

Rohingya Problem: **An Assessment of Kofi Annan Commission Report**

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Introduction

The recent mass exodus of Rohingyas to Bangladesh due to genocide and persecution is a grave human rights violation in modern history of the world. The Rohingyas are one of the hundred ethnic minority communities of Myanmar living for hundreds of years in its Rakhine state. The Rohingya refugee problem is the outgrowth of ethnic and religious tension, which is mainly driven by policy of extermination, exclusion and subjugation by the authoritarian regime of Myanmar of the ethnic minority of the Rohingya Muslims. A humanitarian crisis of enormous scale and scope has unfolded recently in Myanmar's Rakhine State and its border zone with Bangladesh. More than 600,000 Rohingyas have fled widespread violence in Rakhine State since 25 August 2017 when violence escalated and the situation has created massive humanitarian disaster in the contemporary history of the world. The UN High Commissioner for Human Rights has recently called these atrocities as "a textbook example of ethnic cleaning"¹ which reflects the widespread human rights violation against Rohingyas committed by the security forces.

The claims of the government and political leaders that Rohingyas are illegal migrants could no way be justified due to the clear fact that they have been a part of long history of Burma.² Due to the exclusionary policies, this population group has been systematically marginalized, persecuted, deprived of basic rights, and abused. The mass exodus of Rohingya Muslim started in the late 1970s due to forced labour, land confiscation, religious intolerance, rape, and other forms of persecution by the Myanmar military regime.³ The Rohingya Muslims are treated as stateless persons in Myanmar with consequent restrictions on their movement education and employment in their homeland, which eventually made them also refugees.⁴ They were rendered stateless by the 1982 Burma Citizenship Law, which mainly confers the right to a nationality on members of the 135 'national races' listed by the government, amongst which the Rohingyas are not included.⁵ This statelessness exposed them to systematic discrimination and human rights violation, which force them to migrate in Bangladesh.

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¹ UN human rights chief points to 'textbook example of ethnic cleansing' in Myanmar', 17 September 2017, UN News Centre, <http://www.un.org/apps/news/story.asp?NewsID=57490#.We60wFWWbIU>

² A. K. M. Ahsan Ullah, 'Rohingya Crisis in Myanmar: Seeking Justice for the "Stateless"', *Journal of Contemporary Criminal Justice*, Vol. 32, Issue 3, 2016.

³ Emédecins Sans Frontières-Holland, 10 Years For The Rohingya Refugees in Bangladesh: Past, Present and Future', March 2002.

⁴ See, Imtiaz Ahmed, *The Plight of the Stateless Rohingyas Responses of the State Society and the International Community*, University Press Limited, Dhaka, (2010).

⁵ Chris Lewa, *The Plight of Burma's Stateless, Rohingya Muslims*, <http://www.twf.org/News/Y2003/0630-Burma.html>

Bangladesh hosts now more than 900,000 Rohingya refugees from Myanmar and government of Bangladesh and the problem continued unabated due to continuing persecution over the Rohingya Muslims by Myanmar authority. The Rohingya refugee problem is a decade-long and protracted crisis which needs durable solution. The main options of durable solution suggested include voluntary repatriation to Myanmar- the country of origin, granting citizenship to the Rohingyas, freedom of movement, creating employment opportunities for them, creating a safe zone in Myanmar to protect them, and implementing the recommendations of the Kofi Annan Commission Report. Local integration of Rohingya refugees in Bangladesh is not feasible option and appears increasingly problematic since Bangladesh is already a highly populated country and overburdened with many social and economic problems. It is apprehended that local integration of the Rohingya refugees can impose huge economic burdens on the government of Bangladesh and cause social problems. Moreover, Bangladesh always treats Rohingyas as Myanmar citizens and it is under no legal obligation to grant refugee status to the Rohingya refugees except temporary protection.

In the wake of huge international criticism mounted against the Myanmar government, it formed an Advisory Commission headed by Kofi Annan, former Secretary General of the United Nations in September 2016. The Commission report was prepared by consultative process as wide range stakeholders participated in preparing the report.

Kofi Annan Commission Report

Some of the recommendations of the report focus specifically on citizenship verification, rights and equality before the law, documentation, the situation of the internally displaced and freedom of movement, which affect the Muslim population disproportionately. According to Kofi Annan Commission's report, "some ten per cent of the world's stateless people live in Myanmar, and the Muslims in Rakhine constitute the single biggest stateless community in the world. The community faces a number of restrictions which affect basic rights and many aspects of their daily lives. Approximately 120,000 people are still left in camps for Internally Displaced People (IDPs). The community has been denied political representation, and is generally excluded from Myanmar's body politic."⁶ The Commission has considered humanitarian issues, living conditions, access to health, education and livelihoods, the question of citizenship and freedom of movement, and the assurance of basic rights of the Muslim communities in Rakhine state.⁷ Although the Commission includes three international members, the Commission is essentially a national mechanism as it was established by the Government of Myanmar, and reported to the national authorities of Myanmar.⁸

Granting citizenship to the Rohingyas is considered the main solution of the problem. According to the Commission, citizenship rights and deficiencies in national legislation remain a broad concern and the unresolved status of many Muslims. To address this, the Commission calls for an acceleration of the citizenship verification process in line with the 1982 Citizenship Law. The Commission recommends that complaints regarding the

⁶ 'Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine', Final Report of the Advisory Commission on Rakhine State', August, 2017, p. 9 available at http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf

⁷ Ibid

⁸ Ibid

verification process be addressed swiftly by a government authority independent of the institutions responsible for the process. It also calls for the rights of those whose citizenship application is not accepted to be clarified.

