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**Human Rights Council**

**Thirty-eighth session**

18 June - 06 July 2018

Agenda item 2

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

 Oral update of the High Commissioner for Human Rights on Situation of human rights of Rohingya people

1. This update on the situation of the Rohingya people is presented pursuant to Human Rights Council resolution S-27/1 which requested the High Commissioner to track progress concerning the human rights situation of the Rohingya and to provide oral updates, including at the thirty-eighth session of the Human Rights Council.
2. The Human Rights Council adopted resolution S-27/1 at a special session held on 5 December 2017 in the context of the outbreak of violence in Rakhine State in October 2016 and August 2017 that caused the displacement of hundreds of thousands of Rohingya civilians to Bangladesh, and following reports of grave human rights violations and abuses carried out in a systematic, targeted and deliberate manner by the Myanmar security forces, assisted by non-State actors in Rakhine State. This update is delivered in the context of immense humanitarian challenges in Cox’s Bazar, Bangladesh, resulting from these violations.
3. The High Commissioner recalls the statement on Myanmar delivered by the President of the Security Council on 6 November 2017. He also recalls the General Assembly resolutions on the situation of human rights in Myanmar, particularly Assembly resolution 72/248 adopted on 24 December 2017, as well as the resolutions of the Human Rights Council, the latest being resolution 37/32 of 23 March 2018. Since the special session of December 2017, the independent international fact-finding mission on Myanmar and the United Nations Special Rapporteur on the situation of human rights in Myanmar have provided updates to the Human Rights Council while not being allowed access to Myanmar.
4. In June 2018, following a request for information by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Government of Myanmar provided updates on the status of implementation of the Recommendations of the Kofi Annan-led Advisory Commission on Rakhine State (“Rakhine Commission”).
5. This oral update outlines the current humanitarian situation facing refugees in Cox’s Bazar; developments pertaining to repatriation of those refugees to Myanmar; the current situation in Rakhine State; the root causes of the current crisis, including the denial of citizenship to the Rohingya in Myanmar; and advocacy of racial and religious hatred against the Rohingya in their home country.

Humanitarian situation

1. As of 31 May 2018, 721,641 refugees from Myanmar had arrived in Cox’s Bazar, Bangladesh, since the beginning of so-called “clearance operations” conducted by Myanmar security forces in northern Rakhine from August 2017.[[1]](#footnote-2) They have joined 166,020 Rohingya who had sought protection in Bangladesh from previous episodes of violence, nearly half of whom were driven from their homes during the 1991-1992 Phi Thaya, or “Clean and Beautiful Nation”, military operation.[[2]](#footnote-3) These refugees live in camps and settlements throughout the district of Cox’s Bazar. The biggest of these camps houses over 700,000 people, making it the largest refugee camp in the world, and the fourth largest city in Bangladesh, a country of 166 million.
2. The situation of the refugees in the camps is precarious. It is estimated that 215,000 live in areas at risk of flooding and/or landslides.[[3]](#footnote-4) A single day of rain in June flooded vast areas of the camp. Further floods pose a grave risk to services and facilities, including by threatening to overflow latrines which would lead to a contamination of water-wells and may trigger a widespread outbreak of waterborne diseases. In the pre-monsoon period, within one week, landslides in the camps damaged 1,152 shelters, affecting 9,748 people.[[4]](#footnote-5) Five refugees have already died this year as a result of landslides, three of whom were children aged eight or under. The entire refugee population lacks access to structures that are safe during high winds or cyclones. An additional 1,500 acres of land is needed to relocate those living in areas most threatened by floods and landslides.
3. Camp conditions are dire and the humanitarian action is perilously under-funded. As of 21 June 2018, only 22 per cent of the $950 million needed for the Joint Humanitarian Response Plan has been secured. By sector, only 13 per cent of the funds required to meet the health needs of the refugee population had been secured; 15 per cent of that needed to ensure food security; and 25 per cent of the entire education budget.
4. Humanitarian needs are growing rapidly: As of mid-May, 16,000 babies were born in the camps since 25 August 2017 - an average of 60 a day - of whom only 3,000 were born in health facilities.[[5]](#footnote-6) With 1 June 2018 marking 40 weeks since 25 August, pregnancies coming to term are likely to include those resulting from rape that allegedly occurred during the clearance operations. With only a fraction of births occurring in health facilities, and given the stigma generally affecting victims of sexual violence, it is difficult to estimate the number of births resulting from rape. What is clear is that support for de-stigmatization programmes for victims of sexual violence and their children is critical, including for those who may be rejected by their families.
5. In opening its border to the Rohingya last year, Bangladesh set an example for all governments to follow. However, the monsoon season has already highlighted how precarious the situation is for refugees in the camps. The plan of the Government of Bangladesh to relocate 100,000 refugees to Bhasan Char, a flood-prone island recently reclaimed from the sea and not easily accessible, does not appear to be a credible solution. What is needed is more land in safe locations, and permanent structures that can withstand wind and rain. It is also imperative that the authorities in Bangladesh officially acknowledges the status of the Rohingya they are hosting as refugees, and ensure they have the rights they need to live with dignity, including the rights to education, to access livelihood, and to an adequate standard of living.

