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## **The Rohingya Muslims in Myanmar: Past, Present, and Future**

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More than seventy five percent of the world’s population dwells in countries where state restrictions on religious freedom prevail.<sup>1</sup> Despite laudable strides towards democratic reform, Myanmar is among those nations.<sup>2</sup> In fact, it stands out as among the world’s twenty-five most populous nations with the most government restrictions on, and social hostilities due to, religion.<sup>3</sup> Notably, the

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<sup>1</sup> *Rising Tide of Restrictions on Religion*, THE PEW FORUM ON RELIGION AND PUBLIC LIFE (Sept. 20, 2012), <http://www.pewforum.org/Government/Rising-Tide-of-Restrictions-on-Religion.aspx>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

religious hatred or bias is directed toward the Rohingya Muslim population.<sup>4</sup>

The United Nations has long characterized the Rohingya Muslims as one of the world's most persecuted minorities.<sup>5</sup> By way of background, anti-Rohingya and anti-Muslim sentiment has long tainted the state's political and social spheres.<sup>6</sup> More recently, escalating violence has not only exasperated the humanitarian crises confronting the Rohingya Muslims, but it also threatens to undermine the Burmese transition from one-party military rule to democratic governance.<sup>7</sup> It adversely impacts global security, too.

This writing examines the Rohingya Muslim experience historically, but perhaps more significantly, it examines their experience through a contemporary humanitarian and human rights lens as well. Indeed, it begins with a brief history of the Rohingya Muslims in post-colonial Myanmar. The second section analyzes contemporary humanitarian developments. The third section explores several key human rights abuses perpetrated against the Rohingya Muslims. The fourth section discusses realities surrounding the United States policy on Myanmar. The final section concludes with recommendations.

## I

### BACKGROUND ON MYANMAR

Upon achieving independence from England in 1948, Myanmar struggled with armed ethnic conflict and political instability during a prolonged period of political reformation.<sup>8</sup> In 1962, a military coup produced a one-party, military state informed by socialist notions of governance—it would last for more than sixty years.<sup>9</sup>

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<sup>4</sup> *Burma: UN Expert Visits Refugee Camps*, RADIO FREE ASIA (Feb. 11, 2013), <http://www.refworld.org/docid/511ce46723.html>.

<sup>5</sup> *Id.*

<sup>6</sup> *Muslims Vanish as Buddhist Attacks Approach Myanmar's Biggest City*, VOICE OF AMERICA (Mar. 30 2013), [hereinafter *Muslims Vanish*], <http://www.voanews.com/content/muslims-vanish-as-buddhist-attacks-approach-Myanmar-biggest-city/1631625.html>.

<sup>7</sup> *See id.*

<sup>8</sup> *The Government Could Have Stopped This*, HUMAN RIGHTS WATCH (Aug. 1, 2012), <http://www.hrw.org/reports/2012/08/01/government-could-have-stopped>.

<sup>9</sup> *See id.*

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During that time, the Burmese army committed numerous human rights abuses, such as killing, raping, and torturing<sup>10</sup> the state's Rohingya Muslim population.<sup>11</sup> Notably, the army subjected the group to mass expulsions in 1977<sup>12</sup> and 1992,<sup>13</sup> creating what has been widely viewed as a chronic refugee crisis in neighboring Bangladesh.<sup>14</sup> Two years later, many of the Rohingya were forced to return to Myanmar;<sup>15</sup> instances of excessive force by the Bangladeshi security forces and the Burmese troops (receiving the Rohingya) resulted in some deaths.<sup>16</sup> Those Rohingya who returned were granted limited rights to movement and employment.<sup>17</sup> Thousands remain displaced even today, surviving on international humanitarian aid while continuing to endure brutal repression by state border guards.<sup>18</sup> Such repression includes forced conscription to perform labor, arbitrary detention, beatings, and other mistreatment.<sup>19</sup>

The human rights and humanitarian condition of the Rohingya is further exasperated by their official "statelessness."<sup>20</sup> The Citizenship Act, enacted in 1982, codified the legal exclusion of the Rohingya, presently numbering approximately one million, by denying the group

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<sup>10</sup> *Id.*

<sup>11</sup> *Muslims Vanish*, *supra* note 6 (Myanmar is predominantly Buddhist, but about 5 percent of its 60 million people are Muslims.).

<sup>12</sup> *The Government Could Have Stopped This*, *supra* note 8. (In 1977, for instance, the Burmese government implemented a nationwide initiative scrutinizing illegal immigrants but which in effect, resulted in killings, mass arrests, torture, and other abuses against the Rohingya, forcing more than 200,000 Rohingya to flee to Bangladesh. Engaging in political spin, the Burmese government stated, "19,457 Bengalis fled to escape examination because they did not have proper registration papers," again refusing to identify the Rohingya as such while also underestimating the number of refugees. Once in Bangladesh, the refugees were deprived of food aid in the host country's bid to force them back to Myanmar; more than 12,000 starved to death and others were forcibly repatriated to Myanmar.).

<sup>13</sup> *Id.* (In 1992, for instance, more than a quarter million fled to Bangladesh, where they once again confronted a familiar hostility as well as beatings and the denial of food rations, after military personnel burned its way through villages, killing hundreds.).

<sup>14</sup> *See id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See id.*

<sup>19</sup> *Id.* (Last year, for instance, the force detained approximately 2,000 to 2,500 Rohingya for violations like repairing one's home without permission.).

