

## Feasibility of Implementing of R2P in Myanmar

Mehdi Kashfi<sup>1</sup>, \*Sohrab Salahi<sup>2</sup>, Mohammad Sadeghi<sup>3</sup>

<sup>1</sup>Department of Law, Qeshm Branch, Islamic Azad University, Qeshm, Iran.

<sup>2</sup>Department of Law, Imam Imam Hossein University, Tehran, Iran.

<sup>3</sup>Department of Law, Hormozgan University, Bandar Abbas, Iran.

### Abstract

"Killing men, shooting them, slaughtering children, raping women, burning and looting houses" these are only some human rights crimes that occur against Muslims in Myanmar but up to now, none of the international community has made a substantial contribution. In 2001, International Law Commission realized that the UN charter did not have much success in overcoming human rights violations, so a new concept for human law intervention called Responsibility to Protect (R2P) was invented. The central subject was "the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe- from mass murder and rape, from starvation- but, when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states". Therefore, in its simplest and most widely accepted formulation, Responsibility to Protect (R2P) represents the responsibility of governments and the international community to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. According to a senior U.N. official, "Burmese authorities are carrying out a campaign of ethnic cleansing against the Muslim minority in Myanmar" which is one of the subjects covered by R2P. The purpose of writing the article is explaining the rules in International Commission on Intervention and State Sovereignty, R2P, answering the question of how the international community can intervene in reducing the disaster occurring in Myanmar, and using Responsibility to Protect (R2P) in overcoming the tragedy of the killing of Muslims in Myanmar.

**Key Words:** International Law, Muslim, Myanmar, Rohingya, Responsibility to Protect.

\*Please cite this article as Kashfi M, Salahi S, Sadeghi M. Feasibility of Implementing of R2P in Myanmar. Int J Pediatr 2020; 8(3): 10993-11001. DOI: **10.22038/ijp.2020.45843.3741**

---

### \*Corresponding Author:

Sohrab Salahi, Department of Law, Imam Imam Hossein University, Tehran, Iran.

Email: slahi.sohrab@gmail.com

Received date: Nov.23, 2019; Accepted date: Jan. 22, 2020

## 1- INTRODUCTION

On 20 June 2016, the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein issued a new report on the situation of minorities in Myanmar, which urged the government to take concrete steps to end the "systematic discrimination" and ongoing human rights violations against minorities, particularly the Rohingya Muslims in Rakhine state (1). Myanmar is the second largest state in mainland Southeast Asia that is one of the most ethnically diverse regions in the world. The geographical location of Myanmar has caused considerable diffusion from India, China, Thailand, Bangladesh, and Laos. Ethnic minorities constitute one-third of the entire population of Myanmar (2).

Myanmar has experienced a long history of migration and conflict among various ethnic groups along fluid frontiers. Under British rule (3), diverse peoples far from Rangoon (now Yangon) were brought under at least nominal central administration, though in practice many areas remained effectively self-ruled. During the Second World War, many Burman joined the Japanese forces, whilst many minority ethnic groups remained loyal to Britain. The union of Myanmar became independent in 1948.

The Panglong Agreement of 1947, negotiated in the run up to independence to convince most ethnic minority groups to join the new union, outlined minority rights and specifically gave the Shan and Karenni people the option to secede from the union a decade after independence, Myanmar was thrown into a series of brutal ethnic wars that have continued with varying intensity to this day. There have, for a very long time, been social tensions between the Buddhist majority and the Christian and Muslim minorities (4). Minorities' specific abuses can be condemned through various rules of international law. In recent years the

greatest human rights abuses have been committed against Muslims in Myanmar. Following the adaptation of the charter of the United Nations, Security Council was introduced as responsible for supporting international peace and security. However, in 2001 a new concept called "Responsibility to Protect" to end the genocide and mass atrocities in the world were raised. Central to the responsibility to protect (R2P) concept is the idea that sovereign states are responsible for the protection of their populations from mass atrocities and that they are accountable not only to their own people but also to the international society for the performance of this duty. An international commission in 2001 following significant developments in theory and state practice during the 1990s developed the concept.

