



## Article

# “There We Are Nothing, Here We Are Nothing!”—The Enduring Effects of the Rohingya Genocide

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**Abstract:** Debates continue as to whether crimes committed against the Rohingya in Myanmar amount to genocide. This article will address this question, framed in the broad context of the Rohingya victimisation in Myanmar, but also the narrow context of the Rohingya refugee lived experience in Malaysia. The authors contend that the Rohingya are victims of genocide, and this is in part evidenced by the destruction of the Rohingya culture, including through assimilation (and therefore loss of group identity) in refugee destination countries, such as Malaysia. This analysis is based on the consideration of theories of genocide process and definition, international law, and qualitative data collected during extensive anthropological fieldwork by one of the authors with urban refugees in peninsular Malaysia.

**Keywords:** Rohingya; genocide; Malaysia; Myanmar; cultural genocide

## 1. Introduction

Myanmar’s Rohingya crisis became worldwide news in August and September 2017 after an astonishing number of Rohingya refugees fled Myanmar into Bangladesh (UN Urges Myanmar 2017). Within this period, in less than three weeks, up to 400,000 Rohingya refugees fled Myanmar (Das 2017). From August 2017 to August 2018, the United Nations High Commissioner for Refugees (UNHCR) estimates that over 723,000 Rohingya fled Myanmar. In 2014, 1.4 million Rohingya were living in Rakhine state in Myanmar; estimates place only 150–350,000 remaining in Myanmar. Those who remain are confined in detention camps, ghettos, and prison villages. The mass exodus of the Rohingya from Myanmar was caused by their subjugation to mass human rights violations and atrocities, including the burning of villages and crops, executions, and sexual violence.

Yet the Rohingya refugee crisis is not new. The Rohingya have been persecuted in Myanmar for decades. More than one million Rohingya have fled Myanmar since the 1970s (International Human Rights Clinic 2009). In 1978 and 1991, over 200,000 and over 250,000, respectively, Rohingya fled Myanmar after being attacked by the military, subject to killings, rape, and burning villages (Human Rights Watch 2013, 2019). The Office of the United Nations High Commissioner for Human Rights (OHCHR) has declared that “discrimination against the Rohingya [in Myanmar] has been endemic for decades” (OHCHR 2017). Previous waves of displacement and return were marked by violence and growing suspicion towards Rohingya by the Rakhine-based Buddhists and the national (military and civilian) governments.

One of the issues surrounding the crimes committed against the Rohingya is whether these crimes amount to genocide. This very question is being asked in a case brought by The Gambia against Myanmar, in the International Court of Justice (ICJ), <https://www.icj-cij.org/en/case/178> (O’Brien 2020; Becker 2020), a ruling that, if it finds genocide has been committed against the Rohingya, will be

momentous, and confirmation in the legal arena that the crimes are genocide<sup>1</sup>. In the meantime, the debate continues, with Myanmar arguing that any crimes that may have been committed may be war crimes or crimes against humanity, but certainly not genocide<sup>2</sup>. This article will briefly address the question of whether or not the crimes amount to genocide<sup>3</sup>, framed in the broad context of the Rohingya victimisation in Myanmar, but also the narrow context of the Rohingya refugee lived experience in Malaysia. The authors contend that what is occurring to the Rohingya is genocide, and this is in part evidenced by the destruction of the Rohingya culture, including through assimilation (and therefore loss of group identity) in refugee destination countries such as Malaysia. This analysis is based on the consideration of the theories of genocide process and definition, international law, and qualitative data collected during extensive anthropological fieldwork by the author Hoffstaedter with urban refugees in peninsular Malaysia<sup>4</sup>. While this article refers only to a small number of individual stories, the anthropological interviews and observations carried out over a 10-year period revealed that the experiences outlined in the examples in this article are reflective of the experience of the vast majority of the interview subjects and families observed. Thus, the examples contained in this article are representative of the experience of at least the majority of Rohingya refugees in Malaysia. These interviews were conducted over a period of several extensive field visits from 2009, and include a one-year extended period of fieldwork from 2015–2016. During this time around 80 people were interviewed, oral histories collected, and participant observation conducted at family gatherings, community events, and everyday activities, such as going shopping or attending workplaces. Extensive semi-structured interviews with individuals, families, and community organisers and participant observation with Rohingya refugees were conducted in the Klang Valley, Johor, and Penang. Initial contacts were made through community organisations and refugee service providers, with the snowballing technique utilized to expand the sample size. In order to find a wider distribution of experiences, the author also attended numerous community activities and events to inform a range of Rohingya refugee communities across peninsular Malaysia about the research project and recruit interviewees. Working with refugees always engender several ethical and practical issues, such as the potential danger to refugees working with a foreign researcher and making sure participants understand the confines of a research project and the limitations of researchers to help refugees. We therefore continually worked with and trained refugee community research assistants to assist with interviews, translation, and interviewee recruitment. The interviews were conducted with the original purpose of learning more about the everyday lives of those in legal limbo in Malaysia, but the data emerging from the interviews revealed a lived experience directly connected with the violence perpetrated in Myanmar and a distinct loss of Rohingya identity that forms a continuation of the genocide process begun in Myanmar.

The discussion of the destruction of culture in genocide is not new, although the popularity of the notion in law, practice, and scholarship have had peaks and troughs (Bilsky and Klagsbrun 2018). However, we present a novel argument: that the loss of culture experienced by refugees from a genocidal state is part of the genocide process. This article presents one group of Rohingya refugees (those in Malaysia) as a case study, on which to test the theory that genocide refugees continue to lose their group identity in their refugee state.

