

## MODULE PAPER 4

# Myanmar's Rohingya Muslims - Whose Responsibility to Protect?

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An analysis of the 2012 Arakan violence, history of  
discrimination against them, and the role of  
international community

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## **Introduction**

Myanmar is on a long and tedious road to democratic transition. As the country prepares for General Elections in 2015, the struggle to maintain hegemony and legitimacy is becoming even more intense for Thein Sein's Union Solidarity and Development party, given the public support enjoyed by the newly revived opposition party National League for Democracy led by pro-democracy leader Aung San Suu Kyi. This transition and struggle to maintain status quo is coming at a high price for Myanmar, particularly for those belonging to the ethnic minority groups. This paper is particularly concerned with the situation of one such minority group — the Rohingya Muslims in Myanmar.

The Rohingya Muslims live in the Rakhine state bordering the Bay of Bengal in the west. Despite an estimated 1-2 million Rohingya Muslims living in the region, they are not recognized as ethnic minority group by the Myanmar government but are believed to be Bangladeshi migrants who have settled in the state illegally. This perspective has given birth to all the discriminatory policies and actions against them since beginning of the last century.

In June 2012, sectarian violence broke out between the majority Arakanese Buddhists and the Rohingya Muslims, triggered by the rape of a 28-year old Buddhist woman by three Muslim men. The violence in October was on a larger scale and much more lethal. The ensuing violence since June has reportedly claimed hundreds of lives and caused thousands of Rohingyas to flee their homes. As of July 2013, an estimated 140,000 Rohingya Muslims have been displaced from their homes. An unaccounted number of people are dying almost daily in the open sea as they attempt to flee to neighboring countries on rickety boats, and many more are dying due to systematic blockade of aid, food, water or medicine supply in the Rohingya IDP camps. Several factors clearly indicate that the ongoing violence is much more than sectarian clash.

This paper aims to understand the nature of the Rohingya crisis in Myanmar, its background and what are the mechanisms that fuel such discriminatory treatment of minorities. The paper tries to understand the nature of the persecution by through the framework of atrocity crimes such as Genocide, Ethnic Cleansing and Crimes against Humanity. Finally, it also attempts to put on table the various actions that can be taken to influence Myanmar to take responsibility for the Rohingyas, who are paying for the vacillation with their life.

The first section attempts to analyze the 'who, what, when, where and how' of the recent conflict in Arakan in order to unravel the complexity of the crisis. It also highlights the situation inside the camps for Internally Displaced Rohingyas and how it violates the United Nations Guiding Principles on Internal Displacement.

Section two aims to understand the role of the 1982 Citizenship Law as the starting point of such blatant discrimination against Rohingyas, and the kind of impact it has had on their

lives. Section three uses the theoretical framework of international laws such as the Genocide Convention and the International Criminal Court to probe if the current persecution of Rohingyas can be classified as one of the atrocity crimes. The following section explores the possibilities of international intervention, using the theoretical framework of UN resolutions of Responsibility to Protect and on Human Security, as well as the role of regional associations like ASEAN in assisting Myanmar to effectively deal with the crisis. Section five lists down a set of recommendations for the Myanmar government to focus on immediately. This is followed by the conclusion.

## 1. Analysis of 2012 Rakhine Violence

Rohingya Muslims are an ethnic, religious and linguistic minority group living in Myanmar's Rakhine state, on the west coast, which shares border with Bangladesh. Their physical appearance bears similarities with natives of Bangladesh's Chittagong region as does their Bengali dialect. Perhaps, this is the reason why they are widely referred to as 'Bengali' and not as Rohingya Muslims, as they themselves prefer to be called.

In June 2012, violent sectarian clash erupted between Arakanese Buddhists and Rohingya Muslims in Maungdaw, Sittwe and surrounding areas in Myanmar's Arakan state, triggered by the rape of a Buddhist woman by three Muslims men on 28 May 2013 in Ramri Township and the subsequent retaliatory killing of 10 Muslim men in Toungop Township. Official figures claim that 78 people were killed, and almost 100,000 Rohingyas were displaced in the ensuing violence that lasted for weeks. (Human Rights Watch, Aug 2012) Violence resurfaced four months later, on 23 October 2012, when thousands of Arakanese men armed with machetes, swords, homemade guns, Molotov cocktails, and other weapons attacked Muslim villages in Kyauk Phyu, Kyauktaw, Minbya, Mrauk U, Myebon, Pauktaw, Ramree and Rathedaung townships in Arakan. It was marked by large scale killings, arson, destruction of homes, mosques, Muslim shops and other properties. Several Rohingya villages were targeted concurrently and it is suspected that the perpetrators could have been from other townships. Several news reports and reports by rights groups suggests great amount of planning by local Arakanese political party officials and public vilification by senior Buddhist monks portraying Rohingyas as a threat to Arakan State. HRW reports the existence of at least 4 mass graves in Arakan state, where bodies of men, women and children were dumped unceremoniously in the presence of the army and/or the police. Precisely how many bodies can be accounted for in these mass graves or mass cremations will remain a mystery for a long time. Official estimate of the number of Rohingyas killed in this second wave of violence is 70, but, there is a high probability that these figures are grossly under-reported.

