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THE PLIGHT OF THE ROHINGYA IN MYANMAR ROOT CAUSES OF THE CRISIS AND DURABLE SOLUTIONS

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Amjad Bashir MEP

The plight of the Rohingya is synonymous to the failure of the international community to prevent and resolve the fastest growing humanitarian crisis in the world. A crisis, however, that was waiting to happen since a very long time. Perceived by the Burmese society as illegal immigrants brought by British colonisers from Bangladesh into Myanmar and hatred by the dominant Buddhist nationalists, the more than 1 million Rohingya have been incrementally stripped of their political rights. As they do not have citizenship and are excluded from the Burmese census, they are de facto stateless. Unable to own land, access healthcare and education and practise any profession the Rohingyas hadn't had the slightest chance to their inalienable rights of life and pursuit of happiness.

Since last year the Myanmar military offensive, a "textbook example of ethnic cleansing" according to the UN (bearing the hallmarks of a genocide), is playing out unchecked as thousands are murdered and hundreds of thousands driven out in state-condoned violence.

This unique report commissioned by the New Direction, the European reform think tank that I am proud to serve as its Vice-President, will provide ample details of how and why the UN is paralysed at the Security Council level. A complex web of vested geo-strategic and geo-economic interests prevents any sensible action from being even considered.

We saw the same awkward inability before in Rwanda and Srebrenica and hoped we would never let it happen again. Yet that is what is happening.

As a member of the Foreign Affairs Committee of the European Parliament (AFET) and its subcommittee on Human Rights (DROI), I have worked tirelessly to make sure that this wouldn't happen. Not under our watch. Not without trying at least.

In the last year alone, I have been privileged to secure support across the entire political spectrum on three Resolutions for the Rohingya.

Last June, my report on "Statelessness in South and South East Asia" warned the European Union and the international community of the grave dangers looming ahead for hundreds of millions refused to be granted citizenship rights, not only in Myanmar but in many other countries in the region.

Having visited the world's largest makeshift camp in Cox's Bazar, Bangladesh where hundreds of thousands of refugees have fled for their lives I have been determined to help put an end to the immense suffering of the more than 600,000 Rohingya who have been lucky enough to have fled conflict.

Thankfully, and in spite of initial reluctance by some parts of the European Parliament, the last two Resolutions in the European Parliament condemned in the most unequivocal terms the atrocities in Myanmar while calling for targeted sanctions against the perpetrators of these heinous crimes. To my dismay, the Burmese authorities opted to defy - once again - the international community.

Against this backdrop, as this detailed report will show, the world further allowed this grave crisis to



be left in the hands of just two nations: Myanmar, the unaccountable perpetrator, and Bangladesh, the unfortunate host of 20-30.000 more refugees on a daily basis! And this in spite of the fact that previous bilateral efforts ended in failure - because an act of ethnic cleansing cannot by definition be left solely in the hands of the perpetrator. and those suffering the direct consequences of it.

Thankfully, common sense prevailed. For many either in policy making, or journalism and the civil society, the Rohingya crisis can no longer be regarded as a mere humanitarian issue. We can no longer afford to treat it as such. This is not just about securing more humanitarian aid for the hundreds of thousands stranded in Bangladesh. On the contrary it is about bringing about a lasting political solution before there is no Rohingya left alive on Myanmar soil.

This is the spirit of the third Resolution that was secured in the European Parliament last December at my request.

This time, the final text represents probably the most ambitious and comprehensive agreement today.

However we are still far from implementing its bold recommendations.

Readers of this report will delve into into the dilemmas of policy makers including the legal complexities of having these responsible in the Burmese authorities for crimes against humanity stand an independant trial. The Constitution of Myanmar ensures a culture of impunity by means

of amnesty to the Burmese authorities for past and future actions. Furthermore, Myanmar is unfortunately not a signatory part to the Statute of the International Criminal Court.

There are of course possible alternatives and I am personally honoured to be part of these discussions.

The last Resolution of the European Parliament after all goes as far as to make the plea for a full-fledged EU-led Intergovernmental Summit whose task shall be to seek alternative ways to bring the Burmese generals to justice while providing incentives for cooperation by means of investments into the rebuilding of the Rakhine State and Myanmar as a whole.

Notwithstanding this, with various nations, including the UK, having taken a clear stance in the name of the humanity, it is my firm belief that we shall soon get our act together.

I can only welcome therefore this report as another instrument to making sure that we, the elected policy makers in Brussels, shall not rest until a lasting solution is reached.

I trust that the European Union, through its European External Action Service, together with the UN and many Nations across the world will find in this report the arguments necessary to step up their efforts. Before it is too late. Before Myanmar takes its place next to Rwanda and Srebrenica as a textbook example of how the world shrugged its shoulders offering nothing but empty promises that this would not happen again. •

1

INTRODUCTION

Rakhine state, formerly known as Arakan state, is situated on the western coast of Myanmar, bordering Bangladesh. Despite the strategic location and a wealth of natural resources, it remains one of the poorest states in Myanmar, with heightened underdevelopment and economic marginalisation. Around 3.2 million people live in Rakhine state, with the majority of the population being ethnic Rakhine and predominately Buddhist. The second largest group in Rakhine state are the Rohingyas. The majority of the Rohingya population reside in northern Rakhine state. They have their own Rohingya dialect, culture and are overwhelmingly Muslim by faith. Discrimination against the Rohingyas has been increasing since Myanmar's independence in 1948. Perceived as illegal immigrants brought by British colonisers from Bangladesh, they have been incrementally stripped of their political rights. As they do not have citizenship and are excluded from the Burmese census, they are de facto stateless. In addition to discriminatory policies, there have been regular outbreaks of violence between the Burmese army and Rohingya armed groups, in particular since 2012, which has resulted in gross human right violations against Rohingya civilians.

As a result of the mounting discrimination and the regular outbreak of violence against Rohingya civilians, there has been a regular flux of refugees towards Myanmar's neighbouring countries. The latest

exodus began after an outbreak of violence in August 2017, with more than 650,000 Rohingya who have fled to Bangladesh.

The Rohingya crisis is of concern to the international community for at least two reasons. First, the exodus of Rohingya people represents an unprecedented humanitarian crisis, and it is mounting to what the UN recently qualified as the 'world's fastest growing refugee crisis'¹. The whole refugee population, almost one million people, requires aid. With 60% of the refugee children often separated from their families, the Rohingya refugee population is highly vulnerable. The magnitude of the challenge is overwhelming and requires sustained international solidarity. Second, as state sponsored violence and discrimination against the Rohingyas persists, there is a risk of mounting violence as a response from the Rohingya population². Further violence in Rakhine state could not only threaten a fragile democratisation process in Myanmar, but it could also be a threat to the stability of the region as there are economic and geopolitical interests within Rakhine state.

This report aims to explain the root causes of the Rohingya crisis. It will assess the limitations and challenges of the international responses to end the violence against Rohingyas and their exodus, and it will provide policy recommendations on how the European Union and its member states could contribute to finding a durable solution to the crisis. •

¹ BBC. 'Myanmar Rohingya: What you need to know about the crisis'. BBC News. 18 December 2017. Available at <http://www.bbc.com/news/world-asia-41566561>

² Advisory Commission on Rakhine State, 2017. Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine. Final Report of the Advisory Commission on Rakhine State. Available at <http://www.rakhinecommission.org/>

2

GENERAL INFORMATION ON THE CONFLICTS IN BURMA

Myanmar is a multi-ethnic country in South East Asia, bordering India, Bangladesh, China and Thailand. It has faced a prolonged situation of war since its independence from the British colonial rule in 1948. Conflicts in Burma are orientated along two main claims: calls for democracy led by a predominantly urban movement, of which the most prominent figure was the Nobel laureate Aung San Suu Kyi, and ethnic grievances led by ethnic armed groups in the borderlands.

2.1 THE LONG PATH TOWARDS DEMOCRACY

Following its independence, Myanmar experienced a few years of democracy with the election of its Prime Minister U Nu. Nevertheless, the military coup in March 1962, which ousted U Nu and his party, marked the beginning of a direct military rule, which lasted until 2011. The Burmese military has been able to dominate national politics for such a long period of time by constantly re-inventing itself and re-asserting its dominance over Burmese society. Indeed, in 1962, the new military leader General Ne Win abolished the federal system that had been put in place following independence, inaugurated 'the Burmese Way to Socialism', nationalised the economy, formed a single-party state called the Burma Socialist Programme Party (BSPP) and suspended any opposition political parties. Under the communist dictatorship, the Burmese army, the *Tatmadaw*, became the primary political force regulating all aspects of social life. Furthermore, due to its limited resources, the BSPP government failed to support economic growth and maintain its control over the economy, as illegal trade flourished and dominated the Burmese economy. With the economic failures of the BSPP government, popular grievances increased, which resulted in a civilian uprising in 1988. On 8 August 1988, thousands of demonstrators marched in Rangoon calling for an end to the military dictatorship, but they were received with gunfire from the Burmese army. Despite this crack down, demonstrations continued to grow nationwide. Aung San Suu Kyi, daughter of Burmese independence leader Aung San, who happened to be present in Rangoon, joined demonstrators and became the leader of the democracy movement, the *National League for Democracy (NLD)*. In order to contain the growth of the democracy movement, General Ne Win stepped down, put an end to the BSPP government and established the *State Law and order Restoration Council (SLORC)*, whose mission was to restore law and order through martial law before handing power to a civilian government. Up to

3,000 protesters were murdered, while others were imprisoned, tortured or forced into exile.

In 1990, the military government held the promised elections in free and fair conditions. Aung San Suu Kyi's *NLD* won the elections in a landslide. However, the government ignored the results, kept the opposition leaders under house arrest and clung to power. The SLORC and later the *State Peace and Development Council (SPDC)*, relinquished socialism to embark on a state-building programme by modernising the country's infrastructure and asserting the *Tatmadaw's* power by doubling its size and modernising it. In addition, in 2003, the junta announced a roadmap towards a 'disciplined democracy', promising a transfer of power to an elected government as they sought to hold the chairmanship of the ASEAN (*Association of Southeast Asian Nations*). The pressure to move towards a democratic transition increased with the 2007 wave of unrest and the Saffron revolution, when monks supported by the NLD manifested their opposition to the regime. The revolt was suppressed, tarnishing the image of the regime in a country with deep loyalty to its Buddhist institutions.



The first steps towards transitioning from a military dictatorship to democracy included establishing a constitution in 2008 upon which laws and, in particular, electoral laws would be based. The electoral laws notably provide that the president is above the law and reserves 25% of seats in parliament for serving military officers designated by the president³. The 25% quota is enough to give the military veto power over any constitutional amendments as a constitutional clause stipulates that changes can only be made with the support of more than 75% of the legislators in parliament. Furthermore, under the constitution there is no parliamentary oversight of the military and the ministries of defence, home affairs and borders affairs (which covers cross-border trade and ethnic conflicts) are selected by the head of the *Tatmadaw*⁴. The constitution also bars anyone with a foreign spouse or children from

³ Burma Fund UN Office, 2011. Burma's 2010 Elections: A Comprehensive Report. Available at http://www.burmalibrary.org/docs11/BurmaFund-Election_Report-text.pdf

⁴ Ibid.

the presidency. This clause was aimed at barring Aung San Suu Kyi from becoming president. These laws opened the way for the 2010 general elections, which asserted the power of the junta's party, the *Union Solidarity and Development Party* (USDP), as the opposition party the NLD boycotted. Following the 2010 elections, the newly elected President Thein Sein, a former general who served as the junta's prime minister from 2007 to 2010, undertook political and economic reforms⁵.

It was only during the 2015 elections that opposition parties competed against the USDP, and the NLD swept to victory, thus allowing Aung San Suu Kyi to become state counsellor (a position created to get around the clause in the constitution) and her close confidante Htin Kyaw to become president.

2.2 THE ETHNIC CONFLICTS

While the Burmese army has battled to reassert its dominance over successive governments, it also has had to face the internal conflicts with ethnic groups seeking autonomy in the borderlands.

The ethnic majority Burman (Bamar) make up about 2/3 of the population and has control of the military and the government. The ethnic minority population is concentrated in seven states named after the main seven ethnic minorities: Chin, Kachin, Karenni (also named Kayah), Karen (also named Kayin), the Mon, the Rakhine (also named Arakan) and the Shan. All of these ethnic nationalities have, since the independence of Myanmar in 1948, formed rebel groups to fight for autonomy of the ethnic states.

The ethnic constituencies, in particular the Karen and Kachin, were privileged in the colonial military system; the British armed and trained ethnic armies to fight the Burma Army, who refused colonial rule. Hence, at independence, the ethnic armies were military organisations with enough power and authority to act as alternative systems of local governance and



challenge the central Burmese authority⁶. In preparing the independence of Burma, the British worked with the leader of the Burman Anti-Fascist People's Freedom League (AFPFL), Aung San, to find an institutional arrangement to ensure that the ethnic minorities' concerns over the domination of Burman were addressed. In February 1947, Aung San led the Panglong Conference with Shan, Kachin and Chin delegates to negotiate

the status of ethnic minorities under a union of Burma. They signed an agreement and adopted a new constitution containing provisions for secession rights after a 10 year period of independence. However, several ethnic minorities, including the Karen, the Mon and the Arakanese, were not invited to the conference, limiting the significance and impact of any agreement negotiated. First, the Karen, the largest ethnic minority of Burma did not participate in the conference, as they asked for self-determination with no delay⁷. The Mon and the Rakhine were not invited to attend the conference, as they were considered part of ministerial Burma rather than frontier areas. As they did not attend the conference, the new constitution contained no provisions of self-determination for the Karen, Arakanese or Mon.

Furthermore, several weeks after the Panglong Conference, Aung San was assassinated and his successor U Nu was opposed to the independence of the ethnic areas, in particular the Karen, Rakhine and Mon. As negotiations with the Karen failed on various occasions, the Karen National Union (KNU) entered a period of rebellion in 1949, as did the Mon and the



Rakhine. This led the newly-independent Burma to descend into chaos as vast territories of the country fell under the control of different insurgent forces⁸.

Furthermore, the chaos in the country provided the opportunity for the Burmese army, the *Tatmadaw*, to grow and its leader General Ne Win to seize power in 1962. As he established a centralised system of government under the new Burma Socialist Programme Party (BSPP) and the *Tatmadaw*, General Ne Win rejected any discussion of self-determination with the ethnic groups threatening the unity of the country. The response to General Ne Win's accession to power was a new generation of insurgent resistance, including the signatories of the Panglong Conference: the Shan, Chin and Kachin. From 1968 to 1975, some of the fiercest battles in all of the years of armed conflict in Burma took place, as the ethnic armies were backed by neighbouring states, including Thailand (who backed the KNU) and China (who traded with the Kachin Independent Organisation [KIO]). In the last decades of the BSPP, as anti-government disaffection

grew and the black market bloomed, the armed ethnic organisations controlled the entire eastern border of Burma. The strongest ethnic parties, the KNU and the KIO, both maintained over 5,000 troops in the field⁹.

The prospects of armed ethnic groups increased during the 1988 pro-democracy protests that brought down General Ne Win's BSPP government. Following the SLORC takeover, some students and political activists fled into areas with ethnic majority groups and formed alliances with the ethnic-armed organisations, as the new military regime tried to enhance a nation-building process through the forced assimilation of ethnic minorities in a united country. In 1989 the military regime announced the change of the country's name from Burma, which referred to the post-colonial multi-ethnic state, to Myanmar, which referred to the Barman ethnicity and was designed to give to the country a new sense of nationalist, and inherently exclusivist, unity. As a result of the government strategy to assimilate the opposition groups from 1988 to 1992, fierce fighting raged in the border regions, pushing

5 Fisher, J. 'Myanmar: Thein Sein Leaves Legacy of Reform'. BBC News. 30 March 2016. Available at <http://www.bbc.com/news/world-asia-35916555>

6 Thawngnhmung, A. M., 2008. The Karen Revolution in Burma: Diverse Voices, Uncertain Ends. Institute of Southeast Asian Studies, Singapore.

7 Peacock, J. L., Thornton, P. M. & Inman, P., 2007. Identity Matters: Ethnic and Sectarian Conflict. Berghahn Books. New York.

8 Smith, M., 2007. State of Strife: The Dynamics of Ethnic Conflict in Burma. Institute of Southeast Asian Studies. Available at <https://books.google.co.uk/books?id=f8V6BwAAQBAJ>

9 Ibid.

FIGURE 1:
Ethnic armed organisations in Myanmar

Ethnic armed organisations	Area of operation	Estimated strength	Ceasefire?
Restoration Council of Shan State/ Shan State Army- South (RCSS/SSA-S)	Southern Shan State	8000+	Signatory of the National Ceasefire Agreement (NCA)
Arakan Liberation Party (ALP)	Northern Rakhine	60-100	Signatory of the NCA
Chin National Front (CNF)	North Western chin State; Sagaing Region	200+	Signatory of the NCA
Democratic Karen Buddhist/benevolent Army (DKBA)	Eastern Karen State	1500+	Signatory of the NCA
KNU/KNLA Peace Council (KNU/KNLA-PC)	Central Karen State	≤200	Signatory of the NCA
Karen National Union (KNU)	Karen and Mon States	5000+	Signatory of the NCA
Pa-O National Liberation Organisation (PNLO)	Southern Shan State	400	Signatory of the NCA
Shan State Progress Party/ Shan State Army-North (SSPP/SSA-N)	Northern Shan State	8000+	Not signatory of ceasefire- ongoing fighting
Kachin Independence Organisation (KIO)	Kachin State	10 000	No ceasefire agreement- on going fighting
Arakan Army (AA)	Rakhine State	2000	No ceasefire agreement- ongoing fighting
Myanmar National Democracy Army (MNDA)	Kokang Region, North eastern Shan State	3000	No ceasefire agreement- ongoing fighting
Ta'ang National Liberation Army (TNLA)	Shan State	4500	No ceasefire agreement- ongoing fighting
United Wa State Army/Party (UWSA)	Wa self-administrated division; Eastern Shan State	30,000	No ceasefire- no active fighting
Karenni National Progressive Party (KNPP)	Karenni State	600	Bilateral ceasefire in 2012
New Mon State Party (NMSP)	Mon State	800-2000	No ceasefire agreement
Arakan Rohingya Salvation Army	Rakhine State	?	No ceasefire agreement-on going active fighting

refugees to flee to neighbouring countries, including Thailand and Bangladesh.

In the mid-1990s a few ethnic organisations, including the KIO, concluded ceasefire agreements with the SLORC allowing them to maintain arms and territories until a new constitution, providing a valid opportunity to re-enter national politics, was introduced. This change of strategy by the authorities was motivated by the need for the regime to access the natural resources of ethnic states to successfully conduct market-oriented reforms. Nonetheless, these ceasefire agreements gave the *Tatmadaw* the opportunity to focus on the ethnic organisations,

which had not agreed on ceasefire agreements. The KNU was notably weakened by the *Tatmadaw's* new offensives¹⁰.

Between 1993 and 2007 ethnic ceasefire organisations, which continued to voice demands for a division of power between the central state and local governments, participated in the SLORC's national convention to draft the principles of the new convention. However, in the convention finalised in 2008, much to the disappointment of the ethnic leaders, no significant powers were devolved to the ethnic states. In addition, since the mid-2000s the SLORC has called for the ethnic ceasefire

organisations to disarm or join Border Guard Forces controlled by the *Tatmadaw*. This initiative led a number of ethnic organisations, in particular the Kachin, to break the ceasefires in 2011.

While in the Kachin and Rakhine region, conflict escalated and several ethnic armed organisations entered into peace negotiations as a response to the democratic reforms and the nomination of the new president, Thein Sein. The oldest ethnic-armed group, the KNU, despite internal divisions, agreed to a historic ceasefire in January 2012. And a draft of a Nationwide Ceasefire Agreement (NCA), stipulating the terms of ceasefires, their implementation and monitoring, as

well as the roadmap for political dialogue, was signed by seven ethnic-armed organisations in 2015.

Furthermore, since 2016 the 21st Century Panglong Peace Conference has brought together representatives from the government, the parliament, the military, political parties and ethnic-armed organisations with the objective of reaching a Union Peace Accord, which is expected to serve as the foundation for a durable peace in a federal Myanmar. The two critical outstanding issues of the conference involve the creation of a federal army and the institutional federal arrangement¹¹. •

11 Qingrum, S. 'Second Panglong Conference Sees Significant Breakthroughs'. Mizzima. 1 June 2017. Available at <http://www.mizzima.com/news-opinion/second-panglong-conference-sees-significant-breakthroughs>



10 Fink, C, 2008. 'Militarization in Burma's Ethnic States: Causes and Consequences'. Contemporary Politics, 14(4), pp.447-462.

