How to protect the rights of the stateless Rohingya people in Myanmar?

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Few years ago, I was in London attending a human rights festival, where I watched a documentary about Myanmar. At that time I knew little about Myanmar, but that movie struck my attention and gave a different direction to my life. I decided to take action and understand what was behind the Junta's curtain and the military violence against its own people. Therefore, few months later, I started a Master in Human Rights & Conflict Management at Scuola Superiore Sant'Anna in Pisa, Italy and then spent four months at the United Nations Regional Office of the High Commissioner for Human Rights (OHCHR) in Bangkok.

During my time at OHCHR, I got closer to the Rohingya's cause when in October 2012, following an escalation of violence in Myanmar, they organized a protest in front of the UN building in Bangkok, asking the United Nations Security Council to deploy, within 72 hours, UN Peacekeeping Forces in the Rakhine State to protect the Rohingya people and to constitute a UN Commission of Inquiry to investigate the international crimes committed against them and bring the perpetrators to justice. The decision to research on the topic of the stateless Rohingya has been taken as a way to stand for their cause. Their particular vulnerability and determination at the same time, inspired me.

I am grateful to colleagues from the United Nations High Commissioner for Refugees (UNHCR) Regional Office in Bangkok, namely Nick Oakeshott, Regional Protection Officer on Statelessness and Yasser Saad, Senior Regional Training Officer on Protection, who have both been my trainers in the course on Refugees and Statelessness, as well as to Laura Giammarinaro, UNHCR Regional Registration Officer, who personally helped me drafting the questionnaire to interview the Rohingya before traveling to Myanmar in December 2012.

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to interview in Yangon, while Myo Thant, a member of the 88-Generation, sent me precious information regarding the history and political discrimination of the Rohingya.

My words of gratitude also go to Marga Ozonas Marcos, from the United Nations Entity for Gender Equality and the Empowerment of Women (UN WOMEN); Becky Palmstrom, from BBC media Action in Myanmar; Rezaur Rahman Lenin, Executive Director of Law Life Culture in Bangladesh; Mark Harris, from ASEAN-UN Partnership, Department of Political Affairs/ESCAP; Petra Righetti, from the United Nations Population Fund (UNFPA); the Rohingya National Organization in Thailand (RNOT) and Aung Aung, a Myanmar guest researcher at the Institute for Security and Development Policy (ISDP) in Sweden.

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Silvia di Gaetano
28 March 2013

Statement of authenticity

The opinions and conclusions expressed are those of the author and do not necessarily reflect the views of the people, institutions and organizations mentioned hereafter. The work submitted is expressed in her own words and incorporates her own ideas and judgments. All information therein contained is true, correct and accurate to the best of her knowledge and belief. She is aware that plagiarism is a crime and can be ground for expulsion.

ABSTRACT

How to protect the rights of the stateless Rohingya people in Myanmar?

Western Myanmar is populated by Buddhist Rakhine and Muslim Rohingya people. On May 28 2012, a Buddhist Rakhine woman has been alleged raped and killed by three Muslim Rohingya men. Consequently, on June 3, a group of Rakhine villagers assaulted a bus and killed 10 Muslims on board. Since June 2012, deadly sectarian violence erupted in the Rakhine State between the two ethnic groups, with an escalation of violence in October, leaving 800,000 stateless Rohingya in the hands of the International Community.

The Government of Myanmar has long denied Rohingya the right to obtain citizenship, therefore limiting their right to get married and found a family, to register the birth of their children, to enjoy freedom of movement, access to education, employment, medical care and legal protection. Many human rights violations have marked the life of the Rohingya people, leaving them without a sense of identity and belonging.

Consequently, the main questions leading this research are: Who are the Rohingya? Why are they considered Stateless and how to protect their rights and address the causes of the Myanmar discriminatory nationality law? Understanding the reasons of Rohingya stateless status and developing an understanding of the legal, political and social context in which the violence is taking place will set the floor to advocate for the rights of the Rohingya people to be recognized as citizens of the Union of Myanmar, and subsequently fully enjoy human rights.

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LIST OF ABBREVIATIONS

1954 Convention	Convention relating to the Status of Stateless Persons
1961 Convention	Convention on the Reduction of Statelessness
ARF	Asian Resource Foundation
ASEAN	Association of Southeast Asian Nations
ASEAN Charter	Association of Southeast Asian Nations Charter
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Inter Governmental Commission on Human Rights
OHCHR	Office of the High Commissioner for Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPPF	Conflict Prevention and Peace Forum
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DPKO	Department of Peacekeeping Operations
IDPs	Internally Displaced Persons
ISDP	Institute for Security and Development Policy
NGOs	Non-Governmental Organizations
NRCs	National Registration Cards
OCHA	Office for the Coordination of Humanitarian Affairs
RNOT	Rohingya National Organisation in Thailand
TRCs	Temporary Registration Certificates
UN	United Nations
UN Charter	United Nations Charter
UDHR	Universal Declaration of Human Rights
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees

UNICEF	United Nations Children's Fund
UN WOMEN	United Nations Entity for Gender Equality and the Empowerment of Women
WFP	World Food Programme

INTRODUCTION

Western Myanmar is populated by Buddhist Rakhine and Muslim Rohingya people. On May 28 2012, a Buddhist Rakhine woman has been alleged raped and killed by three Muslim Rohingya men. Consequently, on June 3, a group of Rakhine villagers assaulted a bus and killed 10 Muslims on board. Since June 2012, deadly sectarian violence erupted in the Rakhine State between the two ethnic groups, with an escalation of violence in October, leaving 800,000 stateless Rohingya in the hands of the International Community.

The Government of Myanmar has long denied Rohingya the right to obtain citizenship, therefore limiting their right to get married and found a family, to register the birth of their children, to enjoy access to education, employment, medical care, legal protection and freedom of movement. Indeed, the majority face difficulties in obtaining the required travel permits even to visit a neighboring village. Many human rights violations have marked the life of the Rohingya people, leaving them without a sense of identity and belonging.

Consequently, the main questions leading this research are: Who are the Rohingya? Why are they considered Stateless and how to protect their rights and address the causes of the Myanmar discriminatory nationality law? Understanding the reasons of Rohingya stateless status and developing an understanding of the legal, political and social context in which the violence is taking place will set the floor to advocate for the rights of the Rohingya people to be recognized as citizens of the Union of Myanmar, and subsequently fully enjoy human rights.

The work is structured in nine chapters. Chapter I starts with information about Myanmar. Chapter II explains who the Rohingya are, based on an historic overview of Rohingya people's origins, crucial to understand the derogative term "illegal Bengali" used in Myanmar to describe them. Chapter III shows a snapshot of the inter-communal violence between the Buddhist Rakhine and the Muslim Rohingya people in the Rakhine State. It is followed by a presentation of the 1982 Myanmar Citizenship Law, the main discriminatory law against Rohingya people, cause of the racism against the Muslim minority. Chapter V

provides the reader with possible International and Regional Legal Instruments to address the problem of Statelessness, together with the concluding observations of the Human Rights Treaty Bodies and the recommendations of the Special Rapporteur on the situation of human rights in Myanmar in Chapter VII. The last chapters are dedicated to explain the future and imminent implications for not tackling the problem of Statelessness in Myanmar and the repercussion of that in other ASEAN countries, followed by conclusions and possible solutions to Statelessness.

Methodology

This paper is based on a thorough analysis of the relevant National, International and Regional legal instruments and on a review of the grey literature from NGOs, scholars and UN agencies. The research was carried out during 2012-2013 in relation to the escalation of violence in the Rakhine State and the human rights violations committed by armed forces and Buddhist Rakhine people against the Muslim Rohingya, consequently leading to deep discrimination against them.

Limitations

Firstly, the paper was supposed to be based on field research conducted in the Rakhine State. For this purpose, a specific questionnaire has been prepared in collaboration with the UNHCR Regional Office in Bangkok to demonstrate that the Rohingya are victims of multiple discrimination, if compared to other ethnic populations, namely the Buddhist Rakhine. Fieldwork carried out as part of this review involved in-depth interviews with 30 Rohingya and Rakhine IDPs, and with a wide range of support agencies from the United Nations to the NGOs working in Myanmar.

The target group had been divided into the main vulnerable groups: children, women and elderly. The field research would have examined *inter alia* the role of UNHCR programs for stateless people in two towns: Sittwe, capital of the Rakhine State and Yangon, the former capital of Myanmar. I managed to arrange about 10 interviews in Yangon with no result, since

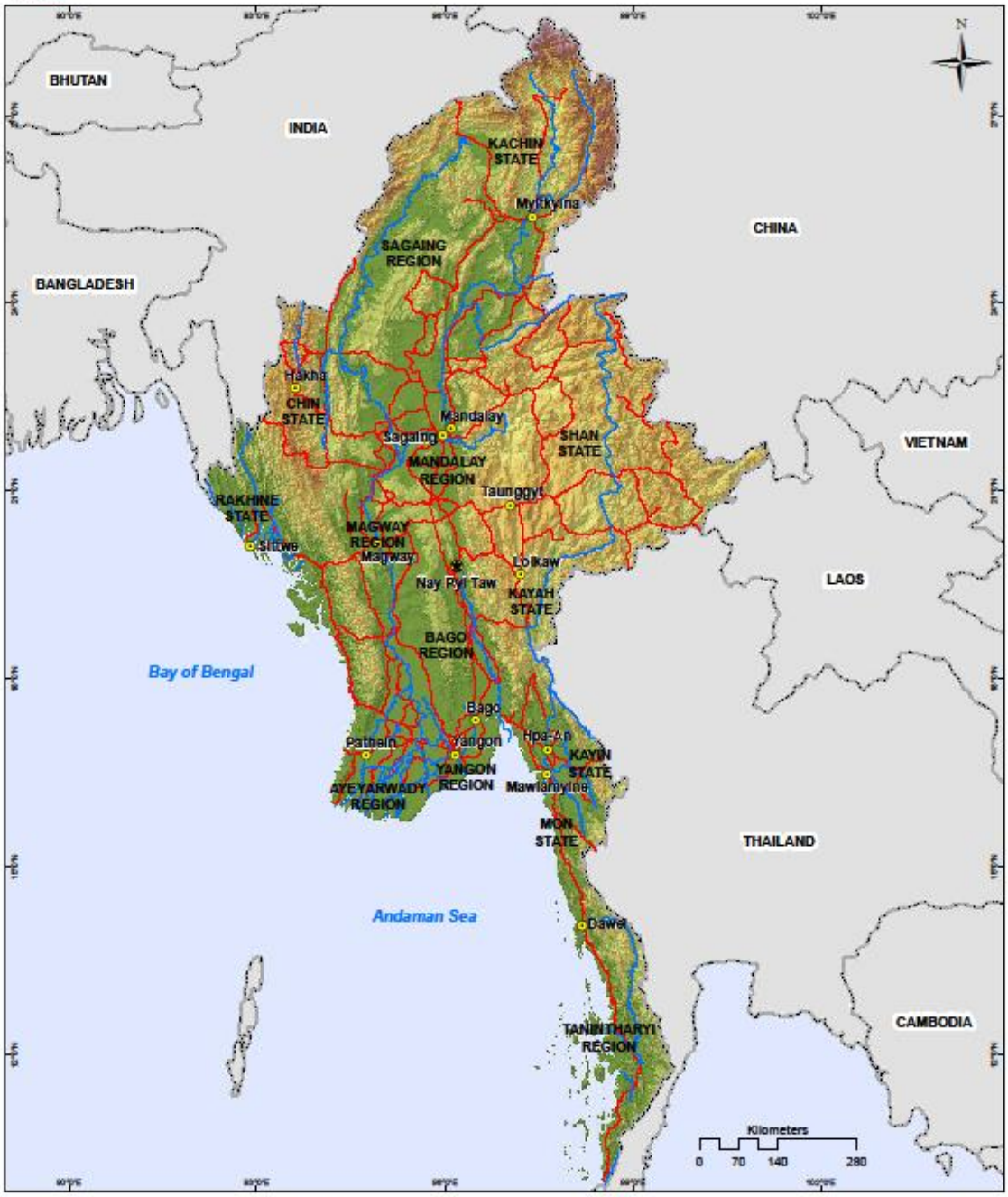
the Rohingya decided not to meet me when they found out I was working for the UN. To be noted that the Rohingya are scared to talk with people from UN and NGOs because of the repercussions from the State's forces.

