

## Equal Rights Trust

Submission to the Human Rights Council at the  
23<sup>rd</sup> Session of the Universal Periodic Review

### Myanmar

1. Since May 2008, the Equal Rights Trust has been conducting research and advocacy on the human rights of stateless persons around the world. Over this period, the Trust has focused on the human rights of stateless Rohingya in various countries, including Myanmar. The Trust has been involved in documenting abuses against Rohingya since 2009, including documenting the testimonies of over 50 Rohingya who have fled violence in Myanmar since June 2012. Our research on Rohingya in Myanmar has contributed to three publications: [\*Unravelling Anomaly: Detention, Discrimination and Protection Needs of Stateless Persons \(2010\)\*](#), [\*Burning Homes, Sinking Lives: A situation report on the violence against stateless Rohingya in Myanmar and their refoulement from Bangladesh \(2012\)\*](#) and [\*Emergency Report: Urgent Action Essential to Protect Muslims in Myanmar \(2012\)\*](#). The Trust has continued to conduct research and to document abuses against the Rohingya since the publication of these reports. This submission draws on all of our research to date.

### Universal Periodic Review of Myanmar under the First Cycle

2. Myanmar was subject to the Universal Periodic Review during Session 10 of the First Cycle, in January 2011. At this Review, five recommendations were made in relation to Myanmar's treatment of the Rohingya. Belgium recommended that Myanmar "[a]dapt the Citizenship Act of 1982 in order to put an end to the statelessness of the Rohingya population"<sup>1</sup> and "[p]ut an end to racial discrimination against the Rohingya and join ICERD".<sup>2</sup> The USA recommended that Myanmar "[i]mmediately end violence and discrimination against members of ethnic and religious minorities, grant full citizenship rights to Rohingyas and end sexual violence committed against ethnic minority women".<sup>3</sup> Jordan recommended that Myanmar "[e]xert more efforts to promote and protect the rights of Muslim minorities".<sup>4</sup> Switzerland recommended that Myanmar "[m]odify the Citizenship Law of 1982 to ensure all minorities equal rights as citizens and remove all restrictions imposed on the Muslim minority in Rakhine State".<sup>5</sup> Myanmar did not accept any of these recommendations.<sup>6</sup>
3. Myanmar also did not accept multiple recommendations to ratify the CAT, CRPD, ICESCR, ICCPR, the Rome Statute, the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.<sup>7</sup>

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<sup>1</sup> UN General Assembly, *Report of the Working Group on the Universal Periodic Review: Myanmar*, 21 March 2011, A/HRC/17/9, para 107.10.

<sup>2</sup> *Ibid.*, para 107.26.

<sup>3</sup> *Ibid.*, para 107.67.

<sup>4</sup> *Ibid.*, para 106.44.

<sup>5</sup> *Ibid.*, para 107.3.

<sup>6</sup> UN General Assembly, *Report of the Working Group on the Universal Periodic Review: Myanmar Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 27 May 2011, A/HRC/17/9/Add.1.

<sup>7</sup> See above, note 1, para's 106.3 – 106.20.

4. As this Submission elaborates, the discriminatory treatment and persecution of the Rohingya has increased in the past four years, bringing into stark focus Myanmar's refusal to accept relevant recommendations by states.

### **The Rohingya – a History of Discrimination and Persecution**

5. The Rohingya are an ethno-religious minority group from the Rakhine region, which today is encompassed within the borders of Myanmar and is adjacent to Bangladesh. There is an estimated population of 1-1.5 million Rohingya residing in Rakhine State. Much of the population is concentrated in the three townships of North Rakhine State – Maungdaw, Buthidaung and Rathedaung – where the Rohingya are in the majority. Other smaller minority communities of Rohingya are scattered throughout Rakhine State. To a large extent, Rohingya have been contained in Rakhine State, through successive government policies restricting freedom of movement. However, small numbers of Rohingya have settled in Yangon, the capital of Myanmar, and other places in the country.
6. For many decades, the Rohingya in Myanmar have faced acute ethno-religious discrimination, amounting to persecution, and resulting in a steady outflow of Rohingya refugees from the country. This submission focuses on the key patterns of discrimination and the most significant concerns with regard to the human rights protection of stateless Rohingya in Myanmar, including: nationality and identity; forced displacement and segregation; and the right to family life.