3

THE CONFLICT IN RAKHINE STATE

3.1 WHO ARE THE ROHINGYAS? FACTS AND FIGURES

Rakhine state, formerly known as Arakan state, is situated on the western coast of Myanmar, bordering Bangladesh. Despite the strategic location and a wealth of natural resources, it remains one of the poorest states in Myanmar, with heightened underdevelopment and economic marginalisation. Around 3.2 million people live in Rakhine state, with the majority of the population being ethnic Rakhine and predominately Buddhist. The second largest group in Rakhine state are the Rohingyas, the majority of whom are Muslims and speak Rohingya dialect, which is not recognised as a national language. Rohingya is a self-identifying term that is not recognised by the Burmese government. Hence, no national reports refer to the Rohingyas. Similarly, projects conducted by international organisations working with the permission of the Burmese state do not necessarily refer to 'Rohingyas', but rather refer to the population located in northern Rakhine state or the Muslim population in Rakhine state.

It is difficult to establish the precise figures of the Rohingyas, as they were not accounted for in Myanmar's 2014 national census. It is nonetheless estimated that there were one million Rohingyas in Rakhine state before the 2017 mass exodus. Rohingyas accounted for most of the population in three northern Rakhine townships: Maungdaw, Buthidaung and Rathedaung. While the northern Rakhine state is populated by a majority of Rohingyas, it is also home to other Muslim minorities, like the Kamam and the ethnic Rakhine, who can also be Muslim.

There were 140,000 Rakhine Muslims, a majority of which are Rohingyas, internally displaced after the 2012 widespread violence in Rakhine state. Furthermore, there has been a constant influx of Rohingyas to Bangladesh since 1978, with a peak of arrivals in 1991 and 1992. Following the outbreak of

violence in August 2017, at least 646 000 Rohingyas fled to Bangladesh, either in refugee camps or spontaneous settlements and in the host community. As of 7 of December 2017, the total Rohingya refugee population living in Bangladesh has reached 858,590¹².

The Rohingyas have faced long-standing discrimination and have been gradually stripped of their citizenship. The UNHCR estimates that in February 2016, 940 000 people were without citizenship in Rakhine state, of which a majority are Rohingyas¹³.

The Rakhine state is among the poorest state in Myanmar, with large needs for humanitarian assistance to address health and food crises. According to the World Bank, the Rohingyas are among the poorest minority in Myanmar, as they are 2.4 times more likely to be poor¹⁴ than the population at large¹⁵.

3.2 THE POLITICAL ORIGINS OF CONFLICT IN RAKHINE/ARAKAN STATE

The Arakan region has been for most of its early history separated from the rest of Burma. It is suggested by some scholars, although it is disputed by politicians in Burma, that the first settlers in the Arakan region were the Rohingyas, whose language is Indo-Aryan from the Bengali-Assamese branch, and who have close links with the populations in India and Bengal. The first rulers of Arakan were probably Hindus, reflecting Indian influences, but Islam was adopted by the Rohingyas in the 7th century as it penetrated the Arakan region through trading links with India and Arabia. The dominance of the Rohingyas in the Arakan region ended with the arrival of the Rakhine group from central Burma around the 11th century. The Rakhine shared Tibeto-Burmese roots with the Burman and were largely Buddhist. Nonetheless, some Rakhine have converted to Islam.

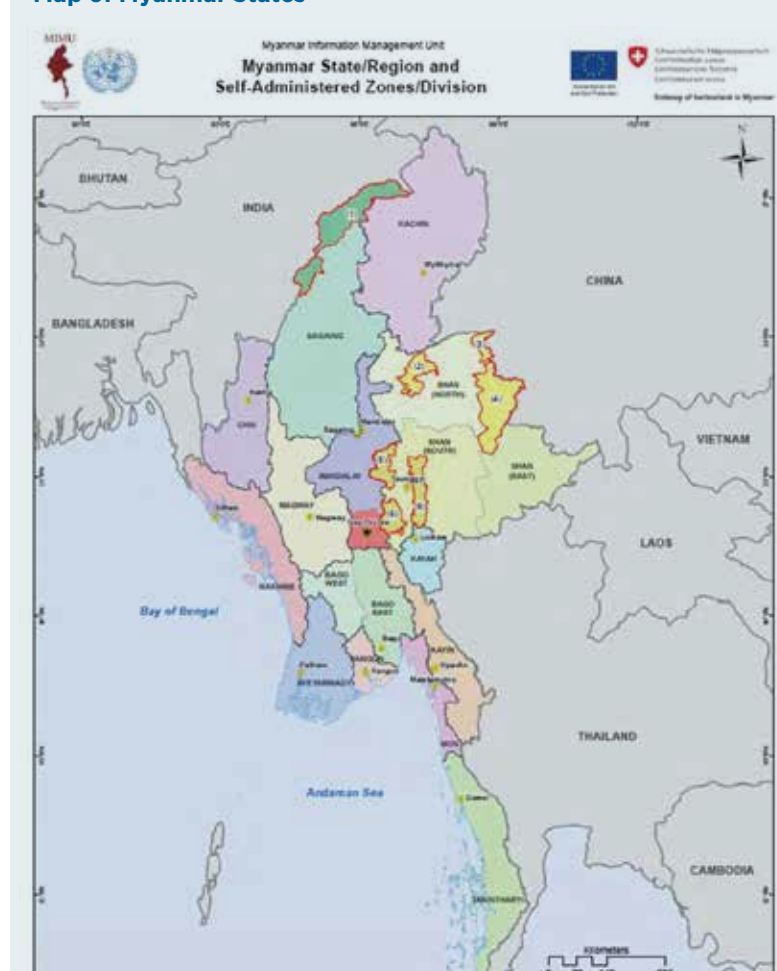
¹² Inter Sector Coordination Group, 2017. Situation Report: Rohingya Refugee Crisis. 7 December 2015. Inter Sector Coordination Group. Cox's Bazar. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/171207_iscg_sitrep_one_pager_final.pdf

¹³ UNHCR, 2016. UNHCR Myanmar Fact Sheet.

¹⁴ The poverty incidence is calculated as the cost basic needs and retained as a threshold the ability to consume 2300 calories per adult per day. World Bank, 2014. Myanmar Ending Poverty and Boosting Shared Prosperity in a Time of Transition. No. 93050. Available at http://www.worldbank.org/content/dam/Worldbank/document/EAP/Myanmar/WBG_SCD_Full_Report_English.pdf

¹⁵ Ibid.

FIGURE 2:
Map of Myanmar States



Up until the colonisation of Burma, the histories of Burma and the Arakan region were largely distinct. However, the British created Burma as an independent state from India in 1937, which integrated the Arakan region. In order to impose their authority on the Burmese nationalists, including the Rakhine, who resented the foreign rule, the British relied on the Muslim Rohingyas. Similarly, during WWII the Rohingyas stayed loyal to the British, who promised them relative independence. Meanwhile the Burmese nationalists supported the Japanese, as they hoped that the defeat of the British Empire would allow them to seek independence. This sowed the seeds for deep divisions between Rohingyas and Buddhist Rakhine communities. It resulted in a mujahidin rebellion that erupted in April 1948, a few months after the independence declaration of Burma. Rebels sought annexation to Bangladesh, formerly East Pakistan, or the creation of an autonomous Muslim area in the north of Rakhine state. The ethnic and religious strife

ended in 1961 when the *Tatmadaw* launched an offensive campaign and concluded a ceasefire agreement with the rebels.

Following independence, anti-Rohingya sentiment grew among Burmese nationalists who formed the new government. This was reflected in the new constitution drafted in 1947. Rohingyas were placed into a special category compared to other ethnic minorities. As the border between Arakan state and Bangladesh was porous, the Burmese government tended to fail to distinguish Rohingyas from ethnic Bengalis, who were considered illegal labour migrants. Hence, the Burmese government did not recognise the Rohingyas as a core ethnic group of Burma. The 1947 constitution stipulated that citizenship could only be granted to the Rohingyas depending on their length of residency in the Arakan state.

The situation for Rohingyas slowly worsened under the BSPP regime, as they were incrementally denied

citizenship and were treated as foreigners. In 1974, the Emergency Immigration Act imposed ethnic-identity cards for all ethnic nationalities, except for Rohingyas, who were only eligible for Foreign Registration Cards. In 1982, the Burmese Citizenship Law created four categories of citizens which were assigned to ethnic groups based on their residency status in Burma before 1824: citizens, associate citizens, naturalised citizens and foreigners. The Rohingyas were deemed to be foreigners as their residency in Burma before the 19th century was not recognised¹⁶. This denial of citizenship led to restrictions of their legal rights, freedom of movement, land ownership, employment and access to health services and education.

From 1978, the *Tatmadaw* began Operation *Naga Min* or 'Dragon King' to take action against those they deemed to be illegal immigrants. As the Rohingyas were considered to be foreigners rather than an ethnic minority of Myanmar, they were a primary



target of the military campaign. The combination of an increased restriction of Rohingya's citizenship rights and the *Tatmadaw* campaign against those they deemed to be illegal migrants led to the creation of the Rohingya Patriotic Front armed group, which became the Rohingya Solidarity Organisation (RSO) in 1982, the Arakan Rohingya Islamic Front (ARIF) in 1986 and the Arakan Rohingya National Organisation in 1998¹⁷. Nonetheless, the Rohingya armed groups have not been as active as other ethnic minority armed groups, conducting only occasional small military attacks on the Burmese army from bases in Bangladesh.

The 2008 Constitution, which was supposed to mark the Burmese transition towards democracy, strengthened the denial of citizenship for Rohingyas. Similarly, in the months leading to the 2015 elections, the parliament amended the electoral laws to remove the Rohingyas' voting rights and ban them completely from being represented in parliament.

Furthermore, most local political actors have contributed to segregate even further the Rohingyas. Local politics are dominated by local parties: the Arakan National Party (ANP), the Rakhine Nationalities Development Party (RNDP) and the Arakan League for Democracy (ALD). The RNDP

was founded in 2010 by Rakhine nationalists and is dominant in the Rakhine state parliament. The RNDP has contributed in several instances towards distributing statements and pamphlets denying the existence of the Rohingya ethnicity and calling to socially and economically isolate them¹⁸. In addition, in the lead up to the 2015 elections, Aung San Suu Kyi and the NLD did not take a strong stand on the Rohingyas' plight for civil rights. Local politics have, therefore, been marked by a growth of anti-Rohingya sentiment.

3.3 THE GROWTH OF ANTI-MUSLIM SENTIMENT SINCE THE 1990s

From the 1990s, the Rohingyas not only suffered from political and economic discrimination, but they also had to face a growing anti-Muslim sentiment propagated by extremist Buddhist movements, including the 969 Movement and Ma Ba Tha.

The 969 Movement grew out of the 1988 uprising. The military co-opted Buddhist monks and supported them to create an organisation in an effort to repair its image after the violent reprisal of the 1988 uprisings and undermining of rebellious monks. The movement sought to promote and preserve Buddhist cultural traditions as well as encourage people to live according to Buddha's teachings. The 969 Movement considers Myanmar as a Buddhist country and believes it should protect itself from the influence of other religions¹⁹. Its leader, Ashin Wirathu, has publicly called for discrimination and incited violence against Muslims. He has called for people to boycott Muslim shops and refrain from interfaith marriages. The 969 Movement enjoyed the support of senior government officials and some members of the NLD²⁰.



¹⁷ International Crisis Group, 2017. Buddhism and State Power in Myanmar | Crisis Group, Brussels. Available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/290-buddhism-and-state-power-myanmar>

¹⁸ Human Rights Watch, 2013. 'All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State'. Human Rights Watch, ed. New York: Human Rights Watch. Available at http://www.hrw.org/sites/default/files/reports/burma0413webcover_0.pdf

¹⁹ 969 Movement. 'What is 969 Movement?'. Available at <http://969movement.org/what-is-969-movement/>

²⁰ Marshall. A. 'Special Report; Myanmar Gives Official Blessing to Anti-Muslim Monks'. Reuters. 27 June 2013. Available at <https://www.reuters.com/article/us->

¹⁶ Minority Rights Groups International. N.d. 'Myanmar/Burma: Muslims and Rohingya'. Available at <http://minorityrights.org/minorities/muslims-and-rohingya/>



This anti-Muslim sentiment propagated by the extremist Buddhist movements resulted in increased tensions between Buddhists and Muslims across the country. In March 1997 in Mandalay, a group of Buddhists, including monks, rioted following the alleged rape of a Buddhist girl by a Muslim man. The riot spread to various cities, including Yangon. In 2003 Ashin Wirathu delivered a sermon in Kyaukse inciting violence against Muslims, and one month later 11 Muslims were killed and 2 mosques and 26 houses were burnt.

As the 969 Movement’s visibility and popularity grew, the Burmese government feared being overshadowed. Hence, Ashin Wirathu was arrested by the junta for inciting violence and spent nine years in Mandalay’s prison until 2012, when he was freed as part of a general amnesty for political prisoners. The release of Ashin Wirathu revitalised the 969 Movement. However, in late 2013, the 969 Movement was banned by the Sangha Council, a government body of monks that regulates the Buddhist clergy. The ban was not an outright

dismissal of the group’s ideology, but it reflected a battle of political influence²¹.

The ban against the 969 Movement prompted it to evolve into a more formal structure named Ma Ba Tha, which can be translated as the Association for the Protection of Race and Religion. Ma Ba Tha expanded beyond the 969 Movement by combining efforts with Buddhist NGOs, and its local branches provided media and law training for anti-Muslim activists. Through its active campaigning, Ma Ba Tha gained influence over the political parties’ agenda. For instance, Ma Ba Tha lobbied for the Protection of Race and Religion Laws, which were enacted in 2015, and targeted the Muslim population, in particular Rohingya and Kamam Muslim minorities. These laws included the Population Control Law, by which the government can implement population control measures; the Buddhist Women’s Special Marriage Law, which limits the opportunities of marriage between Buddhist women and non-Buddhist men; the Religious Conversion Law, which restricts conditions for conversion; the Monogamy

Law, which criminalises having more than one spouse²². Similarly, Ma Ba Tha campaigned actively for the 2015 general elections, spreading anti-Muslim rhetoric across all parties including the NLD to the point that none of the main parties, the NLD and the military-backed USDP, named Muslim candidates²³. As a result out of the 6,000 candidates to the 2015 elections, only 10 were thought to be Muslim²⁴.

The growth of Ma Ba Tha has been seen as fuelling intercommunal riots. In March 2013 more than 40 people died and an entire neighbourhood was razed as violence erupted between Buddhists and Muslims in Meiktikila in central Myanmar. In August 2013 Muslim-owned houses and shops in Kanbalu were burnt after a Muslim man was accused of raping a Buddhist woman. In 2014, after a local Muslim man was accused of raping a Buddhist girl, there were several nights of riots in Mandalay, one of the cities where Ma Ba Tha is the most active²⁵. In January 2017, U Ko Ni, a Muslim lawyer and a top adviser for the NLD, was shot and killed outside Yangon’s international airport. The repeated incitation to anti-Muslim violence, which caused communal strife, led the government to ban the ultra-nationalist Buddhist group and to prohibit Ashin Wirathu from delivering sermons for one year in March and May 2017²⁶. In order to circumvent the ban, the organisation has continued its activities under the name of the Buddha Dhamma Parahita Foundation. Lay supporters of Ma Ba Tha has also found a political party named ‘135 United Patriots Party’ in preparation for future elections²⁷.

It is in this context of general anti-Muslim sentiment at the national level that the crackdowns on the Rohingyas since 2012 have taken place.

3.4 CRACKDOWN ON THE ROHINGYAS IN 2012, 2016 AND 2017

The combination of a long-rooted defiance against the Rohingyas and the strengthening of an anti-Muslim sentiment at the national level has opened the way to important military campaigns against the Rohingyas.

The 2012 crackdown

In June 2012, as President Thein Sein was conducting reforms to transition from military dictatorship to a democracy, violence erupted in Rakhine state between Rakhine Buddhists on one hand and Rohingyas and other Muslim Rakhine groups on the other. The large-scale violence was triggered by the alleged rape and murder of a Buddhist Rakhine woman by Muslim men in Thandwe Township. This led to a revenge killing of 10 Muslim men by Rakhine villagers in Ramri Township²⁸. Then Muslims rioted in Mawdaw Township after Friday prayers, destroying property of Rakhine villagers. The rioting of Rohingyas and Buddhist Rakhines against each other spread to other townships across the state²⁹.

The major escalation of violence occurred in October 2012, when attacks were carried out against Rohingyas across the Rakhine state, mosques and private property was burned and 200 people were killed. Furthermore, 40,000 people, mostly Rohingyas, were internally displaced, notably towards a large refugee camp near Sittwe. The role of the army in preventing and stopping violence is unclear. There are reports of the army intervening to stop violence, although often when the violence was already decreasing, while other reports say security forces took active parts in the violence³⁰.

myanmar-969-specialreport/special-report-myanmar-gives-official-blessing-to-anti-muslim-monks-idUSBRE95Q04720130627

21 International Crisis Group, 2017. Buddhism and State Power in Myanmar | Crisis Group, Brussels. Available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/290-buddhism-and-state-power-myanmar>

22 Ibid.

23 Fisher. J. ‘Myanmar’s Ma Ba Tha Monks Flex Their Political Muscle’. BBC News, Myanmar. 8 October 2015. Available at <http://www.bbc.com/news/world-asia-34463455>

24 Ibid.

25 BBC News. ‘Why Is There Communal Violence in Myanmar?’? BBC News. 3 July 2014. Available at <http://www.bbc.com/news/world-asia-18395788>

26 RFA. ‘Buddhist Authorities Ban Myanmar’s Ultranationalist Ma Ba Tha Group’. Radio Free Asia. 23 May 2017. Available at <http://www.rfa.org/english/news/myanmar/ban-05232017152958.html>

27 DVB. ‘Ma Ba Tha Rebranding, Political Decoupling Do Little to Soothe Critics’. DVB. 2 June 2017. Available at <http://www.dvb.no/news/ma-ba-tha-rebranding-political-decoupling-little-soothe-critics/75845>

28 Human Rights Watch, 2012. ‘The Government Could Have Stopped This’ Sectarian Violence and Ensuing Abuses in Burma’s Arakan State. Human Rights Watch, ed., New York: Human Rights Watch.

29 Amnesty International, 2017. ‘Caged Without a Roof’ Apartheid in Myanmar’s Rakhine State, London.

30 Human Rights Watch, 2012. ‘The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma’s Arakan State’. Human Rights Watch, ed., New York: Human Rights Watch.



Between November 2012 and April 2013, sporadic incidents of violence against Rohingyas continued, including sexual violence by security forces against Rohingya women. Thousands of Rohingyas fled towards Bangladesh, Thailand and Malaysia³¹. Following this wave of violence, some Buddhist monks in conjunction with the political party RNDP distributed pamphlets demanding Rakhine people to cease all economic ties with the Rohingyas³². Similarly, President Thein Sein announced that the ‘only solution’ to stop the violence was to send Rohingyas to other countries or to refugee camps³³. There were also rumours spread through social media about Rohingyas being supported by Al-Qaeda to conduct attacks on Rakhine Buddhists³⁴.

Outburst of violence in 2016 and the emergence of the Rohingyas’ insurgency

The 2016 outburst of violence was marked by the emergence of a Rohingyas rebel armed group. The 2016 violence erupted when on the 9th of October, several hundred of Muslim men, who were believed

to be Rohingyas armed with knives and homemade slingshots, attacked policemen on three border posts in Maungdawn Township. Nine policemen were killed during this attack³⁵.

These attacks signalled the emergence of a new rebel group, the Arakan Rohingya Solidarity Army (ARSA). Its leader Atuallah Abu Ammar Jununi justified the attacks as a response to the crimes and atrocities committed against the Rohingyas³⁶. ARSA denies any links with transnational jihadist terror groups such as the so-called Islamic State or Al-Qaeda. However, it seeks religious legitimacy for its attacks. Senior Rohingyas as well as foreign clerics have ruled that given the persecution against the Muslim Rohingyas, the ARSA campaign is legal in Islam. Several fatwas (religious rulings) were obtained in countries with large Rohingya diasporas, including Saudi Arabia, Pakistan and Bangladesh³⁷. Furthermore, ARSA is an armed group with foreign influence, as, according to the International Crisis Group, it is led by a group of Rohingya diasporas from Saudi Arabia that have returned to Rakhine state³⁸. For instance, Atuallah Abu

Ammar Jununi is the son of a Rohingya from Rakhine state who immigrated first to Karachi and then to Saudi Arabia. Atuallah Abu Ammar Jununi grew up in Mecca, where he received a madrasa education. He allegedly came back to Myanmar following the 2012 violence against Rohingyas, and he may have received training in Pakistan³⁹.

