

# THE STATELESSNESS PROBLEM OF THE ROHINGYA MUSLIMS

## INTRODUCTION

After finding that approximately ten million people worldwide are stateless, the United Nations High Commissioner for Refugees (“UNHCR”) launched the #IBelong Campaign, which seeks to end the global crisis of statelessness within a decade of its launch in November 2014, by identifying and protecting populations of stateless people and preventing further statelessness.<sup>1</sup> The UNHCR is working with other UN agencies, state governments, civil society, and regional organizations to carry out a ten-part Global Action Plan to End Statelessness (“GAP”).<sup>2</sup>

The #IBelong Campaign addresses the problem of statelessness by building off of the UN’s previous efforts, which began in 1954 with the passage of the Convention Relating to the Status of Stateless Persons (“1954 Convention”) and further developed in 1961 with the Convention on the Reduction of Statelessness (“1961 Convention”) and in 1995 with

---

<sup>1</sup> United Nations High Commissioner for Refugees, *UNHCR launches 10-year global campaign to end statelessness*, <http://www.unhcr.org/545797f06.html> (last visited Nov. 4, 2018) (The #IBelong Campaign was launched on November 4, 2014 when the “UN High Commissioner for Refugees António Guterres, UNHCR Special Envoy Angelina Jolie and more than 30 celebrities and world opinion leaders . . . published an Open Letter, saying that 60 years after the United Nations first agreed to protect stateless people, ‘now it’s time to end statelessness itself.’”). The UNHCR also found that a baby is born into a stateless status every ten minutes. *Id.*

A person is stateless when they are in “the condition of not possessing recognized citizenship in a state or nation . . . because they did not acquire a nationality at birth, their state of origin no longer exists, or no state will accept them as citizens.” Jay Milbrandt, *Adopting the Stateless*, 39 BROOK. J. INT’L L. 695, 711 (2014). Caused by governments rather than individuals, statelessness exists and continues largely unchecked due to gaps in international law and broad discretion given to state sovereignties in defining citizenship, and the state uses its broad discretion to discriminate against certain classes of people. *Id.* at 712. There are two types of statelessness. *Id.* Statelessness that is “de jure” means “there is no recognized state to which a person may claim nationality and citizenship.” *Id.* Statelessness that is “de facto” means “a person possesses a legally meritorious claim for citizenship, but is precluded from asserting it because of practical considerations such as cost, circumstances of civil disorder, or fear of persecution.” *Id.* at 713. De facto statelessness consists of “(1) persons who do not enjoy the rights attached to their nationality; (2) persons who are unable to establish their nationality, or who are of undetermined nationality; (3) persons who, in the context of state succession, are attributed the nationality of a state other than the state of their habitual residence.” *Id.* at 713. See also United Nations High Commissioner for Refugees, *#IBelong Campaign to End Statelessness*, <http://www.unhcr.org/en-us/ibelong-campaign-to-end-statelessness.html> (last visited Nov. 4, 2018).

<sup>2</sup> United Nations High Commissioner for Refugees, *#IBelong Campaign to End Statelessness Special Appeal* (December 2016), at 6, <http://reporting.unhcr.org/sites/default/files/%23IBelong%20Campaign%20to%20End%20Statelessness%20Special%20Appeal%20-%20December%202016.pdf?v2>. See also United Nations High Commissioner for Refugees (November 2014), *Global Action Plan to End Statelessness 2014-2024*, at 2-3, <https://www.unhcr.org/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>.

the UNHCR's Global Mandate on Statelessness.<sup>3</sup> These measures, taken as a whole, attempt to reverse the significant challenges arising out of a stateless status, such as a lack of basic identity documentation; a diminished access to education, healthcare, and employment; and general exclusion, marginalization, discrimination, poverty, and fear.<sup>4</sup>

Of the estimated ten million people who the UNHCR has identified as stateless, 75% are from minority groups within the state in question.<sup>5</sup> One such minority is the Rohingya Muslims in the state of Myanmar (formerly Burma).<sup>6</sup> Although previously recognized as citizens, the Rohingya Muslims have been systematically denied citizenship and other rights since 1962, beginning under an anti-Muslim military regime and continuing under the current democratic regime.<sup>7</sup> Systematic oppression

---

3 Matthew Seet, *The Origins of UNHCR's Global Mandate on Statelessness*, 28 INT'L J. REFUGEE L. 7 (2016).

4 David C. Baluarte, *The Risk of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality*, 19 YALE H.R. & DEV. L.J. 47, 48 (2017) (noting that stateless populations in every region of the world experience being intentionally marginalized, vulnerable, and discriminated against by the state that they inhabit as a result of the lack of legal and physical protections afforded to citizens of that state). See also United Nations High Commissioner for Refugees, *2017 UNHCR Statelessness Report*, at 2, [https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR\\_EN2\\_2017IBELONG\\_Report\\_ePub.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR_EN2_2017IBELONG_Report_ePub.pdf) (last visited Nov. 4, 2018).

5 United Nations High Commissioner for Refugees, *2017 UNHCR Statelessness Report*, at 1, [http://www.unhcr.org/ibelong/wpcontent/uploads/UNHCR\\_EN2\\_2017IBELONG\\_Report\\_ePub.pdf](http://www.unhcr.org/ibelong/wpcontent/uploads/UNHCR_EN2_2017IBELONG_Report_ePub.pdf) (last visited Nov. 4, 2018).

6 "Rohingya is an ethno-religious term meaning Muslim people whose ancestral home is Arakan or Rakhine in Myanmar. To date, the total number of Rohingya in Rakhine State are estimated at over one million, the majority of whom live in three townships of North Rakhine State, and the vast majority of whom are stateless." Maung Zarni & Alice Cowley, *The Slow-Burning Genocide of Myanmar's Rohingya*, 23 PAC. RIM L. & POL'Y J. 681, 683 (2014). It is important to note that it is the Rohingya Muslims who are being systematically oppressed and the subjects of multiple atrocities. Defining the Rohingya Muslims is important because it distinguishes from the religious and ethnic majority, which are the Rakhine Buddhists, in the Rakhine State where the Rohingya Muslims historically and currently reside. *Id.* at 691.

Although Burma changed its official name to Myanmar in 1989 in an attempt to break from its colonial past, there is a difference in approach to referring to the state by its official name. The United Nations, France, and Japan are among those who refer to the state as "Myanmar;" however, countries like the United States and the United Kingdom continue to use "Burma" because they do not recognize the legitimacy of the military regime that changed the name. The two words mean the same thing and both have been used in the state. "Burma" is the more colloquial term that is used among the people of the state when they speak while "Myanmar" is the formal term used in official documents and literature. *Should it be Burma or Myanmar?* BBC NEWS (Sept. 26, 2007), <http://news.bbc.co.uk/2/hi/7013943.stm>.

When referring to things that are from Myanmar, the term used is "Burmese" rather than some other term that derives itself from Myanmar. To avoid confusion and to be consistent with how the United States refers to the country, this paper will refer to the state as "Burma" only and will also use the term "Burmese" when describing regimes, officials, and other entities within the state.

7 Zarni, *supra* note 6, at 683. Successive governments following the Burmese independence from the United Kingdom in 1948 recognized Rohingya Muslims as citizens. *Id.*

has resulted in the Rohingya refugee crisis, where more than 671,000 Rohingya Muslims have fled their homes in the Rakhine State since late August 2017 in an attempt to save themselves from ethnic cleansing, mass killings, and other crimes against humanity.<sup>8</sup>

First, this note will explain the UNHCR provisions and guidance on statelessness and the citizenship laws in Burma that create a stateless status for the Rohingya Muslims. Second, this note will discuss how Burma's state actions have resulted in a refugee crisis for the Rohingya Muslims. Finally, this note will propose possible remedies for the problem of statelessness for Rohingya Muslims in Burma and additional solutions for the current refugee crisis.

## I. THE LEGAL FRAMEWORK AND BURMA'S HISTORY

### A. UNHCR Conventions and Global Mandate

Following World Wars I and II, the United Nations established institutions and laws to protect stateless people due to the influx of refugees across the European continent.<sup>9</sup> The UNHCR provides guidance through conventions, protocols, and a global mandate, to States for dealing with both refugees and stateless persons.<sup>10</sup> These provisions lay out the

---

<sup>8</sup> Human Rights Watch, *Rohingya Crisis*, <https://www.hrw.org/tag/rohingya-crisis> (last visited Nov. 4, 2018). The UNHCR provides a different estimate: "The latest exodus began on 25 August 2017, when violence broke out in Myanmar's Rakhine State, driving more than 742,000 to seek refuge in Bangladesh. Most arrived in the first three months of the crisis. An estimated 12,000 reached Bangladesh during the first half of 2018. The vast majority reaching Bangladesh are women and children, and more than 40 per cent are under age 12. Many others are elderly people requiring additional aid and protection." UNHCR, *Rohingya emergency* (July 31, 2019), <https://www.unhcr.org/en-us/rohingya-emergency.html>.

<sup>9</sup> Milbrandt, *supra* note 1, at 714.

<sup>10</sup> Office of the United Nations High Commissioner for Refugees, *Introductory Note to the Convention Relating to the Status of Stateless Persons* (May 2014). It is important to note that refugees and stateless persons can be two separate categories, but there can also be an overlap between the two classifications:

"Indeed, some refugees under the 1951 Refugee Convention may also be stateless, and some stateless persons may be refugees. When this happens international law provides that they 'should be protected according to the higher standard which in most circumstances will be international refugee law, not least due to the protection from refoulement in Article 33 of the 1951 Refugee Convention'. However, most refugees today are not stateless, and not all stateless persons are refugees, thus the two classifications are and remain distinct."