The state security forces acted in complicity with the perpetrators, acting as passive bystanders at best or participating in the killing and arson, at worst. "First the soldiers told us, 'Do not do anything, we will protect you, we will save you,' so we trusted them," a 25-yearold survivor told Human Rights Watch. "But later they broke that promise. The Arakanese beat and killed us very easily. The security did not protect us from them," he narrated. The response of the Myanmar government, led by President Thein Sein, towards protecting the Rohingya community has been non-committal and nonchalant. No serious steps have been taken either to bring the perpetrators to book, rehabilitate the displaced Rohingyas, prevent future outbreaks, or to tackle the root cause of the violence.

Meanwhile, the violence has spread to other parts of Myanmar. Between 20 and 22 March 2013, mobs of Buddhists, at times led by Buddhist monks, attacked Muslims in Meiktila, Mandalay region, following weeks of incitement through anti-Muslim sermons by members

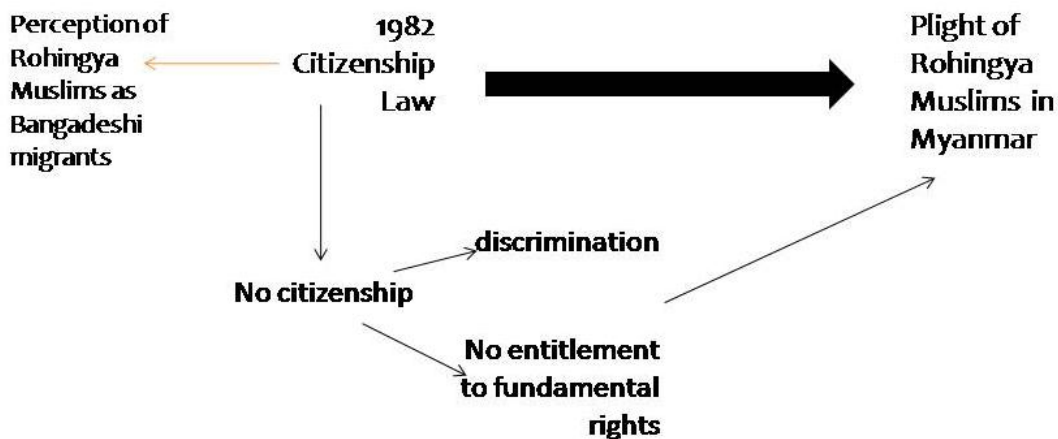
of the Buddhist monkhood. Around 40 people were killed and 61 injured in the ensuing violence in which Muslims property, mosques and shops were destroyed so badly that they were clearly visible from satellite imagery. According to a needs assessment released by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), over 12,000 Muslims were displaced by the violence in Meiktila and are in shelters around the town. The anti-Muslim rage has also spread to central Burma, including Okpho, Gyobingauk, and Minhla townships of Pegu Region.

Besides becoming victim to direct violence, around 35,000 people have turned to the high seas to escape to neighboring countries out of which around 785 have died by drowning (Refugees International). A United Nations High Commissioner for Refugees (UNHCR) report estimates that in December, 13,000 Rohingya arrived by boat in Malaysia in 2012 and refers to the “sailing season” as “unprecedented”. Thai authorities announce 6,000 Rohingya, including women and children, arrived on Thai shores since October 2012. What is even more disturbing is that the escapees are well aware of the risk but prefer dying in the open sea with the hope of reaching the destination alive, than staying back and meeting a certain ignominious death.

As of September 2013, an estimated 1,40,000 Rohingya Muslims are living in Rohingya camps for Internally Displaced People in Myanmar (*Al Jazeera*, 2013), around 2,50,000 are living as refugees in Bangladesh, and many more in Thailand, Indonesia and India. Meanwhile, an unaccounted number of people are dying due to systematic blockade of aid, food, water or medicine supply by the security officials in the Rohingya IDP camps, along with movement restriction in and out of the camps (HRW, 2013). The imposition of sub-human living conditions on the Rohingya inhabitants, along with the policy of segregation, movement restrictions and essential items blockades stand in stark violation of the United Nations Guiding Principles on Internal Displacement.

## 2. The Role of Citizenship Law

This section aims to understand why the Rohingya community is being targeted with such fury. Although discrimination against ethnic minorities is not new to Myanmar, the novelty this time lies in the targeted manner in which their human rights are being violated such as being forced to relocate and be confined to Rohingya-only IDP camps and ghettos through fear-tactics, made to live in sub-human living condition bereft of any possibility to lead a life of dignity, coordinated and large-scale boycott of their business and economic activity by the majority Buddhists led by some high-ranking Buddhist monks, removal of their “Rohingya” identities from official lists, and implementation of several anti-Rohingya policies. Myanmar’s 1982 Citizenship Law has played a huge role in this process. It does not recognize the Rohingya Muslims as a national ethnic minority group, thus depriving them of Burmese citizenship and rendering a vast majority as ‘stateless’. This deprivation of citizenship has had a cascading effect on their quality of life, and has paved the way for gross human rights violations, including the Rohingya’s right to live freely, freedom of movement, right to work, right to education, right to marry and have a family, among others.



**Figure 1. The causal relationship between the 1982 Citizenship Law and persecution of Rohingya Muslims in Myanmar**

This diagram illustrates the relationships between key causal and resulting factors. The 1982 Citizenship Law is the independent variable, the plight of the Rohingya Muslims is the dependent variable, perception of Rohingya Muslims as Bangladeshi migrant is the antecedent variable, while ‘loss of citizenship’, ‘discrimination of Rohingyas’ and ‘no entitlement to fundamental rights’ are the intervening variables that connect the independent and dependent variables.

