

Enduring Vulnerability: The Legal and Humanitarian Challenges Facing Stateless Rohingya Children

Vu Phuong Linh¹¹⁰

Nguyen Dinh Tai¹¹¹

Phan Nguyen Quynh Nhi¹¹²

Abstract

The Rohingya, a Muslim ethnic group primarily residing in Rakhine State, Myanmar, have endured a long history of marginalization and persecution rooted in complex social and historical contexts. This persistent crisis has resulted in many Rohingya children being born into statelessness, depriving them of fundamental rights and increasing their vulnerability. Utilizing secondary data from a range of research and reports on the issues of statelessness and the situation of Rohingya child refugees in particular, this paper starts by tracing the origins of the Rohingya refugee crisis that ultimately led to the denial of citizenship of Rohingya children, detailing the impact it has on their rights to citizenship, healthcare, and education. It then examines international laws on citizenship, statelessness, and children's rights to outline general international obligations and investigate the effectiveness of domestic Myanmar laws in this area. Reflecting on the dangerous conditions currently faced by Rohingya children in refugee camps, the paper also evaluates the effectiveness of assistance from Bangladesh, Malaysia, and Thailand, based on a study of these countries' national laws, and outlines critical gaps in addressing the crisis for stateless Rohingya children.

Keywords: Rohingya, Statelessness, Children's Rights, Citizenship, Myanmar

¹¹⁰ Faculty of International Law, Diplomatic Academy of Vietnam

¹¹¹ Faculty of International Politics and Diplomacy, Diplomatic Academy of Vietnam

¹¹² Faculty of International Law, Diplomatic Academy of Vietnam

1. Introduction

The plight of Rohingya children born in refugee camps and informal settlements highlights a severe humanitarian crisis. These children, born to stateless parents, inherit their lack of citizenship, facing a systematic denial of birth registration and, thereby, their fundamental right to a legal identity (UNHCR, 2022). The absence of a birth certificate renders these children stateless, further emphasizing their marginalization and vulnerability. Life in the refugee camps is filled with threats, including disease outbreaks, poor sanitation, food insecurity, and extreme weather (Thompson et al., 2023). These conditions create a vicious cycle of malnutrition and illness, with approximately one million children in urgent need (OCHA, 2024). Despite efforts from various humanitarian organizations, the challenges faced by Rohingya children in these camps are immense and multifaceted.

Internationally recognized as a fundamental human right, the right to citizenship is crucial for developing and protecting children (OHCHR, 2024). The international community has made significant efforts to address statelessness through various treaties, such as the 1954 Convention Relating to the Status of Stateless Persons (UN, 1954) and the 1961 Convention on the Reduction of Statelessness (UN, 1961). These treaties aim to protect the rights of stateless individuals and prevent the occurrence of statelessness. However, Myanmar, where the Rohingya originate, is not a signatory to these conventions (ISI & SNAP, 2019), complicating efforts to address the statelessness of Rohingya children.

The Rohingya children's struggle for citizenship is further exacerbated by Myanmar's 1982 Citizenship Law, which restricts citizenship to specific national groups and imposes stringent requirements for naturalization (Grundy-Warr & Wong, 1997). The interpretation of this law has contributed to the systemic exclusion of the Rohingya, depriving them of full citizenship rights and opportunities for education and employment. Recent efforts to abolish the 1982 Citizenship Law aim to address these injustices, but significant challenges remain.

This paper examines the international and Burmese approaches to addressing Rohingya children's citizenship in relation to the ongoing transition of statelessness from their parents to them. It highlights the urgent need for comprehensive solutions that address their right to citizenship, healthcare, and education. Through an exploration of relevant legal frameworks and human rights principles, this research reveals the alarming extent to which the rights of stateless Rohingya children are unmet and underscores the importance of ensuring their fundamental rights.

2. Literature Review: Key Debates and Trends in Statelessness

Citizenship is widely recognized by the international community as a fundamental human right (OHCHR, 2024), serving as the foundation for accessing numerous civil, political, and social protections within modern nation-states. Despite this recognition, statelessness remains a pressing issue affecting millions worldwide, often resulting in the systematic denial of basic rights and services. While not exhaustive, this literature review aims to outline key debates and trends in research relating to statelessness, particularly for stateless Rohingyas.

Statelessness was first formally addressed by the international community through the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Achiron, 2014). In recent years, statelessness has gained increased attention from scholars, policymakers, and human rights advocates, particularly in light of large-scale displacement crises and the growing recognition of its impact on children. Numerous scholars have explored the concept of statelessness and its implications. Kingston et al. (2010) argue that statelessness represents a "legal invisibility" that fundamentally undermines human rights protections. They contend that the lack of legal recognition and protection afforded to stateless individuals creates a vacuum in which basic human rights are routinely violated. They also emphasize that statelessness is not merely a legal technicality but a pervasive condition that impacts every aspect of an individual's life, from access to education and healthcare to the ability to work legally or own property. Mansson (2013), in “Reduction of Statelessness and Access to Nationality,” examines the historical and political factors contributing to statelessness, emphasizing the role of discriminatory nationality laws and state succession. She argues that statelessness is often a deliberate political tool used by states to exclude certain groups from citizenship and its associated rights. These works have provided a foundation for understanding the broader context in which the statelessness of Rohingya children occurs.

The serious consequences of being stateless are undeniable, particularly in light of the Rohingya people's predicament. It would be difficult to overlook the most vulnerable demographic—children. In this paper, the authors have reviewed literature related to the statelessness of Rohingya children with a focus on three key areas: first, the legal status of the group; second, the origins of the deprivation of nationality of the group; and third, the interconnection between the statelessness and the poor living conditions faced by the group.

