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

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SUMMARY

In South East Asia, within the Republic of the Union of Myanmar¹, in the northern part of Rakhine State², one of the most persecuted and forgotten populations in the entire world is striving to survive and to keep the right to live in the land in which their ancestors have been for centuries³. The Rohingya represent the Islamic minority of a Buddhist-led State that so far has never recognized an original identity to these people, as well as the rest of the Burmese country. The wide majority of the population indeed, together with the most powerful political, religious and cultural authorities of Myanmar have always labelled the Muslim Rohingya of Arakan as Bengali illegal migrants who trespassed the border during the colonial period in which the British India was occupying Bangladesh and the entire Kingdom of Ava⁴. As a natural consequence the Rohingya were obliged to live as unwanted guests, deprived of all the basic human rights and forced to flee from the country with inadequate means of transportation and often entrusting all their hopes in the hands of the human smugglers⁵. This persecution was put in act by the Rakhine ethnic groups of the region, that were facilitated by an entire framework of laws and regulations that let them render Rohingya an illegal group, fostering a culture of impunity and exclusion. Among these laws, the most important is the Citizenship Law of 1982 that has excluded all the possibilities for Muslims of Arakan to have their nationality

1 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.

2 Rakhine is the current form for the ancient name Arakan

3 See also: P. Gutman, “Burma’s Lost Kingdoms: Splendours of Arakan”, Orchid Press, Bangkok, 2001

4 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; Aye Chan, “Who are the Rohingyas”, Piccima Zone Magazine, Feb. 2010, Vol.1; Saw, K.M.: On the Evolution of Rohingya Problems in Rakhine State of Burma, Network Myanmar, Berlin, 2011

5 See also: Human Rights Watch, Burma: Revoke two-child policy for Rohingya. Coerced Birth Control Reflects Broader Persecution of Muslim Minority, 28th May, 2012, <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>

recognized. This rule in effect considers as foreigners all those ethnic groups that were not present in Myanmar before the arrival of the British Indian Army in 1823⁶. Notwithstanding the racial discrimination that this law triggers, the Rohingya should be entitled anyway to acquire the Burmese nationality.

On the other hand, the revisionist version promoted by Burmese intelligentsia has erased the historical background of these communities⁷. All the proofs required to join the nationality of Myanmar have always been rejected by the official authorities. For this reason, Rohingya people have been rendered stateless, in clear violation to the Art.15 of the Universal Declaration of Human Rights⁸. Thus, these communities in the last 30 years have been subjects to restrictions of movements, forced labours and other persecutions, whose first and natural victims are the weakest categories of the population, namely women and children⁹. The response by the international community has lacked for many years¹⁰. The neighbour countries where waves of refugees had landed gave asylum only to a little percentage of them, forcing the remaining ones to live in crumbling illegal camps, denied of all the basic services. In the last months anyway the humanitarian emergence of the so-called “boat-people”¹¹ that were drowning in the Indian Ocean, has forced the public opinion and the international community to intervene. For the first time serious attempts to rescue Rohingya lives have been put in practice, including an extraordinary summit held in Bangkok in 2015¹². All the solutions that came out from the

6 “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

7 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 2013, that the term “Rohingya” doesn’t exist, an idea that actually represents the official position of Burmese government and population. 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>

8 Art.15 of the Universal 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/>

9 See also: 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

10 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 Affair, October 2013, p. 291

11 The term “boat-people” has been used by Amnesty International and by many relevant international media, in order to describe the emerge afflicting Rohingya people in overcrowded ships in the middle of the Ocean, striving to survive. Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Press Release, 29th May 2015

12 At the end of the Summit the Director General of the IOM- International Organization of Migration 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 entire text of the Article is available at: <http://www.bbc.com/news/world-asia-32925815>

conference were short termed and aimed at putting an end to the crisis of the fugitive people of Rakhine State, without considering the situation that they are forced to live within Myanmar¹³. The first goal instead should be to give back Rohingya their history and their right to live in the land of their forefathers. Thus, it is fundamental to trace back the dimensions of Rohingya legacy in the history of the Republic of Myanmar¹⁴. Indeed, the creators of the Citizenship Law, together with the most influential scholars with fully-fledged relations with the government of Napydyidaw have always attempted to present a partial version of the history of Arakan¹⁵. This version obscures the fundamental role played by Rohingya population and by Islamic religion.