Failing with the first group target, I travelled from Yangon up to the border with the Rakhine State in order to meet the remaining interviewees in the affected area. Unfortunately, I have been stopped by the military and the police, who denied me entrance to the Rakhine region, based on security reason grounds. Indeed, when I travelled to Myanmar in December 2012, serious human rights violations were still reported in the selected research area.

Consequently, I decided to change the methodology of my research and write a legal paper instead, since interviews were impossible to obtain in the field, especially working independently and without any security support. Nevertheless, this change of direction lead the research currently being undertaken to understand better who the Rohingya are and why they are so much discriminated not only by the Government and the Buddhist Rakhine population in western Myanmar, but also by the entire Myanmar population.

Myanmar Information Management Unit

Myanmar Topographic Map



Map ID: MIMU962v01
Completion Date: 5 March 2013,A4
Projection/Datum: Geographic/WGS84

info.mimu@undp.org
www.themimu.info

Legend

- Capital
- State Capital
- Water Body
- Major Road
- International Boundary

Elevation-metres

- 0 - 250
- 251 - 500
- 501 - 750
- 751 - 1,000
- 1,001 - 1,500
- 1,501 - 2,000
- 2,001 - 2,500
- 2,501 - 3,000
- 3,001 - 4,000
- 4,001 - 5,000
- 5,001 - 7,002

Data Sources :
Base Map - MIMU
Boundaries - WFP/MIMU
Place names - Ministry of Home Affairs (GAD) translated by MIMU

Disclaimer: The names shown and the boundaries used on this map do not imply official endorsement or acceptance by the United Nations.

I. BACKGROUND

Myanmar, also known as Burma,[1] attained independence from Britain in 1948 and has been ruled by a military Government from 1962 until the junta has been dissolved following general elections in 2010. A new political environment has marked the transition from military rule to a civilian Government in 2011, in the person of President Thein Sein. The unexpected change has come after the release of the NLD leader Aung San Suu Kyi and the beginning of a new dialogue between the newly elected President and the opposition leader.

Since 1948, most ethnic armed groups have been fighting against the military junta[2] but the Government has been able to reach ceasefire agreements with many of them, being the Karen National Union the most resistant. In 1990, the Government promised free and fair elections but the violent military crackdown against thousands of demonstrators marching through Yangon, calling for a transition to democracy and an end to the military power in the "8888 Uprising" (8 August 1988) saw the killing of thousands of protesters and the arrest of political prisoners, among them Daw Aung San Suu Kyi.

The Nobel Prize Laureate, Aung San Suu Kyi, spent her last 20 years in jail, partly under house arrest. Her imprisonment and the widespread violence following the 8888 Uprising pushed the United States, Canada and the European Union to impose economic sanctions on Myanmar, while the United Nations reported systematic violations of human rights. In August 2007, a second peaceful protest saw thousands of monks marching against the regime for the terrible socio-economic conditions in the country. "The Saffron Revolution," named after the color of monks' robes, saw the same intensity of military violence as the 8888 Uprising.[3] Only in 2008, a referendum adopted a new Constitution which established a "roadmap to democracy" and new parliamentary elections in 2010.

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[1] The military junta changed its name from Burma to Myanmar in 1989, together with many others colonial names; Rangoon, at that time the capital of Burma, became Yangon. United States, Australia, Canada and the United Kingdom continue to use the name "Burma", while the name "Myanmar" is used by the United Nations, the Associations of the Southeast Asian Nations (ASEAN), Germany, China, India and Japan. EU refers to the country with the name of "Burma/Myanmar".

[2] Department of Peace and Conflict Research, 2012. *Myanmar (Burma)*. [online] Available at : <http://www.pcr.uu.se/> [Accessed March 20 March 2013].

[3] US Campaign for Burma, 2012. *The Saffron Revolution of 2007*. [online] Available at: <http://uscampaignforburma.org/learn-about-burma/saffron-revolution/> [Accessed 20 March 2013].

In April 2012 by-elections, Aung San Suu Kyi and her party, the National League for Democracy (NLD), won 43 out of 44 contested seats in the Parliament with over 85% of the votes [4] in the first democratic by-elections in the country. The European Union and the United States of America promptly reacted by suspending most of their economic sanctions. Nevertheless, the path towards democracy is still long and even though at the eyes of the International Community President Thein Sein is the long awaited political reformists, there is still religious violence in Myanmar against the Muslim minorities taking place, as a consequence of the Government inaction in tackling prejudice and discrimination, according to the United Nations Special Rapporteur on the human rights situation in Myanmar, Tomás Ojea Quintana, as of 28 March 2013.

Although, right after the second escalation of violence in October last year the Government publically stated that he would consider revoking the current discriminatory citizenship law, supported by the new Parliament which would have drafted a new law proposal, the last response by the authorities to the Special Rapporteur's report on the situation of human rights in Myanmar states that "No country is obligated to give citizenship to everybody who is living there. The 1982 Myanmar Citizenship Act does not target at any particular group. People living legally in Myanmar for three successive generations are eligible to apply for the naturalized citizenship. Therefore, we see no reason whatsoever to review or amend this Act."[5]

The amendment of the current Myanmar Citizenship Law would improve the status of the Rohingya, who currently reside in the Rakhine State without citizenship. However, Rohingya's statelessness didn't prevent the Government to grant them the right to vote in the November 2010 elections, using temporary registration cards. The reason being that, the winning party, the Union Solidarity and Development Party, chaired by the current President Thein Sein, needed votes. After the elections, the temporary registration cards have not been

4 Campbell C., 2012. Final Results—NLD Wins 43 of 44 Seats. The Irrawaddy, [online] Available at: < http://www.irrawaddy.org/archives/1917> [Accessed 10 March 2013].
5 Myanmar Government response to the report of the Special Rapporteur, 2013. [pdf] Available at: < http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.58.Add.1_AV.pdf> [Accessed 10 March 2013].

replaced by new documents denoting more permanent residential status, if not full citizenship.[6]

With the words of the Special Rapporteur, "The Government must take immediate action to stop the violence from spreading to other parts of the country and undermining the reform process. This includes stemming campaigns of discrimination and hate speech which are fuelling racist and, in particular, anti-Muslim feeling in the country. And it involves holding to account those responsible for acts of violence and destruction against religious and ethnic minorities."[7]

[6] United Nations High Commissioner for Refugees, 2013. UNHCR country operations profile – Myanmar. *The context*. [online] Available at: <http://www.unhcr.org/pages/49e4877d6.html> [Accessed 20 March 2013].

[7] The UN Special Rapporteur on Myanmar issued a statement on the *Religious violence in Myanmar, the consequences of Government inaction in tackling prejudice and discrimination* on 28 March 2013[online] Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13205&LangID=E> [Accessed 20 March 2013].

II. WHO ARE THE ROHINGYA?

The Muslim Rohingya represent the four per cent of the entire population in Myanmar but the 50% of the population in the Rakhine State, where they manly live.[8] It is hard for an average Myanmar person to understand the legal status of the Rohingya, due to the lack of knowledge of their historical background. To an average Myanmar citizen, a Myanmar person is a Buddhist. All the others are considered foreigners, therefore non-citizens.[9]

The Rakhine State, historically known as Arakan State, is located in western Myanmar. Its capital Sittwe, lays on the Bay of Bengal to the west, and the areas affected by the inter-communal violence border with Bangladesh to the northwest. The Rakhine territory shares its borders with the Chin State to the north and to the east with the Magway and the Bago Region. Western Myanmar is populated by Buddhist Rakhine and Muslim Rohingya people.

The Rohingya are a stateless, ethnically, linguistically and religiously distinct minority viewed as illegal Bengali immigrants by the Government of Myanmar and as one of the most persecuted minorities in the world, according to the UN.[10] Through the analysis of the historic roots of the Rohingya, this paper will show why the origins of the Rohingya proved to be so contested.

According to some historians, the Rohingya do not belong to Myanmar, whereas others assure the Rohingya have lived there for hundreds of years. The polemic around the origins of Rohingya is a result of politics, wrong notion of national identity, intolerance and

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[8] Marranci, 2007. The other, invisible suffering of Burma. *Islam, Muslims, and an Anthropologist blog*, [blog] 30 September. Available at: < http://marranci.wordpress.com/2007/09/30/the-other-invisible-suffering-of-burma/> [Accessed 25 March 2013].

[9] Kyaw, M., 2012. *An assessment of the question of Rohingya's nationality: legal nexus between Rohingya and the state*.
[pdf] Available at: <http://www.burmalibrary.org/docs14/ARAKAN-%20Question_of_Rohingyas_Nationality-red.pdf> [Accessed 24 March 2013].

[10] UN Office for the High Commissioner for Refugees, REFWORLD, Statelessness [pdf] Available at: <http://www.unhcr.org/refworld/statelessness.html> [Accessed 24 March 2013].

discrimination.[11] The truth is that at large the Muslims Rohingya have lived in western Myanmar well before the British colonization of the province.

Nevertheless, before the 1784 Burmese[12] invasion of the Rakhine State, or "Burmanization", the area was an independent kingdom inhabited by Buddhists and Muslims. The first use of the term "Rohingya" dates back to the VIII century, according to a research published by Francis Buchanan.[13] At that time, part of the Muslims settled in the then Arakan State was using a different dialect and were calling themselves Rooinga, or natives of the current Rakhine State.[14]

After the Burmanization, the Rakhine region has been annexed to Myanmar as one of its new provinces, forcing 200,000 Rohingya to leave and settle in Chittagong, nowadays the second largest city of Bangladesh.[15] After the 1824-1826 conflict, the British annexed the Rakhine State to India and encouraged migration from Chittagong. [16] This flow assisted to the return of many Muslim Rohingya people to their native land. It is worth notice that under British colonial rule there was no political border between Arakan[17] and Bengal.[18]

Ever since, the Myanmar military junta has depicted the Rohingya as "Indian Bengalis from Chittagong", perceiving this return as the first Rohingya arrival on the Myanmar

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[11] Marciniec, H., Open Society Foundation on Statelessness, 2012: *Exiled to Nowhere: Burma's Rohingya* [online] Available at: <http://www.soros.org/indepth/stateless> [Accessed 27 March 2013].

[12] The use of the term "Burmese" instead of "Myanmar" is justified by the fact that it makes reference to a period prior to 1989, year when the authorities changed the name of the country.

[13] Buchanan, F., A *Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire*, Asiatic Researches 5 (1799), p. 234. [pdf] Available at: <www.soas.ac.uk/sbbr/editions/file64276.pdf> [Accessed 26 March 2013].

[14] Human Rights Watch, 2012. *The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma's Arakan State*. [pdf].
Available at: < http://www.unhcr.org/refworld/docid/50211c9a2.html> [Accessed 26 March 2013].

[15] Bahar, A., 2010. *Myanmar's missing dots: the emerging face of genocide*. Xlibris, p. 101.

[16] To be noted that under British colony Chittagong was part of India. After the partition of India in 1947, Chittagong became part of East Pakistan, now Bangladesh since its independence in 1971.

[17] Before 26 May 1989, the military regime changed the name of the country from Burma to Myanmar as well as the names of various cities and divisions. Therefore, I referred to the Rakhine State as the Arakan because I was referring to the history of that territory.

[18] Human Rights Watch, 2012. *The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma's Arakan State*. [pdf].
Available at: <http://www.unhcr.org/refworld/docid/50211c9a2.html> [Accessed 26 March 2013].

territory. [19] Therefore, the authorities consider the Rohingya as illegal immigrants. In addition, the confusion about Rohingya's origins can also be contested with their distinguished dialect. While Bengali and Rohingya physically look similar, the Rohingya speak a completely different dialect, and some of them also speak the Myanmar language.

After Myanmar's independence in 1948 and following a coup d'état in 1962 led by General Ne Win and his Burma Socialist Program Party (BSPP), the country has been under military rule. During this time, the United Nations and several NGOs have reported consistent and systematic human rights violations against both Rakhine and Rohingya population, including rape, killings, torture, widespread forced labor, land confiscation and arbitrary detention.

