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## **Five Years Too Long: Rightless Rohingya Women & the Ratification of CEDAW**

### **I. Introduction**

August 25, 2022, marked the fifth year anniversary of Myanmar's continued systemic assault and persecution against its Rohingya population.<sup>1</sup> In August of 2017, Myanmar's military forces unleashed a rampage of mass killings and violent sexual attacks in an effort to cleanse its northern Rakhine State of the Rohingya people.<sup>2</sup> An estimated one million Rohingya refugees have fled to Bangladesh, only to face continued human rights violations in overburdened refugee camps.<sup>3</sup> While Gambia, Argentina, and the International Criminal Court (ICC) have made efforts

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*Myanmar: Five-year anniversary of Rohingya crisis must mark 'turning point' in quest for justice*, AMNESTY INT'L, (Aug. 24, 2022) <https://www.amnesty.org/en/latest/news/2022/08/myanmar-rohingya-five-year-anniversary/> [<https://perma.cc/XFU2-UYT3>] [hereinafter **Five-year anniversary**].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

to investigate and hold Myanmar accountable for these crimes against humanity,<sup>4</sup> the international community's response has been arguably ineffective, especially concerning crimes against Rohingya women.<sup>5</sup>

In particular, while the United States (U.S.) markets itself as a global leader of human rights, its response to this humanitarian crisis has not been reflective of this role.<sup>6</sup> Although the U.S. is a party to the Genocide Convention, which codified genocide as a crime of international law,<sup>7</sup> the U.S. government did not formally call the Rohingya crisis a genocide until March of this year (2022).<sup>8</sup> Although the U.S. has imposed sanctions on Myanmar,<sup>9</sup> finally uttering the “G-word” after nearly five years is too late.<sup>10</sup> High-ranking Burmese military officials have yet to be prosecuted and over a million refugees continue to suffer in limbo, particularly Rohingya women and girls.<sup>11</sup>

While the U.S. is a permanent member of the UN Security Council tasked with “maintaining international peace and security”,<sup>12</sup> it is not a party to the Rome Statute establishing

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<sup>4</sup> *Id.*

<sup>5</sup> *See For Rohingya refugees, imminent surge in births is traumatic legacy of sexual violence - special report*, U.N. News (May 11, 2018), <https://news.un.org/en/story/2018/05/1009372> [<https://perma.cc/EZW4-9YHV>] [hereinafter Special Report].

<sup>6</sup> Alexandra Sharp & Robbie Gramer, *The U.S. Has Recognized Myanmar's Genocide. But Is That Enough?* FOREIGN POL'Y (Mar. 24, 2022) <https://foreignpolicy.com/2022/03/24/myanmar-genocide-rohingya-us-recognition/> [<https://perma.cc/6TNU-4LLZ>].

<sup>7</sup> *The Genocide Convention*, U.N. OFF. ON GENOCIDE PREVENTION, <https://www.un.org/en/genocideprevention/genocide-convention.shtml> [<https://perma.cc/6Q2Y-432Z>] (last visited Sept. 17, 2022).

<sup>8</sup> *Myanmar: U.S. Recognizes Genocide Against Rohingya*, HUM. RTS. WATCH (Mar. 21, 2022), <https://www.hrw.org/news/2022/03/21/myanmar-us-recognizes-genocide-against-rohingya> [<https://perma.cc/3KK6-3L4X>] [U.S. Recognition].

<sup>9</sup> *Id.*

<sup>10</sup> *See* Five-year anniversary, *supra* note 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Current Members*, U.N. SEC. COUNCIL, <https://www.un.org/securitycouncil/content/current-members> [<https://perma.cc/7EQU-VFF5>].

the International Criminal Court.<sup>13</sup> Likewise, it is one of only seven countries—and the only industrialized democracy—to not ratify the UN’s Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>14</sup> Considering that CEDAW “provides an international standard for protecting and promoting women’s human rights,”<sup>15</sup> and that discrimination had been found to be an early stage of genocide,<sup>16</sup> U.S. ratification would strengthen the treaty as an instrument for promoting women’s rights moving forward, and help to address the immediate futures of Rohingya women.

## II. Crimes Against Rohingya Women

In August of 2017, the Burmese military of Buddhist-dominated Myanmar unleashed a massive wave of violence and ethnic cleansing against the Muslim minority Rohingya, resulting in an exodus of more than 900,000 refugees seeking survival.<sup>17</sup> The UN has described the Rohingya as “the most persecuted minority in the world,”<sup>18</sup> and they have faced decades of institutionalized discrimination in Myanmar leading up to this crisis.<sup>19</sup> Since the late 1970s, the Burmese government has imposed exclusionary policies on the Rohingya, including a denial of citizenship and “restrictions on marriage, family planning [limited to two children], employment,

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<sup>13</sup> Rome Statute of the International Criminal Court, U.N. TREATY COLLECTION (July 17, 1998), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-10.en.pdf>.

