

# Extinguishing the Vulnerable: The Rohingya and the Buddhist-Theravada Exertion of Biopower

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Dear Editor,

In the midst of different global disturbances, conflicts and wars, the Rohingya crisis is gradually taking center stage internationally. Roughly 1.1 million Rohingya people live in the predominant Buddhist Myanmar.<sup>1</sup> Myanmar authorities have neither recognised their language nor citizenship in the country's Constitution, rendering them effectively stateless and treating them as illegal immigrants. The Rohingya are subject to a number of restrictive policies; they are not allowed to leave the region without government permission and access to medical facilities as well as education is severely restricted.<sup>2</sup> More worryingly, the Rohingya live there in 'ghetto-like camps and have a lack of basic services and opportunities',<sup>3</sup> and are exposed to wide resentment by the majority Buddhist population who consider them as unwelcomed interlopers.<sup>4</sup> In the coming sections, this letter will seek to address the situation in the country, explain the underlying leitmotif by the government to violently confront the Rohingya and, finally, expound what the role of international law should be.

## Escalation of the situation

In the last three years, accusations of sexual assault and local disputes flared up and unleashed widespread communal clashes. The *ignis fatalis* was on the 25<sup>th</sup> of August 2017, when a group of militant Rohingya rebels attacked Myanmar border police, triggering a 'clearance operation' by the military that resulted in 1,000 deaths, an exodus of 300,000 people and an increase in military presence in the Rakhine state.<sup>5</sup>

The United Nations issued a report in February 2017 based on interviews with Rohingya refugees, which detailed mass rapes and killings and the possibility of crimes against humanity carried out by Myanmar

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<sup>1</sup> Al Jazeera, 'Who are the Rohingya?' *Al Jazeera* (London, 18 April 2018) <<https://www.aljazeera.com/indepth/features/2017/08/rohingya-muslims-170831065142812.html>> accessed 7 November 2018.

<sup>2</sup> Rebecca Ratcliffe, 'Who are the Rohingya and What is Happening in Myanmar?' *The Guardian* (London, 6 September 2017) <<https://www.theguardian.com/global-development/2017/sep/06/who-are-the-rohingya-and-what-is-happening-in-myanmar>> accessed 8 December 2017.

<sup>3</sup> Al Jazeera (n 1).

<sup>4</sup> *ibid.*

<sup>5</sup> BBC News, 'Myanmar: What sparked latest violence in Rakhine?' *BBC News* (London, 19 September 2017) <<https://www.bbc.com/news/world-asia-41082689>>.

security forces.<sup>6</sup> With Resolution A/HRC/RES/34/22, the United Nations Human Rights Council appointed a fact-finding mission to investigate the crackdown on the Rohingya.<sup>7</sup> The outcome of this report was presented in September 2018, concluding that:

[g]ross human rights violations and abuses committed in Kachin, Rakhine and Shan States are shocking for their horrifying nature and ubiquity. Many of these violations undoubtedly amount to the gravest crimes under international law. They are also shocking because they stem from deep fractures in society and structural problems that have been apparent and unaddressed for decades. They are shocking for the level of denial, normalcy and impunity that is attached to them.<sup>8</sup>

In the next section, certain writings of Giorgio Agamben and Michel Foucault will be used to elucidate governmental and societal response in Myanmar.

### **Persecution of the Rohingya: The Exertion of Biopower**

The majority population in Myanmar is Theravada-Buddhist. Since the country's independence in 1948, different leaders have based their legitimacy on demonstrating public relationships with Buddhist's sacred rites and sites. This leadership produces a homogenous political order that pleases the public spirit of the majority faith.<sup>9</sup> Agamben explains that the application of sovereign power established through the production of a political order, results in the exclusion of bare, human life.<sup>10</sup> In this case, the Rohingya. This is achieved through the enactment of the state of exception in which the law is suspended, withdrawn from the human being who is stripped of legal status and transformed in relation to sovereign power into bare life without rights.<sup>11</sup> Bare life, encompassed in the exception, inhabits the threshold of the juridico-political community. Foucault argued that in biopolitics, the prerogative over the right to kill is exercised as the right of the social body to ensure, maintain, or develop its life.<sup>12</sup> To this end, wars are no longer waged in the name of a sovereign who must be defended, but they are waged on behalf of the existence of

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<sup>6</sup> Office of the High Commissioner for Human Rights, 'Report of OHCHR mission to Bangladesh, Interviews with Rohingyas fleeing from Myanmar since 9 October 2016' (3 February 2017) <<http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>> accessed 8 December 2017.

<sup>7</sup> United Nations General Assembly, 'Situation of Human Rights in Myanmar' (3 April 2017) UN Doc A/HRC/RES/34/22 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/081/98/PDF/G1708198.pdf?OpenElement>> accessed 8 December 2017.

<sup>8</sup> United Nations General Assembly, 'Report of the Independent International Fact-Finding Mission on Myanmar' (12 September 2018) A/HRC/39/64 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/274/54/PDF/G1827454.pdf?OpenElement>> accessed 10 November 2018.

<sup>9</sup> For more information, see Friedrich-Ebert-Stiftung, 'The Role of Monkhood in Contemporary Myanmar' (Friedrich Ebert Stiftung 2008) <<https://library.fes.de/pdf-files/iez/05699.pdf>> accessed 7 November 2018.

<sup>10</sup> Giorgio Agamben, *Homer Sacer* (1st edn Stanford University Press 1998) 54.

<sup>11</sup> *ibid* 109.

