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The Rohingya Crisis, Two Years After: Impasses and Deadlocks

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EXECUTIVE SUMMARY

- Two years since 700 000 refugees fled from Rakhine State, Myanmar to Bangladesh, the various issues surrounding this issue are in a state of deadlock.
- The third repatriation attempt is taking place, but once again the issues of citizenship and the recognition of Rohingya as a national race have not been resolved by the Myanmar authorities. It is likely that the refugees will remain in Bangladesh for the foreseeable future.
- The Chinese and Russian are blocking action against Myanmar in the UN Security Council.
- The Myanmar military maintains that its operations in Rakhine State in August 2017 were legitimate. Myanmar civilian officials have repeatedly denied that security forces committed abuses during the operations.
- The Myanmar government has prioritized economic development in Rakhine State to resolve the many issues plaguing the region. Nevertheless, given the multiple domains of conflict in Rakhine State, achieving sustainable development and peace in Rakhine State will be an arduous feat.

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25th August marks two years since hundreds of thousands of Rohingya, referred to as Bengali in Myanmar, fled from Rakhine State in Myanmar to Cox's Bazar in Bangladesh. The triggering incident was the attack by the Arakan Rohingya Salvation Army (ARSA), a non-state armed group claiming to defend the rights of the Rohingya, on police and army posts in northwest Rakhine State. Consequently, the Myanmar military launched "clearance operations" to eliminate militants. In the process, it is estimated that thousands of Rohingya were killed, and entire villages were burnt down.¹ In just three months, more than 700 000 Rohingya fled to Bangladesh in search of sanctuary.

This article provides a summary of what has happened in the two years since the Rohingya fled to Bangladesh. It shows that for the issues of refugee camp conditions, repatriation, justice and resolution, the various actors are at an impasse.

OVERCROWDING AND UNDERFUNDING

According to UNHCR figures provided on 15 August 2019, 743 016 people have arrived from Rakhine State, Myanmar, in Cox's Bazar, Bangladesh in the last two years. This brings the total number of refugees in Cox's Bazar to 912 852, the majority of whom identify as Rohingya.² Of these, more than half are children (55 per cent of the population). Women and girls make up 52 per cent of the residents and there are 210 488 families in the 35 camps and sites.³

Despite the Bangladeshi government having provided more land for refugee camps, overcrowding has been identified by the agencies working in Cox's Bazar as the central challenge for providing services and for improving living conditions. First, the lack of space increases the risk of landslides and floods, which in turn cause displacement and deaths. This is particularly so during monsoons and cyclones. Second, agencies are finding it difficult to create access roads for the more remote parts of camps. This restricts their capacity to provide adequate services to residents. Third, there is a lack of open spaces and shade for recreation and community-based activities.⁴ Fourth, it has been reported that incidents of violence and tension have been exacerbated by the congestion in the camps.

Finally, the lack of space has also limited opportunities for education and training.⁵ Consequently, many children attend informal education for only two hours a day to allow for multiple shifts. The figures show that 16 per cent of children between 3-14 years old, and 81 per cent of young people between 15-24 have no access to education at all.⁶

Besides overcrowding, there is a shortfall in the total funding required. The 2018 Joint Response Plan for assisting camp residents was funded at 69 per cent. In July 2019, only a third of the US\$920 million requested for the year has been received.

REPATRIATION, CITIZENSHIP AND PLACE OF RETURN

At present, the third attempt to repatriate the refugees is under way. A list of more than 3000 Rohingya refugees has been confirmed by the Myanmar government as eligible to return. However, several refugees have reported not having been consulted, informed or even willing to return to Rakhine State.⁷ This renewed repatriation endeavour comes after a Myanmar government delegation began repatriation talks with Rohingya leaders in one of the camps in late July. At these talks, the Rohingya reiterated that they would not return unless they were granted citizenship and recognized as Rohingya.

The first repatriation attempt began in November 2017 with Myanmar and Bangladesh signing an agreement to repatriate the refugees as soon as possible. The first batch of Rohingya was slated to return at the end of January 2018 but this was postponed by the Bangladesh government amidst concerns about the procedures and the unwillingness of the refugees to return.

In June 2018, the UN High Commissioner for Refugees (UNHCR), the UN Development Programme, and the Myanmar government signed a memorandum of understanding on return which lacked guarantees of citizenship. This led to a second attempt at repatriation in mid- November 2018 which fell through because the Rohingya were unwilling to return without guarantees of citizenship and housing.

The challenges surrounding repatriation are multi-factorial. First, the Rohingya are only willing to return to Myanmar if they are provided citizenship and are recognized as a national race of Myanmar. At this point, it is pertinent to point out that these are two separate issues.

