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MYANMAR'S DEMOCRACY STRUGGLE: THE IMPACT OF COMMUNAL VIOLENCE UPON ROHINGYA WOMEN AND YOUTH

Engy Abdelkader[†]

Abstract: Since the end of its military rule in 2011, the international community has rewarded Myanmar for perceived political and economic reforms. Still, Burma's transition to democratic governance is beset by an unfortunate human rights record and marred by state-sanctioned violence against members of its minority Rohingya Muslim population. This article explores the conflict's impact upon Muslim women and children. It argues that the group is experiencing human rights violations that are specific to its identity and have yet to be adequately recognized and addressed. These violations emanate from discriminatory population control regulations, gender based violence, human trafficking, hard labor, and educational inequality. Such a perspective has not yet been examined in legal scholarship and discourse. This article further argues that official Burmese¹ policies and normative practices targeting the country's Muslim population continue to compromise Burma's local, regional, and global security interests. To help protect those interests and prevent further human rights violations, this article proposes a number of related legal and policy recommendations, including: a) amending the 1982 Citizenship Act; b) engaging in public education campaigns to help dispel many of the myths that represent causal factors in anti-Muslim violence; c) providing resources and support for victims of gender based violence; and d) exercising increased vigilance in identifying, investigating, and prosecuting all those who facilitate human trafficking.

I. INTRODUCTION

"I wouldn't have to live this life if I wasn't a Muslim." Anwar Sardad, a ten-year-old child laboring in Myanmar, October 2013.²

In recent years, the dominant narrative surrounding the opening of Myanmar is one of dramatic transition from decades-long military rule to

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¹ The country is also commonly referenced as Myanmar. This article uses both designations interchangeably.

² Robin McDowell, *Rohingya Kids in Myanmar: Hard Labor, Bleak Lives*, ASSOCIATED PRESS (Oct. 15, 2013), <http://bigstory.ap.org/article/suffering-dogs-rohingya-kids-myanmar> ("The 10-year-old struggles up the hill, carrying buckets filled with rocks. Though he tries to keep a brave face in front of his friends, his eyes brim with tears. Every inch of his body aches, he says, and he feels sick and dizzy from the weight. 'I hate it,' whispers Anwar Sardad. He has to help support his family, but he wishes there was a way other than working for the government construction agency.").

democratic governance.³ Since the 2011 elections ushered in Thein Sein as Myanmar's President,⁴ the international community has rewarded perceived political and economic reforms with eased international sanctions,⁵ foreign business investments,⁶ and enhanced public diplomacy initiatives.⁷

³ See, e.g., U.S. DEP'T OF STATE, *Secretary's Preface, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012* (2013), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> ("We cover the horrifying violence in Syria, historic elections in Egypt, Georgia, and Libya, and the promising democratic opening in Burma."); David Pilling, *Myanmar Keeps its Transition on the Road—But only Just*, FIN. TIMES (Oct. 2, 2013), <http://www.ft.com/intl/cms/s/0/4f2cea14-2ac6-11e3-ade3-00144feab7de.html#axzz2tDjz8bBj> ("The world has just about got used to the fact of Myanmar's remarkable transition since the leaders of the pariah nation formerly known as Burma shed their military fatigues."); *Myanmar Must Continue Making Gains in Democratic Transition—UN Chief*, UN NEWS CTR. (Sept. 26, 2013), <https://www.un.org/apps/news//story.asp?NewsID=46059&Cr=myanmar&Cr1#.UvzYKxadDzI> ("Commending Myanmar for its remarkable progress, Secretary-General Ban Ki-moon today stressed that the South-east Asian country must continue its democratic transition and overcome the inter-communal violence that is threatening it. 'Myanmar continues a journey towards a more open and broad-based democracy. Its robust civil society will play an increasingly crucial role as a bridge between government and citizens, in the process strengthening accountability, transparency and participation,' Mr. Ban told a ministerial meeting of his Group of Friends on Myanmar, which met on the margins of the 68th General Assembly in New York. Mr. Ban praised President Thein Sein's commitment to bring the country towards peace, democracy and an open market, as well as the recent release of various political prisoners. However, he warned that the security situation remains fragile, and called for measures to ease tensions in the country."); *German President Praises Myanmar for Transition to Democracy*, EUR. ONLINE MAG. (Feb. 9, 2014), http://en.europeonline-magazine.eu/german-president-praises-myanmar-for-transition-to-democracy_317425.html ("German President Joachim Gauck on Sunday praised Myanmar for making steps towards democracy, adding that the country's progress was the reason that Germany had approved a [EUR 500 million] debt relief package for the southeast Asian country. 'Burma has made bold steps towards democracy,' said Gauck during a visit to the Shwedadong Pagoda in Myanmar's capital Yangon, which marked the first state visit by a German president to Burma since 1986.").

⁴ Thomas Fuller, *Parliament Picks Insider as President of Myanmar*, N.Y. TIMES (Feb. 5, 2011), <http://www.nytimes.com/2011/02/05/world/asia/05myanmar.html>.

⁵ See, e.g., Ernest Z. Bower & Murray Hiebert, *U.S. Eases Myanmar Sanctions in Response to Reforms*, CTR. FOR STRATEGIC AND INT'L STUDIES (May 18, 2012), <http://csis.org/publication/us-eases-myanmar-sanctions-response-reforms>; *EU Agrees to Suspend Most Burma Sanctions*, BBC (Apr. 23, 2012), <http://www.bbc.co.uk/news/world-asia-17813656>.

⁶ See, e.g., Aung Hla Tun & Jared Ferrie, *Foreign investment in Myanmar surges, office rents sizzle*, REUTERS (Sept. 20, 2013), <http://www.reuters.com/article/2013/09/20/myanmar-investment-idUSL3N0HG0L420130920>.

⁷ See, e.g., Peter Baker, *Obama, in an Emerging Myanmar, Vows Support*, N.Y. TIMES (Nov. 18, 2012), at A3, <http://www.nytimes.com/2012/11/19/world/asia/obama-heads-to-myanmar-as-it-promises-more-reforms.html> ("Mr. Obama arrived here as the first sitting American president to visit Myanmar with the hope of solidifying the stunning changes that have transformed this Southeast Asian country and encouraging additional progress toward a more democratic system. With the promise of more financial assistance, Mr. Obama vowed to 'support you every step of the way.'"); *President Obama Meets with President Thein Sein of Myanmar*, THE WHITE HOUSE BLOG (May 20, 2013, 6:30 PM) <http://www.whitehouse.gov/blog/2013/05/20/president-obama-meets-president-thein-sein-myanmar> ("Today President Obama welcomed President Thein Sein of Myanmar to the White House for a bilateral meeting, the first visit to the United States by a leader of that country in almost 50 years."); *EU Foreign Policy Chief Visits Myanmar*, CNN (Apr. 28, 2012), <http://www.cnn.com/2012/04/28/world/asia/myanmar-ashton-visit/> ("EU foreign policy chief Catherine Ashton met with Myanmar's pro-democracy leader Aung San Suu Kyi Saturday, as she became the latest in a series of high-ranking international figures to visit the country. Ashton is also expected to meet President Thein Sein during her three-day visit to Myanmar, also

Most recently, in October 2013, Myanmar was awarded the rotating chair of the Association of Southeast Asian Nations (“ASEAN”) for 2014 in what was widely regarded as a diplomatic prize for its broad strides toward democratic reform.⁸ President Thein Sein declared the theme of Burma’s incoming chairmanship as “moving forward in unity in a peaceful and prosperous community.”⁹

Still, Myanmar’s struggle with democracy is beset with an unfortunate human rights record, which is marred by government-sanctioned anti-Muslim violence.¹⁰ This article builds upon prior research examining the experience of the Rohingya Muslim¹¹ community in Burma through both a historical and contemporary lens.¹² That research explored both the humanitarian and human rights challenges confronting Muslims, who constitute approximately five percent of Myanmar’s estimated sixty-million people,¹³ and suffer from discriminatory laws and policies that infringe upon the free exercise of religion,¹⁴ freedom of movement,¹⁵ access to education,¹⁶

known as Burma. The trip, which follows a series of political reforms in Myanmar, marks the latest step in the country’s international rehabilitation after decades of isolation.”).

⁸ *Myanmar Takes ASEAN Chair*, ABS-CBN NEWS (Oct. 10, 2013), <http://www.abs-cbnnews.com/global-filipino/world/10/10/13/myanmar-takes-asean-chair>.

⁹ *Id.* (“In April, Human Rights Watch accused Myanmar of ‘a campaign of ethnic cleansing’ against members of the Rohingya Muslim minority—an accusation rejected by Thein Sein as a ‘smear campaign.’”).

¹⁰ See U.S. DEP’T OF STATE, *Burma 2012 Human Rights Report*, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012 (2013), available at <http://www.state.gov/documents/organization/204400.pdf>.

¹¹ The Rohingya are members of a distinct cultural group in Burma who are also Muslim; the group’s faith and ethnic identities are commonly conflated. However, not all Burmese Muslims are necessarily Rohingya although they may also be subject to persecution.

¹² See generally Engy Abdelkader, *The Rohingya Muslims in Myanmar: Past, Present and Future*, OR. REV. INT’L L. (forthcoming 2014); see also *An Unclear Roadmap: Burma’s Fragile Political Reforms and Growing Ethnic Strife: Hearing Before the Subcomm. on Asia and the Pacific of the H. Comm. of Foreign Affairs*, 113th Cong. 23-24 (2013) (statement of Wakar Uddin, Dir. Gen. of the Arakan Rohingya Union), available at <http://docs.house.gov/meetings/FA/FA05/20130919/101329/HHRG-113-FA05-Transcript-20130919.pdf> (“The plight of the Rohingya people dates back to 1962; however, they experienced the worst violence and bloodbath in Rakhine/Arakan state in 2012 and 2013. The violence and massacre of Burmese Muslims in central Burma in 2013 follow the anti-Muslim attacks in central Burma in 2001, 2003, and 2006, but this year’s attacks were far more dramatic In Rohingya areas in Rakhine/Arakan State, the Burmese government could have prevented the violence against Rohingya through its security apparatus with massive military force as it did during the handling of the uprising of monks in central Burma. The Burmese government did not have the willpower to protect the Rohingya from violence by Rakhine mobs backed by Burmese/Rakhine police forces.”).

¹³ See Kyaw Phyoo Tha, *Burma Imprisons Two Muslim Women for Sparking Okkan Unrest*, THE IRRAWADDY (June 18, 2013), <http://www.irrawaddy.org/conflict/burma-imprisons-two-muslim-women-for-sparking-okkan-unrest.html>.

¹⁴ See U.S. DEP’T OF STATE, *Burma 2012 International Religious Freedom Report*, in INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2012 (2013), available at <http://www.state.gov/documents/organization/208430.pdf>. “Societal abuses and discrimination based on a mix of ethnicity and religious affiliation, belief, or practice occurred. Longstanding social tensions between Rohingya Muslims and Rakhine Buddhists in Rakhine State erupted in communal violence in June and October that claimed an estimated 250 lives and resulted in more than 100,000 displaced persons and

and equal employment opportunities.¹⁷ Notably, the group remains stateless to date because the country's 1982 Citizenship Act deprives the Rohingya of citizenship rights, further exasperating their struggle for survival.¹⁸ Such laws codify the general societal bias that constitutes the Rohingya's normative experience in Burma, including prejudice from both well-respected human rights advocates and ethnic minorities who themselves have struggled against official acts of oppression and repression.¹⁹ Indeed, the United Nations ("UN") has aptly depicted the Rohingya as "virtually friendless."²⁰

the segregation of the two groups. Villages of Kaman people, an officially recognized Muslim 'national race' group distinct from the Rohingya, were burned to the ground during the second wave of violence in October. An estimated 3,000 Kaman Muslims were attacked, indicating that some of the violence was aimed not only against the Rohingya, but against Muslims in general." *Id.*

¹⁵ See U.S. DEP'T OF STATE, *supra* note 10 ("The government restricted the ability of IDPs, refugees, and stateless persons to move.").

