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The Rohingya citizenship crisis: No end in sight

Approximately 700,000 Rohingya Muslims have fled Myanmar after Myanmar's military, the Tatmadaw, began its "clearance operations" in Northern Rakhine State. The operations came in response to an attack on security posts by the militant Rohingya group Arakan Rohingya Salvation Army (ARSA) on 25 August 2017. An agreement has been signed between Bangladesh and Myanmar to ensure the repatriation of the refugees to Myanmar.

The following brief summarizes the background for the current crisis and points to one of the main causes of the conflict that must be addressed before there are any real prospects for a safe and voluntary return for the Rohingya: the Rohingya's lack of citizenship rights and the underlying racism and nationalism motivating the military's operations.

Main points:

- A safe and voluntary return for the Rohingya is unlikely in the foreseeable future.
- As a root cause to the conflict, the citizenship status of the Rohingya must be addressed.
- There is little reason to believe that the military's policy towards the Rohingya will shift, as it is based on strong nationalist and xenophobic sentiments.

The violent actions by the small militant Rohingya group ARSA on 25 August 2017 came as no surprise to observers of the conflict in Northern Rakhine State. However, the retaliation by the Tatmadaw, resulting in the mass exodus of Rohingya to Bangladesh, exceeded most predictions about the development of the crisis. Although such a complex and longstanding crisis cannot be fully understood by referring to only one or two contributory factors, some root causes are commonly seen to underlie the conflict. The lack of citizenship rights for the Rohingya, based on Myanmar's link between citizenship and ethnicity, has contributed to the gradual exclusion of this minority from Myanmar society and to the gradual deprivation of the Rohingya's basic human rights. Related to this, the strong tendencies of religious protectionism and nationalism that affect all minorities of Myanmar have struck the Rohingya particularly hard. The Tatmadaw has had a long-standing policy to rid Myanmar of the Rohingya, as it sees them as illegal Muslim immigrants and a threat to Buddhism in Myanmar. Given this combination of a lack of basic citizenship rights and massive discrimination and xenophobia, it is unlikely that the Rohingya will find it safe to return to Myanmar any time soon. On top of this, the continuing impunity for extremely grave human rights abuses committed by the military, and the complete denial of basic facts about the crisis from the country's civilian leadership, show little sign of the policies and attitudes towards the Rohingya changing.

Rakhine State: The scene of the conflict

Rakhine state in Western Myanmar stretches from the Bangladeshi border almost to the Irrawaddy Delta. The current conflict and the vast majority of abuses have unfolded in Northern Rakhine State, where most Rohingya lived. Until the recent exodus to Bangladesh, Rakhine State consisted of approximately three million people. The majority in Rakhine State are ethnic Rakhine Buddhists who themselves constitute a poor and deprived minority in Myanmar, in conflict with the central government over political autonomy rights. The approximately one million Rohingya Muslims have been heavily concentrated in Northern Rakhine, where they have constituted the majority. Approximately 90 percent of the Rohingya population of Northern Rakhine State has now fled.¹ Human Rights Watch has documented the burning, completely or partially, of 362 villages since August 2017, and several of these are now cleared and bulldozed by heavy machinery.²

There is a high degree of uncertainty as to how many Rohingya have been killed or wounded inside Rakhine, as the area has been closed to international observers and humanitarian agencies. Building on testimonies from aid groups working in the camps in Cox's Bazaar in Bangladesh, however, it is evident that a large number has been killed near their homes or while fleeing. Médecins Sans Frontières has estimated that at least 6,700 Rohingya were killed inside Rakhine during the first month after the 25 August attacks.³ The military operations have resulted in what is now commonly referred to as "ethnic cleansing" by western politicians and UN officials.⁴ Some top UN officials have even started to use the word "genocide" to describe the atrocities committed.⁵

A crisis long in the making

Attention to the plight of the Rohingya exploded in 2015, following a humanitarian disaster with a boat refugee crisis in 2015.⁶ Tens of thousands of refugees were set adrift in the Indian Ocean by their smugglers, without food and water. The Rohingya has suffered abuse, persecution and widespread violence for decades, including two particularly severe episodes in 1978 and 1991, resulting in several hundred thousand refugees fleeing for Bangladesh. More recently, their situation deteriorated after an upsurge in violence in 2012, when approximately 140,000 Rohingya were displaced, most of them interned in camps. While Myanmar prepared for the landmark November 2015 general election, international advocacy groups and journalists pointed to the potential genocide risk of this particularly vulnerable minority. In particular, advocacy groups pointed to the denial of the Rohingya's basic citizenship rights, the increasing religious and ethnic hatred expressed against the group, horrific living conditions in the internment camps and other places, and the participation of security forces in the violence against the group.⁷

The persecution of Rohingya has been going on for years,⁸ and has periodically broken into waves of violence between the Muslim Rohingya and the Buddhist Rakhine. The state of Myanmar has a troubled relationship with most of its ethnic minority groups, reflected in many decades of civil war. During the so-called democratization process, the Rohingya were disproportionately affected by the side-effects of the opening of political space, with freedom of speech and election campaigning being used by extremist Buddhist monks to rally against the Rohingya.