Rohingya communities are the result of centuries of contacts between the Maghs, the ancestors of the Rakhine ethnic groups, and the Muslim tribes coming from different parts of the world¹⁶. There are at least four different historical periods in which we can find evidence of massive arrivals of Islamic people in this region. Throughout the centuries these different communities have merged together into the same population, giving birth to the Rohingya tradition. The first Islamic settlements were those of the Arab merchants and traders that landed over the coasts of the Bengal Bay during the 8th and 9th centuries, constituting the first Muslim tribes present here¹⁷. The second influx is connected to the vicissitudes of King Naramekhla: an ancient Arakanese sovereign forced to flee to the Thuratan's court¹⁸. The members of the several expeditions sent to reconquer Arakan in the name of an old alliance between Naramekhla¹⁹ and the King of Gaur, decided to remain in the region, reinforcing the Muslim presence²⁰. A further influx occurred

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

14 For a complete overview of the history of Muslim minorities in Arakan see also: M. Yegar, “The Muslims of Burma: a Story of a Minority Group”, Otto Harrassowitz, Wiesbaden, 1971; Karim, A. *The Rohingyas: A Short Account of their History and Culture*, Arakan Historical Society, Bangladesh, 2000

15 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; Aye Chan, “Who are the Rohingyas”, *Piccima Zone Magazine*, Feb. 2010, Vol.1; K.M Saw, “On the Evolution of Rohingya Problems in Rakhine State of Burma”, *Network Myanmar*, Berlin, 2011

16 See also: Sir A. Phayre: “History of Burma”, Trubner & Co, Ludgate Hill, 1883, London; A. Karim, “The Rohingyas: A Short Account of their History and Culture”, Arakan Historical Society, 2000, Bangladesh

17 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

18 The Thurathan, also known as the King of Gaur was the Muslim sovereign of the Bengalese lands

19 Naramekhla was also known as Min Saw Mun. In many of the sources that I consulted both terms were used

20 See also: 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)

between the 15th and 19th centuries is due to the trading activities of Portuguese pirates and merchants and regarding thousands of human beings²¹. In many cases the commerce of slaves encompassed groups coming from Islamic and Hindu areas, who were sold along the Burmese coasts of the Bengal Bay. The chronicles and the activities of the European missionary priests²² demonstrate that the Muslim slaves had shaped a wide community within Arakan a long time before the arrival of the Anglo-Indian invaders²³.

The last massive wave is the Mughals' one, well described by Sir Alfred Phayre²⁴ and other eminent scholars expert in the history of Arakan²⁵. According to the chronicles indeed a fratricidal war between the heirs to the throne of the Mughal's empire had taken the Mughal prince Shah Shuja in Arakan, while escaping from his younger brother Aurangzib²⁶. The entire family of Shah Shuja's family was massacred by the same King Chandra Sudarma that had previously hosted them, but many of the surviving soldiers remained in the Arakanese territory, increasing once again the Islamic presence in the zone. Among them, three thousands Kaman archers constituted a distinct group that was destined to have a wide influence in the Mrauk-U²⁷ court in the following decades²⁸. Today the Kamans are recognized as a Burmese ethnic group, according to the prescriptions of the Citizenship Law. In the meanwhile, they are strongly tied with the Rohingya communities and have also been victims of the persecutions and of 2012 violence²⁹. The four different moments that we described represent the origins of the

21 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, San Germano, F., "The Burmese Empire, a Hundred Years Ago", Archibald Constable and Company, Westminster, 1983

22 See also: G.E. Harvey, "History of Burma", Asian Educational Service, p. 131

23 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

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

25 See also: H. Siddiqui, "Muslim Identity and Demography in the Arakan State of Burma (Myanmar)", Westchester, 2011, Kindle edition

26 See also: 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

27 Mrauk-U was the ancient capital of Arakan, also know as Mrohang

28 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"

29 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

Rohingya community. Despite the theories of U Khin Maung Saw³⁰ and Aye Chan³¹, which foster the idea that the word Rohingya is a fictional creation shaped by the Bengali migrants after the Second World War, there is evidence that also before the I Anglo-Burmese War they constituted a distinct and integrated ethnic group.