It is commonly claimed that the law in Myanmar denies the Rohingya the possibility of acquiring nationality in Myanmar. In actual fact, they are not *de jure* but *de facto* stateless. Their statelessness has been created through the “gradual degradation” of their documented status and the inconsistent and erratic implementation of the 1982 Citizenship Law.⁸

With regards to the recognition of Rohingya as a national race in Myanmar, that is a much more difficult issue to overcome. Myanmar has a list of 135 national races that recognizes members of these races as natural citizens. However, there are several differing versions of this list and none is considered official in law. Besides citizenship, the concept of national races has implications for political representation and territorial claims. The 2008 Constitution states that there is a constitutional threshold that gives a population minority representation in the state and regional parliaments. Thus, if the Rohingya were to obtain official recognition as a national race, they would have the possibility of gaining representation in the country’s political structure and the possibility of acquiring special autonomous status. Given the climate surrounding Muslim and Rohingya presence in Myanmar, there would be great opposition to this becoming a reality.

Besides the issues of citizenship and recognition of Rohingya as a national race, there are practical concerns about where the Rohingya will return to. The Myanmar government has

built two “reception centres” and a “transit camp,” surrounded by perimeter fences, to process and house returnees. However, a recent report found that of the 329 Rohingya settlements identified by the United Nations Operational Satellite Applications Programme as damaged or destroyed during the 2017 crisis, more than 320 showed no signs of being reconstructed, 40 per cent were razed, and 6 suspected military facilities have been built or expanded on former Rohingya settlements. In addition, 58 settlements were identified as having been demolished in 2018, and others in 2019.⁹ In response to this report, the Minister for Social Welfare, Relief and Resettlement said that Myanmar has plans to build better villages that will include public infrastructure on empty plots of land where Rohingya homes used to be.¹⁰

BANGLADESH: PERMISSION TO REMAIN AND CONCERNS FOR THE LOCAL SURROUNDINGS

After initially pushing back refugees in August 2017, the Bangladeshi authorities permitted the Rohingya to seek sanctuary in Cox’s Bazar. Bangladesh has allowed international agencies to provide services and assistance to the refugees and has said that it will not force the Rohingya to leave. The Bangladeshi public has been supportive of this but worries about the impact on employment, prices, resources, the environment and radicalization.¹¹ Some studies have shown drastic changes in vegetation cover in the areas where the Rohingya have settled, degradation of forested land and destruction of wildlife habitats.¹²

At present, the Bangladesh government has plans to move about 100 000 of the refugees to a silt riverine island in the Bay of Bengal to deal with the overcrowding in Cox’s Bazar. The concern among international agencies is the risk that cyclones and tidal waves would pose to residents. In response, Bangladeshi officials claim that the island has been secured with embankments, and that the homes and cyclone shelters they have built on the island are better than those available to millions of Bangladeshis. The Rohingya living in the camps have repeatedly said that they will not go as they fear for their safety.

FACT-FINDING AND JUSTICE

In March 2017, five months before the Rohingya crisis, the United Nations Human Rights Council established an independent fact-finding mission to establish the circumstances of the alleged human rights violations and abuses by military and security forces in Myanmar. The aim was to ensure full accountability for perpetrators and justice for victims. The mission presented a report to the Human Rights Council in September 2018 stating that “consistent patterns of serious human rights violations and abuses in Kachin, Rakhine and Shan States, in addition to serious violations of international humanitarian law” had been “principally committed by the Myanmar security forces, particularly the military”. In addition, “[m]any violations amount to the gravest crimes under international law”. It recommended that certain senior generals of the Myanmar military be investigated and prosecuted in an international criminal tribunal for genocide, crimes against human and war crimes.¹³

In July this year, the US announced sanctions on Myanmar military's Commander-in-Chief Min Aung Hlaing and his deputy, Soe Win, and two other senior commanders and their families, for extrajudicial killings of Rohingya, barring them from entry to the United States.

In August, the same fact-finding mission called for an embargo on arms sales to Myanmar and for targeted sanctions on businesses with connections to the military because they were found to be funding human rights abuses. The report called for senior military officials to face investigation and prosecution for genocide, crimes against humanity, and war crimes. The fact-finding mission on Myanmar intends to submit its final report to the UN Security Council in September.¹⁴

The Myanmar government opposed the establishment of the UN Human Rights Council Fact-Finding Mission, stating that it was based on unfounded allegations.¹⁵ It has repeatedly denied that security force abuses took place and barred the UN fact-finding mission and special rapporteur on Myanmar from the country. The Myanmar government did not respond to a detailed list of questions submitted nor to the report written by the fact-finding mission. In fact, the Myanmar government does not recognize the report.

