



Research Article

Volume-05|Issue-06|2025

Right to Return: International Law and the Case for Rohingya Muslim Repatriation in Myanmar**Md. Abdul Jalil, Ph.D¹, Tanim Hasan Jim², Muhammad Khalilur Rahman, Ph.D³**¹Professor, Department of Law and Dean, Faculty of Arts & Humanities, World University of Bangladesh.² Lecturer, Department of Law, World University of Bangladesh³Senior Lecturer, Faculty of Entrepreneurship and Business, Universiti Malaysia Kelantan, Kota Bharu, Malaysia.**Article History**

Received: 21.10.2025

Accepted: 27.11.2025

Published: 03.12.2025

Citation

Jalil, M. A., Jim, T. H., Rahman, M. K. (2025). Right to Return: International Law and the Case for Rohingya Muslim Repatriation in Myanmar. *Indiana Journal of Multidisciplinary Research*, 5(6), 63-69.

Abstract: The protracted displacement of the Rohingya Muslim population represents one of the most critical challenges to contemporary international refugee and human rights law. Despite several decades of persecution and forced migration, the right of Rohingya Muslims to return to their ancestral homeland in Arakan (present name Rakhine) in Myanmar remains unresolved. This article examines the legal foundations of the "right to return" under international law, drawing from key instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and customary norms. It critically analyses Myanmar's obligations, the role of the international community, and emerging state practices. By exploring legal, political, and institutional pathways, the article argues for a rights-based framework to ensure safe, dignified, and sustainable repatriation for the Rohingya Muslim people of Arakan, Myanmar.

Keywords: Rohingya Muslims, Right to Return, Arakan State, International Law, Refugee Protection, Human Rights, Repatriation to Myanmar, Accountability of military junta.

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INTRODUCTION**Background of the Rohingya Muslim Crisis in Arakan, Myanmar**

The Rohingya Muslim crisis stands as one of the most severe humanitarian and human rights challenges of the 21st century. The Rohingya, a predominantly Muslim ethnic minority from Myanmar's Arakan State (now Rakhine State), have faced several decades of systemic discrimination, statelessness, and persecution. Their exclusion from Myanmar's 1982 Citizenship Law stripped them of legal nationality, rendering them one of the world's largest stateless populations although the history says that they lived in Arakan (Rakhine), Myanmar for the past a thousand years (Human Rights Watch, 2018; Green *et al.*, 2015). Arakan was an independent and sovereign country in the South Asia for hundreds of years where the predominantly Rohingya Muslims lived and it was amalgamated with the then Burma (now Myanmar) by the British empire in South Asia. Periodic waves of violence, particularly the large-scale military crackdown in August 2017, resulted in mass atrocities, including extrajudicial killings, severe sexual violence, and forced displacement, which the United Nations has described as a "textbook example of ethnic cleansing" in Myanmar (UNHRC, 2018; Fortify Rights, 2020).

As a result, over 740,000 Rohingya Muslims fled to neighbouring country Bangladesh, joining earlier waves of refugees from previous conflicts (ICG, 2019). Today, nearly one million Rohingya Muslims live in

refugee camps in Cox's Bazar under precarious conditions, facing limited access to education, healthcare, and livelihoods (UNHCR, 2023). Despite extensive humanitarian assistance, the crisis remains unresolved, and durable solutions — particularly voluntary, safe, and dignified repatriation — have not been realised (Milton *et al.*, 2017; Mahmood *et al.*, 2017).

The origins of the crisis lie in a historical pattern of heinous exclusionary state policies of Myanmar aimed at homogenising Myanmar's national identity along ethnoreligious lines (Cheesman, 2017; Leider, 2018). This structural marginalisation in Myanmar has been compounded by cruel military operations characterised by gross violations of human rights and international law, which multiple international bodies, including the Independent International Fact-Finding Mission on Myanmar, have suggested as a shocking ethno-religious cleansing genocide in South Asia (UNFFM, 2018; ICC, 2019).