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<sup>1</sup> There is also an investigation underway by the Office of the Prosecutor of the International Criminal Court (ICC), although it is unclear whether genocide will form part of any charges eventually brought. For more detail on the ICC investigation, see (Akhavan 2019; Wheeler 2019; Vagias 2018, 2019; Colvin and Orchard 2019).

<sup>2</sup> See the Verbatim records 2019/19 (11 December 2019) and 2019/21 (12 December 2019), *The Gambia v Myanmar*, <https://www.icj-cij.org/en/case/178>.

<sup>3</sup> For a discussion of the framework of genocide in the Rohingya context, see (Van Schaack 2019)

<sup>4</sup> University of Queensland Ethics Approval No. 2015000349, granted April 2015. To protect the identity and safety of interview subjects, research data are not shared.

## 2. Genocide as a Social Process

Under the Genocide Convention and the Rome Statute of the International Criminal Court (Rome Statute), the definition of genocide is limited to the destruction, in whole or in part, of a national, ethnical, racial, or religious group.<sup>5</sup> Thus, when genocide is committed, it is done so to eliminate (in whole or in part) a group of people based on their nationality, ethnicity, race, or religion.<sup>6</sup>

As Powell has noted, killing *a group* is not killing multiple individuals, but rather killing “something more than or other than the sum of the individuals who belong to it ... genocide is the killing or destruction of that ‘something more’.” (Powell 2007). That is, the ‘genos’ in genocide “must connote a type of social figuration. The collective object ... must ... have the general property of being a dynamic relational network formed through practical social interactions in historical time.” (Powell 2007). Feierstein has referred to genocide as “a specific technology of power for destroying and reorganizing social relations”, noting that it “is impossible to commit genocide without first building models of identity and Otherness” (Feierstein 2014).

Card describes genocide as social death, different from simply killing a large number of people through, for example, terrorism or war (Card 2010). Social death comes through the annihilation of social vitality, which only exists through relationships, including those mediated through social institutions such as religion. Members of the group lose their context and identity that shapes their lives.

In genocides, survivors experience a social death, to a degree and for a time. Some later become revitalized in new ways; others do not. Descendants of genocide survivors, like descendants of slaves who were kidnapped, may be “nationally alienated”, no longer able to pass along and build upon the traditions, cultural developments (including languages), and projects of earlier generations. (Card 2010; Lederman 2017)

The International Criminal Tribunal for the former Yugoslavia Appeals Chamber has specifically noted that the goal of *génocidaires* is “to deprive humanity of the manifold richness its nationalities, races, ethnicities and religions provide”; in other words, it is the group as a cultural concept, a social structure, that *génocidaires* seek to eliminate.<sup>7</sup> In the German case of *Jorgić*, the *Bundesverfassungsgericht* [Federal Constitutional Court] held that the genocidal intent to destroy has “a broader meaning than only physical-biological annihilation”, including “the annihilation of a group as a social unit with its special qualities, uniqueness and its feeling of togetherness, not exclusively their physical-biological annihilation”.<sup>8</sup> This interpretation was upheld by the European Court of Human Rights, finding:

The domestic courts’ interpretation of “intent to destroy a group” as not necessitating a physical destruction of the group, which has also been adopted by a number of scholars ... [and] is therefore covered by the wording, read in its context, of the crime of genocide in the [German] Criminal Code and does not appear unreasonable.<sup>9</sup>

The Court observed that

domestic courts did not construe the scope of that offence narrowly. They considered that the “intent to destroy” a group within the meaning of Article 220a of the Criminal Code, as interpreted also in the light of Article II of the Genocide Convention, did not necessitate

<sup>5</sup> Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature December 9, 1948, 78 U.N.T.S. 277 (Genocide Convention), art II; Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 U.N.T.S. 90 (Rome Statute), art 6

<sup>6</sup> For a discussion of ‘groups’ in the purview of genocide, see (Schabas 2009).

<sup>7</sup> Prosecutor v Krstić, Case No IT-98-33-A, Appeals Judgment (23 April 2004), <https://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>, [36].

<sup>8</sup> *Jorgić*, Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 2 BvR 1290/99, 30 April 1999, [4].

<sup>9</sup> *Jorgić v Germany*, 2007-III Eur. Ct. H.R. 263 [105].

an intent to destroy that group in a physical or biological sense. It was sufficient that the perpetrator aimed at destroying the group in question as a social unit.<sup>10</sup>

In his treatise *Axis Rule in Occupied Europe*, Lemkin delineated religious techniques, political, cultural, economic, biological, physical, and moral destruction as a specific part of genocide (Lemkin 1944). Admittedly, in this specific discussion, Lemkin was only referring to the conduct of Nazi Germany, rather than undertaking a comparative assessment of various genocides. However, it is striking that Lemkin had such a comprehensive perspective of what constituted genocide more generally, although not surprising, given his observations and experiences of the Armenian Genocide and the Holocaust (Frieze 2013). Lemkin did not advocate for cultural destruction as a sole form of genocide but presented this as one of the key elements of genocide (Moses 2010). That said, Lemkin positioned cultural destruction as a precursor to physical and biological destruction<sup>11</sup>. Here, we argue that cultural destruction can also continue after (or parallel with) the physical and biological crimes.

