

PERMANENT PEOPLES' TRIBUNAL

Founder: LELIO BASSO (ITALY)

President:

FRANCO IPPOLITO (ITALY)

Vice Presidents:

LUIZA ERUNDINA DE SOUSA (BRASIL)

JAVIER GIRALDO MORENO (COLOMBIA)

HELEN JARVIS (AUSTRALIA)

PHILIPPE TEXIER (FRANCE)

Secretary General:

GIANNI TOGNONI (ITALY)

Session on

State Crimes Allegedly Committed in Myanmar against the Rohingyas, Kachins and Other Groups

University of Malaya, Faculty of Law
18-22 September 2017, Kuala Lumpur, Malaysia

PRELIMINARY JUDGMENT

(edited, 27 Sept 2017)

General Secretariat:

VIA DELLA DOGANA VECCHIA 5 - 00186 ROME - TEL:0039 0668801468

E-mail:ppt@permanentpeopletribunal.org

www.permanentpeopletribunal.org

CONTENTS

I. GENERAL HISTORICAL AND JURIDICAL FRAMEWORK

II. THE PROCEDURE FOR THIS SESSION OF THE PPT

III.- PRESENTATION OF THE FACTS

IV.- THE STATE OF MYANMAR AND THE QUESTION OF IDENTITY

V.- QUALIFICATION OF THE FACTS

VI.- RECOMMENDATIONS

I. GENERAL HISTORICAL AND JURIDICAL FRAMEWORK

I.1 The competence of the Permanent Peoples' Tribunal

The Permanent Peoples' Tribunal (PPT) is an international opinion tribunal, independent from any state authority. It examines cases regarding violations of human rights and the rights of peoples.

Promoted by the Lelio Basso International Foundation for the Rights and Liberation of Peoples, the PPT was founded in June 1979, in Bologna, Italy, by a broad spectrum of legal experts, writers and other cultural community leaders from 31 countries. The PPT is rooted in the historical experience of the Russell Tribunal on Vietnam (1966-67) and on dictatorships in Latin America (1974-1976). The importance and strength of decisions by the PPT rest on the moral weight of the causes and arguments to which they give credibility, as well as the integrity and capability to judge of the Tribunal members.

While fully recognising the reference role of the institutions of the international community of states and the juridical instruments, the PPT assumed as its Statute the Universal Declaration of Peoples' Rights (Algiers, 1976), which underlines its aim: to give visibility and legitimacy to the authority of peoples when states and the international bodies fail to protect their rights, due to geopolitical reasons or other motivations.

Complaints heard by the Tribunal are submitted by the victims, or by groups or individuals representing them. The PPT calls together all parties concerned and offers the defendants the possibility to make their own arguments heard. The panel of the judges is selected for each case, combining members who belong to a permanent list and individuals who are recognised for their competence and integrity.

From June 1979 to the present, the PPT has held 43 sessions whose results and judgments are available at: www.permanentpeopletribunal.org.

The permanent and increasing challenge of the original working hypothesis has been confirmed by the spectrum of cases which have requested the competence of the PPT as the instrument which could make visible and qualify the violations of their fundamental rights to self-determination and to life, in the absence of, or denial in, responses at the institutional, juridical and political level. . In this sense, the verdicts and deliberations of the PPT represent a narrative of international law as seen from the side of peoples, when their status of victims is translated into that of the only legitimate subjects to whom the public and private powers are accountable, beyond their legal impunity.

For the purpose of this case on the violations of the rights of peoples of Myanmar, it is useful to refer specifically to the doctrine developed by the PPT in the deliberations where state crimes have been committed against individuals and groups of the same countries, transformed from citizens into enemies, and/or “other” and, as such, exposed in full impunity to processes of discrimination leading to a genocide, recognised only too late, or even never: Argentina and its *desaparecidos*, 1980; East Timor, lead case of the first neo-colonial genocide, 1981; Guatemala and its indigenous populations, 1983; the determinants and the responsibility for the Armenian genocide, 1984; the peoples of the ex-Yugoslavia, 1995; victims of Islamic fundamentalism of Algeria, 2004; the communities of Colombia, 2006-08. An even more specific reference must be made to the two sessions on the case of Eelam Tamils (Dublin, 2019; Bremen, 2013) which could be considered, from a methodological and doctrinal point of view, an integral part and foundation for this deliberation.

I.2 The specificity of this session

The attention of the PPT for the situation of peoples of Myanmar dates back to 2013, at a time when Myanmar’s (already ongoing) violations were hardly considered, and even less well known on the world stage. This was the hidden face of a state seen as undergoing a transformation from military to democratic control, and a woman icon of peace was portrayed as an indisputable guarantee for a future in which all the citizens of the country could be recognised as inviolable subjects of their rights to a life in dignity.

The preparatory phase for this session was transformed into one of urgency due to the rapidly – even if not unexpectedly – evolving situation with the dramatic incidents of October 2016 in Rakhine state, even more so because of the absolute invisibility to the world of what appeared to us to be a dramatic “case”.

An opening session of the PPT was convened in London (Queen Mary University, 6-7 March 2017). The reports, the witnesses, the closing remarks of that session, must be considered and referred to as an integral part of this Judgment. Despite the clear alarm sounded of an impending genocide, the findings did not draw the attention of the international community nor of wider public opinion.

Only on the eve of this session, the suffering of the Rohingya peoples finally and belatedly seized world attention, with the consistent accumulation of increasingly dramatic reports from NGOs and international UN agencies. Within the three weeks leading up to this session, nearly half a million people crossed the border from western Myanmar into Bangladesh, telling harrowing stories of the carnage they left behind as they crammed into open fishing boats or trudged along muddy paths carrying babies and the elderly and bundles of meagre possessions, seeing plumes of smoke soar into

the air as their homes and villages were burnt to the ground. Many of these refugees suffered injuries from land mines laid apparently even during the immediate past along these paths to the border.

The consensus of many sources on the humanitarian crisis of the population of Rakhine state, both within their land and in their search for refuge, could not have been clearer, and it was openly and repeatedly underlined even by the UN Secretary-General António Guterres, despite the constant denial of the civil and military authorities of Myanmar..

As clearly set out in the indictment which synthesised the available overwhelming written, visual, factual and analytical documentation, the request and the task for the PPT went beyond giving more visibility to what already known, including, according to the terms of reference established in the London session:

- a) to broaden the focus from the most tragically and acutely affected population of the Rohingyas to the general policy of the Myanmar state on Kachins and other ethnic-religious groups;
- b) to document and qualify the historical and structural roots and causes of the events, to avoid considering them as occasional incidents and strictly internal affairs of a still young and “fragile democracy” , with no political, strategic, economic interactions with and impact on regional and global actors and interests;
- c) to qualify juridically the severity and the responsibility of the crimes not only in view of the most pertinent criminal qualification, but to stress and justify with the greatest emphasis the absolute priority for concrete responses to the urgency of the needs of the affected population.

