



BRIEFING PAPER

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Myanmar: January 2020 update

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Contents:

1. The Rohingya crisis
2. Other developments



Contents

Summary	3
1. The Rohingya crisis	4
1.1 Controversy over repatriation	4
2018: a failed attempt to begin repatriation	4
2019: impasse	5
1.2 Humanitarian situation for Rohingya refugees in Bangladesh	6
Recent updates	6
Bhasan Char	6
International Crisis Group assessment	6
The Myanmar authorities struggle to address linked challenges	7
1.3 International responses to the crisis	8
Resumption of sanctions	8
UN action on accountability	8
The UK stance	10
2. Other developments	12
2.1 21 st Century Panglong Union Peace Conference	12
2.2 Freedom of expression	12
2.3 Economy	13

Summary

Over the last two years the Myanmar authorities have sought to limit the damage caused to their reputation by the crisis in Rakhine State, which in 2017 triggered the forced displacement into Bangladesh of hundreds of thousands of Muslim Rohingya. While at home they may have had some success, the UN and Western governments have not been appeased – although critics argue that they have not responded robustly enough.

A range of initiatives have begun as part of the search of accountability for international crimes committed in the context of the Rohingya crisis, most notably through the International Court of Justice and the International Criminal Court.

Aung San Suu Kyi's and the National League for Democracy's (NLD) government's efforts to manage the Rohingya crisis have distracted them from the pursuit of other important initiatives – for example, the ongoing nationwide peace process (known as Panglong) with minority ethnic armed groups.

The next national elections are due in 2020.

For further background, see our January 2018 [briefing](#) on Myanmar.

Note: in our previous briefings, the term 'Burma' – which until 1989 was the official name of the country – has been predominantly used. However, from this briefing onwards we will predominantly use 'Myanmar', which has been the official name of the country since that year.

UK governments have continued to use 'Burma' in most of their public announcements about the country. However, they have increasingly used the name 'Myanmar' in UN fora.

1. The Rohingya crisis

1.1 Controversy over repatriation

Over a year on from when it was supposed to begin, the process of repatriating over 900,000 Muslim Rohingya refugees living across the border in Bangladesh back to Myanmar remains stalled.

The UN and Western countries, along with the refugees themselves, remain adamant that the conditions for repatriation still do not exist. This has so far been enough to prevent it happening.

Spokespeople for the refugees have consistently said that the conditions which must be satisfied before they can return are that their citizenship rights should be addressed, an international security presence established in Rakhine State, and that there should be proper restitution for the suffering and loss they have experienced. None of these conditions have so far been met.

2018: a failed attempt to begin repatriation

General agreement between Myanmar and Bangladesh to begin repatriation was first reached in late-2017. The initial goal was to see the process completed by the end of 2019.

During 2018 there was continuous discussion between Myanmar and Bangladesh through a joint working committee established to oversee the process about beginning repatriation. An apparent breakthrough came in June of that year, when the Myanmar government signed an agreement on cooperation with UN agencies on repatriation. Progress was subsequently made on the formal registration of all the refugees in camps, which is a crucial precondition for a credible process of repatriation.

In October 2018, with the registration of refugees reportedly fully completed, Myanmar and Bangladesh set a date of 15 November for the repatriation process to begin. There were [claims](#) that 2,200 refugees had already been identified for repatriation without their knowledge or consent, with up to 5,000 in total identified for a first phase of returns.

Senior UN figures made multiple appeals to both countries not to go ahead. As the deadline approached, the new UN High Commissioner for Human Rights, Michelle Bachelet, [said](#) that many Rohingya refugees were in a state of terror and panic at the prospect of being forced to return. Some refugees were said to have gone into hiding or were fleeing the camps. 33 refugees were rescued by the Bangladesh coast guard after trying to leave Cox's Bazar and get to Malaysia by boat.

However, on 15 November, the Bangladesh authorities announced that beginning repatriation had been postponed until next year. The UN and Western governments welcomed this decision with some relief.

Only a tiny number of refugees had returned to Rakhine State by the end of 2018, all of them by informal routes. They were resettled in camps (officially called 'reception centres') over which the authorities

had extensive control. There were said to be over 100,000 Rohingya interned in 20 camps around Rakhine State at this time.