The *Tatmadaw* and the police launched a major operation to recover looted weapons and arrest the activists involved in the attack. They portrayed the attackers as a group of foreign or Bengali terrorists⁴⁰. The counter-offensive campaign included reports of the government arming local militias of Rakhine Buddhist nationalists to contain the ‘Muslim threat’⁴¹.

Further ARSA attacks and counter-offensive campaign against Rohingyas in 2017

In August 2017, ARSA launched a second wave of larger and more coordinated attacks with 150 fighters targeting around 30 of the Border Guard Police posts across several townships in northern

Rakhine state. At least 77 Rohingyas, although it is not clear whether they were rebels or civilians, and 12 members of the Burmese security forces were reported killed⁴².

In response to the ARSA attack, the *Tatmadaw* and the Border Guard Police, supported by the local militias, conducted a brutal counter-offensive campaign⁴³. Maungdaw Township, which was the focus of ARSA attacks, bore the brunt of the military response, leading to large numbers of Rohingyas to flee the township⁴⁴. Buthidaung Township has been less affected directly by the military campaigns, but the government has restricted humanitarian aid, which has left Rohingyas with no choice but to escape the untenable living conditions. In Rathedaung Township, which is primarily Rakhine Buddhist and where the ARSA conducted one of their attacks on the 25th of August 2017, the military campaign was accompanied by communal anti-Muslim violence. Subsequently, according to International Crisis Group, most of the Rohingyas have left the township⁴⁵. •



31 Human Rights Watch, 2013. ‘All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State’. Human Rights Watch, ed., New York: Human Rights Watch. Available at http://www.hrw.org/sites/default/files/reports/burma0413webwcover_0.pdf

32 Ibrahim, A., 2016. The Rohingyas: Inside Myanmar’s Hidden Genocide. Hurst. Available at <https://books.google.co.tz/books?id=6OdGjgEACAAJ>; Human Rights Watch, 2013. ‘All You Can Do is Pray ’ Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State’. Human Rights Watch, ed., New York: Human Rights Watch. Available at http://www.hrw.org/sites/default/files/reports/burma0413webwcover_0.pdf

33 Human Rights Watch, 2012. ‘The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma’s Arakan State’. Human Rights Watch, ed., New York: Human Rights Watch.

34 Ibid.

35 Solomon, F. ‘Nine Police Have Been Killed in Border Post Attacks in Western Burma’. The Times. 10 October 2016. Available at <http://time.com/4524441/burma-myanmar-border-attacks-rakhine-rohingya/>

36 Edroos, F. ‘ARSA: Who are the Arakan Rohingya Salvation Army?’ Aljazeera. 13 September 2017. Available at <http://www.aljazeera.com/news/2017/09/myanmar-arakan-rohingya-salvation-army-170912060700394.html>

37 International Crisis Group, 2016. Myanmar: A New Muslim Insurgency in Rakhine State, (December), pp.1–30. Available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state>

38 Ibid.

39 Ibid.

40 McPherson, P. ‘We Die or They Die: Rohingya Insurgency Sparks Fresh Violence in Myanmar’.

41 International Crisis Group, 2016. Myanmar: A New Muslim Insurgency in Rakhine State, (December), pp.1–30. Available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state>

42 Aljazeera. ‘Deadly Clashes Erupt in Myanmar’s Restive Rakhine State’. Aljazeera. 26 August 2017. Available at <http://www.aljazeera.com/news/2017/08/deadly-clashes-erupt-myanmar-restive-rakhine-state-170825055848004.html>

43 International Crisis Group, 2017. Myanmar’s Rohingya Crisis Enters a Dangerous New Phase, Brussels.

44 Ibid.

45 Ibid.

THE HUMAN RIGHTS VIOLATIONS AND HUMANITARIAN CRISIS FACED BY ROHINGYAS

As a result of the long-standing political and socio-economic discriminations against Rohingyas, as well as the counter-insurgency campaigns in the northern Rakhine state, several organisations have documented extended human rights violations. For instance, Amnesty International has documented unlawful killings, laying of landmines, rape and other crimes of sexual violence as a result of the military campaign⁴⁶. In addition, the Burmese Rohingya Association UK has reported that the government has restricted aid as a way to drive Rohingyas out of the country. Similarly, a UN report released in October 2017 has detailed the brutal *Tatmadaw's* 'clearance operation', citing restrictions on food, limited access to medical care and arbitrary arrests⁴⁷. The following will detail the human rights violations faced by the Rohingyas.

4.1 HUMAN RIGHTS VIOLATIONS AGAINST ROHINGYAS IN MYANMAR

A stateless group: Denial of the right to a nationality and to legal documentation

No citizenship or nationality

Most Rohingyas have been deprived of a nationality since the 1982 Citizenship Law, the Burmese legal citizenship framework based on a *jus sanguinis* criteria. This law originally created a new form of national identification with three categories of citizens and their corresponding identity cards called the Citizenship Scrutiny Card (CSC): 'citizens' (pink card), who belong to the officially recognised 'national races' and who settled in Burma before the British colonisation in 1823 and were full citizens by birth; the 'associate citizens' (green card) for those whose citizenship application under the previous citizenship law was pending; and 'naturalised citizens' (blue card) for those who could furnish evidence of entry and residence in Myanmar before the independence, who could speak one of the national languages and whose children were born in Myanmar. Children could acquire full citizenship by descent if both of the parents were citizens⁴⁸.

Rohingyas, who were not recognised as a 'national race', but rather as 'foreigners' or 'Bengali', could not fulfil the requirements for a full citizenship. Therefore, Rohingyas could only access citizenship as 'associate citizens' or as 'naturalised citizens'. However, as they could not submit the required documentation or comply with the language requirements, the 1982 Citizenship law left large proportions of Rohingyas with no citizenship and no CSCs.

In 1995, the Burmese authorities issued Temporary Registration Cards (TRCs), also named the 'white cards', for Rohingyas with no CSCs while their citizenship status was determined. The 'white cards' conferred limited civic rights and were a proof of residence for Rohingyas in Myanmar. The TRCs were



the primary form of identification of the Rohingyas, although they were not legally recognised as a proof of citizenship. In March 2015 President Thein Sein announced they would expire, making Rohingyas effectively stateless and revoking any of their civic rights, such as the right to vote.

Rohingyas were then invited to apply to a 'citizenship verification process' and for an Identity Card of National Verification (ICNV), a temporary card valid for two years while the authorities verified the type of citizenship individuals were entitled to. However, the participation of Rohingyas in the process has been low, as few of them have the required documents to obtain full citizenship⁴⁹. The Rohingyas who have not been recognised as 'citizens' do not have standing in Myanmar courts. They also have limited access to economic opportunities, education and property ownership⁵⁰. In addition they do not have access to the fundamental rights that promote equality, non-discrimination, education and health care and protect them from forced labour and inequality, as these are reserved for 'citizens'.

Lack of legal documentation

In addition to rendering Rohingyas stateless, Amnesty International has reported that the Burmese authorities have been stripping the Rohingyas of any legal and administrative documentation that could allow them to later acquire citizenship or exercise key human rights⁵¹.

46 Amnesty International, 2017. 'Caged Without a Roof' Apartheid in Myanmar's Rakhine State, London.

47 UN News Centre. 'Attacks against Rohingya a ploy to Drive Them Away; Prevent Their Return. UN Rights Chief'. UN News Centre. 11 October 2017. Available at <http://www.un.org/apps/news/story.asp?NewsID=57856#.WiqNLkpl9nl>

48 Amnesty International, 2017. 'Caged Without a Roof' Apartheid in Myanmar's Rakhine State, London.

49 Ibid.

50 Lindblom, A. et al, 2015. Persecution of the Rohingya Muslims: Is genocide Occurring in Myanmar's Rakhine State? A Legal Analysis. Available at http://ec.europa.eu/echo/files/aid/countries/factsheets/rohingya_en.pdf

51 Ibid.



First, all people in Rakhine state had to gain permission to obtain marriage licences. However, this law was enforced only against the Muslim population. To obtain such licences, men must shave their beards and women must remove their religious head scarves, which is against their religious customs, for the licence photograph. Similarly, from 1993, the Burmese authorities have stopped issuing birth certificates for Rohingya families who have more than two children⁵².

Furthermore, in Myanmar the Ministry of Immigration and Population and the Ministry of Home Affairs issue household lists that account for members of the household, even those with no birth certificate, and should be updated yearly. The household list is a proof of residency although it does not provide a legal status⁵³. Since 2016, Amnesty International has reported that the Burmese authorities have not visited the villages affected by violence to register newborns and update the household lists⁵⁴. In other areas of Rakhine state, where the authorities have been able to access the villages, they have stopped adding newborn babies’ names to the household list. Instead they have required families to submit a range of documents for an application to add new-borns to the household list, including a valid marriage licence, a copy of the TRCs, a letter of recommendation from the village authority and ‘a mutual agreement between heads of household’⁵⁵. This process has

placed further administrative and financial burdens on families, and even when they have met the requirements, it is unclear whether the process has led to any official form of documentation for newborns. Hence, although there are no relying figures, the UN Committee on the Rights of the Child has expressed concern about the large number of unregistered children⁵⁶.

Similarly, the Burmese authorities have deprived Rohingyas from legal documentation by deleting names of individuals who had to flee violence or had to move for economic reasons and were not present during the annual population and household list checks. Once they are deleted from the household list, individuals are not permitted to return and stay in their household or they could face legal action.

These practices infringe on the freedom of movement and international laws providing that one may not be arbitrarily deprived of the right to enter one’s own country, and they could also potentially leave thousands of Rohingyas who have fled to neighbouring countries with no rights to return to their homes⁵⁷.

4.2 VIOLATIONS OF THE RIGHT TO FREEDOM OF MOVEMENT

The Rohingyas have faced serious limitations to their freedom of movement, as they are considered by the government as foreigners and they must abide by the 1940 Foreigners Act, which requires a person to have a photographed licence to move freely in the country⁵⁸.

In response to the 2012 violence, the Burmese authorities have required Rohingyas residing in Rakhine state to obtain official travel permits to travel between townships and outside the Rakhine state⁵⁹. To obtain the travel permit, the individuals need



to submit a form at least a week in advance called Form 4, along with passport photographs, a letter of recommendation from their village authorities, a copy of the household list, two letters of recommendation from neighbours and money to pay a fee. If they obtain the travel permit, upon arrival to the township of destination, Rohingyas have to register to the local immigration office and inform them of their departure. Since the ARSA attacks on the border posts, the issue of travel permits has been scarcer⁶⁰.

In addition, the restriction on movement has been even tougher on internally displaced Rohingyas. Following the eruption of violence in 2012, it is estimated that 120,000 Rohingyas were displaced to 36 informal camps in Rakhine state, in particular the nearby Sittwe town. Rohingyas are not allowed to leave the camps without permission⁶¹.

4.3 VIOLATIONS OF ECONOMIC AND SOCIAL RIGHTS

According to Amnesty International, Rohingyas face discrimination in access to education, health services and livelihood.

Discrimination in access to education

Rohingya children have faced serious challenges in pursuit of education, especially since 2012. Rohingya students, and more generally Muslim students, are not allowed to attend government schools with Buddhist Rakhine students, and government teachers refuse to go to Muslim schools in Rohingya villages, citing security issues. Furthermore, as they face restriction of movement, Rohingya students are not allowed to go to other townships to acquire an education. As a

52 Amnesty International, 2017. ‘Caged Without a Roof’ Apartheid in Myanmar’s Rakhine State, London.
53 The Arakan Project, 2016. Key Issues Concerning the Situation of Stateless Rohingya Women and Girls in Bangkok.
54 Amnesty International, 2017. ‘Caged Without a Roof’ Apartheid in Myanmar’s Rakhine State, London.
55 Ibid.
56 Ibid.
57 Ibid.
58 Lindblom, A. et al, 2015. Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar’s Rakhine State? A Legal Analysis. Available at http://ec.europa.eu/echo/files/aid/countries/factsheets/rohingya_en.pdf
59 Amnesty International, 2017. ‘Caged Without a Roof’ Apartheid in Myanmar’s Rakhine State, London.

60 Ibid.
61 Ibid.

result, some Rohingya communities have established their own schools with volunteer teachers.

In addition, since 2012, Rohingyas and more generally Muslim students have not been permitted access to higher education in the Rakhine state through the state's only university in Sittwe. With the restriction on freedom of movement, Rohingya students do not have the possibility to seek a higher education in other states of Myanmar, and they are in turn simply banned from higher education⁶².

Restrictions on livelihoods and land grabbing

Several factors have led the Rohingyas to be the poorest ethnic minority in Myanmar, with 78% of households living below the poverty line of \$1.25 a day, compared to the national average of 37.5%, according to the World Bank⁶³. This has led to high level of food insecurity and malnutrition. According to the World Food Programme, in the Maungdaw District, home to a majority of Rohingyas, 225,800 people are suffering from hunger and are in need of humanitarian assistance over a total population of 880,000⁶⁴.

Restrictions on movement prevent Rohingyas from accessing employment opportunities. Rakhine state has one of the highest unemployment and poverty levels in Myanmar. The Rohingyas are in particular suffering from unemployment and lack of livelihood opportunities as their lack of legal documentation has prevented them from obtaining access to land in a state where the main source of income is agriculture⁶⁵. Also, since the 1990s the *Tatmadaw* has been grabbing vast stretches of land from smallholders in ethnic areas of Myanmar in order to

settle military personnel or to establish *Tatmadaw* farms and camps. Land has also been confiscated from Rohingyas since the 1990s to implement the *Na Ta La* programme consisting of building new 'model villages' to relocate ethnic Rakhine and other non-Rohingya people⁶⁶. The programme was run by the Ministry for Development of Border Areas and National Races, and, according to state media, there are currently 39 model villages in the three northern townships of Rakhine state⁶⁷. In addition, when the Rohingyas flee to a neighbouring country or are displaced from conflict zones, their lands are confiscated by the *Tatmadaw* and it is unclear whether they will be able to reclaim their farmland⁶⁸. Thus, most of the Rohingya population from northern Rakhine state is landless and deprived of any source of income⁶⁹.

4.4 VIOLATIONS ON RELIGIOUS AND POLITICAL RIGHTS

Restrictions of participation in public life

Since 2012, in the lead up to the 2015 elections, there have been serious restrictions on the Rohingyas' political rights. The first step towards a greater exclusion of Rohingyas from political life was their exclusion from the 2014 census. During the census, Rohingyas were expected to identify as 'Bengali', who are considered by the government as foreigners and illegal migrants. This excluded Rohingyas de facto from the census. The lack of legal documentations allowed the Burmese authorities to revoke their right to vote. Similarly, in the run up to the 2015 election, Rohingya candidates were disqualified on the basis of their citizenship status⁷⁰.



Restriction on religious rights

Since the 2012 violence and with the growth of anti-Muslim sentiment, there has been an intensification of restrictions on Rohingyas' freedom to practice their religion. In northern Rakhine state, in particular in Maungdaw and Buthidaung townships, Burmese authorities have imposed curfew orders, preventing the Rohingyas from praying in a group as laws prohibit more than four people from gathering in public. According to Amnesty International, there are also restrictions on religious teaching in mosques and madrasas and prohibitions from using speakers for the call of prayer. Several mosques have been closed, in particular the mosque of Sittwe⁷¹.

4.5 VIOLATIONS OF PHYSICAL INTEGRITY RIGHTS AS A RESULT TO THE CONFLICT

As a result of the military campaign against ARSA, international organisations have reported a sharp increase in the violation of physical integrity rights.

Unlawful killings

The OHCHR Rapid Response Team, Amnesty International and Fortify Rights have all recorded the multiplication of unlawful killings in the hours following the ARSA attacks on the 25th of August 2017. The Burmese security forces, sometimes working with local Buddhist Rakhine militias and mobs, probably surrounded Rohingya villages and opened fire indiscriminately⁷². They also shot fleeing Rohingyas at close range. There have also been witnesses of Rakhine Buddhist individuals killing Rohingyas with knives and machetes. The OHCHR mission received information of the presence of 100 bodies of Rohingya victims, including 42 children in the Naf River, which goes from Myanmar to Bangladesh, from the 31st of August to the 20th of September⁷³.

Sexual violence in conflict

The OHCHR Rapid Response Team, Amnesty International, Fortify Rights and Human Rights Watch have reported the use of sexual violence by the Burmese

62 Amnesty International, 2017. 'Caged Without a Roof' Apartheid in Myanmar's Rakhine State, London.

63 IOM, 2016. IOM Appeal Myanmar Rakhine State. April 2016-April 2018. Available at https://www.iom.int/sites/default/files/country_appeal/file/IOM-Myanmar-Appeal-April-2016-April-2018.pdf; World Bank Group, 2014. 'Myanmar: Ending Poverty and Boosting Shared Prosperity in a Time of Transition.' Myanmar: WBG. November 2014, pp. 21-23.

64 Ibid.

65 Advisory Commission on Rakhine State, 2017. Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine. Final Report of the Advisory Commission on Rakhine State. Available at <http://www.rakhinecommission.org/>

66 South, A., 2007. Displacement and Dispossession: Forced Migration and Land Rights Geneva: (COHRE), Centre on Housing Rights and Evictions.

67 Global New Light of Myanmar, 'Rebuilding Houses in Maungdaw'. Global New Light of Myanmar. 15 October 2017. Available at www.globalnewlightofmyanmar.com/rebuilding-houses-maungdaw

68 International Crisis Group, 2017. Myanmar's Rohingya Crisis Enters a Dangerous New Phase, Brussels; Amnesty International, 2017. 'Caged Without a Roof' Apartheid in Myanmar's Rakhine State, London. Advisory Commission on Rakhine State, 2017. Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine. Final Report of the Advisory Commission on Rakhine State. Available at <http://www.rakhinecommission.org/>

69 Amnesty International, 2017. 'Caged Without a Roof' Apartheid in Myanmar's Rakhine State, London.

70 Ibid.

71 Ibid.

72 Amnesty International, 2017. 'Caged Without a Roof' Apartheid in Myanmar's Rakhine State, London; Fortify Rights, 2017. 'They Tried To Kill Us All' Atrocity Crimes against Rohingya Muslims in Rakhine State Myanmar; UN Human Rights Office of the High Commissioner, 2017. Mission Report of OHCHR Rapid Response Mission to Cox's Bazar, Bangladesh. New York; Human Rights Council. Statement by Mr. Mazuki Darusman, Chairperson of the International Fact-Finding Mission on Myanmar. 19 September 2017. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22099&LangID=E>

73 UN Human Rights Office of the High Commissioner, 2017. Mission Report of OHCHR Rapid Response Mission to Cox's Bazar, Bangladesh. New York.



military⁷⁴. Although the extent of the use of sexual violence is difficult to assess, testimonies have accounted soldiers gang-raping women and girls in Rohingya villages. According to Fortify Rights, soldiers went systematically from house to house, gathering the village population in a public space and selecting girls, who were then raped⁷⁵. There were also records of other forms of sexual violence, such as humiliating body searches⁷⁶.

Sexual violence in conflict can be prosecuted by the International Criminal Court as a crime against humanity, a war crime or an act of genocide. It can be prosecuted as a crime against humanity if the conduct was committed as part of a systematic attack on a civilian population. It may be a war crime if it was associated with an international armed conflict. Finally, it may be recognised as an act of genocide if it is committed with intent to destroy an ethnic, racial or religious group⁷⁷. Several UN Security Council Resolutions have also recognised and condemned the use of sexual violence as a weapon of war⁷⁸.

Forced displacement and destruction of property and livelihoods

According to the OHCHR Rapid Response team there is a ‘well organised, coordinated and systematic pattern of destruction by the Myanmar security forces (sometimes with the support of individual Rakhine Buddhist villagers) of the villages, homes and property belonging to Rohingyas and the forced displacement of large sections of the Rohingya population from their dwellings and villages in northern Rakhine state from 25 August onwards’⁷⁹. Amnesty International has come to a similar conclusion by analysing data from satellite images. It has found that Burmese authorities have burnt Rohingya properties in at least 156 locations in September 2017⁸⁰. The burning, according to Amnesty International, is ‘organised, widespread, consistent over time and across northern Rakhine state’⁸¹ and targets specifically Rohingya property and places of worship.

4.5 HUMANITARIAN CRISIS OF THE ROHINGYAS REFUGEES

The widespread and sustained nature of human rights violations against Rohingyas has created an unprecedented humanitarian crisis in Northern Rakhine state as well as in Bangladesh, where Rohingyas have been fleeing.

Cox’s Bazar

Location of refugee settlements

The violent outbreak in Rakhine state in August 2017 has driven an estimated 647,000 Rohingyas, out of an estimated one million total Rohingya population, to cross the border and seek refuge in Bangladesh; that means an estimated 65% of the total Rohingya population have been driven out of Rakhine state⁸². This wave of refugees joined the estimated

300,000 Rohingyas who had fled in earlier waves of displacement⁸³. Before the August 2017 violence, the number of Rohingyas in Bangladesh was estimated at 212,518. By December 2017 that number had quadrupled with a total Rohingya refugee population of 859,531⁸⁴. The Rohingya refugee population is highly vulnerable: among those who have fled, 65% are women and girls, and 60% of the refugee population are children⁸⁵.