It was unanimously endorsed by the society of states at the UN World Summit in 2005. In 2011, the Security Council appealed to the concept and for the first time authorized the use of force against a functioning sovereign state, Libya, without its consent, for the purpose of protecting civilians from the threat of mass atrocities (5). This study is seeking to adapt R2P terms in Muslim abuses phenomenon in Myanmar and is studying on how to protect Muslims in Myanmar through the Security Council and member states through R2P.

## 2- MATERIALS AND METHODS

Both authors have been directed by reliable sources including books and journals to study the International Commission on Intervention and State Sovereignty Convention and review articles and the United Nations' reports on Myanmar crises through official websites to find the best solution to the crises. No special languages were undertaken in this article but English was mostly used in searches and finding sources.

### 3- RESULTS

#### 3-1. Muslim abuses in Myanmar

The history of human rights abuses against Muslims is believed to have started in 1784 when Burman Buddhists invaded Arakan and although all religious and ethnic minorities have suffered, it seems to be the Muslims of Arakan who have endured the most of the resentment. The Muslim Rohingya people in southeastern Myanmar (Arakan state) were targeted in 1991-the government reportedly contributed to or instigated this anti-Muslim violence, and over 250,000 fled to neighboring Bangladesh. Since 1994, at least 110,000 Karen and Mon people from eastern Myanmar have been living as refugees in Thailand following intense offensives by the Myanmar army. The government reportedly also contributed to or instigated anti-Muslim violence in Shan state and Yangon in 1996 (4). Officially, the Muslim population of Myanmar is placed at 3 percent, but the true figure may be as high as 10 percent. Myanmar Muslims are divided into four groups, the largest being the Rohingyas or Rakhines, perhaps several million in number, who live in Arakan. A 1982 citizen law denied Rohingya Muslims citizenship in Myanmar if they could not trace their family's residency in the country to the first quarter of the 19<sup>th</sup> century- something almost impossible to do in a country with very limited official records. The Rohingyas therefore, are now essentially stateless and have little if any protection under the law. One of Myanmar's other Islamic groups is the BaMa Muslims, who are generally the progeny of Burmese converts to Islam; many of them are ethnically Chinese Hui. Another of the country's Muslim groups is composed of immigrants from surrounding countries who entered Myanmar during the British colonial period. A fourth group is the product of mixed marriages between Indian Muslims and indigenous Burmese

(6). Anti-Muslim sentiment in Myanmar is not a novelty of the political transition, but results from the country's historical ethno-linguistic complexity. Expressions of Buddhist nationalism earned integral status in Burmese politics during the anti-colonial struggle. Religious legitimization of political power was relevant for all regimes following independence-parliamentary, socialist, and military. This continues to be so both for state and opposition leaders of the Burmese mainstream (7). The Rohingyas who reside in the Rakhine State argue that their access to citizenship rights were withdrawn after the promulgation of the 1982 Citizenship Law, and their human security was consequently threatened. Negative attitudes and group-bias exist toward the Rohingyas both from the neighboring Buddhist Rakhine communities and the recognized national ethnic groups throughout Myanmar. The Rakhine Buddhist label the Rohingyas as Bengali illegal immigrants, and classify them as non-members of the national ethnic groups. To favor the in-group and to denigrate the out-group, Buddhist Rakhine develop strong nationalist attitudes emphasizing themselves as the defenders of land and religion. Then, the Rohingyas are categorized as a threat to race and religion and as intruders who will occupy Rakhine land in order to establish an Islamic state. The group-bias has developed within the Buddhist Rakhine community, and extended to most Buddhist communities that live throughout Myanmar. The Rohingyas are excluded from Buddhist society, especially from the neighboring Buddhist Rakhine society. This exclusion gradually threatened the human security of the Rohingyas as stereotypes, prejudices and discriminatory behaviors increased (8). The United Nations High Commissioner for Human Rights on 20 June 2016 documented a wide range of rights violations, including arbitrary deprivation of nationality, severe

