

## REPATRIATION OF ROHINGYA REFUGEES

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### INTRODUCTION

#### The Context

In 1978 and 1991 Bangladesh was faced with influx of Rohingya refugees from Myanmar. In 1978 about 200,000 refugees crossed into Bangladesh to flee persecution by the Myanmar army in the Arakan region. Their stay in Bangladesh at that time was short lived as the problem was resolved through diplomatic initiatives in sixteen months. The situation is somewhat different this time when about a quarter of a million of refugees took shelter in the Teknaf-Cox's Bazar region. Following the successful completion of the Cambodian operation the Rohingya repatriation constitutes the single largest UNHCR operation in Asia. In spite of the Bangladesh Government's agreement with the Myanmar authorities and UNHCR's Memorandum of Understanding with both the governments on repatriation, initial steps in the repatriation has been rather slow. Currently the repatriation process has virtually stagnated. The presence of such a large number of refugees, which at one stage appeared to be for an indefinite period, has created tensions in the host communities and impacted adversely the economy and environment of the region. It is in this setting that a study on the Rohingya refugees is being undertaken.

#### Structure of the Study

The study has three major parts. The *first part* will attempt to identify the root causes of the refugee problem. The backwardness and the remoteness of the Rakhine region in Myanmar, the communal tension that exists between the Buddhist and the Muslim populations and the state sponsored repression are some of the obvious reasons that have led to occasional exodus of the Rohingyas from their normal place of habitat. All these will be examined in the context of a complex interaction and cross-migration of the peoples of the Arakan - Cox's Bazar region over the last few centuries. It may be argued that, like a dozen of other sub-national groups in Myanmar, the Rohingyas also failed to be integrated in the mainstream Myanmar nation-building project and continue to be a marginalised community in the remote region of Arakan. Thus the feeling of alienation of the Rohingyas towards the Myanmar state and the attitudes and policies of the successive Myanmar governments will constitute important elements of this part.

The *second part* will deal with the question of treatment of refugees by the Bangladesh Government. Although Bangladesh is not a signatory to the 1951 Convention, its acceptance of the Universal Declaration of Human Rights of 1948 and its own experience in the liberation war, when one out of every seven Bengalis was a refugee in India, the nation has a moral responsibility to uphold the basic rights of the refugees. Ever since the arrival of the

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Rohingya refugees, the Bangladesh Government has provided relief and shelter to these people. In this effort non-governmental organizations, both national and international, and UNHCR have provided crucial support to the Bangladesh authorities in coping with a crisis of such magnitude. In spite of the humanitarian assistance rendered to the refugees, a major policy consideration of the Bangladesh authorities has been their 'quick and safe return' to Myanmar. This part will evaluate the treatment of the refugees by the Bangladeshi authorities with the aim of suggesting improvements, should there be any recurrence of such phenomena.

The *third part* will deal with the question of repatriation. An important consideration would be the issue of voluntariness. UNHCR has been actively engaged in organizing the repatriation of refugees. The chapter will identify issues and constraints of the Bangladesh Government-UNHCR-NGO collaboration with respect to the repatriation of these refugees. This will be followed by an examination of change in circumstances with respect to refugees under international law.

## Methodology

The historical account of the region will be based on secondary sources. For the second and third parts, text of the Bangladesh-Myanmar Agreement on refugee repatriation, texts of the Memoranda of Understanding between UNHCR and Bangladesh, UNHCR and Myanmar, unclassified papers of UNHCR, the Ministry of Foreign Affairs and parliamentary proceedings on the refugee question in Bangladesh, comprise important primary sources. Interviews of the refugee representatives, officials of the various ministries, the UNHCR at Dhaka and field levels in Cox's Bazar and Maungdaw, and NGOs involved in relief and repatriation would provide important insights. Newspaper reports, journal articles and in-house research reports of aid agencies constitute important secondary source of information for the study.

## 1. BACKGROUND

### 1.1 Arakan in Historical Perspective

Arakan province is a long stretch of land along Myanmar's coastline in the Bay of Bengal. The northern tip of the region adjoins Bangladesh and there is 176 miles of common border between the two countries. The Naf river separates the two countries. The Arakan Yoma mountain range separates the region from the mainland Myanmar. Historically, it had more interaction with the west, i.e. the region now comprising Bangladesh. Needless to say over the last thousand years the expanse of

land that now covers Chittagong has changed hands a good number of times between the feuding warlords and kings of adjoining regions of Bengal, Tripura and Arakan. Historian Phayre (1884) was of the opinion that Arakan has continued to remain as an independent kingdom until it was annexed by Burma in 1784 AD.

While the Arakanese scholars argue that it was the Aryans from the west who first settled in Arakan, the majority opinion of scholars is that the first settlers of Arakan were those of Kanyan tribe of Tibeto-Burman group (Maung, 1989:2). Of all the kingdoms and dynasties that

ruled over parts of Burma the Arakanese have the longest history stretching back to 2666 B.C.

The Arakanese were basically animists. Over the centuries Brahmanism, Buddhism and Islam shaped and influenced their religious beliefs, as they did over the Burmans (Hall, 1950:13). As early as the first century AD the installation of the famous *Image of Mahamuni* in Dinnyawati, the then capital of Arakan, testifies to the influence of Buddhism. Between 788 to 957 AD the adding of suffix of Chandra to the names of the Arakanese kings, and the image of trident of Shiva on the coins issued by them, suggest dominance of Hinduism and Jainism at that time.

## 1.2. Muslims in Arakan

It was Arab merchants through whom first contacts with the Arakanese was established. These merchants on their way to China were believed to have touched the Rumri port of Arakan. The famous single-domed *Bundar Mokam* mosque of Akyab (Temple, 1925) and historian Harvey's account of Arakanese women in veils (1967:137) are indicative of increased penetration of Islam in the Arakani life.

Famous historian of Chittagong Mabbubul Alam argues that around 951 Chittagong was annexed by an Arakanese king and the city was named after him. Between 10 century AD to 1580 Chittagong, Sandwip and Ramu region was either under the control of the Muslim Sultans of Bengal or under the rule of the Arakanese Kings. For centuries the Maghs of Arakan with the help of the Portugese and the French were engaged in piracy, looting and killing in the coastal regions of Bengal. To sum it up, Bengal's relationship with the Arakan region can be traced to ancient times and there was constant fluctuation in that relation. When Bengal was powerful, the Arakanese accepted Bengal's tutelage and paid taxes. When the balance of power shifted in favour of Arakan, Bengal was made its vassal state. All this led to increased interaction between the peoples of the region, including traders and religious preachers. There was constant influx of Muslims from as far away as Afghanistan, Persia and Turkey, as well as from north India and the Arabian peninsula. They merged into the existing Muslim society and became the Rohingyas. A distinct dialect emerged as a result of the mixture of Persian, Urdu, Pushtu, Arakanese and Bengali (Nicolaus, 1995:1).

In the 16th century, the Arakanese adopted sailing and war techniques from the Portugese pirate settlers in the coast and began numerous raids in the neighbouring Bengal. Capture of slaves was a major purpose of these raids. These slaves and their offsprings were used for cultivation work all over Arakan and their presence can be seen in the rural Arakan even today. Nicolaus states that these people call themselves Rohingyas, but the Arakanese and the Rohingyas refer to them as Heins, meaning low-caste (1995:2).

Two incidents involving two royal asylum seekers have significantly moulded the history of Arakan. In the 15th century the events relating to royal asylum seeker from Arakan, Narmikheila, significantly boosted Muslim penetration and presence in Arakan. However, in the mid-17th century the events surrounding the Mughal prince Shah Shuja, who sought asylum in Arakan, led to the erosion of the Muslim hold and influence there.

### 1.3. The Narmikheila Incident

Muslim influence in Arakan grew in the 15th century. In 1404, Narmikhila, the king of Arakan, deposed by the Burmans, sought refuge of the Iliasshahi ruler of Gaur. Narmikhila was given royal asylum by the then Sultan and lived in Gaur for twenty-four years. It has been claimed that the Buddhist king during this period in exile became well versed with Islamic history and politics. In 1430 Jalaluddin Shah provided Narmikhila 20,000 soldiers under general Wali Khan and got rid of Burmans from Arakan. But when Wali Khan instead of handing over power to the Arakanese king declared himself the ruler, another 30,000 troops were sent under general Shiddhi Khan to punish him (Phayre, 1884:47). Finally, Narmikhila regained power in Arakan with Gaur ruler's total support and assumed the Muslim name Solaiman Shah. Following him successive rulers of Arakan added a Muslim name to their Buddhist names. Coins issued by them had Arabic inscription on them (Collis, 1928:35).