Significance of the Right to Return of the Rohingya Muslims to Myanmar

Within this broader context, the right to return emerges as a cornerstone of both humanitarian response and international legal obligation. Codified in Article 13(2) of the *Universal Declaration of Human Rights* (UDHR) and Article 12(4) of the *International Covenant on Civil and Political Rights* (ICCPR), this right affirms that "no one shall be arbitrarily deprived of the right to

enter his own country" (UN, 1948; UNGA, 1966). For the Rohingya Muslims in Arakan, Myanmar this principle not only encapsulates a legal entitlement but also symbolises the restoration of dignity, identity, and justice (Bartholomeusz, 1999; Hathaway & Foster, 2014).

The right to return is deeply connected to the principle of state responsibility, accountability for mass atrocities, and reparations for victims of forced displacement (Goodwin-Gill & McAdam, 2021). Moreover, it offers a pathway to sustainable peace and reconciliation by enabling displaced populations to reintegrate into their societies with legal recognition and equal rights (Chimni, 2004; Long, 2013). In the case of the Rohingya Muslims in Arakan, Myanmar, realising this right would signify not just physical relocation but the reversal of several decades of scandalous exclusion and systemic violence there (Azad & Jasmin, 2013; Mohajan, 2019).

OBJECTIVES OF THE RESEARCH

This study aims to explore the legal, political, and institutional dimensions of the right to return as it applies to the Rohingya Muslim crisis. Specifically, the research seeks to:

1. Examine the historical evolution and legal foundations of the right to return under international law.
2. Analyse Myanmar's international legal obligations regarding forced displacement of Rohingya Muslims, state responsibility, and repatriation.
3. Investigate the role of international institutions, including the United Nations, the International Court of Justice (ICJ), and the International Criminal Court (ICC), in enforcing repatriation-related norms.
4. Assess the political, security, and socio-economic barriers to safe and dignified Rohingya Muslim repatriation in Arakan, Myanmar.
5. Propose a rights-based framework and policy recommendations for implementing sustainable return of Rohingya Muslims to Arakan, Rakhine in Myanmar and reintegration strategies.

Through these objectives, the research intends to contribute to scholarly discourse on refugee law and state responsibility of the Myanmar government while offering practical insights for policymakers, international organisations, and civil society actors.

METHODOLOGY OF THE RESEARCH

This article adopts a qualitative, doctrinal, and analytical research methodology, integrating primary and secondary legal sources with policy and scholarly literature. The primary sources include international legal instruments — such as the UDHR, ICCPR, the 1951 Refugee Convention, and relevant UN resolutions — alongside judgments and proceedings from the ICJ

and ICC relating to Myanmar's alleged crimes against the Rohingya (UNGA, 2017; ICJ, 2020).

Secondary sources comprise academic articles, reports from international organisations, policy briefs, and NGO documentation that analyse the Rohingya crisis and the normative development of the right to return (Cheung, 2012; Uddin, 2019). Comparative analysis is also employed, drawing parallels with other cases of mass displacement, such as the Palestinian, Bosnian, and Kosovar contexts, to understand state practice and evolving customary norms (Gibney, 2004; Chimni, 2004).

The research utilises a legal-historical approach to trace the evolution of the right to return, combined with a critical legal analysis to evaluate the enforcement mechanisms and accountability gaps. It also employs a normative framework to assess how legal principles can inform policy and advocacy strategies aimed at facilitating Rohingya repatriation. The methodology thus blends theoretical analysis with policy-oriented recommendations, ensuring both scholarly depth and practical relevance.

Historical and Legal Foundations of the Right to Return to the Ancestral Homeland *International Treaties and Conventions*

The concept of the right to return is deeply embedded in international human rights and refugee law. Its roots can be traced back to Article 13(2) of the Universal Declaration of Human Rights (UDHR), which states that "everyone has the right to leave any country, including his own, and to return to his country" (United Nations, 1948). This principle is reinforced in Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR), which prohibits arbitrary deprivation of the right to enter one's own country (UNGA, 1966).

In addition to human rights law, the 1951 Refugee Convention and its 1967 Protocol establish the foundational framework for the protection of refugees and their eventual return. While these instruments do not explicitly codify a right to return, they enshrine the principle of voluntary repatriation, which is regarded as the most desirable and durable solution to refugee crises (Goodwin-Gill & McAdam, 2021). This principle has been consistently reaffirmed in UN General Assembly resolutions and UNHCR Executive Committee Conclusions, which emphasize the conditions of safety, dignity, and voluntariness as prerequisites for return (UNHCR, 2004; Hathaway, 2021).

