



GENEVA CENTRE FOR HUMAN RIGHTS ADVANCEMENT AND GLOBAL DIALOGUE

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CENTRE DE GENÈVE POUR LA PROMOTION DES DROITS DE L'HOMME ET LE DIALOGUE GLOBAL

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Background paper

**For a possible Special Session of the United Nations Human
Rights Council in December 2017 on the human rights situation of
the Rohingya Muslim population in Myanmar**

December 2017

Executive summary - Ambassador Jazairy: “Myanmar’s Rohingyas are denied the right to have rights”

Further to the appeal made to the member States of the Human Rights Council by the Geneva Centre for Human Rights Advancement and Global Dialogue (hereinafter “*The Geneva Centre*”) on 11 and 12 October 2017 on the human rights situation of the Rohingya Muslim population, a Special Session on the situation in Myanmar will hopefully take place in December 2017 in response to the importance and urgency of the situation.

Although Myanmar’s recent political reforms and “*opening to the world*” have brought welcome change and transformation to the country, the Muslim population in the State of Rakhine continues to be denied access to basic human rights as the “*1982 nationality code was not changed*” highlights a background note prepared by the Geneva Centre on the human rights situation of the Rohingya Muslim population in Myanmar (available on pages 5-19 of this document). It is also argued that the 2008 Constitution is also impeding the realization of full citizenship rights for the Rohingyas which cannot be left unaddressed:

“The 2008 Constitution distinguishes between citizens and associated citizens with benefit of jus soli only for 3rd generation immigrants. It is reminiscent of Ancient Greece. In those days citizens co-habited with other natives of inferior status.

“Such provisions are also an expression of the refusal of diversity which prevails under different pretexts in modern times. This refusal seldom extends however, as it does in Myanmar, to denial of citizenship, in other words, to denial of the right to have rights.”

The background note likewise emphasizes that promises to end the outflow of Rohingya refugees heading towards neighbouring Bangladesh have not been met, despite Myanmar’s State Counsellor Daw Aung San Suu Kyi pledge to redress the situation by 5 September 2017.

Even though the humanitarian crisis in Myanmar has reached an unprecedented level since the outbreak of hostilities in 2012, it is argued that a “*total absence of foresight from the international community on the implications of not attending to a festering crisis.*” “*It should have been expected*” – highlights the Geneva Centre – “*that inaction on its part would foster radicalization which is what happened.*”

It is likewise observed that Resolution 29/21 of 22 July 2015 was the only resolution adopted by the UN Human Rights Council dealing specifically with the

gross human rights violations inflicted on the Rohingya Muslims: *“All other resolutions, whether from the General Assembly or from the Council limit themselves to mentioning in general terms ‘The situation of human rights in Myanmar’”* underlines the Geneva Centre.

Against this background, the Geneva Centre echoes the UN Secretary General’s statement on 28 September 2017 to the UN Security Council that the time had come for action. The background note appeals to the Human Rights Council to address more specifically the situation of the Rohingya Muslims in its forthcoming sessions. It likewise calls upon the government of Myanmar to permit UN’s Myanmar Fact-Finding mission to visit the Rakhine State in line with the provisions set forth in UN Human Rights Council Resolution 34/22 of 24 March 2017 and to provide unfettered access to the Special Rapporteur on Myanmar.

The background note adds that the forthcoming holding of a Special Session on the Rohingyas in Myanmar at the UN Human Rights Council is a step in the right direction to address the plight of the Rohingya population in Myanmar:

“The Geneva Centre addressed an appeal to all member States of the Human Rights Council on 11 and 12 October 2017 to convene a Special Session on the situation of the Rakhine Muslims urgently. This appeal has been heard and the beginning of December was put forward for this important meeting.”

The Geneva Centre also recommended to member States of the Human Rights Council on 31 October 2017 that the title of the forthcoming Special Session be *“Situation of human rights of Rohingya Muslims and other minorities in Myanmar”* which would correspond to the title of Resolution 29/21 adopted by the UN Human Rights Council on 22 July 2015.

