

BOFAXE

Return of the Rohingyas

WHY UNDERDEVELOPMENT EFFECTIVELY HINDERS REFUGEES' RETURN TO MYANMAR

The rape and murder of 27-year-old Arakan Buddhist woman, Thida Htwe in late-May 2012, allegedly by three Muslim men, triggered multiple rounds of sectarian violence in Myanmar's Rakhine state. Mass internal displacement prompted waves of Rohingya refugees to flee into neighboring Bangladesh. The continuing tension in the region brings up questions surrounding a "return" of the Rohingyas to Myanmar: Is it currently a viable option, given the volatile and complex situation in the country? More specifically, are conditions to protect Rohingyas' rights in place, in order for "return" to be considered a meaningful and long-term solution? This piece argues that return is currently unviable and explores what could be done instead. The Rohingyas have been enduring unabated discrimination for generations with successive governments asserting that they have no right to live in Myanmar. However, "[t]here have been Muslim inhabitants in western Myanmar for centuries," with the term "Rohingya" used in research since as early as 1799. Regardless, the Myanmar government and many citizens do not acknowledge the term "Rohingya" and claim that they are illegal immigrants with origins from what is now Bangladesh. Myanmar's population is predominantly Buddhist and made up of more than 135 "national races" (of which "Rohingya" is not legally classified as one under the 1982 Citizenship Law). Given the severity of the Rohingyas' current situation (according to UNHCR, more than half a million Rohingya refugees have arrived in Bangladesh since Aug 2017 and an estimated 128,000 have been internally displaced in Myanmar), many recommendations were made, such as granting the Rohingyas citizenship in Myanmar and bringing responsible individuals to justice for mass atrocities; however, a sustainable and meaningful solution remains elusive. Under the New York Declaration for Refugees and Migrants' (A/Res/71/1, unanimously adopted by all 193 UN Member states) Comprehensive Refugee Response Framework (CRRF) and the Global Compact on Refugees (GCR), one of the key objectives to provide better support to refugees and displaced persons is to "support conditions in countries of origin for return in safety and dignity."

In November 2017, Dhaka and Naypyidaw signed a bilateral agreement to return the refugees to Myanmar, cemented by MOUs between Myanmar and several UN agencies. However, the endeavor was delayed multiple times and despite some low-numbers of voluntary returns, no Rohingyas have officially returned under the agreement. Still, according to Human Rights Watch (HRW), even though the Rohingyas have not followed repatriation attempts for fear of renewed persecution in Myanmar, they have expressed an overwhelming desire to return "once it is safe: when they have citizenship and freedom of movement; and when there is genuine accountability for atrocities." I posit that to truly "address the root causes of the Rohingya crisis," economic development issues must be considered in tandem with normative legal considerations. This entails urging the international community and stakeholders to consider the interlinkages of development and human rights. I am not saying Myanmar should reach a certain standard of development before the Rohingyas' repatriation, effectively putting their rights "on-pause"; but I am advocating that such efforts would minimize the state's volatility and reduce the propensity for conflict between Myanmar's ethnic communities in the long run.

A common perception is that the conflict is singularly driven by ethnic and religious motives. This explanation provides only a partial view of the reality; that there is a close connection between political (in)stability and economic growth. According to a recent study on the relationship between conflict and development, "[e]ven the most horrific conflicts, those that seem entirely motivated by religious or ethnic intolerance or hatred, have that undercurrent of economic gain or loss that flows along with the violence, sometimes obscured by the more gruesome aspects of that violence but never entirely absent" (p. 265). Siegfried O. Wolf of the University of Heidelberg's South-Asia Institute stated that the Rohingya crisis is more politically and economically driven. Indeed, Myanmar, after decades of economic and political isolation only transitioned from military rule to democracy in 2015, and still falls under the UN's Least Developed Country (LDC) category. Military presence is still very much active, with the ability to override many government decisions. As a primarily agrarian-based economy, an overwhelming majority of Myanmar's population live in rural areas. According to the 2017 report by the Advisory Commission on Rakhine State, where the majority of Rohingyas reside, the state lags behind the national average in every sector. Communities find themselves in a situation of insecure land tenure and a lack of livelihood opportunities, fomenting conflict. Rakhine state is also perceived unattractive to private sector investments, despite being rich in natural resources due to the "simmering threat of violence and instability". As a consequence, any development and growth generated are not significant enough to be of benefit for the local residents. UNDP's review of Myanmar's agricultural sector and investment strategy suggests that rural growth is an effective way of reducing poverty both in rural and urban settings. By promoting economic growth in rural areas, poorer segments of the population are able to generate increased income through increased employment opportunities; and spending that income on "non-tradable" goods which are produced within the country, resulting in further rural economic growth. By comparison, urban economic growth disproportionately benefits the wealthy due to a resulting increase in demand for imported goods. Since 2010, Myanmar went through economic liberalization under President Thein Sein — the country saw increases in development aid and Foreign Direct Investment (FDI). However, in her April 2020 report (A/HRC/43/59), the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, stated that developments on the economic front have "undoubtedly brought benefits to many people, [but] also exacerbated existing human rights issues" (para. 20) and urged the government "to protect all the people on its territory against human rights abuse, including by business enterprises" (ibid).

