

Christina Szurlej\*  
Atlantic Human Rights Centre, St. Thomas University

## PREVENTING GENOCIDE AGAINST THE ROHINGYA MUSLIM MINORITY IN MYANMAR

### Introduction

Recognized by international media as one of the most persecuted minority groups in the world<sup>1</sup>, the Rohingya Muslims in Myanmar are in need of protection. Following the eruption of communal violence between the Rohingya and Burmese Buddhists in 2012, over 100,000 have fled the country, while another 140,000 are living in camps for internally displaced persons (IDP) in inhumane conditions<sup>2</sup>. For those who attempt to flee persecution and seek refuge, neighbouring countries have been less than welcoming. There have been multiple instances of Malaysia, Thailand, and Indonesia casting boats full of desperate Rohingya refugees back into the sea<sup>3</sup>. Over one million Rohingya who remain in Myanmar face ongoing oppression and persecution.

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\* Christina Szurlej is an Assistant Professor in the Human Rights Program at St. Thomas University and Director of the Atlantic Human Rights Centre. This paper was originally presented at a conference entitled Human Rights, Violence and Dictatorship in Krakow, Poland on 4 December 2015. Thanks are owed to St. Thomas University for providing a travel grant to support participation in this conference.

<sup>1</sup> Amie Hamling, “Rohingya People: The Most Persecuted Refugees in the World,” *Amnesty International*, October 7, 2015, <http://www.amnesty.org.au/refugees/comments/35290/>; BBC News, “Why Is There Communal Violence in Myanmar?” July 3, 2014, <http://www.bbc.com/news/world-asia-18395788>; Damian Collins, “The Most Persecuted Minority in the World”, *The Huffington Post*, June 26, 2015, [http://www.huffingtonpost.co.uk/damian-collins/rohingya-muslims\\_b\\_7668804.html](http://www.huffingtonpost.co.uk/damian-collins/rohingya-muslims_b_7668804.html).

<sup>2</sup> Human Rights Council, “Report of the Special Rapporteur on the Situation of Human Rights in Myanmar,” A/HRC/31/71, March 18, 2016, para. 37.

<sup>3</sup> Thomas Fuller and Joe Cochrane, “Rohingya Migrants from Myanmar, Shunned by Malaysia, Are Spotted Adrift in Andaman Sea”, *The New York Times*, May 13, 2015; The Guardian, “Malaysia and Thailand Turn Away Hundreds of Migrants on Boats”, May 14, 2015, <http://www.theguardian.com/world/2015/may/14/malaysia-turns-back-migrant-boat-with-more-than-500-aboard>; BBC News, “Indonesia Turns Away Boat of Bangladeshi and Rohingya”, May 18, 2015, <http://www.bbc.com/news/world-asia-32701199>.

Applying Genocide Watch's ten stages of genocide, as well as the definition of genocide under article II of the *Convention on the Prevention and Punishment of Genocide* (hereinafter "*Genocide Convention*"), demonstrates how the Rohingya face acute risk of genocide. Satisfying all ten stages to varying degrees, and several key components of the legal definition of genocide, it is clear the situation in Myanmar is dire. Action must be taken to hold perpetrators of human rights violations against the Rohingya to account, while protecting the Rohingya from further victimization. The recent election of the NLD and appointment of Htin Kyaw as President could represent a crucial turning point for the Rohingya if this new party reverses discriminatory laws and practices targeting Rohingya Muslims, ensures respect for international human rights standards, and holds perpetrators accountable for human rights violations.

### **Background on Situation in Myanmar**

Myanmar has a rich history, beginning with its founding by King Anawrahta in 1057 when it was known as Burma. It is beyond the scope of this paper to detail in full. A brief recent history will be discussed to provide context for the current situation in Myanmar. Emphasis is placed on points in history affecting the Rohingya peoples.

Burma's cession of Arakan strip to the British after the first Anglo-Burmese war in 1826 foreshadows Britain's expanding colonization of Burma that would last over a century. In 1942, Burma fell under Japanese occupation for three years until liberated by Britain and the Anti-Fascist People's Freedom League (AFPFL). Aung San, President of the AFPFL, formed part of the interim government, but was assassinated by a political opponent in 1947. A year later, Burma gained independence from Britain<sup>4</sup>.

Prime Minister U Nu was elected and served until overthrown by a military coup led by army General Ne Win in 1962. This marked the beginning of what would become over fifty years of military rule in Myanmar. Ne Win promptly declared a one-party state, banned independent media, and nationalized Burma's economy<sup>5</sup>. He continued to rule until 1981 when San Yu, a retired general, took power. The following year, Yu's regime passed a law creating a hierarchy of citizenship, with anyone of non-indigenous background designated as an

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<sup>4</sup> Encyclopaedia Britannica, "Aung San: Myanmar Nationalist", February 18, 2015, <http://www.britannica.com/biography/Aung-San>.

<sup>5</sup> Robert H. Taylor, "General Ne Win: A Political Biography", *Institute of Southeast Asian Studies*, 2015.

“associate citizen” and prevented from holding office<sup>6</sup>. By 1987, devaluation of the kyat (Myanmar’s currency) caused riots as life savings disintegrated. In response, the government carried out thousands of arbitrary detentions and extra-judicial killings over the next two years then declared a state of emergency.

Aung San Suu Kyi, Aung San’s daughter and President of the NLD, was placed under house arrest for the first time in 1989<sup>7</sup>. This was the same year the military junta renamed Burma as Myanmar. After the National League for Democracy won a victory in the 1990 general elections, the military refused to acknowledge it or relinquish power. Internationally recognized as a symbol of perseverance and peace, Aung San Suu Kyi was awarded the Nobel Peace Prize in 1991. For fifteen of twenty-one years from 1989 to 2010, Aung San Suu Kyi would continue to be held under house arrest to prevent her from being able to politically challenge military rule and to impede her advocacy for human rights<sup>8</sup>. This includes preventing her participation in the first elections in twenty years that took place in 2010.

Amid the shifting heads of state, the military continued to maintain power. Extending beyond political opponents, journalists, and human rights advocates, the military also targeted ethnic minorities in a campaign of discrimination and subjugation. In January 2007, the United States of America and United Kingdom advanced a joint draft resolution to release long-detained political prisoners and end human rights abuses against its ethnic minorities. Russia and China used their veto power to halt the resolution, despite it otherwise receiving the necessary number of votes to pass. The basis for the vetoes was that these matters did not impact international peace and security and thus should not be dealt with by the United Nations Security Council (UNSC)<sup>9</sup>. This point will be revisited when discussing potential remedies.

President Thein Sein was sworn in in March 2011. At the beginning of his reign, he advanced a number of progressive initiatives, including freeing political prisoners, relaxing laws against forming unions, allowing peaceful demonstra-

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<sup>6</sup> Socialist Republic of the Union of Burma, *Burma Citizenship Law*, 1982, [www.ilo.org/dyn/natlex/docs/ELECTRONIC/87413/.../MMR87413.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87413/.../MMR87413.pdf), BBC News, “Myanmar Profile – Timeline”, March 30, 2016, <http://www.bbc.com/news/world-asia-pacific-12992883>.