<sup>20</sup> *See* Jay Milbrandt, *Stateless*, 20 *CARDOZO J. INT'L & COMP. L.*, 75, 80 (2011) ("People are stateless because they did not acquire a nationality at birth, their state of origin no longer exists, or no state will accept them as citizens . . .").

citizenship rights.<sup>21</sup> The Act officially recognizes 135 “national races” that qualify for citizenship.<sup>22</sup> The Rohingya Muslims are not included on that list and as such are denied the full benefits of citizenship on account of what the Burmese government has described as their “nonindigenous ancestry.”<sup>23</sup> Widespread societal prejudice against the group informs the historical (and contemporary) lack of political will to repeal the law.<sup>24</sup>

To be sure, the denial of Burmese citizenship has resulted in additional injustices and inequalities.<sup>25</sup> Illustrative is a Burmese law—the Emergency Immigration Act—requiring the possession of National Registration Certificates by all citizens.<sup>26</sup> As noncitizens, however, the Rohingya can only possess Foreign Registration Cards, which are rejected by a number of schools and employers.<sup>27</sup>

The government has also restricted their rights to marry, own property, and move freely—rights guaranteed to non-citizens as well as citizens under international law.<sup>28</sup> Human rights violations continue until present day notwithstanding a nominally civilian Burmese government ushered in by popular elections in March 2011.<sup>29</sup>

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<sup>21</sup> *The Government Could Have Stopped This*, *supra* note 8. See also, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012: BURMA (2012) [hereinafter COUNTRY REPORT], available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (follow Drop-down Menu “Countries/Regions” and select “Burma” hyperlink). (The government consistently denied citizenship to most Rohingya on the grounds their ancestors did not belong to a national race or indigenous group present in Myanmar before the beginning of British colonial rule in 1823, as required by the 1982 citizenship law.)

<sup>22</sup> COUNTRY REPORT, *supra* note 21.

<sup>23</sup> See *id.*

<sup>24</sup> See HUMAN RIGHTS WATCH, WORLD REPORT 2013 6 (2013), <http://www.hrw.org/world-report/2013/country-chapters/burma?page=3>.

<sup>25</sup> See *The Government Could Have Stopped This*, *supra* note 8.

<sup>26</sup> *Id.*

<sup>27</sup> See *id.*

<sup>28</sup> See HUMAN RIGHTS WATCH, *supra* note 24; see also *The Young and the Hopeless in Bangladesh’s Camps*, UN HIGH COMMISSIONER FOR REFUGEES, Jan. 23, 2013, <http://www.refworld.org/docid/5100ecaf2.html>.

<sup>29</sup> See *Myanmar Profile*, BBC NEWS (July 16, 2013), <http://www.bbc.co.uk/news/world-asia-pacific-12992883>.

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## II CONTEMPORARY DEVELOPMENTS

Both private and state actors continue to persecute the Rohingya Muslims even with the country's current democratic transition.<sup>30</sup> International human rights advocates and political leaders have called for accountability, prompting several related visits by United Nations Special Rapporteur for Human Rights Tomás Ojea Quintana.<sup>31</sup>

Quintana visited Myanmar in March 2010 and called for the establishment of a U.N. Commission of Inquiry to investigate Myanmar's violations of international humanitarian and human rights law and to recommend appropriate redress.<sup>32</sup> Quintana reiterated this appeal a year later in March 2011 and then again that summer, but to no avail.<sup>33</sup>

In June 2012, sectarian violence erupted.<sup>34</sup> Initially, the state security forces refused to protect the Rohingya at critical moments, resulting in scores of deaths and some 100,000 displaced.<sup>35</sup> The security forces then participated in the persecution—killing, beating and arresting the Rohingya.<sup>36</sup> Burmese officials also obstructed humanitarian access, further compounding the Rohingya suffering.<sup>37</sup> During the conflict, state media emboldened discrimination by publishing inaccurate, incendiary, anti-Rohingya accounts of the violence.<sup>38</sup>

Following the violent outbreak, Burmese President Thein Sein recommended the mass expulsion of the Rohingya to “third countries” or UNHCR camps,<sup>39</sup> demonstrating the lack of official accountability and refusal to acknowledge anti-Rohingya

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<sup>30</sup> See Audrey Tan, *Myanmar's Transitional Justice: Addressing a Country's Past in a Time of Change*, 85 S. CAL. L. REV. 1643 (2012); see also AMNESTY INTERNATIONAL, ANNUAL REPORT 2012: MYANMAR (2012), <http://www.amnesty.org/en/region/myanmar/report-2012>.

<sup>31</sup> Tan, *supra* note 30, at 1653.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> HUMAN RIGHTS WATCH, *supra* note 24; see also *Burma: Medical Crisis Looms in Rakhine*, RADIO FREE ASIA (Feb. 7, 2013), <http://www.refworld.org/docid/511ce462c.html>.

<sup>35</sup> HUMAN RIGHTS WATCH, *supra* note 24.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

persecution.<sup>40</sup> Moreover, Burmese officials and security forces responsible for the human rights violations were never subject to prosecution.<sup>41</sup>

Shortly thereafter, in August 2012, Quintana called for the formation of a “truth commission” to examine Myanmar’s human rights abuses and described it as “crucial for democratic transition and national reconciliation.”<sup>42</sup> It may be significant to note that whereby tribunals and international courts focus on criminal justice, truth commissions represent regional interventions and a “compromise between former abusers and their victims, who settle for the limited satisfaction of the truth, rather than receive actual redress through punishment.”<sup>43</sup>

Truth commissions are preferred where political stability is fragile<sup>44</sup> and prosecution of criminal perpetrators may undermine peace.<sup>45</sup> In addition to the truth commission, Quintana also urged the Burmese government to ease restrictions on freedom of movement particularly in the camps for displaced Rohingya.<sup>46</sup>

While Burmese President Thein Sein did not establish a truth commission, he appointed a National Human Rights Commission in September 2011.<sup>47</sup> The Commission—which did not include a single

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<sup>40</sup> See *UN monitor urges Myanmar to tackle sectarian unrest*, BANGKOK POST (Mar. 12, 2013) [hereinafter *UN monitor urges*], <http://www.bangkokpost.com/news/asia/340017/un-monitor-urges-myanmar-to-tackle-sectarian-unrest> (“Almost 95 percent of the total population of the country are Buddhists. However, the majority do not discriminate against the minority.”).

<sup>41</sup> AMNESTY INTERNATIONAL, *supra* note 30.