In the 17th century one witnesses increased influence of Bengali language and literature in the Arakan court and assumption of offices of Muslims in the Arakanese administration. It was the contributions of Arakan based Daulat Kazi, Alaol and Magan Thakur that enriched the Bengali culture of the period. Dr. Ahmed Sharif terms this the golden phase of Bengali culture and literature in Arakan whose tides continued to reach the shores of southern Chittagong till the 18th and the 19th centuries.

Muslims were placed in key positions of the Arakanese administration. One Ashraf Khan was appointed the Defence Minister, while Syed Musa was the other Muslim member of the king's cabinet. In the defence services Muslims dominated the cavalry and archers divisions.

### 1.4. The Shah Shuja Incident

In the declining phase of the Mughal empire when emperor Aungrazeb assumed power, his brother Shah Shuja, then governor of Bengal, sought refuge in the Arakan kingdom in 1660. Deterioration of relations between the Arakanese king and the Mughal ruler led to the latter's involvement in the Arakanese court politics. This, in turn, led to the preemptive strike by the Arakanese and many Muslims were massacred though Shuja and his family were given reprieve. In support of Shah Shuja, the Muslims soldiers of the Arakanese king rebelled and were joined by other Muslim residents of the capital. This led to a bloodbath and the Shuja and his family were executed.

This act of the Arakanese king invited reprisal from the Mughal governor of Bengal. Under Aurangazeb's order Shaista Khan strengthened his navy, captured Sandwip in 1665 and Chittagong and Ramu the following year.

### 1.5. First Influx of Refugees

Following the death of King Sri Chandrasudharma in 1684, the political situation in Arakan was unstable. Except for a brief period of rule by King Shandhauza (1710-1731) court intrigue and conspiracies became order of the day. Hall claims that between 1684 and 1784

Arakanese Muslims had a major role in the making and overthrowing of the kings in Arakan (1950:62). In 1785 the Burman king conquered Arakan and a long guerilla war ensued. The Burman army committed atrocities on the Arakanese. A good number of men were murdered and women prisoners were sent Burma. Karim alleges that as many as 6,000 Arakanese youth were sent to renovate the Meiktila Lake and none of them returned. In addition, Arakanese forced labour was extracted to build the 500 feet tall pagoda in Mingun in Burma. In 1791, an unsuccessful attempt against the Burman rule in Arakan was followed by massive reprisal from the Burman authorities and one estimate suggests that as many 200,000 Arakanese were murdered. Another attempt in 1796 ended in failure and resulted in massive influx of Arakan refugees into the Cox's Bazar area. Almost two-thirds of the population of Arakan, most of the Rohingyas and Heins, left Arakan for the Chittagong area. This marked the beginning of the periodic influxes of refugees from Arakan into Bengal. It may be pertinent to mention here that it was the refugees from Arakan who constituted the bulk of the original settlers between Teknaf and Cox's Bazar. Hiram Cox, after whom Cox's Bazar was named, was appointed by the East India Company as the Superintendent for the rehabilitation of the refugees.

#### 1.6. British Rule in Arakan and Adjoining Areas

The incorporation of Arakan with Burma brought the Burmans in direct contact with British India. The Arakanese refugees under the leadership of their deposed king Bering waged a guerilla warfare against the Bhama king. This resulted in the incursion of the Burman army into the British Indian territory and ultimately precipitated the first Anglo-Burmese War. The War (1824-26) resulted in the annexation of Arakan and Tenessarim by the British. The natural resources of Burma led the British to wage another war, the Second Anglo-Burmese War, which ended in 1853 and ensured British occupation over entire lower Burma, later known as the rice bowl of the British India (Maung, 1989:19). The Third Anglo-Burmese war of 1885 led to British control over entire Burma.

With the incorporation of Arakan, and later the rest of Burma, into the British empire, a large section of the refugees returned. Nicolaus argues that together with the refugees new settlers flowed into the depopulated country bringing with them Bengali culture and language (Nicolaus, 1995:3). The British Census figures reveal the level of increase in population:

Area	Year	
	1831	1911
Maungdaw Township	18,300	101,100
Akyab District	95,100	530,000
Pegu District	95,700	293,000

Source: Nicolaus, 1995

The increase in the number of settlers did not cause any major social dislocation in Arakan. The Second World War had major bearing on the inter-communal relationship between

the Rohingya Muslims and the Rakhine Buddhists. The advance of the Japanese army led to the exodus of tens of thousands of Indians from Burma and especially Muslims from Arakan. Communal riots flared up between the communities and some 22,000 Rohingyas were forced to take refuge in adjoining British Indian territories, i.e., Cox's Bazar, Teknaf, Ukhia and Ramu (Yegar:1972,95). The Arakanese communities were divided in their loyalties, the Rohingyas were loyal to the British, rendering valuable services in work units, reconnaissance and espionage, while their Buddhist counterparts, the Rakhines, took the side of the Japanese.

### 1.7. Disillusionment of the Arakanese Muslims

The end of the war created condition for the displaced people to return back to their homes. Although the British promised the Arakanese Muslims autonomy in a Muslim National Area, which would comprise Maungdaw, Buthidaung, and the part of Rathedaung bordering East Bengal (Yegar, 1972: 96), this was not subsequently honoured.

After the Buddhist dominated Burmese administration took control over Arakan, the Muslim's sense of alienation and betrayal grew. The Arakanese Muslims, especially those hailing from the Chittagong region, took the initiative to form the North Arakan Muslim League in Akyab. They sought the then leader of Pakistan, Mr. Jinnah's support for their plans. That was not forthcoming as Jinnah assured General Aung San that he was not keen on the idea. In 1948 an outbreak of an armed rebellion took place, known to be the *Mujahid* rebellion. The main goal of the *Mujahid* movement was to create an independent Muslim state between the rivers Kaladan and Mayu. The movement created deep schism in the Muslim community of Arakan. The moderates wanted to avoid a confrontation with the government and the Rakhines, while the extremists resorted to firearms. There have been instances where sections within the Rohingya community appealed for arms from the U Nu government to fight the rebels (Yegar, 1972:97).

### 1.8. Impact of Muslim Militancy

The end result of the Muslim militancy was that the Muslims were eyed with suspicion in Burma and considered to be disloyal to the Burmese state. The Muslim civil servants, policemen and headmen were replaced by Rakhines and were barred from military service. Arbitrary arrests, extortion of money by law enforcing agencies and members of the civil administration were rampant. The educational and economic development programmes for the Arakanese Muslim community were neglected.

Restrictions were imposed on the movements of Muslims from Maungdaw, Buthidaung and Rathedaung to Akyab. Muslims returnees were not settled in their original place of habitat and some of them were termed as illegal Pakistani immigrants. Property and land of returnees was confiscated. The *Mujahid*'s frustration on all these accounts made them fiercely committed to their cause and, by June 1949, they effectively controlled the whole of northern Arakan. There were reprisals and counter-reprisals of the government army units and the *Mujahids*.

Accusations of persecution of Muslims were also raised in 1952 by the Pakistani press and it was met with the counter-accusation that the Arakanese Muslims were aided by the

in the beginning of 1978 in the Kachin and Arakan states. In the State of Kachin it proceeded smoothly, only 45 persons out of 15,524 were screened. While in the district of Akyab the number of arrests was much higher. Approximately 1,025 out of a total 36,825 were arrested. In an official report on April 29, 1978 the government revealed that it had found, among other irregularities, that there had been "an alarming rate of illegal entry" into the state of Arakan. Several thousand prosecutions had been instituted against Chinese and Rohingyas under the Registration of Foreigners Act and other relevant legislation. It is also announced that 19,427 Bengalis had absconded, leaving their 3,723 homes' (Keesing's Contemporary Archives, 6.10.78, p.29238).