## 2.1 Hierarchies in Citizenship

Myanmar draws its legal framework on citizenship from the 1982 Burma Citizenship Law which was passed on 15 October 1982 by the Chairman of the Council of State. This detailed document comprising seven chapters replaced the 1948 Union Citizenship Act.

A distinguishing characteristic of the existing Citizenship Law is that it creates three distinct classes or hierarchies of citizenship — full citizen, an associate citizen and a naturalized citizen — in that order, bestowing each with varying degrees of rights and privileges.

**Full citizenship** is granted to “nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 AD.” An Amnesty International report points out that although this definition appears on its face to be flexible (“such as”), sec. 4 grants the Council of State practically unfettered powers to decide “whether any ethnic group is national or not.” (2004) It also accords citizenship to persons based on the citizenship status of both parents and at times even grandparents.

**Associate citizenship** is granted, under certain conditions, to persons who had applied for citizenship under the 1948 (sec. 23) citizenship law and their children, and whose application was ongoing at the time of promulgation. The law grants the Central Body the authority to deprive such persons of their rights as citizens as well as revoke “associate citizenship” on grounds that include “disaffection or disloyalty to the state” or “moral turpitude” in which case they can impose a minimum of one year imprisonment or a fine of one thousand kyats (sec. 35).

**Naturalized citizenship** is what most Rohingya Muslims are eligible for. Under section 42 of the Citizenship Law, those “persons who have entered and resided in the State anterior to 4th January, 1948, and their offspring born within the State may, if they have not yet applied under the union Citizenship Act, 1948, (can) apply for naturalized citizenship to the Central Body, furnishing conclusive evidence.” It may be granted to non-nationals such as members of those ethnic groups not recognized as native Burmese; this would include the Rohingya Muslims. It also lists down other criteria for consideration such as having parents belonging to specified combinations of naturalized citizens, associate citizens and foreigners (sec. 43), as well as age criteria of 18 years, fluency in at least one national language, good character and sound mind (sec 44).

Moreover, the Central Body enjoys sweeping powers on the issue of granting, rejecting and revoking citizenship, beyond the scope of being questioned and further appeal. Furthermore, even if in theory the Rohingyas may be eligible for naturalized citizenship, few possess the necessary documents that would provide ‘conclusive evidence’ of entry and residence prior to 4 January 1948 or could establish the necessary bloodlines as required by the law. The Amnesty report points out, “while to prove their residence they can use their family list,



which names each member of the household, the family list only indicates names of family members and date of birth. It does not indicate place of birth, which in effect prevents people from “furnishing conclusive evidence” of birth in Myanmar as required by the 1982 law.” (9)

Referring to the timing when the current citizenship Law came into effect, Amnesty report insinuates that it could have been designed explicitly to deny Rohingyas the right to a nationality since it coincided with the repatriation of the Rohingyas who had fled during 1978. (2004, 10)

## **2.2 Rohingya Muslims in Myanmar- Stateless and invisible**

As a fall out of this exclusion from citizenship, most of the 1-2 million Rohingya Muslims in Myanmar have been rendered ‘stateless’, thus becoming extremely vulnerable to flagrant violations of their human rights. In addition, neither the 1982 Citizenship Law nor the Constitution of the Republic of the Union of Myanmar make any mention of ‘stateless’ people living within its territory. In fact, even the use of the word ‘Rohingya’ is found unacceptable and objectionable by a vast majority of people, including by government officials. (Bangla News 24) They are referred to as ‘Bengali’, ‘so-called- Rohingyas’ or even as ‘kalars’, a derogatory word referring to their darker complexion. In fact, in April 2012 in Arakan state, the National League for Democracy party which has a large Rohingya support base, removed the term ‘Rohingya Muslims’ from its membership application form and asked the young Rohingya supporters to write ‘Muslims’ instead of ‘Arakan Muslim’, ‘Rohingya Muslims’, ‘Burmese Muslims’, ‘Bangali’ or ‘Kala’ in the column for ‘RACE’. (Kaladan News 2012)

## **2.3 The Citizenship Law gives License to violate rights**

In practice, the Law has impinged on key fundamental rights of the Rohingya Muslims such as freedom of movement, right to education, right to work and employment, right to marriage and to have a family, either directly or indirectly, and thus stands in violation of international human rights law, particularly the Universal Declaration of Human Rights. Furthermore, they are repeatedly subjected to forced labor, arbitrary detention and arrest, torture and rape, land confiscation, forced eviction, destruction of house and place of worship, extortion and arbitrary taxation, registration of Birth and deaths in families against payment and much more. (Amnesty International, 2004) One thing that comes across unequivocally in all the reports is that the Rohingyas are the prime, if not the only, targets of Nasaka’s excruciatingly discriminatory policies.

Nasaka, an inter agency force comprising the local police and the paramilitary border force, is the supreme authority in charge of security and implementation of various state policies in Arakan. It was officially disbanded by President Thein Sein in July 2013 without giving any

reason. The agency was heavily criticized by various rights groups for its flagrant human rights abuses, corruption and heavy extortion from the Rohingyas and other minority groups.