<sup>42</sup> Tan, *supra* note 30, at 1678; see also *UN monitor urges*, *supra* note 40 (“The government must establish the truth about what happened in Rakhine State during the two waves of communal violence last June and October, and hold those responsible for human rights violations to account”); see also *Independent UN expert warns of significant human rights shortcomings in Myanmar*, UN NEWS SERVICE (Mar. 11, 2013), <http://www.refworld.org/docid/513f01652.html>.

<sup>43</sup> Tan, *supra* note 30, at 1678 (quoting Ivan Simonic, Comment, *Attitudes and Types of Reaction Toward Past Crimes and Human Rights Abuses*, 29 YALE J. INT’L L. 343, 346 (2004)).

<sup>44</sup> See Johan Kharabi, *Advancing Myanmar’s Transition: A Way Forward for U.S. Policy*, THE ASIA SOCIETY (Feb. 15, 2012), <http://asiasociety.org/policy/task-forces/advancing-myanmars-transition-way-forward-us-policy> (arguing that Myanmar’s democratic transition is fragile political transition is still in its infancy, and reformers face major challenges to their efforts.).

<sup>45</sup> See Tan, *supra* note 30, at 1673-74;

<sup>46</sup> See *UN monitor urges*, *supra* note 40.

<sup>47</sup> AMNESTY INTERNATIONAL, *supra* note 30; see also COUNTRY REPORT, *supra* note 21.

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Rohingya representative on the panel<sup>48</sup>—was responsible for receiving and investigating human rights complaints.<sup>49</sup> It was tasked with investigating the June outbreak of violence, and found no government abuses, thus evidencing an absence of impartiality.<sup>50</sup> It also concluded that all humanitarian needs were being met, while ignoring issues surrounding Rohingya citizenship and persecution.<sup>51</sup> Commentators have observed that the commission's lack of independence from the government violates The Paris Principles, governing how national human rights commissions should function.<sup>52</sup>

As such, perhaps it should strike no one as surprising that communal violence against the Rohingya continues to escalate.<sup>53</sup> In October 2012 violence erupted again but this time in townships that had not been previously affected.<sup>54</sup> Again, state security forces and local officials participated in the mayhem.<sup>55</sup> As a result, entire Muslim Rohingya villages were destroyed; an unknown number of people were killed, beaten and injured; and approximately 35,000 people were displaced.<sup>56</sup> Further, Burmese officials obstructed Rohingya access to markets, food, and work.<sup>57</sup> United Nations and humanitarian aid workers, perceived as sympathetic to the Rohingya, were arrested, threatened, and intimidated.<sup>58</sup>

Even more recently, violence erupted in March,<sup>59</sup> rendering approximately 13,000 people homeless according to the United

<sup>48</sup> See Yadana Htun, *We Won't Be Influenced By the Govt*, MYANMAR TIMES (Sept. 25, 2011), <http://www.mmtimes.com/2011/news/593/news59318.html>.

<sup>49</sup> AMNESTY INTERNATIONAL, *supra* note 30.

<sup>50</sup> See *Burma: Government Forces Targeting Rohingya Muslims*, HUMAN RIGHTS WATCH (Aug. 1, 2012), <http://www.hrw.org/news/2012/07/31/burma-government-forces-targeting-rohingya-muslims-0>.

<sup>51</sup> *See id.*

<sup>52</sup> *See* COUNTRY REPORT, *supra* note 21.

<sup>53</sup> *See* HUMAN RIGHTS WATCH, *supra* note 24.

<sup>54</sup> *Id.* *See also* *Burma: Medical Crises Looms in Rakhine*, *supra* note 34.

<sup>55</sup> HUMAN RIGHTS WATCH, *supra* note 24.

<sup>56</sup> *Id.*

<sup>57</sup> *Burma: Government Forces Targeting Rohingya Muslims*, *supra* note 50.

<sup>58</sup> *Id.*

<sup>59</sup> *Muslims Vanish*, *supra* note 6; *see also* *Muslims Targeted with 'Brutal Efficiency': UN Envoy*, IRRAWADDY.ORG (March 28, 2013), <http://www.irrawaddy.org/archives/30728> (The violence has been "attributed to anti-Muslim rhetoric spread over the Internet and by word of mouth from monks preaching a movement known as "969." The three numbers refer to various attributes of the Buddha, his teachings and the monkhood. But it has come to represent a radical form of anti-Islamic nationalism that urges Buddhists to boycott Muslim-run shops and services."); *Burma: Satellite Images Detail Destruction in Meiktila*,

Nations.<sup>60</sup> Over 120,000 internally displaced persons (IDPs) are currently living in temporary shelters with limited access to food, medical care, sanitation facilities, and other types of humanitarian necessities.<sup>61</sup> According to reports, medically trained personnel have documented cases of skin infections, worms, chronic coughing, and diarrhea in the camps and said that its staff members had encountered “alarming numbers of severely malnourished children.”<sup>62</sup> Obtaining clean drinking water remains a concern due to the continued threat of violence<sup>63</sup>—violence that persists even as of this writing.

### III HUMAN RIGHTS CONCERNS

Set against this humanitarian background, several critical human rights issues may be distilled vis-à-vis the Rohingya Muslims: denial of citizenship rights, restrictions on religious freedom, forced displacement, and the lethal use of force. In fact, these issues were examined earlier this year when the late<sup>64</sup> Congressman Tom Lantos scheduled a related hearing before the Human Rights Commission.<sup>65</sup> Each is examined in turn below.

#### *A. Burmese Denial of Citizenship*

As noted above, the Rohingya’s stateless status aggravates their condition of suffering. According to the Universal Declaration of Human Rights, statelessness is a matter of human rights law.<sup>66</sup> Article 15 provides, in relevant part, that (1) everyone has the right to a nationality, and (2) no one shall be arbitrarily deprived of his

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HUMAN RIGHTS WATCH (Apr. 1, 2013), <http://www.hrw.org/news/2013/04/01/Myanmar-satellite-images-detail-destruction-meiktila>.