Helene Lambert, *Comparative Perspectives on Arbitrary Deprivation of Nationality and Refugee Status*, 64 INT'L & COMP. L.Q. 1, 2 (2015). Prevention of one category may lead to prevention of the other, such as providing "effective nationality and the ability to exercise the rights inherent to nationality" can prevent statelessness which may lead to refugeehood or providing rights to refugees may prevent statelessness. *Id.* at 4.

basic principles and rights that refugees and stateless persons can expect from the international community.<sup>11</sup> Although Burma is not a signatory to any of these laws, the provisions are helpful in understanding how the international community may hold Burma accountable for its violations of the protections found in these conventions and protocols.<sup>12</sup>

The first of these provisions is the 1951 Convention Relating to the Status of Refugees (“1951 Convention”), which holds that “[t]he Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”<sup>13</sup> If a person falls within any of the exceptions listed in Article 1, Paragraphs C, D, E, or F, they may not be covered by the Convention Relating to the Status of Refugees.<sup>14</sup> The Rohingya Muslims do not fall in any of the exceptions because they have not voluntarily availed themselves of the protections or nationality of Burma, they are only receiving assistance from the UNHCR, have not received nationality in the countries that have taken them in, and have not committed any act that is contrary to the United Nation’s purpose.<sup>15</sup> Therefore, the 1951 Convention would apply to the Rohingya Muslims.

---

11 Office of the United Nations High Commissioner for Refugees, *Introductory Note to the Convention Relating to the Status of Stateless Persons* (May 2014).

12 See generally, United Nations Treaty Collection, *Convention relating to the Status of Stateless Persons*, [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en) (last visited Nov. 4, 2018); United Nations Treaty Collection, *Convention relating to the Status of Refugees*, [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en) (last visited Nov. 4, 2018); United Nations Treaty Collection, *Convention on the Reduction of Statelessness*, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-4&chapter=5&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=_en) (last visited Nov. 4, 2018); and United Nations Treaty Collection, *Protocol relating to the Status of Refugees*, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-5&chapter=5&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&clang=_en) (last visited Nov. 4, 2018).

13 1951 Convention Relating to the Status of Refugees, art. 1, July 28, 1951.

14 *Id.* at art. 1.

15 See 1951 Convention Relating to the Status of Refugees, art. 1 ¶ C, July 28, 1951 (Convention does not apply to any person who voluntarily re-avails himself of protection from country of nationality, voluntarily re-acquires protection after losing nationality, gains new nationality, reestablishes himself in another country out of fear of persecution, refuses without compelling reason the protection from the country of nationality after he no longer is recognized as a refugee, or is able to return to the country of former residence in the event there is no nationality); *Id.* at ¶ D (“This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance”). *Id.* at ¶ E (“This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country”). *Id.* at ¶ F (Convention does not apply to one who “(a) has committed a crime against peace, a war crime, or a crime against humanity... (b) he has committed a serious non-political crime outside the country of

Another important provision of the 1951 Convention is its prohibition of refoulement, where a state cannot “expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>16</sup> This provision is especially important because countries, like Bangladesh, receiving the Rohingya Muslims in their refugee camps may prematurely send the Rohingya Muslims back to Burma, where they will likely continue to face mass killings, sexual violence, and other crimes against humanity on account of their ethnic and religious identities.<sup>17</sup> Although Bangladesh is not a signatory of the 1951 Convention, the country may still be subject to its provisions.<sup>18</sup> Under Article 56 of the 1945 United Nations Charter, every member State of the United Nations has a general obligation to cooperate with the United Nations and its agencies.<sup>19</sup> Thus, the duty to protect refugees is extended to all states, even if they have not signed the 1951 Convention, because they must adhere to the United Nations Charter.<sup>20</sup>

The 1951 Convention was amended by the 1967 Protocol Relating to the Status of Refugees (“1967 Protocol”), which gave the 1951 Convention universal coverage to all refugees, replacing the original limitations that restricted the application of the 1951 Convention to only

---

refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations”).

16 *Id.* at art. 33 ¶ 1.

17 *Myanmar / Bangladesh: Rohingya refugees must not be forced home to abuse and discrimination*, AMNESTY INT’L (Oct. 4, 2017), <https://www.amnesty.org/en/latest/news/2017/10/myanmar-bangladesh-rohingya-refugees-must-not-be-forced-home-to-abuses-and-discrimination/>.

18 See United Nations Treaty Collection, *Convention relating to the Status of Refugees*, [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en) (last visited Nov. 4, 2018).

19 U.N. Charter art. 56, ¶ 1 (“All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”). The purposes listed in Article 55 include “the creation of conditions of stability and well-being...peaceful and friendly relations among nations...respect for the principle of equal rights and self-determination of peoples...higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” *Id.* at art. 55. All members of the United Nations must accept the obligations found in the Charter of the United Nations. *Id.* at art. 4 (“Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations”).

20 Moira Sy, *UNHCR and Preventing Indirect Refoulement in Europe*, 27 INT’L J. REFUGEE L. 457, 459 (2015).

those refugees who were fleeing the consequences of World War II in Europe.<sup>21</sup> The change reflects the recognition that new refugee situations can arise anywhere in the world at any time and that refugees should be covered by the 1951 Convention equally.<sup>22</sup>

Although the United Nations General Assembly convened a Conference of Plenipotentiaries in 1951 to draft an international treaty on the protection of both refugees and stateless persons, only the 1951 Convention providing protections for refugees was agreed to, so negotiations continued on the subject of stateless persons.<sup>23</sup> These negotiations resulted in the adoption of the 1954 Convention Relating to the Status of Stateless Persons (“1954 Convention”), which entered into force on June 6, 1960.<sup>24</sup> The 1954 Convention defined a stateless person as “a person who is not considered as a national by any State under the operation of its law.”<sup>25</sup> States cannot discriminate against stateless persons “as to race, religion or country of origin.”<sup>26</sup> However, there are some exceptions that apply, which are similar to the ones found in the 1951 Convention and 1967 Protocol.<sup>27</sup> The 1954 Convention requires States to afford stateless persons the same freedom of religion given to nationals, the same or greater right of association and right to wage-earning employment as that given to aliens in that country, and the same right to elementary education given to nationals and the same or greater right to higher education as that given to aliens in that country.<sup>28</sup>

---

21 Office of the United Nations High Commissioner for Human Rights, *1967 Protocol Relating to the Status of Refugees*, art. 1 ¶ 2-3 (“For the purpose of the present Protocol, the term ‘refugee’ shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words ‘As a result of events occurring before 1 January 1951 and . . .’ and the words ‘. . . as a result of such events’, in article I A (2) were omitted. The present Protocol shall be applied by the States Parties hereto without any geographic limitation. . .”).

22 Office of the United Nations High Commissioner for Human Rights, *1967 Protocol Relating to the Status of Refugees*, Preamble.

23 Office of the United Nations High Commissioner for Refugees, *Introductory Note to the Convention Relating to the Status of Stateless Persons*, at 3.

24 *Id.*

25 Office of the United Nations High Commissioner for Refugees, *Convention Relating to the Status of Stateless Persons*, art. 1 ¶ 1.

26 *Id.* at art. 3.

27 *Id.* at art. 1 ¶ 2(i-iii) (The 1954 Convention does not apply to (i) people receiving protection or assistance from institutions other than the UNHCR, (ii) people who are recognized “as having the rights and obligations which are attached to the possession of the nationality of that country,” and (iii) to people who have committed a crime against peace, war crime, crime against humanity, serious non-political crime, or acts that are “contrary to the purposes and principles of the United Nations.”).

28 Office of the United Nations High Commissioner for Refugees, *Convention Relating to the Status of Stateless Persons*, art. 4 (“The Contracting States shall accord to stateless persons within their

Of particular importance in the context of the Rohingya Muslims are the provisions related to the freedom of movement, right to identity papers and travel documents, and protection from expulsion.<sup>29</sup> Burmese authorities require the Rohingya Muslims to carry special documents and travel permits for internal movement, restrict them to movement within only five areas of the northern Rakhine State, and require prior approval for leaving the village of their residence.<sup>30</sup> These restrictions on movement limit both their access to higher education and employment.<sup>31</sup> To make matters worse, the Rohingya Muslims who leave Burma are not able to return to their residences because they are given jail sentences for illegally entering the country.<sup>32</sup> Burma passed the Emergency Immigration Act in the mid-1970s, which required all citizens to possess National Registration Certificates; however, the Rohingya Muslims were only issued Foreign Registration Cards, and many schools and employers would not accept this

---

territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.”). *Id.* at art. 15 (“As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.”). *Id.* at art. 17 ¶ 1 (“The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.”). *Id.* at art. 22 ¶ 1 (“The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.”). *Id.* at art. 22 ¶ 2 (“The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education . . .”).

29 *Id.* at art. 26 (“Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.”). *Id.* at art. 27 (“The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.”). *Id.* at art. 28 (“The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents.”). *Id.* at art. 31 (“The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.” If the state determines that a person should be expelled, that state must give the stateless person due process of law and a reasonable amount of time to find legal admission into another state.)