**Forced labor** - Many Rohingyas are deployed by the Nasaka as forced labors irrespective of their age, sex, or health conditions for sentry duty, road construction and repair, building fences. Although the labor is often paid, it is nonetheless forced and the payment is pittance. No one is exempted from labor except by paying through one's nose. It has also been reported that the burden of labor falls mainly upon the Rohingya and the native Rakhines are mainly exempted from it. Amnesty reports that in Maungdaw and Buthidaung townships, and to some extent in Rathedaung Township, only Rohingyas are normally required to perform forced labor. (ibid., p 19)

**Forced eviction and confiscation of properties**- Many Rohingya properties in Arakan state including land, farm and houses have been confiscated by the Nasaka, and the members have been forcibly evicted, without any compensation. The property was reportedly used for the creation of "model villages"; commercial purposes like shrimp farms, construction or expansion of Nasaka camps or for new settlers such as Barmans and other ethnic groups. To add insult to injury, the Rohingyas were forced to build these new constructions without any pay for others to settle down. Sometimes, the property was confiscated on false charges of illegal construction or non-registration. Overnight independent farmers were rendered dependent and impoverished laborers, robbing them and the families of shelter, food and social security.

**Extortion and arbitrary taxation**- The Rohingyas are also subjected to extortion and arbitrary taxation by the Nasaka on necessary items and services such as on collecting firewood and bamboo, birth and death registration in the family lists, on livestock and fruit-bearing trees, and even on football matches. The amount payable is calculated arbitrarily and varies from place to place. Particularly excruciating was the rice tax under which the paddy farmers had to sell a portion of their harvest at fixed prices to the state Myanmar Agricultural Products Trade (MAPT) at prices that were shamefully below the market rate, varying from ½ to 1/8 of the market price. (Amnesty 2004, 27) Although it has been officially abolished in 2003, the practice is still on.

**Marriage restriction**- In line with Myanmar government's policy of controlling the Rohingya Muslims' population is the need to acquire an official permission to marry. This inglorious policy is imposed only on the Muslim population and not on any other ethnic groups. If a Rohingya couple wants to get married, they need to seek permission much in advance and each side needs to pay anywhere between 50,000- 3,00,000 kyats. Even then, permission is not guaranteed. As a result of this policy, there have been no marriages for last several years in many Rohingya villages. It has also forced many couples to flee to Bangladesh to get married and has, in turn, jeopardized their chances of return, besides increasing the financial burden and debt on the families. Human Rights Watch report reveals that such restrictions have tightened since the second spate of ethnic violence in October 2012. Men and women are often arrested and sentenced to prison for unlawful marriages. (2012, 80)

**Limitation on the number of children-** Related to the above policy is the revival of the reprehensible “two-child” policy of 2005, for the Muslims in two townships in Arakan state, Buthidaung and Maungdaw. Not only is this highly discriminatory, but it has been openly supported by several top government officials and many members of Buddhists majority group. This policy has severely jeopardized the health of pregnant Rohingya women who opt for unsafe abortions, as well as increased the vulnerability of many Rohingya children. Many parents have not registered their children out of fear of reprehension by the authorities, thus rendering the children extremely susceptible to various kinds of abuses, arbitrary arrest, trafficking etc. This policy has received flak internationally, and has even invited the criticism of Aung San Suu Kyi, who has hitherto been reticent about the issue, calling it “discrimination not in line with human rights.”

## **2.4 Response of the Government to the crisis**

Since they have been denied citizenship and are regarded as stateless, even in the aftermath of June 2012 violence when many Rohingyas were butchered to death and hundreds ended up as refugees and IDPs, the response of the Thein Sein government was apathetic. In fact, in an interview on July 12, 2012, President Thein Sein said that the “only solution” to the problems facing the Abakan State was to send “illegal” Rohingya to “third countries” or to refugee camps overseen by UNHCR. He said:

“We will take care of our own ethnic nationalities, but Rohingyas who came to Burma illegally are not of our ethnic nationalities and we cannot accept them here. ... The solution to this problem is that they can be settled in refugee camps managed by UNHCR, and UNHCR provides [sic] for them. If there are countries that would accept them, they could be sent there.”

What was even more shocking was the public response to Thein Sein’s suggestion. Instead of censuring the government, the public favored his move reflecting a wide-spread dislike of the Rohingyas not limited to the Arakan state. The UN Refugee agency was quick to respond to this suggestion saying that its program is meant only for recognized refugees and people cannot be refugees in their own country, thus did not entertain any hope of resettling Rohingyas in Myanmar.

Besides being perceived as outsiders, they are also perceived as threat to Myanmar’s national security. Chris Lewa, founder of Arakan Project explained that the government wants to prevent the Rohingya population from growing, and stop their “illegal migration” from Bangladesh. At the same time, they also want to prevent their population from growing from inside by restricting their marriages and putting a limit on the number of children.

In April 2013, the government’s Enquiry Commission on the Sectarian Violence in Rakhine State, submitted its report on the 2012 ethnic violence. Commenting on it, Ms Lewa said it was biased, “[T]he voice of Rakhines prevailed, there is no detailed plan for solution, no

timeframe, nor is there any acknowledgement of past abuses done to Rohingya.” (August 2013) She added further that there were no representative from the Rohingya community on the panel, and out of the three Muslim representatives two were reportedly forced to resign on spurious charges. Voicing her concerns on the impartiality of the Commission, she first pointed out that the Commissioner of the commission was the leader of the Rakhine Nationalities Development Party which was instrumental in instigating violence on the Rohingya community, and second, the report downplayed the role of government authorities in the ethnic violence. Lastly, the report does not mention the issue of segregation which is critical for any form of reconciliation to work.