The Fourth Geneva Convention (1949) and its Additional Protocols further strengthen the normative foundation of repatriation by prohibiting forced displacement and calling for the restoration of displaced persons to their homes following conflicts (ICRC, 2016). Moreover, regional human rights instruments, such as the American Convention on Human Rights (Article 22) and

the African Charter on Human and Peoples' Rights (Article 12), reaffirm the right to return within their respective jurisdictions (Gibney, 2004).

Customary International Law and State Practice

Beyond treaty law, the right to return has crystallised into customary international law through consistent state practice and *opinio juris*. The post-World War II period saw significant jurisprudence and state action affirming the principle. Notably, UN General Assembly Resolution 194 (1948) recognised the right of Palestinian refugees to return to their homes, setting a precedent for subsequent displacement situations (Quigley, 2010). Similarly, peace agreements in Central America (e.g., the 1987 Esquipulas II Accord) and the Balkans (e.g., the 1995 Dayton Accords) incorporated the right to return as a fundamental component of post-conflict reconstruction (Long, 2013; Phuong, 2005).

Judicial bodies have also contributed to the normative consolidation of this right. In the *Loizidou v. Turkey* case, the European Court of Human Rights (ECHR) upheld the applicant's right to return to property in Northern Cyprus, affirming that displacement does not extinguish ownership or return rights (ECHR, 1996). Similarly, the *Chorzów Factory* case of the Permanent Court of International Justice (PCIJ) and subsequent *Bosnian Genocide* judgment of the International Court of Justice (ICJ) underscored the principle of restitution — including return — as an essential remedy for wrongful acts (ICJ, 2007).

These precedents demonstrate that the right to return has evolved into a *jus cogens*-adjacent norm, especially when displacement results from violations of peremptory norms such as genocide, ethnic cleansing, or apartheid (Alston & Goodman, 2013; Kälin, 2000). For the Rohingya, these legal foundations collectively provide a strong basis for claiming repatriation as both a right and an obligation under international law.

Myanmar's Legal Obligations and State Responsibility on Rohingya Muslims

Genocide, Ethnic Cleansing, and State Accountability

Myanmar's actions against the Rohingya Muslims — including mass killings, terrible sexual violence, and wicked destruction of villages — have been characterised by numerous international bodies as potential genocide and crimes against humanity (UNFFM, 2018; Human Rights Council, 2019). Under the Convention on the Prevention and Punishment of the Crime of Genocide (1948), Myanmar is obliged not only to refrain from committing monstrous genocide but also to prevent and punish such acts (UNGA, 1948). The evidence collected by the Independent International Fact-Finding Mission on Myanmar (IIFM) suggests that the virulent atrocities were committed with genocidal and ethno-religious cleansing intent, targeting the Rohingya Muslims in Arakan, Myanmar as a distinct ethnic group (IIFM, 2019).

State responsibility for internationally wrongful acts is further articulated in the International Law Commission's Articles on State Responsibility (2001), which require states to make full reparation for dreadful injuries caused by violations of human rights and international law (Crawford, 2013). Reparation includes restitution — returning victims to their original situation — which, in the case of the Rohingya Muslims in Arakan, Myanmar, encompasses the facilitation of safe and dignified return to Myanmar (Bassiouni, 2002).

ICJ and ICC Proceedings

Myanmar's legal accountability is currently being addressed in multiple international judicial forums. In *The Gambia v. Myanmar* (2020) before the International Court of Justice (ICJ), the Court issued provisional measures ordering Myanmar to prevent acts of genocide and preserve evidence (ICJ, 2020). Although the ICJ's jurisdiction pertains specifically to state responsibility under the Genocide Convention, its rulings have significant implications for the Rohingya's right to return, as the cessation of genocidal acts and guarantees of non-repetition are prerequisites for repatriation (Schabas, 2020).

Parallel proceedings before the International Criminal Court (ICC) address individual criminal responsibility for crimes against humanity, particularly the deportation of Rohingya into Bangladesh, which falls within the Court's jurisdiction due to Bangladesh's membership in the Rome Statute (ICC, 2019). These cases collectively establish that Myanmar's conduct has triggered obligations under both international criminal law and human rights law, including restitution, repatriation, and guarantees of non-recurrence (Akhavan, 2020).