The arrival of the British army in the Kingdom of Ava³² has further complicated the situation. The strong legacy between the Muslim communities of Rakhine State and the Indian countries, from where the British conquerors had arrived, has raised the strain between the two peoples. Rakhine and other ethnic groups in Burma have always detached Rohingya as part of the invaders who established themselves in Arakan in the period 1823-1945³³. After the Second World War, that tension was destined to outbreak, characterizing the bad relations between Buddhists and Muslims in the region of Sittwe³⁴. In this period, acts of guerrilla by Islamist clans and by the Mujahid rebels³⁵ gave birth to the first wave of repressions in Arakan³⁶. Moreover, the activities of those clans contributed to shape the idea of strong connections between the international terrorist networks and Muslim communities. An idea that started to become widespread after 09/11 attacks. Banning an entire ethnic group with the alleged responsibilities of a few of them has meant a further danger for the persecuted minorities of Rakhine State. The spectrum of a widespread Islamization of a Buddhist-led country represented the occasion for Myanmar authorities to justify the persecutions at the eyes of the Burmese public opinion. In this sense the role of extremist organizations led by Buddhist monks, such as the “969”

30 K.M. Saw, “On the Evolution of Rohingya Problems in Rakhine State of Burma”, Network Myanmar, Berlin, 2011

31 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; Aye Chan, “Who are the Rohingyas”, Piccima Zone Magazine, Feb. 2010, Vol.1;

32 M.Yegar, “The Muslims of Burma: a Story of a Minority Group”, Otto Harrassowitz, Wiesbaden, 1971; Sir A. Phayre: “History of Burma”, Trubner & Co, Ludgate Hill, 1883, London

33 There have been three Anglo-Burman wars. The first one was concluded in 1826 with the Treaty of Yandaboo and with the conquer by British Army of the regions of Arakan, Asam and Tenasserim. The second war was fought between April and December 1852 and permitted to the British Indian Company to annex the entire province of Pegu. The last one occurred in 1885 and finished with the total annexation of Burma. In this period more than 60000 Muslims used to live in Arakan. 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 ; D.G.E. Hall, “Burma”, Hutchinson and Go., London, 1950 Ch. XVIII “Economic and Social Evolution”, p. 156; M. Yegar “The Muslims of Burma- A Study of a Minority Group” Otto Harassowitz 1972, Wiesbaden, p. 29

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

35 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

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

movement³⁷, has been fundamental in the anti-Rohingya propaganda that has accompanied the recent repressions in Rakhine State³⁸.

With the Naga-Min operations of 1978 and in particular since the promulgation of the new Citizenship Law of 1982 it began a terrible period for Rohingya communities. The law represents indeed the legal anchor of the persecutions³⁹. According to this regulation, the only ethnic groups entitled to be legally Burmese are those whose roots are prior to the year 1823⁴⁰. Of course, Rohingya could not be considered within the short list accepted by the Government, nor they could have the possibility to join the status of naturalized or associate citizens, that could guarantee them at least a decent life⁴¹. Thus, the effects of the law were devastating. Since 1982 the possibilities for Rohingya to reach important positions in the political, administrative and social environment of the country are none⁴². In addition, the inter-ethnic strains within the region, in which the security forces of the Government always had a dynamic role, have rendered the members of this community victims of every kind of abuses, including restrictions of movements, forced labours and illegal detentions⁴³. Many policies and regulations have contributed to complicate the conditions of living for them.