Rohingya continued to cross into Bangladesh during 2018, albeit in smaller numbers, suggesting that the violence and persecution had not entirely stopped. There were reports that the Myanmar authorities had been bulldozing Rohingya villages and supporting settlement activities by Buddhist Rakhine – all of which seemed to make voluntary return more difficult. A UN report [described](#) the Rohingya in Myanmar as living under “apartheid-like restrictions”.

Humanitarian access to Rakhine State improved a little during 2018 from a very low starting-point, but criticisms about limits on the freedom of operation of international agencies continued.

2019: impasse

Following the failure of Myanmar and Bangladesh’s effort to begin repatriation of the Rohingya in November 2018, there were renewed efforts to do so during 2019, but they got nowhere.

Bangladesh became increasingly impatient about the situation during the first half of the year. Its frustration burst out into the open in June after Myanmar accused it of not cooperating with its efforts to prevent more Rohingya from crossing into Bangladesh. Bangladeshi prime minister Sheikh Hasina [accused](#) Myanmar of not wanting repatriation to take place. Her foreign minister [called](#) on the UN and Western countries to increase pressure on Myanmar to create conducive conditions for repatriation to begin.

In mid-August the Bangladeshi authorities said that they would be ready from 22 August to [return](#) 3,450 Rohingya refugees from a much larger list of those approved for return by Myanmar. But none of those selected were willing to go, leading Bangladesh to abandon the plan. Following this second failed attempt to begin repatriation, there were reports that Bangladesh had begun refusing entry to some new Rohingya arrivals and returning those who had just crossed the border. Small numbers continued to try and cross into Bangladesh throughout the year.

In October 2019, Yanghee Lee, the UN Special Rapporteur on Human Rights in Myanmar, [reiterated](#) that it remained unsafe for Rohingya refugees to return to the country. She said that living conditions for Rohingya in Rakhine State remain “dreadful” and that no steps have been taken to address the “system of persecution” to which they have been subjected. She added that she “continues to receive reports of beatings and killings and the burning of houses and rice stores”. She also said that about 128,000 Rohingya were now being “effectively detained” in government camps in Rakhine State – an increase on 2018.

There was also continued criticism about lack of humanitarian access to Rakhine State during 2019.

1.2 Humanitarian situation for Rohingya refugees in Bangladesh

Recent updates

The IOM leads the Inter Sector Coordination Group, which brings the main humanitarian actors together. Its most recent [situation report](#) was published in October 2019.

The IOM, UNHCR, UN Resident Coordinator for Bangladesh and ISCG came together to publish a [Joint Response Plan](#) for 2019. The four bodies requested US\$920.5 million to provide life-saving assistance to 1.2 million people, including both Rohingya refugees and local host communities. The priority needs in the plan included food, water and sanitation, shelter, and medical care.

A [mid-term review](#) was published in October. By the end of September, the Joint Response Plan was only 42% funded, according to a [funding update](#).

The UNHCR's most recent (to our knowledge) [Operational Update](#) covers November 2019.

Many humanitarian challenges remain – the sheer congestion remains perhaps the single biggest problem. There has been much concern over the last two years about what would happen during the monsoon season. Bangladesh has made some land available that is safely above sea-level but it is not enough to meet needs. However, although the rains certainly have had a negative [impact](#) on conditions, worst-case scenarios have been avoided.

Bhasan Char

There has also been concern about preparatory work by the Bangladeshi authorities over the last two years on an island called [Bhasan Char](#), 21 miles away, from the mainland, that may be used for upwards of 100,000 refugees but which international agencies have had difficulty accessing and which most impartial observers believe would be [unsuitable](#) for accommodating them.

Relocation of Rohingya refugees there has not yet begun. In late 2019 there was growing international concern that it might be about to begin, but the Bangladesh government quickly put relocation plans on hold and [said](#) that any future relocation there would be on a purely voluntary basis.

International Crisis Group assessment

In late-December 2019, the International Crisis Group published a [report](#) in which it called for the introduction of a “sustainable policy for Rohingya refugees in Bangladesh”. It summarised its assessment as follows:

What's new? Two years after atrocities in Myanmar's Rakhine State drove a wave of Rohingya refugees into Bangladesh, prospects for repatriation remain dim. Frustrated Bangladeshi authorities refuse to plan for the long term, have introduced

stringent security measures at refugee camps, and may move some refugees to a remote island, Bhasan Char.

Why did it happen? The Bangladeshi government is struggling with growing security challenges near the refugee camps and domestic political pressure to resolve the crisis. It is also irritated by the lack of progress in repatriating any of the estimated one million Rohingya refugees on its soil.

