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Rohingya: A Crime Against Humanity

Introduction

Persecuted and oppressed in Myanmar, Rohingyas flee across the border into Bangladesh. Starving and stateless, they live in squalid makeshift camps. The recent ethnic clashes between Rohingya Muslims and the Rakhine Buddhists in the Rakhine (Arakan) province of Myanmar have attracted global attention. It is as if a veil had been lifted to reveal a hideous blemish. The terrible ethnic and religious violence recently happened in June 2012, in Myanmar's western state of Rakhine, pitted Buddhists against the mostly Muslim Rohingyas minority. The latest—when an ugly incident of rape and murder of a Buddhist woman allegedly by three Rohingyas—turned into a disaster for the Rohingya Muslims community in Myanmar.

According to United Nations (UN) reports, there are more than 800,000 Rohingyas residing in Myanmar, mostly in the province of Rakhine, and many hundreds of thousands of Rohingya refugees in other countries. Thus, Rohingyas are one of the most persecuted minorities in the world. The ruling Junta stripped Rohingyas of all the rights of a citizen through a law called "Citizenship Law" in 1982, thus making Rohingyas the only stateless community of the world.

However, the ruling Junta in Myanmar did not want to know nor let others know that the Rohingyas have a long history, a language, a heritage, a culture and a tradition of their own that they had built up in the Rakhine, through their long history of existence there. Moreover, through their “criminal propaganda”, the Buddhist majorities have been feeding so much misinformation against the Rohingya. According to Siddiqui (1999), the level of disinformation has reached such an alarming level that if some of the people were to talk with a Rakhine Buddhist, they would say that the Rohingyas are refugees in Rakhine and they do not belong to Myanmar, but that they belong to Bangladesh. However, such allegations are unfounded. Some scholars distinguished that in fact the forefathers of Rohingyas had entered into Rakhine from time immemorial (Karim, 2000).

Who are Rohingyas?

Rakhine or Arakan was formerly known as “Rohang/Roshang/Raham”. The Rohingya name identifies the Muslims of Arakan as natives of Rohang or of Arakan (Buchanan, 2003). According to Buchanan (2003), the ethnic majority Rakhine fundamentally rejects any suggestion that the Rohingyas should be considered an ethnic group with bona fide historical roots in the region. Indeed, the Rakhines contend that they only encountered the word “Rohingya” in the 1950s during the time of the Mujihid movement. However, it is clear that the Muslim residents in Rakhine who prefer to be designated “Rohingya” as opposed to “Burmese Muslims” have developed a culture and language (mixture of Chittagonian, Burmese, Hindi and English), which is absolutely unique to the region (Lewa, 2010).

The history of the Rohingya minority in Myanmar goes back to the 8th century as they claim to be original settlers of the Rakhine province in the country, while tracing their ancestry to Arab traders. The Rakhine State of Myanmar, bordering Bangladesh, is mostly inhabited by two ethnic communities—the Rakhine Buddhist and the Rohingya Muslim. The Rakhine Buddhists are close to the Burmese in religion and language, while the Rohingya Muslims are ethnically and religiously related to the people from the region of Chittagong in southeastern Bangladesh.

The number of Rohingya Muslim is approximately 3.5 million but due to large scale persecution through ethnic cleansing and genocidal action against them, nearly half of them (1.5 million), are forced to live outside their ancestral homes since Burmese independence in 1948 (Alam, 1998). These uprooted people are now living in exile as refugees and illegal immigrants, mostly in Bangladesh, Pakistan, Saudi Arabia, Thailand and Malaysia.

The Roots of the Rohingyas

According to Habibullah (1995), the original inhabitants of Rohingya were Hindus, Buddhists and animists, while from the pre-Islamic days, the region was very familiar to the Arab seafarers. Some historians cite that the first Muslims to settle in the Rakhine were Arabs under the leadership of Muhammad Ibn Hanafiya, in the late of 7th century, when he married the queen of Kaiyapuri who had converted to Islam. The mountain peaks where they lived are still known as Hanifa Tonki and Kaiyapuri Tonki (Habibullah, 1995).

