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**The Protection of Human Rights of Rohingya in
Myanmar: The Role of The International Community**

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INTRODUCTION

What is the most persecuted population all over the world? Making researches in order to give a valid answer to this sad and complex question we can acknowledge the story of Rohingya people, a Muslim persecuted minority living in North Rakhine or Arakan State¹, in Myanmar². The “Rohingya affair” has been largely ignored by the world public opinion, something that pushed some scholars to think that they represent a ghost and forgotten ethnic group, suffering a “slow-burning genocide”³. Since the launch of the Naga-Min (Dragon King) Operation, by the military junta of Myanmar in 1978, and in particular since 1982, this group of people has experienced discriminatory population control registration, gender based violence, human trafficking, hard labour and education inequality. Indeed, in the last 35 years the State of Myanmar has executed national plans aimed at destroying the Rohingya people in the Western part of the State⁴. The first step of this cruel campaign has been to deny a real identity to this people. Burmese government decided not to recognize them as an indigenous group of the zone, accusing them of being illegal Bengali economic migrants⁵, whose arrival in Rakhine was dated back to the colonial period. In this sense the origin of the name Rohingya, whose literally meaning is: “Muslim people whose ancestral home is Arakan⁶” has been deleted in Burmese vocabularies. The possibility to cancel the real identity of these families, representing more or less 1 million of people, has been the first step towards

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- 1 The term Arakan represents the old form of the official version Rakhine. The real origin of the name has been highly discussed. See also Ch.1
 - 2 We can consider the terms Burma and Myanmar as synonymous. In 1988 with the “Adaptation of Expression Law” (Art.2), promoted by the SLORC (State Law and Order Restoration Council) the official name of the State became “Union of Myanmar” and the old term Burma, used during the period of British domination, was replaced. Many countries, like UK and US decided not to recognize this new definition, that on the contrary was accepted by the UN and by all the major International Organizations. In the common language, and even in an official speech given by Barack Obama in Rangoon in 2012, the 2 terms have been used interchangeably. See also: <http://news.bbc.co.uk/2/hi/7013943.stm> and <http://www.theguardian.com/world/2012/nov/19/burma-myanmar-obama-name-visit>
 - 3 M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 681
 - 4 “Over the past 35 years the State of Myanmar has intentionally formulated, pursued, and executed national and state-level plans aimed at destroying the Rohingya people in Western Myanmar” M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 682
 - 5 The term 'migrant' in Art. 1.1 (a) of the “UN Convention on the rights of migrants” should be understood as covering all cases where the decision to migrate is taken freely by the individual concerned, for reasons of “personal convenience” and without intervention of an external compelling factor. In doing so when we use the term migrant we do not refer to refugees, displace or those forced to leave their homes. See also http://www.unesco.org/most/migration/glossary_migrants.htm
 - 6 According to M. Yunus, the term Rohingya comes from the word Roang/ Rohang/ Roshang, meaning the land of God’s blessing. See also M. Yunus “A history of Arakan (Past and Present), 1994

an escalation of events that had as a natural effect the explosion of the hate against the Rohingya. This antagonism has generated communal violence, according to the more cautious critics, but even operations of ethnic cleansing and genocide,⁷ in clear violations to many international conventions and laws. The possibility to take back arbitrarily the ID cards from Rohingya people and to create, in particular through the 1982 Citizenship law⁸, different levels of citizenry, has facilitated the campaign of “removal of identity” by Myanmar government and its military power, in clear violation to the Art.15 of the Universal Declaration of Human Rights stating the rights for all the human beings to have a nationality⁹. The attitude of the majority of the leading figures of the government has further aggravated this situation. Many relevant characters of the recent political history of Myanmar have remarked this general tendency to define the Muslim minority of Rakhine State as people with no rights. It is particularly striking the idea by President Thein Sein, who declared in a speech given to the Chatham House in London, in July 15 of 2013¹⁰, that the term “Rohingya” doesn’t exist, an idea that actually represents the official position of Burmese government and population. The spectrum of solutions left to these persecuted people has been very limited. If they accept all the restrictions imposed to their life, they will be forced to live in terrible conditions as internally displaced persons. Among these conditions we find the denial of having more than two children¹¹, of marrying without an official permission from the government, of being employed in the majority of the structures and the possibility to be victims of pogroms, violence and arbitrary deportations. Another solution could be to seek a life as unwanted refugees in Bangladesh and other states of South East Asia. Unfortunately the response by those States never proved to be efficient and to guarantee a “human” life to Rohingyas, that often found themselves deprived of all the commodities in terrible refugee camps. Moreover, in the attempt of escaping from

7 Zarni and Cowley detect all the possible elements needed to consider a massacre a genocide, concluding that in the “Rohingya case”, starting from 1978 (Operation Naga Min) we are in front of a “slow burning genocide”. ” M. Zarni, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 682-686

8 See also Ch.2.1, “The Citizenship Law and the second class citizens.

9 Article 15 of the UN Declaration of Human rights states:

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The complete text of the UN Declaration of Human Rights is freely available at: <http://www.un.org/en/documents/udhr/>

10 Thein Sein gave a speech during the Conference held in Chatham House on July 15th, 2013. The title of the conference was “Myanmar’s complex transformation: prospects and challenges”. The transcript of the speech is available at: <http://www.chathamhouse.org/events/view/193003>

11 E. Abdelkader, “Myanmar’s democracy struggle: the impact of communal violence upon Rohingya women and youth”, Pacific Rim Law and Policy Journal Association, Vol. XX, No. X, p.9-14, 22

Myanmar, seeking desperately a better life, many of them decided to entrust all their lives and hopes to human traffickers, who exploited the refugees for sexual and economic purposes¹².

In the last years many attempts have been made to denounce this state of things. The most influent voices have been the ones of special associations devoted to the protection of the North Rakhine Muslims, and other worldwide famous NGOs, like Amnesty International and Human Rights Watch¹³, whose reports have been fundamental for the drafting of my thesis. Furthermore, the United Nations have increased the concern over the situation of the human rights in Myanmar. The resolution adopted by the UNGA on 29th December 2014¹⁴, despite welcoming positive developments in the fields of economic and political reforms, has denounced the existence of remaining human rights violations and abuses, urging the government to ensure the full engagement of the religious minorities, providing full citizenship on an equal basis and to promote peaceful coexistence in Rakhine State. In this sense the effort made by the UN Special Repporteur for Human Rights Tomás Ojea Quintana, has proved to be fruitful, in particular since the speech given in London in April 2014. During the “Conference on decades of State-sponsored destruction of Myanmar’s Rohingya¹⁵, he recognized elements of genocide in Rakhine with respect to Rohingya.

Despite the growing voices striving to denounce an unsustainable situation, the number of violations continues to increase and much more has to be done. The first step is to clarify the real history of the population, tracing back their origins vis à vis Burma history. That is why I decided to follow this path.

In the first chapter I will describe the origins of the Muslim population in Rakhine State, trying to demonstrate that the first Muslim settlers of this zone arrived a long time before the Colonial Period ruled by the British Empire. I will describe the fragile coexistence during the first years after the independence of Myanmar in 1948, until the arrival of the

12 E. Abdelkader, “Myanmar’s democracy struggle: the impact of communal violence upon Rohingya women and youth, Pacific Rim Law and Policy Journal Association”, Vol. XX, No. X, p.17,18

13 see also <http://www.hrw.org/news/2013/07/19/excuse-me-mr-president>

14 UNGA Resolution 69/248 adopted on 29/12/2014 “Situations of human rights in Myanmar”, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/248

15 The Conference was held in London School of Economics and Political Science on the 28th of April. Ojea affirmed: “It is crimes against humanity. The possibility of a genocide needs to be discussed. This conference is very important as it does just that.” - See also: <http://www.rohingyablogger.com/2014/04/press-release-united-nations-expert.html#sthash.NSM7pmRr.wYnSFYPw.dpuf>

military dictatorship. I will then conclude with the description of one of the cruellest campaign suffered by the members of the Rohingya Community, the operation Naga Min (Dragon King), in 1978. It represents indeed a kind of door opened into a new stage of this old story.

In the second chapter I will try to analyse the last decades of State-sponsored destruction, in particular highlighting the fundamental moments: the creation of a highly contested Citizenship Law of 1982, the two-child policy, and the year 2012, with the strong repression of the revolts exploded in Rakhine. It will be fundamental also to underline the devastating effects of these 3 moments on the Muslim population of North Rakhine State. In this sense it will be useful to enlist the violations that Myanmar governments continues to commit to many international conventions, part of the customary international law.

Thus, I will describe the role played by many actors in this affair, starting with the non state-actors, like the NGOs and IGOs, in particular deepening the action of the UNHCR- Thus, I will continue with the neighbouring countries and with role of the ASEAN, finishing with the role of the individual personalities.

I will conclude detecting all the possible fields in which the international community can try to intervene in order to change the situation, guaranteeing a “normal” life to the “most ignored people” in the entire world. In this sense, it can be useful to measure the efficiency of the policies put in act so far by the international community and put a spotlight on the current situation in Myanmar, with the promulgation of the “protection of race and religion bills”.

1. THE PAST: THE HISTORICAL PRESENCE OF ROHINGYA IN RAKHINE STATE. SINCE THE ORIGINS TO 1978

The ongoing violations of human rights, recorded by journalists, international organizations and non-governmental organizations and causing huge amounts of internally displaced persons and refugees have been justified, reshaped and facilitated by a very particular vision of history given by Myanmar leading classes belonging to the Buddhist majority of the country¹⁶. The result was the one to rewrite the “official version” in order to make it fit to the necessities of the military Burmese government. Thus, the role of the Burmese “intelligentsia” has been crucial. Among the authors that facilitated the emergence of a partial version about the identity and origin of Rohingya people we find Khin Maung Saw¹⁷ and his mentor Aye Kyaw¹⁸, one of the creators of the contested Citizenship Law of 1982. The aim was denying an official identity to Rohingya, claiming the non-existence of such an ethnic group and denouncing the fallacy of the name, seen just as a fictional creation by Bengali illegal economic migrants who trespassed the porous boarder with Burma during the British colonial rule¹⁹. Once deprived of their history they were depicted as a danger for the rest of the population.

The first reason was connected to economic purposes. According to K.M. Saw’s version, the necessity to seek better economic conditions was at the basis of the movement of these people from Bangladesh to Arakan. The second and most important factor was due to a campaign aimed at describing Rohingya²⁰ as interested in the Islamization of the Buddhist Myanmar, something particularly striking after 09/11 in a

16 In the first decades of Myanmar independence and in particular after the promulgation of 1982 Law just a few members of the Muslim community were able to reach important political position in Myanmar.

17 See also K.M. Saw: “On the Evolution of Rohingya Problems in Rakhine State of Burma”. Despite he does not recognize the presence of an original Muslim community named “Rohingya” in Arakan, he states at the the end of his paper: “I would like to emphasize again that human rights violations, military abuses and brutal crimes committed against the "Rohingyas" by the various Burmese Military Juntas must be strongly condemned, whoever the "Rohingyas" are.”

18 See also Maung Zarni (founder and director of the Free Burma Coalition (1995-2004), and a visiting fellow (2011-13) at the Civil Society and Human Security Research Unit, Department of International Development, London School of Economics), “1982 Citizenship Law of Myanmar and Myanmar’s Popular Racism”. He writes: “Among the drafters of the 1982 Citizenship Act were British, Dutch Australian and American trained legal scholars, historians and other experts such as the late Dr Maung Maung, Dr Aye Kyaw”. The Article is available at: <https://www.transcend.org/tms/2013/08/1982-citizenship-law-of-myanmar-and-myanmars-popular-racism/>

19 See also Ch.1.8 “Arakan under British rule”

20 We must remember that in the “official version” promoted by K.M. Saw, Aye Kyang, Maung Maung and others the Rohingya are always labelled as “Bengali economic migrants”.

place obsessed by the respect of the Buddhist orthodoxy. These campaigns raised the level of violence, whose hotspot was represented by North Rakhine state. Claiming the absence of rights for these people without a state, has facilitated the diffusion of episodes of communal violence, especially since the promulgation of 1982 Law. Notwithstanding the fully-fledged violation of human rights and international law, what is really dangerous is the attempt to reinvent the history, forgetting hundreds of years of presence of Rohingya's ancestors in North Rakhine State, as highly demonstrated by many international authors.

That is the reason why I think it is fundamental to start this thesis describing the history of the region of Arakan/North Rakhine, where the Rohingya and their forefathers have lived since the first Muslim settlements in the 9th and 10th century AD. A region that has become, before and after the beginning of the military rule in 1962²¹, the stage for communal violence, with clear tracks of genocide, but that has also witnessed periods of coexistence before and after 1784, the year in which the Burmese King Bodaw Paya conquered and annexed Arakan²². In the opinion of A.M. Waheed of the Chittagong University²³: “the two sisters communities, the Rohingya and the Rakhines lived in peace and harmony”.

1.1 REWRITING HISTORY: CONFLICTING VERSIONS OF BURMESE AND INTERNATIONAL SCHOLARS

Arakan State, whose capital is Sittwe, represents now the hotspot of the ethnic problems afflicting Burma. This is due to many reasons, mainly because of the particular history of these 2 entities. Throughout the centuries Arakan has been much more in contact with Bangladesh than with Myanmar, especially before 1784. The reason lies mostly in the particular geography and geomorphology of this region. Arakan, or Rakhine State, lies in the north-western part of Myanmar, embedded between the Arakan Yoma mounts and the Bengal Bay. Pamela Guttman writes: “stretching along the Bay of Bengal, from the Naaf River which separates it from Bangladesh to Cape Negrais in southern Burma,

21 1962 is the year in which a military coup led by Gen. Ne Win deposed the former government instaurating a military dictatorship

22 See also Dr. Habib Siddiqui, “Muslim Identity and Demography in the Arakan State of Burma (Myanmar)”, Westchester, 2011, Kindle edition

23 A.M. Waheed, “In my opinion”, introduction to M. Yunus, “History of Arakan (Past and Present), 1994

it occupies the narrow strip of land to the west of the mountains of the Arakan Yoma (Range). Land and sea routes connected it with Bengal to the west and Burma proper to the east, routes that were travelled by peoples, religions and cultures”²⁴. This condition has facilitated the emergence of a situation of isolation with respect to the rest of the country, whilst the porosity of the boarder with the land that now we call Bangladesh, in particular with Chittagong district, has facilitated the proliferation of strong cultural ties. This proximity has pushed many Burmese scholars to deny the presence of a distinct Muslim ethnic group, simply defining the Rohingyas as Chittagonians²⁵, migrants coming from an other state, covering themselves under the customs of an indigenous group.

Thus, the history of Rakhine State has always been separated by the one of Burma, whose political and cultural leaders have so far tried to rewrite history deleting the evidence of the presence of Islamic settlers and the correlation between those settlers and the Rohingya group, centuries before the advent of King Bodaw Paya and the one of the British Navy. Finding an objective description of the history of the land called Arakan is not easy. Dr. Mohammed Yunus²⁶ has stated that the old Arakanese chronicles, written in Burmese language are “controversial and some time derailed far away from truth. There are clear evidences of distortion of the histories”. As demonstrated also by Thair Ba Tha²⁷ there is the proof of a cohabitation, often peaceful, a long time before the advent of the British empire, of the 2 most influential ethnic group: the Maghs and the Rohingyas.

The term Rohingya comes from the word Rohai or Roshangee. This word denotes the Muslim people inhabiting the old Arakan, whose origins come from Arabs, Turks, Mughals, Persians and Bengalis that in different ages were living in Arakan²⁸. We must observe that an important part of this family has fled to Chittagong district in order to

24 P. Gutman, “Burma’s Lost Kingdoms: Splendours of Arakan”, Orchid Press, Bangkok, 2001. P. 18. See also Sir A. Phayre: “History of Burma”, Trubner & Co, Ludgate Hill, 1883, London. P. 171, he writes: ”Situating between Bengal and Burma, and far inferior to either in extent and resources, the strength of Arakan lay mainly in woods and swamps, which opposed the passage of an enemy and offered a safe refuge for the people”.

25 Chittagong district, in Bangladesh, is bounded by Cox's Bazar district on the South side, Feni district and Tripura area of India on the North side, Rangamati, Khagrachhari and Bandarban districts on the East side and Noakhali district and the Bay of Bengal on the West side. See also: <http://www.kabirhat.com/bangladesh-district/chittagong.html>

26 M. Yunus, “History of Arakan (Past and Present), 1994

27 M.A. Tahir Ba Tha “A short History of Rohingyas and Kamans of Burma”, originally written in Burmese under the title: “The Rohingyas and Kamans” (1963) and tr. A.F.K. Jilani, ed. Mohd. Ashraf Alam (1998)

28 M. Yunus, “History of Arakan (Past and Present), 1994, Ch. I, “The land and the people”. He writes: “The Rohingyas trace their origin to Arabs, Moors, Turks, Persians, Moghuls, Patthans and Bengalees

escape from the atrocities committed by Burmese army in 1784, forming the distinct group of the Rohais (Rohingyas) of Chittagong²⁹.

The Rohingyas have their own characteristics, similar but distinct from the ones of the Muslims in Bangladesh, and developed in centuries of history. Among these characteristics we find an autonomous and complex language: an admixture of different traditions, that has lived a long evolution lasted more than 1000 years. In his “Short history of Rohingya and Kamans of Burma” Tahir Bah Tah mentions another minor Muslim ethnic group in Arakan, the one of the Kamans, that for history and characteristics are often assimilated to the Rohingyas³⁰.

On the other hand we find the Maghs. The origin of the name is not certain and there are different theories about its etymology. According to the memories of several English travellers of 16th century, such as Ralph Fitch³¹, Arakan was also identified as Mog, Mogen and Mogue. The Maghs are the dominant group in Rakhine State, representing the majority of the region, under a numerical and religious point of view. Their presence in Rakhine is dated by historians back to the end of 10th century, as the product of Indian arrivals in the zones. In the following centuries the intermarriages between Indians, Mongolians and Tibeto-Burmans has facilitated the emergence of the most important features of this group who is unified in the Buddhist faith. It is curious to acknowledge that such a group, shaped through a history of encounters and religious exchanges and that has suffered often the consequences of the Hindu-Buddhist struggle, promotes now the hate towards a specific and well identified ethnic and religious group.

Thanks to the archaeology and to the diaries of travellers and traders that arrived in the East Bengal Bay many centuries ago³², the historical ethnic homogeneity of the population living in Arakan has been denied. Nevertheless, the contradictions that emerge in the version promoted by Burmese intelligentsia do not seem to appear

29 M. Yunus, “History of Arakan (Past and Present), 1994, Ch. I, “The land and the people”. He writes: “The Rohais of Chittagong today are those Muslim people who fled Arakan (Rohang) as a result of Burman atrocities after the country was occupied in 1784 AD. As many as 50% of the total population of Chittagong district are Rohais who trace their ancestral origin to Arakan”.

30 M.A. Tahir Ba Tha “A short History of Rohingyas and Kamans of Burma”, originally written in Burmese under the title: “The Rohingyas and Kamans” (1963) and tr. A.F.K. Jilani, ed. Mohd. Ashraf Alam (1998). Ch. 8: “The emergence of ethnic Kamans”.

31 See also: M.A. Alam: “A study of etymology of Arakan, Rohingya, and Rakhine”; A.Wright: “Opium and Empire in Southeast Asia: Regulating Consumption in British Burma”, 2014, Palgrave MacMillian

32 References to these travellers are made many times by Phayre in the chapters regarding Arakan see also H. Siddiqui, “Muslim Identity and Demography in the Arakan State of Burma (Myanmar)”, Westchester, 2011, Kindle Edition

convincing. The result is that the story of this land has been narrated in different ways. Thus, it is necessary to maintain an objective point of view, dismantling the several theories that have been used to destroy the history of an entire population. The contradictions start to emerge already in the etymology of the terms.

1.1.1 ETYMOLOGY OF THE TERMS

Arakan represents an old term used to define Rakhine State³³. Buddhists in Burma tried to delete the Muslim root of the name Arakan, in the framework of a wider program aimed at deleting the signs of historical Islamic presence within the region. The opinion by Muslim scholars is that it represents an ancient name deriving from the Arab and Persian language, coming from the plural version of “Rukn”, whose meaning is “pillar”³⁴. In the Islamic symbolism, this term reminds us the importance of the “5 pillars of Islam”, and the possibility to describe Arakan as the “land of Islam”, or the “land of peace”³⁵. We find historical evidence of the presence of this word already in the mid 16th century, thanks to the coins of the Sultan Bahadur Shah, dated 1557 and now preserved in the Indian Museum in Calcutta, and the ones of Sultan Muhammad Shah of 1555 and preserved in the British Museum, in London³⁶.

The Magh Buddhists of the zone, that define themselves as “Rakhaing” have a different idea. In the essay published by K.M. Saw with the title “On the Evolution of Rohingya Problems in Rakhine State of Burma”, the author states: “the term Arakanese is only for the “Rakhaing” people, the largest ethnic group living in Arakan (the Rakhine State of Burma) and not for the other ethnic groups. The Arakanese (Rakhaings) are devout Buddhists”. According to this thesis the term “Arakan” cannot be referred to an Arabic etymologic root, on the contrary it would be a distortion of the term “Rakkha

33 It is believed that the first track of this name can be found in Ptolemy. In this sense K.M. Saw and Habib Siddiqui agree. See also: K.M. Saw: “On the Evolution of Rohingya Problems in Rakhine State of Burma”, Ch. 2.1: “Rakhaing/Rakhine (Arakan), country and race”; H. Siddiqui, “Muslim Identity and Demography in the Arakan State of Burma (Myanmar)”, Westchester, 2011, Kindle Edition

34 See also M. Yunus, “History of Arakan (Past and Present)”, 1994, Ch.1 “The land and the people”. He writes: “The term Arakan is the corruption of the plural of the word Rukn, meaning a pillar. The fundamental tenets of Islam are called ‘5 pillars of Islam’. According to K.M. Saw, instead it is the corruption of the European form of the word Rakhaing, a word indicating the native Buddhists living in this region. See also K.M. Saw, “On the evolution of Rohingya problem on Rakhine State of Burma”, p. 2, available at http://www.networkmyanmar.org/images/stories/PDF14/Illegal_Kular_Problem_in_Arakan.pdf

35 See also M. Yunus, “History of Arakan (Past and Present)”, 1994, Ch.1 “The land and the people”.

36 The pictures of the coins are also available at: www.kaladanpress.org. Other coins are represented in: Sir A. Phayre: “History of Burma”, Trubner & Co, Ludgate Hill, 1883, London. P.80

Mandaing”, meaning the “ones who protect their own race”, in this case Arakanese inhabitants struggling to defend themselves from the invasion of “negrito tribes”³⁷. During the 15th century the Portuguese traders used the terms Rachani and Arakan as synonymous³⁸, but it is possible to demonstrate that the 2 terms have different origin. K.M Saw, as well as other Burmese authors, bases his thesis on fictional ideas, denied by historical evidence. So, starting from the real origin of the different names, we should make a distinction between the 2 populations that throughout the centuries have lived and coexisted into this region: the Rohingya and the Maghs, representing the Buddhist majority, with a strong ethnic tie with the rest of the country.

Excluding Rohingya from the list of ethnic groups living in Arakan since 10th and 11th centuries means making an unacceptable historical distortion. As Professor Abdul Karim wrote: “the forefathers of Rohingyas had entered into Arakan from time immemorial”³⁹.

1.2 ANCIENT HISTORY OF ARAKAN AND FIRST ISLAMIC CONTACTS

Under different periods of history Arakan has been an independent sovereign monarchy ruled by Hindus, Muslims and Buddhists. Muslim influence had been heavy until Arakan was invaded and occupied by Burmans in 1784. The profundity of the legacy left in Arakan by Islamic people in many centuries has been many times deleted from the official chronicles, produced by politicians and scholars worried by the possibility of the imprint that it could left to the traditional nationalist narratives. On the contrary the evidence of the weight of such an influence, is fully witnessed.

37 According to K.M. Saw the “Negrito tribes” used to represent demon-like beings that the native Buddhist inhabitants of Arakan had to chase out from the region to establish there. Another hypothesis made by Saw is that Arakan’s origin is represented by the Sanskrit word “rakshasa”, meaning “the demon of the water”. See also: K.M. Saw: “On the Evolution of Rohingya Problems in Rakhine State of Burma”, Ch. 2.1: “Rakhaing/Rakhine (Arakan), country and race”

38 A good overview of the activities made by the Portuguese living in Arakan at that time, including the ones belonging to the religious orders of the Dominicans and the Augustinians, who were witnesses to the atrocities committed against the captives, is given by M. Collis, “The land of the great image”, New Directions Books, New York, 1943, p.57-76

39 A. Karim, “The Rohingyas: A Short Account of their History and Culture”, Arakan Historical Society, 2000, Bangladesh

For what concerns the first tracks of the presence of Muslim people in the region we have different sources and versions. Moshe Yegar in “Muslims of Burma”⁴⁰ writes that “Muslim seamen first reached Burma in the 9th century”. As recorded by Martin Smith: “there is evidence of Muslim presence or settlement along parts of the Arakan coast line, from as early as the eighth and ninth centuries A.D. These first arrivals, it is presumed, were largely Arab seafarers, merchants and occasional holy men”⁴¹. This thesis is confirmed by Dr. Abdul Karim, from the University of London. According to the introduction to his book we find that “the first Muslim settlers in Arakan were the Arabs; they were the shipwrecked people coming to the east for purposes of trade”⁴².

The “golden age” of the Arab traders took the “Mussalman” to the coast of the Bengal Bay and lasted until the 17th century. We find descriptions of this zone even in the books of the first Arab geographers, who used to make reference to the kingdom of Rahma, identified with the region that goes from Chittagong to lower Burma⁴³. “If the Arabs visited Chittagong port, they were also acquainted with Arakan and came into contact with the Arakanese kings”, writes Abdul Karim⁴⁴. R.B. Smart, author of the Burma Gazetteer, writes about Mussalman crews who placed villages in Arakan in 9th century⁴⁵, while it is stated by many influential scholars, that “Muslim faqirs and dervishes used to visit Arakan coast”⁴⁶. One of the most interesting signs of their presence is the “Buddermokan” or “Badr Moqam” (house of Badr). In the city of Akyab, on the island of Sittwe, a place considered by many the effective gateway between the King of Arakan and the Bay of Bengal, stands in fact a shrine dedicated to a Sufi Saint, Pir Badr, that was believed to have spent a long time here in hermitage and meditation. Richard Forster

40 M. Yegar, “The Muslims of Burma: a Story of a Minority Group”, Otto Harrassowitz, 1971, Wiesbaden, p.1-3. He also writes: “Among the many Muslim travelers who wandered eastward, most of whom hoped to reach China, were several who managed to get to Burma, too. Southern Burma is mentioned in the writings of the Persian traveler, Ibn Khordadbeh, and of the Arab, Suleiman, both of the ninth century; and of the Persian traveler, Ibn al-Faqih, of the tenth century. The Arab historian, al-MaqqisI (tenth century) describes the ramified trade activity.”

41 M. Smith, “The Muslim Rohingya of Burma”, Conference of Burma Centrum Nederland, 1995

42 A. Karim, “The Rohingyas: A Short Account of their History and Culture”, Arakan Historical Society, 2000, Bangladesh

43 According to Richard Forster of the University of Hawaii, many influential Arab geographers of the 10th and 12th centuries, like Al-Idrisi and Al Masudi, mentioned ports in the Indian Ocean. In particular he refers to Samandar and Ruhmi, which modern scholars have identified with Chittagong and Lower Burma. See also: R. Forster, “Magh Marauders, Portuguese Pirates, White Elephants and Persian Poets: Arakan and Its Bay-of-Bengal Connectivities in the Early Modern Era”, EXPLORATIONS-a graduate student journal of southeast asian studies, Vol. XI, Issue I, Spring 2011, P. 63.

44 See also A. Karim, “The Rohingyas: A Short Account of their History and Culture”, Arakan Historical Society, 2000, Bangladesh, p. 11-13

45 R.B. Smart, Burma Gazetteer, Akyab District, Vol. I, Ch. II, History and Archeology

46 M. Yunus, “History of Arakan (Past and Present), 1994 Ch. II “Early History- A vent of Islam in Arakan”

dates the shrine in the 15th century⁴⁷, but many other versions, including the one by Dr. Yunus, place it many centuries before⁴⁸.

Islamic religion never succeeded in becoming predominant because of the spread of Buddhism, that became the major trend since 12th century. The early domination of Hinduism, since the 1st to the 10th century also contributed to maintain Islam in a sort of niche, despite large signs of the Muslim tradition are still visible in the whole Burmese culture. Also the legacy of the Hindu past, despite actually just a little percentage of the population declares to be Hindu, is present in Arakan. It is visible in the language, in the names, in the coins and in the ruins of ancient temples and statues⁴⁹.

1.3 CHANDRAS DINASTY AND THE ORIGIN OF THE MAGHS

All the ancient traditions and chronicles record that in the ancient past Arakan was a Hindu land, with a line of kings reaching back to the year 2666 B.C.⁵⁰ In the first century A.D. an Hindu kingdom flourished in Dhavannati, 40 miles northwest of Mrauk-U (Mrohang), the ancient capital of Arakan. Furthermore, archaeological findings indicate that before the 8th century this area was the seat of Hindu dynasties. The most important was the one of the Chandras that in the 8th century established its kingdom in the city of Vesali. Many members of this dynasty converted soon to Buddhism and Islam, characterizing Vesali for the incredible clime of tolerance and religious fraternity⁵¹.

In 957 A.D. the Tibeto-Burmans destroyed Vesali and dethroned the Chandras. Maurice Collis described this period as the cradle of the Rakhine population (Maghs), born by the encounter between the Tibeto-Burmans (Mongholians) and Vesali Hindus (Ayrians). For centuries many dynasties rotated on the throne of the State that started to

47 R. Forster, "Magh Marauders, Portuguese Pirates, White Elephants and Persian Poets: Arakan and Its Bay-of-Bengal Connectivities in the Early Modern Era", *EXPLORATIONS-a graduate student journal of southeast asian studies*, Vol. XI, Issue I, Spring 2011, P 66-68

48 M. Yunus, "History of Arakan (Past and Present)", 1994 Ch.II "Early History- Advent of Islam in Arakan"

49 see Harvey G.E., *History of Burma*, Asian Educational Service. The image of Mahamatmuni (the great image of Lord Buddha) surrounded by dozens of statues of Hindu Gods is one of the most important visible sign of the Hindu heritage

50 Sir A. Phayre writes: "The time when Marayo became king is by the Arakanese chroniclers placed at an extravagantly remote era - 2666 B.C. The dynasty he founded is represented as having lasted for eighteen hundred and thirty-three years." Sir A. Phayre: "History of Burma", Trubner & Co, Ludgate Hill, 1883, London. P.43

51 see also Sir A. Phayre: "History of Burma", Trubner & Co, Ludgate Hill, 1883, London. P.45

be known as “Rakhine” by the Maghs. In this period the fully-fledged presence of Muslim tribes descending from Arabs started to be mixed to the one of the Maghs⁵².

1.4 MIN SAW MUN AND THE ARAKANESE KINGS WITH MUSLIM TITLES. THE SIGNS OF A WIDESPREAD ISLAMIC INFLUENCE

At the beginning of the 15th century a new encounter between inhabitants of Arakan and Muslims, this time coming from Bengal, changed the history of the region. Large contingents of Bengals entered into Arakan by invitation of the ruling prince, Min Saw Mum. The prince, indeed, had attacked some areas of Burma with the intent to conquer them, but was strongly defeated, losing the control of the capital Launggyet and being forced to leave the kingdom in 1406. Min Saw Mum, also known as Naramekhla, fled to Bengal. Here, the Thuratan⁵³, who used to live in Gaur, gave him and his court hospitality and support, in exchange for the unconditional loyalty.

In the following years a new alliance between the Arakanese and the hilly tribe of the Talaings fought a harsh war against the Burmese for the control of the entire Arakan retaining it in 1426⁵⁴. The crucial intervention was provided by the Bengal general Wali Khan, appointed by the king of Gaur. This talented and skilful general was sent to help the Arakanese in getting back their territories as a sign of gratitude for the help given by Naramekhla to the Sultanate of Bengal in fighting against the army of Delhi.⁵⁵ Once pushed back the invaders, Wali Khan, together with the Rakhine chief named Tse-U-Ka, betrayed Min Saw Mum. They formed a new government and forced the old king to flee again in Bengal. Here, the Thurathan organized a new expedition with the task to give back the throne to his allied sovereign and punish the traitor. The expedition was

52 M. Collis, “The land of the great image”, New Directions Books, New York, 1943

53 Thuratan is the Arakanese word for “Sultan”. See also Mohammed Ali Chowdhury, “The advent of Islam in Arakan and the Rohingya”, Arakan Historical Society at Chittagong

54 Sir. A. Phayre writes: “for several years the Talaings and the Burmans struggled for the possession of Arakan and the latter were finally expelled in 1426”, Sir A. Phayre: “History of Burma”, Trubner & Co, Ludgate Hill, 1883, London. P.45. See also Harvey G.E., History of Burma, Asian Educational Service, p. 141.

55 The ancient chronicles narrate that only thanks to the experience of the King of Launggyet it was possible for “Bengals” to defeat the “Indians”, who could count on a legendary army characterized by the presence of wild animals and in particular of huge elephants. See also: R. Forster, “Magh Marauders, Portuguese Pirates, White Elephants and Persian Poets: Arakan and Its Bay-of-Bengal Connectivities in the Early Modern Era”, EXPLORATIONS-a graduate student journal of southeast asian studies, Vol. XI, Issue I, Spring 2011, P. 65. See also Sir A. Phayre: “History of Burma”, Trubner & Co, Ludgate Hill, 1883, London

successful and the throne returned to Naramekhla. The restored king decided to move the capital city from Launggyet to Mrauk-U, where the signs of a glorious past are still visible⁵⁶. As Harvey recounts the reason at the basis of this decision was connected to the influence of the astrologers on Naramekhla, convinced that the old capital was ill-fated and that it was necessary to found a new main city, which happened in 1433.⁵⁷

In the following decades the heirs of Naramekhla could maintain the throne, but they were obliged to accept impositions by the Sultanate of Bengal. Among these impositions we find the obligation to pay annually fees to the Bengali court, to give 12 towns to the sultanate, including Chittagong, to study and celebrate the Muslim history⁵⁸ and to use the Persian as court language. The atmosphere remained however pacific between the different groups and many Arakanese kings alternated on the throne with Muslim titles, until 1637.⁵⁹

There was another group of Muslims that entered into Arakan in this period. They were the slaves sold by Portuguese pirates, who used to infest the coasts of the Bay of Bengal.⁶⁰ Indeed, the strange alliance made during this period between the ruling elite of Mrauk-U and Portuguese traders and pirates, facilitated the presence of flourishing trading activities regarding members of Muslim tribes, that used to arrive from Bengal, forming the 3rd wave of Muslim entrance into Arakan.⁶¹

56 The name Mrauk-U was transformed by Bengali poets into Roshango (Rohang), that reminds us the term "Rohingya". In particular we remember a poem of a XIV century poet, Ashun Nagainda Mawgwann:

"Because they are capable of cherishing
And safe-guarding of their nation
And moral precepts,
They are deserved to be named
And called "Rakhaing".

57 Mrauk-U was described by Harvey as "a popolous sea port, built on hillocks amid the rice plains and intersected by canals wich served as streets". Harvey G.E., *History of Burma*, Asian Educational Service, Ch.V "Arakan" p. 139,140

58 U Kyi, "The Essential History of Burma". He wrote that "Rakhine Maghs became Muslims after embracing Islam in 15th century. For hundred years, from 1430 to 1530 A. D. Arakan was under the suzerainty of Muslim Bengal."

59 The kings are enlisted by Lt.Col. Ba Shan in "Coming of Islam to Burma to 1700 A.D." Ba Shan is mentioned by Tahir Ba Tha and Abdul Karim. See also A. Karim, "The Rohingyas: A Short Account of their History and Culture", Arakan Historical Society, 2000, Bangladesh; M.A. Tahir Ba Tha "A short History of Rohingyas and Kamans of Burma", originally written in Burmese under the title: "The Rohingyas and Kamans" (1963) and tr. A.F.K. Jilani, ed. Mohd. Ashraf Alam (1998)

60 The Portuguese priest Manrique witnesses the presence of a sort of alliance between the Portuguese pirates and the Magh kings. Abdul Karim describes Manrique as a "Portuguese priest who spent 6 years in the Augustinian Church at Dianga and was a witness to piratical raids". A. Karim, "The Rohingyas: A Short Account of their History and Culture", Arakan Historical Society, 2000, Bangladesh; see also "The travels of Fray Sebastien Manrique" ed. Luard & Hosten, Vol. 1, p.285; M. Collis, "The land of the great image", New Directions Books, New York, 1943, p.73-76

61 Harvey writes about the Portuguese travellers: "their cruel treatment of the natives roused the indignation not only of mission priests, but also of saner laymen among them, who, when the downturn came recognized it as a divine judgement". Harvey G.E., *History of Burma*, Asian Educational Service, p. 131

1.4.1 DIFFERENT VISIONS: WHICH ROLE FOR ROHINGYA IN MYANMAR?

The scholars and the experts of the history of Arakan provide us different versions regarding the effective weight of Muslim religion and the effective power of the Sultanate of Bengal in this piece of land until mid-17th century. Richard Forster, from University of Hawaii states that over these points the theories by several historians appear sometimes contradictory. In particular, he claims that the most influential experts on Burmese and Arakan history, such as A.P. Phayre or G.E. Harvey, based their thesis on ancient Arakanese chronicles, whose legendary tone is evident.⁶² Jacques Leider, on the contrary, raises many objections against the promulgation of a picture of the court of Mrauk-U characterized by the strong influence of Islamic values, highlighting instead the clear dominance of Buddhist culture⁶³ We have no proofs of real conversions, but it is fledged that for political needs the Kings of Arakan had to adopt Islamic titles and make Islamic declarations of faith, together with the entire courts.

Furthermore, as stated by Abdul Karim, during the two wars involving Bengalese contingents, it is likely that many soldiers decided to stay and live in Arakan. In particular, many of the ones that followed the expedition by Wali Khan had no chance that remaining there and living hidden between woods and small villages, since they would have been executed once returned home. Probably hundreds of Islamic soldiers of the second expedition decided to stay in Arakan too, with the task to continue to serve Min Saw Mun. It is sure that these new entrances have contributed to shape Arakanese politics and left an important legacy in the population. Moreover, the hundreds of people forming the court of Naramekhla exiled in Gaur had experienced Muslim traditions and habits, remaining deeply influenced once back in Arakan. Although Abdul Karim states that between the end of 16th century and 1638, three following Arakanese kings tried to conquer Bengal, the Muslim legacy always remained present at any social level and the sovereigns continued always to retain Muslim titles.⁶⁴ As Forster writes: “it seems

62 R. Forster, “Magh Marauders, Portuguese Pirates, White Elephants and Persian Poets: Arakan and Its Bay-of-Bengal Connectivities in the Early Modern Era”, *EXPLORATIONS*-a graduate student journal of southeast asian studies, Vol. XI, Issue I, Spring 2011, P. 65

63 J. Leider, “On Arakanese territorial expansion: Originis, Context, Means and Practice”, in *The Maritime Frontier of Burma: Exploring political, cultural and commercial interaction in the Indian Ocean World, 1200-1800*, ed. Jos Gommans and Jacques Leider (Amsterdam and Leiden, Koninklijke Nederlandse Akademie van Wetenschappen and KITLV Press, 2002), 111

64 A. Karim, “The Rohingyas: A Short Account of their History and Culture”, Arakan Historical Society, 2000, Bangladesh. He also refers that the 17th century Bengali Muslim poets give in their writings the impression that the capital city of “Roshang thronged with the Muslim population, so that the Muslim

prudent to consider Islamic influence at the court of Mrauk U as having a greater role than Leider is willing to accept”.⁶⁵

If we observe the Burmese official chronicles, in particular the version provided by K. M. Saw⁶⁶, once again some contradictions emerge. Despite we never find a complete denial regarding the role played by the Sultanate of Bengal, the aim to reduce its influence for political reasons is pretty clear. While different Muslim scholars talk about 200 years in which the reign was feudatory to the Sultanate of Bengal and during which up to 18 kings adopted Muslim titles and traditions⁶⁷, the Burmese influential writer tries to dismantle this thesis criticizing also the opinion by Maurice Collis, according to whom only 12 kings were vassals to Bengal⁶⁸. U Po Hla Aung, author of “A new history of Rakaing” and one of the main sources for K.M. Saw, goes further, stating that the only feudatory to Bengal was Naramekhla.⁶⁹ The following kings couldn’t be considered as such, since Min Kahyi, Naramekhla’s brother and successor, entered into a friendship and boarder treaty with the Burmese king of Ava, declaring his country freed from Bengal. In the attempt of deleting the past link between Rakhine and Bengal, the author fails nevertheless to explain the presence of Muslim names to detect Naramekhla’s successors and other important signs, such as the presence of coins with Persian inscriptions dated more or less between 1530 and 1622.⁷⁰

1.5 A NEW INFLUX: FRATRICIDAL WARS BETWEEN THE HEIRS OF THE MUGHALS’ THRONE AND THE ROLE OF THE KAMANS

The new influx of Muslims in Arakan took place during the second part of 17th century and was due to the political upheavals in the Mughal court. The story behind these new

ministers mantained courts”.

