Top 3 Winners

ALSA Brunei Legal Writing Competition 2021/2022

Theme : The Social and Legal Development of Refugees under the Law

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GREETINGS

From ALSA Brunei Darussalam

Greetings from ALSA Brunei,

As we gather to explore the intricate theme of "The Social and Legal Development of Refugees under the Law," it is with deep gratitude and respect that we acknowledge the foundational contributions of our former president for the term 2022/2023, Ifwat Jane, to these remarkable publications.

The subject of refugees and their experiences within the framework of the law is not only a matter of academic inquiry but a profound humanitarian concern. In a world marked by displacement, unrest, and the pursuit of safety and dignity, the legal community has a vital role to play. It is through initiatives like academic publications that we shed light on the complexities of refugee law and endeavor to create a more compassionate and just society.

The articles presented in the publications from the 2022/2023 term are a testament to the power of collaboration and shared knowledge. Within these pages, you will find a wealth of insights from our members who have dedicated their time to unravelling the multifaceted aspects of refugee law. Their contributions provide invaluable perspectives on the legal frameworks, human rights considerations, and social implications that shape the lives of refugees worldwide.

As we embark on this intellectual journey, we honour the legacy of our former term and express our heartfelt appreciation for their unwavering commitment to advancing the discourse on refugee issues.

May these academic publications be a helpful guide on your journey of knowledge!

With my deepest gratitude and respect,
ALSA, Always Be One!

Dayang Syafiah

President
ALSA Brunei Darussalam 2023/2024

Greetings from ALSA Brunei,

It is my honor to bring you the articles from the term 2021/2022 during Aisyah Yusop's tenure as the Vice President of Academic Activities. With the theme of 'The Social and Legal Development of Refugees under the Law', it aims to educate our members to understand and appreciate the international law realm, especially regarding the issue of refugees and human rights.

I would also like to extend my gratitude to Aisyah and her officers for their dedication and hard work in conducting legal writing competition for us to be able to compile and publish these articles today.

To the readers, I hope these articles will give and increase your knowledge about international law, how it is crucial to regulate the status and human rights of refugees amid crises.

ALSA, Always Be One!

Aziezul Safwan

Vice President of Academic Activities
ALSA Brunei Darussalam 2023/2024

GREETINGS

From ALSA Brunei Darussalam

VPAA of the Term 2021/2022

Greetings from ALSA Brunei,

In my capacity as Vice President of Academic Activities for the year 2021/2022, I wish to express my heartfelt gratitude to the contributors, advisors, and officers who have been instrumental in the success of the ALSA Legal Writing Competition 2022. This competition stands as a testament to our ALSA community's dedication, passion, and collaborative spirit.

I extend my thanks to the contributors for their invaluable insights, enriching the quality of submissions and inspiring our aspiring legal professionals. To our advisors, your guidance has shaped this competition into a prestigious event, empowering participants to excel in legal writing. Lastly, I appreciate the tireless efforts of ALSA Brunei's officers, the backbone of this endeavor.

Looking ahead, I am optimistic about ALSA Brunei's future, hoping that the spirit of excellence and camaraderie displayed during this competition will propel our association to new heights in the years to come. Thank you all for your unwavering support, and I trust that ALSA Brunei will continue to thrive in the legal landscape.

Respectfully yours,

A'isyah Yusop

Vice President of Academic Activities

ALSA Brunei Darussalam 2021/2022

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OUR
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AUTHOR 1

Article Writing Competition 2021/2022

ASEAN's Response Towards Myanmar Crises and Refugees.

Written by : Aziezul Safwan Zakaria

It is my greatest pleasure to share with you a piece of my legal writing titled 'ASEAN Response Towards Myanmar Crises and Refugees'. I hope this article will create awareness of what is happening in our neighbouring country and give you insights on the role of ASEAN and the usage of legal instruments in this issue.

Moreover, I dedicated this article to my Myanmar friends, Cayla, Chel, Zack and others whose name I could not mention here. I have witnessed the surface of your struggles amid these crises when we worked together at IB and I could not imagine being in your position. I hope for everything to get better and for a bright light at the end of a tunnel. My prayer goes for you, stay safe, friends!

I would also like to extend my sincerest gratitude to ALSA Brunei for their dedication and hardwork to provide a platform and opportunities for its members to showcase their knowledge and skills via writings. Lastly, to dearest readers, happy reading!

ALSA, Always Be One!

Abstract

The emergence of Myanmar's refugees are mainly due to two factors; discrimination against the Rohingya Muslim ethnic minority and the military coup in February 2021. Due to Myanmar's domestic socio-political instability, the people have limited choice but to either be internally displaced or flee to seek asylum in its neighboring country. This raises international concern, especially of The Association of Southeast Asian Nations ("ASEAN"). Unfortunately, ASEAN member states' response towards the crisis and administration of the refugees who crossed into their land are unsatisfactory and concerning mainly due to minimal and ineffective steps taken. This gives a fatal impact on the refugees and their rights. Additionally, the majority of ASEAN members are not signatory to the 1951 Refugees Convention and 1967 Protocol which exempt them from obligations to protect refugees, which further worsens the refugees' welfare. In this paper, the author will attempt to observe, study and argue on three main points which are firstly, the observance and obedience of available international law and legal instruments relating to refugees, secondly, ASEAN's response towards the Myanmar crisis and treatments on its refugees and lastly, suggestions to manage the refugees via socio-legal approach.

Keywords : 1951 Convention, 1967 Protocol, ASEAN, Asylum-Seeker, Human Rights, Myanmar, Refugees, UNHCR.

Introduction

Refugee is defined under Article 1A(2) of the Refugee Convention as a person who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or, who not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it".

The emergence of Myanmar's refugees are the immediate result and concrete evidence of a state's chaotic situation, government's incompetency, political and social instability. The situation in Myanmar was characterized by growing violence and insecurity which resulted in significant forced displacement within the country and into neighboring countries. Some may not be able to flee the country due to various reasons, hence the displacement in Myanmar, while others are of the view that fleeing the country is a safer and better choice in order to escape from the military government's brutality. It is reported by the United Nations High Commissioner for Refugees ("UNHCR") that many have fled the country and crossed the land into several neighboring countries such as Bangladesh, Thailand, Indonesia, Malaysia, etc. Unfortunately, although seeking asylum abroad may seem to be a better option, it has its downside too such as being unrecognized and denied of their basic rights, discriminated against and refouled. Nevertheless, there are international laws and legal instruments established to govern such situations.

International Laws and Legal Instruments relating to Refugees and Human Rights.

In the aftermath of the Second World War in 1951, the United Nations ("UN") have been working to protect the status and human rights of the refugees as a result of wars. The advocacy of refugees is done by governing international law and introducing other legal instruments that bind more than one country, especially the member countries of the UN. The differences between the two are that law binds internationally regardless if a state has signed a treaty or not, whereas the legal instruments such as treaties established by the UN are not necessarily binding, except only to those who have signed the treaty or convention.

The existence of refugees is not something recent and it has existed since the First World War, hence why the UN through the UNHCR has been actively overseeing and advocating the human rights of the refugees all around the world through establishment of legal instruments. This can be seen by the UN's adoption of the 1951 Convention relating to the Status of Refugees ("1951 Refugee Convention") and then later developed to widen the scope by the creation of 1967 Protocol relating to the Status of Refugees ("1967 Protocol") in order to include refugees all around the world, not just those in Europe. These are the international legal instruments that countries can voluntarily bound by and are overseen mainly by the UNHCR. However, they are not binding on the countries that do not sign the convention which exempted these countries from the obligations governed in the instruments. As a result, oftentimes the security and well-being of the refugees are severely impacted due to their human rights being neglected and the non-signee countries would argue that they are under no obligation to give protection for the refugees should they come to seek asylums. Unfortunately, this remains as a weakness of international treaties considering they have the option to be excluded from the responsibilities under the treaties.

Fortunately, the UN puts efforts by passing international laws that guarantee and protect the human rights of all people, including the refugees. At the UN General Assembly, there are several laws that have been passed such as the International Human Rights Law ("IHLR") and International Humanitarian Law ("IHL"). Additionally, there are sources of international law that impose obligations to all states such as the customary international law and Jus Cogens (Peremptory Norms). Although the language used in these provisions do not specify refugees, the rights of refugees are also included and still guaranteed since they are human too. Therefore, they strive to protect the lives, health and dignity of individuals, albeit from different angles.

International Laws and Legal Instruments relating to Refugees and Human Rights.

Furthermore, the significant principle relating to refugee is the non-refoulement principle, stated in Article 33 of the 1951 Refugees Convention which serves as a protection, emphasizing that no country is allowed to send back the refugees in which their original country is in chaos that puts the citizens' life at risk. It stated that :

1. No Contracting state shall expel or return (refouler) a refugee in any manner what- soever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

This is considered as customary international law and some scholars even classify this principle as having *jus cogens* status, that is a principle of international law that is absolute in nature and binds all states and does not allow any exception. It is apparent that although a country is not a signatory to the legal instruments relating to refugees, they are still bound by the international laws to give protections. Any negligence and/or non-abiding to the law may result in sanctions imposed upon the country itself. Therefore, to this extent, it can be seen there is still a protection guaranteed by the UN even when the refugees seek asylum in the non-signee countries.