The General Ne Win started a "Burmanization campaign" using the slogan "Burma[20] is for Burmans", discriminating all the ethnic groups and the religious minorities not identified with the majority Buddhist religion. The new dictator forged the derogatory label of "illegal Bengali immigrants", referring to the Rohingya as people migrated from Chittagong of Bangladesh, even though Bangladesh's Independence was announced only in 1971.[21]

The military junta has discriminated the Rohingya simply because of their skin color, their language and their different religion, contrary to the Myanmar Ministry of Foreign Affairs' assertion that cites: "The main religions of the country are Buddhism (89.2%), Christianity (5.0%), Islam (3.8%), Hinduism (0.5%), Spiritualism (1.2%) and others (0.2%). Religious intolerance or discrimination on grounds of religion is nonexistent in the Union of Myanmar throughout its long history." [22]

The generals endorse the Buddhist faith and the Myanmar culture for their national citizens only; as a result, the Rohingya, who want to retain their own culture and the Muslim

[19] Wipperman, T., and Haque, M., 2007. *Between a Rock and a Hard Place: The Rohingya of Bangladesh and Myanmar*. Neeti Gobeshona.
[20] The name "Burma" refers to the country prior to 1989.
[21] Bahar, A., 2010. *Myanmar's missing dots: the emerging face of genocide*. Xlibris, p. 110.
[22] Ministry of Foreign Affairs. Government of the Republic of the Union of Myanmar. [online] Available at: < http://www.mofa.gov.mm/aboutmyanmar/religion.html> [Accessed 25 March 2013].

faith, fall outside of this ideal criterion.[23] In 1974, the Government issued the Emergency Immigration Act, which stripped Myanmar nationality from the Rohingya. Under the Emergency Immigration Act, the authorities required all citizens to present the National Registration Certificates, but the Rohingya were only given Foreign Registration Cards, *i.e*. non-nationals cards.[24]

In 1977 and 1978, the "King Dragon Military Operation"[25] scrutinized every person living in the Myanmar territory, dividing the population by citizens and foreigners according to the existing law. The operation, initiated by the Government, was meant to register citizens and to screen out foreigners prior to a national census.[26] As a result of this military campaign, the junta took actions against foreigners, especially against the Rohingya in the Rakhine State, causing mass arrests, widespread killings, torture, rape, destruction of mosques and religious persecution.

The operation was a real ethnic cleansing campaign that drove approximately 200,000 to 250,000 Rohingya into the neighboring Bangladesh. Nevertheless, the Myanmar Government claimed that their flight served as proof of the Rohingya's illegal status in Myanmar, describing this exodus as if the Rohingya were escaping examination, since they didn't hold the required registration documents.[27]

On the Bangladeshi side, the authorities didn't provide the refugees with any food aid, leading to the starvation of about 10,000 Rohingya, with the aim of pushing them back to Myanmar. After almost one year, the survivors were repatriated in northern Rakhine State. As a response to Bangladesh's mass repatriation of Rohingya to Myanmar, the promulgation of the most controversial and discriminatory nationality law in 1982 declares them "non-nationals" or "foreign residents", therefore stateless.

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[23] Restless Beings Project, 2013. *Stateless Rohingya* [blog] 01 May 2008.
Available at: < http://www.restlessbeings.org/about > [Accessed 26 March 2013].
[24] Human Rights Watch, 1996. *Burma: The Rohingya Muslims: Ending a Cycle of Exodus?,* p.29. [pdf] Available at: <http://www.unhcr.org/refworld/docid/3ae6a84a2.html> [Accessed 26 March 2013].
[25] I put it in brackets because it is a translation for the Naga Min Sitsin Yae program.
[26] The International Observatory on Statelessness, 2007. *Burma/Myanmar*. [online] Available at: <http://www.nationalityforall.org> [Accessed 27 March 2013].
[27] Lintner, B., 1999. *Burma in Revolt: Opium and Insurgency Since 1948*, Chiang Mai: Silkworm Books. p. 317.

In 1983, the Myanmar Government conducted the first census and counted the Rohingya as "others", *i.e*. "foreigners". The arbitrary deprivation of citizenship leads to a new exodus of Rohingya during 1991-1992[28], who settled in Cox's Bazaar in Bangladesh. Unfortunately, the reaction by the Bangladeshi Government was not that different from 1978. Therefore, many Rohingya repatriated to Myanmar, even though involuntary.

In 1995, the authorities in Myanmar made an effort to issue personal identity documentation by instituting a policy that would allow stateless Muslim residents of northern Rakhine State to acquire personal identity documents. The Government started to provide the Rohingya population with white "Temporary Registration Certificates"[29] (TRCs), in a way confirming the lawful residence of the holder in northern Rakhine State.[30]

Even though, legally, the possession of a TRC may help to confirm the individual's eligibility for citizenship, the Myanmar authorities used always discriminatory policies to grant access to nationality for this population. In the meantime, the Temporary Registration Certificates provided only limited rights to movement and employment, but were crucial to gain a marriage license, travel authorization and eligibility to participate in certain political processes, including the right to vote in national elections.[31]

Notwithstanding, since 1995 the Rohingya in the Rakhine State have suffered brutal repression by the Nasaka, the Myanmar border police, from forced conscription to mistreatment in custody.[32] This, together with Government racist campaigns and policies against the Rohingya, have led to extreme hatred towards the Muslim population. The consequences of continuing discrimination are known to all, as per the explosion of inter-

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[28] Since 1958, we assist to a mass exodus of Rohingya from Myanmar, through 1975 and 1978.
[29] I quoted just to highlight this information.
[30] United Nations Office for the High Commissioner for Refugees (UNHCR), 2010. *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia*. [online] Available at: < http://www.unhcr.org/4d7de5ec9.html> [Accessed 25 March 2013].
[31] Ibid. p.26.
[32] Human Rights Watch, 2012. *The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma's Arakan State*, p.16. [pdf].
Available at: < http://www.unhcr.org/refworld/docid/50211c9a2.html> [accessed 26 March 2013].

communal violence in the Rakhine State between Muslim Rohingya and Buddhist Rakhine in June 2012, with an escalation of violence in October last year.

III. THE VIOLENCE IN THE RAKHINE STATE

Even though, inter-communal violence erupted in the Rakhine State on 28 May 2012, it was from June 8 when Buddhist Rakhine and Muslim Rohingya mobs set fire to homes, shops and places of worship.[33] According to Human Rights Watch report, witnesses acknowledge that members of both communities were responsible for beating neighbors with swords, poles, metal bars and bamboo sticks and looting houses. At the beginning, the Myanmar police watched the events without taking action, turning a blind eye to the violence.

The rape and murder of Thida Htwe, 27, an ethnic Rakhine Buddhist woman, allegedly by three Muslim men sparked the violence in Ramree in southern Rakhine State. Soon after, incendiary pamphlets detailing the rape and killing were circulated locally, provoking the reaction of the Buddhist population. On June 3, around 300 Rakhine villagers, stopped a bus in Toungop town, southeast of Ramree and killed ten Muslims pilgrims who were coming from Yangon. [34]

At the time of the attack on the bus, justice had already been made by the police, who held three Muslim men in custody with the charge of rape and murder. One of them committed suicide in prison, while the others were sentenced to death on June 18. Facts show that in contrast, despite the many witnesses to the bus attack, there have been no convictions in connection with the killing of the 10 Muslims in Toungop.

The hatred spread all over the Rakhine State, reaching the northern areas, where on June 8, after Friday prayers thousands of Muslims in Maungdaw town destroyed property of Rakhine residents and killed many of them. As a domino effect, violence then quickly spread to Sittwe, the capital of Rakhine State and on 10 June, President Thein Sein declared a state of emergency under Section 413 of the 2008 Constitution, giving authority to the military to

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[33] Human Rights Watch, 2012. *The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma's Arakan State*, p.16. [pdf].
Available at: < http://www.unhcr.org/refworld/docid/50211c9a2.html >[accessed 26 March 2013].
[34] Ibid.

restore peace. The UN retrieved its staff from the affected area and announced that UNHCR staff would return later on.[35]

Many human rights organizations, affirm that the military committed human rights abuses against the Rohingya during the sectarian violence, as portrayed by the State media. The most common has been arbitrary detention of Rohingya in northern Rakhine State. On 17 April 2012, the President set up an Investigation Commission to investigate the violence, which was due to submit its report to the President of Myanmar in November 2012, but it is now scheduled to report and release it publicly on 31 March 2013.

The Commission is made up of 27 members, one Rakhine representative but no Rohingya, coming from different backgrounds: politicians, academics, journalists, celebrities and civil society workers.[36] Apart from covering the background to the conflict, the report will include issues such as corruption, citizenship, religious extremism, immigration, methods of conflict resolution and reconciliation between the Buddhists and Muslims.

In order to address human rights violations in Rakhine State, particularly with regard to the number of victims, it is of a paramount importance to read the Commission's report. Even though, the Myanmar National Human Rights Commission (MNHRC), led by the chairman Win Mra, an ethnic Rakhine, traveled to the affected area State to assess the situation and announced on a state-run media no government abuses had been reported.

The government`s failure to appropriately intervene contributed to a further escalation of violence in October 2012, leaving 115,000 internally displaced in Rakhine State.[37] After the

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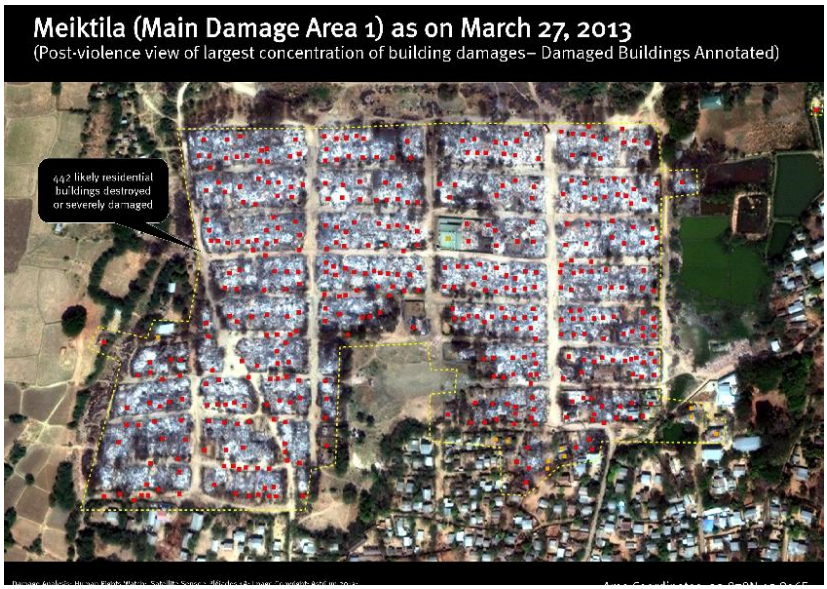
[35] The Equal Rights Trust, 2012. *Burning Homes, Sinking Lives: A situation report on violence against Stateless Rohingya in Myanmar and their refoulement from Bangladesh*. [online] Available at: <http://www.equalrightstrust.org/ertdocumentbank/The%20Equal%20Rights%20Trust%20-%20Burning%20Homes%20Sinking%20Lives.pdf> [Accessed 2 February 2013].

[36] Arakan Investigation Commission to Release Latest Report, 2013. *Irrawaddy*, [online] 20 March. Available at: <http://reliefweb.int/report/myanmar/arakan-investigation-commission-release-latest-report> [Accessed 20 March 2013].

[37] These figures have been confirmed to me by Rosalie Fournier, UNHCR Protection Unit in Myanmar. The numbers include both the Buddhist Rakhine and the Muslim communities. The Muslim communities comprises different groups, including the Rohingya. There is no available desegregated data based on religion and/or ethnicity of the total 115,000 IDPs.

violence in Rakhine State, left with no hope to stay, the Rohingya have fled as refugees to the neighboring countries, especially Bangladesh, Thailand and Malaysia, which are seeking to send them back to Myanmar or to resettle them in a third country.

Regrettably, the hatred against Muslim populations saw again, on Wednesday 20 March, violent clashes between Muslim and Buddhist communities in Meiktila, a town in Mandalay Division, after an argument broke out between a Muslim gold shop owner and his Buddhist customers, leaving at least ten people dead.[38] Local residents described houses on fire, burned bodies, and mosques torched.[39] The communal violence comes in a time when the country is widely praised for its political reforms since the end of military rule.



Meiktila (Main Damage Area 1) as on March 27, 2013 (Post-violence view of largest concentration of building damages - Damaged Buildings Annotated). Source: Human Rights Watch

[38] At least 10 dead in Myanmar riots: MP, 2013. *Reliefweb*, [online] 21 March. Available at: <http://reliefweb.int/report/myanmar/least-10-dead-myanmar-riots-mp> [Accessed 21 March 2013].

[39] At least 10 dead in Buddhist-Muslim clashes in Myanmar's Rakhine state, 2013. *Straitstimes*, [online] 21 March. Available at: < http://www.straitstimes.com/breaking-news/se-asia/story/least-10-dead-buddhist-muslim-clashes-myanmars-rakhine-state-20130321> [Accessed 21 March 2013].