Destroying culture is an essential element of destroying a group, in whole or in part: destroying that group as a social structure. Culture—including language, religion, and education—and the freedom to practice it are substantial elements of this social structure or figuration, and thus a major contributor to what must be destroyed to destroy *a group* through genocide. Rather than a separate concept of ‘cultural genocide’, we see the essential destruction of *a group* as including the destruction of their identity, not just their physical elimination. Indeed, to fall under the ambit of the Genocide Convention, a group is required to have a perspicuous *identity*. “Genocide not only intentionally strips individuals of the ability to participate in social relationships, activities, and traditions, it aims to destroy the possibility of those particular kinds of relationships, activities, and traditions for others in the future” (Card 2010). For survivors, there is alienation, a deracination, from their people—their *group*.

Genocide is defined as acts committed with the intent to destroy a group in whole or in part. The definition found in the Genocide Convention and the Rome Statute states that the acts must be committed “with intent to destroy”. One of the criminal acts of genocide is the infliction of conditions of life calculated to bring about “the physical destruction in whole or in part” of the group. The fact that the umbrella definition does not include the word ‘physical’ but one of the specific crimes does, indicates that an interpretation of the “intent to destroy” can be—and should be—broader than simply physical destruction<sup>12</sup>. International and domestic case law has specifically referred to the bonds of group members as a defining element of the group, “as well as such aspects of the group as its members’ culture and beliefs”, hence the ‘intent to destroy’ “cannot sensibly be regarded as reducible to an intent to destroy the group physically or biologically”.<sup>13</sup>

In addition, the individual crimes of genocide are not all crimes that result in the death of the individuals of the group: namely, causing serious bodily or mental harm; imposing measures intended to prevent births; and forcible transfer of children. Genocide does not have to be the physical destruction of a group and is an in-depth, long-term operation comprising multiple and varied offences.

For the Rohingya, the destruction has been both social and physical. The denial of education, as well as the ability to practice their cultural rites fully, including religious rites, has meant that the Rohingya culture is disappearing. Rohingya are denied the ability to educate in their own language. A more in-depth retention of the language and the culture that is transmitted through such education is thus impossible. This disappearance of language and culture is also caused by the dispersal of

<sup>10</sup> Jorgić v Germany, [104].

<sup>11</sup> Lemkin wrote that “[p]hysical and biological genocide are always preceded by cultural genocide . . .”; Raphael Lemkin, ‘Memorandum on the Genocide Convention’, AHJS, P-154, Box 6, Folder 5, cited in (Moses 2010), p. 34.

<sup>12</sup> For further discussion on treaty interpretation in the context of the crime of genocide, see (Nović 2015).

<sup>13</sup> *Prosecutor v Krajišnik (Trial Judgment)*, International Criminal Court for the Former Yugoslavia, Trial Chamber I, Case No IT-00-39-T, 27 September 2006 [854], footnote 1701. See also (Quigley 2006) (John Quigley, *The Genocide Convention: An International Law Analysis* (Aldershot: Ashgate, 2006), pp. 103–5. for other cases referring to destruction of a group as a social entity.

Rohingya to many countries in the world as refugees, fracturing the Rohingya as a group and thus disrupting and ending their ability to be a cohesive cultural group.

### 3. Genocide of the Rohingya in Myanmar

The crimes committed against the Rohingya since 2017 are not unfamiliar ([Human Rights Council 2020, 2019a, 2019b, 2018](#); [Amnesty 2018](#); [Smith 2018](#); [Green et al. 2015, 2018](#); [OHCHR 2017](#); [Lowenstein 2015](#); [Human Rights Watch 2013, 2019](#); [International Human Rights Clinic 2009](#); [Ibrahim 2018](#); [Wade 2019](#); [Lee 2019a, 2019b](#); [Southwick 2015, 2018](#); [Zarni and Cowley 2014](#)). They have only escalated in intensity and number, with the perpetrators doubtless spurred by the impunity with which they have been able to commit such atrocities for so long ([Barber 2019](#); [Lee 2019a, 2019b](#); [Southwick 2018, 2015](#); [Zarni and Cowley 2014](#)).

United Nations (UN) officials such as the Secretary General and the High Commissioner for Human Rights have called the crimes against the Rohingya “ethnic cleansing” and crimes against humanity ([Besheer 2017](#); [UN Rights Chief 2017](#)). When the crimes against the Rohingya escalated in 2017, the UN initially avoided the term “genocide”, most likely because of the protection obligations that this triggers under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). However, in 2018 an Independent International Fact-Finding Mission on Myanmar (‘the Mission’) reported to the Human Rights Council that “the factors allowing the inference of genocidal intent are present” ([Human Rights Council 2018](#)). Since then, the Mission has published subsequent reports which confirm genocide and call for Tatmadaw generals to be held accountable for atrocities including genocide ([Human Rights Council 2019a, 2019b](#)). One recent report focused on sexual and gender-based violence, which the Mission specifically stated were acts of genocide and demonstrated genocidal intent to destroy the Rohingya people ([Human Rights Council 2019a](#)).

Other reports have found genocide to be taking place against the Rohingya, or, at the very least, “genocidal conditions”, with the use of the term significantly increasing after August 2017 ([Green et al. 2015, 2018](#); [Lowenstein 2015](#); [Smith 2018](#)). Myanmar’s military government has systematically sought and acted to remove the Rohingya minority from Myanmar and overall, from existence.