¹⁶ See U.S. DEP'T OF STATE, *supra* note 14 ("Without citizenship status Rohingya did not have access to secondary education in state-run schools. Authorities did not permit those Muslim students from Rakhine State who completed high school to travel outside the state to attend college or university.").

¹⁷ See U.S. DEP'T OF STATE, *supra* note 10 ("Rohingya experienced severe legal, economic, and social discrimination."); Khin Maung Lay, *Burma Fuels the Rohingya Tragedy*, KALADAN PRESS NETWORK (Apr. 10, 2009, <http://www.kaladanpress.org/index.php/article-mainmenu-27/16-rohingya-article/1894-burma-fuels-the-rohingya-tragedy.html>) ("In his 2007 report 'Caught Between Two Tigers,' Graham Thom, Amnesty International Australia's refugee coordinator, writes: 'In an effort to encourage their departure to Bangladesh, their freedom of religion and movement is restricted; they must apply for permission to marry, their land has been confiscated and they suffer severe economic constraints. The military has murdered fathers and husbands and raped mothers, sisters and daughters. They are routinely subjected to brutal forced labor, arbitrary taxation and constant humiliations.' Additionally, the establishment of a growing number of Buddhist-settler villages has changed the demographic composition in Arakan.").

¹⁸ See U.S. DEP'T OF STATE, *supra* note 10 ("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. The UNHCR continued to advocate for amendment of the 1982 citizenship law to focus on civic rather than ethnic nationality, but the government did not provide stateless persons the opportunity to gain nationality on a nondiscriminatory basis during the year. The 1982 citizenship law grants full citizenship to anyone whose parents are both one of the 135 officially recognized 'national races.' The law deems as a national race only ethnic groups that can trace origins back to 1823, the year before the British began to colonize Burma, or earlier. Two lesser forms of citizenship exist, associate or naturalized citizenship; these citizens are unable to run for political office, inherit land or money, or access the full range of educational opportunities. The government asserted that most Rohingya were recent economic migrants and denied full citizenship on the grounds their ancestors did not belong to a national race. Only Rohingya who were able to prove three generations of residence in country were eligible to apply for naturalization. NGOs reported that Rohingya in northern Rakhine State who applied for naturalization with all required documents did not receive replies. Lawyers and activists noted that some Rohingya could also secure naturalization or 'associate' citizenship through bribery or by registering.").

¹⁹ See HUMAN RIGHTS WATCH, *Burma: Government Forces Targeting Rohingya Muslims*, HUFFINGTON POST (Aug. 2012), http://www.huffingtonpost.com/human-rights-watch/burma-government-forces-t_b_1738063.html.

²⁰ See *Rohingya Women and Children Brave the Seas to Flee Myanmar*, THOMSON REUTERS FOUNDATION (July 17, 2013), <http://www.trust.org/item/20130711095259-lup2a/>.

Anti-Muslim violence continues unabated while spreading to previously unaffected regions in Myanmar.²¹ The human rights situation is further compounded by increasingly volatile nationalist-Buddhist extremism²² coupled with official complacency and complicity²³ in the deaths of men, women, and children; destruction of homes, businesses, and mosques; and forced migration.²⁴ Indeed, violent clashes between the minority Muslim population and majority Buddhists in October and June 2012 left several hundred dead and more than 140,000 people—primarily Muslim—internally displaced and left to live in squalid conditions within refugee and other camps.²⁵ Thousands of Rohingya, including increasing

²¹ See Abdelkader, *supra* note 12; see also Kyaw Phyo Tha, *supra* note 13 (“Before the rioting in Okkan, inter-communal strife between Buddhists and Muslims broke out last year in west Burma’s Arakan State. The violence spread this year to central Burma and east Burma—with clashes in the town of Meikhtila, then in Okkan, and mostly recently in Lashio. In total, more than 200 people have been killed and more than 150,000 people—mostly Muslims—have been displaced.”).

²² See Richard Lloyd Parry, *Bomb Attack on 'Burmese bin Laden' Leaves Five Hurt*, THE TIMES (July 23, 2013), <http://www.thetimes.co.uk/tto/news/world/asia/article3822758.ece>.

²³ See John Sparks, *Dangerous Waters for Burma’s Rohingya Minority*, CHANNEL 4 NEWS (June 25, 2012), <http://www.channel4.com/news/dangerous-waters-for-rohingyas-forgotten-people> (“Her husband Mohammad said that local policemen and members of the military in Burma had sided with the ethnic Buddhists—participating in attacks on Muslims. He said he saw a Burmese helicopter attack boats packed with refugees: ‘There were three boats together when we set off—and another three followed us. The three boats that lagged behind were attacked by a helicopter and caught fire.’ He thinks almost 50 people were killed, adding: ‘We saw something reddish fall on the boats and instantly they exploded into flames.’ A regional official in Burma today denied this allegation, pointing out that there was ‘only one’ helicopter in Rakhine state which is ‘unarmed.’ Still, events in Burma are a catastrophe for the Rohingya, a little-known group of people who nobody seems to want. Only dialogue and generosity and human decency will prevent further loss of life.”).

²⁴ See Aung San Suu Kyi *Urged to Place Human Rights, Anti-Muslim Violence at the top of the Agenda*, ASIAN TRIB., (Oct. 18, 2013), <http://www.asiantribune.com/node/65447>; see also HUMAN RIGHTS WATCH, *supra* note 19 (“Burmese security forces committed killings, rape, and mass arrests against Rohingya Muslims after failing to protect both them and Arakan Buddhists during deadly sectarian violence in western Burma in June 2012. Government restrictions on humanitarian access to the Rohingya community have left many of the over 100,000 people displaced and in dire need of food, shelter, and medical care.”); see generally U.S. DEP’T OF STATE, *supra* note 10 (“International NGOs estimated that the outbreak of communal violence in Rakhine State displaced more than 115,000 persons, including Rohingya, Kaman Muslims, and ethnic Rakhine Buddhists. There was little access to clean water, sanitation, and health and education services in the IDP areas, and many displaced persons were unable to grow sufficient food due to continual threats necessitating flight.”).

²⁵ See THE ASSOCIATED PRESS, *Buddhist Mobs Torch Muslim Homes in Myanmar as Sectarian Violence Continues*, N.Y. DAILY NEWS (Oct. 1, 2013), <http://www.nydailynews.com/news/world/buddhist-mobs-torch-muslim-homes-myanmar-sectarian-violence-continues-article-1.1472705>.

numbers of women and children, have sought refuge in Thailand,²⁶ Bangladesh,²⁷ and Malaysia.²⁸

This article explores the plight of Muslim women and children, in particular. It argues that women and children are increasingly finding themselves in vulnerable situations that have yet to be adequately recognized and addressed in the Burmese context. Such a perspective has not yet been examined in legal scholarship and discourse. This article is organized in three parts. Part II examines the ways that women and youth are uniquely impacted by the escalating violence against the Rohingya and other Muslim populations in Myanmar. This section examines several types of vulnerable circumstances created by discriminatory population control regulations, gender-based violence, human trafficking, hard labor, and education inequality. Part III contemplates the security implications of continued Burmese persecution of its Rohingya Muslim population while Part IV engages in a related discussion and analysis of their plight. It articulates a number of legal and policy recommendations, including a) amending the 1982 Citizenship Act; b) engaging in public education campaigns to help dispel many of the myths that represent causal factors in anti-Muslim violence; c) providing resources and support for victims of gender based violence; and d) exercising increased vigilance in identifying, investigating and prosecuting all those that facilitate human trafficking. The article closes with several concluding remarks.

II. MUSLIM WOMEN AND YOUTH IN VULNERABLE CIRCUMSTANCES

This Part examines the ways that Muslim women and youth are uniquely impacted by communal violence in Myanmar, including, but not limited to, discriminatory birth control regulations, gender-based violence, vulnerability to human trafficking, hard labor, and education inequality. These human rights violations are compounded, if not facilitated by, the

²⁶ See U.S. DEP'T OF STATE, *supra* note 10 (“Emigration and Repatriation: According to the UNHCR, 83,401 registered Burmese refugees lived in nine camps in Thailand as of November. The estimated total number of refugees, including unregistered new arrivals, was approximately 140,000. The government allowed the UNHCR and other organizations limited access to monitor potential areas of return to assess conditions for the eventual voluntary return of refugees and IDPs.”).

²⁷ See HUMAN RIGHTS WATCH, *supra* note 19 (“Since the June violence, thousands of Rohingya have fled to neighboring Bangladesh where they have faced pushbacks from the Bangladeshi government in violation of international law. Human Rights Watch witnessed Rohingya men, women, and children who arrived onshore and pleaded for mercy from Bangladesh authorities, only to be pushed back to sea in barely seaworthy wooden boats during rough monsoon rains, putting them at grave risk of drowning or starvation at sea or persecution in Burma. It is unknown how many died in these pushbacks. Those who were able to make it into Bangladesh live in hiding, with no access to food, shelter, or protection.”).

²⁸ See *Myanmar Takes ASEAN Chair*, *supra* note 8.

country's citizenship law rendering Rohingya men, women, and children "stateless."²⁹ As a result of their "stateless" status, the group suffers restrictions on movement, forced labor, confiscation of property, forced eviction from, and demolition of, houses, discriminatory taxation, and limitations on marriage, employment, health care, and education.³⁰ Unfortunately, such discriminatory laws and policies provide fertile ground for acts of anti-Muslim violence.

Since chivalric ideals often inform perceptions that women and children should not be targeted in conflict zones,³¹ it is significant to note first that amid worsening communal strife, Burmese Muslim women and girls have in fact suffered in ways similar to their male counterparts. For instance, in June 2013, Burmese security officials killed several female Rohingya villagers who peacefully protested the government's efforts to relocate their families to a new camp, taking them away from the housing they had collectively resided in since Buddhist extremists burned their homes during violent clashes that erupted the previous year.³² One victim's pregnancy did not seem to warrant special protection from the shooting officers; perhaps this is due to a perception of pregnant women as carrying future generations of unwanted Rohingya or Muslims.³³

²⁹ See U.S. DEP'T OF STATE, *supra* note 10 (Myanmar's 1982 Citizenship Act recognizes 135 "national races" to whom it grants full citizenship rights. The law deems as a national race only ethnic groups that can trace origins back to 1823, the year before the British began to colonize Burma, or earlier. Two lesser forms of citizenship exist: associate or naturalized citizenship. These citizens are unable to run for political office, inherit land or money, or access the full range of educational opportunities. The government asserted that most Rohingya were recent economic migrants and denied full citizenship on the grounds their ancestors did not belong to a national race. Only Rohingya who were able to prove three generations of residence in country were eligible to apply for naturalization. NGOs reported that Rohingya in northern Rakhine State who applied for naturalization with all required documents did not receive replies. Lawyers and activists noted that some Rohingya could also secure naturalization or "associate" citizenship through bribery or by registering); see also Burma Citizenship Law, 1982 (Myan.) available at <http://www.refworld.org/docid/3ae6b4f71b.html> (The system's anchor is the 1982 Citizenship Law, which in both design and implementation effectively denies the right to a nationality to the Rohingya population. It supersedes all previous citizenship regimes in Myanmar. The 1982 Citizenship Law creates three classes of citizens—full, associate, and naturalized—none of which has been conferred on most Rohingyas.)