Repatriation

1. In January 2018, at the signing of the Physical Arrangement deal that is to facilitate the return of the Rohingya in line with the 23 November 2017 Arrangement on Return of Displaced Persons from Rakhine State (“Repatriation Agreement”), Bangladesh and Myanmar stated that repatriation would preferably be complete within six months. Seven months later, repatriation has yet to begin.
2. The Government of Myanmar has reported on the building of physical infrastructure to house returnees, including two reception centres as well as a transit centre at Hla Poe Kaung, with 600 long-house style buildings that can accommodate 30,000: a complex built in a village tract that was home to an estimated 2,500 Rohingya before 25 August 2017. While the authorities have arranged visits for media and diplomats to these facilities, scant information has been provided on the expected timeframe for processing returns, particularly the length of time the Rohingya will be required to stay in the reception and transit centres. The two reception centres that have been established in Taung Pyo Let Wae and Nga Khu Yar are reportedly able to process 300 returnees a day, five days a week. At this rate, it would take over 10 years to process the 815,000 people who have arrived in Cox’s Bazar since October 2016, if the reception centres were to work at full capacity, every working day, 52 weeks a year. In the six months since signing the Physical Arrangement, the Government of Bangladesh has given the names of 8,032 Rohingya to the Government of Myanmar for verification and return. To date, Myanmar has verified only 1,387 names. The refugees included on these lists were neither consulted on the process, nor did they apply for voluntary return to Myanmar.
3. Notwithstanding the agreements it has signed and the committees it has established, the actions of the Government of Myanmar cast doubt on its willingness to repatriate the Rohingya. This is evidenced by continued ill-treatment, violence and discriminatory practices against Rohingya who remain in northern Rakhine, as reported by the hundreds still arriving in Bangladesh each month; the ongoing deprivation of the most basic rights of the Rohingya held in camps for internally displaced persons in central Rakhine for the past six years; and the situation of the Rohingya trapped on the border between Myanmar and Bangladesh.
4. In May 2018, Myanmar authorities resumed loudspeaker announcements demanding that the approximately 4,000 Rohingya who have been staying at the international border between Myanmar and Bangladesh since August 2017, leave the area. Although the area is located outside Myanmar’s border fence and is routinely referred to in media as a “no-man’s land”, the area is generally understood to be part of Myanmar territory. It is adjacent to the area of Myanmar that is home to the group in question. The loudspeaker announcements state that it is illegal for the group to occupy this area and doing so is punishable under Myanmar criminal law.
5. In April 2018, the return of one Rohingya family of five to Rakhine State was highly publicized, with photographs of the family receiving National Verification Cards from local officials circulated by Government media. While their return received international press attention, it was later reported that they had never left Myanmar, traveling only as far as the “no-man’s land” on the border. In May 2018, the Government of Myanmar stated that it had arrested 62 refugees who had returned to Rakhine over the course of the preceding four months of their own accord and outside the framework agreed with Bangladesh. Fifty-eight received prison sentences in apparent violation of the provision of the Repatriation Agreement that returning refugees will not face legal action. Criminal charges were dropped against the remaining four. It is unclear what specific charge the 58 were convicted under but the Office of the State Counsellor announced they had been pardoned by President U Win Myint.[[6]](#footnote-7) They are reported to have been detained initially in Buthidaung prison and were subsequently moved to Nga Khu Yar reception centre.