The Enquiry Commission’s report betrays the desperate and base attempts of an insecure government to secure a permanent vote-bank by deepening the already-existent ethnic schism between dominant Buddhists and minority Muslims.

### 3. The Challenge of Classification

This section aims to understand the nature of the crime committed, and whether it can be classified as one of the atrocity crimes- Genocide, Ethnic Cleansing, and Crime against Humanity

The term ‘Genocide’ was coined by Raphael Lemkin, a Polish-Jewish jurist by combining the ancient Greek word *genos* (race, clan) and the Latin suffix *cide* (killing). Thus, genocide in its formation would correspond to such words as tyrannicide, homicide, patricide. It is the crime of destroying national, racial or religious groups. (Lemkin, 1946)

Lemkin’s theoretical work on Genocide was seminal in drafting the Convention on Prevention and Punishment of the Crime of Genocide came, which came into being in 1948. The Convention defined genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Furthermore, Article III of the Convention regards not only the actual act of committing genocide but also the conspiracy, incitement and attempt to commit genocide as well as complicity in the act as punishable in relation to the crime. However, the Convention defines Genocide in much restricted way than was originally conceived.

Crimes against Humanity is defined by the International Criminal Court as acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. They include murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury. (ICC, October 2013)

Ethnic Cleansing refers the use of force or intimidation to remove people of a certain ethnic or religious group from an area. The United Nations Commission of Experts, in a January 1993 report to the Security Council, defined “ethnic cleansing” as “rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area.”

There are a lot of definitional overlaps, and that makes the task of classification challenging. Many believe that Genocide is the worst form of Crime Against Humanity, with its focus on the “intent to destroy, in whole or in part” a group of people. In our case, there are enough signs signaling the presence of the intent to destroy the Rohingya community. Around a thousand have been killed in direct violence (Lewa, August 2013), many more injured and subjected to the threat to kill, bodily injury, discrimination and isolation in Rohingya IDP camps, restriction on movement, blockade of essential items, subjected to two-child policy and marriage restrictions, apartheid treatment and much more. Moreover, news and human rights reports are abound with evidences indicating great amount of planning, conspiracy, incitement and complicity of security forces, Buddhist leaders and government officials in the violence directed at Rohingya Muslim community. Does it mean that the ongoing situation of Rohingyas amounts to Genocide?

Prof. William Schabas says, “We’re moving into a zone where the word [Genocide] can be used (in the case of the Rohingya). When you see measures preventing births, trying to deny the identity of the people, hoping to see that they really are eventually, that they no longer exist, denying their history, denying the legitimacy of the right to live where they live, these are all warning signs that mean that it’s not frivolous to envisage the use of the term genocide.” (Interview with *Al Jazeera*, 2013) The Sentinel Project for Genocide Prevention, an online project working on developing an effective early warning system to prevent Genocide, concludes that the risk of Genocide in Myanmar is extremely high- “[T]he distinct possibility of genocide carried out either through extermination by killing squads or more slowly by isolation and starvation. While virtually all of the elements of the genocidal process are present in Burma, it is too early to determine whether genocide itself is currently occurring. Such a determination depends upon both the continued systematic ethnic cleansing of Muslim-populated regions and upon continued isolation, denial of aid, and restriction of movement, which could be interpreted as indicators of genocidal intent.”

In his interview with this researcher, Prof Gregory Stanton refers to alternate nomenclatures posited by other atrocity crime experts that could perhaps be more accurate. David Scheffer, U.N. Secretary-General's Special Expert on United Nations Assistance to the Khmer Rouge Trials, believes that we should simply concentrate on calling it Crimes against Humanity, or atrocity crimes. (Stanton, 2013) Stanton argues against classifying this as a total Genocide saying that the killings have been sporadic and in response to incitement, and the whole Rohingya population has not been decimated at once, which would be total Genocide. He posits Leo Kuper’s idea of ‘genocidal massacres’, which are “cases of mass killing in which the scale is relatively small and the intent of the perpetrators is not to murder all members of the group but only a portion of them” (Kuper and Fein), as a more apt classification.

Yet, despite the situation bearing frightful semblance to Genocide, small or large-scale, many international rights watchdogs of repute are extremely cautious about classifying it as Genocide. Prof Stanton explains that the lawyers at Amnesty International are extraordinarily conservative in their usage of the term ‘Genocide’, almost legalistic. He cites that during the Rwandan Genocide in 1994 the lawyers at Amnesty international refused to call it Genocide. Human Rights Watch, on the other hand, was very outspoken, and called it Genocide right

from the start. In its ground-breaking report on Burma “All you can do is Pray” published in April 2013, Human Rights Watch classifies the crime against Rohingyas during 2012 violence as “Crimes against humanity carried out as part of a campaign of ethnic cleansing”.

However, keeping this intellectual din aside, how does this classification matter to the Rohingyas? What difference does it make to their life, their present and the future of Myanmar?

#### **4. Rohingya Muslims- A Shared Responsibility to Protect**

The question of classification is linked with the action it warrants from the international community, which will in turn determine the future of Rohingyas. This section aims to explore whose responsibility it is to protect the Rohingyas, particularly when the state of Myanmar itself is complicit in the crime. Dr William Schabas elaborates that the notion of prevention of genocide was implicit within Article 1 of the Genocide Convention which states, “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.” He cites the 2007 ruling of the International Court of Justice (ICJ) which spoke of a duty of “due diligence” imposed upon States, one that extended even to acts committed outside of their own borders by entities over which their influence may extend. This obligation to prevent genocide dovetails nicely with the Responsibility to Protect (R2P), recognised in 2005 by the United Nations General Assembly and endorsed the following year by the Security Council.”