30 U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Country Reports on Human Rights Practices for 2012, 23 (2012).

31 *Id.*

32 Melissa Stewart, “*Rotting of the Flower*”: Persecution of the Rohingya Threatens Myanmar’s Democratic Transition & Further Perils the Right to a Nationality, 27 GEO. IMMIGR. L.J. 437, 440 (“In 2007, Rohingya trying to return to Myanmar by boat were given seven-year jail sentences for illegally entering the country. This prohibition on return gives some weight to claims that the violence and displacement of Rohingya amounts to ethnic cleansing.”).

form of identity documentation.<sup>33</sup> The Burmese government refuses to acknowledge the persecution of the Rohingya Muslims, and Burmese President Thein Sein even recommended “the mass expulsion of the Rohingya to ‘third countries’ or UNHCR camps” in response to the internal and external displacement of hundreds of thousands of Rohingya Muslims from the Rakhine State as a result of state violence.<sup>34</sup> These actions by the Burmese government directly violate the provisions of the 1954 Convention.<sup>35</sup>

While the 1954 Convention laid out the basic principles for preventing statelessness, the 1961 Convention on the Reduction of Statelessness (“1961 Convention”) sets rules for limiting situations where statelessness arises.<sup>36</sup> In doing so, the 1961 Convention gives effect to everyone’s right to a nationality found in Article 15 of the Universal Declaration of Human Rights.<sup>37</sup> The 1961 Convention provides that “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) at birth, by operation of law, or (b) upon an application....”<sup>38</sup> Furthermore, “[a] Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.”<sup>39</sup> Finally, “[a] Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”<sup>40</sup> Burma’s citizenship law violates each of these provisions, thus rendering the Rohingya Muslims stateless according to the 1954 and 1961 Conventions.<sup>41</sup>

---

33 Engy Abdelkader, *The Rohingya Muslims in Myanmar: Past, Present, and Future*, 15 OR. REV. INT’L L. 393, 396 (2013). Beginning in the 1990s, the Rohingya Muslims were “able to register as temporary residents with identification cards, known as white cards,” which “conferred limited rights but were not recognized as proof of citizenship.” Eleanor Albert and Andrew Chatzky, *The Rohingya Crisis*, COUNCIL ON FOREIGN RELATIONS. <https://www.cfr.org/background/rohingya-crisis> (last updated Jan. 23, 2020). One of the limited rights conferred by the white cards was the right to vote; however, in February 2015 President Thein Sein canceled the white cards after Buddhist nationalists protested the Rohingya Muslims’ right to vote in the 2015 constitutional referendum. *Id.*

34 Abdelkader, *supra* note 33, at 397.

35 See Office of the United Nations High Commissioner for Refugees, *supra* note 25, at art. 3, 26-28, 31.

36 Office of the United Nations High Commissioner for Refugees, *Introductory Note to the 1961 Convention on the Reduction of Statelessness*, at 3.

37 *Id.*

38 Office of the United Nations High Commissioner for Refugees, *Convention on the Reduction of Statelessness*, art. 1 ¶ 1.

39 *Id.* at art. 8 ¶ 1.

40 *Id.* at art. 9.

41 Benjamin Zawacki, *Defining Myanmar’s “Rohingya Problem,”* 20 HUM. RTS. BR. 18, 19 (2013).



Neither the 1954 Convention nor the 1961 Convention tasked any unit or agency to attend to the issue of stateless, possibly because the United Nations felt that statelessness would decrease on its own once States became fully independent.<sup>42</sup> In 1995, the UNHCR's Executive Committee adopted the Conclusion on Prevention and Reduction of Statelessness and Protection of Stateless Persons ("Global Mandate"), which mandated the UNHCR to promote compliance with the 1954 and 1961 Conventions and provide technical and advisory assistance to States as they implement the provisions of the Conventions in their national legislation.<sup>43</sup> The Global Mandate seeks to identify stateless persons through research and first-hand information, prevent statelessness by advising governments on citizenship laws and documentation, reduce statelessness by expanding access to nationality, protect the basic human rights of stateless people until nationality can be acquired, and protect stateless persons from "indefinite detention, trafficking and violence."<sup>44</sup>

### *B. Burma History and Demographics*

In 1948, Burma gained independence from Great Britain.<sup>45</sup> In 1962, a one-party, military state was established after a military coup.<sup>46</sup> While the Burmese military carried out a number of human rights violations against the Rohingya Muslims under the military state, the most notable instances occurred in 1977 and 1992, which marked the beginning of the Rohingya Refugee Crisis.<sup>47</sup> In 1977, the Burmese government cracked down on illegal immigration, resulting in killings, mass arrests, torture, and other abuses against the Rohingya Muslims.<sup>48</sup> More than 200,000 Rohingya Muslims fled to Bangladesh, which attempted to drive the refugees out by starving and forcibly returning them to Burma.<sup>49</sup> In 1992, another military crackdown resulted in more than a quarter-million Rohingya Muslims fleeing to Bangladesh only to receive the same treatment as in 1977.<sup>50</sup>

---

42 Maryellen Fullerton, *Comparative Perspectives on Statelessness and Persecution*, 63 U. KAN. L. REV. 863, 866-867 (2015).

43 See, *supra* note 3, at 10.

44 United Nations High Commissioner for Refugees, *How UNHCR Helps Stateless People*, <http://www.unhcr.org/en-us/how-unhcr-helps-stateless-people.html> (last visited Nov. 4, 2018).

45 Abdelkader, *supra* note 33, at 394.

46 *Id.*

47 *Id.* at 394-395.

48 *Id.* At 395 n.12.

49 *Id.*

50 *Id.* at 395 n.13.

In 1982, Burma passed the Citizenship Law (sometimes referred to as Citizenship Act), which recognized 135 national races.<sup>51</sup> The Rohingya were excluded from this list, thus making them noncitizens and thereby limiting their ability to receive education and employment, move freely throughout the country, own property, get married and family plan.<sup>52</sup> The Burmese government carried out campaigns of mass killings, rape, and property destruction in 1978, 1992, and 2001, leading to an exodus of thousands of Rohingya Muslims across the border; moreover, in 2008 and 2009, Rohingya refugee boats were turned away from Thailand.<sup>53</sup> Sectarian violence beginning in 2012 and continuing until the present has resulted in the displacement of hundreds of thousands of Rohingya, in addition to persecution, beatings, arrests, and obstruction from humanitarian access.<sup>54</sup>

On August 25, 2017, “the Arakan Rohingya Salvation Army (ARSA) claimed responsibility for coordinated attacks against 30 security outposts in northern Rakhine State, killing 12 security personnel.”<sup>55</sup> Burmese security forces and local vigilante groups then responded with widespread atrocities against Rohingya villagers.<sup>56</sup> These atrocities included extrajudicial killings, lethal force against civilians, planting land mines along the Bangladesh border to kill refugees leaving from or returning to Burma, disappearances based on alleged connections with ARSA, gang and mass rapes of women, torture and abuse against prisoners and detainees, police beatings and arbitrary arrests, and arson of homes, religious buildings, and other buildings.<sup>57</sup> As of December 2018, the

---

51 *Id.* at 395-396.

52 *Id.* at 396. “The Burmese Citizenship law affects Rohingya adults and children alike. A specific provision of the law requires government authorization for marriage, as well as a ‘two-child policy.’ These restrictions have made Rohingya children ‘evidence’ of unregistered marriages, an act punishable by up to ten years in prison.’ Should a family choose to have more than two children, each subsequent child who is unregistered becomes ‘blacklisted for life, unable to travel, attend school, or get married.’ These stateless children, along with men and women, confront inadequate healthcare and starvation, resulting in avoidable health problems.” Amanda Crews Slezak, Thalia Roussos Singer, and Rupa Ramadurai, *Stateless and Fleeing Persecution: The Situation of the Rohingya in Thailand*, 35 CHILD. LEGAL RTS. J. 44, 45 (2015).

53 Zawacki, *supra* note 41, at 18.

54 Abdelkader, *supra* note 33, at 397.

55 U.S. Dep’t of State Bureau of Democracy, Human Rights, and Labor, BURMA 2017 HUMAN RIGHTS REPORT, at 1, <https://www.state.gov/wp-content/uploads/2018/04/Burma.pdf> (last visited Nov. 4, 2018).

56 *Id.*

57 *Id.* at 2-5.

atrocities internally displaced an unknown number of Rohingya and externally displaced more than 700,000 Rohingya to Bangladesh.<sup>58</sup>

## II. DENIAL OF CITIZENSHIP

Although the Rohingya Muslims have lived in the Rakhine State of Burma for centuries, the Burmese government refers to them as “undocumented immigrants” and “Bengalis,” and even excluded them entirely from the 2014 Census.<sup>59</sup> The Burmese government has accomplished the exclusion of the Rohingya Muslims through the enactment of the 1982 Citizenship Law.<sup>60</sup> The denial of citizenship and the denial of benefits and rights as a result have led to growing tensions between the Burmese government and the Rohingya Muslims, culminating into what has “said to be the world’s fastest growing refugee crisis.”<sup>61</sup>

### A. 1982 Citizenship Law

In relevant part, the 1982 Citizenship Law states, “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.”<sup>62</sup> The 1982 Citizenship also provides two other categories for citizenship: associate citizens and naturalized citizens.<sup>63</sup>

---

58 *Id.* at 1. See also, U.S. Dep’t of State Bureau of Democracy, Human Rights, and Labor, BURMA 2018 HUMAN RIGHTS REPORT, at 1, <https://www.state.gov/wp-content/uploads/2019/03/BURMA-2018.pdf> (last visited Nov. 3, 2019).

59 Slezak, *supra* note 52, at 44. See also Zarni, *supra* note 6, at 683 (“In Myanmar’s state media, official policy documents, and school textbooks, the Rohingya are referred to as Bengali, a racist local reference, and are portrayed as illegal economic migrants from the colonial time, who are a ‘threat to national security, a portrayal that the bulk of the Burmese have accepted as a fact over the past five decades.”). See also *Myanmar Rohingya: What you need to know about the crisis*, BBC NEWS (Apr. 24, 2018), <https://www.bbc.com/news/world-asia-41566561>.

60 Slezak, *supra* note 52, at 44.

61 BBC NEWS, *supra* note 59.

62 Burma Citizenship Law, Ch. 2 (1982), [www.ilo.org/dyn/natlex/docs/ELECTRONIC/87413/99608/.../MMR87413.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87413/99608/.../MMR87413.pdf).

