information and ideas through any media and regardless of frontiers’.<sup>73</sup> Such sweeping restrictions are arbitrary, unnecessary, disproportionate, and serve no legitimate aim.<sup>74</sup> They constitute a form of collective punishment and impede vital access to communication and independent news and information required in daily life, particularly in exigencies and instances of crises.<sup>75</sup>

#### **D. Dismantling of Legal Protections for Individuals Arrested, Detained, and Forcibly Disappeared**

25. Since the coup, the SAC has also progressively dismantled legal protections for those detained and arrested in connection with the protests. As of 7 July 2021, the UN reported that nearly 6,000 people were detained, including politicians, human rights defenders, civil servants, journalists, and others.<sup>76</sup> Many family members of those detained reported that State authorities have refused to disclose their whereabouts and denied detainees access to their family and legal representation. In many instances, family members have only received informal information from other released detainees about their loved ones’ fate or whereabouts.<sup>77</sup>
26. On 13 February 2021, the SAC suspended Section 7 of the Law Protecting the Privacy and Security of Citizens,<sup>78</sup> which requires a court order for any detention of more than 24 hours and guarantees detainees’ right to be promptly taken before a judge. The next day, the SAC amended the Code of Criminal Procedure Amendment Law to include offences that effectively criminalizes the exercise of free speech. These are non-bailable offences and the alleged offender is subjected to arrest without a warrant.<sup>79</sup>
27. Sources in Myanmar also described how civilian courts are established inside prisons to try alleged offenders. In some cases where detainees have access to lawyers, the court provides only a date of the hearing without a set time. In other cases, they are only provided with a 30-minute notice. Consequently, the Accused without lawyers or those whose lawyers failed to appear within the short time window faced proceedings without any legal representation. During proceedings

<sup>73</sup> UDHR art 19.

<sup>74</sup> HRCCommittee, ‘[General Comment No 10: Freedom of Expression](#)’ (29 June 1983) para 4; Human Rights Council, ‘[Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests](#)’ (13 July 2020) UN Doc A/HRC/44/L.11 2.

<sup>75</sup> Richard Weir, ‘[Myanmar Military Blocks Internet During Coup](#)’ (*Human Rights Watch*, 2 February 2021).

<sup>76</sup> ‘[Statement by Thomas H. Andrews, UN Special Rapporteur on the Situation of Human Rights in Myanmar](#)’ (OHCHR, 7 July 2021); ‘[Daily Press Briefing by the Office of the Spokesperson for the Secretary General](#)’ (UN, 14 June 2021).

<sup>77</sup> ‘[Hundreds Forcibly Disappeared](#)’ (*Human Rights Watch*, 2 April 2021).

<sup>78</sup> Law Protecting the Privacy and Security of Citizens Section 7.

<sup>79</sup> ‘[Post-Coup Legal Challenges Erode Human Rights](#)’ (*Human Rights Watch*, 2 March 2021).

at these courts, the Accused and their legal representatives resort to sitting on the floor due to a shortage of chairs.<sup>80</sup> Since the coup, the security forces have also reportedly arrested and detained lawyers representing detainees; some were arrested while attending court. Some lawyers were also charged under Section 505A of the Penal Code.<sup>81</sup>

28. On 14 March 2021, the SAC declared martial law in 11 townships across Yangon and Mandalay, whereby the SAC transferred all executive and judicial powers over to regional military officials.<sup>82</sup> Under the Martial Law Order 3/2021,<sup>83</sup> civilians facing charges of any 23 violations of the Penal Code and other laws will be tried by military tribunals.<sup>84</sup> These 23 crimes include 'disrupting or hindering government employees and services', 'spreading false news' about the government, and 'exciting disaffection towards the government.'<sup>85</sup> The Order also prescribes disproportionately severe sentences, including the death penalty and prison sentences with hard labor.<sup>86</sup>
29. Military tribunals in Myanmar have historically been conducted in private without procedural safeguards on usage of evidence and there exists no right to appeal.<sup>87</sup> Sources in Myanmar reported that since February 2021, at least 200 cases against civilians have been tried before the military tribunal,<sup>88</sup> with each case being deliberated by the judges for 10-15 minutes before the judgment is pronounced. The defendant is not entitled to any legal representation. There are three judges on the panel, all of whom are Myanmar military personnel. In March and April 2021 alone, the tribunal pronounced the death sentence for several Accused, and many were sentenced to unstipulated years of imprisonment without knowledge of the offence they were convicted of.<sup>89</sup> As of 21 July 2021, 65 people have been sentenced to death.<sup>90</sup>
30. In May 2021, the SAC made key amendments to the 2016 Legal Aid Law, removing legal aid services during pre-trial detention, a critical phase when detainees are particularly at risk of, among others, arbitrary detention and ill-treatment.<sup>91</sup> On 30

