

The Introspection of the Sufferings of Rohingyas and the Hidden Genocide Angle

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ABSTRACT:

The attempted project of ethnic cleansing of the Rohingyas in August 2017 is regarded as one of the worst cases of genocide in recent history. With history dating back to 11,000 BC, the ethnically divergent nation Myanmar, has come to witness rampant violence and routine discrimination of the vulnerable Rohingyas, a Muslim minority of the Rakhine State at the hands of the Buddhist majority. It has led to devastating consequences for them in the form of communal violence, deprivation of natural rights, racial discrimination, disenfranchisement, denial of citizenship, extermination of social, economic and political environment for the community and what not. This paper endeavors to analyze the ongoing crisis and comprehend the reasons behind their acute sufferings. Beginning with their historical origin, it goes on to explain how the community has been deprived of citizenship for so long, construing them to be illegal migrants from Bengal. It then gives a detailed study, thus proving the above hypothesis to be wrong and provides a critical examination of the Citizenship laws of Myanmar which are discriminatory in nature. Further, even if the Rohingyas are construed as illegal migrants, then also, denying them the basic rights such as access to health services, education and legal protection cannot be justified because it is a blatant violation of numerous International Conventions and agreements. Explaining the stateless and the refugee situation of the Rohingyas, the paper emphasizes on the principle of Non-Refoulement and the obligations of other neighboring countries. It finally sums up the above conditions into one major conclusion of genocide and ethnic cleansing, the ultimate crimes against humanity.

I. THE CURRENT SCENARIO

Myanmar, formerly known as Burma is a land of rich cultural heritage. Originating from a British Colony, with its historical reign dating back to 11,000 BC, the ethnically divergent nation is currently in the midst of an ongoing democratic transition after decades of military rule. However, the brunt of this adversarial decision is being borne by none other than the Rohingyas. It has led to devastating consequences for the Muslim minority of northern Rakhine State in the form of communal violence, deprivation of natural rights, racial discrimination, disenfranchisement, extermination of social, economic and political environment for the community and what not. This process is central to any ethnically diverse society that undergoes a political transition.

To date, a lot has been said and written about the rampant violence against the 'stateless' and vulnerable minority. When hundreds and thousands of terrified refugees began swarming onto the beaches and paddy fields of southern Bangladesh, seeking asylum under the host nation, the world began to take notice of one of the most ghastly cases of ethnic cleansing that spoke volumes about the unspeakable violence and brutality faced by the Rohingyas at the hands of the vast Buddhist majority.

In what has been referred to as a humanitarian disaster, a staggering 400,00 Rohingyas fled to Bangladesh in August 2017 and by April 2019, around 9,10,00 had settled in Cox's Bazaar in an attempt to save themselves

from the relentless persecution undertaken by the Burmese Government and the citizens. Those fleeing attacks and violence in that exodus joined around 300, 000 people already in Bangladesh from previous waves of displacement, effectively forming the world's largest refugee camp.¹ However, overcrowded camps and lack of basic necessities are not the only poor conditions the refugees are facing. The suffering doesn't stop here. Nearly a quarter of all Rohingya refugee children living in camps (between 6 months and 5 years-old) are malnourished. Lack of clean water, unsafe environments for girls and women and the inability of children and young people to seek emotional support for their experiences are all negatively affecting the displaced Rohingya people.² Existence of an insurmountable evidence of mass rapes, killings, the burning of homes and murder by the military regime suggests that among the 135 ethnic minorities, Rohingyas are the worst treated, deprived and stripped away with all the fundamental rights and exterminated to an irretrievable extent. They have been victimized and subjected to various forms of oppression such as land confiscation, arbitrary taxation, restriction on movements, torture and mass killings, forced eviction and house destruction and financial restrictions on marriages. Although the government claims that the "clearance operations" ended long back and puts the number of dead at 400, this is, however in clear contradiction to reports of Medecins Sans Frontieres (MSF) which states that least 6,700 Rohingyas, including approximately 730 children under the age of five were killed after violence broke out. At least 288 villages were destroyed by fire in northern Rakhine State after August 2017, claims Human Rights Watch. Described by the UN as a "textbook example of ethnic cleansing"³, the Rohingyas are therefore, considered as the fastest growing refugee crises in the world, the most persecuted, vulnerable and oppressed minority.

II. WHO ARE THE ROHINGYAS? : A DETAILED ANALYSIS OF THEIR ORIGIN

An ethno religious Muslim minority of 1.3 million, the Rohingyas form the largest single group of Stateless People. Living predominantly in Rakhine State (in the two towns of Maungdaw and Buthidaung), they continued to co-exist alongside Buddhists for decades. The term Rohingya, is derived from the word Rohang and refers to the ancient Arakans who maintain that they are indigenous to Western Myanmar with a heritage and influence from Arabs, Mughals and Portuguese. In Rakhine, around 59.7% of the 3.8 million people are Buddhists while 35.6% are Muslim Rohingya, and the rest are from other religious groups. Unlike the majority, they speak a language which shares some similarities with a Bengali dialect. The language forms the basis of the systematic discrimination that the Rohingyas face even though they have existed in Myanmar for centuries.

¹Thomas Nybo, *Rohingya crisis*, UNICEF, (Jun. 27, 2019, 3:30 PM), <https://www.unicef.org/emergencies/rohingya-crisis>

² Meghan Prichard, *Rohingya refugee crisis: Quick facts*, MERCY CORPS (Jun. 27, 2019, 3:31 PM), <https://www.mercycorps.org/articles/bangladesh/rohingya-refugee-crisis-quick-facts>

³ UN NEWS, UN HUMAN RIGHTS CHIEF POINTS TO 'TEXTBOOK EXAMPLE OF ETHNIC CLEANSING' IN MYANMAR, UN, (JUN. 27, 2019, 3:51 PM), [HTTPS://NEWS.UN.ORG/EN/STORY/2017/09/564622-UN-HUMAN-RIGHTS-CHIEF-POINTS-TEXTBOOK-EXAMPLE-ETHNIC-CLEANSING-MYANMAR](https://news.un.org/en/story/2017/09/564622-un-human-rights-chief-points-textbook-example-ethnic-cleansing-myanmar)

Reviled by many as illegal migrants, they are often treated as ‘stateless’ citizens and forced to live in appalling conditions. They are even denied the basic rights of citizenship providing linguistic similarity as proof that they are rather migrants from Bengal. This perception of Rohingya as outsiders and illegal immigrants is used to implicitly justify their disenfranchisement, as well as the atrocities being committed against them.

