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ROHINGYA CRISIS AND THE REPATRIATION AGREEMENT - A CRITICAL ANALYSIS

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ABSTRACT

Rohingya Muslims, a minority group residing in the Rakhine state, formerly known as Arakan, as Myanmar did not recognize them as citizens or one of the 135 recognized ethnic groups in the country since 1982. They were considered as **"stateless entities"**. The ensuing communal tension between the Buddhist and the Muslim populations and the state sponsored repression resulted in long exodus of the Rohingyas. **Amnesty International acknowledges this as unprecedented genocide and also describes the Rohingyas as "one of the most persecuted minorities in the world"**.

This paper attempts to analyse **"The Repatriation Agreement"** which was signed between Bangladesh and Myanmar to rehabilitate the Rohingyas. Conferring the "right to return" and forced repatriation are two entirely different things. This Agreement unfortunately suffers numerous lacunae from manifestly representing Myanmar's interest, to lack of specific assurances for the victims future livelihood and the procedural obstacles like excess verification is also a major concern. This paper also seeks to address the serious setback of how Bangladesh, by preferring a bilateral agreement, **lost a vital opportunity to internationalize this issue**, and suggests further potential amendments.

Keywords: Rohingyas, Repatriation, Stateless entities.

1. HISTORICAL BACKGROUND

The Rohingya are an ethnic Muslim minority who practice a Sufi-inflected variation of Sunni Islam. Before August 2017, the majority of the estimated one million Rohingya in Myanmar resided in Rakhine State, where they accounted for nearly a third of the population. They differ from Myanmar's dominant Buddhist groups ethnically, linguistically, and religiously.

The Rohingya trace their origins in the region to the fifteenth century, when thousands of Muslims came to the former Arakan Kingdom. Many others arrived during the nineteenth and early twentieth centuries, when Rakhine was governed by colonial rule as part of British India. Since independence in 1948, successive governments in Burma, renamed Myanmar in 1989, have refuted the Rohingya's historical claims and denied the group recognition as one of the country's 135 ethnic groups. The Rohingya are largely considered illegal immigrants from Bangladesh, even though many trace their roots in Myanmar back centuries.

Neither the central government nor Rakhine's dominant ethnic Buddhist group, known as the Rakhine, recognize the label "Rohingya," a self-identifying term that surfaced in the 1950s, which experts say provides the group with a collective political identity.¹

2. LEGAL STATUS OF ROHINGYAS

The government refuses to grant the Rohingya citizenship, and as a result the vast majority of the group's members have no legal documentation, effectively making them stateless. Myanmar's 1948 citizenship law was already exclusionary, and the military junta, which seized power in 1962, introduced a law twenty years later stripping the Rohingya of access to full citizenship. Until recently, the Rohingya had been able to register as temporary residents with identification cards, known as white cards, that the junta began issuing to many Muslims, both Rohingya and non-Rohingya, in the 1990s. The white cards conferred limited rights but were not recognized as proof of citizenship.

The Myanmar government has effectively institutionalized discrimination against the ethnic group through restrictions on marriage, family planning, employment, education, religious choice, and freedom of movement. For example, Rohingya couples in the northern towns of Maungdaw and Buthidaung are only allowed to have two children. Rohingya must also seek permission to marry, which may require them to bribe authorities and provide photographs of the bride without a headscarf and the groom with a clean-shaven face, practices that conflict with Muslim customs. To move to a new home or travel outside their townships, Rohingya must gain government approval.

3. CAUSATING FACTORS FOR RECENT BURNING ISSUE

Clashes in Rakhine broke out in August 2017, after a militant group known as the Arakan Rohingya Salvation Army (ARSA) claimed responsibility for attacks on police and army posts. The government declared ARSA a terrorist organization and the military mounted a brutal campaign that destroyed hundreds of Rohingya villages and forced nearly seven hundred thousand Rohingya to leave Myanmar. At least 6,700 Rohingya were killed in the first month of attacks, between August 25 and September 24². Myanmar's security forces also allegedly opened fire on fleeing civilians and planted land mines near border crossings used by Rohingya to flee to Bangladesh.

Since the start of 2018, Myanmar authorities have reportedly cleared abandoned Rohingya villages and farmlands to build homes, security bases, and infrastructure. The government says this development is in preparation for the repatriation of refugees, but rights activists have expressed concern these moves could be intended to accommodate other populations in Rakhine State.

UN Secretary-General Antonio Guterres has described the violence as ethnic cleansing and the humanitarian situation as catastrophic. Rights groups and other UN leaders suspect acts of genocide have taken place.

Aung San Suu Kyi, Myanmar's de facto leader, has denied that ethnic cleansing is taking place and dismissed international criticism of her handling of the crisis, accusing critics of fueling resentment between Buddhists and Muslims in the country. In September 2017, the Nobel Peace Prize laureate said her government had "already started defending all the people in Rakhine in the best way possible." In December, the Myanmar government denied access to the UN special rapporteur on human rights in Myanmar, Yanghee Lee, and suspended cooperation for the remainder of her term.

4. CRITICAL ANALYSIS OF THE REPATRIATION AGREEMENT

Bangladesh and Myanmar signed a new repatriation agreement on 15 January 2018³. The agreement will see a total of 646,072 refugees sent back to Rakhine over a two-year period. The

¹ By identifying as Rohingya, the ethnic Muslim group asserts its ties to land that was once under the control of the Arakan Kingdom, according to Chris Lewa, director of the Arakan Project, a Thailand-based advocacy group.

