



International investigation urgently needed into human rights abuses against the Rohingya

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Introduction

The Rohingya Muslim minority in Burma are the most persecuted ethnic minority in Burma, subject to policies of oppression which are applied almost exclusively to them. Government policies target Rohingya on the basis of their ethnicity and religion. The Rohingya are widely viewed in Burma as illegal immigrants from Bangladesh, despite the fact that Rohingya people have lived in Burma for centuries.

Human Rights Abuses

The Rohingya have endured decades of abuse, persecution and discrimination. The repressive 1982 Citizenship Law denies many Rohingya citizenship and underpins legal discrimination against the Rohingya. It means the Rohingya are denied access to education and employment, and face unacceptable restrictions on movement, marriage, and reproduction. Many Rohingya children cannot even have their birth registered.

Since 2012, there have been two major waves of violence against the Rohingya leading to a downward spiral in conditions for Rohingya. What began as communal violence in June 2012 quickly evolved into widespread and systematic attacks against the Rohingya. Further violence erupted in October 2012. Hundreds of people have been killed and hundreds of thousands of people forced to flee their homes. Human rights abuses reported include killing of Rohingya men, women and children, rape, beheadings, stabbings, beatings, mass arrests and villages and neighbourhoods burned to the ground.

Government Response

Despite the seriousness of the abuses against the Rohingya, there remains a complete lack of justice and accountability. The government of Burma has failed to conduct any credible investigation into

Recommendation

The overwhelming evidence indicates that human rights violations against Rohingya in Burma may constitute crimes against humanity and ethnic cleansing.

It is also evident that the government of Burma is unwilling to undertake any credible investigation or hold perpetrators to account.

Given that there is no political will or desire from the government of Burma or indeed opposition parties in Burma to address this, it is the responsibility of international governments to intervene to support an investigation, which is then established by a body of the United Nations.

violence against the Rohingya since 2012 and has supported policies and practices that endorse and encourage violence against the Rohingya. Those inciting anti-Rohingya violence are still allowed to operate with impunity.

Following the violence against the Rohingya in 2012, Thein Sein asked for international assistance in deporting all Rohingya from Burma:

“The solution to this problem is that they can be settled in refugee camps managed by UNHCR, and UNHCR provides for them. If there are countries that would accept them, they could be sent there.”

A discussion on the issue of Rohingya with UN High Commissioner for Refugees António Guterres, 11 July 2012

A government committee established to investigate the violence in Rakhine State included members known hold views that the Rohingya should be expelled from Burma, while no Rohingya were allowed on the committee, violating international human rights guidelines. The committee’s report failed to address who was responsible for the violence.

In his report in April 2014, UN Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, highlighted the lack of fair trials following the mass arrests of Rohingya:

“arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights ... has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State.”

The government is also unwilling to amend the policies that underpin the repression of the Rohingya. President Thein Sein has publicly ruled out amending the 1982 Citizenship Law:

“... the law intends to protect the nation and some time was taken to draft it with input from experts ... I believe the law is meant to protect the country and the government has no plan to revise it.”

President Thein Sein in an interview with Democratic Voice of Burma, 1 March 2013

President Thein Sein is even unwilling to recognise that the Rohingya exist:

“There are no Rohingya among the races. We only have Bengalis who were brought for farming [during British rule].”

Interview with the Washington Post 19 May 2013

This reflects policy across the government in Burma. During her first visit to Burma in July 2014, the new UN human rights rapporteur, Yanghee Lee, reported that she *“was repeatedly told not to use the term ‘Rohingya’ as this was not recognized by the government.”*

Ministers in the Burmese government have repeatedly and publicly disputed the right of Rohingya to be in Burma. In November 2013 the UN General Assembly passed a resolution urging Burma to give *“equal access to full citizenship for the Rohingya minority”*. The call was immediately rejected by the government of Burma. Burma’s Permanent Representative at the UN Kyaw Tin told the UN assembly that Burma has a *“long standing position against the use of the word ‘Rohingya minority’.”*

As the situation of the Rohingya continues to deteriorate, urgent action is needed. However, as the government of Burma continues to deny rights to the Rohingya and has rejected all calls to take action, it is necessary for the international community to act.

Violations of International Law

The systematic and widespread human rights violations committed against the Rohingya violate international law. There is mounting evidence of state involvement in those crimes against humanity and of government involvement in a campaign of ethnic cleansing against the Rohingya.

“The fact that the Rohingya are effectively excluded from citizenship is a clear violation of international human rights law. It is a fundamental principle that “everyone has the right to a nationality”. This principle is especially important in relation to children. The UN Convention on the Rights of the Child provides in terms that every child “shall have from birth...the right to acquire a nationality”. As a party to that Convention, Burma is obliged to “ensure the implementation” of every child’s right to acquire a nationality. Since it is almost impossible for a Rohingya, and in particular a Rohingya child, to acquire Burmese citizenship, the 1982 Burma Citizenship Law violates the fundamental right to a nationality.”

