

Joint 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

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Joint Submission to the UN Special Rapporteur on Freedom of Religion or Belief*

1. Citizens Against Hate¹, Development and Justice Initiative², Global Campaign for Equal Nationality Rights³ and the Institute on Statelessness and Inclusion,⁴ welcome the opportunity to make this joint submission to the Special Rapporteur on “examples of religious or belief communities at risk of statelessness”.⁵ This submission focuses on the nexus between discrimination against minority religious or belief communities, and the denial of equal nationality rights and related (risk of) statelessness; as well as the multiple discrimination/additional vulnerabilities of religious minorities who are stateless or whose nationality is under threat.
2. Discrimination is a primary driver in exposing minorities to statelessness, further heightening exclusion and disadvantage, driving disenfranchisement, conflict and insecurity. Religious discrimination is a main cause of statelessness. The intersection of sex and religious discrimination can also lead to statelessness and other rights violations,,⁶ undermining equal participation in society. Further, citizenship laws can be used as a technologies to exclude religious minorities that are deemed undesirable, through nationality deprivation measures in the context of counter-terrorism.⁷
3. This submission looks at religious discrimination and statelessness related to:
 - a. the Rohingya in Myanmar and India;
 - b. Bengali Muslims in Assam, India;
 - c. sex discrimination;
 - d. nationality deprivation as a counter-terrorism measure; and
 - e. COVID-19.

Myanmar’s Rohingya: Discrimination in law and its effects

4. The Rohingya of Myanmar have faced decades of persecution and violence. Clashes in Rakhine State in 2012 erupted into a deadly crisis. Rohingya were killed and buried in mass graves, neighbourhoods and villages were razed, and over 125,000 Rohingya and other Muslims were displaced to IDP camps. Violence and forced displacement continued through 2015 and 2016, as 87,000 Rohingya fled Rakhine State into Bangladesh. This violence reached its nadir in 2017,

* For more information, please contact: Sangita.Bajulaiye@institutesi.org

¹ <http://citizensagainsthate.org/>

² <https://www.daji.org.in/>

³ <https://equalnationalityrights.org>.

⁴ <https://www.institutesi.org/>.

⁵ SRFoRB, Call for Submissions, Report to the United National General Assembly on Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16 (ADG 16), p. 3.

⁶ Malaysia denies men the right to confer nationality on children born outside of legal marriage. See list of affected countries at <https://equalnationalityrights.org/the-issue/the-problem>.

⁷ Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism), *Racial Discrimination in the Context of Law, Policies and Practices Concerning Citizenship, Nationality and Immigration*, U.N. Doc. A/HRC/38/52 (2018).

through a series of well documented atrocity crimes, which displaced over 750,000 Rohingya and have been internationally condemned as crimes against humanity and genocide.

5. The violence and genocide committed against the Rohingya is the result of decades of structural ethnoreligious discrimination. A key element of this discrimination is the deprivation of nationality, which legitimises incorrect narratives of the Rohingya as “illegal” immigrants who pose threats to stability and security.
6. Religious discrimination is codified into Myanmar law. The 1982 Citizenship Law grants citizenship based on the concept of “national races,” creating a hierarchy of citizenship. Those not considered ‘indigenous’ national groups only have access to a lower, less secure form of ‘naturalised’ citizenship. This discriminatory law is further implemented in a discriminatory manner, and has been central to a long-term strategy to make life within Myanmar untenable for the Rohingya =, rendering them stateless. The 2008 Myanmar Constitution recognises Buddhism as the “special religion”. This exacerbates legal hierarchies which subject ethno-religious minorities to further discrimination and disadvantage.⁸ In 2015, Myanmar enacted four, highly discriminatory laws that target religious minorities, especially women, by controlling their marital and reproductive freedoms.⁹
7. The discriminatory and coercive National Verification Card (NVC) programme further undermines Rohingya claims to citizenship, by labelling cardholders as “foreigners”. At times, authorities have forced Rohingya at gunpoint to accept these identity cards,¹⁰ and subjected them to torture and arbitrary restrictions of movement and access to work.¹¹ The holders of NVCs are barred from applying for citizenship.¹²
8. Rohingya Muslims are further subject to laws and practices that restrict their right of freedom of religion or belief. In 2016, government forces demolished mosques and Islamic religious schools in Rakhine State, building military bases on this land in 2018. Non-state actors have committed similar crimes with impunity. Mobs have attacked and destroyed Muslim mosques and prayer halls, with little to no government intervention.¹³ In 2012 alone, 32 mosques and 22 monasteries were destroyed.¹⁴ Muslims have also been banned from praying in public spaces during Ramadan.
9. Political and religious leaders also engage in hate speech. The Myanmar government often refers to the Rohingya as ‘Bengalis’, furthering the discriminatory idea that they do not belong. The term “*ko win Bengali*”¹⁵ was promulgated by the U Thein Sein government, with the intention of further

