

**A Legal and Structural Analysis of the Violence in Rakhine State  
against the Rohingya Muslims of Myanmar  
By Karen Pimentel Simbulan**

**Introduction**

On May 28, three Rohingya Muslim men raped and killed an Arakenese woman from the Yanbye Township in Rakhine State (formerly Arakan State), Myanmar. Purportedly because of this criminal offense, on June 3, 2012, hundreds of Arakenese Buddhists surrounded a bus carrying Muslim pilgrims in Taungup Township, Rakhine State, forced ten Muslim men off the bus, and proceeded to beat the men to death. According to the Myanmar government, these two events caused riots to break out in Sittway, Maungdaw and Buthidaung Townships, leaving 77 people dead and 109 people injured.<sup>1</sup> A total of 4,822 houses, 17 mosques, 15 monasteries, and 3 schools were also burnt down.<sup>2</sup> Human Rights Watch estimates that the violence has also led to the displacement of 100,000 people, among them 75,000 Muslims, and the mass arrests of hundreds of Rohingya Muslims.<sup>3</sup>

Several months later, from October 21-24, Arakenese Buddhists again rioted and attacked villages populated by Rohingya and Kaman Muslims in Rakhine State. Houses and mosques were burnt to the ground and at least 70 Muslims were killed in Mrauk-U, including 28 children. An additional 37,000 people were also displaced, bringing the total number of displaced persons from Rakhine State to 120,000 people.<sup>4</sup>

President Thein Sein claimed that the October riots were unexpected.<sup>5</sup> But an examination of recent Myanmar history reveals that the attacks against the Rohingya Muslims that occurred in June and October of 2012 were not isolated incidents but part of a recurring pattern of antagonism and violence against the Rohingya that has been perpetuated mainly by the State.

This paper will endeavor to place the violent events of June and October 2012 in Rakhine State, Myanmar into context by examining current government policies. Using Johan Galtung's triangle of violence<sup>6</sup> as a point of reference, this paper will focus on the laws and policies of the Myanmar government, analyzing them as manifestations of the structural violence that has institutionalized discrimination and promoted a culture of intolerance and social exclusion against the Rohingya. From this perspective, the direct violence that occurred in June and October 2012 that primarily targeted the Rohingya could hardly be surprising. Following Galtung's theory that

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<sup>1</sup> Statement from the Republic of Myanmar Ministry of Foreign Affairs dated 30 July 2012. Accessed on 9 August 2013 from <http://www.president-office.gov.mm/en/issues/foreign-policy/id-390>

<sup>2</sup> Ibid.

<sup>3</sup> Human Rights Watch, *All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, (22 April 2013) at 21. Accessed on 9 August 2013 from <http://www.refworld.org/docid/518230524.html>

<sup>4</sup> Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana. 6 March 2013. A/HRC/22/58, paragraph 47. Accessed on 9 August 2013 from <http://www.ohchr.org/Documents/Countries/MM/A-HRC-22-58.pdf>

<sup>5</sup> Republic of the Union of Myanmar President Office Statement No.(1/2012), 25 October, 2012. Statement with regard to conflict in Rakhine State. Accessed on 7 August 2013 from <http://www.president-office.gov.mm/en/briefing-room/news/2012/10/26/id-903>

<sup>6</sup> Johan Galtung, *Violence, War, and Their Impact: On Visible and Invisible Effects of Violence*, (Polylog: Forum for Intercultural Philosophy 5, 2004). Accessed on 9 August 2013 from <http://them.polylog.org/5/fgj-en.htm>

“[g]enerally, a causal flow from cultural via structural to direct violence can be identified,”<sup>7</sup> it was only a matter of time before direct violence occurred given the atmosphere in Myanmar that has been permeated by both structural and cultural violence against the Rohingya. In this sense, the Myanmar government has set the stage for the commission of all three kinds of violence – direct, structural and cultural – against the Rohingya.