<sup>60</sup> See *Muslims Vanish*, *supra* note 6.

<sup>61</sup> Myanmar: *Independent human rights monitoring still needed*, AMNESTY INTERNATIONAL, <http://www.amnesty.org/en/library/asset/ASA16/001/2013/en/a203877f-7fc6-4b09-bd63-0ebc4ac57387/asa160012013en.pdf>; see also *Burma: Medical Crises Looms in Rakhine*, *supra* note 34.

<sup>62</sup> Myanmar: *Medical Crises Looms in Rakhine*, *supra* note 34.

<sup>63</sup> See *id.*

<sup>64</sup> Tom Lantos: *A Champion of Human Rights*, THE IRRAWADDY, Mar. 2008, available at [http://www2.irrawaddy.org/article.php?art\\_id=10641](http://www2.irrawaddy.org/article.php?art_id=10641).

<sup>65</sup> *Human Rights in Burma*, TOM LANTOS HUMAN RIGHTS COMM’N, Feb. 28, 2013, [http://tlhrc.house.gov/hearing\\_notice.asp?id=1245](http://tlhrc.house.gov/hearing_notice.asp?id=1245).

<sup>66</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).



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nationality nor denied the right to change his nationality.<sup>67</sup> The 1982 Citizenship Law clearly violates these provisions.

The Rohingya's statelessness facilitates numerous other human rights violations such as the group's lack of access to identity documents, education,<sup>68</sup> employment, and freedom of movement.<sup>69</sup> The lack of citizenship has also rendered group members vulnerable to arbitrary detention, forced labor, discriminatory taxation, and confiscation of property.<sup>70</sup> As such, President Thein Sein's position against repealing or amending the 1982 Citizenship Act is disconcerting.<sup>71</sup> The plight of the Rohingya will not improve until the law is stripped of its discriminatory provisions.

### ***B. Restricting Religious Freedom***

A number of human rights scholars and advocates characterize religious freedom as an essential component of modern political and civil freedoms.<sup>72</sup> Some have observed that where religious freedom is

<sup>67</sup> *Id.*

<sup>68</sup> *Myanmar: Country Report on Human Rights Practice*, *supra* note 21 ("Without citizenship status Rohingyas did not have access to secondary education in state-run schools. Those Muslim students from Rakhine State who completed high school were not permitted to travel outside the state to attend college or university. Authorities continued to bar Muslim university students who did not possess NRCs from graduating. These students were permitted to attend classes and sit for examinations, but they could not receive diplomas unless they claimed a "foreign" ethnic minority affiliation." U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2011 11 (2011).)

<sup>69</sup> *Id.* ("Authorities require the Rohingya, a stateless population, to carry special documents and travel permits for internal movement in five areas in northern Rakhine State: Butheedaung, Mungdawe, Rathedaung, Kyauktaw and Sittwe, along the border with Bangladesh. Officials lifted travel restrictions for Rohingya in Thandwe and Kyaukphu districts in June. . . . The government required them to receive prior approval for travel outside their village of residence, limited their access to higher education, and prohibited them from working as civil servants, including as doctors, nurses, or teachers. Authorities required Rohingya to obtain official permission for marriages. Rohingya were singled out by authorities in northern Rakhine State to perform forced labor and were arbitrarily arrested. U.S. DEP'T OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012 23 (2012).)

<sup>70</sup> *The Government Could Have Stopped This*, *supra* note 8.

<sup>71</sup> *Thein Sein says Myanmar has no plan to amend citizenship law*, ELEVEN, July 7, 2013, <http://www.elevenmyanmar.com/politics/2706-thein-sein-says-myanmar-has-no-plan-to-amend-citizenship-law>.

<sup>72</sup> See PETER HENNE ET AL., RELIGIOUS FREEDOM AND VIOLENT RELIGIOUS EXTREMISM (2012), available at [http://repository.berkeleycenter.georgetown.edu/121205/RFP/ReligiousFreedomViolentReligiousExtremismSourcebookModernCasesAnalysis\\_low%20res.pdf](http://repository.berkeleycenter.georgetown.edu/121205/RFP/ReligiousFreedomViolentReligiousExtremismSourcebookModernCasesAnalysis_low%20res.pdf).

undermined, additional anti-democratic initiatives will follow.<sup>73</sup> These are significant considerations in light of official Burmese disregard for religious freedom vis-a-vis the Rohingya Muslim population.<sup>74</sup> The group does not enjoy the protection of the state's anti-discrimination laws because they are noncitizens.<sup>75</sup> For instance, Article 34 of the Burmese 2008 Constitution states, "Every *citizen* is equally entitled to freedom of conscience and the right to freely profess and practice religion subject to public order, morality or health and to the other provisions of this Constitution."<sup>76</sup>

In a similar vein, Article 354 provides that

every **citizen** shall be at liberty . . . if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality . . . to develop . . . [the]religion they profess and customs without prejudice to the relations between one national race and another or among national races and to other faiths.<sup>77</sup>

Relevant here, the International Covenant on Civil and Political Rights (ICCPR) protects freedom of religion or belief.<sup>78</sup> As Article 18 sets forth, restrictions on religious freedom must sound in necessity and focus upon protecting public safety, order, health, or fundamental rights.<sup>79</sup>

The Burmese officials are in clear violation of these tenets. In addition to the abuses detailed within the above section, security forces arrested Burmese Muslims for teaching religious doctrine and praying, in absence of the extenuating circumstances referenced above.<sup>80</sup> Religious places of worship could only be constructed with

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<sup>73</sup> *Id.*

<sup>74</sup> See U.S. DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2011: BURMA (2011), available at <http://www.state.gov/documents/organization/192827.pdf>.

<sup>75</sup> *Id.* ("Muslims across the country, often were required to obtain permission from township authorities to leave their home towns. Authorities often denied Rohingya and other Muslims living in Rakhine State permission to travel for any purpose; however, permission was sometimes obtained through bribery. Muslims in other regions were granted more freedom to travel, but still faced restrictions. For example, Rohingyas living in Rangoon needed permission from immigration authorities to travel into and out of Rakhine State).