BACKGROUND OF MYANMAR CRISIS

The existence of refugees from Myanmar are the immediate result of two major causes. Firstly, the military overthrew the government of Aung San Suu Kyi and seized power which put the country in chaos and constant protest. Secondly, the issue of Muslim Rohingya being put under constant systematic discrimination, statelessness and targeted violence.

1

Myanmar's Military Coup 2021

In the 2020 democracy election, Aung San Suu Kyi's National League for Democracy won by landslide, winning 346 of 412 seats despite international outrage for her treatment towards the Rohingya. The Union and Solidarity and Development Party ("USDP") and the military rejected the results, alleging that the election had been tainted by fraud and irregularities, and called for the polls to be rerun. Unfortunately, those claims were rejected as there was no proof of fraud or irregularities. On February 1, 2021, the military seized power because of their suspicion and dissatisfaction with the election's result. This resulted in mass demonstrations, work stoppages and a vast civil disobedience movement. Soldiers and the police began shooting protesters in the streets and jailing thousands of people, including opposition leaders and journalists. Unfortunately, the military remained in power resulting in almost 700,000 people have been forced to flee their homes due to conflict since the coup and more than 1.2 million are currently displaced.

2

Rohingya Crisis

For over decades, Rohingya, an ethnic Muslim minority group, in Myanmar, a predominantly Buddhist country, have faced institutionalized discrimination, such as exclusionary citizenship laws. The government's policies and poor treatment has compelled the Rohingya to flee the country and cross by land into Bangladesh, Thailand, Indonesia, Malaysia, etc. In 2017, Myanmar's government carried out a campaign that was discriminatory against the Rohingya, where they were being violated, including rape, murder and arson. Due to the government's discrimination, the Rohingya fled the country to seek asylum in other countries and relied on humanitarian assistance to provide them shelter, food, etc.

These refugees are the products of the Myanmar crisis, highlighting the severity of the crisis, government's incompetencies, use of violence and discrimination and most importantly, violation of rule of law. Due to these atrocities, fleeing the country may seem to be a better and safer choice to seek shelter and protection from the local discrimination and violence. Consequently, according to the Global Report 2021 recorded by the UNHCR, there were over 30,000 refugees between February 2021 to January 2022 and 430,000 people were internally displaced in Myanmar due to the coup in February 2021. In addition, since 2015, over 900,000 Rohingya refugees have fled the country to seek humanitarian assistance.

ASEAN'S Response Towards

Myanmar's Crisis and Refugees

The Association of Southeast Asian Nations ("ASEAN") is an international organization which consists of 11 member countries by 2022 when Timor Leste joined as its 11th member. One of its purposes is to ensure regional peace and stability by abiding respect for justice, rule of law and adherence to the principle of the UN Charter. It should be noted that the ASEAN states are also the members of the UN, but unfortunately, not all of them sign and agree to be a party in some legal instruments relating to refugee's status and protection initiated by the UN. Evidently, only 3 of ASEAN countries, namely Cambodia, The Philippines and Timor Leste, had signed the 1951 Refugees Convention and 1967 Protocol that agree to recognize the refugees and their rights. As a consequence, the rest of ASEAN countries are being exempted from the obligations prescribed in those instruments.

Nonetheless, Myanmar's neighboring countries could not just turn a blind eye on this matter as this indirectly impacts them too such as refugees entering their land. In addition, due to their solidarity and maintenance of good international relations in the Southeast Asia region, it led ASEAN to take a swift step as an attempt to end the violence in Myanmar by calling an emergency summit on April 24, 2021 in Jakarta, Indonesia. As an outcome, it had come up with a 5-Point Consensus, demanding the "immediate cessation of violence" and calling on all parties in the country to exercise "utmost restraint". They have also agreed to provide humanitarian assistance for Myanmar. Regrettably, ASEAN has failed to fulfill its pledges or take meaningful steps toward pressing the junta to end its human rights violations. This can be seen in 2021 when Brunei served as a chair, ASEAN merely took symbolic actions by banning Myanmar from the meetings and there was no significant pressure imposed on the Myanmar generals. In addition, in 2022 when Cambodia serves as the chair, the Prime Minister Hun Sen initially welcomed the generals back into the ASEAN fold, visiting Naypyidaw and pressing for the brutal military regime's renormalization. This reveals ASEAN's lack of use of the available legal instruments and other methods in tackling such situations.

ASEAN paralysis on the Myanmar crisis gives a fatal impact towards Myanmar refugees. This can be seen from the high number of 30,000 Myanmar refugees between February 2021 to January 2022 as a result of minimal steps taken by ASEAN to tackle this situation. The refugees' security are not guaranteed in the Southeast Asian region since majority of the ASEAN members are not privy to the 1951 Refugees Convention and 1967 Protocol. In addition, ASEAN has also to honor and stick with their policy of "non-interference in the internal affairs of ASEAN Member States", which limits the other member states from interfering in the internal affairs of one's government, including military coup in Myanmar. This further allows the continuation and worsen the crisis which, as a result, inevitably increases the number of refugees and displaced people.

Moreover, in Southeast Asia's complex mixed-migration context, States' interests relating to both national security and the maintenance of good relations with neighbors pose challenges to international protection and access to asylum. The continued use in some countries of immigration detention facilities to hold asylum-seekers, refugees and stateless people, including children and others vulnerable to exploitation and abuse, if of concern. In addition, many refugees and asylum-seekers are unable to earn a living or gain access to social services.

For example, Malaysia, despite constantly condemning the brutality in Myanmar, has declined to provide Burmese refugees on its territory with security despite having the UNHCR in the country for over 4 decades now. This puts the refugees at risk of a constant threat, conviction and refoulement. Malaysia also limits their ability to obtain legal employment, healthcare, and education, thereby exposing them to sexual and economic exploitation and other human rights abuses especially during the Coronavirus disease 2019 ("COVID-19") periods. Additionally, according to UNHCR, Malaysia has been actively deporting hundreds of refugees back to Myanmar mainly for their national protection. In the recent news, 150 refugees including some former navy officers were sent back to Myanmar in October 2022 and another 144 refugees received the same treatment on December 13, 2022 upon their stay on deportation being lifted by Malaysia's court decision.

The basis of such treatment is mainly because Malaysia is not signatory to the 1951 Refugees Convention and 1967 Protocol that exclude them from performing the obligations to protect the refugees. Hence, they do not recognize refugees in their country. Moreover, Malaysia's domestic law contributed to such treatment too. Under Section 6 of Malaysia's Immigration Act 1959/63, it states that a person shall not enter Malaysia without a valid permit, otherwise they shall be guilty of an offense and subject to punishment. Such a law fails to draw distinctions between illegal immigrants and refugees entering the country, which unfortunately have the consequence of being arrested and deported regardless of the status of that person, provided they entered the land illegally. This shows an intersection and contradiction between Malaysia's domestic law and international law, specifically on the non-refoulement principle. Under this principle, it prohibits a state to send the refugee back to their country amid chaos and that they should be protected instead. Unfortunately, the wording of Malaysia's law generalizes all comers without permit as guilty of immigration offense and eventually shall be deported back to their country. It must be reiterated that unlike illegal immigrants, the reason why the refugees are forced to come to one's state is to seek asylum due to their country's bad situation. Therefore, Malaysia's deportation of Myanmar's refugees violates international law.

Recommendation for the management of Refugees

The role of ASEAN is crucial because they are the immediate countries to Myanmar, it is most likely for its refugees to seek asylum in the nearby countries such as Thailand and Laos. There are a few recommendations from legal perspectives that can be considered by ASEAN in order to handle the issue of refugees.

1

Amendments on the domestic laws

This author believes that there needs to be standardization and integration between international laws and ASEAN member states' domestic laws, such as by standardizing the definitions of subjects and their operations. This is crucial in order to provide universal understanding and avoid any contradiction or intersection between the two laws so that ultimately justice can be maximized.

For example, in the case of Malaysia laws, the main reason which led the court to lift the stay on deportation is because their domestic statute is being very unclear on the definition of a 'person' that enters the country and to whom it refers to, either illegal immigrants or refugees. Due to this, the court's decision to rule the refugees to be deported is a favorable and correct decision because technically the refugees entered Malaysia without a valid permit, hence it falls under the words of Section 6 of Malaysia's Immigration Act 1959/63.

Unfortunately, this immigration law is also the same in the majority legal systems of ASEAN member states including Brunei Darussalam, Indonesia, Singapore and Thailand. This reveals that their legal systems are inefficient to ensure human rights of refugees due to limitations of their domestic laws.

To resolve this, the ASEAN member states need to call for amendments on their domestic law in order to eliminate any ambiguity which ultimately clarifies and standardizes with the other ASEAN's member states law under the umbrella of international laws. This can be done in many ways such as by differentiating or specifying the word 'person' that enters their country and/or make exceptions from punishments upon refugees, hence differentiating refugees from illegal immigrants. This amendment will help to ensure the refugee's human rights such as recognition and employability. On top of that, it gives the credibility and reliability of the ASEAN member states in advocating the rights of and justice for refugees in the region.

2

Abiding the International Laws and its Principles

Some may argue that the legal instruments initiated by the UN are not as effective as it is intended to be. For example, the 1951 Refugees Convention and 1961 Protocol were established to ensure the status of the refugees but it is not binding upon the states that do not sign the treaties, including the majority of ASEAN member states. Its effectiveness is only limited to the states that agreed to it which leaves the non-signatory states to be excluded from any duties and responsibilities relating to refugees. This shortcoming can be seen in the lack of protection of Myanmar's asylum-seekers in the ASEAN member states' countries where their rights have been denied, torn away and they are being neglected such as denied citizenship or difficulty to obtain legal employment.

