

Persecution of the Rohingya in Burma/Myanmar and the Responsibility to Protect

INTRODUCTION

After more than fifty years of military rule, in 2011 Burma/Myanmar embarked upon a historic transition with the new civilian government, led by President Thein Sein, undertaking a series of significant political and economic reforms. Since then, Burma/Myanmar has been lauded by the international community for its attempt to end gross human rights abuses and establish a more tolerant and peaceful society.

However, Burma/Myanmar's democratic transition has also caused insecurity. Although the government has permitted greater freedom of expression and allowed for political debate, Buddhist chauvinists have also been able to exploit this newly-opened democratic space. In particular, long-standing discrimination against Rohingya Muslims has fuelled prejudice and incitement against them.

During June and October 2012 inter-communal violence in the country's western Arakan/Rakhine state left at least 200 people dead and 120,000 displaced, most of whom were ethnic Rohingyas. Largely unchecked by the government, anti-Rohingya sentiments continued to spread, and violence affected the broader Muslim community. Following deadly clashes between Buddhists and Muslims in Meikhtila during March 2013, anti-Muslim rhetoric and sporadic attacks have persisted. Today nearly 140,000 people remain segregated in squalid internally displaced person (IDP) camps, where the government has been accused of blocking access to healthcare and other vital assistance.

While the government has continued to insist that it seeks reconciliation between all the country's ethnic communities, it has undertaken several measures that have systematized the persecution, segregation and disenfranchisement of Rohingyas. During 2014 the human rights situation for the Rohingya dramatically worsened. The then-UN Special Rapporteur on the

situation of human rights in Myanmar, Tomás Ojea Quintana, remarked in April that recent developments marked "the latest in a long history of discrimination and persecution against the Rohingya community which could amount to crimes against humanity."

The government of Burma/Myanmar bears the primary Responsibility to Protect all populations within its borders, regardless of ethnicity or religion, from mass atrocity crimes. Yet, it is failing in this responsibility.

Despite an enduring risk of mass atrocities, the international community has continued to praise the progress made by President Thein Sein's administration, rewarding the government with renewed diplomatic engagement and direct foreign investment, as well as by lifting decades-long bilateral sanctions. Unless the international community presses the government to take meaningful remedial action, enduring ethnic conflicts and persecution will continue to endanger vulnerable populations and imperil the country's stability.

BURMA/MYANMAR AND THE ROHINGYA

In 1989 the military dictatorship officially changed the name of Burma to Myanmar, although this is not universally accepted. Burma/Myanmar is a multi-religious and multi-ethnic country, with 135 distinct ethnic groups officially recognized by the government. The most prominent of these groups are the Bamar, who are mainly Buddhist, estimated to constitute about two-thirds of the population and comprising much of the army (Tatmadaw). A history of mutual distrust and hostility has characterized relations between the Tatmadaw and many minority ethnic groups, resulting in decades of conflict. Violence between the Tatmadaw and several ethnic armed groups continues despite the reform agenda of the new civilian government.

Burma/Myanmar's 2 million Muslims account for roughly 4 percent of the population, according to the country's 1983 census, which is the latest available data. Despite a history of religious intolerance and inter-communal mistrust, most of the ethnically diverse Muslim population is geographically dispersed and socially integrated. By contrast, the approximately 1.3 million Rohingya Muslims, who were excluded from the 1983 census, are mainly concentrated in the country's western Arakan/Rakhine state.

Rohingya Muslims were made stateless by the Citizenship Law of 1982, which designates that only members of officially recognized ethnic groups are eligible. Since the government fails to recognize Rohingya as an ethnic group, the law automatically renders all members of the group non-citizens. While President Thein Sein's administration continues to refer to Rohingyas as "Bengalis," claiming they are illegal immigrants from Bangladesh, many Rohingya have been in the country for generations.

According to the Rome Statute of the International Criminal Court, persecution is defined as the severe deprivation of fundamental rights contrary to international law, by which the perpetrator targets an individual or group based upon national, ethnic, cultural, religious or other grounds. As such, persecution amounts to a crime against humanity. The government's policies regarding the Rohingya suggest that it is attempting to render Arakan/Rakhine state ethnically homogeneous through persecution.