Lastly, the background note concludes that *“the crisis situation of the Rohingyas in Myanmar is a reminder that diversity in modern times cannot be stamped out. Like a pressure cooker on a hot plate, it needs a safety valve or it explodes. This is also a reminder that ethnic cleansing under any form is not an alternative to, but is also a harbinger of violence.”*

Background note on the human rights situation of the Rohingya Muslim population in Myanmar

The Geneva Centre on the Advancement of Human Rights and Global Dialogue is organizing in June next year a major conference on the theme of “*Religions, Creeds and/or Other Value Systems: Joining Forces to Enhance Equal Citizenship Rights*” in collaboration with UAE authorities, the former Minister of Foreign Affairs of Algeria (**H. E. Lakhdar Brahimi**), the General Secretary of the World Council of Churches (**Reverend Dr. Olav Fykse Tveit**), the Secretary General of the International Catholic Migration Commission (**Monsignor Robert J. Vitillo**), the President of Bridges to Common Ground (**former US Congressman and US Ambassador at UN Honourable Mark D. Siljander**) and others.

Citizenship in conceptual terms is clear enough. It is defined by the Constitution and the laws of each country and encompasses rights enjoyed by, and duties incumbent upon, individuals sharing a common allegiance to a country. While these entitlements and obligations are defined by sovereign States, they have to comply with accepted standards of international law and in particular with the International Bill of Rights.

Citizens are individuals that are recognized by custom or law to be members of a given community.

The status of citizens in law has a connotation in terms of entitlement which is broader and more empowering than that of members of a tribal entity or of « subjects ». It has furthermore evolved over time leading to the Enlightenment-prone concept of « civic citizenship ». This constitutes the social basis of modern societies wherein citizenship is based on a shared acceptance of a national constitution and legal system. The characteristic of such progressive societies is that the citizenship they harbour is inclusive, being fully compatible with diversity in all its manifestations, whether in religion, geographic background, gender or social origin.

Contrary to Antiquity, modern societies today are no more divided between citizens on the one side and denizens of inferior status, whether slaves or not, on the other. In such societies the law provides that all citizens have equal citizenship rights even if empirical power relations distort such a pattern in real life.

Advanced societies themselves often have had a problem dealing with diversity despite the fact that secularity is supposed to uphold it. In the XIX- XXth century, this led them to the downgrading of the Other in the practice of colonialism or anti-semitism and in the XXIth century, of xenophobia focussed on islamophobia.

In some advanced countries, diversity has been particularly under threat as a result of a progressive slippage from secularity to secularism. The latter is an ideology intent on erasing any public manifestation of religious affiliation. This is a violation of Article 19 of the UDHR.

One can understand that in societies where one religion remains closely associated to the power structure, dealing with diversity is even more arduous, specially where the democratic tradition is not yet fully rooted in people's minds.

Whether advanced or developing, societies in this century are discovering the effects of globalization and of liberalism. Globalization, despite its obvious economic benefits, makes weaker groups fear the loss of identity attendant on the opening of borders. Liberalism for its part, has introduced freedom, bringing down the fortresses of bureaucracy and authoritarianism but it has not advanced in the present century the cause of equality. Added to the proclivity of certain powers towards military interventionism, these trends have stimulated by reaction, the privatisation of violence, the instrumentalisation of religion and the direction of anger against the ruling elites. Indeed the latter seem to be increasingly cut off from the concerns of ordinary people, thus whipping up populism.

It is against this background that one must assess the tragedy which is unfolding before our eyes in Myanmar. It is not an isolated case in terms of the problématique of advancing equal citizenship rights as all countries to different extents are challenged in this regard. Rather it can be seen as a basket case of what happens when it is not made to prevail in daily life.