It was not until the latest spat of ethnic violence following the brutal ethnic cleansing perpetrated by the Myanmar security forces in 2017 that the state of the lives existing in the “zone of indistinction” had been largely ignored by the world, especially the international media. The scanty media coverage and initial ignorance and inaction from policy makers worldwide has had several implications both for Myanmar and the international community.

In an attempt towards tracing the plight of the Rohingya refugees, the paper tries to make a fundamental argument: The Rohingya Muslims trapped in no man’s land between Myanmar and Bangladesh face the threat of genocide and are vulnerable to violence from the Myanmar military. Ever since 1948, the minority has been targeted and the government has been cementing hatred against them through ‘divide and rule policy’, using the dislike for Rohingyas as a way to mobilize support. The year 2018 was a dire and desperate year for them as most of the population remained displaced in crowded camps in Bangladesh. The rest who remained in Myanmar face serious restrictions resulting from the ongoing genocide. The alarms of the potential risk of genocide and other mass atrocities have gone largely unheeded, leading to an indescribable human suffering. The Rohingyas have suffered crimes against humanity and ethnic cleansing and there is compelling evidence to show the same.

The contemporary events in Myanmar and are inextricably linked to the political and historical development of the region. A key narrative is played by the military, ethnic extremists and the Buddhist fundamentalists. In order to understand the origin of Rohingyas, it is vital that Myanmar’s cultural and pre- historical events be discussed in detail. Myanmar is ethnically diverse, with 135 officially recognized races, and at least a few more than that are unrecognized (like the Rohingya). The majority ethnic group is the Burmans, who make up 68% of the population (distinct from the term “Burmese” which refers to all citizens of Myanmar). Burmans reside primarily in the central geographic region of the country. Other ethnic groups, such as the Kachin, Chin, Rakhine, Shan, and others, reside primarily in the outside borderlands of the country, also called the Frontier Areas. Many of these minority ethnic groups live on both sides of Myanmar’s border with neighboring countries.⁴ There have been many debates on the origin of the Rohingyas and the Arakan State; mainly focusing on whether they are the illegal immigrants from Bengal or they are the original descendants of the Arakan Muslims.

⁴ 1, Rohingya Briefing Report, 4 (Warzone Initiatives, 2015).

A strip of coastal plains connecting Bangladesh to the deltaic landscape of Myanmar, Arakan (now called Rakhine) had a separate history from that of Burma until 1784, while Buddhism, on the other hand, arrived in the region of Central Burma at later stages. With the Burman ethnic groups steadily gaining influence, the Pagan Kingdom was established. Theravada Buddhism was adopted and by the late thirteenth century, the Kingdom was a major protector of Buddhism, constructing monasteries⁵ and using its authority to ensure the establishment of a coherent religious community. Meanwhile, in Arakan, the arrival of Rakhine Buddhists ended the Rohingya dominance in the region. Ruled by the Mrauk-U dynasty, the courts looked to India for the systematic deportation of Bengali country folk and thrived the slave trade taking place between the two countries. When the Burmese conquered Arakan in late 1784, they deported leading Buddhist, Muslim, and Hindu families from Mrauk-U and resettled them in the capital, Amarapura.⁶ However, the importance of Rohingyas could not be undermined. Many references have been made to the local Muslims who referred to their place of origin as 'Rooinga' or 'Rovingaw'. The term, an obvious forerunner of the modern word *Rohingya*, was never used as an ethnic category by British administrators, most likely because Muslims themselves did not use it as an ethnonym. Since the rediscovery of Buchanan's 1799 article in the early 21st century, however, his mention of "Rooinga" has been quoted as proof of the existence of an indigenous Muslim ethnic community, to be referred to retrospectively as "Rohingya."⁷ An 1815 German compendium of languages of the wider region by J.S. Vateri also mentions the existence of the Rohingyas as an ethnic group with a distinct language.⁸ Thus there is substantial proof to the argument that the existence of the Rohingyas as a separate ethnic group was well before the arrival of Rakhine Buddhists in Arakan. Their entire history was summarized by an Economist in 2015 in the following words:

“Muslims probably arrived in what was then the independent kingdom of Arakan (now Rakhine) as long ago as the 8th century. They were seafarers and traders from the Middle East, and were joined in the 17th century by tens of thousands of Bengali Muslims captured by the marauding Arakanese. Some were forced to serve in the king of Arakan’s army, others were sold as slaves and yet more were forced to settle in Arakan. “Rohingya” simply means “inhabitant of Rohang”, the early Muslim name for Arakan. The kingdom was then conquered by the Burmese army in 1785.”⁹

⁵Tun, T, Religious Buildings of Bura AD 1000-1300, 42:2 J. Burma Res. Soc. 71-81 (1959).

⁶Jacques Leider, *Rohingya: The History of a Muslim Identity in Myanmar*, OXFORD RESEARCH ENCYCLOPEDIAS (Jun 27, 2019, 3:32 PM),

<https://oxfordre.com/asianhistory/view/10.1093/acrefore/9780190277727.001.0001/acrefore-9780190277727-e-115>

⁷Francis Buchanan, A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire, 5 Asiatick Researches. 223 (1799).

⁸Vateri, J.S., *Linguarumtotiusorbis*, Index: Berlin. (1815).

⁹Sarah Wildman, *The world’s fastest-growing refugee crisis is taking place in Myanmar. Here’s why*, VOX (Jun 27, 2019, 3:33 PM), <https://www.vox.com/world/2017/9/18/16312054/rohingya-muslims-myanmar-refugees-violence>

It was even evident from the British Census, carried out by James Baxter in 1872, that apart from the Muslims living in the Arakan region, all the other Hindu population who had been traded as slave workers or had migrated to Myanmar in search of work, was to be distinguished from the rest of the lot. The report clearly intended to notify that Rohingyas apart from the Kamans and a small minority in Moulmen had existed as the residents of Burma for a long time. Baxter acknowledged that,

*“there was an Arakanese Muslim community settled so long in Akyab District that it had for all intents and purposes to be regarded as an indigenous race. There were also a few Mohamedan Kamans in Arakan and a small but long established Muslim community around Moulmen which could not be regarded as Indian.”*¹⁰

The regime in Burma, however, favours the construction that the concept of Rohingyas came into being with the influx of a majority of Muslims who migrated from Bengal to North Arakan state during the 2nd World War. They are hence referred to as ‘Bengalis Muslims’, the actual race to which the lineage and heritage of the Rohingyas could be traced. This argument is hence, unscrupulously used against them as they are an easy target for the Military to justify their control over the nation. The miff between the government and the Military is used by both to continue this sham and exploit the Rohingyas in the pretext of it.