² According to the international medical charity Doctors Without Borders

³ The new contract is based on an earlier repatriation agreement in 1992/93.

process of repatriating the first batch of Rohingya refugees was slated to start on 23 January but it has been delayed due to administrative issues. The Rohingya crisis has morphed into a vicious cycle of violence, displacement and repatriation. Myanmar is nowhere near ready to take in the refugees. Furthermore, there are major flaws in the repatriation agreement.

As of December 2017, there were 858,590 Rohingyas in refugee camps in Bangladesh. However, the contract is only applicable to those who fled Rakhine during the two bouts of violence in 2016 and 2017. The first outbreak of violence was triggered in October 2016 when militants from the Arakan Rohingya Salvation Army (ARSA) attacked soldiers who were patrolling along the border. The second exodus was sparked a year later in August/September 2017 after new attacks by the ARSA on police posts. Both rounds of violence led to a military crackdown which saw large numbers of civilians escaping across the border into Bangladesh.

The Rohingya crisis has spiraled into a cross-border issue that has affected the regional security architecture. Bangladesh and Myanmar have argued over the rightful citizenship of the Rohingya community where neither one is willing to take them. It has also put both countries under enormous pressure to find a long-term solution to the burgeoning crisis. Dhaka wants a rapid repatriation process to prevent straining its resources and denting its economy.

Many recent high-level visits by world leaders to the refugee camps have highlighted the seriousness of the issue⁴

5. REPURCUSSIONS IN THE AGREEMENT

Although the agreement is voluntary in nature, it may be premature to send the externally displaced to Rakhine under the current state of affairs. The contract has also produced an impossible timeframe for the safe and smooth return of refugees. The agreement is flawed because:

Myanmar may have signed this new agreement under diplomatic pressure. This new agreement also undermines the principle of non-refoulement that protects refugees and asylum seekers from returning to a country where they fear persecution⁵. The principle often referred to as the foundation of international protection, could be applied if a refugee fears persecution or extreme harm in his home country. The civilians were mistaken to be members of the ARSA group. This was a rare occasion when the military acknowledged that it committed an atrocity against unarmed civilians.

Another major setback is the UN High Commissioner for Refugees (UNHCR) is not fully involved in the repatriation process⁶. Human Rights Watch wrote a letter to the Foreign Minister of Bangladesh and Union Minister of Myanmar on 11 December 2017, urging them to get the UNHCR involved in ongoing discussions.

It will be pragmatic to include the UNHCR in the entire repatriation process to facilitate both the safety aspect and support any national efforts on resettlement, reconstruction, reconstruction, rehabilitation and development assistance.

The two parties may also consider getting the UN Secretary-General António Guterres to oversee the whole process. The Secretary-General plays the role of a "world moderator"⁷. During his

⁴ United Kingdom foreign secretary Boris Johnson paid a similar visit to the camps on the border. He said during his visit that he is uncertain whether State Counsellor of Myanmar Aung San Suu Kyi "understands the full horror" of the refugee issue.

⁵ Under Article 33(1) of the 1951 UN Convention relating to the status of refugees, no country can repatriate a refugee in a manner that would endanger their life

⁶ Bangladesh Foreign Minister Abul Hassan Mahmood Ali said in November 2017 that the refugee agency will have a role to play in the refugee repatriation.

⁷ Article 100 of the UN Charter has stated that the Secretary-General should play an impartial role

tenure, he administered some key structural reforms and built the organisation's capacity to respond to major displacement issues⁸. His expertise on the issue may help to navigate the repatriation process

The agreement requires the externally displaced to show tangible evidence of their residency. The Myanmar Permanent Secretary at the Ministry of Labour, Immigration and Population, Myint Kyaing, said that the government will accept refugees who have identification documents that were issued by past governments. These documents include the national verification cards and the so-called "white cards". The lack of political recognition has stripped the Rohingyas of their ethnic identity

Many Rohingya refugees may fall short of the criterion since those who fled were unable to take the necessary documents with them. Furthermore in 1982 Burma Citizenship Law revoked the citizenship of thousands of Rohingyas, **leaving them stateless**. It may be difficult for many of the externally displaced to verify their residence and get rightfully repatriated. Moreover, the government is concerned with accepting only those who were externally displaced during the two bouts of violence in 2016 and 2017. It wants to keep out other migrants and refugees who fled prior to this period⁹.

6. RECOMMENDATIONS

The Rohingya conundrum has indeed placed both Bangladesh and Myanmar in a difficult position. Bangladesh cannot accommodate the refugees for too long without substantial damages to its own economy. It is also concerned with the forthcoming General Elections. On the other hand, Myanmar has not displayed the willingness to permanently resettle refugees. Fundamental safety will remain a topmost concern for returning refugees.

Repatriation is not simply about returning refugees to their country of origin. It also encompasses resettlement and reintegration. The repatriation agreement may not be the most feasible course of action at the given time since the long-term issues have not been addressed. **The key recommendations** of this paper are citizenship verification, freedom of movement, humanitarian access, education and media access. **The recommendations on the citizenship verification process call the government to "clarify the status of those whose citizenship application is not accepted"**. Rohingyas neither has the status of citizens nor refugees. They are Stateless entities. **This agreement has to be amended in such a way that the Rohingyas, the persecuted minorities should be positioned again in their own land as citizens.**

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⁸ Guterres has been credited for his work when he served as the 10th High Commissioner of UNHCR from 2005 to 2015

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