Why does it matter? Dhaka's restrictions on aid activities prohibit its partners from building safe housing in the Rohingya camps or developing programs that cultivate refugee self-reliance. Combined with heavy-handed security measures, this approach risks alienating refugees and setting the stage for greater insecurity and conflict in southern Bangladesh.

What should be done? While pressing for eventual repatriation, Bangladesh and external partners should move past short-term planning and work together to build safe housing, improve refugees' educational and livelihood opportunities, and support refugee-hosting communities. Dhaka should also roll back its counterproductive security measures and plans for relocations to Bhasan Char.

The Myanmar authorities struggle to address linked challenges

The Rohingya armed group known as the Arakan Rohingya Salvation Army (ARSA) has launched periodic attacks on the Myanmar security forces and civilians in Rakhine State, but these have been small in scale. During 2019, the number of such attacks further dwindled.

Amnesty International has accused ARSA of [committing](#) serious human rights abuses against civilians. There have also been allegations of abuses by the security forces against ARSA fighters. In January 2018, the authorities [admitted](#) that ten ARSA fighters had been detained and summarily executed in Maungdaw township.

There has been little sign of official determination to implement the 2017 recommendations of the Myanmar government-backed [advisory commission](#) on how to address the Rohingya crisis chaired by Kofi Annan, who died in August 2018. This commission recommended that the Rohingya be granted full citizenship and civil rights.

A much greater insurgent threat to the Myanmar authorities in Rakhine State in recent years has been the Arakan Army (AA). Established in 2009, it is an ethnic Rakhine group fighting against the perceived marginalisation of the Buddhist majority. The AA is hostile to any idea of citizenship for the Rohingya. It is also active in neighbouring Chin State and cooperates with other ethnic armed groups in what is known as the 'Northern Alliance'. In October 2019, the Myanmar army began ceasefire talks with the AA and its allies, so far without result. The AA has also been accused of committing human rights abuses against civilians.

In June 2018 the Myanmar government announced that it would establish a three-member independent commission of inquiry (ICOE) into alleged human rights violations in Rakhine State. It is headed by Philippino diplomat Rosario Manalo. Some have questioned the sincerity

of the Myanmar authorities in establishing the commission of inquiry, asking whether their real purpose was weakening the case for international investigations into the alleged abuses. In September 2019 the UN Fact-Finding Mission on alleged human rights violations in Rakhine State [said](#) that the commission of inquiry could not be considered credible (see below).

In late 2019, the commission of inquiry was [reported](#) to be about to send investigators to Bangladesh, but we have been unable to confirm if it did so. It argued that unless it could undertake research in Bangladesh, it would be unable to complete its work. It is due to [submit](#) its final report to the Myanmar authorities in January 2020.

1.3 International responses to the crisis

Resumption of sanctions

Since early 2018, Western governments have begun reintroducing sanctions against military officers involved in the crackdown against the Muslim Rohingya. But critics have argued that the approach taken has been too narrow and hesitant.

The US finally imposed sanctions on the head of the Myanmar armed forces, General Min Aung Hlaing, and three other senior officers, in July 2019, starting with a [travel ban](#). [Asset freezes](#) were imposed in December. The EU may eventually follow suit but has not yet done so. Its existing sanctions will come up for renewal in April 2020.

The US and EU also have an arms embargo against Myanmar. The EU [strengthened](#) its embargo in 2018. Campaigners are [calling](#) for a global UN embargo.

The EU has been considering [revoking](#) Myanmar's access to the 'Everything But Arms' preferential trade scheme, but has [not yet done so](#) – largely because of concerns for the livelihoods of thousands of garment industry workers in the country.

UN action on accountability

During 2018 the UN Special Rapporteur on Myanmar, Yanghee Lee, called for international efforts to be made to ensure there was accountability for official abuses against the Rohingya. Both she and the then UN High Commissioner for Human Rights, Zeid Ra'ad al-Husseini, said that acts of genocide may have occurred against the Rohingya. They called on the UN Security Council to refer the country to the International Criminal Court (ICC) and for tougher targeted international sanctions against Myanmar military commanders and military-run companies.

Rapporteur Lee, backed by the new UN High Commissioner, Michele Bachelet, has [reiterated](#) her concerns during 2019. Her most recent [report](#) to the UN Human Rights Council was published at the end of August 2019. Myanmar has continued to deny Rapporteur Lee access to the country.