³⁰ See Benjamin Zawacki, *Defining Myanmar's 'Rohingya Problem,'* 20 HUM. RTS. BRIEF 18 (2012-13); see generally Abdelkader, *supra* note 12.

³¹ See Judith Gardam & Michelle Jarvis, *Women and Armed Conflict: The International Response to the Beijing Platform for Action*, 32 COLUM. HUM. RTS. L. REV. 1, 7 (2000).

³² See ASSOCIATED PRESS OF PAKISTAN, *Myanmar Must do More to Curb Abuses Against Rohingya Muslims: UN Expert*, PAK. OBSERVER (June 13, 2013), <http://pakobserver.net/201306/13/detailnews.asp?id=209656>; see also Special Rapporteur on the Situation of Human Rights in Myanmar, *Rep. on the Situation of Human Rights in Myanmar*, Human Rts. Council, U.N. Doc. A/HRC/22/58 (Mar. 6, 2013).

³³ See Min Thein Aung, *Three Rohingya Women Shot Dead, Several Injured Over Housing Dispute*, RADIO FREE ASIA (June 5, 2013), <http://www.rfa.org/english/news/myanmar/rohingya-06052013172809.html/>.

During the same month elsewhere in Burma, a court sentenced two Muslim women to two years in prison and hard labor for allegedly causing communal strife in the town of Okkan.³⁴ The violence transpired several months earlier after one of the women bumped into a Buddhist monk, causing his food to spill and his alms bowl to break.³⁵ According to another account, one of the women also shook the monk by his shoulders (it is religiously inappropriate in Buddhism for women to have such physical contact with monks).³⁶ The women had been convicted of “insulting [the Buddhist] religion” in contravention of a criminal law prohibiting “deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.”³⁷ Observers have noted that while the prototypical victims of Burma’s communal violence have been Muslim, the majority of those convicted of related criminal offenses have also been Muslim, potentially speaking to biases within the country’s legal, judicial, and security structures.³⁸

In addition, for approximately three consecutive days in March 2013, anti-Muslim violence erupted in the Burmese town of Meiktila where groups of men disguised in monks’ robes fatally assaulted Muslim women and children by “hacking them to death.”³⁹ The men were believed to be associated with the so-called “969” campaign that promotes anti-Muslim boycotts and opposes Buddhist-Muslim intermarriages.⁴⁰ Burmese officials have declared the region to be under a “State of Emergency” on-and-off since that time.⁴¹

To be sure, the human rights violations committed against the Rohingya and other Muslims are widespread, systematic, and without accountability, as the UN Special Rapporteur on the human rights situation in Myanmar, Tomas Ojea Quintana, has recently observed.⁴² But while the human rights violations depicted above are gender neutral, Muslim women

³⁴ See Kyaw Phyo Tha, *supra* note 13.

³⁵ See *id.* (“Notwithstanding a formal apology the incident reportedly angered local Buddhists, leading to anti-Muslim rioting in the city about 100 kilometers from Rangoon. One Muslim man was killed and nine were injured in the unrest, while 81 homes and a mosque were burned to the ground.”); see also ASSOCIATED PRESS, *Myanmar: Muslim Women Sentenced to Hard Labor*, N.Y. TIMES (June 20, 2013), at A10, <http://www.nytimes.com/2013/06/20/world/asia/muslim-women-sentenced-to-hard-labor-in-myanmar.html>.

³⁶ See ASSOCIATED PRESS, *supra* note 35.

³⁷ See Kyaw Phyo Tha, *supra* note 13.

³⁸ See ASSOCIATED PRESS, *supra* note 35.

³⁹ See Parry, *supra* note 22.

⁴⁰ See *infra* Part III.

⁴¹ *Burmese Village Violence Against Children & Families Must Stop, Says UNICEF*, WNN (Oct. 9, 2013), <http://womennewsnetwork.net/2013/10/09/burmese-violence-unicef/>.

⁴² See ASSOCIATED PRESS OF PAKISTAN, *supra* note 32; see also Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 32.

and youth are experiencing violence in a manner that is specific to their identities, including, but not limited to, discriminatory birth control regulations, gender-based violence, human trafficking, hard labor, and education inequality.

A. *Discriminatory Population Control Regulations*

For decades, Myanmar's Rohingya Muslims have been subject to local regulations—also referred to as the “two-child rule”—designed to control the group's population growth.⁴³ Applicable exclusively to the minority group, authorities enforce the policy together with regulations requiring Muslim couples to secure official approval, by remitting sizable bribes, prior to marrying.⁴⁴ Couples are often forced to wait lengthy periods—as long as two years in some instances—for advance permission.⁴⁵ The marriage application process also includes mandatory pregnancy tests.⁴⁶ Additionally, each couple must provide a signed statement that they will not have more than two children, with the understanding that violating the two-child rule could result in fines and imprisonment.⁴⁷ The policy uniquely impacts Muslim women and children: the former risk physical danger while the latter risk placement on an official blacklist.⁴⁸ President Thein Sein's administration continues to support the policy under the pretext of curbing rapid Muslim population growth allegedly designed to surreptitiously overcome the country's Buddhist majority.⁴⁹

⁴³ See Harrison Akins, *No Place for Islam? Buddhist Nationalism in Myanmar*, AL JAZEERA (Oct. 2013), <http://www.aljazeera.com/indepth/opinion/2013/10/no-place-islam-buddhist-nationalism-myanmar-2013101710411233906.html>.

⁴⁴ HUMAN RIGHTS WATCH, BURMA: REVOKE ‘TWO-CHILD POLICY FOR ROHINGYA (2013) *available at*: <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya> (“Advance permission to marry came from the Na Sa Ka (in Burmese, Nay Sut Kut Kwey Ye), a corrupt interagency border guard force comprising military, police, immigration, and customs.”).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See HUMAN RIGHTS WATCH, *supra* note 44 (“Rakhine State Spokesperson Win Myaing claimed local officials sought to implement a recommendation by the government Inquiry Commission on the Sectarian Violence in Rakhine State, a 27-member body appointed to examine the causes of last year's deadly violence between ethnic Arakanese (Rakhine) Buddhists and Rohingya and Kaman Muslims. The commission's summary report, released on April 29, 2013, called for ‘implementation of family planning programs amongst Bengali [Rohingya] communities’ to address its ‘rapid population growth.’ However, the report said that ‘government and other civil society organizations should refrain from implementing mandatory measures which could seem unfair and abusive.’ The commission included political leaders of Arakanese Buddhists but did not include any Rohingya members.”).

A Rohingya woman who bears more than two children is confronted with the difficult decision to either: a) seek refuge in another country;⁵⁰ b) seek an abortion;⁵¹ or c) remain in the country and give birth to a blacklisted child.⁵² In the event she attempts to terminate the pregnancy, her circumstances are exacerbated by Article 312 of Burma's penal code, which criminalizes abortion except where the woman's life is endangered.⁵³ As a result, a Muslim woman who wishes to abort an unborn fetus must undergo such a procedure in an unsanitary unlicensed facility or self-induce an abortion at home.⁵⁴ The circumstances are so precarious that many women die in the process,⁵⁵ thus contributing to Burma's high rates of maternal death.⁵⁶ It is significant to note that aborting an unborn fetus is generally prohibited in Islam after the initial 120 days of the pregnancy except under very specific conditions.⁵⁷ As such, this option not only jeopardizes a woman's physical health and well-being, but may also force her to betray a sincerely held religious belief and subject her to severe stigmatic harm in the event that co-religionists learn of her decision.

In addition to endangering women's physical, emotional, and mental health in violation of international law, the two-child rule adversely impacts children as well. In the event a woman opts to remain in the country after violating the rule, the child is deprived of any legal status.⁵⁸ As a result, the child cannot access education, receive official permission to travel, marry, or acquire any property.⁵⁹ Burmese officials may also arrest and detain the child.⁶⁰

To avoid such repercussions, a woman may bribe a legally married couple to register her child as their own or avoid registering the birth with officials to escape penalties—such as fines or imprisonment—associated with violating the law.⁶¹ Many couples avoid registering their marriages

⁵⁰ See *infra* Part II.C. (women who flee the country are vulnerable to exploitation and trafficking. As such, communities are impacted as daughters, mothers, aunts, nieces, friends, and neighbors are forced to abandon everything they know to secure refuge elsewhere.).

⁵¹ See Akins, *supra* note 43.

⁵² See HUMAN RIGHTS WATCH, *supra* note 44.

⁵³ See *Myanmar: The Penal Code, Article 312*, available at http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf; see also HUMAN RIGHTS WATCH, *supra* note 43.

⁵⁴ See Akins, *supra* note 43; see also HUMAN RIGHTS WATCH, *supra* note 44.

⁵⁵ See Akins, *supra* note 43.

⁵⁶ See *id.*

⁵⁷ There are different jurisprudential positions about when and if an abortion is permitted. See, e.g., Khaled A. Fadl, *Fatwa*, SCHOLAR OF THE HOUSE, <http://www.scholarofthehouse.org/fabydrabelfa1.html> (last visited May 8, 2014).

⁵⁸ HUMAN RIGHTS WATCH, *supra* note 44.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

altogether in order to evade the population-control measure even though it necessarily means that children born under such circumstances will remain unregistered and lack any legal status.⁶² According to one government report, there are approximately 60,000 unregistered Rohingya children in Myanmar today.⁶³ To be sure, a woman's choice vis-à-vis the two-child rule—seeking refuge in other countries, aborting the unborn fetus, or birthing a child subject to an official blacklist—impacts not only her life, but her family and community as well.

It is important to note that while the two-child law was initially conceived, implemented, and enforced during Myanmar's military rule, President Thein Sein's administration has left the policy wholly undisturbed and local government officials have lent support for the rule.⁶⁴ In April 2013, for instance, a report issued by a state government commission tasked with investigating the incidents of communal violence between ethnic Muslims and Buddhists in Rakhine State depicted such family planning programs as an effective mechanism for countering the Muslim community's "rapid population growth," which was characterized as a causal factor motivating the violence experienced by the Rohingya in Rakhine.⁶⁵

In fact, the discriminatory measure is informed by false assumptions surrounding Muslim birth rates.⁶⁶ Burmese officials frequently engage such political rhetoric attributing anti-Muslim violence to the minority community's "rapid population growth."⁶⁷ Representative are public

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See Akins, *supra* note 43; see also HUMAN RIGHTS WATCH, *supra* note 44 ("The Arakan State spokesperson, Win Myaing, told the media on May 26 that local authorities had reaffirmed a 2005 regulation for Rohingya Muslims in Buthidaung and Maungdaw townships in northwestern Arakan State along the Bangladesh border.").

⁶⁵ See HUMAN RIGHTS WATCH, *supra* note 44 ("Rakhine State Spokesperson Win Myaing claimed local officials sought to implement a recommendation by the government Inquiry Commission on the Sectarian Violence in Rakhine State, a 27-member body appointed to examine the causes of last year's deadly violence between ethnic Arakanese (Rakhine) Buddhists and Rohingya and Kaman Muslims. The commission's summary report, released on April 29, 2013, called for 'implementation of family planning programs amongst Bengali [Rohingya] communities' to address its 'rapid population growth.' However, the report said that 'government and other civil society organizations should refrain from implementing mandatory measures which could seem unfair and abusive.' The commission included political leaders of Arakanese Buddhists but did not include any Rohingya members.").

⁶⁶ See DAVID DAPICE & NGUYEN XUAN THANH, CREATING A FUTURE: USING NATURAL RESOURCES FOR NEW FEDERALISM AND UNITY, 26 ASH CENTER FOR DEMOCRATIC GOVERNANCE AND INNOVATION (2013), available at <http://www.ash.harvard.edu/extension/ash/docs/creating.pdf>.