### **The International Law Obligations of Myanmar**

7. The obligations of Myanmar towards Rohingya women and children are entrenched in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) respectively, which have both been ratified by Myanmar. Myanmar has not ratified any of the other principal human rights treaties. However, Myanmar is a Member of the United Nations and is thus obligated by the Charter of the United Nations to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. The human rights and fundamental freedoms referred to in Article 55(c) of the UN Charter are specified in the Universal Declaration of Human Rights (UDHR). Many of the human rights entrenched in the UDHR are also recognised as principles of customary international law and are therefore universally applicable.

### **Nationality, Statelessness and Identity**

8. The majority of Rohingya in Myanmar today have been deprived of their nationality and are stateless. The arbitrary deprivation of their nationality and the erosion of their legal rights has occurred alongside the denial of their ethnic identity and history in the Rakhine region. In 1962, Myanmar fell under military rule, which was to last 49 years. During this period, the process of stripping the Rohingya of their identity and rights began. This process continues in the present day.
9. The military regime under General Ne Win promulgated the 1982 Burma Citizenship Law depriving the Rohingya of the right to citizenship. Entitlement to citizenship in Myanmar is primarily through membership of the state-defined national races/ethnicities or *Tai Yin Tha*. Prior to 1982, the categories of *Tai Yin Tha* were broadly defined and open-ended. After the 1982 law, a closed list of 135 national races/ethnicities was published and the Rohingya

(and some other minority groups, including persons of Indian and Chinese origin) were excluded. Thus they did not acquire citizenship automatically and by right.<sup>8</sup>

10. It should be noted that under section 6 of the 1982 Law, persons who were already citizens at the time the law came into force would continue to be so. Furthermore, the law also provided for “Associate” and “Naturalised” citizenship, the former being for those whose citizenship applications were being processed at the time the 1982 Law was promulgated and the latter being non-citizens who can establish that they and their predecessors lived in the country prior to independence.<sup>9</sup> Thus, all Rohingya whose families lived in Myanmar from the colonial period should have been able to continue to enjoy or to acquire Myanmar nationality either under section 6 of the Act, or as naturalised or associate citizens. However, while most Rohingya would be able to trace their ancestry at least to the colonial period, the lack of adequate documentation – including as a result of previous mass exoduses and discriminatory and arbitrary decision-making by officials – mean that the vast majority of Rohingya have not been recognised as citizens. Most significantly, during a nationwide citizenship scrutiny exercise in 1989, Rohingya who submitted their National Registration Cards (NRC)<sup>10</sup> to the authorities with the hope of receiving new Citizenship Scrutiny Cards (CSC), were denied the new CSCs; their old NRCs were not returned.<sup>11</sup>
11. The period since the 2010 election has seen the further erosion of the Rohingya’s rights. Whilst a large number of Rohingya are stateless, the Rohingya have continued to exercise some citizenship rights – as holders of Temporary ‘white’ identity cards – including through participation in the 2008 Constitutional Referendum and 2010 elections. However, a declaration by President Thein Sein that all white cards will expire on 31 March 2015<sup>12</sup> will render the Rohingya unable to vote at the 2015 referendum or general elections or to stand for election in 2015, indicating the further erosion of their rights since the political reforms of 2010.
12. Closely linked to the nationality rights of the Rohingya is the question of their identity. The term ‘Rohingya’ is rejected by Myanmar, which refers to this community as ‘Bengali’ instead. The refusal of Myanmar to allow Rohingya to self-identify has further compounded the nationality problem. Despite the UN receiving assurances to the contrary, the Rohingya were not allowed to self-identify in national census in 2014.<sup>13</sup> This resulted in outbreaks of violence and the vast majority of Rohingya not being recorded in the census. The right to self-identify is a well-established principle under international law.<sup>14</sup> The denial of this right to the Rohingya has the added impact of legitimising the arbitrary deprivation of their nationality under the 1982 Law.

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<sup>8</sup> Equal Rights Trust, *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*, 2014, p. 9.

<sup>9</sup> *Burma Citizenship Law*, 15 October 1982, Ch. III (Associate Citizenship) and Ch. IV (Naturalised Citizenship).