The first aspect explored here is the legal status of Rohingya stateless children. As detailed in section 7, the legal status of Rohingya children within host countries of Rohingya refugees, e.g., Bangladesh, Malaysia, and Thailand, is highly ambiguous and often undefined within existing citizenship frameworks. Sabuj (2024) reflects on the actual situation regarding the citizenship rights of Rohingya children born to Bangladeshi parents in refugee camps. He estimated that around 36,000 children of Bangladeshi descent are born stateless in these camps. These children are denied Bangladeshi citizenship despite the citizenship law of this country allowing children of Bangladeshi parents to acquire citizenship by descent. Dali (2018) found that Malaysia lacks a domestic legal framework governing the designation and treatment of refugees despite its openness in condemning Myanmar's policy. About Thailand, Slezak et al. (2015) argue that Thai law in itself is inadequate to ensure the full rights and protections associated with Thai citizenship for Rohingya children.

Secondly, the literature finds that the origins of the deprivation of citizenship for the Rohingya are long-standing and deep. A number of authors (see Kipgen, 2011, 2013, 2015), Holliday (2010), Mohajan (2018), Wolf (2017), and Callahan (1998), amongst others) locate the deprivation of citizenship of the Rohingya people in the historical conflicts and political dynamics of Myanmar. Specifically, and as outlined in detail in section 4, three periods were identified and analyzed from within the literature: British Colonialization (1823-1948),

Parliamentary Democracy in Myanmar (1948-1962), and Military Government in Myanmar (1962-1988). Furthermore, in his examination of the stateless status and history of the Rohingya people, the paper of Soheli (2023) explains the process by which the Rohingya were gradually stripped of their citizenship, culminating in the 1982 Citizenship Law that excluded them. Particularly for vulnerable groups like children, the study reflects the reality that Rohingya children in refugee camps have had their childhoods stolen, deprived of play, education, and a sense of safety, and even denied citizenship for those born in the camps. Based on the 1991 Convention on the Rights of the Child (CRC), the paper outlines several rights being violated in the case of these children, including the right to protection, freedom of speech, and access to education. Many Rohingya children are forced to take on adult responsibilities, sacrificing their education and dreams for the future.

Thirdly, there is a clear and profoundly concerning link between the statelessness experienced by many Rohingya children and the poor living conditions and trauma that they face, in particular psychological trauma. Parvin (2023) and Chowdhury et al. (2020) have conducted significant research in this area. Chowdhury et al. (2020) outline the challenges faced by this group on aspects related to the precarious legal status of Rohingya children who are denied citizenship in both Myanmar and Bangladesh. This lack of legal recognition further pushes Rohingya children into a state of limbo, denying them access to fundamental rights and services. Many have witnessed violence, displacement, and loss of loved ones, leading to profound mental health challenges. On the other hand, based on data collected from 13 children selected as participants, Parvin (2023) emphasized the psychological problems that can be found in Rohingya children, including post-traumatic stress disorder, anxiety, depression, and somatic symptoms, which were all cited by the majority of respondents. They frequently suffer from flashbacks, nightmares, panic attacks, suicidal ideation, trauma, palpitations, sleep disturbances, and physical aches for no apparent reason. However, Chowdhury et al. (2020) recognized that the socio-economic burdens on host countries, particularly Bangladesh, are challenging to resolve. The influx of over 1 million Rohingya refugees, including a large number of children, has strained Bangladesh's limited infrastructure. This has led to tensions with local communities and concerns about the long-term viability of the refugee camps. Unaccompanied minors and children without legal guardians, who are stateless, are at high risk of being trafficked for forced labor and prostitution.

While extensive research has illustrated the legal, social, and psychological challenges facing Rohingya children, there remains a critical need for a comprehensive synthesis of existing evidence, particularly regarding the efficacy of host countries' legal frameworks. The following sections in this paper attempt to tackle this by providing a detailed analysis and integration of existing research on the subject.

3. Methodology

This study involved a detailed review of secondary documentary data through an assessment of a wide range of sources. For this paper, the authors reviewed 13 reports from UN agencies, 5 studies from NGOs, including Human Rights Watch and Concern Worldwide, 15 legal documents, including international treaties, Burmese national laws, and national laws of

Thailand, Malaysia, and Bangladesh, as well as additional documents from research journals, books, and websites. In total, 64 documents were reviewed.

The review process involved, firstly, the identification of key sources, which was based on their relevance, authority, and comprehensiveness in covering the subject matter. Publications from UN agencies were prioritized due to their official status and extensive data, and NGO reports were included to ensure a multifaceted understanding, reflecting on-the-ground realities and diverse viewpoints. Secondly, the authors conducted a screening of these documents for direct relevance to statelessness and children’s protection, and finally, a detailed review of these documents was done to extract information and insights.

Key themes from the literature were identified, drawing on the practice of thematic analysis (Braun & Clarke, 2006). This process involved reviewing documents to uncover recurring themes and patterns, organizing related information into broad categories, and synthesizing the findings. Specifically, the authors identified three main areas important for addressing the research questions concerning stateless Rohingya children: (i) the origin of the deprivation of nationality, (ii) the conditions, and (iii) the legal status of these children. Having established the main categories, data were sorted and organized into these groups to create the narrative of the paper. By employing this methodology, the study ensures a thorough and well-rounded exploration of the research topic.

