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Protecting Minorities: The Rohingya Case

Summary

The term Rohingya generically defines the Sunni Muslims who inhabited the former Arakan State, as historians used to call the western region of Myanmar, now identified with the Rakhine State. The historical clarification is more important than ever in this case, as the humanitarian disaster currently affecting Rohingya has its roots in the past, a past characterized by discrimination and marginalization towards this community. As a matter of fact, Rohingya are not mentioned in the national Citizenship Law of 1982, whose text presents a list of recognized minorities in Myanmar divided into eight groups. De facto, since they're not acknowledged by the State, they are a stateless group, continuously threatened by the Buddhist community identified with the bamar, the prevailing ethnic group in the country. They've been affected by decades of racist propaganda, injustices and labelled as a threat for the country and its religion. The religious and ethnic oppression has reached unimaginable levels in the last five years, with incidents that caused deaths, destruction, and an appalling number of refugees and displaced persons inside the country itself, with the majority of Rohingya being illegally incarcerated and tortured in prison camps.

The explosion of violence also caused an unprecedented flow of migrants directed towards Myanmar's neighbouring countries: Bangladesh, Thailand and Malaysia. Here, Rohingya have been accepted, but they're blocked inside refugee camps and detention facilities where other human rights violations have been reported.

Keywords: [Rohingya](#), [Human Rights](#), [International Law](#), [Myanmar](#)

International Human Rights Law and Its Violations

Myanmar is a contracting party of various international treaties protecting human rights, namely: the Convention on the Rights of the Child; the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW); the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the Convention on the Prevention and Punishment of the Crime of Genocide; the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

Besides all the obligations imposed upon the State by these treaties, there also international customary law obligations deriving from the Universal Declaration of Human Rights, which at Art.2 specifies that “Everyone is entitled to all the rights and freedoms [...], without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs [...]”, and by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which at art.4 declares that “States shall take measures [...] to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.”

The Burmese Constitution of 2008 offers some form of protection of fundamental freedoms and human rights, and requests that the government strive to promote the economic, social, cultural and linguistic development of the citizenship, and the solidarity among different ethnic groups. Unfortunately, all these rights are only granted to citizens, a category in which Rohingya don't fall into due to an arbitrary exclusion from the list of recognized Burmese ethnic groups, in total breach of Art.15 of the Universal Declaration of Human Rights¹.

The fact that they're not citizens by the law has led to the birth of the greatest community of stateless people in the country: more than a million people, most of all Rohingya living in the Rakhine State. Furthermore, the power detained by the Buddhist national authorities in granting or denying the right of citizenship has exacerbated tensions among the population and caused more violations of fundamental rights.

The Burmese Government tried to find a solution when in 2014 and 2016 Officials of the Ministry of Immigration went to Rakhine State's region and offered the Rohingya to register as Bangladeshi, in order to start over the process of identification as foreigners, as the law on Citizenship allows them to. The proposition was entirely made on the assumption that Rohingya are not part of the nation but arrived illegally from Bangladesh in a remote past, when in fact numerous testimonies attest their presence in the region in ancient times, and then during the pre-colonial era, gathered in communities as farmers of Muslim faith in the old Arakan State.

All regulations proposed since the Independence of the Burmese State violate International Human Rights Law and the norms of the Universal Declaration, as they grant the right to citizenship based on ethnic criteria, in total breach of Art. 2 of the Declaration².

In Myanmar, according to 1982 Citizenship Law, only those who belong to the eight recognized ethnic groups included in Art.3 Chapter II of the text ³ are granted full citizenship. Those who filed a request before the approval of the 1982 Law, thus when the previous Union Citizenship Law of 1948 was still applicable, are granted associate citizenship; lastly, those who can prove their permanence in the country before 1948, and their good knowledge of one of the national languages, are granted naturalized citizenship.

¹ Universal Declaration of Human Rights, Art. 15: Right to a nationality. “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

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

³ Burma Citizenship Law, 15 October 1982, “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 A.D. are Burma citizens.”

Evidently, those who are associate or naturalized citizens are granted less rights with respect to citizens by birth, and their citizenship can be revoked at any time by the Authorities, as stated in Art. 8 of the Law⁴.

Discrimination and violence against Rohingya and other minorities of Muslim faith intensified during the control of the Authorities from the Ministry of Immigration, when officials distributed ID cards of different colours depending on the ownership of full, associate or naturalized citizenship. Unrecognised minorities obtained a white card which indicated that the person didn't have any citizenship, thus no rights. This aberrant classification has been condemned by the UN High Commissioner for Human Rights and by the Committee on the Rights of the Child, both expressing their concern and recommendations to the Burmese Government to abolish the classification based on ethnic, racist, religious criteria which have allowed the perpetration of cruel treatments and the spread of prejudice towards Muslim communities as the Rohingya on Rakhine territory.

Racist Propaganda and Explosion of Violence

The 2008 Constitution of the Republic of the Union of Myanmar at Art. 364 of Chapter VIII on Citizen, Fundamental Rights and Duties of Citizens states that: "The abuse of religion for political purposes is forbidden. Moreover, any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution. A law may be promulgated to punish such activity."

