



POLICY BRIEF 9

Addressing the Plight of the Rohingyas Summary

The Rohingyas, one of the most neglected communities in the world, have routinely been subjected to the systematic state persecution and human rights abuse in Burma since the late 1970s. Many have taken refuge in nearby countries with Bangladesh being a major host country. Although Bangladesh has received hundreds of thousands of Rohingya refugees over the last several decades, it has not developed any formal refugee management system to effectively deal with the problem. Moreover, until last year the policy of indifference of the international community made this community suffer for decades.

To add insult to injury, the spells of inter-communal violence in June and October, 2012 and in 2013 in Burma coupled with state-sponsored persecution have made many Rohingyas attempt to enter Bangladesh for refuge but in vain as they were officially denied entry. However, the June and October mayhems presented an opportunity to work for a sustainable solution as the incidents brought this vulnerable community to the international spotlight. The UN General Assembly adopted a resolution in December 2012 on the Rohingya issue for the first time in history. As a primary country of refuge for a good number of the Rohingya people, Bangladesh should make best use of this opportunity and play a lead role to work out a durable solution in partnership with all other stakeholders.



Guests at the RMMRU dialogue on 'Economic Migrants or Asylum Seekers? Rohingyas in Bangladesh' Seen in the photo are (right to left) Prof. Shah Alam, Chair, Bangladesh Law Commission, Prof. Mizanur Rahman, Chair, National Human Rights Commission, Chief Guest Justice Dr. Syed Refaat Ahmed and journalist Afsan Chowdhury.

BACKGROUND

The Rohingya, an ethno-linguistic Muslim minority in Burmese northern Arakan state, have been subjected to systematic discrimination and violence for more than three decades. Faced with sustained persecution, many Rohingyas have had no choice but to flee to a number of countries including Bangladesh that share borders with Burma.¹ The most recent exodus of the Rohingyas has taken place after the inter-communal violence between the Rakhine Buddhist and the Rohingya communities last year, followed by a series

of state-sponsored persecution in two spells of violence in June and October, 2012. Approximately 180 people were killed while more than 100,000 were displaced and 5000 houses were burnt to ashes.²

Even though Bangladesh is not a party to the 1951 UN Refugee Convention or its 1967 Protocol, it has been hosting a significant number of Rohingya refugees for decades.³ Because of prolonged stay, Bangladesh has started demonstrating “refugee fatigue” syndrome and became reluctant to open its doors to the new groups of Rohingya

asylum seekers turning their ordeals into an endless despair.

In the absence of any comprehensive refugee management system in Bangladesh coupled with the unrelenting persecution in the country of origin and continued inertia of the international community, the Rohingyas enjoy very little protection and access to basic human rights.⁴

It goes without saying that it is a moral and legal obligation for the relevant stakeholders to address the root causes of their sufferings in a concerted way, no matter how onerous the task is. The recent mayhems in Burma once again underscore the urgent need for a durable solution to this “decades long” problem.

ORIGIN OF THE ROHINGYA REFUGEE PROBLEM

Burma has been uninterruptedly ruled by the military junta since the early 1960s. To strengthen their powerbase, the junta has promoted a particular nationalist agenda.⁵ Such nationalist narratives promoting “Burmanisation” have been based on the exclusivity of the Burmese language, culture and the religion of the majority – Buddhism.⁶ The Rohingya problem is rooted in a chauvinist ethos which renders them a minority in their own land.

Based on the conservative nationalist ideology, the military regimes have enacted draconian laws including the Citizenship Law of 1982 and other policies over the years.⁷ Disenfranchisement of the entire community is identified as the root cause of all forms of atrocities and human rights violations of the Rohingyas. The oppressive practices of these regimes have made the Rohingya, a community of approximately 800,000 people living in Arakan state,⁸ either languish in prisonlike villages or flee the persecution and seek refuge in countries like Bangladesh, Malaysia, Indonesia Singapore, Thailand, Saudi Arabia and Pakistan in the last several decades.⁹

Denial of Citizenship and Rights to Property

Stripping of their citizenship in 1982 has been used as the most ruthless tactic against the Rohingya.¹⁰ The Citizenship law of Burma puts emphasis on ancestry, naturalisation, ethnicity and language as the basis of citizenship with a view to restoring the country’s “Golden Age” or national purity.¹¹