<sup>7</sup> Tracey McVeigh, “Aung San Suu Kyi ‘Released from House Arrest’”, *The Guardian*, November 18, 2010, <http://www.theguardian.com/world/2010/nov/13/aung-san-suu-kyi-released>.

<sup>8</sup> *Ibid.*; Min Zin and Brian Joseph, “The Democrats’ Opportunity”, *Journal of Democracy* 23, no. 4 (October 2012), 105.

<sup>9</sup> UN News Centre, “China and Russia Veto US/UK-backed Resolution on Myanmar”, January 12, 2007, <http://www.un.org/apps/news/story.asp?NewsID=21228#.Vv6F1-IrIdU>.

tions, and limiting state censorship<sup>10</sup>. However, these positive shifts in government policy would soon be overshadowed by a series of oppressive policies and laws targeting the Rohingya Muslim minority. Under the Thein Sein government, the Rohingya suffered “killings, forced labor, sexual violence, denial of citizenship, displacement, and restriction on movement, marriage, and religion”<sup>11</sup>. Oppression of the Rohingya escalated following the rape and murder of a Buddhist girl by three Rohingya men in June 2012. In response, the government declared a state of emergency in Rakhine State, expanding military presence<sup>12</sup>, imposing a dawn-to-dusk curfew (lifted in March 2016), and prohibiting gatherings of five or more people in public<sup>13</sup>. Violations of these restrictions were only enforced against the Rohingya<sup>14</sup>. Communal violence ensued, with 90 Rohingya killed in clashes in November 2012, and a further 10 four months later. To date, over 200 Rohingya Muslims have been killed<sup>15</sup>.

On August 17, 2012, President Thein Sein issued an Executive Order to establish the Rakhine Inquiry Commission “to discover the root causes of communal violence and provide recommendations for the prevention of recurrence of violence in the future and promotion of peaceful coexistence”<sup>16</sup>. This would be an applaudable step forward if it were not for the Commission’s stark bias, referring to the Rohingya as Bengalis throughout its report, and placing blame primarily on the Rohingya for instigating sectarian conflict between “Rakhine and Bengali communities”<sup>17</sup>. Though the Commission advanced some meaningful recommendations, the government’s response was weak. For instance, rather than allowing Rohingya in IDP camps to return to their homes, they will be resettled in another unspecified location. In order to be relocated, Rohingya must undergo a “nationality verification process”, requiring them to identify as Bengalis before being considered for citizenship or resettled. The government in turn blames the Rohingya for resettlement delays, because they refuse to register as

<sup>10</sup> BBC News, “Myanmar Country Profile”, March 30, 2016, <http://www.bbc.com/news/world-asia-pacific-12990563>.

<sup>11</sup> Fortify Rights, “Persecution of the Rohingya Muslims: In Genocide Occurring in Myanmar’s Rakhine State?”, *Yale Law School*, 2015, 13.

<sup>12</sup> *Ibid.*, 20.

<sup>13</sup> *Ibid.*, 19.

<sup>14</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6, para. 42.

<sup>15</sup> CBC News, “Why Burma’s Rohingya Muslims Are the Among the World’s Most Persecuted People”, May 25, 2015, <http://www.cbc.ca/news/world/why-burma-s-rohingya-muslims-are-among-the-world-s-most-persecuted-people-1.3086261>.

<sup>16</sup> Republic of the Union of Myanmar, “Final Report of Inquiry Commission on Sectarian Violence in Rakhine State”, July 8, 2013, [http://www.burmalibrary.org/docs15/Rakhine\\_Commission\\_Report-en-red.pdf](http://www.burmalibrary.org/docs15/Rakhine_Commission_Report-en-red.pdf).

<sup>17</sup> *Ibid.*, 7.

Bengalis<sup>18</sup>. According to the Special Rapporteur on the Situation of Human Rights in Myanmar, even “those granted citizenship through the process...reportedly remain in camps and continue to face restrictions on their freedom of movement and access to basic services”<sup>19</sup>.

After four years of Sein’s rule, the NLD party won by a majority of votes in Myanmar’s democratic national election in November 2015— an election in which the Rohingya were barred from voting— bringing an end to over five decades of military-dominated rule<sup>20</sup>. Though voted out, the military is guaranteed twenty-five percent of seats in Parliament, authority over the ministries of defence, border affairs and human affairs, and the Vice Presidency. As President of the NLD, Aung San Suu Kyi would have been sworn in as President of Myanmar if it were not for a clause in the Constitution preventing anyone with foreign children from becoming President. In order to change this provision, two thirds of Parliament must vote in favour. Since twenty-five percent of Parliamentary seats remain reserved for military officials, all non-military delegates would need to vote unanimously. Her close aid, Htin Kyaw, was sworn in as President instead on March 30, 2016; Suu Kyi will rule by proxy as “Advisor to the State,” performing the functions that would traditionally belong to the Prime Minister, and leading the ministries of the presidential office, foreign affairs, energy, and education<sup>21</sup>.

### Ten Stages of Genocide

In 1998, Professor Gregory Stanton, President and Co-Founder of Genocide Watch, developed eight stages of genocide to assess the risk of an outbreak: classification, symbolization, dehumanization, organization, polarization, preparation, persecution, extermination, and denial. Five years later, Stanton expanded these eight stages to ten, adding discrimination at stage three and persecution at stage eight. Though often non-linear<sup>22</sup>, identifying early warning signs of genocide is crucial to preventing its incitement, organization, or commission. Each of the ten stages is coupled with strategies for prevention. Early warning signs also prompt the state concerned to act to prevent genocide, or signify a need for the

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<sup>18</sup> Fortify Rights, *supra* note 15 at 33.

<sup>19</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6, para. 44.

<sup>20</sup> BBC News, “Myanmar’s Aung San Suu Kyi Given New ‘PM-like’ Role”, March 31, 2016, <http://www.bbc.com/news/world-asia-35928524>.

<sup>21</sup> *Ibid*.

<sup>22</sup> Due to the non-linear nature of the ten stages of genocide, their application to the situation of Rohingya in Myanmar is not chronological.

international community to intervene to prevent and protect against serious human rights violations when the state is unable or unwilling.

### Stage 1 – Classification

During the first stage of genocide, classification exploits distinctions between two groups based on ethnicity, race, religion, or nationality. Divided, bipolar societies are most at risk of genocide, particularly when competing for resources in an environment of scarcity<sup>23</sup>. In Myanmar, deep cleavages are drawn based on ethnicity and religion.

Myanmar has 135 recognized ethnic groups, with the majority of the population identifying as Bamar at 68% or approximately 38 million of a population over 56 million<sup>24</sup>. By comparison, there are just over one million Rohingya living in Myanmar. The Rohingya are

...believed to be the Muslims with the longest history in Myanmar. The first Muslims who settled in this region were believed to be Arab mariners and traders that arrived on the Rakhine coast in the 8<sup>th</sup> and 9<sup>th</sup> centuries. Other Muslims who came to the area in later centuries included Persians, Moguls, Turks, Pathans and Bengalis. During the British colonial period from 1824-5 until 1948, there was also massive migration from Chittagong to what is now the Rakhine State<sup>25</sup>.