The responsibility to protect (R2P or RtoP) is a new international security and human rights norm to address the international community’s failure to prevent and stop genocides, war crimes, ethnic cleansing and crimes against humanity. This commitment was made by the world leaders at the United Nations (UN) 2005 World Summit. The Summit Outcome Document emphasizes that the primary responsibility to protect civilians from atrocity crimes, and its prevention, lies with the individual state, and the international community should assist the concerned state in delivering its obligation satisfactorily. (Paragraph 138)

In our case, the responsibility to protect the Rohingya Muslims lies with the state of Myanmar, which as evidences suggest, is complicit in the crime. Given the situation, what recourse do they have? In such cases, the responsibility falls on the broader international community to provide that protection. Paragraph 139 of the outcome document reads, “The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.” It also mentions that should peaceful means fail to influence the concerned state to protect its own population, then the international community could undertake military intervention, through the Security Council, as enlisted in Chapter VII of the UN Charter.

R2P commands a wide range of actions including, but not limited to military intervention such as diplomacy, financial sanctions, prosecutions at international tribunals, intelligence collection and other actions aimed at deterring would-be perpetrators. (Abramowitz, 2013) However, the few instances where it has been invoked has largely been through military intervention, which has had devastating humanitarian consequences and its success as an



intervention meant to protect civilians is so far questionable. The case of Libya is a stark reminder, where in 2011 R2P was applied through military intervention by passing UN Security Council resolution 1973.

Myanmar now stands at the crossroads of history and future, military hegemony and democratic sanction of power, and other entanglements. Major reforms are underway, ending the country's long isolation, and catapulting it to the international playground as the newest rookie. The year 2010 earmarked Myanmar's gradual democratic transition starting from November 2010 elections held for the first in 20 years, followed by the subsequent release of pro-democracy leader and Nobel Laureate Aung San Suu Kyi, who was not allowed to contest the 2010 election. In March 2011, soon after Thein Sein was sworn in as President, the new government released thousands of prisoners, but few political prisoners, under amnesty. In October the same year, more than 200 political prisoners were freed under general amnesty. New labour laws were passed and peaceful demonstrations became permissible for the first time. In April 2012, three months after Suu Kyi's political party, National League for Democracy (NLD) re-registered for the by-elections, it recorded a landmark victory securing 43 out of 45 seats in its first ever elections since 1990. Between December 2011 and May 2013, the new military-backed government brokered several peace agreements with warring ethnic groups in the border-states. In December 2011, Burmese authorities agreed upon a truce with rebels of the Shan ethnic group and ordered the military to stop operations against ethnic Kachin rebels. In January 2012, the government signed a ceasefire with rebels of Karen ethnic group. A day later, hundreds of prisoners were released - among them the country's most prominent political prisoners, including veterans of the 1988 student protest movement, monks involved in the 2007 demonstrations and activists from many ethnic minority groups. In February 2013, government and ethnic Kachin rebels reach an agreement to hold talks, after weeks of fighting in the north-east of the country. Pleased with Myanmar's strident moves, the west finally loosened the nose over Myanmar.

Following April 2012 by-elections, US relaxed its sanctions on Burma, followed by the European Union which additionally opened an office in Myanmar's biggest city, Rangoon. In April 2013, EU lifted its remaining trade, economic and individual sanctions - except those on arms sales - in response to Burma's political reform program. In January 2013, the Asian Development Bank resumed loans to Burma for the first time in 30 years in an attempt to boost its social and economic development. In June 2013, Myanmar hosted the World Economic Forum 2013, becoming the cynosure of multi-national companies and governments, who are impatient to tap into the country's virgin market and resources. On this, Human Rights researcher, Lisa Misol writes:

General Electric, which was the first American company to sign a deal after U.S. sanctions were lifted in July 2013, formally launched its Myanmar office in late May 2013. On June 4, Coca-Cola opened its first bottling plant in the country in 60 years, following Carlsberg and Heineken. Then, on June 27,

Myanmar's awarded licenses to telecommunications firms from Norway and Qatar. In the petroleum sector, companies from around the world have reportedly bid on 30 sought-after offshore oil and natural gas fields in June. At least 20 more fields are to be offered next. (July 2013)

Indeed, Myanmar is the golden goose and none would dare to throttle it, despite its existing social and sectarian problems.

Given the circumstances, will the international community invoke R2P on Myanmar? Prof Greg Stanton believes not. (Stanton interview with researcher, August 2013) China, Myanmar's biggest economic benefactor, will most likely veto any such resolution intended to launch an offensive against the country. Moreover, it would perhaps be wiser to engage Myanmar diplomatically. Stanton believes that the international community needs to reach out to Myanmar through assistance in dealing with this national problem which, no doubt, has been caused by its own laws and deep-rooted feelings against the Rohingya community. The international community could support Myanmar by covering the cost of integrating the Rohingya population into Myanmar's society, he suggests.