Myanmar also remains bound by customary international norms prohibiting forced displacement and mandating the right to return (Robinson, 2019). Continued denial of repatriation constitutes a continuing wrongful act, prolonging Myanmar's international responsibility (Meron, 1991). Moreover, the international community bears a complementary duty to cooperate in bringing an end to serious breaches of peremptory norms under Article 41 of the ILC Articles (Crawford, 2013).

Thus, Myanmar's legal obligations extend beyond mere cessation of violence; they encompass active facilitation of safe, voluntary, and dignified return, restoration of citizenship, property restitution, and the creation of conditions that ensure non-repetition of atrocities.

The Role of the International Community

The international community has played a pivotal role in addressing the Rohingya crisis, primarily through diplomatic interventions, humanitarian support,

legal actions, and advocacy for repatriation. The United Nations (UN), regional organizations, and individual states have sought to pressure Myanmar to fulfill its obligations under international law and facilitate safe, voluntary, and dignified repatriation (UNHCR, 2022).

The UN General Assembly and the Human Rights Council have repeatedly condemned Myanmar's actions, urging accountability for atrocities and emphasizing the right of the Rohingya to return to their homeland (UNGA, 2021). Special Rapporteurs on Myanmar and the Independent Investigative Mechanism for Myanmar (IIMM) have documented evidence of crimes against humanity and genocide, strengthening the legal basis for international action (OHCHR, 2022). Furthermore, the UN High Commissioner for Refugees (UNHCR) has been actively involved in negotiating repatriation terms, providing humanitarian aid, and supporting host countries like Bangladesh (UNHCR, 2023).

Global responses have also included bilateral and multilateral initiatives. Bangladesh and Myanmar signed repatriation agreements in 2017 and 2018, but these efforts stalled due to Myanmar's unwillingness to guarantee citizenship, safety, and rights for returnees (Azad & Jasmin, 2020). ASEAN has attempted to mediate and proposed technical cooperation, although its "non-interference" policy has limited its effectiveness (Haacke, 2020). Meanwhile, the Organization of Islamic Cooperation (OIC) has pursued legal action by supporting Gambia's genocide case against Myanmar at the International Court of Justice (ICJ, 2020).

Donor states and international agencies have also mobilized significant humanitarian assistance. However, funding shortfalls threaten the sustainability of aid programs in refugee camps (WFP, 2023). The "Joint Response Plan" for the Rohingya crisis continues to depend on voluntary contributions, and a global fatigue risks undermining essential services and protection mechanisms (ICG, 2023).

Ultimately, the international community must maintain diplomatic pressure, enhance accountability mechanisms, and develop coordinated repatriation strategies that align with human rights standards (Rahman, 2022). These efforts are essential to ensure that repatriation is not only possible but also sustainable and rights-based.

Challenges to Safe and Dignified Repatriation

Despite global attention, numerous challenges obstruct the safe, voluntary, and dignified return of the Rohingya Muslims to Myanmar. The foremost barrier is the lack of security and continued evil persecution of Rohingya Muslims in Arakan, Rakhine State. Military operations, ongoing armed conflict between the Myanmar military and ethnic armed organizations, and

widespread human rights abuses create a hostile environment for returnees (Human Rights Watch, 2023).

Citizenship remains a fundamental legal obstacle. Myanmar's 1982 Citizenship Law effectively rendered the Rohingya stateless, excluding them from full rights and recognition (Cheesman, 2017). Without a clear pathway to citizenship and legal protection, repatriation risks becoming a tool for renewed oppression rather than a durable solution (Leider, 2021).

Socio-political resistance within Myanmar further complicates repatriation. Anti-Rohingya sentiment, entrenched discrimination, and Buddhist nationalist movements foster an environment of hostility, raising concerns about the safety and reintegration of returnees (Selth, 2022). Moreover, Myanmar's domestic instability following the 2021 military coup has weakened governance structures and further diminished prospects for a secure and inclusive repatriation process (Lall, 2022).