63 See generally Burma Citizenship Law, Ch. 3. “If a person cannot provide evidence that his ancestors settled in Burma before 1823, he or she can be classified as an associate citizen if one grandparent, or pre-1823 ancestor, was a citizen of another country. Those persons who qualified for citizenship under the 1948 law, but who would no longer qualify under this new law, are also considered associate citizens if they had applied for citizenship in 1948.” Human Rights Watch, *Discrimination in Arakan*, <https://www.hrw.org/reports/2000/burma/burm005-02.htm> (last visited Nov. 4, 2018). See also Burma Citizenship Law, Ch. 4. “To become a naturalized citizen, a person must be able to provide ‘conclusive evidence’ that he or his parents entered and resided in Burma prior to independence in 1948. Persons who have at least one parent who holds one of the three types of

Most Rohingya Muslims have not been granted nationality under any of the three classes of citizens.<sup>64</sup> In addition to limiting citizenship based on a finding of presence on or before 1823, the Burmese government also limits citizenship to “individuals who belong to one of the 130 recognized national ethnic groups, none of which included the Rohingya.”<sup>65</sup> Even if a Rohingya Muslim is somehow able to provide conclusive evidence of their parents entering and residing in Burma before 1948, the Burmese government still has discretion to deny citizenship by implementing the law in a discriminatory way, so enforcement is uniformly imposed on the Rohingya Muslims alone rather than all excluded groups.<sup>66</sup> The UNHCR estimates that over one million people have become stateless as a result of this denial of citizenship.<sup>67</sup>

There are several issues with the 1982 Citizenship Law. First, it is almost impossible for the Rohingya to produce ‘conclusive evidence’ of their ancestry that dates back to 1823, so they are not able to become full citizens, associate citizens, or naturalized citizens.<sup>68</sup> Along with attacking the right to self-identity and being “based on deeply flawed and out-dated notions about race and ethnic identity formation that were prevalent during the colonial period in Myanmar,” the high standards needed to obtain naturalization or demonstrate associate citizenship are also not compliant with the 1954 and 1961 Conventions, the Universal Declaration of Human Rights, and other international laws.<sup>69</sup> Second, the 1982 Citizenship Law does not provide safeguards for stateless children born in Burma to acquire citizenship at birth if they do not have another nationality that they can obtain.<sup>70</sup> Since children are being born into a stateless condition, the number of stateless persons in Burma will only increase.<sup>71</sup> Third, the 1982 Citizenship Law provides the basis for further systematic and severe

---

Burmese citizenship are also eligible. Beyond these two qualifications, Section 44 of the act stipulates that the person must be eighteen years old, be able to speak well one of the national languages (the Rohingya language, a dialect related to Chittagonian, is not one), be of good character, and be of sound mind.” Human Rights Watch, *Discrimination in Arakan*, <https://www.hrw.org/reports/2000/burma/burm005-02.htm> (last visited Nov. 4, 2018).

64 Slezak, *supra* note 52, at 47.

65 *Id.*

66 *Id.*

67 #IBelong Campaign to End Statelessness Special Appeal, *supra* note 2, at 24.

68 Burmese Rohingya Organisation UK, *Myanmar’s 1982 Citizenship Law and Rohingya* (December 2014).

69 *Id.*

70 *Id.*

71 *Id.*

abuses of human rights.<sup>72</sup> Among the most basic human rights that the Rohingya Muslims have been denied are the freedom to believe and practice the religion of one's choice.<sup>73</sup>

As mentioned earlier, the Rohingya Muslims are restricted in their right to free movement within the Rakhine State, other parts of Burma, and outside the country.<sup>74</sup> This restriction is a violation of the well-established principle of the freedom of movement set forth in the Universal Declaration of Human Rights and other international laws, such as the 1954 and 1961 Conventions.<sup>75</sup> The Rohingya Muslims are restricted in their access to education because they are not able to receive state-run secondary education, which the Burmese government provides for citizens only.<sup>76</sup> Many Rohingya only receive up to primary education, as private secondary education is limited or unavailable.<sup>77</sup> The Rohingya Muslims are restricted in their employment because they cannot be employed in civil service positions, such as teachers, health workers, or government workers because these positions are available only to citizens.<sup>78</sup> In addition, it is common for the Rohingya Muslims to be forced into unpaid labor and be subject to arbitrary confiscation of property as a result of lack of citizenship.<sup>79</sup> With the heavy military presence in the Rakhine State, the Rohingya are often threatened with detention, fines, or worse if they do not comply with military orders.<sup>80</sup>

### *B. Rohingya Refugee Crisis and Refoulement*

Since August 2017, more than 720,000 stateless Rohingya refugees have found shelter and safety in Cox's Bazar district of Bangladesh, which already hosted an estimated 200,000 Rohingya refugees due to previous

---

<sup>72</sup> *Id.*

<sup>73</sup> Abdelkader, *supra* note 33, at 401-402 ("Article 34 of the Burmese 2008 Constitution states, 'Every citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion subject to public order, morality or health and to the other provisions of this Constitution.'" However, since the Rohingya Muslims are not considered to be citizens, the state is not obligated to provide this right to them, even if it is a significant violation of international laws and norms.).

<sup>74</sup> Human Rights Watch, *supra* note 63.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* The gap between Burmese Buddhists and the Rohingya Muslims is exacerbated by not just a lack of employment opportunities but also poor infrastructure and widespread poverty, as the "Rakhine State is Myanmar's least developed state, with a poverty rate of 78 percent, compared to the 37.5 percent national average, according to World Bank estimates." Albert, *supra* note 33.

<sup>79</sup> Human Rights Watch, *supra* note 63.

<sup>80</sup> *Id.*

displacements occurring as a result of violence and discrimination in Burma.<sup>81</sup> The Cox Bazar camp has one of the densest concentrations of refugees in the world.<sup>82</sup> A new Joint Response Plan was launched in February 2019, requesting \$920.5 million to provide life-saving assistance, such as food, water, sanitation, shelter, and medical care, to 1.2 million Rohingya refugees and local host communities.<sup>83</sup> As of April 2019, only 17% of the appeal has been met.<sup>84</sup> The camps already have such little funding, and it will be costly to address issues that may arise from monsoons, which can cause floods and landslides.<sup>85</sup> Thus, the refugee camp must be reinforced against latrines overflowing which can lead to health risks, like cholera and other waterborne diseases.<sup>86</sup> Additionally, relocating such a mass of people, mostly women and children, will also pose difficulties since the refugees are already so concentrated.<sup>87</sup>

In November 2017, Burma and Bangladesh reached a deal, which was finalized in January 2018, to repatriate 1,500 Rohingya Muslims each week.<sup>88</sup> The goal of this deal was to return all 781,000 refugees within two

---

81 United Nations High Commissioner for Refugees, *Rohingya emergency one year on: Asia's most recent refugee crisis warrants international solidarity and progress on solutions*, UNHCR USA (Aug. 24, 2018), <http://www.unhcr.org/news/briefing/2018/8/5b7fc7174/rohingya-emergency-year-asias-recent-refugee-crisis-warrants-international.html>.

Besides the 720,000 refugees in Cox Bazar, there are about 5,000 displaced Rohingya Muslims living in the camp at Tombru checkpoint, located about 30 miles from Cox Bazar, which is a strip of land inside Burma's territory but fenced off from the rest of the country and separated from Bangladesh by a small canal. Anbarasan Ethirajan, *Myanmar's Rohingya stuck in Bangladesh's 'no man's land'*, BBC NEWS (Mar. 30, 2018), <https://www.bbc.com/news/world-asia-43458014>. These displaced Rohingya Muslims are able to cross into Bangladesh to receive food and healthcare, but they are not allowed to enter through the checkpoint to return to their homes in Burma. *Id.* The displaced Rohingya living in this "no man's land" are heavily monitored by Burmese guards, with the government claiming the security measures are due to risks of militants living amongst the displaced Rohingya Muslims. *Id.*

82 United Nations Office for the Coordination of Humanitarian Affairs, *Rohingya Refugee Crisis*, <https://www.unocha.org/rohingya-refugee-crisis> (last visited Aug. 29, 2019).

83 *Id.*

84 *Id.*

85 Somini Sengupta & Henry Fountain, *The Biggest Refugee Camp Braces for Rain: "This is Going to Be a Catastrophe,"* N.Y. TIMES (Mar. 14, 2018), <https://www.nytimes.com/2018/03/14/climate/bangladesh-rohingya-refugee-camp.html>.

86 *Id.*

87 *Id.*

88 Elliot Higgins, *Transitional Justice for the Persecution of the Rohingya*, 42 FORDHAM INT'L L.J. 101, 110 (2018). In November 2018, the joint authorities of Bangladesh and Burma planned to return about 2,000 Rohingya to Burma, but protests within the refugee camps resulted in these plans being halted, as many of the Rohingya expressed concerns that a returning them to Burma would essentially be like sending them to their death. *Rohingya return to Myanmar: Confusion and fear in refugee camps*, BBC NEWS (Nov. 15, 2018), <https://www.bbc.com/news/world-asia-46217505>.

The Burmese government states that it will provide temporary shelters, medical care, and food rations for returning Rohingyas; however, the UNHCR and international observers fear sending the

years.<sup>89</sup> This agreement was criticized for being unsafe and premature.<sup>90</sup> After the first attempt failed, other unsuccessful attempts to repatriate the Rohingya refugees occurred in November 2018 and again in August 2019, with the Rohingya refusing to return each time.<sup>91</sup> Without an end to the violence and discriminatory laws in the country, any repatriation operation can run the risk of violating the refoulement provisions found in international law, such as in the 1951 Convention.<sup>92</sup>

Bangladesh has suggested creating “safe zones” for the Rohingya Muslims to return to in Burma; however, these safe zones have a high

---

Rohingya back to Burma until the root causes of the violence and discrimination have been properly addressed. Nick Beake, *What awaits any Rohingya refugees who return to Myanmar?*, BBC NEWS (Dec. 28, 2018), <https://www.bbc.com/news/world-asia-46312889>. There are also fears that the returning Rohingyas will be subject to the supposed protection of the very army that executed their genocide in the first place. *Id.* Furthermore, the Burmese government continues to refuse to grant citizenship to the Rohingya Muslims, only offering limited movement within the country using a National Verification Card, which may effectively give the Rohingya Muslims the status of “unlawful aliens from a foreign land.” *Id.* The treatment of returning Rohingyas will likely resemble the treatment of those who are currently residing in Burma, where they are confined to camps that are essentially open-air prisons and continue to face threats of violence. *Id.*

<sup>89</sup> Higgins, *supra* note 88, at 110.