Here we see a historic link between the Rohingya's ethnicity and religion—categories by which they are classified as “other” and separated from the dominant group. This distinction was amplified with the passing of the *1940 Foreigners Act*, requiring all Rohingya to carry a licence with a photograph and legal name at times<sup>26</sup>.

### Stage 2 – Symbolization

Drawing distinctions between groups or classifying them according to names or symbols can result in genocide if fused with hatred towards and dehumanization of the target group. The dominant, more powerful group may use symbols to signify their target group's membership and quickly distinguish between “us

<sup>23</sup> Stanton, *supra* note 3.

<sup>24</sup> CIA Factbook, “Burma”, March 31, 2016, <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>.

<sup>25</sup> Rianne ten Veen, “Myanmar's Muslims: The Oppressed of the Oppressed, Islamic Human Rights Commission”, 2005, 6.

<sup>26</sup> Fortify Rights, *supra* note 15 at 16.

and them”, as occurred when the Nazis forced Jews to wear a yellow star of David during the Holocaust<sup>27</sup>.

In Myanmar, the Rohingya’s “second-class” status is symbolized through the use of incorrect or derogatory terms, distinguishing them from other ethnic groups. Dominant Buddhist Burmese refer to the Rohingya as Bengali settlers, illegal immigrants, and intruders to legitimize denying them citizenship or nationality<sup>28</sup>. The Rohingya are also called Muslim “kala”<sup>29</sup>, meaning “noble” or “black” in Hindi. Used to refer to “non-ethnic Burmese”, this term departs from its traditional meaning and carries a racist connotation in Myanmar. Through adopting classifications that instead bridge divisions, polarized groups can find common ground and see the “other” as more similar than different.

### Stage 3 – Discrimination

Moving to stage three, Stanton describes discrimination as the use of “law, custom, and political power [by a dominant group] to deny the rights of other groups”<sup>30</sup>. In the discrimination stage, civil rights, voting rights, and citizenship are often compromised. A lack of or weak comparative legal standing “legitimizes victimization of weaker groups”<sup>31</sup>.

Under the *1948 Union Citizenship Act*, only those considered ethnically indigenous to Burma were granted citizenship. This trend continued into 1974 when the Rohingya were only permitted to obtain Foreign Registration Cards, limiting their access to education and employment. Former Burmese leader General Ne Win implemented the *1982 Citizenship Law*, effectively rendering the Rohingya stateless<sup>32</sup>. Eligibility for citizenship hinged on whether the Rohingya were able to prove their families resided in Myanmar prior to 1948<sup>33</sup>. Those who would otherwise qualify were excluded, because they lacked access to documentation to provide as evidence and encountered difficulty with the language requirements to gain citizenship<sup>34</sup>. The situation worsened when on March 31, 2015 “all temporary registration cards, the main identification document held by Rohingya and

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<sup>27</sup> Fred Skolnik and Michael Berenbaum, eds, *Encyclopaedia Judaica*, 2<sup>nd</sup> ed. (Detroit: Thomson Gale, 2009); Israel Gutman, *Encyclopedia of the Holocaust* (Jerusalem: Yad Vashem, 1990).

<sup>28</sup> Fortify Rights, *supra* at 33.

<sup>29</sup> *Ibid.*, 14.

<sup>30</sup> Stanton, *supra* note 3.

<sup>31</sup> *Ibid.*

<sup>32</sup> Human Rights Watch, “1982 Citizenship Law,” 2000, <https://www.hrw.org/reports/2000/burma/burm005-02.htm>; Chris Lewa, “North Arakan: An Open Prison for the Rohingya in Burma,” *Forced Migration* 32 (2009), <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR32/11-13.pdf>.

<sup>33</sup> *Ibid.*

<sup>34</sup> Fortify Rights, *supra* note 15 at 7.

by persons of Chinese or Indian descent, expired”<sup>35</sup>. Only those who applied for new identity cards by the government imposed deadline were eligible for renewal, excluding more than half of the Rohingya population in Myanmar<sup>36</sup>.

By denying the Rohingya citizenship in Myanmar, the State impedes full access to the human rights and freedoms to which the Rohingya are entitled. The newly elected NLD should provide the Rohingya peoples with the opportunity to regain citizenship through legal means. Ensuring all minority groups are politically empowered and have access to citizenship rights helps prevent discrimination. Domestic legislation should expressly outlaw discrimination on national, ethnic, racial, and religious grounds, acting as a deterrent and providing a tool to hold violators accountable.

#### Stage 4 – Dehumanization

During stage four, dehumanization, members of the target group are “equated with animals, vermin, insects or diseases”<sup>37</sup> to reflect their “subhuman” status. Propaganda is used to create an “exclusionary ideology”, dehumanize the target group, and overcome “the normal human revulsion against murder”<sup>38</sup>. Nazi propaganda called Jews rats<sup>39</sup>, genocide inciting newspaper *Kangura* referred to Tutsis as cockroaches<sup>40</sup>, and today Buddhist monks who are part of the 969 Movement call the Rohingya snakes, mad dogs, wolves, and jackals<sup>41</sup>.

Responsible for a campaign of dehumanization against Rohingya Muslims, the 969 Movement identifies as a “social movement to preserve the cultural traditions of Buddhism in Buddhist countries” and “organizes campaigns in support of mutual aid to Buddhists”<sup>42</sup>. In practice, however, the 969 Movement appears to invest more energy into denigrating its “enemies” than providing aid to Buddhists. For instance, the 969 Movement uses its Twitter page almost

<sup>35</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6 at para. 35.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Stanton, *supra* note 3.

<sup>39</sup> *The Eternal Jew*, directed by Fritz Hippler (Deutsche Film Gesellschaft, 1940). This citation is provided as an example of Nazi propaganda dehumanizing Jews during the Holocaust.

<sup>40</sup> Human Rights Watch, “Propaganda and Practice”, 1999, <https://www.hrw.org/reports/1999/rwanda/Geno1-3-10.htm>.

<sup>41</sup> Fortify Rights, *supra* note 15 at 21; Thomas Fuller, “Extreme Racism Rises Among Myanmar Buddhists”, *The New York Times*, July 20, 2013, <http://www.nytimes.com/2013/06/21/world/asia/extremism-rises-among-myanmar-buddhists-wary-of-muslim-minority.html>.