<sup>10</sup> NRCs were issued under the Residents of Myanmar Registration Act, 1949.

<sup>11</sup> See above, note 8, p. 8.

<sup>12</sup> Oren Samet, “The Explosive Politics of Voting Rights in Myanmar”, *The Diplomat*, 04 March 2015.

<sup>13</sup> The Guardian, “Burma census is not counting Rohingya Muslims says UN Agency”, 2 April 2014.

<sup>14</sup> See for example, the statement of UN Special Rapporteur on the Situation of Human Rights in Myanmar, 26 July 2014, in which she stated that “the rights of minorities to self-identify on the basis of their national, ethnic, religious and linguistic characteristics is related to the obligations of States to ensure non-discrimination against individuals and groups, which is a central principle of international human rights law”.

## Forced Displacement, Segregation and Humanitarian Crisis since June 2012

13. In June and October 2012 ethnic violence broke out in Rakhine State, with the Rohingya bearing the brunt. The Equal Rights Trust's report *Burning Homes, Sinking Lives* provided evidence that the military were complicit in and participated in attacks on the Rohingya. This finding was substantiated by later reports from Human Rights Watch and other human rights organisations. As a result of the violence, tens of thousands of Rohingya fled to different parts of Rakhine State or across international boundaries, seeking refuge in Bangladesh, Malaysia and elsewhere. By the end of 2012, an estimated 140,000 Rohingya who had fled violence, lost their homes or been forcibly relocated by the military were contained in closed camps in Rakhine State.<sup>15</sup>
14. Additionally, there has been an increase in the forced migration of Rohingya out of Myanmar, mostly on boats heading for Southeast Asia and beyond. The exact numbers of Rohingya who have undertaken this journey since 2012 are not known, but it is estimated that from June 2011 to May 2012 approximately 9,000 people travelled in this way; from June 2012 to May 2013, this number is believed to have risen to over 31,000 and it is estimated that between June 2013 and May 2014, at least 54,000 have undertaken the journey. Between June 2012 and May 2014, as many as 2,000 Rohingya are believed to have gone missing at sea.<sup>16</sup>
15. Since 2012, grave concerns have been raised regarding the desperate humanitarian situation for Rohingya and Muslim communities in Myanmar, both within IDP (internally displaced person) camps and in their home communities. Conditions in the camps have been described as "dire", with severe restrictions on access to food, adequate shelter, clean water, health care and protection.<sup>17</sup> International agencies providing humanitarian assistance to Rohingya have had their efforts hampered by threats and violence against them by local populations, and by restrictions being placed on their activities by the Myanmar government and local authorities. Since 2012, under the state of emergency, restrictions of movement and population control similar to or even worse than those in North Rakhine State have been imposed on other Rohingya populations. The scale, extent and intent behind the escalation in human rights violations targeted at the Rohingya, their widespread and systematic nature, the role played by state actors and the impact it has had on the population, amount to prima facie evidence of violations of international criminal law, which should be addressed through relevant international frameworks.<sup>18</sup>
16. Efforts to provide aid for the affected Rohingya populations were severely hampered by protests and outbreaks of localised violence by the local Rakhine communities against Rohingya and NGO workers providing aid to Rohingya populations. Central and local government policies restricted access of humanitarian agencies to Rohingya populations, including the expulsion of Medicins sans Frontieres from Rakhine State in 2014.
17. In 2015, over 10% of the Rohingya population in Rakhine State remain detained in IDP camps in Rakhine State in a situation described by the UN Special Rapporteur on the

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<sup>15</sup> See above, note 8, p. 12.

<sup>16</sup> *Ibid.*

<sup>17</sup> UN OCHA, *Humanitarian Bulletin, Myanmar*, November 2012,

<sup>18</sup> Equal Rights Trust, *Burning Homes, Sinking Lives*, July 2012.

