

Myanmar's Democratic Transition

Peril or Promise for the Stateless Rohingya?

Katherine G. Southwick

Research Associate, National University of Singapore
katherine.southwick@gmail.com; lawkgs@nus.edu.sg

Abstract

Myanmar's recent reforms have opened an uncertain chapter in the history of the Rohingya, a Muslim minority group representing one of the world's most protracted cases of statelessness. Perceived by some as illegal Bengali migrants, for decades the Rohingya have suffered discrimination, forced labour, and campaigns of violence and displacement. Over a million subsist as refugees or undocumented migrants in other countries. This paper reviews the history of the Rohingya in Myanmar, including recent violence and living conditions of those inside and outside the country. Against this background, the paper considers how Myanmar's political and economic reforms present opportunities for the government and international actors to alleviate and ultimately resolve the plight of the Rohingya. Guided by national and international laws, a strategy could emphasise ensuring security, upholding rights, particularly equal rights to citizenship, and promoting broad-based economic development, all in a non-discriminatory manner.

Keywords

Myanmar – Rohingya – Rakhine – statelessness – citizenship – crimes against humanity – reform – Thein Sein – Muslim – minority – ASEAN – Bangladesh

1 Introduction

Myanmar's recent reforms have opened an uncertain chapter in the history of the Rohingya, a Muslim minority group representing one of the world's most protracted cases of statelessness. Perceived by some as illegal Bengali migrants, for decades the Rohingya have suffered discrimination, forced labor, and

campaigns of violence and displacement. Over a million subsist as refugees or undocumented migrants in other countries.

The Rohingya's plight takes place against a backdrop of dramatic change, as the Myanmar government transitions from decades of military rule to civilian democracy. In less than three years, the government has worked to restore a range of civil and political rights, allowing for parliamentary elections and releasing hundreds of political prisoners. Steps have also been taken to improve interethnic relations, with efforts to end armed conflict with and allow more autonomy for some of the country's largest minorities, such as the Shan and Kachin. An ongoing process of constitutional reform creates the possibility of more progress along these dimensions. As the country continues to open up to foreign investors, press, and other visitors, it faces more scrutiny.

At the same time, ethnic and interreligious tensions have flared into some of the worst violence against the Rohingya in years. The risk of further violence can be mitigated, by taking advantage of opportunities that reforms have presented. Guided by national and international laws, the Myanmar government and regional and international actors can take steps to end the deadlock and despair that has long characterized the Rohingya's statelessness.

2 Background

For at least a millennium, Muslims and Buddhists have resided in Arakan, now known as Rakhine State, which borders Bangladesh in western Myanmar. Under British rule in the nineteenth and early twentieth centuries, large numbers of Hindu and Muslim immigrants from India came to Myanmar as labourers, administrators, and merchants. Their economic influence fuelled Burmese nationalism, with severe communal clashes taking place in Arakan during the Second World War. After the war, armed factions from both ethnic Rakhine and Muslim communities separately demanded autonomy from the central government. Since at least the 1950s, Muslims based in northern Arakan have called themselves 'Rohingya'. According to scholar Martin Smith, while no conclusive studies exist regarding how Rohingya culture arose, it 'is absolutely clear that in the Muslim-majority townships (...) in northernmost Arakan a distinctive but local Muslim culture has developed over the past two hundred years.'¹

¹ Martin Smith, 'The Muslim Rohingya of Burma,' Draft of Speech Delivered at Conference of Burma Centrum Nederland (11 December 1995).

The 1982 Burma Citizenship Law was passed following a census operation and brutal counterinsurgency campaign in 1978 that forced 200,000 Muslims to flee the country.² The law created three categories of citizens: National, Associate, and Naturalized. Nationals are persons belonging to ethnic groups who settled in the country 'as their permanent home' from before 1823. Experts assert that because the Rohingya are not among the 135 officially recognised ethnic groups categorised under the eight national groups listed in Article 3, a Rohingya cannot qualify for citizenship as a National.³ Associate citizens are those persons who successfully apply for citizenship under a previous law from 1948. An individual and his children may apply, 'furnishing conclusive evidence,' for naturalized citizenship if he entered or resided in the state before 1948 and if he has not applied for citizenship under the 1948 law.⁴ Standards for accepting evidence as 'conclusive' are unclear.