The affected Myanmar people are not merely victims waiting for humanitarian responses – certainly essential, though delayed and partial. They are, and must be considered first and foremost, the central subjects of rights, whose recognition and restitution should be the first, structural implication of a judgment based on the inviolable legitimacy of individual and peoples’ rights.

II. THE PROCEDURE FOR THIS SESSION OF THE PPT

II.1 The Panel of Judges

The Panel of the Judges was composed of:

Daniel Feierstein (Argentina), who chaired the panel

Zulaiha Ismail (Malaysia)

Helen Jarvis (Cambodia-Australia)

Gill H. Boehringer (Australia)

Nursyahbani Katjasungkana (Indonesia)

Shadi Sadr (Iran)

Nello Rossi (Italy)

Two of the judges convened by the Permanent Peoples' Tribunal were not able to attend: Denis Halliday (Ireland), for severe and acute health reasons, and Bellur Narayanaswamy Srikrishna (India), because it was unable to arrange a visa in time.

II.2 Communication to the parties and right to defence

In strict compliance with its Statutes, all the steps and official documents related to the case of this session – from the results of the London opening session, to the first formal convocation of the Kuala Lumpur event to the official program and the Indictment – have been transmitted: a) to the representatives of the Myanmar civil and military authorities; b) to directly relevant international agencies and governing bodies.

Myanmar authorities notified and invited to present a defence:

- Senior General Min Aung Hlaing, Commander in Chief, the Tatmadaw (Myanmar Armed Forces), Naypyidaw
- Daw Aung San Suu Kyi, Minister of Foreign Affairs and Myanmar State Counsellor
- Vice President Myint Swe, Chair of the Myanmar Presidential Investigation Commission on Rakhine, Former Lt-General and former Chief of Military Intelligence
- General Myat Tun Oo, Chief of Military Affairs and Security Office of the Commander in Chief
- Win Mra, Chair of the Myanmar Human Rights Commission

UN, EU and others authorities invited

- António Guterres, Secretary-General of the United Nations
- Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights
- Professor Yanghee Lee, Special Rapporteur on the Human Rights Situation in Myanmar
- Ahmed Shaheed, UN Special Rapporteur on Freedom of Religion or Belief,
- Fernand de Varennes, Special Rapporteur on Minority Issues,
- Adama Dieng, United Nations Office on Genocide Prevention and the Responsibility to Protect
- Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy /Vice-President of the European Commission
- Kofi Annan, Chair, Rakhine Inquiry Commission
- Mr Kazi Reazul Hoque, Chairman of the National Human Rights Commission of Bangladesh.

While no answer was received from the Myanmar representatives, a formal acknowledgment of the invitation was given by various of the above representatives of international agencies, with a request to be kept informed of the results of the session, and Mr Kazi Reazul Hoque addressed the Tribunal regarding the impact of the impact of Rohingya refugees on Bangladesh.

The right to defence, which is central in the Statutes of the Tribunal and has been a carefully observed practice throughout all its proceedings, has been regularly communicated to the concerned parties in due time. As no answer was received, at the beginning of each of the three days of public audience, the Chairperson of the Panel of Judges asked if any representative of the Myanmar Government was present in the room, and no response was received.

According to the Statutes, in the absence of any response, the PPT procedure of an *ex officio* defence was activated, and the resulting text was read publicly by the representative of the Secretariat of the PPT. The full text of the speech given by the State Counsellor, Aung San Suu Kyi, on 19 September 2017 in an address to the assembled diplomatic corps in Naypyidaw, which had already been listened to collectively by the Panel of Judges, and which was formally and partially replayed in front of the audience, was assumed to be the most complete and updated expression of the position of the Myanmar authorities. Because of its relevance, it is considered as an integral part of this deliberation (Annex X).

II.3. The proceedings

The public hearings of the PPT took place in the Faculty of Law, University of Malaya in Kuala Lumpur, Malaysia. The program, together with essential information on the Judges, Prosecution and witnesses and experts who gave testimonies are provided in Annex X.

II.4 Security measures

The Panel of Judges assured *in camera* hearings for those witnesses for whom it was determined desirable to provide a close protection of their identity.

III. PRESENTATION OF THE FACTS

III.1. Situation of the Kachin people: “We are still birds in a cage”

In this way, the first Kachin witness before the Peoples’ Tribunal on Myanmar in Kuala Lumpur summarised the condition of his people after reading a long list of specific cases of torture and execution suffered since the 2011 breakdown of the 17-year-long ceasefire between the Kachin Independence Army (KIA) and the Burmese Army.

Since achieving independence from the UK on 4 January 1948, the state of Myanmar has been at almost ceaseless war with the approximately 40% of its 55 million people¹ who make up the country’s 135 recognised nationalities as well as minority religions and other unrecognised ethnic groups.

Kachin state, the most northerly state of the country, in the foothills of the Himalayas bordering China and India, “is one of the six, later to become seven, ethnic nationality states that were created when Burma became independent in 1948.”² In the 2014 Myanmar Population and Housing Census, the state’s population was reported as 1.689 million or 3.3% of the total.

The Kachin people, numbering between 1 and 1.5 million, are largely resident in Kachin state but also form a substantial part of the population of the northern section of Shan state. Under British colonial rule, many of the previously animist people became Christian, now especially Baptist.

War and increasing marginalisation have been the dominant features of life for the Kachin people since at least the early 1960s. The KIA was established in 1961, and the 1962 military coup by General Ne Win ushered in more than three decades of war, during which many previously Kachin towns and villages were destroyed and people were killed. And under the national policy of Burmanisation and substantial inwards migration, the Kachin have progressively lost many of their customs and traditions, including competence in the six Kachin languages.

The ceasefire from 24 February 1994 until 9 June 2011 brought an end to intense fighting, but led paradoxically to an ever increasing militarisation of the region (with the stationing of many Burmese/Myanmar central army battalions) and the introduction of an oppressive developmental model involving massive alienation of traditional lands and natural resources (notably their precious jade), accompanied by increasing dispersal and marginalisation of the Kachin through significant urban immigration of lowland Burmese people, including replacing many Kachin animist or Christian or sacred places with Buddhist shrines or pagodas, generating demoralisation and a debilitating drug

¹ 2014 *Myanmar population and housing census*. [Yangon] : Ministry of Information, 2014.

² Mandy Sadan, Testimony at the London opening session of the Tribunal and in *Being and Becoming Kachin: histories beyond the state in the borderlands of Burma*. Oxford : Oxford University Press, 2013.

scourge.³ This shift is reflected in the findings of the Myanmar 2014 census that 64% of the population in Kachin state reported as Buddhist, and just 34% Christian.

