



Statelessness, Violation of human rights, Muslims of Myanmar's case

Alireza Roustaei

Ph.D. in Public International Law

Email: alireza.roostayi@yahoo.com

Abstract

Although according to domestic law, citizenship is a prerequisite for the enjoyment of rights but in the international law, the principles of human rights would maintain that being human is the sufficient to have human rights. Because being human is the sole requirement entitling one to human rights, whether or not one possess a nationality should have no bearing on whether one enjoys all of her or his human rights. However, in practice, statelessness are resulted to human rights violations against persons without nationality. In this article we will say that the most significant group affected by this issue are a Muslim minority in Myanmar known as the Rohingya who are not recognized as one of the country's "national races" under the 1982 Citizenship Act. Stateless Rohingya in Rakhine state have faced grave human rights abuses for several decades, including restrictions on free movement, land Confiscation, exaction of forced labor and etc. Indeed, this reflects statelessness impact in increasing human rights violations.

Keywords: Statelessness, human rights, Muslims of Myanmar, Rohingya



1. Introduction

Human rights law guarantees the right of everyone to a nationality, yet there are millions of stateless persons around the world – persons who are not considered as a national by any state under the operation of its law. The very existence of statelessness evidences a human rights problem *per se*, but statelessness is commonly also both a product and a cause of other human rights problems (Van Waas, 2014, p. 5).

Statelessness is a severe human rights problem in Myanmar (Burma) where the most significant group affected are a Muslim minority known as the Rohingya who are not recognised as one of the country's "national races" under the 1982 Citizenship Act. Over 800,000 Rohingya in Myanmar's Rakhine state are stateless and hundreds of thousands more have fled the country to seek refuge from communal violence and government persecution. Stateless Rohingya in Rakhine state have faced grave human rights abuses for several decades (Van Waas, 2014, p. 40). In fact, central to the persecution of the Rohingya is the 1982 Citizenship Law, which effectively denies Burmese citizenship to Rohingya on discriminatory ethnic grounds. Because the law does not consider the Rohingya to be one of the eight recognized "national races" (along with ethnic Burmans, Arakanese, Karen, and other groups), which would entitle them to citizenship, they must provide "conclusive evidence" that their ancestors settled in Burma before independence in 1948, a difficult if not impossible task for most Rohingya families (Human Rights Watch, 2013, p. 15).

For decades from now, the Rohingya have been subjected to structural violence in the form of repressive and discriminatory laws that have denied them citizenship and reduced them to the status of illegal immigrants in the land of their birth. The Myanmar's government, and Burmese society more broadly, openly considers the Rohingya to be illegal immigrants from what is now Bangladesh and not a distinct "national race" of Burma, denying them consideration for citizenship. Despite claims that virtually all Rohingya are "Bengali," most Rohingya in Burma were born in the country, many to families whose lineage goes back several generations. The government has made use of this denial of citizenship to deprive Rohingya of many fundamental rights. Rohingya face restrictions on freedom of movement, education, marriage, and employment – rights that are guaranteed to non-citizens as well as citizens under international law (Human Rights Watch, 2013, p. 15).

Between June and November 2012, the Rohingya bore the brunt of communal violence, human rights violations, and an urgent humanitarian situation in Rakhine State, and still face an uncertain future (Zawacki, 2013, p. 18). With the institutionalized violence against the Rohingya embedded in both the legal structure and within Myanmar society in general, and given the highly charged atmosphere, as well as the high degree of animosity between the Rohingya and the Arakenese in Rakhine State, the outbreak of violence in June and October of 2012 was all but inevitable (Simbulan, 2013). Earlier in 2014, the government imposed a ban on international humanitarian organizations offering medical assistance. This is causing extreme human misery and an increase in preventable deaths. Moreover, a deeply flawed national census exercise conducted in April 2014 further exacerbated inter-ethnic and inter-religious tensions and analysts warn that the release of census data in 2014 and 2015 may spark further violence (Van Waas, 2014, p. 40).