Situation of Human Rights in Myanmar as segregation.<sup>19</sup> They are left without access to their land, livelihoods or vital services, with their rights severely curtailed, including their freedom of movement. The UN Special Rapporteur described health care in the IDP camps as “abysmal” and access to education as “highly limited”.<sup>20</sup> The prolonged segregation of Rohingya populations in the IDP camps and in Northern Rakhine State increases inter-communal tensions and results in further discrimination and persecution of Rohingya minorities. Following the onset of violence in 2012, President Thein Sein called for the UN High Commissioner for Refugees to either settle the Rohingya in refugee camps or resettle them to third countries.<sup>21</sup> Further, the Rakhine Action Plan aims to extend the process of detaining non-citizens and those who do not comply with registration processes in internment camps.<sup>22</sup>

### **Right to Family Life**

18. Since the 1990s, Rohingya living in North Rakhine State have, through local orders, been subject to multiple discriminatory restrictions on marriages, births and movement, severely impacting on their right to family life. Marriage authorisations can take several years and require payment of excessive bribes. Families are restricted to two children per family. Cohabitation or sexual relations outside of marriage have resulted in prosecution and prison sentences of between 4 and 5 years. Women who become pregnant without a marriage authorisation can resort to unsafe, illegal abortions resulting in high maternal mortality. Restrictions on marriages and birth have led to thousands of unregistered children who are unable to access basic services including health and education and are unable to apply for travel and marriage permission themselves. Additionally, these children are denied evidence to support future applications for citizenship, thus increasing the numbers of stateless persons in Rakhine State.
19. Following the violence of 2012, against the backdrop of political reform in Myanmar, there was increasing public support for policies and legislation that would further restrict births and prevent intermarriage between Muslims and Buddhist populations in Rakhine State and elsewhere in Myanmar. The increased hate speech against Myanmar’s Muslim populations has not been curtailed. On the contrary, a package of four bills on the preservation of race and religion have been tabled for discussion in parliament which aim to control religious conversion, enforce birth spacing in particular communities and restrict marriages between Buddhist women and non-Buddhist men. The discriminatory nature of these bills raise serious concerns, and if passed, they are likely to be used to discriminate against ethnic and religious minorities and against minority women.

### **Recommendations**

20. Based on ERT’s continuous research into the human rights of stateless Rohingya in Myanmar over the past 6 years, and in particular, in relation to the above summary of our research findings, ERT makes the following recommendations. While the Human Rights Council has stated that “[t]he second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the developments of

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<sup>19</sup> Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar, 16 January 2015.

<sup>20</sup> *Ibid.*

<sup>21</sup> Associated Press, *UN refugee chief rejects call to resettle Rohingya*, 13 July 2012.

<sup>22</sup> Jared Ferrie, “Rights groups condemn Myanmar’s Rohingya plan”, Reuters, 3 October 2014.

the human rights situation in the State under review”,<sup>23</sup> in light of the fact that Myanmar accepted none of the recommendations in relation to the Rohingya under the first cycle, and subsequently, the human rights situation they face has further deteriorated, these recommendations build on the previous recommendations by states that were not accepted by Myanmar. Our recommendations are as follows:

- a. Address the systematic and entrenched discrimination inflicted on the Rohingya by state actors over many decades.
- b. Take steps to tackle institutional and popular racism and discriminatory attitudes in society at large.
- c. Tackle the root causes of the human rights abuses in Rakhine State, including by laying out a comprehensive plan towards peace, reconciliation and integration.
- d. Reform the citizenship laws to ensure all races and ethnicities are given equal and fair access to nationality without discrimination.
- e. Reduce statelessness in Myanmar by establishing clear paths towards the acquisition of citizenship and effective nationality for all stateless persons with legitimate claims to Myanmar nationality including the Rohingya who were arbitrarily deprived of their nationality by the 1982 citizenship law.
- f. Reform the immigration laws of Myanmar to make them compatible with international human rights law and ensure that they are implemented in a manner which does not discriminate against minority groups or opponents of the state.
- g. Address the humanitarian crisis in Rakhine state and ensure protection of all displaced persons and their resettlement in accordance with the UN Guiding Principles on Internal Displacement.
- h. Allow Rohingya to vote and seek election in all upcoming elections.
- i. Ratify and take all necessary steps to implement the ICCPR, ICESCR, CAT, CERD and other core human rights treaties.
- j. Ratify and take all necessary steps to implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

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<sup>23</sup> Human Rights Council, *Resolution 16/21: Review of the work and functioning of the Human Rights Council*, UN Doc. A/HRC/RES/16/21, April 2011, Annex 1, Para 6.