Rohingyas are fleeing to the Cox’s Bazar district, which borders Rakhine state. They are mainly concentrated in two upazilas (Bangladesh administrative areas): Ukhia and Teknaf.

Before August 2017 there were two main Rohingya refugee camps, Kutupalong and Nayapara, which registered around 30,000 refugees. Most of the Rohingyas, around 65,080 according to the Inter Sector Coordination Group, were unregistered and



74 Human Rights Watch, 2017. All My Body Was in Pain, Sexual Violence against Rohingya Women and Girls in Burma. Human Rights Watch. New York. Available at https://www.hrw.org/sites/default/files/report_pdf/burma1117_web_1.pdf; ‘They Tried to Kill Us All’ Atrocity Crimes against Rohingya Muslims in Rakhine State Myanmar. Fortify Rights. Washington DC.

75 Fortify Rights, 2017. ‘They Tried To Kill Us All’ Atrocity Crimes against Rohingya Muslims in Rakhine State Myanmar, Washington; UN Human Rights Office of the High Commissioner, 2017. Mission report of OHCHR Rapid Response Mission to Cox’s Bazar, Bangladesh. New York.

76 Amnesty International, 2017. ‘My World Is Finished’ Rohingya Targeted in Crimes against Humanity in Myanmar, London.

77 Human Rights Center UC Berkeley School of Law, 2015. ‘The Long Road: Accountability for Sexual Violence in Conflict and Post-Conflict Settings’.

78 United Nations, 2002. Women, Peace and Security. Study Submitted by the Secretary-General Pursuant to Security Council Resolution 1325 (2000). Recherche. United Nations Publication. <http://www.lavoisier.fr/livre/notice.asp?id=OKRWAAA23K6OWH>; United Nations Security Council, 2009. Resolution 1888 (2009). S/RES/1888 (2009).

79 UN Human Rights Office of the High Commissioner, 2017. Mission Report of OHCHR Rapid Response Mission to Cox’s Bazar, Bangladesh. New York.

80 Amnesty International, 2017. ‘My World Is Finished’ Rohingya Targeted in Crimes against Humanity in Myanmar, London.

81 Amnesty International, 2017. ‘My World Is Finished’ Rohingya Targeted in Crimes against Humanity in Myanmar, London.

82 Inter Sector Coordination Group, 2017. Situation Update: Rohingya Refugee Crisis. ISGG. 12 December 2017. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/171212_iscg_sitrep_one_pager_final.pdf

83 The first wave of displacement occurred in the 1990s following the increase human rights violations by the Burmese army, around 250,000 Rohingyas fled to Bangladesh. However, 230,000 refugees returned to Myanmar in the 1990s. The violence in 2012 displaced 140,000 people and drove 87,000 Rohingya out of the country.

84 Ibid.

85 Humanitarian Response Plan, 2017. Rohingya Refugee Crisis, Available at https://reliefweb.int/sites/reliefweb.int/files/resources/2017_HRP_Bangladesh_041017_2.pdf

lived outside the camps in host communities⁸⁶. After August 2017 the two formal refugee camps grew slightly with a total population of 45,306. Most of the new Rohingya refugees settled in the Kutupalong-Balukhali Expansion Site around the Kutupalong refugee camp, where the Bangladesh government allocated 2,000 acres to accommodate the swelling numbers of refugees. As of the 11th of December 2017, 546,867 Rohingyas were accounted for in the Kutupalong Balukhali Expansion Site. New refugees have also taken refuge in three makeshift settlements⁸⁷. The International Organisation for Migration (IOM) also recorded 21 spontaneous settlement sites. In addition to the population living in the camps and settlements, 78,568 Rohingyas have been absorbed by the host community⁸⁸.

Rohingya refugees' needs

The refugees who arrived since August 2017 have come with few possessions and are heavily relying on humanitarian assistance. According to the IOM, 68% of the refugee sites have received assistance from international organisations and NGOs, and 32% have received assistance from Bangladeshi authorities. However, the new wave of refugees has arrived in areas where there is a lack of adequate land and infrastructures. There is for instance a limited access to roads, with only 27% of the camps being accessible by small or big vehicles. This greatly constrains the distribution of humanitarian aid.

Yet, the humanitarian needs are wide and urgent⁸⁹:

- **Lack of adequate shelter:** Only 68% of sites have received shelter assistance in the form of plastic sheets, bamboo, fixing materials, mosquito nets, blankets and mats. The vast majority of the new Rohingya refugees have settled in new

spontaneous sites, which have no sheltered spaces, and they are staying in the open air. The new arrivals who can afford shelter usually build bamboo structures and cover them with low quality plastic, which does not offer adequate protection. Adequate shelter is nonetheless critical, as according to the UN Humanitarian Response Plan, poor living conditions present a major risk in an area subject to heavy cyclone and monsoon seasons⁹⁰. In addition, there is no access to water or sanitation facilities.

- **Food insecurity:** Northern Rakhine state has one of the highest malnutrition rates in Myanmar with 225,800 people suffering from hunger⁹¹. Hence, Rohingyas arriving from Myanmar are already in need of food support. Similarly, before the 2017 wave of refugees, Cox's Bazar already suffered from food insecurity amongst the existing refugee and the host communities⁹². This combined with a lack of means upon arrival to buy basic items including food, cooking utensils or fuel increases the malnutrition rates of Rohingya refugees. According to the UN Humanitarian Response Plan, up to 90% of the new refugees eat just one meal a day⁹³.

Nutritional vulnerabilities amongst Rohingya children under the age of five, pregnant or lactating women and adolescent girls are very high, putting them at risk of increased mortality and poor development.

- **Lack of water, sanitation and hygiene facilities (WASH):** As a result of the large influx of new refugees, the already weak WASH facilities are under immense strain. There is limited access to portable water and to latrines in most of the settlements. The proximity of wells to latrines



poses great health concerns, and due to the limited access to wells, households tend to use unprotected water sources. According to the UN Humanitarian Response Plan, there is also a problem of sludge management⁹⁴.

- **Lack of healthcare facilities:** Rohingya refugees crossing the border bear physical and psychological wounds. Many arrivals have violence-related injuries, severely infected wounds and obstetric complications. As of the 15th of November 2017, according to the World Health Organisation (WHO), around 1.2 million people are estimated to be in need of health assistance in Cox's Bazar. This includes the Rohingya refugees and their host community. In October 2017, the WHO graded the health crisis as a level 3 emergency, the highest rating possible. The health crisis results from the lack of access to health care facilities because refugee settlements are remote and located on hilly terrain with no infrastructures or roads linking them to major towns. In addition, the government

healthcare facilities in the main towns in Cox's Bazaar, Teknadh and Ukhia Upazilla, are not equipped to handle the large influx of Rohingya refugees. According to the WHO, the existing health facilities reported a 150-200% increase in patients, overwhelming their operational capacities⁹⁵.

The lack of access to healthcare facilities represents a serious health threat, as the crowded living conditions, inadequate water and sanitation facilities (WASH) and low vaccination coverage are significant risks for epidemic outbreak. There is for instance a threat of a measles epidemic. In addition, there is an acute lack of maternal health care support as well as reproductive health services and sexual and gender-based violence support, which leaves women and children in vulnerable situations⁹⁶.

Furthermore, there is a lack of infrastructures to treat mental health issues of refugees who have been confronted with traumatic situations.

86 Tan, V. & Dobbs, L. 'Two Camps of Thought on Helping Rohingya in Bangladesh'. UNHCR. January 2013. Available at <http://www.unhcr.org/news/latest/2013/1/5106a7609/camps-thought-helping-rohingya-bangladesh.html>

87 Humanitarian Response Plan, 2017. Rohingya Refugee Crisis. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/2017_HRP_Bangladesh_041017_2.pdf

88 Inter Sector Coordination Group, 2017. Situation Update: Rohingya Refugee Crisis. ISGG. 12 December 2017. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/171212_iscg_sitrep_one_pager_final.pdf

89 Humanitarian Response Plan, 2017. Rohingya Refugee Crisis. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/2017_HRP_Bangladesh_041017_2.pdf

90 Ibid.

91 WFP, 2017. Food Security Assessment in Northern Part of Rakhine State. Final Report. Humanitarian Response Plan, 2017; Rohingya Refugee Crisis, Available at https://reliefweb.int/sites/reliefweb.int/files/resources/2017_HRP_Bangladesh_041017_2.pdf

92 Ibid.

93 Ibid.

94 Ibid.

95 World Health Organisation, 2017. Bangladesh/Myanmar: Rakhine Conflict 2017. World Health Organisation. Available at <http://www.searo.who.int/publichealthsituationanalysis29092017.pdf?ua=1>

96 Ibid.



- **Protection concerns:** Many refugees have experienced violence and traumatic events which could need follow up referrals to appropriate services to ensure the protection of the most vulnerable.

The overcrowded settlement areas are conducive to gender-based violence, including rape, human trafficking and survival sex for women who have limited access to safe shelters.

Similarly many children arrive in the camps as orphans separated from their parents and have witnessed or experienced brutal acts of violence, increasing their vulnerability to violence, abuse and exploitation.

Furthermore, the absence of identity documentation and legal status impedes access to justice for Rohingyas in a district where high levels

of criminality linked to settlement economies have been recorded. According to the UN Humanitarian Response Plan, drug trafficking has been a long-standing issue. Human trafficking has also been a source of income for the displaced Rohingya community⁹⁷. The established criminal networks involved in human and drug trafficking represents a serious threat for the new influx of Rohingya refugees.

- **Limited access to education:** An estimated 60% of the Rohingya refugees are children⁹⁸. Yet, there is a decrease in schools and learning, centres as they have been used as temporary shelters for the new refugees. In addition, the lack of national identity documentation or legal status impedes Rohingya children from enrolling in government schools in Bangladesh. Therefore there are 453,000 children in need of a protective environment ensuring their education and safety⁹⁹.

Agencies providing humanitarian assistance in Cox's Bazar

Several organisations have mobilised to provide humanitarian assistance to Rohingyas in Cox's Bazar.

Inter-Sectoral Coordination Group (ISCG): The International Organisation for Migration (IOM) has since 2013 established and led the ISCG under the UN Resident Coordinator. The ISCG coordinates humanitarian aid of several sectors, including the following:

- Health from World Health Organisation (WHO);
- Shelter, NFI;
- Site Management from IOM;
- WASH from Action Contre la Faim (ACF);
- Education and child protection from United Nations Children's Fund (UNICEF);
- Food security from World Food Programme (WFP);

- Protection from UNHCR, the UNHCR is registering the new arrivals and relocating them in the newly constructed shelter site next to the Kutupalong refugee camp.
- Gender-based violence protection from United Nations Population Fund (UNFPA);
- Communication with communities and information management from IOM;
- Protection from sexual exploitation and abuse from IOM
- Logistics and emergency telecommunications from WFP.

Other NGOs working in Cox's Bazar are MSF, PHALS; MUKTI; ACLAB; BGS; Khan; Islamic Relief; FDSR; BNWLA; BRAC; World Vision; BuroBangladesh; Dak Bhanga; EKATA; ANANDO; CODEC; SARPV; NACOM; Bandhu Social Welfare Society; COAST; RIC; Marie Stopes Bangladesh; IPAS Bangladesh; YPSA; Handicap International; CARITAS; OPKA; Partners in Health and Development; NONGOR; Family Planning Association of Bangladesh; PODOKKEP; SHED; GONOSHASTHO; Leprosy Mission International; PULSE Bangladesh¹⁰⁰.



4.7 ROHINGYA REFUGEES IN INDIA, THAILAND AND MALAYSIA

In addition to the large influx of refugees in Bangladesh, there are Rohingya refugee communities in India, Thailand, Malaysia and Indonesia.

India

Since 2012, at least 16,500 Rohingyas have fled to India via Bangladesh and have been registered by the UNHCR. However, according to the Indian Minister of State for Home Affairs Kiren Rijiju, there is overall an estimated 40,000 Rohingya refugees in India as of August 2017¹⁰¹. The Rohingyas are the second largest refugee population in India after Afghans. Rohingyas are residing in the Indian states of Jammu, Kashmir, Telangana, Haryana, Uttar Pradesh, Delhi and Rajasthan.

The UNHCR in India issues identity cards to registered refugees and documents to asylum seekers, which protects them from harassment, arbitrary arrests and detention. The Indian authorities, although they are not signatories of the 1961 Convention on Refugees, have issued long-term visas on a case-by-case basis to refugees as a way to ease the Rohingyas' access to public services, bank accounts and employment. Nevertheless, vast numbers of the Rohingyas in India remain unregistered and live in impoverished neighbourhoods in tented settlements and are often underpaid and exploited. The Rohingyas that have not been registered and have no identity documents cannot send their children to schools or access public services.

Since 2016, Rohingya refugees in India, in particular in the state of Jammu, have been targeted by right wing Hindu groups. According to the local non-governmental organisation the Development and Justice Initiative (DAJI), at least 5,700 Rohingya live around the city of Jammu in the Indian administered Kashmir¹⁰². However, they have recently been targeted by a hate campaign led by the Jammu and Kashmir National Panthers Party, led by the Harsh Dev Singh. Banners from the party stating 'Rohingya,

97 Humanitarian Response Plan, 2017. Rohingya Refugee Crisis. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/2017_HRP_Bangladesh_041017_2.pdf

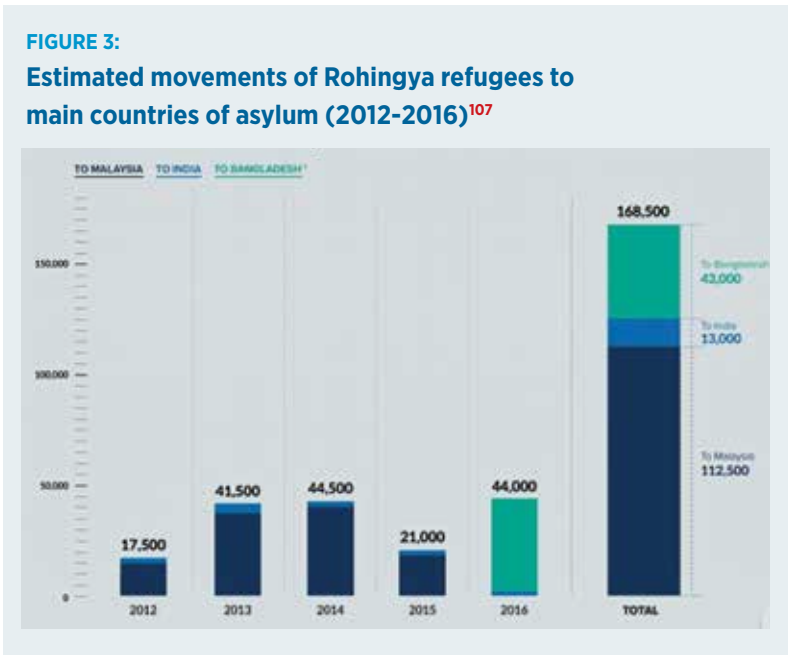
98 Ibid.

99 Ibid.

100 NGO Cox's Bazar, 2017. NGO's Work in Cox's Bazar. Available at <http://ngocoxsbazar.gov.bd/ngo-list-2/>

101 Human Rights Watch, 2017. 'India: Don't Forcibly Return Rohingya Refugees'. Available at <https://www.hrw.org/news/2017/08/17/india-dont-forcibly-return-rohingya-refugees>

102 DAJI. 'Development and Justice Programme'. Available at <http://www.daji.org.in/programs.html>



Bangladeshi QUIT JAMMU’ have been put up in the city of Jammu, and a protest against Rohingyas took place in February 2017. Harsh Dev Singh has denounced a ‘conspiracy to reduce Dogra population to a minority in their bastion Jammu by engineering demographic changes’¹⁰³. He warned against the settlements of Rohingyas, who could be a security threat for India.

Furthermore, since the August 2017 attacks on the Rohingyas in Myanmar, India has threatened to deport 40,000 Rohingya refugees. In September 2017 the Home Minister Kiren Rijiju has stated in the media that ‘whether the Rohingyas are registered under the United Nations Human Rights Commission or not, they are illegal immigrants in India...as per law they stand to be deported’¹⁰⁴. He also told the parliament in August 2017 that the central government has directed state authorities to identify and deport Rohingyas, as he argued that the arrival of new Rohingya refugees is a burden on the resources of the country and aggravates security challenges¹⁰⁵.

Rohingya Migrants boat crisis in Bay of Bengal and Andaman Sea

In addition to land migration, Rohingyas have fled persecution through sea routes towards Thailand, Indonesia and Malaysia. Although these migration flows existed before, they have tripled from 2012 to 2015, following the 2012 crackdown on Rohingyas (c.f. Figure 2)¹⁰⁶.

The Rohingyas often flee by sea alongside Bangladeshi migrants seeking economic opportunities. Boat journeys are organised by human trafficking or smuggling networks. According to Amnesty International, the Rohingyas leaving by boat are victims of grave

human rights abuses by traffickers, including beating, deprivation of food and water, detention and extortion¹⁰⁸. This combined with the hardship of the journey results in high fatality rates. In fact, the fatality rate in the Bay of Bengal and Andaman Sea is similar if not superior to the fatality rates of migration movement across the Mediterranean Sea (between 0.6% and 1.6%)¹⁰⁹. It is estimated that between 2013 and 2015 1.2% of the migrants died at sea – that is 1,800 Rohingyas.

Over the past decade, the Thai government has responded to the sea migration by a ‘push-back policy’. This means that Thai authorities prevent vessels of Rohingya refugees from landing on Thai territory. In 2008, the Thai authorities pushed back 1,000 Rohingyas at sea with little food and water after detaining them for two days on a deserted island. Following public condemnation of this push back strategy, the Thai government slightly changed its policy and now provides humanitarian assistance to Rohingyas at sea before redirecting them towards

Malaysia. They nevertheless dismissed proposals to set up temporary centres, and incidents against Rohingyas have repeatedly occurred. In 2013, sailors from the Thai Navy fired at a group of Rohingya refugees who were pushed back at sea after being in navy custody, causing at least two deaths, according to Human Rights Watch¹¹⁰. In 2014 Thailand announced they had deported 1,300 Rohingyas back to Myanmar¹¹¹. Finally, in 2015 trafficking camps and mass graves of Rohingyas were discovered in southern Thailand at the Malaysian border. This led to a crackdown on trafficking networks, and in July 2017, a Thai court convicted 21 government officials for their involvement in trafficking and the deaths of Rohingya refugees.

In addition, Malaysia and Indonesia, who are not signatories of international conventions on refugees, have also regularly turned away boats of Rohingya refugees. However, on May 2015 after months of Rohingya boats being pushed off across the Andaman Sea and following the discovery of mass graves in Thailand, an emergency summit between the three countries was held in May 2015. Malaysia and Indonesia issued a statement offering shelter to 7,000 refugees found at sea on a temporary basis, but they would be expected to either resettle or repatriate¹¹². They also agreed to intensify search and rescue operations for migrants at sea. The Thai government stated that it would stop the push back policy, but it did not agree to provide shelters to the Rohingyas¹¹³. Following the 2017 crackdown on Rohingyas, Thailand has reiterated its intention to prevent Rohingyas from accessing the Thai territory. Thailand’s Internal Security Operations Command, chaired by Prime Minister General Prayut Chan-o-cha, announced that the Rohingya boats coming too close to the Thai coast would be intercepted. They would be given humanitarian assistance so they could continue their journey towards Malaysia and

Indonesia. If they are discovered in Thai territory, they would be detained in immigration detention centres¹¹⁴.

Since 2016 as a result of more effective law enforcement and increased costly fares demanded by smugglers and despite the escalation of the conflict and insecurity in Myanmar, new arrivals of Rohingyas by boat have considerably decreased (cf. Figure 2).

Rohingya communities in Thailand, Malaysia and Indonesia

Despite attempting to prevent Rohingya refugees to enter their territories, Malaysia, Thailand and Indonesia already host Rohingya communities.

Malaysia is home to an estimated 65,250 Rohingyas as of the end of November 2017¹¹⁵. The Rohingya community in Malaysia comprises newly arrived refugees as well as Rohingyas who have been informally settled in Malaysia for generations. They reside throughout Malaysia, notably in Kuala Lumpur, Penang, Johor, Kedah, Kelantan and Tenrengganu. In Indonesia around 2,000 Rohingyas have been accommodated in six shelters in Aceh and North Sumatra since 2015. In Thailand Rohingyas live within host communities in Mae Sot and Tak provinces along the Burmese border.