However, this vision of reintegrating Rohingyas into Myanmar's society is not shared as enthusiastically either among the political elites, or the Buddhist religious leaders, or the security forces and definitely not the majority Buddhist population. For many, the idea itself is inconceivable. Infact, Burmese expert Chris Lewa believes that pushing for it may even jeopardize the security of Rohingyas. (Lewa, interview with researcher, August 2013)

This brings me to my next question- what are the other plausible options to protect the Rohingyas, and simultaneously, influence Myanmar's policies and official stance towards the community? Exhausting all the options available in the UN could be a good start. Although, the Security Council may not agree to a unanimous classification of the Rohingya crisis, given the veto politics, that does not close other possible avenues for taking necessary action. Prof Stanton offers a variety of actionable ideas to put diplomatic pressure and moral suasion on Myanmar. United Nations General Assembly is an important executive branch of the UN system, having its own powers, and could declare the Rohingya crisis as a Crime against Humanity. The United Nations High Commissioner for Refugees can also make a statement that it is a Crime against Humanity. UN Secretary General Ban Ki Moon can exercise his good offices to address this diplomatically with the government of Myanmar to try to reach a solution to the problem, and he might be called upon to ask the UNHCR to also work on this problem. Additionally, United Nations Children's Fund (UNICEF) and World Food Program are two UN agencies who do not require any permission from the government to follow their mandate, of protecting children and providing food during humanitarian emergencies, respectively.

Use of intelligent diplomacy will go a long way in resolving this crisis by creating a win-win situation for all parties. Prof Stanton also suggests that the ASEAN countries could come together to offer a lucrative deal of assistance to Myanmar in exchange of the acceptance, rehabilitation and integration of Rohingya Muslims within the country. For example, the association could create an all-ASEAN common market, where Myanmar could become the mid-wife for an all- ASEAN common market as part of the deal in which Rohingyas are granted citizenship and efforts are made to integrate them into the society as equal human beings. Other option is that the bigger ASEAN countries, the US or EU could strike a deal on the Rohingya rehabilitation with Myanmar, in exchange of assistance in infrastructural development such as building roads, shipping logistics and railways infrastructure. The trick, he emphasized, is in doing things quietly. That will be more effective.

On 10 September, the United Nations General Assembly adopted the consensus resolution 66/290 entitled “Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome” in which Member States agreed on a common understanding on human security, paving the way to formally apply human security within the work of the United Nations.

The resolution clearly draws a line between the concept of human security and the responsibility to protect and its implementation. It also clarifies that “human security does not entail the threat or the use of force or coercive measures.” (Section 3 (d and e))

The resolution emphasizes that the primary responsibility to ensure the survival, livelihood and dignity of its citizens lies with the individual state; however, the role of the international community is to complement and support the Governments, upon their request, to strengthen their capacity to respond to current and emerging threats. Unlike R2P, it does not warrant any military intervention. Therefore, the human security resolution highlights the need for greater collaboration and partnership among Governments, international and regional organizations and civil society. (3g)

Therefore, in order to ensure the human security of the Rohingya Muslims, there needs to be a concerted effort between the Myanmar government and the international community, UN system, ASEAN and SAARC, national and international civil society, as well as influential neighbor, particularly India and China.

## 5. Recommendations

Following are my key recommendations addressed to the Myanmar government:

1. Establishment of an independent investigation team to look into violations of international human rights law, and human rights abuses in the wake of the 2012 ethnic violence between Buddhists and Rohingya Muslims in Arakan state. Those found guilty of playing any role in the crime – not just committing the actual crime, but also inciting hatred, planning, abetting the crime and other such acts, should be tried fairly to the fullest extent of the law, irrespective of rank or position, and as per the international law on atrocity crimes.
2. Immediate removal of blockade of aid, food, and medical supply by the government into the Rohingya IDP camps.
3. To provide immediate, safe and unhindered access to humanitarian and relief agencies into Rohingya IDP camps, settlements and affected population, not only to provide immediate relief to those suffering, but also to assess the magnitude of the humanitarian crisis.
4. The Constitution of Myanmar should recognize scores of stateless people living within the country, and make amends to either provide them citizenship status- full or partial, or create legal, social, economic space for the recognition of their rights as human beings. To this end, the 1982 Citizenship Law warrants immediate amendment to remove discriminatory clauses against Rohingya Muslims and other minorities, and accord them citizenship status to enable them to enjoy their fundamental rights as human beings living in a civilized, democratic country. Additionally,
5. Immediate removal of discriminatory policies and restrictions such as on movement, marriage, holding property, freedom to work and to have children. Myanmar's policy on minorities needs to be in line with international human rights framework.
6. Shift in the official attitude towards the Rohingya Muslims; acknowledging their narrative of history and upholding respect for all forms of diversity.
7. Need for a comprehensive and inclusive National Reconciliation Program as a sine qua non for democracy.

## 6. Conclusion

The situation in Myanmar is snowballing into a major humanitarian crisis, and has already begun to have ripple effects in the region. The bombing of Bodh Gaya, a Buddhist shrine, in India by Islamic extremist outfits (*TNN*, 2013) and reports of increasing involvement of Islamic terror groups in the Arakan state, allegedly spurred by the sectarian violence, should be a wake-up call for the world leaders. Despite several international provisions, treaties and conventions meant to prevent the occurrence of atrocity crimes on civilians, violence against Rohingya Muslims in Myanmar continues unabated. It betrays the lack of commitment of the international community to live up to the ideals enshrined in the Bibles of human rights.