As a matter of fact, it is quite unfortunate to see the disintegration of Myanmar on the basis of multitudinous of religious and ethnic communities present in the country. However, this does not justify the fact that the minorities are any less different from the core majority and ought to be discriminated against. Unfortunately, this is not the case in Myanmar. Here, the dominant narrative of many Burmese about the Rohingyas is one of illegitimate ‘invasion’ by a threatening ‘outsider’.¹¹

III. THE ADVENT OF BRITISH IN BURMA

During the colonial era, the series of Anglo- Burmese Wars led to the integration of Arakan and Central Burma. The British were resented by the Burmese Buddhists as they had failed to protect and promote their culture and had allowed the monasteries and hierarchical structures which are so imminent to Theravada Buddhism to fall apart. The hatred against their ‘illegitimate rule’ led to even more hostility against the Muslim community, especially the Rohingyas, as they had remained faithful to the British since the very beginning. Things, however escalated during World War II with the Japanese invading Myanmar. The Buddhist Extremists welcomed their move while the Rohingyas were seen as traitors as they continued with their support to the British on the promise of partial independence being granted to the Muslim Minority after the war would get over and this led to a serious inter- communal ethnic strife. The massacre carried out by the Japanese followed by the worsening of matters after the British reneged on their promise of creating a Muslim National Area for

¹⁰ Paton, C, A Short Report on Arakan, London: Colonial Office, (1826).

¹¹ Azeem Ibrahim, The Rohingyas: Inside Myanmar’s Hidden Genocide 33 (2nd ed. 2017).

the Rohingyas aroused the North Arakans to form their own armies and Muslim Organizations. However, they failed miserably after Burma gained independence in 1948. After the partition of India and Pakistan, numerous Muslim Leaders went on to meet Muhammad Ali Jinnah so that their territories could be included in East Pakistan. However, after Jinnah's death, the subject of linking Muslim majority towns in Burma with Pakistan was never again brought upon. All this further fortified the religious and ethnic tensions among the different communities.

However, even after independence, the situation for the minorities remained nevertheless, the same. The Rohingyas were still not recognized as the Parliamentary Democracy was established, yet it was engulfed with ethnic strife. Ethnic Burmans formed roughly two-thirds of its population; the remainder comprised more than one hundred groups, with the Shan, Karen, Rakhine, and Mon among the largest, as well as significant Indian and Chinese populations.¹² The lack of trust between the Government and the ethnic groups resulted in the signing of the Panglong Agreement in 1947 so that these communities could gain full autonomy in internal administration. However, it was later on signed off by the Military, thus making it the house of despotic power and unauthorized rule. Civil war had broken out in Burma by 1949. In North Arakan, the outbreak of the Mujahid insurrection (1948–1961) can be attributed to the violent exactions of local militias, the dissatisfaction of local landlords, the unfair treatment of Muslims by Arakanese administrators, and murky business conflicts. Not only did they attack security forces, but they terrorized the local population, too.¹³

IV. THE INFAMOUS CITIZENSHIP LAWS

Later on, the Burma Independence Army led by General Aung San and Rohingya fighters signed the 'Aung San-Atlee Agreement' with the then Prime Minister of England Clement Attlee which attempted to give a rough idea about who is to be considered as a citizen of the Union. Gradually, the definition of the term 'Citizen' was further elaborated and given clear demarcations as defined in the 1947 Constitution. It states that *Citizens are persons who belong to an "indigenous race", have a grandparent from an "indigenous race", or have lived in British Burma prior to 1942.*

The term indigenous races was further defined in Article 3 (1) of the Burma Citizenship Law 1948 as:

"For the purposes of section 11 of the Constitution the expression any of the indigenous races of Burma shall mean the Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and such racial group as has settled in any of the territories included within the Union as their permanent home from a period

¹² BeinaXu& Eleanor Albert, *Understanding Myanmar*, COUNCIL OF FOREIGN RELATIONS(Jun 27, 2019, 3:34 PM),<https://www.cfr.org/backgrounder/understanding-myanmar>

¹³ Jacques Leider, *supra* note 6.

anterior to 1823 A. D. (1185 B.E.). These two categories of people and those descended from them are automatic citizens.”

It was implicit from the above sections that Rohingyas were also to be regarded as the citizens of Myanmar who come under the category of Arakanese people. Therefore, the parliamentary government (1948-1962) had officially declared Rohingya as one of the indigenous ethnic groups of Burma. The declaration reads: ***“The people living in Maungdaw and Buthidaung regions are our national brethren. They are called Rohingya. They are on the same par in status of nationality with Kachin, Kayah, Karen, Mon, Rakhine and Shan. They are one of the ethnic races of Burma.”***¹⁴ Giving special significance on the indigenous status of Rohingya, the former first President of Burma Sao Shwe Theik had stated, ***“Muslims of Arakan certainly belong to one of the indigenous races of Burma. If they do not belong to the indigenous races, we also cannot be taken as indigenous races.”***¹⁵ Although, it was not declared expressly either in the Constitution or in the Union Citizenship Law, 1948 that the Rohingyas were to constitute an indigenous race, yet this view came to be endorsed both by the military as well as the Government.

It was even held by the Supreme Court of Myanmar in *Letto Law Danga v. the Union of Burma*¹⁶ that the indigenous races referred to in section 11(i) (ii) and (iii) of the Constitution and in section 3 of the UCA 1948 are all “indigenous races of Burma” who are closely connected by similar culture and ethnic characteristics.¹⁷

A military report from 1961 describes the Muslim population in Mayu frontier district (bordering East Pakistan) as Rohingyas.¹⁸ Moreover, according to Article 11 of the Constitution, National Registration Certificate was awarded to them, giving them full legal and voting rights. Some of them even served in the parliament and later on became the members of Socialist Programme Party. All these initiatives were taken to address the differential treatment of the Rohingyas and further strengthen their relations with the Government.