For all three categories, the Central Body may 'in the interest of the State' revoke citizenship.⁵ The Central Body may also revoke associate or naturalized citizenship for a range of specified acts, such as 'showing disaffection or

² Burma Citizenship Law 1982.

³ See IRIN, United Nations Office for the Coordination of Humanitarian Affairs, 'Myanmar: Census Offers Hope to Ethnic Groups' *IRIN News* (16 May 2012) <www.irinnews.org/report/95462/myanmar-census-offers-hope-to-ethnic-groups> accessed 20 October 2013 (quoting Chris Lewa, Director of the Arakan Project); Euro-Burma Office, 'The Rohingyas: Bengali Muslims or Arakan Rohingyas?' (*EBO Briefing Paper No. 2*, 26 March 2009) 3. Article 3 of the Burma Citizenship Law provides that '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.' Article 4 further provides that 'The Council of State may decide whether any ethnic group is national or not.' The Rohingya are currently not listed among the 135 ethnic groups to which Articles 3 and 4 are said to apply. A question remains, however, as to the bases upon which the government determines which groups are nationals under Article 4, and how discretionary that determination is. For instance, it is unclear whether the Rohingya could be included in the list of recognised groups if it can be established that the community has resided in Myanmar as a permanent home since before 1823. If so, the text of the law itself does not explicitly or necessarily exclude the Rohingya from citizenship on the basis of nationality. Rather, the manner in which these provisions have been interpreted and applied has contributed to the group's statelessness.

⁴ Burma Citizenship Law 1982, Art. 42.

⁵ *Ibid* Art. 8. An exception is a 'citizen by birth,' though how this category is different from a national is unclear.

disloyalty to the State by any act or speech or otherwise' or communicating with an organisation which is 'hostile to the State.'⁶ Under these broad terms, conceivably a person could lose his citizenship by alleging abuses committed by the state. The law does not allow for dual citizenship⁷ and an individual whose associate citizenship has ceased or has been revoked cannot reapply for citizenship.⁸ Moreover, an associate or naturalized citizen 'who leaves the State permanently' loses his citizenship.⁹ Under such terms, it is unclear whether individuals who have fled the country and lived abroad for many years would be eligible for citizenship.

In a speech given at the time the 1982 law was passed, General Ne Win suggested that the purpose of the law was conciliatory, stating that:

We are, in reality, not in a position to drive away all those people who had come at different times for different reasons from different lands. We must have sympathy on those who had been here for such a long time and give them peace of mind, (...) [for] they would be in great trouble with nowhere to go because they have lost contact with their native places.¹⁰

While referring to the ethnic Burmese as 'true citizens,' he envisioned that over time, the grandchildren of associate and naturalized citizens would become 'full citizens'. Then, in his words, 'there will be only one type of citizen'.¹¹

The number of Rohingya that have acquired citizenship under the 1982 law is unknown and thought to be very limited. Most Rohingya are either unaware of the law's requirements or, as a result of poverty or loss and destruction of documents through displacement, are unable to provide the evidence required for associate or naturalized citizenship.¹² Moreover, most Rohingya abroad have no path to citizenship in the countries in which they live. Most Rohingya are therefore stateless. However, some Rohingya received temporary

6 Ibid Arts. 35 and 58.

7 Ibid Art. 13.

8 Ibid Art. 41.

9 Ibid Arts. 34 and 57.

10 Translation of Speech by General Ne Win Provided in *The Working People's Daily* (9 October 1982).

11 Ibid.

12 See Benjamin Zawacki, 'Defining Myanmar's "Rohingya Problem"' (2013) 20 Hum. Rts. Br. 18 (stating that the citizenship law's provisions require 'an awareness of the law that few Rohingya possess and a level of proof that even fewer are able to provide').

registration cards and were permitted to vote in the May 2008 referendum on the new Constitution¹³ and in the 2010 general election.¹⁴