Refugees in the three countries are considered as illegal immigrants and are, therefore, at risk of arrest, detention and deportation. They also lack access to legal employment, which risks exploitation. The UNHCR is the main agency engaged in providing assistance to Rohingya refugees in the absence of government involvement in refugee protection¹¹⁶. IOM has also been active in facilitating resettlement or repatriation as well as promoting socio-economic self-reliance and better livelihood opportunities¹¹⁷. •

¹⁰³ The Indian Express. ‘JKNPP Protests Settlement of Immigrant Muslims in Jammu’. The Indian Express. 13 February 2017. Available at <http://indianexpress.com/article/india/jknpp-protests-settlement-of-immigrant-muslims-in-jammu-4497596/>

¹⁰⁴ Wu, H. ‘Indian Prime Minister Blames Rohingya Violence on Extremists’. CNN. 9 September 2017. Available at <http://edition.cnn.com/2017/09/06/asia/modi-india-myanmar-rohingya/index.html>

¹⁰⁵ The Hindu Herald. ‘UN Chief Concerned about India’s Plans to Deport Rohingya Refugees’. The Hindu Herald. 15 August 2017. Available at <http://www.thehindu.com/news/national/un-chief-concerned-about-indias-plans-to-deport-rohingya-refugees/article19496293.ece>

¹⁰⁶ UNHCR, 2017. Mixed Movements in South East Asia. 2016. UNHCR. Available at http://reporting.unhcr.org/sites/default/files/UNHCR%20-%20Mixed%20Movements%20in%20South-East%20Asia%20-%202016%20--%20April%202017_0.pdf

¹⁰⁷ Ibid.

¹⁰⁸ Amnesty International, 2017. Between a Rock and a Hard Place: Thailand’s Refugee Policies and Violations of the Principle of Non-refoulement. London. Available at <https://www.amnesty.org/en/latest/news/2017/09/refugees-in-thailand-forcibly-returned-to-danger/>

¹⁰⁹ Ibid.

¹¹⁰ Human Rights Watch. ‘Thailand: Fleeing Rohingya Shot in Sea by Navy’. Human Rights Watch. 13 March 2013. Available at <https://www.hrw.org/news/2013/03/13/thailand-fleeing-rohingya-shot-sea-navy>

¹¹¹ Time. ‘Thailand Sends 1300 Rohingya Back to Hell’. Time. 14 February 2014. Available at <http://time.com/7335/thailand-sends-1300-rohingya-back-to-hell/>

¹¹² Reuter. ‘Indonesia and Malaysia Agree to Offer 7,000 Migrants Temporary Shelter’. The Guardian. 20 May 2015. Available at <https://www.theguardian.com/world/2015/may/20/hundreds-more-migrants-rescued-off-indonesia-as-pope-calls-for-help>

¹¹³ Amnesty International, 2017. Between a Rock and a Hard Place: Thailand’s Refugee Policies and Violations of the Principle of Non-refoulement. London.

¹¹⁴ Phasuk, S. ‘Thailand Needs to Stop Inhumane Navy ‘Push-Back’’. Human Rights Watch. 22 September 2017. Available at <https://www.hrw.org/news/2017/09/22/thailand-needs-stop-inhumane-navy-push-backs>

¹¹⁵ UNHCR Malaysia, 2017. Figures at a Glance. Available at http://www.unhcr.org.my/About_Us-@-Figures_At_A_Glance.aspx

¹¹⁶ UNHCR, 2017. 2017 Planning Summary. Available at <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GA2017-Malaysia-eng.pdf>

¹¹⁷ IOM, 2015. Livelihoods and Community: Sustainable Solutions for the Forgotten Rohingyas and Host Communities in Mae Sot. Available at <https://thailand.iom.int/livelihoods-and-community-sustainable-solutions-forgotten-rohingyas-and-host-communities-mae-sot>

5

THE INTERNATIONAL AND REGIONAL RESPONSE

The following section will first outline the international legal framework and instruments that could address the situation. Then, it will present an overview of the regional and international responses to the crisis. The international human rights law and the international criminal law provide a framework to examine the legal implications of the crimes perpetrated against Rohingyas. If the alleged crimes reported by the UN human rights bodies, Kofi Anan's Advisory Commission for Rakhine State, Amnesty International, Human Rights Watch, MSF and Fortify Rights are proven to have occurred, it is likely that the human rights violations against Rohingyas amount to crimes against humanity and genocide. However, there are several challenges in prosecuting such crimes under international and domestic legal frameworks. In addition, the diplomatic response to the crisis from different international actors has been limited, and most key stakeholders have failed to take a strong and early stance.

5.1 MYANMAR AND ITS NEIGHBOURS' OBLIGATIONS TOWARDS ROHINGYA UNDER THE HUMANITARIAN AND HUMAN RIGHTS LEGAL FRAMEWORK

The alleged discrimination and crimes that Rohingyas face in Rakhine state are condemned by several provisions of the international human rights legal framework. Myanmar is a party to several human rights legal instruments. It is notably a signatory of the Geneva Conventions (ratified in 1992), the Convention on the Prevention and Punishment of the Crimes of Genocide (ratified 1949), the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Rights of the Child (ratified in 1991), the Convention on the Elimination of all Forms of Discrimination Against Women (ratified in 1997) and the Convention on the Rights of Persons with Disabilities (CRPD). Myanmar is also subject to the obligations under customary international law, which includes rights in the Universal Declaration of Human Rights. International law requires states to comply with their treaty obligations. These obligations often include requirements that states modify their domestic laws to ensure compliance with international human rights and humanitarian standards and obligations. However, regarding Rohingyas, the Burmese government has been in breach of these international obligations.

Right to a nationality

Most Rohingyas in Myanmar have been deprived of nationality and citizenship since 1982. Yet, the right to a nationality is promoted and protected by a series of international legal instruments, including the Universal Declaration of Human Rights Article 15, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The

UN General Assembly resolution 50/152 also recognises the prohibition of arbitrary deprivation of nationality.

The issue of nationality is also regulated in the Convention on the Reduction of Statelessness, the 1954 Convention relating to the Status of Stateless Persons and the Convention relating to the Status of Refugees. The 1954 Convention relating to the Status of Stateless Persons defines 'stateless person' as 'a person who is not considered as a national by any State under the operation of its law'¹¹⁸.

Right to non-discrimination

Non-discrimination is key to protecting the rights of minorities. According to the Universal Declaration of Human Rights, states should protect the human rights of all their citizens without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Similarly, the Convention of the Right of the Child states the right of children belonging to minorities to enjoy their culture, religion and use their language. The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires states to take positive measures to protect the rights and identity of minorities¹¹⁹.

The Burmese government's policies outlined in the previous section, as well the Burmese Constitution, suggest that Rohingyas in Rakhine state are likely to be deprived of fundamental rights on the basis of their membership to an ethnic minority. Such policies would be in violation of the right to non-discrimination promoted by international human rights law.

What is more, as a result of the discriminatory policies, Rohingyas are also allegedly denied fundamental rights defended by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, which Myanmar ratified in 2017. These include the right to marriage, to property, to freedom of peaceful assembly and association, to take part in the government of their country, to move freely, to work and to receive an education¹²⁰.

¹¹⁸ UN Human Rights Office of the High Commissioner. N.d. Right to a Nationality and Statelessness. Available at <http://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>

¹¹⁹ OHCHR. 'Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities'. Available at http://www.ohchr.org/Documents/Issues/Minorities/Booklet_Minorities_English.pdf

¹²⁰ United Nations. N.d. Universal Declaration of Human Rights. Available at http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf



International refugee law and non-refoulement

The 1951 Convention on the Status of Refugees and the 1967 Protocol provide an overview of the state's non-refoulement obligations with regard to refugees and asylum-seekers, and it is usually the main legal instrument for preventing refoulement of refugees.

The principle of non-refoulement is enshrined in Article 33 of the 1951 Convention, which is also binding on states party to the 1967 Protocol¹²¹.

Article 33(1) of the 1951 Convention:
'No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.'

However, Myanmar's neighbouring countries hosting Rohingya refugees are not signatories of the 1951 Convention of the Status of Refugees. Therefore, the treatment of refugees and asylum-seekers is left to their discretion.

Furthermore, the principle of non-refoulement is also protected by the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, which prohibits the removal of a person to a country where there are substantial grounds to believe that the person would be in danger of being subjected to torture¹²².

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Article 3:

1. No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Bangladesh, Indonesia, and Thailand have ratified the Convention and are, therefore, bound to the non-refoulement principle. India has signed it but not ratified it, and Malaysia has yet to sign it.

5.2 THE CHALLENGES TO INVESTIGATE AND PROSECUTE CRIMES AGAINST ROHINGYAS

Myanmar and neighbouring countries receiving Rohingya refugees are in breach of several human rights law obligations. Ensuring justice for serious violations is in the first place the responsibility of the states whose nationals are implicated in the violations. Under the international human rights regime, states have an obligation to investigate and prosecute human rights violations that implicate members of their forces. However, the lack of independence in the Burmese domestic legal system means that it is unlikely to conduct thorough investigations or prosecute human rights violations.

Furthermore, international legal bodies are limited in their ability to prosecute crimes against Rohingyas. Therefore, their perpetrators are likely to remain immune from prosecution for human rights violations.

The impunity of state-sponsored violations of human rights in Myanmar

The current Burmese judicial system was set up by the 2008 Constitution, which despite making efforts

to democratise prolonged the impunity of military officials.

Since the 2008 Constitution, the structure of the Burmese judiciary consists of civilian courts, military courts and constitutional tribunals. Within the civilian courts, the Supreme Court is the highest body of law with national legislative power. The judges in the civilian courts are appointed by the president with the approval of parliament and should be free from political affiliation. However, the military influence over the parliament, as military officials detain 25% of the seats in parliament, limits the independence of the justice system and creates a culture of impunity. In addition, under the 2008 Constitution the cases against military must be adjudicated in the military courts, in which the commander-in-chief has the final say¹²³. Therefore, the total independence of the judicial system in prosecuting affairs relating to the army is not guaranteed.

Furthermore, the domestic judicial system is not prone to prosecute Burmese authorities. For instance the 2008 Constitution includes an immunity clause that grants amnesty to regime officials who have committed crimes as part of their official duties. The clause does not specify which acts could be covered by the amnesty, permitting criminal liability for human rights abuses. The language of the constitution is ambiguous and it is not clear whether the amnesty can be applied for past, present or future actions¹²⁴.

121 UNHCR. N.d. Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Available at: <http://www.unhcr.org/4d9486929.pdf>

122 United Nations Human Rights. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

123 International Centre for Transitional Justice, 2009. Impunity Prolonged. Burma and Its 2008 Constitution. New York.

124 Ibid.



The culture of impunity for military authorities has been particularly discernible in the reaction of the Burmese government to the Rohingya crisis. In 23 May 2017, the Burmese army announced that its investigation into alleged military abuses during the crackdown on Rohingyas in 2016 in Rakhine state uncovered no wrong-doing except for two minor incidents¹²⁵. Similarly, in November 2017, the *Tatmadaw*, the Burmese army, released a report denying all allegations of rape and murder of Rohingyas. The report posted on the Facebook page of the army’s Commander-in-Chief Min Aung Hlaing stated that the internal investigation had cleared the security forces of accusations committing human rights violations against Rohingyas¹²⁶. Nevertheless, Major General Maung Maung Soe, who was the head of the western Ccmmand in Rakhine state, was transferred and put in reserve. Yet, the reasons for the transfer were not made public¹²⁷.

The culture of impunity against army officials renders the possibility of internal fair and thorough investigation and prosecution of the perpetrators of crimes against Rohingyas unlikely at a domestic level.

The challenges of the international criminal law to prosecute crimes against Rohingyas

Jurisdiction of the ICC

In Myanmar, several sources, including the OHCHR Rapid Response Team as well as Amnesty International, MSF, or Fortify Rights, have reported alleged violations of human rights against Rohingyas in Rakhine state, including mass killing, torture, sexual violence and destruction of entire villages¹²⁸.

Such alleged crimes against Rohingyas may amount to crimes of genocide or crimes against humanity, as have been highlighted by several UN officials. On 4 October 2017, the UN Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child called the Myanmar authorities to stop the violence in Rakhine state as they recorded violations of Rohingya women and children’s human rights, which could ‘amount to crimes against humanity’¹²⁹. In September 2017, the UN High Commissioner for Human Rights Zeid Ra’ad

Al Hussein claimed recent violence committed by the state against Myanmar’s Rohingya minority appears to be a ‘textbook example of ethnic cleansing’¹³⁰. Similarly, on 5 December 2017, during the Human Rights Council in a special session convened in response to the ongoing exodus of Rohingya, Zeid Ra’ad Al Hussein stated that given the evidence they had received it could not rule out that elements of genocide may be present¹³¹.

The international criminal legal framework, in particular the International Criminal Court (ICC) provides several instruments to prosecute crimes against humanity and genocide. The ICC was established in 1998 by the Rome Statute to end the impunity of most serious international crimes. The ICC has jurisdiction over crimes against humanity, war crimes and genocides committed by national or state parties to the Rome Statute.

The ICC and the Convention on the Prevention and Punishment of the Crime of Genocide, which was drafted in 1948, defined the crime of genocide as the following:

(ICC) Article 6: Genocide:
“‘Genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group;
5. Forcibly transferring children of the group to another group’.

(ICC)Article 7: Crimes against Humanity:
‘For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
1. Murder;
2. Extermination;
3. Enslavement;
4. Deportation or forcible transfer of population;
5. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
6. Torture;
7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
8. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
9. Enforced disappearance of persons;
10. The crime of apartheid;
11. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health’ .

In contrast with genocide, crimes against humanity do not need to target a specific group because the victim of the attacks can be any civilian population.

The ICC can have jurisdiction over signatory states and hold them criminally accountable for war crimes and crimes against humanity or genocide when the national jurisdictions are unable or unwilling to do so genuinely.

Under the ICC, crimes against humanity are defined as the following:

125 Human Rights Watch. ‘Burma: Army Investigation Denies Atrocities’. Human Rights Watch. 24 May 2017. Available at <https://www.hrw.org/news/2017/05/24/burma-army-investigation-denies-atrocities>

126 Nianias. H. ‘Myanmar Army Denies Raping and Murdering Rohingya Muslims after Internal Investigation’. The Telegraph. 13 November 2017. Available at <http://www.telegraph.co.uk/news/2017/11/13/myanmar-army-denies-rape-murdering-rohingya-muslims-internal/>

127 Lone. W. ‘Myanmar Military Denies Atrocities against Rohingya, Replaces General’. Reuters. 13 November 2017. Available at <https://www.reuters.com/article/us-myanmar-rohingya-general/myanmar-military-denies-atrocities-against-rohingya-replaces-general-idUSKBN1DD185>

128 Amnesty International, 2017. ‘Caged Without a Roof’ Apartheid in Myanmar’s Rakhine State, London; Fortify Rights, 2017. ‘They Tried To Kill Us All’: Atrocity Crimes against Rohingya Muslims in Rakhine State Myanmar; UN Human Rights Office of the High Commissioner, 2017. Mission Report of OHCHR Rapid Response Mission to Cox’s Bazar, Bangladesh; Human Rights Council. Statement by Mr. Mazuki Darusman, Chairperson of the International Fact-Finding Mission on Mynamar. 19 September 2017. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22099&LangID=E>

129 UN News. ‘Myanmar Rohingya Abuses May Be Crimes against Humanity, UN Rights Experts Warn’. UN News. 4 October 2017. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22196&LangID=E>

130 Solomon. F. ‘Myanmar Stands Accused of Ethnic Cleansing. Here’s Why.’ Time. 12 September 2017. Available at <http://time.com/4936882/myanmar-ethnic-cleansing-rohingya/>

131 UN News. ‘UN Rights Chief Calls for Probe into Attacks against Rohingya, Says Genocide “Cannot Be Ruled Out”’. UN News. 5 December 2017. Available at <http://www.un.org/apps/news/story.asp?NewsID=58223#.Wk-nyKhI9nl>



Challenges in investigating and prosecuting Burmese officials for alleged crimes against Rohingyas: The weaknesses of the UN Security Council

However, in the case of Myanmar, the jurisdiction of the ICC is limited. Despite allegations of crimes of genocide and crimes against humanity being conducted against Rohingyas, Myanmar is not a party of the Rome Statute, and, therefore, it is not obligated to cooperate with an investigation or prosecution.

Under the Rome Statute, the ICC could exercise its jurisdiction over Myanmar if the UN Security Council were to refer a situation to the ICC in cases where Myanmar is unable or unwilling to prosecute suspects of crimes against humanity and genocide (Rome Statute, Article 13b)¹³². Such a referral could only happen if all the permanent members (China, the United States, France, the United Kingdom and Russia) withhold their veto power.

Yet, the UN Security Council members with veto power remain divided on how to solve the Rohingya

crisis as a result of international geopolitical considerations and regional interests. China, backed by Russia, is opposed to the UN Security Council taking any actions to pressure Myanmar in stopping the alleged abuses against Rohingyas. China has great economic interests in Myanmar and is, therefore, unlikely to antagonise the Burmese authorities. The business interests include investments and a 'Belt and Road' trade project. On the coastline on the Bay of Bengal in Rakhine state, a consortium led by China's CITIC Group has proposed to lead a \$7.3 billion deep sea port at Kyauk Pyu, an industrial park and a special economic zone, which would represent a crucial link connecting China to the Indian Ocean, opening new trade routes. In addition, Myanmar and China have concluded an agreement on an oil pipeline and railway projects that could allow China to expand its regional influence¹³³.

Then, despite the United Kingdom, France and the United States repeatedly raising Myanmar in UN Security Council meetings and briefings, the UN Security Council has been paralysed by the veto powers of its members. The only stance

the UN Security Council has taken regarding the alleged crimes against the Rohingyas has been a UN Presidential Statement delivered on 6 November 2017. It expressed 'grave concerns' over reports of human rights abuses' and 'alarm at the significantly and rapidly deteriorating humanitarian situation', demanding the Burmese government halt the violence¹³⁴. However, it did not impose any measures or deadlines on the Burmese government. Hence, the eventuality of the UN Security Council referring Myanmar to the ICC and a prosecution of the perpetrators of alleged crimes against Rohingyas is very unlikely.

In order to prevent the use of veto to paralyse the UN Security Council from acting in cases of mass atrocities, France called in 2013 for regulation of the veto powers in cases of crimes under the jurisdiction of the ICC¹³⁵. While receiving support within the international community, this proposal lacks essential support from all the permanent members, and is probably unlikely to be adopted in the near future. It is,

therefore, likely that the UN Security Council will be unable to take any actions to prosecute, investigate or stop the alleged crimes committed against the Rohingyas.

5.3 THE DIPLOMATIC RESPONSES TO THE ROHINGYAS' PLIGHT

Organisation of Islamic Cooperation

Among the first international actors to respond to the 2012 crackdown on Rohingyas was the Organisation of Islamic Cooperation (OIC). The OIC was established in 1969 and is the second largest inter-governmental organisation after the UN, comprising 57 states. It aims to represent the collective voice of the Muslim world and protect the interests of Muslims in the spirit 'of promoting international peace and harmony among various people of the world'¹³⁶. The most important body within the OIC, responsible for the policies of the organization concerning human rights, is the Independent Permanent Human Rights Commission (IPHRC).

132 ICC. 1998. Rome Statute of the International Criminal Court. Available at <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

133 The Irrawaddy. 'Analysis: China Backs Myanmar at UN Security Council'. The Irrawaddy. 1 September 2017. Available at <https://www.irrawaddy.com/news/burma/analysis-china-backs-myanmar-un-security-council.html>

134 United Nations. 'Security Council Presidential Statement Calls on Myanmar to End Excessive Military Force, Intercommunal Violence in Rakhine State'. United Nations. 6 November 2017. Available at <https://www.un.org/press/en/2017/sc13055.doc.htmhttps://www.un.org/press/en/2017/sc13055.doc.htm>

135 Diplomatie.gouv.fr, 2014. 'Why France Wishes to Regulate Use of the Veto in the United Nations Security Council'. Available at <https://www.diplomatie.gouv.fr/en/french-foreign-policy/united-nations/france-and-the-united-nations/article/why-france-wishes-to-regulate-use>

136 Organisation of Islamic Cooperation. N.d. History. Available at https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en

Its strategy in managing the Rohingya crisis has been to condemn the human rights violations and provide humanitarian aid.

They repeatedly condemned the ‘the continued disregard of international law by the Myanmar authorities’¹³⁷ in respecting the human rights of Rohingyas and called upon the Myanmar authorities ‘to adopt inclusive policy towards...Rohingya Muslims’ and to ‘stop promptly the use of force and violence and to desist from illegal practices which could get to the level of crimes against humanity’¹³⁸.

