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MINORITY RIGHTS IN SOUTHEAST ASIA AND
ASEAN'S RESPONSE TO STATE-DIRECTED
MINORITY PERSECUTIONS:
SPECIAL EMPHASIS ON THE ROHINGYA
MINORITY PERSECUTION

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ABSTRACT

Despite state-directed minority persecutions being one of the most common and high-profile case of human rights violation in Southeast Asia, minority rights and protection has not been high on the agenda, both in ASEAN regional level and within each of its member states' domestic arrangements. Despite growing importance of ASEAN human rights regime (e.g. AICHR in 2009 and AHRD in 2012), minority rights provisions are omitted and nowhere to be found in ASEAN human rights documents. Consequently, amid multiple cases of state-directed minority persecutions, neither ASEAN, its human rights mechanism (AICHR), nor its member states are capable to give adequate responses to address these cases. Nowhere is this inadequacy in addressing state-directed minority persecution more visible than in Rohingya persecution by Myanmar government. While this minority persecution has lasted for decades and evolved into serious humanitarian conflict that also affect the region, ASEAN and its member states' response to the conflict has been rendered ineffective and inadequate by this omission of minority rights in ASEAN human rights regime. This paper aims to address these questions: amid growing human rights regime of ASEAN, why are minority rights provisions continuously omitted? What forms and patterns of state-directed persecutions that minority groups in Southeast Asia face? How do ASEAN and its member states deal with the Rohingya minority persecution, and what does it tell us about minority rights and protection in Southeast Asia? Upon analyzing legal documents related to minority rights in both international, regional (ASEAN), and domestic (ASEAN member states) level, as well as analyzing discourses made by relevant leaders in addressing state-directed minority persecutions, this paper argues the combination of the ASEAN Way Principle (primacy of national sovereignty, non-interference in domestic affairs, and consensus-based decision-making) and ethnocultural nationalist identification of several ASEAN member states towards specific identity cores (ethnic, religious, linguistic core) as the underlying factors behind the state of minority rights and protection in Southeast Asia and ASEAN.

Keywords: Minority rights, State-directed minority persecutions, ASEAN, Southeast Asia, the Rohingya, the ASEAN Way, ethnocultural nationalism

Minority Rights in Southeast Asia and ASEAN's Response to State-directed Minority Persecutions: Special Emphasis on the Rohingya Minority Persecution

Mohammad Yunas Fitra

I. Introduction

Despite being one of the most culturally diverse regions with thousands of distinct ethnic groups, protection of minority rights of those groups has not been a prominent issue in Southeast Asia. In regional level, Association of Southeast Asian Nations (ASEAN) does not have specific minority rights provisions, and in domestic level, ASEAN Member States also lack sufficient domestic laws to protect minority groups and their rights. This lack of minority rights and protection mechanism is rather baffling, considering the great cultural diversity in the region. Meanwhile, State-directed minority persecution by ASEAN Member States are all too common. In Thailand, assimilationist and discriminatory policies towards Patani ethnic group result in decade-long conflict (Sobandi, 2011). In Myanmar, the Rohingya minority, considered as one of the world's most persecuted minority groups (Hofman, 2016), is denied citizenship according to the 1982 Myanmar citizenship law (Mahbubul Haque, 2017a), as successive Myanmar governments persistently claim that the Rohingya people are illegal immigrants coming from Bangladesh (Ahsan Ullah, 2016).

These cases have several commonalities. Firstly, they display dangerous tendencies of several Southeast Asian states to persecute minority groups whose certain ethnic, religious, or linguistic features do not conform to features held by majority groups in those states. Under authoritarian regimes in particular, these persecutions often turn into violent conflicts that last for decades, as seen in Myanmar and Thailand. Secondly, these cases are met with little to no regional response from ASEAN and its human rights mechanism (i.e., AICHR), who are legally incapable and politically reluctant to take measures on national governments on these matters, leaving minority group defenseless in both domestic & regional protection of their rights.

The third is the scholarly tendency to view such cases solely from the framework of human rights, while the specific approach of minority rights in these issues remain rather scarce. In the Rohingya case, as the most high-profile of such cases and the focus of this paper, the bulk of works that emerge here, especially among Southeast Asian scholars, view this issue

from individual spectrum of human rights perspective (e.g., Kaewjullakarn [2015], Itasari [2020], Rachminawati & Azwin Mokhtar [2019]). This tendency to some extent reflects the legal and political tendency of ASEAN in minority rights and human rights: amid growing, albeit flawed, focus on human rights regime and mechanism in ASEAN, as exemplified by the establishment of ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and adoption of ASEAN Human Rights Declaration (AHRD) in 2012¹, specific provisions regarding minority rights are nowhere to be found in these human rights documents.

Considering the increasing attention for human rights in ASEAN since the start of the millennium, why is there a clear omission on minority rights within ASEAN human rights regime? How is this neglect on minority rights and protection of minorities in ASEAN translate to ASEAN's response to state-directed minority persecutions done by its member states? What are the forms of persecution that minority groups are subjected to by each ASEAN member states? What are the patterns of state-directed minority persecutions in Southeast Asia? These are few questions that this article is based on. This article argues that there is a significant linkage between the omission of minority rights in ASEAN human rights regime and the ineffectiveness of ASEAN, its human rights mechanism, and its member states in dealing with state-directed minority persecutions, as clearly exemplified by the lack of ASEAN response to the Rohingya persecution in Myanmar. Moreover, this continued omission to minority rights provisions in ASEAN can be explained by a combination of two things: the ASEAN Way principle (primacy of national sovereignty, non-interference in domestic affairs, and consensus-based decision-making) and ethnocultural nationalist identification of several ASEAN member states towards specific identity cores (ethnic, religious, linguistic core).

The first part of this paper elaborates on Minority Rights as theoretical basis of this paper. The second part observes minority rights in the Southeast Asian context. The third part looks at the Rohingya minority persecution by Myanmar governments as the most convincing example of failure of minority rights and protection in Southeast Asia. The last part explains how the two ideas, the ASEAN Way and ethnocultural nationalism in some ASEAN member states, contribute to the state of minority rights in the region.

¹ ASEAN Human Rights Declaration, Phnom Penh, November 19, 2012, available from [https://asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20\(7.%20Jul\)%20-%20ASEAN%20Human%20Rights%20Declaration%20\(AHRD\)%20and%20Its%20Translation.pdf](https://asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20(7.%20Jul)%20-%20ASEAN%20Human%20Rights%20Declaration%20(AHRD)%20and%20Its%20Translation.pdf)

1.1. Research Framework

This article focuses on ASEAN and its member states, while the particular emphasis on Rohingya persecution is chosen as the example case due to how well it illustrates the systemic failure of both domestic laws of Myanmar and regional laws in ASEAN to protect minority groups, while acknowledging similar cases of persecution experienced by other minority groups in Southeast Asia.