Among the policies we should mention the two-child one⁴⁴. Originally promoted to lower

37 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”

38 “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

39 “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.

40 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.”

41 The Ch. 2,3 of the Law says: “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. The entire text is available at: <http://www.refworld.org/docid/3ae6b4f71b.html>

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

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

44 “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

the unstoppable growth rate of Muslims in Rakhine State, a theory dismantled by the researcher of Harvard University⁴⁵, the government has imposed for Rohingya couples the duty to receive an official permission to get married, in addition to the prohibition to have more than two children⁴⁶. The official permissions can require also several years before they are considered and the applicants are often obliged to pay bribes to obtain them⁴⁷. Moreover, in a region in which there is a very low knowledge about the contraceptive methods, the risk to overcome the two-child limit is very high. For this reason, the lives of Rohingya women are seriously endangered⁴⁸. In the case in which a woman has her third pregnancy the only possibilities are to seek abusive abortions, to accept the fines or imprisonments imposed by the judicial system, or to give birth to an “abusive child”. In all of these cases, indeed the risks for women are extremely high. The abortion is illegal according to the Burmese Penal Code⁴⁹ and as a consequence there is the proliferation of illegal abusive structures where inadequate staffs, without the right knowledge nor the adequate tools, effect dangerous procedures on Rohingya mothers⁵⁰. The possibility to die during the operations or to get deadly diseases is extremely high, but often this option is the one more considered by the mothers. Indeed, in the case in which a Rohingya couple has a third child it is exposed to fines and imprisonments by the authorities. The outcomes that we just described raise the portion of population that decides to undergo difficult voyages through crumpling boats in the middle of the Indian Ocean, with scarce possibilities to arrive in the coasts of Thailand, Malaysia or Indonesia.

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>

45 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

46 “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

47 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

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

49 The Art. 312, that 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” forbids the abortion in Myanmar

50 “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

Moreover, these trips are usually led by the clans of human smugglers active in the region, that exploit the desperate migrants for sexual and economic purposes⁵¹.

The impact on children so far has been devastating⁵². As a natural consequence of the policies that we analysed there is a huge amount of Rohingya unregistered kids⁵³. No rights are recognized to them and for this reason the level of the education among the members of the community is very low, as we can see by the daunting 80% of illiteracy rate⁵⁴. The undeniable right to education, on the basis of equal opportunity, stated by the Art. 28,1 of the Convention of the Right of Child is constantly violated⁵⁵. The mass of “blacklisted”⁵⁶ children present in the Islamic areas of Rakhine State cannot have access to the public education. On the other hand, also for those regularly registered the quality of the educative structures and the conditions in which they are obliged to study makes it impossible for Muslim pupils to acquire an adequate culture⁵⁷. Most of them are thus

51 “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

52 The situation of Rohingya children in North Rakhine is also witnessed by the Special Rapporteur Tomas 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 Right 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

53 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>

54 See also: 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

55 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.

56 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

57 The journalist MacDowell has made the example of the school of Ba Gone Nar, with more than 1200 students enrolled and no more than 11 teachers appointed by the government. 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>

obliged to perform forced labour for the government, carrying for 10 hours per day heavy loads and being exposed to abuses and diseases.

Forced labour is an effect one of the most evident problems for Rohingya communities, involving all the different categories⁵⁸. The Government has always justified those practices, that include activities of cultivation, construction and repairs of infrastructures and guard and sentry duties⁵⁹, with the presence in Burmese legal framework of the Village Act and the Towns Act, two anachronistic regulations of the first years of the XX century that so far have been modified but never totally amended.