The government must promote reconciliation and tolerance, while at the same time holding those responsible for the violence accountable,[40] instead of imposing martial law by declaring another state of emergency.[41] Vijay Nambiar, special advisor to the UN Secretary-General Ban Ki-Moon, said "Religious leaders and other community leaders must also publicly call on their followers to abjure violence, respect the law and promote peace".

[40] Displacement tops 1,000 in Meiktila, 2013. *IRIN*, [online] 22 March. Available at: <http://reliefweb.int/report/myanmar/displacement-tops-1000-meiktila > [Accessed 22 March 2013].

[41] "Myanmar imposes emergency rule as death toll hits 20", 2013. *Agence France-Presse*, [online] 22 March. Available at: <http://reliefweb.int/report/myanmar/bodies-streets-riot-hit-myanmar-town > [Accessed 22 March 2013].

IV. NATIONALITY LAW AND CAUSES OF STATELESSNESS

"Nationality is a legal bond between an individual and a State. States normally grant a nationality either through descent, whereby children acquire the nationality of their parents (*jus sang*uinis), or through a child's birth on a country territory (*jus soli*). A stateless person is someone who is not considered as a national by any State under the operation of its law."[42]

What does it mean to be Stateless?

Stateless people are in many ways the ultimate 'forgotten people' and identification of statelessness remains a major challenge. Frequently, stateless persons live on the margins of society and are, almost by definition, 'uncounted' (Manly, 2009).

While stateless people[43] can enjoy human rights under international law, they often face barriers that prevent them from accessing their rights. These include the right to establish a legal residence, travel, work in the formal economy, send children to school, access basic health services, purchase or own property, vote, hold elected office, and enjoy the protection and security of a country (Blitz, 2009). They are generally denied social welfare and are mainly at risk of forced labor. They are also vulnerable to violence and abuse, and to exploitation by traffickers and smugglers.

Furthermore, stateless persons are generally excluded from political rights, making it hard for them to voice their concerns and influence policies that affect them. Under international human rights law, political participation is an area in which rights may legitimately be reserved for citizens of the State. An interesting exception can be found in Myanmar where, despite not being recognized as nationals, Muslim residents of northern

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[42] Office of the United Nations High Commissioner for Refugees , 2012. *Under the Radar and Under Protected: The Urgent Need to Address Stateless Children's Rights*. [pdf] Available at: <www.unhcr.org/refworld/docid/514acd3e2.html> [Accessed 27 March 2013].

[43] Office of the United Nations High Commissioner for Refugees , 2012. *Stateless People*. [online] Available at: http://www.unhcr.org/pages/49c3646c155.html

Rakhine State could vote in the 1990 elections and the 2008 constitutional referendum. They were also eligible to vote in the 2010 elections.[44] In practice, a Temporary Registration Certificate may be required to cast their ballot, illustrating again the fundamental link between access to personal documentation and the enjoyment of rights by stateless persons. Note that the right to stand for election remains reserved to citizens both of whose parents were citizens. [45]

It is hard to establish the exact number of stateless in Myanmar, due to the fact that the first census took place in 1983. After more than 30 years, with the help of the United Nations Fund for Population Activities (UNFPA), Myanmar will conduct the next census to be implemented in 2014. In January 2013, 14 census experts from Asia, Africa, Europe, USA, Australia, the World Bank and the UN met with Myanmar Government in Nay Pyi Taw, to discuss the implementation of Myanmar's 2014 Population and Housing Census according to international standards.[46] The 2014 census will serve as an important source of information, especially for UNHCR to identify stateless people in Myanmar and envisage a future survey on statelessness.

The UN counts around 800,000 Stateless Rohingya Muslims in Myanmar. The next chapter will analyze how the nationality law provisions represent the main cause of statelessness and what the international community, the Government and the civil society within and outside Myanmar could do to stop the application of this discriminatory law.

Why are the Rohingya considered Stateless?

The main cause of statelessness in Myanmar is the prevalence of *jus sanguinis* on *jus solis*, leading to a discriminatory implementation of existing nationality laws on grounds of race. The Government in Myanmar has not recognized the Muslim Rohingya

[44] International Crisis Group, 27 May 2010. *The Myanmar elections*, Asia Briefing No. 105.
[45] Office of the United Nations High Commissioner for Refugees, UNHCR Global Report 2009 – Myanmar, p.29. [pdf]. Available at: < http://www.unhcr.org/4d7de5ec9.html> [Accessed 2 March 2013].
[46] UNFPA, 2013. *2014 Population and Housing Census in Myanmar*. [pdf]. Available at: < http://countryoffice.unfpa.org/myanmar/2013/01/30/6184/housing_census_in_myanmar/> [Accessed 20 March 2013].

minority as full members of the State, therefore they don't have a nationality. Indeed, even though the word stateless seems to imply without a State, it actually means without a nationality.[47] Nationality is the legal bond between the State and the individual which entails rights and duties. The main right a national holds is the right to return and to reside within the territory of its State and a person's ability to identify him or herself and show proof of legal status.

Notwithstanding, nationality is acquired or lost according to rules set by the State. In Myanmar, the Rohingya people have been arbitrarily deprived of their nationality with the "Burma Citizenship Law" of 1982,[48] which rendered them stateless. This law has led to justify systematic arbitrary and discriminatory treatment against the Rohingya community. When the new nationality law was passed, the Muslim residents of northern Rakhine State were not included among the eight "national races" granted full citizenship.[49]

From 1989 onwards, all Myanmar nationals were granted the Citizens Scrutiny Cards, except the Rohingya, since they were considered by the Government to be foreigners. Subsequently, establishing an entitlement to nationality under any of the other provisions of the law has proved hard for them.[50] Nationality facilitates the enjoyment of all human rights, and is obviously essential for full participation in society. More than 800,000 Rohingya in northern Rakhine today are effectively stateless and denied basic human rights. [51]

Under the 1982 Citizenship Law, the Myanmar Government recognizes eight national races: the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine and Shan,[52] as nationals who settled in the country prior to 1823, period of the British occupation (1824-

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[47] Office of the United Nations High Commissioner for Refugees , 2012. *Self study module on Statelessness*.
[48] Myanmar Citizenship Law of 1982. Pyithu Hluttaw Law No. 4 of 1982.
[49] United Nations High Commissioner for Refugees (UNHCR), 2008. *Statelessness: An Analytical Framework for Prevention, Reduction and Protection*. [pdf] Available at: <http://www.unhcr.org/49a271752.html> [Accessed 26 March 2013].
[50] Minorities at Risk Project, 2003. *Assessment for Rohingya (Arakanese) in Burma*. [pdf] Available at: < http://www.unhcr.org/refworld/docid/469f3a6129.html> [Accessed 26 March 2013].
[51] Lynch, M., Southwick, K., 2009. *Nationality rights for all: A progress report and global survey on statelessness*, Refugees International.
[52] Myanmar Citizenship Law of 1982. Pyithu Hluttaw Law No. 4 of 1982.

1948), therefore omitting the Rohingya. The Law provides for three categories of citizenship: (1) full citizens, (2) associate citizens, and (3) naturalized citizens. According to this list Rohingya fall under session 2 (e), which defines a Rohingya as a "non-national" or a "foreign resident", "a person who is not a citizen or an associate citizen or a naturalized citizen."[53]

The first category, termed "Citizenship", refers to the eight national races or those who settled in Myanmar for a period prior to 1823 in either the law itself or in a list published by the Council of State in 1983. This exclusion was justified on the basis that this population is said to have arrived to Myanmar subsequent to the annexation of the Rakhine State in 1824 by the British. Muslim residents of Rakhine State do not accept this analysis. There is evidence that indicates both the existence of a sizeable Muslim population in Rakhine State before annexation, as well as immigration into Rakhine State after that date. [54]

The second category, called "associate citizenship", requires individuals to have applied for recognition before 1982 and qualified for citizenship already under 1948 Law. Currently, it does not provide an accessible route to citizenship. The third category, termed "naturalized citizenship", is not generally accessible for the Rohingya in Rakhine State because the criteria are, in practice, impossible to meet. Foreigners may become naturalized citizens if they can provide "conclusive evidence" of their residence in Myanmar prior to its independence in 1948 or descent from a resident at that time.[55]

Rohingya people could try to apply for naturalized citizenship but they shall still present conclusive evidence,[56] which means, among others, that they must be at least eighteen years old and be able to speak one of the national languages. Unfortunately, Rohingya language is not recognized as an official language. The 1982 Citizenship Law is

[53] Myanmar Citizenship Law of 1982. Pyithu Hluttaw Law No. 4 of 1982.
[54] Notes by Nick Oakeshott, Regional Protection Officer on Statelessness, taken from the training course on Refugees and Statelessness, which I attended in Bangkok in December 2012.
[55] Lewa C., Forced Migration Review 209. *North Arakan: An open prison for the Rohingya in Burma*. [pdf] Available at: <http://www.fmreview.org/FMRpdfs/FMR32/FMR32.pdf> [Accessed 26 March 2013].
[56] Myanmar Citizenship Law of 1982. Pyithu Hluttaw Law No. 4 of 1982.

another attempt of the military junta to turn the Rakhine State into a Burmanized Buddhist region by reducing the Muslims into a stateless minority.

Some Rohingya held citizenship before the 1982 Law came into force and its provisions permit those who previously held citizenship to retain it. Some of this group have documents, called National Registration Cards (NRCs), that were issued before 1982 under the 1949 Residents of Burma Registration Act[57] and the 1951 Residents of Burma Registration Rules.[58] However, the Government began a citizenship scrutiny exercise in 1989, and the Rohingya resident in Rakhine State were not issued with identity documents, called Citizenship Scrutiny Cards, which are now necessary to prove citizenship. Furthermore, all NRCs State on the front that "it shall not be used or identify the holder as a citizen". Rohingya who had previously lived in Rakhine State but who had moved to live in another part of Myanmar and went through the Citizenship Scrutiny exercise in their new home were often issued with Citizenship Scrutiny Cards.

According to the terms of the law, only citizens are "entitled to enjoy the rights of a citizen under the laws of the State with the exception of the rights stipulated from time to time by the Council of State".[59] The 1982 Citizenship Law leads to racism. The Law is against the idea of building a national identity and should be amended. The Myanmar Government should support dialogue between Buddhist Rakhine and Muslim Rohingya leaders for regional reconciliation and future cooperation. Daw Aung San Suu Kyi has been asked about Rohingya citizenship but her dismissive answer stating the importance of rule of law in the country shows her denial to address the citizenship problem.

[57] THE RESIDENTS OF BURMA REGISTRATION ACT, 1949 (UNOFFICIAL TRANSLATION). [pdf] Available at: <http://www.burmalibrary.org/docs12/The_Residents_of_Burma_Registration_Act-1949.pdf> [Accessed 26 March 2013].
[58] Ibid.
[59] Myanmar Citizenship Law of 1982. Pyithu Hluttaw Law No. 4 of 1982.

V. INTERNATIONAL LEGAL INSTRUMENTS

A Stateless person is

"a person who is not considered as a national by any State under the operation of its law"

Article 1 of the 1954 Convention relating to the Status of Stateless Persons[60]

This definition[61] is a perfect tool to describe the current legal status of the Rohingya in Myanmar. Actually, it refers to the legal lack of a nationality, also known as *de jure* statelessness.[62] UNHCR estimates that 12 million people worldwide are affected by statelessness. The "statelessness problem" is particularly acute in Southeast Asia. Out of 12 million stateless people around the world, 797,388 are found in Myanmar.[63]

The lack of legal status led the Rohingya to flee as refugees into neighboring countries: Thailand, Malaysia and especially Bangladesh. Despite the Government in Myanmar refers to Rohingya as "Bengali", the Bangladeshi Government considers them to be Myanmar nationals and pushes them back to Myanmar,[64] in violation of its international obligations towards asylum seekers.[65]

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[60] Myanmar is not party to the 1954 Convention relating to the status of Stateless Persons, but this definition is now part of customary international law.

[61] Office of the United Nations High Commissioner for Refugees, 2012. *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*. HCR/GS/12/01. [online] Available at: <http://www.unhcr.org/refworld/docid/4f4371b82.html> [Accessed 24 March 2013].

[62] United Nations High Commissioner for Refugees (UNHCR), 2008. *Statelessness: An Analytical Framework for Prevention, Reduction and Protection* [online] Available at: <http://www.unhcr.org/49a271752.html> [Accessed 24 March 2013].

[63] Office of the United Nations High Commissioner for Refugees , 2012. *Self study module on Statelessness*.