4. The Rohingya Refugee Crisis and the Situation of Stateless Rohingya Children

In 2017, the military armed forces (MAF) of Myanmar orchestrated a brutal campaign of attack against Muslim communities in Myanmar, including the Rohingya (Klinken & Aung, 2017). It is now documented that the attacks against the Rohingya included killings, violence, and the burning of the homes of thousands of Rohingya people (Human Rights Watch, 2022). To understand the root causes of the situation, it is necessary to look into the political and social conflict grounded in the early establishment of what became modern-day Myanmar.

4.1. Historical Context

4.1.1. British Colonialization (1823-1948)

The conflict between the Buddhist majority and Muslim minority has to be traced back to the British colonization in the mid-1820s. During this period, the British imposed divergent modes of rule across Myanmar. They exercised their direct rule in central Burma and indirect rule in the surrounding state, thus creating a “patchwork of governance arrangements” (Holliday, 2010). Before British rule, central Myanmar had different governance arrangements from the frontier areas. Britain claimed that these frontier areas were less advanced and needed separate administration. Unlike the Burmese, who lost their autonomy in 1885, the frontier people maintained their traditional life and leadership. Due to this policy, different ethnic groups and religions were mixed but not integrated (Holliday, 2010). This contributed to the divides along ethnic and religious lines, which have continued to characterize the country in recent years.

During World War II, while the Burma Independence Army (BIA) of the Burmese majority sided with the Japanese against the British, some minority groups, including the Rohingya,

chose to fight alongside the British. This also played a part in fueling the conflict between the Muslim minority and the Buddhist majority. Myanmar is a country surrounded by primarily Muslim countries - Bangladesh, Malaysia, and Indonesia. Historically, it is argued that these dynamics have also worsened Buddhists' belief that if any Islamic country attacks Myanmar, the Rohingya will fight against Myanmar (Mohajan, 2018). Consequently, even after independence from British rule, these factors played a role in the post-World War II discrimination against the Rohingya (Wolf, 2017).

4.1.2. Parliamentary Democracy in Myanmar (1948-1962)

Despite independence from Britain, the political negotiations post-war continued to face significant challenges connected with demands for autonomy by different ethnic groupings (Callahan, 1998). To unify the country, the Burmese administration in the center negotiated with the frontier leaders that they would grant the frontier areas autonomy and would not intervene in their customs and religious practices (Kipgen, 2011). Although the frontier leaders were suspicious of the motives of the Burmese leaders, they signed an agreement to form the Union of Burma in 1947 with the expectation that they would still maintain their autonomy and receive equal treatment (Kipgen, 2011). The 1947 Constitution recognized special arrangements for certain ethnic groups. Following the 2008 Constitution, Myanmar has been administratively divided into seven regions, seven states, six self-administered zones, and one 'union territory' (DFAT, 2022). The Burman majority predominantly resided across the regions, while minority groups had to live in the designated states (Kipgen, 2011).

After Myanmar's independence in 1948, the Union Citizenship Act recognized that all born in the country were Myanmar's citizens from birth. Some Rohingya with multi-generational residence, with two or more generations residing in Myanmar, reportedly obtained national identity cards (Biver et al., 2014). However, in the following decade, after the establishment of a parliamentary democracy, challenges arose concerning the full incorporation of various ethnic minorities within the national framework. This stemmed partly from a preexisting reluctance among certain minority groups to join the Union of Burma. Consequently, these minority groups advocated for a federal form of government where each distinct nationality would be afforded a measure of self-governance (Callahan, 1998). Crucially, however, minority groups, including the Rohingya, never received the promised self-governance rights, including control over local governments, decision-making power, and taxes (Callahan, 1998).

4.1.3. Military Government in Myanmar (1962-1988)

Growing economic and political instability has created opportunities for General Ne Win's military to stage a coup, strip away Burmese democracy, and exacerbate existing problems in the country (Kipgen, 2011). This change conferred upon the armed forces a broad scope of responsibilities encompassing defense matters and involvement in political and economic governance across Burma (Jones, 2013). Following its establishment, in 1982, the military government passed a new Citizenship Law, dividing people into two groups with different rights and privileges. As a result, the Rohingya were "left out," effectively being rendered stateless (Burnley, 2014). In addition to the discriminatory regulation, the military government of Myanmar launched attacks in northern Rakhine, destroying Rohingya mosques and schools. This brutality forced over 200,000 Rohingya to flee across the border to Bangladesh (Grundy-

Warr & Wong, 1997; Matthieson, 1995). Effectively, the law meant that the Rohingyas had been stripped of their citizenship and right to self-identify. The 2018 report of the Mission of the Human Rights Council suggests that the Rohingya suffered from human rights abuse, extrajudicial killings, torture, rape and sexual violence, the two-child rule, political arrests and detentions, forced eviction, forced relocation, destruction of livelihoods, and confiscations of land and resources, firing in homes and business areas, forced labor, child labor, human trafficking, herding people into fenced enclosures, destruction of mosques, and restriction on freedom of movement, assembly, association, expression, and religion (Human Rights Council, 2019).

4.1.4. Current Situation of the Rohingya Crisis

Currently, over 1.5 million Rohingya people are internally displaced, mainly in the Northwest (Rakhine State), Southeast, and Northeast (Kachin State), which has further led to a humanitarian crisis inside Myanmar (Shohel, 2023).

Since then, international actors such as the UN have been struggling to deliver aid in many areas. Since the 2021 coup, an estimated 70,000 more people have fled Myanmar as refugees to neighboring countries. Nearly 1.2 million Rohingya refugees, mainly from Rakhine, are scattered across the region. Almost 1 million are in Bangladesh, with smaller numbers in Malaysia and India. There are also over 300,000 other refugees and asylum seekers from Myanmar in Thailand, Malaysia, and India (UNHCR, 2024).