The term ‘minority’ and ‘minority group’ used throughout this research also requires clarification. This research only focuses on minorities covered by Article 27 of ICCPR – ‘*ethnic, religious and linguistic minorities*’ – and UNDM – ‘*national or ethnic, religious and linguistic minorities*’ –, thus does not cover other characterizations of groups that might be included in the umbrella term minority, such as refugees and sexual minorities.

1.2. Research Questions and Hypotheses

This research studies the status of minority rights and protection in Southeast Asia and within ASEAN human rights regime, and how it impacts ASEAN involvement in cases of state-directed minority persecutions in Southeast Asia, as highlighted by Rohingya case.

The research questions are:

- a. Despite increasing attention to human rights in ASEAN and its laws since 2009, why are specific provisions on minority rights and minority protection still absent?
- b. Looking at Myanmar domestic laws and ASEAN laws, how does the absence of minority rights and protection frameworks impact on the persecution of Rohingya?

This research hypothesizes that:

- a. Combination of ASEAN Way as ASEAN’s foundational principles as regional organization and ethnocultural nationalist identification of several ASEAN member states towards specific identity cores (ethnic, religious, linguistic core) contribute to continuous avoidance to refer to minority rights within ASEAN human rights regime.
- b. Absence of minority rights protection, both in domestic and regional laws, leave minority groups (in this case, the Rohingya) defenseless in both domestic and regional level, which also explains the inaction of ASEAN, its member states & its human rights mechanism (AICHR) to be involved in such matters and reluctance to take measures on national governments.

1. 3. Research Methods

This article employs methods that are qualitative in nature. The first is document and legal analysis: looking at texts related to minority rights and minority protection in International Laws; texts in ASEAN human rights regime; ASEAN member states' ratification, adherence, or reservation to international minority rights instruments; and minority rights and protection provisions in the domestic laws of Myanmar and other relevant member states. Moreover, reports by non-state actors (e.g., non-governmental organizations, international organizations) particularly in the case of Rohingya persecution are also within the scope of this research. The second method employed here is discourse analysis: looking at speeches or statements from Myanmar leaders and other relevant sources in the issue.

II. Minority Rights in International Laws

2.1. Conceptual definition of minorities

To define which groups and characteristics are included under the term 'minority' merits special discussions. Defining minority is a major point of debate, as there is no legally binding definition of minority accepted by International Law and no fixed legal criteria to determine minority (Alam 2015). However, this absence does not completely prevent development of minority rights regime in International Laws. Scholars agree that definitions are secondary in importance, what matters most is rights and protections of those groups. In practice, existence of minorities is matter of fact, not definition. In the words of former OSCE High Commissioner on National Minorities Max van der Stoep (1994), the "*existence of minorities is a question of fact and not of definition... I would dare to say that I know a minority when I see one*".

Despite this absence, there are certain widely accepted factors and characteristics that define minority, derived from various legal and scholarly attempts to define minority. One of the earliest definitions was provided by Permanent Court of Justice (PCIJ) on its Advisory Opinion on the case of Greece and Bulgaria's reciprocal emigration issue in 1930. Although it only concerns Greece and Bulgaria, it was considered universally important in shaping future minority rights discussion. Minority is defined as:

'group of persons living in a given country or locality, having a race, religion, language and traditions of their own, and united by the identity of such race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their tradition, maintaining

their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another.²

Perhaps the most widely accepted working definition on minority was that of Francesco Capotorti in 1979, who served as UN Special Rapporteur of Sub-Commission on Prevention of Discrimination and Protection of Minorities. He developed the definition of minority in relation to Article 27 of ICCPR. He defined minority as:

'A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language' (Capotorti, 1979)

Another frequently cited definition was offered by Jules Deschenes, who also served under UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, who defined minority as:

'A group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and law'. (Deschenes, 1985)

The definitions above are of similar tone, and from these definitions certain factors that form generally accepted definition of minority rights are derived. Such factors are often classified into two categories: objective and subjective (Alam, 2015). Objective factors are concerned with existence of observable facts related to minority groups, such as existence of distinct ethnic, religious, and linguistic difference, numerical inferiority, distinct tradition, and non-dominant position. Subjective factors, on the other hand, are more about feelings of the group: solidarity, community, and collective will to preserve their survival and existence, characteristics, and identity.

² Permanent Court of Justice Advisory Opinion on the case of Greco Bulgarian Communities, July 13, 1930, available from https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_B/B_17/01_Communautes_greco-bulgares_Avis_consultatif.pdf.

2. 2. Minority Rights in Key International Legal Documents

To date, there are three main sources of minority rights in International legal documents: Article 27 of ICCPR, the UNDM, and the FCNM. However, the Article 27 of ICCPR, despite being a legally binding document, is not specifically a minority rights treaty, and its provision is rather short and not all encompassing. The UNDM is more elaborate in its minority rights provisions, but it is a UN General Assembly Declaration in nature, thus has no legally binding effect. The FCNM, on the other hand, is a legally binding minority treaty, but it is limited geographically to Europe. Thus, it can be concluded that there is still no global legally binding minority rights treaty.

2. 2. 1. *International Covenant on Civil and Political Rights (ICCPR)*

The ICCPR was adopted by the UN General Assembly on December 16, 1966 and entered into force March 23, 1976. It was a multilateral treaty aimed to commit its parties to respect the civil and political rights of individuals. As of now, it has 113 parties, and tasked with observing its implementation is the UN Human Rights Committee. Provision regarding minority rights is in Article 27, drafted by Sub-Commission on Prevention of Discrimination and Protection of Minorities. Article 27 states that:

'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language³'.

2. 2. 2. *The UN Minority Rights Declaration (UNDM)*

Officially named the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁴, UNDM is essentially a UN General Assembly resolution, thus has neither legally binding effect under international law nor subsidiary rules to back its implementation. Nevertheless, to date it remains the only global instrument dealing solely with minority rights; thus it carries significant moral authority for states to comply (Petričušić, 2005). Although inspired by Article 27 of ICCPR, UNDM is not simply its

³ International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations Treaty Series, vol. 999, p. 171, C.N.782.2001.TREATIES-6 available from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en (accessed 20 June 2022)

⁴ General Assembly resolution 47/135, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, A/RES/47/135 (18 December 1992), available from <https://undocs.org/A/RES/47/135> (accessed 25 June 2022)

expansion, rather it represents a fresh start for international minority rights (Thornberry, 2001). Firstly, while Article 27 terms minority rights in negative terms (*'shall not be denied the rights'*), UNDM lays out more positive terms in *'have the rights'*. Secondly, while ICCPR do not stipulate positive measures that States should undertake to protect minority rights, UNDM do it in wide-ranging scope in several Articles. For instance, Article 1 obliges States to protect existence and identity of minority groups and to take appropriate legislations and policies to achieve those aims, and Article 4 obliges States to take measures to ensure persons belonging to minorities exercise their human rights, express and develop features of their identity, learn and use their own languages, and culture, and participate in the country's economic progress.