6. Around 90 Rohingya that were on board a boat that had reportedly left Bangladesh for Malaysia in June 2018, but landed in Rakhine State after engine problems forced it ashore, were also sent to Nga Khu Yar reception centre. Photographs were posted online showing the passengers sitting on the ground, surrounded by armed security forces and people in plain-clothes holding swords. They were later moved to Hla Poe Kaung Transit Camp and reportedly handed over on the same day to the authorities of various village tracts which, in half of the cases, are not their village tracts of origin.
7. The situation of 127,953 Muslims - mostly Rohingya - who have lived as IDPs in central Rakhine since the violence that erupted there in 2012, provide an ominous indication of what can be expected for any Rohingya returning from Cox’s Bazar to Myanmar under current conditions. While Rakhine Buddhists displaced by that episode of violence have all been permitted to return to their places of origin or have been relocated to resettlement sites, and although some camps housing Muslims have also been closed over the years since 2012, the remaining Muslim IDPs have been confined to camps for six years. The Assistant Secretary-General for Humanitarian Affairs recently described the conditions of these camps as being “beyond the dignity of any people”, without any freedom of movement, access to sufficient food, adequate health care, education and livelihoods.[[7]](#footnote-8)
8. In 2017, two camps, housing Kaman Muslims and Rakhine Buddhists respectively, were reported to have been closed in response to recommendations of the Rakhine Commission’s interim report. During her last visit to Myanmar in July 2017, the Special Rapporteur met with IDPs who had been living in these camps but was denied access to IDPs in a third camp which houses Rohingya - Kyein Ni Pyin, in Pauktaw township. The Government of Myanmar states that that camp is closed but according to reports, it remains active, and continues to receive humanitarian assistance. As many as twelve other camps have been mentioned by the Government of Myanmar for possible closure at different times since issuance of the recommendations of the Rakhine Commission, but the timeline for this is unclear.
9. While the Rakhine Commission recommended the closure of IDP camps, it insisted it should be in line with international standards and that the “aim should be to facilitate returns to places of origin as a matter of priority, or otherwise respect the choices of the displaced”. With the details still being finalized for most locations, the Government of Myanmar has suggested that IDPs will be moved from long-house style buildings to individual houses or multi-storey apartment blocks on or near their current location. They have not been given any immediate guarantees of freedom of movement and access to livelihoods. This would not be consistent with the recommendation of the Rakhine Commission that IDPs should not be confined to substandard areas without equal access to basic services and livelihoods.
10. Humanitarian actors have expressed concerns that by taking these steps, the Government of Myanmar is simply reclassifying the camps rather than closing them down. Their concerns are that in practice, the confinement of the Rohingya will continue as will their dependence on humanitarian assistance. The IDPs have expressed fears about future access to assistance after the camps have been declared “closed” and most have expressed their preference to return to their places of origin, something that has been mostly ruled out by the Government of Myanmar. Rohingya interviewed by OHCHR in Cox’s Bazar have stated that they are unwilling to return until the IDPs remaining in central Rakhine are granted citizenship and equal rights, and permitted to return to their places of origin.
11. The IDPs are also worried that the Government is considering the reclassification of camps as a durable solution, and in the process is taking away their rights to eventually reclaim their previous land and property. In this regard, the Rakhine Commission had specifically stated that “the choice to relocate must not be regarded as a renunciation of the right to return in safety and with dignity to the original place of residence, should that choice become feasible later.”