The permanent denial of equal citizenship rights to Myanmar's Muslim Rohingya community by the central government has contributed to the inflaming situation and the rise of inter-communal violence in the country.

The Constitution of 2008 followed by the national elections of November 2015 opened a process of democratic evolution in Myanmar. It kept alive however some of the blemishes of the former military regime. The latter was exposed to international sanctions for denying basic rights to the population of all ethnic origins.

The Muslim community has been traced back to the XVIIth century in Rakhine. Many were transplanted by the British colonial power from the Indian sub-continent, in the XIXth century. In XXth century Burma, Britain and Japan were

waging a proxy war in WWII, with the former arming the Muslims and the latter the Buddhists¹.

This did not facilitate Buddhist-Muslim coexistence. Later, Muslim insurgencies took place and with retaliation from the armed forces, hundreds of thousands fled to Bangladesh in 1978 and in 1990.

The Interior Ministry and the Security services were kept under the control of the armed forces after the historic elections of November 2015 and the return to a civilian government in Myanmar. The timid evolution towards incipient democracy seems to have opened up the floodgates for the violent affirmation of untrammelled sub-identities. Some of the 135 officially recognised ethnic groups mostly of Buddhist affiliation with military support attacked Muslims in northern Rakhine, calling them immigrants.

The 2008 Constitution recognized the right only of Muslims who had lived for 3 generations in Myanmar to at last enjoy citizenship rights. One would have expected this to lead to a reduction in inter-communal tension. However the 1982 nationality code was not changed. Freedom of movement, access to the labour market, to education and health services were denied to or restricted for, Muslims from northern Rakhine. Over 100,000 were even consigned to squalid IDP camps. Their right to move and even their right to marry and to obtain birth certificates for their children were also restricted.

No wonder inter communal violence broke out again in 2012 leading to hundreds of deaths among Muslims and Buddhists alike. Muslims claiming in vain to be granted official recognition as Rohingyas, fled in droves to neighbouring countries.

Historic elections were held in November 2015 heralding the introduction of democracy and far-reaching reforms. Nevertheless, indiscriminate violence and collective punishment were perpetrated in October-November 2016 after the attack of some border police posts claimed by a violent group called Harakat al Yakin.

On 25 August 2017, a terrorist group calling itself the Arakan Rohingya Salvation Army attacked 30 police posts and an army base. The UN Secretary General condemned these attacks, adding that « the situation has spiralled into the world's fastest-developing refugee emergency and a humanitarian and human rights nightmare ».

¹ *Myanmar's resurgent nationalism shapes new political landscape*, by Thant Myint-U, 5 October 2017



Rohingya villages burnt to the ground by Myanmar security forces.

Photo credit: Alwaght.com

Intensified persecutions followed against Muslims in northern Rakhine by the armed forces and Buddhist vigilante groups resorting to disproportionate and indiscriminate retaliation against civilians. It involved the rocket assault and burning of some 200 villages, the random shooting of innocents, arbitrary detentions and disappearances and resort to rape as a war weapon.

Since August 2017, over 500,000 civilians, overwhelmingly Rohingya Muslims have fled for their lives across the border in to Bangladesh. With previous waves of refugees, Bangladesh, one of the poorest countries in the world has had to accommodate over time some 900,000 fugitive civilians from Myanmar. It has done so to the best of its ability but is nevertheless overwhelmed.

Commitments were undertaken by the State Counsellor Daw Aung San Suu Kyi to remedy this situation. The 5th of September 2017 was supposed to be a tipping point in a reversal of woeful developments of the past. At the behest of the State Counsellor an Advisory Commission on Rakhine State was established and was chaired by former UN Secretary General Kofi Annan.



Despaired Rohingya refugees receiving food and medical supplies from international aid organizations in Bangladesh. **Photo credit:** Mohammad Ponir Hossain / Reuters

The Commission submitted its report in August 2017². This report was acknowledged by the Secretary General of the UN, Mr Antonio Guterres who indicated in the Security Council that it « provided a blueprint for the longer issue »³. As for the short term issues, Ms Daw Aung San Suu Kyi asserted that outflows of refugees would stop after 5 September 2017.

