

MYANMAR: A TIPPING POINT FOR ROHINGYA RIGHTS?

Two years after a wave of violence hit the region, Myanmar’s Rakhine State has become a segregated zone. Two million ethnic Rakhine live apart from 1.2 million stateless Rohingya, who are trapped inside displacement camps or barred from leaving their villages. Ending this segregation and protecting the rights of the Rohingya are necessary components of Myanmar’s move toward democracy. However, the Rakhine leadership has rejected – both politically and with force – any reintegration of the two communities, and it is seeking to exclude the Rohingya from any role in the state’s development, distribution of resources, and political representation.

Recently, Myanmar’s central government developed a draft “Rakhine Action Plan” that would provide some Rohingya with the opportunity to apply for citizenship, but only if they identify as ethnically “Bengali.” Those who are found ineligible for citizenship, or who refuse to comply, would be rendered to internment camps. The plan as currently drafted is indefensible, and the international community must demand that it be revised to reflect the rights of Rohingya to self-identify; secure citizenship; and live without arbitrary restrictions on their movement, religion, education, and livelihoods. The plan must also support the positive development of all communities in Rakhine State.

POLICY RECOMMENDATIONS

The government of Myanmar should:

- Revise and make public for comment the draft “Rakhine Action Plan” to ensure consistency with human rights standards, including the rights to liberty, nationality, and freedom of movement; as well as the principle of non-discrimination;
- Make transparent any requirements associated with successfully securing citizenship through the citizenship verification process, and ensure that applicants have the right to due process, including legal assistance and an independent review of any adverse decision before a judicial body;
- Treat Rohingya who arrived in camps after June 2012 as internally displaced persons, register them in coordination with the UN Refugee Agency, and provide them with all necessary assistance;
- Immediately address important assistance and protection gaps in the Sittwe camps, including irregular access to camps for healthcare personnel, the abuse of Rohingya by members of the military and police, rapidly deteriorating communal shelters, and the need for secondary education facilities and staff.

The international community should:

- Insist that as a prerequisite to full normalization of relations, Myanmar must extend non-discriminatory protection to all people living in Rakhine State, provide citizenship to Rohingya born in or with longstanding ties to Myanmar, restore the rule of law, and prosecute perpetrators of violence consistent with due process;
- Provide increased levels of humanitarian and development funding to Rakhine State focused on increasing access to food and clean water, eradicating poverty, and improving health and nutrition standards;
- Urge UN agencies and their implementing partners to improve camp management and ensure that all camp facilities are in conformity with protection-based physical planning; and that victims of crime, violence, and abuse have access to adequate health and psychosocial care, and other services.

BACKGROUND

Despite a historical lineage that reaches back centuries, the Rohingya have been treated as a foreign population in Myanmar for decades. By the 1970s, the Rohingya were being divested of their citizenship, restricted in their movements, and persecuted *en masse*. The arrival of thousands of refugees from East Pakistan (now Bangladesh) worsened the situation and led to violent government crackdowns on “illegal immigration” that improperly targeted many Rohingya. By 1980, 200,000 Rohingya had fled to Bangladesh for protection, and the Rohingya diaspora may now number as many as a million people who remain stateless and live primarily in Bangladesh, Thailand, Malaysia, and Indonesia. Myanmar’s 1982 Citizenship Law formally excluded the Rohingya from a list of ethnic groups considered indigenous to the country. Since then, the more than one million Rohingya who remain in Myanmar have seen their situation deteriorate to the point that over the last two years, as many as 100,000 Rohingya have fled Rakhine State on unseaworthy boats. These vessels are supposed to take them to Malaysia or Thailand, but often put them in the hands of vicious human traffickers.

Today more than 10 percent of Myanmar’s Rohingya live in closed displacement camps, while the rest are restricted to their communities in northern Rakhine State and unable to move freely. The Rohingya are not permitted to run for public office, and their ability to access livelihoods, education, and healthcare is extremely limited because they cannot move. Despite the efforts of international agencies, most Rohingya – and especially those living in northern Rakhine State – have very little access to humanitarian assistance. It is important to note, as well, that the whole of Rakhine State – including its two million ethnic Rakhine residents – has suffered from decades of neglect by the central government. Rakhine State has the lowest level of access to clean water in Myanmar, and more than 70 percent of its residents live in poverty. Children in the state are more likely to have lower health and nutritional levels than other children in Myanmar, and they are less likely to begin school on schedule.¹