⁶⁷ Do 'Rapidly Breeding' Rohingya Muslims Really Threaten Myanmar's Buddhist Identity?, THE GLOBAL POST (Oct. 14, 2013), <http://www.globalpost.com/dispatch/news/regions/asia-pacific/myanmar/131011/rohingya-demographics-population-boom-myth> ("Certain cities enforce a two-child limit on their women and government reports insist their 'rapid population growth' has provoked Buddhists into torching their homes and taking their lives.").

statements alleging that a) Muslims are striving to “Islamize” Burmese society through exploding birth rates; b) Rohingya are reproducing ten times faster than Buddhists; and c) Muslims are analogous to “African carp” that breed quickly and behave violently.⁶⁸ Such sentiments evidence general societal prejudice and an unsubstantiated popular fear that Muslim population growth may eventually render the now-Buddhist-majority a minority in Myanmar.⁶⁹ Such misinformation concerning the minority religious community should not be taken lightly—it has prompted public calls in Myanmar for the Rohingya’s mass expulsion.⁷⁰

Interestingly, Harvard researchers have recently debunked this “rapid population growth” myth.⁷¹ After examining official government data, the academics found the Rohingya to have one of the country’s lowest population growth rates.⁷² As such, the researchers found the evidence inconsistent with widely circulated allegations concerning a threatening population shift.⁷³ They encourage undertaking additional research, such as a Burmese government census, to help government officials make more informed and effective policy decisions.⁷⁴

Moreover, researchers note that even if Muslim population growth was threatening to overtake Myanmar’s Buddhists, the most effective government response includes equal access to education, health care, and

⁶⁸ *Id.* (“A politician named Shwe Maung told The Economist that ‘they are trying to Islamize us through their terrible birth rate.’ Rakhine State government spokesman Win Myaing has claimed to India’s The Hindu that the Rohingya population growth is ten times that of native Buddhists. Extremist monk Wirathu, the best-known face of Myanmar’s swelling anti-Muslim movement, told GlobalPost that ‘Muslims are like the African carp. They breed quickly and they are very violent. They eat their own kind.’”).

⁶⁹ *See* Dapice & Nguyen Xuan Thanh, *supra* note 66.

⁷⁰ *See id.* (“The violence in Rakhine state has led to many remarks about the uncontrolled migration of Bangladeshi migrants into Rakhine. As many of those who were actually born in Rakhine often cannot prove it, some argue that any person who is Muslim and appears to be South Asian must be a migrant and should be expelled. In addition to migration, the rate of births of the Muslim families are said to be higher than the Buddhist and there is fear expressed that the proportion of Islamic people will increase and make the Buddhists a minority in their own country.”).

⁷¹ *Id.*

⁷² *Id.*; *see also* HUMAN RIGHTS WATCH, *supra* note 44 (“He is also dubious of accusations of out-of-control birthrates among Rohingya women. Rakhine State—home to roughly 800,000 Rohingya Muslims, according to the United Nations—has one of Myanmar’s lowest population growth rates. The region’s overall population is estimated at 3.3 million.”).

⁷³ Dapice & Nguyen Xuan Thanh, *supra* note 66 (“The official data show a slightly lower population growth rate in Rakhine compared to all of Myanmar for the 1955-2010 period. If the population of Rakhine had grown at the national rate from 1955, the 2010 population would be 3.46 million instead of 3.3 million. Unless there is a severe underestimation of the Rakhine population, it does not appear that the population changes are large enough to shift relative population shares much. This also shows up in the national Muslim population share which was no higher in 1983 than in 1953—more recent and reliable data are not available. Note that this data is completely inconsistent with widely circulated fears that the rapidly growing Muslim share of population is threatening Myanmar’s Buddhists.”).

⁷⁴ *Id.*

economic opportunity for the country's ethnic and religious minorities.⁷⁵ Harvard's findings comport with related recommendations by the UN Committee on the Rights of the Child, tasked with monitoring compliance with the Convention on the Rights of the Child ("CRC") to which Burma acceded, calling upon the country to revoke the discriminatory birth control regulation.⁷⁶ Notably, in May 2013, President Thein Sein indicated that his administration would review the subject regulation.⁷⁷ However, at the time of writing this article, the policy remains intact.

B. *Gender-Based Violence*

As previously mentioned, Rohingya women have also experienced anti-Muslim violence in ways that are unique to their gender. Amid escalating conflict, rights groups have noted increasing reports of rape from Muslim women and girls in recent years.⁷⁸ The following accounts illustrate the current situation: gender-based violence involving the Rohingya has intensified, disrupting families and communities. Moreover, attempts to seek refuge abroad compound the risk to women and girls of rape, exploitation, and trafficking.

To be sure, sexual assaults against Rohingya women are by no means a new phenomenon—Burmese security forces have engaged in such human rights violations for a number of years.⁷⁹ But as the violence has escalated,

⁷⁵ *Id.* ("Under such conditions, birth rates tend to drop – the fertility rate in mainly Muslim nations such as Bangladesh dropped from 4.5 in 1990 to 2.2 in 2010 and in Indonesia it dropped from 3.1 in 1990 to 2.1 in 2010. This is very close to Myanmar's 2.0 in 2010 – a rate that may be depressed due to the migration of millions of younger workers.").

⁷⁶ See HUMAN RIGHTS WATCH, *supra* note 44 ("In March 2012, the United Nations Committee on the Rights of the Child, which monitors state compliance with the Convention on the Rights of the Child, called upon Burma to 'abolish the local order restricting marriages for Rohingya people and cease practices which restrict the number of children of Rohingya people.'"); see also Joshua Lipes, *Myanmar to Reexamine Divisive Birth Rule*, RADIO FREE ASIA (May 31, 2013), <http://www.rfa.org/english/news/myanmar/children-05312013171333.html> ("The United Nations deputy spokesman Eduardo del Buey on Thursday said the decision to restore the two-child limit on Rohingyas would be discriminatory and called on authorities in Rakhine state 'to remove such policies or practices.'").

⁷⁷ See Lipes, *supra* note 76 ("We are reexamining this order," President Thein Sein's spokesman Ye Htut told RFA's Myanmar Service, adding that the policy which bans Rohingya families from having more than two children was regionally implemented and had not been developed in tandem with the central government. Ye Htut's statement marked the first time Thein Sein's office has publicly commented on the policy which, according to Rakhine state spokesperson Win Myaing, was initially introduced in 2005 and reaffirmed earlier this month for Rohingyas in Buthidaung and Maungdaw townships along the Bangladesh border.").

⁷⁸ See Samantha Michaels, *Burma Support Withheld on UN Pledge to End Sexual Violence*, IRRAWADDY (Sept. 6, 2013), <http://www.irrawaddy.org/women-gender/burma-support-withheld-un-pledge-end-sexual-violence.html>.

⁷⁹ See Francis Wade, *Rapes by Burmese Security Forces 'May Cause More Strife' in Troubled Region*, THE GUARDIAN, Feb. 26, 2013, <http://www.theguardian.com/world/2013/feb/26/burma-security-forces-rape-arakan> ("Sexual violence by Nasaka against Rohingya women has been documented for many

so too have gendered assaults. Since June 2012, for example, the communal strife in Arakan State included numerous instances of Buddhist extremists gang raping Muslim women.⁸⁰ More recently, in February 2013, Burmese security forces repeatedly raped thirteen Rohingya women and girls in a small Arakanese village, with at least one nineteen-year-old woman left in critical condition.⁸¹

Similar assaults against Rohingya and other Muslim women have also occurred in Rakhine State, as recently documented by the UN Special Rapporteur Ojea Quintana in his report to the Human Rights Council in March 2013.⁸² Most recently, in February 2014, a sixteen-year-old Rohingya girl alleged that Burmese authorities raped her following the murder of more than fifty local Muslims.⁸³ Human rights advocates have expressed concern that gender-based violence, attributed to entrenched gender bias as well as ethno-religious prejudices, will further exasperate already escalating communal violence in the region.⁸⁴

Moreover, it is important to recognize that such attacks disrupt families and communities, as they frequently result in instances of internal displacement.⁸⁵ Survivors of sexual assault, particularly by Burmese soldiers, are re-victimized by communities fearful of official retribution should the victims decide to report their assaults.⁸⁶ In the past, village elders

years,' says Matthew Smith, a researcher with Human Rights Watch, adding that prosecutions are rare for rapes committed by security forces.'').

⁸⁰ See *CBRO Urges Canadian Government to Press Burma on Rohingya Ethnic Cleansing*, KALADAN PRESS NETWORK (July 29, 2013), <http://www.kaladanpress.org/news/332-news-2013/july-2013/4298-cbro-urges-canadian-government-to-press-burma-on-rohingya-ethnic-cleansing> ("Numerous women were gang-raped and tortured inhumanly in Arakan State since 2012 June. RNDP chairman Dr. Aye Maung and 969 campaigner Monk Wira Thu went on barbaric rampage and anti-Muslims [sic] violence. They gang-raped woman publicly, slaughtered any one [sic] in their way. This sorts [sic] of barbaric misdeeds; these Buddhist extremists have committed them all, they have even poisoned the ponds so that Muslims cannot even drink the water, according to CBRO member.'').

⁸¹ See Wade, *supra* note 79 ("One victim, an 18-year-old girl who cannot be named for security reasons, described how a group of uniformed soldiers from Burma's border security unit, known locally as NaSaKa, entered her house in northern Maungdaw township shortly after midnight on 20 February. 'They took us separately to different places and tortured and raped us,' she said, referring also to her mother and younger sister, 15. The ordeal lasted until dawn, she said. 'They came in and out of the house at least 15 times. They also beat my mother with a gun and dragged her outside to the road and beat her to the ground.' According to the victim, 13 people in the village were assaulted. Chris Lewa, head of the Arakan Project, which has monitoring teams in Maungdaw township, said she had separately confirmed that at least 11 people were raped that night.'').

⁸² See Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 32; see also ASSOCIATED PRESS OF PAKISTAN, *supra* note 32.

⁸³ *Rohingya Muslim Girl Allegedly Raped by Myanmar Police*, WORLD BULLETIN NEWS (Feb. 5, 2014), <http://www.worldbulletin.net/muslim-world/128322/rohingya-muslim-girl-allegedly-raped-by-myanmar-police>.

⁸⁴ See Wade, *supra* note 79.

⁸⁵ See, e.g. HUMAN RIGHTS WATCH, *supra* note 44.

⁸⁶ See Wade, *supra* note 79 ("Khin Ohmar, founder of the Women's League of Burma, said that such

have subjected victims to expulsion.⁸⁷ In other instances, villagers, who fear further retribution in the event survivors choose to complain to Burmese officials, have fled into nearby forests and across the border to neighboring countries such as Bangladesh.⁸⁸ Indeed, rape and sexual abuse have resulted in the physical and psychological destruction of Rohingya women, families, and communities.

Notably, Muslim women are also vulnerable to gender-based violence while attempting to flee religious persecution in Myanmar.⁸⁹ Human smugglers sexually exploit and rape women whom they have falsely promised safe transport to a country of refuge, such as Malaysia, Thailand, or Bangladesh.⁹⁰ Such exploitation may occur at government-run detention centers in other countries or during the course of flight.⁹¹ Reporting the crimes can be particularly daunting, as authorities make clear that they are uninterested in pursuing investigation.⁹² Further, reporting victims may face

ordeals terrorize the community. 'I've heard of cases where rape survivors are kicked out of their village because the village head is so scared of retribution if they complain to the Burma army.'").