General respect, support and acceptance from States to the UNDM was further clarified in the 1993 Vienna Declaration and Programme of Action (VDPA), which is the result of the World Conference of Human Rights in Vienna, 1993. VDPA, agreed based on consent of 171 States in attendance, included minority rights and reaffirms States' support towards UNDM in protecting rights of persons belonging to minorities (e.g., Article 26 *'The World Conference on Human Rights urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities in accordance with the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities'*).

2. 2. 3. Framework Convention for the Protection of National Minorities (FCNM)

The first legally binding multilateral instrument on protection of national minorities, FCNM was adopted by Council of Europe. It is a highly significant document for minority rights in Europe and the point of reference for EU's minority rights regime. Its status as a treaty also gives it considerable binding effect on Parties, while also supported by an implementation mechanism. It has been ratified by 39 States.

As a multilateral treaty addressed to States, compared to UNDM, FCNM focus more on States' obligations to protect minority rights rather than elaborating in detail what those rights are and what minority is. As such, it does not give definition of minority, so state parties may give different interpretation of minority when referring to FCNM⁵. FCNM also did not provide rigid and concrete details on what measures states should undertake, rather it offered general

⁵ Some states (e.g. Denmark, Germany, Poland, and Sweden) provide their own definition of minority when ratifying the treaty, while Liechtenstein, Luxembourg and Malta, despite ratifying the Treaty, declare that minority do not exist in their territories.

principles and aims that States should consider when drafting each of their own domestic legislations to protect minority rights, which explains the term ‘Framework’. Among important provisions in FCNM are the inclusion of protection of national minorities within human rights protection (Article 1), states’ obligation to guarantee minority rights (Article 4), to ensure necessary conditions to protect minorities’ identity and characteristics (Article 5.1), prohibition of state assimilation towards minority against their will (Article 5.2), and so on⁶.

2. 3. Main Contents and Principles of Minority Rights

2. 3. 1. Rights to Identity and Existence

Part of subjective factor that defines minority is the group’s desire to preserve their identity: their culture, language, religion, and traditions. Thus, recognition of such identity forms the basis of minority rights, while continued survival of such identity is one of the main aims of minority rights. A precondition for identity is existence of the group itself. It not only refers to physical existence of its members (i.e., lives and survival of individuals that make up the minority group) but also the shared consciousness of its members, manifested through their common language, culture, religion, shared history, and shared destiny (Thornberry, 2001).

The identity and existence of minority groups could be threatened by several ways. Firstly, States may refuse to recognize their existence as a minority group within their territory. Secondly, States may force onto them measures that eliminate features of their collective identity, such as forced assimilation to national majority culture, prohibition of expressing their culture and language, etc. Thirdly, States may even undertake extremely violent measures to physically eliminate existence of minority groups (e.g., forced displacement, ethnic cleansing).

In UNDM, rights to identity and existence are included in its first Article, indicating its utmost importance:

‘1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.’

⁶ Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory Report, 1 February 1995, available from <https://rm.coe.int/168007cdac> (accessed 25 June 2022)

2. 3. 2. Cultural Rights

Linked to rights to identity is rights to enjoy, express and practice minority groups' own cultures. The term 'culture' itself has a wide-ranging scope. According to UN Committee on Economic, Social and Cultural Rights, the term 'culture' includes *'ways of life, language, oral and written literature, music and songs, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.'*⁷

Thus, in terms of minority rights, rights to culture can cover many rights, including rights to engage in economic and social activities which are part of their culture, rights to engage in their cultural practice, rights to learn, develop, and share cultural knowledge and expressions, right to education and information related to cultural identity, etc. (Alam, 2015). The rights to enjoy, express and practice the minority groups' own cultures is included in many major minority rights instruments. Article 27 of ICCPR stated that *'persons belonging to minorities shall not be denied the right.... to enjoy their own culture....'* The UNDM not only stated that persons belonging to minorities *'have the right to enjoy their own culture'* (Article 2), but also put obligations for States *'to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture'* (Article 4.2).

2. 3. 3. Religious Rights

Guarantee of the rights to practice religion is a common theme found in minority rights instruments. Included in these rights are rights to practice religion, individually or in community with others, rights to form religious association, rights to establish religious sites and institutions, rights to observe religious holidays, etc.

Article 2 of UNDM states that persons belonging to minorities *'have the right to profess and practice their own religion'*, while FCNM includes more specific religious rights provisions, which is Article 8 that includes *'the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.'*

⁷ UN Committee on Economic, Social and Cultural Rights, General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, available from: <https://digitallibrary.un.org/record/679354?ln=en> (accessed 26 June 2022)

2. 3. 4. Language Rights

An important part of minority identity and culture is their own language. Continued survival of identity of minority groups is often marked by continuity of its language. However, for many members of minority groups, a different language used by majority in both daily and official public life in the country often means that they are marginalized in social and political life due to this language difficulty. Moreover, mandatory teaching of national language is often not accompanied by teaching of minority language, which means that speakers of minority languages are assimilated to majority or national language, which diminish chance of long-term survival of minority language. Thus, language rights is important part of minority rights. It covers the rights to use the language in daily life, use of the language in official public and political life, rights to teach and study the language, use of the language as medium of instruction in schools, rights to access and establish media in their own language, and so on.

Article 27 of ICCPR states that '*persons belonging to minorities shall not be denied the right.... to use their own language*'. In the UNDM, rights to language not only cover the rights to '*use their own language, in private and in public,*' (Article 2), but also includes positive measures by States '*to take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue*' (Article 4.3). Moreover, Article 9 of FCNM ensures that States will protect the '*freedom to hold opinions and to receive and impart information and ideas in the minority language*'.

2. 3. 5. Rights to Participation

A less straightforward aspect of minority rights is the right to participation in social, economic, political and public affairs. Right to participation for minority rights is often associated solely within political context, hence its association with the concept of self-determination as well (Barten, 2015: 244). Thus, unlike previous aspects of minority rights, there is certain vagueness in international instruments on right to participation.

