

[10 October 2017]

The Institute on Statelessness and Inclusion (ISI) is deeply concerned for the safety and security of the more than 519,000 Rohingya refugees who have fled to Bangladesh since 25 August 2017.ⁱ These refugees have endured atrocities in Myanmar that are described as ‘ethnic cleansing’ by the UN High Commissioner for Human Rights,ⁱⁱ ‘serious human rights violations’ by UN human rights experts,ⁱⁱⁱ and likely ‘crimes against humanity’ by NGOs.^{iv} At the time of writing, more refugees continue to arrive in Bangladesh, while over 100,000 are displaced in Myanmar, with little access to humanitarian aid.^v The scale of the displacement, the desperate condition of the refugees (facing starvation and trauma, many with gunshot wounds and landmine injuries); and their demographics (the majority being children, women and the elderly) mean that Bangladesh is facing a humanitarian catastrophe. It is not possible for one country to cope with this challenge, without adequate support from the international community.^{vi}

As this crisis unfolds, and is discussed in the UN Security Council, the Institute is concerned that Bangladesh and Myanmar are currently negotiating the **repatriation** of these Rohingya refugees. Any such effort in the current context would amount to an act of **refoulement**, strictly prohibited under international law. The Institute is also deeply concerned by Bangladesh’s position – despite clear evidence to the contrary – that Rohingya are “forcibly displaced nationals from Myanmar”.^{vii} This position denies both their **statelessness** and their **refugee status**, each of which entitle them to international protection.

Conditions to be met for the repatriation of the Rohingya

These **seven conditions** draw on international law standards and are grounded in an analysis of the Rohingya’s present and past situation – a recurring and self-perpetuating cycle of statelessness, persecution, denial of protection and *refoulement*. This cycle must be broken.

- 1. Voluntariness:** Any repatriation of Rohingya refugees must be voluntary. ‘Voluntariness’ requires *inter alia* that all refugees:
 - a. Are provided with adequate information about their rights under international law, including their right to seek refuge and to not be forcibly returned.
 - b. Are provided with viable alternatives - protection in Bangladesh or resettlement to third countries - so that their choice to return is not influenced by a lack of international protection.
 - c. Should be consulted individually and not be put under pressure to agree to return to Myanmar as a group.
- 2. UN oversight:** Any repatriation effort must be supervised by the UNHCR, with additional oversight by the OHCHR.
- 3. Right to nationality:** All returning refugees and internally displaced Rohingya [as well as the non-displaced Rohingya population] should be guaranteed their rights to nationality, self-identification and documentation under international law.
- 4. Equality & human rights:** All Rohingya should be guaranteed equal treatment under the law and be protected from discrimination. They should be able to enjoy their basic human rights, including the freedom of movement, the right to liberty and security of the person, the right to education and right to an adequate standard of living.
- 5. Normalisation:** Any repatriation should be preceded and accompanied by steps taken by Myanmar which include:
 - a. Granting full access to humanitarian and human rights agencies, including UN investigators and monitors.
 - b. The reconstruction of all destroyed properties and the guarantee that ownership will be reverted to the displaced occupants, and that they will be able to return to their homes.
 - c. The demilitarisation of North Rakhine State and the ensuring of security of all returnees.
- 6. Accountability:** Repatriation should be complemented with an independent process (with OHCHR and international oversight and participation) to document all violations committed against civilians; to ensure accountability of all perpetrators; and to compensate victims and their successors.
- 7. Rehabilitation & integration:** Community rehabilitation and integration should be prioritised, including through identifying and combatting hate speech and through desegregation.

Repatriation

The UN Secretary General has repeatedly called on Myanmar to “recognise the right of return of all those who had to leave the country”,^{viii} and world leaders have called for their safe return to Myanmar.^{ix} The Bangladesh government is proposing Rohingya repatriation to Myanmar in “safety, security and dignity”, and the creation of UN supervised safe zones in Rakhine State.^x In keeping with its position that the Rohingya are “forcibly displaced nationals from Myanmar”, Bangladesh has begun issuing identity cards to refugees, identifying them as “Myanmar nationals”.^{xi} In place of UNHCR, the International Organisation for Migration (IOM), which has no refugee protection mandate, appears to be leading the humanitarian response.

Myanmar has agreed in principle to accepting returnees,^{xii} and Bangladesh and Myanmar are currently discussing proposals for repatriation. Accordingly, repatriation is likely to be subject to an identity verification process in which the UN will play no role, and would be according to the same criteria as those agreed by the two countries in the 1990s.^{xiii}

The 28 April 1992 MoU between Bangladesh and Myanmar, led to over 200,000 Rohingya who had fled persecution in Myanmar being returned. This repatriation exercise has been widely criticised for resulting in the forced return of refugees, in violation of the principle of *non refoulement*. According to a statement issued by Myanmar at the time, the agreement stipulated that Myanmar would accept the return of all persons “carrying Myanmar citizenship identity cards / national registration cards; those able to present any other documents issued by relevant Myanmar authorities and; all those persons able to furnish evidence of their residence in Myanmar...” Significantly, the MoU did not obligate the states to involve the UNHCR in the process, with the government of Myanmar agreeing only that “the services of the UNHCR could be drawn upon as needed at an appropriate time”.^{xiv}