The fact-finding mission concluded that the Myanmar government has proven itself unable and unwilling to investigate and prosecute crimes under international law. This is significant because the case can later be referred to the International Criminal Court (ICC), an intergovernmental organization and international tribunal, which can only take action when justice in national courts is not possible.

The ICC has no jurisdiction over crimes in Myanmar as the latter is not an ICC member. However, Bangladesh is a member and thus the ICC has jurisdiction where an element of the crimes occurred in Bangladesh. Nevertheless, there are political forces at play. The conventional procedure would be for the UN Security Council to refer the case in Myanmar to the ICC. However, Chinese and Russian opposition in the UN Security Council would make this unlikely at present.¹⁶

THE MYANMAR GOVERNMENT

In May 2018, the Myanmar government set up a four-member Independent Commission of Enquiry to look into abuses in Rakhine State. At the end of 2018, the commission called for people to provide evidence of abuses conducted by Myanmar's military during the 2017 crisis. It has had access to different communities in northern Rakhine, unlike the UN fact-finding mission. At present, the commission is in Bangladesh with the intention of interviewing 150 to 200 Rohingya.¹⁷ It is not known if any of the Rohingya refugees have agreed to speak to it.

The Myanmar military held an investigation into the events that happened in August 2017 and issued a report end 2017 that exonerated the security forces of any crimes.

In April 2018, the military, after launching an investigation into the killing of 10 Rohingya men, sentenced seven soldiers to 10 years of prison for their participation in the killing of 10 Rohingya men in the beginning of September 2017. This investigation was conducted after two Reuters reporters uncovered the killings at the end of 2017. However, the seven soldiers were released in November 2018, after having served less than a year of their sentence.¹⁸ In an ironic twist, the two Reuters reporters who brought the case to light spent more than 16 months in prison after having been charged for obtaining state secrets.

In March this year, the Myanmar military set up a military court to investigate its conduct during the Rohingya crisis of 2017.¹⁹ The court consists of three senior military officials who have been tasked to examine the Rohingya crisis of 2017. It is believed by international commentators that this was in response to the UN fact-finding mission reports building up evidence of abuses and violations carried out by the Myanmar military in August 2017.

The military maintains that its operations in Rakhine State in August 2017 were legitimate and undertaken in response to attacks by ARSA. Myanmar civilian officials have also repeatedly denied that security forces committed abuses during the operations.

The Myanmar government has adopted a long-term economic approach to resolving the conflict in Rakhine State. The Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD), formed in October 2017, has been tasked to provide humanitarian aid, coordinate resettlement and rehabilitation efforts, create sustainable development, and promote conflict resolution and durable peace in Rakhine State. It is run by a committee which is government led and which is involved in national level work. This committee is steered by 10 private sector task forces.

UEHRD has pursued entrepreneurs and businesspeople for donations and investment.²⁰ The emphasis has been on inviting local and foreign enterprises to invest in Rakhine State in areas such as the building of infrastructure, establishing an agriculture and livestock breeding economic zone, developing the information technology and media sectors, creating job opportunities, conducting vocational training, promoting healthcare services, establishing micro-finance schemes and promoting the tourist sector.²¹

The Myanmar government's plans for Rakhine State may be derailed as armed conflict has escalated in the state. The Arakan Army, whose objective is the self-determination of the population of Rakhine State, had mostly confined its armed activities to Kachin and Chin States. However, since the beginning of this year, it has begun attacking security targets and kidnapping civilians in Rakhine State. These activities and some public support for the Arakan Army are added challenges to the complex problems the Myanmar government faces in trying to resolve issues in Rakhine State.

CONCLUSION

The various issues surrounding Rohingya refugee living conditions, justice for the violations visited upon them, repatriation and resolution of the conflict in Rakhine State are in a state of deadlock. It is very likely that this standoff will continue into the medium- and long-term future. At present, the likelihood of repatriation is very low and the refugees will likely remain in the camps in Bangladesh for the foreseeable future.

International actors, the Myanmar government and the military have pursued different lines of inquiry for the crisis in August 2017. However, the outcomes are at odds with one another, and the possibility of obtaining true accountability are also at a standstill as a result of diverging political interests.

In the meantime, the Myanmar government has prioritized economic development in Rakhine State to resolve the many issue that plague the state. This approach has its merits but Rakhine State is currently dealing with multiple forms of conflict from the Arakan Rohingya Salvation Army (ARSA) and the Arakan Army (two non-state armed groups with vastly different objectives), tensions between Muslims and Buddhist Rakhine, and longstanding antipathy between the Rakhine and the Myanmar government. At present, the possibilities of sustainable development and peace in Rakhine State for all ethnic groups looks to be a distant dream.

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