<sup>14</sup> *United States Ratification of International Human Rights Treaties*, HUM. RTS. WATCH (July 24, 2009), <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties> [<https://perma.cc/KQE2-2MM4>] [hereinafter *Ratification*].

<sup>15</sup> A Fact Sheet on CEDAW: Treaty for the Rights of Women, AMNESTY INT’L (Aug. 25, 2005), [https://www.amnestyusa.org/files/pdfs/cedaw\\_fact\\_sheet.pdf](https://www.amnestyusa.org/files/pdfs/cedaw_fact_sheet.pdf) [hereinafter *Fact Sheet*].

<sup>16</sup> Gregory H. Stanton, *The Ten Stages of Genocide*, GENOCIDE WATCH (2016), <http://genocidewatch.net/genocide-2/8-stages-of-genocide/> [<https://perma.cc/6DEG-EXZ6>].

<sup>17</sup> Rohingya Refugee Crisis Explained, U.N. REFUGEE AGENCY (July 13, 2022), <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/> [<https://perma.cc/VDP6-3Y5J>] [hereinafter *Refugees*].

<sup>18</sup> *Id.*

<sup>19</sup> Eleanor Albert & Lindsey Maizland, *The Rohingya Crisis*, COUNCIL ON FOREIGN RELS. (Jan., 23, 2020), [https://www.cfr.org/backgrounder/rohingya-crisis?gclid=EAIaIQobChMIRmF4ZWZ3wIVzgOGCh2NVgmwEAAYBCAAEgJPn\\_D\\_%20BwE](https://www.cfr.org/backgrounder/rohingya-crisis?gclid=EAIaIQobChMIRmF4ZWZ3wIVzgOGCh2NVgmwEAAYBCAAEgJPn_D_%20BwE) [<https://perma.cc/EY4F-AU74>].

education, religious choice, and freedom of movement”.<sup>20</sup> This decades-long systemic discrimination has escalated to a genocide against the Rohingya.<sup>21</sup> As the world’s largest stateless population, they are denied basic human rights and Rohingya women are left particularly vulnerable to “exploitation, sexual and gender-based violence (SGBV) and abuse.”<sup>22</sup>

The specific abuses suffered by Rohingya women reveal how they are not only targeted for their ethnicity, but also as women.<sup>23</sup> The Burmese military’s campaign of sexual violence and genocidal rape violates the human rights of Rohingya women and their dignity as human beings.<sup>24</sup> Survivors have detailed their horrific and traumatizing experiences of soldiers burning their villages, killing off the men, and gang-raping all of the women and girls.<sup>25</sup> They recall soldiers beating their pregnant bellies until their babies were dead, forcing their children and toddlers to watch their assaults, and tying women to trees to be raped to death.<sup>26</sup> One survivor described how a soldier stuck a knife into her side to hold her place while multiple men took their turns.<sup>27</sup> Other women described the pain of fleeing to Bangladesh with their battered bodies, as well as the likelihood of not being able to have children again.<sup>28</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> Refugees, *supra* note 17.

<sup>22</sup> *Id.*

<sup>23</sup> See Catherine A. Mackinnon, *Rape, Genocide, and Women’s Human Rights*, in *VIOLENCE AGAINST WOMEN: PHILOSOPHICAL PERSPECTIVES* 43, 46-7 (Stanley G. French et al. eds., 1998).

<sup>24</sup> *See id.*

<sup>25</sup> *See 21 Rohingya women detail systemic, brutal rapes by Myanmar armed forces*, NBC NEWS (Dec. 13, 2017), <https://www.nbcnews.com/news/world/21-rohingya-women-detail-systemic-brutal-rapes-myanmar-armed-forces-n828811> [<https://perma.cc/UPM8-T7E6>].

<sup>26</sup> *See id.*

<sup>27</sup> “*All of My Body Was Pain*”: *Sexual Violence against Rohingya Women and Girls in Burma*, HUM. RTS. WATCH (Nov. 16, 2017), <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma> [<https://perma.cc/3E73-4K8S>] [hereinafter *All of My Body*].