A history of displacement

- Previous crises in 1978 and 1991-92 sent several hundred thousand Rohingya refugees from Rakhine to Bangladesh.
- After inter-communal violence in 2012, 120,000 Rohingya have remained interned in closed camps.
- A refugee crisis in the Indian Ocean in 2015 captured international attention.
- Several warnings of genocide risks were issued in 2015.
- Renewed violence in 2016 curbed hopes that the Annan Commission would bring political solutions.

In 2016, the Myanmar government set up a commission led by Kofi Annan to look into the conflict in Rakhine and suggest political solutions.⁹ However, reports of increased tension, violence, refugee flows across the Bangladeshi border, and deployment of police and military troops during October and November 2016 soon replaced cautious optimism with renewed fear of escalation of the suffering of the Rohingya.

Against this background, few experts were surprised to see new attacks by armed Rohingya against the military being met with disproportionate retaliation. However, the scale of the current exodus is a dramatic turn in this long-standing conflict. There is a real danger that the scale of the most recent conflict will have far-reaching consequences for security and conflict throughout the whole region.

Gradual denial of political rights

Over the past decades, the Rohingya have gradually been excluded from political life. The citizenship law of 1982 and a following citizenship inspection process in 1989 left the Rohingya stateless. From 1995, many Rohingya received Temporary Residency Cards, but these were invalidated in 2015.¹⁰ Legislation that separated Rohingya from other citizens was enacted in the 1990s. In 1993 one township restricted Rohingya marriages, and since 1994 Rohingya children have not received birth certificates from the government. In 1997 travel

restrictions were imposed on Rohingya in Sittwe (the capital of Rakhine state), and in 2005 marriages and birth rates were restricted in Maungdaw township. Rohingya were, however, allowed to participate in the 2008 national referendum over the constitution. The Rohingya were stripped of their voting rights in 2015 and banned from participating in the general election in November 2015.¹¹ Also in 2015, the race and religion laws promoted by extremist Buddhist monks were enacted by the parliament.¹² The laws imposed nationwide restrictions on the Rohingya's religious freedom and on their right to marriage and childbirth.

The crisis of identity-based citizenship

The fact that the Rohingya makes up the world's largest group of stateless people underline the centrality of citizenship to their continuous plight.

In Myanmar, citizenship rights are ethnically based. According to the 1982 Citizenship Law, only those belonging to ethnic groups who have settled in what is now the territory of the state of Myanmar prior to 1823 are by definition considered "citizens of birth", which is the highest category of citizenship.¹³

Further, a list of 135 "ethnic races" defines those groups who are eligible for citizenship. This list was first referred to by authorities in the 1990s, and it was used as a basis for the 2014 census. The Rohingya are not on this list, and they are not mentioned as one of the national groups in the Citizenship law. Consequently, they can only be granted citizenship if they can document a family lineage in Myanmar for several generations, which is often impossible since such documentation does not exist or has been lost.

In Myanmar, the recognition of national ethnic group status implies certain political rights. Various ethnic groups in Myanmar are demanding increased territorial and political autonomy. Demands for recognition as a minority group in Myanmar are associated with more wide-reaching political claims and are therefore highly contentious. One reason why authorities in Myanmar and the population in general do not recognize the existence of the Rohingya as a group is because that would potentially legitimize wider political demands down the road. The group's right to self-identification is ignored. The group is usually referred to as Bengali, a derogatory term implying that they are illegal immigrants from Bangladesh. Over the last couple of years the government

has used the term “Muslim minority”, which may be seen as a compromise between the term “Rohingya” used by the group themselves, and “Bengali” used by their opponents. Both Rohingya and Rakhine Buddhists have protested against the new term.¹⁴ Movement of people across what is now the Myanmar–Bangladeshi border during British colonial rule is among the factors used to delegitimize the Rohingya’s presence in Myanmar. The view that the group belongs to Bangladesh and therefore has no legitimate claim to status as citizens of Myanmar is widely supported among the people of Myanmar.