The second major influx of early Muslims dates back to the 8th century. According to the British Burma Gazetteer (1957), Mahataing Sandya (788 AD) ascended the throne of Vesali, founded a new city on the site of old Ramadi and died after a reign of twenty two years. During his reign, several ships were wrecked on Rambree Island.

The third major influx came after 1404, when the Rakhine’s king, dethroned by the Burmese, took asylum in Gaur (the capital of Bengal) and pleaded for help from Jalaludin Muhammad Shah (the Sultan of Bengal), to regain the lost throne. The sultan sent tens of thousands of soldiers to conquer the Rakhine. Many of these Muslim soldiers subsequently settled there (Habibullah, 1995).

Later, other ethnic groups such as Mughals, Turks, Persian, Central Asians, Pathans and Bengalis also moved into the territory and mixed with the Rohingyas. Habibullah stated that the spread of Islam in the Rakhine (and along the southern coastal areas of Bangladesh), mostly happened through the Sufis and merchants. Hence, the Rohingya Muslims, whose settlements in Rakhine dated back to the 7th century, are not an ethnic group, which developed from one tribal group affiliation or single racial stock, but they are an ethnic group that developed from different stocks of people. The ethnic Rohingyas are Muslim by religion with distinct culture and civilisation of their own (Habibullah, 1995).

The Influence of Muslims in Rakhine

From the history itself, there are many interpretations that can have a persuasive impact towards Rohingya Muslim people. In Rakhine, the sandwiched Muslim-ruled India in the west and Buddhist-ruled Myanmar in the east, at different periods of history, had been an independent sovereign monarchy ruled by Hindus, Buddhists and Muslims. After Bengal became a Muslim country in the 1203 century, Islamic influence grew significantly in Rakhine to the degree of establishing a Muslim vassal state there in 1430 century (Siddique, 1999). In 1404, the Rakhine’s king, dethroned by the Burmese, took asylum in Gaur (the capital of Bengal) and pleaded for help to regain the lost throne. According to Siddique (1999), the Sultan of Bengal, Jalaluddin Muhammad Shah, sent General Wali Khan at the head of 50,000 soldiers to conquer Rakhine. Wali Khan drove the Burmese out and took control of power over Rakhine, introduced Persian as the court language of Rakhine and appointed Muslim judges. After that, Jalaluddin sent a second army under the General Sandi Khan who overthrew Wali Khan and restored the exiled monarch (Mong Saw Mwan, who took the title of Sulayman Shah) to the throne of Rakhine in 1430 (Saddique, 1999).

In 1660, the Mughal Prince, Shah Shuja fled to Rakhine. This important event brought a new wave of Muslim immigrants to the kingdom of Rakhine (Habibullah, 1995). The Rakhinese king issued a coin bearing the inscription of Muslim kalema, the state emblem and also inscribed Arabic words, the mosque began to dot the countryside and Islamic customs, manners and practices came to be established since this time (Habibullah, 1995).



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Internally displaced Rohingya women sit in the back of a truck ready to leave their camp in Sittwe, northwestern Rakhine State, Myanmar. Tens of thousands of displaced Rohingya people who live in the plastic-roofed tents and reed huts distrust orders from a government that barely acknowledges their exist.

However, from 1685 to 1710, the political power of Rakhine was completely in the hands of the Muslims. Muslims ruled and/or influence in Rakhine lasted approximately 350 years, until it was invaded and occupied by the Burmese king, Boddaw Paya, on December 28, 1784. Boddaw Paya may rightly be called the harbinger for destroying everything Islamic in Rakhine and for sowing the seed of distrust between the two communities, Rohingya Muslim and Rakhine Buddhist (Siddique, 1999).

Religion, Culture and Civilisation of Rohingyas

According to Arakan Rohingya National Organisation (ARNO) (2006), Rohingyas are staunch followers of Islam. Most of the elderly Rohingya grow beards and the women wear 'hijab'. High bamboo walls surround all Rohingya houses. There are mosques and 'Madrassahs' (religious schools) in every quarter and village. There is still in existence a social bond in every village called 'Samaj'. All social welfare activities like Adhahi - meat distribution, helping the poor, widows, orphans and needy, marriage and funeral functions are done by the Samaj. The Ulama play a very prominent role particularly in matters relating to personal laws, like family affairs of the Rohingyas (ARNO, 2006).

