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Myanmar's Rohingya Dilemma¹

by Tin Maung Maung Than and Moe Thuzar

In the past, the people who called themselves “Rohingya” had to contend with successive military governments’ indifference to recognizing – or regularizing - their status as persons living on the territory of Myanmar. The latest incidence of anger against the Rohingyas, however, did not have immigration woes at its source. An unfortunate crime of rape and murder – committed by Muslim men against a Buddhist woman in a strongly nationalistic state – escalated into communal violence fraught with racial and religious undertones. The views, many of them inflammatory, on social media platforms indicate deep-seated prejudices that threaten the unconsolidated stability in Myanmar under President Thein Sein’s reform-minded administration. President Thein Sein made a statement on 10 June to calm seething sentiments on the present conflict. Myanmar also received the visit of United Nations (UN) Special Envoy Vijay Nambiar to the conflict areas. The measures have resulted in lessening tensions somewhat, and won praise from the European Union and the United States². Responding to questions by media, Daw Aung San Suu Kyi highlighted the importance of handling the situation with “delicacy and sensitivity” while also underscoring the need for the rule of law as “essential [...] to put an end to all conflicts in the country”.

However, the Rohingya issue is still far from reaching a lasting solution.

¹ The Irrawaddy’s Aung Zaw has also written on the topic with a similar heading “Burma’s Rohingya Dilemma” (Article in *The Irrawaddy*, June 14, 2012).

² The EU High Representative’s spokesperson Maja Kocijancic on 11 June stated that “We believe that the security forces are handling this difficult inter-communal violence in an appropriate way. [...] We welcome the priority with which the Myanmar Government is giving to dealing with all ethnic conflicts.” (Reuters, 11 June 2012, “EU welcomes ‘measured’ response to rioting”) On 19 June the US Charge d’Affaires in Myanmar stated that the government’s response to the situation, including asking for international help was “a very different and better response” that was “far and away better than Cyclone Nargis”. He also stated that “This is something we would not have seen in the past. The government is trying to help everybody who needs it whether that is Rakhine Buddhists or Muslims”. (*Weekly Eleven News* bi-weekly e-version, citing a Reuters report of 19 June).

THE HISTORICAL CONTEXT AND EVOLUTION OF THE CONFLICT

Muslim influence, through Bengal, in the Rakhine (Arakan) kingdom probably preceded the first known settlement of Muslims at around 1430 AD. Thereafter, Rakhine Muslims managed to preserve their own heritage within the Buddhist environment for many centuries assuming a separate identity distinct from the majority Buddhist Rakhine.

During the colonial era, the porous western border saw a fair share of cross border migration between British India (mainly Chittagong) and the Rakhine State of Burma, which were provinces under the British Raj. During the Japanese invasion of British Burma, chaos and anarchy enveloped Rakhine and communal violence broke out. Internal displacements occurred as each community moved to places where they were a majority and the state became somewhat divided, with the Muslims concentrated in the northern part of the state. When Pakistan was established, some Muslims in Rakhine called for a separate state. This did not get support from Pakistani leaders.

Rebellion broke out in April 1948, incited by some clerics who called for a Jihad against the “infidels”. Known as the Mujahideen (warriors in a holy war) insurgency, the rebellion faded away in the mid-1950s, but left a bitter legacy of distrust and hatred between the two communities, further accentuating the tensions resulting from the wartime violence.

It was probably sometime during the late 1950s that the term Rohingya or Rohingya (meaning dear ones or compassionate ones) came to signify the ethnic identity of Muslims (both recent migrants and naturalized natives). The seeds of ethno-nationalism were sown and the vision of a Rohingya nation persisted for many decades to come. Meanwhile, it appeared that migration from Bengal continued throughout many decades after Myanmar's independence (at times encouraged for political expediency during the parliamentary period) and that the ‘othering’ process (them and us) was perpetuated by both Buddhists and Muslims.

After the Mujahideen were defeated, a plethora of small armed groups emerged under the banner of self-determination for the Rohingyas. These groups, together with exiled dissidents, and expatriate lobbies used the exodus of 1978 and 1991-92 to further the Rohingya's cause and internationalise it. Capitalising on the post-1988 enmity between the junta and the United States and Western governments, this constellation of anti-regime groups attempted to turn the Rohingya issue into a cause celebre by invoking human rights, self-determination and democracy against a slew of allegations: repression, religious persecution, rape as a terror weapon, forced relocation, forced labour, extra-judicial killing, dispossession of land and livelihood and even genocide.