3 Recent Conditions for Rohingya

In 1991 and 1992, over 250,000 Rohingya refugees fled into the Cox's Bazar area of Bangladesh following a violent campaign by the border security force, Nay-Sat Kut-Kwey Ye (NaSaKa).¹⁵ NaSaKa's purpose was to secure the border with Bangladesh and quell a Rohingya insurgency movement thought to consist of a few hundred guerilla fighters. By 1996, many of the refugees were repatriated, with the United Nations Refugee Agency (UNHCR) maintaining two camps in Bangladesh sheltering 28,000 refugees. Over 200,000 Rohingya unregistered refugees still subsist in the Cox's Bazar region, with thousands more in Egypt, Pakistan, Saudi Arabia, Malaysia, Thailand, Indonesia, the United Arab Emirates, and Japan.¹⁶ A lengthy 2010 study conducted by the Irish Centre for Human Rights determined that 'there exists substantial material to support the conclusion that crimes against humanity are currently being committed against the Rohingya minority group in North Arakan State.'¹⁷

June and October 2012 saw some of the worst inter-communal violence in Arakan in years, resulting in around 200 deaths and 150,000 persons displaced.

13 Irish Centre for Human Rights, *Crimes against Humanity in Western Burma: The Situation of the Rohingyas* (National University of Ireland, 2010) 27.

14 IRIN, 'Myanmar: What Next for the Rohingyas?' *IRINNews* (29 March 2012) <www.irinnews.org/report/95190/myanmar-what-next-for-the-rohingyas> accessed 20 October 2013.

15 Reports of murder, rape, destruction of property, and forced labour are well-documented. Human Rights Watch, 'Burma: The Rohingya Muslims: Ending a Cycle of Exodus?' (1 September 1996); Human Rights Watch, 'Burma: Rape, Forced Labor and Religious Persecution in Northern Arakan' (May 1992) 7-21; Amnesty International, 'Union of Myanmar (Burma): Human Rights Violations against Muslims in the Rakhine (Arakan) State' (May 1992) Doc. ASA 16/06/92.

16 *Crimes against Humanity in Western Burma* (n 13) 27. Rohingya refugees began fleeing to some of these countries in the 1980s.

17 Ibid 146. Article 7 of the Rome Statute of the International Criminal Court defines crimes against humanity as 'any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.' Acts enumerated include but are not limited to murder, enslavement, deportation or forcible transfer of population, rape, persecution, and enforced disappearance. Rome Statute of the International Criminal Court, Art. 7 (2002). Myanmar is not a party to the Rome Statute.

Before and after the incidents, a local order of Buddhist monks and a Rakhine nationalist party issued numerous statements calling for the removal of Rohingya and isolation of Muslims more generally.¹⁸ In March 2013, violence among Muslim and Buddhist communities in the central town of Meiktila resulted in 40 deaths and 12,000 internally displaced. According to Human Rights Watch, local police and NaSaKa did little to prevent violence against Muslim communities and subsequently participated in atrocities.¹⁹

In August 2012, the national government formed the Rakhine Investigation Commission, whose purpose was 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.'²⁰ The Commission was criticised for lacking a Rohingya representative and for referring to the Rohingya community as 'Bengalis,' decisions that reflected the depth of ethnic tensions.²¹ Notably, the report found that 'only 4 percent of Rakhine interviewed stated that Bengalis inside the country should not be given citizenship.'²² Moreover:

Although the citizenship status of some Bengalis living in Rakhine State is still unclear, the government and various organizations should not violate human rights principles in dealing with them, and should ensure that their human security concerns and basic social needs are addressed.²³

18 Human Rights Watch, *All You Can Do Is Pray: Crimes against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State* (22 April 2013) 3. See also Hanna Hinstrom, 'The Freedom to Hate,' *Foreign Policy* (Washington DC, 14 June 2012) <www.foreignpolicy.com/articles/2012/06/14/the_freedom_to_hate?print=yes&hidecomments=yes&page=full#> accessed 24 September 2013 (discussing how a freer media environment has enabled the proliferation of anti-Rohingya views).

19 Human Rights Watch, *All You Can Do Is Pray* (n 18) 3. President Thein Sein abolished NaSaKa in July 2013. Alisa Tang, 'Myanmar Abolishes Notorious Border Guard Force,' *Thomson Reuters Foundation* (London, 15 July 2013) <www.trust.org/item/20130715135951-b3jw2/?source=hptop> accessed 24 September 2013.

20 Rakhine Inquiry Commission, *Final Report of Inquiry Commission on Sectarian Violence in Rakhine State* (8 July 2013) 2.

21 International Crisis Group, *The Dark Side of Transition: Violence against Muslims in Myanmar*, International (1 October 2013) 8 n 45 (citing potential concern that including a Rohingya leader on the commission 'would have been counterproductive by making any such decision the main focus of discussion, and likely making it impossible to get any Rakhine representatives to join the commission').