In another statement the Burmese authorities stated that in Buthidaung township alone 108,431 persons were interrogated, 643 prosecuted, 33,596 persons absconded and 6,429 houses abandoned (19.5.78). The government further stated that as many as 101,048 have escaped Buthidaung and Maungdaw to 'escape an immigration check'. The sharp increase in the number of arrests and harassment of the Arakanese Muslims, often accompanied by use of brute force, resulted in the mass exodus of the Rohingyas into Bangladesh.

Faced with a growing number of refugees the Bangladesh government on the one hand began bilateral negotiations with Burma and on the other, appealed to the international community for international assistance for the 150,000 refugees and which was soon expected to reach 200,000. A major international fund raising operation was mounted for the assistance to the growing number of refugees who were kept in 11 camps.

The figures on the number of refugees presented by Bangladesh and Burma varied considerably. The Bangladesh government claimed 252,000 persons sought refuge in Bangladesh, while the Burmese sources stated that 143,900 persons 'absconded to Bangladesh in order to escape the Nagmin Project'. However, in the negotiations conducted between Bangladesh and Burma during June and July 1978 an agreement was finally reached on the repatriation of refugees to Burma. The operation commenced on 31st August 1978 and ended on 29th December 1979 and involved repatriation of a total of 187,250 refugees to Arakan.

In 1991, Bangladesh experienced another influx of Rohingya refugees in the Teknaf, Ramu, Ukhia and Cox's Bazar region. About 250,000 refugees crossed the Naf river and sought asylum in Bangladesh. In the following section the treatment of refugees by the Bangladesh government and people will be discussed.

## 2. TREATMENT OF REFUGEES

Ever since the arrival of the Rohingya refugees the Bangladesh government has provided relief and shelter to these people. In this endeavour the non-governmental organizations, both national and international, and the UNHCR provided crucial support to the Bangladesh in coping with a crisis of such magnitude. In spite of the humanitarian assistance rendered to the refugees, a major policy consideration of the Bangladesh authorities has been their 'quick and safe return' to Myanmar. The Bangladesh government's treatment of refugees has been essentially guided by this overriding consideration. This section deals with the question of treatment of refugees of

Pakistani government. In November 1954, under pressure of the Buddhist monks in Rangoon, the government launched a major offensive, Operation Monsoon which succeeded in destroying rebel centres and killing rebel leaders. Since then the rebels disintegrated into small units and were engaged in terrorist activities in the remote Rohingya and Rakhine villages. A section of the rebels got engaged in smuggling operations along the Naf river border. The improvement in relations between Pakistan and Burma in 1961 weakened the Mujahids further and a number of them surrendered to the Burmese authorities.

### 1.9. Rohingya / Rakhine Conflict and the Question of Statehood

Another important element that contributed to the deterioration of relations between the Rakhine and the Muslim communities in Arakan has been the issue of statehood. The Arakan Muslims vehemently objected to the demands of the Arakan Party for the status of a state for Arakan within the framework of the Union of Burma. They were apprehensive that any such arrangement would ensure the domination of the Rakhine Buddhists over Arakan. Instead the majority of the Muslim organizations demanded 'autonomy for the region, to be directly governed by the central government in Rangoon without any Arakanese officials or any Arakanese influence whatsoever'. This placed the government of U Nu in a difficult situation because in the general elections of 1960 he promised to confer statehood on Arakan, on a par with other states of the Union of Burma. In the face of growing opposition of the Muslim organisations such as the Rohingya Jamiyat al Ulama, the Rohingya Youth and Students' Associations, the government in May, 1961, created the Mayu Frontier Administration covering the provinces of Maungdaw, Buthidaung and the western portion of Rathedaung. The Administration was not accorded autonomy and was under the control of Army officers. With the consent of the Muslim leaders when U Nu government was about to grant statehood to Arakan, excluding the Mayu district, the plan was thwarted by the military coup of General Ne Win in 1962.

The Rohingya militancy was revived following the dissolution of the Mayu Frontier Administration in 1964 by the Military Council and its incorporation into the Arakanese administration. This led to the creation of a new organization, the Rohingya Patriotic Front, and demand for autonomy was back on the political agenda.

### 1.10. The 1978 Operation Nagmin and the first Exodus of the Arakanese Muslims

The Military Council's selective policies towards minority communities was reflected in the policy on naturalisation and citizenship. All ethnic minority communities were granted citizenship except the Indians (among them the Muslims of Arakan) and the Chinese, on the pretext that they were late settlers. This institutionalised state discrimination against these groups and eroded their trust and loyalty to the Burmese Union.

In 1977 a campaign was launched by the central government to scrutinize individually the population in the State, to designate citizens and foreigners in accordance with the law. This was also meant to take actions against foreigners who have infiltrated the country illegally (Government of Burma statement, 16.11.77). The operation *Nagmin* (Dragon King) commenced



the 1991 influx. It is divided into two parts. This first part deals with the official response to the refugee influx and the second part discusses the people's reaction.

### 2.1. The Influx of 1991

The Rohingya refugees began moving into Bangladesh following Myanmar Army's increased activities in the Maungdaw, Buthidaung and Rathedaung townships of Myanmar, region that border Bangladesh. Systematic and massive human rights abuses like, forced labour, rape and confiscation of houses, land and farm animals by the troops of 23rd and 24th regiments of the Myanmar army reportedly triggered off this mass exodus. The destruction of mosques, ban on religious activities, harassment of the religious <sup>leaders</sup> priests and denigration of Islam reflected the intolerance of the authorities of the religious rights of this minority community. Between mid-1991 through mid-1992, an estimated 250,000 refugees took shelter into Bangladesh.

### 2.2. Bangladesh Government's Response

The Bangladesh government allowed the refugees to enter its territory and provided them shelter and relief. Initially it tried to solve the issue on a Bangladesh/Myanmar bilateral basis and to manage relief efforts on its own, but increasing number of refugees and strong intervention from donor countries led the GOB to seek international assistance. UNHCR was invited to provide assistance to the refugees in mid-1992. UNHCR's involvement facilitated the work of international NGOs to complement the work of the national NGOs.

Bangladesh viewed the refugees as a short-term problem. It is on this premise the government signed a Memorandum of Understanding with Myanmar on 28 April, 1992 under which Myanmar agreed to the return of those refugees who could establish their *bona fide* residency in Myanmar prior to their departure for Bangladesh. (In depth assessment of the MOU is presented in detail in Part Three on Repatriation).

In spite of the initial hospitality and cordiality extended to the refugees the mood of the Bangladesh government changed following the signing of the Joint Statement with Myanmar. During 1992 and 1993 human rights groups and UNHCR raised concerns over coercion and forceful repatriation of refugees by the Bangladesh authorities. Certain international NGOs confirmed that such allegations were well founded.

Following UNHCR/NGOs' protests about alleged forcible repatriation and their demand for a halt to such process the Bangladesh government blocked their access to the camps, irrespective of the Agreement signed between the government and the UNHCR on 8 October 1992, which allow the latter a role in verifying the voluntary nature of the return movement. As a result UNHCR withdrew from the repatriation programme on 22 December 1992.

### 2.3 The People's Response

Like the Bangladesh government the people of the affected regions, Teknaf, Ramu and Cox's Bazar, had been very sympathetic to the refugees when they first came. But gradually increased pressure of the refugees on the local society, economy and environment eroded that sympathy

and increase the dissatisfaction against the refugees became more and more pronounced. A major factor contributing to the changed perception of the refugees had been the violence in camps. Such violence mainly took place when refugees protested their forceful repatriation. The media took unsympathetic view of the refugees presence in Bangladesh, portraying them to be an aggressive and disorderly bunch of people. This can be illustrated by a series of newspaper articles published during that period, which articulated refugee presence as has caused great damage to the local flora and fauna, deforestation which has caused major burden on the local environment.

Perhaps the most immediate impact of refugee presence was felt in the increased prices of essential commodities in and around refugee areas which is one of the most undeveloped regions of Bangladesh, where the purchasing power of the vast majority of people was already very low. In July 1992, there were public meetings in Ukhaia demanding a stoppage on work intended to set up new camps (Jummarapara camp).

The local people's opposition to the refugees resulted in the forming of two committees, the Refugee Repatriation Action Committee and the Refugee Repatriation Coordination Council, which voiced concern over the continued presence of the refugees and accused international NGOs and UNHCR of a 'hidden agenda' for prolonging the repatriation process.