restrictions on freedom of movement, threats to life and security, denial of rights to health and education, forced labor, sexual violence, and limitations of political rights. The report also raises the possibility that the pattern of violations against the Rohingya may amount to crimes against humanity. Among the report findings is that in northern Rakhine state, 'arbitrary arrest and detention of Rohingya remains widespread. Arrests are often carried out without grounds, formal processing or charges, until release is secured by payment of a bribe. For those formally charged, fair trial guarantees are often not respected. According to a news release issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR), Myanmar's new Government had inherited the situation where laws and policies are in place that are designed to deny fundamental rights to the minorities and where impunity for serious violations has encouraged further violence against them (9).

### 3-2. Muslims' citizenship

This chapter examines the process by which Rohingyas have become 'non-citizen' in Myanmar from the legal perspective. A complex series of laws, acts and rules related to the citizenship and registration had been endorsed both before and after independence on 4 January 1948 when the Union of Myanmar came into existence. An introduction to the situations that allow citizenship acquisition and loss as it relates to the Rohingyas will assist in understanding the provisions of the 1948 Burma Citizenship Act, 1948 Burma Citizenship Election Act and the 1982 Citizenship law. The Burmese laws concerning citizenship are neither '*jus sanguinis*' nor '*jus soli*', they are a mixture of both. In fact, the 1948 Citizenship Act was based on the principle of *jus soli* while the 1982 Citizenship Law was based on the principle of *jus sanguinis* (8). But in both, 1948 laws were expressed that every

person, whose parents or grand-parent belonged to any of the indigenous races of Burma is a Burmese citizen. However, after 1962, since the history of the Rohingyas has been rife with exploitation, persecution, and discrimination, General Ne Win (1962-1988), and his revolutionary council adopted a policy to suppress and outset the Rohingya Muslims from the country by banning all Rohingya activities and sociocultural organizations. In 1978, he launched "Operation Dragon", which forced 300,000 Rohingyas to enter Bangladesh, causing tremendous economic and political problems. Though most Rohingya returned to Myanmar in 1979 under an agreement between the two countries, returnee Rohingyas became outsiders, despite living in their homeland. Finally, they were rendered stateless by the Myanmar Citizenship Law of 1982, which conferred the right of citizenship on members of 135 nationalities listed by the government of Myanmar, which excluded the Rohingyas. Therefore, it can be said that denial of citizenship is the key mechanism of exclusion, institutionalizing discrimination and arbitrary treatment against this group. The Rohingyas fled Myanmar for a number of reasons, including atrocious living conditions, forced labor by military junta, unexplainable persecution, confiscation of land and material resources, restrictions on movement that virtually confined them, restrictions on marriage and education, frequent communal riots by Rakhine Buddhists against them, and various other restrictions on their freedom of choice and liberty. The distinction between a refugee fleeing persecution and one seeking a better life does not mean much to the Rohingyas, since both are true. Hundreds of thousands of stateless Rohingyas fled brutal oppression in Myanmar and migrated to Bangladesh, the neighboring state, where linguistic (Chittagonian language), and religious homogeneity (Islam) exist with the people of the

Chittagong region (10). How many Rohingyas live in Bangladesh is unknown because the exodus has never stopped and new refugees have no access to the refugee camps; therefore, there is no official record of unregistered Rohingyas.

### 3-3. The situation of children in Myanmar

When hundreds of thousands of terrified Rohingya refugees began flooding onto the beaches and paddy fields of southern Bangladesh in August 2017, the children caught many people's attention. As the refugees – almost 60 percent of whom were children – poured across the border from Myanmar into Bangladesh, they brought with them accounts of the unspeakable violence and brutality that had forced them to flee (11). In Myanmar, most Rohingyas have no legal identity or citizenship. Inside the country, Rohingya children are hemmed in by violence, forced displacement and restrictions on freedom of movement. In Bangladesh, Rohingya children are not registered at birth. Lacking a legal identity, they are unable to secure refugee status (12). As children are the most vulnerable group, their protection is recommended in all human and humanitarian conventions, so in each crisis the most important priority, which needs emancipation and assistance, is minor- under 18 years-old. Therefore, the article 2 of the "Convention on Rights of the Child" has delegated responsibility for child protection to governments.