<sup>90</sup> *Id.*

<sup>91</sup> Helen Regan & Stella Ko, *Rohingya say no to repatriations around anniversary of atrocities*, CNN (Aug. 22, 2019), <https://www.cnn.com/2019/08/22/asia/rohingya-repatriation-myanmar-concern-intl-hnk/index.html>. See also Azeem Ibrahim, *What Myanmar must do before taking back a single refugee*, CNN (Nov. 30, 2018), <https://www.cnn.com/2018/11/30/opinions/rohingya-repatriation-myanmar-intl/index.html>. “The first batch of about 1,200 returnees was supposed to be sent home in January 2018. That plan was delayed by the Bangladeshi government, after an international outcry over the idea of returning traumatized victims to the epicenter of one of the worst eruptions of ethnic cleansing in this century.” Hannah Beech, *Massacred at Home, in Misery Abroad, 730,000 Rohingya Are Mired in Hopelessness*, N.Y. TIMES (Aug. 22, 2019), <https://www.nytimes.com/2019/08/22/world/asia/rohingya-myanmar-repatriation.html> (updated Jan. 23, 2020). When the 2018 attempt failed, “the two countries promised in April 2018 to proceed with safe, voluntary and dignified repatriations, several new deadlines were set. None were met. Most recently, the Myanmar government said the repatriation of 3,450 Rohingya would begin on Thursday. That target, too, passed with no movement across the border.” *Id.* “Maintaining the fiction that repatriations are about to occur is politically useful for” both Burma and Bangladesh, as the first is eager to establish its innocence in allegations of human rights violations and the second is “struggling with overpopulation and poverty.” *Id.*

<sup>92</sup> *Myanmar / Bangladesh: Rohingya refugees must not be forced home to abuse and discrimination*, AMNESTY INT’L (Oct. 4, 2017), <https://www.amnesty.org/en/latest/news/2017/10/myanmar-bangladesh-rohingya-refugees-must-not-be-forced-home-to-abuses-and-discrimination/>. Furthermore, “UNHCR has agreed with the governments of Bangladesh and Myanmar that any repatriation of refugees must be *voluntary, safe and dignified*. Respect for these principles will also have the practical effect of helping to *ensure that return is sustainable* . . . Many [refugees] stated that they do hope to go home to Myanmar *as soon as conditions allow and that assurances regarding their citizenship status, freedom of movement, and security in Myanmar could be provided*.” *UNHCR Statement on Voluntary Repatriation to Myanmar*, UNHCR (Aug. 22, 2019), <https://www.unhcr.org/en-us/news/press/2019/8/5d5e720a4/unhcr-statement-voluntary-repatriation-myanmar.html> (emphasis added).

chance of becoming like the displacement camps that are already in place in Burma.<sup>93</sup> The camps for internally displaced people in Burma have restricted humanitarian access due to the Burmese security forces intimidating and detaining staff members for relief organizations.<sup>94</sup> Moreover, the displaced Rohingya Muslims in these camps are prevented from returning to their homes by Burmese security forces, which leaves them trapped with no water, poor sanitation, and worsening conditions due to Burma's rainy season.<sup>95</sup>

To avoid any violations of the principle of *refoulement*, the Rohingya Muslims must *voluntarily* leave the refugee camps and return to Burma, and despite the deal reached between Burma and Bangladesh, their return would not be voluntary.<sup>96</sup> Given that they will return to a country where they are still discriminated against as noncitizens and restricted from receiving the benefits of this citizenship, such as the freedom of movement, education, employment, marriage, and property, it seems unlikely that the Rohingya Muslims will return to Burma willingly.<sup>97</sup> The

---

93 *Id.*

94 Stewart, *supra* note 32, at 438. For both the Rohingya Muslims who are internally displaced within Burma and those who have been forced into Bangladesh, one of the most critical restrictions to humanitarian aid relates to access to adequate healthcare. Timothy McLaughlin and Shibani Mahtani, *Myanmar's Buddhists block Rohingya Muslims from blood supplies, report says*, WASH. POST (Dec. 24, 2018), [https://www.washingtonpost.com/world/asia\\_pacific/myanmars-buddhists-block-rohingya-muslims-from-blood-supplies-report-says/2018/12/23/d08157c8-02af-11e9-8186-4ec26a485713\\_story.html?utm\\_term=.908fe1f90ed6](https://www.washingtonpost.com/world/asia_pacific/myanmars-buddhists-block-rohingya-muslims-from-blood-supplies-report-says/2018/12/23/d08157c8-02af-11e9-8186-4ec26a485713_story.html?utm_term=.908fe1f90ed6). The Rohingya Muslims are “effectively blocked from accessing the blood bank in the main medical facility in the western Rakhine state” because Burmese Buddhists believe their blood should only be given to other Buddhists, and hospitals comply with this belief. *Id.* When the Rohingya Muslims are able to access medical facilities, they are treated unkindly and are neglected by the hospital staff. *Id.* Additionally, the Rohingya Muslims face a heavier financial burden because they must pay bribes to guards, drivers, nurses, and doctors to be safely transported and treated at the hospital. *Id.* Rohingya Muslims may pay about 61% more than a Buddhist with the same condition just to be admitted to a hospital for several days. *Id.*

95 Stewart, *supra* note 32, at 439.

96 In Thailand, there have also been threats to forcibly return these refugees to Burma. There have been human rights violations, such as the freedom of movement and right to work, of the approximately 110,000 Rohingya refugees living in the nine designated refugee camps in Thailand. The scrutiny faced for these violation “combined with decreases in resources and services—including access to adequate food, shelter, health care, and educational services—have created conditions which threaten to coercively return these refugees to Myanmar. Repatriation in this manner is not truly voluntary, but is instead a form of constructively forced return,” and would violate the principle of nonrefoulement. Zach Hudson, *Stranglehold Refoulement: Fear of Constructively Forced Returns of Burmese Refugees as Consequence of Thailand's Combined Human Rights Violations*, 40 FORDHAM INT'L L.J. 329, 334 (2017).

97 See *supra* notes 30-34, 52, and 70-75. Another reason why Rohingya refugees are unlikely to return is the “major fighting” and troop build-ups that occurred in early January 2019, which displaced about 4,500 Rohingya Muslims in the Rakhine State. *Amid troop build-up in Rohingya's home state, UN appeals to Myanmar for peaceful solution*, UN NEWS (Jan. 9, 2019), <https://news.un.org/en/story/2019/01/1030072>. The Burmese government claims they are attempting to



Rohingya must be given other options besides returning to Burma, such as seeking protection from the international community.<sup>98</sup> If the Rohingya do return, their repatriation must be supervised by the UNHCR.<sup>99</sup> Having the Rohingya return to Burma without the corresponding changes in the law and policies of the country could result in a repeat of previous repatriation efforts.<sup>100</sup>

### III. POTENTIAL SOLUTIONS TO THE STATELESSNESS PROBLEM IN BURMA

#### A. *Global Action Plan to End Statelessness*

One possible solution to the statelessness problem in Burma is to change the legal framework in Burma by implementing the GAP. The GAP consists of ten actions or goals that the UNHCR hopes to achieve by the year 2024.<sup>101</sup> The GAP sets out the starting point, goals to be achieved, milestones and interim targets for 2017 and 2020, many of which can

---

“crush” insurgents of the Arakan Army. *Id.* However, the United Nations fears that this violence will lead to a new wave of migration, as roughly 600,000 Rohingya Muslims are still in Burma, and the UNHCR already is unable to deliver the necessary humanitarian assistance to more than 700,000 refugees in Bangladesh. *Id.* While there is a ceasefire in place in northern and eastern Burmese states, the Rakhine State is not included, which heightens the threat of greater displacement. *Id.*

98 AMNESTY INT’L, *supra* note 92.

99 *See Sy, supra* note 20, at 460.

100 “In the 1990s and early 2000s, tens of thousands of Rohingya refugees were returned from Bangladesh to Myanmar in a large-scale repatriation operation, with the assistance of the UN Refugee Agency, UNHCR. Those returned have continued to face systematic state-sponsored discrimination and waves of violence in Rakhine state.” AMNESTY INT’L, *supra* note 92.

101 *See generally* #IBelong Campaign to End Statelessness Special Appeal, *supra* note 2. The GAP consists of the following action steps, which are not all required because the causes of, populations affected by, and magnitude of statelessness varies greatly from one country to the next. As such, countries may adopt one or more of these actions, and the UNHCR will assist agencies, organizations, civil society, and governments in implementing the relevant actions:

“Action 1: Resolve existing major situations of statelessness.

Action 2: Ensure that no child is born stateless.

Action 3: Remove gender discrimination from nationality laws.

Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds.

Action 5: Prevent statelessness in cases of State succession.

Action 6: Grant protection status to stateless migrants and facilitate their naturalization.

Action 7: Ensure birth registration for the prevention of statelessness.

Action 8: Issue nationality documentation to those with entitlement to it.

Action 9: Accede to the UN Statelessness Conventions.

Action 10: Improve quantitative and qualitative data on stateless populations.”

*Global Action Plan to End Statelessness: 2014 – 2024, supra* note 2, at 2-3.

serve more than one action.<sup>102</sup> Of the ten actions, resolving existing statelessness situations (Action 1), granting nationality to children born in the State's territory (Action 2), and acceding to the 1954 and 1961 Conventions (Action 9), are the most relevant actions for Burma to eradicate statelessness within its territory.<sup>103</sup> Reforming the 1982 Citizenship Law to conform with the obligations set forth in the 1954 and 1961 Conventions will help to eradicate statelessness permanently in Burma, and by extension, it will expand access to citizenship and the rights that come with nationality.<sup>104</sup> Additionally, reforming the 1982 Citizenship Law so that it supports "birth registration activities, in particular in the context of the Ministerial Declaration and accompanying Regional Action Framework on Civil Registration and Vital Statistics in Asia and the Pacific region, will also be essential for enhancing protection of stateless people and to prevent new cases of statelessness" that occur when children are born to Rohingya Muslims within the Burmese territory.<sup>105</sup>

Part of the difficulty with making progress on the goals of the 1954 and 1961 Conventions and the plans, such as the GAP, used to execute these goals is that the United Nations has little enforcement power.<sup>106</sup> Without a Member State willing to cooperate with the UNHCR, the most that the agency can do is advocate for its policies, which are not legally binding, and possibly intervene through international courts, which are legally binding but difficult to enforce.<sup>107</sup>

---

102 *Global Action Plan to End Statelessness: 2014 – 2024*, *supra* note 2, at 5.