### ***Myanmar Laws and Policies - the Rohingya as Foreigners***

In 1982, the Ne Win government enacted the Citizenship Law, which recognizes 3 types of citizenship in the country – full citizenship, associated citizenship, and naturalized citizenship. Full citizenship is accorded only to those from Myanmar’s 135 recognized national ‘races’ or ethnic groups, or whose ancestors settled in Myanmar before the British occupation of Rakhine State in 1823. Alternatively, associate citizenship is granted to a person who applied for citizenship under the 1948 law. To become a naturalized citizen, a person must be able to provide “conclusive evidence” that a parent entered and resided in Myanmar prior to independence in 1948. People who have a parent who holds one of the three types of Myanmar citizenship are also eligible for Myanmar citizenship.<sup>8</sup>

The Rohingya are not among the 135 recognized national races and are thus not entitled to full citizenship. The stringent requirements (“conclusive evidence”) for acquiring associate or naturalized citizenship have also effectively barred the Rohingya from being recognized as associate or naturalized citizens. Consequently, approximately 800,000 Rohingya from Rakhine State were denied citizenship under this law.<sup>9</sup> Even Rohingya children born in Myanmar are denied citizenship since a child can attain Myanmar citizenship only if one of the parents already holds one of the three types of Myanmar citizenship.<sup>10</sup>

The rationale for excluding the Rohingya from the recognized national ethnic groups is the commonly-held and widely-propagated belief that the Rohingya are not native inhabitants from Myanmar but are immigrants from neighboring Bangladesh. Time and again, the highest-ranking government officials from Myanmar have made statements to this effect. In 1998, Myanmar’s then Prime Minister General Khin Nyunt, in a letter addressed to UNHCR, wrote: “These people are not originally from Myanmar but have illegally migrated to Myanmar because of population pressures in their own country.”<sup>11</sup>

More recently, on July 12, 2012, President Thein Sein, in a statement posted on the Myanmar government website after the violent events in June, stated that the Rohingya are not welcome in Myanmar. “We will take care of our own ethnic nationalities, but Rohingyas who came to Myanmar illegally are not of our ethnic nationalities and we cannot accept them

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<sup>7</sup> Johan Galtung. *Cultural Violence*. Journal of Peace Research. Vol 27, No. 3 (August 1990), 295. Accessed on 9 August 2013 from [http://www2.kobe-u.ac.jp/~alexroni/IPD%202012/2012\\_2/Cultural%20Violence%20\(Galtung\).pdf](http://www2.kobe-u.ac.jp/~alexroni/IPD%202012/2012_2/Cultural%20Violence%20(Galtung).pdf)

<sup>8</sup> *Myanmar Citizenship Law* [Unofficial Translation], 15 October 1982. Accessed on 9 August 2013 from <http://www.refworld.org/docid/3ae6b4f71b.html> See also Human Rights Watch. Burma/Bangladesh Burmese Refugees in Bangladesh Still No Durable Solution. May 2000. Accessed on 9 August 2013 from <http://www.hrw.org/reports/2000/burma/burm005-02.htm>.

<sup>9</sup> Human Rights Watch. All you can do is pray. Supra note 3. See also Greg Constantine. Historical Timeline. Exiled to Nowhere: Burma’s Rohingya. (2013) Accessed on 9 August 2013 from <http://www.exiledtonowhere.com/index.php#mi=1&pt=0&pi=6&s=0&p=0&a=0&at=0>.

<sup>10</sup> Human Rights Watch. Burma/Bangladesh Burmese Refugees in Bangladesh Still No Durable Solution. May 2000. Accessed on 9 August 2013 from <http://www.hrw.org/reports/2000/burma/burm005-02.htm>

<sup>11</sup> Human Rights Watch. All you can do is pray. Supra note 3.

here...The solution to this problem is that they can be settled in refugee camps managed by UNHCR, and UNHCR provides for them. If there are countries that would accept them, they could be sent there.”<sup>12</sup>