Among the actions the OIC took to support Rohingyas, it drafted a resolution on anti-Muslim violence and human rights issues in Burma, which it brought before the UN Human Rights Council in 2013. It also sent a delegation to visit Rakhine state to investigate the situation of Rohingyas and meet with representatives of Buddhist and Muslim communities. The OIC also signed a joint communique on November 2013 with the Burmese government’s Central Committee for Implementation of the Stability and Development in Rakhine state, setting a foundation for future cooperation¹³⁹. Furthermore, a resolution calling for the end of military campaigns against Rohingyas and calling for the appointment of a UN Special Envoy was put forward by the OIC to the UN General Assembly, which was then adopted in December 2017.

The OIC has also distributed humanitarian aid to Rohingya refugees with an initial grant of \$200,000. A delegation of the OIC is also set to visit the Rohingya refugee camps in Cox’s Bazar from the 3rd to the 6th of January 2018 in order to acquire information to prepare a report on the human rights violations Rohingyas face in Myanmar¹⁴⁰.

However, analysts have suggested that OIC’s role in

the Rohingya crisis is likely to be limited to passing resolutions with no tangible results¹⁴¹. OIC’s political influence has been largely weakened as a result of its inaction and failures to settle crisis in the Muslim world (i.e. Muslims in the Kosovo War in 1998, the Chechen-Russian conflicts in the 1990s, Iran/Iraq conflict, the Libya War since 2011, the Syrian conflict since 2011 or the civil war in Yemen since 2015). This is partly due to the organisation’s emphasis on national sovereignty, which prevents it from having an effective authority on internal affairs¹⁴².

The United Nations and international non-governmental organisations’ response to the crisis

The United Nations’ strategy in dealing the Rohingya crisis has been to create a name and shame campaign against the Burmese government in stopping the alleged crimes against Rohingyas, as well as taking measures to record the human rights violations occurring in Rakhine state.

Naming and shaming campaign

The United Nations started to act upon the human rights situation in Myanmar in 1990, when the UN General Assembly issued the first resolution calling on Myanmar authorities to improve their human rights record. Since then the UN General Assembly has issued annual statements calling for the improvement of the situation¹⁴³.

Following the 2012 crackdown on the Rohingyas, UN Secretary-General’s Special Adviser for Myanmar Vijay Nambiar and UN High Commissioner for Human Rights Navi Pillay called for an impartial investigation into the violence in Rakhine state. The UN Special Rapporteurs on the situation of human rights in Myanmar have expressed repeatedly since 1992, when

the first Special Rapporteur was appointed, their concerns over the continuing violence in Rakhine state.

On 4 October 2017, the UN Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child claimed they recorded violations of Rohingya women and children’s human rights that could ‘amount to crimes against humanity’¹⁴⁴. They have, therefore, called the Burmese government to stop all violence. In September 2017, the UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein qualified violence committed against Myanmar’s Rohingyas as a ‘textbook example of ethnic cleansing’¹⁴⁵. Similarly, on 5 December 2017, he stated that he could not rule out that elements of genocide may be present¹⁴⁶. In addition, on the 23rd of December 2017, the UN General Assembly voted for a resolution put towards by the OIC to urge the Burmese government to end the military operations against Rohingyas, as well as acting the appointment of a UN Special Envoy to Myanmar by the UN Secretary-General.

Furthermore, since the August 2017 crackdown on Rohingyas, UN officials have also been particularly critical of how Aung San Suu Kyi, Myanmar’s state counsellor and de factor civilian leader, managed the crisis. Prior to August 2017, the international community tended to be clement towards the newly elected Aung San Suu Kyi, who remained an iconic figure of democracy and resistance to military regimes. The international community tended to claim that the human rights violations occurring in Rakhine state against the Rohingyas were the legacy of

years of military rule, which Aung San Suu Kyi would reverse in due time. The UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein stated in June 2017:

“The new Government has inherited a situation where laws and policies are in place that are designed to deny fundamental rights to minorities, and where impunity for serious violations against such communities has encouraged further violence against them. It will not be easy to reverse such entrenched discrimination. This will be a challenging process that requires resolve, resources and time. But it must be a top priority to halt ongoing violations and prevent further ones taking place against Myanmar’s ethnic and religious minorities.”¹⁴⁷

However, after the August 2017 crackdown on Rohingyas, the UN has been more critical of Aung San Suu Kyi. The UN investigator of Human Rights abuses in Myanmar, Yanghee Lee, expressed her disappointment over how the Nobel laureate has failed to condemn the violence taking place in Rakhine state¹⁴⁸. Similarly, the High Commissioner for Human Rights Zeid Ra’ad Al Hussein has stated that Aung San Suu Kyi, by her inaction in preventing violence against Rohingyas, could be ‘culpable of genocide’¹⁴⁹.

There are mixed results of the naming and shaming campaign conducted by the UN. Aung San Suu Kyi and Commander in Chief Hlaing have denied publicly any alleged crimes against Rohingyas. Aung San Suu Kyi insisted that there had been ‘no conflict since 5th September and no clearance operations’¹⁵⁰. She has also adopted the policy of the empty chair to avoid



137 IOC, 2012. Resolution 3/4-EX (IS) on Rohingya Muslim Community in Myanmar. In Resolution Adopted by the Fourth Extraordinary Islamic Summit Conference. 14-15 August 2012. Available at <https://www.oic-oci.org/docdown/?docID=26&refID=8>

138 Ibid.

139 OIC, 2013. Resolution on Muslims Communities and Minorities in Non-OIC Member States. 09-11 December 2013. Available at <https://www.oic-oci.org/subweb/cfm/40/fm/en/docs/MM-40-CFM%20-RES-FINAL-ENG.pdf>

140 OIC. ‘OIC Delegation to Visit Rohingya Refugee Camps in Bangladesh to Ascertain Their Human Rights Situation’. OIC. 1 January 2018. Available at https://www.oic-oci.org/topic/?t_id=17210&ref=9153&lan=en

141 MQadir, M. R., 2015. Organization of Islamic Co-operation (OIC) and Prospects of Yemeni Conflict Resolution: Delusion or Plausible Reality. Journal of Political Studies, 22, pp.367–382.

142 Ibid.

143 Burma Campaign UK. N.d. UN General Assembly Resolutions on Burma. Available at <http://burmacampaign.org.uk/useful-resources/un-general-assembly-resolutions-on-burma/>

144 UN News. ‘Myanmar Rohingya Abuses May Be Crimes against Humanity, UN Rights Experts Warn’. UN News. 4 October 2017. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22196&LangID=E>

145 Solomon, F. Myanmar Stands Accused of Ethnic Cleansing. Here’s Why.’ Time. 12 September 2017. Available at <http://time.com/4936882/myanmar-ethnic-cleansing-rohingya/>

146 UN News. ‘UN Rights Chief Calls for Probe into Attacks against Rohingya, Says Genocide “Cannot Be Ruled Out”’. UN News. 5 December 2017. Available at <http://www.un.org/apps/news/story.asp?NewsID=58223#.Wk-nyKhl9nI>

147 UN News. ‘Zeid Urges Action to Address Serious Rights Violations against Rohingya and Other Minorities in Myanmar’. UN News. 20 June 2016. Available at <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20137&LangID=E>

148 Gladstone, R. ‘Baffled by Rohingya stance, U.N. officials scolds Aung San Suu Kyi’. The New York Times. 27 October 2017. Available at <https://www.nytimes.com/2017/10/26/world/asia/myanmar-rohingya-aung-san-suu-kyi.html>

149 Rowlatt, J. ‘Could Aung San Suu Kyi Face Rohingya Genocide Charges?’ BBC. 1 December 2017. Available at <http://www.bbc.com/news/world-asia-42335018>

150 McPherson, P., ‘Aung San Suu Kyi Says Myanmar Does Not Fear Scrutiny Over Rohingya Crisis’. The Guardian. 19 September 2017. Available at <https://www.theguardian.com/world/2017/sep/19/aung-san-suu-kyi-myanmar-rohingya-crisis-concerned>

the UN pressure on the issue. In September 2017, she skipped the UN General Assembly¹⁵¹. Similarly, she avoided any discussion of the Rohingya crisis when she met senior UN Special Envoy on sexual violence in conflict, Pramila Patten in December 2017.¹⁵² Furthermore, the Ambassador of Myanmar to the UN has condemned the UN actions in regards to the Rohingyas, stating that it is an 'orchestrated demonization of the Government and security forces in Myanmar with deliberate intention to tarnishing the image and integrity of [the] leadership'¹⁵³.

Nevertheless, Aung San Suu Kyi has taken some steps towards addressing the human rights situation in Rakhine state. In 2016, Aung San Suu Kyi set up the Advisory Commission on Rakhine State, led by UN secretary Kofi Annan. The Commission is composed of three international members and six members from Myanmar, including representatives from the Buddhist and Muslim community. This commission was set up as part of Aung San Suu Kyi's campaign promise to ensure peace and stability in Myanmar¹⁵⁴. The Commission's final report, which was released in August 2017, called for the government to ease restrictions on citizenship and movement for Rohingyas; to increase investments in Rakhine state, as well as compensation for appropriated land; to promote communal representation and participation of Rohingya communities; to close all Internally Displaced People (IDPs) camps; to foster inter-communal dialogue; to list religious, cultural and historic sites of Rohingya communities; and to calibrate its responses to violence in Rakhine state¹⁵⁵.



The Burmese government has responded positively to these recommendations and has stated it will implement them 'as much as possible depending on the conditions on the ground'¹⁵⁶. Aung San Suu Kyi has also announced plans to set up a civilian-led agency with foreign assistance to deliver aid and help resettle Rohingyas in Rakhine state¹⁵⁷.

Similarly, the naming and shaming campaign has seemed to have some impact on the Burmese government. The Burmese Army recognised in January 2018 that military forces were involved in the killing of 10 Rohingyas, whose skeletons of were found in Inn Din village near Maungdaw¹⁵⁸. According to experts, the recognition of the Army's involvement in the killing of Rohingya has been the result of international pressure and the fear of being brought before the ICC. Hence, they have admitted some of the crimes against Rohingyas as a way to foreshow their willingness to prosecute some of the abuses.

However, according to experts, setting up the Commission and civilian bodies may be a political attempt to appease the international community by showing the good will of the Burmese government to address the human rights violence in Rakhine state. Nevertheless, the Burmese are unwilling to address the crux of the Rohingya crisis – that is recognising the Rohingya as minority with citizenship rights. Aung San Suu Kyi has stated that the term 'Rohingya' should be avoided¹⁵⁹, putting in debate the mere existence of the Rohingya as an ethnic minority in



Myanmar. Until the Burmese government recognises the existence and the legitimacy of Rohingyas to claim Burmese citizenship, it is unlikely that their other rights and needs will be respected and met.

Then the naming and shaming campaign conducted by the international community has been partially successful. It has forced Aung San Suu Kyi to take some positive steps in addressing human rights violations, but she has not addressed the crux of the Rohingya crisis – that is their right to citizenship.

Recording human rights violations

In addition, to naming and shaming the Burmese government, the UN has aimed to record the human rights violations occurring against Rohingyas. In March 2017 the Human Rights Council decided to dispatch an independent international fact-finding mission, appointed by the President of the Human Rights Council, to establish the facts and circumstances of the alleged recent human rights violations and abuses by military and security forces in Myanmar, in particular in Rakhine State. This mission included but was not limited to investigating cases of arbitrary

detention; torture and inhuman treatment; rape and other forms of sexual violence; extrajudicial, summary or arbitrary killings; enforced disappearances; forced displacement and unlawful destruction of property. The mission operated with a view of ensuring full accountability for perpetrators and justice for victims, and the results of the fact-finding mission were presented to the Council as an oral update at its 36th session, and a full report was given at its 37th session.

However, the Myanmar government has repeatedly refused to grant the UN unfettered access to the worst affected areas of northern Rakhine state, and the UN has not been able to investigate episodes of violence against Rohingyas in Rakhine state. They, nevertheless, conducted interviews in Bangladesh and Malaysia. The UN concluded their first fact finding mission in Bangladesh in October 2017 and in Malaysia in December 2017, and the three human rights experts of the mission claimed to be 'deeply disturbed' by accounts of killings, torture, rape, arson and aerial attacks. The UN is due to submit an interim oral report to the Human Rights Council in March 2018 and a final report in September 2018 to the Council and to the General Assembly.

151 Lui, K. 'Aung San Suu Kyi Plans to Skip UN Assembly as Pressure Mounts Over Rohingya Crisis'. Time. 13 September 2017. Available at <http://time.com/4939152/united-nations-suu-kyi-myanmar-rohingya/>

152 McPherson. P. 'Aung San Suu Kyi Avoided Discussion of Rohingya Rape During UN Meeting'. The Guardian. 27 December 2017. Available at <https://www.theguardian.com/world/2017/dec/27/aung-san-suu-kyi-avoided-discussion-of-rohingya-during-un-meeting>

153 Mission of the Republic of the Union of Myanmar to the United Nations, 2017. Statement of H.E. U Hau Do Suan, Ambassador/Permanent Representative of the Republic of the Union of Myanmar to the United Nations as explanation of vote before the vote on Agenda Item 72(C) 'Situation of Human Rights in Myanmar' (Draft resolution V of A/72/439/Add.3) at the Plenary Meeting of the General Assembly. Available at <http://www.myanmarmissionnewyork.org/images/pdf/2017/Statements/PRs%20EOV%20Plenary%2024%20Dec.pdf>

154 Aung San Suu Kyi. 'Establishment of the Advisory Commission on Rakhine State'. Speech Delivered in Nay Pyi Taw, 19 September 2017. Available at <http://www.londonmyanmarembassy.com/index.php?id=408>

155 Advisory Commission on Rakhine State, 2017. Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine. Final Report of the Advisory Commission on Rakhine State. Available at <http://www.rakhinecommission.org/>

156 Khiane, M. M. & Htway K. P. 'Rakhine Commission: Myanmar Must End Restrictions on Rohingya'. VOA. Available at <https://www.voanews.com/a/myanmar-rakhine-state-commission/3998911.html>

157 Wintour. P. 'Aung San Suu Kyi Unveils Relief Plans for Rohingya Muslims'. The Guardian. 13 October 2017. Available at <https://www.theguardian.com/world/2017/oct/13/aung-san-suu-kyi-unveils-relief-plans-for-rohingya-muslims-myanmar>

158 BBC. 'Rohingya Crisis: Myanmar Army Admits Killings'. BBC News. 10 January 2018. Available at <http://www.bbc.com/news/world-asia-42639418>

159 Slodkowski. A. 'Myanmar's Suu Kyi Reiterates Stance on not Using Term 'Rohingya' - Official'. Reuters. 20 June 2016. Available at <https://uk.reuters.com/article/uk-myanmar-rights/myanmars-suu-kyi-reiterates-stance-on-not-using-term-rohingya-official-idUKKCNOZ61AI?feedType=RSS&feedName=worldNews>

The Office of the High Commissioner for Human Rights (OHCHR) has also deployed teams to report on the human rights violations in Rakhine state. The OHCHR has since 2008 established a rapid response mechanism, allowing it to swiftly deploy teams to investigate serious allegations of human rights violations. The OHCHR rapid response mission was deployed between the 13th and 24th of September 2017 to Bangladesh. The mandate of the OHCHR Rapid Response team was to monitor the situation of the newly arrived Rohingya population in Bangladesh, as well as to establish the facts and circumstances in northern Rakhine in the aftermath of the 25 August 2017 attacks. Based on information gathered from 65 interviews with Rohingya refugees in Cox’s Bazar, the team reported gross human rights violations, as the ‘the security forces and the Rakhine Buddhist individuals incited hatred, violence and killings against the Rohingya population within northern Rakhine state through extremely derogatory abuse based on their religion, language and culture and ethnic identity’¹⁶⁰.

Other international non-governmental organisations (IGOs) have investigated alleged crimes against Rohingyas, including Amnesty International, Human Rights Watch, Fortify Rights, Médecins sans Frontières (MSF) and International Crisis Group.

Although the accounts of IGOs are crucial for advocacy purposes, they may not necessarily help in prosecuting the perpetrators of crimes against Rohingyas. Some IGOs, including MSF, have adopted a binding internal policy, refraining from any cooperation with the ICC. According to an MSF official statement: ‘This policy is based on the recognition that humanitarian activities must remain independent from risk of political and judicial pressure in order to be able to give medical and relief assistance to populations in situations of trouble and violence. This policy has been presented and explained to the ICC so as to make sure that MSF will not be compelled or summoned to give information and witnessing to such judicial bodies’¹⁶¹. In addition, other IGOs may refrain

from cooperating with the ICC because they want to ensure the confidentiality of their informants for security issues.

Humanitarian aid

The UN also provides humanitarian aid. The UN Resident Coordinator of Humanitarian Affairs has overviewed a humanitarian response coordinated between different UN organisations¹⁶².

In the first phase, the Humanitarian Response Plan includes providing life-saving humanitarian assistance to Rohingyas with clean water and temporary latrines; emergency shelter including plastic sheeting, bamboo and technical support; food distribution; mobile primary health care provisions; and early warning and surveillance systems. The second phase aims to provide more robust and sustainable aid, including more robust shelter material, extending informal education and strengthening the capacity of the health system.

In order to fund this plan, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimates it will require \$434.1 million in funding. As of the 1st of January 2018, the projects has only been funded up to 50%¹⁶³.

The European Union’s and United States’ responses to the Rohingya crisis

The European Union

Since 2010 and before the 2017 August crackdown on Rohingya, the European Union (EU) and its member states’ strategy towards Myanmar has been one of supporting the democratic reform. In 2013, the European Union lifted the last of its trade, economic and individual sanctions against Myanmar in response to the political reforms implemented from 2010. The EU has, nevertheless, lifted the arms embargo until April 2018¹⁶⁴. As a result bilateral trade reached €1.55 billion



in 2016, up from €404 million in 2012. Myanmar exports to the EU reached €830 million. Major exports from Myanmar to the EU were garments (more than 69% of total exports), rice (8%) and footwear (6%). According to Myanmar’s official statistics (as of January 2017), the EU was the 4th largest foreign investor in 2016¹⁶⁵.

Additionally, in September 2016, the EU praised Myanmar’s progress in human rights under the leadership of Aung San Suu Kyi. EU Foreign Policy Chief Frederica Mogherini has stated that ‘the government has taken bold measures to improve human rights and re-invigor the peace process’ and that steps have been taken in Rakhine state with the establishment of the Advisory Commission on Rakhine state¹⁶⁶. In recognition of the progress but despite violence in Rakhine state, the EU did not present a human rights resolution on Myanmar at the UN General Assembly¹⁶⁷.

European military bodies have boosted ties with the Burmese government, including with Senior General

Min Aung Hlaing, head of the Burmese military. In November 2016, despite violence erupting against Rohingya, the commander-in-chief was invited to meet with General Mikhail Kostarajos, Chairman of the European Military Council General, in Brussels to discuss outlooks of the European Union on Myanmar political reform and security development¹⁶⁸. In 2017 the commander-in-chief visited German and Austrian armed forces. During the visit the German and Austrian forces offered military training to the *Tatmadaw*¹⁶⁹. The UK also has had military ties with the Burmese army since 2013, when the UK resumed assistance on security sector reform and police training¹⁷⁰. The UK in particular funded £300 000 a year for educational courses for the Burmese military¹⁷¹.

Following the August 2017 crackdown on violence against the Rohingya, the EU and its member states shifted their discourses on Myanmar. In September 2017, EU Foreign Policy Chief Frederica Mogherini issued few statements on the situation in Rakhine state, condemning the violence and calling the government to implement the Advisory Commission on Rakhine state¹⁷². However, it was not only on the 12th of September 2017 that the EU foreign policy chief mentioned the term ‘Rohingya’¹⁷³.