103 *Id.* at 2-3. *See also* #IBelong Campaign to End Statelessness Special Appeal, *supra* note 2, at 24 (listing the UNHCR's Vision for 2019). *See generally*, *supra* notes 28-29, 38-40.

104 #IBelong Campaign to End Statelessness Special Appeal, *supra* note 2, at 24 (explaining the strategy and partnerships the UNHCR will use to achieve goals that are specific to Burma's statelessness situation).

105 *Id.* at 24-25 ("UNHCR, in collaboration with UNICEF, will undertake advocacy interventions with the aim of having 5,000 children of concern obtaining birth certificates.").

106 *See Sy*, *supra* note 20, at 464.

107 *Id.* ("To facilitate implementation, UNHCR uses two main methods: advocacy through the release of guidelines and public statements, and court interventions. UNHCR seeks to influence legislation by assisting the drafting process and commenting on its compliance with international obligations. In practice, states do not recognize UNHCR statements as a source of legal obligations. They are considered authoritative but are not legally binding."). While individual complaints are not allowed by the UNHCR mandate, States may complain to the International Court of Justice when non-compliance occurs under Article 38 of the 1951 Convention; however, no State has exercised this right. *Id.* This means that rights can only be enforced by national governments and the State's courts, so when countries, like Burma, do not adopt the standards and practices set forth by the UNHCR at all, let alone simply diverging in the interpretation of the UNHCR's guidance, individuals usually have no recourse for abuses of international obligations. *Id.*

Since it does not have much hard power, the UNHCR must resort to soft power to encourage States to adopt their policies and plans, which can be seen in the vagueness of statements made in UNHCR reports.<sup>108</sup> However, soft power seems unlikely to solve the statelessness problem in Burma, especially since the Burmese government continues to act in ways that indicate it intends to make the exodus of Rohingya Muslims from the country permanent.<sup>109</sup> The treatment of the internally displaced Rohingya Muslims further indicates an unwillingness by the Burmese government to expand citizenship or afford the Rohingya Muslims with any of the rights attached to nationality, most notably the freedom of movement, access to education, and access to healthcare.<sup>110</sup>

---

108 For example, in the 2017 evaluation of Burma's progress towards the GAP milestones, the UNHCR recognizes its own limitations, such as that the agency will "promote" or "support" or "advocate" for certain goals and engage with local communities only "upon request," implying a secondary role to national governments who must carry out the policies themselves. #IBelong Campaign to End Statelessness Special Appeal, *supra* note 2, at 25. The same report makes statements that indicate a general principle but no concrete action for how to practically implement that principle, such as that the "UNHCR will promote a common understanding of the human rights situation for stateless people and develop coordinated and concrete advocacy points order to promote a common understanding." *Id.* Despite using the words "coordinated and concrete," there is no mention for how the UNHCR will bring the national governments in question to the table so that this understanding can be reached. The lack of authority and subsequent progress is apparent in the fact that Burma's government continues to refuse to grant nationality to the Rohingya. *See* Beake, *supra* note 88.

109 Following the flight of thousands of Rohingya Muslims from the country, Burmese authorities burned down villages, bulldozed the remains, and replaced them with homes for Rakhine Buddhists and new facilities for security forces. Poppy McPherson, Simon Lewis, Thu Thu Aung, Shoon Naing & Zeba Siddiqui, *Erasing the Rohingya: Myanmar's moves could mean refugees never return*, REUTERS (Dec. 18, 2018), <https://www.reuters.com/investigates/special-report/myanmar-rohingya-return/>. The goal of these actions, beginning in August 2017, around the same time the Bangladeshi and Burmese government were negotiating the return of the Rohingya refugees to Burma, was to make the area unrecognizable to the Rohingya Muslims who fled the violence of the preceding years. *Id.* Any Rohingya refugee who does return to Burma will be taken to Rohingya-only settlements that are separated from the rest of the population. Burmese officials have stated that they "can't accept" citizenship as a prerequisite for the Rohingya's return to Burma. *Id.* Without homes and without citizenship, the Rohingya refugees see little reason to return. *Id.*

110 Burmese Rohingya Organisation UK, *supra* note 68 ("The 1982 Citizenship Law is the linchpin for a whole set of laws, policies and practices that discriminate against Rohingyas as non-citizens and leaves them extremely vulnerable to human rights abuses by government and non-government actors. These include systematic and severe restrictions on Rohingya freedom of movement, marriage restrictions, birth and population control. These restrictions limit Rohingya access to health, education, livelihoods and family life"). *See also* Abdelkader, *supra* note 33, at 399 ("Over 120,000 internally displaced persons (IDPs) are currently living in temporary shelters with limited access to food, medical care, sanitation facilities, and other types of humanitarian necessities"). Since 2012, approximately 140,000 Rohingya were taken to IDP camps, either because they were displaced by violence or because they were forced to relocate by security forces. *See* Zarni, *supra* note 6, at 706. Within those camps, the Rohingya have been "subject to a whole set of restrictions that do not apply to the rest of the population of Rakhine State . . . they experience disproportionately more poverty, under-development, restrictive and discriminatory policies, and human rights abuses." *Id.* Furthermore, "within these areas in which the Rohingya are contained, on-going attempts to control

One way the UNHCR may be more successful in promoting the end of statelessness problem in Burma might be to change its approach from emphasizing the importance of nationality to emphasizing the benefits the Burmese government may receive from expanding citizenship to the Rohingya Muslims.<sup>111</sup> This shift will require an understanding of the possible reasons why the Burmese government is averse to expanding citizenship in the first place.<sup>112</sup> With this understanding, the UNHCR may help the Burmese government implement some transitional justice options that may hold the Burmese military accountable for its crimes against humanity.<sup>113</sup> After removing the Burmese military's influence over the

---

marriages and prevent births demonstrate the intention to destroy the Rohingya.” *Id.* As of September 2018, “[a]n estimated 235,000 persons remained internally displaced by violence in Kachin, Rakhine, and northern Shan States.” Burma 2018 Human Rights Report, *supra* note 58, at 29. The Burmese government “limited health and education services and livelihood opportunities through severe and systematic restrictions on movement.” *Id.*

111 Higgins, *supra* note 88, at 111-112 (explaining the possible transitional justice options the Burmese government may take to resolve the current crisis in Burma). Another solution may be to improve partnerships between “the affected population, the State, civil society and other UN, international and regional organizations.” *UNHCR Action to Address Statelessness: A Strategy Note: UNHCR, Division of International Protection, March 2010*, 22 INT’L J. REFUGEE LAW 297, 313 (2010). Successful responses to ending statelessness hinges on full engagement of civil society actors, especially national NGOs, academic institutions, legal aid organizations, religious institutions, trade and workers organizations, and the media. *Id.* Along with the fieldwork and peacekeeping missions of OHCHR, UNICEF, UNFPA, and UNDP, development programs under “the Common Country Assessment (CCA), the UN Development Assistance Framework (UNDAF) and *Delivering as One* initiatives are of relevance” to promote non-discrimination and inclusion of stateless populations. *Id.* Since statelessness is linked to migration in the case of the Rohingya Muslims, regional “organizations and institutions can play a key role as *fora* for standard-setting, advocacy and awareness-raising” through regional treaties. *Id.* However, the United Nations and other organizations already have attempted to foster these regional partnerships, and there has not been much progress or success in doing so, which may mean that such partnerships alone will not resolve the issues surrounding discrimination and violence against the Rohingya Muslims. *See infra* notes 123-124.

112 There are four possible reasons why the Burmese government refuses to address the humanitarian crisis against the Rohingya Muslims: (1) fear of the Burmese military which has collapsed civilian governments in the past; (2) government officials agree with the anti-Rohingya sentiments found throughout the State’s official documents and informally in the region for hundreds of years; (3) fear of electoral backlash since the majority of the population believes the Rohingya are illegal immigrants and terrorists; and (4) the structure of the government gives greater authority to the military than the civilian government. Higgins, *supra* note 88, at 112-113.

113 There are several transitional justice options the Burmese government may take against the Burmese military; however, these options presume that it is the Burmese military alone that is to blame for the violence towards and persecution of the Rohingya Muslims. Higgins, *supra* note 88, at 113. Rather than hold a criminal trial, the Burmese government can create a truth and reconciliation commission, which could assess either or both the violence occurring in the Rakhine State beginning in August 2017 to the present and the entitlement of the Rohingyas to citizenship. *Id.* at 114. The Burmese government could exile or purge the perpetrators of the atrocities against the Rohingya; however, this will not do much to encourage the Burmese government to expand citizenship because removing some members of the military may not change overarching anti-Rohingya sentiments in the military and population as a whole. *Id.* at 114-116. The same problem would arise if the Burmese

government, the UNHCR may have greater success in carrying out reforms to the 1982 Citizenship Law and convincing Burma to become a signatory of the 1954 and 1961 Conventions; however, the Burmese government is unlikely to take action against its own military.<sup>114</sup>

*B. Sanctions or Other International Intervention*

Other solutions may include sanctioning the Burmese government and military and addressing the issue in international courts. On June 25, 2018, “the European Union and Canada announced sanctions on seven Myanmar military officials . . . freezing their assets within European and Canadian jurisdictions and banning them from traveling to Europe and doing business with Canada.”<sup>115</sup> On August 17, 2018, the U.S. Treasury Department announced it imposed economic sanctions on four Burmese security commanders and two military units for their role in ethnic cleansing and other human rights abuses against the Rohingya.<sup>116</sup> So far, most of the sanctions have been imposed on military and government officials rather than on the Burmese government as a whole or on businesses linked to the military.<sup>117</sup>

---

government formally prosecuted the persecutors of the atrocities; although, a public trial may help to change the narrative the military has created towards the Rohingya Muslims, and a direct contradiction of the military’s labelling of the Rohingya Muslims as “terrorists” may alleviate some of the negative tensions the majority of the population has against the Rohingya Muslims. *Id.* at 116.