Article 27 of ICCPR do not specifically refer to rights to participation of minorities. In the UNDM, Article 2.2 states that '*Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.*', but the forms of participation are not elaborated. Article 2.3 states the right to '*participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national*

legislation'. However, the term '*in a manner not incompatible with national legislation*' gives a vague flexibility for States which allows it to prevail over groups' right for participation. Clearer provisions of right to participation for minorities are delineated in the FCNM. Article 15 of the FCNM obliges states to '*create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them*'.

III. Minority Rights and Protection in Southeast Asia and ASEAN

3. 1. Human Rights Regime in ASEAN

When established in 1967, ASEAN was strictly aimed to be inter-governmental platform in a region volatile with instability, external influence of Cold War politics, and internal underdevelopment. Thus, human rights were not present in early ASEAN agenda, as it focused on economic growth, trade, underdevelopment, regional peace and security. As such, human rights were completely missing in the foundational Declaration of ASEAN: the 1967 Bangkok Declaration⁸ and in other ASEAN instruments and would remain so until 1990s. Another explanation of absence of human rights in ASEAN before 1990s is that some member states (Malaysia and Singapore, in particular) were staunch supporters of the Asian values within human rights discourse. Asian values suggest that human rights are essentially product of Western ideology and cultural practice, thus unsuitable for peoples of Asia (Langlois, 2001). With bitter memory of Western colonialism in the region, some even see Asian values as Asian resistance to Western idea that represent new form of Western colonialism (Inoue, 2004).

These perspectives shaped the attitude of ASEAN member states towards human rights until 1990s, during which discussions on human rights started appearing in ASEAN level. However, despite growing recognition of human rights as an important aspect of international politics in 1990s, ASEAN member states were still wary of applicability of human rights in Southeast Asian context. In the 1991 Joint Communique of 24th ASEAN Ministerial Meeting (AMM) in Kuala Lumpur, for instance, ASEAN foreign ministers declared that '*while human rights is universal in character, implementation in the national context should remain within*

⁸ ASEAN, *The ASEAN Declaration (Bangkok Declaration)*, Bangkok, 8 August 1967, available from <https://agreement.asean.org/media/download/20140117154159.pdf> (accessed 3 July 2022)

*the competence and responsibility of each country*⁹, confirming primacy of cultural relativism over human rights' universality. Rather surprisingly, in the 1993 edition of AMM in Singapore, ASEAN proposed massive advancement of human rights, influenced by member states' positive participation in 1993 World Conference on Human Rights in Vienna¹⁰ and their positive reception to the Vienna Declaration and Programme of Action (VDPA)¹¹. The 1993 Communique also offered a new, important development in ASEAN human rights regime: ASEAN member states collectively agreed to '*consider the establishment of an appropriate regional mechanism on human rights*'¹²

Nevertheless, this intention was challenged by some member states. While the founding five States were positive in constructing ASEAN human rights regime, others (Brunei, Cambodia, Laos, Myanmar, and Vietnam) did not share the same enthusiasm. Thus, their accession into ASEAN in late 1990s complicated matters. After much deliberation, breakthrough was finally agreed with adoption of ASEAN Charter in 2007. Article 14 stated that '*.... ASEAN shall establish an ASEAN Human Rights body*'¹³. However, a form of compromise was found in second part of the Article, which stated that '*This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meetings*'. It suggests that with Terms of Reference of this human rights body drawn by member states, it would be under member states' complete control.

The Terms of Reference for ASEAN human rights body was finally agreed in 2009, and the body was named ASEAN Intergovernmental Commission on Human Rights (AICHR). The name suggests that it would be an intergovernmental body, thus not independent of state control and incapable to interfere into domestic human rights cases without government approval. The Terms of Reference further emphasized that AICHR '*is a consultative body*' (Article 3)¹⁴, thus its mandates and functions highly gravitate towards promotion, rather than protection, of human rights. Thus, AICHR is neither capable to hear and adjudicate complaints nor to issue

⁹ ASEAN, *Joint Communique of the 24th ASEAN Ministerial Meeting*, Kuala Lumpur, 20 July 1991, available from <https://cil.nus.edu.sg/wp-content/uploads/2019/02/1991-24th-AMMJC-1.pdf> (accessed 3 July 2022)

¹⁰ All five ASEAN member states in 1993 (Indonesia, Singapore, Malaysia, Thailand and the Philippines) attended the Conference. Brunei and Myanmar also attended, while Cambodia, Laos and Vietnam did not.

¹¹ Vienna Declaration And Programme Of Action, Vienna, 12 July 1993, A/CONF.157/23, available at: <https://www.refworld.org/docid/3ae6b39ec.html> (accessed 3 July 2022)

¹² ASEAN, *Joint Communique of the 26th ASEAN Ministerial Meeting*, Singapore, 23-24 July 1993, available from <https://humanrightsinasean.info/wp-content/uploads/2018/10/ASEAN-Joint-Communique-26th-ASEAN-Ministerial-Meeting-1993.pdf> (accessed 3 July 2022)

¹³ ASEAN, *The ASEAN Charter*, Singapore, 20 November 2007, available from <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf> (accessed 3 July 2022)

¹⁴ ASEAN, *ASEAN Intergovernmental Commission On Human Rights (Terms Of Reference)*, Phuket, 20 July 2009, available from <https://aichr.org/wp-content/uploads/2020/02/TOR-of-AICHR.pdf> (accessed 4 July 2022)

binding decisions, and a form of human rights court that could exercise this function independent of member states does not exist in ASEAN level. Both the legal nature and practical functioning of AICHR have been widely criticized as too politically biased and ineffective in the face of human rights crises. Civil Society Organizations (CSOs) in ASEAN such as Asian Forum for Human Rights and Development (FORUM-ASIA) and Solidarity for ASEAN People's Advocacy (SAPA) have issued negative assessment on AICHR's works, noting that member states "hold tight control over AICHR, hindering its responsiveness, works efficiency, institution-building ability and protection capacity. Compared to other regional and international human rights mechanisms, AICHR has the weakest protection record – in fact it has no protection record to speak of" (Hanara, 2019:6). It also speaks of "resounding silence of AICHR on any human rights violations, in the years that saw deterioration of human rights in the region, some of which amount to worst crimes under international law" (Hanara, 2019:7)

To complement and clarify its mandate and to further promote human rights in ASEAN, AICHR drafted the ASEAN Human Rights Declaration (AHRD), adopted in 2012. It was intended to be the main framework of ASEAN human rights regime, in a way similar to UDHR, but with added value compatible within Southeast Asian context (Renshaw, 2013)¹⁵. Scope of human rights in AHRD provisions are quite comprehensive, such as non-discrimination to rights and freedoms (Article 2), right of recognition and equality before the law (Article 3), right to life (Article 11), prohibition of slavery and human trafficking (Article 13), of torture (Article 14), freedom of thought and religion (Article 22), and so on¹⁶. Nevertheless, AHRD remains a Declaration in nature, backed only by a consultative mechanism (AICHR), thus has no legally binding effect. It is thus unsurprising that some consider it simply as rhetorical statement from political elites, without its practical realization in daily lives of Southeast Asian people (Poole, 2019).

