

THE STATUS AND HUMAN RIGHTS PROTECTION OF STATELESS ROHINGYAS: AN ANALYTICAL STUDY UNDER INTERNATIONAL LAW

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ABSTRACT

The Muslim Rohingya people live in the western part of Myanmar and their right to obtain the citizenship of Myanmar has been denied by the Government of Myanmar. They also can not enjoy the basic human rights like freedom of movement, right to education, right to employment, right to marry and form a family, right to register the birth of their child, right to have medical care and legal protection etc. their human rights are being violated because of lack of their identity as a citizen of any State.

Consequently the main questions leading this research are: What is statelessness? Why the Rohingya Muslims are considered stateless? What are rights of Stateless person and How to protect the Human Rights of Stateless Rohingyas? The primary responsibility to protect the human rights of the Rohingyas rests on the Government of Myanmar. The International Community also has liability to protect them.

Keywords: Rohingya; Vulnerability; Statelessness; International Instruments; Right to protection; Recommendations.

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LIST OF ABBREVIATIONS

1951 Convention	Convention Relating to the Status of Refugees
1954 Convention	Convention Relating to the Status of Stateless persons
1961 Convention	Convention on the Reduction of Statelessness
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Children
CRDP	Convention on the Rights of Persons with Disabilities
NGOs	Non-Governmental Organizations
UN	United Nations
UN Charter	United Nations Charter
UDHR	United Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees

Chapter: 1

INTRODUCTION

The problem of involuntary movement of person from one place to another is as old as the civilization itself. Involuntary movement creates various problems like the refugee problem, statelessness, internal displacement etc. To face these problems there are several norms, rules and regulations which have been provided by the international community. But the international community is also aware about the gap between the theory of international human rights and the practice of implementation of the provided rules and norms.

1.1. Objectives of the study

The issue of 'Rohingya refugees' is one of the major refugee problems of the world today. They are under the most vulnerable situation amongst the refugee communities. The object of my paper is to define the status of stateless Rohingyas and to discuss the human right protections of them provided by the International Law. It is about the protection of human rights of the stateless Rohingyas, who are the victims of failure of rule of law and good governance in Myanmar.

1.2. Methodology

The first part of the paper attempts to find out the origin of Rohingya refugees and define the stateless situation of Rohingyas.

The second part then attempts to show how the current legal framework identifies the status of stateless Rohingyas and what kind of human right protections are available for them under the International Law. This is done through the use of UNHCR, different case study, laws relating to stateless persons, books, thesis and articles about stateless Rohingyas.

The third part is about the gap between the theory and practice of implementing the protection provided by the international law. There is also discussion about some steps which can be taken to reduce the gap and to decrease the number of stateless persons.

This paper is based on a thorough analysis of the relevant National, International and regional legal instruments and on a review of the literature from NGOs, Scholars and UN agencies.

1.3. About Rohingya

The stateless Rohingyas leading a vulnerable life for a long time and the International community is but a handicapped witness to this problem which is the result of conflict based on race, ethnicity and religion. The International community and Myanmar are failing in their duty of responsibility to protect the right of stateless Rohingyas. Statelessness is a situation where a person cannot claim the nationality, which is the legal status of a person, of any state. Stateless persons are deprived of the human rights which are provided to the persons who have nationality of any state. But these stateless persons have the right to enjoy the rights because all human beings are born free and equal in dignity and rights.¹ It is a fundamental principle that, "everyone has the right to a nationality".² So here the fact that stateless persons are effectively excluded from citizenship of any state is a clear violation of International Human Rights Law.

The Rohingyas are stateless persons and it is because of direct discrimination by the Burmese government in its refusal to consider the minority group nationality. As stateless persons, the Rohingyas have no access to employment, schools, health care, police protection, or other public services. They cannot even freely move around the country, as they have to get permission from proper authorities to travel from one place to another. This stateless condition affects every aspect of day to day life. According to Human Rights Watch, the Burmese government's discriminatory treatment of the Rohingyas directly contributes to their severe poverty and has forced Rohingyas to flee to nearby countries. The Rohingyas face serious problems due to their lack of official documentation and they are leading inhuman life.

¹ Article: 1, Universal Declaration of Human Rights, 1948.

² Article: 15 (1), UDHR, 1948.

Chapter: 2

Background of Stateless Rohingyas

The word 'Rohingya' is derived from 'Rohang', the ancient name of the Arakan province of Myanmar. Arakan or Rakhine state in Myanmar has been formed by its riotous history on the frontiers of powerful kingdoms and empires. Islamic communities are believed to have lived in Arakan state for over a millennium, and there is evidence that an ethnic group called the Rohingya has been in Burma (now Myanmar) for many centuries.³ However, many Burmese reject Rohingya claim to indigenosity and regard the Rohingya as unwelcome migrants from Bengal. Also rejected by Bangladesh the Rohingyas have been rendered stateless by increasingly draconian Burmese legislation.

2.1. Who are Rohingya people?

There are basically two theories regarding the origin of Rohingyas in Myanmar. One theory suggests that the Rohingyas are the descendants of Moorish, Arab and Persian traders, including Moghul, Turk, Pathan and Bengali soldiers and migrants, who arrived between 9th and 15th centuries, married local women, and settled in the region. Rohingyas are therefore a mixed group of people with many ethnic and racial connections. This position is mainly upheld by the political organizations of the Rohingyas, including scholars sympathetic to their cause.⁴

The second theory, on the other hand, suggests that the Muslim population of the Rakhine State is mostly Bengali migrants from the erstwhile East Pakistan and now Bangladesh, with some Indians coming during the British period. This theory is further premised on the fact that since most of them speak Bengali with a strong 'Chittagong dialect,' they cannot but be illegal immigrants from pre-1971 Bangladesh. The government of Myanmar, including the majority Burman-Buddhist population of the country, subscribes to this position.