This author is not pressuring ASEAN to be a party to the aforementioned treaties, but merely suggesting ASEAN to observe that there are principles in the treaties that must be abided as it also falls under the international law. They cannot ignore the treaties entirely when the treaties and international law are basically speaking the same language, that is advocating for the human rights of the refugees which are also individuals. Hence, their non-signatory to the treaties cannot be used as an excuse to neglect and/or mistreat the refugees entirely.

One of the significant principles is the non-refoulement principle stated under Article 33 of the 1951 Refugees Convention which is also treated as the customary international law. According to the principle, all states including the ASEAN members are prohibited to send back the refugees back to their country amid chaos that could potentially put their safety at risk. Unfortunately, some states such as Thailand and Malaysia breached this principle when they arrested and deported the refugees back to Myanmar when the situation there remained chaotic. These actions should be condemned as they violate international principles.

ASEAN, who are also members of the UN, needs to observe, incorporate and implement the international laws and principles in their action plan in managing the refugee crisis. However, any positive outcomes are unlikely to be achieved if the state itself refuses to abide by the laws which act as the 'guidelines' working towards guaranteeing one's rights. Therefore, ASEAN needs to be more conscious in their decision-making and utilizes the available laws and legal instruments to tackle the whole situation, not just merely taking symbolic actions.

Recommendation for the management of Refugees

The role of ASEAN is crucial because they are the immediate countries to Myanmar, it is most likely for its refugees to seek asylum in the nearby countries such as Thailand and Laos. There are a few recommendations from legal perspectives that can be considered by ASEAN in order to handle the issue of refugees.

3

Increase ASEAN - United Nations co-operations

Widespread conflict has increased the level of displacement across Myanmar following the events of February 1, 2021, when Myanmar's military installed itself as the State Administration Council and met with armed resistance and civic protests. Since the emergence of refugees from Myanmar, the UNHCR has been actively assisting them by providing humanitarian basic needs such as shelter, food, etc. In addition, since the majority of ASEAN member states do not have legislation that regulate the rights of asylum-seeker and refugee, the UNHCR has been conducting the refugee status determination ("RSD") in order to help refugees to be recognized as legitimate refugees and prevents them from being discriminated against, violated and deported. Unfortunately, the downside of RSD is it is a lengthy and time-consuming process.

Furthermore, the reshaped context has increased humanitarian needs and seen additional restrictions on UNHCR's ability to deliver assistance to the displaced people in Myanmar as well as the asylum-seekers who fled the country. For instance, in the context of Malaysia, its court has pre-determined to send the refugees back to their country, taking away the chance for the UNHCR to verify them as legitimate asylum-seekers. The restrictions on UNHCR as the main organization that administers the welfare of refugees gives fatal consequences on refugees such as lack of humanitarian assistance and protection. In a situation where the government does not or refoule and let the UNHCR provide legal and civil assistance, many rights could be ensured and many lives will be saved from any form of discrimination, violence and danger back in Myanmar.

Therefore, the author urges ASEAN to give the UNHCR and other similar organizations full and endless co-operations in administering the rights and well-being of refugees. This can be done in various ways such as introducing policies that speed up the RSD process, providing manpower and financial assistance, etc. However, it is understandable that not all states could afford to cater the support that UNHCR needs due to several reasons such as economy restraints, so at the very least, the government should not stand in the way of the UNHCR and put restrictions on them, especially when they are delivering help needed by the refugees.

Conclusion

The situation in Myanmar has not improved for as long as the military remains in power and constantly uses 'more sticks than carrots' against the people. Unfortunately, ASEAN treatment towards the refugees such as denying citizenship and basic social and legal rights are concerning since arguably the situation may not be better outside Myanmar. Therefore, this author calls for ASEAN member states to maximize socio-legal approach in their policies to tackle the refugee issue such as firstly, to review and amend their domestic laws in order to maximize justice on refugees, secondly, for the states to abide by the international laws and lastly, to increase co-operations and work closely with the UNHCR, an international body which administers the refugee's welfare such as by providing financial and manpower assistance, or at the very least is to ease them to deliver helps. The positive results can be maximized and will be significant to cater the needs of refugees who are also individuals that need states' protections. Of course, these are only some of the socio-legal solutions towards the refugee crisis that ASEAN can do, but the root of the problem of Myanmar's political situation must be resolved in order to further minimize the number of refugees and restore their rights.

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AUTHOR 2

Article Writing Competition 2021/2022

Setbacks in the Extent of the Positive Socio-Legal Impacts of International Refugee Laws.

Written by : Muhamad Syazwan Nazri bin A. Hanni/Zalanni

It is with great pleasure that I present this article to our readers, a culmination of rigorous research, dedication, and a deep passion for 'Setbacks In The Extent Of The Positive Socio-legal Impacts Of International Refugee Laws'. As the author of this work, I am honored to share my insights and findings with you, the readers, in hopes that it contributes to the ongoing dialogue and advancement of knowledge in our field.

In an era marked by the rapid dissemination of information, it is incumbent upon scholars and researchers to provide well-reasoned, evidence-based contributions to the body of knowledge. This article represents my humble attempt to do just that.

The journey leading to the creation of this article has been both challenging and rewarding. It began with a question, a curiosity that sparked my interest and propelled me into the world of investigation and discovery. It involved countless hours of research, experimentation, and analysis. Yet, through perseverance and the guidance of mentors and colleagues, I have arrived at the insights presented in these pages.

This article is not only a product of my individual effort but also a reflection of the collaborative spirit of the scholarly community. I am indebted to the contributions and support of my peers, lecturers, and colleagues who have offered their guidance, critique, and encouragement throughout this endeavor.

I also wish to express my gratitude to the editorial team for their diligent work in reviewing and refining this article. Their expertise has undoubtedly played a significant role in ensuring the quality and accuracy of the content presented here.

As you delve into the pages of this article, I encourage you to approach it with a critical yet open mind. It is my hope that the research and insights shared herein will stimulate further discussion, inquiry, and exploration in the realm of 'Setbacks In The Extent Of The Positive Socio-legal Impacts Of International Refugee Laws'. Whether you are a law student seeking to expand your knowledge, a fellow researcher seeking to build upon these findings, or a practitioner looking for practical applications, I trust that you will find value in these pages.

In conclusion, I am immensely proud to present this article as a contribution to our collective understanding of 'Setbacks In The Extent Of The Positive Socio-legal Impacts Of International Refugee Laws'. It is my sincere belief that the pursuit of knowledge is a noble endeavor that enriches not only our individual lives but also the broader community.

Thank you for your interest in this work, and I look forward to the discussions and collaborations that may arise from it.

Background

Refugee law has been legislated to ensure the protection of any refugees seeking asylum and safety from the existing oppression in their origin nation. Refugee law can be divided into two divisions of law: International and Regional. For International Refugee Law, the law applies to any nation that is stated or had signed in one of the Conventions. One of the most common and well-known conventions is the 1951 Convention which was originally for the purpose of giving protection and ensuring the rights of the refugees that came from Eastern Europe under the Soviet Union during the Cold War Era (1946-1991). The position of the 1951 Convention was affirmed with the 1967 Protocol which gives affirmation and revision to the 1951 Convention. The affirmation of the 1951 Convention and 1967 Protocol can be found in the statement of Resolution 71/1, UN General Assembly regarding the Declaration for Refugees and Migrants in 2016 :

"We reaffirm the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto as the foundation of the international refugee protection regime. We recognize the importance of their full and effective application by States parties and the values they embody. ... We reaffirm respect for the institution of asylum and the right to seek asylum. We reaffirm also respect for and adherence to the fundamental principle of non-refoulement in accordance with international refugee law."

Regarding Regional Refugee law, some nations also had their specific treaty among themselves, for instance; the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (For African Region), 1994 Arab Convention on Regulating Status of Refugees in the Arab Countries (For Region of Asia and Arab) and 2017 Charter of Fundamental Rights (For European's Region). Regional Law will only apply to the region where it is assigned and usually would have different emphases in comparison with other Regionals.

The existence of Regional Refugee Laws is an ever-evolving concept of law. However, the real focus here is on International Law, the 1951 Convention, which is the foundation of all the laws existing in regard to refugee status and had been allowing refugees to claim their human rights as it drew the definition of the Refugees, Rights, and Status can be found in Article 2-33, 1951 Convention.

It is in this Author's opinion that the 1951 Convention, with signatory nations amounting to 149 nations in total, is evidently capable of protecting a refugee's overall position from being deprived of their own rights. However, how far will the convention be effective? Are there impacts on International Refugee Law toward the socio-legal standing of the refugee or even the host country?

In this article, the main objectives are to find out the setbacks in the extent of the positive socio-legal impacts of international refugee law, concentrated mostly on the 1951 Convention. This Author aims to elaborate on the pertinence of restricting the scope for the impacts of International Refugee Laws to be within social and legal aspects.

1. Legal Impact

This subsection will focus on the application of the 'Definition of Refugee' by the host/signatory nations. This led to the division of the subsection into two parts: the positive and negative legal impacts of the existence of the 'Definition of Refugee'.