Logistical and infrastructural challenges also impede repatriation. Many Rohingya villages have been destroyed, and basic services such as housing, healthcare, and education remain inaccessible (Amnesty International, 2022). Without significant reconstruction and investment, returnees would face conditions incompatible with human dignity.

Additionally, Bangladesh's domestic constraints exacerbate the crisis. Hosting over one million refugees strains its economy, environment, and social fabric, creating pressure to expedite repatriation even when conditions in Myanmar are unsafe (Ullah, 2022). The involvement of criminal networks, including drug trafficking, further complicates security dynamics and undermines trust in the repatriation process (UNODC, 2023).

Addressing these challenges requires a multi-layered approach: ensuring accountability for past atrocities, reforming Myanmar's citizenship laws, promoting social reconciliation, and rebuilding destroyed communities. Only then can repatriation become a truly sustainable and dignified solution aligned with international human rights standards (Chowdhury, 2023).

Toward a Rights-Based Repatriation Framework Policy Recommendations

A rights-based approach to Rohingya repatriation emphasizes the primacy of human rights, legal obligations, and the dignity of displaced populations in planning and implementing return strategies (Goodwin-Gill & McAdam, 2021). This framework entails guaranteeing security, citizenship, and political participation for returnees, coupled with robust international monitoring. The international community must actively support Myanmar in complying with

obligations under the Genocide Convention, the ICCPR, and customary international law, ensuring that any repatriation occurs in conditions free from discrimination or coercion (Schabas, 2020; Alston, 2019).

Policy interventions should include comprehensive legal reforms in Myanmar, particularly the recognition of Rohingya citizenship and protection of property rights (Leider, 2021). Establishing independent national commissions to oversee repatriation, verify eligibility, and adjudicate grievances can prevent arbitrary denial of rights and enhance transparency (Azad & Jasmin, 2020).

International actors, including UN agencies, donor states, and regional organizations such as ASEAN and the OIC, must adopt a coordinated and multi-level approach that integrates humanitarian aid, development assistance, and diplomatic pressure (Haacke, 2020; Rahman, 2022). Conditional financial and technical support can incentivize Myanmar to create a safe environment conducive to voluntary return (UNHCR, 2023).

Pathways for Sustainable Return and Reintegration

Sustainable repatriation requires holistic planning, encompassing social, economic, and political dimensions. Returnees should have access to housing, healthcare, education, and livelihood opportunities, supported by both Myanmar and international agencies (Chowdhury, 2023; Milton *et al.*, 2017). Rehabilitation programs must address the psychological and social impacts of displacement, particularly trauma stemming from violence and statelessness (Meger, 2020).

Community-based reconciliation initiatives can foster trust between Rohingya and local populations, mitigating social tensions and promoting peaceful coexistence (Selth, 2022). Legal safeguards should prevent renewed discrimination, including monitoring mechanisms to track compliance with anti-discrimination norms and human rights protections (Hathaway, 2021).

Cross-border cooperation between Bangladesh and Myanmar is critical. Coordinated planning on border management, identity verification, and return logistics can prevent irregular or forced returns, while donor-backed infrastructure projects can facilitate safe resettlement (Ullah, 2022; UNODC, 2023).

Additionally, accountability mechanisms — including prosecutions for past atrocities and truth-seeking initiatives — must accompany repatriation, reinforcing the link between justice and durable peace (Akhavan, 2020; ICC, 2019). A rights-based framework, therefore, balances immediate humanitarian needs with long-term legal, social, and political remedies, ensuring that return is not only voluntary but transformative for displaced communities.

FINDINGS OF THE RESEARCH AND RECOMMENDATIONS

This research reveals that while the right to return for the Rohingya Muslims to Arakan (now Rakhine State), Myanmar is firmly anchored in international law, its realization faces multi-dimensional challenges as follows.