<sup>42</sup> 969 Movement, “What Is 969 Movement?”, 2016, <http://969movement.org/what-is-969-movement/>.



exclusively as a means of disseminating Islamophobic propaganda. Though referring to Muslims generally rather than to the Rohingya Muslims in Myanmar, 969 Movement's tweet from January 2016 illustrates dehumanization based on religion: "Muslim cobras have been invited into European kindergarten out of multiculti [sic] stupidity, and now Europe will pay the price"<sup>43</sup>. It later tweeted, "Islam is a cancer that the only solution is an operation to remove it."<sup>44</sup>. There is also evidence of senior level officials in the Myanmar who have used dehumanizing language to refer to the Rohingya. Former Consul General Ye Myint Aung, for instance, has called Rohingya Muslims "dogs"<sup>45</sup> and "ugly as ogres"<sup>46</sup>.

All forms of dehumanization attempt to trivialize grave human rights violations against the target group by denying its humanity<sup>47</sup>. The dominant group may also accuse their targets of dehumanizing them in an attempt to deflect blame onto the victim. For example, the 969 Movement tweeted "Muslims see you as an enemy, and they fully intend to force their views on you and reduce you to a slave. Their religion demands it."<sup>48</sup>. To prevent dehumanization, the government should enact laws to ban hate speech and hate crimes; any violations should be investigated, prosecuted, and punished. Media sources found to be disseminating hate propaganda should be shut down to prevent the legitimization of mistreating the Rohingya minority<sup>49</sup>.

### Stage 5 – Organization

When a situation reaches the gravity of stage five, the dominant group attempts to exert total control over target group. This can take the form of mass rapes, arrests, torture, and murder of the target group. Such organization can be formal, carried out by the state or by militias with state compliance, such as was the case with the Janjaweed in Sudan, or can be initiated by trained and armed informal, decentralized groups. At this stage, "plans are made for genocidal killings"<sup>50</sup>.

In Myanmar, the military and police are primarily responsible for elements of organization, including rape and arrest. NaSaKa, a military-led border

<sup>43</sup> 969 Movement, Twitter, January 25, 2016, <https://twitter.com/969movement>.

<sup>44</sup> *Ibid.*, January 9, 2016.

<sup>45</sup> The Irrawaddy, "The Suffering of 'Dogs': Rohingya Kids in Northern Arakan", October 16, 2013, <http://www.irrawaddy.com/burma/suffering-dogs-rohingya-kids-northern-arakan.html>.

<sup>46</sup> The World Post, "'Ugly as Ogres': Burmese Envoy Insults Refugees", March 14, 2009, [http://www.huffingtonpost.com/2009/02/11/ugly-as-ogres-burmese-env\\_n\\_166159.html](http://www.huffingtonpost.com/2009/02/11/ugly-as-ogres-burmese-env_n_166159.html).

<sup>47</sup> Maung Zarni and Alice Cowley, "The Slow Burning Genocide of Myanmar's Rohingya", *Pacific Rim Law & Policy Journal Association*, 23, no. 3 (June 2014), 736.

<sup>48</sup> 969 Movement, *supra* note 47.

<sup>49</sup> Stanton, *supra* note 3.

<sup>50</sup> *Ibid.*

security force (disbanded in 2013), Myanmar Police Force, Myanmar Army, and Rakhine villagers have been accused of raping Rohingya women. In some cases, women and girls are detained on military bases for long periods, enduring physical and sexual abuse. There have also been reports of deaths due to gang rapes<sup>51</sup>, while those who have reported such incidents risk arrest<sup>52</sup>.

Arbitrary arrests are rampant<sup>53</sup>. Human Rights Watch reports that following the outbreak of communal violence in 2012, state security forces

... entered villages around Maungdaw Township, opened fire on Rohingya, looted properties, and rounded up men and boys, taking them to unknown locations where most have since been held incommunicado. Family members of those arrested told Human Rights Watch that they had not heard from their relatives since the security forces boarded them onto trucks and took them away<sup>54</sup>.

From 2011 to 2012 alone, security forces detained between 2,000 and 2,500 Rohingya for trivial “offences”, including failing to “self-identify as “Benagli” [meaning “illegal immigrant” from Bangladesh] on their census forms” or “repairing homes without permission”<sup>55</sup>. While in detention, there have been reports of the Myanmar army forcing males and boys to perform manual labour without remuneration<sup>56</sup>. Apart from being a mechanism to exert control over the Rohingya, “Some cases appear linked to extortion, given that detainees are often released following the payment of a bribe”<sup>57</sup>. Those unable to pay remain in detention.

<sup>51</sup> Fortify Rights, *supra* note 15 at 15.

<sup>52</sup> Fortify Rights, *supra* note 15 at 20.

<sup>53</sup> Irish Centre for Human Rights, “Crimes against Humanity in Western Burma: The Situation of the Rohingyas”, 2010, [http://burmacampaign.org.uk/images/uploads/ICHR\\_Rohingya\\_Report\\_2010.pdf](http://burmacampaign.org.uk/images/uploads/ICHR_Rohingya_Report_2010.pdf); Amnesty International, “Myanmar: Arrests Continue Amid Promise to Release All Prisoners of Conscience”, July 17, 2013, <https://www.amnesty.org/en/latest/news/2013/07/myanmar-arrests-continue-amid-promise-release-all-prisoners-conscience/>; Katherine Southwick, “Preventing Mass Atrocities against the Stateless Rohingya in Myanmar: A Call for Solutions”, *Journal of International Affairs*, 68, no. 2 (2015), 144.

<sup>54</sup> Human Rights Watch, “The Government Could Have Stopped This”, July 31, 2012, <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan>.

<sup>55</sup> Fortify Rights, *supra* note 15 at 14; Sean Garcia and Camilla Olson, “Rohingya: Burma’s Forgotten Minority”, *Refugees International*, December 19, 2010, [https://www.essex.ac.uk/armedcon/story\\_id/Rohingyaburmasforgottenminority.pdf](https://www.essex.ac.uk/armedcon/story_id/Rohingyaburmasforgottenminority.pdf).

<sup>56</sup> Fortify Rights, *supra* note 15 at 11.

<sup>57</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6, para. 41.

Genocide Watch proposes a number of strategies to mitigate the risk of genocide in a situation that reaches the organization stage. First, it calls for membership in militias who organize with genocidal intent to be outlawed<sup>58</sup>. However, if militias are acting with state compliance, the state is unlikely to take action. At an international level, other states could deny militia members visas for travel, the success of which is predicated on awareness of their membership, though this is more difficult to conceal for those in leadership roles. Genocide Watch also suggests that the United Nations “impose arms embargoes on governments and citizens of countries involved in genocidal massacres, and create commissions to investigate violations”<sup>59</sup>. Again, the efficacy of these tactics is limited. Even with the imposition of arms embargoes, determined perpetrators could inflict serious bodily harm, injury, or death through the use of more primitive means, such as the machete used to kill hundreds of thousands of Tutsis in Rwanda. Arms embargoes also fail to account for weaponry already in the perpetrators’ possession. If a commission is formed at the national level, its independence can be called into question, particularly when the state or militias acting with state compliance are the perpetrators. A commission of an international character would need to be formed in order to hold perpetrators accountable, though there appears to be a lack of political will.