In June and October 2012, pre-existing political and economic tensions, combined with growing apprehension about Myanmar’s move toward democracy, led to violence between the Rakhine and Rohingya communities. As many as 200 people were killed, and tens of thousands of people fled the violence, were forcibly moved by the military, or lost their homes in fires. It is now well documented that Myanmar’s police and military were complicit, and may have participated, in attacks on the Rohingya. By the end of 2012, 140,000 Rohingya were living in isolated and squalid

displacement camps due to violence in Sittwe and townships in northern Rakhine State, such as Kyauktaw, Mrauk-U, Maungdaw, and Buthidaung

Donor countries were initially hesitant to fund the construction of desperately-needed shelters for the displaced, due to a concern that it would lead to the permanent segregation of the Rohingya. They consequently did contribute, but on the condition that separation would only occur in the short-term while officials restored – and in some cases instituted for the first time – the rule of law. President Thein Sein publicly committed the government to securing peace and reconciliation in Rakhine State during U.S. President Barack Obama’s first visit to the country in November 2012.

More than two years since the onset of violence, the situation in Rakhine State remains dire and many of the international community’s fears regarding segregation have proven to be well-founded. The central government has yet to present a roadmap that would provide for the return of Rohingya to their places of origin, or for the reintegration and reconciliation of the Rohingya and Rakhine communities. To the contrary, in its draft “Rakhine Action Plan,” the government has instead proposed to process the citizenship applications of Rohingya only if they agree to identify as ethnically “Bengali,” and to force those who refuse to participate or are found ineligible for citizenship into internment camps.

Concurrently, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) was pressing for access to communities in need of food, clean water, healthcare, and education. Even before the violence, most of the Rohingya in northern Rakhine State were reliant on humanitarian assistance because they were prohibited from leaving their villages for work or to secure healthcare. After the violence, and despite increased humanitarian needs, the government made the delivery of aid more difficult by placing severe limits on humanitarian workers. Ethnic Rakhine staff and businesses were physically threatened for working with the UN and non-governmental organizations (NGOs).

Earlier this year, Médecins Sans Frontières (MSF) was expelled from Rakhine State. And days before the beginning of Myanmar’s divisive census, members of the Rakhine community attacked 33 offices belonging to the UN and NGOs, causing millions of dollars in damage and leading to the evacuation of aid workers. While the work of most UN and international agencies resumed by June 2014, MSF only entered into a new memorandum of understanding with the government in September and has yet to resume services. Overall, humanitarian assistance to the Rohingya

community in the coming months is expected to remain below the levels achieved before the March 2014 violence.

Unfortunately, the anti-Rohingya and Buddhist nationalist sentiments held by many members of the Rakhine community only hardened when it became clear that the central government would not prosecute the instigators of the 2012 violence or March 2014 attacks on humanitarian actors. Yet the appointment in June of Major General Maung Maung Ohn as chief minister suggested the central government's intention to stabilize the state. Being neither ethnically Rakhine nor a native of Rakhine State, his appointment was met with protest by many Rakhine leaders. But since arriving he has been able to preserve humanitarian space and squelch public objection to the central government's actions. In October, he observed that the "Rakhine people need to be shrewd in their international relations in implementing the [Rakhine Action] framework. If not, locals will lose opportunities due to the tarnishing of the image of Rakhine State."²

CONDITIONS IN INTERNAL DISPLACEMENT CAMPS

Continuing to service the camps for Rohingya internally displaced persons (IDPs) might be difficult to accept for many donor nations because it could further entrench the segregation of the Rohingya and Rakhine communities. But until the Rohingya are allowed to return to their homes and move freely, the camps must be supported. Furthermore, conditions in the camps have only improved to a very limited extent since they were hurriedly created two years ago, and their services and facilities should be enhanced. Indeed, some residents told RI that family members had left for Malaysia or Thailand specifically to send back money for food and medicine.

In September, OCHA reported that access to healthcare in the camps remains a "major challenge,"³ and the World Food Program announced in October that without \$37 million more in funding, the food distributions on which nearly all residents rely would be interrupted from December onwards. At the end of October, the UN had received only 50 percent of the funding needed to fulfill humanitarian needs throughout the country.⁴

Due to being situated in a low-lying coastal area on the Bay of Bengal, the IDP camps near the state capital, Sittwe, are extremely vulnerable to natural disasters and could be quickly wiped away by a cyclone or other weather event. High levels of flooding and outbreaks of diarrhea, tuberculosis, and malaria continue to afflict the camps.