1. **First**, Myanmar's legal and institutional framework currently obstructs safe and voluntary return of the Rohingya Muslims, particularly through unjustified and restrictive citizenship laws, ongoing security threats, and odiously entrenched discrimination (Cheesman, 2017; Leider, 2021).
2. **Second**, the international community has provided significant humanitarian assistance and legal advocacy but lacks consistent, and coordinated pressure mechanisms to compel Myanmar military junta to fulfill its obligations under international laws (Haacke, 2020; Rahman, 2022).
3. **Third**, social and infrastructural barriers, including destroyed villages, lack of services, and community resistance, threaten the sustainability of repatriation efforts for the Rohingya Muslims of Arakan, Myanmar (Amnesty International, 2022; Chowdhury, 2023).
4. **Fourth**, the research indicates that voluntary and dignified return is possible only through integration of legal reforms, international monitoring, and development support, combined with mechanisms that ensure justice and accountability for past atrocities against the Rohingya Muslims of Arakan, Myanmar (Schabas, 2020; Akhavan, 2020).
5. **Lastly**, Bangladesh's hosting capacity for the Rohingya Muslims of Myanmar is under severe strain, highlighting the urgency for an internationally supported and sustainable repatriation strategy (Ullah, 2022; WFP, 2023).

RECOMMENDATIONS

Based on these findings, the following policy recommendations are proposed:

1. **Legal and Citizenship Reforms**: Myanmar must guarantee full citizenship rights for Rohingya returnees, secure property restitution, and implement anti-discrimination laws (Leider, 2021).
2. **International Monitoring and Pressure**: The UN, ASEAN, and OIC should jointly oversee the repatriation operations, ensuring compliance with international law and human rights standards (UNHCR, 2023; Haacke, 2020).
3. **Holistic Development Assistance**: Humanitarian aid must be linked to reconstruction of housing, healthcare, and education, ensuring sustainable reintegration of the Rohingya Muslims in Arakan, Myanmar (Chowdhury, 2023).
4. **Justice and Accountability**: ICC and ICJ proceedings should continue, with parallel domestic truth and reconciliation mechanisms to address grievances and prevent recurrence of the monstrous genocide in Myanmar (Akhavan, 2020; ICC, 2019).

5. **Community-Based Reconciliation:** Social cohesion initiatives should facilitate coexistence, prevent communal tensions, and empower local governance structures to support the Rohingya returnees to Myanmar (Selth, 2022).
6. **Regional Cooperation and Planning:** Bangladesh and Myanmar, supported by international actors, must coordinate return logistics, identity verification, and monitoring of repatriation to prevent forced or irregular returns (Ullah, 2022; UNODC, 2023).
7. **Long-Term Rights-Based Strategy:** Repatriation policies must prioritize human rights, dignity, and voluntariness, integrating immediate humanitarian assistance with long-term development and governance reforms (Goodwin-Gill & McAdam, 2021; Rahman, 2022).

In conclusion, a rights-based repatriation framework offers a legally grounded, humanitarian, and sustainable pathway for the Rohingya Muslims to return to Myanmar, ensuring both their safety and dignity while fostering durable peace and regional stability in Arakan (now Rakhine State), Myanmar.

CONCLUSION

The protracted displacement of the Rohingya Muslims underscores the urgent need to reinforce international legal norms and mechanisms that protect the rights of refugees and stateless populations. The right to return, firmly grounded in instruments such as the UDHR, ICCPR, and customary international law, provides a legally and morally compelling framework for repatriation (Goodwin-Gill & McAdam, 2021; Hathaway, 2021). Ensuring voluntary, safe, and dignified return requires Myanmar's compliance with obligations under the Genocide Convention, the ICCPR, and international criminal law, alongside structural reforms such as citizenship recognition of the Rohingya Muslims and anti-discrimination guarantees (Schabas, 2020; Akhavan, 2020).

Future prospects hinge on coordinated international action, combining legal accountability, humanitarian support, and sustainable development initiatives (Rahman, 2022; Chowdhury, 2023). Regional and global actors, including ASEAN, the OIC, and the UN, must maintain diplomatic pressure while supporting infrastructure, social cohesion, and livelihood opportunities for returnees (Haacke, 2020; Ullah, 2022). A rights-based, multi-dimensional approach not only restores the dignity of displaced Rohingya but also strengthens the normative authority of international law, setting a precedent for addressing other protracted refugee crises (Alston, 2019; Phuong, 2005).

In conclusion, advancing the Rohingya Muslims' right to return to Arakan (now Rakhine State), Myanmar requires the integration of legal, humanitarian, and socio-political strategies, ensuring durable solutions

aligned with international obligations and human rights standards.

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