

Memorandum
on
Developments in Rakhine State: Repatriation Process, Accountability and Challenges

Introduction

National reconciliation and peace, democracy and human rights, sustainable and inclusive development is irrefutably interlinked in building democratic federal Myanmar. Home to multi-ethnicity and multi-religion, Myanmar inspires peaceful coexistence and harmony among different ethnic communities and religions in the country.

National reconciliation in Rakhine State is of critical importance to Myanmar in its democratic transition. The issue in Rakhine has been wrongly portrayed by some as religious persecution or discrimination to capture the world attention. It is, in fact, political and economic issues which involve cross-border migration since colonial time, poverty, lack of rule of law and security. There has been deeply rooted historical tension, mutual mistrust and fear between the ethnic communities in Rakhine State and the migrant community.

Since taking office, the Government has adopted a holistic approach in addressing the problems of Rakhine State. It must be emphasized, however, that the resurgence of violence in northern Rakhine with the attacks of ARSA terrorists in August 2017, has intensified many existing problems and brought to light new challenges including mass displacement of Muslim community, Rakhine community and small ethnic communities.

Likewise, the launch of massive coordinated attacks by Arakan Army (AA) insurgents against border police outposts in January 2019 has further complicated the security situation in northern Rakhine. Around 17,000 people were displaced to IDP camps and local ethnic Rakhine people constitute the largest among them. Myanmar fully shares the concern over the plight of all communities affected by violence. The most urgent priority for the government, at present, is to resolve the humanitarian issue and to commence repatriation.

Repatriation Process

Since 2017, the government of Myanmar has intensified its efforts on bilateral engagement with Bangladesh to resolve the issues of mutual concern including the repatriation of displaced persons. Myanmar has been working relentlessly in good faith for the speedy repatriation of the displaced persons, based on “the Arrangement”, Terms of Reference (TOR), and “the Physical Arrangement” signed between Myanmar and Bangladesh during November 2017 and January 2018.

Myanmar has also been working closely with UNHCR, UNDP as well as with ASEAN to facilitate the implementation of the bilateral agreements between Myanmar and Bangladesh on the repatriation, resettlement, and development of returnees.

People of Hindu faith express their desire for return

Since 23 November 2017, Myanmar has also requested Bangladesh for the repatriation of 444 displaced persons of Hindu faith who have expressed their desire to return to Myanmar through the Hindu elders and the Indian Embassy in Yangon. Myanmar has repeatedly requested Bangladesh for their expeditious repatriation. But, they were not yet sent back to Myanmar.

1st round of efforts for commencement

According to the Arrangement signed by Myanmar and Bangladesh on 23 November 2017, the repatriation process must have commenced after 2 months, that is, on 23 January 2018. Myanmar was ready to start the repatriation on the agreed date. Necessary arrangements were put in place and officials were assigned on duty there since then. However, no displaced person was repatriated as agreed.

2nd round of efforts for commencement

Then, at the 3rd Joint Working Group (JWG) meeting held in October 2018, Myanmar and Bangladesh agreed again to start the repatriation on 15 November 2018. Although Myanmar side prepared necessary arrangements, the repatriation did not occur on the agreed scheduled date.

3rd round of efforts for commencement

On 6 August 2019, Myanmar was informed by China that Bangladesh intended to start the repatriation on 22 August. On 9 August 2019, the Permanent Secretary of the Ministry of Foreign Affairs confirmed it with the Ambassador of Bangladesh. On 19 August 2019, Myanmar was officially informed by Bangladesh that Bangladesh had undertaken all necessary measures to smoothly conduct repatriation, which was scheduled to start on 22 August 2019.

Based on this confirmation, Myanmar has made all necessary preparation for repatriation to commence on 22 August. At this time, Myanmar government invited ASEAN representatives to witness the repatriation programme – 6 representatives from Indonesia, Malaysia, Thailand, the ASEAN Secretariat and the AHA Centre. They were waiting at the Reception Centre to see returnees on the scheduled date. However, the promised repatriation failed to occur again.

It was learnt that there have been movements by some NGOs as well as threats by ARSA in the Camps to stop repatriation. Members of ARSA have been using threats and intimidation to prevent the inhabitants of the Camps in Cox's Bazar from taking part in the repatriation process. The news media of Bangladesh, appeared on 20 August 2019, quoted that Bangladesh Foreign Minister Dr. AK Abdul Momen said both Bangladesh and Myanmar were fully ready to resume the repatriation but some Muslim leaders and NGOs were reportedly discouraging displaced persons to return.