⁸ Nyi Nyi Kyaw, *Freedom of Religion, the Role of the State, and Interreligious Relations in Myanmar*, (International Centre for Ethnic Studies, ed. 2018).

⁹ Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible, A Legal Briefing (June 2019), <https://www.icj.org/wp-content/uploads/2019/06/Myanmar-Citizenship-law-reform-Advocacy-Analysis-Brief-2019-ENG.pdf> (PDF).

¹⁰ *Myanmar Forces Rohingya to Accept Cards That Preclude Citizenship*, Reuters, Sept. 3 2019.

¹¹ *Id.*

¹² *Id.*

¹³ Nyi Nyi Kyaw, *Freedom of Religion, the Role of the State, and Interreligious Relations in Myanmar*, (International Centre for Ethnic Studies, ed. 2018).

¹⁴ *Id.*

¹⁵ This translates as “Benagli(s) who have illegally entered”.

inflaming anti-Rohingya tensions.¹⁶ The discriminatory term is still used in journals and newspapers across the country.¹⁷ Furthermore, Myanmar government officials often refer to Muslims — Rohingya or not — as “guest citizens.”¹⁸

India: Discrimination in law and its effects

10. 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.
11. 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.
12. 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.¹⁹ According to a statement by 125 NGOs:

*This process arose out of a history of xenophobia and discrimination against both Indian and non-Indian migrants of Bengali ethnicity, with Muslim Bengalis being the most disproportionately impacted. Women who are less likely to be literate or have documentation due to societal prejudices and norms and their children have also been excluded. The immense pressure that this process has placed on individuals and their families, including the cost of applying and appealing, the loss of work, the strain on family life, the emotional and psychological impact, the loss of liberty through detention and the rise in hate-crimes and hate-speech, is extremely worrying.*²⁰

13. Further, there is no extradition treaty between India and Bangladesh, nor does Bangladesh or any other country recognise those excluded as its citizens, creating (a risk of) mass statelessness.

¹⁶ Nyi Nyi Kyaw, *Freedom of Religion, the Role of the State, and Interreligious Relations in Myanmar*, (International Centre for Ethnic Studies, ed. 2018).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Majoritarian Consolidation: Chronicling the Undermining of the Secular Republic*, Citizens Against Hate, March 2020.

²⁰ *The Biggest Mass-Disenfranchisement of the 21st Century*, Institute on Statelessness and Inclusion, 2019, <https://files.institutesi.org/cso-joint-statement-on-assam-nrc.pdf>.

14. The CAA provides a back-door through which members of the majority religious group - Hindu's – who were arbitrarily deprived of nationality through the NRC can re-establish their citizenship. Affected Muslims have no such recourse.
15. 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.”²¹ 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.²²
16. Many Rohingya have sought refuge in India. However, the above described developments have undermined their protection, as they are increasingly subject to detention, deportation, hate speech, violence and xenophobia.
17. 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”.²³