Reform measures that exclude the voices and concerns of the ethnic minorities run the risk of being mere cosmetic changes, powerless in the face of a big crisis. There needs to be a creative solution to bridging the deep ethnic divides that is marring the rich cultural and natural landscape of this Buddhist country. For Myanmar, strengthening its commitment to democratic ideals, human rights and Rule of Law, should not be limited to providing immediate security and relief to Rohingyas, which is the bare minimum it could do but is not doing. It includes having a long-term, time-bound and accountable strategy and commitment to integrate the Rohingyas and other minorities; recognizing their contributions to the country; and creating spaces for every person, without discrimination, to be able to give full expression to his or her potential, free from any fear or want.

## References

- Abramowitz, Mike. "Who Will Stand Up for the Responsibility to Protect?" *The New York Times*, August 1, 2013. [http://kristof.blogs.nytimes.com/2013/08/01/who-will-stand-up-for-the-responsibility-to-protect/?\\_r=0](http://kristof.blogs.nytimes.com/2013/08/01/who-will-stand-up-for-the-responsibility-to-protect/?_r=0).
- Amnesty International, 2004. 'Myanmar: The Rohingya Minority: Fundamental Rights Denied', published on 18 May 2004. **Index Number:** ASA 16/005/2004. <http://www.amnesty.org/en/library/asset/ASA16/005/2004/en/9e8bb8db-d5d5-11dd-bb24-1fb85fe8fa05/asa160052004en.pdf>
- Cohen, Roger. "Ethnic Cleansing" Crimes of War, 2011. Accessed on 5 July 2013 <http://www.crimesofwar.org/a-z-guide/ethnic-cleansing>.
- Myanmar, 2008. 'Constitution of the Republic of the Union of Myanmar, 2008', Online Burma/Myanmar Library. [http://www.burmalibrary.org/docs5/Myanmar\\_Constitution-2008-en.pdf](http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf)
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- First published in *American Scholar*, Volume 15, no. 2 (April 1946), p. 227-230. Accessed 5 July 2013. <http://www.preventgenocide.org/lemkin/americanscholar1946.htm>
- "General Assembly -- R2P Excerpt from Outcome Document." Accessed 6 October 2013. [http://www.responsibilitytoprotect.org/index.php?option=com\\_content&view=article&id=398](http://www.responsibilitytoprotect.org/index.php?option=com_content&view=article&id=398).
- General Assembly Resolution on Human Security, 2012, Accessed 6 October 2013. [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=%20A/RES/66/290](http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/66/290)
- Human Rights Watch, 2013. 'All You Can Do is Pray- Crimes against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State', published in April 2013. [http://www.hrw.org/sites/default/files/reports/burma0413\\_FullForWeb.pdf](http://www.hrw.org/sites/default/files/reports/burma0413_FullForWeb.pdf)
- "International Coalition for the Responsibility to Protect (ICRtoP)." Accessed October 12, 2013. <http://www.responsibilitytoprotect.org/>.
- International Criminal Court, 2013. Accessed 6 October 2013. [http://www.icccpi.int/en\\_menus/icc/about%20the%20court/frequently%20asked%20questions/Pages/12.aspx](http://www.icccpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/Pages/12.aspx)
- Irish Centre for Human Rights, 2010. 'Crimes Against Humanity in Western Burma: the Situation of the Rohingyas'. [http://www.nuigalway.ie/human\\_rights/documents/ichr\\_rohingya\\_report\\_2010.pdf](http://www.nuigalway.ie/human_rights/documents/ichr_rohingya_report_2010.pdf)

- Jain, Bharti. "Bodh Gaya Blasts: Bombs May Have Been Sourced from Assam, NIA Says – Times Of India." *The Times of India*, July 23, 2013. Accessed 16 October 2013. [http://articles.timesofindia.indiatimes.com/2013-07-23/india/40747760\\_1\\_bodh-gaya-nia-sources-assamese-muslims](http://articles.timesofindia.indiatimes.com/2013-07-23/india/40747760_1_bodh-gaya-nia-sources-assamese-muslims).
- Lewa, Chris 2013. Skype Interview with Anamika Gupta, European Peace University, Austria, on 8 August 2013.
- Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven. CT: Yale University Press, 1981), 60. See also, Helen Fein, "Genocide, a Sociological Perspective," *Current Sociology*, 38 (1990): 18-19. Eric Markusen and David Kopf also give a summary of the concept of genocidal massacre in their book *The Holocaust and Strategic Bombing*, 62-64.
- Misol, Lisa. "Myanmar: Invest at Your Own Risk – Global Public Square - CNN.com Blogs." *CNN World*, 10 July, 2013. Accessed 13 October 2013. <http://globalpublicsquare.blogs.cnn.com/2013/07/10/myanmar-invest-at-your-own-risk/>.
- Narinjara, 2012. 'Arakan Public Meeting successfully concludes in Rathidaung', 29 September 2012. <http://www.narinjara.com/main/index.php/arakan-public-meeting-successfully-concludes-in-rahindaung/>
- Republic of the Union of Myanmar, 2013. 'Final Report of Inquiry Commission on Sectarian Violence in Rakhine State', English trans. released on 8 July 2013. Accessed on 10 August 2013. [http://www.burmalibrary.org/docs15/Rakhine\\_Commission\\_Report-en-red.pdf](http://www.burmalibrary.org/docs15/Rakhine_Commission_Report-en-red.pdf)
- Schabas, William A. 1948. "Convention on the Prevention and Punishment of the Crime of Genocide - Main Page," December 9, 1948. Accessed 3 July 2013. <http://untreaty.un.org/cod/avl/ha/cppcg/cppcg.html>.