Despite its flaws, AICHR and AHRD at least served as turning point of human rights discourse in ASEAN, as ASEAN moved from previous rejection and indifference to human rights towards inclusion of human rights into parts of ASEAN political and institutional discourse (Langlois, 2021). It contributes to developments of ASEAN instruments in other

¹⁵ It is important to note that only AICHR, essentially a governmental body, drafted AHRD, without including CSOs and public. Renshaw (2013) further noted that no drafts of AHRD was ever made public.

¹⁶ ASEAN Human Rights Declaration, Phnom Penh, November 19, 2012, available from [https://asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20\(7.%20Jul\)%20-%20ASEAN%20Human%20Rights%20Declaration%20\(AHRD\)%20and%20Its%20Translation.pdf](https://asean.org/wp-content/uploads/images/resources/ASEAN%20Publication/2013%20(7.%20Jul)%20-%20ASEAN%20Human%20Rights%20Declaration%20(AHRD)%20and%20Its%20Translation.pdf) (accessed 3 July 2022)

specific issues within human rights regime, such as The Declaration on The Elimination of Violence Against Women and Elimination of Violence Against Children In ASEAN in 2013¹⁷ and the ASEAN Consensus on the Protection and Promotion of the Right of Migrant Workers in 2017¹⁸. Moreover, human rights formed an important part of ASEAN Community Vision 2025, in which ASEAN strives to ‘*consolidate our Community, building upon and deepening the integration process to realise a rules-based, people-oriented, people-centered ASEAN Community, where our peoples enjoy human rights and fundamental freedoms*’¹⁹

3. 2. Minority Rights in ASEAN Documents

In its human rights regime, minority rights and protection has not been a priority in ASEAN, which is rather ironic since state-directed minority persecution is one of the most common and high-profile forms of human rights violation in Southeast Asia. To date, unlike other issues within human rights canon (e.g., rights of women and children, rights of migrant workers), there is no specific documents in ASEAN dealing with rights and protection of national, ethnic, religious, or linguistic minorities. This absence signifies ASEAN’s lack of formal recognition and respect for the identity, culture, needs and interest of minorities in Southeast Asia, while some human rights observers even calling it “denial or human rights of ethnic minorities” and even “outright denial of their existence” (Forum Asia, 2007).

When the pivot towards acceptance of human rights in ASEAN was made in early 1990s, there were signs that minority rights would be incorporated into its human rights instrument. In the 1993 Bangkok Declaration, along with other Asian states, ASEAN member states agreed to ‘*Emphasize the importance of guaranteeing the human rights and fundamental freedoms of vulnerable groups such as ethnic, national, racial, religious and linguistic minorities, migrant workers, disabled persons, indigenous peoples, refugees and displaced persons*’²⁰. Furthermore, both AHRD and Terms of Reference of AICHR explicitly refer to VDPA as one international human rights instrument they seek to uphold. Considering VDPA itself contains

¹⁷ ASEAN, *The Declaration on The Elimination of Violence Against Women And Elimination Of Violence Against Children In ASEAN*, Bandar Seri Begawan, 9 October 2013, available from https://www.ohchr.org/Documents/Issues/Women/WG/ASEANdeclarationVaW_violenceagainstchildren.pdf (accessed 3 July 2022)

¹⁸ ASEAN, *ASEAN Consensus on the Protection and Promotion of the Right of Migrant Workers*, Manila, 14 November 2017, available from <https://asean.org/wp-content/uploads/2017/11/ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers1.pdf> (accessed 3 July 2022)

¹⁹ ASEAN, *ASEAN Community Vision 2025*, Kuala Lumpur, 22 November 2015, available from <https://www.asean.org/wp-content/uploads/images/2015/November/aec-page/ASEAN-Community-Vision-2025.pdf> (accessed 3 July 2022)

²⁰ Bangkok Declaration, Bangkok, 2 April 1993, available from <http://www.internationalhumanrightslexicon.org/hrdoc/docs/bangkokdeclaration.pdf> (accessed 3 July 2022)

explicit support for minority rights and protection as enshrined in UNDM, one would expect inclusion of minority rights provisions in AHRD or AICHR. However, despite presence of minority rights and protection in Bangkok Declaration and the VDPA, such provisions are completely missing in ASEAN Human Rights documents.

AHRD, as the main ASEAN Human Rights text, does not make explicit reference to minority rights, despite having quite a wide-ranging scope of human rights provisions. Furthermore, AHRD seems to avoid explicit reference to term ‘minority’ or ‘persons belonging to minorities’ by substituting it with ‘*vulnerable and marginalized groups*’, without elaborating what this term refers to (Article 4: ‘*The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalized groups are an alienable, integral and indivisible part of human rights and fundamental freedom*’). Similarly, ASEAN Community Vision 2025 states that ASEAN strives to ‘*...promotes and protects human rights of women, children, youth, the elderly/older persons, persons with disabilities, migrant workers, and vulnerable and marginalized groups*’ (Article 12.2.)

IV. Myanmar and the Rohingya Crisis: A Picture of Failure of Minority Rights and Protection in Southeast Asia

Among all cases of state-directed minority persecutions in Southeast Asia, persecution of Rohingya minority in Myanmar (formerly named Burma) had attracted the most attention, due to severity of the conflict. The Rohingya, as they call themselves, is a minority group inhabiting Rakhine state (formerly known as Arakan), northern part of Myanmar bordering Bangladesh. The group is linguistically, religiously, and culturally distinct from the majority of Myanmar as they predominantly practice Islam in Buddhist-dominated Myanmar, and they speak Rohingya language compared to the Burmese language spoken in Myanmar (Mahmood et al., 2017). As a stateless minority group, denied citizenship by successive Myanmar governments since adoption of 1982 Myanmar Citizenship Law, the Rohingya people have been victims of persecutions and human rights violations, including massacres, rapes, arsons, etc., which have led the UN to describe them as ‘most persecuted minority in the world’²¹.