1. "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".

2. "States Parties shall take all appropriate measures to ensure that the child is

protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members". (<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>).

Unfortunately, in the United Hands Relief and Development (UHR) report "According to the UN, Rohingya children born in Bangladesh are not being registered at birth, and hence, lack a legal identity. Growing up in unstable conditions, with no possibility of education, these vulnerable children are at risk of becoming a lost generation" (13). Most importantly, the source of actions concerning children are not significant-public or private- but the state is the responsible power for eliminating the crises with the help of social welfare institutions, courts of law, administrative authorities or legislative bodies (OHCHR, Article 2). In situations, which states are inefficient in solving the problem, especially in human and humanitarian affairs, other solutions will be raised, that the best of which, from the UN's point of view, is implementing the R2P code. More on this below.

### 3-4. Responsibility to Protect at a glance

At the end of the 20<sup>th</sup> century, the attitude of necessity of making clear postulates of humanitarian intervention arose. In his Millennium Report of 2000, then Secretary-General Kofi Annan, recalling the failures of the Security Council to act in a decisive manner in Rwanda and the former Yugoslavia, put forward a challenge to member States: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?" (14). The phrase 'responsibility to protect', or R2P as it has come to be known, was first

coined only in 2001. The ideas behind it were the product of efforts over several decades in international society to identify and define crimes that have shocked the conscience of humankind and to protect populations from them. The story of R2P's emergence begins in the shadow of the Holocaust when the call of 'Never Again' galvanized efforts to define, prevent, and punish the crime of genocide (15). Looking for the effective measures to prevent systematic violations of human rights and core crimes of international law, the International Commission on Intervention and State Sovereignty (ICISS) in December 2001 released the R2P report. It embraces three specific responsibilities: a) to prevent – to address both the root causes and direct causes of internal conflict and other crises putting populations at risk. b) to react – to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; c) to rebuild – to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation (16). The expression "crimes of international law" is used more or less to refer to what is now embraced by the description "genocide, war crimes, ethnic cleansing, and crimes against humanity", which in turn defines the scope of R2P as embraced by the UN General Assembly meeting at the head of state level during the 2005 World Summit (17). The ICISS was tasked with trying to develop a global political consensus on the question of humanitarian intervention, which it believed it had achieved through reformulating the problem in terms of the R2P. Today the relationship between the R2P and the right of humanitarian intervention appears to be much less clear. This shift in meaning is at the heart of the apparent gap between the R2P and the policy realities, which has been facilitated

by the fact that the universal acceptance of R2P appears to have come at a cost to both its meaning and its application (18).

### **3-5. R2P solution for atrocities on Muslims in Myanmar**

Over 150 heads of state and government unanimously adopted the R2P at the 2005 World Summit and declared that "each individual state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes.... The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means... to help protect populations... we are prepared to take collective action, in a timely and decisive manner... should peaceful means be inadequate and national authorities manifestly fail [to exercise their responsibilities]....". The Security Council subsequently affirmed the paragraphs of the Outcome Document regarding R2P (19). The word 'population' can have various references. It can be referred to nationality, citizenship or domicile, each of which has its own meaning. Nationality is understood as a personal link, acquired by descent implying membership of a state. In some countries citizenship is synonymous with nationality but in some these two emphasize two different aspects of the state membership notion which are different in scope of duties and rights. However, domicile is a place where a person resides with the intention to remain permanently or has his principal establishment (however, these notions have various meanings in each legal system or jurisdiction). Using the concept of population in the World Summit thoughtfully, can involve all concepts, nationality- citizenship and domicile. Therefore, the main purpose of R2P is states' duty of protecting anyone who, confronting genocide, war crimes, ethnic