⁸⁷ *See id.*

⁸⁸ *See id.*

⁸⁹ *See Fleeing Rohingya Women Fall Prey to Traffickers in Thailand*, IRRAWADDY (July 18, 2013), <http://www.irrawaddy.org/human-trafficking/fleeing-rohingya-women-fall-prey-to-traffickers-in-thailand.html> ("Narunisa is one of 62 women and children at the shelter in Phang Nga, near Thailand's popular beach resorts. The 25-year-old fled Arakan State in western Burma when it became impossible to make a living after two bouts of sectarian violence last year left scores dead and some 140,000 displaced, most of them Muslims. Narunisa's village, unlike many others, was not destroyed in the violence, but her source of income quickly vanished when she could no longer go to the main market in Arakan's capital Sittwe to sell fruits and vegetables she had grown. Sittwe is now, except in one cordoned-off area, devoid of Muslims.").

⁹⁰ *See Man Charged with Trafficking Rohingya Refugees may Face Rape Charges*, PHUKET GAZETTE (June 22, 2013), http://www.phuketgazette.net/phuket_news/2013/Man-charged-with-trafficking-Rohingya-refugees-may-face-rape-charges-21412.html ("One of five Rohingya who escaped the Phang Nga Shelter for Children and Family is waiting for doctors to confirm her claims of being raped, for three consecutive nights, by the human trafficker that had promised to get her and her two daughters safely to Malaysia. The alleged rapist, Koreemura Ramahatu, 26, is only facing human trafficking charges so far, confirmed Phang Nga Provincial Police Commander Chalit Kaewyarat to the *Phuket Gazette* on Thursday. 'Police may press rape charges against Mr. Koreemura when they have the test result and more information about the case,' he said."); *see also* Palash Ghosh, *Burma: The Tragedy of the Rohingya People*, INT'L BUS. TIMES (Jan. 6, 2012), <http://www.ibtimes.com/burma-tragedy-rohingya-people-213647> ("She [Panchali Saikia, a research officer at the Institute of Peace and Conflict Studies in India] further stated: 'Anti-Rohingya communities in Bangladesh have also pressurized the government to repatriate the Rohingyas. Due to the denial of protection, assistance, and fear of repatriation, the Rohingyas are now escaping to Malaysia through the sea route. Malaysia is seen as the best destination because of the religion factor. Also, the Malaysian government's permit to access the [UN Refugee Agency] has attracted asylum seekers.'").

⁹¹ *See Fleeing Rohingya Women Fall Prey to Traffickers in Thailand*, *supra* note 89; *see also Rohingya Women and Children Brave the Seas to Flee Myanmar*, *supra* note 20.

⁹² *See, e.g., Fleeing Rohingya Women Fall Prey to Traffickers in Thailand*, *supra* note 89 ("On June 18, Narunisa was released and went to the Khao Lak district police station to press charges. Thomson Reuters Foundation was present and saw firsthand the problems faced by rape victims seeking justice in Thailand. The petite woman, dressed in a brown headscarf, a green top and a printed pink sarong,

death threats and social stigmatization for their ordeal.⁹³ The myriad problems surrounding human trafficking in the Burmese context, specifically, are discussed in the next section.

C. *Human Trafficking of Muslim Women and Girls*

Burma's record on human trafficking has prompted the United States to place it on a Tier 2 Watch List for two consecutive years.⁹⁴ The Watch List is reserved for countries that fail to comply with minimum standards—from preventing trafficking to investigating and prosecuting perpetrators of the crime to protecting victims—as set forth in the Trafficking Victims Protection Act (“TVPA”).⁹⁵ In fact, both men and women have been subject to forced labor by Burmese security forces.⁹⁶ But women have been reportedly forced into prostitution and sexual slavery as well.⁹⁷ Such human rights violations have penetrated Myanmar's borders with neighboring countries, such as Thailand and Bangladesh, which have been forced to absorb the swelling number of Rohingya refugees.⁹⁸ Indeed, political and economic factors in Burma render it a source country for traffickers as tens of thousands Rohingya flee, including women and children.⁹⁹

recounted her experience while waiting patiently to get the attention of the policemen, who for at least 15 minutes argued among themselves whether Khao Lak was the right jurisdiction to investigate the crime. They then questioned her in detail—a process that required four languages—and were flippant when she was unable to recall some details. The police continued to voice concerns over jurisdiction problems. At one point they asked for the exact address of where she was raped, despite repeated explanations that she is unfamiliar with Thailand. They finally started taking notes, nearly an hour after the victim had stepped inside the station.”).

⁹³ See, e.g., *id.* (“A day after filing her complaint, a Thai man reportedly turned up at the shelter and threatened Narunisa and the shelter director, saying he had killed several Rohingya already and killing more ‘would be no problem,’ according to Human Rights Watch. The threat was reported to the authorities, but no police protection has yet been assigned to the shelter at the time of writing. The shelter director has purchased a gun and set up surveillance cameras. Korlimula and Veerayut, the policemen, have since been charged but they remain free. Veerayut is believed to be the first Thai official to be charged with trafficking of Rohingya.”).

⁹⁴ See U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT 2013 COUNTRY NARRATIVES A-C 111-14 (2013), available at <http://www.state.gov/documents/organization/210738.pdf>.

⁹⁵ See *id.*; see also William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong. (2008).

⁹⁶ See Akins, *supra* note 43.

⁹⁷ See U.S. DEPT. OF STATE, *supra* note 94; see also Akins, *supra* note 43 (“Many Rohingya have also been forced to labor on various construction projects as modern-day slaves, including building ‘model villages’ intended to house the Burmese settlers encouraged to come to the region to displace the Rohingya. There have been reports of forced prostitution of Rohingya women by the local Burmese security forces.”).

⁹⁸ See, e.g., *Fleeing Rohingya Women Fall Prey to Traffickers in Thailand*, *supra* note 89; Wade, *supra* note 79.

⁹⁹ See U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT 2013 COUNTRY NARRATIVES A-C, *supra* note 94.

Unfortunately, Myanmar's 2005 Anti-Trafficking in Persons Law¹⁰⁰ does little to protect this vulnerable population. Accordingly, even those who successfully escape to neighboring Thailand remain vulnerable to human trafficking.

1. *Human Trafficking in Burma*

Initially, anti-Muslim clashes resulted in thousands of Rohingya men fleeing Burma in search of work and refuge.¹⁰¹ However, with communal violence escalating since June 2012, Rohingya women have begun fleeing the country together with their children.¹⁰² The communal violence that afflicted Arakan State in June 2012, leaving tens of thousands of Rohingya men, women, and children displaced, illustrates this point.¹⁰³ According to Human Rights Watch, as many as 35,000 Rohingya fled Myanmar as a result.¹⁰⁴

In fact, between June 2012 and May 2013, the U.N. Refugee Agency ("UNHCR") found that approximately 27,000 people fled Myanmar.¹⁰⁵ To help place these figures in proper perspective, during the same time period one year earlier in 2011, an estimated 9,000 people are believed to have fled.¹⁰⁶ Moreover, as many as one half of those leaving Rakhine State's capital (Sittwe) are women and children who are escaping worsening and squalid displacement camps.¹⁰⁷ These women and children are highly vulnerable to forced labor and trafficking because the government does not recognize them as citizens and refuses to provide them with proper identification documents or necessary state protection.¹⁰⁸

Notably, Burma prohibits human trafficking vis-à-vis the 2005 Anti-Trafficking in Persons Law, but its efforts to combat trafficking internally have been lacking.¹⁰⁹ In fact, according to the U.S. Department of State,

¹⁰⁰ Anti-Trafficking in Persons Law, 2005, No. 5/2005 (Myan.), available at <http://www.hsph.harvard.edu/population/trafficking/myanmar.traf.05.pdf>.

¹⁰¹ See *Rohingya Women and Children Brave the Seas to Flee Myanmar*, supra note 20.

¹⁰² See *id.* ("What the flight of women and children signifies is the collapse of hope in the Rohingya community . . . and the fear that the violence by ethnic Rakhines against the Rohingya could restart easily on the basis of the slightest perceived provocation," said Phil Robertson, deputy director of Asia for Human Rights Watch.)

¹⁰³ HUMAN RIGHTS WATCH, THAILAND: RELEASE AND PROTECT ROHINGYA 'BOAT PEOPLE' (2013), available at <http://www.hrw.org/news/2013/08/20/thailand-release-and-protect-rohingya-boat-people>.

¹⁰⁴ See *id.*

¹⁰⁵ See *Rohingya Women and Children Brave the Seas to Flee Myanmar*, supra note 20.

¹⁰⁶ See *id.*

¹⁰⁷ See *id.*

¹⁰⁸ See U.S. DEPT. OF STATE, supra note 94.

¹⁰⁹ Anti-Trafficking in Persons Law, 2005, No. 5/2005 (Myan.), available at <http://www.hsph.harvard.edu/population/trafficking/myanmar.traf.05.pdf>.

Burmese officials reportedly kidnapped Rohingya women from Sittwe and forced them into sexual slavery on military bases.¹¹⁰

The systematic use of rape and sexual assault as a weapon in conflict zones contributes to trafficking and sexual exploitation of Rohingya women and girls. Representative are experiences like that of Sakinah Kahtu, an eighteen-year-old Rohingya girl forced to leave her village in Rakhine State due to worsening violence.¹¹¹ She traveled with human traffickers by sea to Malaysia together with other fleeing Muslims¹¹² because her parents feared that if she remained the Burmese security forces might sexually assault her or subject her to forced labor.¹¹³ In hopes of securing her safety, they paid traffickers nearly \$300 to transport her to Malaysia.¹¹⁴ Kahtu travelled by sea for fifteen days in a vessel that carried approximately 500 passengers, including sixty women and children; they received one meal per day.¹¹⁵ Prior to arriving in Malaysia, however, Kahtu's traffickers detained her in Thailand for three days.¹¹⁶ There, a stranger and fellow Rohingya paid \$2,520 to secure her release and complete her journey to Malaysia. In return, Kahtu's fellow villagers allowed the young man to wed her.¹¹⁷

2. *Human Trafficking in Thailand*

Thailand, which has not signed the 1951 Convention and Protocol Relating to the Status of Refugees,¹¹⁸ currently hosts the largest number of refugees from Myanmar.¹¹⁹ In Thailand, the Rohingya people represent a stateless population banished from their homes, collectively “caught between a crocodile and a snake.”¹²⁰ Unfortunately, Thai officials do not

¹¹⁰ See U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT 2013 COUNTRY NARRATIVES A-C, *supra* note 94.

¹¹¹ *Rohingya Women and Children Brave the Seas to Flee Myanmar*, *supra* note 20 (“Since bloody sectarian violence last year upended Rakhine’s Rohingya communities—leaving scores dead, thousands of homes burnt and some 140,000 displaced—their life has become ever more precarious.”).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Convention and Protocol Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 137, *available at*, <http://www.unhcr.org/3b66c2aa10.html>.

¹¹⁹ See Samuel Cheung, *Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience*, 25 J. REFUGEE STUD. 50, 57 (2012).