Similarly, in a report released by the Rakhine State Conflicts Investigation Commission, the committee tasked by President Thein Sein to investigate the violence that occurred in June 2012 in Rakhine State, the Commission insinuated that the violence was attributable in part to the high population growth of the “Bengali people,” as the report called the Rohingya.<sup>13</sup>

Contrary to the findings of the Rakhine State Conflicts Investigation Commission, Human Rights Watch and various UN agencies attribute the denial of citizenship to Rohingya as a root cause of the violence in Rakhine State.<sup>14</sup> By consistently portraying the Rohingya as foreigners or illegal immigrants, the Myanmar government has branded the Rohingya as outsiders and, worse, as illegal migrants - as a people who have no cultural, religious, or social ties with Myanmar and therefore do not belong in the country. This characterization has been the basis for subjecting the Rohingya to various inequitable government regulations that violate international human rights law, specifically the fundamental rights found in the Universal Declaration of Human Rights (UDHR). Given that the UDHR is generally believed to have attained the status of customary

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<sup>12</sup> Radio Free Asia. Call to put Rohingya in Refugee Camps. (July 2012) Accessed on 9 August 2013 from <http://www.rfa.org/english/news/rohingya-07122012185242.html>. See also Human Rights Watch. Burma: Government Forces Targeting Rohingya. 1 August 2012. Accessed on 9 August 2013 from <http://www.hrw.org/news/2012/07/31/burma-government-forces-targeting-rohingya-muslims-0>.

<sup>13</sup> Pertinent portions of the report read as follows:

Rakhine State, situated in the western part of Myanmar, comprises 4 districts, 17 townships and 3 sub-townships. The Rakhine people and related indigenous ethnic groups (“*Taing-Yin-Tha*”) such as the Rakhine, Thet, Daing-Net, Mro, Khamee, Kaman and Mramargyi peoples.

Apart from these, Bengali peoples also live in Rakhine State. The total population is over 3.3 million and the State’s population density is 235 persons per square mile (90.78 per square kilometre).

The British colonial forces took over Rakhine State in the earlier part of the 19th century, subsequently expanding the land under cultivation. The British brought in large numbers of Bengali from the neighbouring country as seasonal workers. From then on, Myanmar saw increasing numbers of Bengali settlers. The Bengalis had high population growth rates, gradually making them become today’s second largest population group in Rakhine State. ***The high population growth has contributed to the tensions between the different groups that were caused primarily by the struggle for control of socio-economic assets and other resources.***

The conflict and tension between the Rakhine people and the Bengali people go a long way back. ***Major differences between the two groups in religion, traditional practices, culture and social norms meant that each group did not easily accept the other.*** Relations between the two groups have seen attacks and killings, heightened feelings about racial identity, desire for political control, accusations and counter-accusations.

The Republic of the Union of Myanmar President Office. “The Rakhine State Conflicts Investigation Commission Released its Report.” 29 April 2013. Accessed on 9 August 2013 from <http://www.president-office.gov.mm/en/briefing-room/news/2013/04/29/id-1960>

<sup>14</sup> UNOCHA’s Rakhine Response Plan. Accessed on 9 August 2013 from <http://reliefweb.int/sites/reliefweb.int/files/resources/Revised%20Rakhine%20Response%20Plan%20%28amended%29.pdf>, p.27, Reflecting input from humanitarian actors working in Arakan State, notes “the longstanding problem of lack of any citizenship of around 800,000 people in Rakhine State,” – the 800,000 being the Rohingya. See also Human Rights Watch report. Supra note 3.

international law,<sup>15</sup> it is thus binding on all subjects of international law, including Myanmar. These violations are enumerated below.

***(a) Statelessness and lack of citizenship***

Nationality is the legal tie that allows an individual to effectively enjoy the full range of a state's protection.<sup>16</sup> The right to a nationality implies, for example, the right to reside and to freely move within the state. It is for this reason that **Article 15** of the UDHR provides: "(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." The phrase "arbitrarily deprived" should be interpreted in conjunction with **Article 2** of the UDHR,<sup>17</sup> which would thus prohibit racial and ethnic discrimination as a basis for depriving nationality.