<sup>80</sup> Information obtained from a credible source affiliated with a civil society organization, who is currently in Myanmar. The source of the information is withheld to protect their identity and security. More information may be available upon request.

<sup>81</sup> '[Security Forces Arrest Defense Lawyers](#)' (*Human Rights Watch*, 2 July 2021). See sub-section above for an explanation on Section 505A of the Penal Code.

<sup>82</sup> Linda Lakhdar, '[Martial Law in Myanmar a Death Knell for Fair Trials](#)' (*Human Rights Watch*, 16 March 2021).

<sup>83</sup> [Martial Law Order 3/2021](#).

<sup>84</sup> '[Martial Law is Another Dangerous Escalation of Repression](#)' (*International Commission of Jurists*, 17 March 2021).

<sup>85</sup> Penal Code Sections 124A, 124C, and 505A; *ibid*.

<sup>86</sup> '[Martial Law is Another Dangerous Escalation of Repression](#)' (*International Commission of Jurists*, 17 March 2021); [Martial Law Order 3/2021](#) Section 4(B)(3).

<sup>87</sup> Linda Lakhdar, '[Martial Law in Myanmar a Death Knell for Fair Trials](#)' (*Human Rights Watch*, 16 March 2021);

'[Martial Law is Another Dangerous Escalation of Repression](#)' (*International Commission of Jurists*, 17 March 2021).

<sup>88</sup> See also '[Daily Press Briefing by the Office of the Spokesperson for the Secretary General](#)' (*UN*, 29 June 2021).

<sup>89</sup> Information obtained from a credible source affiliated with a civil society organization, who is currently in Myanmar. The source of the information is withheld to protect their identity and security. More information may be available upon request.

<sup>90</sup> '[Junta Tribunals Impose 65 Death Sentences](#)' (*Human Rights Watch*, 21 July 2021).

<sup>91</sup> '[Amendments Restrict Legal Aid for Thousands of Detainees](#)' (*International Commission of Jurists*, 21 May 2021).

June 2021, the SAC reportedly released approximately 2,000 detainees, including journalists and activists, from prison.<sup>92</sup> However, senior political figures and many others remain in detention and continue to face criminal charges. No reasons were given for the release of some and not the others.

31. The UDHR provides that no one shall be subjected to arbitrary arrest or detention.<sup>93</sup> Large-scale indiscriminate arrests and detentions of protestors, and key revisions to legal provisions providing basic procedural safeguards are arbitrary. They are unjustified, unnecessary, lack any due process, and are disproportionate.<sup>94</sup> Further, the UDHR provides that ‘everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal’, is innocent until proven guilty, that trials are public, and that defendants are entitled to legal representation.<sup>95</sup> The treatment of defendants in criminal proceedings before civilian courts and military tribunals, described above, violates their fair trial rights. The SAC’s deliberate interventions into and instrumentalization of the criminal justice system create a chilling effect for protestors exercising their fundamental rights and constitute a flagrant disregard for international fair trial standards.

### III. ROHINGYA REFUGEES DENIED RIGHT TO PEACEFUL ASSEMBLY IN BANGLADESH REFUGEE CAMPS

32. Since 2019, Bangladesh authorities have reportedly restricted peaceful protests by Rohingya refugees in refugee camps and used excessive force in quelling such protests, resulting in injury. This violates Rohingya refugees’ rights under the ICCPR and CRC. The repression of and reprisals against Rohingya refugee protestors are not isolated incidents and must be considered against a pattern of alleged ill-treatment of refugees in Bangladesh refugee camps, including of torture, by Bangladesh authorities.<sup>96</sup>
33. On 25 August 2019, nearly 200,000 Rohingya refugees protested in Cox’s Bazar to commemorate ‘Genocide Day’, the anniversary of the Myanmar security forces’ 2017 ‘clearance operations’ against Rohingyas in Rakhine State. In response, Bangladesh authorities imposed severe restrictions on communications and freedom of movement.<sup>97</sup> On 1 September 2019, mobile phone services were shut down for seven days. Three days later, Bangladesh authorities recommended building a security fence around the camps, citing security concerns for the refugees. There was also an increased military presence around the camps.<sup>98</sup> According to refugees, the Bangladesh authorities also prevented Rohingya