According to the Citizenship Law of 1982, a person must provide the evidence that his/her ancestor(s) settled in Burma before 1823 or parent(s) resided in Burma prior to the independence in 1948 to qualify as a Burmese citizen.¹² The law also identifies some national races i.e. Kachin, Kyah, Karen, Chin, Burman, Mon, Rakhine, Shan, Kaman, or Zerbadee whose members are eligible for citizenship.¹³ In addition, the ability to speak one of the national languages is another prerequisite to qualify as the citizen under the law.¹⁴ Neither the Rohingya as an ethnic group nor their language is recognised in this law turning them into a stateless

community and illegal migrants in their own country of origin.

The Rohingyas are also denied the right to own land and property. The State Law and Order Restoration Council (SLORC) confiscated the land owned by the Rohingya Muslims without any compensation to build military cantonments in the northern Rakhine state after 1988.¹⁵

Arbitrary Taxation and Forced Labour

The Rohingya are subjected to arbitrary taxation. They have to pay high tax for their activities, such as marriage, business, using mobile phones, traveling and education etc.

Local government authorities also continue to compel the Rohingyas to perform forced labour in state-run profit making industries and the construction sector. Those who disobey the order are sometimes threatened with death.¹⁶

Curtailing Freedom of Movement and Other Rights

The Burmese authority imposes restrictions on the movements of the Rohingyas. If they want to travel anywhere outside their own village, they need permission from the Chairman of the Local Peace and Development Council (LPDC).¹⁷ Moreover, rape, physical harassment, extrajudicial killings, arbitrary arrest and detention are rampant.

The negative consequences of these oppressive policies and practices are evident in the socio-economic conditions of this community. They are the poorest groups in Burma. The child mortality and malnutrition rates are markedly high.¹⁸ Restrictions on their mobility have crippled their access to employment opportunities, health facilitates and higher education.

BANGLADESH: ONE OF THE PRIMARY DESTINATIONS

As Bangladesh shares a porous border with Burma, it has been the primary country of refuge for Rohingya asylum seekers. Bangladesh experienced massive Rohingya refugee influx for the first time in 1978 following the infamous military campaign named ‘Nagamin’ (Dragon King).¹⁹ Approximately 200,000 Rohingyas entered Bangladesh at that time while about a quarter of a million took refuge again in 1991-92 to flee state-sponsored persecution.²⁰

Registered Rohingyas

Bangladesh has been hosting 29,000 registered Rohingya refugees in two official camps of Kutupalong and Nayapara in the Cox’s Bazar district of Chittagong.²¹ The refugees live in appalling conditions and their human security is severely compromised.

Their freedom of movement is strictly restricted. They lack access to sufficient food, drinking water and sanitation facilities. A recent survey found that 17 percent of children

aged below five years suffer from acute malnutrition.²² They do not have legal rights to work/practice their professions. Neither registered Rohingyas' children nor those of unregistered ones are allowed to have formal education in Bangladesh. They only have access to informal education based on Burmese curriculum in the official camps.²³ The Government of Bangladesh (GoB), however, allows the United Nations High Commissioner for Refugees (UNHCR) and some other NGOs to work for these refugees in a very limited way.

Unregistered Rohingyas

Approximately 200,000–500,000 unregistered Rohingyas have been languishing in makeshift camps and other informal shelters in the Cox's Bazar-Teknaf area.²⁴ The unregistered persons of concerns denied access to humanitarian supports including food. A recent survey found that malnutrition rate among unregistered Rohingyas is exorbitantly high – 26 percent, double the emergency level.²⁵

In the absence of any legal protection, they fall victim to starvation, detention, assault and arbitrary abuses including rape, gender-based violence and underpayment by their local employers but have no recourse to justice.

Recent Arrivals

In the wake of the recent inter-communal violence, hundreds of thousands of Rohingya asylum seekers attempted to cross the border into Bangladesh but in vain. The GoB has sealed the borders in order to impede refugee influx thus jeopardising their basic survival. The Border Guard Bangladesh (BGB) pushed back the Rohingya loaded boats. Some of them were arrested by the members of the law enforcement agencies on ground of illegal entry.