Situation in Rakhine State

1. In their 31 May 2018 announcement of a tripartite Memorandum of Understanding being concluded with Myanmar, the United Nations Development Programme (UNDP) and the United Nations High Commissioner for Refugees (UNHCR) stated that conditions in Rakhine were not yet conducive for returns. This observation is confirmed by the continuous movement of Rohingya fleeing to Bangladesh by land and, in smaller numbers, to Malaysia and Indonesia by sea.
2. According to UNHCR, between 550,000 and 600,000 Rohingya remain in Rakhine State. Between January and mid-June 2018, there were 11,432 new arrivals of Rohingya to Bangladesh, 620 in May alone. In April, 140 Rohingya in three boats landed in Malaysia and Indonesia, which were the first confirmed maritime arrivals to countries other than Bangladesh since the Andaman Sea crisis of 2015. The passengers included IDPs from the camps in central Rakhine. Ten passengers on one boat reportedly died at sea. Although the Government of Myanmar states it is ready to accept returnees, it would appear that Rohingya are still prepared to risk dying at sea to escape the current conditions in Rakhine State.
3. In June 2018, OHCHR staff interviewed Rohingya refugees who had crossed into Bangladesh in the days and weeks before. The interviews indicate that killings and enforced disappearances of Rohingya, and the burning of their homes are ongoing. One woman who arrived in Cox’s Bazar in late May said she had left after two incidents in which Rohingya homes in her village in Rathedaung township were burned to the ground by military. On both occasions, soldiers allegedly fired indiscriminately into the street to prevent villagers from approaching the fires, killing three people. A man from Buthidaung township, who also arrived in Bangladesh in late May, said that he had left shortly after 10 to 20 homes were burned to the ground in a neighbouring village. A woman from Buthidaung township reported that her local Imam was hacked to death with a machete around two months before she arrived in Cox’s Bazar. Another man from Buthidaung said he had fled in early June after he and his father were attacked by military and Rakhine Buddhists as they were cutting down trees in their garden. They were beaten and told that they were not allowed to cut down trees as the land did not belong to them. The man’s father was then taken away. After waiting for two days in the hope of discovering his father’s whereabouts, he fled to Bangladesh. He has had no news of his father’s fate.
4. Almost all the people interviewed by OHCHR who arrived in Bangladesh in recent weeks provided similar accounts. They described how they fled continued violence, persecution and other human rights violations, and ran out of money due to routine extortion by military and police in Rakhine State. They said they could not continue living there in a state of fear and anxiety due to the constant danger and uncertainty, the loss of livelihood and property, and the inhumane restrictions on their most basic rights. They described having to stay in their homes 24 hours a day; never venturing out, unless absolutely necessary, for fear of being extorted by military or physically attacked. Curfews limit their ability to move within even short distances. Some had stayed in Myanmar to nurse ailing parents who have since died because they were unable to get adequate treatment and medicine.
5. The 4,071 Rohingya living in Aung Mingalar, in Sittwe, live in perilous conditions. That community was not displaced by the 2012 violence but has since been held in ghetto-like conditions, with no freedom of movement outside the community, which is surrounded by armed guards. Every day, a single truck takes 20 people outside the community to a Muslim market adjacent to the Sittwe IDP camps to get food and attend to other necessities. The estimated 200,000 Muslims, mostly Rohingya, who live in villages elsewhere in central Rakhine, primarily in Kyauktaw, Minbya and Mrauk-U, are also subject to severe movement constraints and other forms of discrimination.
6. None of those interviewed by OHCHR in Cox’s Bazar came with identification papers, explaining that whatever documentation they possessed was either destroyed or lost as they fled. One woman told OHCHR that since her home was burnt down during the post-25 August 2017 violence with her identification documents, she had been living with her sick and blind mother. She had recently fled after a local official told her she had to leave town due to her lack of documentation. Many of the Rohingya who arrived in Bangladesh recently are coming from parts of Rakhine State that are further away: one woman from a remote area of Buthidaung township, interviewed by OHCHR in June, said that it took her 15 days to walk to Bangladesh with her ailing mother. Those who fled in recent weeks avoided travelling on the main roads as these are reportedly dotted with military checkpoints. They were forced to travel through mountain passages and only by night.
7. As access to Rakhine State is severely restricted, it is difficult to ascertain what is happening there. However, reports emerging from within northern Rakhine and satellite imagery indicate that a huge scale construction project is underway in areas that were previously home to the Rohingya: entire villages that were burned during the post-25 August 2017 violence have been razed to the ground and evidence appears to show that Rohingya-owned properties and religious buildings that survived the violence unscathed have since been destroyed. Reports suggest that some of the buildings under construction are new bases for military and other security forces. Villages of Rakhine Buddhists and other non-Rohingya communities are also reported to have been built where Rohingya villages once stood, and there are regular reports of initiatives by Rakhine civil society to relocate non-Muslim communities from other parts of Rakhine to previously Rohingya-majority areas. This includes Inn Din, a village tract in Maungdaw township where the Myanmar military has admitted responsibility for the killing of ten Rohingya, and where two Rohingya villages that were previously home to more than 4,000 people have reportedly been emptied entirely. This concerted effort to change the landscape and demographics of Rakhine State contributes further to the question of how the Rohingya will be able to return to their places of origin when those places have been utterly changed and, in some cases, inhabited by others.