22 Rakhine Inquiry Commission (n 20) 63.

23 Ibid 64.

Identifying a review of the minority group's right to citizenship as a priority, the report recommended that 'the Government should not only apply existing national laws but also proceed in line with international agreements.'²⁴ In light of international attention and to quell inflammatory rhetoric from all sides in the conflict, the Commission also encouraged the government to be transparent in sharing information about the situation in Arakan.²⁵

Displaced Muslim communities now reside in makeshift camps prone to flooding. Access to drinking water and health care is extremely limited and malnutrition rates are high.²⁶ Diarrhea, tuberculosis, and dengue fever are widespread. The only schooling available to children consists of community madrassas. Government delays in granting travel authorization and intimidation by Rakhine community leaders have obstructed humanitarian aid. Under orders that are strictly enforced in Northern Rakhine State, Rohingya must seek permits for travel (even inside townships), marriage, and repair of houses and religious buildings.²⁷ They cannot pursue sustainable livelihoods, but no plans appear to be under way to enable the displaced communities to return. According to one observer, 'Aside from the shells and facades of a few mosques here or there in the city, there is absolutely no Muslim presence in Sittwe today. It is like it has been totally erased.'²⁸ According to the government, tensions are

24 Ibid 65.

25 Ibid 68-69.

26 Refugees International, 'Myanmar: Protecting Minority Rights Is Non-Negotiable' *Refugees International Field Report* (30 May 2013). According to RI, 'The government does not permit foreign doctors to provide secondary health care, and Rohingya patients die unnecessarily as a result.' See also IRIN, 'Myanmar: Displaced Rohingya Living "Worse than Animals,"' *IRINNews* (4 October 2012), <www.irinnews.org/report/96449/myanmar-displaced-rohingya-living-worse-than-animals> accessed 24 September 2013; Jared Ferrie and Vickie Hawkin, 'Muslims Blocked from Rakhine Township Hospitals, Says MSF,' *ABC Radio Australia* (22 October 2013), <<http://networkedblogs.com/PPG3P>> accessed 23 October 2013 (reporting that Muslims can only seek treatment at Sittwe General Hospital in part because medical staff in township hospitals fear reprisals for providing treatment to Muslims); Nyein Nyein, 'Children Are Victims in Arakan State, UNICEF Says,' *The Irrawaddy* (8 October 2013) <www.irrawaddy.org/burma/children-victims-arakan-state-unicef-says.html> accessed 23 October 2013 (reporting that unrest has caused children psychological trauma and 'made it nearly impossible for many affected children to continue their education or access health care').

27 Refugees International, 'Myanmar: Protecting Minority Rights' (n 26).

28 Refugees International, 'Life in the Rohingya's Myanmar: A Q & A with photojournalist Greg Constantine' (20 June 2013), <<http://refugeesinternational.org/blog/life-rohingyas-myanmar-q-photojournalist-greg-constantine>> accessed 24 September 2013.

still too high to allow returns to take place.²⁹ In mid-2013 and following criticism from the UN and advocacy groups, the government said it would review its policy limiting each Rohingya family to two children only.³⁰ Last August, 200 Buddhists mobbed the vehicle of a UN human rights envoy during his visit to Meiktila.³¹ Journalists reporting on the situation have also faced local intimidation and restrictions.³²

Approximately 800,000 Rohingyas live in Myanmar, but more and more Rohingya are expected to risk their lives leaving the country on rundown boats to seek refuge in Malaysia, Thailand, and elsewhere. In the past year, at least 35,000 have made this attempt,³³ with at least 785 individuals reported to have drowned.³⁴

Living conditions abroad are also desperate, as receiving states aim to discourage a mass migration. In August 2012, Bangladesh ordered humanitarian organisations to cease operations in makeshift camps, whose conditions were previously described by Physicians for Human Rights as 'among the worst they had ever seen.'³⁵ Sexual and gender-based violence against women and girls

29 Refugees International, 'Myanmar: Protecting Minority Rights' (n 26).

30 AFP, 'Government to Examine Two-Child Policy Targeting Rohingya' *Agence France Presse* (3 June 2013), <www.dvb.no/news/govt-to-examine-two-child-policy-targeting-rohingya/28598> accessed 26 September 2013.