<sup>92</sup> [‘Joy and Scepticism as Myanmar Frees Hundreds Held Since the Coup’](#) (Reuters, 30 June 2021).

<sup>93</sup> UDHR art 9.

<sup>94</sup> HRCCommittee, [‘General Comment No 35: Article 9 \(Liberty and Security of Person\)’](#) (16 December 2014) UN Doc CCPR/C/GC/35 para 12; [‘About Arbitrary Detention’](#) (OHCHR).

<sup>95</sup> UDHR arts 10 and 11.

<sup>96</sup> [‘Cyclone Endangers Rohingya on Silt Island’](#) (Human Rights Watch, 20 May 2020); Human Rights Watch, [‘An Island in the Middle of the Sea’](#) (7 June 2021).

<sup>97</sup> [‘UN Experts Concerned by Crackdown at Rohingya Refugee Camps’](#) (UN, 16 September 2019); [‘Rohingya Cry for Justice Deserves to be Heard’](#) (Fortify Rights, 19 August 2020).

<sup>98</sup> [‘Clampdown on Rohingya Refugees’](#) (Human Rights Watch, 7 September 2019).

groups from gathering for other communally significant occasions, such as Rohingya National Day on 3 January.<sup>99</sup>

34. In September 2020, Bangladesh authorities beat a group of refugees who were on a hunger strike to demand reunification with their families in Cox's Bazar camps. One of those refugees stated that Bangladesh navy personnel beat protesting men, women, and children using tree branches and rubber sticks.<sup>100</sup>
35. On 31 May 2021, senior UNHCR officials visited Bhasan Char, when thousands of refugees gathered and tried to meet with them to protest conditions on the island and voice their concerns.<sup>101</sup> Bangladesh security forces warned the Rohingya refugees to stay inside prior to the visit. They nevertheless surged forward upon the officials' arrival and were subsequently beaten by the police.<sup>102</sup> The UNHCR released a statement stating they were 'deeply concerned' regarding reports of refugees who were injured on the day of the visit.<sup>103</sup>
36. The Bangladesh authorities' tactics to quell protests and reprisals violate Rohingya refugees' right to peaceful assembly, right to liberty and security, freedom of expression, and freedom of movement under the ICCPR and CRC, ratified on 6 September 2000 and 3 August 1990 respectively.<sup>104</sup> Restrictions on communications and movement, and use of force against protestors were arbitrary, unnecessary, disproportionate, and served no legitimate aim.<sup>105</sup>
37. While Bangladesh did not ratify the 1951 Convention Relating to the Status of Refugees (Refugee Convention) or the 1967 Protocol, some of the protections therein are guaranteed under the human rights treaties to which Bangladesh is a State Party. In addition to obligations under these treaties, Bangladesh is also bound by customary international law and *jus cogens* norms. The UDHR is also an authoritative document.
38. Bangladesh's obligations under the ICCPR and the CRC extend to 'all persons within its territory and subject to its jurisdiction', 'without distinction of any kind'.<sup>106</sup> Rights protected by both treaties may be exercised by citizens and non-citizens alike, including 'migrants (documented or undocumented), asylum seekers,

<sup>99</sup> Fortify Rights interview with C.Z., Cox's Bazar District, Bangladesh, 7 January 2020.

<sup>100</sup> Human Rights Watch, '[An Island in the Middle of the Sea](#)' (7 June 2021); '[Bangladesh: Free Rohingya Refugees Detained on Isolated Island](#)' (*Fortify Rights*, 12 November 2020).

<sup>101</sup> Human Rights Watch, '[An Island in the Middle of the Sea](#)' (7 June 2021); '[Rohingya Protest Against Living Conditions on Bangladesh Island](#)' (*Al Jazeera*, 1 June 2021).