1.1 Positive Legal Impact

The definition of the Refugee has been a great help for signatory states to recognise who can be considered and attain the status of 'refugees' in the eye of International Law. With the definition above, it allows the signatory nations to classify what can be taken as a refugee and what can be rejected on the ground not fulfilling the elements of refugee which can be found in the 1967 Protocol. In the instance application of such law, the application of this definition can be looked at in the case of David Hellman vs. Immigration Review Tribunal;

David, a 17-year-old American Citizen, was rejected by the court and upheld the Tribunal's decision to disallow his entry to Australia as a Refugee. This decision was based on the ground he was unable to fulfill the definition of refugee on the part he belonged to a particular group that has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion". The court further stated that "United States authorities would be able to protect him from his mother".

In the case presented above, the definition of refugee had allowed the court or in general, the government of signatory nations, to interpret and classify which groups of people as Refugees in their nation.

1.2 Negative Legal Impact

Despite its ability to allow the government of signatory nations to classify any individual to belong to a particular group that is recognizable as a refugee, there is a defect that co-existed with the definition. Although the definition had served the purpose of giving a general definition of refugee, it had caused the decision-maker such as judicial bodies to have an argument regarding an individual's qualities and position which can be considered 'refugee'. It is well-known due to the part of the definition; the 'well-founded fear of being persecuted', the decision-maker must go the extra mile to identify whether the said individual is really prosecuted in their respective nation. This also leads to the decision-maker investigating further into the details of the said individual, their rights, and the circumstances of their nation. The host could implement a method by only investigating the condition of the individual nation, however, for the governing official, this would lead to an open floodgate for refugees to enter and 'would lead to their being swamped'. This can be proven as some regions had to redefine the meaning of refugee according to their regional agreement on the definition. For instance, in the Declaration of Cartagena on Refugee 1984, the majority of the South American nations agreed an individual is a refugee when there are 'massive violations of human rights or other circumstances which have seriously disturbed public order'.

Hence, even though the International Law's definition of the term 'refugee' has been widely accepted by the signatory states, the governing state and the decision maker must redefine the meaning accordingly in order to suit best the definition of 'refugee' and restrict the term in such a manner it will not open the floodgate of refugee in the region and provide a safeguard in the interest of the host nation.

2. Social Impact

The legal aspects arising from the 'Definition of Refugee' has been paving the way for social impacts to take place. The social impact that will be discussed under this subsection will be the increasing number of refugees in the host nation. As of mid-2022, according to UNHCR, there are 35.6 million individuals considered to be 'refugees'. When looking at the trend since the establishment of the 1951 Convention, the increase in the number of refugees might be ongoing, especially due to never-ending clashes and conflicts within or even outside of the nation.

2.1 Positive Social Impact

Amid the increasing population, the host governments are to prepare proper facilities accordingly for the incoming refugees which include shelter and water supply. Although some of the host's citizens will live in the surrounding area to benefit from sufficient facilities such as water and electric supply such as in Manyatta in Kenya, this has also been contributing to the diversity in the host nation. The host became diverse as the refugees settled in their land and allowed them to socialize with the locals living in the surrounding area. In some cases, places where the refugees settle, will become urban areas instead of rural, either due to the placement of being close to a rural area (converting it to Urban, as the population grows) or due to the migration of locals to the surrounding refugee area (due to sufficient facilities provided).

Diversity is also seen to be growing increasingly as the refugee and the host citizens created mutual benefits among each other by blending in or even by exchanging goods with the locals, leading to 'refugee population and the local people in a relationship of mutual benefit and preventing antagonism between highly subsidized non-food, producing poor groups and less subsidized food-producing poor groups residing in the same localities'. For instance, in Pakistan, it is reported 'charitable activities by refugees who gave small shares of food relief free of charge to destitute Pakistanis who visited the refugee compounds' . The exchanging of food had led to a 'Spillover effort', gaining trust and mutual benefit from exchanging excess ration with the locals.

Hence, with locals living closer to the refugee due to geographical reasons or due to benefiting from the sufficient provided facilities, the rural area would transform into an urban area due to the rapid increase of the population. This would ease the refugee in blending in with the locals. This would result in a diverse community between locals and refugees.

2.2 Negative Social Impact

Apart from the positive social impact of an increasing number of refugees, it would also create antagonistic impacts. Although having refugees in the host nation would lead to a diverse community of refugees and locals, some of the locals and even the government does not take it as a fully positive impact. This is based on the reason that it would also lead to an increase in crime and inappropriate behavior. It's also based on the theoretical argument which states that 'refugees' prior exposure to violence may increase their likelihood to perpetrate future violence' and 'the relative social and economic deprivation from opportunities may increase the propensity to engage in criminal activity'. The condition in which the camps were provided might be a reason for the increase in the crime rate within the community due to the lack of supervision caused by the usually overpopulated camps, it would associate the camps with 'problems such as drunkenness, prostitution, and sexual promiscuity'.

An instance of refugees causing an increase in the crime rate could be proven during the Syrian Crisis in 2011, displacing millions of Syrians to neighbouring countries. Jordan, one of the receiving nations, had experienced an increase in crime committed by foreigners, especially in crimes against property, where in 2010, only 1916 crimes were committed by foreigners, but by 2011 it increased by 2205 crimes and continued to increase, reaching the peak of 2608 crimes committed by foreigners in 2015 alone.

Further, in Amjad Khan vs. State; A case that gives worrying concern about refugee aggressive behavior, where Sindhi refugees and Muslims had been involved in communal rioting leading to Sindhi refugees being aggressive toward the Muslim communities. In this case, the defendant was attacked by a group of Sindhi refugees in his shop, leading him to take the desperate measure of fatally injuring one of the refugees.

With theoretical reasoning, the crime rate committed by foreigners in Jordan during the Syrian crisis and in the case of Amjad Khan; it can be summarized that due to conditions the refugee had faced before and currently faced, some refugees tend to resort to violence as the solution. Hence, leading to public unrest, especially among the host localities.

3. Non-Refoulement Policy

When the host's nation was able to identify the individual or the group of people to be under the definition of 'refugee', the host is obligated to fulfill their duty to the refugee as stated in the 1951 Convention. The most important part that needs to be under full control by the host is the 'Non-Refoulement policy', where as stated in Article 33 (Prohibition of Expulsion Or Return ("Refoulement")), 1951 Convention ;

"The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

This Article emphasized the need of the host nation to fulfill its obligation which 'come into effect after an asylum seeker has entered a signatory country and fall squarely on that country'. The main element of the policy is, 'not sending someone back into a situation of possible persecution'.

3.1 Legal Impacts

Positive Legal Impacts

The existence of Article 33 (Non-Refoulement policy) is beneficial in providing assurance for the refugee when staying within the host nation. The assurances are such as mentioned in the writing of 'The principle of non-refoulement in the migration context: 5 key points' by Tilman Rodenhäuser, a Thematic legal adviser, International Committee of the Red Cross; where with availability the policy in 'different bodies of international law' which can be found in different treaties such as 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The principle by so far is 'applicable whenever a person falls within the jurisdiction of a State' or when an individual or a particular group is identified as a refugee, would be able to 'protect persons fleeing armed conflict', 'protects against direct and indirect measures that force a person to leave' and provide 'procedural safeguards'.

Hence, from the above statements, Article 33 will enable refugees to have the assurance to stay within the host nation without any lingering thought of being removed from the host nation. Further, will allow the refugees to enjoy the rights that are bestowed and should be granted by the host nation under the 1951 Convention, this includes rights to practice religion (Article 4), rights to own property (Article 13), rights to work (Article 18-19), and rights of pleading and making claim in the court (Article 16). This policy also ensures the host to not remove any refugee from their ground for any reason except due to an exception contained in Article 33(2) regarding a criminal amounting to 'danger to society', hence, allowing refugees to rightfully claim rights to live in the host nation and enjoy the rights as stated in the 1959 Convention.

Negative Legal Impacts

Although the Non-Refoulement policy allows the refugee to stay and prohibit the host nation to remove them from their ground, it also posed the legal problem of the inability for the refugee to go back to their origin country as the hosting nation would not be able to let the refugee return unless the definition of a refugee, according to international refugee law, cease to exist. If the origin country of the refugee is still categorized as having 'well-founded fear of being persecuted', refugees on any accountable reasoning will not be allowed to return except for a reason pertaining to Article 33(2). This principle had disallowed the assertion of 'the right of individuals to stay home or to return home and enjoy basic human rights' and which from another perspective could be seen from Adrienne Millbank stating: "It is the principle of non-refoulement rather than a general obligation to refugees, wherever they are, that is at the core of the Refugee Convention" commenting the host nation was acting according to and bonded to the 1951 Convention, not due to their utmost sympathy to help the refugee.

However, refugees have ways to return to their nation even though the origin nation is still under a 'well-founded fear of being persecuted'; first, by being a criminal amounting to being a 'danger to society' (as mentioned in Article 33(2)) and by exile from the hosting nation. Both ways can be seen as negative ways to exit a nation, especially exile, supported by Adrienne Millbank in 'The Problem with the 1951 Refugee Convention', Adrienne mentioned the exile method which 'institutionalised the notion of exile as a solution to refugee problems' by the Convention 'is an inappropriate solution to modern refugee problems and in an age of globalisation and regionalisation'(Adrienne Millbank, 2000).