<sup>28</sup> *See id.*

However, upon arriving at the camps the Rohingya women have found little safety.<sup>29</sup> If they survive their attacks and long journeys to Bangladesh, they are met with conditions of chaos and overcrowding where gender-based violence continues to run rampant.<sup>30</sup> Families often oust women and girls who have been violated, seeing them as “damaged goods,” and once alone, they are easy targets for traffickers who prey on their vulnerability.<sup>31</sup> For instance, “Over one six-day period in October [2017], United Nations staff recorded 306 incidents of gender-based violence in the camps. Of those attacks, 96 percent required a referral to emergency medical services.”<sup>32</sup>

Unfortunately, the medical services in the camps cannot meet the needs of the hundreds of thousands of women who have be violated. These conditions were ill equipped to support the “surge of births” in the year following the August 2017 attacks,<sup>33</sup> and many women in the camps continue to lack access to adequate medical services to support their sexual and reproductive health care needs, as well as necessary trauma treatment.<sup>34</sup> It has been five years and the Rohingya women are still nowhere close to living out the full enjoyment of their basic human rights as women.<sup>35</sup>

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<sup>29</sup> Hannah Beech, *I'm Struggling to Survive': For Rohingya Women, Abuse Continues in Camps*, N.Y. TIMES (Dec. 23, 2017), [www.nytimes.com/2017/12/23/world/asia/rohingya-women-abuse-myanmar.html](http://www.nytimes.com/2017/12/23/world/asia/rohingya-women-abuse-myanmar.html) [<https://perma.cc/7M2B-QJXU>].

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

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Special Report, *supra* note 5.

<sup>34</sup> *See id.*

<sup>35</sup> Five-year anniversary, *supra* note 1.

This violence is nothing new.<sup>36</sup> Sexual violence targeted at women and girls has played out in conflicts throughout history, but this pattern is exactly the problem.<sup>37</sup> A representative of the UN on Sexual Violence in Conflict noted how rape as a weapon of war is “the most underreported human rights violation,” and it is vital that there is accountability to prevent such horrific crimes in the future.<sup>38</sup> The Rohingya women have faced an ethnic and gendered attack in which they were targeted specifically as females of the Rohingya people. Furthermore, these crimes against humanity did not happen overnight. Genocide does not come from nowhere, nor does rape as a ready-made tool for it, the foundations for such ethnic and gendered hostility must be pre-existing.<sup>39</sup> By addressing seeds of discrimination against women before they take root, atrocities like this one could be more effectively avoided in the future. The U.S.’s ratification of CEDAW could help to bolster the treaty’s purpose and to refocus the international community’s response to protecting the human rights of women.

### III. Application of CEDAW

CEDAW is the “world’s primary legal document on women’s equality,”<sup>40</sup> and is “often referred to as a ‘Bill of Rights’ for women.”<sup>41</sup> As a core treaty of the Universal Declaration of Human Rights (Declaration), CEDAW reflects the Declaration’s “recognition of the inherent dignity and ... rights of all members of the human family.”<sup>42</sup> The treaty recalls that “discrimination against women violates the principles of equality of rights and respect for human

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<sup>36</sup> See Special Report, *supra* note 5.

<sup>37</sup> See *id.*; see also MACKINNON, *supra* note 23, at 46-7 (explaining how sexual violence was an instrument of the genocide in Bosnia as a case study).

<sup>38</sup> Special Report, *supra* note 5.

<sup>39</sup> MACKINNON, *supra* note 23, at 46.

<sup>40</sup> Ratification, *supra* note 14.

<sup>41</sup> Fact Sheet, *supra* note 15.

<sup>42</sup> G.A. Res. 217 (III), Universal Declaration of Human Rights, preamble (Dec. 10, 1948).

dignity,”<sup>43</sup> and defines the term “discrimination against women” as not “impairing or nullifying the recognition, enjoyment, or exercise by women ... of human rights and fundamental freedoms.”<sup>44</sup>

Additionally, under CEDAW, State Parties agree to “condemn discrimination against women in all its forms,”<sup>45</sup> and the international community has interpreted this provision to include violence against women.<sup>46</sup> A former UN Special Rapporteur on Violence Against Women, Rashida Manjoo, stated that “States must acknowledge that violence against women is not the root problem, but that violence occurs because other forms of discrimination are allowed to flourish.”<sup>47</sup> Likewise, CEDAW’s monitoring body, the Committee on the Elimination of All Forms of Discrimination Against Women, took the view that “violence against women is the most extreme manifestation of discrimination” and adopted General Recommendation Number 19.<sup>48</sup> This recommendation explicitly includes gender-based violence under CEDAW, stating that this form of discrimination “seriously inhibits women’s ability to enjoy rights and freedoms.”<sup>49</sup> It declares that:

“The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based

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<sup>43</sup> G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, preamble (Dec. 18, 1979) [hereinafter CEDAW].