¹²⁰ *Id.* at 53; see Zawacki, *supra* note 30, at 20 (“Unable to avail themselves of the diplomatic or consular protection of Myanmar, the Rohingyas’ stateless status places them in the same position everywhere, whereby their ‘right to have rights’ is seen by the authorities as lacking. It simply compounds the precariousness of their situation.”).

recognize the Rohingya's right to asylum.¹²¹ Numbering as many as 2,000,000, the Rohingya people live intermingled and without documentation among a sizable populace of Burmese migrants.¹²² If detected by the authorities, however, they are likely detained or repatriated.¹²³

In addition, many Rohingya who flee to Malaysia¹²⁴ do not make it to their ultimate destination because they are arrested en route and detained by authorities in Thailand.¹²⁵ Since January 2013, Thai officials have detained more than 1,800 Rohingya in immigration centers or government shelters.¹²⁶ Women and children detained at government-run detention centers remain vulnerable to both Thai and Rohingya human traffickers who gain access to the buildings¹²⁷—places where detainees should theoretically enjoy official protection.¹²⁸ After promising detainees reunification with family members, traffickers smuggle them out of the centers and instead rape the unsuspecting victim(s).¹²⁹ For instance, in June, traffickers who promised to reunite Narunisa, a 25-year-old Rohingya who was detained in a government shelter, with her husband in Malaysia for USD 1660, raped her instead.¹³⁰ Unfortunately, the Thai government has not investigated or prosecuted trafficking gangs, as they continue to operate with impunity, nor has it determined how traffickers gain access women and children in detention centers.¹³¹ In fact, traffickers frequently operate in tandem with corrupt Thai officials who enable and facilitate such abuse and exploitation.¹³²

¹²¹ See Zawacki, *supra* note 30. (“Known as *non-refoulement*, this principle makes irrelevant the fact that the countries mentioned are not States Parties to the UN Convention on the Status of Refugees. The prohibition against involuntary return of asylum-seekers and refugees is a matter of customary international law, meaning that it applies regardless of a nation's treaty status.”).

¹²² See Cheung *supra* note 119, at 56.

¹²³ See Zawacki, *supra* note 30.

¹²⁴ Such as Kahtu, whose journey is described in *Rohingya Women and Children Brave the Seas to Flee Myanmar*, *supra* note 20.

¹²⁵ See *Rohingya Women and Children Brave the Seas to Flee Myanmar*, *supra* note 20 (“Some 2,000 Rohingya are being held in about two dozen centres in Thailand.”).

¹²⁶ HUMAN RIGHTS WATCH, *supra* note 103.

¹²⁷ *Id.*

¹²⁸ See *Rohingya Women and Children Brave the Seas to Flee Myanmar*, *supra* note 20.

¹²⁹ See HUMAN RIGHTS WATCH, *supra* note 103.

¹³⁰ *Id.*

¹³¹ See *id.* (“On May 27, Korlimula helped Narunisa and her two children to escape from the shelter and took her to meet with other associates. Narunisa and her children were put on a pickup truck driven by a man, whom she later learned is a police officer at Khao Lak police station in Phang Nga province. The three of them were taken to six hideouts in the province, and in each case locked up against their will. At the final hideout on Koh Yipoon Island in Phang Nga province's Kuraburi district, Korlimula repeatedly assaulted and raped Narunisa at knifepoint over the course of three days, from June 9 to 11. After that, Narunisa and her children were dumped on the street in Kuraburi district and the three of them made their way back to the shelter on June 18. Narunisa reported the rape case at Kuraburi district police station on June 18, and then filed a formal complaint against Korlimula on June 21. One day after Narunisa filed a

D. Hard Labor, Educational Inequality, and the Rohingya Youth

“I wouldn’t have to live this life if I wasn’t a Muslim,”¹³³ reflects a ten-year-old Rohingya Muslim child forced to perform hard labor—collecting and carrying rocks for eight hours in hot weather—to earn the equivalent of one dollar a day to help support his family.¹³⁴ His circumstances are similar to the majority of Rohingya children residing in Rakhine State, where approximately eighty to ninety percent of Myanmar’s Rohingya Muslims live.¹³⁵ Rohingya children experience poverty in different ways. The government forces them to perform hard labor, they face substantial inequality in education, high malnutrition rates, inadequate vaccinations, and no access to healthcare.¹³⁶

Government pickup trucks typically collect the children in the early morning hours, later depositing them on the riverbeds.¹³⁷ The young children typically work until dusk, scooping up river rocks and carrying them up a hill.¹³⁸ Other children assist the government with road repairs for similar wages.¹³⁹ The children’s incomes help them and their families eat.¹⁴⁰ The region suffers from the country’s highest chronic malnutrition rates, severely impacting children’s mental and physical development.¹⁴¹ Additionally, since officials have limited the work of humanitarian agencies in Rakhine State, children cannot access adequate vaccination coverage,

complaint against the man who raped her and the case threatened to reveal the extent of human trafficking and smuggling in Phang Nga province, a Thai man showed up at the gate of the Ministry of Social Development and Human Security’s shelter and made threats on the life of Narunisa and the shelter’s director. According to the shelter staff, this man said he had killed several Rohingya already. ‘Killing more women would be no problem,’ he told them. The threat has since been reported to the Ministry of Social Development and Human Security, as well as the governor and police commissioner of Phang Nga province. But as of June 27, no police protection has been assigned to the shelter. Also there has been no action taken against the police officer who was allegedly working with the trafficking gang involved in Narunisa’s case.”)

¹³² See U.S. DEP’T OF STATE, HUMAN TRAFFICKING COUNTRY NARRATIVES, BURMA 47 (2013), available at <http://www.state.gov/documents/organization/210738.pdf>; see also *CBRO Urges Canadian Government to Press Burma on Rohingya Ethnic Cleansing*, KALADAN PRESS NETWORK (July 29 2013), <http://www.kaladanpress.org/news/332-news-2013/july-2013/4298-cbro-urges-canadian-government-to-press-burma-on-rohingya-ethnic-cleansing>.

¹³³ McDowell, *supra* note 2.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* (“They look more like little men than boys: No smiles. Each step sturdy and determined. Not an ounce of energy wasted.”).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

leaving them exposed to preventable childhood diseases.¹⁴² For Rohingya children in Rakhine, access to healthcare depends upon a family's financial ability to bribe security officers at checkpoints to facilitate travel to a hospital,¹⁴³ where some physicians may still refuse to treat them.¹⁴⁴

Even where severe food insecurity has not forced poverty-stricken families to put their children to hard labor, Rohingya youth suffer from formal and substantive educational inequality. Officials prohibit children from attending Muslim schools, thus leaving government-run schools as the only option.¹⁴⁵ This prohibition contributes to overcrowding—from preschool to eighth grade—at institutions where children have no chairs or desks, and government-appointed Buddhist teachers provide instruction in a language most students cannot comprehend.¹⁴⁶ The teacher-to-student ratio is estimated to be 1:114, but teachers are frequently absent and fail to secure substitutes to teach in their place.¹⁴⁷ Such circumstances undermine effective learning environments, leaving many Muslim villagers with the belief that Buddhist teachers are not interested in educating Muslim Rohingya children.¹⁴⁸

The poor quality of education has led to an eighty percent illiteracy rate among the Rohingya.¹⁴⁹ Further, there are very few secondary schools—approximately twelve high schools for the whole of North Arakan, with more than 800,000 inhabitants.¹⁵⁰ The Rohingya students who wish to access higher education must confront additional hurdles, including prohibitions against studying particular substantive areas such as medicine, dentistry, and engineering.¹⁵¹ Further, while no formal bar against the

¹⁴² *Id.*

¹⁴³ *Id.* (“With no accurate statistics for northern Rakhine, it's impossible to know how many children from tiny villages die before they ever make it to a hospital because their families cannot afford bribes demanded at checkpoints.”).

¹⁴⁴ *See Muslims Blocked From Rakhine Township Hospitals, Says MSF*, RADIO AUSTRALIA (Oct. 22, 2013), <http://www.radioaustralia.net.au/international/radio/program/asia-pacific/muslims-blocked-from-rakhine-township-hospitals-says-msf/1206856> (“In Myanmar's troubled Rakhine state, minority Muslims live under apartheid-like conditions, housed in temporary camps and segregated from the majority Buddhist population. This has led to a health care crisis as Muslims are subject to strict movement restrictions and local hospitals are known to refuse to treat them.”); *see also* McDowell, *supra* note 2 (“‘If I could be anything, I'd be doctor when I grow up,’ Anwar says. ‘Because whenever someone in my family gets sick and we go to the hospital, the staff never takes care of us. I feel so bad about that. But I know that will never happen,’ the third-grader adds. ‘The government wouldn't allow it.’”).

¹⁴⁵ *See* McDowell, *supra* note 2.

¹⁴⁶ *See id.* (“‘Our teachers write a lot of things on the blackboard, but don't teach us how to read them,’ says 8-year-old Anwar Sjak. ‘It's very difficult to learn anything in this school.’”).

¹⁴⁷ *See id.*

¹⁴⁸ *See id.*

¹⁴⁹ *Myanmar: Rohingyas in Malaysia Seek Education, Opportunities*, IRIN (June 8, 2011).

¹⁵⁰ *See id.*

¹⁵¹ *See* McDowell, *supra* note 2; *see* HUMAN RIGHTS WATCH, BURMA: THE ROHINGYA MUSLIMS -

pursuit of university studies exists, there are no universities in northern Rakhine and, for more than a decade, travel bans have prohibited resident Rohingyas from leaving the area.¹⁵²

Due to Myanmar's discriminatory citizenship law, Rohingya children have been deprived of birth certificates since the mid-1990s, and as depicted above, are blacklisted if their parents' marriage is unrecorded in the official registry or if they are in violation of the two-child limit imposed on their ethnic group.¹⁵³ They are often treated in a denigrating and humiliating manner by non-Muslims; for example, being referred to as "dogs," or, in the instance of young girls, having crude sexual insults hurled at them.¹⁵⁴ As communal violence persists, internal displacement places children at greater risk of family separation as well as physical and emotional damage.¹⁵⁵ In addition, the lack of educational opportunity results in increased vulnerability to trafficking and exploitative work, as depicted above.¹⁵⁶

III. GLOBAL, REGIONAL AND LOCAL SECURITY IMPLICATIONS

Official policies and normative practices targeting Myanmar's minority Muslim population pose a threat not only to Myanmar's internal stability but to global and regional security, too.¹⁵⁷ Radical extremists continue to use maltreatment of co-religionists to manipulate popular sentiment in order to enhance terrorist recruiting in countries where such persecution is believed to exist.¹⁵⁸

ENDING A CYCLE OF EXODUS? (1996), available at <http://www.hrw.org/reports/pdfs/b/burma/burma969.pdf> ("In addition, university admission guidelines prevent all but full citizens from studying medicine, dentistry and engineering at institutes of higher education. Rohingyas who are neither associate nor naturalized citizens (that is, the majority) but stateless persons or holders of FRCs are also denied these rights, and in addition they are denied freedom of movement.").

¹⁵² See Khin Maung Lay, *supra* note 17.

¹⁵³ See McDowell, *supra* note 2. Children who are blacklisted cannot access education, receive official permission to travel, marry or acquire property. They may also be arrested and detained. See also HUMAN RIGHTS WATCH, *supra* note 44.

¹⁵⁴ See *id.*

¹⁵⁵ See *Burmese Village Violence Against Children & Families Must Stop, Says UNICEF*, WOMEN NEWS NETWORK (Oct. 2013), <http://womennewsnetwork.net/2013/10/09/burmese-violence-unicef/>.

¹⁵⁶ See Christa Foster Crawford, *Cultural, Economic and Legal Factors Underlying Trafficking in Thailand and Their Impact on Women and Girls from Burma*, 12 CARDOZO J.L. & GENDER 821 (2006).

¹⁵⁷ See, e.g., Abdelkader, *supra* note 12.