Hence, overall non-refoulement policy is a favourable legal apparatus in International Law to allow them to rightfully stay within the host nation and acquire the rights that are outlined in the 1951 Convention and supposed to be given to them by the hosting nation. Despite that, it could backfire on the refugees as they would lose their rights to return to their original nation, if their status remained a 'refugee'. While in the status of 'refugee', refugees could be returned to their nation if the host acknowledged the refugee as a threat to the security of the host nation or having themselves exiled from the nation. Other than any methods mentioned above, refugees are not allowed to leave on any grounds from the hosting nation.

3.2 Social Impact

The existence of a non-refoulement policy paved the way for the refugees to enjoy their rights under the 1951 Convention. This is based on the rights provided for refugees under Article 3 to Article 34, varying from rights for shelter (Article 21), rights of ration (Article 20), rights to work (Articles 17-19), and freedom of speech (Articles 3-4).

However, it is debatable whether the rights provided under the provision of the 1951 Convention will give out positive or negative impacts. Hence, this subsection will analyse both the positive and negative impacts of the social impact of rights granted to refugees.

Positive Social Impact

The rights of refugees have allowed refugees to enjoy certain benefits provided under Articles 3-34 of the 1951 Convention. This allows refugees 'lawfully residing in the territory of any country' to 'enjoy no discrimination with citizens that are to have public relief and other legislations that a related to labors and social security'. Rights provided under the 1951 Convention should be given by the host to the entitled refugee. For instance, regarding employment, a refugee has the right to be employed and to receive wages, according to Article 17 of the 1951 Convention. The host nation also provides training for refugees in need of work experience and skills. This could be proven in Kocaeli Metropolitan Municipality, which had allowed refugees to gain industrial skills by registering into Turkish Employment Agency's system.

This is the same issue as education where, under the provision of Article 22, it has been stated that the host shall give at least education of elementary school level qualification to the refugees in need. In 2020 alone, around 60 000 had enrolled in elementary school, whereas according to The United Nations Educational, Scientific and Cultural Organization, (UNESCO) and UNHCR, 63% of refugees had been enrolled in primary school, and this report is from 2017 and had expected to increase in percentage.

In issues regarding Health, Article 23 (Public relief), states ;

"The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."

'The same treatment with respect to public relief and assistance' also includes medical care required of the host nation. In the UNHCR report, it was noted in 2020 that there was an estimated 93% able to have access to medical care. This percentage also allowed the rate of 5-month-old mortality to be as low as 0.35 per 1000 newborn children as 92% of the babies were attended by professionals. Globally, in 2020, 7,620,115 outpatient consultations for refugees were able to be provided in 155 sites in 22 nations. As Malaria was one of the top morbidities in refugee camps (contributed 19%), the UNHCR had taken precautions by 'funding malaria control activities such as distributing insecticide-treated nets and indoor spraying in 17 countries'.

With 3 main general aspects elaborated, the rights provided under the 1951 Convention can be seen to be executed by the host/signatory by fulfilling and giving the rights to the refugees as per mentioned in Articles 3-34 of 1951 Convention.

Negative Social Impact

Although the Non-Refoulement policy allowed the rights of refugees to be granted, there are some setbacks that could be found in the extent of its benefits to the refugee. Such setbacks will focus thoroughly on the issues that had been mentioned above which are rights to work, education, and medical care.

In the issue of employment, although Article 17 of the 1951 Convention had allowed the refugee employment, this Article could not fully guarantee that the refugee would be employed in the host nation. According to the report provided by the European Union in 2016, the refugees that reside under the nations of the European Union, only have an average employment rate of 56% and for the first 5 years residing in the host nation, only 25% of the refugees will be employed. In the same report, it is also stated that; 'it takes refugees up to 20 years to have a similar employment rate as the native-born.' This further could be proven in the reported UK resettlement programme; in 2011, only 3 out of 71 refugees after 18 months residing in their country, have been employed in the United Kingdom. In the same issue, refugees who entered employment are not promised equal treatment and payment with the native. In the UK resettlement programme there was this sentiment that was in repeat recorded in the whole report which was; 'When people found paid work, this tended to be temporary and at minimum wage level'. This brings the concern that refugees were generally underpaid during the course of their employment. In 2010, the United States recorded that refugees' average payment per hour was only below US$10 compared to the native having average pay of US$21.29. The low employment rates and wages for refugees are concerning but are expected by the general trend. The reason for such low employment rates and wages are due to the refugees being unfamiliar with the employment conditions of the host nation, so they needed to adapt to the conditions by first learning the language. In the UK resettlement programme it was reported that; 'Rohingya refugees and those from the Democratic Republic of Congo were generally concentrating on language classes and adapting to their new lives'. Although it had struck a more negative side as the refugee were underemployed, In Stein's seminal piece (1979), Vietnamese refugees in the USA during the 1970s, although 39% was in the tertiary industry (government and managerial jobs), only 7% was able to stay with the same industry, and the rest would have been employed in blue-collar jobs (60%). Graeme Hugo in his work; The Economic Contribution of Humanitarian Settlers in Australia, had stated these types of refugees, who are underemployed as 'brain waste'. Hence, it was true 'refugees in particular face hardships of higher unemployment rates, lower wages, and longer jobless periods'.

In the issue of education, referring to the previous data on the positive impact, it is true the refugees were given access to education. However, especially in education, the numbers when compared with the global rate are considered very low. This could be proven by the statistic from UNHCR, 'only 63 percent of refugee children go to primary school, compared to 91 percent globally. Around the world, 84 percent of adolescents get a secondary education, while only 24 percent of refugees get the opportunity.'(UNHCR, 2013) The number is depressing, especially in secondary education where the great 63% gap could be seen clearly. One of the main reasons for the low educational qualification is limited access to education or in other words, the lack of nearby schools in the surrounding place of refugee camps. The Bonyan Organization reports claimed the same, as the less access to education of refugees and 'had recorded 25 million children missed school in 2016-17'. Further, it was claimed by Filippo Grandi, UN High Commissioner for Refugees. "We are failing refugees by not giving them the opportunity to build the skills and knowledge they need to invest in their futures.". Hence, with fewer educational qualifications, younger refugees will not be able to have a secure future.

In the last issue regarding medical care. Although access to medical care was given by the host, it was not enough to cater for the majority of the refugees. This was as stated by Leigh Daynes in 'The health impacts of the refugee crisis: a medical charity perspective'; "refugees and migrants are also struggling to access primary healthcare". The same article also provided the statistic out of 23,000 thousand patients in Europe, 54% of pregnant women were not able to have access to antenatal care, and only 40% of children were vaccinated against mumps, measles, and rubella, and in 'One in five patients had given up seeking medical care or treatment because of difficulties. The reasons for these depressing numbers were due to the challenges faced by the host nation that the refugee had received severe conditions before arriving to the host nation which as World Health Organization had included such conditions; 'as xenophobia; discrimination; substandard living, housing, and working conditions; and inadequate or restricted access to mainstream health services', which increased the risk of developing diseases such as diabetes and hypertension. The increase in risk was due to the 'result of long periods without access to regular care, either in their home countries or during their journeys to the UK. Some patients may have old injuries that have not healed properly'. This would later be developed into chronic disease or even disability to them. Refugee patients were also known to avoid being treated due to unfamiliarity with the host nation's medical procedure; for instance in the United Kingdom, refugees 'may expect to be referred to hospital, or be able to self-refer to a specialist, for issues that are normally treated by a GP'. Due to challenges faced by the host nations, it is unlikely that host nations are able to fully treat all refugees fully as equal as their medical treatment toward their citizens.

In brief, although the non-refoulement policy had paved the way for the rights of the refugee to be granted especially in rights to work, education, and medical care, however, it was not able to be fully granted by the host nations due to reasons and challenges faced by the host nation when receiving the refugees. Hence, this brought to the conclusion, the rights given to refugees will never be equal or close to the rights given to citizens, which draws the rights provided in the 1951 Convention to be based more on theoretical rather than practical.

Brunei's Standing on the Development of Refugee Law

In this last part of the section for analysis, the discussion revolves on Brunei Darussalam's stance on International Refugee Law, especially in the 1951 Convention. This section will simply touch on Brunei's position with regards to the refugee law, the method of overcoming the issue of stateless persons, and recommendations from the UNHCR in regards to Brunei refugee issues.

Brunei Darussalam and the 1951 Convention

As of 2012, although there have been reports of 20,000 stateless individuals in the country, Brunei Darussalam is not a member of the 1951 Convention. As per mentioned in 'Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report' were stated; "Brunei Darussalam is not a State party to the 1951 Convention relating the Status of Refugees and its 1967 Protocol ("1951 Convention")..."(UNHCR, 2013). Brunei Darussalam not being a state party of the 1951 Convention had allowed Brunei not to treat refugees as per guided in the 1951 Convention.

Methods used in dealing with the stateless person and 'refugee'

Although Brunei Darussalam does not take part in the 1951 Convention which acts as a general guide in dealing with the refugee, Brunei has its own method of dealing with the stateless person. It is important to note that Brunei does not recognize the usage of the term 'refugee'. Instead, Brunei uses the term 'stateless person' which carries the same meaning.