#### Stage 6 – Polarization

Polarization occurs at stage six. In an effort to polarize the target group from the rest of society, the dominant group enlists hateful propaganda to divide and further the rift between the two groups. Domestic legislation may also be enacted to forbid social interaction between the polarized groups, including intermarriage. Moderates are seen as a threat that needs to be silenced through intimidation<sup>60</sup>.

The Special Rapporteur on Myanmar has voiced concern that “the activities of ultra-nationalist political parties and religious movements have helped to fuel tensions and polarize communities.”<sup>61</sup> After the Thein Sein government expressed fear that the growing population of Muslims would disturb its political and economic power, it instituted a number of oppressive practices in response. New military personnel receive training entitled “Fear of Extinction of Race”<sup>62</sup>, propagating that the Rohingya intend to spread their Muslim faith, threatening the existence of the Buddhist Burmese. To prevent further growth among the

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<sup>58</sup> Stanton, *supra* note 3.

<sup>59</sup> *Ibid.*

<sup>60</sup> Stanton, *supra* note 3.

<sup>61</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6, para. 38.

<sup>62</sup> Fortify Rights, *supra* note 15 at 17.

Rohingya peoples and the spread of Islam, the government passed “Race and Religion Protection” laws in May 2015, restricting marriages between Buddhist women and non-Buddhist men and regulating conversion to Islam<sup>63</sup>. This law is in addition to existing restrictions imposed on the Rohingya regarding marriage, including the requirement that Rohingya must seek permission from the state before entering into marriage<sup>64</sup>. Nationwide, Rohingya are likewise limited to having only two children.

Buddhist monks who distributed a “12 Point Statement” to socially and economically marginalize the Rohingya illustrate another form of polarization, asserting the

...Rohingya were engaging in a “Rakhine Ethnic Cleansing Program.” To ensure that Rakhine people would “stay away from bad Bengali”, the monks recommended prohibitions against employing Rohingya, engaging in sales with Rohingya, and carrying Rohingya on boats, ferries and motorbikes. They also called for the withdrawal of NGOs that were supporting Rohingya<sup>65</sup>.

The NLD government must act quickly to reverse the polarizing oppression of the Rohingya minority by bringing an end to discriminatory laws and practices. However, in these early stages of new government, it appears as though the NLD and military share apathy towards the plight of the Rohingya peoples, making it less likely members of the NLD will take appropriate action. Genocide Watch calls for “security protection for moderate leaders or assistance to human rights groups”<sup>66</sup>. In the case of the Rohingya, who will provide protection for them when the military continues to wield significant power over political affairs? Where will assistance to human rights groups flow from if the government and military have a record of turning away vital humanitarian assistance?

### Stage 7 – Preparation

In the preparatory stage, perpetrators plan a “final solution” for the targeted group, often using euphemisms, such as ethnic cleansing, purification, or counterterrorism, to disguise genocidal intentions<sup>67</sup>. Preparations to train troops, strengthen armies, and procure weapons are underway. Polarizing propaganda is used to indoctrinate the dominant group with fear of the target group, conveying

<sup>63</sup> Ibid., 34.

<sup>64</sup> Ibid., 11; Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6, para. 39.

<sup>65</sup> Ibid., 22.

<sup>66</sup> Stanton, *supra* note 3.

<sup>67</sup> Ibid.

the message that if they fail to halt this threat, the lives of the dominant group could be in danger<sup>68</sup>.

Ashin Wirathu, a Buddhist monk and leader of the nationalist 969 movement, is fuelling tensions between Rohingya Muslims and the Buddhist majority in Myanmar, alleging “Buddhists are facing a serious threat today from jihadist groups”<sup>69</sup>. Wirathu is using his position to incite violence against the Muslim minority<sup>70</sup>. Previously jailed for 25 years for “inciting anti-Muslim hatred”, Wirathu was “freed in 2010 under a general amnesty”<sup>71</sup>. Since then, he has continued his campaign of hate, gaining broad support across Myanmar. In a visit to Myanmar in 2013, Special Adviser to the Secretary-General on Myanmar Vijay Nambiar expressed deep concern over the use of “incendiary propaganda” aggravating communal violence executed with “brutal efficiency”<sup>72</sup>. All individuals who incite or conspire to commit genocide should be promptly prosecuted under article III of the *Genocide Convention* to which Myanmar is a State Party.

#### Stage 8 – Persecution

When tensions reach stage eight, persecution, the risk of genocide is significant. Members of the target group are separated based on ethnicity and religion, at times, being forced to wear distinctive symbols or clothing. After being separated from the general populace, the target group is transferred to ghettos, concentration camps, or barren regions where necessities for survival are scarce. During this transition, the target group often loses their property to government through expropriation. Acts of genocide occur at this stage when part of the group is intentionally destroyed<sup>73</sup>.

A segregation policy between Muslims and Buddhists has been enforced, in part, by removing Rohingya from their homes<sup>74</sup>, and forcing them into camps for internally displaced persons (IDP) in Rakhine State. Those who refuse relocation are told they will be denied food assistance<sup>75</sup>. The government defended its actions, asserting that the removal and transfer of Rohingya was necessary for the

<sup>68</sup> Ibid.

<sup>69</sup> Dinouk Colombage, “Buddhist Monk to Fight “Jihad Threat””, *Al Jazeera*, September 24, 2014, <http://www.aljazeera.com/news/southasia/2014/09/buddhist-monk-fight-jihad-threat-asia-2014928153512953861.html>.

<sup>70</sup> Hannah Beech, “The Face of Buddhist Terror”, *TIME Magazine*, July 1, 2013, <http://content.time.com/time/magazine/article/0,9171,2146000,00.html>.

<sup>71</sup> Kate Hodal, “Buddhist Monk Uses Racism and Rumors to Spread Hatred in Burma”, *The Guardian*, April 18, 2013, <http://www.theguardian.com/world/2013/apr/18/buddhist-monk-spreads-hatred-burma>.

<sup>72</sup> Ibid.

<sup>73</sup> Stanton, *supra* note 3.

<sup>74</sup> Fortify Rights, *supra* note 15 at 27.

<sup>75</sup> Ibid., 21.

maintenance of peace and security<sup>76</sup>. In reality, the segregation policy mirrors ethnic cleansing<sup>77</sup>, further polarizing the two groups. Rohingya are confined to the guarded, overcrowded camps that lack adequate food, water and shelter, as well as access to medical care and education<sup>78</sup>. Rohingya in IDP camps wishing to travel in Rakhine State must provide the military with notice a week in advance<sup>79</sup>. With support from local Buddhists, the military has repeatedly thwarted attempts for the international community to provide humanitarian aid to the isolated Rohingya<sup>80</sup>. Non-Rohingya in Rakhine State have also threatened aid workers and disseminated information accusing humanitarian groups of conspiring against the Burmese Buddhists<sup>81</sup>.

Genocide Watch recommends that at this stage, armed international intervention should be prepared, or heavy assistance provided to the victim group to prepare for its self-defense<sup>82</sup> if there is political will to mobilize regional or international intervention. Given the recent change in government, the international community is unlikely to act without further indications that the situation of Rohingya in Myanmar is deteriorating under its leadership. The NLD must promptly address the Special Rapporteur on Myanmar's calls "to ensure durable solutions to displacement in accordance with international standards; these should include voluntary returns to places of origin and avoid the segregation of communities"<sup>83</sup>.