Moreover, in late July of 2012, the GoB has instructed three INGOs: Medecins Sans Frontieres (Doctors Without Borders), Action Centre la Faim (Action Against Hunger), and Muslim Aid to cease their humanitarian assistance for the Rohingyas.²⁶

RESPONSE OF MAJOR STAKEHOLDERS

Though the recent atrocities against the Rohingya have sensitised the international community about the issue, it is yet to receive any meaningful actions/initiatives from major stakeholders be it- Burma, Bangladesh, or the international community at large.

Burma

After the first wave of Rohingya exodus back in 1978, the Burmese government signed an agreement with the GoB to take back Rohingya refugees. As a result, overwhelming majority of the refugees were repatriated to Burma in subsequent months. Similarly, the Burmese military rulers also signed two separate Memorandums of Understanding

(MoU) with the GoB and the UNHCR respectively following the mass exodus of 1991-92 but with very little concrete results.²⁷ The agreements have largely failed to bring about any substantial improvements in the socio-political conditions in Arakan state where this community could live without fear of persecution. Human rights violations and systematic abuses of the Rohingya community in Burma by the authorities are well documented.²⁸

The Burmese government still refuses to recognise the Rohingyas as citizens. Even after the recent spate of violence, President Thein Sein shared his intention to expel the Rohingyas from Burma and have them resettled in other countries. Among the local leaders and government officials, the mindset of treating the Rohingyas as illegal immigrant is so pervasive that any sort of violence against this community is considered “acceptable and even desirable”.²⁹ The state authority even went on to have imposed restriction on activity of humanitarian aid workers, human rights defenders, and civil society actors to provide aid to the victims of the violence, to publish statements, reports and to brief the international community about the current deteriorating situation of the Rohingyas.³⁰ To the utter dismay of the international community, the pro-democratic forces in Burma have also disowned this minority community when Nobel Peace Prize laureate Aung San Suu Kyi, said that she did not want to use the “moral leadership” to back the Rohingya.³¹

Bangladesh

Bangladesh was compassionate to the Rohingya issue when the first spell of refugees entered its territory a few decades ago. It has been providing shelter and assistance to thousands of refugees residing in official camps. Repatriation agreements with Burma and collaboration with the UNHCR for status determination indicate its sincerity towards solving the problem.

Repatriation has been the preferred option for the GoB. Because of its effective diplomacy, many refugees were voluntarily repatriated in 1978 and 1992. There are, however, some allegations that the GoB coercively repatriated many a refugee over the years.³²

From the beginning, the GoB has been treating the issue as a short-term problem and therefore it has neither developed any effective refugee management system in the country nor signed any international instruments on refugee protection. Added to this, the GoB, over the years, has become reluctant to improve the conditions of the refugees and asylum seekers to diminish pull factors for perceived economic migrants.³³

The GoB is no longer willing to accept any new asylum seekers on ground of state sovereignty and national security.³⁴ Members of this vulnerable community have often been alleged to be involved in local and transnational

criminal and terrorist activities. For example, they were accused for their alleged involvement in the violence against the Buddhist community in *Ramu* in 2012. They are considered an added burden for resource scarce and overpopulated Bangladesh. Hence, the GoB has been securitising the Rohingya issue and denied its obligation to open the border for the new batch of asylum seekers in 2012 and indiscriminately has labeled them as ‘illegal intruder’ or ‘economic migrants’.

International Community

The Rohingya issue is one of the most pressing refugee issues in the world, yet there are hardly any substantive initiatives taken by the international community to address the issue in a durable manner. The international community and the regional actors do acknowledge the fact that the Burmese government’s discriminatory laws and policies of citizenship is the root cause of the Rohingya problem. However, in solving the problem the international community prefers managing the refugees in a routine manner rather than addressing the root causes of the exodus in the country of origin.