Rohingya are a minority group living in the Rakhine State of Myanmar, located on the western coast, along the border with Bangladesh, and close to India. Rohingya are referred to as ‘Bengali’—in this specific context, intended as a derogatory term—and, despite evidence of their residence in Myanmar for centuries, are denied citizenship and the participatory rights that come with that privilege such as participating in the public service. Since 1982, Rohingya have been denied citizenship based on their omission from the government list of ‘authorised’ minority groups living in Myanmar. From this, they are denied the right to participate in political life, and the right to vote. The Myanmar government has refused to issue Rohingya children with birth certificates since 1994. In 2015, the Population Control Healthcare Bill was passed, aimed to specifically restrict the reproductive freedoms of Rohingya.

Religious practice in Myanmar has become restricted and difficult with the emphasis on the ‘national religion’ (Buddhism), and reproductive rights have been curtailed on the basis of religion. Even some Buddhist monks promote anti-Rohingya sentiment and participate in violence, under the guise of ‘religious purity’.

Violations of Rohingya human rights are pervasive and daily. Rohingya’s freedom of movement is restricted; they are herded into detention camps and ghettos and are not permitted to travel around Myanmar without a travel permit. Thus, they are isolated and segregated. As a consequence of their lack of citizenship, their employment rights and options are severely limited, and they are denied access to healthcare and education. Food access is also inadequate, and in some cases impossible after government-led or sanctioned violence has included the burning of crops and stealing or killing of herd animals.

In addition, long-term mass violence has been carried out by Myanmar military, police, and sanctioned militia, including instances of organised massacres accompanied by sexual violence.



Massacres and executions are carried out by shooting (both random firing and targeted executions), stabbing, burning, and beating. Sexual violence is widespread and endemic, with one study finding 52% of women interviewed were victims of sexual violence (OHCHR 2017). Perpetrators are usually military, and the assault often carried out is gang rape.

Rohingya property is also targeted, with buildings, crops and whole villages burned, using petrol and rocket launchers. Sometimes buildings are burned with people still inside. Rape and burning of villages have been significant and substantial amongst the crimes committed since 2017.

For those that end up in camps, overcrowding leads to hunger and disease. Without access to healthcare, chronic illnesses such as respiratory illnesses, diarrhoea, diphtheria, and infant malnutrition are widespread (Islam and Nuzhath 2018). Due to an inability for neighbouring states, such as Bangladesh, to provide resources to care for Rohingya refugees and the lack of access for humanitarian aid agencies, such as the UNHCR, to Rohingya refugees within Rakhine state, the Rohingya refugee crisis has resulted in increased exposure to crowded conditions and subsequent communicable diseases. Refugees have no access to education and employment, resulting in a long-term stagnation of Rohingya development, and the potential of radicalization (Baykan 2019). The desperation continues for the refugees who are not in camps, but live in other countries, as embodied in this quote from a 23-year old Rohingya woman in Malaysia:

And the people are not in peace. ( ... ) they're thinking about food all the time. I don't know whether I will be killed today, whether I will be arrested or I can eat food twice ... So, this happens since 1942, the genocide started since 1942. So now it's almost after 60 years, the whole nation became so uneducated not even 1% of the entire nation is educated. And they just think of the food, they just think of the protection. So, the women also became like that. Even if we ask any woman, any Rohingya refugees, if you ask why you came to Malaysia? You know what they will say? "Because we're not getting food." They will say that because they don't know, they're so innocent that they don't know why they're persecuted. This is the main problem. (Interview with 23-year-old Rohingya woman in Malaysia, 2017)

Along with various NGOs and the UN Fact-Finding Mission, the authors take the view that what is taking place against the Rohingya is genocide. All crimes of genocide are being carried out: killing members of the group (e.g., executions); causing serious bodily or mental harm to members of the group (e.g., rape, beatings); deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (e.g., isolation and segregation, limiting access to food and healthcare); imposing measures intended to prevent births within the group (e.g., legal restrictions on reproduction); and forcibly transferring children of the group to another group (e.g., forcible displacement of Rohingya including children). These crimes are being carried out with the specific and targeted intent to destroy the Rohingya, in whole or in part.

#### 4. Rohingya in Malaysia

Hundreds of thousands of Rohingya have been exiled. In exile, Rohingya continue to experience this denial: for example, there have been suggestions that India intended to expel the 40,000 Rohingya refugees in its territory—because they are Muslim (Rahman 2018).

Many Rohingya have fled to Bangladesh, but with a lack of support networks there, they have also moved on to further regions, such as Malaysia and Saudi Arabia. In most of these places, persecution and discrimination continue. While Rohingya are persecuted in Myanmar for their ethnicity, their Islamic religion is also a key factor in discrimination, exclusion, and the desired destruction of their group.<sup>14</sup>

<sup>14</sup> The OHCHR has noted the discrimination and persecution as ethnic and religious: "The information gathered by OHCHR indicates that the victims of killings, rape and sexual violence, arbitrary detention, torture, beatings and other violations outlined in this report, were targeted based on their belonging to a particular ethnicity and religion" (OHCHR 2017).