2. Protection of stateless persons and international law

Nationality is the legal tie that allows an individual to effectively enjoy the full range of a state's protection (Adjami & Harrington, 2008, p. 27). The right to a nationality implies, for example, the right to reside and to freely move within the state. It is for this reason that Article 15 of the UDHR provides: "(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." The phrase "arbitrarily deprived" should be interpreted in conjunction with Article 2 of the UDHR, which would thus prohibit racial and ethnic discrimination as a basis for depriving nationality.



While international law scholars might claim that the right to a nationality is the right to have rights, the principles of human rights would indicate otherwise. The principles of human rights would maintain that being human is the right to have human rights. Human rights are the rights that one has simply because one is a human being. Although "national governments may have the primary responsibility for implementing internationally recognized human rights in their own countries, human rights are the rights of all human beings, whether they are citizens or not. Because being human is the sole requirement entitling one to human rights, whether or not one possess a nationality should have no bearing on whether one enjoys all of her or his human rights (Weissbrodt & Collins, 2006, p. 248, 249).

The 1961 Convention on the Reduction of Statelessness focuses exclusively on decreasing statelessness. Under the citizenship rules that states parties to the 1961 Convention must adopt, many persons who might otherwise be stateless are able to acquire a citizenship. In contrast to the 1961 Convention, which focuses on reducing statelessness, most of the 1954 Convention relating to the Status of Stateless Persons is devoted to the protection of stateless persons rather than the elimination of statelessness. The notion that statelessness should not bar one from realizing her human rights is embodied in the 1954 Convention relating to the Status of Stateless Persons. This Convention provides that, within certain domains, states parties should grant stateless persons rights on par with the rights that the state gives to its own nationals or to foreign nationals legally residing within its territory. In addition to the 1954 Convention relating to the Status of Stateless Persons, many other human rights instruments support the notion that holding a nationality is not a prerequisite to enjoying human rights (Weissbrodt & Collins, 2006, p. 249).

2. Myanmar Laws and denial of citizenship

Efforts to deprive Rohingya of citizenship began after Myanmar's independence (International Human Rights Clinic, Yale Law School, 2015, p. 6). The 1948 Union Citizenship Act defined Myanmar citizenship and identified specific ethnicities that were allowed to gain citizenship (Constitution of the Union of Burma, 1947, Chapter II, para. 11(i)). The list did not include Rohingya. Under the 1948 law, individuals who could not provide evidence that their ancestors settled in Burma before 1823 could still be eligible for citizenship. The Union Citizenship Act allowed people whose families had lived for two generations in Myanmar to apply for identity cards. Initially, the government provided many Rohingya with citizenship or identification cards under this provision (Irish Centre for Human Rights, 2010, p. 95). In 1982, General Ne Win instituted a new citizenship law that prohibited Rohingya from obtaining equal access to full Myanmar citizenship, effectively rendering a majority of Rohingya stateless (International Human Rights Clinic, Yale Law School, 2015, p. 7). Burma's 1982 Citizenship Law designates three categories of citizens: full citizens; associate citizens; and naturalized citizens. Color-coded Citizenship Scrutiny Cards are issued according to citizenship status – pink, blue, and green, respectively. By law, full citizens are persons who belong to recognized "national races" (the eight primary races are Arakanese, Burman, Chin, Kachin, Karen, Karenni, Mon, and Shan) or those whose ancestors settled in the country before 1823, when Britain became the colonial power in the country. Under the 1982 law, associate citizenship was only available to those who met the qualifications and had already had applied for citizenship before the 1982 law went into effect, excluding most Rohingya (Human Rights Watch, 2013, p. 110).