However, after the assassination of Aung Sang, military rule became the new norm. Gone were the secular days and inclusiveness of all regions and the future of Burma came to be associated with chauvinistic Buddhist beliefs and driven by the ideology of Burman-supremacism. The military coup d'état on 2nd March 1962 replaced the civilian AFPEL government and marked the beginning of a new rule that continued up to 1988. The military government transformed into an authoritarian system, which since 1974 has sought to disguise itself as a democracy. The new constitution of 1974, along with the Citizenship Law of 1982, promulgated in

¹⁴AmanUllah, *The Concept of Citizenship in Burma and the Status of Rohingyas*, THE STATELESS ROHINGYA (Jun 27, 2019, 3:34 PM), <https://www.thestateless.com/2017/05/the-concept-of-citizenship-in-burma-and-the-status-of-rohingyas.html>

¹⁵*Id.*

¹⁶*Letto Law Danga v. the Union of Burma*, BLR 1959 HC 30.

¹⁷ArchanaParashar&JobairAlam, *The National Laws of Myanmar: Making of Statelessness for the Rohingya*, WILEY ONLINE LIBRARY (Jun 27, 2019, 3:35 PM), <https://onlinelibrary.wiley.com/doi/full/10.1111/imig.12532>

¹⁸Lwin, N.S., *Making Rohingya Stateless*, (2012).

this period brought about a drastic change of the status of the Rohingya as discussed next.¹⁹

Shortly, after the 1962 coup, a second constitution was adopted on 3rd January 1974. It declared Myanmar as a socialist democracy, entrenching ultimate powers to a one –party state dictated by the military rule and woefully lacking democratic governance. The constitution defined seven ethnic minority states (Arakan, Chin, Kachin, Shan, Karenni, Karen and Mon) and seven predominantly ethnic Burman (Myanmar) divisions (Tenasserim, Rangoon, Irrawaddy, Pegu, Magwe, Mandalay and Sagaing).²⁰ The Rohingyas were once again excluded and were referred to as foreigners. The reason cited for this exclusion lies in Article 145 of the Constitution which states that

“All persons born of parents both of whom are nationals of the Socialist republic of the Union of Burma are citizens of the Union.”²¹

The altogether effect being, there was no direct denial of citizenship to the Rohingyas, rather the provision of 1947 Constitution which could have enabled them to gain citizenship on the basis of either having a grandparent from an indigenous race or having been a resident of Burma prior to 1942 was blatantly struck down. Moreover, before the passing of the 1974 Emergency Immigration Act, the Rohingyas were issued government identity cards and British issued ration cards as a valid proof of their identity. Later on, the citizens were issued ethnicity-based identity cards (National registration Certificates) while the Rohingyas were eligible only for Foreign Registration Cards (Non-National cards). The atrocities upon the Rohingyas had just begun. Most of them were killed, tortured and raped on the pretext of them being foreigners. Several social and political organizations of the Rohingyas were closed down. They lived in constant of fear getting persecuted at the hands of the Government who began probing their validity as legitimate citizens of Myanmar.

During the next 10 years, the military co-opted organized Buddhism as the state religion. In the absence of a homogenous ethnic identity for much of the population of the country, they increasingly resorted to seeing Buddhism as the essential criterion for being a ‘true Burmese’.²² Later on, in 1977, when the army launched a national drive to register citizens, the Rohingya were considered illegal. More than 200,000 Rohingya fled to Bangladesh at the time because of further atrocities. Authorities pointed to their flight as purported evidence of their illegal status.²³

Then came the 1982 Citizenship legislation which failed to recognize the Rohingyas as one of the 135 official ethnic groups and declared them as non-citizens of Myanmar. The law created categorized citizenship into three

¹⁹ *Id.*

²⁰ *Id.*

²¹ Bur. Const., 1974 art. 145, cl. 2.

²² Azeem Ibrahim, *supra* note 11, at 37.

²³ EngyAbdelkader, *The history of the persecution of Myanmar's Rohingya*, THE CONVERSATION(Jun 27, 2019, 3:34 PM),<https://theconversation.com/the-history-of-the-persecution-of-myanmars-rohingya-84040>

tiers: citizen, associate and naturalized; and the Rohingyas were excluded from all the three categories. Whereas, on the other hand, Article 3 of the statute defined citizenship in the following terms:

*“Nationals such as the Kachin, Karen, Chin, Burma, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the States as their permanent home from a period anterior to 1185 B.E., 1823 A.D” are Burma citizens. The Council of the State may decide whether any ethnic group is national or not”.*²⁴

In spite of the fact that the history of Rohingyas could be traced back to 8th century A.D and there being sufficient evidence available for the same, they were not recognized as one of the national races. The 1982 Citizenship Law acted no less than an instrument of oppression and categorization and discriminated against the Rohingyas by linking ethnicity and religion with citizenship. The law, however, does make provisions for offering Naturalization but only to those who have resided in the State prior to 4th January 1948. Article 44(c) further provides that for the grant of natural citizenship, one must be able to speak one of the national languages. This clause tends to oppress and denationalize the marginalized groups like Rohingya and generate a lot of IDPs. Burma is an ethnically diverse country. There are people particularly those living in remote areas or isolated places of the country who have no knowledge of Burmese nor are they unable to speak well one of the so-called indigenous languages.²⁵ Another category which is excluded from citizenship is someone who's neither of the two parents are already citizens, thereby excluding the Rohingyas.

The 1982 law does not grant full citizenship to the Rohingyas and makes them ineligible for the national identity card. Consequently, they are granted only foreign identity cards and hence, face restrictions in carrying out their studies, work, travel, marriage ceremonies and rituals, practice of religion, exercise of voting powers and access to health services.

Soon after this, the 1977 Nagamin (Dragon King) campaign, allegedly designed to identify every individual in Burma as either being a citizen or an illegal immigrant brutally destroyed all the mosques and historical schools of Islamic importance. This gave rise to political unrest and struggles which followed the 1988 revolt and the annulment of 1990 elections. In 1991-92, nearly around 2, 50,000 Rohingyas fled to Bangladesh who were eventually forced to return to their homeland in complete violation of UN declarations on Universal Human Rights which led to renewed tensions and further flow of the refugees to countries like Malaysia, Thailand, Indonesia and India.

After facing several decades of persecution and repression, the Rohingyas sought to achieve relief from the

²⁴ UNHCR, *Burma Citizenship Law*, REFWORLD, (Jun 27, 2019, 4:01 PM), <http://www.refworld.org/docid/3ae6b4f71b.html>

²⁵ AmanUllah, *supra* note 14.