In Malaysia, meanwhile, Rohingya expect sanctuary as they see Malaysia as a Muslim (majority) country where they can freely practise their religion. However, Rohingya have not been able to establish themselves as a self-governing and self-sufficient refugee community in the eyes of either the UNHCR or the Malaysian government.<sup>15</sup> Attempts at integration have been short-lived and Rohingya remain stateless and therefore illegal in the eyes of Malaysian immigration law, and thus subject to discrimination and harassment by state authorities. Rohingya have been fleeing Myanmar to Malaysia for several decades, in some cases since the 1970s. When small numbers of Rohingya began arriving in Malaysia in the 1990s, they were well received and even obtained six-month work permits (Coursen-Neff 2000). This led the UNHCR to see local integration as a possible outcome for Rohingya. In 2004, the Malaysian government announced a plan to issue 10,000 temporary work visas to Rohingya in parliament (Cheung 2011). In 2005, Malaysia provided these temporary residence and work passes, also called IMM-13, to persons of concern from the Indonesian Province of Aceh, thus enabling them to access the Malaysian labour market legally and live in Malaysia legally. By 2006 the Malaysian authorities confirmed that this approach would be extended to refugees from the Northern Rakhine State in Myanmar (UNHCR 2006). However, just days into its implementation, the registration process was abruptly halted amidst corruption claims (Cheung 2011). Since then, there has been no government-led registration or regularisation program for Rohingya.<sup>16</sup>

It's just that when you are in another country ... people of the society, the police, everyone will make you feel that you're a refugee and you don't have any dignity. Something like that. I felt that personally. (Interview with Rohingya woman in Malaysia, 2016)

Meanwhile, Malaysian society remains divided along widespread racial lines and processes of othering that code any newcomer into specific categories (Hoffstaedter 2011). Rohingya, whilst they share a common religious identity with Malay, are generally coded as the migrant worker "other". Often, they are referred to as 'Bangla', a derogatory term used disparagingly by locals for migrant workers from Bangladesh (Hoffstaedter 2019). Their physical appearance, language, and work often place them into the same category as these (temporary) foreign workers, who are regularly discriminated against and used as scapegoats by Malaysian politicians and society (Dannecker 2005).

Malaysia, like Bangladesh and Saudi Arabia, is not a state party to the 1951 Convention Relating to the Status of Refugees or Protocol Relating to the Status of Refugees (Refugee Convention),<sup>17</sup> which means that all refugees are deemed illegal immigrants by Malaysian authorities. Malaysia relegates all refugee status determination, registration, and support to the UNHCR and civil society actors.<sup>18</sup> However, UNHCR refugee registration can take years and their offices remain underfunded and unable to provide crucial support to refugees, such as education, healthcare, or shelter (Hoffstaedter 2015). This means Rohingya must find work themselves, pay for medical and education expenses, and blend into society as best they can to go unnoticed. This is a survival strategy in Malaysia, where police corruption and violent gangs target vulnerable people like refugees (Hoffstaedter 2015). In the city they face daily challenges as non-citizens, such as rent-seeking by authorities—police and immigration authorities target refugees as they know their illegal status precludes them from reporting

<sup>15</sup> As Malaysia is not a party to the Refugee Convention or Protocol, the UNHCR is solely responsible for refugee status determination and support. However, due to budget constraints, the UNHCR does not provide the kind of support camp-based refugees generally receive and the UNHCR strategy has been to support refugee communities in gaining self-sufficiency and governance to some degree. By now most refugee communities in Malaysia are self-governing and self-sufficient. Rohingya have had more struggles than most others in establishing trusted and well-managed refugee community organisations, see (Hoffstaedter 2015).

<sup>16</sup> For more context about why Malaysia has provided sanctuary to some refugees and not others and the role of religion and culture in this, see (Hoffstaedter 2017).

<sup>17</sup> Convention Relating to the Status of Refugees, opened for signature 18 July 1951, 189 U.N.T.S. 137 (Refugee Convention).

<sup>18</sup> The short lived Malaysian Pakatan Harapan government included accession to the Refugee Convention in its 2018 election manifesto, but never made any concrete actions to either ratify or even begin discussions on how the government could safeguard refugee protection in (Fortify Rights 2018).

such incidents. Police regularly demand bribes from refugees because they know where they live and when their paydays are. The police call it ‘duit kopi’—coffee money—and it is an integral means to bolster their own meagre wages. Reports of extortion, bribes, and threats of violence, as well as beatings, are daily occurrences in the refugee community. Thus, the deep fear of authorities and other communities in Myanmar continues to haunt Rohingya in Malaysia.

These fears are real, as refugees also face the threat of incarceration in detention centres, and “‘soft deportations’ have been known to take place along the Thai-Malaysia border where refugees, asylum seekers and irregular migrants have been unofficially refouled or deported from Malaysia, often into the hands of smugglers and traffickers” (Equal Rights Trust 2014). Large-scale raids are periodically conducted in urban centres to ‘weed out illegals’, often for domestic political gain. On more than one occasion, refugees have died in the process of trying to evade authorities in such circumstances. Furthermore, in the two years of 2016–2017, 118 people died in immigration detention centres—more than half of the dead were from Myanmar (Ananthalakshmi 2017). At the end of 2015, 2498 Rohingya were incarcerated in detention centres in Malaysia (Humanitarian Policy Group 2016). In interviews with detainees in Kuala Lumpur, Rohingya men and women complained about the poor conditions. Several mentioned the cramped detention cells that were often so overcrowded that detainees slept in shifts as floor space was so limited. Food provision in some detention facilities was also limited, with extortion and abuse by fellow detainees and wardens not uncommon.<sup>19</sup>

## 5. Loss of Rohingya Identity in Malaysia

We argue that genocide as a social practice against Rohingya continues in Malaysia. This does not mean that *a genocide* is happening in Malaysia, or that Malaysians or the Malaysian government are potentially committing genocide, but that the genocide process that begins in Myanmar continues to play out in Malaysia and creates a compound effect on the lives of Rohingya refugees in Malaysia. The experiences of genocide refugees are not distinct from the genocide itself, but rather, a continuation of the process of destruction of that group. Genocide perpetrators are well aware that an outcome of their genocidal violence is mass refugee migration into refugee camps and the dispersal of a diaspora around the world—in other words, the destruction of a community. In the country of refuge, sometimes this continued process happens in the form of physical harm as evidenced by the harsh conditions in Malaysian detention centres, but also in more insidious ways. In order to avoid the detention centres in the first place, Rohingya have to quickly assimilate into Malay (sian) society.