31 TAP, 'Myanmar: Mob Swarms Car of U.N. Rights Envoy' *New York Times* (21 August 2013) <www.nytimes.com/2013/08/22/world/asia/myanmar-mob-swarms-car-of-un-rights-envoy.html?src=recg&r=1&._r=1> accessed 26 September 2013.

32 Hanna Hindstrom, 'The Freedom to Hate' *Foreign Policy* (Washington DC, 14 June 2012), <www.foreignpolicy.com/articles/2012/06/14/the_freedom_to_hate?print=yes&hide_comments=yes&page=full#> accessed 24 September 2013 (noting that broadcaster Democratic Voice of Burma had faced a cyber attack on its website); Hanna Hindstrom, 'Burma Blacklists Two US-Based Reporters for Covering Rohingya Crisis' *Democratic Voice of Burma* (Oslo, 28 August 2013) <www.dvb.no/dvb-video/burma-blacklists-two-us-based-reporters-for-covering-rohingya-crisis/31983> accessed 24 September 2013.

33 John Sparks, 'Nightmare Island Where Traffickers Imprison Burma's Rohingya' *Channel 4 News* (8 August 2013), <www.channel4.com/news/nightmare-island-where-traffickers-imprison-burmas-muslims> accessed 24 September 2013 (citing Arakan Project).

34 Danny Gold, 'Prison camps' or Risking Death at Sea' *NBC News* (7 September 2013), <http://worldnews.nbcnews.com/_news/2013/09/07/20231098-prison-camps-or-risking-death-at-sea-anti-muslim-mob-violence-provokes-dilemma-in-myanmar?lite> accessed 24 September 2013.

35 IRIN, 'Bangladesh: NGO Ban Hurting Undocumented Rohingya' *IRINNews* (17 December 2012) <www.irinnews.org/report/97061/bangladesh-ngo-ban-hurting-undocumented-rohingya> accessed 24 September 2013.

from these camps is also well-documented.³⁶ In Malaysia, Rohingya refugees are perceived as illegal migrants and are vulnerable to detention. In Thailand, Rohingya have ended up in the hands of traffickers or are being held indefinitely in crowded detention centres.³⁷ Despite United Nations appeals, Thailand and Bangladesh pushed asylum-seekers back out to sea in 2009, 2011, and 2012.³⁸

4 Analysis and Conclusions

Cultural and religious differences, legacies of colonial policies, postcolonial nationalism oriented around ethnic Burmese and Buddhist identity, and lack of consensus on historical records partly explain why the Rohingya have not become part of Myanmar's national identity. Statelessness is thus a consequence and a cause of their continuing marginalisation. Without citizenship, they do not 'belong.' This perception has translated into discrimination, deprivation of rights, and violence.³⁹

Advocacy groups and international leaders have increasingly warned that tensions in Arakan and the lack of long-term solutions for the Rohingya could undermine Myanmar's reform process and impose regional consequences.⁴⁰

36 Lynn Yoshikawa and Melanie Teff, 'Bangladesh: The Silent Crisis' *Refugees International Field Report* (19 April 2011).

37 John Sparks (n 33). See also IRIN, 'Analysis: In Search of a Regional Rohingya Solution' *IRINNews* (26 July 2013) (stating that 'nearly 2,000 Rohingya men, women, and children are now in immigration detention centres and government shelters in Thailand') <<http://reliefweb.int/report/myanmar/analysis-search-regional-rohingya-solution>> accessed 24 September 2013.

38 IRIN, 'Analysis: In Search of a Regional Rohingya Solution' (n 37) (stating that 'nearly 2,000 Rohingya men, women, and children are now in immigration detention centres and government shelters in Thailand').

39 See Benjamin Zawacki (n 12) 18 (claiming that systematic discrimination against the Rohingya 'makes such direct violence against the Rohingya far more possible and likely than it would be otherwise'); Lawi Weng, 'Anti-Rohingya Demonstrators in Arakan Are Assembly Law's Latest Victims' *The Iriwaddy* (5 September 2013) ('Protesters argued that the Rohingyas—who are not granted Burmese citizenship under the 1982 Citizenship Law—had no right to a land claim in Kyauktaw.').

40 See UN HRC, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar' (6 March 2013) UN Doc A/HRC/22/58, para 46. ('The Special Rapporteur Tomás Ojea Quintana believes that Rakhine State is going through a profound crisis that threatens to spread to other parts of the country and has the potential to undermine the entire reform process in Myanmar.').