The Myanmar side had repeatedly requested the Bangladesh side to follow the procedures set out in the bilateral agreement. This would require the agreed Verification Forms to be distributed to the inhabitants of the Camps so that the people, who agreed to return voluntarily, can sign the Forms which would then be forwarded to the Myanmar side. This procedure was not adhered to.

And, the UNHCR was able to start interviews with displaced persons only on 20 August 2019, just two days before the stipulated date for repatriation.

With regard to the failure to commence on the agreed date, the Union Minister for Labour, Immigration and Population and the Union Minister for Social Welfare, Relief and Resettlement explained to the representatives from ASEAN Secretariat, AHA Centre, and ASEAN-ERAT on 23 August 2019 in Swittway. Director of ASEAN Secretariat Mr. Ky Anh Nguyen reaffirmed the continued support and implementation of recommendations in the Preliminary Needs Assessment. He also pledged to coordinate with ASEAN Plus 3 countries China, Japan and Korea. He also confirmed that they have witnessed the preparedness of Myanmar side for the repatriation of displaced persons.

Three Visits of high level delegations from Myanmar to Cox's Bazar to disseminate information

With the genuine will to expedite repatriation of displaced persons, it has been 3 times that high level delegations from Myanmar visited the camps in Cox's Bazar to reach out displaced persons and disseminate information.

In April 2018, Myanmar delegation led by the Minister for Social Welfare, Relief and Resettlement visited Cox's Bazar and explained the displaced persons about the development process in Rakhine, the readiness for the repatriation process from Myanmar side, provisions of humanitarian aid and assistance, UEHRD's resettlement project, registration for national verification cards and its benefits, freedom to travel,

housing projects, vocational training, easy access to education and healthcare and the closure of IDP camps.

In October 2018, during the 3rd JWG meeting between Myanmar and Bangladesh on the repatriation of verified displaced persons, a Myanmar delegation led by the Permanent Secretary of the Ministry of Foreign Affairs paid a field visit to the camps in Cox's Bazar. Myanmar delegation met with the representatives of displaced persons and explained in detail on Myanmar Government's efforts in the repatriation process, including safety and security for the prospective returnees, UEHRD's activities for resettlement, rebuilding villages, livelihood opportunities, education and healthcare services for the returnees, issuance of the National Verification Card (NVC), and the benefits of holding NVC cards. The Myanmar delegation also met with the representatives of Hindu people who expressed their desire to return to Myanmar.

Again in July 2019, Myanmar high-level delegation led by the Permanent Secretary of the Ministry of Foreign Affairs and accompanied by the ASEAN ERAT visited Cox's Bazar, met with some displaced persons from various camps, and informed them the preparations for the repatriation. The delegation also handed over Factsheets on repatriation process to the Bangladesh side, for distribution among the prospective returnees in the camps.

Verification of the list of displaced persons

List of verified persons in Hindu faith and Muslim faith provided by Myanmar

At the 1st JWG meeting, Myanmar provided Bangladesh with the detailed list of 508 displaced persons of Hindu faith, and 750 displaced persons of Muslim faith who had been verified as residents in Myanmar to include them in the first batch of repatriation. On 19 March 2018, Myanmar sent the revised list of verified displaced persons – 444 Hindu faiths and 778 Islamic faiths – to Bangladesh through diplomatic channel.

1st List of 8032 people provided by Bangladesh

On 17 February 2018, during the visit of the Union Minister for Home Affairs of Myanmar to Bangladesh, the Bangladesh side presented the forms of the list of 8,032 people from 1,673 households for verification. However, the forms were not the prescribed forms mutually agreed. Myanmar made a number of notifications to Bangladesh to comply with the agreement and use the mutually agreed verification form annexed to the Physical Arrangement. Despite above-mentioned

technical issues, Myanmar verified the people in the list. As of 27 December 2018, 7883 were verified. 5384 were verified as the residents in Rakhine, 68 as suspects to be involved in terrorist attacks and 2431 persons are not included in the registered List of Family Household in Myanmar. Myanmar has informed it to Bangladesh.

2nd List of 22,432 people provided by Bangladesh

Again, after the 3rd JWG meeting, Bangladesh provided verification forms of 22,432 persons to Myanmar. But it is found out that the forms from Bangladesh excluded the Declaration by the head of the family: (i) Apply for return and live in Myanmar voluntarily without any threat or encouragement and (ii) If permission is granted to enter Myanmar, to abide by the existing laws of Myanmar. Therefore, Myanmar called upon the Bangladesh authorities to re-correct it as mentioned in the agreed physical arrangement. Bangladesh officially informed Myanmar on 6 January 2019 to exclude above-mentioned paragraphs but it is not acceptable to Myanmar.