So the Rohingya are a Muslim minority population living mainly in the state of Arakan, in Myanmar. Although Eight hundred thousand Rohingya live in Myanmar, and apparently their ancestors were in the country for centuries, the Burmese government does not recognize Rohingya people as citizens.

2.2. The vulnerable situation of Rohingyas

People without a state, the Rohingyas face harsh persecution in Myanmar and as well as in refugee camps in Bangladesh and Thailand. The Rohingya Muslims are treated as stateless persons in Myanmar with consequent restrictions on their movement, education and employment in their homeland.⁵ The Myanmar government does not even allow them to travel or marry without first getting permission from the authorities. Discriminatory behavior of the Myanmar government forces them to migrate to other countries. Human rights abuses against the Rohingyas have been entrenched into the social, political and economic systems of Burma or Myanmar for decades. Pushed to the margin of society they are restricted in their movement, denied the right to work, denied education and denied freedom to practice their religion and cultural customs. This is simply because the Rohingyas are different in race, language, faith, tradition and culture. As a result of these differences they are living as 'non-citizens' in their own homeland.⁶

The Rohingya people have been described one of the world's most persecuted minorities. They have been denied Burmese citizenship and the Muslim Rohingya people have continued to suffer from human rights violations under the Burmese junta. As a result, many have fled to neighboring countries.

³ In "A Comparative Vocabulary of Some of the Language Spoken in the Burma Empire", Asiatic Researches, 1799, p. 234, Francis Buchman refers to a language "Spoken by the Mohammedans, who have long settled in Arakan, and who call themselves Rooinga".

⁴ AbdurRazzaq&MahfuzulHaque, "A Tale of Refugees: Rohingya", and Tessa Piper, 1993, "Myanmar: Muslims from Rakhine State: Exit and Return", WRITENET, Practical Management (UK), p.2.

⁵ Imtiaz Ahmed, 2010. "the plight of the stateless Rohingyas Responses of the State Society and the International Community", University Press Limited, Dhaka.

⁶ Stateless Rohingya, available at www.restlessbeings.org/projects/rohingya; [Accessed 21 January, 2021].

In 1978 over Two hundred thousand Rohingyas fled to Bangladesh, following the ‘Nagamin’ (‘Dragon King’) operation of the Burmese army. Officially this campaign was aimed at "scrutinizing each individual living in the state, designating citizens and foreigners in accordance with the law and taking actions against foreigners who have filtered into the country illegally." This military campaign directly targeted civilians, and resulted in widespread killings, rape and destruction of mosques and further religious persecution. During 1991–92 a new wave of over a quarter of a million Rohingyas fled to Bangladesh. They reported widespread forced labor, as well as summary executions, torture, and rape. Rohingyas were forced to work without pay by the Burmese army on infrastructure and economic projects, often under harsh conditions. Many other human rights violations were committed by the security forces in the context of forced labor of Rohingya civilians.⁷ The Rohingya, sometimes referred to as the ‘most persecuted people in the world’, in 2017, faced violence in Myanmar and many have been forced into displacement across international borders. The violence faced by this group is of extreme proportions and has persisted over many decades.

The Muslim Rohingya represents the four per cent of the entire population in Myanmar but the 50% of the population in the Rakhine State, where they mainly live. It is hard for an average Myanmar person to understand the legal status of the Rohingya, due to the lack of knowledge of their historical background. To an average Myanmar citizen, a Myanmar person is a Buddhist. All the others are considered foreigners, therefore non-citizen.⁸

Chapter: 3

Defining the Stateless Situation of Rohingyas

3.1. What is Statelessness?

Statelessness does not mean a person without a state. It means a person without nationality. The state provides some benefits and protection through a legal status which is the nationality. Statelessness is a situation where an individual cannot claim the nationality of any state. A stateless person is a person who is not considered a national of any state under operation of its law.⁹ Nationality is a concept of both municipal and international law. Nationality is a legal status through which a person can enjoy the rights, which are given to the citizens of any country. An individual without nationality can be compared with a vessel having no captain to guide it, which is floating on the sea aimlessly. Likewise an individual without nationality remains virtually without any legal protection of any state.¹⁰ Nationality is a legal bond between a person and a state and it gives people the identity and enables them to enjoy a wide range of rights. The main right a national holds is the right to return and reside within the territory of the state. The lack of any nationality, which is statelessness, can therefore be harmful to the lives of individuals concerned. In law, statelessness is the lack of any nationality, or the absence of a recognized link between an individual and any state. A de jure stateless person is someone who is "not treated as a national by any state under the operation of its law". A de facto stateless person is someone who is outside the country of his or her nationality and is unable or, for valid reasons, unwilling to avail himself or herself of the protection of that country. De facto statelessness can be a result of persecution or a consequence of absence of diplomatic relations between the state of nationality and the state of residence. Some de jure stateless persons are also refugees, although not all asylum seekers are de jure stateless and not all de jure stateless persons are refugees. Many stateless persons have never crossed an international border.