Since fighting resumed, in Kachin state and northern Shan state with indiscriminate targeting of civilian areas and military airstrikes, it is estimated that 10% of the population has been displaced, with at least 120,000 people now in IDP camps (at least two-thirds are under control of the Kachin Independence Organisation/Kachin Independence Army (KIO/KIA) and have faced numerous restrictions and denials of humanitarian aid).

Written and oral testimony was presented to the opening session of the Tribunal by the Kachin Women's Organisation (KWO).⁴ The Kuala Lumpur session received both written and oral testimony from further witnesses, including from the Kachin National Organisation (KNO) and the Kachin Women's Association of Thailand (KWAT). Expert testimony, including original video footage of the military attacks, was also presented.

In addition, a number of witnesses who testified *in camera* of crimes that they had suffered personally had felt compelled to leave their homeland in fear for their lives, following forced labour serving as porters for the Myanmar Army, beatings, torture, execution or jailing and enforced disappearance of friends and relatives and/or military attack on their villages.

The direct testimony presented to the Tribunal corroborated a wealth of information given in a number of substantial written reports by various human rights organisations and researchers that were also submitted to the Tribunal by the Prosecution regarding *inter alia* the following acts against the Kachin people:

- murder of all kinds, mutilation, cruel treatment and torture;
- outrages upon personal dignity, in particular humiliating and degrading treatment;
- taking of hostages and use of prisoners as “human shields”;
- passing of sentences and executions without proper trials;
- intentionally directing attacks against the civilian population not taking direct part in hostilities and against churches, schools and sacred sites;
- pillaging;
- rape, sexual slavery and other forms of sexual violence;
- deportation or forcible transfer of population and internal displacement and forced exile.

³ *War and peace in the borderlands of Myanmar : the Kachin ceasefire 1994-2011*, edited by Mandy Sadan
Copenhagen : NIAS Press, 2016.

⁴ *War crimes and crimes against humanity: voices from the Kachin people of Northern Burma*. London : KWO, 2017, presented to the London opening session of the Tribunal.

III.2. Persecution of Rohingya – a summary

The Rohingya are an ethnic minority of Burma/Myanmar who have been subjected to institutionalised and systematic denial of identity and rights for decades. The integral and fundamental parts of their identity, such as language, culture, religion and history, have been criminalised, prohibited to be taught, suppressed and contradicted.

The government of Myanmar has denied the right to nationality of Rohingya through different laws and policies which have subsequently caused the deprivation of civil, political, economic, social and cultural rights.

The gross human rights violations in Myanmar/Burma have been massively documented in detail by the UN, international NGOs and Myanmar human rights and civil society organisations. The Prosecution presented several fact-finding reports to the Tribunal as evidence, which confirmed testimonies which were heard by the Tribunal in London and Kuala Lumpur hearings.

International crimes against the Rohingya

1. Arbitrary detention and torture

The Tribunal both in London and Kuala Lumpur sessions heard several accounts of arbitrary arrests of civilians, including children and young people, by the armed government forces.

Several witnesses testified before the Tribunal about the different types of physical and mental torture which they had been subjected to while in detention.

2. Enforced disappearance

Both personal and expert witnesses testified before the Tribunal about many cases of people who had been arrested by the government forces and have not been seen or heard from since then, and their families do not know their fate or whereabouts. The survivors of the recent crisis have also given reports of missing family members.

3. Rape and other forms of sexual abuse

The Tribunal heard first-hand horrific accounts of Rohingya women who had been raped in their homes, their villages and the IDP camps by military forces. They also witnessed other women being raped or gang-raped.

The memories of the victims of rape are usually bonded with horrendous scenes of the killings, disappearances and injuring of their family members, their children and neighbours, the burning of their homes, and destruction of their belongings.

Rohingya women are reported being subjected to other forms of physical and psychological sexual violence such as violation of bodily integrity by groping their private parts during body searches, as well as forcing them to undress in public.

Four survivors' testimonies also presented a horrific pattern that Rohingya women who had been raped by the military were raped again on numerous occasions, some for several months, by the smugglers and other people who took the advantage of their situation, along their way from Rakhine through Thailand to Malaysia.

The Tribunal was informed that, despite being traumatised and impaired, they often do not receive the support they are in desperate need of from the UNHCR in Malaysia.

4. Extrajudicial killing and causing bodily harm

The survivors of the Rohingya persecution shared unimaginable experiences with the Tribunal of their fellows being severely injured, shot dead, slaughtered with knives or burned alive.

Several massacres in different villages across Rakhine state were reported to the Tribunal by the expert witnesses. These reports also included some details about throwing the bodies of the victims into mass graves.

5. Confiscation of property and destruction of buildings

Several accounts presented to the Tribunal clearly described looting, confiscation of property and destruction of homes, shops, workplaces, mosques and other buildings and indeed entire villages in the areas in which Rohingya people had lived.

In most cases that were brought before the Tribunal, the armed government forces or non-state actors take all valuable belongings of the Rohingya people and subsequently burn or destroy the buildings. Several accounts were given of confiscation of land and other properties by either the government or ultra-religious Buddhist groups.

6. Internal displacement and forced exile

Over the course of only three weeks in August-September 2017, more than 400,000 Rohingya, mostly women, children and the elderly, had to flee their homes and entered Bangladesh. However, the number of Rohingya refugees who had to escape state persecution over the past few decades is much higher than that, with Bangladesh alone soon expected to be hosting 1 million Rohingya refugees in total.

The Tribunal heard several testimonies of Rohingya refugees who were forced to leave their homes and their country, Myanmar, by Border Guard and other Army forces accompanied by Rakhine Buddhist mobs, sometimes including monks. According to the testimonies and other evidence, forced exile takes the form of directly pushing the populations of villages near the border out of the country, often by terrorising them by burning their homes and seizing their belongings and killing their relatives and other villagers, or indirectly through imposing severe and intolerable hardship on them.

III.3. Serious violations of human rights and allegations of crimes against humanity against Myanmar Muslims

Introduction

The PPT received its third complaint from the Myanmar Muslim community in July 2017 and, while allegations of persecution have been somewhat less catastrophic, tragic and severe in intensity compared to the Rohingya community, they nevertheless demonstrate a purposeful institutional strategy of outright abuse towards other Muslims in Myanmar.

Records of human rights abuses against the Muslim community in Myanmar became conspicuous with the coup by General Ne Win in 1962 that established the superiority of the Burmese Buddhists over other ethnic groups. Since 2012 the situation has deteriorated further and, much to the disappointment of the Muslim community, the transition to joint NLD-military rule in 2015 has brought, instead of improvement, the acceleration of human rights abuses plus documented evidence of crimes against humanity towards Muslims in general.