Citizenship and the National Verification Card

1. Zarina Khatum is a 52-year-old refugee who is currently in Kutupalong-Balukhali camp, in Cox’s Bazar. In June 2018, she spoke to OHCHR, recounting how, as a 12-year-old in 1978, she fled Rakhine State to Bangladesh when the Myanmar military launched Operation Nagamin or Dragon King. The stated objective of that operation was to tackle illegal immigration but it violently targeted Rohingya, over 200,000 of whom crossed the border to Bangladesh in search of safety. After one year, and following the signing of a repatriation deal between Bangladesh and Myanmar, she returned home. In 1992, after the launch of Operation Pyi Thaya, Zarina fled again, together with about 250,000 Rohingya targeted once again as ‘foreign immigrants’ to Myanmar. On that occasion, Zarina fled with her young son and remained in Bangladesh for three years before returning to Myanmar after the signing of another repatriation deal. Last year, when violence broke out in Rakhine State, Zarina was forced to flee again. For the third time, she is living in a camp in Bangladesh, now with her grandchildren. Zarina is just one of many of the Rohingya refugees who have experienced repeated displacement caused by cyclical violence against the Rohingya in Myanmar.
2. In May 2018, Government media in Myanmar outlined a closed-door Security Council briefing by the Permanent Representative of Myanmar to the United Nations in New York, U Hau Do Suan.[[8]](#footnote-9) He stated that the current refugee crisis was a consequence of the terrorist attacks by Arakan Rohingya Salvation Army (ARSA) on 30 Border Guard posts in northern Rakhine on 25 August 2017. While it is critical that ARSA’s role and actions in last year’s violence be investigated, the claim that their alleged attacks on 25 August 2017 are the root cause of the current crisis is misleading. Little is clear about ARSA but they appear to have been established in 2013, long after the seeds of the current crisis were sown.
3. As the experiences of Zarina Khatum attest, to understand the root causes of the situation in Rakhine, it is necessary to look back to at least 1978, when the cycle of violence against the Rohingya and a concomitant campaign to erode their legal personality began. It is recalled that the final report of the Rakhine Commission acknowledged that successive governments over the decades since independence have adopted measures that progressively eroded the political and civil rights of the Rohingya. It also noted that prior to the military coup in 1962, the community did enjoy some degree of recognition and was for a short while even allotted a designated administrative area in northern Rakhine.
4. The military regime of Ne Win passed the Citizenship Law in 1982. The law provides for access to “full” citizenship on the basis of ethnicity; with eight “national ethnic groups” – broken down into 135 sub-groups – automatically acquiring citizenship. Despite having lived in Myanmar for generations and enjoying citizenship under the previous legal regime, the Rohingya are not included among the 135 national ethnic groups and cannot apply as Rohingya for citizenship under the 1982 Law. While a strict application of the 1982 Law allows the Rohingya to acquire a form of citizenship, they are required to self-identify as “Bengali” in order to apply. Those willing to submit themselves to the procedures in place are generally frustrated by practical impediments such as slow decision-making, high levels of corruption, and inaccessible immigration officers.
5. In the years since 1982, citizenship has become an increasingly distant prospect for the Rohingya as authorities have engaged in what has been described as a protracted campaign to ensure their “administrative destruction”. Beginning in the 1990’s, a two-child policy was enforced against Rohingya through orders at the local level in townships of northern Rakhine; in 2014, they were excluded from the national census unless they conceded to being registered as “Bengali”; and in 2015, a package of laws known as the “four laws to protect race and religion” introduced a range of highly discriminatory provisions affecting women, children and religious minorities, with disproportionate effect on the Rohingya population. At the same time, restrictions on the day-to-day exercise of rights by Rohingya were imposed with increasing severity with the passing of time, including the rights to freedom of movement, religion, health, education, and access to livelihood.
6. At various points over the years, the authorities in Myanmar have announced different identification regimes for the Rohingya. In 1989, as part of a citizenship verification programme under the 1982 law, the Rohingya handed over the National Registration Cards they had held since 1951 in exchange for Citizenship Scrutiny Cards that were never issued to them; in 1995, they received Temporary Registration Certificates (TRC) which afforded certain rights but expressly did not confer citizenship. Included in the rights conferred to the holders of TRCs, was the right to vote. In 2015, with a national election approaching, the TRCs were revoked, disenfranchising the 797,504 people who held them, the vast majority of whom were Rohingya. The election that year, which brought Aung San Suu Kyi and the National League for Democracy (NLD) to power, was the first since 1948 in which the Rohingya could neither vote nor run.
7. The latest form of documentation required of the Rohingya is the Identity Card for National Verification (ICNV) or the National Verification Card (NVC). It was introduced in 2015 following the invalidation of the TRCs as part of a pilot citizenship verification process scheme under President Thein Sein. It has been expanded under the NLD Government albeit in a revised manner so that applicants are no longer, in principle, required to state their religion or ethnicity in the application. The National Verification Card are at the core of the current discussion surrounding the status of the Rohingya in Myanmar.
8. The National Verification Card does not grant citizenship but states that holders “need to apply for citizenship in accordance with Myanmar Citizenship Law”, namely the 1982 Citizenship Law. According to the Government, the “NVC process is [the] first step towards citizenship”, however that has not been the case for the Rohingya. To the Rohingya, the National Verification Card mark them out as non-citizens, in keeping with the Government’s characterization of them as foreign or Bengali interlopers on Myanmar territory. Their scepticism of the process is borne out by repeated similar experiences in the past – 20 years ago, the Rohingya were told in the very same language that the TRCs were the first step towards a citizenship status that was never granted to them.