Statelessness occurs for a variety of reasons including discrimination against minority groups in nationality legislation, failure to include all residents in the body of citizens when a state becomes independent (state succession) and conflicts of laws between states. Statelessness is a massive problem that affects at least ten million people worldwide. Statelessness also has a terrible impact on the lives of individuals. Possession of

⁷ “Myanmar, *The Rohingya Minority: Fundamental Rights Denied*”. Amnesty International. Retrieved August 2005.

⁸ Kyaw, M., 2012. *An assessment of the question of Rohingya’s nationality: legal nexus between Rohingya and the state*.

⁹ Article: 1 of The Convention Relating to the status of Stateless Persons, 1954.

¹⁰ Harun-ur-Rashid, 2000, *Refugee Law with case laws and materials*, Dhaka. P.69.

nationality is essential for full participation in society and a prerequisite for the enjoyment of the full range of human rights.¹¹

3.2. Why Rohingyas are considered Stateless?

Nationality is acquired or lost according to the rules sets by the state. In Myanmar, the Rohingya people have been arbitrarily deprived of their nationality with the “Burma Citizenship Law” of 1982,¹² under the 1982 Citizenship Law, the Burmese government recognizes eight national races: the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan,¹³ as nationals who settled in the country prior to 1823, period of the British occupation, therefore omitting the Rohingya. The Law lists three types of citizenship: Citizens, Associate Citizens and Naturalized Citizens. According to this list Rohingya fall under s.2 (e), which defines a Rohingya as a foreigner, “a person who is not a citizen or an associate citizen or a naturalized citizen.” Citizens are those who belong to the eight national races or those who settled in Myanmar before 1823. Associated citizens are those who qualified for citizenship already under 1948 Law. Naturalized citizens are those who can provide “conclusive evidence” of their residence in Myanmar prior to its independence in 1948. According to the terms of the law, only citizens are “entitled to enjoy the rights of a citizen under the laws of the state with the exception of the rights stipulated from time to time by the council of State.”¹⁴

Rohingya people could try to apply for naturalized citizenship but they shall still present conclusive evidence, which means, among others, that they must be at least eighteen years old and be able to speak one of the national languages.¹⁵ Unfortunately Rohingya language is not recognized as an official language. The 1982 Citizenship Law is another attempt of the military junta to turn the Rakhine state into a Burmanized Buddhist region reducing the Muslims into a stateless minority. The lack of legal status led the Rohingya to flee as a refugee into neighboring countries: Thailand, Malaysia and specially Bangladesh.

As citizenship, or nationality, is a fundamental human right that helps to get the ability to exercise the other human rights. The Rohingya's inability to acquire citizenship status is thus integral to the discrimination and human rights abuses they suffer in Myanmar. Where an entire group is arbitrarily deprived of citizenship on the basis of nationality or ethnicity, there is a strong argument to be made that this creates discrimination rising to the level of persecution.

3.3. The Rohingyas in Bangladesh

The Rohingya genocide is a series of ongoing persecutions by the Myanmar government of the Rohingya people. The largest wave of Rohingya to flee Myanmar happened in 2017, which resulted in the largest human exodus in Asia since the Vietnam War. The crisis forced over a million Rohingya to flee to other countries, most fled to Bangladesh. Bangladesh hosts the biggest refugee camps in the world. It became so suddenly and brutally. The flow of Rohingya refugees was not a trickle but like a monsoon flood. Bangladesh, itself, struggling to cope with high levels of poverty and population density, has been hosting refugees from Myanmar for nearly three decades. There are more than a million Rohingya refugees in Cox's Bazar now. After Africa and the Middle East, Asia is the leading generator of refugees. Southeast Asia is one of Asia's highest refugee producing regions, and Myanmar is the largest contributor to this sector.¹⁶ Bangladesh is one of the most densely populated countries in the world. Movement of Rohingya

¹¹ *UNHCR-Stateless people*, available at [www.unhcr.org/Home/WhoWe Help](http://www.unhcr.org/Home/WhoWeHelp); [Accessed 21 January, 2021].

¹² Myanmar Citizenship Law of 1982. Pyithu Hluttaw Law No.4 of 1982.

¹³ *Ibid.* s.3.

¹⁴ *Ibid.* s.53(c).

¹⁵ *Ibid.* s.44 (b), (c).

¹⁶ Ullah, A. K.M. and Ahsan, 2016, Rohingya crisis in

Myanmar: Seeking justice for the stateless, The

Journal of Contemporary Criminal Justice <https://doi.org/10.1177%2F1043986216660811>. [Accessed 25 February 2021]

refugees brings additional burden and problems on Bangladesh for example: burden on resources, national security risks, burden on infrastructure and employment market. This country has taken the burden of Rohingya refugees purely on humanitarian ground. In spite of its small economy and resources constraints the government of Bangladesh assures a comfortable living for relocated Rohingyas on the island named 'Bhashan Char'. It has provisions for yearlong supply of fresh water, agricultural plots, uninterrupted power supply, one hundred and twenty cyclone shelters, two hospitals, four community clinics, mosques, telecom services, teaching centers, playground and police station. USD 350 million was spent to develop the facility. Bangladesh is facing and will face grave economic, social and environmental challenges due to the emergent Rohingya crisis. The impact of these challenges will be prevalent as long as the Rohingyas stay here.