65 R. Forster, “Magh Marauders, Portuguese Pirates, White Elephants and Persian Poets: Arakan and Its Bay-of-Bengal Connectivities in the Early Modern Era”, *EXPLORATIONS*-a graduate student journal of southeast asian studies, Vol. XI, Issue I, Spring 2011, P. 65

66 See also K.M. Saw: “On the Evolution of Rohingya Problems in Rakhine State of Burma, Berlin, Ch. 4.3 “The Crucial Mrauk-U Dinasty”

67 Among them we find Abdul Karim, Habib Siddiqui and Thair Ba Tha

68 M. Collis, “The land of the great image”, New Directions Books, New York, 1943. Also M. Yunus, of the Rohingya Solidarity Organization enlists just 11 kings. See also M. Yunus, “History of Arakan (Past and Present)”, 1994,

69 This source is referred in K.M. Saw: “On the Evolution of Rohingya Problems in Rakhine State of Burma”, Berlin, Ch. 4.3 “The Crucial Mrauk-U Dinasty”

70 The pictures of these coins are represented in “Monthly Arakan, News and Analysis of Arakan Rohingya National Organization (ARNO), Arakan, Burma” July Issue 2011 p.8,9

arrivals is well narrated by Abdul Karim and Tahir Ba Tha.⁷¹ Before his death, occurred in 1658, the Mughal Emperor Shah Jahan had divided the power equally between his 4 sons, in order to avoid a fratricidal war for the control of the reign. Despite the Emperor's efforts, after his death one of his sons, Aurangzib, moved war to the others in order to conquer the entire empire. The only able to survive was Shah Shuja, who found asylum in Arakan together with his family and 3000 archers, in 1660. Here, the Arakanese sovereign Chandra Sudarma pretended from Shah Shuja to marry one of his daughters. After having refused the proposal, the only option left to the Mughal family, who had received the order to leave the country, was the one to create an army and fight. It was made up by the faithful soldiers and by part of the Muslim population residing in Arakan. As narrated by the Venetian traveller Niccolao Malucci⁷², the plot was dismantled and Shah Shuja was found in a forest and killed in 1661. In the following months many Moors and Bengali Muslims were plundered and massacred under the orders of the King. Two years later the surviving members of the family were accused of being involved in the fire of the Royal Palace in Mrauk-U and executed.

After the massacre of Shah Shuja's family, some of the survivors of their army decided to remain in Arakan shaping the glorious group of the "Kaman" archers. During the period 1666-1710 the political rule of Arakan was in their hands. Ten kings were crowned and dethroned by them during those years. Throughout the following decades and centuries many intermarriages between the descendants of the Kaman archers and the members of Rohingya tribes facilitated the merging of the 2 communities, increasing the Muslim presence in Arakan.⁷³

1.6 FOUR DIFFERENT WAVES OF MUSLIM ENTRANCES INTO ARAKHAN

Trying to sum up what we stated until now, we can acknowledge the presence of four different moments in which large strands of Muslim populations entered into Arakan.

71 See also A. Karim, "The Rohingyas: A Short Account of their History and Culture", Arakan Historical Society, 2000, Bangladesh; and M.A. Tahir Ba Tha "A short History of Rohingyas and Kamans of Burma", originally written in Burmese under the title: "The Rohingyas and Kamans" (1963) and tr. A.F.K. Jilani, ed. Mohd. Ashraf Alam (1998). Ch. 8: "The emergence of ethnic Kamans".

72 N. Manucci, "Storia do Mogor or Moghul India" Translated and annotated by William Irvine, I.C.S., London, John Murray, 1907. This source is referred by the Journal of the Royal Asiatic Society of Great Britain and Ireland (Jul., 1907), pp. 716-720

73 G.E. Harvey writes: "After the massacre of Shah Shuja, his remaining followers in 1661 A.D. Were retained as archers of the Guard". Harvey G.E., History of Burma, Asian Educational Service

Despite the great influence exercised by the Sultanate of Bengal and later by the heirs of the Mughal Empire and of the Kaman archers, this region always lived a wide Buddhist predominance since the end of the Hindu dynasty of the Chandras⁷⁴. This Buddhist majority, supported by the central government, has exercised in the last decades national plans aimed at deleting the identity of the descendants of the Muslims populations that used to live in Arakan since the 8th century. Influential members of Burmese intelligentsia tried to rewrite history, labelling Rohingya as Bengali migrants, the majority of whom entered into Rakhine State in illegal ways during the “British period”. In these chronicles history has been adapted to political needs and the presence of an evident Muslim imprint throughout the centuries has been strongly downsized. On the contrary, if we analyze the most influential and objective chronicles of Burmese history, such as the ones by Phayre and Harvey, we can observe 4 different steps characterizing the influx of Muslim citizens within Arakan, many centuries before the advent of the British colonists.

The first moment is the one characterized by the first contacts between Arakanese and Muslim populations. In particular, since the 8th and 9th century many Arab traders and travellers landed over the coasts of the Bay of Bengal, developing flourishing trading activities and in some occasions residing here.

The second influx has been the one coming from the soldiers of the Muslim Armies. The reference is to the period of first 15th century, when Naramekhla asked asylum and help to the Sultanate of Bengal. Two groups of Islamic soldiers established in Arakan after their expeditions: the former were members of the army whose chief was the traitor Wali Khan and the latter were part of the second expedition organized by the Turathan in order to give back Arakan to Naramekhla and provide an exemplary punishment to Wali Khan.

The third wave is the one regarding Muslim captives and slaves, victims of the perverse alliance between Portuguese traders and Arakanese elites. The captives were coming from neighbouring countries, such as Bengal, and were both of Islamic and Hindu faith.⁷⁵

⁷⁴ One of the symbol of “the plurality that characterized that cosmopolitan pre-modern society” is the Buddermokan, considered a sign of the Muslim heritage, but even a simble of religious tolerance. See also R. Forster, “Magh Marauders, Portuguese Pirates, White Elephants and Persian Poets: Arakan and Its Bay-of-Bengal Connectivities in the Early Modern Era”, EXPLORATIONS-a graduate student journal of southeast asian studies, Vol. XI, Issue I, Spring 2011, P. 66

⁷⁵ A description of the activities regarding the trade of captives in Arakan is given by Harvey G.E., History

The fourth wave is the one connected to the history of the Mughal Empire. When Shah Shuja found refuge in Arakan, hosted by Chandra Sudharma in the attempt to escape from his younger brother Aurangzib, thousands of people coming from the Mughal lands followed him and remained even after the massacre of his family. Among them, we remember the 3000 soldiers known as Kaman archers, who started to serve the Arakanese king, dominating the political scene in the following decades.⁷⁶

| WAVES | POPULATION | PERIOD | CHARACTERISTICS |
|--------------|--|---|---|
| I | Arab traders | Since 8 th and 9 th century | The first Muslim tracks in Arakan are the ones left by Arab merchants and travellers, who started to develop flourishing activities around the Bay of Bengal, establishing and residing there with their families |
| II | Muslim soldiers of Wali Khan's and Thuratan's armies | 15 th century | The history of these soldiers is linked to Naramekhla's vicissitudes. The first were the ones belonging to Wali Khan's army, forced to escape in the jungle and to hid themselves during the Thurathan's army campaign. Also part of this second army decided to reside in Arakan |

of Burma, Asian Educational Service, p. 143; see also M. Collis, "The land of the great image", New Directions Books, New York, 1943, p. 87 "Among the Slavers of Diango"

⁷⁶ See also: A. Karim, "The Rohingyas: A Short Account of their History and Culture", Arakan Historical Society, 2000, Bangladesh; Ch. 4 "Fourth phase of the coming of the Muslims"

| | | | |
|-----|--|--|---|
| III | Muslim captives and slaves | 15 th -19 th centuries | The victims of the struggles occurred during the centuries between Arakan, Indian regions and the Kingdom of Ava, were the members of Muslim tribes. Many of them were also sold by Portuguese pirates and traders. |
| IV | Mughal's members of the Royal Family and the Kaman Archers | 17 th -18 th centuries | They were the surviving members of Shah Shuja's family that was massacred by Chandra Sudharma. Part of the Mughal army arrived in Arakan will continue to reside and act here, having in the following year a notable influence at the court of Mrauk-U |

Fig. 1.1 Four waves of "Muslim entrances" into Arakan.

1.7 1784: THE ADVENT OF THE BURMANS. THE OCCUPATION BY BODAW PAYA AND THE PREMISES OF BRITISH DOMINANCE

1.7.1 KING SANDA WIZAYA AND THE KAMANS IN RAMREE

In 1710 King Sanda Wizaya took the power and remained on the throne of Mrauk-U for 21 years. The most important goal in the King's program was the one to weaken the influence that the Kamans could have in the Arakanese political scene. Sanda Wizaya had a strong Buddhist faith and the possibility to lose the throne because of the intrigues triggered by the Muslim members of the court pushed him to neutralize the influence of the Kaman archers, deporting the most of them in the island of Ramree, an enormous

everglade full of crocodiles, where the Kamans had to strive for surviving⁷⁷. Even though the power remained strongly in the hands of the Buddhist majority until 1731, after Wizaya's death Arakan lived a long turbulent period. As described by Harvey in his chronicles of Burma, these years were characterized by internal fights of kings against aspirant kings, of villages against other villages.⁷⁸ The survivor Kamans, strengthened by the few that were able to come back from Rarmree reorganized their forces and succeeded in taking back the crown in 1777 with King Sanda Thadita and then in 1782 with King Thamanda.

1.7.2 THE END OF THE KINGDOM OF MRAUK-U AND THE ARRIVAL OF THE AVA ARMY

The struggle between the different clans of Mrauk-U reached the peak under the kingdom of Thamanda. The internal fights between the sons of the last Buddhist kings and the heirs of the Kamans were the prelude for the end of the Kingdom of Mrauk-U. The only option left to the Buddhists indeed was the one to recur to the Burmese King of Ava, asking for an intervention Bodaw Paya arrived with his army in Arakan in 1784 occupying easily the capital. The brutality of the Burmese army was impressive. According to several authors, tyranny and cruelty marked the arrival of the King. The main targets of the Burmese army were the members and the symbols of Islamic community. Everything that was physically and culturally Islamic was completely razed to the ground. More than 20000 Muslim captives were obliged to forced labours and sold as slaves. The luckiest ones escaped in Chittagong district, reinforcing the Muslim presence in the province⁷⁹. At that time Chittagong was under the dominion of British India that accepted the arrival of the escapers from Arakan, since they had the necessity to repopulate the zone and find new cheap forces able to work. The bravest ones decided instead to remain in the region as combatants, organizing a feeble resistance, not ready to afford the powerful army arrived from the Kingdom of Ava, at least until 1811.⁸⁰

77 Sir A. Phayre: "History of Burma", Trubner & Co, Ludgate Hill, 1883, London P.179

78 G.E. Harvey, "History of Burma", Asian Educational Service,

79 See also A.Phayre, History of Burma, Trubner & Co, Ludgate Hill, 1883, London p.222

80 "From the very first years of its conquest in 1785, Arakan had been in turmoil" states Harvey. "Year after year the fighting never ceased, (...) folk could go to bed at night wondering if throats were going to be cut in the morning. Arakan had never been populous, and now it became a desert. There was nothing to see but utter desolation, (...) pestilence and death". Harvey G.E., History of Burma, Asian Educational Service

Arakan was a huge battlefield with the Burmans wondering to delete the Muslim historical presence, facing thus the British colonizers. The issue of the fugitives raised the level of the tension between the 2 powers, the British and the Burman one, that were destined to face each other directly very soon.⁸¹

1.7.3 KING BERING'S SAGA AND THE ARAKANESE RESISTENCE

In the meanwhile Chinbyan, a legendary Arakanese figure, popularly known as King Bering, organized a resistance against the Burmans, making the necessary preparation in the Company's territory. He could count on a considerable number of forces and on a good preparation. In 1811 he crossed the boarder and arrived in Mrohaung. Chinbyan's feats were marked by the same cruelty and ferocity that had characterized Bodaw Paya several years before. Even though he failed to take the city by force, he put to death many Burman soldiers, their families and their Arakanese supporters. By the middle of 1811 almost the entire province was in his hand⁸². Burmans organized soon their troops in order to recovery the lost territories. The rebels were defeated in Cheduba and Chinbyan was forced to escape seeking refuge over the frontier. Once again the question of the fugitives raised the tension on the boarder between Arakan and British India, with the Burmans making incursions in British territories threatening them to occupy the buffer zones and the British striving for a diplomatic solution. Taking advantage from the absence of the armies on both sides of the frontier, due to a moment of negotiation between the powers, "King Bering" planned a new invasion, defeating a small Burman detachment and taking possession of the Burman stockade in Maungdaw. Because of the disparity of the forces in the field, anyway, even this incursion failed and Chinbyan was forced to seek refuge again over the boarder. This time the Company wanted him out of their territories, but no one could catch him, especially after that, in November 1812, his followers occupied Cox's Bazar, transforming it into their new headquarter. The attempts of raids and incursions continued in the following years, until Chinbyan's death in 1815⁸³.

81 Phayre recounts that Bodoahpra asked to the Marquis Wellesley, that was governing British India at that time, the expulsions of the fugitives. The only answer that he received was the reassurance that no immigrants would have done any raids into Arakan. This answer annoyed at such a point the King of Ava, that he arrived to renew the request, threatening "an invasion if the demand was not complied with" A.Phayre, *History of Burma*, Trubner & Co, Ludgate Hill, 1883, London p.222

82 King Bering, in *Journal of Burma Research Society*, p. 445

83 The clashes between the Burmese and the British armies will occur only 10 years later, but King Bering's saga contributed to waste the relations between the Kingdom of Ava and British India. Phayre writes: "Khyengbyan (Chinbyan) having again taken refuge in British territory, the governor of Arakan marched

1.7.4 PREMISES OF BRITISH OCCUPATION

The raising of the tension between the Kingdom of Ava and British India continued to grow despite the end of Chinbyan's "guerrilla". Mohammed Yunus talked about repeated attacks and incursions over the boarder.⁸⁴ The situation degenerated because of the dispute occurred around the island of Shahapuri in 1823, but it was just the prelude of what was going to happen in the following years.

1.8 ARAKAN UNDER BRITISH OCCUPATION (1823-1947)

1.8.1 FIRST ANGLO-BURMAN WAR

According to the description made by Father SanGermano⁸⁵, King Bodaw Paya had a terrible character that took him to "cross the line" many times, overestimating the effective power of his army. When his nephew, Hpagyidoa was appointed as new king, it was evident that he would have reigned with a different mood. As referred by Phayre⁸⁶, he promised to rule justly, but he had soon to face conspiracies and dissent within its kingdom. In order to strengthen the internal control, the King decided to pursue a vigorous expansionist policy in Asam region. Once forced the Asam ruler to escape in British Indian territories in 1823, the campaign launched by Burman army arrived in proximity of Chittagong. Burmese officials started to exercise their authority over the island of Shahapuri⁸⁷, after having attacked a garrison of British soldiers that were stationing there in order to protect British citizens in the island. This action, in addition to the ambitions of King Hpagyidoa and his General Bandoola, was considered unacceptable by British India, that saw as a unique option the one to declare war.

with an army to the frontier, and required the surrender of the fugitives, using insulting menaces if the demands were not complied with: Negotiations took place between the governor and the British magistrate of Chittagaon, which ended in the Burmese troops being withdrawn from the frontier".

A.Phayre, "History of Burma", Trubner & Co, Ludgate Hill, 1883, London p.223,224

84 M. Yunus, "History of Arakan (Past and Present)", 1994, Ch. VI "Arakan under Bodawphaya"

85 Father San Germano, "The Burmese Empire, a Hundred Years Ago", Archibald Constable and Company, Westminster, 1983, p.71,72

86 A.Phayre, "History of Burma", Trubner & Co, Ludgate Hill, 1883, London, p. 232:

87 The island of Shahapuri is located in the Bay of Bengal, at the mouth of the river Naf and in proximity to Chittagong District, Bangladesh

The British army occupied Rangoon and the entire Irawadi valley, where the Burmans were caught at surprise. In the meanwhile, a garrison of scarce 3500 soldiers, strongly hit by diseases and by the tough conditions found in the Bengali jungle, succeeded in resisting to the attack of 60000 people launched by Bandoola.⁸⁸ In 2 months the British forces were able to occupy the entire Arakan pushing back the enemies who retired in Danubyu. Here Bandoola was defeated and killed. Even though at that moment European superiority was evident, the King decided to keep on following his bellicose plans. According to the legends recorded by Phayre, the decision to refuse any kind of negotiations arrived from the Queen and the astrologers of the court.⁸⁹

The new chief of Burman army, Pukan Wungyi, was a “man of relentless cruelty”⁹⁰ and strong motivations. Despite his skills anyway there was no longer the possibility to push back the British army. An armistice of 40 days was agreed, but the terms imposed by the delegates of the European nation and inserted into the proposal to sign a treaty were judged unacceptable and refused. The hostilities were renewed, but soon a combined attack, forced the Burmans to withdraw accepting a new unfavourable treaty. Nevertheless, the King of Ava refused to ratify it, causing the anger of his enemies that decided to attack northward reaching the city of Yandaboo. Here, Hpagyidoa had no chance than accepting humiliating conditions in order to stop the hostilities, in 1826.

1.8.2 TREATY OF YANADABOO 1826: ARAKAN BECOMES A REGION OF THE ANGLO-INDIAN EMPIRE

The regions of Asam⁹¹ and Arakan⁹² and the coast of Tenasserim⁹³ were ceded to the East India Company, while the army was retiring in Rangoon and an annexed commercial

88 The General, in his campaign against the “Kalas” (foreigners) was still quite confident about the likelihood of victory, but didn’t resist to the offensive of General Morrison’s battalion. Anyway Phayre refers they were very ill-equipped and not able to use mosquets. See also A.Phayre, “History of Burma”, Trubner & Co, Ludgate Hill, 1883, London. Ch. XI, p. 232: “Dynasty of Aulanhpra, Conquest to the West and War with British India”

89 The Queen was also known as “the Sorcerer”, since the evil influence she could exercise on her husband. Also the astrologers, who were continuing to predict the success under her influence, could rely on an incredible power at court. See also A.Phayre, “History of Burma”, Trubner & Co, Ludgate Hill, 1883, London, p.251

90 See also A.Phayre, “History of Burma”, Trubner & Co, Ludgate Hill, 1883, London, p.251

91 Art. 2 of the Treaty of Yandaboo says: “His Majesty, the King of Ava renounces all claims upon, and will abstain from all future interference with, the principality of Assam and its dependencies”

92 Art. 3 of the Treaty of Yandaboo says: “To prevent all future disputes respecting the boundary line between the 2 Great Nations, the British Government will retain the conquered Provinces of Arracan, including the 4 divisions of Arracan, Ramree, Cheduba and Sandoway, and his Majesty, the King of Ava, cedes all right thereto”.

93 Art. 4 of the Treaty of Yandaboo says: “His Majesty the King of Ava cedes to the British Government the

treaty was signed in Ava. Hpagyidoa was left at the head of a small kingdom, ruling an exhausted country and being soon victim of palace conspiracies. Despite the complete occupation of Burma will occur only many decades later, the basis of the interracial hate that the Burmans started to feel against the “kalas”⁹⁴ are to be found in the conditions imposed in the Yandaboo treaty. The Buddhist majority of Ava addressed its resentment against the Muslim citizens of Arakan, accused of having plotted with the British Indians and that during the colonial occupation merged with the wave of Chittagonians that trespassed the boarder and arrived en masses in the region. The facility through which citizens could go from East Bengal to Arakan, passing an imaginary frontier that was no longer existing, will give to the future members of the military junta in Myanmar the pretext to label the Rohingyas as illegal migrants arrived from Bengal during the colonial rule.

1.8.3 SECOND AND THIRD ANGLO-BURMAN WARS AND EFFECTS ON ARAKAN

The treaty of Yandaboo represents the official starting point of British occupation of Burma. This important period contributed to raise the level of strain between the different ethnic groups and can be considered with no doubts as one of the most important causes at the basis of the anti-Rohingya feeling present nowadays in Myanmar.

The hostilities between the Anglo-Indian colonizers and the Burmans continued for more than one century, creating the framework for the Anti-Muslim waves that characterized the second part of 20th century. On the other hand the first years of British domination were furthermore marked by revolts and turmoil. When Britain assumed the task of ruling Arakan the conditions were unsettled⁹⁵. A widespread revolt was thereby put down in 1836.

To overcome the problems occurred in the first years of British dominance, a new system of administration was appointed after 1836.⁹⁶ Even though this administrative

conquered provinces of Yeh, Tavouy, and Mergui and Tenasserim, with the islands and dependencies thereunto appartaining”

94 In Burmese the term “Kalas” means “foreigners”. It is a derogative term used in Myanmar, in particular by Buddhist Maghs in Arakan, to detect everything not considered “native”, including of course Rohingya people.

95 See also M. Yunus, “History of Arakan (Past and Present), 1994 Ch. VII Arakan under British Occupation; and D.G.E. Hall, “Burma”, Hutchinson and Go., London, 1950

96 The Indian model was introduced, including a Commissioner at the top of an oligarchic structure and a native revenue officer that superintended the revenue affairs. Moreover, township officers were appointed for each township, with the duty to organize the local jurisdictions. The administrative reform contributed

reorganization together with the massive waves of Indian migrants contributed to raise the level of welfare of the region, the British Indians had always to cope with the grudge of the native Buddhists. Continuous revolts will occur throughout the 19th century, creating the roots for the Buddhist nationalist movements that will start to rise and grow up in the first years of the 20th century. The second and the third Anglo-Burmese wars contributed to foster such feelings.

The British willing to control the majority of the commercial routes in South-East Asia lies behind the major causes of the second Anglo-Burmese War, that did not involve anyway Arakan territories. This war was fought between April and December of 1852 and permitted the British Indian Company to annex the province of Pegu. During the following years, new groups of Indian Muslims arrived in British Burma, that was now composed of 3 districts: Arakan, Pegu and Tenasserim. According to the first official census that was taken in Burma, in August 1872, the two thirds of the total number of Muslims recorded in these territories, around 64000 people, lived in Arakan⁹⁷. This number anyway was destined to increase as effect of the complete occupation of Burma.

The third Anglo-Burmese war, occurred in 1885, was concluded with the total annexation of Burma. Many chronicles and data demonstrate that the landscape of Burma was completely evolving during this period. Indians could move and reside freely in the country, giving the rise to extensive exchanges in Arakan. Also the economy and the agriculture of the region were totally overturned, namely large Burmese areas were put under rice cultivation transforming Burma into an exporting country linked in many ways with Europe.⁹⁸

to waste the relations between British India and Burmese administrative and religious organs. D.G.E. Hall Writes: "the British refusal to give official recognition to the Buddhist ecclesiastical code on the grounds that this would constitute the kind of interference with religion." D.G.E. Hall, *Burma*, Hutchinson and Go., London, 1950, p. 146. See also M. Yunus, "History of Arakan (Past and Present), 1994 Ch. VII Arakan under British Occupation

97 C. Grundy Warr, E. Wang, Sanctuary under a plastic sheet- the unresolved problem of Rohingya refugees- IBRU Boundary and Security Bulletin Autumn 1997, p. 80

98 D.G.E. Hall, *Burma*, Hutchinson and Go., London, 1950 Ch. XVIII "Economic and Social Evolution", p. 156

1.8.4 MASSIVE SOCIETAL CHANGES AND INDIANS' LEADING POSITIONS IN THE BUREAUCRACY OF BURMA

As Moshe Yegar suggested, the British conquest of Burma caused great changes in the societal structure of the country⁹⁹. The waves of Indians that took advantages from the porosity of the borders between Burmese provinces and Indian territories, caused new strains in the society, in particular within Arakan. Indian migrants not only provided cheap labour but obtained even jobs in the civil service, becoming active in the development of communal activities, such as the building of new mosques and “madrasahs”¹⁰⁰. The social position of the Indians¹⁰¹ was indeed considered superior to the one of the indigenous Burmans. It is one of the reason why the percentage of Indian Muslim population in Burma continued to grow, not only in Rakhine, but also in departments traditionally excluded from Muslim new arrivals, such as Rangoon district.

As stated above, the first official census recorded 64000 Muslims, the majority of whom living in Arakan. The census of 1891, that included a much broader area, recorded almost 250000 Muslims.¹⁰² By 1921 there were over 500000 Muslims recorded out of an overall population of 13 millions of people. The majority of them, as demonstrated even by the census made 10 years later had Indian origins and the 41% used to live in Arakan. These data have been manipulated by Burmese military government, that often denies the presence of non-Indian Muslim as original inhabitants of Arakan. On the other hand it is demonstrated that the intermarriages had blurred the sharp distinctions between “Indian” and “Burman” Muslims¹⁰³, making harder to prove the original roots of Rohingya settlers in Rakhine State, a long time before the advent of the British occupation.

99 M. Yegar “The Muslims of Burma- A Study of a Minority Group” Otto Harassowitz 1972, Wiesbaden, p. 29

100 “Madrasa: a place of education for Muslim religious leaders and scholars. Madrasahs concentrated on rote memorization of Quran, knowledge of correct ritual practice and the deduction of legal points from the scriptures (fiqh), and, in fact they eventually produced bodies of law.” Juan Eduardo Campo, Encyclopedia of Islam, Encyclopedia of World Religion, 1950, New York, p.446

101 The wide majority of the “Indians” we refer to were Muslim Bengalis, in particular coming from Chittagong and Cox's Bazar districts.

102 The majority of Arakan Muslims were considered as “Zerbadees”, offspring of intermarriage between Indian Muslim men and Burman Buddhist women. See also M. Yegar “The Muslims of Burma- A Study of a Minority Group” Otto Harassowitz 1972, Wiesbaden, p. 33,34

103 C. Grundy Warr, E.Wang “Sanctuary Under a Plastic Sheet- The Unresolved Problem of Rohingya Refugees”, IBRU Boundary and Security Bulletin, Autumn 1997, p.80

Moshe Yegar tries nevertheless to highlight the basic differences between these 2 distinct groups¹⁰⁴, a further proof of the necessity of a deeper historical analysis around the role of Islamic inhabitants in these zones.

1.8.5 ANTI-COLONIAL NATIONALIST MOVEMENTS: THE ROOTS OF THE FUTURE LEADING CLASSES

After the end of the third Anglo-Burman war, which was completed with the total annexation of Burma in 1885, the Buddhist majority within the country started to suffer the British dominance and the Indian superior social position. The natural consequence was that soon new organized groups appeared in the socio-political landscape of Burma threatening the colonial established order. One of the outcomes of the actions organized by such groups was the raising of the tension between different ethnic families. As stated even by Yunus, a large wave of anti-Indian and anti-Muslim hate was infused in the whole nation, in particular into the region of Arakan.¹⁰⁵

In 1906 an organization named Young Men's Buddhist Association (YMBA) led by students of Rangoon College was established with the original goal to promote Buddhist culture and education. After being converted into the General Council of Burmese Association (GCBA) in 1917, the organization started to take political resolutions and to be considered as a continuous point of reference for the Buddhist nationalism.

In 1930 a new movement called Do Ba Ma Asiayone (Our Burman Association) was founded by a group of university students known as the "Thakins" (masters). These 2 groups can be considered the forerunners of the Thakin Party, whose leader Aung San¹⁰⁶ is often represented as the father of Burmese independence. In the same year anti-Indian riots broke out in Rangoon, targeting indiscriminately all the different non-Buddhist religions and tribes.¹⁰⁷

104 M. Yegar wrote: "it was generally possible to identify the community of the Indian immigrant by his profession"; "Further differences causing tensions and splits between the 2 groups were over religion and custom. The Burmese Muslims spoke Burmese whereas the Indian spoke mostly Urdu or other Indian languages. According to the accepted custom in Buddhist society, the Indian Muslim women covered their faces with Purdah, a custom practically unknown among the Burmese Muslim women who were used to full equality with their men." M. Yegar "The Muslims of Burma- A Study of a Minority Group" Otto Harassowitz 1972, Wiesbaden, p.29, 107

105 See also M. Yunus, "History of Arakan (Past and Present), 1994 Ch. VII Arakan under British Occupation- Anti-colonial nationalist movement

106 Aung San was the father of Aung San Suu Kyi, Burmese Politician, Nobel Peace Prize in 1991 and Human Rights activist.

107 There was a clear inability to distinguish the native Rohingyas from all the other communities, like the

In 1931 a “Burma round table Conference” was organized in London with 24 delegations representing the different communities of Myanmar. The Rohingya delegation was nevertheless excluded and included into the Indian one.¹⁰⁸ In 1937 the “Home rule”, namely the internal self-government, was granted to Burma, with the Thakins controlling the whole administration.

1.9 INTER-COMMUNAL TENSIONS IN THE “JAPANESE” PERIOD¹⁰⁹. MYANMAR DURING THE WWII

When the WWII broke out the “Thakin Party” exploited the occasion to free the territory from the British occupation. Thus, the official decision was the one to be at war with Axis powers, creating the Burma Independence Army (BIA)¹¹⁰ under the patronisation of Japan. With the combined attack of BIA, led by Gen. Ne Win, together with the Japanese Army, the wide majority of British forces were obliged to withdraw from Burma and Arakan in 1941.

While the Japanese forces were occupying, together with the BNA, a large part of the State, the administration of Arakan was entrusted to the Maghs, representing the Buddhist elites of the region. In the following years a huge massacre caused more than 100000 victims among the Muslims of the zone¹¹¹. The only able to give a valid refuge to those enough luck to have the possibility to escape were the remaining British troops in Cox’s Bazar (Bangladesh) and few areas of Arakan.

ones of Bengali and Indian Muslims. This unwillingness will be a recurrent theme in the history of ethnic discrimination and “anti-kalas” campaigns in the last 85 years.

108 The ratio behind this decision will be used many years later by some Burmese scholars in order to demonstrate the absence of an “indigenous” Islamic community in Arakan before the advent of Indians during the colonial period. See also: M. Yunus, “History of Arakan (Past and Present), 1994 Ch. VII Arakan under British Occupation- Anti-colonialist nationalist movement

109 See also: M. Yegar “The Muslims of Burma- A Study of a Minority Group” Otto Harassowitz 1972, Wiesbaden, p.68, 69 – The Japanese Occupation

110 The BIA was later transformed into BNA: Burma National Army

111 The idea by the moderate Maghs was the one to protect Rohingyas from the massacre, as referred by them in a meeting with the Thakins’ leaders. The content of this meeting demonstrates (although Khin Maung Saw states that there are no signs of the term Rohingya before the 50s) that the Maghs were well aware at that time of the presence of Rohingyas in the zone. On the other hand, it was just an “eyewash” (to use Dr. Yunus’ words), since during the massacre, the slaughtering and the rapes were indiscriminately made towards Chittagonians and Rohingyas, without any distinction. M. Yunus, “History of Arakan (Past and Present), 1994 Ch. VII Arakan under British Occupation- The Muslim Massacre of 1942

In the following years the situation was characterized by the contraposition of 2 factions. On the one hand there were the Japanese troops, together with the members of the BNA and the Maghs. On the other hand the Rohingyas had no chance than making a coalition with the British forces. This juxtaposition contributed to foster feelings of hate and revenge in the spirits of the Thakins and the Maghs. In the same time thousands of Muslims fled to Bangladesh without having the possibility in the following decades to make return to their original houses.

Once the United Kingdom had left the country, the Rohingyas whose loyalty had been deep towards the Europeans, were left alone, without any kind of shelter towards the aggressions of the populations that for thousands of years had coexisted with them in Arakan.

When the Japanese army was finally defeated in 1945 and with the following draft of the Atlantic Charter, the former colonies of the United Kingdom started to gain independence. In January 1947 an agreement between Clement Atlee and Aung San, Burman national leader who had strategically switched alliance before the Japanese defeat, was signed in London. The Aung San-Atlee Agreement provided full independence to Burma¹¹² within one year, with the elections to create a Constituent Assembly to be held within 4 months¹¹³.

The State of Arakan was included into the new borders of Burma, as the natural consequence of the lifelong coalition between the Maghs, Buddhist inhabitants of Arakan, and the members of the Thakins Party, main actors in the story of Burmese independence.

112 Aung San-Atlee agreement is available at: <https://burmatar1010.files.wordpress.com/2011/06/44172419-aungsan-atlee-agreement.pdf>

113 Art.1: "In order that the people of Burma may decide on the future constitution of their country as soon as possible a Constituent Assembly shall be elected instead of a Legislature under the Act of 1935. For this purpose the electoral machinery of the 1935 Act will be used.

Elections will take place in April for the general non-communal, the Karen, and the Anglo-Burman constituencies as constituted under the Act of 1935, and for each constituency two members shall be returned. Any Burma nationals (as defined in Annex A) registered in a general constituency other than one of those mentioned above shall be placed on the register of a general non-communal constituency."

1.10 1947 CONSTITUTION AND THE EXCLUSION OF THE MUSLIMS. THE POLITICAL ROLE OF AUNG SAN

After the end of the WWII it was time for the leaders of AFPFL¹¹⁴ to create a nation. There were many issues at stake, but of course great attention deserved the question of the independence of Arakan and the status of its Islamic community.

Before the agreement with Clement Attlee, the leader of the “Anti-Fascist Front” Aung San held meetings with the representatives of the different communities to discuss the possibility to join or not the new Burmese Union¹¹⁵. Despite Arakan possessed all the requirements needed to form a separate entity, or at least to have a special status, the Magh leaders preferred to remain within the borders of Burma. The reason lied in the necessity for the Buddhist majority to stabilize the region¹¹⁶, avoiding uprisings from the Muslim communities. Nevertheless, the first signs of feasible future rebellions, promoted by the Mujahid movement, were already visible.

The policy by Burmese leaders with respect to Rohingyas revealed soon itself not appropriate to maintain the stability in Rakhine State. Despite in March 1946 Aung San had held a meeting in Akyab where he had assured the Muslim leaders that all their rights would have been maintained after independence, his promises were disappointed the following year. Rohingyas and all the other minorities, including Zerbadees and Kamans, were excluded from the Pong Lang conference and no elections for the Constituent Assembly were held in Arakan. As a consequence the Muslim inhabitants of this region could not be represented in the draft of 1947 Constitution¹¹⁷.

The outcome was the one to push Rohingyas to seek other solutions in order to have their rights protected. The first idea was to recur to Pakistani government asking for the

114 AFPFL: Anti Fascist Freedom People's League

115 We should mention also the “Pang Long conference” of Feb. 1947, just after the Aung San-Attlee Agreement, where Aung Sang negotiated the status of different communities in the post independent Burma. The consensus by all nationalities to the independence was a precondition appointed by the British government, but in Pang Long not all the nationalities, were invited, since Rohingyas of Arakan were, once again, excluded

116 See also M. Yunus-“History of Arakan (Past and Present), 1994 Ch. VIII Why the Arakanese did not gain State?; M. Yegar “The Muslims of Burma- A Study of a Minority Group” Otto Harassowitz 1972, Wiesbaden, p.75-77 The Burma Muslim Congress (BMC)

117 There were several articles in this document promoting equality for anybody who possessed Burmese nationality, which was granted (Art.11) to anybody belonging to the indigenous races or just born in the territory of the Union. The Rohingyas were not excluded totally excluded (it will happen with 1982 Citizenship Law), but never succeeded in joining political important positions, in clear violations with Par. 13 and 14 of the Constitution, granting the right for all the citizens to have equal opportunities.

annexation of Northern Arakan. This possibility was anyway dismantled by an agreement reached between Aung San and Mohammed Ali Jinnah¹¹⁸. The second idea was the one to create organizations with the duty to promote Islam and defend the rights of the members of the Islamic community in Burma. Among these associations we should remember the General Council of Burma Moslem Associations (GCBMA)¹¹⁹, born in Rangoon in 1945 and the Burma Muslim Congress (BMC)¹²⁰. Even though both of them strived fiercely for the integration of their members, the Muslims community of North Rakhine State will continue to be excluded from the major political positions.

1.10.1 THE MUJAHID REBELLION AND THE CONTACTS WITH ISLAMIST NETWORKS. BURMA IN THE POST WWII

The failure of the official legal policies pushed many young Arakanese Muslims to seek new tactics useful to make their requests satisfied, including the decision to join a new movement, led by Jafar Kwal¹²¹. The Mujahid group was recruiting and training volunteers on the Mayu Mountains. The rebellion spread quickly, with the leaders refusing any attempt of negotiation and controlling soon wide areas of North Arakan.

The Mujahid movement caused several losses into the official Burmese army but lost soon the faith reposed by Rohingyas because of the crimes and injustices committed in the whole Arakan. Furthermore, the “Operation Monsoon” launched by Prime Minister U Nu in 1954 and the following campaigns succeeded in breaking the Mujahids’ resistance in 1961¹²². Nevertheless, some positive results concerning the recognition of Rohingyas’ rights started to occur.

On Sept. 1954 for the first time U Nu defined in a radio speech Rohingya people as an indigenous ethnic community. The rights they were deprived of were declared restored

118 Muhammad Ali Jinnah, was the first Governor General of Pakistan. It is considered the Founding Father of this country, which gained independence in 1946.

119 M. Yegar “The Muslims of Burma- A Study of a Minority Group” Otto Harassowitz 1972, Wiesbaden, p. 72

120 See also A. Razak, “The Burman Muslim Organization”, into U Razak of Burma: “A teacher, a leader, a martyr” OS Printing House CO, Bangkok 2007, p 17-19

121 Jafar Kwal was killed by government forces in 1951. With the end of his leadership the Mujahid movement was split into several factions, until the emergence in Maungdaw of the group led by Qassim Raja. See also M. Yunus-“History of Arakan (Past and Present), 1994 Ch. VIII Why the Arakanese did not gain State?

122 In the reality the struggle will continue also after the military coup of 1962. The contenders were the Tatmandaw and the Rohingya Independence Front (RIF, later Rohingya Patriotic Front, that took partially the heritage of the Mujahid revolts)

at a certain extent¹²³. A further result was the beginning of a debate about the possibility to create a special administrative area called “Mayu Frontier Administration” including the hotspots of Rohingyas’ presence: the provinces of Maungdaw, Buthidaung and the western part of Rathedaung. The implementation of this policy took place in March 1961, but the military revolution that occurred in the following year stopped U Nu’s projects¹²⁴, giving the rise to a “black period” for the recognition of Arakan Muslims’ rights¹²⁵.

1.11 THE RIF AND TATMANDAW OPERATIONS. FIRST WAVES OF REPRESSION IN ARAKAN

The Mujahid movement was reformed in 1963 under the name of the Rohingya Independence (later Patriotic) Front, which tried to establish also a weird alliance with other non-Muslim Rakhine rebel groups, such as the Communist Party of Arakan (CPA) and the Arakan National Liberation Party¹²⁶. The common aim was the one to ensure Arakan a further attention by the central government. The different background of the movements forming the coalition, in addition to the lack of strength and energy by the leaders of the movement that wanted to continue the path started by the Mujahid rebels, took this new front to an immediate breakout.

Another important factor behind this failure is connected to the response of the military junta. The Tatmandaw, namely the Burmese Army, conducted large repressive operations. The official aim was the one to destroy and block insurgencies in North Arakan caused by Chittagonians coming from Bangladesh and labelled as “illegal infiltrators”. Despite it was clear that the insurgencies were coming from Arakanese inhabitants, describing the members of the RIF as “Kalas” gave the opportunity to the government to cover the massacres occurring in Rakhine State under the cloak of a sick

123 “A short history of Arakan and Rohingya”, by National Democratic Party for Human rights p. 31

124 See also the 1962 draft for Arakan Statehood, that did not include the special administration project for the “Mayu Frontier”

125 As referred by Yunus and Yegar, the front of Rohingyas splitted in different factions, with opposite ideas regarding the possibility to create a special administrative area. The request by Rohingya Youth Association (RYA) and Rohingya Students Association (RSA) was the one to be directly administered by the central government, avoiding the control of the regional administration of Arakan, fully in the hands of the Maghs. On the other hand the Arakanese Muslim Organization (AMO) claimed for a major independence of North Arakan, guaranteed at constitutional level.