<sup>76</sup> CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR Sept. 20, 2008, art. 34 (emphasis added).

<sup>77</sup> *Id.* art. 354 (emphasis added).

<sup>78</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171.

<sup>79</sup> *Id.*

<sup>80</sup> U.S. DEPARTMENT OF STATE, *supra* note 74.

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informal approval that was frequently rescinded when officials or conditions changed.<sup>81</sup> More formal requests were often delayed or denied.<sup>82</sup> As such, Muslims encountered increasing difficulty in building or even repairing<sup>83</sup> houses of worship.<sup>84</sup>

### ***C. Forced Displacement***

As described in the above section, Burmese officials obstructed access to humanitarian aid to the Rohingya, in violation of the United Nations Guiding Principles on Displacement, drawn from international law.<sup>85</sup> Indeed, the Guiding Principles provide that “[n]ational authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction,” and “without discrimination of any kind, including religion, national or ethnic origin, or legal status.”<sup>86</sup>

While Burmese officials bear the primary responsibility for providing protection and humanitarian assistance, the Guiding Principles also require them to “grant and facilitate the free passage of humanitarian assistance” and allow “rapid and unimpeded access to the internally displaced.”<sup>87</sup> Burmese officials have shirked these international obligations vis-à-vis the Rohingya Muslim population

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<sup>81</sup> *Id.* at 8.

<sup>82</sup> *Id.* at 9.

<sup>83</sup> *Id.* (“The roof repair of a Rangoon mosque became the center of controversy after the Yangon City Development Committee forced the mosque to suspend work. Rangoon Mayor and USDP candidate Aung Thein Linn allegedly approved the renovation project after the Muslim community agreed to support him in the elections. However, authorities revoked the permit after the Buddhist community allegedly sent a letter of protest to the Union Election Commission in Naypyitaw. At year’s end, the mosque was still without a roof.”).

<sup>84</sup> *Id.* (“Historic mosques in Mawlamyine, Mon State and Sittwe, Rakhine State, as well as other areas, continued to deteriorate because authorities did not allow routine maintenance. A number of restrictions were in place on the construction or renovation of mosques and religious schools in northern Rakhine State.”).

<sup>85</sup> *The Government Could Have Stopped This*, *supra* note 8, at 6.

<sup>86</sup> *Id.* at 32 (The Guiding Principles set out the government’s responsibilities towards displaced persons. The life and security of displaced persons are to be protected, including from attacks on their camps and settlements. The displaced retain the right to freedom of movement and “shall not be interned in or confined to a camp.” The government also has an obligation to ensure access, without discrimination, to food, shelter, health care, education and employment, among other necessities.)

<sup>87</sup> *Id.*

by obstructing the efforts of the U.N. workers and other humanitarian agents.<sup>88</sup>

Further, the Guiding Principles set forth an official obligation “to prevent and avoid conditions that might lead to displacement of persons.”<sup>89</sup> Prior to any decision requiring the displacement of persons, the authorities need to explore all feasible alternatives, and when no alternatives exist, take “all measures” to minimize displacement and its adverse effects.<sup>90</sup> Burmese President Thein Sein’s remarks last July—suggesting the mass expulsion of the Rohingya to third countries—contravene these principles.<sup>91</sup>

#### *D. Lethal Use of Force*

As set forth above, Burmese security forces regularly beat and mistreated Rohingya, resulting in deaths.<sup>92</sup> Such conduct violates the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials that requires employing nonviolent measures prior to using force.<sup>93</sup> And, even where force may be warranted, the Burmese officials are required to exercise restraint and react proportionally to minimize damage and injury.<sup>94</sup> Arguably, they have not.

### IV U.S. POLICY

Upon John Kerry’s appointment as U.S. Secretary of State, the State Department publicly announced that it would make no changes to U.S. policy on Myanmar.<sup>95</sup> This section briefly explores the contours of that policy—past and present.

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<sup>88</sup> *Id.* at 3.

<sup>89</sup> *Id.* at 28.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 29.

<sup>92</sup> *Id.* at 26 (The security forces regularly conducted violent beatings during arrests and attacks on villages. Some of these beatings reportedly resulted in death.)

<sup>93</sup> 8th U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27 to Sept. 7, 1990, *Basic Principles on the Use of Firearms by Law Enforcement Officials*, ¶ 4, U.N. Doc. A/CONF.144/28/Rev.1, [hereinafter *Basic Principles*].

<sup>94</sup> *Id.*

<sup>95</sup> Lalit K. Jha, *Kerry to Continue Clinton’s US Policy on Burma*, THE IRRAWADDY (Feb. 7, 2013), <http://www.irrawaddy.org/archives/26279>.

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During Myanmar's past military rule, U.S. policy encompassed (a) efforts to isolate the state's ruling generals, (b) public criticism of human rights abuses, and (c) imposing sanctions.<sup>96</sup> It is significant to note that since 1999, the United States has designated Myanmar as a Country of Particular Concern (CPC) under the International Religious Freedom Act, a designation that results in sanctions.<sup>97</sup>

Notably, U.S. sanctions against Myanmar have been the subject of much international scrutiny and criticism.<sup>98</sup> The sanctions were meant to facilitate enforcement of human rights laws but were unsuccessful in achieving that end.<sup>99</sup> This is largely because there were so many other countries that were willing to overlook Myanmar's human rights record in favor of economic, political, and other strategic self-interests.<sup>100</sup> Illustrative is the Association for Southeast Asian Nations ("ASEAN"), which objected to Western sanctions while pursuing a policy of neutrality towards Myanmar.<sup>101</sup> China and India have traditionally preserved and strengthened their strategic ties to Myanmar in order to enhance political and economic interests.<sup>102</sup>