Chapter: 4

Status of Rohingya: Under International Law

Statelessness is a widespread problem today. With the growing awareness of the global impact of statelessness on individuals and societies, both governments and the international community are increasingly turning to the UN Statelessness Conventions for guidance. The 1954 Convention¹⁷ remains the primary international instrument that regulates the status of non-refugee stateless persons and ensures that stateless persons enjoy human rights without discrimination. It provides the stateless with an internationally recognized legal status, offers them access to travel documents, identity papers and other basic forms of documentation, and sets out a common framework with minimum standards of treatment for stateless persons. Accession to the 1954 Convention therefore allows States to demonstrate their commitment to human rights gives individuals access to protection and mobilizes international support for the State to adequately deal with the protection of stateless persons.

Despite international recognition of the right to a nationality or citizenship, new cases of statelessness have continued to arise. Tackling statelessness still poses a major challenge in the 21st century. There are an estimated Twelve million stateless people around the world today. While some stateless persons are refugees at the same time, most are not. Stateless persons who are also refugees are entitled to the international protection afforded by the 1951 Convention relating to the Status of Refugees. To address the protection problems faced by stateless persons, in particular those who are not refugees, the international community adopted the 1954 Convention relating to the Status of Stateless Persons. This treaty aims to define the status of stateless persons and to ensure the widest possible enjoyment of their human rights. The Convention complements provisions of international human rights treaties. A growing number of States are turning to the 1954 Convention as a framework for the protection of stateless persons. This reflects understanding that the 1954 Convention relating to the Status of Stateless Persons is the only legal instrument that formally establishes the international legal status of "stateless persons". The Convention also addresses many practical concerns relating to the protection of stateless persons – such as access to travel documents – that are not dealt with elsewhere in international law. While the 1954 Convention had only 65 States Parties on 1 July 2010, more States are acknowledging that it is a central component of the international regime for enhancing the protection of the rights of stateless persons.¹⁸

According to Universal Declaration of Human Rights, "everyone has the right to a nationality" and the government has the responsibility to ensure the nationality to every citizen. Stateless people are often without a legal status and feel left out of society. The 1954 Convention recognizes the international legal status of "stateless persons". Article 1 establishes the definition of a stateless person in international law: someone "who is not considered as a national by any State under the operation of its law". This definition is now also recognized to be customary international law. Persons who satisfy the definition are entitled to certain rights and duties contained in the 1954 Convention. The Convention does not cover so-called de facto stateless persons for whom no universally accepted definition exists in international law. However, de facto stateless persons are entitled to protection under international human rights law. Stateless refugees are

¹⁷ Convention Relating to the Status of Stateless Persons, 1954.

¹⁸ Protecting the Rights of Stateless Persons: The 1954 Convention Relating to the Status of Stateless Persons. 60th year of UNHCR the UN Refugee agency.

covered by the 1951 Convention relating to the Status of Refugees and should be treated in accordance with international refugee law.

United Nations High Commissioner for Refugees (UNHCR) has had a mandate for stateless persons ever since the Office was established in 1950. UNHCR's mandate began to extend more to stateless persons since 1974. The UNHCR has a special mandate to prevent and reduce statelessness and to protect stateless persons. The UNHCR has an obligation to fulfill this mandate to the best of its ability and states should at all times fully cooperate with the UNHCR in the fulfillment of this mandate that is why there was the adoption of the Convention Relating to the Status of Stateless persons in 1954.

The Convention Relating to the Status of Stateless Persons, 1954 provided the definition of stateless person. Article 1(1) of the convention is about the definition of stateless persons. The issue under Article 1(1) is not whether or not the individual has a nationality that is effective, but whether or not the individual has a nationality at all. Although there may sometimes be a fine line between being recognized as a national but not being treated as such, and not being recognized as a national at all, the two problems are nevertheless conceptually distinct: the former problem is connected with the rights attached to nationality, whereas the latter problem is connected with the right to nationality itself.¹⁹

In the case of Rohingya people, it can be said that they are deprived of the nationality. After the Burma Citizenship Law 1982, it is almost impossible for the Rohingyas to gain citizenship or nationality. Since the Rohingyas have no other nationality, the effect of The 1982 Citizenship Law is to render them stateless.

The definition in Article 1(1) applies whether or not the person concerned has crossed an international border. That is, it applies to individuals who are both inside and outside the country of their habitual residence or origin. The Rohingyas were forced to flee from their country because of well-founded fear of persecution, but many of them still living within the territory of Myanmar and have not crossed the international border. Both the Rohingya who are living in Myanmar and who are living in other countries like Bangladesh, Thailand, Malaysia etc. can be considered as stateless persons according to the 1954 convention. The matter of crossing the international border is not relevant to define the status of Rohingya people as stateless.

The definition of 'stateless person' should be interpreted due to its ordinary meaning. At the time of applying the definition of statelessness, it is important to look first at the question of 'State', whether that entity qualifies as 'state' or not. In situations where a State does not exist under international law, the persons are ipso facto considered to be stateless unless they possess another nationality. The Rohingya people are victims of discrimination and they are not accepted by the Burmese government as citizens.²⁰ So they are stateless according to the definition of the 1954 convention.