The first step in assimilation is to speak Malay as much as possible, especially in public. Assimilation is a common trope for diasporas settling in new homes trying to fit in and be accepted. Most diaspora research focuses on settlement, acculturation, and assimilation in the West, where migrants usually have status and some means to have their identity, culture, language, or other identifying traits recognised in wider society (Schiller 2005). However, Rohingya in Malaysia have no such status; the lack of status is precisely what drives many to use assimilation as a survival technique. In the context of refugee studies, Malkki has pointed out that camp refugees use strategies to avoid assimilation and put up resistance—retain their culture, as it were—whilst urban refugees largely assimilate, especially if they can become ‘invisible’.<sup>20</sup> This form of assimilation, to become invisible, is clearly a strategy pursued by Rohingya in Malaysia, for it provides some safety from further persecution and some small dose of acceptance in their new home. Yet, the acceptance is based on leaving behind their language, culture, and ultimately their identity. As one, now senior, Rohingya community leader exclaimed about his early upbringing in a small village in Malaysia’s North:

<sup>19</sup> Corroborating findings and for a report that details more issues in detention facilities in Malaysia, see also (SUHAKAM 2018).

<sup>20</sup> Malkki describes the way camp-based refugees constructed a strong nationalist community identity based on a mythical past and in opposition to the camp administrators, see (Malkki 1995).



Thank God, I felt the urge of learning Malay language. Otherwise, friends and neighbours would tease me and think bad of me. My life was difficult when I was small. But I was determined. My parents advised me that we are staying in another people's country, which means we need to be better ... (Interview with Rohingya community leader in Malaysia, 2016)

The Malaysian government does not provide any support to refugees, so refugees must find work to support themselves and their family members. Most Rohingya refugees in Malaysia eke out a living as migrant workers out of necessity. In 2016, the author Hoffstaedter visited a group of Rohingya men living cramped together in shipping containers on a parking lot in Kuala Lumpur. Each one had a small mattress as their sleeping and living quarter. The container had a second floor fitted inside, which meant each man had only about a metre of headroom and little room to move. Their employer, a company that maintained the verges of motorways, provided this form of housing. These Rohingya refugees worked as road sweepers and were part of a maintenance crew entirely made up of Rohingya men. Amongst the men was one 10-year-old boy, who shared his father's bed. All refugees were working to support their extended families in Myanmar and Bangladesh, where many of their families resided in refugee camps or as urban refugees in destitute conditions. They did not have the funds to send for their families to join them in Malaysia, otherwise, they would have. Some were scared of the traffickers that had brought them across the treacherous Andaman Sea and did not trust them to bring their wives and children on this dangerous trip. They instead worked and sent remittances back to their families.

Whilst many Rohingya refugees can find work in the vast Malaysian shadow economy, they are used and sometimes abused for their cheap labour, yet not allowed to make Malaysia a home. One Rohingya man captured the impasse of having no home and no prospect of acceptance either in Myanmar or Malaysia by simply exclaiming: "There we are nothing, here we are nothing" (Interview with Rohingya man in Kuala Lumpur, 2015). As Rohingya are made to assimilate, work, and focus on their daily survival, they have little time or space to focus on the cultural, social, or linguistic survival of their group identity. Few Rohingya know or study about their culture and shared identity, beyond that they are marginalised because of it. Focal points are religion and without their own mosques, the dearth of religious leaders, or sermons in their language, Rohingya become subsumed by Malaysian Sunni Islam. Rohingya are traditionally members of the Hanafi madhab (Islamic legal school), which provides guidance and the legal basis for the daily life of Muslims, i.e., how they enact their religious beliefs (Tay et al. 2018). However, upon their arrival in Malaysia, Rohingya have to conform to the Shafi'i madhab. As Rohingya lack their own religious infrastructure, they have to attend Malay mosques and fit into local religious custom. The latter issue is often coupled with racism against non-Malay members of the congregation as Rohingya are singled out as foreigners and sometimes not welcomed to mosques and neighbourhood suraus. Culture, which was already eroded by decades of persecution and loss of educational opportunities in Myanmar, is further eroded by having to fit into the dominant Malay culture. Indeed, in many rural areas, many Rohingya have integrated as best they can into Malay society by wearing Malay clothes, speaking Malay and *becoming* Malay—all without any legal protection or meaningful social inclusion.