Some have cautioned that protracted marginalisation can lead to radicalisation within the community and calls for separation.⁴¹ Moreover, Muslims in Southeast Asia have become increasingly concerned about violence against Muslims in Myanmar,⁴² with extremist groups having recently plotted or carried out attacks in Malaysia and Indonesia.⁴³ In November 2012 in Yangon, U.S. President Barack Obama urged an end to 'crushing poverty and persecution' in Rakhine State, emphasising that 'the Rohingya hold within themselves the same dignity as you do, and I do.'⁴⁴ In July 2013, UN Secretary-General Ban Ki-Moon urged the Myanmar Government to take 'concrete action' to protect minorities and punish perpetrators of atrocities in Arakan.⁴⁵

The process of reform creates opportunities to take concrete, constructive action. The Myanmar Government has indicated that it is sensitive to how instability in Arakan threatens reforms and regional stability. It gave the Rakhine Investigation Commission a broad mandate to examine root causes and promote peace and reconciliation. President Thein Shein has condemned the violence and promised to take a 'zero-tolerance approach to any renewed

41 Chris Lewa, 'Testimony to the United States Commission on International Religious Freedom' (3 December 2007) ('The resentment spread by these policies combined with sheer poverty are conducive to radicalisation.');

Euro-Burma Office, 'The Rohingyas' (n 3) ('The more the Arakan Muslims are excluded and marginalised in Arakan, the more likely they are to ask for a separate state. They will not ask for a state if they can co-exist as equals in Arakan State.').

42 Over the course of March-April 2013, anti-Muslim violence had spread to other areas in the country and against Muslim communities that have full citizenship, to the city of Meiktila, Bago Region, Oakkan town, and to Kachin and northern Shan States.

43 See Eliane Coates, 'Myanmar's Religious Violence Threatens Southeast Asia' *Today Online* (2 July 2013) <www.todayonline.com/commentary/myanmars-religious-violence-threatens-south-east-asia> accessed 20 October 2013 (recounting that 'since May at least eight people have died in a series of retaliatory attacks by Muslims from Myanmar against Myanmar Buddhists in Kuala Lumpur,' that Indonesian police foiled an attempt by Indonesian militants to bomb the Myanmar embassy in Jakarta, that over a thousand Indonesian Muslims protested outside the same embassy to denounce persecution of Muslims in Myanmar, and citing 'concerns that radical Muslims outside Myanmar could exploit the situation . . . to recruit followers').

44 Office of the Press Secretary, 'Remarks by President Obama at the University of Yangon' (19 November 2012) <www.whitehouse.gov/the-press-office/2012/11/19/remarks-president-obama-university-yangon> accessed 24 September 2013.

45 Thomas Fuller, 'U.N. Secretary-General Warns Myanmar on Religious Violence' *New York Times* (11 July 2013) <www.nytimes.com/2013/07/11/world/un-secretary-general-warns-myanmar-on-religious-violence.html> accessed 24 September 2013.

violence and against those who fuel ethnic hatreds.⁴⁶ According to International Crisis Group, police appear to be responding to incidents 'more quickly and more assertively,' and more Buddhist perpetrators are being prosecuted and imprisoned.⁴⁷

The complex task of unraveling decades of interethnic distrust and promoting stability will require a sustained and comprehensive strategy, with national and international legal principles helping to guide and reinforce the effort. Under the 2008 Constitution, Myanmar is a 'genuine, disciplined multi-party democratic system,' which seeks to 'enhanc[e] the eternal principles of Justice, Liberty and Equality in the Union.'⁴⁸ Chapter VIII sets out principles of nondiscrimination, equal rights, and affirms the rights of citizens to practice religion freely, develop their culture, reside where they wish, own property, and form associations. It prohibits forced labour or enslavement.⁴⁹ Under the Charter of the Association of Southeast Asian Nations (ASEAN) and the UN Charter, Myanmar has pledged to maintain international peace and security, affirm fundamental human rights, and promote social progress.⁵⁰ The ASEAN Human Rights Declaration and the Universal Declaration of Human Rights (UDHR) affirm widely recognised principles of nondiscrimination, equality, freedom of religion, right to nationality and asylum from persecution, and other basic rights regardless of citizenship status.⁵¹ Although Myanmar has not ratified

46 President Office, 'President U Thein Shien delivers speech at roundtable discussion on Myanmar's complex transformation at Chatham House in London' Republic of the Union of Myanmar President Office (16 July 2013) <www.president-office.gov.mm/en/?q=briefing-room/speeches-and-remarks/2013/07/17/id-2372> accessed 20 October 2013 (Chatham House Speech).