cleansing and crimes against humanity has legally chosen them as a permanent place. Therefore, talks on the main nationality or origin of Muslims living in Myanmar are futile and finding a solution to protect the hapless minority is a substantial goal of the international community. States' permission on R2P is something beyond what we call a Declaration and it can be defined as a duty for states and a right for their people. States, clearly have a significant duty to protect their people who are faced with specified international crimes and in the absence of their ability, the international community, through the United Nations, has the responsibility to use appropriate means, from peaceful diplomatic negotiations to resorting to armed conflict.

### **3-6. How to help affected people through R2P**

The ICISS (The International Commission on Intervention and State Sovereignty) in 2001 predicated three primary elements:

1. *The responsibility to prevent (to tackle the causes of conflict and other human-created crises)*
2. *The responsibility to react (to take appropriate action where there are compelling circumstances, including coercive steps such as sanctions or even military intervention as a last resort where there are reasonable prospects of success, taking due regard of the issue of proportionality); and*
3. *The responsibility to rebuild (after an intervention, to provide assistance in dealing with the causes of the conflict, and to assist in reconstruction, reconciliation, and so forth) (20).*

The authority to exercise these types of actions must be obtained from the UN Security Council. UN action in this regard has been only a few reports, one of which expresses:

*Burmese authorities are carrying out a campaign of ethnic cleansing against the Rohingya Muslim Minority in the country's western Arakan state, a senior U.N. official said, as the military continues to sweep the area for what it has labeled Islamic militants (21).*

Mentioning ethnic cleansing, one of the defined crimes introduced in R2P declaration, in Myanmar is one of the few points in the report. Unfortunately, nothing more than some reports have been issued and done from the UN. Considering the R2P as a solution of such problems, Myanmar central government has a duty to protect the Muslim minority as its population and, in this case that the state is reluctant to or the state herself is responsible for human rights violations, other states and organizations must do the task. Before or at the first step of the happening crisis, states were responsible for *prevention* and take appropriate measures to prevent the occurrence of the crime, but it is too late for this step.

At this point of the event, Myanmar and other states should *react* and take appropriate action including coercive steps such as sanctions or even military intervention as a last resort. Peaceful and diplomatic methods including negotiation, inquiry, mediation, conciliation, etc. are the very first steps and in case of non-performance, various sanctions (diplomatic, economic, etc.) may be practical. The latest resort is military intervention, which should be based on Just Cause, Right Intention, Last Resort, Proportional Means, and Reasonable Prospects, which is named "Precautionary Principle". ICISS has decisively declared that Security Council is the only qualified authority to permit intervention aimed at protecting humanity. At last, they have the responsibility to *rebuild* after intervention and assist in reconstruction, reconciliation and so forth (21).

#### 4- CONCLUSION

Regardless of the citizenship of Muslims in Myanmar, killing, shooting, raping, and burning them hurts every human being. Humanitarian intervention or its recent concept 'responsibility to protect' is the best solution to overcome this problem. Therefore, if a government has been elected via democratic election but in the course of its history violates its sovereign duties and ideals of the nation and is repressive, according to R2P, the United Nations and state members can (have to) apply different defined ways to protect the population. Unfortunately, in Myanmar's case, Security Council and its permanent members acted passively and have done almost nothing in eliminating human rights violations. The best solution is for concerned governments and organizations especially the UN invite the international community to react and intervene humanitarily in the mass atrocity that happened in Myanmar by appropriate diplomatic ways, sanctions or, as a last resort, military intervention but the latter needs to attract the attention of the permanent members. It must be stressed that although R2P at first glance could be seen as the savior of people caught in disasters made by states, but in fact the view of R2P was an illusion in the heads of a few ICISS commissioners and activists. As Gareth Evans himself states, when the ICISS report was published, shortly after the terror attacks on 11 September 2001, international policy and academic focus was elsewhere and 'the report seemed likely to disappear without a trace'. Bellamy goes further to argue that it was the unpopular US-led invasion of Iraq in 2003 that killed off the desire for discussion of humanitarian intervention and that the war in Iraq was wrongly associated with the R2P.