Burma Campaign UK report ‘Burma’s Treatment of the Rohingya and International Law’, April 2013

In a report released in April 2013, ‘Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State’ Human Rights Watch concluded that *“the criminal acts committed against the Rohingya and Kaman Muslim communities in Arakan State beginning in June 2012 amount to crimes against humanity carried out as part of a campaign of ethnic cleansing.”*

Evidence gathered by Human Rights Watch since June 2012 has also documented the crimes against humanity of forced population transfer, forced deportation and persecution.

Even before the new wave of violence began in 2012, the situation of the Rohingya in Burma was considered unacceptable and abuses that violated international law have been well documented.

In 2010 the Irish Centre for Human Rights released a report ‘Crimes against Humanity in Western Burma: The Situation of the Rohingyas’. The report, supervised by international human rights law expert Professor Schabas, found that the crime of forced labour was widely used against Rohingya:

“The Rohingyas of North Arakan State are one of the groups who suffer most from the exaction of forced labour ...

Numerous so-called “model villages” have also been built in high numbers in North Arakan State and the authorities have used Rohingyas, and no other group, to do the work. There is constant and ever-increasing discrimination against the Rohingyas; a situation resulting in increased forced labour. As examined and described in the Report, forced labour is exacted from the Rohingya population in several forms. These include portering, building maintenance and construction, forced cultivation and agricultural labour, construction and repair of basic infrastructure, and guard or sentry duty ...

Failure to provide the number of days of labour ordered for each household leads to harassment, beatings, killings and other abuses such as the retributive abuse of family members. The research and analysis in this Report strongly suggest that the crime of enslavement, as provided for in the Rome Statute, is currently being committed against the Rohingya population of North Arakan State.”

The report concluded that “there is a reliable body of evidence pointing to acts constituting a widespread or systematic attack against the Rohingya civilian population in North Arakan State. These appear to satisfy the requirements under international criminal law for the perpetration of crimes against humanity.”

In their February 2014 report, ‘Policies of Persecution, Fortify Rights obtained leaked official documents which provide evidence that human rights violations against Rohingya result from official state policies and could amount to the crime against humanity of persecution:

“The Rome Statute requires that certain elements be fulfilled in order for criminal acts to rise to the threshold of crimes against humanity. In Rakhine State, each of the necessary pieces appears to be in place. There is an ongoing “attack”—which need not involve violent force—against Rohingya, stemming from state policy, thus satisfying the criteria established by the Rome Statute. The attack appears both “widespread” and “systematic,” exceeding the statutory requirement that it be one or the other. Additionally, government officials have demonstrated their knowledge of the attack and of the ways their actions contribute to it, fulfilling the mental element for crimes against humanity.

“The crime of persecution cannot be perpetrated in isolation under the Rome Statute; it must be committed “in connection with” another crime proscribed by the Statute. Over the past two decades, there have been numerous accounts of serious abuses perpetrated against the Rohingya population in northern Rakhine State, as documented by United Nations officials and human rights organizations, including rape, torture, killings, and forced population transfers. These incidents are clearly connected to the discriminatory and persecutory policies described in this report and some could likely support a finding that the crime of persecution is underway in northern Rakhine State.”

In April 2014 Tomás Ojea Quintana, the UN Special Rapporteur on the Situation of Human Rights in Burma, issued a damning report on human rights progress in Burma. The report stated that government policies towards the Rohingya may constitute crimes against humanity:

“the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court. He believes that extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State.”

The situation facing the Rohingya is so severe, that experts on genocide have warned that the early warning signs of genocide are present.

The Sentinel Project reported in 2013 that *“Burma currently presents a textbook case for a country on the brink of genocide.”*

United to End Genocide have concluded that *“deteriorating conditions have put Burma on a downward trajectory that could end in the world’s next genocide without immediate action by the United States and the international community ... Nowhere in the world are there more known precursors to genocide than in Burma today.”*

An International Investigation Needed

The international community’s response so far to the crisis facing the Rohingya has been to call on the government of Burma to take action. However, the government in Burma has taken no serious steps to investigate and bring to justice those responsible for committing crimes against humanity. It has either failed to act or flatly refused to act. Nor is this situation likely to change.

It is essential that the current impunity enjoyed by the perpetrators of these most serious crimes is challenged.

As a vital first step, an international investigation is needed to begin the process of applying international law and addressing both the abuses committed and the laws and policies that have helped to underpin the violence and oppression of the Rohingya. The only way any credible investigation will take place is for the international community to conduct one.

Conclusion

The overwhelming evidence indicates that human rights violations against Rohingya in Burma may constitute crimes against humanity and ethnic cleansing.

It is also evident that the government of Burma is unwilling to undertake any credible investigation or hold perpetrators to account.

Given that there is no political will or desire from the government of Burma or indeed opposition parties in Burma to address this, it is the responsibility of international governments to intervene to support an investigation, which is then established by a body of the United Nations.

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