²¹ UN Office of the High Commissioner for Human Rights (OHCHR). Human Rights Council opens special session on the situation of human rights of the Rohingya and other minorities in Rakhine State in Myanmar. 5 December 2017, available from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22491> (accessed 5 July 2022)

While this persecution is not a recent phenomenon, the bloodiest period of this protracted conflict was in 2017-2018, when Myanmar military launched violent campaign against the Rohingya that turned into humanitarian and refugee crisis. Report published by Ontario International Development Agency (Habib et al. 2018) estimated almost 24.000 deaths from the Rohingya side. The military operation also sparked massive refugee crisis in the region, as about 700.000 people fled to seek refuge in Bangladesh (UN Refugees.org, 2021). Today, about 1 million Rohingya are refugees in neighboring countries, most of which in Bangladesh (about 800-900.000), with smaller numbers in Malaysia, Indonesia, and Thailand (Greenwalt, 2020). Before the 2015-2018 operation, there were approximately 1.5 million Rohingya population within Myanmar, compared to Myanmar population of 54 million people, but after 2018, only about 500.000 of them remained in Myanmar (Al Jazeera, 2018).

The main cause of the Rohingya situation is denial of citizenship and statelessness of the Rohingya people, legitimized with the 1982 Citizenship Law of Myanmar²², which only grant full citizenship of Myanmar to pure-blooded²³, indigenous ‘National Races’ (Mahbubul Haque, 2017b). The Rohingya people claim to be indigenous inhabitants of the Rakhine region, but the 1982 Citizenship Law exclude them from citizenship status as successive Myanmar governments claim they are illegal immigrants from Bangladesh brought by British colonial administration during British occupation of Myanmar (Alam, 2019). Myanmar leaders not only deny that Rohingya are indigenous ethnic group of Myanmar, but they also refuse to acknowledge or use the term ‘Rohingya’, opting to use ‘Bengali’ instead to indicate that the Rohingya are, indeed, immigrants from Bangladesh. This narrative has been officially repeated by various leaders, including former President Thein Sein (Lee, 2021), Aung San Suu Kyi (Chang, 2016), and current de facto leader, General Min Aung Hlaing, who said in in 2017 that *“It has already been announced that there is no race termed Rohingya in Myanmar. The Bengalis in Rakhine State are not Myanmar nationals but immigrants”* (The Irrawaddy, 2018). This narrative share that there were no Muslims before British colonial in 1824, and the Rohingya are Bengalis brought in by British administration from overpopulated Bangladesh in

²² Burma Citizenship Law (Pyithu Hluttaw Law No 4 of 1982), 16 October 1982, available from http://www.networkmyanmar.org/ESW/Files/1982_Myanmar_Citizenship_Law_%5BENGLISH%5D.pdf (accessed 5 July 2022)

²³ In a speech explaining the Citizenship Law in 1982, General Ne Win, Myanmar de facto leader during most of the military regime (1962-1988), stated that “racially, only pure-blooded nationals will be called citizens” (Translation of the speech by General Ne Win provided in The Working People’s Daily, 9 October 1982, available from https://www.burmalibrary.org/docs6/Ne_Win%27s_speech_Oct-1982-Citizenship_Law.pdf, accessed 5 July 2022)

order to enable agricultural expansion in a new arable land of Rakhine²⁴ (Ware & Laoutides, 2018). In a statement in 2012, President Thein Sein stated that *“Before 1948, the British brought Bengalis to work on farms, and since there were ample opportunities to make a living here compared to where they came from, they didn’t leave”* (Radio Free Asia, 2012).

On the other hand, narrative held by Rohingya historians claim they are, indeed, Rakhines’ indigenous inhabitant since 8th century, thus deserves to be added in Citizenship Law classification. They argue that Rohingya people are descendants of Arab traders who arrived in Rakhine at least in the year 788 (Karim, 2016)., and they also reject associating Rohingya with Bangladesh, citing distinct language and culture. As Kyaw Min, a prominent Rohingya leader, stated in 2015, *“I don’t know why they reject us. We have been in Rakhine state for many, many centuries. Our language is not like Bengali. Our culture is not like Bengali.”* (Lee, 2021:138).

While Rohingya persecution is not a novel phenomenon, violence against them intensified since 2010s, coincided with rising Buddhist ultranationalism in Myanmar. Buddhist ultranationalism became the forefront of Myanmar’s political liberalization period since 2011, as Buddhist monks were organizers and frontliners of the 2007 Saffron Revolution, a popular uprising that initiated chain reaction towards political liberalization in Myanmar (Fink, 2013), and Buddhist nationalism became the most salient form of socio-political movement in Myanmar. As new civilian government was sworn in 2011, ending decades of military authoritarianism, political liberalization opened space for freedom of expression, with Facebook emerged as the biggest tool of expression of citizens, massively changed their social lives and public discourse. For Myanmar citizens, Facebook equals the internet - social media, source of news, platform to express their opinions, etc. By 2018, there are about 30 million Facebook users in Myanmar (CBS News, 2018), more than half of total Myanmar population (53 million). However, Buddhist ultranationalists and Islamophobic movements such as the 969 campaign and the Ma Ba Tha organization used Facebook to amplify their messages in framing Muslims and the Rohingya people as existential threats to this Buddhist-majority nation (Schissler, et al., 2018). This mix of freedom of expression and religious nationalism was worsened by the attitude of the government, which benefitted from this situation by tapping into Buddhist ultranationalism to strengthen its hold to power (Reny, 2020). Consequently,

²⁴ When the British annexed Rakhine state in 1824 and subsequently the entire Burma into a province of British India in 1886, territorial demarcation between Burma and Bangladesh, which was also part of British India, had practically disappeared, which enabled British to facilitate migration between Burma and other parts of British India territory (e.g., modern Bangladesh, India, and Pakistan)

Buddhist ultranationalism, Islamophobia, and hate speech towards Muslims in general and the Rohingya in particular, proliferated during the liberalization period. Zarni and Brinham (2017) noted how in Myanmar social media frequently found dangerous hate speech including the phrase “kill all illegal Bengalis”, a direct reference to the Rohingya.

Moreover, this discourse on social media often translated into real life violence as well. In 2012, for instance, the 969 campaign facilitated by social media was undertaken to boycott Muslim-owned businesses, as Buddhists put 969 stickers on their stores and houses to indicate that they belonged to Buddhists and not Muslims (Fink, 2018). Moreover, an investigation conducted by Democracy Reporting International (2018) suggested direct link between hate speech on Facebook and violent military campaign against Rohingya in 2017, as it found about 14.000 Facebook posts related to hate speech against the Rohingya made during August-November 2017, at the same time the attacks against them was ongoing, and concluded that there was an organized campaign to incite hatred against the Rohingya at the height of this crisis. Among the hate speech posts, they found recurring keywords such as Muslim overpopulation, comparing them to animals, Bengali terrorists, and so on.