47 International Crisis Group, *The Dark Side of Transition* (n 21) 25.

48 Constitution of the Republic of the Union of Myanmar 2008, Arts. 6(e) and 7.

49 Ibid Chapter VIII. That these provisions apply to citizens does not necessarily preclude Rohingya, some of whom may actually qualify for citizenship under the 1982 Citizenship Law. Moreover, these rights are guaranteed under international standards regardless of citizenship status.

50 Charter of the Association of Southeast Asian Nations (adopted 20 November 2007, entered into force 15 December 2008), Preamble, Arts. 1-2 (2007); Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) (United Nations Charter), Preamble, Art. 1 (1945).

51 ASEAN Heads of State/Government, 'ASEAN Human Rights Declaration'(21st Summit, 17-18 November 2012), Arts. 1-3 (nondiscrimination and equality), 15 (movement), 16 (asylum), 18 (nationality), and 22 (thought and religion). Article 22 specifies that 'All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.' Universal Declaration of Human Rights (adopted 10 December 1948 UNGA

international statelessness conventions, it has ratified the Convention on the Rights of Child (CRC), which guarantees protection and a set of rights for children regardless of status,⁵² and requires that children be registered immediately after birth and possess the right to acquire a nationality. These rights must be implemented 'in particular where the child would otherwise be stateless.'⁵³

With respect to other states, the principle of *non-refoulement* forbids the expulsion of refugees to a country where they would be persecuted.⁵⁴ Under the UN Charter and the UDHR, states 'have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.'⁵⁵ ASEAN Member States have pledged to assist persons in distress at sea, work jointly to prevent and combat human trafficking, as well as protect women and children from discrimination and violence and ensure survivors' access to education and health care.⁵⁶ Moreover, under the

Res 217 A(III) (UDHR), Arts. 1-2 (equality and nondiscrimination), 13 (movement), 14 (asylum), 15 (nationality), and 18 (thought and religion).

52 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Art. 2.

53 Ibid, art. 7. See also Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175, Art. 1(1) (Reduction of Statelessness Convention) ('A contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless'). Myanmar has also ratified the Convention on the Elimination of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW Convention). Article 9 grants women equal rights with men to nationality and with respect to nationality of their children. Article 3 obligates States to take 'all appropriate measures' to ensure the 'full development and advancement of women.'

54 Technically, this principle applies to states that have ratified the UN Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugees Convention), which neither Bangladesh, Indonesia, Thailand, nor Malaysia has signed. It also requires that the individuals in question have actually obtained refugee status. However, the notion of *non-refoulement* has gained such universal acceptance that situations in which states refuse likely refugees from entering their countries are often decried.

55 Universal Declaration of Human Rights (n 51) (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), United Nations Charter (n 50) Preamble (Member States resolve to combine their efforts to achieve fundamental human rights, tolerance, international peace, and social progress).

56 See generally ASEAN Heads of State/Government, 'ASEAN Declaration on Cooperation in Search and Rescue of Persons in Distress at Sea' (Hanoi, 27 October 2010); ASEAN Heads

doctrine of Responsibility to Protect, the international community is committed to taking collective action to protect populations from serious crimes such as crimes against humanity and ethnic cleansing if a state fails to protect its populations.⁵⁷

With these legal principles in mind, the strategy moving forward could emphasise ensuring security, upholding rights, and promoting broad-based economic development in Arakan, all in a nondiscriminatory manner. On security, segregation of Muslim and Buddhist communities, while arguably necessary in the short run, is likely to be counterproductive in the medium to long run. Political, religious, and other community leaders could work jointly to reduce tensions between groups, through interfaith dialogues, informal procedures to prevent or speedily resolve disputes, promotion of tolerance, and condemnation of hateful speech or incitement. International assistance could support police reform that strengthens community policing and riot control,⁵⁸ as well as increase capacity in the judicial system to quickly and fairly prosecute perpetrators of violence.