It is of serious concern that these same criteria are now being considered; that there appears to be no formal role envisaged for the UN; and that the ‘voluntariness’ of return does not appear to be a condition. Furthermore, any discussion of repatriation is clearly premature. Despite the assurance of Myanmar’s State Counsellor that the “clearance operation” ended on 5 September, and statements by the UN Secretary General and several states at a 28 September UN Security Council Meeting calling on Myanmar to end the violence,^{xv} there are continuing reports of ongoing extreme violence against Rohingya in Rakhine State.^{xvi}

Refugee Status

Prior to the recent crisis, Bangladesh had denied refugee protection to all but 33,148 Rohingya refugees in the country.^{xvii} An estimated 300,000 – 500,000 Rohingya refugees were considered to be ‘illegal immigrants’.^{xviii} Bangladesh acknowledged pushing back at least 5,316 Rohingya to Myanmar between 8 October 2015 and 22 January 2017,^{xix} in violation of the principle of *non-refoulement*. Furthermore, for many years, Bangladesh has not allowed the UN to negotiate resettlement of Rohingya from its territory.^{xx} This record of denying protection in the country, blocking resettlement to third countries, and *refoulement* to Myanmar cannot be ignored.

Statelessness

The statelessness of the Rohingya has been a key element in their decades-long persecution in Myanmar, in their lack of protection as refugees outside Myanmar, and in challenges to finding durable solutions. Myanmar’s 1982 citizenship law, which grants nationality along ethnic lines, led to the exclusion of the Rohingya and several other ethnic minority groups from full citizenship. After the 1982 law came into effect, many Rohingya submitted their old identity documents to obtain new ones, but were either not given new documents, or instead provided with ‘temporary registration cards’, which did not recognise them as citizens. After violence against the Rohingya in 2012,^{xxi} and in a repetition of this history, many Rohingya who had undergone ‘citizenship verification’ after 2014, have had their old documents confiscated. This reinforces the Myanmar Government’s - inaccurate - claim that the Rohingya are illegal immigrants who should be expelled. Even if it were practically safe for the Rohingya to return, their statelessness and lack of documentation means that the majority will be unlikely to pass any verification process, and those returned will continue to suffer persecution as they do now.

Notes

Bangladesh's obligation to protect refugees: The principle of *non-refoulement*, which is the cornerstone of international refugee law and a principle of customary international law, prohibits the return of refugees to a situation where they risk facing persecution or other serious harm. Calls for Rohingya to be returned to Myanmar, make light of the deeply traumatic experience of all Rohingya refugees who escaped death, and who are likely to face persecution and irreparable harm if returned. Any such repatriations will be in violation of the principle of *non-refoulement*. While Bangladesh is not party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, the principle of *non-refoulement* is also enshrined in Article 6 (right to life) and 7 (freedom from torture) of the International Covenant on Civil and Political Rights and Article 3 of the Convention Against Torture. Furthermore, Article 22 of the Convention on the Rights of the Child (read in combination with Articles 2 – non-discrimination and 3 – best interests of the child), obligates states to protect children seeking refuge.

The impact of statelessness: Denied citizenship, the Rohingya have endured structural and extreme human rights abuses for many decades. The conditions under which Rohingya have lived since the 1980s – deprived of free movement; vulnerable to arbitrary arrest, torture and forced labour; denied access to adequate healthcare, education and livelihoods; served with restrictions on marriage and children – have been extensively documented by human rights organisations^{xxii} and by the recent report of the Advisory Commission on Rakhine State.^{xxiii} These conditions have been closely linked to their statelessness, which has often been advanced by state actors as a justification for their discriminatory treatment. Their statelessness has in turn contributed to the denial of their ethnic identity and the mainstreaming of the – now dominant narrative within Myanmar – that they are illegal immigrants from Bangladesh. Consequently, the Rohingya, who are widely referred to as 'Bengali' have been at the receiving end of increasing hate speech and dehumanising language, which has ratcheted up since 2011.^{xxiv}

ⁱ Inter Sector Coordination Group, *Situation Report: Rohingya Refugee Crisis*, 8 October 2017, available at:

https://reliefweb.int/sites/reliefweb.int/files/resources/171008_weekly_iscg_sitrep_final.pdf

ⁱⁱ BBC, *Rohingya crisis: UN sees 'ethnic cleansing' in Myanmar*, 11 September 2017, available at: <http://www.bbc.co.uk/news/world-asia-41224108>

ⁱⁱⁱ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22148>

^{iv} Global Appeal for Action signed by 88 NGOs on 28 September 2017, available at: <https://www.hrw.org/news/2017/09/28/myanmar-global-appeal-un-action>

^v Norwegian Refugee Council, *Alarming lack of assistance to people in Myanmar's Northern Rakhine*, 6 October 2017, available at:

<https://www.nrc.no/news/2017/october/alarming-lack-of-assistance-to-people-in-myanmars-northern-rakhine/>