In order to assuage growing dissatisfaction of local people UNHCR organised the Affected Villages Rehabilitation Programme where infrastructural projects were taken up to soothe the people's sentiments. The involvement of the local people in designing and prioritising, and most important, in implementing these projects, yielded effective results for UNHCR. The criticisms gradually waned.

### 3. REPATRIATION

This section looks into the issue of repatriation in details. It commences with the Bangladesh government's policy on repatriation and its signing of agreement with the Myanmar government. This is followed by an appraisal of the changing relationship between the host government and the UNHCR, an organization which was invited by the former to help the relief and repatriation of about 250,000 refugees. Shifts in the UNHCR's policy from individual interview to mass registration, and the policy from information dissemination to promotional activities will also be examined. The activities of the non-governmental organizations, though mostly involved in relief efforts, on the question of repatriation will be enquired. In particular, their concern about what they see as 'involuntary nature' of repatriation and their claim of 'lack of awareness' of the refugees during mass registration. The chapter will also deal with the prospect of reintegration of the returnees and discuss the efforts mounted by the UNHCR and the WFP on the operational area in the Arakan state. It will also present the refugees' own perception of repatriation based on the findings at the field.

#### 3.1. Bangladesh Government's Policy on Repatriation

When the refugees first began to arrive from Myanmar the people and the government of Bangladesh received them with great degree of sympathy and provided them with all forms of

support. The Government of Bangladesh took effective steps in providing relief to the refugees and provided them temporary shelters, food, medicare and health and sanitation facilities. A large number of officials were mobilised to shore up the relief efforts. Later international agencies (the UNHCR and the WFP) and the NGOs (both local and international) were involved in the relief activities.

However, an important consideration of the policy-makers in Dhaka all along had been the duration of the refugees' stay in Bangladesh be short and they were to return to Myanmar as soon as the situation permitted them to do so. It is in this context that one sees Bangladesh's eagerness to negotiate the return of the refugees with the Myanmar authorities. The GOB held that the country did not have the capacity and resources to host the refugees over an uncertain period of time. Added to this perhaps there was a degree of self-confidence in the Ministry of Foreign Affairs, Dhaka (which later proved to be misguided), that solution to the problem could be worked out through normal bilateral diplomatic channels, as was done during the 1978 influx.

Bangladesh continued to view the refugee as a short-term problem and repeatedly demanded the immediate repatriation of all Rohingya refugees. In April 1992 the Bangladesh Foreign Minister Mostafizur Rahman stated that the repatriation of refugees would be completed in six months. It is out of that sense of urgency that Bangladesh signed a Joint Statement with the State Law and Order Restoration Council (SLORC) of Myanmar on April 28, 1992.

### 3.2. Bangladesh Myanmar Memorandum of Understanding (MOU)

According to the Joint Statement Myanmar agreed to take measures that would halt the outflow of Myanmar residents to Bangladesh and to accept after scrutiny all 'those carrying Myanmar identity cards', 'those able to present other documents issued by relevant Myanmar authorities' and 'all those able to furnish evidence of their residence in Myanmar'. An important lacuna in the Memorandum is the role of the UNHCR. While it was agreed that the GOB would fully associate the representatives of the UNHCR to assist the process of safety and voluntary repatriation, the Government of Myanmar (GOM) agreed that 'the services of the UNHCR could be drawn upon as needed at an appropriate time' (Author's emphasis). Thus, the MOU failed to assign any role to UNHCR in Myanmar. Another important limitation of the Memorandum was that it failed to specify that all refugees, without exception, would be taken back.

An important coincidence was that Bangladesh signed the Memorandum at a time when there were efforts by the UN to get access to Myanmar by the Mission of Under-Secretary General of the United Nations, Mr. Eliasson. It has been reported that in later negotiations with Bangladesh SLORC's position, at least for sometime was, involvement of UN agencies has become obsolete, since both countries agreed on the terms of solution and repatriation.

Another important omission for Bangladesh was her failure to point out that most of the Rohingya refugees were stripped of their Myanmar documents prior to their crossing to Bangladesh and many of them were not in possession of any identity papers in the first place. It is difficult to assess the reasons for Bangladesh's rush in signing the Memorandum without mounting a concerted pressure of international community on Myanmar and particularly at a time

when refugees were still arriving "at the rate of about 1,500 per day".

### 3.3 The first phase of Repatriation

The Bangladesh government's attitude towards the refugees underwent a significant change following the signing of the Memorandum. On 22 September, 1992 the first repatriation took place on a very limited scale without the UNHCR involvement. It has been suggested that the UN agency was notified after the repatriation had taken place (US Committee for Refugees, 1995:5) UNHCR believes that "this movement was accompanied by considerable pressure (coercion) from the Bangladesh authorities, who insisted that they could not give the refugees long-term asylum" (UNHCR, 1995:3). This has been further corroborated by non-governmental organizations who reported that in September, 1992 cases of forced transfer to transit camps by taking away family books, coercion in the form of physical abuse had increased significantly. In addition, it was alleged that camp officials were given quota to come up with a number of 'volunteers' per month. That the first phase of repatriation was not voluntary is evident from the increased outbreak of violence that had occurred in camps, often resulting in deaths of the refugees (officially stated to be 15). Protest demonstrations in camps were held in all camps against the repatriation demanding a total halt to all repatriation.

### 3.4. UNHCR and GOB Relations

On 8 October 1992 an agreement was reached between the UNHCR and GOB which allowed the UN agency a role in verifying the voluntary nature of repatriation. Following signing of the agreement two batches of repatriation took place on 12 and 31 October which according to UNHCR were voluntary. But following this several rounds of repatriation took place without UNHCR's involvement. A UNHCR Situation Report states that 84 percent (4,814 refugees) of the total number of repatriation held in months of November and December 1992 took place without the UNHCR supervision. The Bangladesh government's intransigence to accord the UNHCR its due role in the verification of the voluntary process of repatriation as agreed upon early October 1992, and to continue to coerce refugees to repatriate, ultimately led the agency to withdraw from the repatriation programme on December 22, 1992. An additional 11,216 persons were repatriated after the withdrawal of the UNHCR which has been deemed by some as 'involuntary' (USCR, 1995:6; MSF Holland and France press release). This form of repatriation also came under criticism from the US Department of State which viewed it as "coerced repatriations".

Following these criticisms the GOB suspended its unilateral repatriation in late January 1993 and announced its plans to discuss the issue with the UNHCR. Negotiations for a MOU between the two began soon after.

After several rounds of negotiations and exchange of letters the two sides finally signed a Memorandum of Understanding on 12 May 1993. The Memorandum provided GOB to allow "free access to officials of the UNHCR to independent interview of refugees in transit camps... to determine the voluntary character of their decision to return"(1/a) and "for conducting independent interviews with prospective returnees for certifying the voluntary nature of the repatriation"(1/b). It further commits the Bangladesh government that "no refugees...will be

coerced into leaving against his/her will" (4/f). In addition the Memorandum provided UNHCR to have free access to and presence in all refugees camps at day time (5). An important provision of the Memorandum is that the UNHCR undertook to carry "promotional activities to motivate the refugees to return home once international presence for observing reasonable conditions of safety for the returnee is established in Myanmar in line with the Agreement of 28th April 1992 between the GOB and the Myanmar" (6/c).

Two most important concerns of the UNHCR were taken care of by the Memorandum, (a) protection of refugees in the camps and (b) voluntary repatriation, guaranteed by private interviewing of refugees by UNHCR. For Bangladesh government the tying of the Memorandum to that of Bangladesh-Myanmar Agreement (April 1992) was an important achievement. A grave limitation of the Memorandum was that it did not clearly spell out that repatriation would be promoted only when an appreciable improvement in the conditions had occurred and the safety of the refugees could be assured. This issue became a major bone of contention between the aid agencies and human/refugee rights groups and the UNHCR and on the one hand, and Bangladesh government, on the other, in the later phases of repatriation.

Discussion with aid agency officials as well as with the refugees suggest that even after the MOU was signed there was significant degree of coercion in the camps to make refugees 'volunteer' for repatriation. USCR Report cites a high ranking official who reckoned that as many as fifty percent of the repatriations that occurred prior to August 1994 "were effected either through overt force or other coercive methods" (1995:7). Threat, intimidation and liberal use of broad powers of arrest by the camp officials had been resorted to promote repatriation. In spite of all these problems repatriation process continued and another 50,000 people were repatriated.