2008 constitution which allowed democracy to return to a certain extent. Often claimed as a 'historical document', the constitution was designed as such to give ultimate control to the military and hence, it did nothing to alleviate the situation of the Rohingyas. Instead, the grounds on which they could achieve the status of citizenship were narrowed down drastically, to an impalpable extent. As per Article 345 of the Constitution,

“All persons who have either one of the following qualifications are citizens of the Union of Myanmar:

a. person born of parents both of whom are nationals of the Republic of the Union of Myanmar;

b. person who is already a citizen according to law on the day this Constitution comes into operation.²⁶

Due to lack of documentation, most of the Rohingyas were hence, deprived of citizenship. The Government's response to the implementation of such policies being very vague and out rightly supportive for the nation's security as the Rohingyas are still construed to be illegal Bengali immigrants. The 2012 massacres followed by those in 2015 can only be described as an attempt at ethnic cleansing seeking to drive the Rohingyas either out of the country, or, at the least, from their homes and into internal refugee camps.²⁷

While the nationwide census was being carried out for the first time in 2014, in almost 30 years, it deliberately attempted to exclude the Rohingyas. The Myanmar authorities identified them as 'Bengalis' and hence, were declared as foreigners. The Rohingyas had no choice but to accept the designation given to them by the State and if not, they would be forced into the internal refugee camps due to lack of identification. Similarly, in 2015 elections, the Rohingyas as a group, stripped of almost all the civil and fundamental rights, were deprived of their voting rights as well. For the first in Myanmar's history, no Rohingya had been able to cast his vote, nor was there any representation from this ethnic minority in the parliament.

The above analysis of all the legislations, acts and provisions of the Constitution indicate that, although the Rohingyas have not been directly barred from obtaining citizenship, they have, however been incessantly excluded through gradual changes brought by the various acts and statutes, the cumulative effect being, the Rohingyas ending up as a 'Stateless Ethnic Minority'.

V. THE RELEVANT LEGAL PROVISIONS

The methodical discrimination against the Rohingyas is a result of indefinite factors ranging from racism, Islamophobia, security concerns as stated above and many more. However, the motive which gave effect to such vicious policies of the State the most was the determination of civic rights based on ethnicity and the political hegemony established by the Theravada Buddhist Extremists.

²⁶ Bur. Const., 2008 art. 345.

²⁷ Human Rights Watch, All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State, (2012).

The apex court of Myanmar has nevertheless, discarded such notions and has upheld the principle of cultural and ethnic toleration. In the landmark case of *Hasan Ali and Meher Ali*²⁸, the applicants, although had no knowledge of Burmese language could not be held to have a cultural and linguistic resemblance to that of the Bengalis. Also, while determining the validity of the Burmese Citizenship Laws, the Court held in *Karam Singh v The Union of Burma*²⁹ and in *Bishan Lal v The Union of Burma*³⁰ that importance was to be placed not on the person evidence provided above but upon his ancestors who have settled in the region. The Rohingyas by this judgement and sufficient arguments provided above are among the communities that have established themselves in the soil of Northern Arakan since time immemorial.

However, it cannot be emphasized more that the residence of the distant ancestors of the Rohingyas is completely irrelevant to their right of gaining citizenship today. The claims made by the Myanmar Government about the alleged history of the Muslim minority are also deceitful and fabricated. As per Article 15 of the Universal Declaration of Human Rights, everyone has a right to nationality and no one shall be arbitrarily deprived of it. Provisions intended to prevent or reduce statelessness are embedded in several international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Nationality of Married Women, the Convention on the Reduction of Statelessness, and the Convention Relating to the Status of Stateless Persons, as well as the Universal Declaration.

The Convention relating to the Status of Stateless Persons (1954) defines a “stateless person” as a national by any State under the operation of its law.³¹ The States are required to apply the Convention to all stateless persons without discrimination as to race, religion or country of origin and accord freedom of religion similar to that available to their citizens.³² Similarly, the Convention on Reduction of Statelessness, 1961 provides for granting nationality to a person born on its territory, who would otherwise be stateless; to a person who for certain reasons is unable to acquire the nationality of the contracting State, if the nationality of one of his parents at the time of his birth was that of the contracting State first mentioned.³³ Based on the principles of ‘*jus soli*’ and ‘*jus sanguinis*’, it provides nationality by virtue of birth and in absence of that, by virtue of blood relations. The treaty aims at reducing statelessness and preventing it over time with the help of an international framework designed to safeguard a person’s nationality. However, the sad and regretful reality being, Myanmar

²⁸ Archana Parashar & Jobair Alam, *supra* note 18.

²⁹ *Karam Singh v The Union of Burma*, BLR 1956 SC 25.

³⁰ *Bishan Lal v The Union of Burma*, BLR 1959 HC 3

³¹ K.C. Joshi, *International Law and Human Rights* 548 (3rd ed. 2016).

³² *Id.*

³³ *Id.* at 549-50.

is a party to none of the conventions mentioned above. The Rohingyas hence, cannot claim any of these rights. Nyi Nyi Kyaw argues that the statelessness of the Rohingyas is not only as a result of the discriminatory 1982 Citizenship Law but has also been caused largely by *“de facto nuances and complexities surrounding the citizenization and naturalization of the Rohingyas”*. She argues that policies and practices of successive Myanmar governments since the late 1970s have caused the now chronic statelessness of the Rohingya.³⁴

Although the Burmese Citizenship Laws of 1982 do not violate any of the norms of International Law, they are yet problematic as they are biased and strongly oriented on ethnicity, race and culture. Even though Myanmar is not bound by the 1954 Convention, Article 15 of the Universal Declaration of Human Rights pertaining to the grant of nationality to every person is automatically violated. Successive UN reports have also emphasized that ‘race and ethnicity’ cannot be determining factors in the granting of citizenship. Instead, the law needs to provide for objective criteria that comply with the principle of non- discrimination, such as birth in the territory and descent (with citizenship being passed through a parent who is a citizen).³⁵ It is the basic fundamental right of a man to be a citizen of a state. It is nationality or citizenship only which enables an individual to gain other civic, economic and political rights. Without citizenship, a man is deprived of everything else. For these reasons, the right to be a citizen of a state has been called *“man's basic right for it is nothing less than the right to have rights.”*³⁶