Rohingya face ongoing discriminatory state policies, including restrictions upon marriage and births, forcible displacement and other abuses. Government-imposed restrictions on the movement of Rohingyas have confined many of them to displacement camps with deplorable conditions that the UN Office for the Coordination of Humanitarian Affairs (OCHA) has described as "far below international emergency standards."

Following a visit to Arakan/Rakhine state in January 2015, the current UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, noted the "severe curtailment" of the rights of IDPs, with "abysmal" access to healthcare, education and other essential services. She warned during October 2014 that "the long history of discrimination" against the Rohingya compounds the human rights violations committed against them.

Regrettably, important pro-democracy figures, such as Nobel Peace Prize winner Aung San Suu Kyi and her allies within the National League for Democracy party, have largely remained silent on the issue of Rohingya rights.

APPLYING THE RESPONSIBILITY TO PROTECT

The Responsibility to Protect, adopted at the 2005 UN World Summit, is a commitment by every state to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing. In pledging to uphold its Responsibility to Protect, the government of Burma/Myanmar accepted its primary responsibility to safeguard its population from mass atrocity crimes.

President Thein Sein told the UN High Commissioner for Refugees (UNHCR) during June 2012 that Burma/Myanmar will take responsibility for its own ethnic nationalities, but it is "not at all possible to recognize the illegal border-crossing Rohingyas who are not our ethnicity." Burma/Myanmar's Responsibility to Protect, however, applies to its entire population, irrespective of religion, ethnicity, or citizenship status.

Despite the reform agenda, the government has allowed widespread human rights violations, sometimes reaching the scale of mass atrocities, to continue to be perpetrated against Rohingya. Not only has it failed to ensure that

security forces respect international human rights law, it has done little to hold accountable perpetrators of ethnic and religious violence. In some cases government forces have been complicit in acts of discrimination and violence, including rape, enslavement and murder.

The government is failing to uphold its primary Responsibility to Protect.

ANTI-ROHINGYA VIOLENCE IN ARAKAN/ RAKHINE STATE

Long-standing discrimination has enabled groups in Burma/Myanmar to perpetrate attacks upon the Rohingya with impunity. The June and October 2012 inter-communal clashes between Buddhists and Muslims in Arakan/Rakhine state disproportionately affected Rohingyas, many of whom fled to displacement camps or neighboring countries. While the government said in a 30 July 2012 statement that it “exercised maximum restraint in order to restore law and order,” security forces tasked with reestablishing stability in June are accused of standing idle during attacks or using excessive force and committing human rights violations themselves, including killing civilians. State media also published anti-Rohingya accounts of the events, encouraging further persecution.

In the aftermath of the initial wave of violence, some Buddhist monk organizations called for the deportation of all Rohingya and attempted to block the delivery of humanitarian assistance to displacement camps. In June 2012, President Thein Sein told UNHCR that the camps to which many Rohingya fled were the “only solution” to the conflict outside of deporting them to “any third country [who] would accept them.” At the All-Arakanese Monks’ Solidarity Conference on 18 October 2012, a group of monks denounced those advocating for the

protection of the Rohingya’s human rights, as “national traitors.”

In August 2012 President Thein Sein appointed an independent commission, the Rakhine State Conflicts Investigation Commission, to investigate the 2012 inter-communal violence in Rakhine/Arakan state. On 29 April 2013 the Commission released its report on the June and October 2012 violence, calling upon the government to increase humanitarian support to displacement camps and ensure that the human rights of all groups are protected. However, the Commission referred to Rohingya as “Bengalis,” reinforcing the prejudice that they are ethnic outsiders.

The Commission also recommended that the government double the presence of security forces in Arakan/Rakhine state, including local police and the government’s border security forces (Nasaka). However, local police and Nasaka were previously responsible for the perpetration of violence and anti-Rohingya persecution. In a positive move, on 12 July President Thein Sein announced the disbandment of the Nasaka.