Under International Law, human rights must be guaranteed to non-citizens as well as citizens. The principle of equality and non-discrimination prohibits any discrimination based on the lack of nationality status. Therefore, the legal status of stateless people under national law must reflect applicable provisions of international human rights law. The 1954 Convention is supported by the international human rights law, but some international provisions are based on higher standards of treatment or rights not found in the Convention at all. At the same time, the 1954 Convention maintains still its significance as it addresses matters specific to statelessness, such as provision of identity papers and travel documents that are not addressed elsewhere. On the other hand, the 1961 UN Convention on the Reduction of Statelessness has an important effect on international human rights law. The Rohingya people, who are living within the territory of Myanmar and outside the country, can be considered as stateless according to the international norms related with the matter of statelessness.

¹⁹ Expert Meeting; the Concept of Stateless Persons under International Law Summary Conclusions,

Expert meeting organized by the Office of the United Nations High Commissioner for Refugees, Prato, Italy, 27-28 May 2010.

²⁰ *Burma's Treatment of the Rohingya and International Law*, 2013, available at www.burmacampaign.org.uk/... [Accessed 22 February, 2021].

Chapter: 5

International Instruments to Protect Human Rights of Stateless Rohingyas

If a state is clearly failing to protect its populations, the international community must be prepared to take effective step to protect populations, in accordance with the Charter of the United Nations. The necessity of international protection for stateless persons is premised on the fundamental fact that they are unable to avail the protection of their country of origin. The protection of these people can be either temporary or permanent. International agencies such as UNHCR provide temporary or permanent protection to the refugees, stateless persons, migrants and internally displaced persons. Statelessness, the condition of not being a national from any state, is one of the most serious but unknown violation of human rights and because of this the United Nations have been increasingly motivated to deal with the problem of statelessness. As stateless persons are not able to enjoy the state protection, the international protection is very important for them.

In South-East Asia, most countries do not have any legislation regulating the rights of stateless persons. UNHCR has legislation regarding the determination of the status of the stateless persons but most of the countries of this region are not the member of those legislations. Regarding statelessness, only one State in the sub-region has signed the 1954 Convention relating to the Status of Stateless Persons. UNHCR advocates for States in the region to ensure an adequate protection space for refugees and stateless people, as well as for the establishment of effective legal and normative frameworks governing international protection. In the South-East Asian context, where mixed-migration movements prevail, a number of States implement detention, border-control, and restrictive maritime and other policies to manage irregular migration and ensure national security, which at times are detrimental to international protection. Furthermore, people-smuggling and human-trafficking networks in the sub-region have flourished, along with an increase in irregular maritime movements and a loss of life at sea. The inter-communal conflict that broke out in mid- and late 2012 in Myanmar's Rakhine State, which resulted in large-scale internal displacement and the need for emergency humanitarian response inside the country, has also driven a growing number of refugees from Rakhine State to depart to or transit through various countries in the region, including by sea in unseaworthy and overcrowded boats.²¹

There are two UN statelessness conventions which are working to protect the rights of the stateless persons. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are key legal instruments in the protection of stateless people around the world and in the prevention and reduction of statelessness. While they are complemented by regional treaty standards and international human rights law, the two statelessness conventions are the only global conventions of their kind. A growing number of States are turning to the 1954 Convention as a framework for the protection of stateless persons. This reflects understanding that the 1954 Convention relating to the Status of Stateless Persons is the only legal instrument that formally establishes the international legal status of 'stateless persons'. The Convention also addresses many practical concerns relating to the protection of stateless persons – such as access to travel documents – that are not dealt with elsewhere in international law.²²

States bear the primary responsibility for preventing and reducing statelessness. One of the important parts of UNHCR's work is the promotion of accessions to the 1961 convention on the Reduction of Statelessness. All states should institute safeguards against statelessness regardless of whether they are parties to the 1961 convention or not. The UN General Assembly has specially requested UNHCR to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation. UNHCR has therefore provided such advice to dozens of governments around the world on both prevention and reduction of statelessness.

As Myanmar is not a member to the 1954 convention relating to the status of stateless persons, it has some responsibility towards the stateless Rohingyas. According to the international law the human rights should

²¹2014 UNHCR regional operations profile-South-East Asia; Overview; available at www.unhcr.org/.../Asia_and_the_Pacific/South-East_Asia. [Accessed 22 March, 2021]

²² Supra note: 18

be provided to the non-citizen as well as the citizen of the country. Myanmar is party to the CEDAW²³, to the CRC²⁴ and to the CRPD²⁵. All States need to comply with the international obligations under human rights law. State sovereignty is subject to certain limits in relation to nationality matters, through international treaties and customary law. This is what “protection” means: respecting, protecting and fulfilling the rights of stateless persons. These include the right to education, to work, to healthcare, to get married, to access courts, to travel and many others. In accordance with their human rights obligations, States bear a responsibility to protect these rights for all persons within their jurisdiction, including those who are stateless.²⁶ The 1948 Universal Declaration on Human Rights provides a set of human rights and fundamental freedoms, which should be applicable all over the world. Now-a-days, these norms are considered as principles of international customary law. Furthermore, Myanmar is a member of the United Nations and is obliged by the Charter of the United Nations to take “joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”.²⁷

States have the responsibility for the promotion and protection of human rights without distinction as to race, sex, language and religion. This means that Stateless persons enjoy the following internally recognized rights:

- The right to life, liberty and security of the person provided in Article 3 of the UDHR.
- The right not to be subjected to torture, or to cruel, inhuman or degrading treatment or punishment, as enshrined in Article 5 of the UDHR; Article 37 of the CRC prohibits the torture or cruel, inhuman or degrading treatment or punishment of any child.
- The right to liberty and freedom from arbitrary detention according to Article 9 of the UDHR.
- The right to non-discrimination and equality under Article 2 of the UDHR; Articles 13(1) (b) and 55(c) of the Charter of the United Nations also enshrine the right to non-discrimination. Similarly, Articles 2 of the CRC and CEDAW prohibit discrimination on any ground against children and women respectively.
- The right to an adequate standard of living including food, clothing, housing and medical care is protected by Article 25(1) of the UDHR. Article 24 of the CRC protects the right to the highest attainable standard of health of all children and article 27 states, “the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.”
- The right to recognized everywhere as a person before law.²⁸
- The right to be treated with respect and humanity at the time of detention.²⁹
- The right to have access to basic services. Like- food, shelter etc.³⁰
- The right to receive medical care and special health care of the children.³¹
- The right not to be held in slavery.³²

These protections are provided by the international instruments to protect the basic human rights of the stateless persons. But stateless Rohingya live in a legal limbo. Without protection from any state, they are often exploited and particularly women and children may be more vulnerable to smuggling, harassment and violence. Since they are not recognized as citizens of Myanmar or any other country, they are also denied the

²³ Convention on the Elimination of All Forms of Discrimination against Women, 1979.

²⁴ Convention on the Rights of the Child, 1989.

²⁵ Convention on the Rights of Persons with Disabilities.

²⁶ United Nations High Commissioner for Refugees (UNHCR), 2008. *Statelessness: An Analytical framework for Prevention, Reduction and Protection*, available at <http://www.unhcr.org/49a271752.html>. [Accessed 23 February, 2021].

²⁷ Article: 56, United Nations Charter.

²⁸ Article: 3, Universal Declaration of Human Rights, 1948.

²⁹ Ibid. Article: 10, 11.

³⁰ Ibid. Article: 25 (1).

³¹ Ibid. Article: 25 (2).

³² Ibid. Article: 4.

rights such as the right to reside legally, to register birth of a child, to receive education and medical care and to access formal employment and housing. They are also not allowed to own property, to open bank account, or to get married legally.³³ The primary responsibility to protect the stateless Rohingya rests on Myanmar but the Government of Myanmar ignoring the facts related to the stateless situation of Rohingya. The citizenship law of 1982 violates the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and international norms prohibiting discrimination of racial and religious minorities, such as the UN General Assembly Resolution on the International Convention on the Elimination of all forms of Racial Discrimination.³⁴

The 1954 convention is the primary international instrument, which protects the rights of the stateless persons. This convention ensures the rights to the stateless persons without any discrimination based on race, religion, sex etc. and gives a series of special measures for them. It provides the stateless persons an international legal status, which helps them to enjoy the basic human rights. This legal status offers them access to travel documents, identity papers etc. This convention provides minimum standard of treatment towards the stateless persons. Accession to 1954 convention allows the State to demonstrate the commitment of protecting human rights and providing international support to these unfortunate people.

The Convention Relating to the Status of Stateless persons, 1954 ensures different types of rights and facilities to the stateless persons to protect their human rights and to help them in having a better life within a foreign territory. The 1954 convention has provided the following rights:

- Right to administrative assistance arranged by the contracting state in whose territory the person is residing.³⁵
- Right to freedom of movement by the contracting state to move freely within its territory.³⁶
- Right to have identity papers who does not possess a valid travel document.³⁷
- Right to have travel documents.³⁸
- Right of self-employment.³⁹

- Right of being naturalized by the contracting country.⁴⁰
- Right of association and trade union⁴¹ etc.

These are some rights which have been given to the stateless persons through the convention by the authority of the contracting state. These norms or rules have been made to deal with the difficulties, faced by the stateless people. Considering the situation of these people the convention stipulates that they should be treated as national of the state by the receiving country with regard to certain rights already mentioned. This convention also provides the duties of the stateless persons towards the receiving country to obey the rules and regulations of that country.⁴² The convention has provided the naturalization process to reduce the number of stateless people. When the stateless person acquires an effective nationality, the status of stateless comes to an end then. The definition of stateless persons was established by the 1954 Convention but it is

³³ Arif Ahmed, 2014, *International Law of Refugees (with Bangladesh perspective)*. P.208.

³⁴ Myanmar 'Violates International Law' over Rohingya, available at [www.ibtimes.co.uk>Society>politics](http://www.ibtimes.co.uk/Society/politics). [Accessed 23 March, 2021].

³⁵ Article: 25 of The Convention Relating to the Status of Stateless Persons, 1954

³⁶ Ibid. Article: 26.

³⁷ Ibid. Article: 27.

³⁸ Ibid. Article: 28.

³⁹ Ibid, Article: 18.

⁴⁰ Ibid. Article: 32.

⁴¹Ibid. Article: 15.

⁴²Ibid. Article: 2.

not the only international instrument to protect the human rights of the stateless persons. There is another Convention called the Convention on the Reduction of Stateless, 1961, which was adopted by the General Assembly of the United Nations on 4 December, 1954. There are also many other international instruments, treaties, norms and rules to protect them. The UN assembly gives the responsibility to protect the refugee and the stateless persons to the UNHCR not only because the problem of stateless person and refugee sometimes overlaps but also because the stateless persons need similar type of approach to protect them like refugees by the international instruments.

The 1954 Convention Relating to the Status of Stateless persons and the 1961 Convention on the Reduction of Statelessness are key international legal instruments to define the status and to protect the human rights of the stateless people and Myanmar is not a contracting party to these conventions. But as member country of United Nations Myanmar has responsibility to protect the human rights of stateless Rohingyas.