However, Rohingya Muslims are reported by Bangladesh to be continuously arriving in Cox's Bazar at the rate of up to 20,000 in one single day⁴ while Unicef has indicated recently that 12,000 children continue to cross the border every week⁵. Nor have the flames rising from the burning Rohingya villages stopped billowing over the horizon.

Against this background, the response of the international community to the unfolding tragedy in Myanmar has been lackluster.

There was an absence of foresight from the international community on the implications of not attending to a festering crisis

² *Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine*, Final Report of the Advisory Commission on Rakhine State, August 2017

³ Security Council, 8060th meeting, 26 September 2017

⁴ Statement of the Representative of Bangladesh at the 8060th meeting of the Security Council on 28 September 2017

⁵ Unicef press release of 20 October 2017 entitled: « *Violence in Myanmar driving up to 12,000 Rohingya refugee children into Bangladesh every week* »



Refugee camps in Cox's Bazaar (Bangladesh) housing Rohingya refugees fleeing violent persecution in Myanmar. **Photo credit:** Kaladan Press

It should have been expected that inaction on its part would foster radicalization which is what happened.

The UN General Assembly has indeed expressed concern about the human rights situation in this country since 1991⁶. However it failed to mention during the following 17 years the specific sufferings of the Rohingya minority in Rakhine State although it was fully documented. At that time, the Commission on Human Rights was also silent on Rohingyas except for an incidental mention where it once deplored « restrictions on movements faced by returning Rohingya refugees »⁷

Western power concerns during this period focussed on broader human rights issues and on the military nature of the regime rather than on the treatment of this hounded minority. Thus the EU initiated at the time a Special Session of the Human Rights Council on 2 October 2007. Its purpose was to uphold freedom of opinion and expression and the right to peaceful assembly and association. It also called for the liberation of political detainees including Aung San Suu Kyi. Not a word was included in the outcome resolution⁸ on the fate of the Rohingyas.

⁶ UN General Assembly resolution ref. 46/132 of 17 December 1991 *Situation in Myanmar*.

⁷ Commission on Human Rights resolution ref. 1999/17, 23 April 1999 : *Situation on human rights in Myanmar*, operative paragraph 4(c).

⁸ Human Rights Council resolution S-5/1 of 2 October 2007 *Situation of human rights in Myanmar*.



Myanmar's State Counsellor Aung San Suu Kyi speaks during the 71st session of the United Nations General Assembly at UN New York on the human rights situation in Myanmar.

Photo credit: Associated Press (AP)

It was only after the adoption of the 2008 Constitution which was supposed to herald a new era of democracy that the Human Right Council expressed concern over the situation of the Rohingya ethnic minority. This was done in one out of 23 operative paragraphs of a resolution adopted in March 2009⁹. The UN General Assembly followed suit in December 2009 expressing concern about « discrimination, human rights violations, violence, displacement and economic deprivation affecting numerous ethnic minorities, including, but not limited to, the Rohingya ethnic minority »¹⁰. While the fulcrum of violence targeted the Muslims in northern Rakhine, it is true that there were, to some extent, clashes between the armed forces and other ethnic groups in Kachin and Shan State. It is a fact that the Christian community in Myanmar was also exposed.

Yet despite the worsening situation, only one Human Rights Council resolution adopted in July 2015 actually mentions the Rohingyas in its title as follows: « Situation of human rights of Rohingya Muslims and other minorities in Myanmar »¹¹. All other resolutions, whether from the General Assembly or from

⁹ Human Rights Council resolution ref. 10/27 of 27 March 2009 : *Situation of human rights in Myanmar*, operative paragraph 10

¹⁰ UN General Assembly resolution ref.64/238 of 24 December 2009 : *Situation of human rights in Myanmar*, operative paragraph 14

¹¹ Human Rights Council resolution ref.29/21 of 3 July 2015, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*

the Council limit themselves to mentioning in general terms « The situation of human rights in Myanmar ».