Infringement of several fundamental rights have occurred since the Rohingyas community fled the host nation, Bangladesh after the massacres that occurred on August 2017. Confined to the security camps over there, they face severe restrictions in their movement, practice of religion, access to education and health services. Consequently, constraints have been imposed upon their marriages, some indicating it to be more of a blanket one. The infamous ‘two- child policy’ intended to uplift the lives of the poor Rohingya women is nothing but a charade that could have dangerous and erroneous far reaching consequences. Also, in 2015, the preceding several laws seeking to “protect race and religion” were adopted which discriminated against ethnic and religious minorities and women in violation of Myanmar’s international obligation. The “Religious Conversion Law” launched a State-regulated system for changing religion, which contravenes the right to freedom of religion or belief. The “Population Control Healthcare Law” approves of a selective and coercive proposition to population control, including a potential requirement of 36 months birth spacing that would violate women’s right to choose the number and spacing of their children. The law could be used to target areas with significant minority communities. The “Buddhist Women’s Special Marriage Law” even bars Buddhist women from

³⁴SwagatBaruah, *Prohibition of statelessness and the Rohingya*, CAMBRIDGE INTERNATIONAL LAW JOURNAL(Jun 27, 2019, 3:35 PM), <http://cilj.co.uk/2018/03/08/prohibition-of-statelessness-and-the-rohingya-crisis/>

³⁵ Quintana, T.O., Report of the Special Rapporteur on the situation of human rights in Myanmar, Geneva: United Nations General Assembly, (2014).

³⁶ Perez v. Brownell, 356 U.S. 44, 64 (1958) (Warren, C., dissenting).

marrying non-Buddhist men — irrefutably that is violating a person's right to choose a spouse.³⁷

The UN Charter provides for a basic structure required for the protection of the human rights, especially those of the refugees. It is the principal international document that both Myanmar and Bangladesh have signed, so it's the main legal framework through which the Rohingya refugees can earn protection. The UN Charter requires member countries to work individually and jointly to promote higher living standards, solutions to international humanitarian problems, and universal respect for human rights, without discrimination on account of race, sex, language, or religion. The principal document in this area of law is the Universal Declaration of Human Rights, "*a common standard of achievement for all peoples and all nations,*" which sets forth many of the basic canons of international law.³⁸

Article I of the UDHR states that all humans ought to enjoy equality in dignity and rights while Article III talks about everyone's right to liberty, safety and security. Article V has provisions related to subjecting no human being to torture or to cruel, inhuman and degrading punishment. On the other hand, Article 13.2 and 14.1 deal with the rights of the refugees, enabling them to leave their homeland and return to the same and seek asylum in other countries. All of which are obstreperously violated, yet would have no legal consequences as the declaration is not a legally binding instrument and neither does it have any constitutional validity. Also according to the principles enshrined in Article 13 of UHDR and Article 12 of the International Covenant on Civil and Political Rights, there is no restriction on a person's freedom of movement who lawfully resides in the territory of a state. The State legislation, especially The Registration of Foreigners Act, 1940, however mandates the requirement of a travel permit for the Rohingyas to cross town and state boundaries.

Later on, The Convention on Rights of the Child, 1989 was ratified by Myanmar in 1991. The International treaty obliges the country to abide by the provision as enlisted under Article 7, which runs as follows:

"The child shall be registered immediately after birth and shall have the right to a name, the right to acquire a nationality...States Parties shall ensure implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."³⁹

However, the country's 1982 Citizenship Law is in direct contravention of the above mentioned clause as it provides that at least one parent ought to hold any of the three types of citizenship, hence, implicitly denying

³⁷Amity Saha, *Rohingya Muslims: Deprived of Essential Fundamental Rights in Myanmar – Analysis*, EURASIA REVIEW (Jun 27, 2019, 3:35 PM), <https://www.eurasiareview.com/18022017-rohingya-muslims-deprived-of-essential-fundamental-rights-in-myanmar-analysis/>

³⁸*Universal Declaration of Human Rights*, UN, (Jun 27, 2019, 3:36 PM), <https://www.un.org/en/universal-declaration-human-rights/index.html>

³⁹*Convention on the Rights of the Child*, OHCHR, (Jun 27, 2019, 3:45 PM), <https://www.ohchr.org/documents/professionalinterest/crc.pdf>

the entitlement of Burmese citizenship to the children born to those deliberated as non-citizens.

In addition to this, Myanmar has failed to fulfil its responsibilities as the country's unprecedented breakdown against the hundreds of thousands of Rohingya minority has led to nothing but heinous violence, extra judicial killings and torture of the guileless Rohingya children. The Convention on the other hand, imposes various obligations on the States parties to it. Broadly, Myanmar should have undertaken to respect and ensure the rights set forth in the Convention and adopt appropriate measures to ensure that the child is protected against all forms of discrimination or punishment (Article 2) and is guaranteed an adequate standard of living. Under no circumstance as such, should it have subjected any child to cruel or inhuman or degrading treatment or punishment or life imprisonment as postulated in Article 37 of the Convention.

VI. THE REFUGEE SCENARIO

Talking about the duties of the States who are parties to the 1951 Refugee Treaty, it is the responsibility of every State to safeguard the basic human rights of the refugees. These involve the right to seek asylum in the host nations, right to life, equality and personal security and the right to exercise the option of returning to their homeland or remaining there as long as the political, social and economic conditions remain unviable in their home state for them to return.

Since 1978, millions of Rohingyas have sought refuge in the land of Bangladesh. Nevertheless, the country has so far not ratified either the 1951 Convention or its 1967 Protocol. It is, however, significant to note that Bangladesh is a party to several international human rights Conventions including the four Geneva Conventions of 1949. It is bound to offer protection to the refugees by Article 5 of UDHR; Article 2 of ICCPR; Article 22 of CRC; Articles 2, 3 and 6 of the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment; Article 44 and 45 of the fourth Geneva Conventions. Most importantly, Bangladesh's Constitution in its Preamble pledges to protect fundamental human rights of all. So, Bangladesh has obligation to protect those Rohingyas who are already living in Bangladesh.⁴⁰

While in October 2018, even as India decided to deport seven Rohingya Muslims to Myanmar, it possibly couldn't send the refugees back to their home nation until they were free from all kinds of danger prevalent over there. As the UN High Commissioner for Refugees responded: ***“The core principle of refugee protection is the principle of non-refoulement, which is part of customary international law and requires the states to refrain from measures that could directly or indirectly lead to the return of a person to a country where his***