Following Myanmar's elections in March 2011, the U.S. began to shift its policy in response to the country's democratic reform.<sup>103</sup> Last August, Myanmar was redesignated as a CPC for having engaged in

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<sup>96</sup> See Priscilla Clapp & Suzanne DiMaggio, *Advancing Myanmar's Transition: A Way Forward for U.S. Policy*, ASIA SOCIETY (Feb. 16, 2012), [http://asiasociety.org/files/pdf/120216\\_us\\_policy\\_myanmar\\_report.pdf](http://asiasociety.org/files/pdf/120216_us_policy_myanmar_report.pdf); see also Tan, *supra* note 30 ("Myanmar experienced decades of detachment from the rest of the world due to the government's isolationist policies after the military coup in 1962. . . . The United States protested Myanmar's undemocratic elections in 1990 with the Customs and Trade Act, requiring the U.S. President to impose economic sanctions against Myanmar if progress on human rights and oppression of the outflow of narcotics were not met. In 1996, President Clinton signed the 1997 Foreign Operations Act, prohibiting the U.S. from giving any new assistance to Myanmar and allowing the prohibition of new investments in the country. After a report was issued on Myanmar's human rights abuses and the Myanmar government placed Aung San Suu Kyi under house arrest, the United States passed the Burmese Freedom and Democracy Act of 2004, banning the importation of goods produced, manufactured, grown, or assembled in Myanmar. The European Union imposed "smart" sanctions targeting military rulers and their families by freezing their assets and denying them visa rights.").

<sup>97</sup> See U.S. DEP'T OF STATE, *supra* note 74, at 2.

<sup>98</sup> See Tan, *supra* note 30, at 1649.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 1649-1650.

<sup>102</sup> *Id.* at 1650.

<sup>103</sup> Clapp, *supra* note 96, at 6.

or tolerated particularly severe violations of religious freedom (detailed above).<sup>104</sup> In connection with this designation, the existing arms embargo was also extended.<sup>105</sup> However, increased engagement, diplomacy, and communication are the hallmarks of this new U.S. policy.<sup>106</sup>

Demonstrative is former Secretary of State Hillary Clinton's historic visit to Myanmar in 2011<sup>107</sup>—the first such visit in fifty-six years<sup>108</sup>—signaling a turning point in U.S. policy.<sup>109</sup> During her visit, Clinton clearly articulated U.S. support for democratic reform.<sup>110</sup> Additionally, the United States designated an Ambassador to Myanmar to undergird the state's transition.<sup>111</sup> Since the elections, American embassy officials have met with religious and ethnic minority groups, distributed literature on religious freedom, and conducted related educational programming.<sup>112</sup>

In 2012, President Obama visited Myanmar—becoming the first sitting U.S. president to do so.<sup>113</sup> During his visit, he gave a historic speech at Rangoon University raising human rights concerns,

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<sup>104</sup> U.S. DEP'T OF STATE, *supra* note 74, at 13.

<sup>105</sup> *Id.*

<sup>106</sup> Clapp, *supra* note 96, at 8.

<sup>107</sup> *Id.*

<sup>108</sup> U.S. DEP'T OF STATE, *supra* note 74, at 13.

<sup>109</sup> Statement Before the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific, (Apr. 25, 2012) [hereinafter Testimony by Kurt M. Campbell] (Testimony by Kurt M. Campbell, Assistant Secretary, Bureau of East Asian and Pacific Affairs), <http://www.state.gov/p/eap/rls/rm/2012/188446.htm>.

<sup>110</sup> *See id.*

<sup>111</sup> *See id.* (“On April 4, Secretary Clinton announced five key steps that the United States would take to respond to Burma’s parliamentary by-elections and the progress that they signified. We announced our intention to re-establish a USAID mission at our Embassy in Rangoon, lend U.S. support for a normal UNDP country program, authorize funds to be sent by private U.S. entities to Burma for nonprofit activities, facilitate travel to the United States for select Burmese officials and parliamentarians, and begin a process to ease the bans on the exportation of U.S. financial services and new investment.”).

<sup>112</sup> U.S. DEP'T OF STATE, *supra* note 74 (Embassy representatives offered support to local nongovernmental organizations (NGOs) and religious leaders, including through small grants and training programs, and relayed information to otherwise isolated human rights NGOs and religious leaders.).

<sup>113</sup> Suzanne Nossel, *President Obama Must Carry a Human Rights Message to Myanmar or Risk Setting Back Momentum for Reform*, THE HUFFINGTON POST (Nov. 16, 2012), [http://www.huffingtonpost.com/amnesty-international/obama-myanmar\\_b\\_2146876.html](http://www.huffingtonpost.com/amnesty-international/obama-myanmar_b_2146876.html).

including abuses against Rohingya Muslims.<sup>114</sup> In his remarks, President Obama called for national reconciliation, access to citizenship,<sup>115</sup> and humanitarian aid to<sup>116</sup> and voluntary return for those displaced to facilitate a lasting peace.<sup>117</sup>

President Obama also signed an Executive Order<sup>118</sup> expanding the Secretary of the Treasury's existing sanctions authority to those who undermine the reform process, engage in human rights abuses, or contribute to ethnic conflict.<sup>119</sup> Officials have characterized this Order as a clear message to Burmese officials: those who persist in abusive, corrupt, or destabilizing conduct will lose the rewards of reform.<sup>120</sup>

Notably, notwithstanding Myanmar's CPC designation and attendant embargo, the U.S. has begun easing its sanctions.<sup>121</sup> Indeed,

<sup>114</sup> See President Barack Obama, Address at the University of Yangon (Nov. 19, 2012), <http://www.whitehouse.gov/the-press-office/2012/11/19/remarks-president-obama-university-yangon>.

<sup>115</sup> See *id.* ("Every nation struggles to define citizenship. America has had great debates about these issues, and those debates continue to this day, because we're a nation of immigrants—people coming from every different part of the world. But what we've learned in the United States is that there are certain principles that are universal, apply to everybody no matter what you look like, no matter where you come from, no matter what religion you practice. The right of people to live without the threat that their families may be harmed or their homes may be burned simply because of who they are or where they come from.)