In this regard, the Rohingya crisis has brought about lasting economic damage resulting in a decline in FDI since 2016. Further exacerbating the issue, genocide allegations have prompted renewed economic sanctions from the West, with, among others, adverse consequences to Myanmar's once-lucrative textile industry. "To the West, Rakhine equals Myanmar and Myanmar equals Rakhine, and there doesn't seem to be anything else, whereas the East has another lens, and that is Rakhine is a problem. But Rakhine is a small part of Myanmar, and there is still Myanmar left, and we should engage and not isolate. We should help and not punish," said Serge Pun, a local tycoon. With a tarnished image, investments and tourism from the west have also plummeted, further worsening Myanmar's "brand capital" and global trade relationship. Imposing economic and trading sanctions is often used as a policy for achieving human rights protection. However, it was found that sanctions play a major role in the deterioration of human rights situations in rights-abusive nations. General Comment 8 of the CESCR emphasizes that "whatever the circumstances, such sanctions should always take full account of the provisions [of the ICESCR]" (para. 1). Nevertheless, Myanmar retains several obligations vis-à-vis the Rohingya population, as does Bangladesh: As a rule of customary international law, and a cornerstone of the 1951 Refugee Convention (Art. 33) and its 1967 Protocol (access here), the principle of non-refoulement "prohibits the return of a refugee to a territory where his or her life or freedom is threatened." Both Myanmar and Bangladesh have violated the principle with regard to their aforementioned repatriation agreement. Whereas Bangladesh has raised national security concerns as a reason to send the Rohingyas back to Myanmar, the latter has not followed through with its promises to create conditions for safe and dignified returns, which include prior addressing of the root causes of the crisis. All the same, the current (non-repatriation) efforts are also not in line with human rights law and there is no reason the Rohingyas should continue to suffer until a long-term solution to ensure stability. Consider the widely recognized Pinheiro Principles, which, although formally non-binding, provide the right to both be protected from displacement (Art. 5) and the right to voluntarily return in safety and dignity (Art. 10). To date, UN's humanitarian and development partners have engaged with the Governments of Bangladesh and where possible, Myanmar to come up with short- and mid-term solutions. However, while immediate humanitarian efforts, as outlined in the Joint Response Plan (JRP) and the Myanmar Humanitarian Response Plan (HRP) are undeniably needed, longer-term sustainable solutions are rarely discussed. Even the UNHCR Handbook for Parliamentarians on international refugee protection only briefly attempts to connect normative and economic considerations in a small section on donor countries to "encourage financial and technical assistance be provided to countries to which refugees are returning" (p. 233).

Of course, a normative framework needs to be in place — Myanmar amending its 1982 Citizenship Law and granting the Rohingyas citizenship would be a first step in the right direction in restoring their freedom of movement. However, a singular focus on only normative aspects and accountability will not bring about tangible improvements to the lives of the Rohingyas upon their return. "Higher standards of living reduce the probability of conflict; inequality nurtures conflict; and most conflicts in developing countries are ethnic in nature" (Ray & Esteban, 2017, p. 288). With this view in mind, I urge the international community and relevant stakeholders to expand the normative discussion to include economic and development considerations as part of a wider framework of international assistance and cooperation in accordance with the CESCR's General Comment No. 8 (paras. 12-14.), instead of relying on sanctions. A more nuanced approach is key to a durable solution of the Rohingya crisis.