### 3.5. UNHCR's MOU with Myanmar on Repatriation

Another important development during this period was the signing of an MOU between Myanmar's SLORC authorities and the UNHCR on 5 November 1993 to cooperate to facilitate the voluntary return and to carry out the voluntary repatriation and reintegration of Myanmar residents from Rakhine State who are in UNHCR-assisted camps in Bangladesh. The GOM assured that "the returnees will be allowed to return to their respective places of origin" (2) and "(a)fter necessary verifications ... will, with the assistance of UNHCR, issue to all returnees, the appropriate identification papers" (4). The Myanmar authorities also committed that the "Returnees will enjoy the same freedom of movement as all other nationals in the Rakhine State, in conformity with the existing laws and regulations (5). Among other things the GOM ensured UNHCR access to all returnees in the Rakhine State in order to enable them discharge their responsibilities (6).

### 3.6. Preparation for Mass Repatriation

The signing of the MOU with Myanmar by the UNHCR completed the triad that was felt to be necessary to mount a major repatriation initiative. Accordingly on 19 December 1993 an Operational Plan for mass repatriation was presented by the UNHCR. The objective of the plan was to facilitate voluntary repatriation of approximately 190,000 refugees at the rate of 15-18,000 refugees per month (1,500 every other day).

The Operation Plan (henceforth the Plan) had taken into account UNHCR's presence in Arakan to assist return and reintegration and the sufficient improvement of situation in Myanmar. It was further assumed that all refugees would decide to return and GOM would accept them all. As part of the Operational Plan it was decided to promote confidence among refugees, governments and the NGOs.

Although preparations were being made principally on the GOM-UNHCR MOU, there was no convincing evidence about the situation of the 50,000 refugees who had by then had returned to Myanmar prior to the beginning of mass repatriation. In addition, very little could be gathered from independent sources about the situation actually then prevailing in the operation area in Arakan. The NGOs felt that very little information was made available to them and that they were not involved/consulted in the planning process of mass repatriation. It was generally believed by the non-governmental community that the refugees were not being provided information that they needed to make an informed choice. In addition, the staffing position, particularly at the Arakan side, was too low to handle and monitor such a major operation.

In early January 1994, the UNHCR Head of Desk, Regional Bureau for Asia and Oceania, made a visit to Dhaka following his trip to Yangon, Sittwe, Maungdaw and the 5 reception centres on the Myanmar side. In his briefing in Dhaka he expressed his confidence of the goodwill of the Myanmar authorities and expressed his feeling that they 'had the commitment'. In reply to a question if forced labour was still practiced he said 'no'. It is interesting to note that the senior official of UNHCR was making optimistic statements though he did not speak to any returnee and was not allowed to enter Bangladesh over the Gundum bridge (as was originally planned) by the Myanmar authorities. By then the UN agency was to make any physical presence in Arakan which made the refugees hesitant to go. In spite of this fact in implementing the MOU, UNHCR began the information sessions in the camps and together with the Relief Commissioner.

Thus far in an hostile environment of uncertainty and fear, the camp-inmates gradually began to trust the UNHCR as promoter of their interests and protectors. This the UNHCR earned through its strong stand against the involuntary repatriation that Bangladesh was pursuing at the initial stages. However, the distinction between the GOB and the UNHCR began to fade when UNHCR began the information campaign using the public address system of the camp in charge which so far had aired very little things that the refugees could really trust upon. NGOs claimed that this perhaps was the beginning of an erosion of trust of the refugees in the UNHCR.

By March 1994 the situation showed an upward trend in repatriation. However, there were fresh instances of new refugees and some double-backers and UNHCR was not ready to receive refugees on the Myanmar side. The dissemination of information could not satisfy the refugees. They were particularly concerned with the citizenship rights and freedom of movement.

In April 1994, Myanmar announced the partial completion of the reception facilities. It was in this month that, repatriation was organised with the cooperation of UNHCR. The first group of refugees crossed the border on 30 April 1994, accompanied by the UNHCR Representative in Bangladesh 'to establish confidence of the refugees'. The efforts however, was disrupted by

the 2 May cyclone.

The impasse was further compounded by the Bangladesh Foreign Secretary's accusation that UNHCR was obstructing the repatriation process. The Foreign Secretary also threatened not to renew the MOU that was to expire in May. He demanded that interviewing should be stopped and that all refugees should leave Bangladesh before the end of 1994.

The repatriation process was dealt a severe blow by a cyclone on 2 May 1994 that destroyed all camps, departure and reception points. The total number of returnees since January 1994 was 3,278. It was only in July 1994 following the mass repatriation registrations that repatriation figures gradually picked up with the monthly figure being 3,592. There was positive developments following the arrival of the new Relief Commissioner. The UNHCR was given permission for the first time to begin interviewing in all non-transit camps. It should be noted that prior to July 1994, UNHCR was authorised to interview refugees only in transit camps, to ascertain voluntariness of the refugees to repatriate. Kutupalong was the first camp where 25 percent of the interviewed stated that they wanted to return. During this exercise there was a shift in UNHCR's policy from information to promotion of repatriation.

The new message was that it was time for the refugees to return to their home country as UNHCR was present there and the situation there was 'conducive'. According to UNHCR, the final result revealed that 90 percent of those interviewed said "yes" to repatriation. On July 18 the first group of returnees went over to Myanmar over the Tumburu bridge, the second departure point.

### 3.7. Assessment of UNHCR Repatriation Procedures

A careful assessment of the repatriation operation of UNHCR would indicate two different stages. In the first stage the UNHCR followed the standard repatriation procedures in line with its Guidelines on Voluntary Repatriation. During this stage individual refugee was interviewed and was provided with information about developments in the country of origin. The return of refugees must be on the basis of an individually and freely expressed wish. This stage lasted until July 1994. Since then UNHCR adopted new procedures in the repatriation operation, whereby refugees were encouraged to repatriate, and individual interviews were replaced by mass registration sessions. However, refugees who have genuine reasons for not returning will have the possibility to express their opinion, and UNHCR will not register them for repatriation. Their cases will be discussed at the end of the operation. These procedures were also followed in recent operations in Sri Lanka (1987), Iraq (1991), Guatemala (1993) and Rwanda (1994). The new procedures raise a number of important issues which tantamount to change of policy on repatriation, finally been acknowledged by the High Commissioner in her statement to the ExCom meeting during the 46th session. Referring to some recent experiences she stated that "in none of these instances is return likely to be under ideal conditions. In many, it will be dogged by political insecurity and economic uncertainty". Pointing to returnees from exile requiring continued protection and monitoring, the High Commissioner said, that this creates a "new dimension to our protection responsibilities and has led us to interpret our mandate for solutions in a protection-oriented and proactive manner... we can no longer passively wait for conditions to change so that refugees can volunteer. Instead, we must work actively to create

the conditions conducive to their safe return" (emphasis added). The new procedure contrasts with UNHCR Guideline on voluntary repatriation and ExCom Conclusion Nos. 18 and 40. Under the new procedure onus of repatriation shifted from individual refugees to UNHCR. (Re. MSF's submission to 1995 ExCom meeting).

UNHCR's policy of promoting voluntary repatriation has become one of the contentious issues. In its recent operations mentioned above UNHCR has actively promoted voluntary repatriation before a substantive change of circumstances in the country of origin had taken place. Here the question arises when can UNHCR get itself engaged in active promotion of repatriation? The 1951 Convention, the 1967 Protocol and the ExCom Conclusions did not specify under what circumstances can UNHCR promote repatriation.

The basic foundations of refugee protection is that individuals fleeing the country of origin as a result of risk to life and freedom (persecution and/or fear of persecution) due to political, religious belief, and/or membership of social groups (Art 1), should be given asylum. Thus, under no circumstance such individuals should be returned to their country of origin against their wishes (Art 33). However, Article 1.C.5 clearly indicates that UNHCR can apply cessation clause to withdraw refugee status if there is fundamental change of circumstances whereby there no longer exists risk to life and/or freedom of those who fled. In other words, Art 1.C.5 says that the continuation and/or absence of risk to life is the main criteria for granting asylum and/or withdrawing it. By applying analogy one could safely argue that UNHCR can promote voluntary repatriation if risk to life and freedom no longer exist in the country of origin for those who have fled it. To say the contrary would mean that UNHCR can promote return when risk to life and freedom exist, something which is totally against the basic foundation of asylum law. Therefore, one can only conclude that UNHCR, in principle, can promote voluntary repatriation if and when it believes that risk to life and/or freedom no longer exist. Thus one can say that if there is a partial change and/or improvement of circumstances in the country of origin refugees should not be encouraged on group basis. This is important considering the subjective and objective elements of persecution as defined in UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Re. Paras 38-45).