9. The Rakhine Commission recommended that the National Verification Card process be voluntary. This is demonstrably not the reality for Rohingya in Rakhine. OHCHR has interviewed refugees in Cox’s Bazar who said that their decision to flee Myanmar was partly due to the pressure they were under to accept the NVC. Such pressure appears to be growing, with widespread reports of physical force being used across Rohingya communities remaining in northern Rakhine to accept the NVC. One man interviewed by OHCHR in February 2018 stated that he was tied up and beaten by authorities who demanded that he accept the NVC; he refused and fled to Bangladesh. Another man, a Rohingya local official, informed OHCHR that his son was kidnapped by security forces and held hostage until he could convince Rohingya in his village to accept the NVC.
10. While the Government of Myanmar insists that the National Verification Cards confer certain rights on holders, it is through restrictions on these same rights that they pressurize the Rohingya to accept it. A man who arrived in Cox’s Bazar in late May 2018 stated he had stayed in Myanmar to avoid losing his grocery shop but fled when he learned he would have to accept the NVC in order to continue crossing a particular checkpoint between his home and his business.
11. Recently, OHCHR has received reports that in Rakhine state, security forces started going from village to village, house-to-house, demanding that Rohingya present their National Verification Card for inspection. Recently arrived refugees also describe villagers being forced to accept NVC at gunpoint. One refugee told OHCHR in June 2018 that Rohingya can only stay if they accept the NVC.
12. In April 2018, the Minister of Social Welfare of Myanmar, Dr. Win Myat Aye - who is the Vice-Chair of the Union Enterprise for Humanitarian Assistance, Resettlement, and Development in Rakhine (UEHRD) and the Chair of the Implementation Committee on the Rakhine Commission recommendations - visited Bangladesh. This visit highlighted the absence of a consensus within the Government of Myanmar on the rights that the National Verification Card provides its holders. Indeed, the Minister told Rohingya that the card would allow them to secure citizenship within five months; at a subsequent press conference in Myanmar, he stated that holders would enjoy freedom of movement, access to healthcare and education, and freedom to cross international borders. He was promptly contradicted by the Minister for Labour, Immigration and Population, U Thein Swe, who stated that the NVC would only permit holders to travel within their home townships. The military-aligned Union Solidarity and Development Party has since pointed out that the administrative procedure that Dr. Win Myat Aye said that National Verification Card holders would go through to access freedom of movement is the procedure designated to control movement of foreigners within Myanmar territory. In May 2018, Dr. Win Myat Aye was reported in Government-aligned media as refuting reports that he had stated NVC holders would have freedom of movement.[[9]](#footnote-10)
13. According to the June 2018 progress report by the Committee for Implementation of Recommendations on Rakhine State, a road map “is currently being implemented to ensure that all people in Rakhine State - regardless of religion, race and citizenship status - enjoy freedom of movement” and that “people holding [National Verification] Cards can now enjoy freedom of movement”.[[10]](#footnote-11) It is clear from the above that this is not the case.
14. International law permits significant scope to sovereign States in defining rules governing citizenship but provides that the right of States to decide who their nationals are is not absolute and that the State must comply with its international obligations in this regard. In particular, customary international law includes a norm that prohibits racial discrimination, including in the acquisition and loss or deprivation of nationality. By providing for the acquisition of nationality primarily on the basis of ethnicity, the 1982 Citizenship Law relies on a distinction, exclusion, restriction or preference that is grounded in race, and is in violation of the principle of non-discrimination. Moreover, the 1982 Law violates Article 15(2) of the Universal Declaration of Human Rights which provides that “no one shall be arbitrarily deprived of his nationality”. It also contravenes Myanmar’s international obligations to prevent statelessness, including as a State Party to the Convention on the Rights of the Child, which obliges the registration of children at birth and their acquisition of nationality. Any deprivation of nationality leading to statelessness is generally considered arbitrary as is the deprivation of nationality based on discriminatory grounds, as in the case of the Rohingya who are the world’s single largest stateless group.[[11]](#footnote-12)
15. Despite the violations the Rohingya refugees have been subjected to, often repeatedly, most indicate that they wish to return to Myanmar, but only if the Government meets their demands for citizenship, equal rights and safety. Under the Bangladesh-Myanmar repatriation framework, all Rohingya returnees will automatically be issued an NVC. This appears to contradict the Rakhine Commission recommendation that the process should be voluntary considering the general rejection of the NVC process by the Rohingya. The Government of Myanmar has stated that the Rakhine Commission recommendation to change the 1982 Citizenship Law in line with international standards cannot be implemented in the current political climate.
16. If the Government of Myanmar maintains its position on the 1982 Citizenship Law and the National Verification Card process, or promises other form of status to the Rohingya that is less than citizenship, the vicious cycle that has brought three generations of many thousands of Rohingya families to Bangladesh is likely to continue. To uphold its legal obligations and resolve the situation of the Rohingya, the Government of Myanmar must agree to put in place a credible, non-discriminatory citizenship process that ensures the Rohingya can access their right to nationality and enjoy the same rights as other citizens of the country.