The author worked with one community organizer and writer interested in recovering the history of Rohingya people and disseminating information about Rohingya identity to the community. However, most of the talks he has given, thus far, were to an audience of the international non-governmental organisation (NGO) sector, service providers and concerned Malaysian citizens—not Rohingya. There are many reasons for this skewed information flow; chief among them is that it is simply not very important to most Rohingya at present. Rohingya are preoccupied with their own and their families' daily survival. Beyond that, most Rohingya emphasised their Rohingya identity, but the main aspect of importance to them was Islam—because that is the main difference between them and the Buddhist Rakhine peoples in their homeland. They placed little emphasis on culture or social aspects; in many cases, because they themselves had grown up in refugee camps or in a state of

displacedness—not in a stable home(land), where traditions had time to flourish before a calamity displaced them. This prolonged life in limbo, in a condition of *not being* part of a larger social fabric and community, has undoubtedly had a profound effect on many Rohingya.

One elderly Rohingya man, Ahmad,<sup>21</sup> whom the author interviewed in a small Malaysian town in the countryside, had been living in Malaysia since the 1990s. He could not recall which year he had arrived in Malaysia, nor could he remember which year he was born in—all he would mention is that he was an elder (which amongst Rohingya can mean anyone over 40). He left Myanmar

because Burmese authorities supplied our cows, our land to Rakhine people and there is no justice for us and we are now recognized us foreigners, as Bengali and not recognized as citizens of Burma. After passing standard ten there is no work for us. (Interview with Rohingya elder in Malaysia, 2012)

Ahmad has made a life for himself in Malaysia and recounted that when he arrived he was a bit of a novelty—“No-one knew about Rohingya back then!”, he reminisced. He married an Indonesian woman who was a migrant worker and who, like many, has stayed on in Malaysia illegally. They have both lived in Malaysia undocumented and, in the eyes of the Malaysian law, illegally for several decades. This means their children are denied access to education, and the family remains at risk of arrest or deportation. Living in a small town for such a long time, they have managed to integrate somewhat into local Malay society. However, the price has been complete assimilation. When we met, Ahmad was wearing a worn-out sarong, which most Malays wear in a village setting. He could no longer speak the Rohingya language, having long become proficient in Malay. He conversed with his wife, his children and his neighbours in heavily locally inflected Malay. He had long forgotten about Rohingya and had not taught it to his children. Culturally, too, he had become more Malay, assimilating to local customs; even his worldview was informed by the local Malay-centric customs and lifeworld. What did it mean to be Rohingya to Ahmad? “It’s where I was born—Arakan, and I am Rohingya, I am proud to be Rohingya!” But what does it mean to be Rohingya? There was silence, then a thoughtful sigh: “To be alive!” Further thought delivered more nuance: “Being Muslim, that too”.

It is not just long-time residents who have lost their Rohingya identity—most Rohingya face this loss because they have been subjected to systematic exclusion from education in Myanmar, which is prolonged in the diaspora, whether in Bangladeshi refugee camps, where many Rohingya have spent some time, or in Malaysia. For a local community organiser, this exclusion and loss of identity is at the heart of what needs to change for Rohingya in the diaspora:

You know I don’t want my people to be Malaysian. I don’t want my people to practice Malaysian culture. I want my people to practice our own culture our own way, traditional things. I don’t want us to totally become Malaysians or western. I want us to be Rohingyas. I want people to know and call us, recognize us as Rohingya. That’s the thing in me. So people always ask me—Sharifah, people always say that they’re in Malaysia, they have to behave like Malaysian they have to dress up like Malaysian. (Interview with Rohingya community organiser in Malaysia, 2017)

Back in the container housing, one of the Rohingya road sweepers the author interviewed was the father of the aforementioned 10-year-old boy. The 10-year-old boy does not attend school, as he is not yet registered with the UNHCR. He, therefore, lacks any protection a UNHCR card may provide and thus leaving this worker’s compound puts him in danger of being arrested and detained. However, even if he was able to leave the compound, Rohingya refugees only have access to refugee community schools, run by Malaysian NGOs or Rohingya organisations. There, they learn the basics of what is

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<sup>21</sup> This is a pseudonym to protect the identity of this Rohingya refugee.

necessary to survive in Malaysia: the Malay language, basic mathematics, sometimes some English, and other basic vocational skills. It prepares Rohingya for a life in low-skilled jobs in Malaysia, not for a self-determined and hopeful future.<sup>22</sup>

Rohingya in Malaysia need to organise themselves and find a stronger voice. Their cause is often held back by fractured leadership or no umbrella body that has representational authority. Malaysia remains a place of temporary abode, where they can survive, but not prosper. Many other refugees from Myanmar have been resettled from Malaysia to start new lives in Australia, the United States of America, Canada and other resettlement countries; however, few Rohingya are chosen for resettlement by the UNHCR. To compound this issue, the few resettlement places each year that are offered to Rohingya, usually go to the few better-educated and English-speaking Rohingya, diminishing the local community's capacity further. The Rohingya community in Malaysia requires this capacity urgently in order to organise, maintain their culture, identity and hope.

## 6. Conclusions

Crimes of destruction against the Rohingya are carried out within Myanmar, but the process continues when victims become displaced as refugees. As refugees, they are rendered stateless and without a cohesive social unit that is their group—namely, the Rohingya. This is no more evident than in the example of Malaysia, where the Rohingya no longer exist as a cultural entity, separated as a group and individually subsumed within a different culture and social network.