As against this background and considering the high degree of illiteracy of the Rohingya refugees, on one hand, and on the other, lack of credible information about situation prevailing in the country of origin, absence of cross-border visits and reports of human rights violations in Myanmar one may wonder whether High Commissioner Ogata's statement that "we can no longer passively wait for conditions to change so that refugees can volunteer. Instead, we must work actively create the conditions conducive to their safe return" is in consonance with the principle of voluntary repatriation (Re. High Commissioner's Opening Address of 46th ExCom Meeting, 1995). With respect to UNHCR's promotional activities in Rohingya repatriation three points may be raised; (a) the refugees were not well-informed about their right to refuse repatriation, (b) they did not have access to full and proper information on the situation in their place of origin, i.e., Rakhine state and (c) various reports indicate that there has not been any fundamental change of circumstance in Myanmar (Re. Reports of UN Special Rapporteur's Report, Amnesty International, US State Department Report), and (d) UNHCR's monitoring ability in Myanmar remains of great concern.



Questions are being asked by concerned academics, NGO/human-rights/refugee activists in Bangladesh as well as overseas, are the recent operations including the Rohingya repatriation case indicative of the policies to develop in the future? Has there been a significant departure here from the practices and procedures followed by UNHCR in other operations? Has the sudden shift in policy symptomatic of things to come under the amended mandate of the organization? It would be conjectural to seek answer to these questions given our dearth of knowledge about the actual dynamics of the UN system, particularly that of UNHCR. However, one may dwell into the rationale of this sudden shift in policy within the framework of the operation itself.

The shift in policy of UNHCR was announced in July 1994, from information sessions to promotion sessions and from private interviewing in transit camps to massive registrations in all camps. This has been officially attributed to the situation in Myanmar being "conducive" and "refugees had shown to be interested to return to Myanmar as evidenced by the large scale interviews conducted in Kutupalong recently". As a part of the new strategy, "UNHCR will conduct promotion sessions in the camps in which UNHCR will provide the refugees with:

- information about UNHCR's role in Myanmar, arrangements for their repatriation, guarantees of safety, and plans for their reintegration, and

- an assessment that the situation in Myanmar is conducive to their return and will advise them that they should return." (Emphasis added)

This change in policy may have major ramification over the very concept of voluntariness of repatriation. As one of the leading aid workers stated, "private interviewing was fought for in the past in order to prevent (further) forced repatriation, what guarantee would massive registration provide as far as voluntariness is concerned?".

In the discussions with aid workers, UNHCR staff members suggested the fact that coercion incidents have significantly dropped in the preceding three months showed the goodwill of the Bangladesh government. At a separate meeting with MSF/H, a representative of UNHCR stated that if this new system would lead to coercion, again UNHCR would go back to the system of interviewing.

As stated earlier it is difficult to attribute the real motive behind this sudden change in policy, particularly at a time when the previous system was beginning to work and reaping results. There might have been a convergence of many factors. In July 1994, with the change in the Relief Commissioner, the GOB had a shift in policy to authorise UNHCR to organise promotion sessions and interviews in all camps instead of only in transit camps. The second factor could be re-thinking in UNHCR on new means of being pro active in the preparation of repatriation. This might have been prompted by the completion of the preparation for repatriation in the Rakhine state where UNHCR has a presence with WFP and initiated an integration assistance programme. The third factor could lie on the draft MOU submitted by GOB to UNHCR. In the draft MOU the Bangladesh government demanded "that the level of voluntariness in repatriation of Rohingya refugees should be determined on the basis of the present attitude of the Myanmar government to the refugees". The MOU stated Myanmar has already recognised 135,000 of the total refugees as its citizens, so these Rohingya people should not be treated as refugees anymore

and they should be sent back to Rakhine state as soon as possible. The draft claimed that this proposal was very much compatible with the 1951 Geneva Convention and 1967 Protocol. (Holiday, 29 July 1994). The draft however was never finalized. The newspaper cites a highly placed Bangladesh government source that the UNHCR officials, have agreed to stop individual interrogation of the refugees and instead they would go for mass registration of the refugees. The fourth factor could be that the refugees decided to return in view of the living conditions on the camps where they staid too long and where there is no education for their children and economic life for themselves and which might be less comfortable than in their village of origin.

### 3.8. Refugees' Awareness of their Rights

The NGOs were particularly concerned about the promotional activities of the UNHCR. They were of the opinion that the repatriation process was not voluntary. The NGOs alleged that refugees were not well informed on their right of saying 'no' to repatriation and access to full and proper information on the human rights situation in their place of origin was limited. They further argued that the situation in Arakan had not changed fundamentally. The NGOs, particularly MSF/H and MSF/F claimed that at the promotion sessions refugees were confused and did not know what the registration meant for them. They suggested that UNHCR to improve its information dissemination and counselling of the refugees. UNHCR accepted the suggestion to improve the information session and to organise verification sessions through private interviews with refugees to ascertain that they still wish to repatriate or would have any problem for their repatriation. The verification session is a meeting between a refugee and exclusively with a UNHCR staff member whereby the later communicates to the refugee the decision of Myanmar authorities on their clearance. During this meeting, the refugee concerned could still withdraw his/her name or give justification to defer his/her return. The NGOs also requested an independent survey on the level of information available to refugees. While this was not forthcoming, the NGOs decided to organise their own survey "to convince ourselves whether we were right in stating that the repatriation was involuntary" (Personal interview, Rian van de Braak, MSF/H, 16.7.95). The survey conducted on 15 March 1995 reported that 65 percent of the interviewee claimed that they were not aware of the possibility of saying 'no' to repatriation and 61 percent stated having concerns regarding repatriation (For detail, see Awareness Survey: Rohingya Refugee Camps, March 1995, MSF/F and MSF/H). On the question of concern expressed by refugees, UNHCR statistics (March 1995) also showed that, of the camp population of 55,000, 19,000 were on hold by UNHCR, this does not differ much from the figure indicated by MSF. UNHCR analysed the reasons for these 19,000 persons who chose not to return. It was found that family reunification, medical care, change of mind etc were the principal factors. At this stage UNHCR also geared its information dissemination programme towards the female population of the camps.

### 3.9. Situation in Myanmar

This constitutes one of the most important areas of concern of the refugees themselves and the human rights and NGO community about the on-going process of repatriation of the Rohingya refugees. Discussions on this issue may be divided in two sub-heads; situation prevailing in Myanmar and presence of UNHCR in Arakan.

**Situation Prevailing in Myanmar:** The situation in Myanmar has basically continued to remain unchanged while there can be no doubt that a modest degree of change has been reflected in the Myanmar government's willingness to take back the refugees. The SLORC regime is still in power in the country and has so far failed to legitimise its rule by holding election or referendum. It may be recalled that the military regime refused to hand-over power to the elected assembly of 1990 and no election has been called since. An important landmark in the on route to democracy there has been the release of Aung San Suu Kyi in August 1995 after a long period of incarceration.

The SLORC regime's human rights records continue to fall far short of recognised international human rights standard. The Myanmar government human rights record came under careful scrutiny by the United Nations. In December 1994 the General Assembly passed an unanimous resolution which expressed grave concerns "at the continued violations of human rights in myanmar, as reported by the Special Rapporteur, in particular, summary and arbitrary arrests, torture, forced labour and forced relocations, abuse of women, politically motivated arrests and detention, restriction on fundamental freedom, including freedom to expression and assembly and the imposition of oppressive measures directed in particular at ethnic and religious minorities". In addition to this depressing situation an aspect that continues to work against the return of the refugees is the persistence of discriminatory citizenship law of Myanmar. The UN Special Rapporteur specially urged the Myanmar authorities to consider reviewing the 1982 citizenship law and to abolish the "burdensome requirements for citizenship" and "discriminatory effects on racial or ethnic minorities, particularly Rakhine Muslims".