Table 1: Myanmar refugees and asylum seekers (UNHCR, 2024)

Location name	Population	Date
Bangladesh	978,003	31 March 2024
Malaysia	166,600	31 March 2024
India	86,100	31 March 2024
Thailand	84,000	31 March 2024
Indonesia	2,800	31 March 2024

4.2. The Situation of Stateless Rohingya Children

Children make up a significant portion of the Rohingya refugee population. According to UNICEF, in 2018, more than 16,000 Rohingya children were born in refugee camps and informal settlements in Cox’s Bazar (UNICEF, 2024). Born in families with stateless parents, these children are also deprived of their right to citizenship. The systematic denial of birth registration to Rohingya children constitutes a violation of their fundamental right to legal identity. A birth certificate is the foundation for accessing rights and protections enshrined in the legal system, and without it, these children are rendered stateless, hindering their ability to exercise fundamental freedoms like movement and education (Sabuj, 2024). This lack of legal recognition perpetuates their marginalization and exposes them to increased vulnerability.

Since reaching the camps, the Rohingya children have faced a relentless barrage of threats, including outbreaks of measles and cholera, the ever-present danger of COVID-19, dangerously poor sanitation, the constant struggle for food, the threat of extreme weather, and the terrifying possibility of fire. The risks in the camps have created a vicious cycle. These hardships weaken those already malnourished, making them even more susceptible to illness, and outbreaks further deplete their strength, increasing malnutrition rates (Shohel, 2023). In refugee camps in Bangladesh, thousands of Rohingya children have endured unimaginable hardship. These children require immunizations, vitamin supplements, and other essential medical supplies to survive, especially those who have suffered significant injuries during their traumatic journey and would require extra care (Jony et al., 2021). Despite the aid efforts, over 21,000 children under 5 are so malnourished that they require specialized treatment. Hundreds of thousands of children under 15 do not have access to essential vaccinations due to displacement, putting them at risk of preventable diseases (WHO, 2018).

Education plays a crucial role in their recovery and prospects, opening the door to potential integration or repatriation in the future (UNESCO, 2005); however, the lack of legal status can impede access to schooling and other vital services, perpetuating a cycle of deprivation and vulnerability. "The concept of human rights is inseparable from their role in international political practice" (UNFPA, 2005), meaning that education is necessary to exercise one's agency. Education helps the underprivileged escape poverty and actively engage in their communities (Concern Worldwide, 2020).

Unfortunately, the Rohingya in refugee camps, especially Rohingya children, are not given that opportunity. Studies reveal that Rohingya children in Bangladesh are suffering an educational crisis: they are not allowed to attend public schools and are only able to get minimal non-formal education from non-governmental organizations or, occasionally, from teaching initiatives organized by refugees (Palik, 2020). Based on estimates provided by UNICEF, a significant number of Rohingya children continue to lack access to education. Of the 416,000 Rohingya children (3-18 years old) in school, one-third did not have access to basic education as of 2019 (UNICEF, 2019). Without access to education, children are at risk of being exploited for child labor, trafficking, and sexual abuse. Hammadi (2020) also noted, "However, what is more important for us to see is the consequence of growing a generation without education, a generation that will not be able to speak up for themselves, speak against the violation of their rights, enjoy the benefits of an active and enlightened mind, or lift themselves out of their difficult situation."

The above problems stem from the fact that Rohingya children do not enjoy citizenship rights, regardless of whether their nationality is Burmese or any of the host countries. Therefore, for children to grow up with full awareness of their rights, issues related to their identity, especially citizenship, should be resolved within the scope of international law principles. The following section looks at the implications of the international legal architecture on the statelessness of children, a category into which many Rohingya refugee children now fall.

5. International Provisions on Citizenship, Statelessness, and Children’s Rights

5.1. Defining Nationality and Citizenship

A key definition of the term “nationality” derives from the judgment of the *Nottebohm* case by the International Court of Justice (ICJ) as “a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties” (ICJ, 1955). As such, nationality infers a person's connection to a specific state (Islam, 2017) and implies a certain legal status to be recognized and enjoyed by individuals (von Rütte, 2022). Generally, a state is entitled to determine its nationals under its domestic law, with certain exceptions provided in some treaties, especially when such determination would render an individual stateless. This rule is regulated in Article 1 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (League of Nations, 1930) as follows: “[...] it is for each state to determine under its own law who are the nationals. This law shall be recognized by other states in so far as it is consistent with international conventions, international custom, and principles of law generally recognized with regard to nationality.”

On the other hand, “citizenship” refers to the social and legal connection between individuals and their political community (Patrick, 1999). While nationality and citizenship can be used interchangeably, it is often argued that the term “citizenship” is domestic law-oriented and also includes historic-biological aspects rather than being strictly politico-legal like “nationality” (Weis, 1979). No matter the differences, nationality or citizenship is the primary indicator of one’s rights as an individual, as it ensures the essential condition for subsequent civil, political, and social rights such as the right to education, the right to healthcare, the right to vote, the right to employment, etc. As such, the right to nationality or citizenship is internationally recognized as a fundamental human right (OHCHR, 2023).

Given the usage of the term “citizenship” instead of “nationality” in Burmese national law and considering the social connotations of the term, for the purpose of the current research, the authors will use the term “citizenship” when investigating the transition of statelessness of Rohingya children.

