**Submission to the**

**UN Special Rapporteur on**

**Freedom of Religion or Belief**

For the Report to the UN

General Assembly on

Eliminating Intolerance and

Discrimination Based on

Religion or Belief and the

Achievement of SDG 16

**30 November 2020**

**Submission to the UN Special Rapporteur on Freedom of Religion or Belief[[1]](#footnote-1)\***

1. The Institute on Statelessness and Inclusion[[2]](#footnote-2) welcomes the opportunity to make this submission to the Special Rapporteur in relation to his upcoming report on anti-Muslim hatred and discrimination.[[3]](#footnote-3) “examples of religious or belief communities at risk of statelessness”.[[4]](#footnote-4) This submission focuses on:
	1. Anti-Muslim hatred and discrimination endured by the Rohingya community in Myanmar and India; and
	2. Discriminatory nationality deprivation measures against Muslim citizens, both in a counter-terrorism context and the targeted deprivation of nationality of Muslim Indians and exclusion of Muslims from access to Indian citizenship.
2. As such, this submission focuses on the nexus between discrimination against Muslims, and the denial of equal nationality rights and related (risk of) statelessness; as well as the multiple discrimination/additional vulnerabilities of Muslims who are stateless or whose nationality is under threat.

**1. Discrimination against Rohingya in Myanmar and India**

***1.a. Deprivation of the Right to Nationality (Myanmar)***

1. Access to citizenship in Myanmar follows the discriminatory framework of the 1982 Citizenship Law. The Law facilitates corruption, gives authorities excessive discretion to refuse citizenship and is predicated on the myth of ethnic purity.[[5]](#footnote-5) It defines three categories of citizens: ‘citizens’, ‘associate citizens’ and ‘naturalised citizens’ each with different rules regarding transmission and revocation of citizenship and rights that come with each status.[[6]](#footnote-6) Citizenship is given to the recognised 135 “national races”. Rohingya are not recognised within the 135.
2. Denying Rohingya the claim to citizenship by right reinforced State narratives that Rohingya are ‘foreigners’ and ‘illegal immigrants’. Rohingya have been expelled from Myanmar based on their (lack of) citizenship status ‘justified’ through the Citizenship Law. Its continued use entrenches statelessness of minorities in Myanmar.

***1.b. The Rohingya: Right to Legal Identity (India)***

1. The legal position of Rohingyas in India is uncertain. With no domestic legal framework to recognise or protect refugees and India not being signatory to the 1951 Refugee Convention or its 1967 Protocol makes legal services inaccessible and makes them more susceptible to discrimination.[[7]](#footnote-7) Indian immigration laws prevent foreigners form being in India without a passport and visa putting refugees/asylum seekers at risk of arrest, detention and deportation.[[8]](#footnote-8)
2. They are entitled to UNHCR Refugee Cards, but these are not recognised as valid identification. The domestic framework does provide for Long-Term Visas (LTVs) for those without valid documentation which offers some protection however LTVs have not been renewed since 2016-2017 and new ones not issued.[[9]](#footnote-9)
3. The Citizenship Amendment Act (CAA) was passed in 2019 aiming to amend the 1955 Act granting an expedited path to Indian citizenship for minority refugee groups assuming that they had faced religious persecution in their home country. This does not apply to Muslim minorities,[[10]](#footnote-10) directly discriminating against Muslim populations seeking refuge in India. (See section 2 below).

***1.c. Denial of the Right to Political Participation***

1. In Myanmar, the NLD have showed no political will to reinstate voting rights of Rohingya and in November 2020 they were again, denied voting rights. No Rohingya living in Myanmar, or those in refugee situations were allowed to vote.[[11]](#footnote-11)
2. The Myanmar Union Election Commission cancelled polling for the 8 November election in parts of Rakhine, Kachin, Mon Shan States and Bago Region[[12]](#footnote-12) due to alleged inability to ensure conditions conducive to free and fair elections due to conflict.[[13]](#footnote-13) Denying these populations voting rights, significantly decreased ethnic minorities winning seats in Parliament.
3. A voter app developed to give information about parliamentary candidates included inflammatory language around race and religion including the contextually derogatory and racist term ‘Bengali’ referring to a Rohingya candidate.[[14]](#footnote-14)

***1.d. Liberty and Security of Person***

1. In Myanmar, approximately 130,000 Rohingya Muslims are held in 24 internment camps in Rakhine.[[15]](#footnote-15) Rohingya and Kaman Muslims in internment camps face squalid conditions with restrictions on food, healthcare and aid, endangering human security and basic human rights. Physical abuse[[16]](#footnote-16) and forced confinement are characteristic of the camps.[[17]](#footnote-17) Restrictions on movement due to militarisation[[18]](#footnote-18) pose grave threats to basic rights and liberty of Rohingya.
2. In India, approximately 500 Rohingya are in detention. Most have been arrested when migrating through Indian states bordering Myanmar, Bangladesh and Bhutan. To ensure release, Rohingya need documentation provided by UNHCR which is largely inaccessible across detention facilities.[[19]](#footnote-19) Detained Rohingya are denied access to legal services and India, which is not party to the 1951 Refugee Convention, treats the Rohingya as illegal immigrants and does not protect them.[[20]](#footnote-20)