Hate Speech

1. In March 2018, developments resulting from the closure, in 2017, of the IDP camp in Ramree township - previously home to 55 Kaman Muslim families - highlighted the depth of anti-Muslim sentiment in Myanmar. A motion protesting the relocation of the families to Yangon was defeated in the Lower House of Parliament but received the backing of more than 100 members of Parliament. It was initiated by a parliamentarian for the Union Solidarity and Development Party who described Kaman Muslims as “cancer cells” which had spread through Rakhine State but which could not be permitted to “spread across the country”. Kaman Muslims are a recognized ethnic group of Myanmar and while domestic law, in principle, guarantees their full citizenship rights, they often face difficulties in securing citizenship or exercising their rights to freedom of movement and to live anywhere in the country.
2. Advocacy of racial and religious hatred has fuelled the decades-long campaign of violence and persecution of the Rohingya. A comment in March 2018 by Maung Thway Chun, the chief editor of the publication of the ultra-nationalist religious organization Ma Ba Tha, that 70 years after Myanmar gained its independence it will soon “be subjugated again” and “lose its race, religion and territory”, is typical of the type of message that have mobilized public support to anti-Rohingya violence.
3. In Myanmar, Facebook has become the main medium for incitement to hatred or violence against the Rohingya. OHCHR has received reports of coordinated hate speech campaigns targeting Muslims and Rohingya on Facebook, spreading hate to an extensive audience.
4. It is imperative that Facebook urgently enhances its capacity to combat the spread of hate speech on its platform, including by improving and promoting mechanisms by which users can report hate speech and potential “trigger” posts - messages that may lead to hostility, discrimination or violence - and enhancing its capacity to promptly and comprehensively remove such messages and suspend or terminate the accounts of those who disseminate them. Facebook should conduct a thorough investigation of these networks and invest in the necessary technology to guarantee their permanent removal from the platform.
5. Moreover, the Government should take further action to publicly condemn and speak out against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. It should also increase efforts further to promote tolerance and peaceful coexistence in all sectors of society in accordance with Human Rights Council resolution 16/18 and the Rabat Plan of Action.[[12]](#footnote-13) In addition, the Beirut Declaration and its 18 commitments on ‘Faith for Rights’ can be useful to address advocacy of hatred that incites to violence, discrimination or hostility, particularly when it is conducted in the name of religion or belief.

Accountability

1. In May 2018, the Government of Myanmar announced the establishment of an “Independent Commission of Enquiry” mandated to “investigate the violation of human rights and related issues following the terrorist attacks by ARSA”. While efforts to investigate are welcome, including its proclaimed objectives of addressing reconciliation, peace, stability and development in Rakhine, it is of concern that it does not aim at addressing accountability.
2. This latest initiative is consistent with a pattern where violence is followed by investigations designed to give the appearance of action. These inquiries do not meet any of the requirements for a credible process, including independence and impartiality, and have not resulted in accountability or availability of effective remedies for victims, as required by international human rights law.
3. For example, the Commission of Inquiry on Sectarian Violence in Rakhine State, established following the violence in Central Rakhine in 2012 - that left over 200 Rohingya and Rakhine Buddhists dead - did not identify perpetrators nor call for accountability. Its report referred to Rohingya as “Bengali” and concluded that those insisting on using the term Rohingya were “fanning the flames of sectarian violence”. An investigation led by Vice-President Swe Myint into the post-9 October 2016 violence summarily dismissed allegations of ethnic cleansing and crimes against humanity, concluding that it was too difficult to establish who was responsible for setting fire to 1,152 buildings. It also concluded that some allegations of murder, rape and arson were fabricated.
4. In November 2017, an internal investigation by the military into the post-25 August 2017 violence found that the military had not engaged in any violations, and blamed ARSA for setting fire to villages, forcing people to flee to Bangladesh. Weeks later, following the publication by Reuters of incontrovertible evidence of a massacre by military officers in Inn Din village, the military publicly accepted responsibility following an investigation by the same general who had led the previous investigation.[[13]](#footnote-14) Seven unnamed soldiers were quietly sentenced to ten years in prison by a military court for participating in the massacre. The two journalists who reported the events, Kyaw Soe Oo and Wa Lone, have been subjected to a protracted show trial and face up to 14 years in prison on allegations they violated the Official Secrets Act. On 1 February 2018, an article by Associated Press outlining the discovery of five mass graves in Gu Dar Pyin was met with threats of legal action by the Rakhine State Government.[[14]](#footnote-15)
5. The Government of Myanmar must grant immediate access to Rakhine State to international independent investigators. In September 2018, the independent international fact-finding mission on Myanmar will deliver its final report to the Human Rights Council. Since its formation in May 2017, it has been denied access to Myanmar. However, it has been able to interview Rohingya and other victims of human rights violations and abuses in the countries they have fled to for safety. Since December 2017, the elected Government has resumed the practice of previous military governments of barring access to the United Nations Special Rapporteur on the situation of human rights in Myanmar. OHCHR has not had access to Myanmar for over one year but recently entered into discussions with the Government with a view to extending technical cooperation to it and other partners to promote and protect human rights. This could constitute a first step towards greater and more consequential engagement. The tripartite MoU Myanmar recently concluded with UNHCR and UNDP reportedly raises the prospect of humanitarian access to northern Rakhine.
6. The announcement by the International Criminal Court that it is examining the question of jurisdiction in relation to the commission of the crime of deportation as a crime against humanity on the grounds that an essential legal element of that crime occurred on the territory of Bangladesh, which is a state party to the Rome Statute, is welcome. The United Nations Security Council should immediately refer the situation in Myanmar to the International Criminal Court in order to ensure that the investigation is not limited to the crime of deportation but includes the full range of crimes alleged to have been perpetrated against the Rohingya and other ethnic groups in Myanmar, including the Shan and Kachin. This includes allegations of war crimes, crimes against humanity and genocide.
7. The High Commissioner strongly urges the Human Rights Council to make a recommendation to the General Assembly to establish a new independent international accountability mechanism in line with recommendations of the Special Rapporteur on the situation of human rights in Myanmar presented to the Human Rights Council on 27 June 2018. The mechanism should continue the critical monitoring and reporting work of the Fact-Finding Mission, and should investigate, monitor and report human rights violations and abuses and violations of international humanitarian law. It should build case files for the purpose of assisting individual criminal responsibility processes. Finally, this mechanism should develop a framework for the reintegration of the Rohingya and other victims, and provision of immediate and long-term support to victims, including to enable them to realize their fundamental human rights and their right to an effective remedy.