Sporadic incidents of anti-Rohingya violence continued throughout 2013, and on 13 January 2014 Buddhist mobs attacked and killed at least 40 Rohingya in Du Chee Yar Tan village, Maungdaw Township. While local authorities dismissed the deaths as “false news,” the UN’s Special Rapporteur, High Commissioner for Human Rights and Humanitarian Affairs Coordinator all called upon the government to conduct a credible investigation, hold perpetrators accountable and ensure the protection of all civilians.

As a result of ongoing persecution and violence, UNHCR reported in October 2013 that there had been a “dramatic increase” in the number of Rohingya risking their lives to seek protection abroad. The following month a boat carrying over 70 fleeing Rohingya capsized off the coast of Sittwe, killing most of the passengers. On 22 August 2014 UNHCR reported that an estimated 87,000 people,

mostly Rohingyas, had fled Arakan/Rakhine state via the Bay of Bengal since June 2012.

Burma/Myanmar's neighbors, however, have not been receptive to Rohingya refugees. Bangladesh has in the past closed its borders and, in contravention of international law, forced asylum seekers to return to Burma/Myanmar. Singapore has also previously denied entry to Rohingya asylum seekers. In March 2013 Thailand's navy was accused of shooting at Rohingya attempting to flee by boat to Malaysia. On 13 February 2014 Thailand announced that it had deported approximately 1,300 Rohingya refugees back to Burma/Myanmar since November 2013, blatantly violating international law.

BROADER ANTI-MUSLIM VIOLENCE

Impunity for crimes committed against Rohingya has enabled escalating human rights abuses, including targeted violence against the wider Muslim community. During March 2013 former Special Rapporteur Quintana noted that the warning signs for further violence had been evident since June 2012, but the government had "simply not done enough to address the spread of discrimination and prejudice against Muslim communities across the country, and to tackle the organized and coordinated mobs that are inciting hatred and violently attacking Muslim communities."

During two days of clashes that began on 20 March 2013, inter-communal violence between Buddhists and Muslims in Meikhtila killed an estimated 40 people. Local reports described mobs of Buddhists, including monks, attacking Muslim homes, businesses and mosques. Utilizing satellite images, Human Rights Watch documented the destruction of over 800 residences. OCHA reported the displacement of 12,846 people.

In response, on 22 March President Thein Sein imposed a state of emergency across several townships and deployed troops to restore order. However, during the subsequent week anti-Muslim violence also broke out in a number of other townships, including in Shan state. Buddhist rioters in Lashio destroyed a mosque, orphanage and Muslim-owned businesses, displacing at least 1,400 people.

On 28 March former Special Rapporteur Quintana stated that during some of the aforementioned acts of violence, "military, police and other civilian law enforcement forces have been standing by while atrocities have been committed before their very eyes, including by ultra-nationalist Buddhist mobs." In particular, local police failed to intervene to protect victims during a 21 March massacre of over 30 Muslim students and teachers in Meikhtila. Some police were allegedly directly complicit in the attack.

The central government denies responsibility for any attacks and on 25 March pledged to provide protection and accommodation to victims of the Meikhtila violence. The government said it would cooperate with civil society and international organizations in supplying aid to victims. The police, however, seldom took action against those circulating anti-Muslim materials or engaged in inciting inter-communal violence.

During 2013 Buddhist chauvinism fuelled the rise of "Movement 969," an anti-Muslim boycott movement. Promoted by prominent religious leaders, including influential monk Wirathu, adherents have distributed CDs, leaflets and stickers bearing 969 as a numerological symbol of the attributes of Buddhism. Displayed on store fronts, the logo encourages the boycott of Muslim businesses and has come to represent an intensifying anti-Muslim campaign.

On 25 October 2013 former Special Rapporteur Quintana said the government had yet to investigate allegations of widespread human rights violations committed by security forces and to hold perpetrators to account.

Sporadic outbreaks of anti-Muslim violence continued throughout 2014.

INCREASING PERSECUTION OF THE ROHINGYA

While the government has pledged to prevent all forms of violence and incitement, it has also embarked upon a deliberate strategy aimed at the segregation of Rohingyas from the rest of society.