The US Department of State in its 1994 Report on Status of Human Rights in Myanmar suggests that the Myanmar authorities "took only limited steps to correct long standing serious human rights violations". The Report confirmed the continued practice of forced labour along with a policy of forced resettlement of civilians by the regime, which are gross infringements of human rights. Likewise an US official termed the Yangon regime "one of the world's worst violators of human rights (Hubbard, 1994)". In its 1994 report entitled 'Myanmar: Human Rights Still Denied' the Amnesty International stated that so far "SLORC has failed to make any real progress or sincere attempts to address the issues ... and to ensure that its citizens are able to peacefully exercise their rights of freedom of expression and association (1994).

UNHCR, however, insists that there is no relation between the situation in Myanmar in general, including human right issues and the arrangements for repatriation of refugees. UNHCR argues that it concluded a MOU with Myanmar on 3 November 1993 to facilitate the repatriation process, and up until now, Myanmar has complied with the implementation of MOU fully. Any issue raised by UNHCR has been addressed to by the authorities 'in the most positive manner'.

To illustrate the point, UNHCR raised the issue of forced labour which was one of the main reasons stated by refugees for their flight to Bangladesh. In June 1995, a SLORC decree was passed regarding forced labour. Though it did not discontinue compulsory labour as a matter of policy, it restricted the practice to tasks of portering and sanitation work. UNHCR also raised the issues of relocation of population and land distribution programme, which was unfair to some group of people including the returnees. The two programmes have been discontinued. On Protection issue, whereby officials abused returnees, they were arrested and charged at UNHCR's intervention.

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**Presence of UNHCR in Arakan:** An important consideration behind the policy shift of UNHCR has been its new presence in Myanmar and particularly in Arakan from the first quarter of 1994. Such presence has been argued as a key to ensure protection to returnees. The protection of the returnees has been the most important question that has been faced by the UNHCR. Given the fact that very little substantive progress has been made in terms of political and human rights situation in Myanmar and SLORC regime is in effective control, and the military dominated IMPD over Arakan, any possibility for an improvement or a deterioration in the situation rests squarely on the wishes and policies of those in authority. In the absence of any move towards a democratic, accountable and transparent institutionalization of the administrative processes in Myanmar the regime's claim to respect its commitments would always remain suspect.

Concerns have been expressed by some quarters about the unclear nature of the UNHCR's legal mandate to intervene on behalf of the returnees in their country of origin and vis-a-vis the national (sovereign) authority of that country (USCR, 1995). In addition, a major limitation for UNHCR operations in Arakan has been the difficult terrain and the poor infrastructural facilities. The region is very undeveloped. Only Maungdaw and Buthidaung is connected by a metalled road. UNHCR field officers may have to spend 1/2 days to follow-up a case which generally involves travel on foot, bikes and boat. Considering the vast nature of the area of operation and the absence of any other human right monitoring groups, it would not be improper to suggest that with a strength of only 9 field officers (other 4 of the total 13 expatriates being technical consultants) the capacity of the HCR to effectively monitor protection issues, along with their other routine tasks, is insufficient. Added to this is unreliability of the local staff, who can either be lined with the intelligence agencies (as has been proved in at least one case involving an interpreter: USCR, 1995:15), or can be quite susceptible to their pressures, protection issues in such a regimented structure has to be a major area of concern. However, on this issues UNHCR maintains its position stated above.

**Economic factors:** "The main concern", according to a senior UNHCR official in Myanmar, "is not the human rights situation in Arakan, which can be vastly improved. (It is neither a paradise, nor a hell.) It is the economic anchoring of the people that would prove to be crucial" (Personal interview, July 1995). A proper anchoring of the people to diffuse future exodus situation will require significant improvement in their economic conditions, i.e., development of infrastructure (wells, roads, bridges, schools, water pumps) and more importantly, human resource development. Emphasis should be laid to develop income generating project so that there is a positive move towards poverty alleviation. Two important elements for such a development initiative in this economically depressed region are, (a) commitment of the government and its interest in the region to mobilise resources both internally and from outside and (b) interest of the donor community. Given the past experience one may reasonably predict that none of these would be forthcoming at least in the near future.

UNHCR is neither mandated nor has the expertise to be involved in development projects and the UNDP is yet to make its mark in Arakan. In spite of its understanding with the UNHCR the Myanmar authorities have not been taking any decision in allowing a major NGO involvement in the region. None of the two NGOs that operate in Arakan are involved in reintegration. The AICF is involved in water supplies in reception camps and hydrological

survey of the area and the Japanese Bridge, Asia mainly repairs transports of UNHCR. The World Food Programme is the only other UN body engaged in the returnee areas. Although there had been talks of Myanmar Red Cross becoming involved, particularly in health and community development sectors, not much of a progress has been made since.

Thus we find that the situation prevailing on the Myanmar side is faced with a number of problems. Apart from the general lack of progress in the political and human rights realms, the protection umbrella of the UNHCR seems to be limited. Absence of independent monitoring groups further compounds the problem. It is said that the failure of the Myanmar authorities to take steps for economic rejuvenation of the region and their continued discouragement of the NGOs have cast a major shadow on the future of anchoring programme which the UNHCR technical consultants are striving to develop.

### 3.10. The Unresolved Debate on Change in Circumstance and Voluntary Repatriation

A very pertinent arena for discussions is the questions of change in circumstance and voluntary nature of repatriation. It has been demonstrated in the previous section that a number of international agencies, both private-independent, and inter-governmental, feel that there has not been any major change in the situation in Myanmar, the country of origin of the Rohingya refugees which warrants promotion of repatriation of refugees. For this they argue that the continuation of the SLORC regime, its human rights practices which include forced labour, relocation of villages, restriction of religious practices, mainly of minorities, such as Muslims, restriction of freedom of movements and the issue of citizenship represent a serious breach of basic human rights of members of minority groups and are the reflections of the poor state of human rights in Myanmar.

An important issue for discussion with the refugees during field visit has been the question of developments in Myanmar and their decision to go back. While almost all refugees met and interviewed claimed that they would eventually go, none indicated their willingness to go then. When asked about the reason for such a decision there was a degree of similarity in responses. The refugees stated that the military regime which drove them out was still in full control of Myanmar and they were still pursuing their policies of forced labour and religious persecution. They further suggested that there had not been any positive feedback from the returnees who had gone back to Myanmar. They claimed that hardly anyone had got back their land and homes and they were yet to be provided with any concrete evidence about the normality of the situation in Arakan, that some of the agencies and the Bangladesh government had been claiming.

**The Legalistic Interpretation:** In this part it will be argued that the marginal improvement in the situation in the country of origin should not necessarily be construed as a change in circumstance as both Bangladesh government and the UNHCR seem to be doing.

Article 1/C (5) of the 1951 Convention says that the Convention will cease to apply to any person if "(H)e can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection

of the country of his nationality". It is this principle of change of circumstance which has been dealt with by a corpus of literature in international law. James Hathaway identifies three distinct elements in this regards. First, the "change must be of substantial political significance, in the sense that the power structure under which persecution was deemed real possibility no longer exists" (1991:200). This, among others, may be reflected in the collapse of the persecuting government, coupled with holding of genuinely free and fair democratic elections and coming to power of a government committed to human rights.

I A Grahl-Madsen warns against premature consideration of cessation simply because a relative calm has been restored in country still government by an oppressive political structure. Thus he argues that "the present provision should clearly not be construed so as to force a person to accept, more or less at face value, any change of policy of such (an oppressive) regime. In fact, a refugee cannot be expected to submit himself to the very persons who have persecuted or threatened to persecute him" (1966:401).

The second element that Hathaway stresses that "there must be reason to believe that substantial political change is truly effective" (1991:201). As the dissenting opinion in Ruiz Angel Jesus Gonsalvez notes "there is often a long distance between pledging and the doing"; and "good intentions may have existed, but I refuse to believe that there were no chance mishaps" (Juan Pedro Diaz case, 1987). Here explicitly citing the Peruvian of situation of 1980-81 Hathaway categorically states that cessation is not warranted where "de-facto executive authority remains in the hands of the former oppressors" ... "nor can it be said that here has truly been a fundamental change of circumstances where the police and military establishments have yet fully to comply with dictates of democracy and respect for human rights" (1991:202).