4. 1. Rohingya Persecution from the Lens of Minority Rights

4. 1. 1. Denial on the Rights to Identity

As previously discussed, a key part of Minority Rights is right of identity, as the subjective factor that defines minority is the group’s desire to preserve their identity: their culture, language, religion, and traditions. Thus, recognition of such identity forms the basis of minority rights, while continued survival of such identity is one of its main aims. Farzana (2018), in her ethnographic research on Rohingya refugees in Bangladesh, had concluded that the Rohingya people have a strong sense of common identity with distinct ethnocultural identity markers (e.g., common religion, language and customs), as well as deep-rooted sense of belonging to their homeland of Arakan that they wish to preserve and be recognized by. While the Rohingya people wish to preserve their distinct identity as an ethnic group, as well as being recognized as rightful citizens of Myanmar, successive Myanmar governments have continuously denied the Rohingya of such rights. The denial of the Rohingyas’ rights of identity by successive Myanmar governments take (at least) three different forms: denial of their existence, denial to recognize them as citizens, and systematic forced migration and massacres.

Firstly, despite various records of the Rohingyas’ presence in Arakan prior to British colonization, Myanmar persist in framing them as illegal immigrants from Bangladesh.

Successive Myanmar leaders since 1962 insist on using the term ‘Bengali’ and refuse to use the term ‘Rohingya’, claiming that it is a term made-up in 1960s by Bengalis who seek citizenship in Myanmar. To sum up, Myanmar have continuously rejected the very existence of the Rohingya people. Secondly, directly related to this ‘illegal immigrant’ narrative, Myanmar denied the Rohingya the right to Myanmar citizenship, by not recognizing the Rohingyas as indigenous ethnic group of Myanmar before 1824. Scholars (Arraiza & Vonk [2017], Lee [2019], Southwick [2015]) noted that, notwithstanding competing claim of indigeneity of the Rohingyas, Citizenship Law of Myanmar is discriminatory and should not make indigeneity of ethnic groups the basis of citizenship. Thus, solution for Rohingya problem is reform of Citizenship Law itself, in not making indigeneity and the ‘National Race’ the gold standard of citizenship. Thirdly, Myanmar have continuously launched systematic elimination of Rohingya from their homeland in Arakan, among which were Operation Dragon King in 1978 and 2017 military attack. The 2017 attack, resulted in approximately 24.000 deaths and 700.000 forced displacement, were frequently cited as ethnic cleansing and even genocide.

4. 1. 2. Denial on Religious Rights

Another dimension of persecution of Rohingya is denial on their religious rights. This religious persecution is based on perception that Islam and Muslim population threaten to replace Buddhist identity of Myanmar (Howe, 2018). Some leading Buddhist ultranationalists have spoken about demographic threat Muslims posed in Myanmar²⁵, noting that Muslims intentionally have many children to takeover lands that belong to Buddhists (Fink, 2018)²⁶. The supposed existential threat posed by Muslims towards Buddhism led to adoption of Protection of Race and Religion Laws, four laws adopted in 2015 by Myanmar Parliament. Fink (2018) noted role of Buddhist ultranationalist organizations such as Ma Ba Tha in lobbying parliament to pass the laws which specifically targeted Muslim population. Thus, the laws were adopted as measures to control and decrease Muslim population, by limiting conversions to Islam,

²⁵ It is important to note that the Rohingya is not the only Muslim ethnic minority in Myanmar. The Kaman is another Muslim ethnic minority group. Unlike the Rohingya, the Kaman is listed in the 135 ethnic groups category, thus deserving Myanmar citizenship. However, they too are historically subjected to various persecutions on religious basis, particularly in escalation of Buddhist ultranationalism since 2012. Smaller numbers of Muslims are also found in other ethnic groups, such as Burman and Karen.

²⁶ Wirathu, a Buddhist monk and leading figure in both 969 Movement and Ma Ba Tha Organization stated in 2013 interview that “*Muslims are like the African carps. They breed quickly and they are very violent and they eat their own kind. Even though they are minorities here, we are suffering under the burden they bring us.... Because the Burmese people and the Buddhists are devoured every day, the national religion needs to be protected,*” (Kyaw, 2013)

prohibiting Muslim men from having more than one wife, prohibiting Muslim families to have many children, and preventing Buddhist women to marry Muslim men.

On the ground, religious discrimination against Muslims and the Rohingyas take multiple forms. A report published by Burma Human Rights Network in 2017²⁷ detailed the extent of religious discrimination faced by Muslims between 2012 and 2017. Firstly, in many communal riots and military attacks, mosques are often targeted in destruction (Fink, 2018). The 2017 Report detailed how great numbers of mosques all over the country were destroyed during 2012-2013 riots, and in many cities (e.g., in Meikhtila, Bago, etc.), authority refused to permit rebuilding of the destroyed mosques. Moreover, the government also banned worships in several mosques and banned Islamic religious schools and institutions from operating (e.g., in Yangon, Ayerarwady, and Mon State). Secondly, there were increasing numbers of self-declared Muslim-prohibited zones. The Report stated that until 2017, there were 21 villages in the country where locals, as permitted by authorities, declared that their villages are Muslim-prohibited zones, erecting signboards in the entrance of the villages that Muslims are not allowed to enter. In at least five of such villages, the messages in the signboards are the same: *“Muslim are not allowed to stay overnight, Muslim are not allowed to buy or rent properties, and no one is allowed to marry Muslim”*. In Sinmakaw village in Yangon, the sign stated that *“This is Buddhists village, other religion not allowed. We are honest and racially superior. Sinmakaw Village is a purely Buddhist Village”*. In Rakhine State, these signs appear even in the state hospital, stating *“we welcome Army and Police but not Muslims”*.

4. 1. 3. Denial on Language and Education Rights

As part of strict Burmanization measures under military regime since 1962, Burmese was adopted as sole national language while prohibiting use of other ethnic languages (Bigagli, 2019), such as prohibiting publication of newspapers and books in languages other than Burmese (Nya Mon, 2014). In terms of Rohingya language, Myanmar government banned teaching of the language, use of Rohingya script, and print newspaper in Rohingya language (Abraham & Jaehn, 2019). Moreover, apart from ban on use of Rohingya language in public schools, about 60% of Rohingya children in 2014 never even went to school, due to poverty and lack of access (Carroll, 2014). In Rakhine, Rohingya schools were segregated from other

²⁷ Burma Human Rights Network. (2017). (rep.). Persecution Of Muslims In Burma. Retrieved November 23, 2021, from <https://progressivevoicemyanmar.org/wp-content/uploads/2017/09/BHRN-Research-Report-.pdf>.

members of society, and the Rohingya students constantly faced horrible studying situation, including no desks in classroom and up to 90 children in one classroom.