126 C. Grundy-Warr, E. Wang; “Sanctuary under a plastic sheet: the unresolved problem of Rohingya refugees”, IBRU Boundary and Security Bulletin Autumn 1997, p. 83

and extreme nationalism. The attempt by U Nu to mediate with the Islamic representatives did not find place in the military dictatorship led by Gen. Ne Win, whose first goal started to be the one not to give any space to a non-Buddhist community in Arakan.

The Seventies were indeed marked by large and violent actions. Charles Grundy-Warr and Elaine Wang describe “periodic operations” by the Tatmandaw, in which thousands of Rohingyas have had their homes destroyed and were evicted to a foreign land¹²⁷. Year after year the number of raids and the amount of victims grew exponentially. In 1971 the war occurred in East Pakistan with the subsequent creation of Bangladesh gave the opportunity to the Tatmandaw to cover the operations under the necessity to send back all the illegal migrants seeking refuge in Burma¹²⁸. Despite many foreign nations blamed the operations of the Tatmandaw, the situation didn’t change. According to different authors, like Martin Smith and Moshe Yegar, there were recurrent episodes of ethnic cleansing and “de-Islamization” of entire provinces. All these episodes were accompanied by a fanatic vision according to which the Muslims living in Arakan were the outcome of a clear attempt by the Islamic neighbouring countries to conquer the pure and Buddhist Myanmar.

1.12 THE OPERATION DRAGON-KING: THE BEGINNING OF THIRTY-FIVE YEARS OF SLOW-BURNING GENOCIDE

Under the circumstances we stated in the previous paragraphs, the peak of the violence was reached in May 1978. In this year, the decision by a government fully controlled by Ne Win’s loyalists was the one to launch a cruel campaign, known as the Naga Min (Dragon King) Operation. It consisted in an effort to register official citizens pushing out the foreigners. In the reality, during this period more than 200000 Rohingyas left the country. According to the members of Burmese government it was the final proof of the fact that they could not be considered as “legal” inhabitants of Arakan. Actually, the large majority of them, according to the reports of UN and many NGOs were forced

127 C. Grundy-Warr, E. Wang; Sanctuary under a plastic sheet: the unresolved problem of Rohingya refugees, IBRU Boundary and Security Bulletin Autumn 1997, p. 83

128 M. Yegar, “The Muslims of Burma- A Study of a Minority Group” Otto Harassowitz 1972, Wiesbaden, p 129

to leave the country through a massive use of violence, including rapes, murders and slaughtering of innocent people.

With the end of the operation Naga Min and in particular with the creation of 1982 Citizenship Law we enter into a new era regarding the massacre and the violations of human rights with respect to the Muslim minority of Rohingyas. This law has in effect created a legal framework used systematically by Myanmar government in order to justify the ongoing violations perpetrated against the Muslim minorities of Rakhine State¹²⁹. Despite some minor attempts to normalize the situation were made in the post-WWII, with the promulgation of the new law we abandon an historical perspective, joining the present. Indeed this high contested law represents still today the great obstacle to the aspirations of Rohingyas to be recognized for what they are: citizens of Burma. In the same time, although the UN continues to urge Myanmar government to change the situation, the 1982 Law hasn't been modified yet.¹³⁰

129 “The system anchor is the 1982 Citizenship Law, which in both design and implementation effectively denies the right to a nationality to Rohingya people.” B. Zawacki, “Defining Myanmar Rohingya Problem”, p. 18. Benjamin Zawacki is the Senior Legal Advisor for South-East Asia at the International Commission of Jurists and member of the Council on Foreign Relations.

130 According to latest UN reports regarding Myanmar, this State has reached important results in fields different than the ones of human rights. For this reason UN Gen. Secretary Ban Ki Moon has asked to the international community to lift the sanctions against Myanmar. See also: <http://www.nytimes.com/2012/04/30/world/asia/un-chief-to-ask-west-to-lift-myanmar-sanctions.html> . On the other hand “the opening of societal space and the emerging media freedoms that came with these reforms changed the dynamics, but not the nature of the destruction of the Rohingya”, M. Zarni, A. Cowley, “The Slow Burning Genocide of Myanmar's Rohingya”, 2014, Pacific Rim Law and Policy Journal, Vol. 23, N. III, P. 712

2. THE ACTUAL STATUS OF ROHINGYA IN MYANMAR: SINCE THE CITIZENSHIP LAW TO TODAY

With the draft of the Citizenship Law in Myanmar in 1982 we find a clear attempt to create different classes of citizens. In addition, the national plans promoted by the military bodies were not only aimed at eliminating Rohingya presence in Myanmar, pushing them out of the borders, but even at destroying the entire community. Cowley and Zarni wrote that “the severe abuses included razed villages, mass rapes and extrajudicial killings”.¹³¹ Thus, the documents required by the 1982 law were often gone destroyed and burned during the pogroms in North Rakhine State.¹³² In the last 23 years indeed the actions against Muslim minorities of Arakan have been accompanied by an attempt to render their presence in Burma illegal, in clear violation to the international law.

The story of the persecutions committed in North Rakhine State has been so far sad and too often forgotten. Since the end of the British occupation Rohingya people have lived as unwanted in their own houses. With the Law of 1982 the persecution has moved to a higher level. Despite in the last years we find a new engagement by the international community, Rohingya still live as unwanted refugees in crumbling camps between Bangladesh, Myanmar and Thailand and are day-by-day victims of every kind of sorrow. The level of the violence continues to grow year per year and the effort made by the UN, in addition to the sanctions promoted by the US, don't seem having lowered the hate against this community. The pogroms of 2012, perhaps the worst ones since the end of the Operation Naga-Min demonstrated once again the unsustainability of such a situation.

The weakest categories, in particular women and children, are increasingly finding themselves in vulnerable situations. What makes Rohingya further endangered is the fact that 1982 Law is just the first step of a series of law and policies that have contributed to insert these people among the most forgotten and persecuted in the whole planet. The two-children policy, for example has created a huge amount of unregistered children, who do not have the possibility to access to the educational structures. Due to

131 M. Zarni, A. Cowley, “The Slow Burning Genocide of Myanmar's Rohingya”, 2014, Pacific Rim Law and Policy Journal, Vol. 23, N. III, p. 709

132 M. Zarni, A. Cowley, “The Slow Burning Genocide of Myanmar's Rohingya”, 2014, Pacific Rim Law and Policy Journal, Vol. 23, N. III, p. 717

this reason, the illiteracy rate among Rohingyas is increasing year by year. The worst thing is that this context has not been recognized yet, nor examined in legal scholarship and discourse¹³³.

2.1 THE CITIZENSHIP LAW OF 1982 AND THE SECOND CLASS CITIZENS

“Burma Citizenship Law” was promulgated on the 15th of October 1982¹³⁴. The aim was the one to circumscribe the number of people with the right to be considered citizens of the Union of Myanmar. Despite the claims by the entire international community, including the major NGOs striving for the protection of human rights worldwide, this law has not been modified yet and remains a “legal” weapon used to hit the undesired populations living in Burma.¹³⁵

2.1.1 CHAPTER TWO: CLASSIFICATION ON THE BASE OF ETHNICITY

As we can read in the Chapter 2, point 3 of the text, the only ones fully entitled to be considered as citizens of Burma, are those belonging to a few national groups: Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and all the other ethnic groups settled in the territories of the State before 1823, the year of the I Anglo-Burman war¹³⁶.

The ethnic group of Rohingya is not present in this first list. Moreover, all the official proofs witnessing the original roots of this Islamic community were not considered at all by the authorities. The “official” version of the government, in particular since the military coup occurred during the 60s, is indeed oriented to a complete denial of the existence of such a group. Even though influent political leaders, before the advent of the military junta and the SLORC¹³⁷, had considered Rohingyas as an indigenous

133 E. Abdelkader, Myanmar’s democracy struggle: “The impact of communal violence upon Rohingya women and youth, Pacific Rim Law and Policy Journal Association”, Vol. XX, No. X, p.4

134 The entire text is available at: <http://www.refworld.org/docid/3ae6b4f71b.html>

135 M. Zarni, A. Cowley, “The Slow Burning Genocide of Myanmar's Rohingya”, 2014, Pacific Rim Law and Policy Journal, Vol. 23, N. III, p. 708

136 “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”. Burma Citizenship Law Ch. 2.3

137 As stated above, on Sept. 1954 U Nu defined in a radio speech Rohingya people as an indigenous ethnic community. The rights they were deprived of were declared restored at a certain extent.

community, after 1962 and in particular with the Operation Dragon King and with the Citizenship Law of 1982, there will be no further space for such a recognition.

The year 1823 mentioned in the draft is not casual. It represents in effect the starting point of British domination of Burma and an important moment of discontinuity. According to the history of Arakan, that we tried to summarize in the first part of the thesis, it represents the year in which the British Empire, already settled in Indian territories, conquered Arakan and a large part of the Kingdom of Ava, that nowadays we know as Myanmar. The tendency is the one to consider the period of the British colonization the one in which for the first time Muslim tribes started to arrive in Rakhine from Chittagong district. According to this version a distinct and original Islamic ethnic group, the one of the Rohingyas, was not present in Arakan before the advent of the British forces. On the contrary they were only the result of large waves of migrants coming from outside the Burmese boarder, who profited from the porosity of the frontier between Arakan and British India until the end of the WWII.

We already talked about the attempt to rewrite history by the most influent members of the Burmese intelligentsia. The law at stake was just the natural consequence of such an attempt. What is also daunting here is the willing to classify the citizens on the base of ethnicity¹³⁸, creating suddenly an enormous amount of stateless people, clearly violating the Art.15 of the Universal Declaration of Human Rights and the basic principles of international customary law.

By the first chapter of the Law we can understand that is almost impossible for the members of the Rohingya community to have the full citizenship granted. This Act deprives them of vital citizenship rights, “exasperating their struggle for survival”.¹³⁹ The natural and first victims of this legislation are the weakest categories, represented by children and women. Furthermore, it is granted to the Council of State the power to define a group as national or not¹⁴⁰. This discretionary power in the hands of the Council

138 See also Burma 2012 Human Rights Report, US Department of State. <http://www.state.gov/documents/organization/204400.pdf> “The 1982 Citizenship Law classifies citizens based on ethnicity and effectively makes more than one million residents stateless, including the Rohingya and those of Chinese, Indian, Nepali and Eurasian descent.”

139 E. Abdelkader, “Myanmar’s democracy struggle: the impact of communal violence upon Rohingya women and youth, Pacific Rim Law and Policy Journal Association”, Vol. XX, No. X, p.2

140 “The Council of State may decide whether any ethnic group is national or not”. Burma Citizenship Law, Ch 2.4

gives them the possibility to judge in the most convenient way the requests arriving from the ethnic groups excluded from the “official list”. Since the Council has widely demonstrated the aversion to the Rohingya and the tendency to consider them as a national enemy, we can fully understand how few are the possibilities for them to have full citizenship granted.

In the following chapters of the law two looser forms of citizenry are provided. The criteria requested in addition to many other factors that will be explained later, have rendered almost impossible for this community to acquire one of this form.

2.1.2 CHAPTER THREE: ASSOCIATE CITIZENSHIP

The Chapter 3 of the Law provides another way to become citizens of Burma, even though without guaranteeing the same rights reserved to the first category. It is possible indeed to acquire the title of associate citizens, for those who do not have all the prerequisites provided in Chapter 2.

All the applicants for citizenship under the Union Citizenship Act of 1948 may be determined associate citizens, by the Central Body¹⁴¹. In order to get this title the applicant must appear in front of an organization delegated by the Ministry of Home Affairs, writing an affirmation in which he/she declares allegiance to the State and affirm the willing to respect the laws and the duties of the State¹⁴². In the certificate the Ministry can include also the names of the children minor to 18 years old¹⁴³. At the age of 18 also the children have the duty to appear in front of the organization¹⁴⁴. In addition, in the moment in which both the parents lose the title of associate citizens, also the children will lose the associate citizenry, with all the rights connected¹⁴⁵ to this status.

141 “Applicants for citizenship under the Union Citizenship Act, 1948, conforming to the stipulations and qualifications may be determined as associate citizens by the Central Body”. Burma Citizenship Law Ch.3.23

142 “A person who has been determined as an associate citizen by the Central Body shall appear in person before an organization prescribed by the Ministry of Home Affairs, and shall make an affirmation in writing that he owes allegiance to the State, that, he will respect and abide by the laws of the State and that he is aware of the prescribed duties and rights”. Burma Citizenship Law Ch.3.24

143 “The Central Body may include in the certificate of associate citizenship the names of children mentioned in the application. The child whose name is so included is an associate citizen.” Burma Citizenship Law, Ch.3.25

144 “The child whose name is included under section 25, and who has completed the age of eighteen years shall make an affirmation in accordance with section 24, along with the parents.” Burma Citizenship Law, Ch.3.26

145 “When both the parents, of the children included in their certificate of associate citizenship, lose their

2.1.3 CHAPTER FOUR: NATURALIZED CITIZENSHIP

The citizens who may apply to be naturalized are those who respect the criteria set forth in the Chapter 4 of the Law. In particular, all the people that have entered and resided in the State, before the 4th of January 1948 and all their children born within the borders of the State can be considered as naturalized Burmese, but only after having furnished conclusive evidence.¹⁴⁶ Other criteria are set in the following articles, making very difficult for many ethnic minorities, including Rohingyas, to be considered eligible to the title of naturalized citizens.

2.1.4 IMPOSSIBILITY TO BE BURMESE. LARGE WAVES OF ROHINGYA STATELESS

Under such circumstances it is very difficult for the members of Rohingya community to get one of the forms of citizenship provided by the Law of 1982. They are excluded from the list of the original populations of Burma, despite the clear signs of their longstanding presence. On the other hand it is also difficult for them to be acknowledged as associate citizens. In order to have this qualification indeed a person's ancestor must have been already recognized as associate, before the Act of 1982. This thing works against Rohingyas because Arakan's isolation and the lack of infrastructures, especially in the past, made unlikely for the ancestors to be registered¹⁴⁷.

For the same reason, it is out of their reach the possibility to be recognized as naturalized citizens. In this sense, all the different criteria that we can find in the Chapters 3 and 4 of the Burma Citizenship Law clearly favoured "ethnic Burmans" rather than residents belonging to ethnic minorities. It is necessary for example to be of good character, of sound mind and most of all to speak fluently one of the national languages.¹⁴⁸ Moreover

associate citizenship, the child who has not completed the age of eighteen years, and the child who has completed the age of eighteen years, but has not made an affirmation cease to be associate citizens".
Burma Citizenship Law, Ch.3.29b

146 "Persons who have entered and resided in the State anterior to 4th January, 1948, and their offsprings born Within the State may, if they have not yet applied under the union Citizenship Act, 1948, apply for naturalized citizenship to the Central Body, furnishing conclusive evidence." Burma Citizenship Law, Ch.4.42

147 C. Grundy-Warr, E. Wang; Sanctuary under a plastic sheet: the unresolved problem of rohingya refugees, IBRU Boundary and Security Bulletin Autumn 1997, p. 84

148 "An applicant for naturalized citizenship shall have the following qualifications:
(a) be a person who conforms to the provisions of section 42 or section 43;

it is also possible to have the citizenship revoked in the case in which somebody is found committing acts intended to endanger national security, or committing an offence involving moral turpitude¹⁴⁹. In a situation such as the one of Myanmar in which the Islamic community is already victim of a proved persecution, being everyday accused of conspiracy and religious terrorism, the vague concept of national security is often used by the leading classes to justify the exclusion of Rohingyas. Under such circumstances they were deprived of the title of citizens and issued with white identity cards¹⁵⁰, representing the status of “foreign residents” within the country. The effect is that the Rohingya cannot participate in elective charges, cannot join the army and most of all are prohibited from making certain economic activities. This last prohibition in particular has rendered their life extremely difficult, since also ordinary economic activities, practiced for decades by their ancestors, are no longer available nowadays. The chances to live a normal life are once again strongly reduced.

The Burma Citizenship Law has indeed further complicated Muslims’ situation in Myanmar. Once deprived of their identity, they were rendered extremely vulnerable to charges of illegal immigration and to human rights abuses by the Tatmandaw.¹⁵¹ Thus, the level of antagonism between the 2 groups has risen again in an impressive way. In a press release by ARNO (Arakan Rohingya National Organization) in 2015, the Burma Citizenship Law was judged as “an oppressive law enacted by late dictator Ne Win in

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- (b) have completed the age of eighteen years;
 - (c) be able to speak well one of the national languages;
 - (d) be of good character;
 - (e) be of sound mind.”

Burma Citizenship Law, Ch.4,44

149 “The Central Body may revoke the naturalized citizenship of a person if he infringes any of the following provisions:

- (a) trading or communicating with enemy countries Or with countries assisting the enemy country, or with citizens or organizations of such countries during a war in which the State is engaged, or abetting such an act;
- (b) trading or communicating with an organization or with a member of such organization which is hostile to the State, or abetting such an act; (c) committing an act likely to endanger the sovereignty and security of the State or Public peace and tranquillity or giving rise to the reasonable belief that he is about to commit such an act;
- (d) showing disaffection or disloyalty to the State by any act or speech or otherwise;
- (e) giving information relating to a State secret to any person, or to any organization, or to any other country or countries, or abetting such an act;
- (f) committing an offence involving moral turpitude for which he has been sentenced to imprisonment for a minimum term of one year or to a minimum fine of kyats one thousand.” Burma Citizenship Law, Ch.4,58.

See also C. Lambrecht, The return of the Rohingya refugees to Burma- Voluntary repatriation or refoulement, United States Committee for Refugees

150 The official identity card released to Burma nationals are instead red. See also C. Grundy-Warr, E. Wang;” Sanctuary under a plastic sheet: the unresolved problem of Rohingya refugees”, IBRU Boundary and Security Bulletin Autumn 1997, p. 84

151 C. Grundy-Warr, E. Wang; Sanctuary under a plastic sheet: the unresolved problem of Rohingya refugees, IBRU Boundary and Security Bulletin Autumn 1997, p. 84

violation of customary international Law and human rights standards”, claiming that Rohingya are “full and natural citizens by 1947 and 1974 constitutions and as such they do not legally require to apply for citizenship under 1982 Citizenship Law”.¹⁵²

2.1.5 EFFECTS OF THE LAW. NO RIGHTS FOR STATELESS IN ARAKAN

The 1982 Law, together with the policies and practices by Myanmar government are “attributable to a system that ensures discrimination even in the absence of discriminatory individuals”, states Benjamin Zawacki¹⁵³. Thus, the Rohingya are not only unable to seek protection from the State, but are also victims of every kind of abuse. Those abuses are furthered provoked by other policies and decisions coming from the central government. Indeed, the power given to a central body, in charge with the duty to decide over the rights of nationality of the different ethnic groups has made the possibility to be recognized for Arakenese Muslim communities high unlikely. In this sense Rohingya status was further endangered by the creation of the colour coded scrutiny cards (CDC) in 1989. Pink cards for full citizens, blue cards for naturalized citizens and green ones for associate citizens. As it was predictable, Rohingya were not issued with any kind of card, maintaining the eternal status of unwanted foreigners¹⁵⁴.

Under the pressure of the UNHCR the government decided, in 1995, to issue them with a new kind of card: the white one. The white cards used to represent the “Temporary Registration Cards”, but could not be useful for the members of Arakanese Muslim tribes, since they do not mention the possessors' place of birth, but just the date of birth and the family name. It means that they could not be used to demonstrate the real origins of the possessors. Under a legal point of view, they did not give any kind of advantages to the bearers, whose stateless condition was kept untouched¹⁵⁵. Chris Lewa, of the “Arakan Project”¹⁵⁶, says that the “deprivation of citizenship has served as a key strategy to justify arbitrary treatment and discriminatory policies against the Rohingya”¹⁵⁷. Moreover, the Citizenship Law has contributed to ban them from any kind of

152 ARNO Press Release “Stop Intimidation to Banglianize ethnic Rohingya” 14/01/2015

153 B. Zawacki, “Defining Myanmar Rohingya Problem” Human Rights Brief 20, no. 3 (2013)

154 A.A. Ullah, “Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization”, *Journal of Immigrant and Refugee Studies*, 09/06/2011, p.143

155 See also C. Lewa, “North Arakan: an Open Prison for the Rohingya in Burma”, *Forced Migration Review*, Issue 32, April 2009, p. 11.

156 Chris Lewa is the coordinator of “The Arakan Project”, a local NGO primarily dedicated to the protection and promotion of human rights for the Rohingya minority of Burma

157 C. Lewa, “North Arakan: an Open Prison for the Rohingya in Burma”, *Forced Migration Review*, Issue 32, April 2009, p. 12

employment into the civil service, in particular into the health and education service, where the members of this community had been working for decades, before the advent of Ne Win's military dictatorship. In the "Slow Burning Genocide of Rohingya in Myanmar" we read that the class of "educated Rohingya" occupied important positions¹⁵⁸ during the country's early independence period (1948-1958)¹⁵⁹. Among them, we could find "parliamentary secretaries, cabinet ministers, members of the Parliament, well-to-do merchants, scholars, writers, artists, broadcasters, journalists¹⁶⁰". En effect, before independence and immediately after it there have been a lot of Muslim members of parliaments and at least 2 Muslim ministers were in the cabinets before the 1962 coup. After that period, working in the administration for Muslims in Burma revealed itself to be almost impossible. Syeda Naushin Parnini writes that since the beginning of the military rule not a single Muslim has never been appointed judge in the Supreme Court, nor in the Session Courts or in the Lower Courts¹⁶¹. In addition, the leaders of the community have been targeted in a systematic manner, often arrested and persecuted. Two of the saddest episodes in this sense are the ones of Dr. Tun Aung¹⁶² and of the retired lawyer Kyaw Hla Maung¹⁶³, that after the violences of 2012, were imprisoned in Sittwe under falsified charges.

The exclusion from the civil service, due to a lack of recognition of Rohingya legal status, despite being an unacceptable humiliation for thousands of men and women who have spent their entire lives in taking care of the health and the education of their people, is not the worst problem. The Citizenship Law and all the policies enhanced by this act,

158 See also S.N. Parnini, "The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh", *Journal of Minority Affairs*, Vol. 33, No. 2, p.286

159 Anyway Benjamin Zawacki writes that during the 1990s Rohingya were permitted to form parties and to vote in multiparty elections. Rohingya were also permitted to vote in 2008 Constitutional Referendum and in 2010 national elections. During these periods they were issued with temporary identification cards. However, after 2012 revolts this "privilege" was revoked. See also B. Zawacki "Defining Myanmar Rohingya Problem", *Human Rights Brief* 20, no. 3 (2013) P.20

160 M. Zarmi, A. Cowley "The slow burning genocide of Myanmar's Rohingya" *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p. 730

161 Parnini continues the paper affirming that the schools were nationalized in 1963. As a consequence, from that moment all the Muslism high schools were dismantled, while Muslim teachers and headmasters were replaced with Buddhist teachers.

162 According to the "Urgent Action Network" of Amnesty International Dr. Tun Aung was a Muslim community leader that was imprisoned "having done the exact opposite of what he was charged for". He was arrested after having tried to calm down an agitated crowd, without having the possibility to communicate with his family. He did not have the possibility to choose his own lawyers and during the trial the prosecution won an appeal to extend his sentence from 11 to 17 years because of his action of "inciting violence". See also "Dr. Tun Aung, jailed by the Burmese autorithies for trying to help", *Urgent Action Network- Amnesty International UK*. This article is also available at: <http://www.amnesty.org.uk/blogs/urgent-action-network/dr-tun-aung-jailed-burmese-authorities-trying-help>

163 M. Zarmi, A. Cowley "The slow burning genocide of Myanmar's Rohingya" *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p. 730

created the conditions to oblige Rohingya to forced labour, restrictions of movements, land confiscations, tortures, and many other abuses¹⁶⁴. In this sense no shelter could be used by the members of the community¹⁶⁵.

2.1.5.1 *Impact on the children: the education issue and forced labour*

“I wouldn't have to live this life if I wasn't a Muslim”. With these words, pronounced by the ten-years child Anwar Sardad in October 2013¹⁶⁶, Engy Abdelkader¹⁶⁷ opens her article regarding the impact of communal violence upon Rohingya, on the Pacific Rim Law and Policy Journal in 2013¹⁶⁸. Due also to the effects of the two-child policy¹⁶⁹, that I will examine later in my thesis, the education represents a rare privilege for the youngest members of Rohingya communities. Indeed, if the parents are not officially married or they have already reached the two-child limit, all the basic services, including the access to the public schools, are denied to their children. They are “blacklisted” and deprived of birth certificates¹⁷⁰. Also in the case in which they can have access to the education structures, in the large majority of the occasions the bad conditions of the buildings do not permit to the children to have an adequate education. The schools are overcrowded and the pupils are obliged to follow lessons in unsafe rooms with no space to sit and take notes. One of the most striking example is the one of the school of Ba Gone Nar, with more than 1200 students enrolled and no more than 11 teachers

164 B. Zawacki, “Defining Myanmar Rohingya Problem”, Human Rights Brief 20, no. 3 (2013) P. 19

165 “They suffer discrimination, exploitation, and severe persecution, including but not limited to, forced labour, extortion, restriction on freedom of movement, absence of residence rights, denial of citizenship, inequitable marriage regulations, land confiscation, limited access to education and other public services in Burma. Rohingya have no place to go”, N. Hudson-Rodd, “Rohingya: Denied the Right to Be Human”, ANU College of Asia and Pacific, also available at: <http://asiapacific.anu.edu.au/newmandala/2014/06/15/rohingya-denied-the-right-to-be-human/>

166 The story of Anwar Sardat is narrated by “The Associate Press” through a series called “Portrait of Change”, witnessing several stories regarding the way in which the opening of Myanmar after decades of strong military rule has changed the lives of Arakan inhabitants. See also R. McDowell, “Rohingya Kids in Myanmar: Hard Labor, Bleak Lives”, The Associated Press, Oct.15, 2013. This article is also available at: <http://bigstory.ap.org/article/suffering-dogs-rohingya-kids-myanmar>

167 Ms. Engy Abdelkader is the U.S. Representative to the Advisory Panel of Experts on Freedom of Religion or Belief at the OSCE- Organization for Security and Cooperation in Europe. She also chairs the American Bar Association's Section of Individual Rights and Responsibilities Committee on National Security and Civil Liberties.

168 E. Abdelkader, “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, Pacific Rim Law and Policy Journal, Vol. XX, N. 10, p.1

169 According to the two-child policy Rohingya couples are not allowed to have more than 2 children. To be married they should indeed have the official permission from the authorities. When they submit the application they are obliged to subscribe a declaration in which they refuse not to have more than 2 children.

170 Rohingya kids are “blacklisted” if their parents' marriages are not officially registered or if the two-child limit that has been imposed on them has already been reached. To get an official permission from the NaSaKa is very difficult and the practices can last for many years. See also: R. McDowell, “Rohingya Kids in Myanmar: Hard Labor, Bleak Lives”, The Associated Press, Oct.15, 2013. This article is also available at: <http://bigstory.ap.org/article/suffering-dogs-rohingya-kids-myanmar>

appointed by the government¹⁷¹. Furthermore, the access for Rohingya to Burmese universities is not allowed. Certain subjects, such as medicine, dentistry and engineering are prohibited and for the few remaining areas there are not universities in the whole North Rakhine¹⁷². The natural consequence is a “poor quality education”, witnessed by a daunting 80% of illiteracy rate among Rohingya¹⁷³.

The only possibility that youngest members of this community have to support their families is to perform hard labour for the government. As witnessed by Robin McDowell in northern Rakhine State the government pick up tracks collect the children every morning and depose them on the riverbeds. Here they can experience the most degrading and humiliating work conditions. They can work more than 10 hours every day, carrying river rocks, or assisting the government in repairing the roads. They usually earn less than 1000 kyats (1\$) per day. In many occasions that money is the only source for the families to be sustained. As a natural result the high level of malnutrition in the region can seriously harm the children physical and mental development.¹⁷⁴

The life of a Muslim child in North Rakhine State can also be worse. As witnessed even by Human Rights Watch, whose activity in the zone is everyday put in trouble by government officials, the children are treated in the most denigrating manners. The non-Muslims refer to them as “dogs” and the young girls can experience crude sexual insults. The risk of family separation is always high, as well as the vulnerability to trafficking and exploitative work¹⁷⁵. After 2012 inter-communal violence the risks for children's

171 See also: R. McDowell, “Rohingya Kids in Myanmar: Hard Labor, Bleak Lives”, The Associated Press, Oct.15, 2013. This article is also available at: <http://bigstory.ap.org/article/suffering-dogs-rohingya-kids-myanmar>

172 We may remember that for more than 10 years the Rohingya cannot leave the area in which they have been confined, due to travel bans imposed by Myanmar government. See also “Burma: Burma fuels the Rohingya Tragedy”, Far Eastern Economic Review, March 6, 2009

173 E. Abdelkader, “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, Pacific Rim Law and Policy Journal, Vol. XX, N. 10, p.1

174 The Art. 32,1 of the Convention of the Rights of the Child says: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.” See also: R. McDowell, “Rohingya Kids in Myanmar: Hard Labor, Bleak Lives”, The Associated Press, Oct.15, 2013. This article is also available at: <http://bigstory.ap.org/article/suffering-dogs-rohingya-kids-myanmar>

175 Human Rights Watch also says: “Rohingya children born out of wedlock or in a family that already has two children do not receive any status whatsoever from the government, making them ineligible for education and other government services, unable to receive travel permissions, and they are later not permitted to marry or acquire property. They are subject to arbitrary arrest and detention.” See also: Human Rights Watch, “Burma: Revoke two-child policy for Rohingya. Coerced Birth Control Reflects Broader Persecution of Muslim Minority”, 28th May, 2012. The article is also available at: <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>

lives have sharply risen, together with the concerns of UNICEF, whose representative Bertrand Bainvel declared: “In the name of Myanmar's children, now is the time for the violence to end. Hate messages and inflammatory propaganda just perpetuate the cycle of violence, and it is children who suffer”¹⁷⁶.

Moreover the conditions of youth in North Rakhine State clearly violate the basic articles of the Convention for the Right of the Children, that was signed by Myanmar in 1991. In March 2012 the UN Committee for the Rights of the Child, whose task is to check the implementation of the Convention, called upon Myanmar government to end restrictions and laws that are causing seriously harms to the basic rights included in the Convention and not respected in North Rakhine State. As we can read in UNICEF's home page “the unprecedented acceptance of the convention clearly shows a wide global commitment to advancing children's rights”¹⁷⁷. On the contrary Myanmar seems to be one of the most ignored exceptions to this accepted trend.

The first article of the “Convention for the Rights of the Child”¹⁷⁸ that appears not be respected is the Art. 2¹⁷⁹, obliging all the signatory states to fully respect the rights set forth in the convention, without any exceptions or discrimination regarding, among the others, race and religion. This discrimination appears however vivid in respect to Rohingya children, whose lives are not even comparable to the ones of their coevals in Burma. Another article that seems to be forgotten by Myanmar authorities is the Article 3, according to which State parties should “ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety and health”¹⁸⁰. The inhuman conditions of schools and hospitals in Rohingya's areas are

176 Since the end of 2012 Bertrand Bainvel is the UNICEF representative in Myanmar. See also: Unicef Media Center, “Bertrand Bainvel Joins as UNICEF Representative in Myanmar”. This article is available at: http://www.unicef.org/myanmar/media_20106.html

See also: Women News Network: “Burmese village violence against children & families must stop, says UNICEF”, 10th September, 2013. The article is also available at: <http://womennewsnetwork.net/2013/10/09/burmese-violence-unicef/>

177 Visit: <http://www.unicef.org/>

178 The Convention of The Right of the Child of 1990 has been signed and ratified by the all States, with the only exception of the USA. The entire text is available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

179 Art.2 of CRC says:

1 States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status

2 States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

180 Art 3 of the CRC says:

clearly not conform to the prescriptions of this article.

To a deeper analysis we can acknowledge how the “Children issue” in Arakan zone is one of the most serious questions at stake and how a huge series of rights stated in the CRC of 1990 are in trouble in North Rakine state. We should mention at least:

- the Art.7,1 stating the right to a registration and to a nationality for the children;¹⁸¹
- the Art 28,1 recognizing the right to education, on the basis of equal opportunity;¹⁸²
- the Art 30 which describes the right for children belonging to ethnic, religious and linguistic minorities to enjoy their own culture;¹⁸³
- the Art. 32,1 and 2 according to which each State must recognize the right for the children not to perform “any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”¹⁸⁴.

2.1.5.2 *Torture, rape and ill treatment*

The human rights abuses did not involve only the youngest categories of this

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1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.
- 181 Art. 7,1: “The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”
- 182 Art. 28,1: “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
- a. Make primary education compulsory and available free to all; b. Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; c. Make higher education accessible to all on the basis of capacity by every appropriate means; d. Make educational and vocational information and guidance available and accessible to all children; e. Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
- 183 Art. 30: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”
- 184 Art.32, 1: States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

community. Especially after the beginning of a policy of relocation of Rohingya refugees by Myanmar government, in 1989, the records of abuses against Muslim families in Arakan heavily increased. Many of these abuses have been reported by the UN Commission of Human Rights in the 49th session of February 1993¹⁸⁵. In the report, referred to the first years of the Nineties and in particular to a period of demonstrations against the military regime we can find the description of tortures and abuses against members of different communities by Burmese dictatorship, with particular reference to the areas of Shan, Kayah, Mon, Kayin and Rakhine State¹⁸⁶. Going into the details of the report we can anyway discover inhuman treatments that targeted specifically Muslim people¹⁸⁷.

The Special Rapporteur describes in details the tortures occurred to people coming from Rakhine State. At the point 103 of the report, we can read the story of a man who showed to the rapporteur “extensive scars on his back and shoulders allegedly received from the heavy loads and from beating”¹⁸⁸. At the point 112, it is referred about a 17 years old Muslim boy, who refused to clean the pigsty in the military prison of Kalaw, because of his religion. The punishment was that the boy was beaten in front of the other prisoners and his head was repeatedly “dunked into a bucket of filth containing live insects”¹⁸⁹.

The section F of the report is totally dedicated to the situation of Myanmar Muslims of Rakhine State. The Rapporteur tries to sum up the historical situation of Muslim

185 Y. Yokota, COMMISSION ON HUMAN RIGHTS Forty-ninth session, Agenda item 12 “Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories”

186 “According to testimony received by the Special Rapporteur, thousands of persons have been killed since 1988 by the military throughout Myanmar while providing forced portering for the military. Amongst the most affected groups seem to be the Myanmar Muslims of Rakhine state, the Karen, Shan and the Mon.” Y. Yokota, COMMISSION ON HUMAN RIGHTS Forty-ninth session, Agenda item 12 “Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories”, Section A4- Point 79

187 “The Special Rapporteur was told by dozens of refugees, all Myanmar Muslims from Rakhine state in the Jumapara Transit and Gumdum refugee camps in Bangladesh, that men were routinely taken from the villages for forced portering. Witnesses said that many of the men had been killed while attempting to flee. Numerous women told the Special Rapporteur that their husbands had been taken away for portering and had not been seen again. Furthermore, only a few of these women were able to verify if their husbands were in fact dead or alive.” Y. Yokota, COMMISSION ON HUMAN RIGHTS Forty-ninth session, Agenda item 12 “Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories”, Section A4- Point 83

188 Y. Yokota, COMMISSION ON HUMAN RIGHTS Forty-ninth session, Agenda item 12 “Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories”, Section B2- Point 103

189 Y. Yokota, COMMISSION ON HUMAN RIGHTS Forty-ninth session, Agenda item 12 “Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories”, Section B3- Point 112

communities in Arakan, referring how the large majority of people that had been interviewed was not considered Burmese in 1992, despite being authorized to vote in 1990¹⁹⁰. The attention of the report is on the fact that the resettlement policies separated entire families, without giving to the refugees the adequate land resources to live a dignified life. Mr. Yoko Yozota goes further, affirming that the cultural, political, social and economic rights were not respected at all, with a particular reference to the “alleged grave violations of the physical integrity rights”. Moreover the Rapporteur talked about testimony and evidence of “systematic pattern of torture (including rape), cruel, inhuman and degrading treatment, disappearance or arbitrary execution of Muslim or other ethnic Rakhine minorities by the Myanmar authorities”¹⁹¹.

In addition Asia Watch has documented accounts of torture, rape and ill-treatment. During those years in effects, thousands of civilians were forced to unpaid labour for the construction of new roads. As referred by Carl Grundy Warr and Elaine Wang, there was a cruel activity of confiscation of the Muslim lands, whose historical owners found themselves without means and resources to sustain their families¹⁹².

More than 20 years after the report by Mr. Yozota, the situation does not appear to be changed. In particular after the revolts of 2012, the records of human rights abuses against the Muslim members of Rohingya community continue to grow. Human Rights Watch and other prominent NGOs have tried to record and denounce the state of things in Arakan.¹⁹³ In particular, HRW defines the acts committed against Muslim Rohingya after 2012 revolts “crimes against humanity”¹⁹⁴. One of the cruellest episodes in this

190 Y. Yokota, COMMISSION ON HUMAN RIGHTS Forty-ninth session, Agenda item 12 “Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories”, Section F

191 Y. Yokota, COMMISSION ON HUMAN RIGHTS Forty-ninth session, Agenda item 12 “Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories”, Section F- Point 130-136

192 C. Grundy-Warr, E. Wang; “Sanctuary under a plastic sheet: the unresolved problem of Rohingya refugees”, IBRU Boundary and Security Bulletin Autumn 1997, p. 85

193 Human Rights Watch identify in the 1982 Citizenship Law the main source of Rohingya persecution. In the report of 2013 we can read: “Human Rights Watch, UN agencies, and others have long recognized the denial of citizenship to Rohingya as a root cause of the violence in Arakan State. At the core of the problem is Burma’s discriminatory 1982 Citizenship Law.” See also: Human Rights Watch: “All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslim in Burma's Arakan State”, April 2013, Ch.7 “Denial of Citizenship”, p. 109

194 “The criminal acts committed against the Rohingya and Kaman Muslim communities beginning in June 2012 amount to crimes against humanity carried out as part of a campaign of ethnic cleansing”. Human Rights Watch: “All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslim in Burma's Arakan State”, April 2013.

According to International Criminal Court’s definition: “Crimes against humanity” include any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced

sense is narrated by New York Times' journalist Jane Perlez, who refers about UN and USA reports¹⁹⁵, which document the founding in the area of Sittwe of severed heads of at least 10 Rohingya, including a few belonging to children, into a water tank¹⁹⁶.

Despite the revolts of 2012 are over and some positive steps occurred in the last years, such as the dismantling of the agency NaSaKa¹⁹⁷, the situation remains critic. As it is widely known, the Arakani minorities are still susceptible of physical abuse, religious persecution and forced labour. Harrison Akins wrote that during President Thein Sein's official visit in Arakan in 2013, a mob of hundreds of Buddhists arrived in a Muslim village, burning more than 70 houses and leaving dead people on the ground. It is however only one of the episodes of a long stream of violence and blood that covers the entire "Rohingya" affair¹⁹⁸.

Further violations of human rights are the ones committed against political prisoners, including the leaders of Muslim movements in North Rakhine. Dr. Habib Siddiqui, together with the AAPP (Assistance Association for Political Prisoners in Burma), tries to enlist some of the worst violations perpetrated against these individuals and the methods used by the members of Burmese authorities in order to torture the prisoners:

- Severe beatings, often resulting in loss of consciousness and sometimes death;
- Electrocutation to all parts of the body including genitals;
- Rubbing iron rods on shins of prisoners until flesh is ripped off, a tactic known in this country as the "iron road";
- Burning with cigarettes and lighters;
- Prolonged restrictions of movements, for up to several months, using rope and

pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury.

195 According to Jane Perlez anyway, these reports were sent to Myanmar government, but were never made public. See also: J. Perlez, "Rise in Bigotry Fuels Massacre Inside Myanmar", NY Times, 1st March 2014. The entire text of the Article is available at: http://www.nytimes.com/2014/03/02/world/asia/rise-in-bigotry-fuels-massacre-inside-myanmar.html?_r=1

196 See also: J. Perlez, "Rise in Bigotry Fuels Massacre Inside Myanmar", NY Times, 1st March 2014. The entire text of the Article is available at: http://www.nytimes.com/2014/03/02/world/asia/rise-in-bigotry-fuels-massacre-inside-myanmar.html?_r=1

197 The NaSaKa was a paramilitary security force, that was disbanded in 2013. It was described by many International actors as an abusive and corrupt agency. See also: "The Dark Side of Transition: Violence Against Muslims in Myanmar", Crisis group Asia Report n.251, 1st October 2013

198 See also H. Akins, "No Place for Islam? Buddhist Nationalism in Myanmar", Al Jazeera, 18th October 2013, The text of the article is also available at: <http://www.aljazeera.com/indepth/opinion/2013/10/no-place-islam-buddhist-nationalism-myanmar-2013101710411233906.html>

shackles around the neck and the ankles;

- Repeatedly striking the same area of a person's body every second for several hours, a tactic known in this country as “tick-tock torture”¹⁹⁹.