The EU parliament has also passed two main resolutions on Myanmar, in September 2017 and in December 2017, condemning the ongoing violence and killing. It urged Myanmar authorities to grant authorisation to independent monitors. It also called the international and regional actors, in particular China, to use all bilateral, multilateral and regional platforms to bring a peaceful resolution to the conflict. It also called the Commission to consider the consequences of trade preferences

160 UN Human Rights Office of the High Commissioner, 2017. Mission Report of OHCHR Rapid Response Mission to Cox’s Bazar, Bangladesh. New York

161 MSF, 2009. ‘Doctors without Borders/Médecins sans Frontières’ (MSF) Position Regarding the International Criminal Court’s Prosecutor’s Case against the President of Sudan’. Available at <http://www.doctorswithoutborders.org/news-stories/speechopen-letter/doctors-without-bordersm%C3%A9decins-sans-fronti%C3%A8res-msf-position>

162 Humanitarian Response Plan, 2017. Rohingya Refugee Crisis. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/2017_HRP_Bangladesh_041017_2.pdf

163 OCHA, 2018. Rohingya Refugee Crisis. Available at http://interactive.unocha.org/emergency/2017_rohingya/

164 BBC News. ‘EU Lifts Sanctions against Burma’. BBC News. 22 April 2013. Available at <http://www.bbc.com/news/world-asia-22254493>

165 EEAS, 2017. ‘EU-Myanmar Relations’. Available at https://eeas.europa.eu/headquarters/headquarters-homepage_en/4004/EU-Myanmar%20relations

166 EEAS, 2016. ‘Remarks by Federica Mogherini at the Meeting of the Partnership Group on Myanmar

167 HRW, 2016. ‘Burma. Event of 2016’. Available at <https://www.hrw.org/world-report/2017/country-chapters/burma>

168 European Union Military Committee, 2016. ‘Chairman’s Newsletter’. Available at https://eeas.europa.eu/sites/eeas/files/november_edition.pdf

169 Eleven Myanmar. ‘Germany Offers Military Training to Myanmar’. The Nation. 1 May 2017. Available at <http://www.nationmultimedia.com/detail/breakingnews/30313902>

170 Robinson, Gwen, 2013. ‘Britain Revives Links with Myanmar’s Military Establishment.’ FT.Com. Available at <https://search.proquest.com/docview/1365643207?accountid=14511>

171 BBC. ‘UK Suspends Aid for Myanmar Military’. BBC. 19 September 2017. Available at <http://www.bbc.com/news/uk-41326179>

172 EEAS, 2017. ‘Statement by the High Representative/Vice-President Federica Mogherini on the Situation in Rakhine State, Myanmar’. Available at https://eeas.europa.eu/headquarters/headquarters-homepage/31738/statement-high-representativevice-president-federica-mogherini-situation-rakhine-state-myanmar_en

173 EEAS, 2017. ‘Speech by High Representative/Vice-President Federica Mogherini at the European Parliament Plenary Session on the Situation of the Rohingya People’. Available at https://eeas.europa.eu/headquarters/headquarters-homepage/37246/speech-federica-mogherini-european-parliament-plenary-session-situation-rohingya-people_en



with Myanmar and to launch an investigation under the mechanisms of the Everything But Arms scheme, which grants duty-free and quota-free access to the EU single market for all products if there is no evidence of systematic violation of human rights.

Individual member states have also condemned violence against Rohingyas. French President Emmanuel Macron qualified the situation in Myanmar of ‘genocide’ and ‘ethnic cleansing’ when addressing the UN General Assembly in September 2017¹⁷⁴. The UK has warned Myanmar that the Rohingya crisis was an ‘unacceptable tragedy’¹⁷⁵.

Furthermore, the EU was present at the Asia Europe Foreign Ministers’ Meeting in November 2017 in Myanmar and held a special meeting with Aung San Suu Kyi to stress the importance of concluding a bilateral agreement with Bangladesh on the return

of refugees. However, according to experts, including Azeem Ibrahim, this agreement provides the illusion of a policy decision to address the refugee crisis. Nonetheless, the agreement includes clauses that make the return of Rohingya unlikely. For instance, a verification process of the Rohingya refugees’ legal documentation is required upon returning to Myanmar. Yet, Rohingyas have been stripped of legal documentation and, therefore, cannot be eligible for repatriation¹⁷⁶. Furthermore, the agreement between Bangladesh and Myanmar specifies that the refugees should be returned to property, which is highly improbable as there is evidence of Rohingya villages being burnt¹⁷⁷.

Furthermore, in October 2017, the EU Council incorporated travel bans for the Burmese military officials, including Senior General Hlaing and other senior military officers¹⁷⁸. The EU also began to review the possibility of formal sanctions. Similarly the UK

suspended funding for military training amid the violence against Rohingyas¹⁷⁹.

In addition, to diplomatic efforts, the EU has pledged to increase its humanitarian support to Rohingya refugees in Bangladesh. The EU has been funding humanitarian programmes in Cox’s Bazar since 1994 through NGOs and the UN. Since 2007 the EU has allocated €38 million for basic health, water, sanitation, shelter, nutrition and protection to the Rohingyas. In Myanmar, the EU has provided since 2010 around €76.5 million in humanitarian aid to vulnerable people in Rakhine state, although humanitarian aid projects have been severely limited during the crackdown against Rohingyas due to restricted access. In October 2017 the EU Commissioner for Humanitarian Aid and Crisis Management Christos Stylianides announced that the EU’s support to the Rohingya refugees would amount to €51 million. The EU also co-hosted a pledging conference organised by UN humanitarian agencies in October, during which \$360 million was pledge for Rohingya refugees. Among the biggest announcement of pledges were the UK with \$63,087,248, the European Commission with \$42,452,830 and the US with \$38 million¹⁸⁰.

The United States

During the Obama administration, the stance of the US was to welcome Myanmar into the international community. In 2012, after Myanmar’s first free election in over 20 years, Obama restored diplomatic relations and sealed the new relationship with a personal visit. In 2016 the US dropped most of the remaining sanctions on an executive order.

On 15 November 2017, US Secretary of State Rex Tillerson called for an independent inquiry on the causes of the crisis and alleged crimes, arguing that more information was needed to describe the situation as ‘ethnic cleansing’. He also called against sanctions targeting the Burmese government as his

interest was for the Burmese democracy to succeed¹⁸¹.

Like the EU, the US has shifted its stance on the Burmese government’s actions against the Rohingya. The US Secretary of State shifted his discourse on 22 November 2017, denouncing the actions of the Burmese military, stating that ‘no provocation can justify the horrendous atrocities that have ensued’ and that ‘after a careful and thorough analysis of the available facts, it is clear that the situation in northern Rakhine state constitutes ethnic cleansing against the Rohingya’. As such, the State Department qualified the violence as ‘ethnic cleansing’ but they were careful to not attribute the violence directly to Burmese democratically elected leadership¹⁸². In December 2017 the US Treasury Secretary announced that they were imposing sanctions against Major General Muang Maung, Soe who was the head of the Western Command in Rakhine state until November 2017.

The Regional powers’ answer to the Rohingya crisis

The ASEAN

The Rohingya crisis has become one of the most important regional crises in the last decade as a result of the large flux of refugees. The full-blown humanitarian crisis has been a critical test of the 10 members of the Association of Southeast Asian Nations (ASEAN), putting to light the weaknesses of its institutions to deal with the alleged crimes against humanity, as well as with the protection of refugees.

The ASEAN Charter signed in 2008 by Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam states that the ASEAN aims to respect human rights and fundamental freedoms¹⁸³ and promote human security. In line with the commitments of the ASEAN Charter, in 2009 the ASEAN Intergovernmental Commission on Human Rights was followed by the ASEAN Human Rights Declaration.

174 Le Monde. ‘Emmanuel Macron Qualifie la Situation en Birmanie de “Génocide”’. LeMonde. 20 September 2017. Available at http://www.lemonde.fr/asiе-pacifique/article/2017/09/20/emmanuel-macron-qualifie-la-situation-en-birmanie-de-genocide_5188784_3216.html

175 Holmes. O. & Wintour. P. ‘UK says “Unacceptable Tragedy” of Rohingya Crisis Risks Myanmar Progress’. The Guardian. 28 September 2017. Available at <https://www.theguardian.com/world/2017/sep/28/uk-unacceptable-tragedy-rohingya-crisis-myanmar>

176 Ibrahim, A. ‘Why the Rohingya Can’t yet Return to Myanmar’. The New York Times. 6 December 2017. Available at <https://www.nytimes.com/2017/12/06/opinion/rohingya-myanmar-bangladesh.html>

177 Ibid.

178 European Council, 2017. ‘Myanmar/Burma: Council Adopts Conclusions’. Available at <http://www.consilium.europa.eu/en/press/press-releases/2017/10/16/myanmar-burma-conclusions/>

179 BBC. ‘UK Suspends Aid for Myanmar Military’. BBC News. 19 September 2017. Available at <http://www.bbc.com/news/uk-41326179>

180 UNOCHA, 2017. ‘Pledging Conference for the Rohingya Refugee Crisis’. Available at <http://www.unocha.org/sites/unocha/files/Pledge%20announcements%20Bangladesh%20Pledging%20Conference%2023%20Oct.pdf>

181 Griffiths, J. ‘Tillerson Refuses to Label Rohingya Crisis “ethnic cleansing”, calls for investigation’. CNN. 15 November 2017. Available at <http://edition.cnn.com/2017/11/15/asia/tillerson-myanmar-rohingya/index.html>

182 Westcott, B. & Koran. L. ‘Tillerson: Myanmar Clearly “Ethnic cleansing” the Rohingya’. CNN. 22 November 2017. Available at <http://edition.cnn.com/2017/11/22/politics/tillerson-myanmar-ethnic-cleansing/index.html>

183 ASEAN. ‘Charter of the Association of Southeast Asian Nations’. Available at <http://www.asean.org/storage/images/archive/21069.pdf>



The ASEAN first expressed concerns about the Rohingyas' situations in 2009 and aimed to oversee humanitarian efforts. However, the Chairman's statement referred to Rohingyas as 'illegal migrants'. Similarly, since 2013, the ASEAN Parliamentarians for Human Rights and the ASEAN Inter-Parliamentary Myanmar Caucus, a network of ASEAN parliamentarians with the aim to advocate for human rights in Myanmar, have released statements stating their concerns over the Rohingya crisis.

However, these commitments to the protection of human rights have been largely limited by the founding and distinctive principle of the ASEAN – 'non-interference' in the internal affairs of member states. This principle's purpose is to respect sovereignty and good relations of cooperation between countries, as well as maintaining the privacy of domestic affairs. In other words, this principle allows cooperation without worrying about foreign intervention in domestic politics. The ASEAN cannot press the Burmese government to grant citizenship to the Rohingya, nor can it take strong measures to stop the violence against Rohingyas¹⁸⁴.

Nevertheless, due to the increased violence against Rohingyas since 2015, some Muslim-majority countries, namely Malaysia and Indonesia, have started to take a stronger stance for the protection of Rohingyas. Malaysia has in particular been vocal, condemning violence against Rohingyas. In 2016 the Prime Minister Najib stated that the world couldn't 'sit by and watch a genocide taking place'¹⁸⁵. In November 2017 the Deputy Prime Minister highlighted that the Rohingyas' issues were 'a regional problem' and a 'mounting humanitarian crisis that has emerged due to ethnic cleansing, which should not have happened'¹⁸⁶. Malaysian members of parliament have also asked the state energy firm, Petronas, to exit its operations and investments in Myanmar in protest to the violence against the Rohingyas¹⁸⁷. Malaysia has also been active in providing humanitarian aid and along with Indonesia and Brunei, and it was the only ASEAN countries voting for the UN resolution presented in the UN General Assembly in December. According to Joshua Kurlantzick, fellow for Southeast Asia at the Council on Foreign Relations think-tank, domestic considerations are at play in the Malaysian position towards Rohingyas. Malaysia has an upcoming general election and the prime minister may be attempting to gain the vote of the more conservative Muslim voters¹⁸⁸.

Indonesia and Brunei have been less critical of Myanmar, but they have expressed their concerns about the humanitarian crisis. Other ASEAN member states have not expressed any condemnation towards Myanmar. Thailand has for instance agreed with Myanmar in referring to Rohingya as 'Bengalis', suggesting that the minority is not an indigenous Burmese ethnic group – the crux of the discrimination and violence against Rohingyas¹⁸⁹. The Philippines, chair of the ASEAN in 2017, also spared Myanmar as President Duterte also faces allegation of human rights violations¹⁹⁰.

The Rohingya crisis is all the more sensitive within the ASEAN as Thailand, Malaysia and Indonesia are the primary destinations for Rohingyas fleeing violence in Rakhine state. After the migrant boat crisis in 2015, the discovery of Rohingya mass graves and smuggling camps, ASEAN member states had to acknowledge the need to address the Rohingyas' situation. This led members of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crimes to agree to mechanisms that would provide Indonesia and Australia, co-chairs of the process, to 'consult and if necessary convene future meetings to discuss irregular migration issues with affected and interested countries in response to current regional issues or future emergency situations'¹⁹¹.

As a result to the division over the Rohingya issue, the ASEAN has remained inactive in managing the crisis. The November 2017 ASEAN Summit's final statement barely addressed the Rohingya issue. It does name Rohingyas as a minority, and it solely welcomes Myanmar's 'commitment to ensure the safety of civilians, and take immediate steps to end the violence in Rakhine, restore normal socio-economic conditions and address the refugee problem through verification process'. It expressed 'support to the Myanmar government in its effort to bring peace, stability, rule of law, and to promote harmony and reconciliation between various communities'¹⁹². No mention of the human rights violations and evidence of alleged crimes against humanity were made.

All in all, due to the divisions within the ASEAN on the Rohingya issue¹⁹³ and the ASEAN institutional framework promoting non-interference

in internal politics, it is unlikely that the ASEAN will be taking any strong stances or measures against Myanmar regarding the violence against Rohingyas.

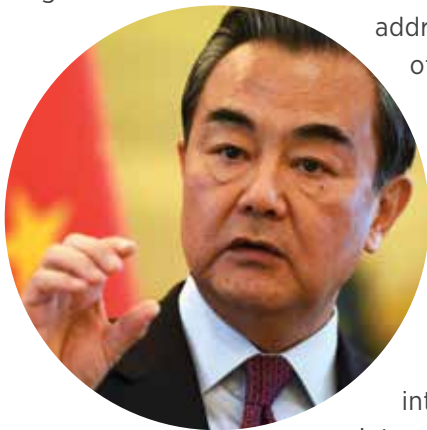
China

China has had a record supporting the Burmese government, arguing that Burmese operations are necessary to protect national security, and it condemns the ARSA attacks on Burmese police posts. China has been opposed to international intervention, blocking any resolutions against Myanmar within the UN Security Council¹⁹⁴.

Instead of seeking the international community's support, China has favoured bilateral consultations with Myanmar. During a trip to Bangladesh and Myanmar in November 2017, China's Foreign Minister, Wang Yi, announced that China, Myanmar and Bangladesh had reached a 'three-phase plan' to bring about a 'final and fundamental solution' to the crisis¹⁹⁵. The first phase of the plan includes a ceasefire in Rakhine state so peace can be restored. The second phase of the plan promotes the repatriation of Rohingya refugees from Bangladesh to Myanmar.

The third phase of the plan advocates for addressing the identified root causes of the conflict – that is according to Beijing a limited development of the region. Therefore, it aims to support investments in Rakhine, state which could boost its development and alleviate poverty.

This unusual Chinese intervention in another country's internal affairs can be explained



184 Shivakoti, R., 2017. ASEAN's Role in the Rohingya Refugee Crisis. Forced Migration Review, (56), pp.75–77.

185 The Guardian. 'Malaysia PM Urges World to Act Against 'Genocide' of Myanmar's Rohingyas'. The Guardian. 4 December 2016. Available at <http://bit.ly/MalaysiaPM-Rohingya-Dec14>

186 Rahman, Z. 'Zahid: Malaysia to Call for UN Resolution on Rohingya Refugees'. The Star. 17 October 2017. Available at <https://www.thestar.com.my/news/nation/2017/10/17/zahid-malaysia-to-call-for-un-resolution-on-rohingya-refugees/#rPKCCVEg2vjWDBI6.99>

187 Channel News Asia. 'Malaysia's Petronas Asked to Exit Myanmar in Protest of Rohingya Crisis' ChannelNewsAsia. 8 November 2017. Available at <https://www.channelnewsasia.com/news/asiapacific/malaysia-s-petronas-asked-to-exit-myanmar-in-protest-of-rohingya-crisis-9387180>

188 Muslimin. A. 'ASEAN's Rohingya Response – Barely A Peep Outside Of Malaysia' Forbes. 17 December 2017. Available at <https://www.forbes.com/sites/anismuslimin/2017/12/17/aseans-rohingya-response-barely-a-peep-outside-of-malaysia/#543448839de8>

189 The Nation. 'Asean Stands by Suu Kyi Regarding Rohingya Crisis'. The Nation. 14 November 2017. Available at <http://www.nationmultimedia.com/detail/asean-plus/30331539>

190 Gotinga, J. C. 'ASEAN summit silence on Rohingya 'an absolute travesty''. AlJazeera. November 17th 2017. Available at: <http://www.aljazeera.com/news/2017/11/asean-summit-silence-rohingya-absolute-travesty-171114211156144.html>

191 BRMC. 'Co-Chairs' Statement BRMC VI. Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, 23 March 2016'. Available at <http://bit.ly/BaliProcess-2016>

192 ASEAN. 'Final Chairman Statement of the 12th EAS Summit'. Available at http://asean.org/storage/2017/11/Final-Chairmans-Statement-of-the-12th-EAS_2.pdf

193 We can observe three main blocs of countries: one block of countries – Malaysia, Indonesia, Brunei – strongly condemning violence against Rohingyas, another block of neutral countries – Thailand and Singapore; and finally a cluster of countries standing by the Burmese government and invoking the principle of non-interference in internal politics – Philippines, Vietnam, Cambodia and Laos.

194 Reuter. 'China Offers Support to Myanmar at UN Amid Rohingya Crisis'. Reuters. 19 September 2017. Available at <https://www.reuters.com/article/us-myanmar-rohingya-china/china-offers-support-to-myanmar-at-u-n-amid-rohingya-crisis-idUSKCN1BU070>

195 Ministry of Foreign Affairs of the People's Republic of China. 'Wang Yi: China Proposes 3-Phase Solution to Address Issue of the Rakhine State of Myanmar'. 20 November 2017. Available at http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1512592.shtml

by the geopolitical and economic interests it has in Bangladesh and Myanmar, in particular in Rakhine state, where it is developing a special economic zone. As such, China's aim is to restore the stability of the region and promote good relations between Bangladesh and Myanmar, which is key to implementing their economic projects. China chooses to do this rather than addressing the crux and root causes of the conflict – the lack of citizenship rights and the increase discrimination against the Rohingyas. China favours the return of Rohingya refugees from Bangladesh to Rakhine state without ensuring that their social and political situations improve, which is likely to be inefficient to solve the crisis at best, or counter-productive at worst.

Aung San Suu Kyi's quandary

Despite mounting international pressure, the government of Myanmar has made little concessions to address the Rohingya crisis, and Aung San Suu Kyi, a Noble Peace Prize laureate, has had a puzzling response to it.



Her initial response has been to remain silent. Although the main clashes between ARSA and the Burmese government occurred on 25 August 2017, Aung San Suu Kyi broke her silence on 19 September by delivering a controversial speech. She denounced the 'mix of untruths and victim-blaming' by Amnesty International, insisting that there was no conflict since the 5th of September 2017 and no clearance operations. She claimed that the majority of the Rohingya population had not been affected by the violence, as the militaries were instructed to avoid collateral damage while pursuing the ARSA insurgents. As such, according to the academic Azeem Ibrahim, by refraining

to condemn violence against Rohingyas, she wears the burden of international criticism. This leaves the Burmese army untarnished from any international pressure.

There are few reasons for why Aung San Suu Kyi does not condemn the violence against Rohingyas. First, Aung San Suu Kyi does not have much authority over internal security matters that remain under the control of the military. Furthermore, according to the academic Azeem Ibrahim, Aung San Suu Kyi has to accommodate a sizable proportion of her voters who embrace Buddhist nationalist ideas and support nationalist Buddhist groups who convey anti-Rohingya rhetoric¹⁹⁶. An example of this is her refusal to employ the name 'Rohingya' but rather use the term 'Bengali' implying that Rohingyas are illegal immigrants from Bangladesh¹⁹⁷.

As such, Aung San Suu Kyi is implicitly backing up the denial of citizenship and discriminations against Rohingyas¹⁹⁸.

Addressing the international community's concerns over the Rohingyas would mean alienating a part of the electorate who helped her get into power.

Treading on a fine line between ensuring the support of her voters and the military while also addressing international criticism, Aung San Suu Kyi has sparingly given concessions to the international community. For instance, she has allowed the Kofi Anan-led investigation on the situation on Rakhine state to enter the country. However, due to the power of the military and the anti-Rohingya sentiment in parts of her electorate, it is unlikely that the most crucial recommendation of the Commission, that is restoring the citizenship rights of Rohingyas, will be implemented. •

196 Ibrahim, A. 'The Rohingya of Burma — Betrayed by Aung San Sui Kyi'. Huffington Post. Available https://www.huffingtonpost.com/azeem-ibrahim/aung-san-suu-kyi-rohingya_b_3287191.html

197 Slodkowski, A. 'Myanmar's Suu Kyi Reiterates Stance on not Using Term "Rohingya"- Official'. Reuters. 20 June 2016. Available at <https://uk.reuters.com/article/uk-myanmar-rights/myanmars-suu-kyi-reiterates-stance-on-not-using-term-rohingya-official-idUKKCN0Z61AI?feedType=RSS&feedName=worldNews>

198 Ibrahim, A., 2016. The Rohingyas: Inside Myanmar's Hidden Genocide. Hurst. Available at <https://books.google.co.tz/books?id=60dGjgEACAAJ>



6

POLICY RECOMMENDATIONS

The situation of the Rohingyas in Myanmar has been qualified as a 'catastrophic humanitarian situation' by UN Secretary-General António Guterres, who also called on the international community to provide assistance to the Rohingya. The Advisory Commission on Rakhine state has highlighted how the current situation in Rakhine state, in particular for the Rohingya, could lead to radicalization of all communities and result in a spiral of violence, destabilizing the region. Hence, the following section aims to voice recommendations on steps the European Union and European policy-makers could take to find a way forward to resolve the crisis.

