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December 11, 2017

HUMAN  
RIGHTS  
WATCH

HRW.org

H.E. Mr. Abul Hassan Mahmood Ali, M.P.  
Foreign Minister  
Ministry of Foreign Affairs  
Segunbagicha, Dhaka 1000  
Bangladesh

U Kyaw Tint Swe  
Union Minister  
Ministry of the Office of the State Counsellor  
Office No. 8  
Naypyidaw  
Myanmar

## Re: Myanmar-Bangladesh “Arrangement” on Rohingya Refugees

Dear Foreign Minister Hassan Mahmood Ali and Union Minister Kyaw Tint Swe,

We write to you on behalf of Human Rights Watch concerning the “Arrangement on Return of Displaced Persons from Rakhine State” (the “Arrangement”), which Myanmar and Bangladesh signed on November 23, 2017. The Arrangement responds to the forced displacement of more than 645,000 members of the ethnic Rohingya minority in Myanmar who have entered Bangladesh during the past three months.

Any agreement to return Rohingya refugees to Myanmar must be based on fundamental principles of international law, including that all returns must be voluntary and safe, and carried out with full respect for the principle of nonrefoulement, which prohibits the return of refugees to places where they would be persecuted or face a real risk of torture, or cruel, inhuman, or degrading treatment.

The text of the Arrangement raises concerns that these principles will not be fully adhered to. While the Arrangement states that those displaced left Myanmar following “terrorist attacks” occurring on October 9, 2016, and August 25, 2017, it makes no reference to the campaign of killings,

Kenneth Roth, *Executive Director*

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widespread rape, and mass arson carried out by Myanmar security forces that caused the vast majority of these refugees to flee. The human rights violations, which amount to crimes against humanity, have been documented by Human Rights Watch and other independent organizations. The United Nations Security Council has met to address these abuses and a Special Session of the UN Human Rights Council was convened on December 5.

The Arrangement fails to identify those who fled Myanmar for Bangladesh either as Rohingya or as refugees.

The Arrangement states that the process of return will commence within two months after the signing of the agreement, and will be completed within “a reasonable time” in a “time-bound manner.” While we commend the implicit recognition of the right of refugees to return and the stated intention to resolve this situation, the timeframe indicated in the Arrangement is unrealistic. Tens of thousands of Rohingya have no homes or even villages to return to after they were burned by the security forces and government-backed groups, making it unclear where they would go upon return.

Thus far the government of Myanmar has not publicly admitted the causes of the displacement and has taken no steps to address them. Senior military officials responsible for planning, ordering, or allowing ethnic cleansing, and security force personnel and others who participated in attacks, have not been identified or held accountable. The security forces continue to present an imminent threat to any Rohingya families that would return. Any assurances of security upon return would be meaningless, since that security would depend on the very same security forces that recently drove them out of the country.

Protection mechanisms need to be put into place to ensure the safety of people who choose to return. The United Nations High Commissioner for Refugees (UNHCR) should have direct and unhindered access to all returnees—including to spontaneous and internally displaced returnees—to monitor every stage of the repatriation and reintegration process. This is necessary to ensure that returnees are not subjected to harassment, intimidation, punishment, violence, or denial of fair access to services or institutions, or discriminated against in the enjoyment of any basic rights until the situation in Myanmar can be considered safe, effective national protection measures are put in place and become available to all returnees, and returnees have been reintegrated.

In addition, to ensure an environment conducive to returns necessitates that the government of Myanmar abolish or revise various discriminatory and abusive laws, policies, and regulations. Voluntary repatriation in safety and dignity will not be feasible

until the Myanmar government demonstrates its willingness and ability to ensure full respect for returnees' human rights, equal access to nationality, and fully protected security among communities in Rakhine State.

The Arrangement contains several additional critical flaws:

- 1) Guiding Principle A.2 states, "Myanmar has agreed to take necessary measures to halt the outflow of Myanmar residents to Bangladesh." The right of any person to leave any country is a human right enshrined in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Universal Declaration also enshrines the right of anyone to leave their country to seek asylum from persecution in another country. This provision of the Arrangement is unacceptable if it would prevent members of the Rohingya minority from fleeing persecution in Myanmar.
- 2) Guiding Principle C.16 pledges both countries not to violate universally agreed principles of human rights "as enshrined in international human rights instruments to which they are parties." However, we note that neither country is a party to the 1951 Refugee Convention or its 1967 Protocol. Any repatriation accord involving the two countries should explicitly recognize that the parties are lawfully obligated to respect customary international law, including the principle of nonrefoulement under international refugee law. The principle of nonrefoulement prohibits any government from forcing an asylum seeker at its border or a refugee on its territory back to a place where their lives or freedom would be threatened. This includes direct or indirect pressure that would give refugees little or no option but to return to a place where they would face a risk of serious harm.
- 3) While Bangladesh agrees in Guiding Principle A.4 to immediately avail itself of the assistance of the UNHCR in the process of safe and voluntary return, Myanmar agrees only "that the services of the UNHCR could be drawn upon as needed and at the appropriate time." As the only UN agency with a statutory mandate to cooperate with governments to facilitate the voluntary repatriation of refugees, UNHCR's involvement should be required as part of any agreement and regarded by both countries as an indispensable element of any organized voluntary repatriation program at every stage of the process, including monitoring reintegration in Myanmar.