<sup>116</sup> See Anne C. Richard, Remarks: Burma's Rohingya: Beyond the Communal Violence, (Oct. 9, 2012), <http://www.state.gov/j/prm/releases/remarks/2012/198758.htm>. ("Notably, in 2012, the State Department, through its Bureau of Population, Refugees, and Migration, provided almost \$24 million to our international organization and non-governmental organization partners to support protection and humanitarian assistance programs for Burmese refugees and asylum seekers residing in neighboring countries and conflict-affected populations inside Myanmar.")

<sup>117</sup> See Obama, *supra* note 114. ("National reconciliation will take time, but for the sake of our common humanity, and for the sake of this country's future, it is necessary to stop incitement and to stop violence. And I welcome the government's commitment to address the issues of injustice and accountability, and humanitarian access and citizenship. That's a vision that the world will support as you move forward.")

<sup>118</sup> Exec. Order No. 13,619, 77 Fed. Reg. 41243 (July 11, 2012).

<sup>119</sup> See *U.S.-Burma Policy*, U.S. EMBASSY OF BURMA, <http://burma.usembassy.gov/policy.html> ("In addition, U.S. economic sanctions currently ban, with certain exceptions, the importation of goods of Burmese origin. Despite the May 17 announcement of the suspension of some sanctions with Myanmar, the import ban will be kept in place.")

<sup>120</sup> *Id.*

<sup>121</sup> See Testimony by Kurt M. Campbell, *supra* note 109. ("In July, the United States eased sanctions to allow American companies to invest in all sectors of Myanmar's economy, including the controversial and opaque oil and gas sector. The US maintained targeted sanctions against some Burmese military officers and companies they control, and appointed its first ambassador to Myanmar in 22 years." *Rohingyas: Women and children*

the Treasury Department has begun authorizing particular financial transactions in support of humanitarian and religious initiatives as well as those promoting government accountability, conflict resolution, and civil society development.<sup>122</sup> However, easing sanctions remains an incremental process to run in tandem with democratic reforms.<sup>123</sup>

With respect to chronic human rights concerns, U.S. policy calls for both pressure and engagement.<sup>124</sup> This includes human rights dialogue with officials.<sup>125</sup> The United States has urged Burmese government officials to stop targeting minority groups, such as the Rohingya Muslims, while also advocating for unfettered access to humanitarian aid in conflict areas.<sup>126</sup> The United States has also utilized forums at international, multilateral and regional venues, such as those provided by the United Nations and ASEAN, to raise awareness regarding Rohingya suffering.<sup>127</sup> This includes strongly advocating for religious freedom throughout all levels and segments of society, including government officials, religious leaders, private citizens, scholars, diplomats, and media.<sup>128</sup>

## V

### RECOMMENDATIONS

The foregoing sections examined the contemporary humanitarian crises, chronic human rights abuses and the U.S. policy response vis-

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*tortured and sexually abused in Burmese prisons*, GJBKK BLOG (Feb. 12, 2013) <http://gjbkkblog.wordpress.com/2013/02/12/rohingyas-women-and-children-tortured-and-sexually-abused-in-burmese-prisons/>).

<sup>122</sup> *Id.*

<sup>123</sup> *See id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 4 (“We also remain concerned by serious human rights violations against the ethnic minority Rohingya people who are denied citizenship and human rights, such as freedom of movement and freedom to marry, among other rights all people should be able to exercise. We will urge the Burmese government, including through a human rights dialogue, to pursue mechanisms for accountability for the human rights violations that have occurred as a result of fighting and discrimination in ethnic areas.”).

<sup>126</sup> *Id.* (“This access is crucial so that the international community can assess needs and attempt to assist tens of thousands who have been displaced as a result of the fighting. While the Burmese government has recently allowed limited access to UN agencies to deliver assistance to certain areas of Kachin State, we are pressing for regular and sustained access to all areas, including those controlled by the Kachin Independence Army, to provide humanitarian aid to internally displaced persons (IDPs).”).

<sup>127</sup> *See id.*

<sup>128</sup> U.S. DEP’T OF STATE, *supra* note 74, at 2.



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à-vis the Rohingya Muslims in Myanmar. This section offers two interrelated recommendations for U.S. State Department officials: ensure the protection and promotion of freedom of religion and press for the elimination of all discriminatory provisions to the 1982 Citizenship Act. With millions expended in humanitarian aid, these recommendations are designed to address the conflict's underlying causes by averting further human rights violations, enhancing regional stability, and enhancing global security while remaining mindful of the prevailing climate of fiscal austerity.

### *A. Protecting and Promoting Freedom of Religion*

Ensuring the religious freedom of the Rohingya and other Burmese Muslim should constitute a policy priority because the status quo arguably threatens global security. Recent evidence from Georgetown University suggests that state restrictions on religious freedom may contribute to violent extremism.<sup>129</sup> Such repression, as described in the relevant subsection above, may radicalize targeted religious communities.<sup>130</sup> In the Burmese context, officials who arbitrarily arrest, detain, beat, injure and kill Rohingya Muslims may enhance the appeal of those advocating a more violent response to government repression.<sup>131</sup>

Conversely, enhanced religious freedom may help “moderate, contain, counteract, or prevent the origin or spread” of violent religious extremism.<sup>132</sup> Further, promoting pluralism is one means to expanding and protecting such freedom.<sup>133</sup> The sociological consequence of religious pluralism is a general recognition and acceptance of all faiths practiced by diverse groups.<sup>134</sup> This represents an arguably ideal model for a diverse<sup>135</sup> country such as Myanmar.<sup>136</sup>

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<sup>129</sup> PETER HENNE, SARABRYNN HUDGINS & TIMOTHY SAMUEL SHAH, RELIGIOUS FREEDOM AND VIOLENT RELIGIOUS EXTREMISM (2012), available at [http://repository.berkeleycenter.georgetown.edu/121205RFPReligiousFreedomViolentReligiousExtremismSourcebookModernCasesAnalysis\\_low%20res.pdf](http://repository.berkeleycenter.georgetown.edu/121205RFPReligiousFreedomViolentReligiousExtremismSourcebookModernCasesAnalysis_low%20res.pdf).