Unfortunately, today, cultural problems are becoming one of the most important problems of the Rohingyas in Myanmar. ARNO (2006) also stated that the Rohingyas have to encounter strong pressure from the Buddhist culture. The Rohingya Muslims have to confront ideological assault from all directions. The Rohingyas

are viewed as practicing a foreign way of life that has no origin in Myanmar. According to the ruling military the Rohingyas should support the ideas of Burmese race and culture and Buddhism.

The Rohingyas are told to discard the Islamic names and adopt Burmese names instead. Everywhere Muslims' are razed to the ground. Hundreds of mosques have been demolished (ARNO, 2006). Construction of new mosques or repairs to the old ones is prohibited. Pagodas, monasteries and Buddhist temples have been erected in every nook and cranny of the Rohingya homeland. According to Nurul Islam (2006), Muslim students have been brainwashed in schools where anti-Islamic materials are being taught to them. Islam and Islamic culture are always projected or presented in humiliating, derogatory, degrading and distorted forms.

Anti-Rohingya Campaign, Violation of Human Rights

Propaganda against Rohingyas has long been launched by the Burmese military dictatorship with the support of some Rakhine intellectuals and politicians. Now, it has reached the new quasi-military government's highest political institution, the parliament in Naypyidaw. The regime and xenophobes denied the existence of Rohingya as an ethnic group and alleged that Rohingyas are illegal Bengalis who have entered into Arakan from Bangladesh (Nurul Islam, 2011). This concocted propaganda was met with strong condemnation from the Rohingya communities worldwide. There were global protests in front of the Burmese embassies

on September 15, 2011. The protest rally held in London was joined by leaders and activists belonging to almost all Burma ethnic groups and democracy movements, some local supporters and NGOs.

Crimes against Humanity, Violation of Human Rights

For many years, the Rohingyas have been enduring human rights abuses. Rohingyas have been trapped by a political stalemate, which has caused this minority to live in horrific conditions. The violations of human rights such as forced labor, deportation and forcible transfer, rape and sexual violence and persecution — are still going on and need urgent attention and redress.

International Human Rights Law

All of the acts against Rohingyas constitute gross violations of international human rights law. According to Mettraux (2005), as a body of law, it certainly applies to the situation of the Rohingyas, and while linked in certain respects to crimes against humanity it must be considered a separate and distinct body of law.

Human rights violations, when gross and systematic, rather than isolated or individual, often correspond to crimes against humanity; however, individuals may be prosecuted for crimes against humanity, and must be shown to have knowledge and intent, whereas human rights violations are addressed from the standpoint of State responsibility. Burma has a regrettable, if unsurprising record when it comes to ratifying international human rights instruments. It is not a party to either the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights (Mettraux, 2005).

Mettraux (2005) also stated that the most notable exceptions to this pattern of avoidance are its ratification of the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women. Burma is naturally subject to recognised norms of customary international law, and this has become relevant in 2011 and it is subjected to the Universal Periodic Review mechanism of the Human Rights Council.

A crime against humanity is distinguished from an ordinary crime by the fact that it consists, by its very nature, of certain enumerated acts — which stated in Article 7 of the Rome Statute provides for murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, rape and sexual violence, persecution, enforced disappearance, apartheid, or other inhumane acts—committed as part of a ‘widespread or systematic attack directed against any civilian population’ (Mettraux, 2005). This



Myanmar Buddhist monks demonstrate against the Organisation of the Islamic Conference in Yangon in 2012.

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presence of a ‘widespread or systematic attack directed against any civilian population’ constitutes at a basic level the general requirement for crimes against humanity, which, as Mettraux (2005) points out, ‘must be seen as a whole’ and within the ‘necessary context in which the acts of the accused must be inscribed’.

Forced Labour

The prohibition of forced labor constitutes a norm of customary international law. The violation of this prohibition may qualify as an internationally wrongful act-giving rise to state responsibility.