As of 26 August 2019, Myanmar has verified 19,897 persons, that is, 89 % of the list of 22,432 persons provided by Bangladesh. Among them, 12406 were verified as former residents; 114 as suspects to be involved in the terrorist attacks; 7377 as not included in the registered list of family household in Myanmar.

Citizenship

The issue of citizenship is entirely the prerogative of a sovereign state as it entails both domestic political and legal issues. Myanmar has similar procedures to those of other sovereign states with regard to the application for citizenship. Like other countries, in Myanmar, no one can get citizenship straight away without verification and application.

As the displaced persons are mixed with those who resided in Rakhine State for decades and those illegal migrants, every returnee must undergo verification without fail. This applies to all in the whole country, including the displaced persons from Rakhine State and returnees from Thailand.

The verified returnees will receive NVC upon their arrival at the reception centre after taking biometric data. NVC is a temporary identification card to be used as a first

step before getting citizenship status. Possession of an NVC is a solid proof that the holder is a legitimate resident in Myanmar. Issuance of NVCs is carried out in the whole country, including the Rakhine State. NVC holders are entitled to apply for citizenship status and NVC must be held during the application process.

The government is also making efforts to issue birth certificates to all residents of Rakhine State who were born in the State.

Special Envoy of UN Secretary-General visits Myanmar for 8th time

Myanmar is closely cooperating with Special Envoy of the UN Secretary-General Ms. Christine Burgener. Myanmar welcomes her visit for the 8th time. Ms. Christine Burgener has arrived Yangon on 3 September will stay until 7 September.

Cooperation with ASEAN and UNDP, UNHCR

Myanmar is creating conducive environment for the verified returnees in cooperation with not only the UN agencies but also its ASEAN friends, as well as its traditional development partners in the region and beyond.

ASEAN will not sideline the UN agencies but it will complement and reinforce the ongoing work of the UN agencies. Myanmar has extended the trilateral MoU with the UNDP and the UNHCR for another one year and has given access to over 80 villages in Rakhine State in order to implement 34 Quick Impact Projects that would contribute to creating conducive conditions for the returnees. Myanmar and UNDP and UNHCR continue working together to implement the MoU.

The ASEAN team has submitted the report on the preliminary assessment to the recent ASEAN Summit. The leaders have tasked the ASEAN Secretary-General to follow up the team's recommendations.

Accountability

Sovereign nations have primary responsibility for protecting the human rights of their own people. Myanmar is willing and capable of addressing the issue of accountability with regard to alleged violations. In this regard, Myanmar strongly rejects any attempt to take the matter to any international judicial or legal body unless it is patently clear that national remedies have been exhausted.

The Independent Commission of Enquiry (ICOE) is a national initiative to address accountability issue. The Commission is tasked to investigate allegations of human rights violations and related issues following the terror attacks by the ARSA in Rakhine, with a view to seeking accountability. The ICOE is further tasked with the formulation of recommendations on steps that should be taken to ensure peace and stability in Rakhine. The ICOE is a fact-finding commission with special investigative and judicial powers under the Investigative Committee Act 1950.

The Advance Team of the ICOE visited Dhaka and Cox's Bazar, Bangladesh from 17-22 August 2019 to prepare groundwork and seek the necessary approvals for the dispatch of ICOE's Evidence Collection and Verification Team (ECVT) in Cox's Bazar to interview and collect evidence from those who are residing in the Camps.

While in Dhaka, the Advance Team paid courtesy calls on Foreign Minister of Bangladesh as well as Foreign Secretary. They met with the Director-Generals of South East Asia Wing, UN Wing and "Rohingya Cell" from the Ministry of Foreign Affairs. They also discussed with the Additional Secretary of Ministry of Disaster Management and Relief and Joint Secretary of Ministry of Home Affairs. In Cox's Bazar, the Advance Team met with the Commissioner of Refugee, Relief, and Repatriation, Additional Deputy Commissioner (Tourism and Protocol) and Police Superintendent. They met with the local representatives from UNHCR, UNICEF and IOM respectively.

It is learnt that Bangladesh's Government has agreed in principle to allow the ICOE's ECVT to carry out its work in Cox's Bazar and requested further information and clarification about the ECVT.

In addition, the Myanmar Armed Forces has also established its own Court of Inquiry, supported by a Legal Advisory Team, to address the allegation of human rights violations in northern Rakhine. The Court of Inquiry might convene a court martial for a possible weakness in following instructions during incidents at Gutabyin Village, as released by the Tatmadaw True News Team. Members of the Court of Inquiry, chaired by Maj-Gen Myat Kyaw, have already visited Buthidaung and Maungdaw areas in Rakhine State from 15 July to 5 August while conducting a second round of investigation. The Court of Inquiry is continuing its investigation.