114 Since the Burmese military has a permanent “seat at the table of government” from the 2008 constitutional amendment, and since the Burmese government fears a coup, the Burmese government is unlikely to change its position on the Rohingya Muslims and will continue to pursue policies that deprive them of opportunities to gain citizenship and rights. Higgins, *supra* note 88, at 125.

115 Conor Finnegan, *When Europe, Canada slapped new sanctions on Myanmar over Rohingya treatment, where was US?*, ABC NEWS (July 8, 2018), <https://abcnews.go.com/International/europe-canada-slapped-sanctions-myanmar-rohingya-treatment-us/story?id=56441577>.

116 Edward Wong, *U.S. Imposes Sanctions on Myanmar Military Over Rohingya Atrocities*, N.Y. TIMES (Aug. 17, 2018), <https://www.nytimes.com/2018/08/17/us/politics/myanmar-sanctions-rohingya.html>. Although the United States has imposed some sanctions, the Trump administration has refused to label the atrocities in Burma as a “genocide,” despite overwhelming evidence found from an investigation by the State Department and bipartisan support in the House of Representatives to hold Burma accountable for its actions. Conor Finnegan, *House Republicans lead vote to label Rohingya crisis ‘genocide’ in rebuke to Trump administration’s silence*, ABC NEWS (Dec. 13, 2018), <https://abcnews.go.com/Politics/house-republicans-lead-vote-label-rohingya-crisis-genocide/story?id=59729449>. Although the United States has donated almost \$300 million in aid for Rohingya refugees, many believe the United States should be doing more to “galvanize international action to investigate Myanmar’s atrocities.” *Id.* With the Trump administration’s silence on the Rohingya crisis, it is unclear whether the United States will do anything to alleviate the plight of the Rohingya Muslims. *Id.*

117 Simon Marks, *EU weighs new sanctions against Myanmar over Rohingya*, POLITICO (Sept. 8, 2018), <https://www.politico.eu/article/eu-weighs-new-sanctions-against-myanmar-over-rohingya/> (noting that countries like the United Kingdom, Germany, and the Netherlands have opted to sanction

It is unclear whether these sanctions will have any effect on the Rohingya refugee crisis, as certain sanctions often are ineffective and can result in disruptions that exacerbate poverty in countries already struggling with economic growth.<sup>118</sup> Sanctions imposed in the 1990s aimed to change Burma's policies to favor democracy, which were lifted around 2012 when Burma's government indicated a commitment to democracy and human rights protections; however, despite having a democratic government, the military continues to play an important role in policy making.<sup>119</sup> As with any military government, Burma may be able to support itself with domestic and foreign resources, sufficient to withstand sanctions and continue making anti-Rohingya policies.<sup>120</sup> As such, even with targeted

---

specific individuals in the government and in the military rather than impose financial or trade sanctions so that economic development in Burma is not disrupted).

118 There is a difference between unilateral sanctions and constructive engagement. Unilateral sanctions are imposed on a target country by one or several countries hoping to change the target country's policies; however, the target country is often undemocratic and undeveloped, leading to no policy changes and poorer living conditions. In contrast, constructive engagement imposes sanctions on specific individuals in order to promote policy changes, and unlike unilateral sanctions, constructive engagement aims to improve living conditions in the target country and cooperate with other countries to achieve the desired result. Joshua L. Savey, *Unilateral Sanctions: An Effective Foreign Policy Tool in Myanmar?*, 50 WILLAMETTE L. REV. 371, 372-374 (2014) (discussing the history of U.S. sanctions against Burma beginning in the 1990s, the ineffectiveness of unilateral sanctions in U.S. foreign policy, and the more desirable results reached once the United States began using constructive engagement in 2012).

119 See Higgins, *supra* note 88, at 105-106 (describing how civilian governments have been replaced by the military several times throughout Burmese history and how the military continues to have significant influence in the government). The Burmese military announced "its so-called roadmap to democracy in 2003," resulting in a "multistage transition to a civilian government." Eleanor Albert, *How Myanmar's Military Wields Power From the Shadows*, COUNCIL ON FOREIGN RELATIONS (Oct. 2, 2017), <https://www.cfr.org/interview/how-myanmars-military-wields-power-shadows>. In reality, the military choreographed "a transition in which a pseudocivilian government comes to power but holds a delicate power-sharing agreement with the military." *Id.* In accordance with this power-sharing agreement, the Burmese "military appoints 25 percent of parliamentary seats," and they control the domestic, border affairs, and defense ministries. *Id.* While the civilian government echoes the military's anti-Rohingya and anti-Muslim rhetoric, the Burmese military is the main perpetrator of the atrocities and ethnic cleansing of the Rohingya Muslims. *Id.* The Burmese military has positioned itself so that it can execute its campaign against the Rohingya Muslims while the civilian government takes the blame. *Id.* Furthermore, the Burmese military is able to do so without harming its own political and economic interests. *Id.* However, the civilian government is not entirely faultless, as it has enabled the military's violence by failing to condemn the atrocities committed and denounce the hate speech, which only fuels the divisions between the Buddhist majority and Rohingya Muslims. *Id.*

120 Savey, *supra* note 118, at 372. Sanctions have had some effect on the Burmese economy, as foreign direct investments and tourism have decreased in the past year because the "country's image is declining." Philip Heijmans, *Sanctions Squeeze Myanmar's Economy*, U.S. NEWS (Jan. 31, 2019), <https://www.usnews.com/news/best-countries/articles/2019-01-31/western-sanctions-squeezing-myanmars-economy>. However, Western sanctions seems to have caused the Burmese government to recalibrate its economic policies in favor of a regional approach, turning to Eastern countries like China and South Korea to fill the void created by the sanctions. *Id.* For example, in October 2018,

sanctions to government and military officials, Burma may not change its course without a threat of greater ramifications.<sup>121</sup>

There have been mixed results from other international intervention. In the UN Security Council (“Security Council”), China and Russia have “argued that the crisis requires a long-term, patient approach rather than pressure, and must be resolved through bilateral diplomatic efforts.”<sup>122</sup> Despite opposition in the Security Council, on July 4, 2019, the International Criminal Court (“ICC”) Prosecutor requested the Court to open an investigation, which was approved on November 14, 2019.<sup>123</sup>

---

Burma “signed an agreement with China’s state-run investment firm CITIC Group to begin work on a \$1.3 billion deep-sea port in Rakhine State” in addition to pledging “to push forward the building of the China-Myanmar economic corridor under China’s One Belt, One Road Initiative.” *Id.* The government is also trying to remedy the decline in tourism by attempting to attract regional customers and travelers. *Id.*

121 *Id.* Another reason why United States sanctions may be ineffective is the fact that the United States has not been fully enforcing the sanctions that it has in place by issuing visa waivers to children of the military officers who are being sanctioned. Nahal Toosi, *U.S. not fully enforcing Myanmar sanctions, documents show*, POLITICO (Aug. 10, 2018), <https://www.politico.com/story/2018/08/10/myanmar-sanctions-rohingya-united-states-congress-773358>. By waiving certain sanctions, the United States may send the message the Burmese military may ultimately will get away with the atrocities it has committed against the Rohingya Muslims. *Id.* One senator has expressed a concern over the appropriateness of these visa waivers considering the human rights abuses and political oppression perpetrated by the Burmese government. *Id.*

122 *Myanmar’s Refugee Problem among World’s Worst Humanitarian, Human Rights Crises, Secretary-General Says in Briefing to Security Council*, UNITED NATIONS: MEETINGS COVERAGE AND PRESS RELEASES (Aug. 28, 2018), <https://www.un.org/press/en/2018/sc13469.doc.htm>. China has long supported the Burmese military, providing it with weapons and training, so it is unlikely that the Security Council will authorize prosecution for the crimes committed in Burma. Higgins, *supra* note 88, at 118. See also Joshua Carroll, *Why the UN failed to save the Rohingya*, AL JAZEERA (July 28, 2019), <https://www.aljazeera.com/news/2019/06/united-nations-failed-save-rohingya-190628024749391.html>; *UN fails to take action on order against Myanmar on Rohingya*, AL JAZEERA (Feb. 4, 2020), <https://www.aljazeera.com/news/2020/02/fails-action-order-myanmar-rohingyas-200205020402316.html>

123 Press Release, Int’l Crim. Ct., ICC Prosecutor, Fatou Bensouda, requests judicial authorisation to commence an investigation into the situation in Bangladesh/Myanmar, ICC-OTP-20190704-PR1465 (July 4, 2019), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1465> (explaining background and contents of ICC Prosecutor’s request). Press Release, Int’l Crim. Ct., ICC judges authorise opening of an investigation into the situation in Bangladesh/Myanmar, ICC-CPI-20191114-PR1495 (Nov. 14, 2019), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1495> (explaining ICC’s jurisdiction and breadth of investigation). However, the Burmese government has claimed the ICC’s investigation “is not in accordance with international law.” *Myanmar rejects ICC probe into alleged crimes against Rohingya*, AL JAZEERA (Nov. 15, 2019), <https://www.aljazeera.com/news/2019/11/myanmar-rejects-icc-probe-alleged-crimes-rohingya-191115180754984.html>.