According to Charney (2009), the imposition of forced labour on the civilian population in Burma has been documented for many years. For more than a decade, it has been monitored closely by the International Labour Organisation. As is the case throughout Burma, the pervasiveness of forced labor varies throughout the territory of North Arakan State. The Rohingyas of North Arakan State are one of the groups who suffer most from the exaction of forced labour. Their location on the Burma-Bangladesh border where there is a strong military presence, as well as the establishment of the Nay-Sat Kut-kwey Ye (NaSaKa), have resulted in an even greater burden for the Rohingyas, as the security forces became the main user of forced labour in Burma (Charney, 2009).

Charney (2009) stated that, numerous so-called “model villages” have also been built in high numbers in North Arakan State and the authorities have used the Rohingyas, and no other group, to do the work. There is constant and an ever-increasing discrimination against the Rohingyas, a situation resulting in increased forced labour. The forced labour is exacted from the Rohingya population in several forms. These include portering, building maintenance and construction, forced cultivation and agricultural labor, construction and repair of basic infrastructure, and guard or sentry duty.

In this case, the individuals so engaged have the possibility of buying their way out of these various forms of labour by providing weekly compensation, but they may not simply reject forced labour requests. Failure to provide the number of days of labour ordered for each household leads to harassment, beatings, killings and other abuses such as the retributive abuse of family members (Charney, 2009).

Deportation and Forcible Transfer

Forced displacement of individuals, whether across borders or within a state, may give rise to the offences of deportation or forcible transfer of population, as well as constitute a violation of freedom of movement. In certain circumstances it may also be referred to as ethnic cleansing (Charney, 2009).

Forced displacement is a well-recognised phenomenon in Burma generally. According to Charney (2009), the displacement of the Rohingyas has a long history, with over 200,000 individuals fleeing across the border to Bangladesh in 1978, and a larger number again from 1991 to 1992. A steady stream of Rohingya refugees into Bangladesh, and other destinations, continues to this day.

At the heart of this displacement—and indeed at the heart of many of the other violations stated in many reports—is the enduring condition of Rohingya statelessness and the refusal of the State Peace and Development Council (SPDC) to acknowledge and regularise Rohingya citizenship. The Rohingyas have experienced difficulties in obtaining citizenship since the early days of Burmese independence. The laws and policies, in particular the 1982 Citizenship Law, are at the heart of a discriminatory system which leaves the Rohingya ethnic minority without citizenship and subsequently vulnerable to a myriad of violations, including forced displacement. Their movement is severely restricted and subjected to a strict licensing system (Charney, 2009).

The construction of model villages and of military installations as a result of the heightened militarization of North Arakan State, has involved land confiscation and has further led to the increased displacement of the Rohingyas. In addition, numerous cases of the wholesale forced relocation or eviction of Rohingya villages have been documented since the early 1990s. The manner in which this has occurred is arbitrary, violent and at times fatal, and is a clear example of the crime of forcible transfer of populations. Generally, this forced displacement has been caused by the creation of intolerable and coercive conditions, culminating in Rohingyas fleeing across the border to Bangladesh or being displaced from their homes while remaining within the region.

The 1982 Citizenship Law

According to the United Nation High Commissioner Refugees (UNHCR), in 1982, Burma's military rulers brought in a new Citizenship Law, which deprived most people of Indian and Chinese descent of citizenship. However, the timing of its promulgation, shortly after the refugee repatriation of 1979, strongly suggests that it was specifically designed to exclude the Rohingya. Unlike the preceding 1948 Citizenship Act, the 1982 Law is essentially based on the principle of *jus sanguinis* and identifies three categories of citizens: full, associate and naturalised.

Full citizens are those belonging to one of 135 'national races', settled in Burma before 1823, the start of the British colonisation of Arakan. The Rohingyas do not appear in this list and the government does not recognise the term 'Rohingya'. Associate citizenship was only granted to those whose application for citizenship under the 1948 Act was pending on the date the Act came into force.

Naturalised citizenship could only be granted to those who could furnish "conclusive evidence" of entry and residence before Burma's independence on January 4, 1948, who could speak one of the national languages well and whose children born in Burma. Very few Rohingyas could fulfill these requirements. Moreover, the wide powers assigned to a government-controlled 'Central Body' to decide on matters pertaining to citizenship mean that, in practice, the Rohingyas' entitlement to citizenship will not be recognised.