5.2. Statelessness: The Consequences of Deprivation of Citizenship

Article 1 of the 1954 Convention Relating to the Status of Stateless Persons defines a stateless person as someone “who is not considered as a national by any State under the operation of its law.” This translates to a lack of citizenship and its associated rights, leaving individuals in a dangerous and often marginalized position. Two key international treaties governing statelessness were previously mentioned: the 1954 Convention, which establishes a legal framework to protect the rights of stateless persons, including access to fundamental necessities like education and employment, and the 1961 Convention on the Reduction of Statelessness, which aims to prevent statelessness from arising in the first place by urging states to adopt practices that ensure all children acquire a nationality at birth. While Myanmar is not a signatory to either convention (ISI & SNAP, 2019), the international community's efforts to address statelessness hold significant weight. The Preamble of the 1961 Convention explicitly

states the objective of “reducing statelessness by eliminating its future causes,” which may suggest a broader international consensus between the United Nations and the Contracting States of the Convention that the reduction and potential elimination of statelessness is a goal with universal application, even for states that have not formally adopted these specific treaties.

Statelessness can result from arbitrary deprivation of nationality, conflict of nationality laws, the emergence of new states and new border rules, or the inability to prove links between an individual and a state (Achiron, 2014). Specifically, regarding arbitrary deprivation of nationality, Article 15 of the Universal Declaration of Human Rights (UN, 1948) explicitly states that everyone has the right to nationality and that no one shall be arbitrarily deprived of his nationality. Arbitrary deprivation often relies on discriminatory grounds, which further exacerbates the plight of stateless persons. Discriminatory nationality laws and administrative practices are usually based on ethnicity, religion, or gender, further increasing exclusion and promoting systemic inequalities within societies. Various international documents have reinforced the prohibition of discriminatory deprivation of nationality, including the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination (UN, 1965), which indicates in Article 5(d)(iii) that: “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law... [and to] the enjoyment of [...] the right to nationality.”

Furthermore, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (UN, 1979), which Myanmar ratified, states that:

“(a) States Parties shall grant women equal rights with men to acquire, change or retain their nationality [...]

(b) States Parties shall grant women equal rights with men with respect to the nationality of their children.”

It is safe to conclude that it is in the international community’s interest to combat statelessness in adherence to the principles of non-discrimination, equality, and the protection of human rights. This requires concerted efforts at both national and international levels.

5.3. The Right to Citizenship of Children under International Law

As previously established, the right to nationality is fundamental to international human rights law. Various international treaties govern children’s right to nationality, including Article 24(3) of the ICCPR: “Every child has the right to acquire a nationality.” Furthermore, it was recognized in the 1989 CRC, which Myanmar ratified (Ministry of Information of Myanmar, 2023), specifically in Articles 2, 7, and 8. In detail, Article 2 requires states to ensure all children within their jurisdiction enjoy their rights without discrimination of any kind and protect them from discrimination or punishment based on their family's status or beliefs. Article 7 provides that every child has the right to be registered at birth, have a name, acquire a nationality, and be cared for by their parents; and Article 8 calls for states to respect and preserve a child's identity, including nationality, name, and family relations, and provide assistance to restore these elements if they are unlawfully taken away.

Children usually acquire nationality at birth through descent (*jus sanguinis*) or being born in a particular country (*jus soli*). Unfortunately, in the case of a child being born to stateless parents, it also means the status of statelessness is transmitted to the child. Usually, *jus sanguinis* is the preferred identification of nationality; however, nationality laws of many states now grant access to nationality *jus soli*. However, not every child born in these countries' territories would be given a nationality (von Rütte, 2022). In the annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, presented in the twenty-fifth session of the UNHRC, the UNHRC found that some laws, although allowing nationality acquisition for children of stateless parents born on their territory, fail to recognize the possibility of a child becoming stateless due to conflict of nationality laws. Others include supplemental conditions for the acquisition of a nationality of a child who would otherwise be stateless (UNHCR, 2021). It is, however, unclear how the specific circumstances of birth would affect national laws. An example given by the UNHRC highlights such a circumstance as “where the child is born to a foreign national woman prisoner or detainee, who may not have knowledge of or access to relevant procedures to secure a nationality for her child.” Only three states have submitted data on the implementation of laws safeguarding otherwise stateless children in their territory, and other states have reported that no such statistics are available (UNHCR, 2021).

These international provisions demonstrate the international community's commitment to recognizing the absolute importance of the rights of the child. However, it is also widely recognized that many states do not adhere to international commitments (UNGA, 2019). As such, it is also essential to examine the relevant Burmese laws on citizenship. Understanding these domestic regulations will provide a comprehensive view of how citizenship is defined and regulated within Myanmar and of the deep challenges this national legal architecture creates. The following section looks at the key legal infrastructure in Myanmar of relevance to this.

6. The Burmese Approach to Rohingya Children's Citizenship

6.1. The 1982 Citizenship Law

Twenty years after the series of ethnicity- and religion-related violence, the 1982 Citizenship Law was enacted by the military authority of General Ne Win (Shohel, 2023). Prior to this law, the 1947 Constitution of Burma and the 1948 Union Citizenship Law included indigenous races as citizenship assessment criteria but also allowed for naturalization through residence. Foreigners were also allowed to apply for naturalization under specific conditions between 1947 and 1982. Article 5(a) of the 1948 Union Citizenship Law also allowed for *jus soli* acquisition of citizenship if a person has both parents being born in the country and four grandparents being permanent residents (Arraiza, 2017).