The exoduses of 1978 and 1991-92 were treated as an immigration issue between Bangladesh and Myanmar by the military governments of the time. On both occasions, the Foreign Ministers of both countries negotiated the process of repatriating the refugees. Burma/Myanmar's stance on both occasions was to accept the refugees and displaced persons back on the basis of these persons' ability to prove their residency status³. Also for

3 For the 1991-92 exodus, Myanmar agreed to accept returnees if they could state which village they resided in and who were their neighbours.

both occasions, UNHCR involvement highlighted the humanitarian aspect of the situation. The UNHCR, acting as a non-participant third party, also coordinated the repatriation process (of refugees back to Burma). In both cases, the pace of repatriation, which received initial high-profile international attention, were drawn-out affairs lasting over several months, and with residual communities in both countries.

The Rohingya were in the news again in 2009 when groups of Rohingya refugees in boats reached the shores of Thailand, Malaysia and Indonesia, after several days at sea. Then Thai Prime Minister Abhisit Vejjajiva's administration was criticized for towing the boats with the Rohingya refugees out to sea to be abandoned. ASEAN prevailed upon Myanmar to receive the refugees back, despite cries of concern from rights groups over the safety and rehabilitation of the returnees. ASEAN turned to the Bali Process – created in 2002 to move regional cooperation on people smuggling and trafficking in persons – to do this. ASEAN had counted on the precedent of the tri-partite collaboration under the Cyclone Nargis relief effort to promote cooperation between Myanmar and the international community on the Rohingya issue, and saw the Bali Process as a “viable option” to discuss the issue. As Myanmar stated that anyone who could prove their citizenship would be readily accepted back⁴, the ASEAN Secretariat was tasked with conducting a census of Myanmar Muslims in countries such as Indonesia, India and Thailand⁵.

The recent communal violence in Rakhine state have brought renewed attention to the Rohingya issue. The rape and murder of a Buddhist woman by Muslim men on 28 May was the trigger event. These men have now been tried and sentenced by a regional court, and a commission of inquiry has been formed. Before this could happen, however, a Buddhist mob took justice into its own hands six days after the rape incident, killing ten Muslim men travelling on a bus. The ten men were pilgrims from other parts of Myanmar, and not from Rakhine. The razing of residences – and even public buildings – prompted President Thein Sein to appeal to the country on 10 June 2012⁶. The President also declared a state of emergency in Rakhine State. The local government in Rakhine State had earlier imposed a curfew on 6 June 2012. The clashes were characterised in the international media as sectarian violence between Buddhists and Muslim Rohingya. The Rohingya were depicted as a minority ethnic group. This prompted an explosion of comments and repartees in the Burmese social media forums – many inflammatory – accusing the international press of biased reporting in favour of the Rohingya.

Myanmar has restrictions against reporting on religious and racial issues. Such stories are required to be submitted to the censorship board. The Chief Minister of Yangon Region Government told private media journalists on 10 June that they faced seven years'

4 At the ASEAN Summit in March 2009, the Myanmar Foreign Minister also stated that the refugees would be allowed to return but only if they identified themselves as “Bengalis” rather than Rohingyas. (The Irrawaddy, March-April 2009, Vol. 17 No.2, p 19)

5 “Asia: Regional approach to Rohingya boat people”, Integrated Regional Information Networks –IRIN, 2 March 2009 (<http://www.unhcr.org/refworld/country,,IRIN,,MMR,,49af987bc,0.html>)

6 The death toll (including the rape victim and the 10 Muslim men) now stands at 62 in the period over 28 May to 21 June, according to a local government official. (Xinhua, 21 June 2012, “Death toll rises to 62 in Myanmar’s riot-hit Rakhine state: official). Over 2000 residential homes and at least a mosque were also destroyed during the riots.

imprisonment under the Emergency Provision Act if news articles on the issue had “inciting news that could worsen the situation”⁷. This is seen by many in the media community as a setback to the progressive steps taken towards press freedom and the dismantling of the censorship board.