At the heart of the systemic discrimination against the Rohingya is the 1982 Citizenship Law, which pointedly excludes the Rohingya from the recognized ethnic groups of Myanmar despite historical evidence of the presence of the Rohingya in Myanmar since the 8<sup>th</sup> century.<sup>18</sup> This law, which denies the Rohingya Muslims the right to Myanmar citizenship, clearly violates Article 15, in conjunction with Article 2, of the UDHR.

***(b) Restrictions on the right to family life***

In 1994, government authorities refused to issue birth certificates for children with Rohingya parents. Thereafter, in the late 1990s, the government required members of the Muslim

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<sup>15</sup> See the 1968 Proclamation of Tehran, (stating "The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.") Proclamation of Tehran, Final Act of the International Conference on Human Rights 13 April-13 May 1968, Part II, par. 2, U.N. Doc. A/CONF.32/41 (1968).

See also the Montreal Statement of the Assembly for Human Rights, 22-27 March 1968 (which expressly noted that the Universal Declaration of Human Rights "has over the years become part of customary international law.")

This view finds further support in the Namibia Case, where Judge Ammoun held:

Although the affirmations of the Declaration are not binding qua international convention within the meaning of Article 38, paragraph 1(a) of the Statute of the Court, they can bind States on the basis of custom within the meaning of paragraph 1(b) of the same Article, whether because they constituted a codification of customary law..., or because they have acquired the force of custom through a general practice accepted as law, in the words of Article 38, paragraph 1(b), of the Statute."

Legal Consequences for States of the Continued Presence of South Africa in Namibia (south West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971. ICJ 16, at 76 (21 June 1971) (separate opinion of Vice President Ammoun). Available from: <http://www.icj-cij.org/docket/files/53/5601.pdf>

<sup>16</sup> Adjami, Mirna and Harrington, Julia. "The Scope and Content of Article 15 of the Universal Declaration of Human Rights." Refugee Survey Quarterly (2008) 27. Available from: <http://rsq.oxfordjournals.org/content/27/3/93.full>

<sup>17</sup> Article 2 provides: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, **without distinction** of any kind, such as **race**, colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

<sup>18</sup> Chris Lewa. "North Arakan: An Open Prison for the Rohingya." in Forced Migration Review Issue 32. (April 2009). Accessed on 9 August 2013 from <http://www.fmreview.org/FMRpdfs/FMR32/11-13.pdf>.

population of North Rakhine State to first obtain official marriage authorizations from the NaSaKa, Myanmar's Border Security Force. Apart from having to pay expensive fees, there have been reports that it takes quite a long time, sometimes up to two years, before the authorization is issued.<sup>19</sup> In 2005, during a NaSaKa reorganization, marriage authorizations were suspended for several months. When NaSaKa started issuing them again in late 2005, Muslim couples had to comply with the additional condition of signing an undertaking that they would not have more than two children.<sup>20</sup>

These conditions, which are imposed only on the Rohingya, plainly violate **Article 16(1)** of the UDHR, which states: "(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution." These conditions also constitute a violation of **Article 12** of the UDHR, which ensures that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

### *(c) Restrictions on movement*

**Article 13** of the UDHR expressly guarantees that: "(1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country." And yet, in a report on the human rights situation in Myanmar, UN special rapporteur Yozo Yokota observed the statement of Lieutenant General Mya Thinn, then minister for home affairs, that because the Muslim population of Rakhine State are ineligible for citizenship under the 1982 law and were not even registered as foreign residents, they could not travel within the country.<sup>21</sup> Thus, Rohingya are required to obtain travel permits from their local Peace and Development Council chairman to cross township and state boundaries, in keeping with the Registration of Foreigners Act and Rules of 1940. There have been reports of local officials who have exploited this requirement, demanding that the Rohingya pay bribes for the necessary travel permits.<sup>22</sup>

### *(d) Education and Employment*

Because the government provides secondary education only to recognized Myanmar citizens, the Rohingya are only allowed to attend state-sponsored primary school.<sup>23</sup> This clearly violates **Article 26(1)** of the UDHR, which guarantees that "(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally

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<sup>19</sup> Human Rights Watch. All you can do is pray. Supra note 3. See also Human Rights Watch. Burma: Revoke 'Two-Child Policy.' May 2013. Accessed on 9 August 2013 from <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>

<sup>20</sup> Ibid. See also Human Rights Watch. "Burma, Revoke Two-Child Policy." Accessed on 9 August 2013 from <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>.