Sections 42 to 44 of the 1982 Citizenship Law on the qualifications required for Burmese naturalized citizenship read:

“42) Persons who have entered and resided in the State prior to 4th January, 1948, and their children born within the State may, if they have not yet applied under the Union Citizenship Act, 1948, apply for naturalized citizenship to the Central Body, furnishing conclusive evidence. 43) The following persons, born in or outside the State, from the date this Law comes into force, may also apply for naturalized citizenship: (a) persons born of parents one of whom is a citizen and the other a foreigner; (b) persons born of parents, one of whom is an associate citizen and the other a naturalized citizen; persons born of parents, one of whom



is an associate citizen and the other a foreigner; (d) persons born of parents, both of whom are naturalized citizens; (e) persons born of parents, one of whom is a naturalized citizen and the other a foreigner. 44) An applicant for naturalized citizenship shall have the following qualifications: (a) be a person who conforms to the provisions of section 42 or section 43; (b) have completed the age of eighteen years; be able to speak well one of the national languages; (d) be of good character; (e) be of sound mind” (Burma Citizenship Law, 1982, sections 42 - 44).

Most Rohingya lack formal documents, and even those who come from families that have lived in Burma for generations do not have any way of providing “conclusive evidence” of their lineage in Burma prior to 1948, let alone prior to 1823, denying them Burmese citizenship (Human Rights Watch, 2013, p. 112). Furthermore, the requirement under Section 44 that applicants for naturalization ‘must be able to speak well one of the national languages’, is an obvious stumbling block for the Rohingyas who speak their own dialect and have only very restricted access to education through which additional language skills could be obtained (Irish Centre for Human Rights, 2010, p. 96).

3. Violation of Human Rights

Although international law ensures non-citizens virtually all the rights of citizens, except for political rights such as voting, the Burmese government has long used the Rohingya’s absence of citizenship to deny them their fundamental human rights. The refusal to grant citizenship allows Myanmar’s government to effectively deny or curtail the ability of the Rohingyas to exercise their basic human rights (Irish Centre for Human Rights, 2010, p. 97). As the UN special rapporteur on human rights in Burma has stated, the 1982 Citizenship Law “contravenes generally accepted international norms to ensure that there is no State sanctioned discrimination on the basis of religion and ethnicity” (Quintana, 2010). Human Rights Watch, UN agencies, and others have long recognized the denial of citizenship to Rohingya as a root cause of the violence in Arakan State (Human Rights Watch, 2013, p. 109). The special rapporteur Rajsoomer Lallah in January 2000 reported that there were six major circumstances that led to massive outflows of Rohingya from Burma— conditions that would amount to unlawful deportation: (1) The lack of citizenship and, by extension, nationality rights; (2) Imposed restrictions on movement by the [Burmese] authorities; (3) Forced labor and portering for the army; (4) Compulsory food donations, extortion and arbitrary taxation; (5) Land confiscation or relocation; and (6) Deliberate food (rice) shortages in combination with high prices. These factors, coupled with systematic human rights violations and imposed underdevelopment, led to the mass exodus of Rohingyas (Lallah, 2000). The other UN specialrapporteur on human rights in Burma, Tomas Quintana, reported in 2010: Discrimination [against the Rohingya] leads to forced deportation and restriction of movement owing to the enduring condition of statelessness, which is the result of the Rohingyas’ historic difficulty in obtaining citizenship, particularly following the enactment of the 1982 Citizenship Act. ... discrimination leads to persecution, which can be defined as intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity (Quintana, 2010, p. 16-17).

At the core of the problem is Burma’s discriminatory 1982 Citizenship Law. While countries have the authority to determine their own criteria for conferring citizenship, this criteria must be in conformity with a country’s international human rights obligations. Burma’s 1982 Citizenship Law and its application have effectively prevented ethnic Rohingya from obtaining Burmese citizenship, resulting in an arbitrary deprivation of citizenship in contravention of international human rights standards (Human Rights Watch, 2013, p. 109).