2.1.5.3 Forced labour

The fact that many of the members of Rohingya group were obliged to forced labours is also witnessed by a report of Tomás Ojea Quintana²⁰⁰ of 2009, in which the special rapporteur affirmed: “there have been numerous and frequent reports of civilians being forced to serve as porters and guides for the military, to build and maintain roads, to construct military camps and to work on infrastructure projects”²⁰¹. According to the reports mentioned by UN Human Rights Council²⁰², there were mainly 5 different types of labour:

- portering;
- construction and repairs of infrastructure;
- maintenance and construction work for the military, NaSaKa and the police;
- guard and sentry duty;
- cultivation and agriculture.²⁰³

The activities of portering included the duty of carrying supplies and the equipment for

199 H. Siddiqui, “The Forgotten Rohingya, Their Struggle for Human Rights in Burma”, Kindle Edition, Ch.1 “Human Rights Violations in Burma”, See also <http://www.aappb.org>, The Assistance Association for Political Prisoners in Burma is a non-profit organization based in Thailand, that makes an activity of lobbying and advocacy for the release of remaining political prisoners in Burma;

200 Tomás Ojea Quintana has been the special rapporteur on the situation of Human Rights in Myanmar, since 2008 to 2014. According to his resume, available on the website of the Office of the High Commissioner for Human Rights: “Mr. Tomás Ojea Quintana is a lawyer, with more than 14 years of activities in the field of human rights. He has worked at the Inter-American Commission of Human Rights. He was also the Executive Director of the OHCHR Programme for Protection and Promotion of Human Rights in Bolivia. Most recently, he has represented the Argentinean NGO “Abuelas de Plaza de Mayo” in cases concerning child abduction during the military régime.” The new Special Rapporteur, appointed in 2015 is Ms. Yanghee Lee, from the Republic of Korea, who also chaired the “Committee on the rights of the Child” in the period 2007-2011. See also: <http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/MM/Pages/SRMyanmar.aspx>

201 UN Human Rights Council, ‘Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana’, UN Doc. A/HRC/10/19 (2009).

202 UN Human Rights Council was created by the UNGA in 2006, by resolution 60/251. It is an intergovernmental body responsible for “strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them”. See also: “Welcome to the Human Rights Council”- <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>: Resolution adopted by the UN General Assembly on 16th March 2006, 60/251, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement>

203 This categorization of the different kinds of forced labours is provided by the Irish Centre for Human Rights, which collected several interviews with Rohingya refugees in Bangladesh. See also: NUI Galway-Irish Centre for Human Rights, “Crimes Against Humanity in Western Burma: The Situation Of the Rohingyas”, 2010, p.41-48

the military forces and for the NaSaKa²⁰⁴. The workers were obliged to carry heavy loads continuously for many times a day. Sometimes among the ones involved in this activity there were also young boys, aged no more than 10 years. Thus, the Rohingya were obliged to work, in all the cases in which the transportation was difficult, in places where the roads were not developed or in isolated areas. The methods of recruitment could change from place to place. In particular the authorities used to send written orders to the villages, pretending a certain number of workers, for a length of period that could go from a few days to several months. In the practice anyway, the written orders could be easily replaced by oral and extemporaneous ones, that forced often Rohingya to comply with the requestes without a prior arrangement²⁰⁵.

Other kinds of activities include the ones of the construction and repair of infrastructures. Also in this case men and boys were recruited randomly, without any notice and often for large spans of time²⁰⁶. According to Chris Lewa²⁰⁷, many Rohingya were forced by the security forces to be employed with no salary in the activities of repairing roads and bridges and in the construction of model villages²⁰⁸. Also in these cases, in particular since the year 2008, the Irish Centre for Human Rights witnesses the forced employment of children between 6 and 10 years old²⁰⁹. A great paradox was in

204 The NaSaKa was an inter-agency force established in 1992. It was also known as the “Boarder Immigration Headquarter”, and was issued with the duty to control the boarders of Myanmar with Bangladesh and in particular to ensure the implementation of the discriminatory policies against Rohingya. The large majority of the members were Rakhine Buddhist and were involved in the communal tensions and violences in North Rakhine State. For this reason the President Thein Sein decided to dismantle this paramilitary group in 2013, with the notification 59/2013. In the notification, dated 12th July 2013 we can read “Border Area Immigration Control Headquarters has been abolished as of today”. He explained the reasons of this unexpected choice, through a speech given at the Chatham House after 3 days. In London he promised “zero-tolerance” against any renewed communal violence. He also stressed the need for a “more inclusive national identity”. In the same speech anyway, he once again refused the existence of the word “Rohingya”, renewing Myanmar’s government revisionism. The text of the notification 59/2013 by Myanmar government is available at: <http://www.myanmarpresidentoffice.info/en/?q=briefing-room/notifications/2013/07/14/id-2340>. The title of the conference Pres. Thein Sein joined at Chatam House was “Myanmar’s complex transformation: prospects and challenges”. The transcript of the speech is available at: <http://www.chathamhouse.org/events/view/193003>. See also: International Crisis Group, “Myanmar: Storm Clouds on the Horizon”, Asia Report n. 238, 12th November 2012

205 NUI Galway- Irish Centre for Human Rights, “Crimes Against Humanity in Western Burma: The Situation Of the Rohingyas”, 2010, p.41

206 NUI Galway- Irish Centre for Human Rights, “Crimes Against Humanity in Western Burma: The Situation Of the Rohingyas”, 2010, p.42

207 Chris Lewa is the deputy chair of the Asia Pacific Refugee Rights Network (APRRN) Working Group of Statelessness since 2012. The Arakan Project is an independent NGO since 2005 and it is member of the APRRN and of the International Detention Colation (IDC). Its main task is to fulfil an activity of research and advocacy in the Northern part of Arakan.

208 C. Lewa, The Arakan Project, ‘No end to Forced Labour!: Forced Labour Practices in Northern Arakan State, Burma’ (October 2006-May 2007)

209 NUI Galway- Irish Centre for Human Rights, “Crimes Against Humanity in Western Burma: The Situation Of the Rohingyas”, 2010, p.42

the fact that many times the Rohingya were involved in the construction of model villages for ethnic Buddhists, placed exactly in those lands previously confiscated by the government to the Muslim communities of Arakan²¹⁰.

Further activities are connected to the maintenance and building work for the security forces. In this case also Rohingya women were forced to unpaid labour, in particular being employed in cooking and cleaning for the military, the police, and for the NaSaKa²¹¹. The harshest activity in this sense remains anyway the one regarding the construction work, namely the tasks of digging and levelling the soil. In the majority of the occasions the Rohingya are also forced to provide the raw materials required. In the case in which they are unable of doing it, they are forced to compensate in unpaid labour the price of the materials they were not able to collect²¹².

Rohingya were also forced to act days and nights as guards of NaSaKa's perennial basis in North Arakan. According to the interviews conducted by the Irish Centre for Human Rights in the refugees camps of Bangladesh, these activities were also accompanied by extortions and physical abuses. Even in these cases the wives of the guards were obliged to replace their husbands whether they were not able to fulfil entirely their tasks²¹³.

The national agriculture policy by Myanmar government is another thing that caused concerns and suffering into the Rohingya groups. Various decrees and legislative enactments have stated in the last years the duty for the possessors of lands to make the fields highly productive. The fixation of hard criteria of productivity has enhanced the SPDC²¹⁴ to confiscate many boarder lands to Muslim farmers in Arakan. As a consequence they were only permitted to lease the land, without holding the possession. In the same fields they are now obliged to cultivate specific crops as requested by the authorities²¹⁵. Many civilians are also forced to work in the field owned by the security forces. In this case the reports indicate that every household must provide one of two

210 For a general overview about the issue of the confiscated lands in Myanmar see also N. Nien, Z. Mann, "MPs Urge Prompted Return of Confiscated Land", The Irrawaddy, 26th September 2014. The article is available at: <http://www.irrawaddy.org/burma/mps-urge-prompt-return-confiscated-land.html> ; The Karen Human Rights Group, "Losing Ground: Land Conflicts and Collective Action in Eastern Myanmar"; March 2013

211 See also Note 42

212 NUI Galway- Irish Centre for Human Rights, "Crimes Against Humanity in Western Burma: The Situation Of the Rohingyas", 2010, p.45

213 NUI Galway- Irish Centre for Human Rights, "Crimes Against Humanity in Western Burma: The Situation Of the Rohingyas", 2010, p.45, 46

214 SPDC stands for "State Peace and Development Council", which took the heritage of the SLORC, "State Law and Order Restoration Council"

215 See also: N. Hudson-Rodd, S. Htay, "Arbitrary Confiscation of Farmers' Land by the State Peace and Development Council (SPDC) Military Regime in Burma", The Burma Fund, Bangkok, 2008

days of forced labour per week, with the youngest member of the community that are the natural victims of these policies²¹⁶.

Under a legal point of view Myanmar government often justified the recurrence to forced labour through the Towns Act of 1907²¹⁷ and the Village Act of 1908²¹⁸, which empower headmen and rural police-men to impose compulsory labour on residents of the labouring class.²¹⁹ Despite the decision in October 1993 to consider these laws obsolete and no longer applied, some provisions were considered still valid in the case of “urgent necessity”²²⁰.

| TYOLOGY OF LABOR | OF | TARGET | ACTIVITIES |
|-----------------------------------|-----------|--|--|
| Portering | | Men; Young boys and children (no more than 10 years) | Carrying supplies and the equipment for the military forces and for the NaSaKa. The workers were obliged to carry heavy loads continuously for many times a day. |
| Maintenance and construction work | and | Men; Women | Digging and levelling the |

216 NUI Galway- Irish Centre for Human Rights, “Crimes Against Humanity in Western Burma: The Situation Of the Rohingyas”, 2010, p.48

217 In particular see Section 9 of the Towns Act (1907), describing the “General Duties of Residents” and the Art 10,3: Any person who contravenes the provisions of this section shall, on conviction by a Magistrate, be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to fifteen days, or with both. The text of the article is also available at: <http://displacementsolutions.org/wp-content/uploads/THE-TOWNS-ACT-1907.pdf>

218 In this sense we should observe the section “Duties and Powers of Village Committees Headmen and Rural Policemen”, of the Village Act (1908), with a particular reference to the Section 8,1 (G): “to collect and furnish, upon receipt of payment for the same at such rates as the Deputy Commissioner may fix, guides, messengers, porters, supplies of food, carriage and means of transport for any troops or police posted in or near or marching through the village-tract or for any servant of the Government travelling on duty provided that no headman shall requisition for personal service any resident of such village-tract who is not of the labouring class and accustomed to do such work as may be required;”. The text of the article is also available at: <http://displacementsolutions.org/wp-content/uploads/THE-VILLAGE-ACT-1908.pdf>

219 See also: ILO, ‘Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No.29)’, GB.273/MYANMAR3 (1998)

220 They referred to the section 8,1 of the Village Act (1908) and to the section 9 of the Towns act. See also: ILO, ‘Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No.29)’, GB.273/MYANMAR3 (1998) Ch.11 “Legislation of Myanmar Relevant to the Case”

| | | |
|---|--|--|
| | | soil. In the majority of the occasions the Rohingya are also forced to provide the raw materials required. For women: cooking and cleaning |
| Cultivation and agriculture | Men; Women; Children | Working for hours in the fields, obliged to cultivate only certain kinds of crops ordered by the government. In many occasions the farmers are obliged to work in their own lands, confiscated by the SPDC |
| Construction and repairs of infrastructures | Men; Children (6-10 years) | Activities of repairing roads and bridges and construction of model villages. |
| Guard and sentry duties | Men; Women (obliged to replace their husbands in the cases in which they were not able to fulfil their duties because of the frequent injuries due to physical abuses) | Guard NaSaKa and other security forces' perennial basis. There is evidence that during these activities the workers could suffer extortion or physical abuses |

Fig.2.1: Forced labour in North Rakhine State

2.1.5.4 *Removal of the identity of an entire population*²²¹

According to the “Convention on the Prevention and Punishment of the Crime of Genocide”, one of the structural elements at the basis of the definition of “genocide” is the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group”²²². In the case of Rohingya's persecution, we may ask if the attempt of Burmese government to erase the identity and the history of this ethnic group constitutes a proof of an ongoing genocide.

As we specified in the first section of this thesis, the most prominent members of Burmese intelligentsia²²³ never recognized the historical identity of Rohingya²²⁴. Many international scholars labelled this process the “Bengalization” of the Rohingya, since the Muslim inhabitants of Arakan were always considered by the Buddhist majority of the nation as illegal migrants coming from Bangladesh²²⁵. This attitude increased in 1982. Indeed, the first creator of the Law, Dr. Aye Kyaw, made it always clear his ultra-nationalist view, according to which Arakan is only for Arakanese Buddhist.²²⁶ The Citizenship Law was the direct consequence of such ideas, despite the contradictions related to the choice of the year 1824²²⁷. At that time indeed the borders of the Rakhine State were far from being clearly demarcated or administered. As the Nobel Peace Prize Amartya Sen affirmed during a round table: “Burma came to the Rohingya, not the other way around”²²⁸.

221 “Over the past 3 decades, the social foundations of the Rohingya people as a group have been eroded with each wave of repression. (There has been) a State's attempt to destroy the social anchor or foundation of the Rohingya community”. M. Zarmi, A. Cowley “The slow burning genocide of Myanmar's Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p 730, Section C- Deliberate destruction of the social foundations of the Rohingya as an ethno-religious group inflicts on the Rohingya conditions of life calculated to bring about the group's physical destruction”.

222 Art. 2 of the Convention on the Prevention and Punishment of the Crime of Genocide says: “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, 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.

223 We usually make reference to Maung Maung, U Khin Maung Saw and many others, including the creator of the high contested 1982 Citizenship Law: Dr. Aye Kyaw

224 See also Ch.1.1 “Rewriting History: 2 different versions”

225 M.Zarmi, A. Cowley “The slow burning genocide of Myanmar's Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 734

226 The theory Aye Kyaw refers to is the so-called “Tai-yin-tha”, meaning the “original indigenous peoples”.

227 According to the Citizenship Law, only the ethnic groups that were residing in Burmese territories before 1824 could be considered legally of Burmese nationality.

228 This quote is referred by M. Zarmi, who was one of the participants, together with Amartya Sen of the roundtable “Burma in Transition: Minorities, Human Rights and Democratic Process, New York, 14th September 2012. See also M.Zarmi, A. Cowley “The slow burning genocide of Myanmar's Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p.735

Although the international community has recognized and denounced the inconsistency of the “official thesis”, Burmese leaders continue to confirm their original vision. President Thein Sein declared in a speech given to the Chatham House in London, in July 15 of 2013, that the term “Rohingya” doesn’t exist²²⁹. The President is not the only Burmese political leader claiming for the non-existence of the term “Rohingya”. On a 2013 press briefing concerning Myanmar's 2014 Census, the Minister of Immigration Khin Yi promised that no other groups different than the ones present in the list of “135 Burmese national races” could be recognized as legally national, in accordance with the 1982 Citizenship Law. In the census, indeed, all the other groups, including Rohingyas, were counted as having other ethnicities²³⁰.

In Chapter 1²³¹ we already mentioned K.M. Saw and his version about the history of the region, in which he tries to reduce the role of the Muslim presence in Arakan since the first settlements in 9th century. Saw affirms in the Chapter 6 of his paper, that he never found tracks of the word Rohingya before 1955 in his research²³². K.M. Saw is, by the way, not the only influential scholar in Burma denying the historical validity of this ethnic group.

The prominent academic Dr. Aye Chan²³³ denounced Rohingya's claims, labelling their historical version as fictional creations in several articles and books. According to the Professor, many of the volumes produced are composed of “fictitious stories, myths and legends”²³⁴. The support given by the international community to Muslims in Arakan would be just the consequence of the fact that these myths “have filtered into the

229 Thein Sein gave a speech during the Conference held in Chatham House on July 15th, 2013. The title of the conference was “Myanmar’s complex transformation: prospects and challenges”. The transcript of the speech is available at: <http://www.chathamhouse.org/events/view/193003>. See also the “Introduction” to this thesis.

230 See also Myo Zaw Ko, “Myanmar Prepares for First Census in Three Decades”, Radio Free Asia, 19th September 2013; M.Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p 736

231 See also Chapter 1.4.1 “Different visions”

232 See also K.M. Saw: “On the Evolution of Rohingya Problems in Rakhine State of Burma”, Berlin, Ch. 6 “The Word Rohingya”

233 Dr. Aye Chan is an History professor to the “Kanga University of International Studies”. His research is addressed to clarify and deepen the history of Arakan

234 One of the main main aims of the Buddhist Professor is to dismantle the thesis of international scholars who tried to claim for the Rohingya the right to be recognized as a distinctive ethnic group. He judges these thesis as unacceptable under an academic point of view. One of the main target of the Professor will be, some years later, the Muslim academic Zaw Min Htut, accused of having created a “bizarre phenomenon”. Zaw Min Htut lives exiled in Japan, where he publishes his books since 2001. See also: Aye Chan, “The Development of a Muslim Enclave in Arakan (Rakhine) State of Burma (Myanmar)”, SOAS Bulletin of Burma Research, Vol.3, No.2, Autumn 2005, p.396; Aye Chan, “Who are the Rohingyas”, Piccima Zone Magazine, Feb. 2010, Vol.1, Zaw Min Htut, “The Union of Burma and Ethnic Rohingyas”, Burmese Ethnic Association in Japan, Tokyo, 2001

international media through international organizations, including reports to the United Nations High Commissioner for Refugees²³⁵. According to Aye Chan's thesis, the term Rohingya was the creation of a group of Bengali Muslim intellectuals, heirs of Chittagonians migrants²³⁶, whose aim was the one to demonstrate their right to be considered Burmese. In another paper published a few years later in the ultra-nationalist "Piccima Zone Magazine" the scholar claims that "there has never been such an ethnic group throughout the history of Burma"²³⁷. Moreover, Chan adds that during the period of the "Japanese occupation"²³⁸ and in the following years there were continuous incursions by Muslim Bengalis in the boarder zone of North Rakhine State²³⁹. During those incursions many Buddhist monasteries and pagodas were raised to the ground and many innocent people were killed. The ultimate aim of the influential academic is not only to deny the existence of a distinct ethnic group, but also to depict the "illegal migrants" as descendants of the persecutors of Buddhist Rakhines.

Burmese public opinion had a fundamental role in this action of reinventing history. The mobilization of popular assumptions about the ethnic history of Myanmar have been of vital importance for the action of erasure towards Rohingya. Arakan political parties, monks, organized groups and activists distributed, during 2012 uprisings, anti-Rohingya pamphlets and public statements with the fledged purpose to mobilize the population. The Muslim families of Arakan were "demonized" and some pamphlets openly invited the population to fulfil an "ethnic cleansing"²⁴⁰. The general assumption today is indeed

235 Aye Chan, "The Development of a Muslim Enclave in Arakan (Rakhine) State of Burma (Myanmar)", SOAS Bulletin of Burma Research, Vol.3, No.2, Autumn 2005, p.397

236 "In light of this, it is important to reexamine the ethnicity of the 'Rohingyas' and to trace their history back to the earliest presence of their ancestors in Arakan. And history tells us that we do not have to go back very far. In the early 1950s that a few Bengali Muslim intellectuals of the northwestern part of Arakan began to use the term "Rohingya" to call themselves. They were indeed the direct descendants of immigrants from the Chittagong District of East Bengal (present-day Bangladesh), who had migrated into Arakan after the province was ceded to British India under the terms of the Treaty of Yandabo, an event that concluded the First Anglo-Burmese War (1824-1826)". Aye Chan, "The Development of a Muslim Enclave in Arakan (Rakhine) State of Burma (Myanmar)", SOAS Bulletin of Burma Research, Vol.3, No.2, Autumn 2005, p.397

237 He also says: "It is obvious that the term Rohingya was created in 1950s by the educated Chittagonian descendants from Mayu frontier area and that it cannot be found in any language till then. The creators of that term might be of the second or third generations of the Bengali immigrants from...Bangladesh." Aye Chan, "Who are the Rohingyas", Piccima Zone Magazine, Feb. 2010, Vol.1

238 With "Japanese occupation we refer to the period, during the WWII, in which Burma was governed by an alliance between the heirs of the Kingdom of Ava and the Japanese troops, who could have the total control of the land. See also Ch.1.9 of this thesis: "Inter-communal tensions during the Japanese period"

239 "The Arakanese folk in rural areas again became the victims of the rebellion which those intrusive settlers launched against the Union of Burma in the 1950s". Aye Chan, "Who are the Rohingyas", Piccima Zone Magazine, Feb. 2010, Vol.1

240 The two most influential groups that organized these activities denying the existence of Rohingya and claiming for their removal from the country were the local order of Buddhist monks (the sangha) and the Rakhine Nationalities Development Party (RNDP), the dominant party in the Arakan State Party. See also Human Rights Watch: "All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of

the one of a “modern Burmese nationalism” promoting the idea of a historical cohesive nation, whose harmony was broken only by British imperialism²⁴¹. Of course we cannot deny the role that the British India and the European colonizers have played in this affair, but putting aside the real history of Arakan region²⁴² in the name of a dangerous “Buddhist” ethnic homogeneity is an unacceptable mystification of the reality. As affirmed by Maung Zarni and Alice Cowley, “this erasure of history and the denial of identity in official discourses and historical accounts should be understood as part of the broader ethnic cleansing process of the Rohingya”²⁴³.

The attempt to destroy the most important symbols, together with the most visible tracks of the Muslim identity in North Rakine State is part of this process. The destruction of the madrasas and the prohibition for pupils to attend Muslim schools have also had an important impact on the field of education. The 60% of children aged between 5 and 17 years were never been enrolled to school²⁴⁴. During the violences of 2001 and 2002, mobs made up of local Rakhine Buddhists attacked the Rohingya in the area of Sittwe. Almost 30 mosques and madrasas were raised to the ground, while an unknown number of Muslim died. The government security forces did nothing to protect the members of Rohingya families and the perpetrators of the violence always enjoyed impunity. Moreover the same members of the security forces took part in the pogroms²⁴⁵. The anger and the violence of Rakhines against the visible signs of Rohingya's religion took the edge during and after the stream of violence of 2012. In June 2012, after several attacks by Rohingya against Buddhist temples, the ethnic majority of Burma systematically destroyed the Islamic houses of worship and all the properties related²⁴⁶. Human Rights Watch reported the witness of a 29th years old man who referred that the mosques in Sittwe²⁴⁷ were destroyed by “teams” of Buddhist militants together with the

Rohingya Muslim in Burma's Arakan State”, April 2013, p.12

241 See also M. Zarni, “Confronting the Demons”, *The Irrawaddy*, 17th October 2009

242 “Misinformed by the skewered readings of our past, the dominant Bamas imagine ourselves as a historically cohesive nation whose organizational integration with minority peripheries only needs to be completed either democratically or by force.” M. Zarni, “Confronting the Demons”, *The Irrawaddy*, 17th October 2009

243 M.Zarni, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p.736

244 See also The Arakan Project, “Issues to Be Raised Concerning the Situation of Stateless Rohingya Children in Myanmar (Burma); Submission to the Committee on the Rights of the Child. For the Examination of the Combined 3rd and 4th Periodic State Party Reports”, January 2012

245 M.Zarni, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p.712, see also: M. Zarni “Religious Violence and the Role of the State”, in “Myanmar in Transition: Polity, People and Processes”, p.83-91

246 See also: Human Rights Watch, “The Government Could Have Stopped This- Sectarian Violence and Ensuing Abuses in Burma's Arakan State”, 2012, p.30

247 Sittwe, previously known as Akyab, is the capital of North Rakine State. In 2012 it has been the cradle

members of the official authorities. Thus, the role of the government during 2012 clashes has been fully proved²⁴⁸.

Human Rights Watch reports about other practices aimed at offending the religious feeling of the members of Rohingya community. For instance: Islamic religion requires the burial of dead people. On the contrary many people interviewed in 2012 witnessed that Myanmar authorities prevented Muslims to bury their dead relatives, in some occasions cremating them²⁴⁹.

If we consider the religion as an integral part of the identity of a community, we should judge the destruction of Muslim buildings and all the other related practices as part of a wider attempt to destroy the identity of an entire ethnic group. In this case we should anyway remember that during 2012 clashes also Rohingya militants committed acts of violence against the pagodas and all the Buddhist related buildings²⁵⁰.

2.2 THE TWO-CHILD POLICY AND THE CONSEQUENCES ON ROHINGYA POPULATION

The discriminatory framework created by the 1982 Citizenship law is strengthened by other complementary policies aimed at controlling the group's population growth. The two-child policy, together with the necessity for Muslim couples to secure official approval has permitted to Myanmar authorities to render Rohingya families' life even more complicated²⁵¹. To have the permission to be married the couples must wait

of the sectarian and inter-religious violences.

248 "The municipal people (local government employees) were destroying the Rohingya mosque at the corner of Merchant Street and Aung Htaw Oo Street. That mosque is ours and they are destroying it. They were government and fire brigade and other people from Sittwe. They are still destroying that mosque." Human Rights Interview, C.F., Sittwe, Arakan State, June 2012. See also: Human Rights Watch, "The Government Could Have Stopped This- Sectarian Violence and Ensuing Abuses in Burma's Arakan State", 2012, p.31

249 HRW refers to a Maungdaw resident who witnessed: "When the violence broke out on June 8, the bodies were piled up near the bridge. We could not get them, to give them a religious burial. Still if one goes to the bridge, you can see bodies under it" Human Rights Interview, D.C. Sittwe, Arakan State, June 2012. See also: Human Rights Watch, "The Government Could Have Stopped This- Sectarian Violence and Ensuing Abuses in Burma's Arakan State", 2012, p.31

250 The Art. 18 of the Universal Declaration of Human Rights, regarding the freedom of religion, says: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

251 The two child policy was conceived, implemented and enforced during the military regime. Thein Sein's presidency has anyway left this policy almost wholly undisturbed, while local government officials continue to strongly support the main clauses of the rule. See also H. Akins, "No Place for Islam? Buddhist

lengthy periods, that can also arrive to 2 years. During this period the couples are often obliged to pay frequent bribes to the corrupted authorities²⁵². The application process for the marriage also include the duty for the future wives to hold mandatory pregnancy test. In addition, the applicants must provide a signed statement, in which they accept not to have more than 2 children. In the case in which this clause is not respected, the consequence for the members of the couple consist in fines and in certain occasions also in the imprisonment²⁵³. President Thein Sein's administration has not modified yet the two-child policy, justifying it under the pretext of the need to block the rapid growth of Muslim community members²⁵⁴.

2.2.1 ROHINGYA POPULATION GROWTH: DISMANTLING THE MYTH

We should debunk the idea of Rohingya population fast growth, that revealed itself not to be true, since it was never supported by official statistics²⁵⁵. The fear by the Buddhist majority in Myanmar is that one day the Muslim portion of the population (no more than the 10%) would overwhelm the rest of the country²⁵⁶. For this reason many relevant

Nationalism in Myanmar”, AlJazeera.com

252 “The discriminatory two-child rule has been enforced alongside regulations that require Rohingya couples seeking to marry to obtain permission from the authorities by paying hefty bribes. Couples often have to wait for extended periods, sometimes as long as two years, before receiving permission. Officials have also forced many women to undergo pregnancy tests as part of the marriage application process.” See also Human Rights Watch, “Burma: Revoke “two-child policy for Rohingya” -Coerced Birth Control Reflects Broader Persecution of Muslim Minority”, 28th May 2013, the full text of the Article is available at: <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>

253 Before it was dismantled, the body in force with checking the implementation of the policy was the NaSaKa. As referred by Human Rights Watch and other NGOs, the methods used by the NaSaKa were often violent. They used to enforce the restrictions detaining, beating and extorting money from Rohingya. Only in 2012 “Na Sa Ka arbitrarily detained an estimated 2,000-2,500 Rohingya for “offenses” both serious and trivial, including repairing homes without official permission and owning “unregistered” livestock, according to informed sources”. Human Rights Watch, “Burma: Revoke “two-child policy for Rohingya” -Coerced Birth Control Reflects Broader Persecution of Muslim Minority”, 28th May 2013, the full text of the Article is available at: <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>

254 Despite a few declaration aiming at reassuring the international community about the intention to modify discriminatory policies by the government, the two child policy has not been modified yet. In addition, many influent members of the administration continue to detect this policy as an efficient mean to stop the fast growth rate of “Bengali” immigrants families. “The Arakan State spokesperson, Win Myaing, told the media on May 26 (2013) that local authorities had reaffirmed a 2005 regulation for Rohingya Muslims in Buthidaung and Maungdaw townships in northwestern Arakan State along the Bangladesh border”. See also Human Rights Watch, “Burma: Revoke “two-child policy for Rohingya” -Coerced Birth Control Reflects Broader Persecution of Muslim Minority”, 28th May 2013, the full text of the Article is available at: <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>

255 “The discriminatory measure is informed by false assumptions surrounding Muslim birth rates. Burmese officials frequently engage such political rhetoric attributing anti Muslim violence to the minority community's rapid population growth.” E. Abdelkader, “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, Pacific Rim Law & Policy Journal, Vol. XX, N. 10, p. 12

256 “Certain cities enforce a two-child limit on their women and government reports insist their “rapid population growth” has provoked Buddhists into torching their homes and taking their lives”. See also P. Winn, “Do Rapidly Breeding Rohingya Muslims Really Threaten Myanmar's Buddhist Identity?”, The Global Post, 14th October 2013. The entire text of the article is available at:

actors of Myanmar political scene have expressed their concerns about the birth growth rate of “Bengali migrants”²⁵⁷ in Rakhine, highlighting the absolute necessity of adequate policies. The public idea is indeed that the Muslims are aiming at “islamizing” the entire country²⁵⁸, increasing the portion of total population they hold. In addition they are reproducing at a rate that is faster than the one of Buddhist families. Thus, there is a public engagement in stopping the “invasion” of “Bengali migrants”²⁵⁹.

The Inquiry Commission on the Sectarian Violence in Rakhine State²⁶⁰, a 27-members commission appointed to examine the causes of the 2012 clashes in Arakan, even though recommending the government and the civil society organizations to avoid “unfair and abusive” mandatory measures²⁶¹, enlisted among the causes of the sectarian violences the rapid population growth of “Bengali”²⁶² communities. Thus, the commission

<http://www.globalpost.com/dispatch/news/regions/asia-pacific/myanmar/131011/rohingya-demographics-population-boom-myth>

257 Since the Rohingya identity was never recognized by official authorities, in all the public statements we can not find reference to them. On the contrary the authorities and the members of the administration always refer to Rohingya tribes as “Bengali” migrants, since the official version is the one that detects in Bangladesh the real origin of Muslim inhabitants of North Rakhine State

258 As referred by “The Economist”, Aung Kyaw Zan, Minister Counsellor, the Permanent Mission of the Republic of the Union of Myanmar to the United Nations has declared “they are trying to Islamise us through their terrible birth rate”. See also The Economist: “Unforgiving history. Why Buddhists and Muslims in Rakhine state in Myanmar are at each others’ throats”, 3rd November 2012

259 “Representative are public statements alleging that a) Muslims are striving to Islamize Burmese society through exploding birth rates; b) Rohingya are reproducing ten times faster than Buddhists; c) Muslims are analogous to “African carp” that breed quickly and behave violently. Such sentiments clearly evidence prejudice and an unsubstantiated fear that Muslim population growth may eventually render the now-Buddhist-majority a minority in Myanmar”. E. Abdelkader, “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, Pacific Rim Law & Policy Journal, Vol. XX, N. 10, p. 12

260 Even though many members of the commission were appointed among the Rakhines of Arakan, no one of the members was representing the Rohingya, that were thus excluded from the activities of the inquiry commission

261 Art. 9.16.17. of the Final Report of the Inquiry commission on Sectarian Violence in Rakhine State says: “Myanmar being a multi-racial and multi-religious country, the government should take firm action against any person or group instigating conflict or violence under the banner of race, religion, language and culture. Existing criminal laws should be effectively applied and enforced. The laws also need to be modified with appropriate punishment to deter such acts in future. Additionally, new laws should be developed and promulgated as needed”. See also Final Report of the Inquiry Commission on Sectarian Violence, Republic of the Union of Myanmar, 8th July 2013

262 The Commission denied the existence of the Rohingya ethnic group. They always refer to them as Bengali migrants, belonging to the wealthiest part of North Rakhine State. In Art. 2.6 of the final report we can read “Bengalis became wealthy in later years. In interviews, Rakhine people recount how the Bengalis had good connections and received strong support from outside groups, which then led to Bengali ownership or control of several big businesses. Some Bengalis weretherefore able to seize greater political and economic opportunities than the Rakhine,could fuelling inter-communal resentment and dissatisfaction.” In the section 10 of the report with the title: “The issues related to the term Rohingya”. Art 10,8 says: The Government of the Union of Myanmar does not recognize the name Rohingya, yet the Bengali community is pushing this term to the point where it is becoming the object of an intensive campaign. The Commission was informed that leaders of the Rohingya movement in Yangon, New York and London were calling the Bengali communities in Rakhine State on mobile phones and urging them to declare themselves “Rohingya”. On the other hand, all the 1,200 Rakhine people interviewed objected to using the name Rohingya for the Bengalis.

required the implementation of family planning policies aimed at stopping the fast growth of Rohingya families. In this sense, the 2005 two-child regulation, in addition to the longstanding marriage restrictions, was not only confirmed, but also indicated as one of the possible instruments to avoid new explosions of inter-ethnic violences in Arakan²⁶³.

David Dapice and Nguyen Xuan Than, from Harvard University, addressed their researches to demonstrate the inconsistency of the population growth myth. In order to do it, they analysed the demographic data related to Burma since 1953 census²⁶⁴. The data demonstrate a lower population growth rate in North Rakhine State, compared to the rest of the country. If the population would have grown in Arakan as well as in the entire nation, the population would be indeed at 3,46 million, instead of 3,3 millions²⁶⁵. Considering that almost the entire Burmese Muslim population has always resided in Arakan, these data clearly shows the inconsistency of the theory behind the two child policy²⁶⁶. Furthermore, Harvard researchers suggest that also in the case in which the Muslim population growth would have been demonstrated, the only effective government response should be the one to provide equal access to education, health care, and economic opportunities for all the minorities residing in the country.²⁶⁷

| Year | Rakhine | Burma | Rakhine/National | Muslim/National |
|-------------|----------------|--------------|-------------------------|------------------------|
| 1955 | 1,4 | 20,4 | 6,86% | 3,95% |

263 Art. 2.7.1 says: “The extremely rapid growth rate of the Bengali population in Rakhine State also contributed to fear and insecurity amongst the Rakhine people. The growth was not only due to high birth rates, but also to a steady increase of illegal immigration from neighbouring Bangladesh. Many Rakhine believed this was due to weaknesses in previous governments. Following Myanmar’s independence from Britain in 1948, the many internal insurgencies, incursions by external armed groups into the country’s territory, and political unrest prevented the Government from systematically addressing the issue of illegal immigration” See also Final Report of the Inquiry Commission on Sectarian Violence, Republic of the Union of Myanmar, 8th July 2013, p.5

264 See also D. Dapice, N. Xuan Than, “Creating a Future: Using Natural Resources for New Federalism and Unity”, Harvard Kennedy School- Ash Centre for Democratic Governance and Innovation, July 2013

265 The data are taken from Statistical Year Books from 1967, 1997 and 2011. The national Muslim proportion was also 4% in 1931. See also D. Dapice, N. Xuan Than, “Creating a Future: Using Natural Resources for New Federalism and Unity”, Harvard Kennedy School- Ash Centre for Democratic Governance and Innovation, July 2013, p. 24

266 “The national Muslim population share which was no higher in 1983 than in 1953 – more recent and reliable data are not available. Note that this data is completely inconsistent with widely circulated fears that the rapidly growing Muslim share of population is threatening Myanmar’s Buddhists.” See also: D. Dapice, N. Xuan Than, “Creating a Future: Using Natural Resources for New Federalism and Unity”, Harvard Kennedy School- Ash Centre for Democratic Governance and Innovation, July 2013, p. 25

267 Moreover the advice given by Harvard researchers is to improve the level of the investments in North Rakhine, to prioritize the conditions of the infrastructures and to create work places for both Rohingya and Rakhine. See also D. Dapice, N. Xuan Than, “Creating a Future: Using Natural Resources for New Federalism and Unity”, Harvard Kennedy School- Ash Centre for Democratic Governance and Innovation, July 2013, p. 27

| | | | | |
|------|------|------|-------|-------|
| 1973 | 1,71 | 28,9 | 5,92% | |
| 1983 | 2,05 | 34,1 | 6,01% | 3,90% |
| 2010 | 3,3 | 50,4 | 6,55% | |

Fig.2.2: Population growth rate in Rakhine State

2.2.2 EFFECTS OF THE TWO-CHILD POLICY

The two-child policy, together with all the practices related, is not only based on absurd foundations, but is also the source for a long series of daunting externalities²⁶⁸. This policy and the methods used to check its implementation by Myanmar security forces gave the rise to gender based violence, physical abuses and extortions, but also contributed to increase the sad phenomenon related to the human trafficking²⁶⁹.

As we specified in the previous paragraphs, in order to receive the official permission to be married, the couples must sign a written statement in which they declare the willing not to have more than 2 children, fully aware of the consequences they can suffer in the case in which this clause would not be respected. Thus, in the cases in which Rohingya women overcome the limit of the 2 children²⁷⁰ the possibilities for them are few:

- seek refuge in another country;
- seek an abortion;
- remain in the country giving birth to the child.²⁷¹

The families that decide to keep the child seeking refuge in other countries are often obliged to entrust their hopes in the hands of human traffickers. Rohingya people who decide to undergo these voyages are left in overcrowded boats in the middle of the Bay of Bengal or in the Indian Ocean, losing their lives in the desperate attempt to arrive in other nations' coasts. The ones that reach other states, such as Thailand, Malaysia or Bangladesh are destined to bad fates. There are countless cases of sexual violence, rapes

268 This argument is well explained by E. Abdelkader, who mentions among the most visible outcomes of the laws: gender based violence, human trafficking of Muslim women and girls, arbitrary detentions and sexual rapes. See also E. Abdelkader “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, *Pacific Rim Law & Policy Journal*, Vol. XX, N. 10

269 “Burma's record on human trafficking has prompted the United States to place it on a Tier 2 Watch List for 2 consecutive years”, E. Abdelkader, “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, *Pacific Rim Law & Policy Journal*, Vol. XX, N. 10, p.17. The Tier 2 Watch List is provided by the US Department of State

270 Given the situation in which Rohingya live, with a scarce knowledge about contraceptive methods, the two-children limit is easily overcome

271 This list is provided by E. Abdelkader, “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, *Pacific Rim Law & Policy Journal*, Vol. XX, N. 10, p.17

and physical abuses. In the majority of the occasions women can be forced to sexual slavery, while the children can be also subject to forced labour and exploitation by the human smugglers²⁷².

To seek an abortion can be also more complicated. According to the Art. 312 of Burmese penal code²⁷³ indeed the abortion is not permitted in Burma, with the only exception of the case in which the woman's life is endangered²⁷⁴. It means that women who wants to have an abortion must do it in illegal ways. There are only 2 options in this case. The first is to undergo such procedures in unsanitary back alleys, often paying huge amounts of money to illegal doctors, who do not have the right knowledge, nor the adequate staff and structures to help the patients to stop the pregnancy.²⁷⁵ In these situations the risk to die for the excessive bleeding or to contract deadly diseases is very high. The second option is also more risky. It consists in self-induced abortions at home. The conditions of the barracks in which Rohingya lives, in refugee camps or in isolated areas, are highly unsafe. Again the possibility to die or to contract a bad disease is incredibly high. Moreover there is always the risk to be discovered by the authorities. The couples that are caught at committing home-made abortions can be subjected to imprisonment, since there is a clear violation of the Art. 312 of the Burmese penal code and of the prescriptions of the two-child policy²⁷⁶.