However, the 1982 Citizenship Law approaches the matter of citizenship in a highly ethicized manner (Arraiza, 2017). This law only recognizes the citizenship of eight national groups: Bamar, Chin, Kayah, Mon, Rakhine, Shan, and Kachin, with very few other exceptions provided in Articles 5, 6, and 7. Others who do not belong to these groups would be categorized into another class of citizenship called the “naturalized citizens” (“*naing ngan thapyu khwint*”

ya thu”) and “associate citizens” (“*eh naing ngan tha*”) (Arraiza, 2017). This categorization denies naturalized and associated citizens full participation rights as citizens, including access to higher education and jobs. Furthermore, this second group comprised people with Bengali or Pakistani heritage and Chinese settlers (Grundy-Warr & Wong, 1997). To qualify as an associate citizen, a person’s ancestors had to have applied for citizenship before 1982, which was unlikely for Rohingya due to isolation and poor infrastructure. Even for regular citizenship, the law required proof of birth and residence in Burma before 1948. Moreover, fluency in a national language, Burmese, was required. The policy can be interpreted as discriminatory towards the Rohingya because the mother tongue of these people is Rohingya or Ruaingga (Mohajan, 2018).

The 1982 Citizenship Law was first implemented with the “national verification” in 1989, providing citizens with color-coded cards to identify their citizenship status. In detail, pink is for full citizenship, green is for naturalized citizenship, and blue is for associate citizenship. Communities, such as the Muslims or the “Bengali,” who refused to participate in the process, arguing that they were already citizens or were entitled to identify themselves as they wished in their ID cards, were offered temporary documentation with no clear legal status, such as Temporary White Cards and Interim Cards for National Verification (Arraiza, 2017). Such temporary solutions, unfortunately, lead to many communities becoming stateless. Nonetheless, the 1982 Law still allows for the acquisition of citizenship for naturalized and associated citizens in certain cases. Children with parents consisting of one full citizen and one naturalized or associate citizen are also allowed citizenship, and third-generation naturalized and associate citizens can also have full citizenship (Sabuj, 2024). This brings up the possibility of recognized citizenship for children of stateless Rohingyas; however, in reality, this is hardly the case due to the inequitable implementation of the law.

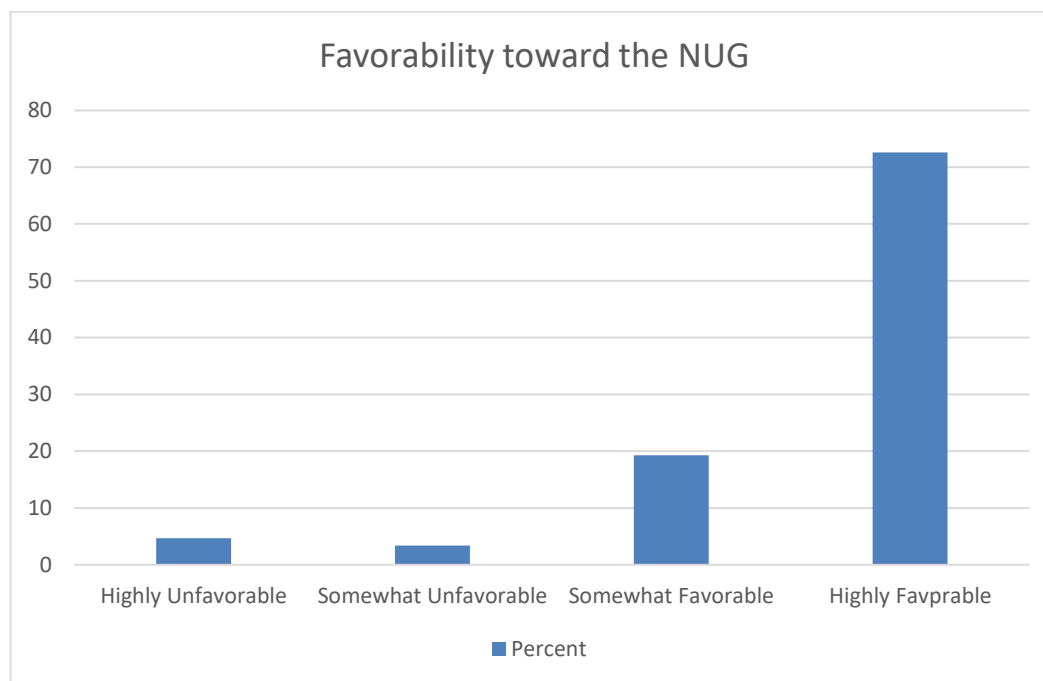
6.2. Newest Development: The Proposed Abolishment of the 1982 Citizenship Law

In June 2023, the National Unity Government of Myanmar (NUG)—established by ousted democratically elected lawmakers and parliamentarians wishing to create an exile government—made a significant announcement regarding the country's citizenship laws by approving the replacement of Myanmar's controversial 1982 Citizenship Law. In a briefing paper submitted to the HRC, NUG suggested that the new law “protects against statelessness and bases citizenship on birth in Myanmar or birth anywhere as a child of Myanmar citizens.” The NUG is working in collaboration with a network of ethnic resistance organizations (EROs) against the MAF and State Administration Council (SAC). Even though lacking formal recognition as Myanmar’s official government, they have important political influence, with a liaison office in Washington, D.C., and a representative at the UN through Ambassador Kyaw Moe Tun (Oo, 2024).

