

# MYANMAR'S ROHINGYA: CULTURE, VIOLENCE AND HUMAN RIGHTS ABUSES

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## **Abstract**

*This paper will consider the structural nature of human rights regarding Rohingya as well as a discussion of the failure of transformative peace. The paper will proceed first by considering the national standing of Rohingya regarding citizenship/nationality then consider the context of Myanmar being an ASEAN member state and avenues for redress at the regional level. Next will be an analysis of Myanmar's international human rights obligations and lastly consider peace or the lack thereof from Galtung's theory of cultural and structural violence.*

## **Citizenship and Nationality**

Internally, the Rohingya situation can be framed within the context of constitutional citizenship and rights thereof to be supported and protected by authorities of the Myanmar state. Citizenship or minority rights (applicable to the Myanmar case as many of its ethnics have a large degree of negotiated autonomy) are intimately tied to individual and groups ability to flourish within their culture and exercise the full range of accordant rights which stem from being part of a recognized and legitimate community with legal standing and protection (Kymlicka 2011: 22, Raz 1994). Kymlicka (2011) argues that minority rights protection serves to protect a group against external forces that might seek to threaten or undermine a particular group, in particular economic and/or political power of a majority group to exercise destructive actions upon a minority. This stands as a central point regarding citizenship and minority rights with regard to Rohingya as they are vulnerable group and have had all their rights violated by majority populations in their proximity that enjoy protection of the state via citizenship whereas they have no viable avenue for exercising defense nor protection from the state (Adjami and Harrington 2008). Notwithstanding the governments allowance for Rohingya repatriation in 1992 and issuing vote in temporary resident cards in 1994 and 2008 as well as allowing them to form political parties in 1990 and vote in 2008 and 2010 (Zawacki, 2013: 20) their lack of legal citizenship stands as a marker of their 'illegal' status vis-à-vis other ethnics which serves to alienate them and contribute to both structural and cultural violence.

Citizenship in Myanmar is defined by its constitution which refers to 'national races' (CRUM, 2008: Article 15) and further delegates citizenship confirmation to organic legislation (CRUM, 2008: Article 346). Organic legislation specifically refers to the eight major ethnicities as entitled to citizenship "Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan" (BCL, 1982: Article 3). The Central Body composed of three ministers decides on citizenship applications (BCL, 1982: Article 67) based on Council of State decisions of whether an ethnic group is a national group (BCL, 1982: Article 4). These state institutions in 1982 conferred citizenship to 135 ethnic groups (Zawacki, 2013: 18) of which the Rohingya were not included thereby effectively taking away all legal citizenship/nationality rights and making them stateless, even though their ancestral lineage predates 1823 as stipulated by the Citizenship law (BCL, 1982: Article 3, CORE, 2012: 23). Citizenship and nationality confer legal identity to groups and provide the basis for aggregate rights of a civil, political, cultural and economic nature. Without nationality individuals and groups are put in an asymmetric position with the state and a socially and culturally inferior position with other national groups automatically creating the basis for othering. Coupled with latent discrimination othering of an official nature provides the stimulus for negative stereotyping and violent behavior. Nationality and citizenship is a national issue which is a key marker of sovereignty in determining who is and who is not a part of your community as such it is very difficult for the international community to intervene on the basis of citizenship laws.

### **Statelessness and International Law**

As the Rohingya are stateless their situation according to international law would fall under the Convention Relating to the Status of Stateless Persons. But as Zawacki argues, this convention is vague as it applies for those deemed to be residing legally in a territory (Zawacki 2013: 20, UNHCR 1954: Article 1). Furthermore, given the nature of statelessness and displacement of Rohingya's to neighboring states the argument concerning legal obligations of neighboring states is moot given that neither Myanmar nor its neighbors have signed nor ratified the CRSSP (UN 1954). This does not infer that Myanmar and its neighbors have no obligations to mankind simply due to non-ratification, they most certainly do have obligations to uphold the highest of rights embodied in the right to life articulated in the Universal Declaration of Human Rights (UDHR: Article 3). The problem with this line of logic is that the UDHR is a part of customary law which is dependent on general and consistent state practice and *opinio juris* and as such both practice and declaration would point to an unwillingness to grant nationality to this ethnic group (Malanczuk 1997: 39). That said the obligation to protect life is then both a national concern as well as an international concern.

The most applicable international treaty would be the Convention on the Reduction of Statelessness which clearly obligates states not to undertake measures which would aggravate the situation towards a group of people which would otherwise be stateless (UN 1961) but once again neither the focal state nor any of its neighbors are parties to this treaty thus rendering a strict legal reading moot (Ibid). It can be argued that Myanmar has ratified CEDAW and CRC and that its obligations under these respective treaties include but are not limited to recognizing the right to acquire nationality (CEDAW: Article 9, CRC: Article 7) and rights to services such as education and medical care (CEDAW: Article 10, CRC: Article 24c, 28). These rights target the elimination of discrimination based on nationality which finds its source in the UDHR which states unequivocally that "everyone has the right to a nationality" and will not "be arbitrarily deprived of his nationality nor denied the right to change his nationality" (UDHR: Article 15). However, the struggles that Rohingya must go through to obtain citizenship is via marriage which is hamstrung by intransigence of state authorities thus rendering them essentially at the mercy of state officials which are against them (Fortify Rights 2014).