The foregoing list of laws and government policies provide a glimpse of the restrictions imposed by the government on the Rohingya on a daily basis. The life of Rohingyas in Rakhine State is a life of duties and obligations to the Myanmar government. Despite having to comply with a long list of obligations, the Rohingya, because they are not recognized as Myanmar citizens, are invisible under Myanmar law and



are not able to claim any rights against the Myanmar government. Taken together, these laws and policies have methodically created a legal structure of discrimination and inequity that identifies the Rohingya as unwanted elements of society (Simbulan, 2013). However, the denial of citizenship to Rohingya is as a root cause of the violence in Rakhine State. In fact, at the heart of the systemic discrimination against the Rohingya is the 1982 Citizenship Law. Statelessness has been the basis for subjecting the Rohingya to various inequitable government regulations that violate international human rights law, specifically the fundamental rights found in the Universal Declaration of Human Rights. These violations are enumerated below.

3.1. Restrictions on the right to family life

The right to marry and found a family is protected under international human rights law. In Myanmar, Buddhists and other ethnic groups can marry following their own customs, religious or secular, as marriage is considered a private affair, with no need for official endorsement. The situation is completely different for the Rohingyas because they are statelessness. Until 1990, the Rohingyas could marry following their own tradition under Islamic law with no need for further procedure or requirements, as was the convention for all groups in Myanmar. The situation has changed drastically for the Rohingyas since the 1990s, as the authorities issued a Local Order compelling individuals in North Arakan State to seek and obtain permission prior to getting married (Irish Centre for Human Rights, 2010, p. 126, 127). The procedure to seek marriage permission is difficult and very costly. Because of these obstacles many Rohingyas are unable to marry. Difficulties in getting marriage permission, or marriage without such authorization, also lead to unsafe abortions, and the “illegal” birth of unregistered children. There are reportedly thousands of Rohingya children in North Arakan State who are not registered because of the marriage restrictions imposed on their parents. These children are likely to be specifically targeted and end up as victims of abuses from the various Burmese authorities throughout their lives. This discriminatory order and its predatory application are deliberately imposed to control the birth rate and to limit expansion of the Rohingya population (Irish Centre for Human Rights, 2010, p. 128 - 130).

These conditions, which are imposed only on the Rohingya, plainly violate Article 16(1) of the UDHR, which states: “(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.” These conditions also constitute a violation of Article 12 of the UDHR, which ensures that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

3.2. Restrictions on movement

The classification of the Rohingyas as non-citizens has a profound impact on their ability to move freely within North Arakan State and the interior of Burma generally (Irish Centre for Human Rights, 2010, p. 98). Article 13 of the UDHR expressly guarantees that: “(1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.”

The Rohingya movement is severely restricted and subjected to a strict licensing system. Because the Muslim population of Rakhine State are ineligible for citizenship under the 1982 law and were not even registered as foreign residents, they could not travel within the country. Thus, Rohingyas are required to obtain travel permits from their local Peace and Development Council chairman to cross township and state boundaries, in keeping with the Registration of Foreigners Act and Rules of 1940 (Simbulan, 2013).

3.3. Education and Employment

The Burmese government has also systematically violated the Rohingya right to Education. Because the government provides secondary education only to recognized Myanmar citizens, the Rohingyas are only



allowed to attend state-sponsored primary school (Human Rights Watch, 2013, p. 81). This clearly violates Article 26(1) of the UDHR, which guarantees that “(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

The lack of citizenship also prevents the Rohingya from joining the civil service or from participating formally in local government, (Simbulan, 2013) an apparent breach of Article 21, paragraphs (1) and (2), which state: (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country.

3.4. Forced Labor

The prohibition of forced labor constitutes a norm of customary international law. The violation of this prohibition may qualify as an internationally wrongful act giving rise to State responsibility. Article 4 of the UDHR clearly provides that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

The imposition of forced labor on the Rohingya in Myanmar has been documented over many years. For more than a decade, it has been monitored closely by the International Labor Organization. Numerous so-called “model villages” have also been built in high numbers in North Arakan State and the authorities have used Rohingyas, and no other group, to do the work. There is constant and ever-increasing discrimination against the Rohingyas; a situation resulting in increased forced labor. Forced labor is exacted from the Rohingya population in several forms. These include portering, building maintenance and construction, forced cultivation and agricultural labor, construction and repair of basic infrastructure, and guard or sentry duty (Irish Centre for Human Rights, 2010, p. 10). Since June 2012, the UN and its humanitarian partners in Arakan State have independently documented forced labor committed by the Burmese authorities against the Rohingya (Human Rights Watch, 2013, p. 63).