UN Special Rapporteur on Myanmar Professor Yanghee Lee (South Korea) addressing the situation of Myanmar's Rohingya population at the United Nations Office in Geneva. **Photo credit:** UN Photo/Jean-Marc Ferré

The Security Council, where politics prevail, is still riven by differences between veto-wielding powers and has not so far been able to adopt a common stand. UN Secretary General Antonio Guterres warned it « that the escalation of the crisis in northern Rakhine state demanded action»¹².

It appears that bi-cephalism is undermining the unity of purpose of the Burmese authorities and that some military officials are not accountable for grave human rights transgressions. These have been qualified by the High Commissioner for Human Rights¹³ as seeming to be « a text-book example of ethnic cleansing ».

The UN Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have gone even further by jointly calling recently for action in the face of « violations (which) may amount to crimes

¹² Security Council, 8060th meeting, 28 September 2017. Doc.SC/13012

¹³ Opening Statement by Zeid Ra'ad Al Hussein to the 36th session of the Human Rights Council, 11 September 2017

against humanity »¹⁴, a position already expressed by Amnesty International in December 2016¹⁵.



United Nations High Commissioner for Human Rights Zeid Ra'ad Al Hussein (Jordan) referred to the persecution of the Rohingyas as “*a text-book example of ethnic cleansing.*”

Photo credit: UN Photo/Jean-Marc Ferré

There may therefore be a need for the Security Council to prevail on the military to desist from the current persecution of Rohingya Muslims, through the imposition of formatted sanctions *ad personam*. This might avoid unleashing a free-for-all resort to unilateral sanctions which are liable to being challenged for breach of due process.

The Human Rights Council is an essential element of the response of the international community to the tragedy of the Rohingyas. Already the Commission on Human Rights which preceded the Council appointed as from 1992 a Special Rapporteur. While the mandate-holders have changed four times thereafter, the same concern continued to be expressed throughout since then: Every single office-bearer has referred to the plight of the Rohingya Muslims in official reports. The human rights community could not ignore the problem.

¹⁴ UN News Centre : *Myanmar Rohingya abuses may be crimes against humanity, UN rights experts warn* » of 4 October 2017

¹⁵ Report of Amnesty International : « *We are at breaking point* », of December 2016, page 46

However the response of western powers tended to focus on broader political issues relating to the nature of the regime in Myanmar. They all resorted to unilateral coercive measures to stimulate evolution towards civilian government. After the ceasefire agreement of October 2015, the November 2015 national elections and the apparent return to civilian rule, the sanctions were lifted. It is noteworthy that the imposition of sanctions as well as their later removal had absolutely no impact on the terrible sufferings which continued to be imposed on the Rohingya Muslims.

The Commission on Human Rights raised the Rohingya issue from 1999¹⁶ until 2002. Then there was a 6 year lull until 2009 when the Human Right Council resumed expression of concern about this issue annually *pari passu* with the General Assembly but to no avail.

A decision was taken by the 34th session of the Human Rights Council to send urgently an independent fact finding mission. Its mandate was to establish the facts concerning *inter alia* arbitrary detention torture, rape extra-judicial killings, enforced disappearances and forced displacement as well as destruction of property. The purpose of the mission was to stop the persecutions and to promote accountability¹⁷. Unfortunately the mission has not yet been given access to the country.



Chair of the UN Fact-Finding Mission on Myanmar Mr. Marzuki Darusman (Indonesia) during a session at the United Nations Office in Geneva on the human rights situation in Myanmar.

Photo credit: UN Photo/ Jean-Marc Ferré

¹⁶ Commission on Human Rights resolution ref. 1999/17 : « *Situation on human rights in Myanmar* », operative paragraph 4(c)

¹⁷ Human Rights Council resolution ref. A/HRC/RES/34/22, *Situation of human rights in Myanmar*, operative paragraphs 11 to 13.