<sup>12</sup> Michel Foucault, *History of Sexuality, Volume I: An Introduction* (1st edn Vintage 1990) 136.

the everyone. For this reason, I argue, genocidal politics becomes a trademark of countries dominated by Theravada-Buddhism. Theravada-Buddhism needs to rely on the purity of its own body politic, while subjugating anyone else to second-class citizenship status. Foucault explained further that in biopolitical rule, states wage wars as managers of life and survival, of bodies and race, and power is exercised for the improvement of the species or races.<sup>13</sup> The validation of governmental rule through the religious paradigm perpetuates leadership over the country. The Rohingya are the enemy to the Buddhist-Theravada state order and this enemy needs to vanish from state affairs. Foucault argues, 'law cannot help but be armed, and its arm, par excellence, is death; to those who transgress it, it replies, at least as a last resort with that absolute menace. The law always refers to the sword.'<sup>14</sup> In the next section, the author will elucidate the role of law to alleviate the suffering and what the role of the international community must be in protecting the Rohingya.

### **The Rohingya under International Law and International Obligations owed to the Rohingya**

First, on the international level, the international community has an obligation to accommodate the fleeing Rohingya. The principle of *non-refoulement* requires states to accord refugee status to the Rohingya<sup>15</sup>, laid out in Article 33.1 of the 1951 Convention Relating to the Status of Refugees. It provides that 'no contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.<sup>16</sup> Second, on a national level, Myanmar's Citizenship Law from 1982 created three different categories of citizens; citizens, associate citizens and naturalised citizens.<sup>17</sup> The Rohingya fall under none of the categories as they are unable to provide the sufficient documents. The current situation perpetuates a stateless situation for the Rohingya and excludes them from citizenship, which stands in contradiction to Article 1.1 of the 1961 Convention on the Reduction of Statelessness,<sup>18</sup> Article 2 of the 1954 Convention relating to the Status of Stateless Persons,<sup>19</sup> Article 15.1 of the Universal Declaration on Human Rights<sup>20</sup>, Article 24.3 of the International Covenant on Civil

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<sup>13</sup> *ibid* 137.

<sup>14</sup> *ibid* 144.

<sup>15</sup> United Nations High Commissioner for Refugees, 'UNHCR Note on the Principle of Non-Refoulement' (November 1997) <<http://www.refworld.org/docid/438c6d972.html>> accessed 8 December 2017.

<sup>16</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

<sup>17</sup> Burma Citizenship Law, <<http://www.refworld.org/docid/3ae6b4f71b.html>> accessed 9 December 2017.

<sup>18</sup> Convention on the Reduction of Statelessness 1961 (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

<sup>19</sup> Convention relating to the Status of Stateless Persons 1954 (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117.

<sup>20</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) UDHR).

and Political Rights<sup>21</sup> and Article 7.1 of the International Convention on the Rights of the Child (of which Myanmar became a party to on the 15<sup>th</sup> of July 1991<sup>22</sup>). In an earlier report, the United Nations highlighted that urgent reform of this Act is needed to bring it in line with international standards.<sup>23</sup> The government of Myanmar, with its application of the law based on superiority over minorities not belonging to the body politic, has effectively excluded the Rohingya and it is up to the United Nations, with its moral authority, resources and knowledge, to persuade and induce Myanmar and neighboring countries to abide by international law.

## Conclusion

Against the background of the current climate that permeates the global discourse on Islam, Muslims are seen as the enemy to the Buddhist-Theravada society. Biopower, in their eyes, in its purest sense must be applied to maintain the *ordre public* of the society. Thus, the status of Rohingya in Myanmar continues to be parlous and Myanmar Buddhist nationalists have used their presence to stir up anti-Muslim sentiments. The Rohingya have become international pariahs with Rohingya refugees being forcibly sent out to sea or imprisoned. For Agamben, the subject who most immediately exemplifies the plight of 'bare life' is the stateless refugee<sup>24</sup>: in our case, the Rohingya. International protection must increase its effort to force the Myanmar into compliance.

The international community must increase its pressure through the United Nations to halt the human rights violations against the Rohingya with immediate effect, to allow the United Nations fact-finding mission into the country and to establish refugee zones in neighboring countries and equip them with necessary funds. Finally, the United Nations must urge the government to bring its legal infrastructure in accordance with international standards, especially amending its Citizenship Law.

It was the infamous Aung San Suu Kyi, formerly human rights icon-turned silent bystander who said in her Nobel Lecture 2012:

[U]ltimately our aim should be to create a world free from the displaced, the homeless and the hopeless, a world of which each and every corner is a true sanctuary where the inhabitants will have the freedom and the capacity to live in peace. (...) Each and every

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<sup>21</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

<sup>22</sup> United Nations Office of the High Commissioner for Human Rights, 'Ratification Status for Myanmar' <[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN)> accessed 9 December 2017.

<sup>23</sup> BBC News (n 5).

<sup>24</sup> UNGA (n 7) 86.

one of us is capable of making such a contribution. Let us join hands to try to create a peaceful world where we can sleep in security and wake in happiness.<sup>25</sup>

If recommendations go unheeded and the international community remains lethargic to Myanmar's exertion of biopower, the world must face its next human tragedy.

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<sup>25</sup> Aung San Suu Kyi, 'Nobel Lecture' (Nobel Lecture, Oslo 16 June 2012), <[https://www.nobelprize.org/nobel\\_prizes/peace/laureates/1991/kyi-lecture\\_en.html](https://www.nobelprize.org/nobel_prizes/peace/laureates/1991/kyi-lecture_en.html)> accessed 8 December 2017.