

HUMAN RIGHTS

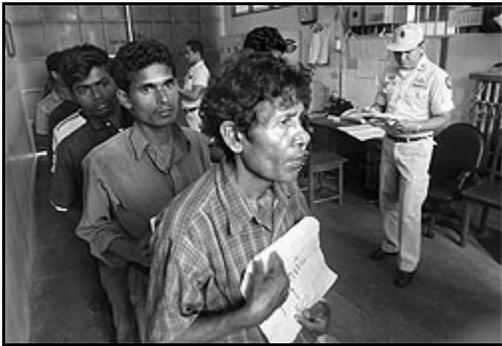
**Burma's Rohingyas in flight and the solutions to their plight**

By: VITIT MUNTARBHORN

Published: 11/03/2009 at 12:00 AM

Newspaper section: [News](#)

Much ink has been spilt over the plight of Rohingyas who have sought shelter in the Southeast Asian region in recent months, even though the situation is hardly new.



This photo taken on Feb 1, 2009, shows Thai officials checking Rohingya boat people who were brought from the provincial prison in Ranong to the immigration office, to await deportation to Burma.

Opinions range from the nationalistic to internationalistic - varying from defensive claims of national security immersed in an attitude of denial, to international law-based advocacy of their rights inviting a more open response.

This group is currently of great interest to the international community, because they are primarily a Muslim minority originating in the Arakan (or Rakhine) state of Burma with a particularly challenging history.

Their outflow has, for a long time, been the result of a situation of great ambivalence in that country of origin where they are, in reality, treated as outcasts.

Even though historically they have been there for many generations, their ethnicity was not adequately recognised at the time of Burma's independence.

Even today, while the authorities there seem to be willing to recognise over one hundred ethnic groups in the country, they do not recognise Rohingyas as a legitimate group in that list.

The past three decades have witnessed various disturbing facts which should help to inform the need for a balanced policy, nationally, regionally and internationally, concerning the group.

They are not allowed to move freely in Burma. They are not allowed to marry without permission. They are impeded from accessing schools and other services. They are extremely poor and are marginalised politically and economically. They suffer from the uncertainties of being a stateless people.

In effect, the Rohingyas are persecuted by a regime which instrumentalises Buddhism for political ends

and plays on the fear of Islam.

These factors thus provide for a scenario of explicit and implicit persecution of the group which, for lack of national protection, requires international protection.

While they may at times fit into the category of economic migrants in their exodus, the likelihood is that concurrently, they are also refugees ("persons with a well-founded fear of persecution," according to the international definition of "refugee") - given the oppressive background that shapes their existence.

The outflows date back many years. In the late 1970s, tens of thousands of Rohingyas were pressured to leave Burma, but they were later able to repatriate to the country with UN help.

In the early 1990s, another massive outflow took place - of several hundred thousands. Most were able to seek temporary refuge in neighbouring Bangladesh. Again with UN help, many were able to return voluntarily to Burma.

However, a residual number remained in camps in Bangladesh and even today, there are some 20,000-30,000 officially in the camps there.

It is estimated that there are also some 200,000-300,000 outside the camps who do not enjoy the formal protection offered by the camps.

Nor is their influx into Thailand new.

Today, it is estimated that there are some 20,000 Rohingyas in Thailand. In the past few years, several thousands have been trickling into the region by boat. Over the past few months, it is evident that the arrivals have been mainly men. It is suspected that they are helped by third parties - smugglers or traffickers, in their precarious voyage.

While many seem to be searching for work, the background of their departure should not be forgotten - especially the environment of discrimination noted above which may be interlinked with persecution.

Sadly, recent arrivals have been subjected to numerous cruelties in the Southeast Asian region, with several reports of push-backs ("refoulement") at sea, and physical violence and other violations committed against them.

In composition, these "boat people" may also be mixed flows; news reports indicate that while some are Rohingyas coming from the camps or around the camps in Bangladesh, others are coming directly from Burma - while others are Bangladeshis (non-Rohingyas) sharing the boats.

But how can the world be really certain?

Before conjecturing too much, it is important that there be ways of talking with the arrivals to ascertain their background and their reasons for departure from their homesteads and/or recent shelters.

It is important to have credible third parties accessing them to listen to their life histories and the reasons for their departure from their country of origin and/or their country of transit.

The office of the United Nations High Commissioner for Refugees (UNHCR) is traditionally the best placed organisation to do so, in cooperation with the authorities of the country of refuge.

If it is found that the circumstances and personal situation of those who seek refuge - objectively and subjectively - indicate that they left their country of origin because of actual or potential persecution, they are entitled to international protection. They should not be pushed out or pushed back from the country of refuge, whether at sea, on land or by air; this encapsulates the international law principle of "non-refoulement".

It is important to relay that message emphatically to border authorities, including the armed forces, immigration officials and police, as well as the message of the duty to rescue people at sea.

The tendency to classify arrivals as "illegal immigrants" under national immigration law should not undermine that overarching duty.

And what is to be done?

After a rather haphazard beginning in recent months, the various countries of refuge, particularly Thailand, are now moving towards more humane solutions, based upon dialogue, consultation and shared responsibility.

Yet, one of the strange ironies of the current situation is that while there has been much advocacy vis-a-vis countries of refuge in relation to deficiencies in their treatment of those who seek refuge, much less has been said concerning the country of origin. Clearly, it is Burma which is the most important element of the equation and which should bear the brunt of the responsibility.

Unless the root causes of displacement and the marginalisation of the Rohingya people are dealt with effectively there, there can be no genuine, long-term solutions. And the plight of the Rohingya people is closely intertwined with the challenge of human rights and democracy in Burma as a whole.

The issue of statelessness also needs to be dealt with concretely by the country of origin. Food security, economic and social development, respect for their religion and culture, freedom of movement, political participation, property ownership, access to schools and livelihood opportunities, and the right to marry are but some of the key issues to be dealt with at the source.

Even if those who are now seeking refuge in other countries did not have Burmese nationality before their exodus, there are still ways of ascertaining that they were long-time residents there. Evidence of this status can be gauged from the various forms of registration in Burma, such as "family lists". In the event of their possible return to the country, they need to be reinstated on such lists and to be assured that they will be treated humanely.

Indeed, it is worth recalling the international position that even those who do not have a country's nationality are entitled to respect for their human rights - as human rights are the rights of all persons irrespective of nationality and other origins.

In the quest for solutions, there are various possibilities open to dialogue and related action. There is the 10-country Asean channel, but Bangladesh is not part of this forum. There is the channel known as the Bali process which involves over 50 countries on measures to deal with aspects of migration in the Asia-Pacific region. However, to date, this process has tended to deal with transnational crime, and human trafficking and smuggling, rather than the plight of those who seek refuge.

If the Bali process is to be used in regard to the latter, there needs to be strong injection of the human rights element and refugee protection into the forum.

On another front, there is a possible tripartite/quadripartite process, involving Thailand, Burma, Bangladesh and the UN. Or there could simply be a bilateral channel between Thailand and Burma on aspects of the Rohingya issue.

The door should thus be open and not closed, on the basis of shared responsibility and humanitarian responses.

- *Vitit Muntarbhorn is a Professor at the Faculty of Law, Chulalongkorn University. He has helped the United Nations in a variety of capacities, including as an expert, consultant and Special Rapporteur. He is the author of "The Status of Refugees in Asia," published by Oxford University Press.*