The existence of the list of 135 national ethnic groups, and the link between ethnicity and citizenship in Myanmar’s Citizenship Law, lies at the core of the Rohingya’s problems. The troubled relations between Myanmar’s Bamar (or Burmese) majority, which dominates the country’s politics, and the ethnic minorities, are largely unsolved despite the political opening recent years, and violent conflicts between the Tatmadaw and ethnic groups persist or have reemerged in many ethnic states. However, the deprivation of political rights and citizenship from the Rohingya adds a separate dimension to their crisis, and institutionalizes the links between identity-based citizenship, Bamar racism and religious discrimination.

The significance of citizenship is underlined by the fact that the militant ARSA, which launched the attacks in August, demanded citizenship. It is unlikely that the Rohingya refugees will return to Myanmar unless there is a legitimate process to ensure their citizenship rights. Given the underlying racism and xenophobia directed towards the Rohingya, and the political benefits the Tatmadaw draws from its campaign against the group, there is little reason to believe that the citizenship problem will be resolved for more than a very small portion of the Rohingya.

Recommendations of the “Annan Commission”

The Advisory Commission on Rakhine State, led by Kofi Annan, was established in September 2016 after an initiative by the Government of Myanmar. Its mandate was to examine challenges and propose solutions to Rakhine State.¹⁵

The Commission produced two reports, the final one delivered on 24 August 2017, only one day before the attacks in Northern Rakhine by ARSA. The recommendations of the report were broad, from general economic development of Rakhine, to more specific recommendations regarding humanitarian access and the situation for IDPs. Central recommendations of the Commission’s report related to the citizenship status of the Rohingya. Although the question of citizenship is a difficult and sensitive issue, the report underlined the suffering and insecurity caused by lack of citizenship, and the absolute necessity to solve this question.¹⁶

Previous processes to grant some Rohingya citizenship have been executed only very sporadically, slowly and incompletely, resulting in a lack of trust in so-called “citizenship verification processes.” Some Rohingya have been granted National Verification Cards, but these processes have resulted in very few actually receiving citizenship. During some of these processes Rohingya have handed in existing registration cards, only to experience that the promised replacements were never issued, or residency cards have been annulled. There is a well-founded fear among the Rohingya that talk of citizenship verification processes will not ultimately lead to citizenship. For a human rights-based repatriation of Rohingya refugees, these processes must in some way be made credible and legitimate. The Annan Commission recommends that “the Government should establish a clear strategy and timeline for the citizenship verification process.”¹⁷ Furthermore, to add some credibility to this process, the military and civilian leadership of Myanmar need to express clearly that they intent to grant the returning Rohingya citizenship. Currently, there are no signs of such a necessary political shift. Central to these questions are provisions in the 1982 Citizenship Law that also need to change, for example the distinction between different types of citizens. On an overarching level, as the Annan Commission recommends, the link between ethnicity and citizenship must be re-examined.¹⁸

Citizenship and ethnicity

- **The Citizenship Law of 1982 and official list of 135 national groups establish a link between ethnicity and citizenship, and excludes the Rohingya from citizenship.**
- **The Rohingya have gradually been deprived of political rights over the past decades.**
- **The need to establish citizenship rights for the Rohingya was one of the core recommendations of the Annan Commission's report.**
- **Previous "verification processes" have led to very few Rohingya receiving citizenship, causing a fundamental lack of trust in these processes.**
- **The link between ethnicity and citizenship should be re-examined.**

Little hope for safe repatriation

On 23 November 2017, the Governments of Myanmar and Bangladesh agreed on the "Arrangement on Return of Displaced Persons from Rakhine State."¹⁹ The two governments agreed to seek assistance from the UNHCR. The Government of Myanmar further "confirmed its commitment to implement the recommendations of the Advisory Commission on Rakhine State," i.e. the "Annan Commission."²⁰

Apart from a statement that "Myanmar will issue the returnees an identity card for national verification,"²¹ the fundamental issue of citizenship is not addressed in the Arrangement. It is likely that Myanmar will repatriate and start a verification process for some Rohingya, as a political maneuver to thwart off international criticism. However, given the failures of previous citizenship processes, the Arrangement offers no credible roadmap towards citizenship for the Rohingya.