[64] Wipperman, T., and Haque, M., 2007. *Between a Rock and a Hard Place: The Rohingya of Bangladesh and Myanmar*. Neeti Gobeshona.

[65] Under international law, the principle of *non-refoulement* has become a rule of international customary law. The principle of non-refoulement constitutes an essential component of asylum and international refugee protection. The essence of the principle is that a State may not oblige a person to return to a territory where he may be exposed to persecution. The wording used in Article 33 paragraph 1 of the 1951 United Nations Refugee Convention is "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". Since the purpose of the principle is to ensure that refugees are protected against such forcible return it applies both to persons within a State's territory and to rejection at its borders.

Statelessness can become root cause of forced displacement. The United Nations estimates the Rohingya population in Myanmar around 800,000, [66] but the Government does not recognize them as one of the country's 135 ethnic groups, denying them citizenship. Clashes between Buddhists and Muslims have left at least 180 people dead in the State since June 2012, and displaced more than 125,000 others, mostly Rohingya.[67]

Stateless populations lack State protection and are in dire need of international protection. Human rights organizations have called for Thailand and Bangladesh not to deport the Rohingya to Myanmar because of the widespread discrimination within the country. In seeking durable solutions to statelessness, UNHCR has encouraged States to sign the two primary international legal conventions relating directly to statelessness: the 1954 UN Convention on the Status of Stateless Persons[68] and the 1961 UN Convention on the Reduction of Statelessness[69], and bring their nationality legislation into line with Convention standards.[70]

In the case of Myanmar, the Government did not ratify either of them,[71] making it harder to protect the rights of the Rohingya religious minority. It is the case of many countries, where gaps in the international legal framework reflect insufficient protections against statelessness in nationality law. Since the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness have not been ratified by many countries, and although they are complemented by international human rights law and regional treaties, in 1995 the United Nations General Assembly[72] gave a mandate to UNHCR

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[66] Office of the United Nations High Commissioner for Refugees, REFWORLD, Statelessness. [online] Available at: < http://www.unhcr.org/refworld/statelessness.html> [Accessed 24 February 2013].
[67] World Food Programme, 2013. *Rapid Assessment of Non-Displaced Populations in Sittwe Township*.
[68] United Nations Office for the High Commissioner for Human Rights, 1954. *Convention relating to the Status of Stateless Persons*. [online] Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatelessPersons.aspx> [Accessed 24 February 2013].
[69] United Nations Office for the High Commissioner for Human Rights, 1961. *Convention* on the *Reduction* of *Statelessness*. [online] *Available at:*< http://www.unhcr.org/3bbb286d8.html> [Accessed 24 February 2013].
[70] Office of the United Nations High Commissioner for Refugees, 2012. *The State of the World's Refugees: In Search of Solidarity: Resolving Statelessness*. [online] Available at <http://www.unhcr.org/4fc5ceca9.html> [Accessed 24 March 2013].
[71] Treaty Ratification Information [online] Available at <http://treaties.un.org/Pages/Treaties.aspx?id=4> [Accessed 24 March 2013].
[72] Office of the United Nations High Commissioner for Refugees, REGIONAL REPRESENTATION FOR CENTRAL EUROPE, *Statelessness Conventions*. [online] Available at <http://www.unhcr-centraleurope.org/en/resources/conventions/statelessness-conventions.html> [Accessed 24 March 2013].

to protect the rights of stateless persons through identification, prevention, reduction and protection.

Identification of stateless people is key to prepare a prevention strategy by working with governments to amend laws and policies and apply international law for the attribution of nationality. Birth registration and technical assistance provided to States or to individuals represent an important starting point to protect their fundamental human rights. Mark Manly, UNHCR's Associate Protection Officer on Statelessness asserts that the global impact of statelessness is not sufficiently understood and calls on the UNHCR's global mandate to work to prevent and reduce statelessness, and to protect stateless persons.[73] He reiterates that statelessness is prevented or reduced through the development of advocacy campaigns to create or amend laws to aid people without citizenship, the provision of capacity building training to the authorities on citizenship questions and through monitoring, to create a favorable protection environment.

Among the UNHCR's strategies and activities in Myanmar in 2013, to advocate for the Government to grant citizenship to the Rohingya, lift restrictive legal practices and help the Government recognize its responsibilities towards the communities affected by displacement, both Muslim Rohingya and Buddhist Rakhine. UNHCR will also strengthen partnerships with the civil society, the academic institutions and the NGOs, while enhancing the dialogue with the new civilian Government. It will collaborate with all the stakeholders involved to improve conditions for the stateless Rohingya.

The UNHCR will place special emphasis on the participation of girls and women in decision-making, and on the dialogue between the two communities affected by the violence in the Rakhine State, leading them to a peaceful coexistence. However, recurrent violence against Muslims in Myanmar makes it difficult to collaborate with the Government, which

[73] *Reehal R.*, The Asia Pacific Refugee Rights Network (APRRN), 2013. *STATELESSNESS - WORKING GROUP ACTION PLAN January 2013 - December 2014*. [online] Available at: <http://www.unhcr.org/49a271752.html> [Accessed 24 March 2013].

fails to recognize that the existing legislation is part of a political decision to denaturalize Rohingya residents in the Rakhine State and force them to abandon their homes.

Statelessness is a "threat to peace and security".[74] The implications of the authorities' unwillingness to recognize Rohingya as citizens of Myanmar will affect national and regional security. Yet, the 1954 UN Convention on the Status of Stateless Persons proves helpful for Myanmar to devise strategies to address statelessness and to regulate the status of stateless persons.[75] For instance, as a non-party to the Convention, it may implement practices of providing travel documents and identity papers to stateless persons.

Under International Law, human rights must be guaranteed to non-citizens as well as citizens. The principle of equality and non-discrimination prohibits any discrimination based on the lack of nationality status. Therefore, the legal status of stateless people under national law must reflect applicable provisions of international human rights law.[76] The 1954 Convention is supported by the international human rights law, but some international provisions are based on higher standards of treatment or rights not found in the Convention at all. At the same time, the 1954 Convention maintains still its significance as it addresses matters specific to statelessness, such as provision of identity papers and travel documents that are not addressed elsewhere.[77]

On the other hand, the 1961 UN Convention on the Reduction of Statelessness had a massive impact on international human rights law,[78] especially on treaties such as the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the

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[74] Office of the United Nations High Commissioner for Refugees , 1997. The State of The World's Refugees: A Humanitarian Agenda. *Statelessness and Citizenship*.

[75] Office of the United Nations High Commissioner for Refugees , 2012. *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, HCR/GS/12/03, p. 11. [online]. Available at: <http://www.unhcr.org/refworld/docid/5005520f2.html> [Accessed 24 March 2013].

[76] Office of the United Nations High Commissioner for Refugees , 2012. *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, HCR/GS/12/03, p. 6. [online]. Available at: <http://www.unhcr.org/refworld/docid/5005520f2.html> [Accessed 24 March 2013].

[77] Ibid.

[78] Office of the United Nations High Commissioner for Refugees, 2011. *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions")*. [online]. Available at: <http://www.unhcr.org/refworld/docid/4e8423a72.html> [Accessed 3 March 2013].

1989 Convention on the Rights of the Child (CRC) and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).

Myanmar is party to the CEDAW, to the CRC and to the CRPD. All States need to comply with the international obligations under human rights law. State sovereignty is subject to certain limits in relation to nationality matters, through international treaties and customary law. This is what "protection" means: respecting, protecting and fulfilling the rights of stateless persons. These include the right to education, to work, to healthcare, to get married, to access courts, to travel and many others. In accordance with their human rights obligations, States bear a responsibility to protect these rights for all persons within their jurisdiction, including those who are stateless.[79]

The set of human rights and fundamental freedoms are enshrined in the 1948 Universal Declaration of Human Rights (UDHR). Most of them, are nowadays recognized as principles of customary international law and are therefore universally applicable.[80]

Universal Declaration of Human Rights, Article 15

"1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

Rather unknown, but key in the study of stateless is the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (1985). The Declaration serves as a guide for states to design and implement laws to protect human rights.[81]

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[79] United Nations High Commissioner for Refugees (UNHCR), 2008. *Statelessness: An Analytical Framework for Prevention, Reduction and Protection* [online] Available at: <http://www.unhcr.org/49a271752.html> [Accessed 24 March 2013].
[80] Universal Declaration of Human Rights. 1948. G.A. Res. 217A.
[81] University of Minnesota Human Rights Center, 2003. STUDY GUIDE:*The Rights of Non-Citizens*. [online] Available at: < http://www1.umn.edu/humanrts/instree/w4dhri.htm> [Accessed 10 March 2013].

UN Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live[82]

Article 1

"*For the purposes of this Declaration, the term "alien" shall apply, with due regard to qualifications made in subsequent articles, to any individual who is not a national of the State in which he or she is present*."

Article 5

The Declaration establishes the rights of aliens to "security", "privacy", "to be equal before the courts", "to choose a spouse, to marry, to found a family", "freedom of thought and expression", "the right to leave the country", and the right to be joined by a spouse and dependent children.

Furthermore, Myanmar is a member of the United Nations[83] and is obliged by the Charter of the United Nations[84] to take "joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55" (Article 56 of the UN Charter).

Article 55 of the Charter of the United Nations

"(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Thus, States have the responsibility for the promotion and protection of human rights without distinction as to race, sex, language and religion. This means that Stateless persons enjoy the following internally recognized rights:

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[82] Declaration on the Human Rights of Individuals who are not nationals of the country in which they live. General Assembly resolution 40/144 of 13 December 1985. [online] Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/HumanRightsOfIndividuals.aspx> [Accessed 25 March 2013].

[83] The Equal Rights Trust, 2012. *Burning Homes, Sinking Lives: A situation report on violence against Stateless Rohingya in Myanmar and their refoulement from Bangladesh*. [online] Available at: <http://www.equalrightstrust.org/ertdocumentbank/The%20Equal%20Rights%20Trust%20-%20Burning%20Homes%20Sinking%20Lives.pdf> [Accessed 27 March 2013].

[84] Article 55 (c) of the Charter of the United Nations.

1) The right to life, liberty and security of the person, enshrined in Article 3 of the UDHR.
2) The right not to be subjected to torture, or to cruel, inhuman or degrading treatment or punishment, as enshrined in Article 5 of the UDHR; Article 37 of the CRC prohibits the torture or cruel, inhuman or degrading treatment or punishment of any child.
3) The right to liberty and freedom from arbitrary detention, enshrined in Article 9 of the UDHR.
4) The right to non-discrimination and equality under Article 2 of the UDHR; Articles 13(1)(b) and 55(c) of the Charter of the United Nations also enshrine the right to non-discrimination. Similarly, Articles 2 of the CRC and CEDAW prohibit discrimination on any grounds against children and women respectively.
5) The right to an adequate standard of living including food, clothing, housing and medical care is protected by Article 25(1) of the UDHR. Article 24 of the CRC protects the right to the highest attainable standard of health of all children and article 27 enshrines "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development".
6) The right not to be held in slavery or servitude, prohibition of forced or compulsory labor.
7) The right to liberty and security of person.
8) The right to have access to basic services such as water, food, sanitation.
9) The right to be treated with respect and humanity when detained.
10) The right not to be imprisoned merely on the ground of failure to fulfill a contractual obligation.
11) The right to recognition everywhere as a person before the law; and
12) The right to receive any medical care that is urgently required.

On its side, the Human Rights Council in its resolution A/HRC/10/35, "Calls upon all States to refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrarily deprive persons of their nationality on grounds of race, color,

sex, language, religion, political or other opinion, national or social origin, property, birth or other status, especially if such measures and legislation render a person stateless".

The Myanmar Government has the legal obligation to protect Rohingya women and children, as enshrined in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)[85] and the Convention on the Rights of the Child (CRC) [86] respectively, which have both been ratified by Myanmar.

The Convention on the Rights of the Child has a paramount importance in terms of tackling the problem of statelessness, as it recognizes the right of every child to acquire a nationality.[87] Starting with a general non-discrimination clause, CRC Article 2, applies to all substantive rights enshrined in the Convention, including Articles 7 and 8. CRC Article 3 requires that the best interests of the child must be pursued in all actions concerning children, including in the area of nationality. It follows from CRC Articles 3 and 7 that a child may not be left stateless for an extended period of time.[88]

More specifically, Article 7 of the CRC elaborates the right of every child to a nationality, as well as the right to be registered at birth. The same article also stipulates that:

Convention on the Rights of the Child (CRC), Article 7

"*1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.*
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be Stateless." [89]

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[85] Convention on the Elimination of All Forms of Discrimination Against Women. 1979. G.A. Res. 34/180.
[86] Convention on the Rights of the Child (CRC). 1989. G.A. Res. 44/25.
[87] Office of the United Nations High Commissioner for Refugees, 2011. *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions").* [online]. Available at: <http://www.unhcr.org/refworld/docid/4e8423a72.html> [Accessed 27 March 2013].
[88] Ibid.
[89] Convention on the Rights of the Child (CRC). [online]
Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> [Accessed 27 March 2013].