<sup>130</sup> *Id.* at 7.

<sup>131</sup> *See id.*

<sup>132</sup> *Id.* at 8.

<sup>133</sup> *Id.* at 10.

<sup>134</sup> *Id.*

<sup>135</sup> U.S. DEP'T OF STATE, *supra* note 74, at 2 (“Theravada Buddhism is the dominant religion. It coexists with astrology, numerology, fortune telling, and veneration of indigenous pre-Buddhist era deities called “nats.” The principal minority religious groups include Christians, Muslims, Hindus, and practitioners of traditional Chinese and

Relatedly, formal inclusion of the Rohingya and other Burmese Muslims into the public and political spheres provides them with a non-violent means to meaningfully contribute to and participate within society.<sup>137</sup>

While there does not appear to be any current evidence of violent radicalization among the Rohingya or other Muslims in Myanmar, guarding against the phenomenon is a critical consideration in light of the Global War on Terror (GWOT). As such, it is important for U.S. officials to continue to press the Burmese government to enact appropriate anti-discrimination legislation to be fully enforced by law enforcement officials on the ground.<sup>138</sup> The Rohingya and other Muslims should be integrated into Burmese society with equal access to education, employment, property, marriage, and travel, among other rights.<sup>139</sup> President Thein Sein and other Burmese officials should set the national standard by publicly and privately endorsing religious tolerance and nondiscrimination toward all minority religious groups, including the Rohingya and other Muslims.<sup>140</sup>

### ***B. Conferring Citizenship upon the Rohingya Muslims***

While the appeal for a “truth commission” by the U.N. Special Rapporteur deserves due consideration, its establishment alone may not end the suffering of or prevent future violence against the Rohingya.<sup>141</sup> Rather, the U.S. must continue to engage and pressure Burmese officials to confer citizenship rights upon the Rohingya

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indigenous religions. According to official statistics, approximately 90 percent of the population practices Buddhism, 4 percent practices Christianity, and 4 percent practices Islam. These statistics almost certainly underestimated the non-Buddhist proportion of the population. There has not been a census since 1983. Independent researchers place the Muslim population as being between 6 and 10 percent.”)

<sup>136</sup> See generally HENNE, *supra* note 129.

<sup>137</sup> See *id.* at 10-11.

<sup>138</sup> See *Burma: Government Forces Targeting Rohingya Muslims*, *supra* note 50; see also HUMAN RIGHTS WATCH, *supra* note 24.

<sup>139</sup> See *Burma: Government Forces Targeting Rohingya Muslims*, *supra* note 50.

<sup>140</sup> See *id.*; see also COUNTRY REPORT, *supra* note 21; see also HUMAN RIGHTS WATCH, *supra* note 24.

<sup>141</sup> Tan, *supra* note 30; see also *UN monitor urges Myanmar to tackle sectarian unrest*, *supra* note 40 (“The government must establish the truth about what happened in Rakhine State during the two waves of communal violence last June and October, and hold those responsible for human rights violations to account.”); see also *Independent UN expert warns of significant human rights shortcomings in Myanmar*, *supra* note 42.

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Muslims.<sup>142</sup> As mentioned above, the group's statelessness facilitates additional injustices and abuses.<sup>143</sup>

As an initial matter, Myanmar may ratify the 1954 and 1961 Conventions on Statelessness and amend the 1982 Citizenship Act to eliminate its discriminatory provisions accordingly.<sup>144</sup> The Rohingya, with effective and genuine links to Myanmar, should be granted citizenship on the same basis as other ethnic groups referenced within the law.<sup>145</sup>

The Burmese government should ensure that the Rohingya are treated as equal citizens under international and Burmese law by adopting, implementing and enforcing appropriate legislation.<sup>146</sup> Such reform should have positive sociological effects by challenging anti-Rohingya prejudice, thereby reducing the likelihood of ethnic and sectarian violence. In response to such positive reform, the U.S. may continue easing sanctions, providing financial services and promoting investment and trade in Myanmar.<sup>147</sup>

In conclusion, by protecting religious freedom and conferring citizenship rights upon the Rohingya, the Burmese will continue its effective transition towards democracy; the persistent waves of violence otherwise threaten to undermine its progress as well as global security. And, as Desmond Tutu recently observed concerning the benefits of embracing such a democracy, "You don't have to contend with sanctions, you don't have to spend resources keeping people under lock and key, you can participate in international business and sport, you can attract tourists . . . . And the most important thing . . . is that this is a moral universe. Right and wrong matter."<sup>148</sup>

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<sup>142</sup> See *Burma: Government Forces Targeting Rohingya Muslims*, *supra* note 50; COUNTRY REPORT, *supra* note 21.

<sup>143</sup> See COUNTRY REPORT, *supra* note 21.

<sup>144</sup> See *id.*; see also *Recommendations Relevant to Statelessness made during the First Cycle of the Universal Periodic Review (2008–2011)*, UNHCR, <http://www.unhcr.org/refworld/pdfid/50781cdb2.pdf>.

<sup>145</sup> See *id.*

<sup>146</sup> See *id.*

<sup>147</sup> As of January 2013, U.S. exports to Myanmar totaled \$76.4 million. See U.S. CENSUS BUREAU, TRADE IN GOODS WITH BURMA (2013), <http://www.census.gov/foreign-trade/balance/c5460.html>.

<sup>148</sup> Tutu Says Burma Must Avoid 'New Apartheid,' IRRAWADY.ORG (Feb. 27, 2013), <http://www.irrawaddy.org/human-rights/tutu-says-burma-must-avoid-new-apartheid.html>.