6.1 ADDRESSING THE ROOT CAUSES OF THE CONFLICT

The first and most fundamental step for a resolution of the Rohingya crisis is to address the root causes of the conflict. As the Rakhine Advisory Commission led by Kofi Annan has stated, the 'status quo in Rakhine state is not tenable' and deep changes are necessary¹⁹⁹. There are no 'quick fix' solutions to the conflict in Rakhine state²⁰⁰. Yet, European policy-makers, in particular from the EU External Action Service, could push for few actions to be taken to find a path forward.

01 There is a consensus among experts that the root causes of the conflict first lie with the lack of citizenship rights for Rohingyas. In Myanmar, acquisition of nationality is a political process that depends on an exclusive, ethnic citizenship regime. According to the 1982 Citizenship Law, there are different tiers of citizenship depending on descent-based criteria. As such, the ethnic minorities who are not recognised to have settled in Myanmar prior to British colonisation in 1824 are excluded from citizenship rights. This is the case for the Rohingyas, who are believed to be illegal immigrants from Bangladesh who arrived in Myanmar during the British colonisation²⁰¹, and they have, therefore, no clear legal status. The citizenship status creates a perception of 'otherness' of the Rohingyas and deepens the cultural divide between Rohingyas and the rest of the Rakhine population, which has allowed a process of gradual disenfranchisement of the Rohingya. As such, the 1982 Citizenship Law is the crux of the Rohingya plight. In addition, several aspects of the 1982 Citizenship Law are not in compliance with international standards and norms, such as the principle of non-discrimination.

Hence, the EU and its member states should:

- Advocate for the Burmese government to review the 1982 Citizenship Law so it is aligned with international standards, following the Rakhine Advisory Commission's recommendation²⁰². This should include moves to abolish the distinction of different tiers of citizenship, to refrain from stripping individuals from citizenship leaving them stateless and to ease the acquisition of citizenship for individuals who have resided in Myanmar permanently. The EU has diplomatic ties with the Burmese government officials that could allow it to lobby and advocate for a review of the 1982 Citizenship Law. Academic research has shown how sustained international pressure on a country can, through a spiral effect of making small concessions, bring in the end a better compliance with human rights²⁰³; therefore, the EU and its member state should sustainably advocate for a citizenship law which can prevent any groups from falling into statelessness.
- Once the 1982 Citizenship Law is amended, the EU should advocate for transparent and efficient legislation for the citizenship verification processes. So far these processes have been unclear and not accessible for Rohingyas. For those who are not recognised as Burmese citizens through the verification process, an official status should be created to allow them to acquire some legal documentation²⁰⁴.
- The amendment of the 1982 Citizenship Law should be a requirement for the repatriation of Rohingyas, who if there is no change of their legal status, will remain de facto stateless and will be exposed to discrimination and human rights violations.

02 The crackdown on the Rohingya occurs in a context of rising extremist Buddhist movements, such as Ma Ba Tha. According to experts²⁰⁵ Ma Ba Tha appeals

199 Advisory Commission on Rakhine State, 2017. Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine. Final Report of the Advisory Commission on Rakhine State. Available at <http://www.rakhinecommission.org/>

200 Ibid.

201 Ibrahim, A., 2016. The Rohingyas: Inside Myanmar's Hidden Genocide, Hurst. Available at <https://books.google.co.tz/books?id=60dGjgEACAAJ>

202 Advisory Commission on Rakhine State, 2017. Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine. Final Report of the Advisory Commission on Rakhine State. Available at <http://www.rakhinecommission.org/>

203 Risse, T & Sikkink, K. 1999. 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction'. Chapter in Risse, Thomas et al. (arg.). The Power of Human Rights: International Norms and Domestic Change, 1-38. Cambridge Studies in International Relations. Cambridge: Cambridge University Press. doi:10.1017/CBO9780511598777.002.

204 Advisory Commission on Rakhine State, 2017. Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine. Final Report of the Advisory Commission on Rakhine State. Available at <http://www.rakhinecommission.org/>

205 International Crisis Group, 2017. Buddhism and State Power in Myanmar. Brussels. Available at <https://d2071andvip0wj.cloudfront.net/290-buddhism-and->

to a portion of the Buddhist population, although the real numbers of its supporters is unknown. Although there is not necessarily a wide endorsement of anti-Muslim narratives, the activism of Ma Ba Tha creates an atmosphere in which the Muslim population in general, and the Rohingya in particular, are seen as ‘the other’ and convey the perception that discriminatory policies against Rohingyas are acceptable. This cultural divide should be curbed in order to create an environment conducive to rights equality for Rohingyas. The EU and its member states could, therefore, contribute to reconciling Buddhist and Muslim communities by doing the following:

- Supporting the government in providing opportunities for Rohingyas and Buddhist Rakhines to engage through ‘joint activities, such as vocational training, infrastructure projects, or cultural events’²⁰⁶. The EU could also back initiatives fostering acceptance of the Rohingya through education or in the media. This could help increase awareness about the human rights violations Rohingya face, while managing disinformation and fake news about Rohingyas. Projects of educational training should particularly target Buddhist institutions and organisations that through extensive influence in a Buddhist majority country could contribute to wider behavioural change.
- Advocate, lobby and support the government in combatting hate speech and enhancing the Burmese legal framework, which could allow for prosecution of those who incite ethnic or religious hatred.

03 In addition, the Advisory Commission on Rakhine State, led by Kofi Annan, has highlighted some of the protracted challenges that Rohingyas face. The Commission has stated that there is a development crisis in Rakhine state, as there is chronic poverty, insecure land tenure and a lack of livelihood opportunities, which contribute to grievances and place pressure on already strained intercommunal relations. Furthermore, Rohingyas face gross human rights violations, such as the lack of freedom of

movement, which have been referred to in the Rohingya armed groups’ grievances. In order to address these underlying issues contributing to fuel the conflict, the EU should do the following:

- Advocate for the implementation of the Advisory Commission on Rakhine State’s recommendations. The Burmese government has positively responded to the recommendations, although it has stated it would implement them ‘as much as possible depending on the conditions on the ground’²⁰⁷. The EU and its member states should use their diplomatic ties and influence to push for the implementation of the recommendations and, if necessary, provide financial support for some of the recommendations.

6.2 ACCOUNTABILITY OF THE PERPETRATORS

Genocide and crimes against humanity, as well as other human rights violations, undermine the fabric of entire societies. Therefore, accountability for crimes and gross violations against Rohingyas is likely to be key to reinstating stability in society and rebuilding trust in public justice and security institutions. Accountability can also be a powerful deterrent from renewed human rights violations²⁰⁸. Hence, the EU External Action Service and its member states should support the following initiatives to ensure the accountability of the alleged crimes against Rohingyas.

01 Accountability for perpetrators of human rights violations requires recording all the human rights violations that could be received in transitional or international criminal courts of justice. As such the EU and its member states could support the following initiative.

- High Commissioner for Human Rights Zeid Ra’ad al Hussein has called for the UN General Assembly to establish a mechanism to assist in criminal investigations in addition to the UN Fact-Finding Mission. Such a mechanism is likely to resemble the one established in Syria. Its task would be to ‘collect, consolidate, preserve and analyse evidence’

as well as ‘prepare files to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts’²⁰⁹. The main aim of this mechanism is to prepare files to assist courts, in contrast with the Fact-Finding Mission. This mechanisms is likely to be key in providing accountability for human rights violations. The EU and its member states could, therefore, back such an initiative by the High Commissioner for Human Rights either politically or economically.

02 Ensuring accountability for the perpetrators of human rights violations also requires ensuring the capacity of domestic institutions to prevent the impunity of perpetrators of human rights. As such, the EU and its member states should do the following:

- Support the creation of a specialised domestic institution that can independently investigate and prosecute international crimes. This would require advocating for a change of the culture of impunity for the Burmese army, as well as ensuring the capacity of domestic institutions to prosecute international crimes. The EU can help train Burmese prosecutors to investigate human rights violations.

6.3 MAINTAIN INTERNATIONAL PRESSURE TO ENSURE BEHAVIOURAL CHANGE IN THE BURMESE ARMY

Although international pressure has been unsuccessful in stopping violence against Rohingyas, the very rare acknowledgement of wrongdoing by the Burmese army of killing 10 Rohingya in Inn Din on January 2018 shows how international pressure can help shift behaviour and move towards the end of impunity of perpetrators of human rights violations. Hence, the EU External Action Service can ensure that Myanmar remains under international pressure.

01 International pressure on Myanmar could include ‘soft and positive measures’, which do not seek compliance through penalties or any form of sanctions, but aim to induce compliant behaviour²¹⁰.

According to academics, positive measures are a long-term approach to non-compliance²¹¹. Therefore the EU policy-makers should do the following:

- Maintain channels of communication through which the EU can enhance cooperation in the field of human rights. The EU should, therefore, hold a new Myanmar-EU human rights dialogue with State Counsellor Aung San Suu Kyi, Commander-in-Chief Hlaing and the EU Special Representative for Human Rights. This dialogue could allow the EU to discuss human rights issues in Rakhine state, urge Myanmar to shift its behaviour concerning Rohingyas, while ensuring the EU’s cooperation in addressing root causes of the violence against Rohingyas.
- Support initiatives strengthening the civil society as a way to end the culture of impunity for the Burmese army. Grassroots organisations could be provided with technical support to strengthen their advocacy work and the recording of human rights violations or legal work. Fortify Rights is, for instance, an organisation who works to strengthen the Burmese civil society, create a wide network of grassroots organisations and provide Burmese organisations with technical training on how to enhance their advocacy strategies and contribute more effectively to defend human rights. The International Dialogue Centre also trained religious leaders and civil organisations to provide training promoting peace and interfaith harmony in Myanmar²¹². By increasing the civil society network, the Burmese public will be able to hold the Burmese army or any perpetrators of human rights violations accountable.

02 In addition to long-term measures to ensure Myanmar’s commitment and compliance with human rights, EU policy makers could take short-term measures. These would include negative instruments aimed to induce a cost on Myanmar in order to change its behaviour. Negative measures could comprise economic sanctions or rhetorical engagements²¹³. Henceforth, the EU should do the following:

state-power-in-myanmar.pdf

206 Advisory Commission on Rakhine State, 2017. Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine. Final Report of the Advisory Commission on Rakhine State. Available at <http://www.rakhinecommission.org/>

207 Khiane, M. M. & Htway K.P. ‘Rakhine Commission: Myanmar Must End Restrictions on Rohingya’. VOA. Available at <https://www.voanews.com/a/myanmar-rakhine-state-commission/3998911.html>

208 UN Chronicle, 2012. ‘Establishing Effective Accountability Mechanisms for Human Rights Violations’. Available at <https://unchronicle.un.org/article/establishing-effective-accountability-mechanisms-human-rights-violations>

209 OHCHR, 2017. ‘International, Impartial and Independent Mechanism on International Crimes Committed in the Syrian Arab Republic’. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21241>

210 Joachim, J., Reinalda, B. & Verbeek, B., 2007. International Organizations and Implementation: Enforcers, Managers, Authorities?, Taylor & Francis. Available at <https://books.google.co.tz/books?id=yu7Z8h4XPicC>

211 Warkotsch, A., 2008. Non-compliance and Instrumental Variation in EU Democracy Promotion. Journal of European Public Policy, 15(2), pp.227–245.

212 KAICIID. ‘Who We Are?’ Available at <https://www.kaiciid.org/who-we-are>

213 Warkotsch, A., 2008. Non-compliance and Instrumental Variation in EU Democracy Promotion. Journal of European Public Policy, 15(2), pp.227–245.

- Maintain naming and shaming campaigns against the Burmese government and army. Several academic studies show that naming and shaming campaigns have successfully explained positive changes in human rights behaviour. Indeed, as the behaviour of the human rights violator is 'held up to light of international scrutiny', they can be viewed as a pariah state which can be costly, not only morally but also materially²¹⁴. Myanmar, which has recently resumed diplomatic and economic ties with Western countries as a result of the recent step forward towards democratisation, could find it costly to be isolated internationally because of the Rohingya crisis. Therefore, the EU External Action Service should pursue naming and shaming campaigns to enhance the pressure on the Burmese government to stop human rights violations against Rohingyas. The rhetorical engagement against Myanmar could include speaking out in ministerial and public events, voicing condemnation of violence against Rohingyas, issuing statements, publishing reports and using the European delegation in-country to express European condemnation of the Burmese government's management of the Rohingya crisis.
- Maintain political and economic pressure on the Burmese government and army until the crux of the conflict with the Rohingya is addressed. According to experts, targeted economic sanctions against Burmese army officials could be a deterrent from further attacks against Rohingyas, as Burmese army officials may fear international isolation. These sanctions could include visa and flight bans and freezing of foreign accounts of Burmese army officials which are suspected responsible of the violence against Rohingyas. The EU Parliament has already urged the Commission to review the trade deals with Myanmar under the mechanisms provided for in the Everything But Arms provision. Such measures could nudge army officials to refrain from further attacks against Rohingyas.

6.4 HUMANITARIAN ASSISTANCE TO ROHINGYAS IN MYANMAR AND REFUGEES

01 As the humanitarian situation for Rohingya refugees in Bangladesh remains dire, humanitarian assistance is needed in areas of WASH, including health, nutrition, food security and shelter. As such, it is vital that the international community and the EU and its member states in particular respond urgently to the requirements of the Humanitarian Response Plan for Bangladesh released by the UN humanitarian agencies for \$434 million, which is only funded up to 55%.

- The EU, which has pledged \$42 million to the Bangladesh Humanitarian Response Plan, should maintain its humanitarian efforts. Member states should further multiply public fundraising campaigns in order to contribute to the Humanitarian Response Plan in Bangladesh.

02 Following the October 2016 and August 2017 crackdowns on the Rohingyas, humanitarian access to parts of Maungdaw Township was denied. International staffs from UN agencies or international non-governmental organisations have been prohibited from entering the conflict-affected areas. Hence, the EU should do the following:

- Advocate for a 'full and unimpeded humanitarian access' to vulnerable communities in Rakhine state in accordance to international protection principles of non-discrimination.
- Maintain humanitarian efforts in Rakhine state. The EU has provide €76.5 million in humanitarian aid since 2010; however, more funding of programmes addressing the Advisory Commission for Rakhine's recommendations is needed.

03 Following the agreement signed by Bangladesh and Myanmar, there are plans to return Rohingya refugees to Rakhine State. Several human rights organisations, including Human Rights Watch²¹⁵,



Oxfam²¹⁶ and UNHCR²¹⁷ have outlined preconditions for Rohingyas to return to Rakhine state. They have highlighted that a premature repatriation of the Rohingyas could lead to further human rights violations, as there is no evidence that the root causes of the conflict have been addressed. Yet the agreement between Bangladesh and Myanmar on repatriation of Rohingya refugees makes no reference to the causes of the displacement. Hence, humanitarian actors fear that refugees returning to Myanmar may be put in 'camps' upon their return. Furthermore, the agreement states that the UNHCR would be 'drawn upon as needed and at the appropriate time', de facto denying the returned refugee humanitarian assistance. Hence, the EU External Action Service should do the following:

- Refrain from promoting the current agreement between Myanmar and Bangladesh on Rohingya refugees' return, which comprises significant flaws.

- Advocate for a non-refoulement principle among Myanmar neighbouring countries, in particular Thailand, which has had a record of not welcoming Rohingya refugees in accordance to international standards.
- Rather, it should encourage the voluntary return of Rohingya refugees in safe conditions as promoted by international standards. Rohingya refugees should not be forced to return to Rakhine state if there is no evidence of improvements of Rohingyas' human rights. Rohingyas should also be able to return to their own household and original places of residence. The EU should advocate through its diplomatic ties for the involvement of the UNHCR in the return of Rohingya refugees to ensure they are repatriated within acceptable conditions. •

214 Keck, M. E. & Sikkink, K., 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell University Press. Available at <https://books.google.co.tz/books?id=y-YH95YHliwC>

215 Human Rights Watch. 'Burma: Rohingya Return Deal Bad for Refugees Burma, Bangladesh Need to Redraft Agreement, Involve UN'. Human Rights Watch. 11 December 2017. Available at <https://www.hrw.org/news/2017/12/11/burma-rohingya-return-deal-bad-refugees>

216 OXFAM. 'Rohingya Refugees Will not Return to Myanmar without Equal Rights'. OXFAM. 19 December 2017. Available at <https://www.oxfamamerica.org/explore/stories/rohingya-refugees-will-not-return-to-myanmar-without-equal-rights/>

217 UNHCR. 'UNHCR – Rohingya Refugee Returns Must Meet International Standards'. UNHCR. 24 November 2017. Available at <http://www.unhcr.org/afr/news/briefing/2017/11/5a16fe014/unhcr-rohingya-refugee-returns-must-meet-international-standards.html>

CONCLUSION

Since Myanmar became independent in 1948, Rohingyas have been increasingly targeted by discriminating measures and sustained violence. Violence against Rohingyas has culminated in August 2017, when a Rohingya militant armed group, ARSA, launched an attack on the Burmese Border Guard Forces' bases. The Burmese army responded with a brutal military campaign. As a result of the violence, more than 650,000 Rohingyas have fled Myanmar and at least 6,700 Rohingyas were killed in the months of the attacks, according to the Médecins sans Frontières. Human rights groups, UN leaders and countries have condemned the escalating violence that has been described by a number of observers as 'ethnic cleansing', 'crimes against humanity' and 'genocide'. The exodus of Rohingyas towards Myanmar's neighbouring states has created what the UN Secretary General has called a 'humanitarian and human rights nightmare'.

Contributing to the international efforts to find a way forward to end the Rohingya crisis, this report has first aimed to present an overview of the Rohingyas' situation in Myanmar. This comprises background information on Myanmar, including its long pathway to democracy and the history of ethnic conflicts.

In the second section, this report listed and analysed the root causes of the state sponsored violence against the Rohingyas, showing that there has been the consolidation of the perception of Rohingyas as an enemy group, especially since the emergence of Buddhist extremist groups. This has led to repeated crackdowns on Rohingyas, culminating in August 2017.

The third section outlined the human rights violations that Rohingyas face. Rohingyas have been increasingly confronted to discriminatory policies that have stripped them of any citizenship rights. As a result of the discrimination policies, Rohingyas face violations of their basic integrity rights, as well as their economic and social rights.

The fourth section of this report has exposed the international efforts to stop the violence against Rohingyas. It has outlined the international legal framework that could be useful in ending the crackdown against Rohingyas. Several international organisations and countries have firmly condemned the violence against Rohingyas and focussed in providing humanitarian aid to Rohingya refugees. Nevertheless, the impact of the international condemnation on the Burmese government has been limited, as few concessions have been made and the crux of the conflict – their lack of citizenship – has not been addressed.

The last section of this report has presented areas of the European strategy to end the Rohingya crisis and where there is room for improvement. It has notably argued that root causes of the conflict should be addressed, in particular the 1982 Citizenship Law that distinguishes different tiers of citizenship and leaves Rohingyas de facto stateless. Furthermore, this report has claimed that accountability for crimes and gross violations against Rohingyas is likely to be key to reinstating stability in society and rebuilding trust in public justice and security institutions. Accountability can also be a powerful deterrent from renewed human right violations²¹⁸. Two areas in which the EU and its member states could assist Myanmar to ensure the accountability of the perpetrators of the human rights are the recording of the human rights violations and capacity building of local institutions. In addition, the EU and its member states could help shift behaviour and move towards the end of impunity for perpetrators of human rights violations against Rohingyas. They could do so by strengthening EU-Myanmar cooperation in the field of human rights as a way to induce a long-term change of behaviour. This strategy should be combined with short-term measures that aim to induce a cost on Myanmar in order to change its behaviour, including targeted economic sanctions or rhetorical engagements. Finally, the EU should reinforce its humanitarian assistance to Rohingya refugees and ensure that they can return safely to their homeland. •

218 UN Chronicle, 2012. 'Establishing Effective Accountability Mechanisms for Human Rights Violations'. Available at <https://unchronicle.un.org/article/establishing-effective-accountability-mechanisms-human-rights-violations>



NOTES



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