Recent commentaries suggest that the previously dominant Myanmar military junta might be on the edge of collapse (Beech, 2024). Struggling to retain its grip on power, the junta has experienced setbacks such as losing control over crucial border trading towns, which has depleted its resources. Additionally, the military has relinquished significant portions of territory (Beech, 2024). On the contrary, the NUG has been gaining considerable support in

Myanmar. The result of an online survey by Jangai Jap and Amy Liu between April and August 2023, involving 4,612 Burmese adults of diverse ethnicities in 20 countries, with nearly 47% in Myanmar, Malaysia, Singapore, and Thailand, illustrates this point.

Figure 1: The result of Jap and Liu’s survey on the extent of favorability toward the NUG (United States Institute of Peace, 2024)



This approved new Citizenship Law implies a closer step toward addressing the longstanding issues of Rohingya children’s right to citizenship. Nonetheless, this new law cannot formally take effect, given that the SAC and MAF remain in control of formal state institutions, including legislation (BTI, 2024), as well as NUG’s lack of formal recognition. Given the complex political landscape in Myanmar and the ongoing challenges faced by the NUG in consolidating its authority, Rohingya children may continue to face obstacles in accessing their rights to citizenship and relevant privileges and protections.

7. Assistance from Host Countries: Is it Effective in Mitigating Children’s Statelessness?

The ongoing crisis in Myanmar has resulted in a significant humanitarian burden for its neighboring countries, primarily Bangladesh, Thailand, India, and Malaysia, which have experienced an influx of Rohingya refugees seeking safety and security. These countries have responded with varying degrees of support, often driven by humanitarian imperatives and international pressure. Despite a shared regional empathy for the plight of the Rohingya, the efforts of these bordering nations remain primarily focused on immediate humanitarian relief rather than long-term integration or resolution. Here, the authors will look into the national laws of Bangladesh, Malaysia, and Thailand, as well as the three countries’ responsibility under international agreements, to investigate the effectiveness of reducing the transition of statelessness from parents to Rohingya children in these countries.

7.1. Bangladesh

Bangladesh has shown its sympathy for the status of the Rohingya, but despite the assistance, Rohingya children only receive humanitarian aid without having legal citizenship from Bangladesh. The citizenship law of Bangladesh, which includes the 1951 Citizenship Act and the 1972 Bangladesh Citizenship (Temporary Provisions) Order, regulates that Bangladesh would confer citizenship for an individual under two circumstances: (i) a person is born to a Bangladeshi parent or (ii) that person has maintained their residence in Bangladesh since 1971. However, regarding the second circumstance, that person needs to be approved by the Bangladeshi government. While the Rohingya children may have satisfied the requirement of residence, in most cases, their application for Bangladeshi citizenship is unsuccessful and denied by the administrative authorities. Therefore, even when the Rohingya want to marry a Bangladeshi citizen, it is unlikely that the Rohingya and their child will receive Bangladeshi citizenship (Sabuj, 2024).

Because Bangladesh is not a member of the 1951 Convention, Rohingya refugees fall under the scope of the 1946 Foreigners Act. This Act does not automatically grant asylum, permanent residence, or a path to citizenship in Bangladesh. Consequently, the administrative bodies of Bangladesh have the authority to decide to grant citizenship to the Rohingya children. Notably, the Bangladeshi administration has explicitly declared that the acceptance of Rohingya refugees stemmed from humanitarian assistance and discretionary authority rather than any legal obligation arising from the Convention (Hoque, 2016). This has resulted in systemic discrimination toward the Rohingya children.

Although Bangladesh has witnessed remarkable poverty reduction and development in recent years, it is still a low-income country (World Economics, 2023). Therefore, Bangladesh is in a delicate position to cope with the situation. At present, Bangladesh has expressed its stance that it would not take any more Rohingya refugees. Bangladesh formulated a relocation plan in January 2018, proposing the transfer of a significant number of Rohingya refugees from Myanmar to Bhasan Char Island. Specialists have designated this island as “uninhabitable” due to its vulnerability to severe weather events, particularly flooding during the monsoon season (Karin et al., 2020). Bangladesh’s stricter stance could also be illustrated through the event that more than 400 Rohingya people were stranded at sea during the COVID-19 pandemic (Karin et al., 2020). Consequently, the Rohingya children are trapped in a vicious circle of being stateless and are at higher risk of discrimination.

7.2. Malaysia

Being the second-largest recipient of Rohingya refugees, Malaysia also bears the burden of ensuring the fundamental rights of the Rohingya, especially the children. Unlike Bangladesh, Malaysia publicly condemned Myanmar's policy (Dali, 2018). It is established that, on average, one child is born each day to a Malaysian-born Rohingya mother. This ongoing pattern of birth within Malaysian territory by successive generations of Rohingya descent raises questions regarding their right to citizenship. Specifically, it casts doubt on whether the term “Rohingya” alone is sufficient to capture their legal status in Malaysia (Dali, 2018).

Unfortunately, Malaysia has not ratified the 1961 Convention on the Reduction of Statelessness. Furthermore, Malaysia lacks a domestic legal framework governing the designation and treatment of refugees. (Dali, 2018). However, as a member of the CRC, Malaysia has an obligation under Article 8 of the Convention to “provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.” Despite the regulation, the right to citizenship is a special concern for Rohingya children.