In most countries, babies are registered at birth, in order to receive a birth certificate. Without such a certificate, it can be very difficult to get access to public health, education or leave and return their country of residence.[90] Accordingly, Article 8 of the CRC states:

Convention on the Rights of the Child (CRC), Article 8

"1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity." [91]

On the other hand, Article 9 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) explicitly provides for the equal enjoyment of nationality rights by men and women, including in the context of marriage[92] and in transmitting nationality to their children.[93] This article represents an important step forward for women's rights, especially because prior to the adoption of the CEDAW (1979), many nationality laws discriminated on the basis of gender. Under the CEDAW, children born in the territory of a Contracting State to fathers who are nationals should also acquire the nationality of that State at birth, if they otherwise would be stateless, in light of the principle of equality.[94]

Convention on the Elimination of all forms of Discrimination against Women, Article 9

"1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her Stateless or force upon her the nationality of the husband.

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[90] Office of the United Nations High Commissioner for Refugees, 1997. The State of The World's Refugees: A Humanitarian Agenda: *Statelessness and Citizenship*.
[91] Convention on the Rights of the Child (CRC), Article 8, para. 1.
[92] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 9, para. 1.
[93] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 9, para. 2.
[94] Office of the United Nations High Commissioner for Refugees , 2011. *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions")*. [online]. Available at: <http://www.unhcr.org/refworld/docid/4e8423a72.html> [Accessed 27 March 2013].

2. States Parties shall grant women equal rights with men with respect to the nationality of their children." [95]

The only reservation made by the Government of Myanmar concerns Article 29 of the CEDAW: "[The Government of Myanmar] does not consider itself bound by the provision set forth in the said article." [96]

Convention on the Elimination of all forms of Discrimination against Women, Article 29

"1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

[95] Division for the Advancement of Women, Department of Economic and Social Affairs, Convention on the Elimination of All Forms of Discrimination Against Women. [online]
Available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> [Accessed 25 March 2013].
[96] United Nations Treaty Collection. [pdf] Available
at: <http://treaties.un.org/doc/publication/mtdsg/volume%20i/chapter%20iv/iv-8.en.pdf>. [Accessed 25 March 2013].

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Silvia di Gaetano, Office of the High Commissioner for Human Rights (OHCHR); Daw Mya MyA, Myanmar Women's Affairs Federation (MWAF); Prof. Than New and U Win Mra, chairman of the Myanmar National Human Rights Commission (MNHRC) at the Southeast Asia Regional Dialogue with National Women's Machineries, National Human Rights Institutions and Other Partners on Advancing Women's Human Rights and Promoting Gender Equality. Bangkok 1-3 November 2012.

Myanmar has also ratified the Convention on the Rights of Persons with Disabilities (CRPD) in December 2011, five years after its adoption by the United Nations General Assembly (2006) and just three after the Convention entered into force in May 2008. Article 18 of the 2006 Convention on the Rights of Persons with Disabilities (CRPD)[97] affirms that "States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality":

[97]Convention on the Rights of Persons with Disabilities (CRPD) [online] Available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx> [Accessed 25 March 2013].

Convention on the Rights of Persons with Disabilities (CRPD)

Article 18 - Liberty of movement and nationality

"*1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:*
(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
(c) Are free to leave any country, including their own;
(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.
2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents."

VI. HUMAN RIGHTS TREATY BODIES

Until now, we have talked about the core international human rights treaties, but who monitors them? Myanmar is party to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD), therefore it has an obligation to ensure the enjoyment of the rights spelled out in the treaties to everyone living within its territory.

The human rights treaty bodies are responsible to monitor the implementation of the human rights treaties ratified by Myanmar, through the submission of periodic reports by the State on how the rights are being implemented, initially within two years of accepting the Convention and thereafter every four years. They are composed by committees of independent experts nominated and elected for fixed renewable terms of two and four years by State parties. [98]

Likewise, the committees publish general comments to guide the State on how to submit a report relating to specific articles of the treaties. The treaty bodies rely their information not only on the State periodic report but also on information received from national human rights institutions (NHRIs), non-governmental organizations (NGOs), civil society organizations (CSOs), United Nations agencies, professional groups and academic institutions.

Following the gathering of all the existing relevant information from different sources, the Committees examine the periodic report in the presence of the State's delegation. Further to this constructive dialogue, the Committees publish their recommendations, referred to as "concluding observations".[99]

In the case of Myanmar, we are interested in analyzing the concluding observations from the Committee on the Elimination of Discrimination against Women (CEDAW) and the

[98] Office of the High Commissioner for Human Rights. *Monitoring the core international human rights treaties*.
[99] Ibid.

Committee on the Rights of the Child (CRC). The Convention on the Rights of Persons with Disabilities (CRPD) is monitored by the Committee on the Rights of Persons with Disabilities. To date, there is no periodic report on the Convention on the Rights of People with Disabilities (CRPD), because Myanmar ratified the CRPD only in December 2011 (entry into force 2012). The authorities are due to report on CRPD supposedly in January 2014. [100]

The first time Myanmar reported to the Committee on the Elimination of Discrimination against Women (CEDAW) was in 1998. The second and third periodic reports were submitted together as one document to the CEDAW Committee in August 2006. In its concluding observations adopted in November 2008, the Committee on the Elimination of Discrimination Against Women requested that further information be submitted within one year, and invited the State party to submit its fourth and fifth periodic reports in a combined report in 2014.[101]

The Convention on the Rights of the Child (CRC) was adopted in 1989 and entered into force in 1990.[102] Myanmar ratified the CRC in 1991 and the CRC Optional Protocol on the Sale of Children, child prostitution and child pornography (CRC - OPT – SC) in February 2012. (entry into force March 2012). The Government is due to report to the CRC Committee in the fifth periodic review in August 2013.[103]

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[100] Myanmar reporting history. [online] Available at: < http://www.bayefsky.com/html/myanmar_t3_crpd.php > [Accessed 24 March 2013].
[101] Ibid.
[102] Convention on the Rights of the Child (CRC). [online] Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> [Accessed 24 March 2013].
[103] Myanmar reporting history. [online] Available at: <http://www.bayefsky.com/html/myanmar_t3_crc.php> [Accessed 24 March 2013].

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COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) - CONCLUDING OBSERVATIONS

Discriminatory nationality law [104]

"The Committee calls upon the State party to review the 1982 citizenship law and repeal or amend it, as appropriate, in order to bring it fully into compliance with article 9 of the Convention. It also calls on the State party to provide more information on Myanmar citizenship rights, including on birth certificates of children born in Myanmar, in particular children of ethnic groups, in its next periodic report."

[104] Committee on the Elimination of Discrimination against Women, 2008. CEDAW/C/MMR/CO/3. Concluding Observations: *Discriminatory nationality law*.

The Committee also invites the Government of the Union of Myanmar to provide with more information on the entitlements to acquire Myanmar citizenship under the 1982 citizenship law, including with respect to women acquiring citizenship based on their marital status and passing citizenship to their children born outside the country, as well as children with non-national fathers.

"The Committee urges the State party to grant citizenship to residents, in particular, on the basis of their long-standing ties to Myanmar, to the Muslims of northern Rakhine State and to allow them, in particular the women, the full enjoyment of their human rights. The State party is encouraged to continue to collaborate with the international community, especially the Office of the United Nations High Commissioner for Refugees (UNHCR), in those efforts."[105]

Moreover, the Committee, while noting the State party's issuance of temporary registration certificates to the Rohingya, is concerned that their entitlement to Myanmar citizenship is unclear and notes that this continuing discrimination is in violation of article 9 of the Convention.

COMMITTEE ON THE RIGHTS OF THE CHILD–CONCLUDING OBSERVATIONS

Children in situations of migration

The Committee on the rights of the child is concerned about serious violations of human rights committed at the borders against deported girls, being sold to brothels or brokers and boys being conscripted, and about the prohibition on the return of Rohingya people, including children, who fled the country. [106]

"The Committee strongly recommends that the State party:

[105] Committee on the Elimination of Discrimination against Women, 2008. CEDAW/C/MMR/CO/3. Concluding Observations: *Discriminatory nationality law*.
[106] Committee on the Rights of the Child, 2012. CRC/C/MMR/CO/3-4. Concluding Observations: Children in situations of migration.

(a) Take the necessary measures to eliminate human rights violations against migrant boys and girls;

(b) Implement comprehensive measures to address the root causes of migration, which include armed conflict, discrimination and deprivation of economic, social and cultural rights; and

(c) Allow Rohingya people, including children, who fled Myanmar to return to the country, and assist them in their reintegration."[107]

Children belonging to minority or indigenous groups

The Committee is especially concerned about Rohingya children, who face multiple discrimination and continue to be denied access to basic rights, including the right to food, health care, education, survival and development, as well as the right to enjoy their culture and to be protected from discrimination.[108]

"The Committee recalls its previous concluding observations (CRC/C/15/Add.237) and urges the State party to gather additional information on all ethnic minorities and other marginalized groups and to elaborate policies and programmes to fully ensure the implementation of their rights without discrimination. The Committee recommends in particular that the State party take effective measures to improve access to education and primary health care for children in the northern Rakhine State. The Committee also recommends that the State party take into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention."[109]

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[107] Committee on the Rights of the Child, 2012. CRC/C/MMR/CO/3-4. Concluding Observations: Children in situations of migration.

[108] Committee on the Rights of the Child, 2012. CRC/C/MMR/CO/3-4. Concluding Observations: Children belonging to minority or indigenous groups.

[109] Ibid.

Cooperation with regional and international bodies

"The Committee recommends that the State party cooperate with the Association of Southeast Asian Nations (ASEAN) Commission on the Promotion and Protection of the Rights of Women and Children in the implementation of the Convention and other human rights instruments both in the State party and in other ASEAN member States."[110]

[110] Committee on the Rights of the Child, 2012. CRC/C/MMR/CO/3-4. Concluding Observations: Cooperation with regional and international bodies.

VII. SPECIAL RAPPORTEUR

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UN Special Rapporteur on the Situation of Human Rights in Myanmar, while in meetings in Naypyitaw, encounters Daw Aung San Suu Kyi in the Pyithu Hluttaw building.

The Special Rapporteur is an independent human rights expert appointed to serve independently and impartiality up to a maximum of six years. The Special Rapporteur or Special Procedures, as he/she is also called, of the Human Rights Council has a mandate to report and advise on human rights from a thematic or country-specific perspective. With the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), special procedures undertake country visits; send communications to States in which they bring alleged violations or abuses to their attention; conduct thematic studies and contribute to the development of international human rights standards, engage in advocacy, raise public

awareness, and provide advice for technical cooperation. Special procedures report annually to the Human Rights Council; the majority of the mandates also reports to the General Assembly.[111]

Mandate holders carry out country visits to analyze the human rights situation in the country of reference. They send a letter to the State requesting to visit the country, and, if the State agrees, an invitation to visit is extended. Some countries have issued "standing invitations", which means that they are, in principle, prepared to receive a visit from any thematic special procedures mandate holder. After their visits, special procedures' mandate holders issue a mission report containing their findings and recommendations.[112]

From 11 to 16 February 2013, the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, conducted his seventh mission to Myanmar. He visited the Rakhine State, since he received reports with allegations of harassment, arbitrary arrest, arbitrary restriction of movement and destruction of places of worship.

The Special Rapporteur‘s feelings of a possible spread of the crisis to other parts of the country, undermining the entire reform process in Myanmar, were right. Following his visit to the Rakhine State in February, new violence broke out near Mandalay in March, against the Muslims. Unfortunately, the ongoing legislative reforms and improvements to the human rights situation in a way, did not reach the point where international human rights standards are met. It will take time to close the gap between reforms at the top and implementation on the ground, [113] but this time should be used to take necessary steps to train the army, the police judges and lawyers, to ensure that the perpetrators of human rights violations are brought to justice.