Myanmar showed no reluctance in admitting Vijay Nambiar, the UN’s Special Advisor on Myanmar, to visit on 13 June the areas where violence had flared. He called for “a full, impartial, and credible investigation of the disturbances to be conducted urgently as well as to ensure that the rule of law is enforced in a transparent manner,” according to a UN news release⁸. Also on 13 June, Tomás Ojea Quintana, the UN Special Rapporteur on Human Rights in Myanmar visited the affected areas with Myanmar’s Border Affairs Minister⁹.

UN relief agencies – including the UN World Food Programme (WFP) and the office of the UN High Commissioner for Refugees (UNHCR) – have been on the ground in Rakhine, in response to the humanitarian situation caused by the communal riots and clashes. Government ministers and officials were also actively involved in relief and resettlement efforts. The Bangladesh government has stated their position of keeping the border closed¹⁰. There were expectations that the Rohingya issue will be discussed when President Thein Sein visits Bangladesh in July.

The Rohingya issue is a complex problem. In light of recent events, the essence of the issue can be described as a clash of two contending interpretations over the perceived “overwhelming” presence of Muslims in Rakhine. From the pro-Rohingya perspective, they are descendents of Muslim settlers, with many ethnic roots, who arrived long before the British annexed Burma and Arakan (now called Rakhine). Their view is that the Rohingya should be accorded the status of a separate ethnic group in Myanmar. In contrast, the official view maintains that they (the Rohingya) were never part of the indigenous national races but were migrants from Bengal and beyond, who arrived after the Anglo-Burmese War of 1824. As “illegal” immigrants, they do not qualify for citizenship.

7 Eleven Media Group, “Chief Minister warns journalists about their news reporting in Rakhine state”. See also Reuters article in Asahi Shimbun “Violence tests Myanmar’s media and its censors”, 14 June 2012. (http://ajw.asahi.com/article/asia/south_east_asia/AJ201206140093)

8 “UN envoy calls for investigation into disturbances in Myanmar state”, UN News Centre, 15 June 2012 (<http://www.un.org/apps/news/story.asp?NewsID=42240&Cr=myanmar&Cr1=>)

9 “Myanmar: UN ready to assist Rakhine displaced”, IRIN humanitarian news and analysis, 15 June 2012 (<http://www.irinnews.org/Report/95658/MYANMAR-UN-ready-to-assist-Rakhine-displaced>)

10 “UN responds to humanitarian needs in Myanmar following recent violence”, UN News Centre, 19 June 2012 (<http://www.un.org/apps/news/story.asp?NewsID=42271&Cr=myanmar&Cr1=#>)

THE ROHINGYA AND THE CITIZENSHIP LAWS¹¹

The 1948 Union Citizenship Act offered a window for dealing with issues of citizenship in the newly independent Burma. Based on the 1947 Constitution¹², the Act specified that indigenous races of Burma meant the “Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and racial groups as have settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 AD (1185 BE)”. Anyone in doubt of their rights to citizenship could apply – through the different administrative layers, by 30 April 1950 – to the Minister of Home Affairs for decision.

Had the Union Citizenship Act been effectively implemented in the years following Burma’s independence, it might have resulted in a clearer legal status for everyone in the country. This did not happen as independence brought with it other concerns perceived as more pressing for the nascent government.

A new legislation on citizenship was introduced under the context of the 1974 Constitution during the Burma Socialist Programme Party (BSPP) years. The 1982 Citizenship Law had its origins in views expounded by the BSPP Chairman and then President of Burma, U Ne Win, in December 1979. His view – apparently a long-standing one in governing circles in Burma – was that the security of the state required clarification of the different kinds of persons residing in the country: genuine Burmese; persons of mixed blood, i.e. Burmese-Indians/Chinese; and those “allowed” to enter and reside in the country, i.e. Indians and Chinese. Of these, those of mixed parentage could not be “fully trusted” due to their alleged foreign contacts and possible external leanings and interests. The 1982 Citizenship Law categorizes citizens into 1) full citizens, who are either descendants of those residing in the country since before 1823, including the indigenous races listed in the 1948 Citizenship Act, citizens at the time of the legislation’s entry into force or those born of parents at least one of whom were citizens at the time of birth; 2) associate citizens who had applied for citizenship under the 1948 Citizenship Act; and 3) naturalized citizens, who comprise persons “who have entered and resided in the State anterior to 4th January 1948, and their offsprings born within the State may, if they have not yet applied under the union Citizenship Act, 1948, apply for naturalized citizenship to the Central Body, furnishing conclusive evidence”¹³. After three generations, descendants of associate or naturalized citizens would be considered full citizens.