The UNHCR and a number of international and national NGOs have been working diligently to provide humanitarian aid and to facilitate registration process of the Rohingya refugees in Bangladesh. The United States of America, the United Kingdom, Denmark, Australia, Canada and some other European countries have also shown their interests in third country resettlement to a limited extent.³⁵

The immediate reaction of the international response especially the reaction of the developed countries to the 2012-13 mayhems was not as sharp as it should have been. Criticising lukewarm reactions of the international community, Brad Adams, Asia Director, Human Rights Watch, went on to comment, “if the atrocities in Arakan had happened before the government’s reform process started, the international reaction would have been swift and strong. But the international community appears to be blinded by a romantic narrative of sweeping change in Burma, signing new trade deals and lifting sanctions even while the abuse continues.”³⁶

It is, however, to be mentioned that International and regional organisations including the UN, The Association of Southeast Asian Nations (ASEAN) and the Organisation of Islamic Cooperation (OIC) expressed their concerns following the violence. The ASEAN Inter-Parliamentary Caucus observed that the identity creation on the basis of religion: *Buddhist vs. Muslim* in the Rakhine state intensified these ethnic conflicts in Burma. They also acknowledged the failure of ASEAN to address the problem and noted that the Rohingya crisis could lead to instability in the greater Malacca Straits.³⁷ As such, they have called to extend

humanitarian assistance to the Rohingyas. Similarly, at the global civil society level, concerns on humanitarian aspect of the crisis have been raised in a number of conferences held in different countries including Malaysia and Turkey.

In a similar fashion, the Islamic World also criticised the Burmese government for the violation of human rights, ethnic cleansing, murder, rape and forced displacement against the Muslim Rohingya minority. The member states of the OIC condemned the atrocities and “the continued recourse to violence by the Myanmar authorities against the members of this minority and their refusal to recognise their right to citizenship”³⁸ at a meeting on 15 August 2013. Furthermore, they agreed to provide all humanitarian support to the Rohingyas in Burma. King Abdullah of Saudi Arabia also urged the international community “to take up its responsibilities by providing needed protection and quality of life to Muslims in Myanmar and preventing further loss of life.”³⁹

In addition, The British Foreign Secretary William Hague called the Burmese government to resolve the Rohingya issue.⁴⁰ Immediately after the incident the US Deputy State Secretary of State for the Bureau of Populations, Refugees and Migration visited the affected areas. The US administration has expressed its concerns about the current Rohingya refugee conditions and called for a regional approach to address the problem. In his speech at Yangon University during his maiden visit to Burma, US President Barack Obama has unequivocally urged the Burmese government to stop the communal violence in Rakhine state and to include the Rohingya community in the mainstream Burmese society.⁴¹

For the first time in history, the UN General Assembly (UNGA) voiced their concern and passed a resolution on 24 December, 2012 on the Rohingya crisis. The UNGA has urged the concerned authority to settle the Rohingya citizenship issue and to bring the perpetrators of human rights violation to justice.⁴² The UN Special Rapporteur Tomas Ojea Quintana in his statement on 16 February, 2013 requested the government of Burma to amend the 1982 Citizenship Act in order “to ensure that all persons in Myanmar have equal access to citizenship and are not discriminated in such access on grounds of ethnicity or religion,” and that “in the meantime, the current Act should be applied in a non-discriminatory manner to enable those with a just claim to citizenship, to claim it on an equal basis with others, including those from the Rohingya community.”⁴³ Furthermore, on 19th November 2013, the UN General Assembly’s human rights committee adopted a resolution urging the Burmese government to grant citizenship to the Rohingya minority and to stop oppression against them.⁴⁴ The Burmese government, however, rejected the UN resolution and “accused the United Nations of impinging on its sovereignty.”⁴⁵

ADDRESSING THE ROHINGYA ISSUE

It is high time for the major stakeholders to realize that history presents us with a rare opportunity to address the Rohingya crisis as Burma sets off on its long awaited journey towards a pluralist democratic society.

Recognising Legal Obligation of Bangladesh

Bangladesh is party to a number of international legal instruments including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Convention against Torture, Inhuman and Degrading Treatment and Punishment and the Convention on the Rights of the Child (CRC). All these instruments incorporate the principle of non-refoulement.

Article 14 of the UDHR, for instance, states that ‘Everyone has the right to seek asylum and to enjoy in other countries asylum from persecution.’ Para 1 Article 3 of the Convention against Torture, 1984, stipulates ‘No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.’ Similarly, Article 7 of the International Covenant on Civil and Political Rights has been interpreted as prohibiting the return of persons to places where torture or persecution is feared. Article 22 on the CRC also contends, ‘State Parties shall take appropriate measures to ensure that a child who is seeking refugee status ... receives appropriate protection and humanitarian assistance.’