In April 2018 there was a Security Council fact-finding mission to Myanmar. It issued conclusions and recommendations that were highly

critical of the Myanmar government. However, the Security Council has taken a less prominent role since then. With China and Russia opposed to referring Myanmar to the ICC, a Security Council referral remains highly unlikely.

Also in April 2018, the Secretary-General, Antonio Guterres, appointed a special envoy to Myanmar, Christine Schraner-Burgener. In marked contrast to representatives of UN human rights mechanisms, she has been able to [visit](#) the country four times and has met .

In September 2018, another UN fact-finding mission – this time established by the UN Human Rights Council – led by Marzuki Darusman called on the Security Council to refer the Rohingya crisis to the ICC. Its [report](#) said that the head of the army and other senior leaders should be investigated and prosecuted. It also directly criticised Aung San Suu Kyi for inaction and argued that the government had been complicit in “atrocious crimes”. The Myanmar government rejected the conclusions of the fact-finding mission.

In late-September 2018, the UN Human Rights Council approved the establishment of an [Independent Investigative Mechanism for Myanmar](#) (IIMM) to collect evidence into case files linked to specific individuals.

In August 2019 Darusman’s fact-finding mission submitted its [final report](#). Amongst other things, it identified a pattern of continuing attacks by the Myanmar security forces “aimed at erasing the identity of Rohingya and removing” them from the country.

The fact-finding mission’s mandate ended in September 2019, at which time it handed over its evidence to the IIMM, by now headed by Nicolas Koumjian, which made its [first visit](#) to Bangladesh in November 2019. The IIMM has a mandate, if it so chooses, to share information with the ICC Prosecutor.

Despite the inactivity of the Security Council, the ICC has become active on the issue of accountability. In September 2018 it ruled that it has jurisdiction over the alleged forced deportation of Rohingya to Bangladesh. It did so on the grounds that, while Myanmar is not a party to the Rome Statute, Bangladesh is, and parts of the alleged crime took place on its territory. The Myanmar government rejected the ruling. In November 2019 the ICC [authorised](#) the Prosecutor, Fatou Bensouda, to begin an investigation. Aung San Suu Kyi has repeatedly said that Myanmar will not cooperate with the Court.

While the IIMM and ICC Prosecutor have only recently begun their respective investigations, things have moved somewhat more swiftly before the UN’s principal judicial body, the International Court of Justice (ICJ). In November 2019 The Gambia brought a [case](#) to the ICJ against Myanmar on behalf of the Organisation of Islamic Cooperation (OIC). The [allegations](#) against Myanmar include responsibility for genocidal acts against the Rohingya and failure to prevent and punish genocide.

At a hearing on 10-12 December The Gambia asked the ICJ to order “provisional measures”, the equivalent of an injunction in domestic law,

to protect the parties' rights pending the case's final adjudication. Such an order would mean that all parties are required to ensure that the alleged acts should cease while the case is being heard.

Aung San Suu Kyi took the [highly unusual step](#) of appearing before the ICJ in person to ask it to drop the case, calling the allegations "incomplete and misleading".

The ICJ is expected to rule on the application for provisional measures in the coming weeks. The case itself is expected to take years to conclude.

The UK stance

The UK Government has consistently argued for the 'safe, voluntary and dignified' return of Rohingya to Myanmar but continues to take the view that the conditions for this do not currently exist. It has been a major humanitarian aid donor to the refugees. By late-2019, the UK had given [£226 million](#) in aid.

An International Development Committee [May 2018 report](#) on Myanmar argued that the UK should no longer continue with "business as usual", calling for a complete review of policy on Myanmar.

Jeremy Hunt, Foreign Secretary under the previous UK government, visited Myanmar in September 2018, meeting Aung San Suu Kyi (but not the head of the army) and travelling to Rakhine State as part of his visit. He [kept open](#) the possibility of supporting a referral of Myanmar to the International Criminal Court.

The UK government views Myanmar as one of its 'human rights priority countries'. It published its [most recent assessment](#) of the situation in October 2019. Below is an extended extract:

The security situation is worsening in the Cox's Bazar refugee camps, where there have been reports of murder, gender-based violence, abduction, illegal drug trading, and human trafficking. Some 32 Rohingya have been murdered inside the camps this year. The Government of Bangladesh is working to contain the situation, with additional police stations and limited night-time patrols by mixed gender security forces. The UN is bolstering the rule of law, including through supporting community policing.