In the closing session of this Tribunal hearing in London in March 2017, the Panel of Judges found identity framing by exclusion – the process of creating Myanmar as a single Burman Buddhist entity – to be the prime ideological cause of ensuing alleged war crimes and crimes against humanity towards other ethnic communities in Myanmar. From a historically pluralistic society of diverse ethnicities and religions, Myanmar underwent a demographic transformation that was buttressed by the passing of its Citizenship Law in 1982. In targeting the Muslim community, which had traditionally been

accorded equal citizenship rights, the new law required all Muslims to show proof of ancestry dating back to 1824. Those Muslims who held full citizenship cards (called National Registration Cards – NRC) had to surrender them when the enforced renewal deadlines (at ages 12, 18 and 35) came up, as it was an unwritten law that a ‘full citizen’ cannot be a Burmese and a Muslim at the same time. In return they were asked to obtain National Verification Cards (NVC), signalling a lower status ID that does not acknowledge full citizenship, rendering the holder ineligible for passports and the loss of freedom of movement.

This alienation cum rejection of the Myanmar Muslims in the political, economic and social sectors then becomes a corollary to the reduced status of the Myanmar Muslims. It was reported that currently there are no Muslims in Parliament or in higher levels of the military service, the police service, administration or academia.

From the research reports presented to the Tribunal and the testimonies of expert witnesses and four fact witnesses, this systematic and institutionalised persecution of Myanmar Muslims could be categorised in several ways:

1. Increased difficulties in securing an NRC

Such institutional denials also translate into reduced job opportunities and reduced financial standing for the individual.

2. Institutionalised forms of religious intolerance contravening the Universal Declaration of Human Rights.

- a. Restrictions on building and repairing mosques, sealing off *madrassa* (Muslim schools);
- b. Reduced access to communal prayer services;
- c. Creation of Muslim-free villages, indicating characteristics of an apartheid system;
- d. Increased evidence of hate speech and discriminatory campaigns, for example boycotts of Muslim-owned businesses.
- e. Sporadic cases of violence initiated by ultra-nationalist monks.
- f. Forced evacuation of an entire village to the area of a Buddhist cemetery after their mosque was bulldozed
- g. The Meikhtila massacre, March 2013, brutally murdered 32 Muslim students and four teachers, as well as a number of other citizens of the town, followed by pillaging and looting and the displacement of 12,000 people.

IV. THE STATE OF MYANMAR AND THE QUESTION OF IDENTITY

The state of Myanmar: a limited democracy under military guardianship. Intolerance and lack of justice

Even after the notional return of the country to democracy, the 2008 Constitution has preserved a dominant and privileged role for the military, guaranteeing them 25 per cent of the seats in Parliament and creating *de facto* a democracy under military guardianship.

The heads of the Myanmar/Burmese Army – who have spent the last 70 years at war with the country's ethnic minorities – retain effective control over the economy, natural resources and the riches of the country, and appear strongly interested in maintaining a degree of internal conflict in order to legitimate the idea that only the military can preserve the state and, consequently, their dominant position.

Furthermore, these ongoing conflicts ensure that the military leaders can be seen as the only true representatives of the country in the international arena.

Therefore most observers stress that the Myanmar/Burmese military remains the major obstacle to achieving key democratic and human rights reforms and to carrying out the perspective of becoming a state that acknowledges its ethnic diversity, chooses to be really federal in structure and favours religious tolerance. This role of the military as an agent of discrimination between the ethnicities can be better understood in historical perspective. In the words of a recent book on this subject:

“There is ample evidence in the Burmese legal framework and in the practical decisions that were made that the Rohingya were not seen as being especially different in the period of democratic rule up to 1962.... “This relative tolerance started to change once the military came to power. ... they decided if they could not have an ethnically pure state (which have meant giving up all the wealth in the border areas to the north and east) they would use being ‘Buddhist’ as a test for being a proper citizen of the state.”⁵

The Buddhist extremists adopted this approach, and unfortunately the democratic opposition did not adequately oppose this sectarian definition of what is meant by being Burmese, with the consequence that the Myanmar government could play politics by using race, religion and nationality “and then

⁵ Azeem Ibrahim, *The Rohingyas : inside Myanmar's hidden genocide*. London : Hurst & Co. 2016, p.8

almost all Myanmar ethnic [sic] have started hatred against Rohingya and hatred against Islam, and accusing collectively, ‘These people are illegal migrants’.’⁶

The framework of a limited democracy is completed by the absence of an independent and authoritative judicial power.

During its 31st Session (March 2016), the Asian Legal Resources Centre stated that Myanmar and its people are “for all practical purposes still under the influence of militarisation that has gripped the country since 1959” and recalled that “the people of Myanmar and their institutions do not have a memory of independent justice institutions. Concepts like presumption of innocence, right to silence, and independent adjudication of disputes have never been given a chance to take root in the country”. This state of affairs contributes strongly to the abuse of power and to the crimes against minorities and guarantees the impunity of the powerful.

Identity and citizenship

The 2008 Constitution⁷ keeps alive Myanmar’s incredibly restrictive approach to citizenship, inspired by the idea that only those ethnicities which are considered nationals of Myanmar (namely, Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan as enumerated in the Election Act of 1948) are able to have citizenship and to give that citizenship to their children, and that any other group outside those nationalities has to prove their presence in the territory of Burma back to 1823, even if in 1990 an official list of 135 different ethnic groups in Myanmar was made public.

The Advisory Commission on Rakhine State (led by Kofi Annan, whose report was issued in August 2017) also drew attention to this question, stating:

The 1982 Citizenship Law explicitly states that those who prior to its enactment were already citizens would retain their citizenship rights. But the law – and the way it was implemented – significantly narrowed the prospects of citizenship for the Muslims in Rakhine. In 1989, a citizenship inspection process was carried out across Myanmar, and those found to meet the new requirements had their National Registration Cards (NRCs) replaced with new “Citizenship Scrutiny Cards” (CSCs). The majority of

⁶ Azeem Ibrahim, op cit, p.10. “ Interview with Rohingya politician, then sitting in parliament, 2015, left anonymous for safety.”

⁷ *Constitution of the Republic of the Union of Myanmar (2008)*. [Yangon] : Ministry of Information, September, 2008, especially Chapter VIII: “Citizen, fundamental rights and duties of the citizens”.

Muslims in Rakhine with NRCs surrendered their documents, but were never issued with CSCs, rendering them de facto stateless.