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[111] Office of the High Commissioner for Human Rights, OHCHR. *Special Procedures of the Human Rights Council*. [online] Available at: < http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx> [Accessed 24 March 2013].
[112] Ibid.
[113] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 6 March 2013. A/HRC/22/58

In order to do that, the United Nations Special Rapporteur calls on the Government of the Republic of the Union of Myanmar to ensure that the Investigation Commission, established by the President Thein Sein, addresses human rights violations occurred since the beginning of the violence in June last year, such as discrimination against the Rohingya in Rakhine State. He recommends that acknowledging the truth on the human rights abuses committed by the security forces and holding those responsible to account will be key to reconciliation and re-establishing trustful relations between communities. [114]

In case, after the publication of the Investigation Commission's report, allegations of human rights violations are not properly addressed, Quintana offers his support to the Government of Myanmar to pursue further investigations and suggests the authorities to ask the Office of the High Commissioner for Human Rights, OHCHR to support fact finding and monitoring in Rakhine State, in addition to supporting ongoing humanitarian efforts. [115]

Furthermore, the Special Rapporteur is aware of the limitation on freedom of movement imposed to Muslim villagers by the Nasaka border police, particularly in northern Rakhine State, to the point where they cannot access food or their livelihoods. He urges the Government to take immediate steps to ease these restrictions [116] and suspend all operations of Nasaka in Rakhine State. The Nasaka police has a long history of abuses and violence. Throughout his mandate, the Special Rapporteur has received a large number of allegations of human rights violations committed by Nasaka, therefore, he urges the Government to reform this border security force.

During his visit to the camps of internally displaced people, the Special Rapporteur highlighted that feelings of fear, distrust, hatred and anger remain still high between Buddhist Rakhine and Muslim Rohingya communities, speaking to community leaders and local officials. Only the Government of Myanmar can address this situation, which requires strong

[114] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 6 March 2013. A/HRC/22/58.
[115] Ibid.
[116] Ibid.

leadership to end the stigmatization of the stateless population in Rakhine State.[117] Walking through the IDPs camps, feels like being in a prison. This was the feeling the Special Rapporteur described while meeting the victims of June and October violence. "Easing restrictions on freedom of movement is also important for the mental health and human dignity of the people in the camps", highlighted to the Special Rapporteur.[118]

Restriction to the freedom of movement is not the only element to take into account while looking at the mental health and human dignity of the IDPs. In addition to easing restrictions on freedom of movement, the Government must reassure the two communities that these camps are not intended to be permanents and that they will be consulted on plans for their voluntary relocation in Rakhine State.[119]

As highlighted by the Special Rapporteur on the situation of human rights in Myanmar, in order to provide an environment conducive to peaceful co-existence and sustainable development in Rakhine State[120] and to prevent future displacement, the Government in Myanmar should promote dialogue between Muslim and Buddhist community leaders in which both sides are willing to make compromises to find solutions,[121]like during his visit to Sittwe, when the local authorities organized a small meeting between the two community leaders.

A dialogue between the leaders of Rohingya and Rakhine populations is not enough, if not accompanied by responsible local journalism. There is no dialogue while discrimination based on religion and ethnicity remains unaddressed, as emphasized by the Special Rapporteur. As mentioned in the previous chapters of this research, around 800,000 members

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[117] Ibid.
[118] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 6 March 2013. A/HRC/22/58.
[119] Ibid.
[120] Office for the Coordination of Humanitarian Affairs (OCHA). Rakhine Response Plan. July 2012–June 2013. (Revised in November 2012). [pdf] Available at: <https://docs.unocha.org/sites/dms/ROAP/Myanmar/Documents/Revised%20Rakhine%20Response%20Plan.pdf> [Accessed 24 March 2013].
[121] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 6 March 2013. A/HRC/22/58.

of the Rohingya Muslim community still lack of a legal status, which gives space to deep discrimination against them.

The 1982 Citizenship Act denies the Rohingya basic human rights, by declaring them stateless. In this regard, the Special Rapporteur reiterates his recommendation to Parliament to amended or repeal the Myanmar Citizenship Law to make sure that all persons have equal access to citizenship and are not discriminated against on grounds of ethnicity or religion. At the same time, he calls on the Government to apply the current citizenship law in a non-discriminatory manner to enable those with a just claim to citizenship to claim it on an equal basis with others. [122]

Nonetheless, the 1982 Citizenship Act is not the only discriminatory regulation affecting the Muslim Rohingya minority. The United Nations Special Rapporteur requests the Government to take immediate measures to remove the whole discriminatory regulations applied to the Rohingya, including limitations on freedom of movement, the right to marry and register a new born child, and access to education and employment. In this sense, he reminds the Government of the Republic of the Union of Myanmar to respect the human rights of ethnic minorities, as enshrined in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.[123]

In his recommendations, the Special Rapporteur highlights the importance for the Government of Myanmar to ensure that the 2014 census will include all ethnic and religious minorities in the country, including the Rohingya.[124] In the meantime, he concludes reiterating the significance of the continuing existence of his mandate to remind the international community of the importance of prioritizing human rights in its bilateral relations with Myanmar.[125] Indeed, the UN Human Rights Council adopts by consensus a resolution on the

[122] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 6 March 2013. A/HRC/22/58.
[123] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. Adopted by General Assembly resolution 47/135 of 18 December 1992.
[124] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 6 March 2013. A/HRC/22/58. *Recommendations*.
[125] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 6 March 2013. A/HRC/22/58. *Conclusions*.

human rights situation in Myanmar and extends the mandate of the UN Special Rapporteur for another year.[126] Moreover, he reminds the Government in Myanmar to follow up on the establishment of an Office of the High Commissioner of Human Rights (OHCHR) with a full mandate, as per Government's invitation received on 18 November 2012 and welcomes the consultations already under way but invites the authorities to accelerate the process.

Last but not least, the United Nation Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, concludes recalling on the neighboring countries, such as Bangladesh, Thailand and Malaysia for their responsibility, under international law, not to send the Muslim Rohingya minority back to the sea or across land borders, against the principle of *non-refoulement*. Between October 2012 and April 2013, the number of Rohingya taking to the sea is expected to range around 20,000 people. The current situation reports by now, the deaths of hundreds of people through drowning.

In addition to the number of victims by sea, the violence in the Rakhine State provoked a new wave of trafficking Rohingya people, especially on the Thai border with Malaysia. Rohingya people flee Myanmar in hope of better life, instead they face detention or discrimination in other countries.[127] The Special Rapporteur urges the Government to take immediate steps to address allegations of trafficking and corruption. He urges the Association of Southeast Asian Nations (ASEAN) to work closely with regional law enforcement authorities and human rights agencies to combat trafficking of Rohingya refugees and support the Myanmar Government to find a solution to common Regional problems.

To conclude, it is not the first visit of the Special Rapporteur to Myanmar. Tomás Ojea Quintana, has been the United Nations Special Rapporteur on the situation of human rights in

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[126] Human Rights Council, 2013. *Human Rights Council extends mandates of Special Rapporteur on Myanmar and the Commission of Inquiry on Syria*. [online] Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12009&LangID=E> [Accessed 23 March 2013].

[127] Rohingya smuggler racket details aired, 2013. Bangkok Post [online] 31 January. Available at: <http://www.bangkokpost.com/news/local/333449/rohingya-smuggler-racket-details-aired> [Accessed 31 January 2013].

Myanmar since May 2008.[128] His mandate was established pursuant to Commission on Human Rights resolution 1992/58, and was recently extended by Human Rights Council resolution 19/21. The present report covers human rights developments in Myanmar since the Special Rapporteur's report to the Council (A/HRC/19/67) in March 2012 and to the Assembly (A/67/383) in October 2012. [129]

Notwithstanding the Special Rapporteur's efforts to be as much impartial and objective as possible, his perspective on the facts contrast with the views of the Government of Myanmar, as shown in the Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, Comments by the State, A/HRC/22/58/Add.1., dated 6 March 2013.[130] According to the Myanmar authorities, the allegations of harassment, arbitrary arrest, arbitrary restriction of movement and destruction of places of worship are unfounded. "They do not match with the real situation on the ground", the report says. The authorities emphasize the presence of temporary places of worship, set up in the IDP camps, reflecting the freedom of worship.

Apparently, the views expressed in the Special Rapporteur's last report on the situation of human rights in Myanmar are inappropriate.[131] Therefore, they are unacceptable. Unacceptable is a recurrent word used by the Government of Myanmar to describe the repeal or amendment of the 1982 Myanmar Citizenship Act, based on the Special Rapporteur's recommendations. With the Myanmar authorities' words: "No country is obligated to give citizenship to everybody who is living there. The 1982 Myanmar Citizenship Act does not target at any particular group. People living legally in Myanmar for three successive

[128] Office of the United Nations High Commissioner for Human Rights, 2013. Special Rapporteur on the situation of human rights in Myanmar. [online] Available at:
< http://www2.ohchr.org/english/countries/mm/mandate> [Accessed 23 March 2013].
[129] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 6 March 2013. A/HRC/22/58.
[130] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, Comments by the State, 6 March 2013. A/HRC/22/58/Add.1. *Situation in Rakhine State*.
[131] Ibid.

generations are eligible to apply for the naturalized citizenship. Therefore, we see no reason whatsoever to review or amend this Act."[132]

The Myanmar Government highlights that, the fact that Rohingya leave Myanmar in unseaworthy boats, putting their lives at risk, is not a sign of their suffering in the country. "This view does not reflect the reality", the authorities say. The Government states that the so-called "boat people" are economic migrants, who "are being exploited by the human trafficking gangs in the region." Moreover, they recall on the Special Rapporteur on the fact that Myanmar does not accept "the notion that all of them come from Myanmar. They could come from everywhere in the region. One cannot discount the possibility that, if or when arrested in another country, these boat people would hide their true identity; they would instead falsely identify themselves as Myanmar nationals. The Special Rapporteur's recommendations [...] are premature. Time is not ripe to consider the amendment of our constitutional provisions."

The words contained in the State report by the Myanmar Government, as response to the Special Rapporteur comments, should leave any human rights activists petrified for their insensitive nature and distance from the real facts. The new era of reforms lives no space for paying attention to the words of the Government of Myanmar, while addressing the serious human rights violations taking place not only in the Rakhine State but all over the country, particularly in the Kachin State this year.

On the other hand, the Human Rights Council met in Geneva on its twenty-second session to discuss, among others, about the human rights situations that require the Council's attention. Item four of its agenda is represented by the situation of human rights in Myanmar. In its report, distributed on 19 March 2013, while welcoming the positive developments in Myanmar and the Government's commitment to continue the path of political reform, democratization and national reconciliation, the Human Rights Council urges the Government to accelerate its efforts to address discrimination, human rights violations, violence,

[132] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, Comments by the State, 6 March 2013. A/HRC/22/58/Add.1. *Situation in Rakhine State*.

displacement and economic deprivation affecting persons belonging to national or ethnic, religious and linguistic minorities, particularly the Rohingya minority in Rakhine State.[133]

The Human Rights Council agrees with the Special Rapporteur in requiring the Government of Myanmar to amend or repeal the 1982 Citizenship Law, that "deny the Rohingya, inter alia, the right to birth registration, the ability to marry and freedom of movement, including equal access to citizenship, through a full review of the to ensure that it conforms to international obligations defined in treaties to which the Government of Myanmar is a party, including their right to a nationality".[134]

Furthermore, the Council asks the Government of Myanmar to take action to limit the escalation of tensions between the Buddhists and the Muslims communities in the Rakhine State and hold to account those responsible for the violence. It calls upon the State to grant unhindered humanitarian access across Rakhine State to all persons in need, and to ensure effective coordination of humanitarian assistance, in the respect of the cooperation agreements between Myanmar authorities and the international community for the distribution of humanitarian aid.[135] The Human Rights Council's session terminates with a call on the Government of Myanmar to establish the Office of the United Nations High Commissioner for Human Rights country office, with a specific timetable for the opening in accordance with the mandate of the High Commissioner.

Together with the United Nations Special Rapporteur, another crucial country mandate is the Special Adviser to the Secretary-General on Myanmar, Vijay Nambiar, whose work is mandated by the General Assembly resolution on Myanmar. During his visit to the country, between 14 and 16 January, the Special Adviser to the Secretary-General appealed to the government for greater humanitarian access in the Rakhine State to provide relief to the communities affected by the recent escalation in the conflict.[136] He also discussed with the

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[133] Human Rights Council, 19 March 2013. *Human rights situations that require the Council's attention*. A/HRC/22/L.20/ Rev.1.
[134] Ibid.
[135] Ibid.
[136] Statement attributable to the Special Adviser to the Secretary-General on Myanmar on his recent visit to Myanmar from 14-16 January 2013.

specific ministries the role the UN could play in the Rakhine State, as well as other humanitarian and political reconciliation issues, including the overall progress of reforms and the developments on the next census.[137]

[137] Statement attributable to the Special Adviser to the Secretary-General on Myanmar on his recent visit to Myanmar from 14-16 January 2013.