Brunei Darussalam allows the stateless person to become a citizen of Brunei. This is according to Section 5(1a) of the Brunei Nationality Act Chapter 15 stated; "...shall be eligible on making application in the prescribed manner to be registered as a subject of His Majesty if he satisfies His Majesty that he — (a) has within the period of 15 years immediately preceding the date of his application for registration resided in Brunei Darussalam...", hence, allowing anyone who resides, including the stateless person to be a citizen of Brunei Darussalam, as long as fulfilling the requirement stated in the provision above.

To prevent the number of stateless people from increasing in Brunei, further initiatives were taken to reduce the number, including the method stated above. Regarding the same provision of the Brunei Nationality Act (Cap.15) in section 6, stateless minors are allowed to be recognized as national citizens if their Majesty thinks fit. Through Section 6, stateless or non-national could neutralize their status and transfer it into national status. According to Section 5(6), non-national/foreign female citizens who married a Brunei Darussalam national may acquire her citizenship.

Additionally, the Brunei Darussalam government is giving cooperation with the UNHCR to smoothen the process of dealing with the stateless person and ensure the rights of a stateless person are in check. The form of cooperation is by sharing statistics regarding the number of stateless people residing in Brunei. This was as mentioned in the report; "Brunei Darussalam has recently strengthened cooperation with UNHCR in respect of UNHCR's statelessness mandate". UNHCR also stated in the report that they responded with 'welcomes the sharing of statistics relating to the number of stateless persons permanently resident in Brunei Darussalam and the number of such stateless person who acquire nationality'.

UNHCR's recommendations on Brunei Darussalam's Methods

UNHCR, in response, welcomed Brunei Darussalam's efforts in dealing with the stateless person. The UNHCR reports stated UNHCR had appreciated Brunei's efforts in dealing with the stateless person. However, UNHCR suggested a few changes in Brunei's methods.

The first main suggestion is to have Brunei accede to treaties and conventions relating to refugees and stateless persons, such as the 1951 Convention, 1967 Protocol, and 1954 and 1961 Stateless Conventions. If Brunei accedes to such conventions, Brunei will be bonded by the conventions with regard to refugees and stateless persons, hence, allowing Brunei to follow the guidelines as laid down in the conventions. Another alternative would be allowing the enactment of national law regarding the refugee law to establish the status of the refugee and its procedures along with granting their rights.

The second suggestion from UNHCR is to undertake a study on whether Brunei Nationality Act (Cap. 15) is compliable with the standard laid down in the conventions relating to refugee law, especially the 1951 Convention. The significance of such a study is to allow the availability of more sources to be relied upon by legislators when there exists the need to compare whether the Brunei National Act is sufficient in dealing with the refugee law against the standards provided by the 1951 Convention.

The last suggestion from UNHCR is to continue the methods made by the Brunei Government as laid down in Brunei National Law Act, especially in the birth registration for a stateless person, where stated in the report; "Continue its outreach programme under which it makes presentations related to birth registration, and evaluate if more areas of the country need to be covered, or more steps need to be taken to ensure access to universal birth registration".

Hence, UNHCR welcomes Brunei's government's methods in dealing with the stateless and any potential refugee person. However, some suggestions were made to enable Brunei's government to have more efficient methods in dealing with the stateless and potential refugees, especially in comparison with the standard laid down in the 1951 Convention.

Conclusion

By finding the setbacks in the extent of the positive socio-legal impact, it is in this Author's opinion that the international refugee law so far is able to give the guidelines for the host nation to deal with refugees and enable refugee assurance to be given the basic rights they needed when residing in the host nation. However, to an extent of the positive impacts, simply cracks and flaws existed where the efficiency of such international refugee law is questioned on its full success. These setbacks as found above, are mostly due to the inability of the host nation to perform due to practical considerations where the 1951 Conventions as provided in-depth so far could be regarded as theoretical and could not be used fully to deal with the issue of refugees.

With the setbacks and positive impacts analysed above, Brunei could also use these in considering whether to accede to the 1951 Convention or international refugee law in total, hence giving a more wider view for the legislator to think of in the future.

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AUTHOR 3

Article Writing Competition 2021/2022

How can Humanitarian Law prevent the decline in Mental Health of Rohingya Refugees?

Written by : Rasyidah Khairol

Writing my article : 'How can Humanitarian Law prevent the decline in mental health of Rohingya Refugees?' was the greatest pleasure as a first year law student. Writing this article as a member of the human race however, was an honour difficult to put into words. In a time where humanitarian crises are reaching an all time high, it is pertinent that both current and future members of the legal field such as myself, are aware of the gravity of humanitarian struggles all across the world and it is equally, if not more imperative that we recognise measures we can take in order to aid those in need. I am extremely grateful to ALSA for the chance to bring to light the integration of Humanitarian Law and one of the issues closest to my heart, mental health.

Abstract

The focus of this article is to highlight ways in which legal intervention is capable of aiding refugees in areas outside providing for physical health- ie. mental health. It is vital for this to be highlighted as mental health is often seen as a 'secondary' issue (in terms of importance), when in reality it is so vital that it be treated just as urgently as physical health as failure to do so may lead to life threatening altercations.

This article begins by outlining the historical context of the Rohingya crisis. This serves the purpose of highlighting the source of their mental health issues. Then, the article covers the actual implications of these actions on their mental health (eg. PTSD). After, legal interventions taken in order to cater to these issues will be discussed as well as problems that arise.

Introduction

The United Nation ("UN") Secretary-General Antonio Guterres has described the people of Rohingya as "one of, if not the, most discriminated people in the world". However, one does not need to be a United Nation General to acknowledge the devastation of the humanitarian crisis of Rohingya.

Brief Historical Context

This tragic humanitarian crisis stems from the 8th century, when people originating from the coastal regions of the Bay of Bengal (now Bangladesh and Myanmar) embraced Islam under the influence of Arab traders. Thus, instead of seeing Rohingya as "taingyintha" (natives of the land), the government of Myanmar believes them to be illegal migrants who immigrated during British colonial rule in the 19th and 20th centuries. Since then, the number of human right violations against the Rohingya has increased exponentially.

From the time of independence in 1948 until the military takeover in 1962, Rohingya were granted full citizenship rights and were eligible to run for office in Parliament. Their circumstances deteriorated and their civil, political, educational, and economic rights were steadily taken away by the military regime. In addition, the Rohingya were further deprived of a number of fundamental rights such as citizenship, freedom of movement, access to healthcare and education, rights to marriage registration, and the right to vote under the 1982 Citizenship Act, which excluded them from being recognised officially as a minority ethnic group. Mosques have either been closed or destroyed.

As a result, they became the largest group of stateless people in the world. Violence and discrimination against ethnic minority groups persisted despite a series of political and economic reforms implemented in the last ten years under the direction of former Myanmar’s President Thein Sein.

Outline of Rohingya Refugee Mental Health Decline

Mental Health is defined as "our emotional, psychological and social well-being" according to the U.S Department of Health & Human Services. Undoubtedly, these severely traumatic events cause detrimental impacts on the mental health of the Rohingya. In order to aid not only their physical health, but their mental health too, several studies were conducted on the victims of the crisis.

Displayed below is a collection of 5 different methodologies used to gather data concerning the Rohingya Refugees' trauma levels which were used by researchers.

Method of systematic data collection. Method of systematic data collection	Explanation
Trauma Events Inventory (based on Harvard Trauma Questionnaire)	• Respondents were asked to specify if they had "experienced any of the following events" during their lifetime. • They were asked to respond "yes" or "no" to each question and to disclose whether the incident occurred in Bangladesh, Myanmar, or both. • Participants were asked to give their approval of things they had personally experienced, as opposed to the human rights violations scale. • Based on the responses, a cumulative aggregate score for the trauma experiences was determined.
Daily Stressors	• Participants were asked questions regarding their day to day experiences and they would answer either 'yes' or 'no.' • 12 main focuses of the Daily Stressors investigation: food, water, shelter, sanitation facilities, income, physical health, safety, education, fair access to aid, travel, harassment by police and harassment by locals (most were taken from the Humanitarian Emergency Settings Perceived Needs Scale). • This allows a 'total environmental stressors score' to be calculated.
PTSD scale	• Utilizes the symptoms of PTSD and so partakers were asked how many of these symptoms they experienced within the previous week. • Response options ranged from 1 to 4 (1 being not at all). • By averaging all items in the scale (per participant), a total symptom severity score was calculated.
Depression and anxiety scales	• Includes 29 items (25 are from HSCL-25).10 anxiety symptoms & 15 depression symptom ideas. • An emotional distress symptom score was calculated.
Functioning	• Focuses on 5 items. 4 items are to do with difficulties in daily functioning in the previous 2 weeks and 1 item "focuses on respondent perception of the reason for the difficulties". • Response options were ranging from 1 (not at all) to 4.

Legal Intervention

The notion of implementing and enforcing laws in order to prevent the events that will inevitably lead to the severe trauma of Rohingya refugees is the main focus of this article. The Roman Statute of the International Criminal Court ("ICC") is one vital vessel of law that has been utilised relentlessly in the Rohingya crisis as it employs the jurisdiction of the ICC to resolve international conflicts. Unfortunately, one of the issues that deems difficulty in the use of the Roman Statute of the ICC is the fact that Myanmar is not one of the countries that partakes in the statute and thus, the statute cannot be used against any actions in the country as stated in Article 15 bis "In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory."