The internal structural situation regarding Rohingya and the their lack of nationality points to the precarious nature of their existence and vulnerability vis-à-vis the state as well as other antagonistic ethnic group wishing them harm. The very fact that they are stateless and are not accepted as suitable candidates for citizenship either in Myanmar or Bangladesh leaves them without standing before national jurisdictions and mechanisms for justice aside from that of the international community which is not willing to prioritize their plight.

Effectively within the Burmese case the 1982 Citizenship law erases their history and rights to live in peace in their ancestral lands due to non-recognition of their existence prior to 1823 as well as places them in a disproportionately vulnerable situation with other groups in Rakhine state.

### **Regional Mechanisms for Support**

Rohingya displacement due to organized and widespread violence has led to spillover of a domestic situation onto the regional scene as fleeing persons have entered both Thai and Malaysian waters and territory seeking refuge from persecution (Bangkok Post 2014, Reuters 2014). The spread of Myanmar's Rohingya problem would thus warrant an explanation of regional mechanisms, namely ASEAN's failure to deal effectively with abuses perpetrated upon these people.

Countries effected by the Rohingya situation are member states of ASEAN and as such it is prudent to consider its regional human rights mechanism, AICHR, and the underlying norms that guide behavior which will impact significantly the attention given to the problem. AICHR is within the larger structure of ASEAN itself and as such is guided by its norms of behavior. ASEAN is an intergovernmental organization guided by the so-called "ASEAN Way" which denotes its operational procedures and norms that inform member states regarding intergovernmental

relations in ASEANs regimes (Acharya 1997, 2001, 2005, Ba 2009). ASEANs constitutive norms are composed of regulative norms consisting of integrity of state sovereignty and independence, no external interference or subversion (TAC Article 10), non-interference in internal affairs and peaceful settlement of disputes (TAC Article 2, 11, 13) and procedural norms of consultation and consensus in decision-making process of (Narine 1997: 365, 1999: 360, Sebastian and Lanti 2010: 155). When put together this essentially means that any problem, decision, initiative or whatnot is subject to member state veto. Put within the context of larger regional issues and problems it means that for ASEAN to deal with the Rohingya problem, Myanmar would have to censure itself and allow for regionalization and internationalization of its Rohingya problem. Given that this will not happen the opportunity for engaging in a substantial and public fashion at a regional organizational level that would address the Rohingya issue is less than slim.

The ASEAN Charter stipulates the formation of a human rights body (ASEAN 2007: Article 14) with Terms of Reference adopted in 2009 within the framework of the Political-Security Community. Since AICHR is situated within this community, structurally this leads to state control over final decision-making authority as it is a purely intergovernmental pillar with no room for final decisions outside of the purview of states (ASEAN 2009a: supra 15, Petcharamesree 2013). AICHRs ToR mandate provide for among others, developing common positions regarding regional HR issues along with promotion and protection of human rights (ASEAN 2009b: supra 4). But given that AICHR is guided by ASEAN norms its ability to address the Rohingya is constrained structurally. Furthermore, due to Thein Sein's classification of Rohingya as a "national security threat" (DVB 2012) the ability of ASEAN, its member states or any of its organs to deal with the issue is beyond consideration.

### **Conflict: Structure and Culture**

Galtung argues that latent violence occurs as a direct result of structural and cultural characteristics of societies that aggravate situations into full blown violence (Galtung 1996). Direct violence according to Galtung is violence which we can see perpetrated and is a result of structural characteristics that can include legal, economic and political inequalities and cultural characteristics bound in stereotypes and perceptions of others. Structural violence is composed of the structures which organize society such as laws, institutions and mechanisms and is seen as easy enough to alter. Cultural violence is seen as deeply embedded in psyches of individuals and groups which are far more difficult to change whereby "cultural violence makes direct and structural violence look, even feel, right – or at least not wrong" (Galtung 1990, Graf, Krammer and Nicolescou 2007).

The UDHR states unequivocally that rights shall not be distinguished based on "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (UDHR: Article 2). It goes further stating that family is "the natural and fundamental group unit of society and is entitled to protection by society and the State" and that both genders have the right to marry and found a family without discrimination based on "race, nationality or religion" (UDHR: Articles 16.1, 16.3). However, in the case of the Rohingya, state authorities have refused to issue birth certificates for children since the early 1990's and making it compulsory for couples to register their marriages with the Myanmar Border Guard Force often time waiting years and having to pay heavy fees for processing (Human Rights Watch 2013, The Arakan Project 2011). Furthermore, and most disturbing is the 2005 law restricting Rohingya family births to no more than two children per family (Ibid). This is clearly discriminatory and targeted at Rohingya's of Buthidaung and Maungdaw townships in Rakhine state. This is only compounded by Bangladesh's now official policy of banning marriages between its nationals and Myanmar Rohingya due to fears of them gaining citizenship (The Indian Press 2014).