Gender discrimination

18. In far too many countries, gender discrimination in nationality and family laws not only undermines women's status as equal citizens and their equality within the family, but also facilitates and perpetuates discrimination on the basis of religion. The intersection of sex and religious discrimination exacerbates the harmful impact of these discriminatory laws and practices.
19. Nationality laws in twenty-five countries²⁴ deny women the equal right to confer nationality on their children. If such children cannot acquire their father's nationality, they may be rendered stateless.
20. In many countries with such gender-discriminatory nationality laws (Bahrain, Brunei, Iran, Jordan, Kuwait, Lebanon, Libya, Malaysia, Mauritania, Oman, Qatar, Saudi Arabia, Somalia, Sudan, and Syria) family laws also deny women the right to freely choose a spouse on the basis of religion, with Muslim women prohibited from marrying non-Muslims. Married couples of “banned” inter-faith unions cannot acquire the marriage certificates required to secure birth certificates establishing their child's legal link to the father. Children born of these unions are often rendered stateless, lacking the ability to acquire their father's nationality due to the “illegitimate” marriage

²¹ Human Rights Watch, *India: Citizenship Bill Discriminates Against Muslims*, Dec. 2019.

²² <https://www.vox.com/future-perfect/2019/9/17/20861427/india-assam-citizenship-muslim-detention-camps>

²³ *Shoot the Traitors*, Human Rights Watch, Apr. 2020.

²⁴ The Bahamas, Bahrain, Barbados, Brunei, Burundi, Eswatini, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Liberia, Libya, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Togo, United Arab Emirates, see also: <https://equalnationalityrights.org/the-issue/the-problem>

and lacking the ability to acquire their mother's nationality due the nationality law's discrimination against women.

21. In some countries, including Algeria, Egypt and Morocco, Muslim women have the legal right to confer nationality on their children, but are banned from marrying non-Muslims. Despite legal provisions to the contrary, women in such banned inter-religious marriages are often denied the ability to confer nationality on their children, with authorities requiring an unobtainable marriage certificate in order to provide civil documents for children. Women in such circumstances may be compelled to register their child as born out of wedlock, which often comes with great stigma for the mother and child, and could even result in criminal charges and incarceration where extra-marital sex is criminalised.
22. In some countries where women lack equal rights to confer nationality on children and spouses, the naturalisation of women's family members is at the discretion of the state. Where this discretion exists, authorities sometimes reject the citizenship applications of women's children and spouses on the basis of their (non-dominant) religious identity. For example, prior to Madagascar's 2016 nationality law reform upholding women's equal rights to confer nationality on children, the citizenship applications for children of Madagascan women and non-citizen fathers were reportedly rejected due to belonging to minority groups including the Karana, a primarily stateless Muslim population.²⁵

Nationality deprivation as a counter-terrorism measure

23. The last two decades have witnessed a trend of a 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. Such measures are likely to be arbitrary and can cause statelessness. They disproportionately target those of minority and migrant heritage and are likely to be discriminatory on the basis of religion.
24. 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,²⁶ 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

²⁵ Equal Rights Trust, "My Children's Future," see pages 2, 51, available at <https://www.equalrightstrust.org/ertdocumentbank/My%20Children%27s%20Future%20Ending%20Gender%20Discrimination%20in%20Nationality%20Laws.pdf>

²⁶ See article 14(4) Dutch Nationality Act and <https://zoek.officielebekendmakingen.nl/stcrt-2017-13023.html> (government gazette).

equates terrorism with radicalised groups, including dual citizens, Muslims, and other individuals perceived to be of non-Dutch origin.”²⁷

In the UK too, concern has been raised that expanded deprivation powers disproportionately impact Muslims, who have become “tolerated citizens”.²⁸

25. There is no evidence to support the effectiveness of such measures, and there is growing concern that they may actually be counterproductive. There are also significant concerns related to the permanent nature of the measure of deprivation of nationality, its disproportionate impact on individuals, families and communities, and the detrimental impact on other fundamental human rights.
26. 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,²⁹ including UN Special Rapporteurs on Minority Issues, Racism & Xenophobia & Counter-terrorism & Human Rights.
27. 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