3.5. Denial of religious freedom

Article 18 of the UDHR expressly guarantees that: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

A prominent manifestation of discrimination against the Rohingyas is the widespread restrictions on their freedom of religion. For many years it has prohibited the construction and maintenance of mosques and in some instances has forced communities to destroy them and build pagodas in their place (Irish Centre for Human Rights, 2010, p. 132). After the June of 2012 violence forced communities of Muslims to flee from Sittwe, Human Rights Watch confirmed the destruction of at least nine mosques in the area of Sittwe. Human Rights Watch has reported that authorities and Arakanese destroyed mosques and religious schools in other parts of the state, including at least six mosques and six Islamic schools in Minbya Township (Human Rights Watch, 2013, p. 42). As a conservative Muslim group, major aspects of Rohingya life are dominated by religious orthodoxy. Restrictions on freedom of religion therefore have an enormous impact on the life of the Rohingyas. The restrictions are unjustified, discriminatory and are a constituent element in the systematic persecution of the Rohingyas (Irish Centre for Human Rights, 2010, p. 133).

4. Responsibility of Myanmar’s government

The acts and policies perpetrated against the Rohingyas are fundamentally based on ethnic, racial and religious discrimination. The 1982 Law’s deliberate targeting of the Rohingyas is the most explicit representation of this discrimination. Such a conclusion finds ample support in the findings of successive Special Rapporteurs on the Situation of Human Rights in Myanmar and the United Nations General



Assembly, who have repeatedly called on the Burmese Government to, '[r]epeal discriminatory legislation and avoid discrimination practices particularly in Northern Rakhine State, where a large part of the Muslim community has been deprived of citizenship and movement for many years'. The citizenship issue is central to any resolution of the situation of the Rohingyas. As it currently stands, the position of the Rohingyas as stateless directly precipitates their forcible displacement from and within North Arakan State; it was central to their mass displacement in 1992 and continues to be the primary factor leading to their flight from the territory (Irish Centre for Human Rights, 2010, p. 98).

5. Conclusion

All of the acts documented in this article constitute gross violations of international human rights law. The Rohingya subject to various inequitable government regulations that violate international human rights law, specifically the fundamental rights found in the Universal Declaration of Human Rights. Myanmar is not a party to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the 1951 Convention relating to the Status of Statelessness and the 1961 Convention on the Reduction of Statelessness. However, those are considered as having acquired a customary nature and thus binding on all subjects of international law, including Myanmar. Primary responsibility rests with the Myanmar government to protect those whose right to a nationality the country has long denied (Zawacki, 2013, p. 23).

Human rights instruments support the notion that holding a nationality is not a prerequisite to enjoying human rights and being human is the sole requirement entitling one to human rights but for decades now, the Rohingya minority group in Myanmar has endured grave human rights violations in North Arakan State. This article is stating that all violations of human rights against the Muslims of Myanmar, including restrictions on the right to family life, on freedom of movement, on education and employment, forced labor and denial of religious freedom flow from the denial of citizenship. Human rights instruments support the notion that holding a nationality is not a prerequisite to enjoying human rights.

The main effect the 1982 Citizenship Law is that the Rohingya, most of whom lack citizenship in Myanmar, have been rendered stateless, both unable to avail themselves of the protection of the state and—as has been the case for decades—subject to policies and practices that constitute violations of their human rights and fundamental freedoms. The Myanmar's government must immediately end the persecution of the Rohingya minority and the violation of their most basic human rights. All policies and practices amounting to restrictions on movement, forced labor, marriage restrictions, discrimination, and other violations must be brought to an end without delay. It must urgently amend the 1982 Citizenship Law to eliminate provisions that are discriminatory or have a discriminatory impact on determining citizenship for reasons of ethnicity, race, religion or other protected status and ensure that the amended law is enforced to provide citizenship without discrimination.