On 24 January 2014 Médecins Sans Frontières (MSF), the largest provider of healthcare among organizations operating in Arakan/Rakhine state, reported treating at least 22 patients with injuries sustained during the 13 January attacks in Du Chee Yar Tan village. The government then accused MSF of a “Rohingya-bias” and ordered the organization to cease its operations. MSF was suspended from working in Arakan/Rakhine state until the middle of December, severely affecting the welfare of Rohingyas and other Muslims.

From 29 March through 10 April the government, supported by the UN Population Fund (UNFPA), conducted the first nationwide census since 1983. Despite an expressed commitment to accept self-identification of ethnicity, days before data collection began the government said it would not allow respondents to identify as “Rohingya.” The UNFPA criticized the decision, calling it a “departure from international census standards, human rights principles and agreed procedures.” Preliminary results released in August 2014 indicated that over one million people in Arakan/Rakhine state were not included in the census.

On 29 September, speaking at the UN General Assembly, Burma/Myanmar’s Foreign Minister, Wunna Maung Lwin, confirmed a plan – the “Rakhine State Action Plan” – aimed at post-conflict reconstruction and development

in Arakan/Rakhine state. The plan calls for the forced relocation of all displaced Rohingyas to unspecified detention camps. Those who register as “Bengali” will be assessed for citizenship eligibility, while those who refuse to do so will be held indefinitely in detention, or be deported, and remain stateless.

In December President Thein Sein sent a legislative package of four bills to parliament for debate during its January 2015 session. The bills include regulations and restrictions on religious conversion, interfaith marriage, family planning and polygamy. The bills were drafted by the Ministry of Religious Affairs after being proposed by the Association for the Protection of Race and Religion, a Buddhist organization with ties to Movement 969. These bills would further constrain the religious freedom of non-Buddhists and are designed to tighten restrictions directed at Rohingyas and other Muslims.

RISK OF FURTHER MASS ATROCITY CRIMES

The government’s refusal to grant Rohingyas access to citizenship or lift discriminatory state policies, as well as its failure to restrict anti-Rohingya hate speech, encourages ongoing violations of their fundamental human rights. Rohingyas continue to face widespread persecution and discrimination, including abuses that amount to crimes against humanity.

The government is failing to adequately address the communal fracture that has grown out of recent anti-Rohingya and anti-Muslim violence. There is also an enduring risk that anti-Muslim persecution may spread throughout the country and lead to the further commission of mass atrocity crimes.

The government has failed to hold accountable those with influence – especially senior religious leaders – who have expressed dangerous anti-Rohingya and anti-Muslim

sentiments. If the government permits the further development of extremist Buddhist chauvinism, relations between Buddhist and Muslim communities will continue to deteriorate and almost certainly result in renewed violence.

Meanwhile, the military continues to oppose efforts aimed at holding perpetrators of mass atrocity crimes accountable. Despite the democratic transition, the parliament continues to be dominated by the Tatmadaw. The constitution, drafted in 2008 by the former military junta, allocates the military 25 percent of seats in parliament and requires support from 75 percent of parliamentarians for any constitutional amendment. It also exempts the Tatmadaw from prosecution for any act carried out “in the execution of their respective duties.”

INTERNATIONAL RESPONSE

The international community has welcomed Burma/Myanmar’s historic transition from military to civilian rule, but has not sent a strong and consistent message that oppression of the Rohingya will not be tolerated. While some governments have expressed grave concern regarding the human rights situation within the country, this has not translated into effective action aimed at holding President Thein Sein’s administration accountable for the ongoing persecution of Rohingyas and deadly attacks against Muslims.

Instead, several countries have lifted or suspended sanctions and cancelled bilateral debt. In 2013, for the first time in over 25 years, the Asian Development Bank and the World Bank approved major loans worth \$512 and \$440 million, respectively, for the social and economic development of the country. On 26 January 2014 the World Bank announced plans for a \$2 billion multi-year development program to increase support for “the huge reform effort under way.”