Third, the change of circumstances must be shown to be durable. The transitory shift in political landscape must not be the guiding principle of decision concerning cessation of refugee status, but rather should be "reserved for situations in which there is reason to believe that positive conversion of the power structure is likely to last" (Hathaway, 1991:203).

The UNHCR in its promotional campaign highlighted the improvements of situation in Arakan. The Bangladesh government, it its turn, strongly believes that the level of voluntariness in repatriation of Rohingya refugees should be determined on the basis of attitude of the Myanmar government to the refugees. On this premise, in the revised MOU of the Bangladesh government argued that refugees who have been accepted by Myanmar should not be treated as refugees and they should be sent back in Rakhine state in Myanmar as soon as possible (Weekly Holiday, 19.7.94).

Thus a minimum degree of familiarity of refugee laws concerning cessation helps us understand the untenability of the argument that withdrawing of the status of refugees can be made contingent upon the "attitude" of the home government towards the refugees and a slight degree of improvement on the surface of political landscape.

The Extreme Liberal Interpretation: One may, however, invoke an extremely liberal interpretation of the question of voluntariness vis-a-vis the legalistic position discussed above. Such a liberal interpretation can be based on the premise that the Rohingya operation is

somewhat unique of UNHCR operations and therefore the question of voluntariness merits a flexible application. The gradual return of Myanmar to the international community by opening up its economy and the release of long detained opposition leader Aung San Su Kyi are small but significant indications of incremental changes that are taking place in that country. The very recent SLORC decisions to discontinue forced labour, payment for communal labour and suspension of relocation of villages may be considered as major steps forward in human rights practice of the regime. All these would have important bearing for the Rohingya refugees and indicate the liberalizing trend of the Myanmar authorities. The improved on ground cooperation between UNHCR and Myanmar authorities in the Arakan region and recent UNHCR reports that returnees have not been subjected to any form harassment as evident from the figure that only 61 of the 193,000 so far repatriated have been arrested on various charges provide evidence of some changes since 1991. The UNHCR further argues that there is adequate safety nets for the refugees to opt out of repatriation, even at the last minute before crossing the border. All these combined together, the liberals hold, ensured the voluntary nature of repatriation and had been in the best interest of the refugees.

In addition to these, if one takes into account the following issues into consideration then one may be inclined to go beyond the strictly legalistic position presented earlier. The peculiar history of the Rohingyas within the Myanmar Union, the unresolved question of their citizenship and associated discrimination as a national minority over the last hundreds of years, the Myanmar government's perception of them as 'illegal migrants' and a possible concomitant implicit national agenda of driving them out to their 'home country' i.e., Bangladesh, make it a compelling case that any opportunity to send them back to Myanmar by ensuring their personal safety is to be availed. Delay in their repatriation would only weaken these people's rights to live there and would further complicate their claims to land and homes. In addition, the stand taken by the host country, that the refugees must go and Bangladesh cannot provide them with any permanent home, further augments the case for repatriation. The denial of Bangladesh authorities to open schools and income generating activities in camps only reflects their firm determination to accept the refugees as a temporary phenomenon. The policy makers in Bangladesh realises any effort of integration of the refugees would only invite more refugees from across the border, whom the Myanmar authorities would be too willing to see them go. Added to this the question of donor fatigue could be very well be in UNHCR's policy makers mind. With the number of refugees worldwide touching the 23m figure, UNHCR could find it legitimate to assess specific situation more pragmatically and apply its principles and policies more creatively.

#### 4. SUMMARY AND CONCLUSIONS

4.1. This paper attempted to examine the reasons behind the periodic influx of refugees from Arakan state of Myanmar. It established that the Rohingyas have been living in Arakan for almost one thousand years, which make them by all criteria the indigenous people of Arakan state. The community is divided into two groups: (1) the Rohingya proper and (2) the Heins. The Rohingyas are the original inhabitants and the Heins are the captured slaves from Bengal. The number of the Heins was further increased with the British sponsored settlement policy in the region. The paper also exposed the weakness of the argument by some that the Rohingya people are the descendants of a small group of people brought to the Arakan state by the British colonial power.

It also assessed indepth the complex issue of Burmans-Rohingya relation which has evolved over the centuries, especially since the Burman annexation of Arakan in 1785. It examined the inter-communal relationship between the Rohingyas and the Rakhines, particularly in the backdrop of demands of statehood for the Arakan state, following independence of Burma.

The paper pointed out that the issue of citizenship rights to the Rohingyas, finds its root in religious persecution and abuses of human rights by the Myanmar authorities. This has periodically led to exodus of Rohingyas from Arakan into Bangladesh. The human rights practices of the Myanmar authorities would constitute the main element behind possible future exodus from Myanmar to Bangladesh. Along with the recognition of their fundamental human rights what is further needed is conscious efforts of anchoring of these people through economic and human resource development.

4.2. On the question of treatment of the refugees of the 1991 influx it was obvious that the primary motivation of the government was to ensure immediate repatriation of the refugees due to their negative economic and environmental impact on the areas where they were allowed to stay. This might have led to given GOB officials to feel free to resort to coercion against the refugees to ensure their quick return to their country of origin.

It was further established that the local people in the refugee affected areas were particularly hard hit as the refugee presence impacted adversely on the local economy and environment. The articulation of the anti-refugee sentiments in the form of institutionalised opposition reflected the need for a more sympathetic and balanced media coverage of the refugee issues. This section also highlighted the creative formula that the UNHCR devised to ameliorate the local discontent.

4.3. On the important question of repatriation of Rohingya refugees the impact of changing dynamics in the relationship between the two governments and their relationship with the UNHCR on the refugee repatriation process was examined. With regard to repatriation it was noted that the matter was directly handled by the Bangladesh and Myanmar governments. The modalities, number and clearance procedure were agreed upon bilaterally. The role of UNHCR on these issues was limited to facilitating the voluntary return of the refugees. It was not until June 1994 that UNHCR was given proper access to the camps in Bangladesh.



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The section also focussed on the evolution of UNHCR's role from pure material assistance to promotional activities with all its implications. The discussion was rounded up with a brief exploration into the change of circumstance in the country of origin which facilitate the ground for promotion of refugee repatriation in international law. It was found that strict adherence to international refugee law entails that if there is no visible and substantial change in the circumstances which led the refugees to flee their home country and if there is any likelihood that change, if any, could not be truly effective, then a strong case exists for the refugees to continue enjoying the refugee status in the country of asylum unhindered. On the other hand, an extremely liberal interpretation of the principle of voluntary repatriation may be taken as recourse to given the vast increase in number of refugees worldwide, the concomitant donor fatigue and the specific political and historical background of the caseload.

The Convention of 1951 and the ExCom Conclusions on International Protection dealing with Voluntary Repatriation, do not address the issue under which UNHCR should promote repatriation. However, Article 1/C/5 that speak about application of Cessation clause which suggests that if conditions led refugee to flee and seek asylum to, changes in a substantive manner, refugees should in principle, could return to his country without risking his life and freedom. By applying this analogy it is safe to say that UNHCR can actually promote repatriation in a positive and active way once it believes that condition in the country of origin which has led initially the refugees to flee have improved in such a manner whereby the UNHCR is convinced that if refugees were to return they will not face risk to life and freedom. The question to be asked therefore is whether condition in Myanmar have improved in such a way to allow UNHCR to advocate active promotion?

There are two views on the matter. The first adopted by the NGOs which argue that no substantive change has occurred which warrant promotion of repatriation. They base they argument on reports of UN Special Rapporteur, US State Department Human Rights and Asia Watch. The other, UNHCR, view is that promotion of repatriation is based on sufficient change of circumstances which guarantee safe return, liberty and freedom of the returnees. To support its view UNHCR states that improvement in human rights situation in Arakan, its presence in the region and its access to returnees to monitor protection matters has led to its decision to promoting repatriation. It also argues that a total change in circumstance to occur in the country of origin may take a long time and may mean that the refugees continue to live in camps for a long period in sub human conditions as opportunity for integration in the host country is minimal. It is in this context a partial improvement in the circumstance, which is about the same before refugees were evicted, UNHCR believes is the right time to promote repatriation in an active way.

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