After being hounded for decades, it is time that adequate attention is given to the situation of the Rohingya and immediate action must be taken by the international community to respond to this situation. The international community must publicly press Burmese authorities to end discrimination and violence against Rohingya and reform the discriminatory 1982 Citizenship Law and bring it into line with international standards.

References

A: Books and Papers

- Adjami, Mirna; Harrington, Julia (2008). "The Scope and Content of Article 15 of the Universal Declaration of Human Rights", *Refugee Survey Quarterly*. Available from: <http://rsq.oxfordjournals.org/content/27/3/93.full>



- Human Rights Watch (2013). All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State, 165 p. Available from: http://www.hrw.org/sites/default/files/reports/burma0413webwcover_0.pdf.
- International Human Rights Clinic (2015). Persecution of the Rohingya Muslims: is Genocide occurring in Myanmar's Rakhine State, Prepared by the Allard K. Lowenstein International Human Rights Clinic, Yale Law School for fortify rights. Available from: http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf
- Irish Center for Human Rights (2010). Crimes Against Humanity in Western Burma: The Situation of the Rohingyas, National University of Ireland, Galway, 153 p. Available from: <http://www.nuigalway.ie/media/intranet/Crimes-Against-Humanit-in-Western-Burma.pdf>
- Lallah, Rajsoomer (2000). "Question of the violation of human rights and fundamental freedoms in any part of the world," UN Economic and Social Council, Situation of human rights in Myanmar, E/CN.4/2000/38.
- Quintana, Tomás Ojea (2010). "Situation of human rights in Myanmar", UN General Assembly, A/65/368.
- Simbulan, Karen Pimentel (2013). "A Legal and Structural Analysis of the Violence in Rakhine State against the Rohingya Muslims of Myanmar". Available from: http://www.academia.edu/6101564/Legal_and_Structural_Analysis_of_Violence_in_Rakhine_State_against_the_Rohingya_Muslims_of_Myanmar
- Van Waas, Laura (2014). 'Addressing the human rights impact of statelessness in the EU's external action', European Parliament, Policy Department DG External Policies, Available from: <http://www.refworld.org/pdfid/5513e2934.pdf>
- Weissbrodt, David; Collins, Clay (2006). 'The Human Rights of Stateless Persons', Human Rights Quarterly, vol.28, p. 245-276. Available from: http://scholarship.law.umn.edu/faculty_articles/412.
- Zawacki, Benjamin (2013). Defining Myanmar's "Rohingya Problem", p 18-25. Available from: <http://digitalcommons.wcl.american.edu/hrbrief/vol20/iss3/2/>

B: Documents and Laws

- Constitution of The Union of Burma (1947). Available from: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/79573/85699/F1436085708/MMR79573.pdf> [Accessed 6 February 2014]
- Convention on the Reduction of Statelessness (1961). entered into force 13 December 1975, 989 UNTS 175, Available from: <http://www.unhcr.org/3bbb286d8.pdf>
- Convention Relating to the Status of Stateless Persons (1954). 360 UNTS 117. Available from: <http://www.unhcr.org/3bbb25729.pdf>.
- International Covenant on Civil and Political Rights (1966), General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. 999 UNTS 171. Available from: <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>
- International Covenant on Economic, Social and Cultural Rights (1966). G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, art. 2(2), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force 3 Jan. 1976). Available from: <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>
- Myanmar Citizenship Law (1982). Pyithu Hluttaw Law No. 4. Available from: un-act.org/wp-content/uploads/2015/10/myanmar-citizenship-law.pdf.
- Universal Declaration of Human Rights, 1948