From 1995, the authorities began issuing Temporary Residency Card (TRCs, or “white cards”) to Muslims in Rakhine State who did not have identity documents, as well as to returning refugees. In early 2015, the Government invalidated all TRCs, and the Constitutional Tribunal ruled that TRC-holders were ineligible to vote. In the democratic elections in November 2015, Muslims from Rakhine were neither allowed to participate as candidates, nor as voters – unlike in all previous elections since independence in 1948.

Through this process of gradual marginalization, Muslims in Rakhine have ended up in a particularly vulnerable position, almost entirely deprived of political influence or representation and living under severe restrictions which affect basic rights and many aspects of their daily lives. While some of these restrictions are based on legislation, others derive from local orders and regulations, often issued by local security officials. Some 120,000 members of the community – including some who hold valid citizenship documents – remain confined to IDP camps.

The 1982 law and the accompanying 1983 procedures define a hierarchy of different categories of citizenship, where the most important distinction is that between “citizens” or “citizens by birth” on the one side, and “naturalised citizens” on the other. “Citizenship by birth” is limited to members of “national ethnic races”, defined as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine and Shan and ethnic groups which have been permanently settled in the territory of what is now Myanmar since before 1823 (in 1990, an official list of 135 “ethnic races” was made public).

For both categories, the transmission of citizenship to a child depends on the status of both parents. However, while the child of a “citizen” automatically qualifies for “citizenship” unless the other parent is a foreigner, the child of a “naturalised citizen” only acquires “citizenship” if the other parent is a “citizen”, or if this parent is the child of two “naturalised citizens”. In all other circumstances, the child of a “naturalised citizen” will have to apply for “naturalised citizenship”, for which the applicant needs to fulfill the following criteria: being over the age of 18; being able to speak one of the national languages well; being of good character; and being of sound mind. However, children’s names may be added to a parent’s naturalized citizenship certificate when the child’s birth is registered. Even with this possibility, the distinction remains that

eligibility for “naturalized citizenship” is not automatic. Moreover, “naturalized citizenship” may be revoked more easily than “citizenship”, for instance for committing offences involving “moral turpitude” (such as theft, adultery, rape or drugs offences).

Although Myanmar is not the only country that has different categories of citizenship, in other countries more than one category is only allowed for very specific circumstances. Having just one citizenship category is generally preferable. It meets the important objective of equal rights for all citizens.

Unlike previous citizenship legislation, the law of 1982 provides limited possibilities of acquiring citizenship based on residence. Individuals who do not have at least one citizen parent can only acquire citizenship if they or their ancestors entered the country prior to 1948, or they were legal residents in Myanmar and married to a citizen before the law came into force.⁸

On this legal basis, membership of the country has been denied until now to Rohingya (treated in the Commission’s Report as “Muslims of Rakhine” in compliance with the government’s position not to accept even to name them with the name they had used for decades and recognise as their own), even though its use was documented from at least the 18th century⁹ (and many sources assert their presence even from the 8th century) in the area of what is now Rakhine state, in open breach of reasonableness and of the 1961 United Nations Convention on the Reduction of Statelessness, which states in Article 1: “A Contracting State shall grant its nationality to a person born in his territory who would otherwise be stateless”.

These laws and governmental decisions on identity have also affected other Muslim groups. The Tribunal was informed by several different witnesses of their experience that to be accepted as citizens of the country they were given the choice of either keeping their Muslim religion and recording a foreign ethnicity (such as Malay, Bengali or Indian or another of the recognised nationalities like Shan or Karen) or renouncing their religion and being recorded as Buddhist with Burmese ethnicity.

Even if the Rohingya are the ones in the worst position, the whole question of managing identities in the state of Myanmar is a matter of deep concern and, in the opinion of this Tribunal, is one of the

⁸ *Towards a peaceful, fair and prosperous future for the people of Rakhine: final report of the Advisory Commission on Rakhine State*, [n.p.] : Advisory Commission on Rakhine State, August 2017, p. 30-31.

⁹ Francis Buchanan, “A comparative vocabulary of some of the languages spoken in the Arakan Empire”, *Asiatic Researches*, vol. 5, 1799, p.219-240, reprinted in *SOAS Bulletin of Burma Research*, Vol. 1, No., 1, Spring 2003 (<http://eprints.soas.ac.uk/8050/1/BuchananComparativeVocabulary.pdf>).

main causes of the conflicts and atrocities which are under scrutiny and which we will analyse below. Two different analyses of genocidal social practice both establish the construction of identity as its first stage (“stigmatisation and construction of negative otherness” in Feierstein’s model,¹⁰ “classification” in Stanton’s model).¹¹

In the state of Myanmar there is a permanent process of classification, stigmatisation and construction of negative otherness against different groups: firstly, the various groups that were not recognised as nationals of the country, if they cannot prove their presence back to 1823, which is an almost impossible task. Then, even other Muslims who were previously considered members of the accepted nationalities. And later, even with the non-Burmese accepted nationalities, as testified in evidence before this Tribunal regarding the case of the Kachin group, and probably also the case regarding other non-Burmese groups that did not have a chance to present their cases before this Tribunal but for which some information was provided, albeit not in an explicit and documented way, during the proceedings.

Ethnicity and religion have played a very important role in this construction of negative otherness as a tool to divide the population. The state of Myanmar has more and more developed a nationalistic and racist understanding of its constituency as a Burmese Buddhist community instead of the original Union of Burma plurinational and multireligious community. In our analysis, this was the first step for legitimising and fuelling the atrocities described in the previous section and that will be qualified below regarding the alleged commission of war crimes, crimes against humanity and genocide.

Following the 1982 Citizenship Law, a whole process of persecution has been advanced in recent years, as described in the Advisory Commission on Rakhine State:

Based on the 1982 Citizenship Law, a citizenship verification process has been advanced by both the former and current governments. According to government figures, approximately 4,000 Muslims (as well as 9,000 Kamans) have been recognized as citizens or naturalized citizens – out of a population of around one million stateless Muslims in the state. Around 10,000 Muslims have also received National Verification Cards (NVC), considered a preparatory step for applying for citizenship. For the benefit of all communities in Rakhine – and in order to provide clarity on the legal status of all – the verification process should be accelerated. The process was first introduced in the

¹⁰ Daniel Feierstein, *Genocide as social practice*. New Brunswick NJ and London : Rutgers, 2014, p.109-121, and Daniel Feierstein “The concept of genocide and the partial destruction of the national group”, *Logos: a journal of modern society & culture*. Winter 2012 (http://logosjournal.com/2012/winter_feierstein)

¹¹ Gregory H. Stanton, Expert testimony at the Kuala Lumpur Session of the People’s Tribunal on Myanmar. Also at: <http://genocidewatch.org/genocide/tenstagesofgenocide.html>

shape of a pilot project in Myebon Township in 2014, where Temporary Resident Card (TRC)-holders were allowed to apply for citizenship on the condition that they listed their ethnicity as “Bengali”. The process was suspended following protests from both communities, but was restarted and expanded to all of Rakhine State in January 2015. After announcing the cancellation of the TRCs in February 2015, the Government started issuing its replacement – Identity Cards of National Verification (ICNV) – in June 2015. To obtain this card, applicants were again required to register as “Bengali” in the application form. A year later, the NLD Government restarted the process, issuing National Verification Cards (a renaming of the ICNV), which no longer required applicants to indicate their ethnicity or religion in the application form (although the Commission has received complaints that ethnic references have still been included on some occasions).