¹⁵⁸ See Dapice & Nguyen Xuan Thanh, *supra* note 66; see also *Jl Protests Against Genocide of Muslims in Burma*, DAILY REGIONAL TIMES OF SINDH (Aug. 4, 2012) ("On the call of the Jamaat-e-Islami, a protest demonstration was staged on Friday against the genocide of Muslims and dishonoring of Muslim women in Myanmar (Burma). After Juma prayers, a big protest demonstration was staged by the Jamaat-e-Islami Hyderabad Chapter outside the Aurangzeb Mosque. Addressing the participants of the demonstration, the General Secretary of Jamaat-e-Islami Sindh Rashid Nasim has called upon the members of the OIC and rulers of the Muslim countries to record a strong protest against the genocide and dishonouring of the Muslim women. He criticized the role of the activists of the human rights

Around the world, there is a heightened awareness concerning the plight of Myanmar's Rohingya population, including its women and children, in diaspora and indigenous Muslim communities. At protests staged in Pakistan by the Islamist organization Jamaat-e-Islami in August 2012, the "dishonoring of thousands of Muslim women" as well as the murder of Muslim children became rallying cries.¹⁵⁹ While that protest was reported as peaceful, there have been explicit calls for violence in response to continued anti-Muslim persecution in Myanmar.¹⁶⁰ Indonesian extremists have called for a "violent jihad" against Burmese Buddhists.¹⁶¹ In January 2013, a 23-year-old Indonesian man was convicted by local authorities of plotting an attack against the Burmese Embassy in Jakarta, together with six others.¹⁶² They allegedly viewed the planned attack as retribution for official persecution of Rohingya Muslims in Burma.¹⁶³

Further, attacks have been launched within Myanmar targeting Buddhist extremist leaders such as the Venerable Wirathu, a leading figure of the 969 campaign that has been closely associated with anti-Muslim violence.¹⁶⁴ The campaign promotes economic boycotts of Muslim-owned businesses and opposes intermarriage between Muslims and Buddhists.¹⁶⁵ The 969 campaign, named for numbers of religious significance in Buddhist scripture, has coincided with a surge of violence in which Muslims have been the principal victims.¹⁶⁶ In Rakhine State, 140,000 stateless Rohingya

organizations, who made hue and cry over slashing of a woman but silent over the dishonouring of thousands of Muslim women, brutal murders of men and children and demolition of mosques in Myanmar.").

¹⁵⁹ See *Jl protests against genocide of Muslims in Burma*, DAILY REGIONAL TIMES OF SINDH (Aug. 4, 2012).

¹⁶⁰ See Michael Bachelard, *Bashir Threatens Jihad on Myanmar Buddhists*, SYDNEY MORNING HERALD (May 4, 2013), <http://www.wmh.com.au/world/bashir-threatens-jihad-on-myanmar-buddhists-20130503-2iyfw.html> ("Islamic terrorists in Indonesia have a new target after militant godfather Abu Bakar Bashir threatened holy war against Myanmar's Buddhists. Just hours after the threat was reported on radical site Voice of al-Islam on Thursday, two men were arrested carrying pipe bombs on their way to the Myanmar embassy in central Jakarta. The report quoted Bashir, who motivated the Bali bombers in 2002, saying Myanmar was conducting genocide against Rohingya Muslims in the Arakan state in the country's west, and that jihad was the only solution. Two others were arrested later after anti-terrorism police raided a property in south Jakarta and seized more explosives. Police spokesman Boy Rafli Amar said those arrested were seeking revenge for the treatment of Rohingya Muslims in Myanmar.").

¹⁶¹ See *id.*

¹⁶² ASSOCIATED PRESS, *Indonesia Sentences Militant Over Burma Embassy Plot*, THE GUARDIAN (Jan. 21, 2014), <http://www.theguardian.com/world/2014/jan/21/indonesia-sentences-militant-burma-embassy-plot>.

¹⁶³ See *id.*

¹⁶⁴ See Richard Lloyd Parry, *Bomb Attack on 'Burmese Bin Laden' Leaves Five Hurt*, THE TIMES ASIA (July 23, 2013), <http://www.thetimes.co.uk/tto/news/world/asia/article3822758.ece>.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

Muslims are living in refugee camps following violent clashes that left more than 200 people dead.¹⁶⁷

During a representative attack against 969 leaders, Wirathu, who has been dubbed “the Burmese Osama bin Laden” and “the bald neo-Nazi,” was targeted with a small handmade bomb placed in a parked car that exploded as he delivered a speech in July 2013.¹⁶⁸ Authorities have not yet apprehended the perpetrators of the crime.¹⁶⁹ This violence is bound to escalate and spread to regional and international actors perceived as supporting Burmese officials responsible for anti-Muslim violence and persecution.¹⁷⁰

IV. RECOMMENDATIONS

Indeed, peace and security can only become a reality in Myanmar through just laws. To that end, and in light of the discussion in Parts II and III, this part proposes a number of legal and policy recommendations, including A) amending the 1982 Citizenship Act; B) engaging in public education campaigns to help dispel many of the myths that represent causal factors in anti-Muslim violence; C) providing resources and support for victims of gender-based violence; and D) exercising increased vigilance in identifying, investigating, and prosecuting all those that facilitate human trafficking.

A. The Rule of Law: Repeal the 1982 Citizenship Act to Comply with International Law Obligations and Myanmar’s Constitution

As an initial measure, Myanmar must amend its 1982 Citizenship Act¹⁷¹ in order to bring it into compliance with international law. Core principles of international law recognize citizenship as critical to the protection of individual rights and impose on states a responsibility to confer citizenship upon stateless people.¹⁷² For instance, the CRC, which Burma

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ For additional discussion, see Abdelkader, *supra* note 12.

¹⁷¹ See *Burma Citizenship Law, 1982* (Myan.), available at <http://www.refworld.org/docid/3ae6b4f71b.html>.

¹⁷² Representative of this principle, the International Covenant on Civil and Political Rights (“ICCPR”), which Myanmar has not yet signed or ratified, affirmatively recognizes the right of every child to acquire a nationality. International Covenant on Civil and Political Rights art. 23, Dec. 16, 1966, 999 U.N.T.S. 171, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>. In addition, the 1961 Convention on the Reduction of Statelessness, to which Myanmar is not a signatory, requires states to grant persons born within its borders nationality if they

acceded to in 1991,¹⁷³ provides children the right to acquire nationality.¹⁷⁴ The right to a nationality represents a fundamental principle in international law to which Burma should adhere, particularly in light of its democratic aspirations. Indeed, Burma should be expected to comply with its international legal obligations as set forth in the CRC, the Universal Declaration of Human Rights (“UDHR”), the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), and other human rights laws, as well as provisions set out in its own constitution.

In its current form, Myanmar’s Citizenship Act denies citizenship to the majority of an estimated 1,000,000 Muslims within its borders,¹⁷⁵ which has devastating effects for women and children.¹⁷⁶ The government must ensure citizenship rights for Rohingya and other Muslim children who are otherwise rendered stateless in violation of the UDHR,¹⁷⁷ which defines statelessness as a matter of human rights law.¹⁷⁸ Article 15 provides in relevant part that (1) everyone has the right to a nationality; and (2) no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.¹⁷⁹ While the UDHR is not binding, its anti-discrimination language can be found in five more international instruments, including the CRC and CEDAW, both of which Burma has ratified and is legally obligated to respect.¹⁸⁰ Yet, Myanmar’s 1982 Citizenship Act and its discriminatory population control regulations clearly violate these provisions.¹⁸¹

Ratified by the Burmese government on July 22, 1997,¹⁸² CEDAW requires signatory states to bring domestic laws into harmony with its provisions to ensure both formal and substantive equality for women and submit periodic national reports detailing compliance.¹⁸³ By accepting

would otherwise be rendered stateless. Convention on the Reduction of Statelessness art. 1, Aug. 30, 1961, 989 U.N.T.S. 175, available at <http://www.unhcr.org/3bbb286d8.html>.

¹⁷³ See Convention on the Rights of the Child, Sep. 2, 1990, 1577 U.N.T.S. 3, available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

¹⁷⁴ *Id.*

¹⁷⁵ See U.S. DEP’T OF STATE, BURMA 2012 HUMAN RIGHTS REPORT (2012) available at <http://www.state.gov/documents/organization/204400.pdf>.

¹⁷⁶ See *supra* Part II.

¹⁷⁷ See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at <http://www.un.org/en/documents/udhr/>.

¹⁷⁸ *Id.* at art. 15.

¹⁷⁹ *Id.*

¹⁸⁰ See Zawacki, *supra* note 30, at 19.

¹⁸¹ *Burma Citizenship Law*, 1982 (Myan.), available at <http://www.refworld.org/docid/3ae6b4f71b.html>. For additional discussion, see Abdelkader, *supra* note 12.

¹⁸² See Convention on the Elimination of All Forms of Discrimination against Women, Sep. 3, 1981, 1249 U.N.T.S. 13, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

¹⁸³ *Id.*

CEDAW, Burma formally committed to ending gender discrimination, for instance abolishing the two-child rule that clearly discriminates against Rohingya women and girls.¹⁸⁴ The population control regulations illustrate how gender inequality has been codified into law and policy, with severe consequences for affected populations.¹⁸⁵ Indeed, the two-child rule adversely impacts women's physical, mental, and emotional health and well-being and it leaves blacklisted girls without legal status.¹⁸⁶ In addition, the 1982 Citizenship Act renders Rohingya women and girls stateless and more vulnerable to physical insecurity and gender-based violence.¹⁸⁷ Both laws facilitate systemic gender discrimination in violation of CEDAW.

President Thein Sein should demonstrate national leadership on this issue with the goal of unifying the nation under a banner of religious pluralism as well as gender and racial equality. Amending Myanmar's citizenship law should be a national priority because so many other injustices naturally flow from its discriminatory provisions, including the deprivation of educational and employment opportunities, increased incidence of human trafficking, and marriage and population control measures, among others.

For instance, Article 34 of the Burmese Constitution states, "[e]very citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion subject to public order, morality or health and to the other provisions of this Constitution."¹⁸⁸ Additionally, Article 354 states that,

Every citizen shall be at liberty . . . if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality . . . to develop . . . [the] religion they profess and customs without prejudice to the relations between one national race and another or among national races and to other faiths.¹⁸⁹

Given the current legal status of the Rohingya as a stateless population, however, Burmese law also denies the group official legal protection of their religious freedom rights. Indeed, as one observer has noted,

¹⁸⁴ See *supra* Part II.

¹⁸⁵ See *id.*

¹⁸⁶ See *id.*

¹⁸⁷ *Burma Citizenship Law*, 1982 (Myan.), available at <http://www.refworld.org/docid/3ae6b4f71b.html>.

¹⁸⁸ See *id.*

¹⁸⁹ CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, § 34, [2008] translated at http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf.

Inside Myanmar, a kind of circularity exists whereby systemic discrimination renders the Rohingya stateless, while their status as a stateless population acts as validation for further discrimination and persecution by the state and its citizens. Because of this, access to a nationality is commonly known as 'the right to have rights.'¹⁹⁰

In light of the security implications of continued Rohingya persecution¹⁹¹ and documented human rights violations¹⁹² the United Nations General Assembly, together with the United States and Europe, should press President Thein Sein to grant equal citizenship rights to all religious and ethnic groups, including the Rohingya and other Muslims. Myanmar officials should similarly lift all discriminatory regulations targeting the Rohingya, including restrictions on births, marriage, educational and employment opportunities, property ownership, and travel, among others.¹⁹³

B. Public Education Campaigns

In addition to amending or revoking discriminatory laws and policies, Burmese officials must also engage in public education campaigns to help dispel many of the myths that represent causal factors in anti-Muslim violence; such an initiative would not only focus upon the general public but officials and policymakers as well. Illustrative are misconceptions concerning rapid population growth among Muslims.¹⁹⁴ Such misinformation not only informs poor public policy decisions (i.e., discriminatory population growth regulations), but also serves to legitimize violence against a religious minority group seen as attempting to Islamicize the Buddhist-majority country.¹⁹⁵ Together with popular education initiatives led by the federal Burmese government, there must be accountability among those whose rhetoric results in imminent lawless violence.

Similarly, education and training initiatives are also necessary to counter gender violence within Myanmar's security apparatus and society more generally. Rape and sexual assault in conflict zones must be

¹⁹⁰ See Zawacki, *supra* note 30, at 19.