^{vi} For a recent overview, see the Institute's September 2017 Monthly Bulletin, available at: http://www.institutesi.org/stateless_bulletin_2017-09.pdf

^{vii} Bilkis Irani, *Foreign Secretary Shahidul: the Rohingya are forcibly displaced Myanmar nationals, not refugees*, Dhaka Tribune, 29 September 2017, available at:

<http://www.dhakatribune.com/bangladesh/law-rights/2017/09/29/foreign-secretary-shahidul-rohingya/>

^{viii} Al Jazeera, *UN urges Myanmar to end Rohingya violence*, 14 September 2017, available at: <http://www.aljazeera.com/news/2017/09/urges-rohingya-violence-170913174112622.html>

^{ix} United Nations, *Security Council 8060th Meeting*, 28 September 2017, available here: <https://www.un.org/press/en/2017/sc13012.doc.htm>

^x Al Jazeera, *Bangladesh PM wants Rohingya Safe Zones in Myanmar*, 22 September 2017, available here: <http://www.aljazeera.com/news/2017/09/hasina-seeks-return-rohingya-refugees-myanmar-170922053435567.html>

^{xi} Gemunu Amarasinghe, *Unrecognised at home, Rohingya refugee receives 1st ID card*, AP News, 6 October 2017, available at:

<https://apnews.com/bef5465ea03c4f9cbbf8d5a64519e7c9>

^{xii} Mizzima News, *Aung San Suu Kyi calls on world community in helping find peace for Myanmar*, 19 September 2017, available at:

<http://www.mizzima.com/news-domestic/aung-san-suu-kyi-calls-world-community-helping-find-peace-myanmar>

^{xiii} AFP, *Myanmar 'makes proposal' to take back refugees*, Frontier Myanmar, 2 October 2017, available at: <https://frontiermyanmar.net/en/myanmar-makes-proposal-to-take-back-refugees>

^{xiv} See C.R. Abrar, *Repatriation of Rohingya Refugees*, available at: http://www.burmalibrary.org/docs21/Abrar-NM-Repatriation_of_Rohingya_refugees-en.pdf

^{xv} <https://www.un.org/press/en/2017/sc13012.doc.htm>

^{xvi} Max Bearak, *Under siege in their villages, Rohingya still in Burma say they're trapped*, The Washington Post, 2 October 2017, available at:

https://www.washingtonpost.com/world/asia_pacific/under-siege-in-their-villages-rohingya-still-in-burma-say-theyre-trapped/2017/10/02/38ba85d8-a4a8-11e7-b573-8ec86cdf1e1ed_story.html?tid=ss_tw&utm_term=.b9dc494e52d1

^{xvii} UNHCR, *Bangladesh Fact Sheet*, March 2017, available at: <http://www.unhcr.org/50001ae09.pdf>

^{xviii} Brook Larmer, *Without a Home, and Without Hope*, NATIONAL GEOGRAPHIC, 22 August 2017, available at:

<http://www.nationalgeographic.com/photography/proof/2017/08/rohingya-refugees-myanmar-bangladesh/>

^{xix} Star Online Report, *67,000 Rohingyas intruded into Bangladesh: Foreign minister*, 31 January 2017, available at: <http://www.thedailystar.net/country/67000-rohingyas-intruded-bangladesh-foreign-minister-1353877>

^{xx} See Krishna N Das, Reuters, *U.N. wants to negotiate with U.S., Canada to resettle Rohingya refugees*, 16 February 2017, available at:

<http://www.reuters.com/article/us-myanmar-rohingya-bangladesh/u-n-wants-to-negotiate-with-u-s-canada-to-resettle-rohingya-refugees-idUSKBN15V10J>

^{xxi} See Equal Rights Trust, *Burning Homes, Sinking Lives, A situation report on violence against stateless Rohingya in Myanmar and their refoulement from Bangladesh*, June 2012, available at: <http://www.equalrightstrust.org/ertdocumentbank/The%20Equal%20Rights%20Trust%20-%20Burning%20Homes%20Sinking%20Lives.pdf>

^{xxii} See for example, Fortify Rights, *Policies of persecution: Ending abusive state policies against Rohingya Muslims in Myanmar*, February 2014, available at:

http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf; International State Crime Initiative, *Countdown to Annihilation: Genocide in Myanmar*, 2015, available at: <http://statecrime.org/data/2015/10/ISCI-Rohingya-Report-PUBLISHED-VERSION.pdf>; and The Arakan Project,

Submission to the CEDAW, 30 June 2016, available at: http://www.burmalibrary.org/docs22/Arakan_Project-2016-06-CEDAW_Submission-Myanmar.pdf

^{xxiii} Advisory Commission on Rakhine State, *Towards a peaceful, fair and prosperous future for the people of Rakhine*, August 2017, available at:

http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf

^{xxiv} Alan Davis, *How social media spurred violence against Rohingya in Myanmar*, News Deeply, 14 September 2017, available at:

<https://www.newsdeeply.com/refugees/community/2017/09/14/how-social-media-spurred-violence-against-rohingya-in-myanmar>