Conclusion

1. **History shows that genocide does not begin with physical violence but with the stigmatization and dehumanization of the intended targets. As outlined in this document, this process appears to have been underway in Myanmar for decades. At its heart has been the contentious discussion on the identity of the Rohingya, with successive governments - military and democratic - and large portions of the Myanmar population refusing to accept this term, choosing instead the term “Bengali” which the Rohingya reject as discriminatory. In recent years, there has been an alarming trend within the international community of refraining from using the term Rohingya in official documents and statements, including at the Human Rights Council. Whatever motivation lays behind the refusal to use the term, those who refuse to acknowledge the right of the Rohingya to self-identify are ultimately acceding to a narrative that characterizes Rohingya as foreign interlopers on Myanmar territory. The recent refusal by Radio Free Asia to comply with the demand of the Government of Myanmar to refrain from using the term Rohingya resulted in a ban on the airing of its programmes in the country is a commendable example of a principled stance for the international community to follow.**
2. **A further failing of the international community has been its unwillingness to consult and include the Rohingya community in decisions on their future. For years, Myanmar has excluded Rohingya from society, including by preventing them from being able to run for parliament in 2015. Rohingya voices have not been included in the various commissions and investigations Myanmar has established in the wake of different episodes of violence perpetrated against them. In June 2018, Rohingya in Kutupalong-Balukhali camp held a demonstration calling for their voices to be heard and demanding that they be consulted in all discussions related to repatriation and to their future more generally.**
3. **The international community must ensure accountability for the serious violations perpetrated against the Rohingya and ensure that conditions are created for Rohingya refugees in Bangladesh to return to their homes. It must also ensure that all future discussions on these issues include Rohingya and give due consideration to their demands.**

1. UNHCR, Bangladesh Refugee Emergency, Population Factsheet as of 14 June 2018. [↑](#footnote-ref-2)
2. UNHCR, Bangladesh Refugee Emergency, Population Factsheet as of 14 June 2018. [↑](#footnote-ref-3)
3. Inter Sector Coordination Group (ISCG), Monsoon Emergency Preparedness and Response, Cox’s Bazar Rohingya Refugee Crisis, 14-21 June 2018. [↑](#footnote-ref-4)
4. ISCG, Emergency Preparedness and Response, Cox’s Bazar Rohingya Refugee Crisis, 30 May 2018. [↑](#footnote-ref-5)
5. UNICEF, ‘More than 60 Rohingya babies born in Bangladesh refugee camps every day’, 17 May 2018. [↑](#footnote-ref-6)
6. Minister of the Office of the State Counsellor, ‘The first returnees from the Camps in Cox’s Bazar arrived in Reception Centres’, 27 May 2018. [↑](#footnote-ref-7)
7. Video interview posted by Ursula Mueller, Assistant Secretary-General for Humanitarian Affairs, 4 April 2018. [↑](#footnote-ref-8)
8. *The Global New Light of Myanmar, ‘*Myanmar Permanent Representative to the United Nations delivers a Statement at Security Council on Government’s efforts in Rakhine State’, 15 February 2018, pp. 1 and 3. [↑](#footnote-ref-9)
9. *The Global New Light of Myanmar, ‘*Pyidaungsu Hlutaw puts implementation of record on Rakhine State on the record’, 15 May 2018, p. 2. [↑](#footnote-ref-10)
10. The Committee for Implementation of Recommendations on Rakhine State, ‘Report to the People on the Progress of the Implementation of Recommendations on Rakhine State, January to April 2018’, 1 June 2018, p. 7. [↑](#footnote-ref-11)
11. UNHCR, ‘This Is Our Home, Stateless Minorities and their Search for Citizenship’, November 2017. [↑](#footnote-ref-12)
12. A/HRC/22/17/Add.4, appendix. [↑](#footnote-ref-13)
13. The brief findings of the investigation by the military were published on the Facebook page of Commander-in-Chief of the Myanmar military, Senior General Ming Aung Hlaing. See for example, *BBC,* ‘Rohingya crisis: Myanmar army admits killings’, 10 January 2018. [↑](#footnote-ref-14)
14. See *The Irrawaddy,* ‘Rakhine Govt to Sue AP over Report of Mass Graves in Buthidaung’, 5 February 2018 [↑](#footnote-ref-15)