Prior to Cyclone Mahasan in May 2013, more than 100 Rohingya drowned during government-led mass evacuations of the camps.⁵

Donors must provide increased levels of humanitarian and development funding to both the camps and Rakhine State more broadly. Development funding should be focused on increasing access to food and clean water, eradicating poverty, and improving health and nutrition standards. During the organization's recent visit to the Sittwe camps, RI also identified a number of humanitarian issues which require immediate resolution:

- At least 7,000 camp residents – most of whom live in Say Tha Ma Gyi, Thay Chaung, and Oon Daw Gyi camps – remain unregistered and without access to any food assistance. They arrived in October 2012 or later, and the government insists that only individuals who fled violence in June 2012 can be registered as IDPs. Some of these unregistered Rohingya rely on begging to feed their families. The government must treat Rohingya who arrived in camps after June 2012 as IDPs, register them in coordination with the UN Refugee Agency (UNHCR), and provide them with all necessary assistance;
- Deficiencies in camp management include a dearth of communication between displaced Rohingya and humanitarian actors, little knowledge of how to report protection concerns, and few avenues for residents to participate in the planning, implementation, and delivery of assistance and services. One result of this poor coordination is that none of the IDPs whom RI met knew that they could lodge complaints or where to do so. In addition, no camps RI visited provided separate and well-lit bathing or toilet facilities for women and men, although such facilities are considered key to mitigating the risk of gender-based violence. The UN agencies and their implementing partners must therefore improve camp management and ensure that all camp facilities are in conformity with protection-based physical planning.
- The provision of primary healthcare in the camps is *ad hoc* because the government-appointed Emergency Coordination Committee refuses to allow humanitarian actors consistent access to the camps. This not only prevents residents from regularly accessing basic care, but also limits referrals to Sittwe Hospital. This creates particular risks for pregnant women and residents with serious illnesses such as tuberculosis, malaria, and HIV/AIDS. The central government should intervene

by instructing the Committee to grant full, unimpeded access.

- Camp residents reported being subjected to arbitrary arrests and detentions, extortion, beatings, and other forms of physical violence by police and the military. Camp protection must be given a higher priority and police and military officers informed that the abuse of Rohingya will not be tolerated.
- Temporary “longhouses” built by the government to shelter displaced Rohingya in late 2012 are falling apart. They also do not provide sufficient space or privacy. The government must refurbish them in coordination with humanitarian actors.
- While most children can now access primary education in the IDP camps, it is not full-time. In addition, secondary education is largely unavailable, and many teachers are not trained or paid adequately. The government should allocate the necessary resources to build secondary schools and provide pay and training for staff, including for Rohingya teachers who currently serve as volunteers.

THE RAKHINE ACTION PLAN AND RELATED DEVELOPMENTS

Established in August 2012, the Rakhine Investigation Commission was put in place by the government to examine the root causes of violence in Rakhine State, and to make short- and long-term recommendations to bring about reconciliation and lasting stability. In April 2013, the Commission issued a report, and while many of the recommendations strongly supported the rights of both the Rohingya and Rakhine communities to citizenship, security, and freedom of movement, they were never implemented by the government. However, based on this document, in July 2014 the government did quietly share a confidential draft “Rakhine Action Plan” with select donor governments and UN agencies, many of whom immediately reacted with concern.

While the draft Rakhine Action Plan remains confidential, RI was able to acquire a copy and review the government’s proposals, which include plans for security, reconstruction, permanent resettlement, and socio-economic development, among others. Some, including a citizenship verification process, are already underway, while others await further development.

Citizenship Verification Process

In the days leading up to the March 2014 census, the central government reversed an earlier position recognizing the right of the Rohingya to self-identify, and declared that the population would have to identify as ethnically “Bengali” if they were to be counted. Almost none of the Rohingya communities across the state agreed to this requirement and, as a result, more than one million Rohingya were not counted during the census. Displaced Rohingya in Myebon Township were the exception to this boycott.

In June 2014, the central government initiated a pilot citizenship verification process in Myebon Township, because many of the Rohingya there had already agreed to identify as “Bengali” during the March census. Among the Rohingya and humanitarian actors with whom RI spoke, there was a general consensus that their decision to identify as “Bengali” was likely attributable to the deplorable conditions in which they were living and their desperation to improve them.

Ultimately, the government accepted 1,094 applications, all from Muslims living in the area, and in September 2014 applications were granted. Forty individuals were granted full citizenship, though it was subsequently understood that all were Kaman Muslims, whose status as an indigenous community has never been questioned. The rest were granted “naturalized” citizenship, which is available to individuals who applied for citizenship after 1982, and whose family resided in the country before January 4, 1948. The rights of naturalized citizens may be removed “from time to time” by the government and, as prescribed by laws and regulations, do not include the right to run for political office; own “immovable” property; study medicine, law, or dentistry; or form political parties.⁶

The citizenship verification process emerged as a response to pressure by donor governments, the UN, and international civil society to rightfully acknowledge and extend legal status to the Rohingya. Yet the central government is also under pressure from Rakhine community leaders, who have demonstrated a strong unwillingness to accept any change in the status quo.