VIII. RELEVANT REGIONAL STANDARDS AND INITIATIVES

Source UNHCR

In addition to the core international human rights treaties and declarations, there are a range of specific instruments that pertain to the Asian region, as well as a number of relevant regional standards and initiatives.

Myanmar is located in Southeast Asia and is a member of the Association of Southeast Asian Nations (ASEAN) since 23 July 1997. The ASEAN was established on 8 August 1967, in Bangkok, Thailand with the signature of the Bangkok Declaration or ASEAN Declaration,

by the Foreign Ministers of five Founding Fathers countries, namely Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam then joined on 7 January 1984, Viet Nam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999, making up what is today the ten Member States of ASEAN.[138]

A gathering of the ASEAN Foreign Ministers was held at the ASEAN Secretariat in Jakarta to celebrate the entry into force of the ASEAN Charter, on 15 December 2008. The Charter was officially adopted during the 13th ASEAN Summit on 20 November 2007 and transformed the Association into a formal legal entity.[139] The Association of Southeast Asian Nations refers to the ASEAN Charter to codify norms and rules within the Southeast Asian Community. The Charter sets clear targets for ASEAN in achieving the ASEAN Community by providing legal status and institutional framework for ASEAN. It also serve as a firm foundation for accountability and compliance of ASEAN values. [140]

In order to address the serious human rights violations suffered by the Muslim Rohingya ethnic minority not only in Myanmar but also in the neighboring countries, it is of paramount importance to know to which extent we can account Bangladesh, Thailand or Malaysia responsible for their actions as much as the Government in Myanmar. To respond to this question, it is worthy to note that the ASEAN Charter has become a legally binding for the ten ASEAN Member States. This means that, all the Member States must be retained accountable for their illegal actions to the Association of the Southeast Asian Nations.

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[138] Association of Southeast Asian Nations (ASEAN). *Overview*. [online] Available at: <http://www.asean.org/asean/about-asean/overview> [Accessed 24 March 2013].
[139] Asian Forum for Human Rights and Development (FORUM-ASIA), 2010. *Hiding behind Its Limits*. A performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR).
[140] Ibid.

Indeed, Article 1(1) of the ASEAN Charter states that the purposes of ASEAN are:

Article 1(1) of the ASEAN Charter[141]

"to maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region"

As discussed in Chapter VI – International Legal Instruments – Statelessness is a "threat to peace and security"[142] and the implications for not recognizing the Muslim Rohingya minority as Myanmar citizens are already affecting the regional security within ASEAN boundaries and even outside the ASEAN Community. To date, Article 4 of the ASEAN Charter "to ensure that the peoples and Member States of ASAN live in peace with the world at large in a just, democratic and harmonious environment" is in the danger.

Another important purpose of the ASEAN Charter is enshrined in Article 1(7):

Article 1(7) of the ASEAN Charter[143]

"To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN"

Furthermore, the ASEAN Charter makes reference to human rights also in Article 2.2(i) and Article 14. According to the principles of the Charter, Article 2.2.(i), establishes that ASEAN and its Member States shall act in accordance with the following Principles:

Article 2.2(1) of the ASEAN Charter[144]

"respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice"

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[141] Associations of Southeast Asian Nations (ASEAN) Charter. Article 1 para 1.
[142] Office of the United Nations High Commissioner for Refugees , 1997. The State of The World's Refugees: A Humanitarian Agenda. *Statelessness and Citizenship*.
[143] Associations of Southeast Asian Nations (ASEAN) Charter. Article 1 paragraph 7.
[144] Associations of Southeast Asian Nations (ASEAN) Charter. Article 2 paragraph 2(i).

After discussing the Myanmar Citizenship Law of 1982, it is evident that Rohingya cannot enjoy those fundamental freedoms, to which the ASEAN Charter refers to. To promote and protect human rights, the ASEAN Charter envisages the establishment of an ASEAN human rights body, which shall operate in conformity with the purposes and principles of the ASEAN Charter. [145] On 23 October 2009, the human rights body was officially inaugurated as the ASEAN Inter Governmental Commission on Human Rights (AICHR). Among its main mandates, "to develop an ASEAN Human Rights Declaration", which was officially adopted by the Heads of States at Phnom Penh, Cambodia, in November 2012. Unfortunately, the ASEAN Human Rights Declaration (AHRD) suffers, to the date of writing, of much criticism from human rights groups and the UN, especially OHCHR. The reason being, the Declaration falls short of international human rights standards, because of its clause on cultural relativism:

Article 1.4 Terms of Reference of ASEAN Intergovernmental Commission on Human Rights

> "To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities"

An additional ASEAN Commission is the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) which may also have a role in protecting and promoting access to the right of nationality as affects women and children. All ASEAN countries are signatories to the CEDAW and CRC. The functions of the ACWC are particularly important because it shall encourage the Member States to produce disaggregated data by sex, age and maybe a good advocacy campaign might introduce the concept of producing disaggregated data based on stateless women and children.

Also important to note, there are a number of regional and international initiatives that relate to counter-smuggling and human trafficking. These initiatives and protocols explicitly call for cooperation between states in verifying and documenting the nationality of victims of

[145] Associations of Southeast Asian Nations (ASEAN) Charter. Article 14 paragraph 1 and paragraph 2.

smuggling or trafficking. This can play a vital role in protecting individuals and preventing statelessness.

First of all, the Protocol to Prevent, Suppress, and Punish Trafficking (2003), has been acceded to by 5 ASEAN countries including: Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines. Thailand has signed the Protocol.

Secondly, the Protocol against the Smuggling of Migrants by Land, Air and Sea (2004), has been acceded to by Cambodia, Lao PDR, Myanmar and the Philippines. Indonesia and Thailand have signed the Protocol.

To conclude, all ASEAN countries participate in the so-called "Bali Process".[146] Since its inception in 2002, states pledge to cooperate in verifying the identity and nationality of illegal migrants and trafficking victims.[147] Broadly, the Bali Process aims to support the provision of appropriate protection and assistance to the victims of trafficking, particularly women and children, some of whom may be stateless. It also aims to ensure focus on tackling the root causes of illegal migration, which include statelessness.

Bali States participating in the Bali Process have acknowledged the connection between tackling statelessness and combating human smuggling and trafficking. This is evidenced, for instance, by efforts to discuss concerns surrounding the situation of the Muslim residents of northern Rakhine State on the sidelines of a meeting of the Bali Process in 2012.

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[146] UNHCR, 2010. *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia*. [pdf] Available at: <http://www.unhcr.org/4d7de5ec9.html > [Accessed 23 March 2013].
[147] The Bali Process. [online] Available at: < http://www.baliprocess.net/> [Accessed 20 March 2013].

IX. CONCLUSIONS

Despite positive developments in Myanmar, the country remains affected by conflicts.[148] In light of the tragic events occurred in July and October last year, and recently in March 2013, a solution to the Rohingya's plight is of paramount importance for the region. The current crisis highlights the need to address the root causes of the violence against the Rohingya. The denial and deprivation of nationality and the discriminatory exclusion of the Muslim ethnic minority population has a poverty-generating function, which in turn impacts on security and peace-keeping (Blitz, 2009).

The Special Rapporteur on the situation of human rights in Myanmar, Tomas Ojea Quintana, has expressed concern at issues of statelessness in occasion of his seventh mission to the country from 11-16 February this year. "As Myanmar continues to undergo wide-ranging reforms, it is important to assess the current human rights situation and to reflect on positive developments and remaining challenges", he said in a statement. The United Nations Special Rapporteur presented the full report of its visit to the 22nd session of the Human Rights Council on 11 March 2013,[149] calling for a review or repeal of the 1982 Citizenship Law, which he said discriminates against Rohingya.[150]

The government of Myanmar has a legal obligation to protect all persons within its territory, regardless of whether they are citizens or stateless. Further violence is likely to happen and the impact on the region would generate more refugees, a political failure for Myanmar and at the same for the role of ASEAN in the Region. In the meantime, statelessness can also lead to inter-State conflicts if the affected population moves from one country to another.

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[148] Zaw, Z., Stein, J., Open Society Foundation, 2013. *Burma in transition*. [online] 28 February 2013. Available at:< http://www.opensocietyfoundations.org/topics/southeast-asia> [Accessed 28 February 2013].

[149] Myanmar: *UN special rapporteur visit to assess human rights situation*. [online] 5 February 2013. Available at:<http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/8BD44A88DE41EF36C1257B09004569CB?OpenDocument> [Accessed 10 February 2013].

[150] Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 6 March 2013. A/HRC/22/58

By contrast, addressing statelessness can help to prevent forced displacement. With a growing interest in statelessness at the national, regional and global level, the acknowledgement that there is a need to tackle the problem must now be translated into further practical strategies and solutions. In the ASEAN region, the nexus between migration and statelessness presents a particular challenge. Migration represents a significant socio-political feature in the region, especially as the region takes further steps towards the free movement of persons, finding ways to solve problems of statelessness from arising in the migration context must be a priority.

The only solution to protect the rights of stateless Rohingya within Myanmar and in other countries entails the amendment of the 1982 Citizenship Act. Key in this process is the political commitment of the Myanmar Government to ensure rule of law and human rights for all the people of the Rakhine State, in order to end deep racism and the way ethnicity and race is viewed in Myanmar. The biggest limitation to convince the Government of Myanmar to repeal or amend the Citizenship Law, is the public attitudes towards the Rohingya. Myanmar nationals perceive them differently for reasons of their religion. Addressing racism and reimagining Myanmar as a multi-ethnic and multi-religious country is the long-term solution.

In order to amend the Citizenship Law, UN and other international organizations who advocate for the rights of Rohingya people need to persuade people in Myanmar not only the Government. If the Government of Myanmar decides to amend the Citizenship Law, it would have most of the population against. That is why, even Aung San Suu Kyi do not dare openly to advocate for the rights of Rohingya people. In addition, no ethnicity in Myanmar accepts the Rohingya and so doesn't the Government and the opposition. The people stand on the same board, meaning that they do not see Rohingya people as originally from Myanmar. That is why international organizations face difficulty in working for the rights of Rohingya population.

The UN needs to advocate international laws within the civil society, the Rakhine community and the Government officials, in order to make people understand more the international legal framework, the State's obligations under international law and to make

them respect Rohingya's rights. To date, the only choice the Rohingya have is to apply for citizenship on ground of naturalization but the requirements to meet are too high. The Government of Myanmar should promote citizenship campaigns to facilitate naturalization. The political will of the State is essential.

This paper has offered an introduction to the legal obligations of the Government of the Republic of the Union of Myanmar for the amendment of the domestic nationality law. Its aim is to create awareness for the design of an effective prevention strategy to the problem of statelessness, through marriage and universal birth registration, for instance. Because, another element generating a risk of statelessness in ASEAN countries is the often inadequate coverage of birth registration systems.[151] The United Nations Children's Fund (UNICEF) estimates that 64.9% of children in Myanmar are unregistered, a situation which clearly leads to statelessness since the children are left without proof of place of birth.[152]

The current research comes in a strategic moment in terms of advocacy. In 2014, Myanmar will chair the ASEAN. The purpose of this paper is to illustrate the Governments of the ASEAN the benefits to find a common solution to Refugees and Stateless. In this sense, of great relevance would be the elaboration of a powerful advocacy plan to convince the Muslim Rohingya minority to stay on the Myanmar territory, by granting them citizenship and enjoy human rights and fundamental freedoms, which would avoid also the burden for other ASEAN countries to host them as refugees, or in the worst case scenario, as trafficked persons.

A recommendation to the UN agencies, the NGOs and the International Community would be to advocate for a definition of "Statelessness" in the CEDAW and the CRC, since all ASEAN countries ratified both International Conventions. Furthermore, to call on the Government of Myanmar to ratify and take all necessary steps to implement the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention

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[151] United Nations Office for the High Commissioner for Human Rights, 2010. *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia*. [online] Available at: < http://www.unhcr.org/4d7de5ec9.html> [Accessed 20 August 2012].
[152] Ibid.

Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and other core human rights treaties.

There can be no real, lasting solution without Myanmar. The Citizenship Law in Myanmar is the root problem.

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