The last possibility consists in remaining in the country keeping the child. If the childbirth is done in official hospitals the risk for the couples is the one to be imprisoned

272 See also "Human trafficking Country Narratives", BURMA (Tier 2 Watch List), U.S. Department of State, 2013

273 The Art. 312 belongs to the section "Of the causing of Miscarriage, of Injuries to unborn Children, of the Exposure of infants, and of the Concealment of Births". It says: Art. 312. "Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be' quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine". In this sense we should mention also Art. 315: Whoever, before the birth of any child, act with the intention of thereby preventing that child from born alive or causing it to die after its birth, and does by prevent that child from being born alive, or causes it to die birth, shall, if such act be not caused in good faith for the of saving the life of the mother, be punished with either description for a term which may extend to ten years, shall be liable to fine."

274 "in good faith for the purpose of saving the life of the woman", see Art. 312, Burma Penal Code

275 Human Rights Watch: "Burma: Revoke the Two-child Policy for Rohingya, Coerced Birth Control Reflects Broader Persecutions of Muslim Minorities", HRW, 28th May 2013

276 "Rohingya women who become pregnant without official marriage authorisation often resort to backstreet abortions, an illegal practice in Burma, which has resulted in many maternal deaths. Others register their newborn child with another legally married couple, sometimes their own parents. Some deliver the baby secretly in Bangladesh and abandon their baby there. Many children are reportedly unregistered. Many young couples, unable to obtain permission to marry, flee to Bangladesh in order to live together" C. Lewa, "North Arakan: an Open Prison for the Rohingya in Burma", Forced Migration Review, Issue 32, April 2009, p. 11

having the newborn taken away from his or her family. For this reason the couples always seek to have illegal deliveries. As well as in the second case, the one of the abortion, the only solution is to rely on unofficial structures or to have the child at home, with countless risks for the lives of mothers and children. The rates of maternal deaths in Burma are indeed extremely high. Once the baby is born, his fate will be a very hard one, since he is destined to live as a “blacklisted”²⁷⁷ or unregistered child²⁷⁸. The consequence is that among Rohingya there is a huge wave of kids who can not be enrolled at school and that are often obliged to forced labours for the government. This explains in part the 80% of illiteracy rate among Muslim communities of Arakan and the 60000 unregistered Rohingya children²⁷⁹.

2.3 GENDER BASED VIOLENCE²⁸⁰: ROHINGYA WOMEN NATURAL VCTIMS OF NATIONAL POLICIES

Rohingya women have experienced anti-Muslim violence in many different ways. Rights groups from all over the world have witnessed the growing amount of episodes of violence against the female members of this persecuted minority²⁸¹. The large majority of these acts are directly connected to the policies put in practice by Myanmar government, which has denied them the right to a nationality²⁸² rendering Rohingya

277 See also: R. McDowell, “Rohingya Kids in Myanmar: Hard Labor, Bleak Lives”, The Associated Press, Oct.15, 2013. This article is also available at: <http://bigstory.ap.org/article/suffering-dogs-rohingya-kids-myanmar>

278 The situation of Rohingya children in North Rakhine is also witnessed by the Special Rapporteur Tomás Ojea Quintana in 2010. In the point 97 of his report he states: “Infant mortality remains high, with an estimated 1 in 10 births resulting in the death of the infant. More than 25 per cent of the population lacks access to safe drinking water. Approximately half of the malaria deaths in South-East Asia occur in Myanmar. More than 30 per cent of Myanmar’s children are chronically malnourished. The national prevalence of underweight and stunting among children under 5 years is 32 per cent.” HUMAN RIGHTS COUNCIL, Thirteenth session, Agenda item 4 “HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL’S ATTENTION- Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana.

279 See also: M.Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p.7; E. Abdelkader, “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, Pacific Rim Law & Policy Journal, Vol. XX, N. 10, p.23

280 For further information regarding the rapes and the violences against women in the entire Burma, see also: B. Apple, V. Martin, “No Safe Place: Burma's Army and the Rape of Ethnic Women”, Refugees International, April 2003

281 Women and children are increasingly finding themselves in vulnerable situations that ave yet to be adequately recognized and addressed in the Burmese context”. E. Abdelkader, “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, Pacific Rim Law & Policy Journal, Vol. XX, N. 10, p. 6

282 It is stated by the Art.15 of Universal Declaration of Human Rights:

“(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his

women deprived of all the basic rights. The two-child policy has further complicated their situation, as well as the connected duty to obtain an official written permission from the government in order to be married²⁸³. For many years the NaSaKa has enforced all the restrictions designed by the government with incredible violence, targeting in particular Rohingya women²⁸⁴.

Burmese security forces have engaged in sexual assaults. Martin Smith, a researcher with Human Rights Watch, has declared that “Sexual violence by NaSaKa against Rohingya women has been documented for many years”²⁸⁵. Moreover, especially during and after the inter-communal violence exploded in June 2012, there have been numerous instances of gang rapes of women by Buddhist extremists in Arakan²⁸⁶. The rapes have been documented also by the Special Rapporteur Tomas Ojea Quintana in his report of March 2013²⁸⁷. Furthermore in the report of April 2014, the Rapporteur has declared that episodes of rape and sexual violence have taken place on a large scale.²⁸⁸

Many relevant international newspapers²⁸⁹ from all over the world have reported the witnessing of young girls who have been repeatedly victims of sexual assaults by members of Rakhine communities, but also by ordinary soldiers. The fears of expulsion and of further abuses constantly pushes the victims not to report the events in a dangerous cycle of silence. In addition, reporting the events can also be not useful, since the governmental authorities have always shown to be uninterested in deepening the

nationality nor denied the right to change his nationality.”

283 Rashida Manjoo, UN Commission on Human Rights, Report of the Special Rapporteur on Violence against Women (2006),

284 See also Human Rights Watch: “The Government Could Have Stopped This, Sectarian Violence and Ensuing Abuses in Burma's Arakan State”, HRW, August 2012, p.20

285 “Sexual violence by NaSaKa against Rohingya women has been documented for many years”, says Matthew Smith, adding that prosecutions are rare for rapes committed by security forces”. Guardian.Co.Uk, “Rapes by Burmese security forces may cause more strife in troubled region”, 26th February 2013

286 See also: M.Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p.712, Ch.4 “The 2012 Pogroms: Civilian-military violence, denial of aid, social and economic boycotts, and hate campaigns are designed to kill, cause serious bodily and mental harms, and deliberately inflict conditions of life calculated to destroy the Rohingya”;- see also: M. Zarni “Religious Violence and the Role of the State”, in “Myanmar in Transition: Polity, People and Processes”, p.83-91

287 Tomás Ojea Quintana, Human Rights Council, Twenty-second session, Agenda item 4 Human rights situations that require the Council’s attention, “Report of the Special Rapporteur on the situation of human rights in Myanmar”

288 Tomás Ojea Quintana, Human Rights Council, Twenty-fifth session Agenda item 4 “Human rights situations that require the Council’s attention Report of the Special Rapporteur on the situation of human rights in Myanmar,” p.12, art.47 and p.13, art.51: “He believes that extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State”

289 Among the media that reported news regarding alleged abuses against Rohingya women The Guardian and the BBC

investigations. Sexual violences are also committed by the human smugglers, who exploit Rohingya refugees for sexual slavery in Malaysia, Thailand and Bangladesh. As declared by Abdelkader²⁹⁰, the exploitation may occur during the course of flight, but also within government run detention centres²⁹¹.

The women are also the first victims of the so-called “night checks”, during which the members of Myanmar security forces enter into Rohingya houses at night, without previous communications and with the specific aim to count the family members checking the compliance with the official registrations. Human Rights Watch has received at least one report witnessing that during night-checks, several mass rapes of women occurred in 2012²⁹². Francis Wade²⁹³, referring to a similar episode in February 2013, revealed that the majority of the victims were teenagers, who also suffered torture and sexual violence.

2.4 INTER-COMMUNAL VIOLENCE AND ANTI-MUSLIMS PROPAGANDA DURING 2012 CLASHES

2012 represents the black year for the process of peace into North Rakhine State and in particular for the recognition of Rohingya's identity. Many of the abuses and violations of human rights that we described in this section of the thesis have been perpetrated during and after the inter-communal violence exploded in June 2012²⁹⁴. The result has been the one of an incredible number of death people left on the ground and waves of Rohingya that were forced to escape towards sad destinies²⁹⁵.

290 See also E.Abdelkader, “Myanmar's Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, *Pacific Rim Law & Policy Journal*, Vol. XX, N. 10, p.16; See *Fleeing Rohingya Women Fall Prey to Traffickers in Thailand*, Irrawaddi, July 2013

291 NUI Galway- Irish Centre for Human Rights, “Crimes Against Humanity in Western Burma: The Situation Of the Rohingyas”, 2010, p 64, 65

292 “Security personnel typically enter Muslim homes unannounced and count family members against their records. If the figures conflict, the officials detain some or all of the residents, and in many cases, extort, and beat or otherwise mistreat them before letting them go”, Human Rights Watch: “All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslim in Burma's Arakan State”, April 2013, p.81

293 Francis Wade is a free lance journalist, expert on issues relating the status of refugees in South-East Asia, with particular reference to Bangladesh

294 See also International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, *Crisis Group Asia Report* n.251, 1st October 2013

295 “The situation in Rakhine State has led not only to internal displacement but also to a new exodus of Rohingya.” M.Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p.712, Ch.6 Post-2012 Pogroms: Flight from Myanmar by Sea Results in Violence and Death to Rohingya”, p.722

At the origin of the clashes there was the rape and the murder of a Buddhist woman by a group of 3 Muslim men on the 28th of May²⁹⁶. After a few days, the 3rd of June, 10 Muslim pilgrims were killed in Toungup township²⁹⁷, as a direct consequence of the inflammatory anti-Islam propaganda subsequent to the Buddhist's woman murder²⁹⁸. The tension erupted in the northern part of Rakhine state and in the area of Sittwe, with fights and urban guerrilla into the streets²⁹⁹. According to the Inquiry commission on Sectarian violence in Rakhine State, in the following month 98 people were killed and 123 injuries, from both the communities. Moreover, 5338 homes, the majority of which belonging to Rohingya, were destroyed and more than 75000 people were displaced³⁰⁰. The ultra-nationalist sentiments merged together with the inter-religious hate, creating the framework for the massacre that occurred in the following period³⁰¹.

The 10th of June the state of emergency was imposed on Arakan, with official troops dispatched in order to enforce it. Despite the presence of the militaries, other incidents were reported and the hostility between the 2 groups continued to inflame the spirits of militants and common people³⁰². In September 2012 in Sittwe, a general meeting of ethnic Rakhine was held. At the end of the conference it was released a document consisting in an “ultra-nationalist manifesto”³⁰³ approving resolutions concerning the creation of local militias, the enforcement of the citizenship laws, the complete removal of Rohingya villages in Rakhine's territories and the objection to the arrival in Yangon

296 See also: Republic of Myanmar: “Final Report of Inquiry Commission on Sectarian Violence in Rakhine State”, 8th July 2013, Ch. 3 “The cause of the conflict and the sectarian violence in 2012”, p.8; International Crisis Group: “Myanmar: Storm Clouds on the Horizon”, Asia Report n.238, 12th November 2012, p 1

297 For this homicide 7 people were sentenced in 2014 to 7 years of prison. See also: Human Rights Watch, World Report 2015-Burma- “Sectarian Tensions and Violence”; International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013.

298 Crisis Group talks about the “distribution of inflammatory leaflets attacking followers of Islam”. International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013. Once again the role of the common people, in this case also Buddhist monks and their attempt to address the feelings of Rakhine, has been fundamental. As I also stated in the Chapter of my thesis named ” Removal of the identity of an entire population”, “the mobilization of popular assumptions about the ethnic history of Myanmar have been of vital importance for the action of erasure of Rohingya”

299 See also: International Crisis Group: “Myanmar: Storm Clouds on the Horizon”, Asia Report n.238, 12th November 2012, p 1,2

300 Republic of Myanmar: “Final Report of Inquiry Commission on Sectarian Violence in Rakhine State”, 8th July 2013, Ch. 3 “The cause of the conflict and the sectarian violence in 2012”

301 See also International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, p.7

302 See also: International Crisis Group: “Myanmar: Storm Clouds on the Horizon”, Asia Report n.238, 12th November 2012, p 1

303 See also International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, p.8

of a mission sent by the OIC (Organization of Islamic Cooperation)³⁰⁴, aimed specifically at blocking the violence against Muslim communities³⁰⁵. After the conference many demonstrations were held along the streets of Sittwe, Yangon and Mandalay, being organized by Buddhist monks, women's and youth organizations. After a few days hand grenades were thrown at two mosques in Kayin State³⁰⁶, a further episode witnessing that the tensions were no longer sustainable.

Widespread violence erupted again on the 21st October in other areas of North-Rakhine, including the historical cities of Mrauk-U and Ramree³⁰⁷. This time the attacks appeared to be well coordinated and not addressed only against Muslim Rohingya, but even against other minor Muslim ethnicities.³⁰⁸ The riots seemed to be well programmed, with specific targets and a high degree of coordination, so that the probability of a political plan behind the clashes of October is extremely high.³⁰⁹ According to the final report of the Inquiry Commission the bulletin of victims was once again terrible. More than 90 people were killed, 142 were injured and 3276 houses were burned down. In addition, more than 32000 people were displaced³¹⁰. The impact of these clashes was dreadful for the Rohingya and the other Muslim communities, but also among the Rakhines there were victims and casualties. The Boarder affairs ministry indicated that 160 Rakhines' houses were destroyed during the clashes, with the result of more than

304 From OIC Official website: "The Organisation of Islamic Cooperation (OIC) (formerly Organization of the Islamic Conference) is the second largest inter-governmental organization after the United Nations which has membership of 57 states spread over four continents. The Organization is the collective voice of the Muslim world and ensuring to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world." The role of the OIC will be further analysed in the last of chapter of this thesis, regarding the role of the international community. See also: http://www.oic-oci.org/oicv2/page/?p_id=52&p_ref=26&lan=en

305 The OIC action in Arakan was anyway blocked by the continuous protests organized by Buddhist monks, with thousands protesting in Yangon and Mandalay. The presence of the OIC in Burma, a Buddhist-led country, was seen as an unacceptable provokation. See also: International Crisis Group: "The Dark Side of Transition: Violence Against Muslims in Myanmar", Crisis Group Asia Report n.251, 1st October 2013, p.8

306 See also L. Weng, "Two Mosques Attacked in Karin State", The Irrawaddy, 29th October 2012

307 See also: International Crisis Group: "The Dark Side of Transition: Violence Against Muslims in Myanmar", Crisis Group Asia Report n.251, 1st October 2013, p.7

308 Among them we should remember the Kamans who has been recognized the right to Burmese nationality, since they are included in the list of the official recognized ethnies, but that are often associated to Rohingya. The Kamans are the heirs of the royal archers in the court of Mrauk-U that for many year had an incredible power in the court of Arakan, despite their Islamic and Indian origin.

309 M.Zarmi, A. Cowley "The slow burning genocide of Myanmar's Rohingya" Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 714; Human Rights Watch, "All you can do is Pray- Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State", HRW, April 2013

310 In the Chapter 5 of the report, there is a wide list of all the victims and casualties occurred during 2012 violence. In the same chapter the commission included also other kinds of damages, with particular reference to the physical impact (Ch.5,2), the psychological and social impact (Ch.5,4) and the economic impact (Ch.5.6). See also Republic of Myanmar: "Final Report of Inquiry Commission on Sectarian Violence in Rakhine State", 8th July 2013, Ch.5 "Losses due to the violence in Rakhine State"

800 homeless³¹¹.

The government of Myanmar, together with a few UN agencies and part of the international community have always labelled what happened in Arakan in 2012 as communal and sectarian violence³¹². Marni and Cowley, together with the majority of human rights organizations on the contrary, underlined the evidence of the presence of official security forces behind the riots and the pogroms³¹³. The senior army-officers delegated to the region object of the struggle, Lieutenant General Hla Min declared the possibility of the presence of political aims and well-organized plans behind the riots³¹⁴. Moreover Human Rights Watch has contested the numbers provided by the government, collecting proofs of the role of security forces in beating and deliberately killing Rohingya. In the report “All you can do is pray” we can find the crude description of four mass graves, created by Muslim men forced to dig by the authorities, that could prove how the number of victims related to the 2012 violence is much higher than the one provided by the Inquiry Commission³¹⁵. In many cases Rohingya were evicted from their villages and forced to live in IDP camps, with the official reason of the necessity of protection, but actually being victims of security forces' action³¹⁶.

The involvement of part of Myanmar government in the spread of violence in North Rakhine has been proved and witnessed. In addition, an attitude to impunity has prevailed in the following months and continue to prevail today. This tendency creates the conditions under which the central State permits the bodily and mental harm to entire ethnic communities, contributing to the physical destruction of Rohingya of Myanmar.

311 See also: International Crisis Group: “Myanmar: Storm Clouds on the Horizon”, Asia Report n.238, 12th November 2012, p 1

312 See also: Human Rights Watch, “All you can do is Pray- Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State”, HRW, April 2013, Ch.II:”Coordinated Attacks and Abuses Against Muslims in Arakan State: October 2012”

313 “State security forces were aware of the attacks before they took place. In some cases, Rohingya were forcibly evicted from their homes and placed in IDP camps by security forces.” M.Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 714

314 See also: International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, p.8

315 The mass graves HRW refers to were found in Mrauk-U, Yan Thei Village, Thackabyn Road and Ba Du Baw IDP camp. Moreover many Muslims told HRW that they saw security forces collecting the bodies , during the period of clashes (June -October 2012). See also: Human Rights Watch, “All you can do is Pray- Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State”, HRW, April 2013, Ch.III “Mass Graves”, p.65-71

About the clashes occurred in Yan Thei, see also: M.Smith, “Tour of Shame for Thein Sein”, Fortify Rights, 16th July 2013, published by Asia Online

316 M.Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 714,715

The issue of impunity³¹⁷ has been described and denounced not only by the NGOs present in the zone, but also by the former Special Rapporteur Quintana. Thus, the September 2013 report says: “in view of the consistent and credible reports of widespread and systematic violences carried out by security forces that the Special Rapporteur has received, he remains concerned that the perpetrators of such violations have not been held to account. This culture of impunity is particularly troubling given the vulnerability and marginalization of the members of the Rohingya community owing to their lack of legal status in the country”³¹⁸.

2.4.1 THE ROLE OF THE INQUIRY COMMISSION ON SECTARIAN VIOLENCE IN NORTH RAKHINE STATE AND THE EXCLUSION OF ROHINGYA DELEGATES

The 17th of August 2012 President Thein Sein appointed an inquiry commission in charge with the duty to investigate over the ultimate causes and consequences of 2012 clashes³¹⁹. The task was also the one to provide useful recommendations not to repeat similar experiences in Arakan. The commission had a very broad mandate and also a wide composition, including Muslim, Christian, Buddhist and Hindu members³²⁰. The great diversity represented into the group was a visible sign of the willing by the government to give voice to all the different cultures³²¹, delivering a message of inclusion in opposition to the strong cleavage at the basis of 2012 struggle³²². The report presented contrasting views from all the communities, and spoke frankly about some very delicate issues³²³. On the other hand, no one of the participants to the commission

317 “They (the “group of friends” in support of the Secretary General) stressed the urgent need for effective action to punish the perpetrators of the communal violence, guarantee respect for the fundamental rights of all peoples irrespective of ethnicity or religion, as well as for urgent attention to address the underlying causes of these difficulties, including the issue of citizenship for the Rohingyas”; UN News Centre, “Continued support vital as Myanmar proceeds with transition process, says Ban”, 10th July 2013

318 United Nations General Assembly, Sixty-eighth session, Agenda item 69, “Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives -Situation of human rights in Myanmar” 23rd September 2013. See also M.Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 715

319 Inquiry Commission on Sectarian Violence in Rakhine State

320 The Commission also comprised a few dissidents, like the famous 88 generation student leader Ko Ko Gyi and the comedian Zaganar. See also: International Crisis Group: “Myanmar: Storm Clouds on the Horizon”, Asia Report n.238, 12th November 2012, p.6

321 With the exception of the one that was mostly involved in this affair, namely Rohingya people

322 One month later President Thein Sein delivered a speech to the United Nations General Assembly where he declared his commitment to pursue gradual democratic reforms. The composition of the Inquiry Commission was thus part of this broader policy

323 International Crisis Group has been criticized by Zarni and Cowley since its views appear too much close to the ones of President Thein Sein, not considering that also the national government had a vital

was a member of Rohingya community³²⁴.

The exclusion of Rohingya delegates within the Commission is one of the most controversial issues of the entire affair³²⁵. Nevertheless the report declined to use the term “Rohingya”, referring to the Muslim part involved in the clashes as “Bengali” migrants³²⁶. Notwithstanding the further discrimination connected to this decision, denying to Rohingya the possibility to be represented into the Inquiry Commission and to be recognized for what they are, has further endangered the validity of the results and the possibility for them to represent the real state of things. The commission's position was that using the term “Rohingya” into the report could have been read in the entire Myanmar as a clear sign of the intention to “take sides on a highly contentious and emotive” issue³²⁷. Moreover, despite the recommendations delivered by the commission, all the draconian restrictive measures imposed on Rohingya are still in practice and no tangible results have been achieved³²⁸. More than 140000 people are displaced in Rakhine State. The great majority of them lives in temporary camps, without the basic services granted. The strain between the communities has not been reduced and after 2012 other violences followed in North Rakhine, despite the original goal of the Inquiry Commission on Sectarian Violence³²⁹.

2.4.2 “969” MOVEMENT AND THE ROLE OF BUDDHIST MONKS

Many Buddhist monks have been involved into 2012 sectarian violence under an

role in the development of 2012 clashes. See also: “M.Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p 686,687 and International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, p.9

324 See also: International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, p.9

325 See also: Amnesty International, “Myanmar must look beyond 'flawed' report to stop cycle of Buddhist-Muslim violence”, 30th April 2013

326 The Commission stated that one of the possible source for the continuation of the struggle is the fact that Bengali Muslims continue to declare themselves “Rohingya”. You can read in the report “should the Bengalis continue to insist they should be called Rohingya, the majority in the country will not accept this and there could be further unrest. The indigenous Rakhine can be expected to have an intense reaction. Thus, Bengalis now pushing to use the term Rohingya are surely fanning the flames of sectarian violence”. Republic of the Union of Myanmar, “Final Report of Inquiry Commission on Sectarian Violence in Rakhine State”, Ch. 10 “The issues related to the term Rohingya”, p.55

327 See also: International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, p.9,10

328 “Contrary to the recommendations, local authorities in Rakhine State subsequently announced the reactivation of a two-child policy for Muslims in northern part of the State.” See also: International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, p.10

329 See also: M.Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III; Country Reports on Human Rights Practices, Burma 2012, US Department of State, Bureau of Democracy, Human Rights and Labor 2013, p.2

ideological and propagandistic point of view, namely through the diffusion of Anti-Muslim papers along Rakhine major cities' streets³³⁰. In addition, their role has often been tied in the direct perpetration of acts of violence, through the actions of the “969” movement³³¹.

The “969” movement represents the most fanatic form of nationalist, “Anti-Islamic” rhetoric organized by a group of Buddhist extremists, which includes prominent members of the clergy³³². Many of the leaders of this movement, such as the monks Wirathu³³³ and Wimala³³⁴, are famous for their extremist propaganda, made up of wild claims against the role of Muslims in Arakan. According to their views, the “Bengali” illegal infiltrators, that pretend to be considered ethnic Burmans, in the reality have as only and ultimate aim the one to take over the country transforming it into a jihadist stronghold³³⁵.

Through the development of specific campaigns and often denying their involvement in the violences, the leaders of the movement were able to raise the popular support. In the whole territory the DVDs with the sermons of the leader Wirathu are widely sold³³⁶. Furthermore, the “969” movement was able to create a web of Buddhist solidarity with the result that also the more moderate factions are always reluctant to criticize a movement that uses highly debatable means. Thus, the position of the Buddhist clergy

330 In 2012 local monks' associations made public statements and issued inflammatory pamphlets denying the existence of Rohingya, demonizing them and calling for their removal from Arakan. Human Rights Watch, “All you can do is Pray- Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State”, HRW, April 2013, Ch 1, “Promoting Ehtnic Cleansing: June-October 2012”, p.24

331 The name of the movement comes from a “numerological shorthand” for the special attributes of Buddha. It was shaped as counterpoint to the number “786”, used by Muslims in Myanmar to define Halal shops and restaurants. See also: International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, Sect.D “The Role of the Buddhist Monks”

332 “The 969 movement has been particularly vocal in its extremist rhetoric, including making wild claims of a Muslim plot to take over the country”. International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, Sect.D “The Role of the Buddhist Monks”, p. 17

333 Wirathu, recognized leader of the movement, has often appeared in the world media for his religious extremism and for the fact that he is called “the Buddhist Bin Laden”. See also: K.Hodal, “Buddhist monk uses racism and rumours to spread hatred in Burma”, The Guardian, 18th April 2013

334 Wimala Biwuntha is considered the theorist of the association, basing his propaganda on the exaltation of the number “969” and its logos. As well as Wirathu, many of his “lessons” are registered in DVDs and distributed all over Myanmar. See also: A. Marshall: “The 969 Catechism”, REUTERS, Yangon, 27th June 2013

335 See also: International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, Sect.D “The Role of the Buddhist Monks”, p. 17

336 On youtube there is a wide array of videos reproducing Wirathu's speeches. Some of the videos reached 300000 views, witnessing the incredible popularity of “969” leader in South-East Buddhist Asia. See also: <https://www.youtube.com/watch?v=nSihfWY41So>

in Myanmar is very ambiguous. Even though the large majority of the monks do not believe in messages of intolerance and religious nationalism, not coherent with the official doctrine, they do not have the strength, and perhaps the willing, to openly oppose a movement widely supported in Burma³³⁷.

Two episodes anyway have weakened the reputation of the “969” movement. The first is connected to the fact that the top Buddhist regulatory body of Myanmar has refused to recognize them any religious status³³⁸. The second episode, more recent, is connected to the top figure in Buddhist religion, the Nobel Prize Dalai Lama. En effect he recently endorsed a public statement openly denouncing the situation of Muslims in Myanmar and criticizing another Nobel prize, Aung Saan Suu Kyi, for not having done enough to protect the discriminated Muslim minority in Arakan³³⁹.

2.5 VIOLATIONS TO INTERNATIONAL LAW AND CONVENTIONS

Because of the way in which Rohingya people are treated in North Rakhine State, and because of the ongoing persecution that these communities are living also under a legislative point of view, we can witness many different violations to the international systems of conventions³⁴⁰. One can reasonably argue that some of the international conventions that nowadays represent the basis for the international community and that actually can be considered violated by Burmese authorities, were not signed nor ratified by Myanmar. We can mention for example the 2 conventions relating the status of statelessness, that the government has not signed yet³⁴¹.

337 See also: International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, Sect.D “The Role of the Buddhist Monks”, p. 18

338 “The decision of the top regulatory body for the Myanmar Buddhist clergy that the 969 movement cannot register or present itself as an official Buddhist organization is positive”. See also: International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, Sect.D “The Role of the Buddhist Monks”, p. 18,23. See also: The Associated Press: “Senior Myanmar Buddhist clergy ban activist monks from forming own groups”, Yangon, 11th September 2013

339 ANSA, “Migranti: Dalai Lama critica Suu Kyi”, Bangkok, 28th May 2015

340 “Burma's treatment of the Rohingya violates at least 8 international laws, treaty obligations and international human rights guidelines”, Burma Briefing, “Burma's Treatment of the Rohingya and International Law”, Burma Campaign UK, No.23, April 2013, p.1

341 We refer to the Convention Related to the Status of Stateless Persons of 1954, and the Convention on the Reduction of Statelessness of 1961

We should consider however that many of the norms included in these conventions are to be considered part of the international customary law. In this sense the persecution towards Rohingya and the denial of a nationality represent a clear violation³⁴². Moreover, not respecting the right of having a nationality is an attack to the principle stated by the Article 15 of the Universal Declaration of Human Rights, basis of the international system for the protection of rights, and signed and ratified by Myanmar³⁴³.

In this section we will not analyse the violations committed with respect to the Convention on the Rights of the Children (CTC)³⁴⁴, ratified at the beginning of the 90s by Burmese authorities, since we already did it in the previous chapters, in particular in the paragraph regarding the status of Rohingya children, with a particular reference to their impossibility of having a proper education³⁴⁵.

2.5.1 DISCRIMINATION AGAINST WOMEN: VIOLATIONS TO THE CEDAW³⁴⁶

In the previous chapter we saw how Myanmar legislation, with particular reference to the two-child policy and the obligation to obtain legal permission to be married, has facilitated gender based violence in Rakhine State³⁴⁷. Muslim women, as well as the youngest generations, are strongly impacted by the violence in Myanmar. In particular, large episodes have been witnessed in the fields of vulnerability to human trafficking, hard labour and education inequality. The 1982 Citizenship Law has facilitated the occurrence of such acts³⁴⁸.

The CEDAW is the “Convention on the Elimination of all forms of Discrimination Against Women”. It comes from the more general principle set in the Preamble of the

342 We refer in particular to the 1982 Citizenship Law, that produces clear discriminations on the base of ethnicities. We also refer to the involvement of Burmese official authorities in the persecution of Rohingya families and to all the policies related, such as the two-child policy.

343 See also Universal Declaration of Human Rights, Art 15:

(1) Everyone has the right to a nationality.(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

344 The Convention of The Right of the Child of 1990 has been signed and ratified by the all States, with the only exception of the USA. The entire text is available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

See also Ch 2.1.5.1 of this thesis: “Impact on the children: the education issue and forced labour”

345 See also Ch 2.1.5.1 of this thesis: “Impact on the children: the education issue and forced labour” See also the Convention on the Right of the Child, at the Art.32, 1: States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

346 The full text of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is freely available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

347 See in particular Chapter 2.2.2 “Effects of the Two-Child Policy”, and Chapter 2.3 “Gender Based Violence”

348 See Chapter 2.1.5 “Effects of the Law”

Charter of the United Nations, stating the faith in the “equal rights for men and women”³⁴⁹. The Universal Declaration of Human Rights has strengthened this principle, proclaiming the “entitlement of everyone to equality before the law and to the enjoyment of human rights and fundamental freedoms without distinction of any kind”³⁵⁰. In all the following conventions, including the International Covenant on Economic, Social and Cultural Rights³⁵¹ and the International Covenant on Civil and Political Rights³⁵², the principle of non discrimination based on the gender has always been taken into account. Nevertheless, given the huge amount of episodes witnessing all over the world a growing discrimination against women, there was the necessity to have a proper document aimed at giving a further protection to women³⁵³. This has been the task of the Commission on the Status of Women³⁵⁴, originally established in 1946 as a sub-commission of the Commission of Human Rights and later developed to the status of autonomous body, thanks to the struggle of the activists for women's rights³⁵⁵. Many conventions have been drafted by the CSW, but the necessity of having a proper binding instrument able to guarantee an appropriate “shelter” pushed the Commission

349 In particular the first part of the preamble says: “we the peoples of the united nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom” Preamble of the UN Charter, the entire text is fully available at: <http://www.un.org/en/documents/charter/preamble.shtml>

350 UN Women Watch: “Short History of CEDAW Convention”, freely available at: <http://www.un.org/womenwatch/daw/cedaw/history.htm>. The Art.2 of the Universal Declaration of Human Rights says: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

351 The International Covenant of Economic Social and Cultural Rights was ratified by the UN General Assembly in 1966 and entered into force 10 years later, in 1976. Art.2,2 says: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

352 The International Covenant on Civil and Political Rights was ratified in 1966 by the UN General Assembly and entered into force 10 years later, in 1976. The creation of 2 distinct covenants is due to the role of the Soviet Union and their refusal to accept the economic clauses of the International Covenant of Economic Social and Cultural Rights

353 UN Women Watch: “Short History of CEDAW Convention”, freely available at: <http://www.un.org/womenwatch/daw/cedaw/history.html>

354 The Commission on the Status of Women (CSW) is the most famous intergovernmental body with the task to check the respect and the implementation of the principle human rights regarding women. It was established by Council resolution 11(II) of 21 June 1946. The entire text of the resolution establishing the CSW is freely available at: http://www.un.org/womenwatch/daw/csw/pdf/CSW_founding_resolution_1946.pdf

355 UN Women Watch: “Short History of CEDAW Convention”, freely available at: <http://www.un.org/womenwatch/daw/cedaw/history.html>

to draft the CEDAW, which was adopted by the General Assembly in 1979³⁵⁶. It was ratified by the Republic of the Union of Myanmar, on July 1996³⁵⁷.

The first Article that deserves our attention in connection to the situation of Myanmar is the Article 2b³⁵⁸ of the CEDAW, which obliges the states parties to adopt appropriate measures aimed at prohibiting all discriminations against women. Given the situation in Rakhine, we can say that despite the propagandistic speeches delivered by President Thein Sein, in connection to the democratic development of the Asian country, no tangible results have been achieved yet in this sense. Moreover all the policies that facilitate the ongoing discriminations are still in practice. Also the Article 2d³⁵⁹, which invites the public authorities to ensure that the practices of discrimination are not in place, appears to be forgotten in Myanmar, as well as the Article 2e³⁶⁰ and the Art.2f³⁶¹ that obliges the parties to modify all the policies and laws that can facilitate discriminations. If we look at the two-child policy and the 1982 Citizenship Law, the major responsible for the abuses and discrimination in North Rakhine, of course we acknowledge that the Article 2f is not at all respected³⁶². The abuses witnessed by many relevant NGOs, but also by the Special Rapporteur Tomás Ojea Quintana, demonstrated that also the national authorities were often involved in illegal practices of violence and

356 UN Women Watch: “Short History of CEDAW Convention”, freely available at: <http://www.un.org/womenwatch/daw/cedaw/history.html>

357 Myanmar anyway ratified it with reservation, regarding the Art.29. [The Government of Myanmar] does not consider itself bound by the provision set forth in the said article." The Art. 29 says: 1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court. 2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation 3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations

358 Art.2b says: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake (...)b. To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women”

359 Art.2d says: “To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;”

360 Art.2e says: “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;”

361 Art.2f says: “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”

362 The goal of the two-child policy is the one to block the demographic expansion of Rohingya people in Arakan. Harvard researchers have anyway demonstrated that Rohingya's demographic growth is nothing more than a myth. On the contrary, it can give rise to incredible dangers for legal and illegal couple in Arakan. See also Ch. 2.2 “The Two-Child Policy”

discrimination against Rohingya women³⁶³.

Another delicate affair is connected to the traffic of women and to the “sexual slavery”, in particular during and after 2012 clashes in which Burmese and Arakanese official security forces were involved. Many families had as a unique solution the one to undergo difficult voyages by sea with inappropriate means of transportation³⁶⁴. The human smugglers always profited from this situation, whether leaving the families in the middle of the sea or forcing women to prostitution³⁶⁵. Since the government of Myanmar never approved solutions aimed at blocking this cruel phenomenon, we can say that a further violation to the CEDAW is committed with regard to the Art.6³⁶⁶, which urges the States parties to adopt all the appropriate measures to stop the traffic of women and their exploitation. In connection to the two-child policy and to the abusive structures that host Rohingya pregnant women, in particular in the case in which the two-child limit has already been reached, we should read the Art.12b. Indeed if we consider the policies aimed at blocking the growth of Rohingya population as the main responsible for these events, we should also consider the state of Myanmar as not taking all the necessary steps to ensure women “appropriate services in connection with pregnancy”³⁶⁷. The state of illegality in which Rohingya mothers can often find themselves indeed pushes them to enter into abusive structures, without appropriate means and staffs³⁶⁸.

According to the Article 18 of the CEDAW³⁶⁹ there is the duty for States parties to

363 Tomás Ojea Quintana, Human Rights Council, Twenty-fifth session Agenda item 4 “Human rights situations that require the Council’s attention Report of the Special Rapporteur on the situation of human rights in Myanmar,” p.12, art.47 and p.13, art.51: “He believes that extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State”

364 See also Ch. 2.2 “The Two-Child Policy”

365 “Sexual violence by NaSaKa against Rohingya women has been documented for many years”, says Matthew Smith, adding that prosecutions are rare for rapes committed by security forces”. Guardian.Co.Uk, “Rapes by Burmese security forces may cause more strife in troubled region”, 26th February 2013

366 Art.6 of the CEDAW says: “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”

367 Art. 12B of the CEDAW: “Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

368 “ The first is to undergo such procedures in unsanitary back alleys, often paying huge amounts of money to illegal doctors, who do not have the right knowledge, nor the adequate staff and structures to help the patients to stop the pregnancy”, Ch.2.2 “Effects of the two-child policy”

369 Art. 18 of the Cedaw: 1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect: a)Within one year after the entry into force for the State concerned; b)

submit periodical reports about the state of implementation of the convention and the respect of the rights of women within the territory of the State. Interesting results can be drawn observing the concluding observations of the Committee with respect to the last report published by Myanmar in 2008³⁷⁰ and describing the conditions of women's rights in Burma. In the introduction to the concluding observations the Committee defines the information included in the report too much general and without the necessary references to specific ethnic groups³⁷¹. In the Art. 14 the Committee expresses serious concerns about the Constitution of 2008, which did not include a single provision regarding the applicability of international treaties³⁷². Even though there has been the establishment in 2000 of Myanmar Human Rights Committee³⁷³, to whom women can send complaint letters, this system has not proved to give enough guarantees. For this reason the Committee in charge with the duty to check the implementation of the CEDAW urges in Art.15³⁷⁴ to strengthen the legal complaint system and to give women of ethnic groups the effective possibility to have access to justice.

Another interesting section is the one regarding the topic of “Violence against women”³⁷⁵. In Art.22 indeed the Committee expresses its wide concerns regarding the

Thereafter at least every four years and further whenever the Committee so requests.2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

370 UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008

371 “The Committee notes that the information provided in the reports in many aspects was too general and lacked the disaggregated data pertaining to, inter alia, the various ethnic groups, as requested in the previous concluding observations, necessary to permit the Committee to evaluate the specific situation of women”, UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art. 2

372 “The Committee is concerned that the new State Constitution, which was approved in May 2008, does not include a provision concerning the applicability of international treaties, including the Convention”, UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art. 8

373 “The Committee notes that the establishment in 2000 of the Myanmar Human Rights Body, which was renamed the Myanmar Human Rights Body in November 2007, and that women who wish to complain about gender-based discrimination can send complaint letters to MAAF”. UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art.14

374 “The Committee urges the state party to strengthen its legal complaint systems to ensure that women, especially women of ethnic groups, have effective access to justice.” UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art.15

375 UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art.22,23

episodes of violence committed throughout the country, including cases of rapes and sexual violence. What really frightens the committee in this case is the acknowledgement that such acts could join a social legitimization, often accompanied by a culture of silence and impunity. In this case it is specified that the area of major concern is the one of northern Rakhine State³⁷⁶. Furthermore in the section “Discriminatory nationality law”³⁷⁷, the 1982 Citizenship Law is clearly detected as one of the main source of discrimination in Myanmar. For this reason the Committee has recommended the government to repeal the Law³⁷⁸, making the conditions to acquire Burmese nationality for Muslim women of Arakan in compliance with the Art.9 of the CEDAW³⁷⁹.

A specific section is finally dedicated to “Women in Northern Rakhine State”³⁸⁰. Here the Committee blames the conditions of living for women in Arakan, with a specific reference to the restrictions of movements, to forced labour and to the restrictions for marriages and pregnancies. According to this report, the religious norms of Rohingya can further aggravate the situation for women. For all these reasons, the Committee has urged the government to “lift the orders concerning marriage authorization and restriction of pregnancy which violate the human rights of these women”³⁸¹.

376 “The committee expresses concerns at the high prevalence of violence against women and girls, such as widespread domestic violence and sexual violence, including rape. The Committee is also concerned that this violence appears to be socially legitimized and accompanied by a culture of silence and impunity, that cases of violence are thus unreported and that those that are reported are settled out of court. The Committee is concerned that geographical areas of particular concern include northern Rakhine State” UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art.22

377 UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art.30-33

378 “The Committee calls upon the State Party to review the 1982 Citizenship Law and to repeal or amend it, as appropriate, in order to bring it fully into compliance with Art.9 of the Convention” UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art.31

379 Art. 9 of the CEDAW:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children

380 UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art.42,23

381 The Committee urges the State party to urgently eliminate all forms of violence and discrimination against women in Northern Rakhine State and, in particular, to alleviate the heavy restrictions on the movement of resident within northern Rakhine State, especially women's and girls. The Committee further urges the State party to lift the orders concerning marriage authorization and restriction of

Three years later Myanmar government has published a “Response to the recommendations contained in the concluding observations of the Committee following the examination of the combined second and third periodic report of Myanmar on 3 November 2008”³⁸². At the end of the report a specific section is dedicated to the situation of “Women in North Rakhine State”³⁸³. In this paragraph the government tries to defend its activities, claiming for the fact that no further restrictions were imposed on “Bengali” women, others than those already imposed by their own tribes³⁸⁴. According to this response no discrimination has been perpetrated by official authorities. On the contrary the State would always contributed to raise the level of education and wellness of women in northern Rakhine State³⁸⁵. The real conditions of women in Arakan, together with the obstacles that the NGOs must face day-by-day in their activities, prove that the information provided in this report are far away from truth.