Because of these and other flaws in the Arrangement, we believe that it should be suspended until it is amended to reflect the above concerns. We urge both parties to invite UNHCR to participate in any future negotiations in order to ensure that international standards are included in any future agreement.

The Arrangement does, however, include some elements that could provide the basis for a new tripartite agreement on voluntary repatriation involving Bangladesh, Myanmar, and UNHCR. The following points, if properly amended, suggest helpful principles governing the voluntary return of Rohingya refugees from Bangladesh:

- 1) Guiding Principle A.2 includes a commitment to encourage those who have left Myanmar “to return voluntarily and safely to their own households and original places of residence or to a safe and secure place nearest to it or their choice.” Recognition of the right of refugees to return to their homes or to other places of their choice is welcome.
- 2) Guiding Principle A.2 states that “Myanmar will take all possible measures to see that the returnees will not be settled in temporary places for a long time and their freedom of movement in Rakhine State still be allowed in conformity with the existing laws and regulations.” This should be amended to be a positive statement of principle, stating instead: “Myanmar will take all possible measures to see that the returnees will not be settled in temporary places for a long time and their freedom of movement be allowed throughout Myanmar.” The right to freedom of movement applies to all throughout Myanmar, not just in Rakhine State, and should not be limited by “existing laws and regulations,” which are discriminatory toward Rohingya.
- 3) Guiding Principle A.3 appropriately states that verification for return “will be based on evidence of past residence in Myanmar.” However, the principle should acknowledge explicitly that much documentary evidence of past residence in Myanmar has been lost during the ethnic cleansing campaign that forced people from their homes, the difficult journey to Bangladesh, and the chaotic conditions after arrival in Bangladesh. Evidence of past residence should include having been registered in Bangladesh after arrival, witness affidavits, and other non-documentary means of verification.
- 4) Guiding Principle A.5 includes an agreement by Myanmar not to prosecute or penalize returnees for illegal exit. This is a positive pledge, but should also include a commitment to revise Myanmar law to respect freedom of movement and end any possibility of being prosecuted for leaving the country without permission. The agreement should also ensure that returnees will not be subjected to harassment, intimidation, discrimination, or any other punitive measures on account of them or their families having left Myanmar.

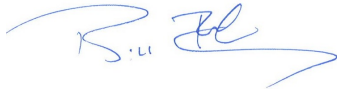
Finally, there are a number of elements that were not included in the Arrangement that should be part of a new tripartite agreement on voluntary repatriation. These include:

- 1) Refugees should be provided with complete, objective, up-to-date, and accurate information about conditions in prospective areas of return, including security conditions, and availability of assistance and protection to reintegrate in Myanmar.
- 2) Bangladesh should provide refugees a genuine choice to stay in Bangladesh, return to Myanmar, or seek resettlement in a third country.
- 3) Myanmar should explicitly ensure that refugees have the right to have restored to them any housing, land, and property of which they were arbitrarily or unlawfully deprived, or to be fully compensated for any housing, land, and property that cannot physically be restored as determined by an independent, impartial tribunal.
- 4) Myanmar should explicitly ensure that refugees who have been arbitrarily or unlawfully deprived of their liberty, livelihoods, citizenship, family life, and identity also have the right of restitution.
- 5) The parties should make every effort to ensure that families are not separated in the process of repatriation and that every effort is made to facilitate the reunification of separated family members.
- 6) Bangladesh should issue or validate documents with respect to changes in legal or civil status, including births, deaths, marriages, divorces, adoptions, as well as educational and vocational degrees, certificates, and diplomas for refugees living in Bangladesh, and that Myanmar should recognize the validity of such documents and credentials.
- 7) The parties should take special measures to ensure that vulnerable groups, including people with disabilities, older people, and children, especially unaccompanied and separated children, receive adequate protection, assistance, and care throughout the repatriation and reintegration process.
- 8) The parties should ensure that refugee women, and children in both refugee and affected communities, are consulted and involved in every phase of the repatriation and integration process, including in “go and see” visits of refugees to areas of intended return.
- 9) The parties should ensure that the United Nations and other humanitarian agencies have unimpeded access to areas of return in Rakhine State to provide humanitarian and development assistance to all communities.

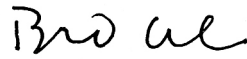
We were concerned to see Union Minister for Social Welfare, Relief and Resettlement, Dr. Win Myat Aye, cited in *The Irrawaddy* as saying, “Anyone coming back will have to undergo the national verification process according to the 1982 Citizenship Law.” This contradicts Guiding Principle A.3, which states that verification for return will be based on evidence of “past residence” in Myanmar, not past citizenship.

We would welcome the opportunity to meet with you to discuss these recommendations or otherwise to assist efforts to help protect the rights of refugees, internally displaced people, and others affected by this urgent humanitarian situation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Frelick". The signature is stylized with a large initial "B" and a long horizontal stroke extending to the right.

Bill Frelick  
Director  
Refugee Rights Program

A handwritten signature in black ink, appearing to read "Brad Adams". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke extending to the right.

Brad Adams  
Executive Director  
Asia Division