Such efforts will help create space for addressing one of the sensitive roots of conflict in Rakhine State: the longstanding need to resolve the legal status of the Rohingya community within and outside Myanmar. As recommended by the Rakhine Investigation Commission, review of citizenship rights must be a priority, and the government should 'proceed in line with international agreements.' Moreover, President Thein Sein has said that peace efforts within the

of State/Government, 'ASEAN Declaration on the Elimination of Violence against Women in the ASEAN Region' (Jakarta, 30 June 2004); ASEAN Declaration on the Elimination of Trafficking in Persons, Particularly Women and Children (2004); ASEAN Heads of State/Government, 'Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children' (Ha Noi, 28 October 2010); Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children in ASEAN (Darrasulam, 9 October 2013).

57 The UN General Assembly agreed upon the Responsibility to Protect doctrine in the World Summit Outcome Document in 2005. UNGA, '2005 World Summit Outcome' (20 September 2005) UN Doc A/60/L.1, para 139 (affirming that '[t]he international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with [the UN Charter] to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity' and expressing states' intent to commit themselves to helping other states 'build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflict break out').

58 International Crisis Group, *The Dark Side of Transition* (n 21) 22.

country 'must be connected to the emergence of a more inclusive national identity. Myanmar people of all backgrounds and all faiths – Buddhist, Christian, Hindu and others – must feel part of this new national identity.'⁵⁹ Because the citizenship law defines the relationship of individuals to each other and the state, reviewing the law is inherent to the process of forging an inclusive national identity. Whether or not the law is amended, to be consistent with constitutional principles and international obligations, the law should be applied without discrimination and guarantee citizens equal rights regardless of how citizenship is acquired. Applicants should be able to acquire citizenship insofar as they possess a 'genuine and effective link' to Myanmar.⁶⁰ Birth registration and citizenship for all children who would otherwise be stateless should be automatic. The law should be interpreted and applied so as to avoid statelessness,⁶¹ which could mean adjusting evidentiary standards to take into account the lack of documentation wrought by conflict, displacement, and poverty. To further promote inclusivity and equality, discriminatory laws and regulations should be repealed and economic policies should seek to engage and benefit all communities, ethnic Rakhine and Muslim, within the resource-rich state.

Increasing social acceptance of the Rohingya and resolving the group's legal status will ultimately depend on the Myanmar Government's political will to take concrete action. In turn, the government's commitment will be important for enabling regional and international actors to act according to their own

59 Chatham House Speech (n 46).

60 *Nottebohm case (Liechtenstein v. Guatemala)* (Preliminary Objections) [1955] 22-23 (setting out a theory which has since become an international standard for recognising nationality based on a 'genuine and effective link,' where factors establishing factual ties to a country may vary but may include habitual residence, family ties, participation in public life, attachment shown by the individual to a given country, or the centre of the individual's interests). See also 'Benjamin Zawacki (n 12) 20 (recommending that 'Rohingyas born in Myanmar who would otherwise be stateless should be granted citizenship, as should those who are not born there but are able to establish a genuine and effective link to the country'); Melanie Teff and Sarnata Reynolds, 'Rohingya in Burma: Spotlight on Current Crisis Offers Opportunity for Progress,' *Refugees International* (30 October 2012) 3 (suggesting that Parliament's Committee on the Rule of Law 'clarify that [the citizenship law] provides citizenship to all those born in or with genuine and effective links to Burma, as well as their descendants').

61 Introductory Note by the United Nations High Commissioner for Refugees, Reduction of Statelessness Convention (n 53) 3 ('Underlying the 1961 Convention is the notion that while States maintain the right to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided.').

international obligations. With donor support, ASEAN Member States and Bangladesh could implement a regional policy that allows Rohingya boat people to disembark and receive temporary assistance. Such coordinated efforts could also seek to prevent and punish trafficking of Rohingya, and to facilitate safe and voluntary returns to Myanmar. In keeping with commitments under the UN Charter, UDHR, and other instruments, the international community could leverage increasing trade and diplomatic ties to encourage the Myanmar Government to protect minorities and end discrimination against them. As President Thein Sein has said, 'We cannot let ethnic or religious differences become an excuse to revert to authoritarianism.'⁶² Rather, constructively managing ethnic and religious diversity will be central to the country's aspiration to bring about a genuine democracy.

62 Chatham House Speech (n 46).