The sporadic implementation of the process – as well as the general lack of communication, consultation and outreach from the Government – has undermined public trust in the exercise within both communities. On the Rakhine side, many fear that corrupt officials may allow a high number of unqualified Muslims to obtain citizenship – a fear strengthened by alleged reports of non-Kaman Muslims posing as Kamans in the verification process.

Some fear that the Government may eventually succumb to pressure from the international community, which they see as biased in favour of Muslim citizenship.

Muslims, on the other hand, object to the NVC as an interim step that will subsequently qualify holders to apply for citizenship at some point in the future. They are worried that this procedure follows a familiar pattern of successive Myanmar governments issuing documents with a promise that citizenship will follow, with the latter repeatedly failing to materialize. Many are also reluctant to hand in their existing documents for fear of being left undocumented. Others have lost their previous identification documents, and are apprehensive that a process which is not based on bona fide will simply be used against them. Trust is also undermined by the lack of tangible benefits for those who successfully go through the process, as verified Muslim citizens continue to face travel restrictions and other forms of discrimination.¹²

¹² Rakhine Commission Report, *op cit*, p. 26-27.

Even if the Commission accepted as valid the fear that the process could result in identity cards being given to “unqualified Muslims” (one wonders what else could be meant by the term “unqualified Muslim” than a way to legitimate negative otherness?), the description of the process and the numbers recognised by the government (a couple of thousand people verified among a population of more than one million) make clear that the objective of the system is not to give citizenship to the people who are being persecuted but, on the contrary, to keep them stateless, without any possibility to enjoy any kind of rights.

Moreover, the growing anti-Muslim understanding of identity was quickly brought into the picture in the widespread connection made in the media between Islam and terrorism. Indeed, Aung San Suu Kyi’s speech made during the proceedings of the Tribunal (included as a part of the Defence Case) qualified attacks against police and outpost stations as “terrorist attacks” and invoked the Antiterrorist Act to persecute them. Use of that label has served to justify forced displacement, massive attacks on civilians, burning of villages and other actions committed by Myanmar security forces, other paramilitary groups or by Rakhine nationalists, which were on two separate occasions (October 2016 and August 2017) presented only as a consequence of those attacks even if many those persecutions were committed long before the attacks took place.

V. QUALIFICATION OF THE FACTS

V.1. War crimes

From the full and detailed documentation admitted during the Tribunal session and described in Part III above, in the presentation of the cases, the accusations advanced in the indictment regarding war crimes against the Kachin people of northern Burma, as defined by Article 8 c) of the Rome Statute for armed conflicts not of an international character, have been fully proved, including the following acts :

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages (such as the use of prisoners as “human shields”);
- (iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.

The Rome Statute (Article 8 d) also includes other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities (such as the murder of Kachin civilians by military forces);
- ...
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives (such as the destruction of houses, churches and other monuments, that is, the human and cultural heritage of Kachin);
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence, also constituting a serious violation of article 3 common to the four Geneva Conventions (reported in many Kachin testimonies);
- (vii) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to actively participate in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

In particular, the Tribunal believes that systematic targeting of civilians and all of the other acts committed by the Burmese/Myanmar Army must be qualified, for all legal purposes, as war crimes committed as part of a plan or policy or as part of a large-scale commission of such crimes.

The course of historical events demonstrates that for many years in the state of Kachin there has been ongoing a kind of internal armed conflict – war of self-determination – to which is applicable the Geneva Convention of 12 August 1949, according to the explicit recognition of the 1973 General Assembly Resolution 3103.

The perpetrators of the crimes above enumerated are combatants; the victims are not combatants; the criminal acts of military soldiers may be said to serve the ultimate goal of a wide military campaign. .

In other words, the attack is intentionally directed against the civilian population or against individual civilians not taking direct part in hostilities and against civilian objects, that is, objects which are not military objectives. The Tribunal watched, on the screen, the shelling of wretched villages, was shown photographic evidence of dead bodies and of tortured persons and heard the accounts of violence from witnesses and victims.

From the foregoing testimonies and documents submitted, the Tribunal is of the view beyond reasonable doubt that the state of Myanmar is guilty of war crimes perpetrated against the Kachin people.

V.2. Crimes against humanity

From the full and detailed documentation admitted during the Tribunal session and described in Part III above, in the presentation of the cases, the accusations advanced in the indictment regarding crimes against humanity against the Rohingya, other Muslim civilian populations in Myanmar and the Kachin people have been fully proved, including the following acts , as defined by the Rome Statute, :

- (a) Murder;
- (b) Extermination (such as the 2013 Meikhtila massacre of Muslims, the numerous extrajudicial killings of Kachin and Rohingya, several massacres of Rohingya people in different villages across Rakhine state, the extermination or murder of Kachin civilians, including women, children and the elderly, by military forces);
- ...
- (d) Deportation or forcible transfer of population (as, in the case of the Kachin people, the creation of a large number of IDP, now estimated at over 120,000, the internal displacement and forced exile of more than 400,000 Rohingya, mostly women, children and elderly, who had to flee their homes and entered Bangladesh only during the last three weeks, joining hundreds of thousands forcibly displaced in different earlier waves);
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law (such as the forcible confinement of Rohingya in camps, suffering from starvation and very poor living conditions, denial of citizenship rights, which had earlier been accorded to them, arrests of Rohingya civilians, including children and young people, by armed government forces, without providing any reason);
- (f) Torture (such as the different types of physical and mental torture which the Rohingya have been subjected to while in detention);
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity (as reported in numerous Rohingya and Kachin testimonies);
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court (such as the persecution against the Burmese Muslims on ethnic and religious grounds during the Meikhtila massacre, the confiscation of property and destruction of buildings);
- (i) Enforced disappearance of persons (as reported in the case of the Kachin and the Rohingya);
- (j) The crime of apartheid (such as the project to create “Muslim-free villages”, as well as the different practices of discrimination against the Rohingya and other Muslim groups).

From the foregoing testimonies and documents submitted, the Tribunal is of the view beyond reasonable doubt that crimes against humanity were committed against the Rohingya, other Muslim civilian populations in Myanmar and the Kachin.