Chapter: 6

Steps to Reduce the Number of Stateless Rohingya

The Rohingya people rarely draw any attention of the local and global policy makers as the most neglected Muslim minority in Myanmar. Stateless persons face multi-pronged psycho-social and human security threats. Four major dimensions of can be mentioned, they are: politico-military, economic, social and environmental. While primary responsibility for these people's security rests with the host government, it has been repeatedly stressed that the problem of security should be an issue for which a multiplicity of actors share responsibility stateless persons themselves, local populations, country of origin, host country, donor states, regional organizations, the UNHCR its operational partners.⁴³ The primary responsibility to save the stateless Rohingya rests on the Government of Myanmar and the regional neighbor countries also have legal and humanitarian obligations towards these people, as does the international community. The Rohingya problem begins at Myanmar and could well end there with effective steps and enough political will. Failing that, regional countries and the wider world should act to address the displacement and statelessness, and to stop the violence and violations. Measures should be taken by the state of origin, the neighbor countries and by the international community mutually. Measures like making proper framework and laws to manage the stateless persons, providing protection against violence, ensuring food, shelter, health care etc.

6.1. Findings and Recommendations

Rohingyas can be considered both as refugee and stateless people and their number will increase if proper steps are not taken by the authority. To reduce the number of stateless Rohingya there is Convention on the Reduction of Stateless, 1961. This convention provides guideline to reduce the number of stateless persons. Articles 1 to 4 are about saving the children from being stateless. States shall grant nationality to foundlings found within the territory.⁴⁴ The convention permits the states to grant the nationality of any children on the basis of some condition like habitual residence. Articles 5 to 7 prevent statelessness in later life by requiring prior possession of or assurance of acquiring another nationality before a nationality can be lost or renounced. There are two exceptions regarding this matter. The States may withdraw nationality from naturalized persons who subsequently take up long-term residence in abroad and from nationals who were born abroad and are not resident in the state when they attain majority, provided certain other conditions are met.⁴⁵ According to Article 8 of this convention, statelessness can be reduced by preventing deprivation of the nationality by the authority of any contracting State. As deprivation of nationality can cause the situation of statelessness, prevention of such deprivation will help to reduce the number of stateless persons. The 1961 convention states that a contracting state may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.⁴⁶ State succession is another cause of creating the

⁴³ Lam YaMostaque, *International Law for Protection of rohingya refugees*, available at www.academia.edu/.../International_law_for_protection_of_rohingya-refugees. [Accessed 24 March, 2021]

⁴⁴ Article: 2, Convention on the Reduction of Statelessness, 1961.

⁴⁵ Supra Note: 32, P.210.

⁴⁶ Article: 9.

problem of statelessness. This convention provides that every treaty between Contracting States providing for the transfer of territory shall include provisions designated to secure that no person shall become stateless as a result of the transfer.⁴⁷ This Article provides the security of nationality of the persons at the time of succession. Thus the 1961 convention provides various ways to reduce the number of stateless persons.

Myanmar is not a contracting State of 1961 convention and so that this country is not legally obliged to follow the rules and regulations, which have been set for the process of reducing the number of stateless persons, by the Convention. The 1982 citizenship act of Myanmar promoted the problem of statelessness of the Rohingya Muslims. The 1982 Law created discrimination against Rohingya by arbitrarily depriving them of their Burmese (Myanmar) citizenship. The deprivation of one's nationality is not only a serious violation of human rights but also an international crime. The law continues to create outflows of stateless people, which overburden other countries posing threats to peace and security within the region. About 1.5 million Rohingya people now live in Saudi Arabia, Bangladesh, Pakistan, UAE, Thailand, Malaysia, India, Indonesia, USA, UK, Republic of Ireland, Australia, Canada, New Zealand, Japan, and any other place they can find a shelter. The Rohingya refugee crisis with their boat people has become a regional problem of international dimension.⁴⁸ To reduce the number of stateless Rohingya, the amendment of 1982 is very important. Without the reformation of this law the problem of statelessness of the Rohingya people is not possible. The only solution to protect the rights of stateless Rohingyas within Myanmar and in other countries entails the amendment of the 1982 Citizenship Act. Key in this process is the political commitment of the Myanmar Government to ensure rule of law and human rights for all the people of the Rakhine State, in order to end deep racism and the way ethnicity and race is viewed in Myanmar. The biggest limitation to convince the Government of Myanmar to repeal or amend the Citizenship Law is the public attitudes towards the Rohingya. Myanmar nationals perceive them differently for reasons of their religion. Addressing racism and reimagining Myanmar as a multi-ethnic and multi-religious country is the long-term solution.⁴⁹

To reduce the number of Rohingyas some steps can be taken by the Government of Myanmar and International Community, like-

- Amendment of Citizenship Law and implementation of the recommendations of the Advisory Commission on Rakhine State.
- Giving the basic human rights to the Rohingya people.
- Providing nationality to these people.
- Following the doctrine of Non-refoulement.
- Doing resettlement of the Rohingya Muslims.
- Raising awareness about the miserable condition of these stateless people etc.