<sup>21</sup> UN Economic and Social Council, "Report on the situation of Human Rights in Myanmar, prepared by Mr. Yozo Yokota, Special Rapporteur on the Commission on Human Rights, in accordance with Commission resolution 1995/72, E/CN.4/1996/65, February 5, 1996. Accessed on 9 August 2013 from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/105/03/PDF/G9610503.pdf?OpenElement>.

<sup>22</sup> Human Rights Watch. All you can do is pray. Supra note 3. See also Human Rights Watch. Burma: Revoke 'Two-Child Policy.' May 2013. Accessed on 9 August 2013 from <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>

<sup>23</sup> Supra note 18.

available and higher education shall be equally accessible to all on the basis of merit.”

The lack of citizenship also prevents the Rohingya from joining the civil service or from participating formally in local government,<sup>24</sup> an apparent breach of **Article 21**, paragraphs (1) and (2), which state:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.

**(e) Forced Labor**

**Article 4** of the UDHR clearly provides that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

According to reports from Human Rights Watch and the UN, the Rohingya are made to perform forced labor in state-run, profit-making industries and construction of "model villages" for non-Muslim migrants in Arakan.<sup>25</sup> In his report to the United Nations General Assembly of October 4, 1999 Rajsoomer Lallah, the U.N. Special Rapporteur, pointed out that the Myanmar government maintains this practice in many parts of Myanmar, especially in ethnic minority states.<sup>26</sup>

According to Human Rights Watch, in 1988, the Myanmar government initiated the model village program to encourage ethnic Buddhist villagers from the Irrawaddy delta to move voluntarily to specific sites. While only Buddhists are allowed to live in these model villages, there have been reports that the Rohingya are made to pay for the model villages by having to provide land, labor and building materials for their construction. There have been numerous reports of Rohingya lands being confiscated by local authorities and Rohingyas ordered to build the model village homes and pay for the building materials used.<sup>27</sup> Apart from this, there have also been reports of Rohingya men, women, and even children being subjected to forced labor and made to work in the state agricultural industry or in doing road repair work.<sup>28</sup>

The foregoing list of laws and government policies provide a glimpse of the restrictions imposed by the government on the Rohingya on a daily basis. The life of Rohingyas in Rakhine State is a life of duties and obligations to the Myanmar government. Despite having to comply with a long list of obligations, the Rohingya, because they are not recognized as Myanmar citizens, are invisible under Myanmar law and are not able to claim any rights against the Myanmar government. Taken together, these laws and policies have methodically created a legal structure of discrimination and inequity that identifies the Rohingya as unwanted elements of society.

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Rajsoomer Lallah, *Situation of human rights in Myanmar*, October 4, 1999. Accessed on 9 August 2013 from <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/3f8703dc183979d48025681e003d2f1b?Opendocument>.

<sup>27</sup> Supra note 18.

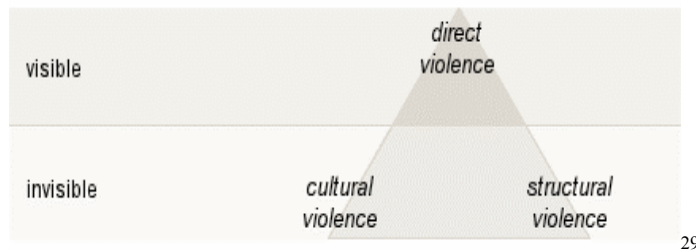
<sup>28</sup> Ibid. See also: UNOCHA, Rakhine Response Plan, Supra note 14.