The ability to freely move is highly curtailed, often needing permits to travel outside townships and Rakhine state opening up this population to systematic abuse and exploitation to those who have the means to travel. This practice stems from their disenfranchisement with the 1982 Citizenship law and inability to register as foreign residents thus relegating them to illegal immigrants (UNESCO 1995). This is in direct contravention of Article 13 of the UDHR which states "everyone has the right to freedom of movement and residence within the borders of each state" (UDHR: Article 13.1). A pointed case from 2005 was when "the wife and three children of U Kyaw Min, a Rohingya MP of the National Democratic Party for Human Rights (NDPHR) were sentenced to 17 years each for travelling and residing in Yangon (Rangoon) without a permit" (MRGI 2008).

It is interesting to note that at present no such restrictions on movement are applicable to any other ethnic group in Rakhine state nor Myanmar and as such this policy specifically targets for discrimination and control one population only (Fortify Rights 2014).

The Myanmar government does not provide education past primary schools to Rohingya as with other ethnicities which are entitled to state sponsored secondary education. This coupled with the inability to travel freely have dire consequences for this population in terms of educating themselves to know their rights or enter occupations other than forced or manual labor due to the structural impediments of not being able to access education or other basic services which also in contravention of Article 26.1 (UDHR: Article 26.1).

### **Discussion and Conclusions**

What is shown above is the structural nature of violence via law which specifically discriminates against Rohingya alone. The consistent pattern of discrimination dates back at least to 1993 when the Burmese SLORC began issuing Regional Orders to curtail movement, marriage, procreation, education, health services and the like to this one single ethnic population. It can be assumed by the rhetoric of Myanmar's leaders pertaining to the illegal alien nature of these people that they have created second class humans which are in close proximity to other ethnic groups. As such it is easy to understand the othering taking place with regard to cultural markers, stereotyping and cultural asymmetry between different ethnic groups. When authorities purposely place a group of people in a subservient position and allow other groups to take advantage of them due to government instigation all that is needed is a trigger for direct violence to occur. This occurred in 2012 when three Rohingya men allegedly raped and murdered a Buddhist woman and led to major rioting where some 70 plus Rohingya men were selectively killed and thousands of homes burned.

The nature of this direct violence is instructive in that an assault on one person led to a massive outpouring of hate and violence against an entire group people. This indicates that underlying this violence was a large degree of pent up anger and hate towards Rohingya which indicates a large degree of cultural violence already existing. The circular nature of cultural violence leading to structural violence which sparks direct violence which creates more of the same is not only disturbing but instructive in how discrimination and state policy mix to create desperate situations. At the base of this is both cultural discrimination and human rights abuses coming together to prevent the establishment of peace as they are both consistently feeding off of one another to create deeper animosities and marginalization.

Conflict transformation is dependent on the so called A-B-C approach of changing and correcting attitudes of people which is highly dependent on mutual understanding and integration of ideas and perspectives of others so as to engage human emotions of empathy and kindness. Behavioral change is dependent on having attitudinal changes which self-reinforce different behaviors which change and do away with the underlying contradictions of action to allow for structural autonomy and self/cultural realization. Put another way, if you take away and continually abuse a groups rights to such a degree that their best hope is to live in a refugee camp in Bangladesh you have effectively created a situation where these people have no dignity, are disgraced, unwanted and de-humanized.

By doing this not only is state policy de-humanizing Rohingya but it is creating a cultural model where anyone can abuse them with impunity. By creating a stateless population of over 2 million the Myanmar government has effectively put this entire group into the void of the international community as there is no country with the capacity or willingness to take this many people thus leaving them to the mercy of the state, other state authorities, human traffickers and other ethnic groups in their own homeland. With the state's consistent reference to these people as 'illegal' border crossers of a historical nature the only thing left is expulsion or existence in an environment which is intolerant of them. This said, how is it possible to transform the conflict from conflict to integrative peace? It is currently impossible without avenues for legal citizenship and identity protection, regional and global frameworks which cannot address effectively the scope of this problem as it is part and parcel both state and private individuals that are responsible for the violence.

It may be going too far to state that peace is prohibited by the lack of human rights for Rohingya. Rather it would be more pointed to state that the lack of human rights and consistent undermining of human rights of the Rohingya are leading to conflict. The conflict was obviously born and bred out of a cultural of discrimination which was fostered in large part by state authorities which exploited underlying tensions rather than fostering an environment of empathy and integration. This is the central point which needs to be addressed and it can only be done by providing some basis of protection perhaps by protecting their human rights which would engender a structural transformation of equality which would slowly foster cultural change. Given that Myanmar is now 'reforming' and 'democratic change' is intertwining with economy opportunities it is unforeseeable that the international and/or regional political climate will allow redress.

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