The mission led by Mr Marzuki Darusman, a former Indonesian Attorney-General, was able to interview many in Bangladeshi camps of the victims of the so-called « clearance operations » carried out by the Burmese armed forces. The 3 mission members were « deeply disturbed » by accounts of killings, torture, rape, arson and aerial attacks reportedly perpetrated against the Rohingya community in Myanmar. Their findings point to a « consistent, methodical pattern of gross human rights violation affecting hundreds of thousands of people »¹⁸. The mission will present its progress report at the March 2018 session of the Human Rights Council and its final report at its September session. It is hoped that by that time it will have been given access to north/west Rakhine.

The Secretary General for his part has emphasized the three immediate steps that need to be taken to address this disastrous humanitarian crisis:

- the suspension of military and security operations
- unfettered access for humanitarian agencies to affected communities
- an exercise of the right of return for those who were forced to flee for their lives.



The Secretary-General of the United Nations Mr. Antonio Guterres calls on Myanmar to end violence against the country's Rohingya Muslims. **Photo credit:** Bebeto Matthews/AP

The last condition may be the trickiest as past experience shows that returns take a long time to achieve. All those hounded out of Myanmar need to have their right

¹⁸ Press release of OHCHR of 27 October 2017 : *Experts of the Independent International Fact Finding Mission on Myanmar conclude visit to Bangladesh*

to citizenship recognised. Citizenship should be granted or recognised on the basis of *prima facie* evidence. It will also take time to change the mindsets of the Buddhist majority. At this time it is influenced by hate-speech and supports the armed forces in the rejection of their own Muslims communities as « Bengali foreigners ». Conditions for a return in safety and dignity still cannot be guaranteed.

As for the longer term, there is general agreement that the report of the Advisory Commission on Rakhine State contains the right answers if the political will can be mustered to implement its recommendations.

One positive development deserves to be mentioned in this grim situation. That is the positive response which has been provided by the international community to the appeal for funding to help support the costs incurred by Bangladesh for hosting the refugees from Myanmar.

The UN Pledging Conference which was held on 23 October 2017 with a target of 434 million \$ with cash contributions received pledges of 360 million \$ and further contributions in kind of 50 million \$. The star performer at the meeting was the UK - the largest donor - followed by the EU, the US and the Scandinavian countries. Non-traditional donors from the Gulf region also made a substantial contribution. This resulted in the remarkable success at the pledging conference.



World leaders meet on 23 October 2017 to pledge funds to Rohingya in Bangladesh at United Nations conference in Geneva, Switzerland. **Photo credit:** Reuters

The Geneva Centre addressed an appeal to all member States of the Human Rights Council on 11 and 12 October 2017 to convene a Special Session on the situation of the Rakhine Muslims urgently. This appeal has been heard and the beginning of December was put forward for this important meeting.

Thus to conclude, the 2008 Constitution distinguishes between citizens and associated citizens. It is reminiscent of Ancient Greece. In those days citizens co-habited with other natives of inferior status.

Such provisions are also an expression of the refusal of diversity which prevails under different pretexts in modern times. This refusal seldom extends however, as it does in Myanmar, to denial of citizenship, in other words, to denial of the right to have rights.

It is nevertheless characteristic of both countries where one religion is closely associated with the State as is the case in Myanmar but not only there or in others where secularity has degenerated into secularism.

The crisis situation of the Rohingyas in Myanmar is a reminder that diversity in modern times cannot be stamped out. Like a pressure cooker on a hot plate, it needs a safety valve or it explodes. This is also a reminder that ethnic cleansing under any form is not an alternative to, but is also a harbinger of violence.

Finally it is logically unwarranted as diversity's mainstreaming into socio-economic development will make the latter sustainable and holds promises for overall growth in harmony.