The continuous violations to human rights that Muslim women in Arakan are suffering, by the way, are not only related to the rights included in the CEDAW. In my opinion, the restrictions imposed on the right to be married for Rohingya couples, violates the principle contained in the Art.16³⁸⁶ of the Universal Convention of Human Rights. The duty to obtain permissions and the long periods that the couples are obliged to wait in order to obtain the authorization³⁸⁷, are in contrast with the right to marriage and to have a family.

pregnancy, which violate the human rights of these women” UN Committee on the Elimination of Discrimination Against Women, 42nd session Concluding observations of the Committee on the Elimination of Discrimination against Women, 20th October-7th November 2008, Art.43

382 Committee on the Elimination of Discrimination against Women, Fiftieth session 3–21 October 2011, “Information provided in follow up to the concluding observations of the Committee”

383 Committee on the Elimination of Discrimination against Women, Fiftieth session 3–21 October 2011, “Information provided in follow up to the concluding observations of the Committee” Art.17-36

384 “As Bengali women do not go outside according to their tradition, they have less health care knowledge, social dealing and education. The government is carrying out NGOs, such as UNHCR, UNFPA, UNICEF, WHO, AFC Malteser, AZG and Care Myanmar for the development of women in this area” Committee on the Elimination of Discrimination against Women, Fiftieth session 3–21 October 2011, “Information provided in follow up to the concluding observations of the Committee” Art.18

385 Committee on the Elimination of Discrimination against Women, Fiftieth session 3–21 October 2011, “Information provided in follow up to the concluding observations of the Committee” Art.18

386 Art.16 of the UDHR: 1- Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution

2- Marriage shall be entered into only with the free and full consent of the intending spouses

3- the family is the natural and fundamental group unit of society and is entitled to protection by society and the State

387 These impositions are imposed only to specific ethnic groups, in particular Rohingya of Arakan. It represents a clear discrimination on the ground of the race

2.5.2 CONDITIONS OF STATELESSNESS³⁸⁸: VIOLATIONS TO THE ARTICLE 15 OF THE UDHR AND TO THE SYSTEM OF INTERNATIONAL LAW AND CONVENTIONS

The Art.15 of the Universal Declaration of Human Rights³⁸⁹ says:

- 1) Everyone has the right to a nationality;
- 2) no one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality.

Making analysis over the 1982 Citizenship Law³⁹⁰ it can be understood how these two principles seems forgotten when we describe the case of Rohingya People in Myanmar. Rendering someone stateless according to the UDHR, which has been signed and ratified by the all the States Parties of the UN, is thus considered a crime. 1948 Union Citizenship Act contained some of the most debated clauses that we can find also in the Law of 1982³⁹¹, such as the possibility to grant citizenship only to those ethnic groups that were living in Burma before the arrival of British India Army in 1824³⁹². In the first years of Burmese independence, by the way, even though it was not granted always the status of “full-entitled” citizens to Rohingya, many of them could apply to be considered as naturalized citizens³⁹³, keeping their role in the society and without being systematically ostracized. After the military coup of 1962 and most of all with the new 1982 Law things appear changed. Rohingyas were not issued with any kind of identity cards during the 80s and they started to be considered citizens of nowhere, refused by their ancestors' country and by the majority of their neighbours³⁹⁴.

In the international system there are 2 major treaties related to the status of stateless

388 According to the UNCHR, a valid definition of the concept of statelessness is the one provided in the Art. 1 of the Convention relating to the status of Stateless persons: “For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law” See also: UNHCR- “What is statelessness?”, available at: <http://www.unhcr.org/pages/49c3646c158.html>

389 The Universal Declaration of Human Rights of 1948 is generally considered as the foundation of Human Rights Law. It has also inspired a wide number of international legally binding treaties.

390 See also Ch.2.2: “The 1982 Citizenship Law”

391 See also: S.L. Verna, “The Law Relating to Foreigners and Citizenship in Burma”, R.R. Verna, 1961, Mandalay

392 Art. 3 of the Burma Union Citizenship Act of 1948 says: “For the purposes of section 11 of the Constitution the expression “any of the indigenous races of Burma” shall mean the Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and such racial group as has settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A. D. (1185 B.E.)”. This article was considered also in the 1982 Citizenship Act

393 The 1982 Citizenship Act provides three different categories of citizenry, together with the full nationality citizens can also apply to be considered naturalized or associate citizens. As we debated in Ch.2.1 anyway none of these possibilities is often available for Rohingya.

394 The official version promoted by Myanmar government is that Rohingya cannot be defined as an autonomous ethnic group, but the members of this community are actually Bengali illegal migrants. For this reason they are not included in the official list of 150 ethnic groups legally entitled to be Burmese.

people. The first one is a treaty of 1954 with the title: “Convention relating to the status of stateless persons”³⁹⁵, while the second was drafted 7 years later, under the name of “Convention on the reduction of statelessness”³⁹⁶. None of the conventions was ratified nor signed by the delegates of Myanmar government. So, despite Myanmar is not in the list of the States parties, many of the articles present in the conventions have to be considered as part of the international customary law and in this sense binding for the entire international community. For this reason we should consider in this section the major violations committed by the government of Burma towards Rohingya people, with reference to the two treaties that form the foundation of the international legal framework to address statelessness³⁹⁷.

2.5.2.1 *Convention related to the status of stateless persons (1954)*

One of the most important rights included in the convention is the recurrent principle of non-discrimination, that we can find expressed at the Art.3³⁹⁸. The principles of the Convention should be indeed applied to all, without discrimination on the basis of race or religion. Considering the specific treatment that Rohingya stateless people are receiving, the ongoing discrimination should be considered as a clear violation³⁹⁹. Moreover the Art.4⁴⁰⁰, regarding the possibility for stateless people to practice their own religion, has been strongly endangered by the destruction of madrasas and other religious buildings by the NaSaKa, together with the denial for children to receive a proper education in Muslim schools⁴⁰¹. Another article connected to the rights of the

395 The draft of the “Convention on the reduction of statelessness” was parallel to the one relating to the status of refugees. While the second one was promulgated in 1951, the other needed other 3 years to be completed and enter into force only in 1960. See also: UNHCR: “Convention related to the status of stateless persons”- Introductory note by the office of UNHCR, p. 3, Geneva, 2014

396 The “Convention on the reduction of statelessness” was adopted in 1961 and entered into force 14 years later, in 1975, with the task to complete the framework created by 1954 convention. See also: UNHCR: “Convention on the reduction of statelessness”- Introductory note by the office of UNHCR, p.3, Geneva, 2014

397 “ a framework for the international protection of stateless persons and is the most comprehensive codification of the rights of stateless persons yet attempted at the international level” UNHCR: “Convention related to the status of stateless persons”- Introductory note by the office of UNHCR, p. 3, Geneva, 2014

398 This principle is also expressed in the Preamble of the convention that reminds us “the principle that human beings shall enjoy fundamental rights and freedoms without discrimination”. The art.3 says: “The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.” UNHCR: “Convention on the reduction of statelessness”- Geneva, 2014

399 See also Ch.2.5.1 “Effects of the Law”

400 Art.4 of the Convention: “ The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.”

401 “The destruction of the madrasas and the prohibition for pupils to attend Muslim schools have also had an important impact on the field of education.” Ch.2.1.2.4 “Removal of the identity of an entire population”

children is Art.22, stating the duty for the State to provide to stateless children an adequate education⁴⁰². If we take into consideration the example of the school of Ba Gone Nar⁴⁰³ that we mentioned in paragraph 2.1.5.1, once again other anomalies emerge.

According to the Art.7⁴⁰⁴ the governments should also give to Stateless people at least the same treatment reserved to other foreigners. According to the reports by UNCHR and other NGOs⁴⁰⁵, even though other ethnic groups are endangered in South-East Asia countries, the case of Rohingya people represent a unique case and aliens in Myanmar are never exposed to the same abuses suffered by Arakanese Muslims. A similar discourse can be made with reference to the Art.13⁴⁰⁶, regarding the possession of movable and immovable properties. Also in this case the treatment for stateless people should be comparable to the one received by foreigners, but if we consider the cases of land confiscations to Muslim farmers by the SLORC⁴⁰⁷ and later by the SPDC⁴⁰⁸, we understand that also this principle has been repeatedly violated. Other violations can be referred to Art.26⁴⁰⁹, about freedom of movement, Art.27⁴¹⁰ about the duty for the State to provide valid travel documents and identity papers to stateless persons and the Art.32⁴¹¹ about the duty for the State to facilitate the process of naturalization.

402 Art. 22 of the Convention: “The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.”

403 “The schools are overcrowded and the pupils are obliged to follow lessons in unsafe rooms with no space to sit and take notes. One of the most striking example is the one of the school of Ba Gone Nar, with more than 1200 students enrolled and no more than 11 teachers appointed by the government.” Ch.2.1.5.1 Impact on the children and the education issue”

404 Art. 7 of the Convention: “1.Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally. 2. After a period of three years’ residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.”

405 Among the major NGOs operating in Arakan we enlist Amnesty International and Human Rights Watch

406 Art. 13 of the Convention: “ The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.”

407 The SLORC is the State Law and Order Restoration Council, later transformed into the SPDC

408 The SPDC is the State Peace and Development Council

409 Art. 23 of the Convention: “ Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.”

410 Art. 27 of the Convention: “The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.”

411 Art. 32 of the Convention: “ The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such provisions.”

2.5.2.2 *Convention on the reduction of statelessness (1961)*

The wide majority of the principles included in 1954 Convention are here repeated and integrated⁴¹². Once again, Myanmar is not one of the States parties, but we should ask in which cases the violations to principles contained in the declaration can be considered violations to general principles of international law. We should mention the Art.1⁴¹³ of the CRS, which obliges the contracting parties to give to stateless children the nationality of the state in which they are born. The 1982 Citizenship Law does not provide a similar clause. On the contrary the children of Rohingya couples⁴¹⁴ are not considered Burmese by official authorities and the majority of them is neither officially registered. Another article that deserves our attention is the Art. 8⁴¹⁵, providing the prohibition for the State to deprive a person of his nationality in the case in which that person would be rendered stateless. The Article that seems to be more appropriate in this situation is anyway the Art.9⁴¹⁶ of the 1961 Convention: “a contracting state may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds”⁴¹⁷. If we remember the history of this population and what has happened since the end of WWII and in particular since the promulgation of 1982 Citizenship Law we can easily acknowledge how this article could be strongly related to Rohingya population⁴¹⁸.

For all these reasons we can say that the provisions of 1982 Citizenship Law are not in compliance with the basic principles of international law. Moreover, the treatment that Rohingya people received from official authorities, due to unequal policies and rules, makes the Republic of the Union of Myanmar one of the place in the entire world that less respects the rights of stateless persons⁴¹⁹.

412 See also: UNHCR: “Convention on the reduction of statelessness”- Introductory note by the office of UNHCR, p.3, Geneva, 2014

413 Art. 1 of the CRS: “ A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.”

414 The majority of Rohingya people is considered stateless, since also Bangladesh always refused to give them a nationality.

415 Art. 8 of the Convention: “ A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.”

416 Art.9 of the Convention: “ A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”

417 Art. 9 of the Convention on the Reduction of Statelessness

418 The decision not to consider the claims by Rohingya people concerning their alleged Burmese origins makes this people stateless according to 1982 Citizenship Law. In the second chapter of this thesis I analyse the major fields in which there has been a fledged discrimination towards Rohingya, on the base of their race and religion.

419 As we already said in this chapter despite Myanmar is not one of the contracting parties of the 2 treaties related to the status of the stateless persons, many of the articles included in the convention must now be considered part of the international customary law and are also included in other human rights treaties.

2.5.3 THE REFUGEES ISSUE AND THE CONDITIONS OF DISPLACED ROHINGYA IN NEIGHBOUR COUNTRIES

Rohingya's marginalization represents a serious concern for the entire international community. However, the countries of South-Asia are the first to be involved in this problem. Among them, the one that is mostly hit by the waves of Myanmar refugees is the Arakan's boarder country, Bangladesh⁴²⁰. The narrative of Rohingya's voyages of hope towards this country starts indeed in connection with the Operation Naga-Min⁴²¹ in 1978. A mass exodus took place after the military campaign, pushing 200000 Rohingya to flee Myanmar for Bangladesh. A new exodus began in connection to the persecutions of 1991 and 1992, with 250000 Rohingya landing in Bangladesh's coasts⁴²². After a series of negotiations between the 2 governments 226576 of them were repatriated, while only 21621 were permitted to remain⁴²³.

It was not anyway the end of the persecutions for the refugees. Indeed, once back in their original seal, they were exposed to new and increased violences. A great part of those who were repatriated tried soon to get back to Bangladesh, this time without any possibility to have the status of refugee recognized⁴²⁴. Many families tried to trespass the boarder through the Naf River⁴²⁵, losing their lives in the attempt. The Rohingya where thus in the paradoxical situation in which nobody wanted to accept them, suffering terrible persecutions from Myanmar authorities and rejected in Bangladesh⁴²⁶. After more than 20 years the situation remains the same. Myanmar refugees from Arakan are banned as “illegal economic migrants” in both the countries, considered

420 According to theories of U Kim Saw, Aye Chan and others, we should remember that Bangladesh is detached as the country of origin of Rohingya, who decided to move to Myanmar seeking better economic conditions of living. See also Ch.2.1.2.4 “Removal of the identity of an entire population”

421 The Operation Naga-Min is the Operation Dragon King, conducted by the forces of the military junta in 1978

422 “The Tatmadaw's coercive measures in northern Arakan helped to create a mass exodus involving approximately 250000 Rohingyas who moved into Bangladesh in 1991-1992.” C. Grundy-Warr, E. Wong, “Sanctuary Under a Plastic Sheet- the Unresolved Problem of Rohingya Refugees”, IBRU Boundary and Security Bulletin Autumn 1997, p.85. See also: S.N. Parnini, “The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh”, Journal of Muslim Minority Affairs, Vol.33, No.2, p.286

423 A.A. Ullah “Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization”, Journal of Immigrant and Refugee Studies, 9: 2, Cairo, 2012, p. 151,152

424 See also: Ashraf Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh”, Journal of Indian Research, Vol.1, No.4, October-December 2013, p.25-35

425 Naf River connects Arakan with Bangladesh. It has been the graveyard for a huge number of Rohingya refugees

426 “The fundamental consideration for a refugee is to have protection after arrival. However, 10 years after they fled their homes they were locked into different predicaments: unwanted in Myanmar and no longer welcomed in Bangladesh”. A.A. Ullah “Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization”, Journal of Immigrant and Refugee Studies, 9: 2, Cairo, 2012, p.152

“Bengali” in Myanmar and “Burmese” in Bangladesh⁴²⁷. Refugees do not have the sufficient support from international organizations and the host countries fail to provide sufficient protection.

It is thought that the total number of Rohingya refugees hosted in Bangladesh is more than 200000⁴²⁸. We have to divide them in two categories: recognized refugees living in official camps and non recognized ones living in unofficial sites. Only 28000 people belong to the first category, allowed to stay in UNCHR supervised camps, in Cox's Bazar area⁴²⁹. The remaining ones live in abusive camps, without any access to basic services and often pushed back to Myanmar. They do not have any legal status or adequate international assistance. Even though the forceful and coercive repatriations violate the principles of refugee protection, they are often committed by Bangladesh authority. In addition, since June 2012 the authorities of Dhaka did not allow Rohingya to shelter, leaving many of them dying in the sea. Despite this refusal the exodus continues. Between June 2012 and May 2013, approximately 34000 to 35000 Rohingya are believed to have taken to the sea: a very important number, if we consider that they were 9000 in 2011.⁴³⁰

The situation has never been as desperate as today. Rohingya people are in the continuous research for a safe life. For this reason they try to reach the coasts of Malaysia, Thailand, Bangladesh and Australia by perilous sea journeys. While Bangladesh is leaving them to die in the sea, the governments of Australia, Thailand and Malaysia increased the anti-trafficking measures, fighting the human smuggling phenomenon but in the meanwhile making almost impossible for Rohingya to land in their coasts⁴³¹.

427 “United Nations has aptly depicted the Rohingya as “virtually friendless””, E. Abdelkader, “Myanmar's Democratic Struggle: the Impact of Communal Violence upon Rohingya”, *Pacific Rim Law and Policy Journal*, Vol. XX, No. 10, p.5

428 See also: Ashraf Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, *Journal of Indian Research*, Vol.1, No.4, October-December 2013 , p.26

429 A.A. Ullah “Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization”, *Journal of Immigrant and Refugee Studies*, 9: 2, Cairo, 2012, p.152, 153

430 See also M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p 722

431 See also: Ashraf Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, *Journal of Indian Research*, Vol.1, No.4, October-December 2013 , p.26

2.5.3.1 Definition of “refugees” and solutions to Rohingya displacement

The term “refugee” refers to the “involuntary movement of the people from their country of origin due to persecution or threat of persecution”.⁴³² In the specific case of Rohingya of Myanmar, the problem at the basis is connected to the outgrowth of ethnic and religious tensions, due to the government of Myanmar's policies⁴³³.

The total amount of refugees all over the world is more than 10.5 million⁴³⁴ and the majority of them are in protracted situations. Rohingya refugees in Bangladesh represent one of the major and complex situations in this sense. The condition of protracted displacement is defined by the UNHCR Standing committees⁴³⁵: “One in which refugees find themselves in a long lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance”⁴³⁶. The one of the Rohingya is not a temporary situation and it cannot be faced through temporary relief solutions and short-term strategies. On the contrary it is necessary to adopt durable solutions, able to provide the refugees with basic services and with the protection of the basic human rights⁴³⁷. As we are going to observe, all the major strategies recognized at international level did not provide a sufficient relief to Muslim populations of northern Rakhine State⁴³⁸.

432 A. Al Faruque, “Plight of Rohingya Refugees in Bangladesh: Legal Aspects of the Problem”, University of Chittagong- Department of Law

433 See also: Ashraf Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, Journal of Indian Research, Vol.1, No.4, October-December 2013 , p.26

434 UNHCR: “Displacement: the New 21st century Challenge”, UNHCR Global Trends, 2012

435 The report witnesses the great concerns of the UNHCR regarding the situations of protracted displacement, in particular in the last 15 years. In the Art.1 of the Document indeed we read: “UNHCR gives a very high priority to developing effective responses to protracted refugee situations, which have been among the principal targets of several major UNHCR initiatives, such as Convention Plus and the Framework for Durable Solutions. Protracted refugee situations have also been the main subject of two high-level meetings on African refugees, and have featured prominently in policy speeches delivered by the High Commissioner and senior UNHCR officials.” Unhcr: “protracted refugee situations”, executive committee of the high commissioner’s programme, standing committee 30th meeting, 10 June 2004, section i: “Introduction: responding effectively to a shared challenge”

436 UNHCR: “Protracted Refugee Situations”, Executive Committee of the High Commissioner's Programme, Standing Committee 30th Meeting, 10 June 2004, Section II: “Definition: In Limbo”.

437 Ashraf Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, Journal of Indian Research, Vol.1, No.4, October-December 2013 , p.30

438 This list is provided by the UNHCR and taken back and presented by many international scholars, including Ashraf Azad, Fareha Jasmin and Al Faruque. See also: UNHCR, “An Introduction to International Protection: Protecting Persons of Concern to UNCHR, Geneva, 2005; Ashraf Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, Journal of Indian Research, Vol.1, No.4, October-December 2013 ; A. Al Faruque, “Plight of Rohingya Refugees in Bangladesh: Legal Aspects of the Problem”, University of Chittagong-

- Voluntary repatriation;
- Local integration;
- Prevention or early intervention;
- Resettlement.

Voluntary repatriation can occur only in the case in which the refugees have the possibility to make return to their countries of origin in safety and dignity and in a voluntary way⁴³⁹. According to the 1951 Convention on the Status of Refugees⁴⁴⁰, the refugee status ceases in the moment in which the refugee re-establishes himself in the country of origin. (Art. 1C,4)⁴⁴¹. In addition the voluntary repatriation can be completed only in the case in which the circumstances that originally forced the refugee to leave the country are no longer present⁴⁴². Thus, there must be the assurance of a condition of physical, legal and material safety for the refugees⁴⁴³. The responsibility to create the proper conditions for the voluntary repatriation must be considered as a burden that the entire international community has to share⁴⁴⁴. In this sense the UNHCR signed in 1993 two memoranda of understanding with Bangladesh and Myanmar in order to settle the proper conditions for a voluntary return of Rohingya. The protracted bad conditions of refugees in both Myanmar and Bangladesh and the eternal status of persecuted minority

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439 Ashraful Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, *Journal of Indian Research*, Vol.1, No.4, October-December 2013, p. 28

440 The UN Convention on the Status of Refugees was signed in Geneva in 1951, but entered into force three years later. We must specify anyway that Myanmar, Bangladesh and the wide majority of South-Asia states did not signed the treaty.

441 Art. 1C(4) of the Convention: “This Convention shall cease to apply to any person falling under the terms of section A if : He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution”

442 For what concern the “ceased circumstances”, we should see Art.1C (5,6) of the convention which states: “(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality ; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality ; (6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence ;” See also: Ashraful Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, *Journal of Indian Research*, Vol.1, No.4, October-December 2013, p. 28

443 See also: Ashraful Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, *Journal of Indian Research*, Vol.1, No.4, October-December 2013, p. 28

444 Pittaway argues that the nature of the voluntariness of the repatriation is a major point of contention and barrier to identifying solutions to the current situation. See also: Ashraful Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, *Journal of Indian Research*, Vol.1, No.4, October-December 2013, p. 28; E. Pittaway, “The Rohingya Refugees in Bangladesh: A failure of the International Protection Regime, in Adelman H., “Protracted displacement in Asia: No Place to Call Home”; England, Ashgate

for Rohingya have anyway demonstrated that these attempts have not been fruitful. According to the UNHCR surveys less than 30% of Rohingya wished to repatriate, even though the government on Bangladesh insisted that all the Rohingya should have returned in their homeland⁴⁴⁵. Since 1997 indeed we do not find any official attempt to repatriate the Rohingya refugees⁴⁴⁶.

Local integration represents a legal, economic and social process. Under a legal point of view indeed a wide number of rights must be ensured by the host state, together with the settlement of the economic conditions aimed at facilitating the integration of refugees and the attempt of the entire population to integrate them under a social and cultural point of view⁴⁴⁷. The great regime of intolerance, together with the high rate of poverty that we can find in many zones of South-East Asian Region do not permit the process of local integration to be a viable solution in Rohingya crisis⁴⁴⁸.

The prevention of course should be the best solution⁴⁴⁹. Anticipating the possible causes of a protracted displacement, such as discriminations, persecutions or civil war could be an adequate strategy in order to erase refugees' problems at the basis. The responsibility to prevent these situations is up to the whole international community, but the first duty belongs to the countries involved. In Rohingya's cases anyway the official authorities have huge responsibilities. The main source for displacement in Arakan are the inter-ethnic strains, but we should also remember the involvement of security forces and governmental bodies. For these reasons this kind of solution still represents a taboo for this specific case⁴⁵⁰.

The last solution is the one of the resettlement⁴⁵¹. It can be really appropriate in this

445 A.A. Ullah "Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization", *Journal of Immigrant and Refugee Studies*, 9: 2, Cairo, 2012, p.155

446A. Al Faruque, "Plight of Rohingya Refugees in Bangladesh: Legal Aspects of the Problem", University of Chittagong- Department of Law

447 See also E.Feller, "Refugees Are Not Migrants", *Refugee Survey Quarterly*, Vol. 24, Issue 4, 2005, p. 32,33. Miss Erika Feller is the Director of Department of International Protection, UNHCR. See also the speech delivered in Vrije University with the title: "SID lecture series -Migration and Development: Challenges for a World on the Move-", 2004 Amsterdam, Netherlands

448 M. Zarmi, A. Cowley "The slow burning genocide of Myanmar's Rohingya" *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p 722

449 Prof. Al Faruque writes: "The age old saying that prevention is better than cure is also applicable for solutions of refugee problem." A. Al Faruque, "Plight of Rohingya Refugees in Bangladesh: Legal Aspects of the Problem", University of Chittagong- Department of Law; See also E.Feller, "Refugees Are Not Migrants", *Refugee Survey Quarterly*, Vol. 24, Issue 4, 2005, p. 32,33.

450 See also Burma Campaign UK: "Burma's Treatment of the Rohingya and International Law", Burma Briefing, No.23, April 2013, p.6

451 Ashraful Azad and Fareha Jasmine write: "Resettlement opportunity was not available for Rohingya refugees in Bangladesh until 2006. The government of Bangladesh refused permission for refugee travel

contest, since it would provide durable solutions for a wide number of refugees and in the same time would represent a concrete instrument to push States to cooperate and to share responsibilities⁴⁵². It consists in the resettlement of individuals, who face immediate protection problems, in third countries that declare themselves available to share the burden of the emergence. Because of the restrictions on travel imposed by Dhaka government on Muslim Burmese refugees, it was not an available strategy until 2006⁴⁵³. Also after this year anyway the data show how this phenomenon has been so far very limited. In the year 2010 there have been only 492 submissions and just 211 departures. The data relating to the USA are particularly striking since there were only 7 departures on a total of 272 submissions⁴⁵⁴.

| YEAR | SUBMISSIONS | DEPARTURES |
|--------------|--------------------|-------------------|
| 2006 | 28 | 13 |
| 2007 | 379 | 75 |
| 2008 | 549 | 156 |
| 2009 | 549 | 465 |
| 2010 | 492 | 211 |
| TOTAL | 1997 | 920 |

Fig.2.3: Resettlement of Myanmar Refugees from Bangladesh (2006-2010), Source: Kiragu,Rosi, Morris, 2011

2.5.3.2 Main principles in the international system related to refugees situation

There are three fundamental principles that should lead the behaviours of States in similar cases⁴⁵⁵:

and countries offering programmes of resettlement showed no active interest in accepting this caseload.” Ashraful Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, *Journal of Indian Research*, Vol.1, No.4, October-December 2013, p.31

452 See also: H. Ankerstjerne, “Role of UNHCR and International Protection of Refugees”, *Bulletin on IHL & Refugee Law*, Vol. 1, No.1, January-June 1996, p.121-132

453 Ashraful Azad, Fareha Jasmin, “Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, *Journal of Indian Research*, Vol.1, No.4, October-December 2013, p.31

454 The data are taken from: UNHCR-Policy Development and Evaluation Service, E.Kiragu, A.L.Rosi, T.Morris, “States of denial: A review of UNHCR’s response to the protracted situation of stateless Rohingyarefugees in Bangladesh”, *Bangladeshh-Myanmar*, 2011, UNHCR

455 See also R.Plender, “The Legal Protection of Refugees”, in R.Blackburn, J.Taylor, “Human Rights-

- Non-refoulement⁴⁵⁶;
- Asylum;
- International solidarity and burden sharing;

The principle of non-refoulement⁴⁵⁷ represents a basic principle of international humanitarian law and a fundamental norm of customary international law. It consists in the duty for the States not to expel subjects, nor to reject them at the frontier, in the cases in which in their country of origin there is a reasonable threat to their safety and life⁴⁵⁸. Thus, sending back a refugee in the country in which he has a well-founded fear of persecution, constitute an open violation to general international law⁴⁵⁹. This principle has been incorporated in the Article 33⁴⁶⁰ of the 1951 Refugee Convention, in the Article 1 of the 1967 Protocol⁴⁶¹, in the Article 3⁴⁶² of UN Declaration on Territorial Asylum and in the Article 3⁴⁶³ of the UN Conventions against Torture and other Cruel, Inhuman

1995”, London, 1995, pp.49-58

456 “The single most important foundation of refugee law is the principle of non-refoulement. This principle generally prohibits nations from returning an individual to any country in which that person would be subjected to persecution” See also R.L. Newmark: “Non Refoulement Run Afoul: the Questionable Legality of Extraterritorial Repatriation Program”, Washington University Law Review, Vol. 71, Issue 3, January 1993, p.834

457 See also: UNHCR, “Report of the UNHCR-1985”, UN Doc. E/1985/62, 1985

458 See also R.L. Newmark: “Non Refoulement Run Afoul: the Questionable Legality of Extraterritorial Repatriation Program”, Washington University Law Review, Vol. 71, Issue 3, January 1993

459 See also: UNHCR, “NGO manual on international and regional instruments concerning refugees and human rights-European series -Volume 4 – No 2 – Geneva, 1998/07

460 Art. 33 of the Convention: No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

461 Art.1 of the Protocol: “ The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined. 2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and ...” “and the words”... “a result of such events”, in article 1 A (2) were omitted. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol

462 Art. 3 of the UNDTA: “1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons. 3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

463 Art.3 of the Convention: “1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2.For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State

or Degrading Treatment or Punishment. For all these reasons we can say that Bangladesh has often been not in compliance with the general principle of non-refoulement, in the case of Rohingya refugees.

The concept of “asylum” represents the heart of the protection of refugees. The definition of asylum, according to the Institute of International Law, is: “the protection which a State grants on its territory or in some other places under the control of certain of its organs, to a person who comes to seek it”⁴⁶⁴. Moreover, the right to seek asylum from persecution is stated by the Article 14 of the Universal Declaration of Human Rights⁴⁶⁵ that represents a corollary to the right to life that each refugee has.

The last principle is the one of the International solidarity and burden sharing. According to Professor Al-Faruque, from Chittagong University, this principle “establishes that States have an obligation to share the responsibility of finding solutions for the people who have been deprived of a community”⁴⁶⁶. Thus, each member of the international community should proportionally contribute to the resolutions of common problems, sharing an adequate portion of responsibility. When a small country is overwhelmed by huge influxes of migrants, for example, the other countries must intervene to provide assistance, according to the concept of burden-sharing, expressed in the Preamble of 1951 Refugee Convention⁴⁶⁷ and in the Art.2 of the Declaration on Territorial Asylum of 1967⁴⁶⁸. For all these reasons the engagement of the international community in this affair can be judged as inadequate and not in compliance with the general principles of international law regarding the rights of refugees⁴⁶⁹.

concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

464 Art. 1 of the Resolution adopted by the Institute of International Law in September 1950. See also: M.T. Gil-Bazo, M.B. Nogueira, “New issues in refugee research: Asylum in the Practice of Latin American and African States”, Research Paper n.249, UNHCR-Policy Department and Evaluation Service, January 2013

465 Article 14 of the UDHR: “(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”

466 A. Al Faruque, “Plight of Rohingya Refugees in Bangladesh: Legal Aspects of the Problem”, University of Chittagong- Department of Law

467 Within the Preamble of the Convention we can read: “EXPRESSING the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States”

468 Art. 2 of the Declaration says: “1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community. 2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State”

469 Human Rights Watch noted: “Because they have no constituency in the West and come from a strategic backwater, no one wants them, even though the world is well aware of their predicament”, Human Rights Watch, “Perilous Plight: Burma’s Rohingya Take to the Seas”, HRW, 2009

2.6 THE GENOCIDE THEORY. RECURRING ELEMENTS IN RAKHINE STATE WITH RESPECT TO 1948 DEFINITION

According to Maung Zarni⁴⁷⁰ and Alice Cowley⁴⁷¹ there are all the conditions to consider what happened in northern Rakhine State, since the launch of the operation Naga Min⁴⁷², a clear situation of genocide. Genocide is defined by the Art.2⁴⁷³ of 1948 Convention on the Prevention and Punishment of the Crime of Genocide⁴⁷⁴: “Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transforming children of the group to another group.”

The authors of the article state that the first four acts included in the definition can be observed in northern Arakan, with a particular focus on the intention by both state and non-state actors to complete the destruction of Rohingya as an ethno religious group. This kind of genocide has been defined “slow burning”⁴⁷⁵, since it has taken place over the past 37 years and continues also today with other instruments of terror. According to Zarni and Cowley indeed the government of Myanmar has adopted policies and plans designed to cause serious harms to the ethnic group of Rohingya⁴⁷⁶. The fact that the Burmese military junta for many years has impeded the access to media within its borders has contributed to isolate Rakhine State from the rest of the world and to make

470 Maung Zarni is a Burmese scholar activist in exile. Visiting Research Fellow to the University of Malaya Center for Democracy and Elections and Scientific collaborator with Harvard University and London School of Economics. His blog represents a constant point of reference for everybody who wants to contribute to the struggle to save Rohingya's existence. See also: www.maungzarni.net

471 Alice Cowley is Consultant Researcher at the Equal Rights Trust (ERT) in London

472 The operation Naga Min, or Dragon King, was a military operation led by Burma Tatmandaw (Army) in 1978.

473 Article 2 of the CPPCG. The entire text of the Convention is available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>

474 The CPPCG was adopted by the UN General Assembly on 9th December 1948

475 A slow burning genocide is: “one that has taken place over the past thirty-five years and continues today via similar processes and instruments of terror and destruction”. M. Zarni, A. Cowley “The slow burning genocide of Myanmar's Rohingya” *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p.684,684

476 See also: M. Zarni, A. Cowley “The slow burning genocide of Myanmar's Rohingya” *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p.685

the situation of Arakanese Muslims ignored by the large majority of the international community⁴⁷⁷. Furthermore, the violence exploded in 2012, in which also the official authorities were involved, has been often justified and labelled as “the dark side of transition”⁴⁷⁸. In this sense they have been obscured by other targets reached by Burmese government, in the field of the rule of law and the respect of human rights⁴⁷⁹.

The scholars' view is on the contrary the one that poses Myanmar authorities as central actors in 2012 clashes, aimed at destroying the whole community. For these reasons the definition of crimes against humanity⁴⁸⁰ is complementary but not enough to describe the state of things in Rakhine state. The article states that the intention to eliminate Rohingya group is clear and for this reasons it constitutes a genocide. Since the beginning of Ne Win's dictatorship popular racism and State's policies and law were mutually reinforcing, as demonstrated by the draft of the 1982 Citizenship Law, which is considered “the culmination of state-sponsored acts”⁴⁸¹.

The first point of genocide's definition, regarding the action of killing Rohingya people, has been widely demonstrated since the terrible year 1978⁴⁸². In addition, killings and violence against Rohingya, together with the “illegalization” of their members had the dual purpose to remove them from Rakhine State and to destroy the entire population. In this sense the historical version provided by Burmese scholars, which totally excluded the role played by Rohingya in the Kingdom of Ava⁴⁸³, is part of this plan,⁴⁸⁴ as well as the limitation of movements suffered by the 800000 members of this community that were pushed into three townships of North Rakhine, victims of restrictive policies. This “ghettoization”⁴⁸⁵ could represent an act intended to inflict

477 To deepen the role of the international community see the Chapter 3 of this thesis, or Burma Briefing, “Burma's Treatment of the Rohingya and International Law”, Burma Campaign UK, No.23, April 2013

478 See also: International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013

479 See also: Human Rights Watch, “All you can do is Pray- Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State”, HRW, April 2013, Ch.II: “Coordinated Attacks and Abuses Against Muslims in Arakan State: October 2012”

480 For the definition of “Crimes against humanity” see the Art.7 of the Rome Statute of International Criminal Court. The entire text of the statute is available at: http://www.icc-cpi.int/nr/rdononlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

481 “This article goes a step further to argue that the abuses against the Rohingya, in both the contemporary and historical contexts, constitute an intention to destroy the destroy the Rohingya as an ethno-religious group and thus constitute genocide.” M. Zarmi, A. Cowley “The slow burning genocide of Myanmar's Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p.687

482 1978 was the year of the operation NagaMin and the year in which the alleged genocide began.

483 The Kingdom of Ava represent the “ancestor” of Burma. With the exception of the last part of their history, the reign of Arakan was not part of this Kingdom.

484 See also Ch. 2.1.2.4 “Removal of the identity of an entire population”

485 Forced displacement of the Rohingya is designed to permanently ghettoize them by segregating them and applying a whole set of policies and conditions of life that only apply to them and other Muslim

conditions of life that are calculated to bring about the group's destruction and cause serious bodily and mental harm on the group.

The last part of the analysis is focused on the effects of the two-child policy⁴⁸⁶, that represents a clear attempt to prevent births within the group, one of the element inserted in the definition of genocide⁴⁸⁷. The policy indeed was officially intended to block the “uncontrollable” growth rate of the Muslim population. On the other hand it is easily demonstrable that this tendency represents nothing more than a myth, not supported by official data and specifically targeted to justify the government's plans⁴⁸⁸.

For all these reasons Zarni and Cowley call upon the international community to start to treat this situation in the right way: judging it as a genocide⁴⁸⁹. With the only exception of the OIC⁴⁹⁰, no one of the major entities in the international system, despite being engaged at different degrees in the protection of Rohingya, has defined it as such⁴⁹¹. The first step on the contrary should be the one to “recognize the mass atrocities experienced by one-million plus Rohingya and committed by both state and non-state actors in Myanmar over the past thirty-five years as a slow-burning genocide. The least the world can do is to call genocide what is genocide.”⁴⁹²

contained in certain geographical areas”. M. Zarni, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 720

486 “The two-child policy, together with the necessity for Muslim couples to secure official approval has permitted to Myanmar authorities to render Rohingya families' life even more complicated” Ch.2.2

487 “Imposing measures intended to prevent births within the group” is one of the elements that characterizes the situations of genocide, according to 1948 Convention.

488 See also: Ch. 2.2.1. “Rohingya's population growth: dismantling the myth”; D. Dapice, N. Xuan Than, “Creating a Future: Using Natural Resources for New Federalism and Unity”, Harvard Kennedy School-Ash Centre for Democratic Governance and Innovation, July 2013

489 M. Zarni, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 752

490 The OIC is the Organization of Islamic Cooperation

491 See also G. Stanton, “The 8-stages of genocide”, Genocide Watch, 1998, freely available at: <http://www.genocidewatch.org/Pages/Display/News.aspx?NewsID=13205&LangID=>

492 M. Zarni, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p.752

3 THE INTERNATIONAL DIMENSION AND THE INVOLVEMENT OF THE GLOBAL COMMUNITY: STATES, NON-STATE ACTORS AND INDIVIDUAL CHARACTERS

The situation of Rohingya people in Myanmar represents a global challenge for the entire international community⁴⁹³. Despite the growing concerns by the major international organizations, so far the contribution by the entire community has not been enough to stop the destruction of this ethnic group. For this reason we can define Muslims in Rakhine state as one of the most forgotten populations in the entire world⁴⁹⁴.

The struggle of internal Arakanese associations, like the ARNO⁴⁹⁵ or worldwide NGOs networks⁴⁹⁶, such as Burma Campaign UK⁴⁹⁷, is not enough. Further attention has been provided on this affair by the dramatic situation of Rohingya families left in the middle of the ocean in crumpling boats, while desperately attempting to reach the coasts of Malaysia and Thailand⁴⁹⁸. In effect, the recent speeches delivered in May 2015 by eminent personalities such as the US President Barack Obama⁴⁹⁹, Pope Francis⁵⁰⁰ and the Dalai Lama⁵⁰¹, contributed to push the international media to refer about the conditions of Rohingya refugees and migrants. Anyway, in order to settle the framework for a peaceful coexistence in northern Arakan and to grant Rohingya the basic human rights, much more has to be done. In particular I consider the regional organisations of South East Asia, such as the ASEAN⁵⁰², totally involved in this emergence. They must

493 Ashraful Azad, Fareha Jasmin, "Durable Solutions to The Protracted Refugee Situation: the Case of Rohingyas in Bangladesh, *Journal of Indian Research*, Vol.1, No.4, October-December 2013, p.33

494 See also: C. Lewa: "North Arakan: an Open Prison for the Rohingya in Burma", *Forced Migration Review*, n. 32, p.11

495 ARNO stands for Arakan Rohingya National Organization. It is the most relevant Arakanese association abroad, since it is based in London. The official website is: www.rohingya.org See also Ch.3.1.1 The ARU: Arakan Rohingya Union;

496 Among them we enlist Human Rights Watch, Amnesty International and Fortify Rights. See also: 3.1.2 "Major International NGOs"

497 Burma Campaign UK is a London based organisation, struggling for human rights, development and democracy in Burma. In particular through their reports and analysis they tried to demonstrate all the major violations to the rule of law in Myanmar. See also Burma Campaign UK, "Burma's Treatment of the Rohingya and International Law", *Burma Briefing*, No.23, April 2013

498 See also: Amnesty International "South East Asia: 'Boat people' crisis summit an opportunity that must not be missed", *Press Release*, 28th May 2015

499 See also J.Edwards, "Obama says Myanmar need to end discrimination of Rohingya to succeed", *REUTERS*, 1st June 2015

500 See also: RaiNews, "Papa: Assistere Profughi Rohingya", 24th May 2015

501 See also: ANSA, "Migranti: Dalai Lama critica Suu Kyi", *Bangkok*, 28th May 2015

502 ASEAN stands for "Association of South-East Asian Nations". The members are: Malaysia, Myanmar,

be able indeed to go over the economic interests with Myanmar, pushing the Burmese government to adopt the necessary provisions⁵⁰³.