By making life as unbearable as possible, these laws and regulations imply a government policy of encouraging the mass migration of the Rohingya from Rakhine State and, ultimately, out of Myanmar. This finds support by President Thein Sein's official statement on July 12, 2012, when he spoke of turning over responsibility of the foreign Rohingya to the UNHCR or to any other country that wants them.

### *Application of Galtung's Violence Triangle to the Rohingya Case*

In *Violence, War, and Their Impact On Visible and Invisible Effects of Violence*, Johan Galtung elaborated on the notion of the three different manifestations of violence – direct violence, cultural violence and structural violence. According to Galtung:



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The direct violence, physical and/or verbal, is visible as behaviour. But human action does not come out of nowhere; there are roots. Two roots are indicated: a culture of violence (heroic, patriotic, patriarchic, etc.), and a structure that itself is violent by being too repressive, exploitative or alienating; too tight or too loose for the comfort of people.

The popular misunderstanding that violence is in human nature is rejected. The potential for violence, like love, is in human nature; but circumstances condition the realization of that potential. Violence is not like eating or sexing, founding all over the world with slight variations. The big variations in violence are easily explained in terms of culture and structure: ***cultural and structural violence cause direct violence***, using violent actors who revolt against the structures and using the culture to legitimize their use of violence as instruments...

But the violence triangle has built-in vicious cycles. The visible effects of direct violence are known: the killed, the wounded, the displaced, the material damage, all increasingly hitting the civilians. But the invisible effects may be even more vicious: ***direct violence reinforces structural and cultural violence***.<sup>30</sup>

In the past 40 years, the Rohingya have been subjected to structural violence in the form of repressive and discriminatory laws that have denied them citizenship and reduced them to the status of illegal immigrants in the land of their birth. While Rakhine State is one of the least developed parts of Myanmar, ranked second worst position in terms of overall poverty in Myanmar according to the 2009-10 Integrated Household Living Conditions Survey, and all its inhabitants have poor access to basic services and livelihood opportunities,<sup>31</sup> the Rohingya are

<sup>29</sup> Supra note 6.

<sup>30</sup> Supra note 6.

<sup>31</sup> Supra note 13 at 4.

subjected to even worse conditions. Not only are they rendered invisible by their lack of citizenship, thereby making them ineligible to claim any rights against the Myanmar government, they are also compelled by the government to comply with onerous and excessive obligations that make daily life intolerable. The strict regulation of all aspects of the life of Rohingyans – from travel and employment to marriage and family life – serves as a constant reminder to all members of Myanmar society that the Rohingyans are outsiders, and that there is no place for them in Myanmar society. This attitude becomes built into the social structure,<sup>32</sup> and permeates into Myanmar culture.

According to Galtung, cultural violence makes direct and structural violence look, even feel, right – or at least not wrong.<sup>33</sup> The culture preaches, teaches, admonishes, eggs on, and dulls us into seeing exploitation and/or repression as normal and natural, or into not seeing them (particularly not exploitation) at all. Then come the eruptions, the efforts to use direct violence to get out of the structural iron cage and counter-violence to keep the cage intact.<sup>34</sup>

The rape of an Arakenese woman by the 3 Rohingya men in May 2012, which would have been seen as a criminal act committed by specific people under less charged circumstances, was seen by members of the Arakenese population as a violent act attributable to all Rohingya Muslims. This required violent retribution – with hundreds of Arakenese beating ten Muslims to death in Tounpou, Rakhine State. Responding to this display of violence, perhaps viewed as the last straw in the never-ending list of indignities and marginalization, residents in the predominantly Rohingya Muslim part of Maungdaw Township, Rakhine State, burned Arakenese homes and killed an unknown number of Arakenese.<sup>35</sup> Counter-violence ensued, with the Arakenese attacking Rohingya Muslims, burning down homes and mosques in predominantly Rohingya villages.<sup>36</sup> After President Thein Sein dispatched the armed forces in Rakhine State, the direct violence consequently subsided.