*11 The background information in this section is mainly from Robert Taylor’s chapter on *The Legal Status of Indians in Contemporary Burma* in K.S. Sandhu and A. Mani (eds) *Indian Communities in Southeast Asia* (ISEAS, 1993).*

12 Section 11 of the 1947 Constitution specified that citizenship was granted to every person, both of whose parents belonged to any of the indigenous races of Burma and were/would have been citizens of the Union; every person born in any of the territories included within the Union if their grandparent(s) belonged to any of the indigenous races of Burma; and every person born in any of the territories which at the time of birth was included within the British dominions and who had resided in any of the territories included in the Union for a period of not less than eight years in the ten years immediately preceding the date of the commencement of the Constitution or 1 January 1942. More importantly, recognition was given to the intent to reside permanently in the Union, thus signifying the choice to be a citizen of the Union.

13 The language is as stated in the 1982 Citizenship Law. Applicants for naturalized citizenship are required to be of 18 years of age, to be fluent in one of the national languages, be of good character and be of sound mind.

The 1982 Citizenship Law can be interpreted as a barrier to citizenship for many people who do not satisfy the criteria thereof. Under this law, a “Central Body” comprising the Minister of Home Affairs (as Chair), and the Ministers of Defence, and Foreign Affairs (as members), has the authority to decide.

CHALLENGES AHEAD

The Rohingya issue is a serious test for Myanmar’s reform process. President Thein Sein had first announced in May 2012 a second phase of the reforms. In his statement of 10 June¹⁴ on the Rakhine riots, he referred to this second phase as “people-centred reform strategies”. He also accepted full responsibility (on the part of the government) for “addressing difficulties, issues and desires of the people reasonably”. In a nationally televised speech on 19 June providing details on the second wave of reforms, he promised to continue work on “national reconciliation, national peace and stability and the rule of law, and the safety of the public.”¹⁵ Human development (and security), national reconciliation and the rule of law thus seem to be the central ingredients for the people-centred reforms.

Similarly, the importance of the rule of law has been consistently emphasised by Daw Aung San Suu Kyi and her National League for Democracy (NLD). In the wake of the violence in Rakhine, Daw Aung San Suu Kyi referred to the need for the rule of law, including clear and precise laws with regard to citizenship.

The Rohingya issue may prompt a revisiting of the 1982 Citizenship Law. However, the deep anti-Rohingya sentiments in the country needs to be overcome. A window may exist in the upcoming census planned for 2014 in partnership with the UN. The preparatory discussions highlighted inclusiveness of the census of all the territories of Myanmar¹⁶. This would enable President Thein Sein’s people-oriented reforms to address the gaps and omissions of past administrations¹⁷.

The recent communal violence in Rakhine state may be seen by some as a flare-up of emotions that government interventions can contain (for the present). A more pessimistic view indicates a deep division within the population that could worsen. Whichever the case, conflicts of this nature highlight the need for “bridge-builders” and for building capacities of such individuals and organisations. Civil society in Myanmar has taken some initial steps towards this difficult role. In addition to government relief efforts, some civil society groups and individuals have offered relief assistance to people displaced by the conflict

¹⁴ English translation provided by Eleven Media Group.

¹⁵ “Myanmar President Announces Economic Reforms” by Thomas Fuller, 19 June 2012, in the New York Times global edition.

¹⁶ “Burma Census Planning Underway”, Mizzima News, 3 May 2012 (<http://www.mizzima.com/news/inside-burma/7051-burma-census-planning-underway.html>).

¹⁷ Even with an inclusive census, it may well nigh prove impossible to differentiate descendents of the early settlers (who might qualify for citizenship under the 1982 law) and latecomers who are now collectively labeled as “Bengali Muslims”. It should also be noted that prior to the 2010 elections, temporary identity cards were issued to a number of Rohingya in Rakhine.

regardless of whether they are Buddhist or Muslim, Rohingya or Rakhine. The role of political parties in Rakhine State and legislators of these parties in the regional and central-level parliaments is also crucial. However, it will take decades to undo negative perceptions.

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