COVID-19

28. In Myanmar, there is growing concern that the military is capitalising on COVID-19 to carry out further crimes against the Rohingya. Furthermore, the implementation and enforcement of public health policy has a clear discriminatory intent. Widespread diagnostic testing is limited in Myanmar, with IDPs in Rakhine being excluded, despite the heightened risk they face due to their living conditions. Additionally, punishments for not following public health guidelines have not been equitable. For example, the government fined only four of a hundred people who attended a Buddhist Monk’s funeral., But all 14 mourners at a Muslim funeral were sued, with the twelve adults in attendance being imprisoned for three months.³⁰
29. Similarly, the handling of COVID-19 pandemic in India has been rife with religious discrimination, with Muslims widely scapegoated as ‘vectors’ of the disease.³¹ Authorities blame a Muslim religious gathering of the Tablighi Jamaat movement in Delhi for the spread of the pandemic.,³²

²⁷ Amicus Brief presented by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance before the Dutch Immigration and Naturalisation Service. Available at: https://www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf, p. 21.

²⁸ Choudhury (2017). See also, in respect of the Netherlands and Belgium, Amnesty (2017).

²⁹ <https://www.institutesi.org/year-of-action-resources/principles-on-deprivation-of-nationality>.

³⁰ *Different Laws Applied to Myanmar COVID-19 Restrictions*, The Irrawaddy, May 2020, <https://www.irrawaddy.com/specials/myanmar-covid-19/different-laws-applied-myanmar-covid-19-restrictions-lead-inconsistent-punishments-violators.html>

³¹ *Hit Job: Using COVID-19 To deepen Anti-Muslim Bias and Weaken Muslim Voice*, Citizens Against Hate, May 2020.

³² *Id.*

Online disinformation campaigns have ensued, with #CoronaJihad trending on Twitter and the religious gathering being labelled as ‘corona terrorism’.

30. In Assam, members of Foreigners’ Tribunals who have made donations towards state COVID-19 relief efforts, have requested that the funds not be disbursed to those who contracted the virus at the Tablighi Jamaat event, using words like “jehadi” and “jahil” to describe such people.
31. The government has also targeted the Rohingya, singling them out for screening. Given failed attempts to deport Rohingya refugees in 2019, there are serious concerns around this development. The exclusion of Rohingya and other refugees from accessing government COVID-19 relief measures has made survival difficult. Rohingya who live in squalid urban slums are also highly vulnerable to the virus. Rohingya in camps risk starvation as they struggle over access to food and water. The state-wide lockdown has hampered an already slow stream of resources.³³
32. Persons rendered stateless by the intersection of sex and religious discrimination, experience exacerbated vulnerability and rights violations. COVID-19 economic relief in many countries, including Jordan and Malaysia, is not available to non-citizen family members. Tragically, gender-based violence has spiked under lockdown, with gender-discriminatory nationality laws adding to the hurdles faced by women trying to extract themselves from abusive relationships at this time.³⁴

³³ *India: Rohingya in Pandemic Red Zone Face Starvation*, Anadolu Agency, Apr. 2020.

³⁴ Global Campaign for Equal Nationality Rights, “Gender-Discriminatory Nationality Laws Add to Families’ Suffering during COVID-19 Pandemic” available at: <https://equalnationalityrights.org/reports/document/1295-gender-discriminatory-nationality-laws-add-to-families-suffering-during-covid-19-pandemic?highlight=WyJjb3ZpZCJd>. For example, though a Malaysian mother wants to leave her abusive partner and the heightened COVID threat she faces in her spouse’s country, her children lack Malaysian citizenship so she is remaining overseas with her abusive spouse. See Foreign Spouses Support Group, “Challenges faced by Malaysian women with children born overseas during the Covid-19 crisis,” available at <https://equalnationalityrights.org/news/105-challenges-faced-by-malaysian-women-with-children-born-overseas-during-the-covid-19-crisis>; Pre-COVID, a Jordanian mother was forced to provide for her entire family, as her husband and children lack citizenship and therefore access to formal employment due to the country’s discriminatory nationality law. Now she is suffering increased violence from her husband because she cannot bring home her normal earnings during the COVID shutdown.