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<sup>76</sup> *Ibid.*, 24.

<sup>77</sup> Human Rights Watch, "'All You Can Do Is Pray' Crimes against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State", April 2013, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>; Human Rights Watch, "Burma: End 'Ethnic Cleansing' of Rohingya Muslims", April 22, 2013, <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims>, United Nations Security Council, "UN Commission of Experts Report", S/1994/674, May 27, 1994. Ethnic cleansing means "rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area".

<sup>78</sup> Fortify Rights, *supra* note 15 at 25; United Nations Secretary General, "Situation of Human Rights in Myanmar", A/68/397, September 23, 2013, para. 51; Doctors without Borders, "The Ongoing Humanitarian Emergency in Myanmar's Rakhine State", February 6, 2013, <http://www.doctorswithoutborders.org/news-stories/field-news/ongoing-humanitarian-emergency-myanmars-rakhine-state>.

<sup>79</sup> Fortify Rights, *supra* 15 at 16.

<sup>80</sup> *Ibid.*, 30.

<sup>81</sup> *Ibid.*, 23.

<sup>82</sup> Stanton, *supra* note 3.

<sup>83</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6, para. 43.

### Stage 9 – Extermination

If the conflict advances to the following stage, extermination, mass killings will begin to take place, reflecting the perpetrators' dehumanization of their victims. Mass killings could be perpetrated by state officials, armed groups acting with state complicity, or the dominant group as a whole. Offensive killings can result in the target group mounting a defence and perpetrating "revenge killings" that spiral out of control<sup>84</sup>.

Since 2012, over 200 Rohingya peoples have been killed. Between June and October 2012 alone<sup>85</sup>, 67 died as a result of violence in Rakhine State<sup>86</sup>. Other instances of extermination include police orders for medical personnel to kill Rohingya in Sittwe Hospital and military execution of Rohingya who refuse to board boats to leave the country<sup>87</sup>. The exact number of casualties is unknown, as the military has attempted to conceal deaths by transporting and burning dead bodies<sup>88</sup>. Military, police, and local officials justified their actions by accusing the Rohingya of being part of an armed international terrorist organization<sup>89</sup>.

Another less direct form of killing the Rohingya is closely connected to article III(c) of the *Genocide Convention*, prohibiting the deliberate infliction "on the group conditions of life calculated to bring about its physical destruction in whole or in part". Many Rohingya peoples lack access to health care facilities, including emergency medical treatment, due to their isolated position in IDP camps and because they must seek permission before travelling. In response, the Special Rapporteur on Myanmar has urged the government to "uphold the right to health of the entire population in Rakhine and to ensure equal access and medical treatment to all in public health facilities, irrespective of religion, ethnicity or citizenship"<sup>90</sup>.

Genocide Watch warns that "only rapid and overwhelming armed intervention can stop genocide" at this stage. Any safe zones or escape routes created for Rohingya must be adequately protected by armed personnel authorized to use force. If the genocide is smaller in scale, the United Nations Security Council should authorize the UN Standing High Readiness Brigade or regional forces to intervene. However, if the number of deaths rapidly increases, a multilateral intervention authorized to use force would be necessary.

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<sup>84</sup> Stanton, *supra* note 6.

<sup>85</sup> "Why Burma's Rohingya Muslims Are Among the Most Persecuted People in the World", *supra* note 19.

<sup>86</sup> Fortify Rights, *supra* note 15 at 26.

<sup>87</sup> *Ibid.*, 28.

<sup>88</sup> *Ibid.*, 27.

<sup>89</sup> *Ibid.*, 32.

<sup>90</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6, para. 40.

During the 2005 World Summit, the international community accepted a responsibility to prevent and protect against grave human rights violations, including crimes against humanity, war crimes, ethnic cleansing, and genocide<sup>91</sup>. Whether or not the situation of the Rohingya has formally reached the gravity of genocide, many of the human rights violations against them constitute crimes against humanity, including murder, forcible transfer, “imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law,” rape, and persecution based on ethnic and religious grounds<sup>92</sup>, thus still invoking the international community’s responsibility. Stanton posits that “the international responsibility to protect transcends the narrow interests of individual nation states. If strong nations will not provide troops to intervene directly, they should provide the airlift, equipment and financial means necessary for regional states to intervene”<sup>93</sup>.

#### Stage 10 – Denial

The final stage is denial. Genocidal perpetrators attempt to deflect blame onto victims, while concealing or destroying evidence, opposing investigations, and intimidating witnesses<sup>94</sup>. Denial can be two-pronged. Perpetrators will attempt to deny genocide has taken place. If unsuccessful at suppressing evidence, they will actively deny their roles in inciting, conspiring, organizing, and committing genocide. Without acknowledging genocide has taken place and holding perpetrators accountable, it sends the message that there is no deterrent; *genocidaires* can act with impunity<sup>95</sup>.

Though it is debatable whether genocide has been perpetrated against the Rohingya peoples, ethnic cleansing has clearly taken place, evidenced by the forcible removal of Rohingya from their homes and transfer to IDP camps. When responding to allegations of ethnic cleansing, Mr. Win Myaing, a spokesperson from Rakhine retorted “How can it be ethnic cleansing? They [the Rohingya] are not an ethnic group”<sup>96</sup>. Attempts to reveal serious human rights violations pepe-

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<sup>91</sup> United Nations General Assembly, 2005 World Summit Outcome Document, A/Res/60/1, October 25, 2005, paras. 138-139; Rachel Wagley, “The Quiet Audience: Responsibility to Call for an International Investigation into Crimes against Muslims in Burma,” *Emory International Law Review* 28, no. 1 (2014), 44.

<sup>92</sup> United Nations General Assembly, *Rome Statute of the International Criminal Court*, July 17, 1998, ISBN No. 92-9227-227-6.

<sup>93</sup> Stanton, *supra* note 3.

<sup>94</sup> Stanton, *supra* note 3.

<sup>95</sup> *Ibid.*

<sup>96</sup> Jason Szep, “Special Rapport—In Myanmar, Apartheid Tactics against Minority Muslims”, *Reuters*, May 15, 2013, <http://uk.reuters.com/article/us-myanmar-rohingya-specialreport-idUSBRE94E00020130515>.



trated against the Muslim minority are vehemently opposed. Journalists are denied access to IDP camps where Rohingya are held, while state controlled media dismiss existing claims as “false reports of foreign news agencies”<sup>97</sup>.