The 1982 Citizenship Law, together with all the policies related and the involvement of the official authorities in the persecutions of Rohingya violate a great number of international customary laws and conventions. The gender-based violence caused by the two-child policy and highly widespread in Burma⁶⁰ is against the fundamental principles of the Convention on the Elimination of all forms of Discrimination Against Women, that was ratified by the Republic of the Union of Myanmar in 1996⁶¹. For what concerns the conditions of children the Convention of the Rights of the Child⁶² appears completely forgotten. Notably, the Art.30 of the Convention, stating the right for the children to join their own culture is day-by-day violated⁶³. Another area of concern for the international community should be the one regarding the treatment of refugees and stateless people. Despite the wide majority of South East Asian States has not signed yet the Convention Related to the Status of Stateless persons (1954)⁶⁴, the Convention on the Reduction of

58 “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” 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)

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

60 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”

61 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>

62 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>

63 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.”

64 UNHCR: “Convention on the reduction of statelessness”- Geneva, 2014. This version is available at: <http://www.unhcr.org/3bbb25729.html>

Statelessness (1961)⁶⁵ and the Refugee Convention (1951)⁶⁶, the treatment received by Rohingya stateless and refugees seems not in compliance with basic humanitarian principles recognized at international level. This emergence has taken the aspect of an irreversible crisis since the explosion in June 2012⁶⁷ of the inter-communal tensions between the two major ethnic groups in Rakhine State: the Maghs and the Rohingya. In a few months a huge number of victims were caused by the struggle between the different factions⁶⁸. The clear involvement of the official security forces, including the NaSaKa, recently dismantled by the President Thein Sein, made the Muslim forces the ones with the highest number of casualties⁶⁹. The crisis of 2012 has contributed to raise the level of the emergence. Mass waves of Rohingya were forced to leave the country and in the last months continuous episodes of sunken overcrowded ships in the Indian Ocean and the overflowing phenomenon of the human smuggling have raised the attention of the public opinion on this affair⁷⁰.

A huge part of responsibility is up to the international community⁷¹, whose commitment has lacked for many years. In the last period anyway, the recent “boat-people”⁷² emergence and the important endorsements by influent characters in the religious, political and cultural fields⁷³, put a spotlight on the case of these people, forcing the major actors in the international system to intervene in a concrete way. The most important characters remain anyway the non-state ones. The clans of Muslim combatants active in

65 The “Convention on the reduction of statelessness” was adopted in 1961 and entered into force 14 years later, 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

66 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

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

68 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

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

70 Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Press Release, 29th May 2015

71 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

72 Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Press Release, 29th May 2015

73 In particular we mention: Barack Obama, Pope Francis, Dalai Lama

Myanmar, such as the Rohingya Solidarity Organization⁷⁴ and the groups of Buddhist Rakhine extremists faced each other for many years, a long time before the situation could precipitate in 2012. Many famous NGOs are present in the region and try to give a concrete relief to the persecuted populations. Amnesty International, Human Rights Watch⁷⁵ and Fortify Rights⁷⁶ are those organizations that actually contribute to make the public opinion aware of what is happening in South-East Asia, providing in the same time assistance to Rohingya displaced persons and refugees. Their engagement has been fundamental, but it deserves the necessary help of more powerful actors. The Organization of Islamic Cooperation⁷⁷ together with other pro-Rohingya groups throughout the world, like the Arakan Rohingya National Organization⁷⁸, in this sense gave their contribute.

The United Nations is fully aware of the violations of human rights perpetrated in Arakan since 1978, as it is witnessed by the strong engagement of the UNHCR and the Special Rapporteur for the situation of human rights in Myanmar, whose reports have always been an official denouncement of what has happened in the last years⁷⁹. The geopolitical and economic ties of the country members of the Security Council, first of all China, had anyway erased the possibility for the United Nations to intervene on a higher level⁸⁰. The resolution aimed at sponsoring an intervention in Myanmar in 2007 has been indeed blocked by the combined vetoes of Beijing and Moscow⁸¹.