Although Article 4(2) states that "The Court may exercise its functions and powers... on the territory of any State Party and, by special agreement, on the territory of any other State" which suggests that should an exception be made for this crisis, it is possible for the Court to act on its jurisdiction over Rohingya, it is imperative that an amendment to strike Article 15(5) or form an exception for the Rohingya Crisis is put forward as the Roman Statute holds a number of validating clauses that with the right evidence, can put a stopper to these inhumane crimes. The following are examples of these.

Beginning with a short extract from the Preamble of the statute that states the vows of The State Parties to this Statute which writes that they are to be: "Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity" and "Recognizing that such grave crimes threaten the peace, security and well-being of the world."

It is exhaustingly obvious that the Preamble of the Rome Statute aims to abolish all the atrocities that are currently happening in Rohingya.

Advancing onto Part 2 of the Statute which concerns applicable law, Article 5 discusses "Crimes within the jurisdiction of the Court" which in this context, confers about the specific crimes committed in Rohingya in which its judgement will be decided by the Court.

Genocide is defined in Article 6, which states that "any of the following acts committed with intent to destroy" is considered to be genocide. In Article 6(a), it is defined as "killing members of the group." Article 6(b) defines it as "causing serious bodily or mental harm to members of the group." The Myanmar Government has evidently carried out both of these acts as displayed in Figure 1.

Table 2 Trauma events

	Myanmar	Bangladesh
Average number of trauma events experienced by Rohingya refugees in Bangladesh and Myanmar	**19.4**	**1.0**
Trauma event endorsement rate		
Exposure (i.e., hearing and/or seeing) to frequent gunfire	**98.6%**	**1.6%**
Witnessed destruction/burning of villages	**97.8%**	**2.0%**
Repeatedly exposed to violent images against Rohingya on websites (i.e., Facebook, RVision, TV, WhatsApp, etc.)	**95.3%**	**88.7%**
Forced to do things against religion (e.g., eat pork, remove cap/niqab/veil, burn/cut beard, etc.)	**94.9%**	**0.0%**
Threats against your ethnic group	**93.3%**	**0.6%**
Home destroyed	**93.1%**	**0.6%**
Witnessed dead bodies	**91.8%**	**2.8%**
Witnessed physical violence against others	**90.4%**	**1.4%**
Confiscation/looting of personal property	**88.2%**	**1.2%**
Murder of extended family or friend	**86.2%**	**0.2%**
**Follow-up to above item: Family member was killed by security forces*	***100.0%***	***N/A***
Threats against you or your family	**83.7%**	**1.6%**
Forced to flee under dangerous conditions	**83.7%**	**0.4%**
Extortion (i.e., paying money due to force or threats)	**83.1%**	**2.8%**
Forced to hide because of dangerous conditions	**75.5%**	**1.0%**
Death of family or friends while fleeing or hiding (e.g., not from violent injury like shooting or stabbing, but because of illness, lack of food, drowning etc.)	**70.6%**	**2.0%**
Witnessed sexual violence/abuse of others	**67.3%**	**0.8%**
Unjust detainment	**63.3%**	**1.4%**
Present while security forces forcibly searched for people or things in your home (or the place where you were living)	**56.9%**	**1.2%**
Torture (i.e., while in captivity you received deliberate and systematic infliction of physical or mental suffering)	**55.5%**	**1.4%**
Forced labor (i.e., forced to do work that you could not decline, for example, patrolling, working for security forces, etc.)	**48.6%**	**0.2%**
Beaten by non-family member	**46.1%**	**1.6%**
Turned back while trying to flee	**46.1%**	**0.2%**
Sexual abuse, sexual humiliation, or sexual exploitation (e.g., coerced sexual acts, inappropriate touching, forced to remove clothing, etc.)	**33.3%**	**1.0%**
Murder of immediate family member (i.e., father, mother, sister, brother, husband/wife, or children)	**29.5%**	**0.0%**
**Follow-up to above item: Family member was killed by security forces*	***99.3%***	***N/A***
Physical injury from being intentionally stabbed or cut with object (e.g., knife, axe, sword, machete, etc.)	**29.4%**	**1.8%**
Disappearance of family member	**19%**	**0.2%**
Beaten by spouse or family member	**14.5%**	**3.0%**
Other serious physical injury from violence (e.g., shrapnel, burn, landmine injury, etc.)	**9.2%**	**0.2%**
Forced Abortion (only female)	**5.4% (of female respondents)**	**0.0%**
Physical Injury from being shot (bullet wound)	**5.1%**	**0.2%**
Rape by security forces (i.e., forced to have unwanted sexual relations with security forces)[g]	**1.6%**	**0.0%**
Rape by others (i.e., forced to have unwanted sexual relations with a stranger, acquaintance, or family member)	**1.2%**	**0.0%**

Fig. 1 Table displaying trauma events collected in study.

Legal Intervention (cont.)

Article 7 of the Rome Statute has outlined the forms of crimes that constitute crimes against humanity such as apartheid, torture, rape, deportation, persecution against identifiable group and any other inhumane act. The key element is that these acts are committed in a widespread and systematic manner.

The legal application of Article 7(h) is demonstrated in the case of The Gambia v. Myanmar [2020] ICJ Rep 3 in 2019. As mentioned previously, the issue of Myanmar not being a state party in the ICC is the main cause for the failure of the prosecution of the Myanmar Government.

In this case, the ICC use the Convention on the Prevention and Punishment of the Crime of Genocide 1984 which contained a provision allowing the court jurisdiction to settle disagreements regarding how the convention should be implemented :

Article 9: “Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

The Gambia (The Agent of the Government of the Republic of Gambia) insists that the acts carried out by the Myanmar Government “were intended to destroy the Rohingya as a group, in whole or in part, by the use of mass murder, rape and other forms of sexual violence, as well as the systematic destruction by fire of the villages, often with inhabitants locked inside burning houses.” In the news article “Rape Prosecution Must Drive the New Rohingya Genocide Court Case” by Hutchinson, it is stated that “The Human Rights Council has published detailed reports on the actions of the security forces, showing they amount to war crimes, crimes against humanity and genocide.”

Furthermore, more proof of the systematic use of sexual violence as a strategy of genocide can be seen in the number of pregnant women and new moms who entered the refugee camps in Bangladesh after the genocide in Rwanda. These facts alone justify the definition in Article 7(g) and more recently in August 2019, the UN Independent International Fact-Finding Mission on Myanmar issued a report displaying that Myanmar's armed forces have also utilized sexual violence against males, boys, and transgender individuals in addition to women and girls.

The Human Rights Watch News Article: “Developments in Gambia’s Case Against Myanmar at the International Court of Justice (ICJ)” explains this case in depth. In it it states: Myanmar’s defence stands on the argument that “Gambia lacked standing because it filled its application as a “proxy” for a regional body the Organisation for Islamic Cooperation, while the ICJ was established to preside over disputes between states.” Additionally it is also stated that despite this, the Court confirmed that the case was in fact filed by Gambia and therefore its support from other states or intergovernmental organisations did not affect its case in court. Myanmar’s additional defence was that they believed “there was no dispute between Gambia and Myanmar on the interpretation, application, or fulfillment of the Genocide Convention, as required by Article 9 of the convention.” However once again, the Court rejected this and stated that “a dispute did not need to be explicit.”

Thirdly, Myanmar contended that because the ICJ is a UN organ, states cannot bring cases before it because of its reservation to Article 8 of the Genocide Convention, which allows states parties to request action from competent UN organizations to stop and prevent genocide. The court did come to the conclusion that Article 9 unambiguously grants the ICJ power to hear cases involving the Genocide Convention's applicability. The court determined that a reservation to Article 8 does not apply to Article 9 since the two articles' aims are distinct from one another. The judge remarked that Myanmar had not objected to Article 9. Last but not least, Myanmar maintained that Gambia lacked standing—the legal right to file a claim—because it was unaffected by the alleged violations of the Genocide Convention. The court concluded that ensuring the prevention and punishment of acts of genocide is in the interests of all governments parties to the convention. In order to enforce conformity with the convention, any state, not only those impacted by the violations, may file a claim against another.

Legal Intervention (cont.)

Fortunately, on January 23rd of 2020, The ICJ issued temporary measures ordering Myanmar to stop all genocide against the Rohingya, to make sure that the military and other security services do not carry out genocide, and to take action to protect any evidence that may be relevant to the case. A report on Myanmar's implementation and compliance with the temporary measures was mandated by the court, and it must be submitted every six months after that. The parties to the case are required to abide by the ICJ's directives for provisional measures. Before the February 1, 2021 coup, the Myanmar government submitted two implementation reports, and according to publicly available information, the junta has kept up communication with the court over the reporting requirement. Gambia is allowed to examine these reports, respond to them, and find any ongoing violations of these rules.

Although Rohingya advocacy groups have demanded that the findings be made public, only the court and the parties to the case are permitted to review them. Human Rights Watch has continued to record abuses against the Rohingya still present in Myanmar despite the temporary measures. Approximately 600,000 Rohingya are still confined to camps and communities in Rakhine State, where they lack the ability to move around or access to sufficient food, healthcare, education, and employment opportunities. Since 2012, arbitrary detention camps with open air have been used to hold 130,000 Rohingya in central Rakhine. Persecution, apartheid, and severe loss of liberty are most certainly crimes against humanity committed by the junta. Since the coup, Rohingya have even more limitations on their freedom of movement and are subject to severe penalties for trying to flee Rakhine State. Other UN organisations might take action to carry out the ICJ's ruling and, consequently, raise the political price Myanmar would pay if it disobeyed. Orders for provisional measures issued by the court are immediately transmitted to the UN Security Council in accordance with Article 41(2) of the ICJ Statute (UNSC). To address any of the signs of genocidal intent listed in the Fact-Finding Mission's 2018 report, the Security Council could take effective action, such as by passing a binding resolution. A Security Council resolution may, for instance, order Myanmar to abolish restrictions on Rohingya freedom of movement, remove pointless barriers to aid reaching Rakhine State, repeal discriminatory laws, and outlaw actions that deny Rohingya access to livelihoods, healthcare, and education. The Security Council, however, is at a standstill over Myanmar.