Over the past two decades, more than 100,000 Rohingya individuals have migrated to Malaysia (UNHCR, 2024). This influx has resulted in the birth of at least one, potentially two, generations within Malaysian territory (Human Rights Watch, 2000). However, as enshrined in the 2008 Constitution, Malaysian citizenship law does not grant automatic citizenship based solely on birthplace. The Constitution outlines two primary paths to citizenship acquisition—*jus soli* and *jus sanguinis*. The principle of *jus soli* is only applicable when one parent is a Malaysian citizen or permanent resident at the time of the child’s birth (Loganathan et al., 2022). This is unavailable to Rohingya children due to their parents’ lack of official documentation. *Jus sanguinis* seems like a better fit, but Malaysia lacks a legal framework to grant citizenship to children born there if their parents are stateless. The situation is further complicated because the terms ‘undocumented,’ ‘non-citizen,’ ‘migrant,’ and ‘stateless’ are sometimes used interchangeably (Loganathan et al., 2022). Pursuant to the Malaysian Immigration Act 1959/63, migrant workers employed in low-wage sectors are prohibited from sponsoring the entry of their family members or establishing new families within Malaysia (Immigration Act 1959/63 – Act 155, 1959). As a result, all children born to such migrant workers in Malaysia, regardless of their parents’ immigration status, would be considered irregular migrants under the Act (Human Rights Watch, 2000). This complex web of limitations leaves Rohingya children in legal limbo, denying them access to fundamental rights and exposing them to the threat of detention and deportation. Due to the limitation in obtaining citizenship, their ability to access essential services such as healthcare, education, and social protection is significantly impeded (Loganathan et al., 2022).

7.3. Thailand

When the crisis first broke out, Thailand did not welcome the Rohingya and considered this minority group a danger to their security. However, when the crisis got worse, Thailand called for a “help-on” policy to assist the Rohingya with humanitarian aid (Slezak et al., 2015). Although being provided with fundamental needs, the Rohingya children at the Thailand border are still at risk due to the limited rights to citizenship.

According to Thailand’s 1965 Nationality Act B.E. 2508, Section 7 *bis*. (3), a person born in its territory of alien parents shall not be able to acquire Thai nationality if either a father or a mother or both “have entered and resided in the Thai Kingdom without permission under the law on immigration.” This provision means to the Rohingya children that even when their father or mother is Thai, there is little chance that they would be allowed to register as Thai citizens. At the same time, Section 10 of this law also provided that an alien who wishes to apply for naturalization as a Thai must possess the qualifications as follows: (1) becoming *sui juris* (having total legal capacity) in accordance with Thai law and the law under which he has

nationality; (2) having good behavior; (3) having a regular occupation; (4) having a domicile in the Thai Kingdom for a consecutive period of not less than five years till the day of applying for naturalization; and (5) having knowledge of Thai language as prescribed in the regulations. These criteria set a high threshold for the Rohingya children to meet, given the fact that they have limited access to fundamental rights, including the right to education and the right to live in a safe place.

Meanwhile, although Thailand is not a member of the 1954 or the 1961 Convention (UNHCR, 2021), in 2008, the Government of Thailand amended the 2004 Civil Registration Act, establishing mandatory universal birth registration. This amendment mandates the issuance of birth certificates to all individuals born within Thailand's territory, irrespective of their parent's immigration status. While this establishes a legal recognition of birth and provides these individuals with an identity document, it is crucial to distinguish this from the acquisition of Thai citizenship. The law itself does not confer the full spectrum of rights and protections associated with Thai citizenship (Slezak et al., 2015). Furthermore, the situation for Rohingya children born at sea presents additional complexities. The legal framework surrounding such births may require further clarification to ensure a proper registration framework for establishing their legal status in Thailand (Slezak et al., 2015). Therefore, the Rohingya children at the border of Thailand are also enduring discriminatory treatment.

8. Conclusion

In conclusion, this paper has uncovered several critical findings regarding the statelessness of Rohingya children. By providing a historical overview of the current situation and challenges regarding stateless Rohingya children, it traces the roots of the Rohingya refugee crisis back to the British colonial period and the subsequent political and social conflicts in Myanmar. It also analyzes the impacts of these factors on children's right to nationality. Moreover, the paper includes a comprehensive review of international provisions on citizenship, statelessness, and children's rights, highlighting the importance of nationality and citizenship as fundamental human rights. Additionally, the paper explores the Burmese approach to Rohingya children's citizenship, particularly focusing on the controversial 1982 Citizenship Law and its recently proposed abolishment. This examination sheds light on the legal challenges and discriminatory practices that have contributed to the statelessness of the Rohingya population. Furthermore, by assessing the effectiveness of assistance provided by neighboring countries such as Bangladesh, Malaysia, and Thailand in mitigating the statelessness of Rohingya children, the paper evaluates the challenges and limitations these countries face in providing legal recognition and protection to Rohingya refugees, offering insights into the regional dynamics and international responses to this pressing humanitarian issue. Nonetheless, the research calls for further primary research to be conducted to highlight this critical issue, inspiring more in-depth studies and innovative solutions to address the complex challenges faced by stateless Rohingya children.

While efforts by host countries and UN agencies offer temporary shelter and livelihoods, the cycle of statelessness persists without assured citizenship rights and preservation of dignity. Resolving this complex issue requires Myanmar's cooperation in recognizing the Rohingya as

an ethnic group and improving relations with the Buddhist majority. Furthermore, host countries must uphold international human rights laws, ensuring fair judicial reviews and granting citizenship to stateless children. Although there are no easy solutions, improving opportunities through UNICEF and UNHCR-led initiatives and providing psychosocial support can foster a sense of belonging and hope for the future among Rohingya children. Comprehensive solutions addressing their right to citizenship, healthcare, and education are urgently needed to break the cycle of statelessness and secure a better future for these vulnerable children.

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