74 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 financed by some of the major Islamist groups worldwide

75 Human Rights Watch has also written a letter to the Burmese President Thein Sein in order to ask further attentions on Rohingya issue: “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>

76 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

77 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>

78 ARNO, namely Arakan Rohingya National Organization is part of the umbrella organization ARU- Arakan Rohingya Union, created by the initiative of the EBO-Euro Burma Office and the OIC- Organization of Islamic Conference

79 Since 2008 until 2014 the Special Rapporteur has been Tomas Ojea Quintana. Since 2014, the new special rapporteur is Ms. Yanghee Lee, whose commitment in defending the rights of the children is widely recognized

80 See also: R.D. Kaplan, “The Revenge of Geography”, Random House, New York, 2012

81 United States, France and UK evoked the resolution UNSC 1674, regarding the Responsibility to Protect

As the difficulties that also the UN constantly live show, the Rohingya affair must be judged as a regional problem, since the consequences of the waves of departures from the Asiatic State involve the security and the wealth of the entire neighbourhood⁸². The “boat-people” crisis in the Indian Ocean has involved the authorities of Thailand⁸³, Bangladesh⁸⁴, Malaysia and Indonesia, that recently acknowledged the imperative necessity to intervene. For this reason at the end of May 2015 a meeting was held in Bangkok, with the participation of all the major Asian stakeholders, together with other influent actors such as the United Nations, the United States, the International Organisation of Migration (IOM) and the ASEAN⁸⁵. At the end of the meeting several important decisions were taken. Indonesia and Malaysia have accepted a temporary engagement in giving shelter to migrants, under the condition that the international community would intervene within one year. Further assistance actions will be provided by joint forces, while new channels of legitimate migration will be enhanced. Finally, important amounts of money will be provided by the USA and Australia to the IOM, in order to give the necessary humanitarian assistance in Myanmar and Bangladesh⁸⁶.

For what concern the role of the most powerful actors in the global context, the geopolitical and economic reasons have so far represented a significant obstacle. As referred by Kaplan, Burma represents a land abundant in metals, hydrocarbons and other resources that China requires⁸⁷. Beijing indeed has a huge quantity of commercial

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

82 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

83 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

84 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; Ashraf 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

85 ASEAN stands for “Association of South-East Asian Nations”. The members are: Malaysia, Myanmar, Philippines, Thailand, Brunei, Cambodia, Indonesia, Laos, Singapore, Vietnam

86 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>

87 “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”

relations with Myanmar, as it is witnessed by the almost 20 billions USD that each year they invest in Burma⁸⁸. On the other side of the world, the USA always tried to intervene to settle the conditions for a pacific cohabitation in Northern Rakhine State⁸⁹. The recent necessity to build new alliances in the eastern Pacific and Indian Ocean, part of the wider strategy known as “pivoting to Asia”, have anyway lowered these attempts⁹⁰. Notwithstanding these conditions, Washington remains seriously concerned about the status of Rohingya, as it is witnessed by the recent speeches given by Barack Obama⁹¹ in favour of the recognition of the human rights for Muslim minorities in Arakan State.

The American President is not the only individual actor that in the last months has raised his voice in favour of the displaced groups in Myanmar. The emergence of the “boat-people” has pushed other two famous personalities to make official requests of intervention in South-East Asia. The first is Pope Francis⁹², whose engagement in making the public opinion aware of the conditions of the forgotten populations is not new⁹³. In the speech given in Regina Coeli in May 2015, Pope Bergoglio has expressed his concerns over the conditions of the displaced Rohingya people dying in the Ocean. Another meaningful approach has been the one of the Supreme Buddhist authority, namely the Dalai Lama. From the seal of his exile, indeed he has called upon the Burmese politician and Nobel Peace Prize Aung San Suu Kyi to intervene⁹⁴. Despite her longstanding commitment for the protection of fundamental freedoms and human rights, she has often been contested for not having done enough to save Rohingya's lives, also refusing to label

88 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.492

89 The USA together with the European Union have promoted several sanctions against Myanmar, including arms embargoes and economic sanctions. In the last years anyway, as a result of the alleged positive results achieved by President Thein Sein in the democratic transition, both these entities decided to lift part of the sanctions. US sanctions: OFAC- Office of Foreign Assets Control, “Burma Sanctions Program, US Department of State, January 2014. EU sanctions: 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

90 See also: R.D. Kaplan, “The Revenge of Geography”, Random House, New York, 2012, Ch.XI “The Geography of Chinese Power”

91 In particular the American President declared in a speech given at the beginning of June 2015, in the White House: “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

92 See also: RaiNews, “Papa: Assistere Profughi Rohingya”, 24th May 2015

93 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

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

the situation in North Rakhine as ethnic cleansing⁹⁵. We should remember by the way that many of the targets reached in Myanmar in the field of human rights and democracy are due to her active engagement.