Moreover, Article 32 of the Constitution of Bangladesh protects the right to life and personal liberty for all persons, regardless of nationality or thereof. The right to life and personal liberty is also protected by the Articles 6 of the ICCPR and CRC to which Bangladesh is state party.

Keeping these instruments in perspective, Bangladesh cannot negate its obligation to respect the principle of non-refoulement even though it is not party to the 1951 Refugee Convention and its 1967 Additional Protocol. Added to this, Bangladesh should be mindful of the fact that as many as ten million Bangladeshis took refuge in India during the Liberation War in 1971. As such, Bangladesh should abandon the practice of securitisation of the Rohingya issue and consider it from humanitarian perspective.

Formulating a Comprehensive National Refugee Policy

Bangladesh has been dealing with the Rohingya refugee issue for more than three decades. Its approach to this problem, however, lacks coherence and farsightedness. Massive refugee influxes in 1978, 1991/1992, 2012

underscore the need to develop a comprehensive national refugee policy including the national refugee law. The policy should incorporate necessary administrative structure that can facilitate protection, registration, assistance, resettlement, and voluntary repatriation as appropriate.

Registering the Unregistered

The unregistered asylum seekers are in urgent need of protection as their human rights and security is routinely compromised. They have every right to be protected under different international instruments. The GoB should immediately take necessary steps in partnership with the UNHCR to register these asylum seekers who are languishing in different makeshift camps and elsewhere.

Registration would help agencies and organisations to properly estimate and provide adequate shelter, food and medical care to this community.

Resuming the Resettlement Process

One of the key strategies of durable solutions to the refugee problem is third country resettlement. The GoB had the apprehension that such an initiative could be counter-productive and would work as a pull factor for Rohingya economic migrants who want to be resettled in developed countries. As a result, the GoB suspended resettlement process in October, 2010 and has failed to take full advantage of Burmese refugee resettlement programme initiated by the US government.⁴⁶

Bangladesh should reconsider the restriction on refugee resettlement and proactively engage with other interested countries to have these refugees resettled in those countries as part of durable solutions.

Pursuing Effective Diplomacy

As a primary country of refuge, Bangladesh can play a lead role in garnering international support for the cause of the Rohingya refugees. Through diplomatic means, it can engage with different stakeholders at the bilateral, regional and multilateral levels in order to arrive at a durable solution to this problem as the issue has recently attracted substantial attention of the international community.

Burma is moving towards democracy. Ensuring human rights is one of the most important cornerstones of a functioning democracy. The country needs to establish good relations with other countries especially the western and ASEAN countries. It creates a good opportunity for the major powers of the world to put pressure on Burma to settle the Rohingya issue on humanitarian ground. Bangladesh should immediately avail itself of this rare opportunity and urge the major powers to use their diplomatic leverage on Burma to devise a concrete and sustainable road-map for the reintegration of the Rohingya in Burmese society by

amending its 1982 citizenship act. It is to be noted that recently the Nobel Laureates José Ramos-Horta and Muhammad Yunus observed that “there is evidence that the Rohingyas have been in present day Myanmar since the 8th century. It is incontrovertible that Muslim communities have existed in Rakhine State since the 15th century, added to by descendents of Bengalis migrating to Arakan (Rakhine) during colonial times.”⁴⁷

Developing Comprehensive Plan of Action

Bangladesh should also focus on developing a Comprehensive Plan of Action (CPA) to manage the crisis. The main objective of the CPA would be the long term solution to this problem where all the stakeholders including regional and international community will have to work together.

Underlying thesis of the CPA, as suggested by Justice Dr. Syed Reefat Ahmed, should be international solidarity and equitable sharing of burden/*quick pro quo* among all states of concern: state of origin, state of temporary sanctuary and state of settlement along with international organisations such as the UNHCR.⁴⁸ The states which will be part of the CPA must go above the narrow territorial sovereignty and perception of national interest. International best practice i.e. CPA for managing the Indo-Chinese refugee crisis can be followed in this regard.

ENDNOTES

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Comments on this Policy Brief are welcome.

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