However, since the 1990s, Buddhist communities promoted hatred, racism, discrimination and violence toward Muslims, feelings which aggravated during the last few years and caused such terrible conflicts in Rakhine State's region that news of crimes against humanity and ethnic cleansing on behalf of Burmese authorities started circulating.

In June 2015, the Special Rapporteur on the situation of human rights in Myanmar, Ms. Yanghee Lee, sent a report to the High Commissioner expressing her concern for the public incitement directed towards the killing of Rohingya; as a matter of fact, just a month before, a political candidate whose name was cancelled on the report was filmed during a public rally, inviting people to kill and bury all Rohingya. This happened during a thriving anti-Muslims campaign launched by nationalist movements as the MabaTha and the 696 Movement, whose representatives stressed also the need to exclude Rohingya from the national economy, boycotting their small commercial activities.

At the same time, groups of Buddhist Monks had distributed pamphlets in which they accused the Rohingya of organising violent attacks against the original Arakanese population, and for this reason they should've been completely isolated from the region. These Buddhist groups, among which the most powerful is the sangha, had also prepared a 12-point declaration in which they openly talked about the ethnic cleansing of the pagan Bengali, a derogatory term they use to indicate the Rohingya, stressing the fact that they are not Burmese but foreigners.

As a result, in October 2012 violence exploded: Buddhist groups in the Arakan State armed with machetes, guns and Molotov bombs attacked Muslims communities, setting fire to entire villages and mosques. Burmese Security Forces perpetrated atrocious crimes while allegedly trying to put the conflict to an end.

Those crimes have been classified as crimes against humanity as stated by Art.7 of the Statute of the ICC⁵, and have been followed by deportation and forced displacement of Rohingya from the Rakhine State, by persecution of other minorities of Muslim faith, and by the denial of numerous fundamental rights recognized by the Universal Declaration.

Moreover, gender-based violence has been registered during these attacks, and a few international organisations and UN agencies found that rape, both individual and in group, sexual assaults towards women and children, beatings and other acts of humiliation and cruelty were systematic practices used by Burmese military to take control of the villages.

⁴ Burma Citizenship Law, 15 October 1982, "The Council of State may, in the interest of the State revoke the citizenship or associate citizenship or naturalized citizenship of any person except a citizen by birth."

⁵ Rome Statute of the International Criminal Court, 17 July 1998, Art. 7: Crimes against Humanity "[...] "crime against humanity" means any of the following acts [...] directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender [...]; Enforced disappearance of persons; the crime of apartheid; Other inhumane acts [...] intentionally causing great suffering, or serious injury to body or to mental or physical health."

Human Rights Watch realised an entire report on this⁶, writing down 52 testimonies of women to cast light on the perpetrated crimes and on the denial of fundamental rights these women have suffered: the right to life, to freedom and personal security as stated by Art.3 of the Universal Declaration.

Even more appalling was the response of Burmese National Authorities who, when asked to address the atrocities committed by the army, answered denying the truthfulness of the testimonies. Symbolically, it's enough to report the declaration of Coronel Phone Tint, a minister for border security in the northern districts of the country, who told the BBC "Where is the proof? Look at those women who are making these claims. Would anyone want to rape them?".

Other attempts of denial came from the Office of the State Counsellor, Aung San Suu Kyi, while in August 2017 a special commission established by the Vice-president refuted the allegations against the army, declaring the lack of evidence on the perpetrated abuses and thus the impossibility to carry out the criminal proceedings.

The failure to protect the victims violates various norms of International Customary Law and harms their rights and freedoms as individuals. It's important to highlight violations of these two fundamental rights:

The right to an adequate standard of living, with focus on motherhood and childhood, which are entitled to special care and assistance.⁷

The right to an equal access to health care services. In this case, women who were victims of rape and sexual assaults didn't receive emergency contraception nor first aid measures following the attacks, putting their health at severe risk.⁸

Desirable Measures of Reparation

The constant denial on behalf of the national Burmese authorities, of the atrocities and discrimination affecting Rohingya communities is causing even more damage in fuelling violence and assaults. In order to reconcile the two opponents, there's a strong urge to modify Burma Citizenship Law of 1982 to let Rohingya be recognised as national ethnic group alongside other Muslim minorities, so that they would finally be granted civil, political and social rights. The International Community should continue to put pressure on the Burmese Government so that it recognizes that the army, the national border security forces and the nationalist movements of Arakan State have committed crimes against humanity as stated in the ICC Statute, bringing to trial the responsible of those systematic attacks who wanted to carry out a real ethnic cleansing and an attempt of genocide as defined by International Law. Eventually, an additional effort should be made to reaffirm fundamental rights denied to Rohingya communities, the same rights who are granted to every individual as stated in the Universal Declaration but are violated in their entirety in Myanmar.

⁶ Human Rights Watch, "All of My Body Was Pain", Sexual violence against Rohingya Women and Girls in Burma, Nov.2017

⁷ Universal Declaration of Human Rights, Art.25

⁸ Convention on the Elimination of all forms of Discrimination against Women, Art.12

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