Bringing perpetrators to justice through the International Criminal Court, an international criminal tribunal, hybrid national and international court, regional court, or national court is the only way to end denial and impunity. Unfortunately, there is currently no regional or international court with direct jurisdiction over human rights violations perpetrated in Myanmar. As Myanmar forms a part of the Asian region, there is no regional human rights court to hold perpetrators accountable for grave violations of human rights. Whereas there is a European Court of Human Rights, Inter-American Court of Human Rights, and African Court of Human and People’s Rights, no such court exists for the Asian region. While the International Criminal Court (ICC) could provide recourse in such a situation, Myanmar is not a State Party to the *Rome Statute of the International Criminal Court* and thus is not subject to the Court’s jurisdiction. The only exception is if the United Nations Security Council (UNSC) refers the situation to the Prosecutor of the ICC.

Due to its key geographic location between India and China, it is likely China would veto any attempt to bring state officials in Myanmar before the ICC to avoid disrupting a key route with one of its major trade partners. China also receives its natural gas through Myanmar and has a vested interest in continuing its partnership with the government. The formation of an international criminal tribunal via the Security Council is likewise unlikely for this reason. Setting a precedent of inaction, China and Russia vetoed the United States’ draft UNSC resolution in 2007 calling for an end to persecution against minorities in Myanmar<sup>98</sup>. At the time of writing, the US general elections have not yet taken place. If presidential candidate Donald Trump is elected to office, he may likewise move to block a vote in the Security Council, as he has repeatedly spewed anti-Islamic rhetoric throughout his election campaign<sup>99</sup>.

A national or hybrid court is just as improbable, given the military’s continued control over key ministers and twenty-five percent of the Parliamentary vote. The establishment of either court would require the military’s support, which is problematic because access to justice for victims in essence rests with the perpetrators. Even if a national or hybrid court was formed, there is no guarantee against corrupt attempts to compromise the findings of the court.

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<sup>97</sup> Fortify Rights *supra* note 6 at 35.

<sup>98</sup> UN News Centre, *supra* note 13.

<sup>99</sup> Scott Bixby, “‘It’s Just Wrong’: Obama Barely Disguises Attack on Trump’s Anti-Muslim Rhetoric,” *The Guardian*, January 13, 2016, <http://www.theguardian.com/us-news/2016/jan/12/obama-state-of-the-union-donald-trump-race-religion>.

Based on the above analysis, the situation of the Rohingya in Myanmar has satisfied each of the ten stages of genocide, though to varying degrees. There is significant evidence suggesting that the Rohingya are at severe risk of experiencing genocide. If the NLD government is unable or unwilling to investigate and prosecute those responsible for grave human rights violations against the Rohingya, the international community has a duty to intervene.

## Genocide Test

A Polish-Jewish lawyer named Raphael Lemkin coined the term “genocide”. First inspired by the appalling lack of justice following the Armenian genocide, Lemkin stated “A nation was killed and the guilty persons were set free. Why is a man punished when he kills another man? Why is the killing of a million a lesser crime than the killing of a single individual?”<sup>100</sup> These questions would take on a personal nature for Lemkin during the Holocaust, as nearly thirty members of his family perished. At the time, there was no term to describe widespread, systematic, state-sponsored violence against a target group with the intention of bringing about its destruction. Lemkin strove to develop a concise, memorable, logical term: “genocide” stems from the Ancient Greek prefix “genos”, meaning clan or race, and the Latin suffix “cide”, meaning to kill<sup>101</sup>. To Lemkin, genocide constituted:

a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group<sup>102</sup>.

Although Lemkin was a driving force behind the successful drafting of the *Genocide Convention*, the definition of genocide found under the Convention is

<sup>100</sup> Donna-Lee Frieze, ed. *Totally Unofficial: The Autobiography of Raphael Lemkin* (New Haven: Yale University Press, 2013).

<sup>101</sup> Raphael Lemkin, Genocide, *The American Scholar*, 15, no. 2 (1946), 228.

<sup>102</sup> Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, 2<sup>nd</sup> ed. (Clark: The LawBook Exchange, 2005).

narrower than what Lemkin had envisioned, namely the exclusion of political and cultural groups as targets of genocide. Article II of the Convention defines genocide as:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

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

How does the definition of genocide under the Convention apply to the situation of the Rohingya in Myanmar? As an ethnic and religious minority, the Rohingya constitute a protected group under the article II of the Convention. In violation of subsection (a), hundreds have been killed on account of their membership in this group, albeit in numbers lower than those traditionally associated with meeting the definition of genocide<sup>103</sup>. Widespread, systematic rape perpetrated by security forces could satisfy section (b) as amounting to “serious mental or bodily harm”<sup>104</sup>. Further, the inhumane conditions in IDP camps to which 140,000 Rohingya are confined<sup>105</sup> could establish deliberate infliction of “conditions of life calculated to bring about its physical destruction... in part” under subsection (c)<sup>106</sup>. The question remains whether the state perpetrated these acts with the intent of destroying the group in whole or in part. A finding on this point is best left to a competent court or tribunal to decide. As discussed, however, the establishment of an accountability mechanism is hindered by military influence in Myanmar and a lack of international political will.

While Myanmar is a State Party to the Convention, it has made reservations that would further impede attempts to create international accountability mechanisms. Article VI stipulates that

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<sup>103</sup> “Why Burma’s Rohingya Muslims Are Among the Most Persecuted People in the World”, *supra* note 19.

<sup>104</sup> Fortify Rights, *supra* note 15 at 15.

<sup>105</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6.

<sup>106</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, *supra* note 4.

Persons charged with genocide or any of the other acts enumerated in article III<sup>107</sup> shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction<sup>108</sup>.

Myanmar's reservation negates the provision of establishing an international penal tribunal or granting it jurisdiction:

With reference to article VI, the Union of Burma makes the reservation that nothing contained in the said article shall be construed as depriving the Courts and Tribunals of the Union of jurisdiction or as giving foreign Courts and tribunals jurisdiction over any cases of genocide or any of the other acts enumerated in article III committed within the Union territory<sup>109</sup>.

Myanmar made a second reservation, specifying that Article VIII shall not apply to the Union. Article VIII states that "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III". These reservations, along with the limitations outlined earlier, render it difficult to bring perpetrators in Myanmar to justice for their treatment of the Rohingya peoples.

## Conclusion

With the NLD assuming power, Myanmar is in a critical transitional period<sup>110</sup>. Given the acute risk of genocide faced by the Rohingya Muslim minority as demonstrated through the application of Stanton's ten stages and the *Genocide Convention*, the government must promptly act to rectify oppressive and discriminatory

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<sup>107</sup> Ibid., Article III of the *Genocide Convention* stipulates that "The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide".

<sup>108</sup> Ibid.

<sup>109</sup> United Nations, *Treaty Series*, vol. 78, p. 277.

<sup>110</sup> Andrew Fagan, "The Rohingya, Genocide and a New Dawn for Myanmar, E-International Relations", December 6, 2015, <http://www.e-ir.info/2015/12/06/the-rohingya-genocide-and-a-new-dawn-for-myanmar/>.

laws and practices<sup>111</sup>. Perpetrators of serious human rights abuses, including the incitement of religious and ethnic hatred and violence, must be held to account. Otherwise, the new government sends the message that this sort of behaviour will be tolerated—a dangerous precedent that could spiral out of control.