But the Commission does not recommend granting citizenship automatically to the Rohingyas. However, the Commission notes the need to revisit the law itself and calls on the government to set in motion a process to review the law. Such a review should consider – amongst other issues – aligning the law with international standards, re-examining the current linkage between citizenship and ethnicity, and considering provisions to allow for the possibility of acquiring citizenship by naturalisation, particularly for those who are stateless. The Commission calls for the rights of non-citizens who live in Myanmar to be regulated, and for the clarification of residency rights. The Commission noted that changes in the citizenship law in Myanmar which deprived Rohingyas citizenship fall short of international standards including the Convention on the Rights of the Child (CRC) - ratified by Myanmar - requires states to respect, protect and fulfil the right of every child to acquire a nationality, otherwise they would be stateless.”⁹ According to the Commission, through this process of gradual marginalization, Muslims in Rakhine have ended up in a particularly vulnerable position, almost entirely deprived of political influence or representation and living under severe restrictions which affect basic rights and many aspects of their daily lives. While some of these restrictions are based on legislation, others derive from local orders and regulations, often issued by local security officials.¹⁰ Taking into above considerations, the Commission has recommended the Myanmar Government to review the law and aligning the law with international standards and treaties to which Myanmar is a State Party, and the abolition of distinctions between different types of citizens.¹¹ However, pending such a review, the Commission calls on the Government to ensure that existing legislation is interpreted and applied in a manner that is non-discriminatory. In general, the Commission has made recommendations for freedom of movement for all people in Rakhine State, irrespective of religion, ethnicity, or citizenship status and preparing a comprehensive strategy towards closing all IDP camps in Rakhine State.¹² The recommendations also included that the Government of Myanmar should ensure full and unimpeded humanitarian and media access to all communities in Rakhine State.¹³ It also includes equal access to education and health, irrespective of religion, ethnicity, race, gender, or citizenship status.¹⁴ The Commission asked the Government of Myanmar to take steps to promote communal representation and participation for underrepresented groups, including ethnic minority groups, stateless and displaced communities.¹⁵ The Commission has also recommended that the Governments of Myanmar and Bangladesh should facilitate the voluntary return of refugees from Bangladesh to Myanmar through joint verification.¹⁶

⁹ Ibid, p.29.

¹⁰ Ibid, p. 30.

¹¹ Ibid, p. 31.

¹² Ibid, p. 34.

¹³ Ibid, p. 38, 39.

¹⁴ Ibid, p. 42, 43.

¹⁵ Ibid, p. 48.

¹⁶ Ibid, p. 60.

Weaknesses of the Kofi Annan Commission Report

The recommendations of the Report, if implemented fully, would resolve many problems and lead to lasting peace in Rakhine state. However, it has many limitations. Firstly, the Commission is a national entity and the majority of its members are from Myanmar. It was mandated to examine the complex challenges facing Rakhine State and to propose responses to those challenges.¹⁷ Thus, the Commission is not mandated to investigate specific cases of human rights violations. Rather, its mandate was limited to address institutional and structural issues which undermine the prospects for peace, justice and development in Rakhine province of Myanmar.¹⁸ Secondly, it has no mechanism to implement the recommendations. Responsibility for the implementation of these recommendations lies with Myanmar's leaders and institutions which include Myanmar central government, Rakhine State governments; the national and state parliaments; religious and community leaders. The Government of Myanmar should establish a mechanism to facilitate and track the process and progress of the implementation. Thirdly, the Commission does not use the term "Rohingya", rather it uses "the Muslim community in Rakhine". Fourthly, there is no international mechanism of monitoring the progress of implementation of the recommendations. Finally, it does not recommend for granting citizenship to the Rohingya community in unequivocal manner. It calls for verification process for citizenship and review of the existing law.

Conclusion

The Kofi Annan Commission Report is now much talked issue in resolving the long-standing problem of the Rohingyas. Although the report is essentially 'national' in nature, it has assumed international significance as it has been repeatedly mentioned in the statements and resolutions of the UN. Voluntary repatriation of the Rohingya refugees to home country- Myanmar should be pursued vigorously as preferred durable solution of the problem, which is also mentioned in the Kofi Annan Report. Recommendations put forward by the Kofi Annan Commission report should be implemented by the Myanmar government fully. Myanmar government should review the existing law on citizenship and repeal the current citizenship law of 1982 that deprived the Rohingya communities of their citizenship. As the recommendations of the Kofi Annan Report are not legally binding, implementation of the recommendations of the report depends on political willingness of the Myanmar government. The UN and international community should exert considerable pressure on the Myanmar government to implement it fully and within shortest possible time frame. Apart from implementing the recommendations of the Kofi Annan report, 'safe zones' in Myanmar under UN supervision should be created to protect the Rohingya people in Myanmar from persecution and genocide by the security forces of Myanmar. Such a 'Safe zone' can only be created by the UN Security Council and it can be protected through deployment of international peace-keeping force. There is ample evidence that in case of intense civil conflict or humanitarian disaster caused by massive human rights violation, UN Peace-keeping forces have been employed in many countries.

¹⁷ Ibid

¹⁸ Ibid