<sup>102</sup> Meenakshi Ganguly, '[Bangladesh's Unplanned Relocation of Rohingya Refugees to Bhasan Char Island is Risky](#)' (*Human Rights Watch*, 7 June 2021).

<sup>103</sup> '[UNHCR's Assistant High Commissioners Conclude Four-Day Visit to Bangladesh](#)' (*UNHCR*, 2 June 2021).

<sup>104</sup> ICCPR arts 9, 12 19, and 21; CRC arts 13, 15, and 37.

<sup>105</sup> HRCCommittee, '[General Comment No 10: Freedom of Opinion](#)' (29 June 1983) para 4; HRC, '[Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests](#)' (13 July 2020) UN Doc A/HRC/44/L.11 2.

<sup>106</sup> ICCPR art 2; HRCCommittee, '[General Comment No 18: Non-discrimination \(1989\)](#)' para 1; HRCCommittee, '[General Comment No 3: Article 2 \(Implementation at the National Level\)](#)' (1981) para 1; HRCCommittee, '[General Comment No 15: The Position of Aliens under the Covenant](#)' (11 April 1986) paras 1-2.

refugees and stateless persons'.<sup>107</sup> Rohingya refugees in Bangladesh fall within these treaties' protection regime even though they lack recognized legal status and are registered as 'Forcibly Displaced Myanmar Nationals'.<sup>108</sup> This remains true in spite of the distinction between fundamental rights afforded only to Bangladesh citizens and those to all within its territory under domestic law.<sup>109</sup>

39. Although inadequate, Bangladesh's domestic legal framework provides *some* protection to Rohingya refugees. The Constitution confers the freedom from 'action detrimental to the life, liberty, body' to 'every citizen [...] and of *every other person for the time being within Bangladesh*'.<sup>110</sup> Bangladesh has failed to observe this constitutional obligation to the Rohingya refugees. While the Constitution arguably does not confer many other fundamental rights to non-citizens,<sup>111</sup> Bangladesh's domestic laws and their inconsistencies with international human rights law cannot justify a circumvention of its international obligations. The Vienna Convention on the Law of Treaties stipulates that a State 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.<sup>112</sup> The Human Rights Committee was also clear on this point in its General Comment.<sup>113</sup> In fact, States Parties shall 'adopt legislative, judicial, administrative, educative and other appropriate measures' to 'give effect to the Covenant rights in the domestic order'.<sup>114</sup>
40. The Bangladesh Constitution and jurisprudence of Bangladesh courts support this. Article 25 of the Constitution stipulates that 'the state shall base its international relations on [...] the respect for international law'.<sup>115</sup> This was confirmed in *Nurul Islam v Bangladesh*, where the court reiterated that the 'Constitution casts an obligation on the State to respect for [sic] international law'.<sup>116</sup> In *Hussain Muhammad Ershad v Bangladesh and Others*, Judge Chowdury observed that 'where the domestic laws are clear and inconsistent with the international

<sup>107</sup> HRCCommittee, '[General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#)' (29 March 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 10; HRCCommittee, '[General Comment No 15: The Position of Aliens under the Covenant](#)' (11 April 1986) para 7; HRCCommittee, '[General Comment No 35: Article 9 \(liberty and security of persons\)](#)' (16 December 2014) UN Doc CCPR/C/GC/35 para 3; HRCCommittee, '[General Comment No 37 on the Right of Peaceful Assembly \(Article 21\)](#)' (17 September 2020) UN Doc CCPR/C/GC/37 para 5; Committee on the Rights of the Child and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, '[Joint General Comment No 3 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration](#)' (16 November 2017) UN Doc CMW/C/GC/3-CRC/C/GC/22 para 9.

<sup>108</sup> Human Rights Watch, '[Bangladesh is Not My Country](#)' (5 August 2018).

<sup>109</sup> Mahmudul Islam, 'Constitutional Law of Bangladesh' (3<sup>rd</sup> edn, Mullick Brothers Press 2012) 5.18A.

<sup>110</sup> The Constitution of the People's Republic of Bangladesh 1972 art 31; Jobair Alam, 'Status and Rights of the Rohingya as Refugees under International Refugee Law: Challenges for a Durable Solution' (2021) 19 Journal of Immigrant & Refugee Studies 2.