While Aung San Suu Kyi cannot formally take on her rightful role as President of Myanmar, she has declared her role as “above the President”<sup>112</sup> and will rule by proxy. Having faced decades of persecution, she should be empathetic to the plight of the Rohingya peoples. Unfortunately, she has consistently remained silent or minimized their situation. It is possible that Aung San Suu Kyi is reluctant to support granting the Rohingya human rights protections to which they are entitled due to a fear that she would lose popularity among the Buddhist majority. If that is the case, is she much different from the military government that preceded her, which obviated the human rights of its political opponents to remain in power?

In November 2014, she explained “I am not silent because of political calculation. I am silent because whoever’s side I stand on there will be more blood. If I speak up for human rights, they (the Rohingya) will only suffer. There will be more blood”<sup>113</sup>. In interpersonal contexts, silence does not necessarily connote acceptance, but when it comes to the de facto head of state, silence on serious human rights abuses against vulnerable populations equals complicity. It is the state that is the primary duty bearer in the context of human rights protections. There is a duty to respect, protect, and fulfill its international human rights obligations, not just towards citizens recognized by the state, but its entire populace. Silence is a grossly inadequate response on all three counts. It may be that Suu Kyi is attempting to distance herself and the NLD from the Rohingya to avoid being seen as a “Muslim sympathizer”<sup>114</sup>. In her own words, however, “You should never let your fears prevent you from doing what you know is right”<sup>115</sup>.

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<sup>111</sup> Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 6, para. 39.

<sup>112</sup> Oliver Holmes, “Aung San Suu Kyi Set to Get PM-like Role in Myanmar Government”, *The Guardian*, April 1, 2016, <http://www.theguardian.com/world/2016/apr/01/aung-san-suu-kyi-set-to-get-pm-type-role-in-myanmar-government>.

<sup>113</sup> Brian Pellot, “Why Won’t Aung San Suu Kyi Say the Word ‘Rohingya’?” *The Washington Post*, December 4, 2004, [https://www.washingtonpost.com/national/religion/why-wont-aung-san-suu-kyi-say-the-word-rohingya-commentary/2014/12/04/95477390-7bea-11e4-8241-8cc0a3670239\\_story.html](https://www.washingtonpost.com/national/religion/why-wont-aung-san-suu-kyi-say-the-word-rohingya-commentary/2014/12/04/95477390-7bea-11e4-8241-8cc0a3670239_story.html).

<sup>114</sup> Sana Saeed “Statelessness of the Rohingya in Myanmar”, *Conflict Studies and Global Governance: The New General of Ideas*, October 31–November 1, 2014, [https://www.umb.edu/editor\\_uploads/images/mgs/mgs\\_conflictres/96\\_Statelessness\\_of\\_the\\_Rohingya\\_in\\_Myanmar.pdf](https://www.umb.edu/editor_uploads/images/mgs/mgs_conflictres/96_Statelessness_of_the_Rohingya_in_Myanmar.pdf).

<sup>115</sup> Barbara Victor, *The Lady: Aung San Suu Kyi: Nobel Laureate and Burma’s Prisoner* (London: Macmillan, 2002).

When “national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity”<sup>116</sup>, it opens the door for international intervention. However, as discussed earlier, there are multiple political barriers to mobilizing international intervention. Without the state or international will to intervene, who will protect the Rohingya Muslims from severe persecution and risk of genocide? This environment of complacency and denial creates a hierarchy of humanity where some are worth saving and others are not, bringing to mind international inaction in Rwanda, where 800,000 people were killed before intervention took place<sup>117</sup>. After genocide occurs, humanity collectively says “never again”, but this will not become a reality until we recognize the early warning signs and act before it is too late.

If both the state and international community are unwilling to act, what can be done? Stanton argues “the movement that will end genocide must come not from international armed interventions”<sup>118</sup>. Instead, he believes widespread resistance is the answer. Each individual has the power to challenge and reject elements fuelling genocide and crimes against humanity, including “discrimination; dehumanization, hate speech, and formation of hate groups; rise of political parties that preach hatred, racism or xenophobia; rule by polarizing elites that advocate exclusionary ideologies; police states that massively violate human rights; ...and denial...”<sup>119</sup>. In an age of technological revolution, the individual is more empowered than ever to widely disseminate information about human rights violations, condemn oppressive state practices, and lobby governments for change. Collectively, our voices will become so resounding, no state will be able to look the other way and do nothing.

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<sup>116</sup> 2005 World Summit Outcome Document, *supra* note 95 at para. 139.

<sup>117</sup> BBC News, “Rwanda Genocide: 100 Days of Slaughter”, 7 April 2014, <http://www.bbc.com/news/world-africa-26875506>.

<sup>118</sup> Stanton, *supra* note 3.

<sup>119</sup> *Ibid.*

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Abstract

**Preventing Genocide against  
the Rohingya Muslim Minority in Myanmar**

Although Myanmar appeared to make positive steps towards the realization of its human rights obligations since the end of a lengthy military rule, General Thein Sein marked a new era of overt discrimination against ethnic and religious minorities. The national authorities are both perpetrating gross human rights abuses and failing to hold violators accountable. On August 20, 2015, Parliament approved the “Protection of Race and Religion” bills, effectively legalizing discriminatory practices against ethnic and religious minority groups, particularly the Rohingya Muslims in the western state of Rakhine<sup>120</sup>. Facing discrimination, polarization, and persecution by a predominantly Buddhist government and populace, the Rohingya are in desperate need of protection against gross human rights abuses. The time to act is now. National elections in November 2015 led to a landslide victory for the National League for Democracy (NLD) party, resulting in Htin Kyaw replacing Sein as President<sup>121</sup>. Though the military still holds twenty-five percent of Parliamentary seats, as required by the Constitution, the NLD’s rise to power presents an opportunity for the party to spearhead the protection and promotion of human rights for all in Myanmar. Applying the ten stages of genocide developed by Gregory Stanton<sup>122</sup>, and the definition of genocide under the *Convention on the Prevention and Punishment of the Crime of Genocide*<sup>123</sup>, demonstrates that Myanmar is at high risk of an outbreak of genocide against the Rohingya. Preventive and reactive strategies are explored, including the international community’s responsibility to prevent and protect, as well as options for bringing perpetrators to justice.

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<sup>120</sup> Amnesty International, “Myanmar Parliament Must Reject Discriminatory ‘Race and Religion’ Laws”, March 3, 2015, <https://www.amnesty.org/en/documents/asa16/1107/2015/en/>.

<sup>121</sup> The Republic of the Union of Myanmar, “U Htin Kyaw Sworn in as President”, March 31, 2015, <http://www.president-office.gov.mm/en/>.

<sup>122</sup> Stanton, Gregory, “Ten Stages of Genocide”, *Genocide Watch*, 2013, <http://www.genocidewatch.org/genocide/tenstagesofgenocide.html>.

<sup>123</sup> UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, December 9, 1948, United Nations, Treaty Series, vol. 78, p. 277.