UNHCR also stated that, in 1989, colour-coded Citizens Scrutiny Cards (CRCs) were introduced: pink cards for full citizens, blue for associate citizens and green for naturalised citizens. The Rohingya were not issued any cards. In 1995, in response to UNHCR's intensive advocacy efforts to document the Rohingyas, the Burmese authorities started issuing them a Temporary Registration Card (TRC), a white card, pursuant to the 1949 Residents of Burma Registration Act. The TRC does not mention the bearer's place of birth and cannot be used to claim citizenship. The family list, which every family residing in Burma possesses, only records family members and their date of birth. It does not indicate the place of birth and therefore provides no official evidence of birth in Burma — and so perpetuates their statelessness.

The Rohingyas are recognised neither as citizens nor as foreigners. The Burmese government also objects to them being described as stateless persons but appears to have created a special category: 'Myanmar residents', which is not a legal status. However, on more than one occasion, government officials have described them as 'illegal immigrants from Bangladesh'. In 1998, a letter to UNHCR, Burma's then Prime Minister General Khin Nyunt wrote: "These people are not originally from Myanmar but have illegally migrated to Myanmar because of population pressures in their own country." February 2009 article in the government-owned New Light of Myanmar newspaper stated that, "In Myanmar there is no national race by the name of Rohinja."

According to Charney (2009), deprivation of citizenship has served as a key strategy to justify arbitrary treatment and discriminatory policies against the Rohingya. Severe restrictions on their movements are increasingly applied. They are banned from employment in the civil service, including in the education and health sectors. In 1994, the authorities stopped issuing Rohingya children with birth certificates. By the late 1990s, official marriage authorisations were made mandatory. Infringement of these stringent rules can result in long prison sentences.

Rape and Sexual Violence

Recent decades have seen increased attention to international crimes involving rape and sexual violence. This is evidenced in

ROHINGYA MUSLIMS IN MYANMAR THROUGH THE CENTURIES

15
CENTURY

15th century

ISLAMIC INSCRIPTIONS AND COINS USED
IN WHAT IS TODAY MYANMAR

1799

TERM "ROHINGYA" MENTIONED
IN PUBLISHED RESEARCH

1871 **58,000**
MUSLIMS IN
BURMA'S RAKHINE STATE

1871 **179,000**
MUSLIMS IN
BURMA'S RAKHINE STATE

1982

CITIZENSHIP ACT EXCLUDED
ROHINGYA FROM BURMESE CITIZENSHIP

1991

CONFLICT DROVE MORE THAN
250,000
ROHINGYA TO BANGLADESH

1992-1993

50,000
ROHINGYA FORCIBLY REPATRIATED
TO MYANMAR

2012

JAN 2012
MORE THAN
29,000

REGISTERED REFUGEES FROM
RAKHINE STATE STILL IN
BANGLADESH GROUP
THAT ARRIVED IN
1991:200,000

MORE UNREGISTERED PEOPLE FROM
MYANMAR ESTIMATED TO
LIVE IN BANGLADESH

2012
800,000
ROHINGYA MUSLIMS IN
MYANMAR

the jurisprudence of international criminal tribunals, and in the Statute of the International Criminal Court (UNHCR, 2005).

According to Charney (2009), many reports from a wide variety of non-governmental organisations and United Nations bodies and representatives include a common view that rape and sexual violence is an endemic problem in Burma, especially for ethnic minority women and girls. Authorities regularly fail to effectively investigate alleged cases of rape, which leads to the inability of those affected to obtain redress for violations. Victims, their families, and witnesses of rape and sexual violence have reported being threatened, intimidated and physically abused because of their allegations.

The root causes of this type of abuse are numerous. Some are common throughout Burma, while others are particularly apparent in North Arakan State. Burma is a male-dominated society where women and girls hold traditional roles and generally do not enjoy equal status with men. Rohingya society is also very conservative. In this context, Rohingya women and girls are vulnerable to gender-based discrimination, which can lead to sexual violence and rape (Charney, 2009).