Should the ICJ rule in favour of Gambia, it will be able to provide victims with some forms of compensation and relief. All UN member states are required by Article 94 of the UN Charter to follow the rulings of the ICJ in matters in which they are parties, and in the event that they do not, the UN Security Council may "decide upon actions to be taken to give effect to the judgement." Gambia has requested that the ICJ rule that Myanmar has violated and will continue to violate its obligations under the Genocide Convention; that it must stop all current acts of genocide and fully uphold those obligations going forward; and that it must ensure that those accountable for genocide are brought before an appropriate tribunal. Additionally, the "safe and dignified return" of individuals who have been forcibly relocated, "respect for their full citizenship and human rights, and protection against discrimination, persecution, and other related acts," as well as "reparations to Rohingya victims of genocidal atrocities." Gambia has also requested assurances and pledges from Myanmar that it won't continue to violate the Genocide Convention.

This explores just one of the injustices that Rohingya refugees face. The article “Rohingya Crisis in Myanmar: Seeking Justice for the “Stateless” by AKM Ahsan Ullah covers the varied areas of injustices that they endure. The 4 “Dimensions of Injustices'' are: “Political isolation, Financial deprivation, Freedom curtailed and Socially cornered.” In the article, Ahsan Ullah interviews Mr Kalam, a Rohingya Refugee. Previously, this article covered the several implications that Rohingya refugees face that resulted in severe mental health issues and the several legal attempts to resolve these problems from arising again.

Direct Steps taken to prevent further Mental Health declinations in Rohingya Refugees

This Author is now moving on to more direct steps taken to prevent the additional deterioration of mental health of the Rohingya refugees. This part will focus on the legal steps taken by Legal Action Worldwide ("LAW"). The LAW launched its Rohingya Crisis program with the intention of guaranteeing the inclusion of the Rohingya in significant ways in the ongoing international justice proceedings related to how they are treated in Myanmar- their own form of empowerment. The LAW also "undertakes innovative strategic litigation on behalf of more than 500 Rohingya clients, and ensures Rohingya voices are prioritised throughout its advocacy." Also, the LAW works closely with survivors of sexual and gender-based violence. The LAW supports Rohingya Refugees through several different organisations.

The LAW recognises the implication sexual violence will have on victims' mental health and therefore have set up the program: "Survivor Advocates: Building Capacity for Community Empowerment." The "clearing operations" in 2017 were characterized by sexual assault, and many refugees in the Kutupalong camp still deal with the trauma of that abuse today. The Rohingya community and LAW collaborate to reduce the cultural stigma and feelings of shame that keep victims from getting the legal, medical, and psychosocial care they require to deal with their trauma. 80 Rohingya (50 women and 30 men) are currently receiving regular training from LAW to serve as a network of Survivor Advocates. Advocates for survivors help and support Rohingya community members, particularly those who have experienced sexual and gender-based abuse in the camps. In order to help LAW's clients receive the necessary assistance, Survivor Advocates are taught to lead community awareness events and give legal information on the current international justice procedures relating to the Rohingya Crisis.

Information regarding the International Criminal Court inquiry and the International Court of Justice lawsuit between The Gambia and Myanmar on the application of the Convention on the Prevention and Punishment of the Crime of Genocide is included in the course in a clear, current manner. Additionally, LAW educates Survivor Advocates about Sexual and gender based violence ("SGBV"), gender equality, and the legal protections for victims of SGBV provided by international law. A secure environment is also offered to Survivor Advocates so they may talk about grassroots initiatives to stop SGBV inside the camps.

Similarly, LAW have started "The Myanmar National Human Rights Commission On behalf of one of its clients, Setara, whose husband was one of 10 men slain during the "Inn Din Massacre" LAW and McDermott, Will and Emery LLP filed the first complaint by a Rohingya complainant with the Myanmar National Human Rights Commission (the Commission) on December 10, 2020. According to the complaint, Ms. Begum's rights were gravely violated due to major shortcomings in the investigation of this crime and the punishment of those responsible. According to international standards, the complaint asks the Commission to propose $2 million in compensation for Setara and the Rohingya community. Myanmar frequently claims that local remedies (national systems) are enough to resolve human rights abuses and actions that qualify as international crimes committed against the Rohingya; Setara's case challenges this claim.

LAW have lastly launched their "Rohingya mission to The Human Rights Council." The first female Rohingya harmed directly by the 2017 "clearing operations" by the Myanmar Armed Forces (Tatmadaw) to testify before the Human Rights Council in Geneva was Hamida Khatun, a Shanti Mohila member, on Monday, March 11. Legal Action Worldwide was happy to assist Hamida in this momentous occasion. Hamida spoke of leaving Northern Rakhine State after her community was attacked and family members were killed in her testimony. She emphasized that hundreds of thousands of Rohingya are presently living in destitute refugee camps in Bangladesh and that her situation is not unusual. Three main demands from Shanti Mohila were presented to the world community by Hamida: access to justice, including restitution; a safe and secure return home, including citizenship; and justice.

Conflicts and Difficulties

This section focuses on “Two Tell-tale Perspectives of PTSD: Neurobiological Abnormalities and Bayesian Regulatory Network of the Underlying Disorder in a Refugee Context.

Several issues arise in regards to the ICC v Gambia case. Given that the ICC's "interference" in Myanmar's affairs gives the state and military plenty of justification to support their allegations of threats to national sovereignty and foreign influence, there is local resistance. The International Criminal Court does not have direct jurisdiction over crimes committed on Myanmar's territory since Myanmar has not ratified the Rome Statute, but rather only if the UN Security Council decides to ask the ICC to start an investigation. This has not happened, though. Instead, the ICC has determined that there is sufficient reason to open a preliminary inquiry because of the cross-border implications the Myanmar-related events have had on Bangladesh, a signatory to the Rome Statute. This increases the prospect that the ICC investigation, among other high-profile findings, might be unproductive in the long term since, in particular, national authorities believe that the ICC is exploiting the Rohingya issue as a ruse to expand its authority globally. Any attempt to bring the accused offenders before the ICC will face significant obstacles due to the inability to access Union of Myanmar territory and the government's unwillingness to cooperate. Without these, a thorough investigation and even a trial cannot be ensured. Indeed, some commentators have questioned whether the Rohingya would be satisfied if those responsible for the atrocities were only tried for the crime against humanity of forcible deportation and not charged with genocide, murder, or sexual violence due to the investigation's limited scope thus far and its potential outcomes.

Additionally, there is a chance of overtaxing the ICC's resources and, of course, further enraging non-members. Any attempt to bring the accused offenders before the ICC will face significant obstacles due to the inability to access Union of Myanmar territory and the government's unwillingness to cooperate. Without these, a thorough investigation and even a trial cannot be ensured. Indeed, some commentators have questioned whether the Rohingya would be satisfied if those responsible for the atrocities were only tried for the crime against humanity of forcible deportation and not charged with genocide, murder, or sexual violence due to the investigation's limited scope thus far and its potential outcomes. Additionally, there is a chance of overtaxing the ICC's resources and, of course, further enraging non-members.

The result of this is made public. The recent memorandum of agreement between UN agencies and the government have been hailed as a triumph in advancing political discourse and enlarging the sphere of influence of a historically reclusive country, but they have not yet had any discernible effect on the situation in Rakhine. The Special Rapporteur on Human Rights, as well as the Rohingya themselves, have strongly opposed the efforts by Myanmar and Bangladesh to facilitate repatriations, citing concern that such efforts could restart the cycle of abuse and violence in the absence of more overt and obvious steps to protect their rights and address the root causes. In contrast to the appearance of improved access to North Rakhine, which is regulated by weekly permissions that compel humanitarian players to tread gingerly, Rohingya camps that are still in Myanmar have been institutionalised into communities. Despite the fact that access for humanitarian purposes is now legally allowed, the breadth of the access is still limited compared to before the crisis.

Conclusion

According to the impartial United Nations fact-finding mission, the military of Myanmar committed atrocities with "genocidal intent." According to a different UN study, they are accountable for war crimes and crimes against humanity committed nationwide against (ethnic) minorities.

The Office of the Prosecutor's authority (“OTP”) and right to conduct an inquiry were the main legal defences raised. Preliminary investigations, as defined by the Rome Statute, are a process of assessing the evidence that is currently available to decide if there is a legitimate foundation for an inquiry. In this instance, the OTP investigation aims to compile the evidence required to indict those who committed crimes against the Rohingya on a global scale.

Legally punishable or not, the acts of violence of the Myanmar Government have negatively impacted thousands of victims' mental health. These are the facts and if organisations similar to LAW continue to empower these victims, the decline in mental health could in fact decrease.

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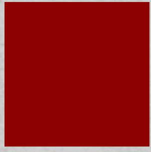

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