With the institutionalized violence against the Rohingya embedded in both the legal structure and within Myanmar society in general, and given the highly charged atmosphere, as well as the high degree of animosity between the Rohingya and the Arakenese in Rakhine State, the outbreak of violence in October 21 to 24, 2012 was all but inevitable. In such a society, it became permissible, even acceptable and encouraged, for local political and religious leaders to make inflammatory speeches against the Rohingya. And this is exactly what happened shortly before the outbreak of violence in October 2012. As Human Rights Watch reports in *All You Can Do Is Pray*, between June and October of 2012, Arakenese political parties, local monks' associations, and Arakenese civic groups made public statements and distributed pamphlets that called for the removal of the Rohingya from Myanmar and urged the Arakenese population to socially and economically isolate the Rohingya - to avoid associating with the Rohingya, not to conduct business with them or to employ them.<sup>37</sup> Shortly thereafter, President Thein Sein announced to the general public that the “only solution” for the situation in Rakhine State was the expulsion of the “illegal” Rohingya to other countries or to camps overseen by the UNHCR.

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<sup>32</sup> Johan Galtung. *Violence, Peace and Peace Research*. Journal of Peace Research, Vol. 6, No. 3 (1969), 167-191, 173. Accessed on 9 August 2013 from <http://www.jstor.org/stable/422690>

<sup>33</sup> Johan Galtung. *Cultural Violence*. Supra note 7, at 291.

<sup>34</sup> Ibid at 295.

<sup>35</sup> Human Rights Watch. *All you can do is pray*. Supra note 3 at 21.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid at 24.



It was within this context that violent attacks perpetrated mostly by Arakenese against the Rohingya occurred from October 21 to 24, 2012. Notably, these attacks happened simultaneously in nine different townships throughout Rakhine State, leading some international observers to opine that the attacks were premeditated.<sup>38</sup>

At present, while there have been report of sporadic incidents of violence against the Rohingya in Rakhine State, there have not been any major outbreaks of violent attacks comparable to that seen in June or October 2012. However, given the pervasiveness of the view of the Rohingya as unwanted nonmembers of Myanmar society, and the deeply ingrained and structurally-embedded discrimination against them, it is only a matter of time before violence erupts again. As Galtung warned in *Cultural Violence*:

Violence can start at any corner in the direct-structural-cultural violence triangle and is easily transmitted to the other corners. With the violent structure institutionalized and the violent culture internalized, direct violence also tends to become institutionalized, repetitive, ritualistic, like a vendetta.<sup>39</sup>

In this light, President Thein Sein's promises in a letter to UN Secretary-General Ban Ki-moon "to address contentious political dimensions, ranging from resettlement of displaced populations to granting citizenship" to the Rohingya<sup>40</sup> is but the first necessary step to breaking this cycle of violence. But with Myanmar's Immigration Minister being quoted in the news in June 2013 as expressing support for the implementation of the two-child limit policy introduced in 2005 on the Rohingyas in Rakhine State,<sup>41</sup> the President's earlier promises appear little more than rhetoric - made more for the benefit of the international community in order to lessen the international condemnation of the violence being committed against the Rohingya, but not meant to be a source of legal obligation that the Rohingya can rely on.

### **Policy Recommendations for the Myanmar Government**

Certainly, President U Thein Sein has taken steps to address the outbreak of violence in Rakhine State in June and October 2012. Notably, on 28 March 2013, President U Thein Sein guaranteed that all perpetrators of violence would be prosecuted to the fullest extent of the law. The President has also addressed his countrymen, calling for compassion, tolerance, understanding and empathy amongst the people of all faiths in Myanmar.<sup>42</sup> The Central Committee for Implementation of Stability and Development in Rakhine State has also been formed to spearhead development in the restive region.