This humanitarian challenge must be on the top of the agenda of the major States and international organizations⁵⁰⁴. The democratic transition that Myanmar has undergone⁵⁰⁵ in the last years should not be judged complete until the treatment of the Rohingya and other ethnic groups would be unequal. The situation of Rohingya's weakest categories, namely children and women⁵⁰⁶, should not be accepted by the global community. In particular, the behaviour of Myanmar's neighbour countries in this humanitarian crisis must change. This affair must be treated as a regional challenge and not only as a national one. If we believe in the transformation of a world that is no longer made up only by states, but on the contrary in which the major international organizations pretend to have the role that they deserve, the pressure on Myanmar government and on the members of the ASEAN must be higher and higher. Until it will not happen, the Rohingya will continue to live in the endless nightmare that has always characterized their lives⁵⁰⁷.

3.1 NON STATE-ACTORS: THE GROWING ROLE OF ETHNIC GROUPS, NGOs AND IGOs

Non-state actors represent the main protagonists of this entire affair. From one side or another indeed the attitude of the major international states has been the one to leave to other supranational or sub-national entities the duty to intervene and to handle the situation in northern Rakhine. In this case, the involvement of associations, NGOs,

Philippines, Thailand, Brunei, Cambodia, Indonesia, Laos, Singapore, Vietnam

503 See also: Ch. 3.2 "The Neighborhood and its inadequate response. A growing engagement since the Bangkok conference?"

504 "It is necessary therefore, that the British government and the rest of the international community intervene to provide a combination of pressure where needed and of assistance, both in terms of humanitarian assistance, and in terms of expertise, for instance relating to reforming laws to bring them into line with international law, and in terms of addressing issues of communal violence and tensions" Burma Campaign UK, "Burma's Treatment of the Rohingya and International Law", Burma Briefing, No.23, April 2013, p.7

505 See also: International Crisis Group: "The Dark Side of Transition: Violence Against Muslims in Myanmar", Crisis Group Asia Report n.251, 1st October 2013

506 See also: E. Abdelkader, "Myanmar Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth", Sec.2 "Muslim Women and Youth in Vulnerable Circumstance", p.7

507 M. Zarmi, A. Cowley "The slow burning genocide of Myanmar's Rohingya" Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 750,751

international religious networks and international organizations has revealed itself more important than the one of the old State nations. Starting from the paramilitary groups involved in the Arakanese clashes⁵⁰⁸, arriving to the UNHCR, whose reports represent the most important documents witnessing the state of things in Myanmar, there is a wide array of non-state actors that at different titles are involved⁵⁰⁹.

In this sense, we should remember that despite the clear involvement of the State in the persecutions of Muslim families in Rakhine, the great part of the violence has been carried out by other groups. Many times in Burmese history indeed armed clans and other organizations have done the “dirty jobs”, such as the launching of violent mobs⁵¹⁰. In an interview released by the former head of the Directorate of Defense Services Intelligence (DDSA), General Khin Nyunt admitted that many times during the period “1988-2004”, the leaders of the country have organized networks of non-state actors, not part of the official security forces, to launch campaigns and attacks to targeted goals. One of the most famous example has been the attack to the leader of the opposition Aung San Suu Kyi and to her motocade in 2003⁵¹¹.

Other similar organizations are involved in the human smuggling, even because of the porosity of the boarder between Bangladesh and Myanmar⁵¹². The refugee influx has permitted to the smugglers' organizations to exploit large waves of people to produce consumer products, drugs and arms. Also the refugees organizations and the armed clans, such as the Rohingya Solidarity Organization (RSO), depend on drug trafficking for funds. Others maintain strong ties with Islamist extremist groups⁵¹³. This alleged contacts have permitted to Myanmar government to describe Rohingya people as dangerous religious fanatic interested in the conquer of the country and in the

508 Despite the role played by official authorities in 2012 clashes and in other violence in Rakhine State, the opposing factions of Rakhines and Rohingya were always the main characters engaged. Among these groups, we remember the Rohingya Solidarity Organization (RSO) that has been finances by some of the major islamist extremist group worldwide.

509 In particular one of the most important protagonist, whose reports have been of vital importance to mae the world aware of the Arakanese events, is the former High Representative Tomas Ojea Quintana. See also: Human Rights Council, “Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Ojea Quintana”, HRC 22nd session, Agenda Item n.4, 06th March 2013

510 M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 724

511 Interviews with ex-general Khin Nyunt, Chief of the Directorate of Defense Services Intelligence (1988-2004) and Prime Minister (2003,2004). See also M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, pp.712,724

512 A.A. Ullah “Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization”, Journal of Immigrant and Refugee Studies, 9: 2, Cairo, 2012, p.155

513 Among these groups the most involved are Jemaah Islamiah, which is connected to Al Qaeda, Harkat-Ul-Jihad-I-Islami (HuJi), one of the most Bangladesh's extremist group and Jamaat-i-Islami, that is thought as the main source that finance the Rohingya Solidarity Organization. See also: B. Lintner: “Bangladesh extremist Islamic consolidation”, Faultlines, 2009

Islamization of the entire region. A similar propaganda often contributed to shape the ideas of Burmese public opinion⁵¹⁴.

3.1.1 *THE ARU: ARAKAN ROHINGYA UNION*⁵¹⁵

The ARU is a non-profit “umbrella” organization⁵¹⁶, whose main aim is to reunite and connect all the major international entities that are actually defending Rohingya's rights. It was formed by the initiative of the Euro-Burma Office and the OIC⁵¹⁷ (Organization of Islamic Cooperation). Among the most important goals of the Union, we find the project of a multicultural and inclusive Myanmar and the restoration of citizenship⁵¹⁸ and basic human rights for Muslim inhabitants of Rakhine State.

Within the ARU, the association that mostly strives to have the rights of these forgotten people respected is the ARNO. The Arakan Rohingya National Organization is a constant and active point of reference for these populations⁵¹⁹. Their first task is to connect Muslim refugees and internal displaced persons, making an activity of lobbying in favour of forgotten Burmese groups in Arakan. Their press releases⁵²⁰, published from the headquarters in London, represent the most important claims made by the representatives of the community towards the main organs at international level. In addition they carry out educational, economic and cultural programmes aimed at pushing up the human development of Rohingya people⁵²¹. One of the main instruments used by the organization is the monthly release of the magazine “Monthly Arakan”⁵²²,

514 See also the “Introduction” to this thesis

515 For further information visit the official ARU's website: <http://ar-union.org>

516 They define themselves as the “umbrella group for Rohingya organizations from around the world.”. Their headquarter is in Jeddah, Kingdom of Saudi Arabia. See also: <http://ar-union.org/about-us/>

517 The OIC is the second intergovernmental body in the entire world for its dimensions. It reunites more than 50 states with the aim to promote the the protection of Islamic culture together with the respect of the cultural heritage and of human rights.

518 We should remember that the citizenship has been denied to the members of the Rohingya ethnic groups, in particular since the promulgation of 1982 Citizenship Law.

519 One of the most important programmatic aims of this association is the one to see the “right of self determination” of Rohingya people respected. Thanks to the collaboration of several scholars, such as Prof. Abdul Karim of the London School of Economics, the ARNO tries to preserve the legacy of ancient Arakanese populations and the historical background of Rohingya. The official website is: www.rohingya.org

520 ARNO's latest press releases are focuses to the situation of Rohingya refugees left in the middle of the sea. In particular ARNO is claiming for the ASEAN to intervene, since this problem represents a regional one. See also: ARNO, “Appeal to save and rescue the abandoned people in distress at sea”, Press Release, London, 14th May 2015

521 Among the most important campaigns by ARNO, the one aimed at dismantling the thesis according to which Rohingya are settlers of the British era.

522 The entire name is: Monthly Arakan- News and Analysis of Arakan Rohingya National Organisation. Particularly striking are the pictures of Rohingya victims that are published in the pages of the magazine. See also: Monthly Arakan, ARNO, July Issue 2011

in which the most eminent personality of Rohingya world, at home or abroad, develop interesting analysis about the situations of major concern. Even though for displaced Rohingya is often impossible to get access to the copies of this magazine, redacted in English and published in London, the “Monthly Arakan” gives voice at international level to the claims of this forgotten community.

The Euro-Burma Office⁵²³ was established in 1997 in Bruxelles with the clear aim of transforming the Republic of the Union of Myanmar into an inclusive and modern nation⁵²⁴. Among its main activities the EBO pretends to be a non-official diplomatic entity, which facilitates the dialogue between different ethnic groups in Myanmar⁵²⁵. Indeed, handling the negotiations within regions that have recently witnessed massive strains and violences, can be complicated for official diplomatic entities that are often uninterested in what is going on within the borders of the States. For this reasons, through different initiatives the Office is trying to strengthen the role of the civil society⁵²⁶, cooperating with official parties and international media⁵²⁷. A further activity that contributes to render the Euro-Burma Office an essential subject in the Burmese chess-field is the annual release of an official report in which the members of the organization well describe the programmatic points of their mission. In the 2013 Report we find for example a long in-depth of the strategies aimed at facilitating the dialogue between the different ethnic armed groups of Myanmar, with a particular reference to the actors of 2012 inter-communal tensions of Arakan⁵²⁸.

The Organization of Islamic Conference (OIC)⁵²⁹ is the second largest inter-

523 We must remember that together with the OIC is funding partner of the ARU- Arakan Rohingya Union
524 The most important activities of the Europe Burma Office are connected with found-raising. The official website is: <http://www.euro-burma.eu/>

525 “In 2013, EBO organized a consultation between Rohingya leaders to discuss how the violence in Rakhine State could be contained and what political solutions can be found to the Rakhine conflict. Additionally, EBO and international partners enabled the Arakan National Unity Facilitating Committee (ANUFC) to organize a meeting between Rakhine leaders. They decided that the five armed Rakhine organizations should cooperate.” EBO Myanmar, “2013 Annual Report”, p.27

526 The civil society represents the target of a wide number of international organization and NGOs, including the Arakan Rohingya National Organization (ARNO)

527 The EBO has a long series of partners. Among them: Community leaders, political parties, generals, civil society organizations, foreign governments and media organization. The ultimate aim is the one to create a sort of web in which optimal solutions can be studied. For further information: <http://www.euro-burma.eu/>

528 “In 2013, EBO took a leading role in facilitating the peace process by supporting the coordination and strategy work of the EAOs to engage in political negotiations. EBO’s support to EAOs was strictly for the organization of meetings, workshops and trainings on political negotiations, i.e. in their active participation in the national peace process, thus mitigating risks of a return to armed conflict.” EBO Myanmar, “2013 Annual Report”, p.24

529 The most important body within the OIC, responsible for the policies of the organization concerning the human rights is the Independent Permanent Human Rights Commission (IPHRC)

governmental organization in the entire world with 57 members. The primary objective, as it was expressed in the OIC Charter of 2008⁵³⁰, is the one to give voice to the Muslim communities in the entire world. For this reason they have an active engagement in Arakan zones. The official support to Rohingya was declared in the resolution adopted in Astana in July 2011⁵³¹, in which the organization called upon “the government of Burma to put an end to operation of displacements, expulsions, and exile of Rohingya Muslims, and to the continued attempt to eradicate their Islamic culture and identity”. The OIC has recently pushed the United Nations to do more in order to save Muslims in Myanmar from the persecutions⁵³². In the official statement published in July 2013 we read: “The Organization of Islamic Cooperation (OIC) has called on the UN to make more efforts to end the tyranny that Muslims are facing in Myanmar. During a Wednesday meeting with UN Secretary General Ban Ki-Moon, OIC envoys said that the UN should put pressure on Myanmar’s government to resolve problems the Rohingya Muslim community is facing in the country”⁵³³. In addition, many influential personalities close to the OIC, such as the Saudi Ambassador to the UN Abdullah al-Mouallemi, have expressed all their concerns to the major international organizations in order to have louder voices and policies aimed at blocking the “ethnic cleansing” in Myanmar. The former Secretary General of the OIC, Surin Pitsuwan, invited in 2012 the Islamic global community to consider the implications of 2012 clashes for entire region, including Malacca Straits⁵³⁴.

3.1.2 MAJOR INTERNATIONAL NGOs: STRIVING FOR THE RELIEF OF ROHINGYA IN MYANMAR

The role of non-governmental organizations has been a fundamental anchor for the entire Muslim populations of Myanmar. Despite they were forced to flee from Arakan during the violence exploded in 2012, thanks to their action the persecuted populations

530 In the Introduction to the Charter of the OIC we read, among the goals of the organization: “to foster noble Islamic values concerning moderation, tolerance, respect for diversity, preservation of Islamic symbols and common heritage and to defend the universality of Islamic religion.” The entire text of the Charter is freely available at: <http://www.oic-oci.org/is11/english/Charter-en.pdf>

531 See also International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, p.21

532 See also Y. Ririhena, “ASEAN chief: Rohingya issue could destabilize the region”, The Jakarta Post, 30th October 2012

533 OIC-Human Rights in Islamic Countries, “OIC urges UN to help Myanmar muslims”, Press release, 11th July 2013

534 The Malacca Straits connects the Pacific Ocean with the Indian Ocean. It constitutes a historical and fundamental choke point in the entire Muslim world

have always received support. Moreover, the reports periodically published by Human Rights Watch are an important source of information to understand what has happened in the last years in the Northern-West part of Rakhine State. The organization has always claimed for the necessity to have a global support. In particular in the report published in 2013, with the title “All you can do is pray”, the acts committed by fanatic Rakhines, together with Burmese authorities, were judged by HRW as ethnic cleansing and crimes against humanity⁵³⁵. For these reasons they are trying to establish a direct contact with President Thein Sein, with a series of letters that so far have received only vague answers by Myanmar government⁵³⁶. In addition we should also remember the fears and the problems faced by Human Rights Watch in Myanmar. The activity of all the NGOs operating in the country indeed is not always easy. In certain periods, like in 2012 and in March 2014 the NGOs and the aid organizations were forced to suspend the activities. Furthermore the access to IDP camps in Sittwe remains highly regulated.⁵³⁷

Another organization that is contributing to make the world aware of what is happening in Myanmar is Martin Smith's Fortify Rights⁵³⁸. Martin Smith is a famous human rights researcher and writer for the Wall Street Journal. He recently published “leaked government documents revealing abusive population control measures against Rohingya Muslims”⁵³⁹. The central aim of the organization is indeed the one to demonstrate the violations to human rights committed by official authorities. Among the activities of the group, a series of periodical reports and press releases, describing the situation of human rights in South Asia, with a particular reference to the Burmese case⁵⁴⁰.

535 “The criminal acts committed against Rohingya and Kaman Muslim communities in Arakan State beginning in June 2012 amount to crimes against humanity carried out as part of a campaign of ethnic cleansing.” Human Rights Watch, “All you can do is Pray- Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State”, HRW, April 2013

536 “ We write to you to urge your government to heed the call of all members of the United Nations to amend the 1982 Citizenship Law to grant full citizenship rights to Rohingya on the same basis as all other ethnic groups in the country”. Human Rights Watch: “Letter to President Thein Sein: Amending 1982 Citizenship Law”, 13th January 2015, the entire text of the letter is available at: <http://www.hrw.org/news/2015/01/13/letter-president-thein-sein-re-amending-1982-citizenship-law>

537 European Commission- Humanitarian aid and Civil Protection, “The Rohingya Crisis”, Echo Factsheet, April 2015

538 Fortify Rights is a non-profit human rights organisation based in South-East Asia and registered in Switzerland and United States. See also: www.fortifyrights.org

539 Martin Smith continues: “This and other evidence demonstrate that state and central government authorities are responsible for denying Rohingya fundamental human rights by limiting their freedom of movement, marriage and childbirth, among other aspects of daily life, in Northern Rakhine State”. M. Smith, “Burma's Ethnic Persecution is State Policy”, Wall Street Journal, 13th March 2014

540 One of the central mission of Martin Smith and Fortify Rights is to involve the entire international community in Rohingya affair and in particular in the problems regarding the human trafficking in Thailand. For this reason the organization has written an important letter to US Secretary of State John

Amnesty International⁵⁴¹ represents an headliner in the struggle for human rights in Arakan. The activities of advocacy by this association are aimed at convincing the Asian countries to put the adequate attention on the crisis of Rohingya refugees. The concerns by Amnesty took Richard Bennet to intervene writing an open letter⁵⁴² to all of the members of the summit held in Bangkok on the 29th of May 2015⁵⁴³. The director of Amnesty International's Asia Pacific has put a spotlight on the emergence, highlighting the necessity to give immediate assistance and relief to “thousands of people crammed onto boats with little or no food or water”⁵⁴⁴.

3.1.3 THE ROLE OF THE UN AND UNHCR⁵⁴⁵. THE REPORTS OF THE SPECIAL RAPPORTEUR AND THE NON INTERVENTION BY UN SECURITY COUNCIL

The United Nations represent an important point of reference for the entire Muslim population of Myanmar. So far anyway the decisions adopted by this global organ have not been enough to alleviate the suffer of Rohingya. Syeda Parnini of the University of Malaya analysed the role of the UN and of the whole international community, stating that the “crisis arising from the exodus of Rohingya has not been taken seriously either by any national governments or by the international community”⁵⁴⁶. The ongoing oppression indeed has made these people extremely vulnerable, often victims of human smuggling⁵⁴⁷. For this reason Rohingya have always looked towards the international support⁵⁴⁸.

The involvement of the UN started in 1978, during the violent campaign known as “Naga Min” Operation⁵⁴⁹. In that year Poul Hartling⁵⁵⁰, head of the UNHCR, set aside

Kerry, in May 2015. The entire text of the letter is available at: http://www.fortifyrights.org/downloads/Trafficking_In_Persons_Report_Letter_20150501.pdf

541 The official site is <http://www.amnesty.org>

542 You can find a copy of the letter at: <https://www.amnesty.org/en/documents/asa03/1717/2015/en/>

543 See also: “Rohingyas, Still in Peril”, *The Economist*, Vol.415, No.894, Singapore, 6th-12th June 2015, p.43

544 See also Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Press Release, 29th May 2015

545 UNHCR: United Nations High Commissioner for Refugees

546 S.N. Parnini, “The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh”, *Journal Of Muslim Minority Affair*, October 2013, p. 290

547 A.A. Ullah “Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization”, *Journal of Immigrant and Refugee Studies*, 9: 2, Cairo, 2012, p.155

548 S.N. Parnini, “The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh”, *Journal Of Muslim Minority Affair*, October 2013, p. 291

549 For the NagaMin Operation see M.Smith, “The Muslim Rohingya of Burma”, Delivered at Conference of Burma Centrum Nederland, 1995

550 Poul Hartling has been Foreign Minister and Prime Minister of Denmark before becoming High Commissioner in 1978. For the long part of his mandate he had to deal with the refugee issue in the

500000 USD as an emergency aid for all the 200000 Rohingya that were forced to flee to Myanmar⁵⁵¹. Together with the OIC, the UN tried to facilitate the return to Burma for the refugees, but after the promulgation of the Citizenship Law⁵⁵² it was clear that the persecution was destined to endure for many years⁵⁵³. Again during the first years of the Nineties the UNHCR was strongly involved in settling the conditions for the return of Rohingya refugees, facilitating the relationships between Myanmar and Bangladesh. Despite the alleged repatriation of more than 190000 refugees, the record of abuses and human rights violations never permitted an ordinary resettlement for Muslim minorities. Nor the involvement of the United Nations has permitted a peaceful coexistence⁵⁵⁴.

In 2007 the UNSC proposed an intervention in Myanmar, following the principle of the Responsibility to Protect (R2P)⁵⁵⁵. According to a few members of the Council indeed, Burma had failed in protecting one of its own populations, the Rohingya. In these cases the international community, starting from the highest global bodies, has the duty to intervene and to take on the proper responsibilities⁵⁵⁶. The resolution anyway was vetoed by Russia and China, on the ground that the repressions committed by the government were not a threat to the international security. Once again the economic and geopolitical ties had obscured the need for help from an entire population⁵⁵⁷.

The UN General Assembly has always followed and monitored the democratic

complex environment of the cold war. For this reason he was awarded with the Nobel Peace Prize in 1981. See also: Poul Hartling page, UNHCR Official Website, available at: <http://www.unhcr.org/pages/49da0abf6.html>

551 Report of Reuters 1978, May 20th 1978, Geneva; UNHCR Report on Rohingya, 1978. Referred by S.N. Parnini, "The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh", *Journal Of Muslim Minority Affair*, October 2013, p. 290

552 1982 Citizenship Law. See also Ch.2

553 S.N. Parnini, "The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh", *Journal Of Muslim Minority Affair*, October 2013, p. 291

554 See also Commission on Human Rights, "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories", 49th Session, Agenda item 12, 17th February 1993, prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1992/58

555 The three pillars of the responsibility to protect, as stipulated in the Outcome Document of the 2005 United Nations World Summit (A/RES/60/1, para. 138-140) and formulated in the Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect are:

"The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement; The international community has a responsibility to encourage and assist States in fulfilling this responsibility; The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations. See also: UN Office of the Special Adviser on the Prevention of Genocide, "The responsibility to Protect", freely available, at <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>

556 A.R. Farooq, "The Bali Process & R2P: Who is to Protect the Rohingyas?", *Asian Tribune*, Vol.3, No.1, April 2009

557 See also: R.D. Kaplan, "The Revenge of Geography", Random House, New York, 2012

transition in Burma. If we analyse the resolutions adopted each year with respect to the situation of human rights in Myanmar, we can acknowledge that an important section of them has always been reserved to the treatment of Muslim communities in Arakan State⁵⁵⁸. Comparing the documents related to the year 2009⁵⁵⁹ and 2014⁵⁶⁰, we can anyway acknowledge the growing attention reserved by the General Assembly to the treatment of the ethnic minorities in Burma, with a particular reference to the case of Rohingya people of Arakan. In the resolution adopted on the 24th December of 2009 the Assembly condemns at Art.1⁵⁶¹ the systematic violations of human rights and fundamental freedoms in Burma. In addition the Rohingya are nominated in the Art.14⁵⁶², where the Assembly expresses its wide concern around the discrimination and the violence perpetrated against the Rohingya in North Rakhine State, with a clear invitation addressed to the government of Myanmar to “take immediate action to bring about an improvement in their respective situations, and to grant citizenship to the Rohingya ethnic minority”⁵⁶³. In the resolution adopted 5 years later, on the 29th December 2014, the attention of the UNGA is much more focused on the “Arakanese case”. After having urged Myanmar government to step up the efforts in the field of the protection of human rights in the Art.5⁵⁶⁴ and in the Art.7⁵⁶⁵, in the Art.8 of the resolution the Assembly, despite welcoming the few steps promoted by the Government, urges it

558 We should remember that the UN General Assembly has not the same power of the Security Council, where each member state has a veto power.

559 UNGA- “Resolution adopted by the General Assembly on 24 December 2009”, 64th Session, Agenda Item 69, Res.n. 64/238 Situation of Human Rights in Myanmar

560 UNGA- “Resolution adopted by the General Assembly on 29 December 2014”, 69th Session, Agenda Item 68, Res. n. 69/248, Situation of Human Rights in Myanmar

561 Art.1 of the Resolution of 2009: UNGA “Strongly condemns the ongoing systematic violations of human rights and fundamental freedoms of the people of Myanmar”

562 Art.14 of the Resolution of 2009: “Expresses its concern about the continuing discrimination, human rights violations, violence, displacement and economic deprivation affecting numerous ethnic minorities, including, but not limited to, the Rohingya ethnic minority in Northern Rakhine State, and calls upon the Government of Myanmar to take immediate action to bring about an improvement in their respective situations, and to grant citizenship to the Rohingya ethnic minority;”

563 UNGA- “Resolution adopted by the General Assembly on 24 December 2009”, 64th Session, Agenda Item 69, Res.n. 64/238 Situation of Human Rights in Myanmar Art. 14

564 Art.5 of the Resolution of 2014: “Urges the Government of Myanmar to step up its efforts to end remaining human rights violations and abuses, including arbitrary arrest and detention, forced displacement, rape and other forms of sexual violence, torture and cruel, inhuman and degrading treatment, arbitrary deprivation of property, including land, and violations of international humanitarian law in some parts of the country, and repeats its call upon the Government to take necessary measures to ensure accountability and end impunity;”

565 Art.14 of the Resolution of 2014: “Urges the Government of Myanmar to accelerate its efforts to address discrimination, human rights violations, violence, hate speech, displacement and economic deprivation affecting various ethnic and religious minorities, and attacks against Muslims and other religious minorities, and calls upon the Government to uphold the rule of law and to step up its efforts to promote tolerance and peaceful coexistence in all sectors of society by, inter alia, facilitating interfaith and intercommunity dialogue and understanding and supporting community leaders in this direction;”

to:

- ensure human rights and fundamental freedoms;
- ensure immediate access to humanitarian assistance;
- permit the humanitarian agencies to bring help and relief to discriminated populations;
- grant equal access to full citizenship;
- ensure equal access to services;
- ensure an equal right to marry and birth registration;
- to take impartial investigations upon the causes of human rights violations⁵⁶⁶.

One of the most important protagonist of this affair has always been the Special Rapporteur on the situation of the Human Rights in Myanmar. Between 2008 and 2014 this position has been covered by Tomás Ojea Quintana⁵⁶⁷, whose effort in reporting the great violations of human rights suffered by Rohingya people, has been widely recognized by the international community. One of the most important official documents in the hands of the Human Right Council is Quintana's report related to the year 2012⁵⁶⁸. In this document the situation in North Rakhine State is well described, together with the heavy consequences of 2012 violences. In the Art.49⁵⁶⁹ Quintana expresses his concerns about the divergent information received on human rights violations in Rakhine State, witnessing the great difficulties that he had to face while doing his job. His mission included moreover frequent visits in IDP Muslim camps,

566 UNGA- "Resolution adopted by the General Assembly on 29 December 2014", 69th Session, Agenda Item 68, Res. n. 69/248, Situation of Human Rights in Myanmar, Art.8

567 Tomás Ojea Quintana is a lawyer, with 14 years of experience within the field of Human Rights. He has worked for the Inter-American Commission of Human Rights and has served as executive director of the OHCHR Programme for the Protection and Promotion of Human Rights in Bolivia and between 2008 and 2014 as Special Rapporteur on the situation of human rights in Myanmar

568 Human Rights Council, 22nd Session Agenda Item 4 "Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana", Distributed on 6 March 2013

569 Art. 49 of the Report: "The Special Rapporteur continues to receive widely divergent information on the scale of human rights violations in Rakhine State, particularly with regard to the number of deaths, injuries and victims of sexual assault committed during the violence. He reiterates the importance of the Investigation Commission's report addressing the issue of human rights violations in Rakhine State. If, following the publication of this report, allegations of human rights violations are not properly addressed, the Special Rapporteur offers his support to the Government to pursue further investigations and recommends that the Government consider asking OHCHR to support fact finding and monitoring in Rakhine State, in addition to supporting ongoing humanitarian efforts. He emphasises that establishing the truth of what has happened and holding those responsible to account will be integral to reconciliation and re-establishing trustful and harmonious relations between communities."

where he could witness the lack of basic services and adequate health conditions⁵⁷⁰. Even thanks to these trips into the heart of Rakhine State he could declare, at Art.56⁵⁷¹ that it exists an “endemic discrimination against the estimated 800000 members of the Rohingya Muslim community”. Since 2014 the new Special Rapporteur is Ms. Yanghee Lee⁵⁷², from Republic of Korea, whose notoriety is due to her incredible expertise in the field of the rights of the children. The fact that she has been nominated as the new Special Rapporteur witnesses the deep concerns of the UN Human Rights Council about the violations to human rights suffered by the most innocent victims of the situation in Arakan State, namely Rohingya kids⁵⁷³. According to Maung Zarni⁵⁷⁴ and Alice Cowley⁵⁷⁵ anyway the UN is not doing enough⁵⁷⁶. Despite their continual presence, the UNHCR, that set up operations in Rakhine State in 1992 in order to provide assistance and support to stateless persons, refugees and internally displaced persons, has remained virtually silent. This was due also to the lack of concrete support by the international community⁵⁷⁷. Other agencies, like the World Food Program (WFO), are fully aware of the level of abuses perpetrated against Rohingya, but together with the UN should have at least a review of the words used to describe the crisis. In the opinion of Zarni, defining communal violence what has happened since 2012 in Arakan means using a language

570 Human Rights Council, 22nd Session Agenda Item 4 “Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana”, Distributed on 6 March 2013, Art.50

571 Art. 56 of the report: “The Special Rapporteur highlights that mutually respectful dialogue cannot occur while discrimination based on grounds of ethnicity and religion remains unaddressed. As stated in previous reports, there exists in Rakhine State endemic discrimination against the estimated 800,000 members of the Rohingya Muslim community. The lack of a legal status of the Rohingya effectively gives state sanction to this discrimination, denying them access to many of their basic human rights. He reiterates his recommendation to Parliament that the 1982 Citizenship Act be amended to ensure that all persons in Myanmar have equal access to citizenship and are not discriminated against on grounds of ethnicity or religion. In the meantime, the current Act should be applied in a non-discriminatory manner to enable those with a just claim to citizenship to claim it on an equal basis with others. Immediate measures should be taken to remove other discriminatory regulations applied to Rohingyas, including with regard to marriage, freedom of movement, registration of new born children, and access to education and employment.

572 Ms. Yanghee Lee served as a member (2003-2013) and chairperson of the Committee on the Rights of the Child (2007-2011). Moreover she is founding President of International Child Rights Centre. In 2009 she was awarded with the “Order of Civil Merit”, the highest recognition given to a civilian for her work in human rights. For further information visit the official UN webpage of the Special Rapporteur for Human rights in Myanmar, available at: <http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/MM/Pages/SRMyanmar.aspx>

573 See also Ch. 2.1.5.1 “Impact on the children: the education issue and forced labour”

574 Maung Zarni is a Burmese scholar activist in exile. Visiting Research Fellow to the University of Malaya Center for Democracy and Elections and Scientific collaborator with Harvard University and London School of Economics. His blog represents a constant point of reference for everybody who wants to contribute to the struggle to save Rohingya's existence. See also: www.maungzarni.net

575 Alice Cowley is Consultant Researcher at the Equal Rights Trust (ERT) in London

576 M. Zarni, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 750

577 See also Ch.3.3 “The rest of the world: State actors and the European Union. Between sanctions and geopolitical interests”

that suggests a struggle between two entities on the same level, while the interference of the authorities in favour of ethnic Rakhines, take us to exclude it⁵⁷⁸. Thus, the UN should raise the level of pressure put on Myanmar government, also establishing an inquiry commission, issued with the duty to investigate in an objective way over the ultimate roots of the persecutions, establishing all the responsibilities in this entire affair⁵⁷⁹.

3.2 THE NEIGHBORHOOD AND ITS INADEQUATE RESPONSE: A GROWING ROLE SINCE THE BANGKOK CONFERENCE?

The Rohingya case has heavy effects and repercussions in the entire South Asian region. At different levels indeed all the national and regional entities geographically close to Myanmar have been touched by the consequences of what has happened in the last 35 years in Arakan⁵⁸⁰. As declared in an interview released in May 2013 by Indonesian Foreign Minister Natalegawa: “it is a classic case of an internal problem with regional ramifications”⁵⁸¹. So far anyway no one of the subjects involved has been able to put in practice adequate actions aimed at limiting the negative consequences of the persecutions of Muslim communities of Rakhine State.

The widespread tension generated by the clashes of 2012 has resonated in the region. In June 2013, in Malaysia five Buddhist migrant workers from Myanmar were killed as a result of religious tensions.⁵⁸² In an Indonesian detention centre violences erupted

578 “The UN should have a public review of the language its agencies use to describe the Rohingya crisis. Language such as communal violence which suggest that the violence is horizontal, or pandering to the government's refusal to use words such as Rohingya or stateless, serves to further legitimize the role of the State in the violence and divert the international community's attention away from the severity of the situation.” M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p. 750

579 “Finally the UN should lead the efforts to establish a UN led inquiry commission whose task would be to examine the root causes of the Rohingya plight over the years, including establishing the role of both the state actors and non state actors.” M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p. 750

580 See also International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, *Crisis Group Asia Report* n.251, 1st October 2013, p.21

581 Thomson Reuter Foundation, “Myanmar communal strife has regional impact- Indonesia minister”, 16th May 2013, the entire text of the article is available at: <http://www.trust.org/item/20130710120408-nk9x2/>

582 The reporter adds that one of the victims was “slashed to death by machete wielding attackers”, S.Grudgings, “Four dead as Myanmar violence spills into Malaysia: police”, *Reuters*, Kuala Lumpur, 5th June 2013. The entire text of the article is available at: <http://www.reuters.com/article/2013/06/05/us-malaysia-myanmar-violence-idUSBRE9540BA20130605>

between Muslim and Buddhist Burmese clans⁵⁸³, while in Bangladesh Rakhine Buddhist residents have been attacked, with their homes burned and temples vandalised⁵⁸⁴. These incidents were directly connected to the inter-communal tensions exploded in Myanmar. Moreover the negative consequences are not only limited to the frequent and violent clashes between the two opposite ethnic and religious groups. The large waves of Rohingya migrants forced to flee Myanmar indeed are reshaping the landscape of the region. In this situation the worst response is the one of closing the frontiers, living the Rohingya migrants dying in the sea or going back to the persecutions in Rakhine State⁵⁸⁵.

One of the States that should have the power and the willing to intervene is Thailand. Together with the United Nation Security Council, the ASEAN, India and the USA, Thailand is one of the main actors of this entire affair.⁵⁸⁶ The Government of Bangkok, which has not signed yet the 1951 Convention Relating to the Status of Refugees⁵⁸⁷, hosts the largest part of refugees from Myanmar⁵⁸⁸. Also in this state anyway the Muslim communities of Arakan remain stateless, since the Thai officials never recognized to Rohingya the right to asylum⁵⁸⁹. As a result also in these cases the large waves of Muslim migrants from Burma live as abusive populations, without documents and continuously forced to risk detention, or in the worst of the hypothesis, repatriation in the regime from which they escaped⁵⁹⁰. According to Human Rights Watch indeed during the year 2013 almost 2000 Rohingya were detained by Thai authorities⁵⁹¹. This situation makes Rohingya in Thailand extremely vulnerable to the phenomenon of human smuggling. With the promise to reunify divided family, human traffickers kidnap and rape the innocent victims from Rakhine State⁵⁹². Moreover the criminal clans

583 See also International Crisis Group: "The Dark Side of Transition: Violence Against Muslims in Myanmar", Crisis Group Asia Report n.251, 1st October 2013, p.21 ; "Indonesia jails 14 Rohingya for deadly brawl", The Irrawaddy, 5th December 2013, the entire text of the article is available at: <http://www.irrawaddy.org/latest-news/indonesia-jails-14-rohingya-deadly-brawl.html>

584 "Buddhists from Bangladesh resettle in Myanmar, Rohingya Muslim cry foul", Christian Science Monitor, 24th May 2013

585 See also International Crisis Group: "The Dark Side of Transition: Violence Against Muslims in Myanmar", Crisis Group Asia Report n.251, 1st October 2013, p.21

586 S.N. Parnini, "The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh, p.291

587 Actually, for strategical reasons no one of the States of South East Asia have signed or ratified yet the 1951 Convention Relating to the Status of Refugees. See also Ch.2.5.6 "The refugee Issue"

588 S. Cheung, "Migration Control and Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience", Journal of Refugee Studies, N.50, 2012

589 See also: E. Abdelkader, "Myanmar Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth", Pacific Rim and Policy Journal, Vol.XX, No.X, pp.19,20

590 B. Zawacki, "Defining Myanmar's Rohingya Problem", 20 Human Rights Brief, 2012-2013

591 Human Rights Watch, "Thailand: Release and Protect Rohingya boat people", HRW, 2013.

592 See also: E. Abdelkader, "Myanmar Democracy Struggle: the Impact of Communal Violence upon

engaged in these activities can often gain access to the official structures where the migrants are detained, and where theoretically they should have the protection granted⁵⁹³. So far Thai government has never investigated or prosecuted traffickers' gangs, that keep on exploiting children and women. In addition, according to the US Department of State, many of these acts happen with the complicity of the corrupted Thai officials⁵⁹⁴.

3.2.1 *THE ROLE OF THE ASEAN*⁵⁹⁵

The ASEAN has a crucial role to play. As declared by many scholars anyway it has failed to address the real causes of Rohingya problem⁵⁹⁶. As one of the major stakeholders at global level, the association that reunites all the major countries of South East Asia has the duty to increase the pressure put on the Burmese Government, involving the other regional organizations all over the world.

On the other hand in the last years the involvement of the ASEAN ⁵⁹⁷ in this situation has gradually grown up⁵⁹⁸. In this sense a valid help has been provided by the US, whose Assistant Secretary of State for East-Asian and Pacific Affairs Joseph Yun supported in 2011 the organization's demand for reconciliation and dialogue⁵⁹⁹. In the last days instead the diplomatic efforts of the ASEAN have permitted the creation of a summit in Bangkok held at the end of May 2015⁶⁰⁰. It was joined by 17 countries affected by the problem of “illegal immigration” in the Indian Ocean, together with the US, Switzerland, the UN and the International Organization for Migration (IOM)⁶⁰¹. The

Rohingya Women and Youth”, Pacific Rim and Policy Journal, Vol.XX, No.X, p. 20

593 See also: E. Abdelkader, “Myanmar Democracy Struggle: the Impact of Communal Violence upon Rohingya Women and Youth”, Pacific Rim and Policy Journal, Vol.XX, No.X, pp.19,20

594 US Department of State, “Human Trafficking Country Narratives- Burma (Tier 2 Watch List)”, USA, 2013. The report is also available at: <http://www.state.gov/documents/organization/210738.pdf>

595 ASEAN stands for “Association of South-East Asian Nations”. The members are: Malaysia, Myanmar, Philippines, Thailand, Brunei, Cambodia, Indonesia, Laos, Singapore, Vietnam

596 S.N. Parnini, “The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh, p.291

597 See also: L. Fawcett, “Regional Institutions” in “ Security Studies: an Introduction”, Routledge, London, 2004”, pp.355-373

598 S.N. Parnini, “The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh, pp.291,292

599 Yun said: “These are excellent demands from the ASEAN ministers, and I think the Myanmar authorities should really take them to heart and make them a reality.”, S.N. Parnini, “The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh”, p.292

600 BBC News “Myanmar picks up migrants as Asean agrees to tackle crisis”, BBC Asia, 29th May 2015. The entire text of the Article is available at: <http://www.bbc.com/news/world-asia-32925815>

601 At the end of the Summit the Director General of the IOM declared to BBC News: “The most encouraging result was the general consensus that these discussions need to continue”, See also: BBC News “Myanmar picks up migrants as Asean agrees to tackle crisis”, BBC Asia, 29th May 2015. The

first aim of the Conference was the one to settle the conditions to solve the long standing crisis of the thousands of Arakanese migrants endangered in the Indian Ocean, in the desperate attempt to reach the coasts of Thailand, Malaysia and other South Asian destinations⁶⁰². In the last months anyway this crisis has become irreversible since the decision of Thailand government to close the frontier road with Myanmar, leaving waves of people in the hands of human smugglers⁶⁰³. Despite the delegates of Burmese government have strongly refused the accusations addressed to them during the conference⁶⁰⁴, some positive results occurred, including a final consensus on a shared statement that included opinions and recommendations.