In some genocides, preservation of cultural (including religious) rituals in targeted groups continued where possible, not only for normality and routine but also as a form of resistance, in the broad sense of the word (Zámečník 1933). Safeguarding culture and rituals function a means of survival through the perpetuation of that group's existence as a separate and distinct cultural entity. In Myanmar, the Rohingya are denied the ability to preserve their culture, notably through prohibitions on education, religious practice, and the commonplace social and communal traditions of their society. Outside of Myanmar, the need to survive on a daily basis, as well as pressure to assimilate, continue the destruction of Rohingya culture and identity (Ahmed et al. 2020). This loss of language, culture, and education may occur in Malaysia and other destination countries, but this loss is only taking place because of the need for the Rohingya to flee Myanmar, escaping physical and cultural destruction. Thus, genocide in the source country has direct impacts and effects on the lives of displaced Rohingya in transit or refuge countries, with the situation in these third countries potentially contributing to the genocide process—as is occurring to the Rohingya in Malaysia. Malaysia remains a site of ongoing displacedness, precisely because Rohingya remain without protection, status, or the tools to organise, be represented, and have a voice of their own to maintain their cultural, linguistic, and social identity as Rohingya. This article has explored the case study of Rohingya refugees in Malaysia, but it opens an opportunity to apply the approach presented here through further research into the circumstances of other Rohingya refugee groups in states other than Malaysia, and from a larger perspective, into the circumstances of refugees from other genocides throughout history. This approach would also lend itself to more specific studies: for example, it would be worth exploring a comparison between the situation of genocide refugees in democratic, human rights-oriented states, and refugees from the same group in non-democratic, authoritarian states.

There is a compelling obligation to look beyond torture and killing to other crimes within the genocide context, which have frequently been neglected under prosecution in favour of the crimes of torture and killing. The focus on physical destruction in prosecutions ignores the seriousness of crimes that destroy the very fabric of a group, crimes that are “a deliberate attempt to change the identity of

<sup>22</sup> The issue of schooling and education more broadly is also an issue for camp-based refugees where a loss of cultural identity is linked to language and educational institutions; see (Bakali and Wasty 2020). That said, there are programs running in the refugee camps in Bangladesh that specifically focus on the reclaiming of Rohingya culture; for example, women's sewing, in The Quilt of Memory and Hope program run by Asia Justice and Rights, <https://asia-ajar.org/quiltofmemoryandhope/>.

the survivors by modifying relationships within a given society” (Feierstein 2014). The social process of genocide of the Rohingya has been taking place for decades and has now escalated to the point where physical destruction and cultural loss are reaching a crescendo. The distinct identity of the Rohingya as a group is disappearing, and to some extent, has already disappeared due to the assimilation and survival processes detailed in this article.

Only a concerted regional effort will reverse this process. Immediate efforts must include: stabilisation of the Rohingya population in places of asylum like Malaysia, providing them with the necessary resources to survive and, beyond that, maintain their culture when they are displaced. This entails recognising the broader concept of the destruction of a group as part of genocide, to place earlier pressure on regional governments to act before physical destruction occurs as well as safeguard displaced populations that may be assimilated and their culture lost forever. Using the term ‘genocide’ to categorise the atrocities against the Rohingya is helpful in understanding—and acting to improve—the plight of the Rohingya in Malaysia, because: (a) using the term clarifies what the Rohingya are experiencing and that destruction of Rohingya culture is a substantial aspect of that experience; and (b) ‘genocide’ triggers state obligations under international law, through the Genocide Convention and customary international law, where states are obligated to protect genocide victims and hold perpetrators (states and individuals) accountable.<sup>23</sup> Using the term has, at the very least, led to the Malaysian government being more vociferous on the international stage and domestically about the need for action on the Rohingya genocide, including calls for Myanmar to grant the Rohingya citizenship (AFP 2019; AP 2016; Dziedzic 2018; Nyane and Gerin 2019). It has also led to the former Malaysian government declaring an intention to ratify the Refugee Convention and to allow refugees to work legally in its 2018 election manifesto (although these actions are yet to occur) (Fortify Rights 2018). In contrast to Malaysia’s strong calls, the Association of Southeast Asian Nations (ASEAN), the most important regional organisation capable of acting against Myanmar, avoids using the term ‘genocide’, instead referring to it as the ‘humanitarian situation’ or ‘conflict’. Despite specifically being tasked with promoting and protecting human rights in the region, ASEAN’s response to date is weak, focusing only on repatriation, with no contextualisation (for example, the need for citizenship for the Rohingya) or mention of accountability (Barber 2019). This may change if the International Court of Justice rules that Myanmar has committed (is committing) genocide against the Rohingya, a ruling that would prevent states from denying that it is a genocide being committed. An ICC case would result in charges against individual perpetrators, whom state parties to the ICC’s Rome Statute would have to surrender if those individuals are found in state parties’ territory. Such a restriction on perpetrators’ ability to travel would curtail their power, ultimately resulting in loss of political power and subsequent cessation of atrocities. Thus, with rulings from the ICJ and/or the ICC, there would be more pressure on states and entities such as the UN Security Council to take action against Myanmar, forcing them to reverse the situation of the Rohingya so the Rohingya can return home with their rights reinstated. This would also likely push Malaysia to take the promised actions, to ratify the Refugee Convention (as promised) and provide more rights to Rohingya refugees, who, if they still cannot return home to Myanmar, could then at least live freely as Rohingya in their country of asylum. The term ‘genocide’, as the truth of the atrocities committed against the Rohingya, delivers stronger political and legal responses, which can lead to greater protection for the Rohingya refugees.

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<sup>23</sup> The case brought by The Gambia in the ICJ is an example of a state exercising their obligations under the Genocide Convention. (O’Brien 2020).

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