While there is sufficient evidence for the ICC to indict members of the Burmese military for war crimes, which violates Article 7(1)(d) of the Rome Statute, the ICC does not have jurisdiction over Burma because it is not a signatory. Higgins, *supra* note 88, at 118. “The Rome Statute provides jurisdiction in three circumstances: crimes committed in the territory of a state party, crimes committed by a national of a state party, and crimes in a jurisdiction that has been specifically authorized by the UN Security Council.” *Id.* at 119. Since Burma is not a signatory, the ICC cannot

Around the same time, on November 11, 2019, the Republic of the Gambia brought suit against Burma, calling the International Court of Justice (“ICJ”) to determine whether Burma violated the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>124</sup> On January 23, 2020, the ICJ ordered Burma to “take all measures within its power” to prevent the genocide of the Rohingya Muslims.<sup>125</sup> However, it is difficult to determine whether the ICJ ruling will have any effect on the Rohingya Muslims, as the Burmese government continues to deny the charges against it, and there is no way to enforce the ruling.<sup>126</sup>

Help from neighboring states is also unlikely, especially from Bangladesh, because the costs of taking in the Rohingya refugees is too high.<sup>127</sup> In September 2018, an “Independent International Fact-Finding

---

assert personal or territorial jurisdiction over the country. *Id.* However, in September 2018, the ICC determined that jurisdiction over this specific issue may be allowed because Bangladesh is a signatory of the Rome Statute. *Id.* at 120. As such, the ICC may be able to investigate the “deportation of members of the Rohingya people from Myanmar to Bangladesh” and “related crimes such as persecution and inhumane acts.” *Id.* There has yet to be a prosecution following this decision. *Id.* at 121.

<sup>124</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Order, No. 178 ¶ 1 (Jan. 23, 2020), <https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>.

<sup>125</sup> “The Republic of the Union of Myanmar shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Rohingya group in its territory, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular: (a) killing members of the group; (b) causing serious bodily or mental harm to the members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group.” *Id.* at ¶ 86. The ICJ further ordered Burma to ensure that the military and other armed groups do not commit or conspire to commit genocide, that measures be taken to prevent the destruction of evidence, and that a report be submitted to the Court regarding the application of the provisional measures. *Id.*

*See also Myanmar Rohingya: Government rejects ICJ ruling*, BBC NEWS (Jan. 23, 2020), <https://www.bbc.com/news/world-asia-51229796>; David J. Scheffer, *Why the ICJ Is Trying to Protect Myanmar’s Rohingya*, COUNCIL ON FOREIGN RELATIONS (Jan. 24, 2020), <https://www.cfr.org/article/why-icj-trying-protect-myanmars-rohingya>; Aman Ullah, *International Court of Justice and Rohingya Issue*, CANADIAN ROHINGYA DEVELOPMENT INITIATIVE, <https://www.rohingya.ca/international-court-of-justice-and-rohingya-issue/> (last visited Feb. 6, 2020).

<sup>126</sup> *See* BBC News, *supra* note 125. *See also* Mia Swart, *Will Myanmar respect ICJ order to protect Rohingya from genocide?*, AL JAZEERA (Jan. 23, 2020), <https://www.aljazeera.com/news/2020/01/myanmar-respect-icj-order-stop-genocide-rohingya-200123144204115.html>; Andrew Nachemson, *‘As expected’: People in Myanmar shrug off ICJ Rohingya ruling*, AL JAZEERA (Jan. 30, 2020), <https://www.aljazeera.com/news/2020/01/expected-people-myanmar-shrug-icj-rohingya-ruling-200127065507541.html>.

<sup>127</sup> Neighboring states and the Association of Southeast Asian Nations (“ASEAN”) either do not acknowledge the Rohingya crisis or overtly support the Burmese government and its military’s actions. “China, with its long ties to the Tatmadaw and substantial economic interests in the country, has been a steadfast supporter of Myanmar, and Thailand has even recently awarded Myanmar’s army chief a royal decoration.” Furthermore, Bangladesh, “a geographically small, vastly overcrowded, and



Mission (FFM) on Myanmar, sanctioned by the United Nations Human Rights Council in March 2017, submitted a damning 440-page report” detailing the atrocities of the Burmese military.<sup>128</sup> The report spurred some western countries like Australia, the United States, and the United Kingdom to condemn Burma and issue sanctions, but there was either no reaction from neighboring countries or the opposite reaction where neighboring countries refused help to the Rohingya.<sup>129</sup> Thus, it seems unlikely that the international community will provide any viable solutions for the Rohingya crisis in the near future.<sup>130</sup>

Lastly, while it is important to hold the Burmese government and military accountable for the atrocities that were committed against the Rohingya Muslims, this accountability will not address the root cause for the Rohingya Muslims’ stateless status: the anti-Rohingya sentiments need to be combatted, and the 1982 Citizenship Law needs to be reformed in order for there to be a permanent resolution to the matter.<sup>131</sup>

### *C. Improvements to the Refugee Relief*

Since the likelihood of the Burmese government changing its anti-Rohingya position and the likelihood of the international community enforcing UNHCR policies or court decisions are slim, the least that can

---

under-resourced nation,” wishes to return the Rohingya refugees to Burma rather than continue to support them. Higgins, *supra* note 88, at 123-125.

128 Angshuman Choudhury, *Why Are Myanmar’s Neighbors Ignoring the Rohingya Crisis?*, THE DIPLOMAT (Sept. 25, 2018), <https://thediplomat.com/2018/09/why-are-myanmars-neighbors-ignoring-the-rohingya-crisis/> (detailing silence from ASEAN, China, India, and others).

129 *Id.* See also Aisha Ismail & Elliot Dolan-Evans, *The International Community’s Response to the Rohingya Crisis*, AUSTRALIAN INST. OF INT’L AFFAIRS (Sept. 12, 2017), <http://www.internationalaffairs.org.au/australianoutlook/international-community-response-rohingya/> (explaining responses from India, China, the UN, United States, and the Organization of Islamic Cooperation). While some countries have sanctioned, condemned, and sent foreign ministers to Burma to talk, “condemnations alone are not enough. The international community must adopt a two-pronged approach to assisting the Rohingya. Firstly, punitive measures, such as sanctions should be taken against the government of Myanmar to demonstrate that the international community firmly denounces the actions of the Tatmadaw. Secondly, and most importantly, the international community must take immediate action to alleviate the suffering of the Rohingya people by providing humanitarian relief and proactively assisting the Rohingya in seeking asylum.” *Id.*

130 Higgins, *supra* note 88, at 126.

131 See *supra* notes 68-72 (arguing that the 1982 Citizenship Law should “include naturalisation procedures that are fair, reasonable and accessible to those who have a clear link to Myanmar,” “be implemented in a non-discriminatory and non-arbitrary manner,” and “not reinforce hierarchies of citizenship through different categories of citizenship such as ‘full citizen’, ‘associate citizen’ and ‘naturalised citizen’. All citizens should have the same access to rights in Myanmar”).

be done for the Rohingya Muslims is to improve the relief given to them in the interim until some other solution becomes available.<sup>132</sup>

The largest improvement needed for refugee relief for the Rohingya Muslims is creating safer, more sanitary camps and increasing funding for resources. The refugee camps are heavily populated and vulnerable to natural disasters, and life-saving emergency response requires upgrading to achieve coverage and quality care.<sup>133</sup> Congestion, malnutrition, contaminated water, disease outbreaks, psychological issues, lack of fuel, and gender and sexual abuse are amongst the highest priority issues that continue to require greater resources.<sup>134</sup> The influx of refugees has lowered living conditions in Bangladesh even further, with wages dropping, increased prices for basic needs and food, crumbling infrastructure, displacement, and higher percentages of people in poverty and extreme poverty.<sup>135</sup> These needs cannot be addressed without proper funding, and the UNHCR still has almost \$279 million of unmet requirements through the total Joint Response Plan for 2019.<sup>136</sup>

One possibility for alleviating these issues would be to spread the costs and have other surrounding countries take in the Rohingya refugees so that the majority of the burden is not on Bangladesh; however, this option seems unlikely as the majority of the neighboring countries support the Burmese government.<sup>137</sup> Another possibility is to increase private donations through charities.<sup>138</sup>

---

132 Higgins, *supra* note 88, at 125-126.

133 *Joint Response Plan for Rohingya Humanitarian Crisis: March 2018 – December 2018*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, at 10, <https://www.unocha.org/sites/unocha/files/JRP%20for%20Rohingya%20Humanitarian%20Crisis%202018.PDF> (last visited Jan. 4, 2019).

134 *Id.* at 13-16.

135 *Id.* at 16-18.

136 *Bangladesh: Rohingya Refugee Crisis Joint Response Plan 2018 (Other)*, UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS (updated 2019), <https://fts.unocha.org/appeals/656/summary>.

137 *See supra* note 127.

138 There are several organizations responding to the Rohingya crisis that accept charitable donations: BRAC, IOM, Action Against Hunger, UNICEF, Save the Children, Doctors Without Borders, International Rescue Committee, UNHCR, and the World Food Program. Tiffany May, *Helping the Rohingya*, N.Y. TIMES (Sept. 29, 2017), <https://www.nytimes.com/2017/09/29/world/asia/rohingya-aid-myanmar-bangladesh.html>.

## CONCLUSION

Despite the magnitude of the Rohingya refugee and statelessness crises, it seems unlikely for any solutions to be reached in the near future.<sup>139</sup> Without permanent reform of the 1982 Citizenship Law, the Rohingya will continue to be persecuted in Burma, which will lead to further displacement and greater threats of genocide.<sup>140</sup> Lacking the support of the United States and the rest of the international community only exacerbates the issue, as the Burmese government and its military are not being held accountable for their atrocities.<sup>141</sup> Since national governments are unwilling to take action against Burma, and international organizations and agencies are limited by their resources and jurisdictional provisions, it is even more essential for private individuals and organizations to fill in the gaps and provide for the needs of the Rohingya Muslims.<sup>142</sup>

*Shehmin Awan\**

---

139 See Higgins, *Supra* note 88, at 126.

140 See *supra* note 131.

141 See *supra* notes 122-126.

142 See *supra* notes 133-138.

\* Executive Notes Editor, Washington University Global Studies Law Review J.D. Candidate (2020), Washington University School of Law; B.A. (2017), majoring in Political Science and International Studies, Maryville University