V.3. Genocide

The term genocide was coined by the Polish jurist Raphael Lemkin, who wrote, “By genocide we mean the destruction of a nation or an ethnic group”. Lemkin went on to argue that “Genocide has two phases: one, the destruction of the national identity of the oppressed group, the other, the imposition of the national identity of the oppressor.”¹³

The concept of genocide was codified in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (approved in 1948 and ratified by the state of Myanmar in 1956, later included in the Rome Statute for the International Criminal Court in 1998) which defines genocide as any of enumerated acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

The distinctive feature of genocide, according to Lemkin and to the Convention, is that it aims to destroy a group rather than the individuals who make up the group. The ultimate purpose of genocide is to destroy the group’s identity and impose the identity of the oppressor on the survivors. This idea gives us a useful insight into the workings of power systems in the modern era and, particularly, in the case of the state of Myanmar, which is under scrutiny in this judgment.

Lemkin wrote also that the nation state has tended to destroy the identities of ethnic and religious minorities within its boundaries and impose a new identity on them: the national identity of the oppressor.

That is the intent of the process which started in Myanmar decades ago regarding the different non-Burmese groups, even if it has not developed at the same pace with all of them.

V.3.1. General intent

Many sociological works have shown that genocide is a process that involves different kinds of actions and, so, different stages, even if they are neither linear nor exclusive. Professor Gregory Stanton, founding president of Genocide Watch and former president of the International Association of Genocide Scholars, testified in this Tribunal analysing that process in 10 different stages. The report *Countdown to Annihilation*¹⁴ referred explicitly to the case of the Rohingya population in

¹³ Raphael Lemkin, *Axis rule in occupied Europe*. Washington, DC : Carnegie Endowment for International Peace, 1944, Chapter IX Genocide, p. 79-95.

¹⁴ Penny Green, Thomas McManus and Alicia de la Cour Venning, *Countdown to annihilation: genocide in Myanmar*. London : International State Crime Initiative, School of Law, Queen Mary University, 2015.

Myanmar and presented before the Tribunal in the London hearings (and provided to the Judges as document 6 in the current procedures) applied Feierstein’s six-stage model of the genocide process to the case of the Rohingya group. It found that the first four stages had been reached in the then current situation of the Rohingya in Myanmar (stigmatisation, harassment, isolation and systematic weakening, and that the stages of extermination and symbolical enactment could happen at any moment).

Moreover, the 1988 Peace and Development Council (SPDC)’s Rohingya Extermination Plan, submitted by the Prosecution in evidence and also verified by the International State Crime Initiative, precisely articulated a government policy not to provide Rohingya with citizenship cards.¹⁵

The Tribunal found that the denial of the Rohingyas’ right to nationality has caused institutionalised deprivation or restriction of their other basic rights, such as the right to education and health services. The 1988 Rohingya Extermination Plan outlined the government policy of denying the Rohingya any access to higher education, right to property and other economic rights, stating “any such properties under their existing ownership must be confiscated for distribution among the Buddhists”.

In all of these analyses and in all of the other evidence presented before this Tribunal, it is clear that the general intent of the government of Myanmar has been to destroy (and in the case of the Rohingya population and the Burmese Muslims also to deny) the identity of these different groups as a part of the Myanmar community. That intent applied not only to the three groups under scrutiny (Kachin, Rohingya and other Muslims of Myanmar) but also probably to other groups that were not part of these proceedings (even if were few references about their situation were provided to the Tribunal).

The stages of the execution of that general objective of identity destruction have been different, but it is important to highlight that all the “non-Burmese” groups and the Muslim Burmese are suffering a common process. The stages which that process has reached at present are not the same, which only means that some groups could suffer in the near future the same process other groups are suffering today. Accordingly, we believe that combining in a single Tribunal the analysis of these various genocidal practices developed by the state of Myanmar against different parts of its community could be a way to strengthen the ties among those communities in order to confront the genocidal aims of the state of Myanmar.

V.3.2. Implementation of genocide

¹⁵ “SPDC Rohingya Extermination Plan”, English translation reproduced in *Countdown*, p.36, described as having been “adopted in 1988 on the basis of the proposals submitted by Col. Tha Kyaw (a Rakine), Chairman of the National Unity Party.”

Even if the general objective of destruction of the group is applied to all the non-Burmese groups, the implementation of it is in different stages regarding each of the groups.

First of all, even in the legal structure of the state of Myanmar, the Rohingya group has been wiped out. In the current situation, the Rohingya cannot be Myanmar citizens as Rohingyas. That group is not recognised as part of the community, and it is even prohibited to use the word Rohingya to refer to them. That is the last stage in any analysis of genocidal social processes as either “denial” or “symbolical enactment”, which means not only that the group is attacked in a material form with the intention to annihilate it, but even its symbolic existence is also denied.

In the case of other Muslims, if they state their religion as Muslim, that is recognised and recorded, but then is interpreted to mean they cannot be recognised as ethnic Burmese (and they are forced to add a second qualifying ethnicity/nationality, such as Karen, Shan, Indian, Pakistani, Bengladeshi, regardless of whether they have any such ancestry). Moreover, if the group is not one of the accepted nationalities but a foreign group, they have to prove their origins in the land back to 1823.

In the case of the Kachin, because they are one of the recognised nationalities, they seem not to have experienced denial of their identity to the same extent. Rather, Kachin identity, especially as revealed in names, has over time gradually led to increasing discrimination, such as blocking of employment, appointments and promotion.

After proving the general intention of destruction of the three groups under scrutiny (even if at different stages) and qualifying the facts as genocide under the Genocide Convention, the Tribunal went on to identify three of the five practices of the UN Genocide Convention applied with the specific intent to destroy the Rohingya population in whole or in part, namely:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group ;(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

On the strength of the evidence presented, the Tribunal reached the consensus ruling that the state of Myanmar has the intent to commit genocide against the Kachin people and the other Myanmar Muslims. Further, the state of Myanmar is guilty of the crime of genocide against the Rohingya. Moreover, that genocide against the Rohingya is now taking place with ongoing acts of genocide and the possibility the casualties of that genocide could be even higher in the future if nothing is done to stop it.

Regarding the other Myanmar Muslims and the Kachin, even if the implementation of the genocide is not yet taking place, the Tribunal needs to issue a clear alert that the continuation of the persecution, together with the crimes against humanity and war crimes, could amount to the implementation of genocide in the near future.

To make matters worse, the wholesale lack of justice leads to systematic impunity of perpetrators of the crimes so far specified, since it is impossible or useless to make a complaint to police, judiciary or military authorities.

All these unpunished crimes have been committed and are currently committed – with intent to commit the same – by the Myanmar/Burmese Army and by the regime in power in the state of Myanmar and seem to be part of a plan: to deny every expression of autonomy and self-government of the people of Kachin state and, more generally, to humiliate and to destroy the ethnic and cultural identity of minorities living in Burma.