<sup>111</sup> This includes the freedom of expression, freedom of movement, and the freedom of peaceful assembly.

<sup>112</sup> Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 27.

<sup>113</sup> HRCCommittee, '[General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#)' (29 March 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 4.

<sup>114</sup> CRC art 4; Id paras 7 and 13; CommRC, '[General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child](#)' (27 November 2003) UN Doc CRC/GC/2003/5 para 1.

<sup>115</sup> The Constitution of the People's Republic of Bangladesh 1972 art 25.

<sup>116</sup> Prof. Nurul Islam et al v Government of the People's Republic of Bangladesh et al 52 DLR (2000) 413.

obligations of the state concerned, the courts [...] shall draw the attention of the law makers to such inconsistencies'.<sup>117</sup>

41. Bangladesh must observe its obligations to respect, protect, and fulfil rights of Rohingya refugees guaranteed under the ICCPR and CRC regardless of whether they have been incorporated into domestic laws. Domestic laws inconsistent with treaties to which Bangladesh is bound cannot serve as a basis for non-performance of treaty obligations.

#### **IV. RECOMMENDATIONS TO THE SPECIAL RAPPORTEUR, THE UNITED NATIONS, AND INTERNATIONAL COMMUNITY**

42. In the words of the UN High Commissioner for Human Rights: 'In recent months, the situation in Myanmar has evolved from a political crisis to a multi-dimensional human rights catastrophe'.<sup>118</sup> Myanmar security forces must immediately cease violence against civilians and repression of fundamental rights and freedoms in the country.
43. Myanmar security forces continue to enjoy state-sanctioned impunity for reported human rights violations and international crimes committed. Decades of allegations of war crimes, crimes against humanity, and genocide against the Rohingya and other ethnic minority groups in the country have been met with inaction by the UN and international community. Lack of intervention has only emboldened the military and fuelled their actions. The UN and the international community must engage in decisive and concerted action to secure justice and accountability for the people of Myanmar.
44. We recommend the Special Rapporteur urges States to:
- Completely disengage economically from the Myanmar security forces, their leaders, and businesses owned or controlled by them through divestment and targeted sanctions against these entities;
  - Freeze foreign assets of businesses owned or controlled by the Myanmar security forces and their leaders;
  - Conduct independent and impartial investigations and prosecutions of allegations of past and ongoing international crimes committed by the Myanmar security forces on the basis of universal jurisdiction;
  - Urge the UN Security Council to adopt a resolution, referring the situation in Myanmar to the ICC and imposing an arms embargo.
45. The Special Rapporteur's report should call on Myanmar security forces to:
- Respect the right to peaceful assembly of the people of Myanmar and cease reprisals against protestors, including the arbitrary use of force, arbitrary arrests and detentions, and torture and/or ill-treatment;

<sup>117</sup> Hussain Muhammad Ershad v Bangladesh and Others II ADC (2005) 371.

<sup>118</sup> [Statement by Michelle Bachelet, UN High Commissioner for Human Rights](#) (OHCHR, 6 July 2021).

- Unconditionally release those detained resulting from their participation in, organization of, or support of peaceful protests;
- Observe obligations under the CRC, including respecting children's rights to peaceful assembly, right to life, freedom from arbitrary arrests and detentions, right to a fair trial, freedom of expression, and freedom from torture and ill-treatment;
- Observe obligations under the CEDAW and cease deliberate targeting of and gender-specific tactics against women protestors;
- Cease crackdowns, threats, and intimidation of the media, journalists, and rights groups, and permanently lift restrictions on access to internet and telecommunication services;
- Respect the right to fair trial of those detained in connection to the protests by adhering to international fair trial standards.

46. The Special Rapporteur's report should also call on Bangladesh to:

- Ratify the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol;
- Observe obligations under international human rights treaties and norms that Bangladesh is bound by, including obligations towards Rohingya refugees on its territory;
- Cease reprisals against and repression of rights of Rohingya protestors. Respect the rights of Rohingya refugees to, *inter alia*, peaceful assembly, liberty and security, freedom of expression, and freedom of movement;
- Adopt legislative, judicial, administrative, educative and/or other appropriate measures to give effect to rights guaranteed under international human rights treaties in the domestic order. Amend laws currently inconsistent with international human rights law.