Media access to Rakhine

The government has allowed media groups to visit northern Rakhine to cover news and interview with locals. After the incidents in October 2016, Media groups

visited once in 2016, 8 times in 2017, 20 times in 2018, and 5 times so far in 2019. Media team also visited the Kainggyi (Mro) and Indin villages on 31 August 2019. A group of local and foreign media personnel visited the Hla Pho Khaung Transit Centre on 29 August 2019 and Taung Pyo Letwe Reception Centre on 30 August 2019. The group included media persons from Courrier Japon, Nishinipon Shimbun, Nippon TV, VOA, BBC, MRTV, MITV, MIR, and MNA. This is the 34th visit by media persons to Maungdaw.

Humanitarian Assistance

The humanitarian assistance is being provided to all affected communities in Rakhine through the Government, UEHRD, local NGOs and Red Cross Movement. WFP is also providing humanitarian assistance in Rakhine States including IDPs. Myanmar requested ICRC to provide humanitarian assistance to those residing in the boundary line area only from Myanmar side. In this regard, ICRC conducted preliminary assessment in September 2018 in cooperation with the Myanmar Red Cross Society under the Red Cross Movement.

Myanmar's position on FFM and IIM

Myanmar categorically rejected the establishment of FFM by the Human Rights Council. Myanmar made clear that it would not accept the findings of its reports. Its establishment, composition and mandate raised serious concerns due to lack of impartiality. Human Rights Council exceeded its mandate and contravened the terms and practices of international law. Myanmar regards FFM's reports as an action intended to harm the interests of Myanmar and its people. This action contributes in any way to the resolution of the challenges that Myanmar has been facing with. Myanmar is addressing the issue of accountability in Rakhine with its national accountability mechanisms in place. Myanmar opposes mechanisms that are set up without allowing for national remedies to be exhausted.

The Government of Myanmar and private associations such as Myanmar Federation of Chambers of Commerce and Industry (UMFCCI), Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD), Max Myanmar Group categorically rejected the unfounded allegations in the report on the economic interests of the Myanmar Military released by the Fact Finding Mission (FFM) on 5 August 2019.

Myanmar is still facing several challenges in its delicate democratic transition, which needs continued support from the international community. The international

community must play a constructive role in seeking a sustainable resolution that would lead to peace, stability, and development in Rakhine State. Exertion of discriminatory and illegitimate political pressure, with malicious intent for Myanmar, will not help address the problems.

The establishment of the ongoing Independent Mechanism (IIM) on Myanmar by the Human Rights Council is yet another step in a series of unprecedented and discriminatory scrutinization of a member State.

Myanmar strongly objected to the establishment of the IIM, as it was set up beyond the Council's mandate. It represents selectivity, discriminatory attitudes, and double standards by the UN human rights body. It will only serve the political purpose of those who wish to exploit the HRC for their political agenda.

Some members of the Council made a reference to the report of the HRC's Fact Finding Mission (FFM), which was totally biased and one-sided. Its investigation targeted only Myanmar security forces and excluded violations committed by the ARSA. The reports of FFM adhere to what it wants to focus and reject any contradicting evidence. The FFM ignored reports revealing massacres by the ARSA and discounted atrocities committed by it.

The government of Myanmar has repeatedly stated that it would act against perpetrators according to law, if the allegations are supported by sufficient evidence. The government is committed to accountability in addressing the issue. Therefore, Myanmar strongly rejects any move to bring the issue before the international judicial system.

Conclusion

The issue in Rakhine is one of the complex challenges in the democratic transition of Myanmar, which needs time and space. As it has committed, the government has been striving for stability, security and development of the Rakhine State. Despite complexities and challenges remain, Myanmar is making its utmost efforts to expedite repatriation and to create more conducive environment for the verified returnees.

Myanmar is aware of many obstacles including the movements in the camps to stop the displaced persons from return to Myanmar and using the plight of displaced persons to achieve political aim. Therefore, it is vital for creating conducive environment for displaced persons to express their desire freely without any fear. Since it is a migrant-related issue, the issue needs to be solved bilaterally. In addition,

smooth and successful repatriation of the displaced persons would largely require genuine political will as well as strict adherence to the Agreements that have been signed.

Myanmar is willing and capable of addressing the issue of accountability with regard to alleged violations. Therefore, any attempt to take the matter to any international judicial or legal body shall be rejected as national remedies have not been exhausted.

Myanmar looks to its friends and the international community for the constructive support in speeding up its endeavors in the resolution of problems and overcoming the formidable challenges on its path towards democracy.

Permanent Mission of Myanmar,
Geneva.

7 September 2019