Apart from this, the Myanmar government has endeavored to improve the conditions of the camps in Rakhine State for internally displaced persons, as noted by the UN Special Rapporteur

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<sup>38</sup> Ibid. See also Burma Campaign UK. Last Month in Burma. (October 2012) Accessed on 14 August 2013 from [http://www.burmacampaign.org.uk/images/uploads/Last\\_Month\\_October\\_2012.pdf](http://www.burmacampaign.org.uk/images/uploads/Last_Month_October_2012.pdf)

<sup>39</sup> Supra note 9 at 302.

<sup>40</sup> Aung Hla Tun. "Myanmar Presidents says will address sectarian violence." Chicago Tribune. (17 November 2012). Accessed on 14 August 2013 from [http://articles.chicagotribune.com/2012-11-17/news/sns-rt-us-myanmar-violencebre8ag02o-20121116\\_1\\_myanmar-president-rakhine-state-mrty](http://articles.chicagotribune.com/2012-11-17/news/sns-rt-us-myanmar-violencebre8ag02o-20121116_1_myanmar-president-rakhine-state-mrty).

<sup>41</sup> Jason Szep and Andrew R.C. Marshall "Myanmar Minister backs two-child policy of Rohingya." Reuters.com. (11 June 2013). Accessed on 14 August 2013 from <http://www.reuters.com/article/2013/06/11/us-myanmar-rohingya-idUSBRE95A04B20130611>

<sup>42</sup> Religious violence in Myanmar, the consequences of Government inaction in tackling prejudice and discrimination – UN expert. 28 March 2013. Available from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13205&LangID=E>

to Myanmar in his March 2013 report.<sup>43</sup> In a more recent statement, Special Rapporteur Quintana noted that the state and central government are working well with the international community to address urgent humanitarian needs of both Rakhine Buddhists and the Muslim communities.<sup>44</sup>

However, the government needs to take more decisive action if it wants to address the structural and cultural violence being perpetrated against the Rohingya. Listed below are a number of policy recommendations that the government must implement in order to holistically address the problems that the Rohingya presently face in Myanmar.

- (a) ensure that a full, transparent and independent investigation is conducted into the violent events of June and October 2012 that occurred in Rakhine State, with immediate prosecution of all those responsible for the violence;
- (b) ensure that a full, transparent and independent investigation is conducted into the possible participation of government security forces in the violent events that occurred on June and October 2012, with immediate prosecution of all those responsible for the violence;
- (c) ensure accountability and take immediate measures to put an end to all acts of violence and all violations of human rights in the country, including those committed against Muslims;
- (d) prevent political and religious leaders in the country from using inflammatory language that encourages the commission of violence against particular ethnic or religious groups, particularly against Muslims;
- (e) ensure that the civilian population is protected from violence and ensure full protection of human rights and fundamental freedoms of all persons within the government's territorial jurisdiction, including Muslims;
- (f) ensure the safety and protection of all places of worship, commercial and residential buildings building to all persons;
- (g) grant the United Nations and international organizations full access into the country to provide humanitarian assistance to all persons who were affected by the violence in Rakhine State and guarantee the protection of staff from international aid organizations who want access to the Rohingya Muslims;
- (h) authorise the establishment of an OHCHR office in the country, with branch offices in the provinces, in order to allow for adequate monitoring of the human rights situation in the country;
- (i) amend the 1982 Citizenship Law to recognize the Rohingya Muslims in Rakhine State as full citizens of Myanmar;
- (j) pursue legal and institutional reforms in order to revoke laws and policies that discriminate based on ethnic and religious affiliations;
- (k) pursue security sector reform by providing human rights training for military, security and police personnel;
- (l) ratify the **1961 Convention on the Reduction of Statelessness**, and comply with international norms relating to nationality, including the principle that statelessness should be avoided.

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<sup>43</sup> Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomas Ojea Quintana. A/HRC/22/58. 6 March 2013, p. 12.

<sup>44</sup> Myanmar is moving forward in many areas, but must stem the spread of incitement of religious hatred," says UN expert. 22 August 2013. Available from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13650&LangID=E>

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