The limited and incomplete democracy of Myanmar, still heavily dependent on military power, shows, in this conflict, intolerance and lack of respect of human rights and reveals its negative and dark side, conflicting with the principles of civilisation and with the religious beliefs of most of its people.

This unacceptable and dangerous state of things can no longer be described and justified as the inevitable result of a difficult transition to a full and mature democracy, as claimed by State Counsellor Aung San Suu Kyi even on 19 September 2017, but must be defined as a regime of oppression and of denial of fundamental rights of the Kachin people, Rohingya and other Muslim groups.

Even an imperfect form of democracy requires an adequate protection of ethnic and religious minorities, of all minority groups and of the weak, that now does not exist in the state of Myanmar. This absence of protection and of respect for fundamental human rights of minorities living in Myanmar appears to be the common denominator among the different conditions of Kachin, Rohingya and other Muslim groups of that country.

VI. RECOMMENDATIONS

Numerous reports on the situation in Myanmar have appeared in recent months, each making significant recommendations. It is not the intention of the PPT simply to repeat what is already a substantial list of well-informed and valuable recommendations.

In making our recommendations we intend to indicate what in our view, based on the evidence we have considered, needs to be done under conditions that exist currently, as well as longer term actions that need to be taken to heal the wounds suffered by the people of Myanmar and to prevent further injury to them.

We do this, cognisant of the State Counsellor's invitation to "friends of Myanmar", as we consider ourselves, to join with her government in helping to restore peace, to achieve reconciliation and to point the way to social, political and economic development toward a fair, just and prosperous Myanmar under the rule of law.

We also are aware that, despite the best intentions of the international community in establishing the United Nations and bringing forth the Universal Declaration of Human Rights in the shadow of dreadful events such as the Holocaust in World War II, genocide and other atrocious crimes have been repeated time and again since 1948. Therefore, we have taken this opportunity to make some general suggestions that we believe will aid in the universally desired end, unfulfilled since 1948: Never Again.

The recommendations that follow are articulated with attention to their potential for being implemented in the current intense period of international debates and proposals accompanying the events of Myanmar:

- 1) to stress the urgency of and the need for concreteness to face effectively the immediate-short term needs of the humanitarian crisis;
- 2) to protect and promote the struggles for democracy of the communities most affected by discriminatory and persecutory measures and policies;
- 3) to assert that the failure of key national and international actors to assume effective measures in this instance would contribute to the growing crisis of credibility on the role of international laws and principles in providing peaceful solutions for conflicts where regional or global political and

economic interests prevail over fundamental rights universally recognised as indicators of a sustainable democracy.

Recommendations

Measures for the government and people of Myanmar

Urgent measures to minimise further harm

1. A ceasefire package and de-militarisation should be negotiated by government and ASEAN representatives with all armed groups in Rakhine state and the Myanmar military, including a de-militarised zone along the border in the northern region of Rakhine state.
2. The “verification process” proposed by Aung San Suu Kyi and others should without any further delay guarantee that all persons born or naturalised in Myanmar are considered full citizens of Myanmar and are issued national identity cards, with all the rights of full Myanmar citizenship.
3. Myanmar must grant visas and full access to the fact-finding mission of the UN Human Rights Council and others in order to investigate and document human rights abuses against the Rohingya, other Myanmar Muslims, Kachin and other groups.

Democracy, participation and citizenship

4. Myanmar must end its official discrimination and persecution of the Rohingya, Kachin, Myanmar Muslims and other groups. Myanmar must repeal or amend the 2008 Constitution, the 1982 Citizenship Law and other discriminatory law and policies in order to extend full citizenship to the Rohingya and other groups, ensuring all rights guaranteed by the treaties and conventions to which Myanmar is a party as well as the Universal Declaration of Human Rights.
5. Military representation in Parliament should be abolished, and all members of Parliament should be democratically elected. Minorities should not be barred from representation in Parliament.
6. The 2008 Constitution should be amended in order to place the Armed Forces and Police under full civilian authority.

Justice and the rule of law

7. Myanmar must prosecute in its courts perpetrators of human rights abuses, hate crimes, genocidal massacres, rape, torture, arson and ethnic and religious violence against the Rohingya,

Kachin, Myanmar Muslims and other groups. There must be no more impunity for military personnel, police or militias.

Human rights and accountability

8. An independent, non-governmental Commission should be established to develop a program for rehabilitation and compensation to all those injured through violation of human rights.

Transformation, inclusion and equality

9. Recognition of the capacity of the peoples in the different states to administer their own affairs consistent with commitment to a united, federal Myanmar. The reality of internal colonialism and the policy of Burmanisation need to be confronted and transformed.

Measures for the government of Myanmar and its neighbouring countries

10. Myanmar and neighbouring nations must allow humanitarian, human rights, religious organisations and journalists unobstructed access to Rakhine state and Rohingya refugees, and to areas with Kachin and other national groups.

11. There is a tendency to view the refugee flow through a security lens. Such a perception is not only flawed but may also result in improper policy responses. We urge all concerned to view refugees with compassion and humanity, and thus to highlight threats to the human security of refugees rather than viewing them as a national security threat.

We urge the Bangladesh government to:

- a) issue a temporary identity document that will protect the Rohingya refugees, including those arriving in previous years, from detention for illegal entry.
- b) ensure treatment of the wounded and in due course put in place psychological support to the refugees, especially affected children and abused women.

Measures for ASEAN and other members of the international community

12. ASEAN nations are encouraged to share responsibility for the emigration crisis and open their borders to Rohingya asylum seekers in accordance with the ASEAN Charter, and permit them to settle in refugee camps until Rohingya are granted full citizenship rights in Myanmar.

13. The EU, USA, Japan, China and other prosperous nations should provide the financial and material resources necessary to support the burden borne by Bangladesh, Malaysia and other nations that welcome Rohingya refugees.

14. The hosting countries' law enforcement agencies and community organisations must remain vigilant, while NGOs and the media should be encouraged to raise awareness about traffickers' methods and the consequences of trafficking. Women and unaccompanied children are particularly vulnerable to both internal and cross-border trafficking.

Measures for international and regional institutions

15. Impose an immediate arms embargo on the government of Myanmar.

16. Targeted sanctions should be imposed on Myanmar government officials and perpetrators of human rights abuse, e.g. freezing of overseas bank accounts, a ban on travel outside Myanmar and a plan to escalate sanctions should the government fail in its general duty to protect its people and to stop the human rights violations by the military and by private persons and organisations.

17. An independent, international non-governmental Commission should be established in order to investigate the causes of and responsibility for the harms about which the world has now been made aware.

[end]