Even though it can be witnessed a major involvement by the international community, all the actors that are trying to intervene have always sought short-termed solutions aimed at guaranteeing a temporary assistance to Rohingya fugitives. On the contrary, I consider long-term strategies highly required in this case. Only giving Rohingya the right to live in their own land, being recognized as entitled to acquire Burmese nationality, the crisis can be overcome. A further attention must be put on the current political situation. Despite the President Thein Sein is considered a promoter of the democratic transition, he has recently signed a legislative package of reforms⁹⁶ that is further endangering the protection of religious and ethnic minorities in the state. Part of the “Protection of Race and Religion Bills” are the “Population Control Healthcare Bill”⁹⁷, the “Religious Conversion Bill”⁹⁸, the “Myanmar Buddhist Women's Special Marriage Bill”⁹⁹ and the “Monogamy Bill”¹⁰⁰. In the moment in which these regulations will enter into force, new limits will be imposed to the space of liberty for Rohingya. The reform indeed is aimed at blocking the possibility for non-Buddhists to practice their own faith and to freely marry Buddhist women. In addition, new rules regarding the “birth-spacing” and the “family-control” will be imposed in large strands of the population, while the adultery will be punished with unreasonable fees and detentions that will further hit the poor

95 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

96 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>

97 Through the “Population Control Healthcare Bill” the Government of Myanmar enhances a system of “family-control”, through a birth-spacing regulation that obliges the couples to wait a 36-months period between two different pregnancies.

98 According to the “Religious Conversion Bill”, everyone that is intentioned to convert to another faith will be obliged to provide adequate information and justification to the official authorities. These authorities will make investigations over the roots of such a decision. Investigations that will endanger the private life of each citizen and his or her freedom of religion, stated by the Art. 18 of the Universal Declaration of Human Rights

99 The Women's Special Marriage Bill strongly discourages the inter-religious marriages. It provides indeed specific and heavy penalties on non-Buddhist men who pretend to marry Buddhist women. In addition, the cohabiting couples, in the case in which the woman is Buddhist and the man belongs to another faith, are deemed married by the Law. It means that also in the case in which they do not have the willing to be married they are obliged to do that

100 The Monogamy Bill 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 adultery. 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 Women.

conditions of women in Rakhine State¹⁰¹.

Despite the frightening dimensions of the recent “boat-people”¹⁰² crisis and the imminent promulgation of the “Protection of Race and Religion Bills”, there is some space to hope that something is going to change in the living conditions for Rohingya communities. The decision by President Thein Sein to dismantle the NaSaKa group¹⁰³ has been an important step ahead. In the meanwhile, the further attention posed by the international community and the strategies adopted since the Bangkok conference, represent the proof of a major engagement at the global level. The ignorance that the world public opinion has demonstrated so far with respect to the situation of Muslims in Rakhine State has represented indeed the biggest threat and an incredible obstacle to their hopes. Only if a major part of the global population will be aware of what has happened in the last 35 years in Arakan, a further pressure will be put to the major international stakeholders¹⁰⁴. This pressure could push them to solve the humanitarian crisis and to settle the proper conditions for a peaceful coexistence between the Buddhist and Muslim communities in North Rakhine State.

101 See also: 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>

102 Amnesty International, “South East Asia: ‘Boat people’ crisis summit an opportunity that must not be missed”, Press Release, 29th May 2015

103 See also J. Della Giacomina- International Crisis Group: “Myanmar’s “Nasaka”: Disbanding an Abusive Agency”, 16th July 2013

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

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