¹⁹¹ See *supra* Part III.

¹⁹² See *supra* Part II.

¹⁹³ See Abdelkader, *supra* note 12; see also Zawacki, *supra* note 30.

¹⁹⁴ See *supra* Part II.

¹⁹⁵ See Dapice & Nguyen Xuan Thanh, *supra* note 66, at 24.

understood as crimes against humanity, as per international law.¹⁹⁶ Such initiatives should represent preventative and rehabilitative measures prompting a change to the mindset of past or prospective perpetrators. If democratic governance is to become a reality in Myanmar, military and security personnel must understand the significance of relating and respecting members of all communities and of avoiding human rights violations, including gender-based violence.

Unfortunately, it does not appear that President Thein Sein's administration is committed to addressing gender-based violence. In fact, in September 2013, the Burmese government withheld its support for a United Nations declaration—signed by 113 member states—to end sexual violence in conflict zones.¹⁹⁷ The UK-led declaration pledges not to permit amnesties for gender violence in peace agreements and indicates that a new international protocol will be adopted next year to ensure that evidence gathered in abuse cases remains admissible in court and extends support to non-governmental organizations to enhance monitoring and documentation in gender violence cases.¹⁹⁸ Burma's refusal to sign on to the declaration comes amid continued reports of sexual assaults against Muslim women by its security forces.¹⁹⁹

¹⁹⁶ See, e.g., War Dep't, Gen. Orders No. 100, § 2, art. 44 (1863), available at <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B1CE1E21A4237EE6C12563CD00514C6C>; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 12, 1949, 75 U.N.T.S. 31, available at <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C12563CD00519E66>; Geneva Convention Relative to the Treatment of Prisoners of War art. 14, Aug. 12, 1949, 75 U.N.T.S. 135, available at <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F0E25F9F56372523C12563CD0051AB8F>; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts art. 75(2), Jun. 8, 1977, 1125 U.N.T.S. 3, available at <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=086F4BB140C53655C12563CD0051E027>; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts art. 4(2), Jun. 8, 1977, 1125 U.N.T.S. 609, available at <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD575D47CA6C8C12563CD0051E783>; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 27, Aug. 12, 1949, 75 U.N.T.S. 287, available at <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=FFCB180D4E99CB26C12563CD0051BBD9>; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts art. 76, Jun. 8, 1977, 1125 U.N.T.S. 3, available at <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=5FB5CC7AD1C3AAF7C12563CD0051E08C>; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts art. 77, Jun. 8, 1977, 1125 U.N.T.S. 3, available at <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8F7D6B2DEE119FBAC12563CD0051E0A2>.

¹⁹⁷ See Michaels, *supra* note 78.

¹⁹⁸ See *id.*

¹⁹⁹ See *id.*

These crimes bear genocidal elements, and as such, the United Nations should independently investigate gender violence in Burma's conflict zones, including in the Rakhine and Arakan states. In the international legal context, genocide is defined as acts "committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group."²⁰⁰ In the Burmese context, and pursuant to Article II of the Convention on the Prevention and Punishment of the Crime of Genocide,²⁰¹ such acts encompass the unlawful deprivation of life by imposing restrictions on births and causing serious bodily or mental harm as detailed in Part II.²⁰² Interestingly, in 2012, a number of journalists, commentators, and activists, as well as the Organization of Islamic Cooperation ("OIC"), described Burmese officials as engaging in genocide against the Rohingya.²⁰³ Indeed, the international community should not wait for human rights violations, such as rape and sexual abuse, to reach the scale of atrocities in Rwanda or Yugoslavia before undertaking appropriate responsive action.

C. *Resources and Support for Victims of Gender-Based Violence*

While most of this article has focused on Muslim women and children as victims of pervasive prejudices and hatred, it is important to recognize their capacity to act as the protagonists of their own story. Indeed, with proper resources and support from international donors, they can serve as agents of constructive change within their families, communities, and nation as survivors of gender-based violence—and eventually thrive, too.

Recently, in September 2013, more than 400 activists and policymakers attended a Burmese conference focused on ending gender based violence.²⁰⁴ Indeed, gender violence is a critical issue that has impacted members of other ethnic and religious groups in Burma,²⁰⁵ not

²⁰⁰ Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277, available at http://legal.un.org/avl/pdf/ha/cppcg/cppcg_e.pdf. See Zawacki, *supra* note 30.

²⁰¹ See Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 200.

²⁰² See Zawacki, *supra* note 30, at 21. "The most credible use of the term in relation to Myanmar came from Professor William Schabas, who from 2009-2011 was a member of the International Association of Genocide Scholars. In an Al Jazeera documentary entitled 'The Hidden Genocide' that first aired on December 9, 2012, he stated: '[I]n the case of the Rohingya we're moving into a zone where the word can be used. When you see measures preventing births, trying to deny the identity of a people, hoping to see that they really are eventually—that they no longer exist—denying their history, denying the legitimacy of their right to live where they live, these are all warning signs that mean that it's not frivolous to envisage the use of the term genocide.'" *Id.*

²⁰³ See Zawacki, *supra* note 30, at 23.

²⁰⁴ See Michaels, *supra* note 78.

²⁰⁵ See *id.* ("The Shan Women's Action Network, a network of Shan women in Burma and Thailand,

merely the Rohingya. While the gathering's focus was not specific to the Muslim Burmese experience, it is imperative that such gender-based campaigns remain inclusive of women and girls from all religious and ethnic minority groups, including those who continue to be raped and tortured even at the time of this writing.

New programmatic initiatives emphasizing progress and development for women in Burma should be inclusive of Rohingya and other Muslim women. Often, the key areas of programmatic focus, such as health awareness, prevention and treatment, education and training, and expanded economic opportunities for women,²⁰⁶ speak to the needs of many Rohingya women and girls. Given the physical and psychological state of many survivors of gender-based violence resulting from their religious and/or ethnic identities, more culturally sensitive victim services may be needed—and other female survivors may be best situated to help facilitate provision of such services to members of their respective religious and ethnic communities. Such programs should encompass restorative justice mechanisms—restoring the victims' emotional and material losses—to help rehabilitate victims of human rights abuses and reintegrate them back into their communities.²⁰⁷

During the September 2013 women's conference, there was also discussion of a new domestic law prohibiting acts of gender violence in the private and public spheres as well as related constitutional amendments towards gender equitable reform.²⁰⁸ Female members of religious and ethnic minority groups, such as the Rohingya, who have been deprived of

documented 173 of cases of rape and other sexual violence at the hands of government soldiers in Shan State between 1996 and 2001. Since 2002, the network has received more than 300 complaints of rape committed by soldiers, and less than a year after the government signed a ceasefire with Shan rebels in January 2012, the group said it had received more than 10 reports of rape, adding that many more cases likely went unreported. In Kachin State, where a ceasefire broke down in 2011, sexual violence has also been reported amid continuing clashes between government troops and the Kachin Independence Army ('KIA'). In a shocking case last year in May, a grandmother with 12 children was reportedly beaten and gang-raped by 10 soldiers in a church.”)

²⁰⁶ See *The Abbott Fund Announces \$1 Million Partnership with the Secretary's International Fund for Women and Girls to Empower Women in Burma*, INVESTMENT WEEKLY NEWS (Aug. 4, 2012), <http://www.verticalnews.com/article.php?articleID=7313474>.

²⁰⁷ See Mark Umbreit, *What is Restorative Justice*, CNTR. FOR RESTORATIVE JUSTICE & PEACEMAKING, U. OF MINN. (1999), available at http://www.cehd.umn.edu/ssw/rjp/resources/rj_dialogue_resources/RJ_Principles/What_is_RJ.pdf (“Research has found restorative justice programs to have high levels of victim and offender satisfaction with the process and outcome, greater likelihood of successful restitution completion by the offender, reduced fear among victims, and reduced frequency and severity of further criminal behavior.”).

²⁰⁸ See Michaels, *supra* note 78 (“He declined to comment on Burma's decision not to sign the declaration this week. ‘I cannot say now [about the declaration], but the first step now is that we are trying to develop an anti-violence against women law,’ he said. ‘This would include domestic violence and sexual violence. So this is the first step.’”).

equal citizenship rights, must be able to avail themselves of protection under the new provisions. Further, it is important for officials to advance the rights of all women—irrespective of their racial, ethnic, or religious identities—in legal structures and normative practice to ensure formal and substantive equality in employment and educational opportunities. Officials should promote access to justice and health care services to help address lingering effects of past abuses, such as the two-child rule and gender-based violence.

D. The Rule of Law: Identify, Investigate, and Prosecute All Those that Facilitate Human Trafficking.

Addressing the above issues indirectly addresses the issue of human trafficking vis-à-vis Myanmar's status as an origin country supplying prospective victims fleeing persecution, communal violence, and abject poverty. Further, destination countries such as Thailand should exercise much more vigilance in identifying, investigating, and prosecuting all people who facilitate trafficking.

Presently, Thai and Burmese efforts to combat trafficking have been less than vigilant.²⁰⁹ For example, the Thai government has not investigated or prosecuted trafficking gangs, and it allows them to continue to operate with impunity.²¹⁰ Nor have Thai officials determined why traffickers can access women and children in the detention centers described above.²¹¹ Thailand should exercise much more vigilance in identifying, investigating, and prosecuting all those that facilitate trafficking. In the instance of organized criminal elements, officials should trace, freeze, and confiscate related proceeds and provide unconditional assistance to victims regardless of their citizenship status or religious or ethnic identities. Thai officials should also address the demand-side factors contributing to the exploitation of women and children within their borders.²¹²

As to Myanmar, although it prohibits human trafficking vis-à-vis its 2005 Anti-Trafficking in Persons Law, its efforts to combat trafficking internally have been lacking, as evidenced by the egregious conduct of its own security forces discussed in Section II. Moreover, Myanmar will remain a source country supplying prospective trafficking victims (fleeing religious and ethnic persecution) until it effectively addresses the underlying

²⁰⁹ See generally U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, available at <http://www.state.gov/j/tip/rls/tiprpt/>.

²¹⁰ See *Thailand: Release and Protect Rohingya 'Boat People,' supra* note 103.

²¹¹ See *id.*

²¹² See Crawford, *supra* note 156.

causes of persistent communal violence and abject poverty confronting its minority Muslim population. Simply put, the plight of women and children seeking a better life should not result in trafficking, exploitation and gender violence.

V. CONCLUSION

The international community has praised Myanmar for political and economic reforms since the end of military rule in 2011. Still, severe human rights problems persist, evidencing the country's struggle with democracy as oppressed members of ethnic and religious minority groups' fight for survival. Burmese officials would do well to recognize that such conditions will depress foreign investment, political development, and wider diplomatic acceptance.²¹³ The status quo—abject poverty, gender-based and anti-Muslim violence, discriminatory laws and policies—will continue to undermine progress for Myanmar and the region.²¹⁴ Indeed, Burmese success as a burgeoning democracy in the Southeast Asian region is intimately linked to the status and experiences of its ethnic and minority groups. Without dramatically modified laws and policies—ones that respect the rights of all irrespective of race, ethnicity, religion or gender—it remains unclear whether Myanmar will succeed on the path to becoming the democracy to which it aspires.

²¹³ See Dapice & Nguyen Xuan Thanh, *supra* note 66; see also Aung San Suu Kyi urged to place human rights, anti-Muslim violence at the top of the agenda, *supra* note 24 (“The underlying tensions that stem from discrimination against ethnic and religious minorities pose a threat to Myanmar’s democratic transition and stability,” said ASEAN Parliamentarians for Human Rights President and Indonesian Member of Parliament Eva Kusuma Sundari.”).

²¹⁴ See *id.*