***1.e. Access to economic, social and cultural rights***

1. In India, Rohingya refugees live in both small urban-based camps and in rental apartments. With no right to work, employment is found in informal sectors of the economy. They have no safety nets or social security. COVID-19 has resulted in loss of livelihoods and financial insecurity. Inability to pay rent has resulted in harassment from landlords and the loss of homes.[[21]](#footnote-21) Some continue to work increasing risk of infection. Food rations do not always reach Rohingya communities, meaning they are facing food shortages.[[22]](#footnote-22)
2. Camps are densely populated and overcrowded with limited access to proper hygiene facilities. Social distancing is often impossible to maintain and virus prevention measures are difficult to implement. Rohingya are at increased risk of infection compounded by an increased culture of fear and anxiety of contacting the virus.[[23]](#footnote-23)
3. Access to public health information is a serious challenge. Internet blackouts[[24]](#footnote-24) in parts of Rakhine makes disseminating public health and virus prevention information challenging,[[25]](#footnote-25) leading to widespread misinformation and rumours, panic and fear.[[26]](#footnote-26) Rohingya language interpreters are scarce, as are female interpreters impacting both access to healthcare and decisions to seek healthcare.[[27]](#footnote-27)
4. Internally displaced women in Taung Paw camp, Rakhine, have faced limits to reproductive and maternal healthcare.[[28]](#footnote-28) There are accounts of pregnant women dying during labour and occurrences of still births due to restrictions of movement and inadequate healthcare. [[29]](#footnote-29)

***1.f. Social attitude, hate speech and state sponsored violence***

1. COVID-19 resulted in increased hate speech from Myanmar authorities and media against the Rohingya. The adopted rhetoric being the Rohingya are ‘Bengali’, have entered Myanmar illegally and bought with them the virus.[[30]](#footnote-30)
2. Ahead of the November 2020 elections there was a rise in hate speech and disinformation on social media, discrimination against minority voters and disqualification of Muslim candidates based on racist claims against their ancestry.[[31]](#footnote-31)
3. State-sponsored violence is recognised as genocidal by the UN and other international bodies and states. In January, the ICJ ruled Myanmar must protect the Rohingya from genocide; prevent the military from committing acts of genocide and prevent the destruction of evidence of Genocide.[[32]](#footnote-32) “Security operations”[[33]](#footnote-33) in 2017 consisting of multiple attacks on Rohingya communities and the destruction of approximately 40,600 structures in Rohingya villages[[34]](#footnote-34) have been denounced by the international community.[[35]](#footnote-35) In Rakhine, Rohingya face institutionalised control and state violence, restrictions to their livelihood and freedom of movement beyond Rakhine State.

**2. Discriminatory nationality deprivation targeting Muslims**

1. Post-WWII, citizenship stripping was no longer seen as democratic and the prohibition of arbitrary deprivation of nationality became anchored in international human rights law. Today, while most democratic states resist increasing these powers, the policy is regaining traction. These powers especially target particular groups, e.g. naturalised or dual citizens, groups largely composed of those with a particular national or ethnic origin,[[36]](#footnote-36) or religious background. The notion that some citizens are ‘more equal’ than others, undermines the fundamental democratic premise of equal citizenship for all. In the immediate term, even if ultimately only a small number of people are deprived of citizenship under these expanded powers,[[37]](#footnote-37) *“nationality stripping measures in the context of counter-terrorism initiatives can be divisive, and buy into and promote false and xenophobic narratives”*.[[38]](#footnote-38) As such, “*they effectively stigmatize entire racial, ethnic, national and religious groups in ways that make these groups even more vulnerable to racist and xenophobic violence”*.[[39]](#footnote-39)
2. Citizenship deprivation powers are powerful instruments for nationalist or populist governments, and are employed by States in different ways. Citizenship can for instance be weaponised to manipulate the demographic composition of the state (as in Assam, India where 1.9 million people are on the brink of statelessness)[[40]](#footnote-40); deployed as an extension of restrictive and controversial immigration powers (as in the US, where a ‘denaturalisation’ task force has been mandated to review the citizenship files of 700,000 Americans).[[41]](#footnote-41) Below the issue of nationality deprivation as a counter-terrorism measure targeting Muslims is considered, as well as the situation in India.