One of the most important agreed principles that were included in the statement was about “promoting full respect for human rights”⁶⁰⁵. Together with this shared idea the main points included in the statement are:

- Indonesia and Malaysia will remain engaged in giving temporary shelter for migrants. After 1 year the international community has the duty to resettle or repatriate them;
- all the states parties of the ASEAN and the other members of the conference will intensify the efforts in the action of save and rescue the desperate refugees;
- a joint force will be organized with the duty to coordinate the assistance actions;
- new channels of legitimate migration will be enhanced;
- the US pledged 3 Millions USD and Australia 2,5 Millions USD to IOM to increase the humanitarian assistance in Bangladesh and Myanmar.⁶⁰⁶

entire text of the Article is available at: <http://www.bbc.com/news/world-asia-32925815>

602 See also: “Rohingyas, Still in Peril”, *The Economist*, Vol.415, No.894, Singapore, 6th-12th June 2015, p.43

603 About the role of Thailand see also: E.Abdelkader, “Myanmar Democracy Struggle, the Impact of Communal Violence upon Rohingya Women and Youth”, *Pacific Rim Law and Policy Journal*, Vol. XX; No.X, p. 20

604 Many accusations have been addressed towards Myanmar in the last years, concerning its role in favouring the human smuggling. Their restrictive policies indeed have pushed Rohingya to seek all the possible ways to escape from the persecutions, becoming easy victims of the human traffickers. Despite Burma prohibits human trafficking, they did not make enough to stop this phenomenon. In addition, according to the US Department of State, Burmese officials kidnapped Rohingya women in Sittwe, forcing them to sexual slavery. See also: E.Abdelkader, “Myanmar Democracy Struggle, the Impact of Communal Violence upon Rohingya Women and Youth”, *Pacific Rim Law and Policy Journal*, Vol. XX; No.X, p. 19

605 A. S. Lefevre, K. Kapoor, “SE Asia vows to rescue 'boat people'; Myanmar seizes migrant vessel”, *Reuters*, 29th May 2015, The entire text of the article is available at: <http://www.reuters.com/article/2015/05/29/us-asia-migrants-us-idUSKBN00E05T20150529>

606 See also: BBC News “Myanmar picks up migrants as Asean agrees to tackle crisis”, *BBC Asia*, 29th May 2015. The entire text of the Article is available at: <http://www.bbc.com/news/world-asia-32925815>

The whole international community now hopes that these programmatic points will be transformed in the future in a concrete relief for Rohingya refugees⁶⁰⁷.

3.3 THE REST OF THE WORLD: STATE ACTORS AND THE EUROPEAN UNION. BETWEEN SANCTIONS AND GEOPOLITICAL INTERESTS

The response by the rest of the world, in particular by the most powerful actors in the international arena, so far has been missing. Only after the end of 2012 inter-communal tensions⁶⁰⁸ and in particular in the last months with the explosion of the crisis of Rohingya “boat-people”⁶⁰⁹, the major nation-state characters have felt themselves involved in this affair. Moreover the geopolitical and economic ties that many states have with respect to Naypyidaw⁶¹⁰, have always been an obstacle to effective interventions. Russia and China in 2007⁶¹¹ have blocked through their vetoes the decision to intervene, promoted by the other members of the UN Security Council⁶¹². Myanmar crisis should be in the contrary a matter of great concerns for the entire international community. The extreme poverty of these zones together with the huge inflows of migrants from Arakan can indeed raise problems at regional and global security level⁶¹³.

China in this sense is in a crucial position. China-Myanmar economic and commercial relations are very significant and the amount of bilateral trade between the 2 countries

607 Richard Bennet, Amnesty's International Asia Pacific Director, declared at the eve of the Conference: “We have seen thousands of people crammed onto boats with little or no food or water, while governments have been slow to provide shelter or other basic humanitarian assistance. There clearly needs to be immediate action.”. See also: Asia Pacific Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Amnesty, 28th May 2015

608 See also Ch.2.4 “Inter-communal violence and anti-Muslims propaganda during 2012 clashes”

609A. S. Lefevre, K. Kapoor, “SE Asia vows to rescue 'boat people'; Myanmar seizes migrant vessel”, Reuters, 29th May 2015, The entire text of the article is available at: <http://www.reuters.com/article/2015/05/29/us-asia-migrants-us-idUSKBN0OE05T20150529>

610 Naypyidaw is Myanmar's political capital city.

611 See also Ashraful Azad, Fareha Jasmin, “Durable Solutions to the Protracted Refugee Situation: the Case of Rohingya in Bangladesh”, Journal of Indian Research, Vol.1, No.4, October-December 2013, p.33

612 United States, France and UK evoked the resolution UNSC 1674, regarding the Responsibility to Protect to intervene in Myanmar. The decision was anyway vetoed by China and Russia. See also: UNSC, “Importance of preventing conflict through development, democracy stressed, as security council unanimously adopts resolution 1674”, UN Press release, 28th April 2006

613 See also: S. Bali, “Population Movements”, in “Security Studies: an Introduction”, Routledge, London, 2004”; C.Thomas, P. Williams, “Poverty”, in “ Security Studies: an Introduction”, Routledge, London, 2004”, pp.295-310

was worth more than 4.5 billions USD.⁶¹⁴ In 2010, the quantity of Chinese investments in Myanmar overcame 16 billions USD. Moreover China, as member of the ASEAN +3, has a great power of influence towards this regional entity⁶¹⁵. The strategy of the USA of “pivoting to Asia”, aimed at countering China in East Asia, raising the level of naval forces in Eastern Pacific and Indian Ocean and establishing strategic alliances with China's neighbours, has made Myanmar a crucial target in the strategies of the 2 huge countries⁶¹⁶. Furthermore, China's most important mantra in foreign affairs is the non-intervention within internal affairs of the other countries. Thus, also in the next few years an intervention from Beijing aimed at blocking the emergence is high unlikely⁶¹⁷. Especially with the recent interviews and press conferences released by US President Barack Obama⁶¹⁸ over the issue of Rohingya people, the American involvement has always been heavy. During Myanmar past military rule the US policy encompassed efforts to isolate the ruling generals, to raise the level of the attention on human rights abuses and to impose sanctions⁶¹⁹. For many reasons the US Government has defined Myanmar in 1999 as a “Country of Particular Concern”⁶²⁰. Despite the decision to lift a part of them as a response to the slightly acceleration in democratic reforms, the US have always promoted a number of economic and political sanctions towards the Burmese government⁶²¹. The program of sanctions began in May 1997⁶²² under the

614 S.N. Parnini, “The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh, p.292

615 See also: L. Fawcett, “Regional Institutions” in “ Security Studies: an Introduction”, Routledge, London, 2004”, pp.355-373

616 See also: R.D. Kaplan, “The Revenge of Geography”, Random House, New York, 2012

617 “First and foremost among the states of Southeast Asia, with the largest, most sprawling landmass in the region, is Burma. Burma, too, like Mongolia, the Russian Far East, and other territories on China’s artificial land borders, is a feeble state abundant in the very metals, hydrocarbons, and other natural resources that China desperately requires. The distance is less than five hundred miles from Burma’s Indian Ocean seaboard—where China and India are competing for development rights—to China’s Yunnan Province. Again, we are talking about a future of pipelines, in this case gas from offshore fields in the Bay of Bengal, that will extend China’s reach beyond its legal borders to its natural geographical and historical limits”, R.D. Kaplan, “The Revenge of Geography”, Random House, New York, 2012, Ch.XI “The Geography of Chinese Power”

618 Barack Obama's speech in the White House, Washington, 01st June 2015. Video edited by REUTERS

619 See also: E. Abdelkader, “The Rohingya Muslims in Myanmar: Past, Present and Future”, Oregon Review of International Law, Vol.15, 2013, p. 404

620 For the recent list of CPC- Country of Particular Concerns, visit the related page of US Department of State, available at: <http://www.state.gov/j/drl/irf/c13281.htm>

621 See also: E. Abdelkader, “The Rohingya Muslims in Myanmar: Past, Present and Future”, Oregon Review of International Law, Vol.15, 2013, p. 405

622 “The Burma sanctions program implemented by the Office of Foreign Assets Control (“OFAC”) began in May 1997 when the President, in Executive Order (“E.O.”) 13047, determined that the Government of Burma (then ruled by a military junta) had committed large-scale repression of the democratic opposition in Burma and declared a national emergency with respect to the actions and policies of that government”, OFAC- Office of Foreign Assets Control, “Burma Sanctions Program, US Department of State, January 2014, p.3

authority of the Office of Foreign Assets Control (OFAC), and was due to the repression of the political oppositions and human rights violations committed by Myanmar governmental forces. The list of the US promoted sanctions include:

- prohibitions for American citizens to deal with all the Burmese individuals included in the List of Specially Designated Nationals and Blocked Persons (SDN List);
- limitations to investments and exports;
- limitations to transactions to blocked banks;
- arms embargoes.⁶²³

The sanctions promoted by the US have been object to large criticism in the international environment. Notably, many argued that they were meant to facilitate the enforcement of human rights policies and regulations, but they were not successful in this sense⁶²⁴. This was due also to the fact that many states were available to overcome the terrible record of human rights abuses in favour of economic, political and strategical self-interests. India, for instance, have always tried to “steal” China the title of preferential partner of Myanmar, without taking part in the emergence⁶²⁵. On the other hand the recent lift of sanctions did not seem having changed Myanmar's narrative towards the Rohingya case, although the US has urged Napydyiang to stop targeting minority groups, in particular Rohingya Muslims. In this sense, the US has also utilized international forums and venues, such as the ones provided by the United Nations and the ASEAN⁶²⁶, to raise the level of attention on the question⁶²⁷. The impressive extension of the crisis anyway witnesses that so far also the American support has not been adequate to relief the sorrow of Rohingya community⁶²⁸. Furthermore the increasing contacts between Washington and Naypyidaw did not bring good results: the USA put pressure to Myanmar to end Karen's guerrilla⁶²⁹, but the issue of Rohignya and

623 OFAC- Office of Foreign Assets Control, “Burma Sanctions Program, US Department of State, January 2014

624 See also: E. Abdelkader, “The Rohingya Muslims in Myanmar: Past, Present and Future”, *Oregon Review of International Law*, Vol.15, 2013, p. 404

625 See also: R.D. Kaplan, “The Revenge of Geography”, Random House, New York, 2012, Ch.XI “The Geography of Chinese Power”

626 See also: L. Fawcett, “Regional Institutions” in “Security Studies: an Introduction”, Routledge, London, 2004”, pp.355-373

627 See also: S.N. Parnini, “The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh”, p.292

628 M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” *Pacific Rim Law and Policy Journal*, Vol. XXIII N. III, p. 750

629 The Karens are a Burmese rebel groups, settled in South-East part of Myanmar, who conducted for long years actions of guerrilla against the government as a result of the widespread persecutions.

in particular the settlement of the conditions for the repatriation of Burmese Muslims in Bangladesh was never negotiated.⁶³⁰

The European Union has been for many years quite silent on the argument of Rohingya persecution⁶³¹. In the last period anyway the Arakan situation has represented a matter of growing concern for an entity that pretends to be an example of cohabitation between different ethnic groups and communities. A great part of the activities that the European Union and in particular the European Commission have done regarded humanitarian aid and civil protection⁶³². The total amount of aids that the EU has reserved for this reason to Burma has been of 57.3 millions of Euro, that must be added to the 26.3 millions of Euro given to Bangladesh and 325.000 Euros to Thailand⁶³³. Of course this money is not enough to settle a problem whose roots are more ethnic than economic, but the attention and the messages sent by the Commission to end the segregation in Arakan can represent a valid starting point. These activities must be inserted in a path that was tracked in conjunction with other EU organs. In this sense we should mention the EU Parliament, that in June 2013 adopted a resolution on the situation of Rohingya Muslims⁶³⁴. Within the resolution the accent is put on the necessity to amend the Citizenship Law⁶³⁵ and to find a solution to the problem of IDP persons⁶³⁶. In the last

630 See also: S.N. Parnini, "The Crisis of the Rohingya as a Muslim Minority in Myanmar and Bilateral Relations with Bangladesh, p.293

631 Burma Campaign UK, one of the biggest NGO involved in pro-Rohingya activities has recently urged the EU to do more, in particular pushing to make pressure on ASEAN and countries like Thailand, Bangladesh, Indonesia and Malaysia. See also: Burma Campaign UK, "Burma's Treatment of the Rohingya and International Law, Burma Briefing, No.23, April 2013 p.7, Burma Campaign UK, "Hammond Urged to Mobilize EU over Rohingya Refugee Crisis", 15 May 2015

632 European Commission- Humanitarian Aid and Civil Protection, "The Rohingya Crisis", ECHO Factsheet, April 2015

633 European Commission- Humanitarian Aid and Civil Protection, "The Rohingya Crisis", ECHO Factsheet, April 2015, Section "Facts and Figures"

634 European Parliament, "Resolution of 13 June 2013 on the situation of Rohingya Muslims", Res.2013/2669 (RSP), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0286+0+DOC+XML+V0//EN>

635 Art. 11 of the Resolution: "(...)reiterates its earlier calls for an amendment or repeal of the 1982 Citizenship Law in order that Rohingyas have equal access to Burmese citizenship, implying both rights and duties, and to bring the amended or replaced law into line with international human rights standards and with the country's obligations under Article 7 of the UN Convention of the Rights of the Child;" European Parliament, "Resolution of 13 June 2013 on the situation of Rohingya Muslims", Res.2013/2669 (RSP), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0286+0+DOC+XML+V0//EN>

636 Art. 5 of the Resolution: "Stresses the need for urgent action to deal with the humanitarian risks facing all displaced persons, and in particular the Rohingya people, in Burma/Myanmar; reiterates its call on the Government of Burma/Myanmar to provide UN agencies and humanitarian NGOs, as well as journalists and diplomats, with unhindered access to all areas of the country, including Rakhine state, and to give unrestricted and full access to humanitarian aid for all communities affected by conflict and sectarian violence; calls on the Burmese authorities to improve conditions in the Rohingya displacement camps as a matter of urgency;" European Parliament, "Resolution of 13 June 2013 on the situation of Rohingya Muslims", Res.2013/2669 (RSP), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0286+0+DOC+XML+V0//EN>

years the EU has decided to lift the sanctions to Myanmar, because of the progress made in the democratic transition. Anyway they kept some of the main restrictive measures: embargo on arms and related matériel, ban of exports on equipment for internal repression, ban on provision on certain services.⁶³⁷

3.4 THE IMPACT OF INDIVIDUAL PERSONALITIES: BARACK OBAMA, POPE FRANCIS AND DALAI LAMA

The attention of the international public opinion has always been low towards the hidden populations of far South East Asia⁶³⁸. In the last period anyway some global eminent personalities at global level endorsed their worries about the destiny of Rohingya, with a particular reference to the plight of “boat people”⁶³⁹ abandoned in the middle of the sea. Even though the speeches delivered by these actors are not enough to change the complexity of the affair⁶⁴⁰, their interest has revealed itself useful to push the international media to talk about this argument. Among the ones that mostly spoke out about the necessity to rescue Rohingya and find a solution: Barack Obama⁶⁴¹, Pope Francis⁶⁴² and Dalai Lama⁶⁴³.

In 2012 Barack Obama was the first sitting US President to visit Myanmar⁶⁴⁴. During his tour he gave an impressive speech in front of the students of the University of Yangon⁶⁴⁵. In the crowded hall of the University he raised all his concerns about human rights abuses against Rohingya Muslims. In addition he claimed for the necessity of a national reconciliation together with the possibility for all to get access to the citizenship on an equal level. Moreover he underlined the need for these populations of

637 EU: “Restrictive Measures (Sanctions) in Force- updated to 19 March 2015”, p.59,60. Available at: http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

638 See also the “Introduction” of the thesis

639 A. S. Lefevre, K. Kapoor, “SE Asia vows to rescue 'boat people'; Myanmar seizes migrant vessel”, Reuters, 29th May 2015, The entire text of the article is available at: <http://www.reuters.com/article/2015/05/29/us-asia-migrants-us-idUSKBN0OE05T20150529>

640 This is true also for the ones that occupy powerful positions in the international scope, including US President Barack Obama. Despite all his endorsement aimed at making American population aware of the plight of Rohingya, American policies were not useful to make Rohingya living a better life

641 See also J.Edwards, “Obama says Myanmar need to end discrimination of Rohingya to succeed”, REUTERS, 1st June 2015

642 See also: RaiNews, “Papa: Assistere Profughi Rohingya”, 24th May 2015

643 See also: ANSA, “Migranti: Dalai Lama critica Suu Kyi”, Bangkok, 28th May 2015

644 See also: E.Abdelkader, “The Rohingya Muslims in Myanmar: Past, Present and Future”, Oregon Review of International Law, Vol.15, 2013, p. 407,408

645 Yangon is the biggest city of Myanmar, capital of Yangon Region

humanitarian aids. Also in other occasions the President has recalled the government of Myanmar to stop abuses against ethnic minorities, and not to impede the humanitarian aids in conflict zones⁶⁴⁶. The concerns by President Obama are actually higher than ever. On the 1st of June 2015 he gave a speech in Washington. He declared that the only way for Burma to complete the transition is to end the Rohingya people's discrimination. Notably, during the speech he mentioned the tragedy of displaced Rohingya⁶⁴⁷ dying in the Ocean. He promised that the United States are going to play an important role in the relocation of the refugees⁶⁴⁸. In one of the most suggestive moments of the conference he said: "I think that if I was a Rohingya I would want to stay where I was born, in the land where my parents had lived. That's what I would want. It is part of the democratic transition to take very seriously this issue of how the Rohingya are treated."⁶⁴⁹

On the 24th of May 2015, for the very first time in history the highest figure of the Catholic Church has pronounced publicly the word Rohingya, claiming for the necessity to rescue them from their sad destinies. During a speech given in the Roman prison of Regina Coeli Pope Francis expressed his concerns over the situation of Rohingya who are literally drowning in the Indian Ocean⁶⁵⁰. Moreover Pope Bergoglio welcomed the attempt of those States that are trying to find adequate solutions to this crisis, including some of the participants of the Conference held in Bangkok⁶⁵¹ at the end of May 2015⁶⁵².

Another eminent religious authority that has recently claimed for a wider attention over Rohingya case is the Dalai Lama⁶⁵³. His endorsement represents a fundamental step in the global recognition of the tragedy that we described in this thesis. We should remember indeed that many extremist movements in Rakhine State, whose main

646 See also: E. Abdelkader, "The Rohingya Muslims in Myanmar: Past, Present and Future", *Oregon Review of International Law*, Vol.15, 2013, p. 408

647 "Our focus is on making sure that those that are being subject to human trafficking and in some cases still in very perilous situations out in the open sea" Barack Obama's speech in the White House, Washington, 01st June 2015. Video edited by REUTERS

648 See also J. Edwards, "Obama says Myanmar need to end discrimination of Rohingya to succeed", REUTERS, 1st June 2015

649 Barack Obama's speech in the White House, Washington, 01st June 2015. Video edited by REUTERS

650 See also: RaiNews, "Papa: Assistere Profughi Rohingya", 24th May 2015

651 See also: "Rohingyas, Still in Peril", *The Economist*, Vol.415, No.894, Singapore, 6th-12th June 2015, p.43

652 The point of view of the supreme authority of Roman Church is totally in line with Francis' narrative over the total exclusion of entire nations and societies, that is occurring in the shadow of modernity itself. According to this theory, whose main exponents are Wallerstein and Saskia Sessen, the exclusion of entire portions of the global societies is one of the negative outcomes of the capitalistic systems and of the strong division between centre and peripheries. See also: R. David, "The Language of Pope Francis", *Philippine Daily Inquirer*, 13th April 2014; S. Sessen, "Expulsion- Brutality and complexity in the Global Economy", Harvard University Press, May 2014

653 Dalai Lama is the highest figure for Tibetan Buddhists, actually leader of Tibet government in exile in India

exponents declared themselves fervent Buddhists, have persecuted and slaughtered hundreds of Rohingya, before and after 2012 violence⁶⁵⁴. Moreover the main Tibetan authority has claimed for an active intervention of the Nobel Peace Prize Aung Saan Suu Kyi⁶⁵⁵, whose struggle for the respect of human rights is globally known. From a political figure who has suffered years of illegal detention a great part of the world public opinion aware of Rohingya persecution is asking a major involvement⁶⁵⁶. Even though many positive steps occurred in the field of democracy and Rule of Law⁶⁵⁷ in Burma are due to the political activity of Aung San's⁶⁵⁸ daughter⁶⁵⁹, it is a matter of fact that she always rejected the use of the term “ethnic cleansing” while referring to the plight of the Rohingya⁶⁶⁰.

3.5 CURRENT SITUATION: PROTECTION OF RACE AND RELIGION BILLS AND NEW DANGERS FOR ETHNIC AND RELIGIOUS MINORITIES IN MYANMAR

Despite the participation of Myanmar at the Bangkok conference of May 2015⁶⁶¹, the situation with respect to the promotion of equal rights for the different ethnic groups in Myanmar remains critic. In addition, the Special Rapporteur Ms. Yanghee Lee⁶⁶² and

654 Among this group we remember the 969 movement (not officially recognized as a religious organization), whose leader the monk Wirathu has been labelled by the international press as “Burmese Bin Laden”. See also Ch. 2.4.2 ““969” movement and the role of Buddhist monks”; International Crisis Group: “The Dark Side of Transition: Violence Against Muslims in Myanmar”, Crisis Group Asia Report n.251, 1st October 2013, p.9,10

655 See also: ANSA, “Migranti: Dalai Lama critica Suu Kyi”, Bangkok, 28th May 2015

656 See also: M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 746

657 See also: Burma UK, “Burma's Treatment of the Rohingya and International Law, Burma Campaign UK”, No.23, April 2013

658 Aung San represents the most important protagonist of the Country's independence

659 Aung San Suu Kyi has anyway protested against the reintroduction of the two-child policy in Rakhine State, European Parliament, “Resolution of 13 June 2013 on the situation of Rohingya Muslims”, Res.2013/2669 (RSP), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0286+0+DOC+XML+V0//EN>

660 See also M. Zarmi, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III, p. 746; E. Staokes, “Aung San Suu Kyi is turning a blind eye to human rights in the name of politics”, The Guardian, 26th November 2013; H.Hindstrom, “Suu Kyi rejects allegations of ethnic cleansing in Burma”, Democratic voice of Burma, 24 October 2013

661 See also: “Rohingyas, Still in Peril”, The Economist, Vol.415, No.894, Singapore, 6th-12th June 2015, p.43

662 Ms. Yanghee Lee served as a member (2003-2013) and chairperson of the Committee on the Rights of the Child (2007-2011). Moreover she is founding President of International Child Rights Centre. In 2009 she was awarded with the “Order of Civil Merit”, the highest recognition given to a civilian for her work in human rights. For further information visit the official UN webpage of the Special Rapporteur for

Amnesty International have expressed all their concerns over the fostering of the “protection of race and religion bills”⁶⁶³, by Myanmar government. They represent an important source of discrimination towards the weakest communities and categories in Burma⁶⁶⁴. These 4 acts, recently signed by President Thein Sein are:

- Population Control Healthcare Bill;
- Religious Conversion Bill;
- Myanmar Buddhist Women's Special Marriage Bill;
- Monogamy Bill,⁶⁶⁵

The first act that we mentioned, namely the Population Control Healthcare Bill, perhaps is the one that mostly worries the UNHCR and the Special Rapporteur⁶⁶⁶. The declared objectives of this act are to alleviate poverty, improve living standards, ensure a better quality healthcare and develop maternal and child health. In the reality the provisions included in the text are extremely vague and there are no mechanisms aimed at protecting the citizens from discrimination⁶⁶⁷. The policies encompass provisions aimed at creating “birth spacing”, through a massive action of family planning. According to UN Special Rapporteur on the Right to Health, Dainius Puras⁶⁶⁸: “Any coercive requirement for birth spacing with the aim to ‘organise’ family planning would constitute a disproportionate interference in the sexual and reproductive health and rights of women and could amount to a violation of women’s human rights”⁶⁶⁹. The Bill in effect allows township groups to organize married couples in order to have a 36-

Human rights in Myanmar, available at: <http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/MM/Pages/SRMyanmar.aspx>

663 UNHCR, “Myanmar: UN rights experts express alarm at adoption of first of four ‘protection of race and religion’ bills”, Press Release, Geneva, 27th May 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>

664 Among the weakest categories in Burma, Rohingya and Kaman Muslims of Rakhine State

665 UNHCR, “Myanmar: UN rights experts express alarm at adoption of first of four ‘protection of race and religion’ bills”, Press Release, Geneva, 27th May 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>

666 See also: Amnesty International Asia Pacific “Myanmar: Scrap Race and Religious Laws that Could Fuel Discrimination and Violence”, Press Release, 3rd May 2015

667 UNHCR, “Myanmar: UN rights experts express alarm at adoption of first of four ‘protection of race and religion’ bills”, Press Release, Geneva, 27th May 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>

668 Dainius Puras is the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, since August 2014. He is a Professor and the Head of the Centre for Child Psychiatry at Vilnius University. He is a human rights advocate engaged in the last 30 years in the process of transforming public health services. For further information see also Puras' page in UN official website: <http://www.ohchr.org/EN/Issues/Health/Pages/SRBio.aspx>

669 UNHCR, “Myanmar: UN rights experts express alarm at adoption of first of four ‘protection of race and religion’ bills”, Press Release, Geneva, 27th May 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>

month birth spacing between pregnancies⁶⁷⁰. In this way the groups that are mostly involved are the marginalized ethnic ones, with the non-recognized Rohingya that appear to be strongly endangered, since they are already “victims” of the restrictive “two-child” policy⁶⁷¹ and they are unreasonably detached as the first responsible of population growth rate in Myanmar⁶⁷².

The Religious Conversion Bill enhances a State-regulated system for the control of religious conversions. Each Burma citizen that intends to convert his or her religion is obliged to ask an official permission to the Government⁶⁷³. The process to acquire the authorisation includes a relative study and analysis of the reasons of the conversion, through interviews and investigations within the private life of the individual, that is obliged to appropriately justify the decision. This is a clear violation of the principle of “freedom of religion” stated by the Art.18⁶⁷⁴ of the Universal Declaration of Human Rights and an undeniable invasion of the private life of the members of religious minorities, stated by the Art.12⁶⁷⁵. Thus, the ones who will massively suffer the negative outcomes of this policy are those belonging to Muslim and Hindu faiths.

The Buddhist's Women's Special Marriage Bill strongly discourages the inter-religious marriages⁶⁷⁶. It provides indeed specific and heavy penalties on non-Buddhist men who pretend to marry Buddhist women⁶⁷⁷. In addition, the cohabiting couples, in the case in which the woman is Buddhist and the man belongs to another faith, are deemed married

670 R.Horsey, “New Religious Legislation in Myanmar” SSRC-Conflict Prevention and Peace Forum, 13th February 2015

671 See also Ch.2.2 “The two-child policy and the consequences on the population”

672 According to Harvard University anyway the idea of the population growth in Arakan is nothing more than a myth, used to justify the repressive policies of the Government. See also Ch.2.2.1 “The myth of Rohingya Population Growth”; D. Dapice, N. Xuan Than, “Creating a Future: Using Natural Resources for New Federalism and Unity”, Harvard Kennedy School- Ash Centre for Democratic Governance and Innovation, July 2013

673 UNHCR, “Myanmar: UN rights experts express alarm at adoption of first of four ‘protection of race and religion’ bills”, Press Release, Geneva, 27th May 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>

674 Art.18 of the Universal Declaration of Human Rights: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

675 Art.12 of the Universal Declaration of Human Rights: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

676 See also: Amnesty International Asia Pacific “Myanmar: Scrap Race and Religious Laws that Could Fuel Discrimination and Violence”, Press Release, 3rd May 2015

677 “If the non-Buddhist husband violates any provision of this law, he is liable to up to three years imprisonment or a fine not exceeding five hundred thousand kyat (approximately USD 500), or both. Misconduct on the part of the registrar is punishable by up to one year imprisonment and a fine not exceeding fifty thousand kyat (approximately USD 50).” R.Horsey, “New Religious Legislation in Myanmar” SSRC-Conflict Prevention and Peace Forum, 13th February 2015

by the Law⁶⁷⁸. It means that also in the case in which they do not have the willing to be married they are obliged to do that⁶⁷⁹.

The Monogamy Bill⁶⁸⁰ is apparently the part of this legislative packet that can cause less problems, since it is potentially in accordance with the international human rights agreed standards. On the other hand this rule strongly criminalizes polygamy and adultery⁶⁸¹. According to the UNHCR indeed this provision makes specific references to non-buddhist people and disproportionately punishes women that committed adultery, violating the Convention on the Elimination of all forms of Discrimination Against Women⁶⁸².

The UN human rights experts, part of the Special Procedures of the Human Rights Council⁶⁸³ have strongly criticized these 4 bills that represent an enormous step back in the process of democratic transition ongoing in the Republic of the Union of Myanmar⁶⁸⁴. The declared aim of protecting Burmese Race and Religion further endangers the minority groups' rights⁶⁸⁵. Moreover the content of the bills can potentially build new wide walls between Buddhists and Muslims in Arakan, destroying since the very beginning the process of reconciliation. For this reason the independent Human Rights Experts, that are cooperating with the UN, have asked to the Government of Naypyidang to discard this packet of regulations, offering immediate assistance in finding alternative and more sustainable options⁶⁸⁶.

678 “Existing de facto marriages must be registered in accordance with the provisions of this law.” R.Horsey, “New Religious Legislation in Myanmar” SSRC-Conflict Prevention and Peace Forum, 13th February 2015

679 Art. 16 of the Universal Declaration of Human Rights: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”

680 Art.494 of Burma Penal Code: “Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”

681 UNHCR, “Myanmar: UN rights experts express alarm at adoption of first of four ‘protection of race and religion’ bills”, Press Release, Geneva, 27th May 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>

682 See also Ch. 2.5.1 “Discrimination against women: violations to the CEDAW”

683 To further understand the tasks of the special procedures of Human Right Council see also: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

684 UNHCR, “Myanmar: UN rights experts express alarm at adoption of first of four ‘protection of race and religion’ bills”, Press Release, Geneva, 27th May 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>

685 See also: Amnesty International Asia Pacific “Myanmar: Scrap Race and Religious Laws that Could Fuel Discrimination and Violence”, Press Release, 3rd May 2015

686 UNHCR, “Myanmar: UN rights experts express alarm at adoption of first of four ‘protection of race and religion’ bills”, Press Release, Geneva, 27th May 2015, available at:

| BILL | CONTENT | EFFECTS |
|--|---|---|
| Population Control Healthcare Bill | Imposition of “birth-spacing” through a massive action of family planning. The couples are obliged to have a 36-month birth spacing between pregnancies | Violation of the rights of women to choose freely the number and spacing of children |
| Religious Conversion Bill | Each Burma citizen that intends to change his or her faith is obliged to ask an official permission to the government | Violation of the freedom of religion. Before the approval the government conducts investigation over the habits of the individual analysing the reasons at the basis of the request. This activity violates the private sphere of the citizens. |
| Myanmar Buddhist Women's Special Marriage Bill | Heavy penalties on Buddhist men who pretends to marry Buddhist women. The “mixed” couples that are cohabiting are obliged to get married | Violation of the freedom of marriage for women. Disproportionate penalties for non-buddhist men. The bill discourages the dialogue between ethnic and religious groups |
| Monogamy Bill | Criminalization of polygamy and adultery | Disproportionate penalties for women who committed adultery, in violation to the CEDAW, that has been signed and ratified also by Myanmar |

Fig.3.1: Protection of race and religion bills

3.6 SPACE FOR HOPE: THE DEMOCRATIC TRANSITION AND THE DISMANTLING OF NASAKA

The Protection of Race and Religion Bills have contributed in rendering the actual conditions for Arakan Rohingya Muslims more complex than ever⁶⁸⁷. The space of freedom left to the persecuted members of this community is getting lower day-by-day.

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>
687 See also Ch.3.5 “Current Situation: Protection of Race and Religious Bills and New Dangers for Ethnic and Religious Minorities in Myanmar”

In addition the situation of the so called “boat people”⁶⁸⁸ that are dying in the Indian Ocean has increased the number of Rohingya victims, increasing the level of the humanitarian crisis⁶⁸⁹. Neither it has blocked the continuing departures of Rohingya from Arakan that are often victims of the numerous clans of human traffickers. Anyway there is a little space to hope that in the next few years something is going to change.

I consider the lack of interest by the public opinion over this entire affair as one of the main obstacle to a global mobilization in favour of Arakanese Muslims⁶⁹⁰. On the other hand in the last months, a greater attention can be witnessed over their case⁶⁹¹. The endorsements given by some of the major individual actors in the international scope contributed in making the world public opinion aware of what is happening in South-East Asia⁶⁹². This attention in the long run can contribute to put pressure on Naypyidang government to change policies and regulations that are strongly discriminating certain sectors of the population. The United Nations, through the effort of the UNHCR and the Special Rapporteur Ms. Yanghee Lee⁶⁹³ are giving an important contribute in this sense, constantly monitoring the evolution of the events in the Indian Ocean and in northern Rakhine State⁶⁹⁴.

President Thein Sein and all the major political, economic and social leaders in Myanmar, are clearly not intentioned in recognizing Rohingya group as a Burmese indigenous community, nor in amending the principles of 1982 Citizenship Law that is considered the legal anchor of the persecutions by many relevant intellectuals⁶⁹⁵.

688 See also: Asia Pacific Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Amnesty, 28th May 2015

689 See also: “Rohingyas, Still in Peril”, The Economist, Vol.415, No.894, Singapore, 6th-12th June 2015, p.43 ; A. S. Lefevre, K. Kapoor, “SE Asia vows to rescue 'boat people'; Myanmar seizes migrant vessel”, Reuters, 29th May 2015, The entire text of the article is available at: <http://www.reuters.com/article/2015/05/29/us-asia-migrants-us-idUSKBN0OE05T20150529>

690 For many years the Rohingya case has been totally ignored by the major international media. The only subjects who put a spotlight on the crisis where the major international NGOs, such as Human Rights Watch, Fortify Rights, Amnesty International, and the action of International Organizations, such as the UN and UNHCR, whose report have always been considered as the most important official documents stating the situation of Human Rights in Rakhine State. See also Ch.3.1 Non State Actors: the Main Characters”

691 See also: Asia Pacific Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Amnesty, 28th May 2015

692 In this sense we should highlight the importance of the summit held in Bangkok at the end of May 2015. See also: 3.2.1 The Role of the ASEAN; Asia Pacific Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Amnesty, 28th May 2015

693 See also Ch.3.1.3: “The role of UN and UNHCR”

694 See also: UN Meetings, “Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar” ,69th Session of the General Assembly, 3rd Committee, Item 68, New York, 28th October 2014

695 Among them also Maung Zarni: M. Zarni, A. Cowley “The slow burning genocide of Myanmar’s Rohingya” Pacific Rim Law and Policy Journal, Vol. XXIII N. III

Something anyway has been done and our hopes should focus in these small changes. In particular the most important step has been the closing of the NaSaKa⁶⁹⁶, the body that most has created problems to the ordinary life of Rohingya people. Even though the notification that has put an end to this dangerous institution was not accompanied by official justifications or promises of change⁶⁹⁷, it is thought to be connected to the speech given at Chatham House three days later, on the 15th of July 2013, by President Thein Sein⁶⁹⁸. During this speech, in which anyway he denied once again the original identity of Rohingya people, he declared the willing to make Myanmar a more inclusive nation⁶⁹⁹. Although the results achieved in this sense are not in line with the programmatic goal expressed in London, the international community hopes that this principle could be realized soon⁷⁰⁰.

696 See also Jim Della Giacomina- International Crisis Group: “Myanmar’s “Nasaka”: Disbanding an Abusive Agency”, 16th July 2013

697 See also Jim Della Giacomina- International Crisis Group: “Myanmar’s “Nasaka”: Disbanding an Abusive Agency”, 16th July 2013

698 Thein Sein gave a speech during the Conference held in Chatham House on July 15th, 2013. The title of the conference was “Myanmar’s complex transformation: prospects and challenges”. The transcript of the speech is available at: <http://www.chathamhouse.org/events/view/193003>

699 See also the transcript of the Speech: <http://www.chathamhouse.org/events/view/193003>

700 See also: UN Meetings, “Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar”, 69th Session of the General Assembly, 3rd Committee, Item 68, New York, 28th October 2014

CONCLUSION

When I started my research to develop the main arguments of my thesis I did not know so much about the story of Rohingya in Arakan. For this reason I decided to begin from the story of the region⁷⁰¹. It has not been easy to maintain an objective point of view since I tried to balance the diverging point of views: the one of Muslim and international scholars, together with the chronicles of old travellers and merchants, and the one of Burmese intellectuals that always circumscribed the presence of Muslim groups in Rakhine State to the inflows of migrants coming from Bangladesh. The result was impressive. Still now it is difficult for me to explain how ancient divisions and a common colonial background⁷⁰² could justify wide repressions and persecutions. In the same way it is difficult to accept that an entire population made up of several millions of people has been for years completely forgotten by the international community. The first thing that should be considered unacceptable by the way is the attempt to cancel the legacy of hundreds years of history⁷⁰³. In the same way discovering how many children and women⁷⁰⁴ have been hit by the persecutions has been extremely striking for me. I felt a strong sense of empathy towards those that were unable to live a normal life within the same land of their ancestor. Still I had anyway to mediate between different sources and points of view not to commit mistakes and mystifications.

In the last days the emergence of the so called “boat people”⁷⁰⁵ has finally found space within the major international media. The attention of the public opinion could be an important starting point, as well as the intervention of many eminent personalities of the

701 See also: Ch. 1 “The past: the historical presence of Rohingya in Rakhine state. from the origins to 1978”

702 Since the first Anglo-Burmese war in 1824 to end of the WWII the ancient Kingdom of Ava, today Republic of the Union of Myanmar, has been dominated by British India colonial force.

703 See also Ch.1.1: “Rewriting history, 2 different versions”; Dr. Habib Siddiqui, “Muslim Identity and Demography in the Arakan State of Burma (Myanmar)”, Westchester, 2011, Kindle edition;

704 See also Ch. 2.1.5.1 “Impact on the children: the education issue and forced labour”; Ch.2.3 “Gender based violence”

705 See also: Asia Pacific Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Amnesty, 28th May 2015

global landscape⁷⁰⁶. Pope Francis has always been by the side of the weakest categories and populations and the speech that he gave in May 2015 in Regina Coeli could represent an historical step ahead in the recognition of this crisis⁷⁰⁷. In the same way also Dalai Lama's condemnation of Rohingya treatment can have a great value⁷⁰⁸. Still anyway I think that these endorsements cannot be enough. It is necessary a complete change of paradigm. Myanmar authorities always relied on the fear of the “Islamic invasion”. The religious Buddhist extremism, fuelled by the role of associations like “969” movement⁷⁰⁹ and a sick crude nationalism, has played an important role in this affair. For this reason I think that the only way to make a cohabitation possible in northern Rakhine State is to eradicate the fanaticism of all sorts and to work on the culture of people, the same culture Rohingya have been deprived of. The recent conferences held by the ASEAN, together with the UN⁷¹⁰ and the major state actors, can have a fundamental role in giving the necessary relief to people dying in the Ocean, victims of human smugglers clans⁷¹¹. Thailand and other South-East Asian countries seem actually really interested in stopping the emergence. I really hope that this growing concern will be translated soon in concrete actions able to save thousands of lives. On the other hand the whole attention has been focused on the effects of what has happened in the last 35 years in Arakan, notwithstanding the roots. Indeed, only if the 1982 Citizenship Law⁷¹² will be amended together with all the related policies promoted by Myanmar government, the conditions of stateless Rohingya will improve. And only if Rohingya will have the recognition that they deserve this could be possible. In this sense the pressure put on by the UN and by the sanctions of the USA and the EU⁷¹³ to repeal the law did not work. Even if a democratic transition is ongoing and the situation in other problematic areas of Burma has recently changed, nothing really has been done to make the lives of Rohingya people, displaced and refugees, sustainable. Maybe at the end of this transition Myanmar will be a democratic country in which also the rights of Muslim Arakanese will be respected, but this process could last for many years and for that time the ethnic cleansing could have provoked too many victims. Thus, the

706 See also Ch.3.4 “The impact of individual personalities”

707 See also: RaiNews, “Papa: Assistere Profughi Rohingya”, 24th May 2015

708 See also: ANSA, “Migranti: Dalai Lama critica Suu Kyi”, Bangkok, 28th May 2015

709 See also Ch.2.4.2 ““969” Movement and the role of Buddhist monks”

710 See also Ch. 3.1.3 “The role of the UN and UNHCR”

711 See also: Asia Pacific Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Amnesty, 28th May 2015

712 1982 Citizenship Law grants nationality only to the ethnic groups able to demonstrate their presence in Burma before the I Anglo-Burmese War, thus rendering Rohingya stateless

713 See also Ch.3.3 “The rest of the world: state actors and the European Union”

international community should be focused also in setting up the conditions for a proper coexistence, intervening in a much heavier way and overcoming the geopolitical and economic interests that actually represents a further obstacle in Rohingya's path towards freedom. This is the only possibility to make Rohingya lose the title of “most persecuted population of the world”.

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