<sup>44</sup> *Id.*, art. 1.

<sup>45</sup> *Id.*, art. 2.

<sup>46</sup> Stop Violence Against Women, *Convention on the Elimination of All Forms Against Women*, THE ADVOCS. FOR HUM. RTS., [https://www.stopvaw.org/convention\\_on\\_the\\_elimination\\_of\\_all\\_forms\\_of\\_discrimination\\_against\\_women\\_cedaw.html](https://www.stopvaw.org/convention_on_the_elimination_of_all_forms_of_discrimination_against_women_cedaw.html) [<https://perma.cc/EB8Y-LBBC>] (last visited Sept. 17, 2022) [hereinafter Stop Violence].

<sup>47</sup> Rashida Manjoo, *Statement at the General Assembly*, 3 (Oct. 11, 2011), [https://www.un.org/womenwatch/daw/documents/ga66/RAPPORT\\_on\\_VAW.PDF](https://www.un.org/womenwatch/daw/documents/ga66/RAPPORT_on_VAW.PDF) [hereinafter Statement].

<sup>48</sup> Stop Violence, *supra* note 46.

<sup>49</sup> Comm. on the Elimination of Discrimination Against Women, *General Recommendation 19, Violence against women* (eleventh session, 1992), ¶ 1, U.N. Doc. A/47/38 (1993) [hereinafter Recommendation].

violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.”<sup>50</sup>

Furthermore, CEDAW provides multiple ways in which State Parties can pursue means to protect women against any act of discrimination. Appropriate measures can include legislative and legal protections for the rights of women, imposing sanctions, and ensuring public authorities, institutions, organizations and persons act in conformity.<sup>51</sup> State Parties shall also take measure to “modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”<sup>52</sup>

This crisis has violated Rohingya women’s inherent dignity as human beings. CEDAW reiterates the notion that such extreme manifestations of violence against women are rooted in discrimination. As Manjoo stated, such violence is “not the root problem,” but it gains its power through flourishing forms of discrimination.<sup>53</sup> Similarly, Recommendation 19 defines gender-based violence as “violence that is directed at woman because she is woman.”<sup>54</sup> The violence unleashed on Rohingya women was a product of decades of carefully cultivated seeds of ethnic and gendered discrimination and conceptions of superiority. Such flourishing discrimination in Myanmar allowed this genocide to come to fruition.

#### **IV. Conclusion**

If the international community, and particularly the U.S., wants to live up to the ideals of international human rights, then an increased response is necessary to protect the rights of women. Human rights are women’s rights, yet in the context of the Rohingya genocide, this

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<sup>50</sup> *Id.* ¶ 6.

<sup>51</sup> CEDAW, *supra* note 43, art. 2.

<sup>52</sup> *Id.*

<sup>53</sup> Statement, *supra* note 47, at 3.

<sup>54</sup> Recommendation, *supra* note 49, ¶ 6.



concept seems to have been abandoned. In order to effectively prevent such crimes against humanity in the future, it's necessary to understand the full scope of how these atrocities come to fruition and to stop them in their tracks before they cause irreparable harm. While it might be five years too late to protect the Rohingya women from such violence, a U.S. ratification of CEDAW could draw the international community's attention to the specific crimes against women in this case, as well as increase efforts to suppress this kind of ethnic and gendered discrimination in the future.

Although the U.S. has often been reluctant to ratify certain international treaties, believing them to be inconsistent with domestic interests, the U.S.'s condemnation of the Rohingya genocide could have a greater effect if it was coupled with action to actually hold perpetrators accountable.<sup>55</sup> Through the U.S.'s role on the U.N. Security Council, substantial measures could include a council resolution to increase economic sanctions and impose an arms embargo on the Myanmar military.<sup>56</sup> Additionally, the U.S. should formally support and provide funding for Gambia's ongoing case against Myanmar in the ICC, which seeks a legal determination of state responsibility for genocide.<sup>57</sup> At a minimum, the U.S. should provide support and funding for the many victims' communities of more than one million displaced Rohingya people.<sup>58</sup> Finally, a U.S. ratification of CEDAW could help to condemn discrimination and bring genuine reconciliation to Myanmar, lay the groundwork for real consequences for perpetrators of gender-based violence, and restore the human dignity of Rohingya women.

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<sup>55</sup> Sharp, *supra* note 6.

<sup>56</sup> U.S. Recognition, *supra* note 8.

<sup>57</sup> *Id.*

<sup>58</sup> Sharp, *supra* note 6.