Further, the prospects for voluntary and safe returns are undermined by the general language of the Arrangement. There are no references to the massive and well-documented human rights abuses that have been committed against the Rohingya. Rather, the Arrangement states that residents of Rakhine fled following "terrorist attacks", referring to those committed by ARSA. To

increase the possibility of a safe and voluntary return, the Government of Myanmar needs to address both the crimes committed in Northern Rakhine State, as well as the causes of the crisis. Based on these issues and many more specific problems with the Arrangement, advocacy groups such as Human Rights Watch have stated that it is flawed and should be suspended.²²

Protectionism, nationalism and "democratization"

Myanmar's military, the Tatmadaw, sees itself as protector of the country's majority religion, Buddhism, and sees this religion existentially threatened by perceived Muslim immigration and population growth. The attacks by the small and badly equipped ARSA group in August 2017 gave the military a pretext for executing "clearance operations" and for justifying those operations as anti-terror actions. Bamar nationalism and Buddhist protectionism have characterized Myanmar politics since independence, but became increasingly visible during the reform process and so-called "democratization" after 2011. During this process, which culminated in the general election of November 2015, extremist Buddhists exploited

The reform process and Rohingya's citizenship

- **The political reform process created space for hate speech and extremism, targeting the Rohingya and other Muslims.**
- **There is little political support for Rohingya's demands for citizenship.**
- **The anti-Muslim political climate will impede a change in the policies of citizenship, which is necessary to facilitate a safe and voluntary return.**

the political opening to ignite fear and repression of the Muslim minority, particularly the Rohingya. There was a strong fear among politicians of being seen as pro-Muslim.²³ The extremist Buddhists aligned with the Union Solidarity and Development Party (USDP), former president Thein Sein's party, which is closely allied with the military. The Buddhist extremist movement held the National League for Democracy party (NLD) hostage in

an anti-Muslim climate. Consequently, the NLD removed Muslim candidates from its lists, and Aung San Suu Kyi made no move to address the plight of the Rohingya. The political opening also contributed to anti-Muslim sentiment by allowing hate speech and agitation as a consequence of freedom of speech and assembly. Monks who had been imprisoned for during the military regime, such as the infamous U Wirathu, were now released.

It is not uncommon for periods of political opening and democratization to prove uncomfortable for minorities. In Myanmar, the Rohingya has served the role as the “other”, the enemy threatening the political entity of Myanmar.²⁴ The election campaign of 2015 illustrated clearly the fear of being seen as “pro-Muslim” among NLD and the democracy movement. Anti-Rohingya and anti-Muslim sentiment is widespread in Myanmar, and has become the issue on which the Tatmadaw and its political party can mobilize support, particularly among the majority Bamar population. Therefore, the logics of electoral politics ensure that there is little to gain and much to lose from supporting the Rohingya’s demands for recognition as a national group and citizenship status.

Addressing ethnicity and citizenship: A difficult but necessary step forward

All ethnic minorities of Myanmar suffer the consequences of Bamar nationalism, and Christian minorities have suffered discrimination over the decades. This has not improved much with the reform process. Many minorities have experienced deteriorated relations with the government. A major failure of Aung San Suu Kyi’s leadership has been her inability to reach out to ethnic minorities.

The current link between ethnicity and citizenship excludes most Rohingya, as they are not on the list of 135 national ethnic groups that have the right to citizenship. This debate must be raised by civil society actors, ethnic organizations and political parties alike. However, the Rohingya crisis has made the issue of citizenship extremely sensitive. It is unlikely that a genuine change of politics of citizenship, including a detangling of the link between citizenship and ethnicity, will happen in the current political climate.

A broader approach to citizenship

- All ethnic and religious minorities of Myanmar suffer discrimination.
- The issue of citizenship must be addressed in a sensitive manner, preferably from actors inside Myanmar.
- A major challenge is the small number of voices inside Myanmar criticizing the current policies towards the Rohingya.
- A possible strategy would be to document and discuss how the link between ethnicity and citizenship, and the underlying racism, affects all minorities, not only the Rohingya.

Tragically, no other ethnic minorities, apart from the Karen Women’s Organization, have expressed support for the Rohingya. Given the current anti-Muslim sentiment and the fear among other minorities and human rights activists of being seen as pro-Rohingya, this is a difficult time to address the underlying issue of citizenship and ethnicity. Addressing this issue, however, is crucial to facilitating a possible future for the Rohingya in Myanmar. An important step forward could be to raise discussions about how the link between ethnicity and citizenship, and the underlying racism and religious protectionism, create problems for minorities across Myanmar, so that the topic is not solely related to the Rohingya. Currently, there is a strong sense in Myanmar that the country has been unfairly criticized by the West. It is therefore vital that attempts to raise these issues be initiated from within the country, from groups that are not seen as foreign or hostile. There are very few voices that openly criticize the authorities over the handling of the Rohingya, but a broader perspective that focuses on racism, discrimination and the plight of all ethnic minorities might provide a strategy for approaching the discussion on ethnicity and citizenship.

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The Project

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To read more about the projects at the Norwegian Holocaust Center on international minority protection, see www.hlsenteret.no/english/research/Minorities/minority-protection-and-mass-atrocity-prevention/

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