In Myanmar, 600,000 Rohingya (128,000 of whom are in camps) continue to face severe restrictions and ongoing persecution, and are denied basic citizen rights as well as severe restrictions such as freedom of movement, religion or belief, or access to education and healthcare. In April, a Tatmadaw helicopter attack killed at least six civilians and injured 13. Those in the camps also face the threat of human trafficking; in May, at least 23 Rohingya girls were rescued from human traffickers. There have been consistent reports of the widespread and systematic use of sexual violence against Rohingya women and girls, including mass rape, as well as other forms of sexual violence primarily against women and girls, but also against men and boys.

In Rakhine, Kachin, and Shan states, human rights violations continue to occur in Myanmar's decades-long civil war. Civilians in conflict areas are targeted with arbitrary detention and torture: since December at least 71 civilians have died (including 11 women and 8 children), of whom 15 were in Tatmadaw custody. A government shutdown of mobile internet in 9 townships in

Rakhine and Chin States from 21 June has further limited freedom of expression, access to humanitarian aid, and the scrutiny of security forces. The use of legislation to restrict freedom of expression has increased. Currently over 300 social and political activists, including journalists, are facing lawsuits under laws covering online defamation, peaceful assembly and procession, and unlawful association, and under Section 505 of the Penal Code on malicious communications.

Below are links to some other recent UK government statements/initiatives on Myanmar:

[UK announces extra £87 million funding for Rohingya crisis in Bangladesh](#) (DFID news story, 22 September 2019)

[Release of journalists in Myanmar: Foreign Secretary's statement](#) (FCO news story, 7 May 2019)

2. Other developments

2.1 21st Century Panglong Union Peace Conference

Ongoing efforts to reach a comprehensive peace agreement with all minority ethnic groups have stalled over the last year. Some are [concerned](#) that the entire process could collapse.

A third peace conference took place in July 2018. For the first time all groups attended, including those which had not yet signed ceasefire agreements with the authorities. Several new signatories were present.

However, there were no breakthroughs on constitutional and security issues at the conference. The government announced that it wanted to complete the peace process by the 2020 elections. But over a year on from the third conference, a date for the fourth conference is yet to be announced.

The continuing peace process has [not meant peace](#) on the ground. Levels of violence (outside of the monsoon season, when things quieten down) have not reduced, leading to significant new internal displacement and humanitarian need.

2.2 Freedom of expression

As shown above, many have expressed criticisms of Myanmar's human rights record. One area where there has been concern is freedom of expression and media freedom.

For example, there was strong international criticism of the jailing in September 2018 of two Reuters journalists, Wa Lone and Kyaw Soe Oo, under the Official Secrets Act for drawing on leaked information when reporting the discovery of a mass grave of ten Rohingya villagers who had been summarily executed in late-2017. They were sentenced to seven years in prison with hard labour.

The Myanmar authorities did not deny their account of events and said that action would be taken against all those involved. Lawyers for the two men, who had already been in detention for nearly a year, said that they had been 'set up' by the police.

Aung San Suu Kyi refused to criticise the verdicts at the time. However, in May 2019 they were released by President Win Myint as part of a presidential amnesty of over 6000 prisoners.

During 2018 Facebook closed the accounts of some senior Myanmar military figures, including the head of the army, and Buddhist monks because they were deemed to incite violence and hate against the Muslim Rohingya. In November 2018 the company published a [report](#) in which it admitted that it had not done enough in the past to combat hate speech in Myanmar on its platform.

Overall, critics charge that the NLD has failed to promote or strengthen a culture of human rights in the country, including in the sphere of freedom of expression.

2.3 Economy

Economic performance looks respectable by some indicators – GDP growth has consistently been [over 6%](#) in recent years – but most people’s living standards have still not seen much improvement since the NLD took office in 2015. The Rohingya crisis has [held down](#), but not ended, foreign investment in the country.

Some investors appear to be [losing hope](#) that the NLD government will rein in rampant cronyism and pursue reforms that improve the business environment. Others remain [more hopeful](#).

Although the relationship is anything but straight-forward, China remains a major economic player in Myanmar. In late-2018 the Myanmar government and China's state-owned CITIC Group signed a framework agreement for a proposed US\$1.3 billion deep-sea port in [Kyaukphyu](#), Rakhine State.

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