⁴⁰ Lam- yaMostaque, *International law for the protection of Rohingya refugees*. ACADEMIA, (Jun 27, 2019, 3:41 PM), https://www.academia.edu/2649084/International_law_for_protection_of_rohigya_refugees.

or her life or freedom would be in danger."⁴¹ India cannot hence argue that it being not a signatory to the Refugee Convention, is not obliged to be bound by the Non-Refoulement Principle. The Principle forms a vital constituent of the peremptory norms of Customary International Law which is binding on all States whether they have/have not ratified the 1951 Convention or its Protocol. Also, Article 51 of the Constitution of India endeavors to promote international peace and security by being considerate of international law, treaties and obligations. In National Human Rights Commission v. State of Arunachal Pradesh (1996) also, the Apex Court held that *"Our Constitution confers... rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise..."*⁴²

The same is the case with Thailand which has become yet, another destination for the Rohingyas to seek asylum from the ongoing crisis. Trafficking of children, smuggling are some of the few crimes that have occurred in the regime adding on to the already existing overcrowded and inhuman conditions of the Rohingyas in the detention camps. Although not a party to the Refugee convention, it still has to give temporary asylum under CIL norms. Also, since the country is a party to ICCPR, ICESCR, CEDAW, CRC, The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (CAT), The Convention on the Rights of Persons with Disabilities (CRPD), and the Convention against Transnational Organised Crime (UNTOC) and its Trafficking and Smuggling protocols, it therefore, has an obligation to protect the rights of the Rohingya community as have been enumerated in the above mentioned international treaties and related protocols.

VII. THE HIDDEN GENOCIDE PERSPECTIVE

The move towards Democracy would never be achieved in Myanmar if the military continues to retain its mind set of persecuting and excluding the ethnic minorities from the goal of inclusive economic development. The deep-rooted Buddhist nationalist sentiments and immense hatred against the Rohingyas have propelled barbaric crimes against humanity including those of genocide and ethnic cleansing. With no support from the International community, the West has once again failed to enact over the gross violation of human rights that have taken place in Myanmar. Compared to the catastrophic 1991 genocide that took place in Rwanda, the Rohingya crisis is believed to be no less than an act of genocide against the minority Muslims as stated by UN Human Rights Chief Zeid Ra'ad al- Hussein.

⁴¹AnirbanBhaumik, Rohingya issue: UN body reminds India of Refugee Laws, DECCAN HERALD, (Jun 27, 3:57 PM), https://www.deccanherald.com/amp/national/deportation-rohingyas-un-body-696242.html#referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s

⁴²ThulasiK.Raj, Wrong on the Rohingya, THE HINDU, (Jun 27, 2019, 3:36 PM), <https://www.thehindu.com/opinion/op-ed/wrong-on-the-rohingya/article26176985.ece>

With sufficient instances given above, it is quite evident that Myanmar is on the road to ethnic cleansing instead of alleged democratization. Substantive human rights abuses have now taken the form of mass humanitarian crisis and now the nation stands on the brink of genocide. For more than 70 years, the Rohingyas have been stateless in their own country, their economic livelihood has been dismantled and restrictions have been placed on their ability to marry and have children. At the moment, all the preconditions for genocide are in place and, so far, the world is choosing to ignore the warning signs.⁴³

It is imperative to first understand how the crime of genocide is understood in the context of International Law. The term as codified in international law as one of the five punishable acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such. The five punishable acts are killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group. The definition first appears in Art. II Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention'), adopted by the United Nations General Assembly on 9 December 1948.⁴⁴ The mass killing or to say the extermination of Rohingya community including the atrocities of rape, torture, sexual violence, forced drug use, deliberate deprivation of resources required for one's physical survival, enslavement, imprisonment, deportation or forcible transfer, prevention of births, involuntary sterilization, forced sterilization etc., persecution against a particular political, cultural, racial, national, ethnic or religious group or any other form of deprivation of fundamental human rights constitute an act of genocide and is in clear violation of International humanitarian norms. The major element being the intention to kill or harm or inflict such bodily or mental harm so as to distinguish it from other major crimes.

With sufficient findings documented by the Fact Finding Mission on Myanmar and several other reports of UN, it is most likely to conclude that if not all but at least some of the atrocities that have been committed by the Military against the ethnic minority do fall under the above mentioned categories and undoubtedly constitute crimes against humanity. Wide rampant indiscriminate killing and contemptuous sexual violence inflicted upon the Rohingya women including the humongous destruction of their homes and villages in the Rakhine State is sufficient evidence to warrant investigation against the crime of genocide.

As defined in the ICJ judgement for Croatia, a genocide must be aimed to destroy and eliminate a particular identity group so that it loses its presence in the particular region. Also systematic attempts ought to be made at normalizing the violence towards the particular community and its members should be restricted from

⁴³Azeem Ibrahim, *supra* note 11, at 100.

⁴⁴A.Sachabas, W., *Genocide*, OXFORD PUBLIC INTERNATIONAL LAW (Jun 27, 2019, 3:36 PM), <https://opil.oup.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e804>

sustaining themselves physically and biologically. The requirement of targeting and persecuting a particular group is also fulfilled in the above instance. The act should also be of such grave nature that it triggers an imminent fear and requires immediate action from the UN Security Council. It is indeed true that the manner in which the Rohingyas have been treated calls for immediate response not just from the UNSC but from the international community as a whole.

The ethnic cleansing taking place in the Rakhine State has characteristic features which have the effect of turning a particular ethnic conflict into that of an act of genocide. They are as follows: 1) previous instance of several ethnic tension; 2) political upheaval; 3) the governing elite is drawn overwhelmingly or entirely from a particular ethnic group; 4) that elite has an ideology that believes it is right to persecute a particular ethnic group; 5) the regime is autocratic; 6) the regime is closed to the wider international order; 7) a minority is targeted for severe political or economic discrimination. The simple reality is that all these apply in the Rakhine⁴⁵, the outstanding question being whether there was a clear intent and desire to annihilate the entire minority while performing such egregious acts.