**5- CONFLICT OF INTEREST:** None.

#### 6- REFERENCES

1. UN news center. News ID=54268#.WFAxpH13DIU. Available at: [www.un.org/apps/news/story.asp?](http://www.un.org/apps/news/story.asp?)
2. Topich WJ, Leitich KA. The history of Myanmar. ABC-CLIO; 2013.
3. Burma Is Pursuing 'Ethnic Cleansing' of Rohingya Muslims, U.N. Official Says. Available at: [www.time.com/4582157/burma-myanmar-rohingya-bangladesh-arakan-ethnic-cleansing-suu-kyi](http://www.time.com/4582157/burma-myanmar-rohingya-bangladesh-arakan-ethnic-cleansing-suu-kyi).
4. Ten Veen R. Myanmar's Muslims: The Oppressed of the Oppressed. Islamic Human Rights Commission; 2005.
5. Glanville L. Sovereignty and the responsibility to protect: a new history. University of Chicago Press; 2013 Dec 20.
6. Marshall Cavendish Reference. Islamic Beliefs, Practices, and Cultures. Marshall Cavendish; 2010.
7. Cheesman N, Farrelly N, editors. Conflict in Myanmar: war, politics, religion. ISEAS-Yusof Ishak Institute; 2016 Aug 1.
8. Gibson T, James H, Falvey L, editors. Rohingyas Insecurity and Citizenship in Myanmar: Insecurity and Citizenship in Myanmar. Thaksin University Press; 2016 Jan 21.
9. UN News. Available at: [www.un.org/apps/news](http://www.un.org/apps/news).
10. Howard-Hassmann RE, Walton-Roberts M, editors. The human right to citizenship: A slippery concept. University of Pennsylvania Press; 2015 May 28.
11. Saeidi M, Bahreini A, Emami Moghadam Z, Taghizadeh Moghaddam H, Aghajani F. Children, the Main Victims of Ethnic Violence in Myanmar. International Journal of Pediatrics, 2017; 5(11): 6173-6178.
12. Molkizadeh A, Kiani MA, Baghban R, Rahmanian S, Saeidi M. Right to Health with Emphasis on Children, Women and Disabilities: A Literature Review. Int J Pediatr. 2019; 7(6): 9611-22.
13. Convention on the Rights of the Child. Available at: [https://uhrelief.org/49162/?gclid=EAIaIQobChMI6IzjqZSt5wIVDuR3Ch1fBgKmEAYASA\\_AEgJCRfD\\_BwE](https://uhrelief.org/49162/?gclid=EAIaIQobChMI6IzjqZSt5wIVDuR3Ch1fBgKmEAYASA_AEgJCRfD_BwE).



14. Annan US. Millennium Report. Chapter. 2000; 3: 43.
15. Bellamy A, Dunne T, editors. The Oxford Handbook of the Responsibility to Protect. Oxford University Press; 2016 Jun 30.
16. Gagro SF. The Responsibility to Protect (R2P) Doctrine. International Journal of Social Sciences. 2014; 3(1):61-77.
17. Evans G. The responsibility to protect: ending mass atrocity crimes once and for all. Brookings Institution Press; 2009 Aug 1.
18. Cunliffe P, editor. Critical perspectives on the responsibility to protect: interrogating theory and practice. Taylor & Francis; 2011 Mar 31.
19. Jared G, Cotler I. The Responsibility to Protect.
20. O'Bannon BR, editor. Reassessing the Responsibility to Protect: Conceptual and Operational Challenges. Routledge; 2015.
21. Across Myanmar, Denial of Ethnic Cleansing and Loathing of Rohingya. Available at: <https://www.nytimes.com/2017/10/24/world/asia/myanmar-rohingya-ethnic-cleansing.html>.