***2.a. Nationality deprivation as a counter-terrorism measure***

1. There is a 21st Century trend of a small, but growing number of States resorting to deprivation of nationality as a counterterrorism and national security measure. While some States have amended their laws to expand existing powers or introduce new powers to enable deprivation of nationality, others have relied on existing powers, which have been construed expansively to apply to situations not previously envisaged. Deprivation of nationality as a national security measure disproportionately targets those of minority and migrant heritage and is likely to be discriminatory on various grounds, including religion. Albeit often not directly targeted, this leads to Muslims being significantly affected by these measures.
2. For instance, Islamist entities like Al Qa'ida, ISIS and allies to ISIS, Hay'at Tahrir al-Sham, are listed as terrorist organisations in the Netherlands,[[42]](#footnote-42) whose members can be deprived of nationality, whereas there are no non-Islamist groups on the list (e.g. FARC). The ethno-religious make-up of these groups, raises questions of ethno-religious discrimination. Addressing this situation, the Special Rapporteur on Racism and Xenophobia has stated that:

*“In light of the ethnic and national origin composition of the Dutch population of dual nationals, these counter-terrorism policies effectively target Dutch-Moroccan dual nationals and Dutch-Turkish dual nationals, and risk fuelling xenophobic rhetoric that equates terrorism with radicalised groups, including dual citizens, Muslims, and other individuals perceived to be of non-Dutch origin.”[[43]](#footnote-43)*

In the UK too, concern has been raised that expanded deprivation powers disproportionately impact Muslims, who have become “tolerated citizens”.[[44]](#footnote-44)

1. There is no evidence to support the use of deprivation of nationality as being an effective means of protecting national security, and there is growing concern that such actions may actually be counterproductive. Such measures are also likely to be arbitrary and can cause statelessness. There are also significant concerns related to the permanent nature of the measure.
2. Addressing this practice, the *Principles on Deprivation of Nationality as a National Security Measure* were developed over a 30-month research and consultation period, with input and endorsement from more than 60 leading experts,[[45]](#footnote-45) including UN Special Rapporteurs on Minority Issues, Racism & Xenophobia, and Counter-terrorism & Human Rights. The Principles restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice, and are a relevant resource for the Special Rapporteur’s consideration in addressing discriminatory measures relating to citizenship (in)directly targeting Muslims.

***2.b. India: exclusion from citizenship***

1. In December 2019, India’s Parliament passed the Citizenship (Amendment) Act (CAA), which enables the provision of Indian citizenship to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian migrants from Pakistan, Bangladesh and Afghanistan (three Muslim majority countries) who entered India before December 2014. Muslims are excluded and face risks of disenfranchisement, statelessness, detention and deportation. This ‘religion test’ contravenes the secular nature of the Indian constitution and violates principles of equality and non-discrimination.
2. The CAA, in addition to targeting foreigners, also targets those arbitrarily declared as foreigners through discriminatory bureaucratic processes. In particular, it will have direct and immediate impact on the 1.9 million persons excluded from National Register of Citizens (NRC) in Assam. The vast majority of these people were of Bengali origin, most of Muslim faith, with Hindu’s also impacted. Women and girls form a majority of the excluded, due to lack of documentation to prove their claim to citizenship.
3. The implementation of the NRC coincided with an increase in anti-Muslim rhetoric espoused by ruling Bharatiya Janata Party (BJP) officials, demonising Muslims living in Assam and Rohingya seeking refuge, as “infiltrators.” In September 2018, the BJP Home Minister referred to Muslim immigrants as “termites” who pose threats to security and stability. This inflammatory rhetoric influenced the implementation of the NRC. The process placed the burden of proof on individuals and resulted in discrimination based on language and religion.[[46]](#footnote-46)
4. In defending the clear discriminatory intent behind the CAA, BJP officials have stated that “there is a fundamental difference between a refugee and an infiltrator.”[[47]](#footnote-47) Those excluded under the NRC, who find themselves outside the scope of the CAA must appeal to Foreigner’s Tribunals, which have a track record of arbitrary and discriminatory decision-making. Those who lose their appeals are subjected to detention.[[48]](#footnote-48)
5. This politico-legal landscape has heightened violence and hatred against Muslims in Assam and India as a whole. Anti-Muslim pogroms took hold of the capital New Delhi in February 2020. Following protests over the Citizenship Amendment Act, the pogroms in predominantly Muslim areas resulted in Muslims being attacked and their property destroyed. Fifty-two people were killed and over 200 were injured. The State response was slow and weak. Leading government ministers instigating the pogroms through hate speech and BJP officials described the protestors as “traitors”.[[49]](#footnote-49)
6. The current pandemic has deepened islamophobia in India[[50]](#footnote-50). Authorities exploit the pandemic to further an exclusionary, nationalist agenda, and many Muslims are being targeted by rumours that they are carrying the virus.[[51]](#footnote-51) One individual reported that he was stopped by a police officer, directly blamed for spreading the virus, before being assaulted and left lying on the road for nearly an hour.[[52]](#footnote-52) There have also been reports of online disinformation targeted at Muslims, propagated by the ruling party and the mainstream media.

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