While the Rakhine leadership has consistently demanded that Rohingya be screened for citizenship eligibility under Myanmar’s 1982 Citizenship Law, this is based on the expectation that very few Rohingya will actually receive it. Indeed, a Buddhist monk in Sittwe informed RI that no more than 49 percent of Rohingya could be citizens, and that extending citizenship to more than that would be “impossible.” Despite the low numbers of Rohingya approved for citizenship, immediately after the government

announced the first set of results some members of the Rakhine community objected, including a member of the lower house of Parliament. At the end of October, the government announced that it was suspending the citizenship verification process without specifying a reason, but reportedly due to allegations made by the Rakhine that Rohingya were fraudulently claiming to be Kaman and thereby securing citizenship.⁷ Thus far there is no evidence to support this assertion.

Even if the citizenship verification process were to move forward, it is not clear that large numbers of Rohingya would participate given the current obligation to identify as Bengali. RI spoke to IDP leaders representing five different Sittwe camps who said they would not participate if they were required to adopt a false ethnicity. However, this view is not universal. For example, some residents in the only remaining Rohingya neighborhood in Sittwe, Aung Mingalar, told RI they would pursue citizenship despite the requirement so that their “children will be full citizens of Myanmar.” How the more than one million Rohingya living outside Sittwe in northern Rakhine State would proceed is unknown, and their participation is certainly not assured given their earlier refusal to accept the Bengali identity during the census exercise.⁸

For the central government, determining whether an individual is eligible for citizenship should not pose great difficulty because the government has kept detailed records of the number and location of all families throughout the country for generations. Yet how much and what types of evidence will be sufficient for individuals to demonstrate eligibility for citizenship in Myanmar remains opaque, and there is no right to petition for an independent judicial review of an adverse decision. These ambiguities leave ample room for government officials to make decisions based on political considerations rather than the merits of an individual’s application. Given the rights at stake, and prior to any resumption of the citizenship verification exercise, the process should be made transparent, a right of review should be established, and Rohingya communities should be informed about the benefits and risks.

Internment, Resettlement, and Statelessness

More than any other portion of the draft Rakhine Action Plan, the proposal for dealing with those Rohingya who refuse to participate in the citizenship verification process, or who are found ineligible, has been subject to the most criticism. It delineates that these Rohingya will be put into “temporary camps” where their humanitarian needs will be met, but there is no indication as to who will fund and run

the camps, how long they will be in place, or whether residents will enjoy freedom of movement. Rather, the plan calls for the eventual resettlement of this category of people to other nations with the assistance of the UNHCR, which has already rightfully refused to participate in such a plan. Many hundreds of thousands of Rohingya could consequently be subject to indefinite and arbitrary detention.

Less remarked upon, but also of great concern, is the assertion that Rohingya who refuse to participate in the process or are found ineligible for citizenship are “illegal aliens.” While Myanmar’s government rightly claims the authority to determine eligibility for citizenship, it does not have the authority to arbitrarily deny legal recognition to Rohingya who have no claim to citizenship elsewhere, particularly when they were born and have lived in Myanmar all their lives. In circumstances such as these, international human rights law recognizes that nations have certain obligations,⁹ including the duty to extend legal recognition to individuals who were born in the country, have genuine ties, and who would otherwise be stateless.¹⁰

Even beyond the universal human rights framework, the international community has developed and recently bolstered a stateless-specific protection regime that provides an additional layer of regulation in this area.¹¹ To be in conformity with international law and standards, Myanmar needs to do more than decide who is a citizen; it must also determine how it will promote and protect the rights of noncitizens.

CONCLUSION

While the situation of Myanmar’s Rohingya population remains dire, it must be acknowledged that the central government has taken some limited steps to address their long-term status. These steps have only come about because of consistent pressure from the international community. It is therefore vital that as a prerequisite to full normalization of relations, donor governments must insist that Myanmar extend non-discriminatory protection to all people living in Rakhine State, provide citizenship to Rohingya born in the country or with longstanding ties, restore the rule of law, and prosecute perpetrators of violence consistent with due process. Only when such steps are taken can the Rohingya’s future in Myanmar be secured.

Sarnata Reynolds and Jeff Crisp traveled to Myanmar in September 2014 and assessed the humanitarian response to displacement in Rakhine State.

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9. See United Nations High Commissioner for Refugees, Division of International Protection. "UNHCR Action to Address Statelessness: a Strategy Note," *International Journal of Refugee Law* 22, no. 2 (2010): 299.
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