President Thein Sein has actively and successfully promoted Burma/Myanmar’s diplomatic rehabilitation. On 20 May 2013 President Barack Obama welcomed President Thein Sein to the White House for a bilateral meeting, the first visit to the United States by a leader of Burma/Myanmar in nearly 50 years. However, on 13 November 2015, at the East Asia Summit, President Obama urged the government to implement a plan that would allow the Rohingya to become citizens.

A number of countries have spoken out publicly against the growing violence in Burma/Myanmar. The Association of Southeast Asian Nations (ASEAN) Inter-Parliamentary Caucus has made several statements condemning discrimination and violence against Rohingya.

The ASEAN Parliamentarians for Human Rights (APHR) have released numerous statements condemning the government of Burma/Myanmar for not doing enough to reduce inter-communal tensions and prevent anti-Muslim violence. APHR has also criticized the “dangerous, discriminatory and unnecessary” draft law proposing restrictions on interfaith marriage. On 26 June 2014 APHR called upon the government to allow MSF to resume full-scale operations and for the government to “uphold its international legal obligations to prevent genocide and carry out its responsibility to protect Rohingya.”

Turkey has expressed concern over the persecution of Rohingya and called upon the international community to be more vocal on the issue. In June 2013 Malaysia urged Burma/Myanmar to take stronger action to prevent attacks on Muslims and bring perpetrators to justice. The following month Indonesia urged the government to address the citizenship status of Rohingya so they can obtain the same legal rights as “the rest of their countrymen.”

The UN Special Adviser on the Prevention of Genocide, Adama Dieng, warned on 25 March 2013 of the risk of

further violence unless the government actively implements preventive measures, including holding accountable those responsible for past attacks on Rohingyas and other Muslims and protecting populations at risk.

The UN Human Rights Council has expressed concern about the violence in Rakhine/Arakan state and urged the government to ensure accountability for those responsible. It has called upon the government to facilitate the effective coordination of humanitarian assistance, end discrimination against Rohingyas and grant them equal access to citizenship.

In an annual resolution on "The situation of human rights in Myanmar," on 29 December 2014 the UN General Assembly urged the government of Burma/Myanmar to grant equal access to citizenship for the Rohingyas and to address the root causes of attacks against Muslim minorities in the country.

Speaking at the Sixth Annual ASEAN-UN Summit on 12 November the UN Secretary-General encouraged the government to "uphold human rights, take a strong stance against incitement and ensure humanitarian access to Rohingyas living in vulnerable conditions."

CONCLUSION

The risk of further mass atrocity crimes being committed against Rohingyas and the wider Muslim community in Burma/Myanmar is high. The government must address the endemic discrimination against Rohingyas and abolish local and state policies, including the Rakhine Action Plan, that impinge upon their fundamental human rights. The government should amend the 1982 Citizenship Law and grant Rohingyas equal access to citizenship. It must hold accountable those who incite ethnic and religious violence and provide appropriate

protection for all Muslim communities against human rights abuses.

In Arakan/Rakhine state, the government must allow unhindered humanitarian access to those affected by previous violence. Security forces should be tasked with ensuring the effective protection of Rohingyas and facilitating the safe, voluntary return of IDPs back to their communities.

Despite important statements from senior UN officials, more institutional pressure must be brought to bear upon the government for its failure to uphold its Responsibility to Protect. The international community must focus attention not only on the government's democratic reforms and emerging economic opportunities, but also on grave human rights violations that continue to be committed with impunity.

ASEAN members should encourage the government of Burma/Myanmar to uphold its Responsibility to Protect and act in accordance with the ASEAN Charter and the ASEAN Intergovernmental Commission on Human Rights. Member states should press the government to address the underlying causes of anti-Rohingya and anti-Muslim sentiment. Neighboring states should also open their borders to Rohingyas asylum seekers.

Members of the international community must press the government of Burma/Myanmar to prioritize human rights as a prerequisite for further engagement. Remaining sanctions should only be lifted following a demonstrable improvement in the welfare of vulnerable ethnic and religious communities, especially Rohingyas.

As Burma/Myanmar continues its historic democratic transition, it must uphold its Responsibility to Protect its entire population, regardless of ethnicity or religion. A future Burma/Myanmar cannot be built on injustice and impunity for past atrocities.