The crucial shift to the act of genocide requires proper atmosphere and setting all of which is created by constructing inter-ethnic, separating all the social and political institutions on religious lines, fracturing the links between the majority and the minority through some deliberate policies of extremist parties and thus, eventually establishing distrust and sustained ethnic violence. A key act in producing the conditions of genocide is slow legitimation and normalization of the framework used to justify discrimination and murder on the basis of identity, and testing the limits of what is acceptable. Genocide requires the long term development of cultural and institutional conditions that we have highlighted in order to organize and sustain such violence.⁴⁶ The collection of sharp or blunt objects from Rohingya civilians so as to ensure they were unarmed and unable to defend themselves during the crackdown; spreading anti-Rohingya propaganda; training and arming local non-Rohingya communities; tearing down fencing and other structures around Rohingya homes; deliberately depriving Rohingya of food and crucial life-saving aid to weaken them prior to attack; and deploying unnecessarily high numbers of state security forces to northern Rakhine state⁴⁷ were some extreme measures undertaken by the Government to exterminate all the traces of the Rohingya community. Evidence of premeditation and planning; large-scale public propaganda campaigns; cover-ups and destruction of evidence; and denial all serve as indicators⁴⁸ as exposed by the Fortify Rights Report. As noted by the CEO of Fortify

⁴⁵Azeem Ibrahim, *supra* note 11, at 101.

⁴⁶Ferroggiaro, W, *The US and the Genocide in Rwanda 1994: Evidence of Inaction*, Washington, D.C.: National Security Archive, (2001), Pierson, P, *Politics in Time: History, Institutions, and Social Analysis*, Princeton, NJ: Princeton University Press, (2004).

⁴⁷Strimov Durbin, A., *Why the Rohingya crisis is a genocide*, JEWISH WORLD WATCH(Jun 27, 2019, 3:36 PM), <https://www.jww.org/conflict-areas/rohingya/why-the-rohingya-crisis-is-a-genocide/>

⁴⁸*Id.*

Rights that a crime like Genocide takes a lot of systematic planning, care, caution and do not occur spontaneously, thus, clearly indicating the malicious intent behind such heinous crimes.

While Myanmar is a party to the 1948 Genocide Convention, it is therefore, under the severe obligation to not commit, prevent and punish genocide (Article I) and to ensure that persons found guilty of such acts be charged with effective penalties (Article V). The Perpetrators would then otherwise be tried by a competent tribunal as the jurisdiction for the trial of such crimes lies not only with the State in whose territory it was committed, but also with an international tribunal as provided under Article VI. The tribunal here being the International Criminal Court (ICC) as the ICC's Rome Statute affirms that these crimes are *“the most serious crimes of concern to the international community as a whole.”* Additionally, they *“must not go unpunished and their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.”*⁴⁹ However, the complex bureaucracy of international law has made legal action a complicated and difficult endeavor. Over 123 countries have ratified the Statute but, unsurprisingly, Myanmar is not one of them – which complicates the process of prosecuting crimes being carried out within the country's borders. For crimes relating to states that have not ratified the ICC statute, a United Nations Security Council resolution is required. Since a resolution of this nature has yet to be passed with regards to the Rohingya crisis, more circuitous action was required. As of September 2018, the ICC has managed to establish jurisdiction over the crisis due to a loop-hole in the court's policy. While Myanmar has not ratified the Rome Statute, Bangladesh, Myanmar's north-western neighbor and the country to which over a million Rohingya refugees have fled, is a signatory and, as a result, a member of the court. By focusing the investigation on the forced migration of the Rohingya into Bangladesh, the ICC determined that it would be able to override the limitations posed by Myanmar's lack of ratification and begin formal prosecution.⁵⁰ In response to these atrocities, the UNSC has failed to adopt any resolutions on the Rohingya situation, hindered by China and Russia's partnership with Myanmar. Since the prosecution needs to be carried out against particular individuals and groups and not states and governments, therefore, as per the 2018 UN Report, 6 individuals within the military unit have been named who were instrumental in committing crimes against the Rohingya community.

VIII. CONCLUSION

The positive developments at ICC is an important step towards seeking justice for the Rohingyas. Nonetheless, the combination of these proceedings with those if initiated before the ICJ would prove to be effective to fully address the injustices propelled against them and the same would be important for three reasons. First, the ICC will focus on *individual* criminal responsibility, while the ICJ could seek legal accountability at the state level.

⁴⁹ UNGA, *Rome Statute of the International Criminal Court*, Preamble.

⁵⁰ Mendelson, A., *The Implications of Labelling the Rohingya Crisis as Genocide*, THE MCGILL INTERNATIONAL REVIEW (Jun 27, 2019, 3:40 PM), <https://www.mironline.ca/the-implications-of-labelling-the-rohingya-crisis-as-genocide/>

Doing so could force Myanmar to directly respond to the claims against it, which it has so far declined to do before the ICC. Second, the ICJ could issue provisional measures directing Bangladesh and Myanmar to postpone their agreement to repatriate the Rohingya. Third, claims of genocide are by far the most serious allegations against Myanmar and simply cannot go unpunished, particularly in light of the inaction of the international community.⁵¹ Crimes against humanity and genocide ostensibly trigger legal obligations on the part of the international community to act to protect threatened communities. Under the principle of Responsibility to Protect, when a state fails to protect its populations from these crimes, the international community must be *“prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter [of the United Nations].”*⁵² With the help of the above analysis, it is amply clear that there exists a hidden genocide angle with the miseries of the Rohingyas and it can be addressed with the help of the international community and adequate legal procedures. Also, the infamous Citizenship Law ought to be amended so that the Rohingyas can attain full rights as the legal citizens of Myanmar. Condemning the bureaucratic hoops and the autocratic military regime coupled with extremist beliefs and ideas, the term ‘genocide’ finally needs to be invoked so that the system which allowed for such devastation to happen be finally prosecuted and charged. Learning from the Rwanda lesson, it is high time that international silence be broken and the outside world stand as a protective barrier between the Rohingyas and genocide or else it will be too late to do anything.

⁵¹Viren Mascarenhas et al., *The Rohingyas' Plight: What Options Under International Law?*, THE DIPLOMAT (Jun 27, 2019, 3:39 PM), <https://thediplomat.com/2019/01/the-plight-of-the-rohingya-what-options-under-international-law/>

⁵²United Nations General Assembly (UNGA), *Resolution 60/1, 2005 World Summit Outcome*, October 24, 2005 (UN Doc. A/RES/60/1), para. 139, UNITED NATIONS ORGANIZATION (Jun 27, 2019, 3:40 PM), <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>