The significant military presence in North Arakan State seems to be a prominent cause of the prevalence of rape and sexual violence. In addition to gender-based discrimination and the militarisation of North Arakan State, the perpetration of sexual violence crimes and rapes against Rohingya girls and women frequently appears to be linked to racial discrimination. It appears that Rohingya women and girls in North Arakan State have been victims of rape and sexual violence, frequently at the hands of soldiers and NaSaKa members. The rapes and sexual violence carried out by the military, NaSaKa forces, and sometimes the police, appear to go beyond isolated, random, and individual circumstances. The regularity of their occurrence, the context in which they occur — e.g. during forced labor or in military bases - and the impunity of the perpetrators, all invite the conclusion that these acts, together with the others are offences committed against the Rohingyas.

Persecution


The above violations do not occur in isolation. For example, rape and sexual violence occur during forced labour or when women are left alone because the men have been taken for labour. Moreover, these violations appear to be directed in particular against the Rohingya minority, as part of a general discriminatory approach. Consequently, there arises a concern that the Rohingya minority are victims of the offence of persecution. According to Charney (2009), under the Rome Statute, “‘Persecution’ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”.

In addition to the above detailed offences, a number of other violations appear to be committed against the Rohingyas. Arbitrary detention is a frequent occurrence, often accompanied by extortion and demands for bribes. Similar concerns are raised with regard to murder, torture, and other ill-treatment. Whilst the Burmese regime has been criticised for the prevalence of impunity for these violations throughout Burma, once again, in

North Arakan State, the Rohingyas appear to be singled out for such abuse on account of their ethnic minority status (Charney, 2009).

The Rohingya minority is also exposed to widespread restrictions on their freedom of religion, including obstacles with respect to the maintenance of mosques and schools, which has a further detrimental impact on their right to education. Linking the violations is the fact that their commission is widespread and systematic and committed with discriminatory intent, i.e. because of the ethnic, racial and religious make-up of the Rohingya community. Each category of violation is linked to the discriminatory policies of the SPDC.

From forced labor and rape to forcible displacement and marriage restrictions, the Rohingyas are targeted for abuse on account of their minority status. In the absence of the most basic freedom, resulting in destitution and frequently death, hundreds of thousands of Rohingyas have been left with no option but to flee their homes for the relative safety of neighbouring States. Taken together and in context, the offences committed against the Rohingya minority appear to present a case for crime against humanity of persecution.


The Rohingyas have experienced difficulties in obtaining citizenship since the early days of Burmese independence.

Conclusion

After being hounded for decades, it is time that adequate attention be given to the plight of the Rohingyas. The root causes of the situation of the Rohingyas must be further assessed, as failure to do so will undoubtedly lead to a bleak future for this ethnic minority group. People committing, allowing, adding and abetting these crimes must be held accountable. The international community has a responsibility to protect the Rohingyas, to respond to the allegations of crimes against humanity, and to ensure that violations and impunity do not persist for another generation.

In addition, these violations also serve as a test for the Nobel Peace Prize Winner, Aung San Suu Kyi, now an opposition leader in parliament, whose studied neutrality has failed to defuse tensions and risks undermining her image as a unifying moral force. Suu Kyi, a devout Buddhist, said that she refuses to take sides. Can Suu Kyi stay silent while at the same time,



she is honored for her leadership and steadfast commitment to human rights and for promoting freedom, peace and democracy in her home country of Myanmar?. At present, Suu Kyi has been largely silent on the Rohingyas issue and has even answered, "I don't know" when asked by a reporter whether the Rohingya Muslim community should be allowed Burmese citizenship.

It would be seen back home in Rangoon as a grave political faux pas for the opposition leader to get bogged down in a debate regarding the reviled Bengali immigrants — as a number of Burmans and Arakanese view the group. No doubt she would receive standing ovations across the United States and the West by standing up for the hapless Rohingyas, but in Myanmar, not so. Her party loyalists assume she is in the process of abandoning her role as a peace-loving activist and assuming the real political mantle of an opposition in a corrupt parliament. Politically speaking, Aung San Suu Kyi has nothing to gain from opening her mouth on this. She is a politician and her eyes are fixed on the prize, which is the 2015 majority Buddhist vote. What is more important to her now must surely be her role as a politician, and it seems certain that she will go with her head instead of her heart. For if she went with her heart, she must surely know that the moral position is to condemn the violence and call for the respect of the Rohingyas' human rights.

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