The stateless Rohingyas are suffering a lot as they do not have the basic rights of life because of not having the legal status by any state of the world. They are not accepted anywhere, not in Myanmar or not in any other country. Some of them are living illegally in the territory of other countries, some are floating from here to there by boat, some are living vulnerable life in the refugee camps without any facilities and some are living in Myanmar and being victim of violence there. These people have the rights to live a good life like a human being and for this we should take immediate steps to solve the problem of Stateless Rohingya.

Chapter: 7

Conclusion

It has been verified that the Rohingyas are both stateless and refugees. The causes to their refugee hood can be categorized as primary factors (as enumerated in the 1951 Convention), secondary factors (as recognized in the 1969 OAU Convention), and auxiliary factors (such as economic, ecological and demographic

⁴⁷ Article: 10.

⁴⁸ Dr. Habib Siddiqui, 2012, *The Rohingya problem: Why and How to Move Forward*; Kaladan Press Network.

⁴⁹ Silvia di Gaetano, (2013), *How to Protect the rights of the stateless Rohingya people in Myanmar*, available at www.academic.edu/.../How_to_protect_the_stateless_Rohingya. [Accessed 27 March, 2021].

change). The rejection of citizenship rights, denial of freedom of movement, expulsion campaigns, forced labor, removal from their lands and property, violence and physical torture contributed to the making of the Rohingyas stateless and refugees.⁵⁰

It is not possible to believe that the Myanmar Government will suddenly change the Citizenship Law in favor of Stateless Rohingyas. In fact, with the possible exception of some exile groups, twenty seven none of the recognized ethnic groups in Myanmar have supported the cause of the stateless Rohingyas. Even Aung San SuuKyi is surprisingly silent on this issue. The primary responsibility to take step rests on the Government of Myanmar to solve the problem of stateless Rohingyas. After that the neighbor countries and the international authority will have to take effective measures to reduce the number of these unfortunate people through different process and by providing nationality. The government of Myanmar has a legal obligation to protect all persons within its territory, regardless of whether they are citizens or stateless. Further violence is likely to happen and the impact on the region would generate more refugees, a political failure for Myanmar and at the same for the role of ASEAN in the Region. In the meantime, statelessness can also lead to inter-State conflicts if the affected population moves from one country to another.⁵¹ It would be better if the South-Asian countries deal with the problem of statelessness in a united way.

The Convention Relating to the status of Statelessness and the Convention on the Reduction of statelessness are the important guidelines to minimize this problem. The south-Asian countries can take a step forward on the way to solve this problem by being signatory to these two conventions. Acceding to the 1954 Convention relating to the Status of Stateless Persons is a way for States to demonstrate State commitment to treat stateless persons in accordance with internationally recognized human rights and humanitarian standards. The rules and regulations of these international instruments ensure that stateless persons have access to the protection of a State so that they are able to live with security and dignity. Provides a framework to identify stateless persons within their territory and ensure enjoyment of their rights, including through issuance of identity documentation and travel documents. Both of these two documents promote recognition of the international legal status of “stateless person” and the common international framework for protection, thereby increasing legal transparency and predictability in State’s response to statelessness. The 1954 convention and 1961 convention increase the security and stability by avoiding exclusion and marginalization of stateless persons and also prevent displacement by promoting the protection of stateless persons in the country in which they find themselves.⁵² Another important sector of these conventions is to mobilize the international authority about the protection of the stateless persons. The prominence of statelessness as an area of international concern rises as a correlative of the number of people who either have no nationality or have no effective nationality. Statelessness is often a mixed question of law and fact. It is a matter of law in a negative sense, in that a stateless person is defined as a person who is not recognized as a citizen by any state under its law. It is also a factual issue, in that statelessness may result from historical events, and it may be perpetuated by reason of failure to acquire new nationality. Evidence conclusively determinative of statelessness, like all evidence of negative conditions, will often be missing, however, and interferences as to the lack of protection may have to be drawn from all the circumstances, including any available documentation and historical context.⁵³ In case of stateless persons, history has shown that the question of nationality is not merely a legal one of whether or not a nationality has been ascribed. In certain cases, having a nationality may push individuals to seek different status, may itself lead to statelessness.⁵⁴

Statelessness is a miserable condition and the Rohingya people in Myanmar are one of the largest stateless groups of the world today. They are excluded, persecuted and having a vulnerable life to live. The human rights of these people are being abused because of their statelessness. The complex situation of Rohingya Issue affecting many countries, so it is very important to take proper steps to reduce the problem. The

⁵⁰ Supra note: 41.

⁵¹ Supra note: 46.

⁵² Supra note: 21.

⁵³ Goodwin-Gill, 2007, *the Refugee in International Law*, 3rd Edition, Clarendon Press, Oxford.P.246.

⁵⁴ B.S. Chimni, 2000, *International Refugee Law: A Reader*, Sage Publications, New Delhi. P.73.

stateless Rohingyas are unfortunate people as they do not have the nationality or Citizenship of Myanmar; on the other hand, they are not accepted by the neighbor countries. Denial of fundamental rights like freedom of movement, right to citizenship, right to marry and forming family etc. causing harm to the Rohingya people. Their situation must be changed by the Government of Myanmar, the other countries of this region and as well as by the International community. As a human being every Rohingya has the Right to lead a life as human and enjoy all the rights which are provided to the people, who have the nationality of any country. The Rohingya as an ethnic group that is a part of our “humanity” should have access to the assistance and help of the international mechanisms in their survival against the threat of genocide, ethnic cleansing, and crimes against humanity, in order for them to live collectively within the territorial boundaries they call “home”.

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