4. 1. 4. Denial on Political Participation Rights

The right to vote and right to be elected are generally limited to citizens of the State. However, there were indeed States which allow non-citizens to vote or to be elected to represent their communities. Until 2015, Myanmar was one of those countries, as Myanmar allowed White Card holders²⁸, who are mostly the Rohingya, to vote and even run in general elections. In 2010 general election, Myanmar allows White Card holders (at the time, approximately 600.000-700.000 Rohingya possessed the White Cards) to vote and run for seats in the Parliament (Farrelly, 2016). As a result of the election, three Rohingya members of the Union Solidarity and Development Party were elected to the Parliament to represent Rohingya constituencies in Rakhine (Crouch, 2019).

Nevertheless, gradual elimination of rights to political participation for the Rohingya people (and other Muslims in Myanmar) was parallel with increasing Buddhist ultranationalism and securitization of Muslims since 2011, as Buddhist ultranationalism exerted growing influence in the government (Kyaw, 2016). For instance, in a press statement in 2015, Buddhist ultranationalist figure Wirathu threatened the Parliament “*not to betray over 50 million people by giving priority to one million people. If you allow them to vote in the coming election, I will lead the people to fight against them*” (Lidauer, 2021:30). The White Cards that many of the Rohingya possessed were ultimately declared invalid starting from May 31, 2015, about 5 months before the scheduled general election. White Card holders were removed from eligible voters list, institutionalizing loss of political participation rights for the Rohingya people (Lidauer, 2021). Not only the Rohingya, this also affected the general Muslim representation in Myanmar politics, as in 2015, neither the USDP nor NLD, two of the biggest parties, had a single Muslim candidate. Consequently, there was no Muslim representative in the Parliament resulting from 2015 election.

4. 2. Responses of ASEAN & AICHR in Rohingya Conflict

The Rohingya persecution leads many to question ASEAN’s capability to pressure Myanmar, its member state, to alleviate the situation. Moreover, the conflict evolved from domestic to regional humanitarian crisis, as Rohingya refugee flow reach other member states.

²⁸ White Cards is a temporary identity card, issued mostly to the Rohingya population

ASEAN also has its own human rights instruments (i.e., AHRD and AICHR), thus, it should be well-equipped to pressure on Myanmar, particularly through AICHR. Nevertheless, AICHR is forced to adhere to its main principles, which reflect some of ASEAN's principles, such as primacy of national sovereignty and non-interference, which ultimately renders AICHR powerless and incapable in dealing with human rights of member states (Kaewjullakarn, 2015). In Rohingya conflict, AICHR role is very minimal and inconsequential., and its response to have been limited to promotional human rights activities like debate, workshop, and training (Rakhminawati & Azmin Mokhtar, 2019), with neither concrete action nor legal documents coming from these activities. For instance, in May 2013, AICHR held Focus Group Discussion in Jakarta to discuss the Rohingya conflict for 2 hours. However, no concrete action plan and/or document was produced from the meeting, as Myanmar delegation rejected to accept the result of the meeting, citing non-interference as the Rohingya case is viewed as their internal issue (Saputra, 2019). Perhaps the most telling indicator of AICHR's powerlessness in Rohingya conflict was the February 2017 AICHR meeting in the Philippines. At the time, the conflict was escalating, and it was visible that further escalation would be expected, which did materialize in the massive military campaigns about 5 months later. However it did not address the Rohingya issue, instead focusing primarily on issues such as Sustainable Development Goals and access to water and sanitation.²⁹

After the peak of the military violence against the Rohingya occurred in August 2017, about a month later, ASEAN issued the ASEAN Chairman's Statement on The Humanitarian Situation in Rakhine State. Controversially, the statement did not condemn the extent of violence that Myanmar military did to the Rohingya people. Instead, ASEAN stood in favor of Myanmar government and "*condemned the attacks against Myanmar security forces*"³⁰. Moreover, the Statement did not at all mention the term "Rohingya", thus refusing to address the core aspects of the issue. As the crisis had evolved into a serious humanitarian crisis affecting the region as well, silence on the issue became untenable, and ASEAN was forced to address it. The Rohingya conflict is thus discussed in all ASEAN Summit meetings³¹ since

²⁹ ASEAN, Press Release: 23rd Meeting of the AICHR, Boracay, 13-15 February 2017, available from <http://aichr.org/pressrelease/press-release-23rd-meeting-of-the-aichr-13-15-february-2017-boracay-the-philippines/> (accessed 5 July 2022)

³⁰ ASEAN, ASEAN Chairman's Statement on The Humanitarian Situation In Rakhine State, 24 September, 2017, available from <https://asean.org/wp-content/uploads/2017/09/1.ASEAN-Chairmans-Statement-on-the-Rakhine.pdf> (accessed 5 July 2022)

³¹ The ASEAN Summit is the highest-level meeting of ASEAN, attended by Heads of States or Governments of the member states. It is in these meetings that the highest-level decision-making processes are undertaken. Held twice a year, each Summit produces ASEAN Chairman Statement as final document.

November 2017, indicating its importance in ASEAN. Nevertheless, closer analysis of the Chairman Statements of the Summits, as the final documents produced in each Summits, reveals certain patterns that inform general ASEAN attitude towards the Rohingya conflict.

Firstly, in all ASEAN Summit documents that address the Rohingya conflict, (ASEAN Chairman's Statement on the 31st until 39th ASEAN Summit) none of them specifically use the term 'Rohingya', thus aligning with Myanmar's interest which deny existence of Rohingya, as well as avoiding root cause of the issue. In all the Statements, ASEAN use the wording of "*the humanitarian situation in Rakhine State*". Secondly, none of the ASEAN Summit documents refer to the underlying causes of the conflict: denial of citizenship and statelessness. Instead, ASEAN seemingly choose to focus on the side effect: refugee flows and repatriation from Bangladesh to Myanmar. The first concrete mission ASEAN took in Rohingya conflict, the Preliminary Needs Assessment Mission (PNA Mission) in 2019, was strictly aimed to "support Myanmar Government in its efforts regarding the repatriation process" (ASEAN Thailand, 2019). Until now, report of PNA Mission is not officially released to public, but it was leaked in June 2019 (Straits Times, 2019). The Mission drew heavy criticism, as ASEAN seemingly expect refugee repatriation from Bangladesh to Myanmar to be smooth and safe, neglecting years of persecution, violence, and marginalization that the Rohingya people face in Myanmar.

Thirdly, none of the documents refer to role of Myanmar military on the issue. Instead, ASEAN frame it as intercommunal conflict, thus it simply encourages Myanmar government to mediate and ease tensions between conflicting communities without addressing role of Myanmar governments in this conflict. For instance, in the Statement on 32nd Summit in 2018, ASEAN stated that "*We expressed our support for the Myanmar Government in its efforts to bring peace, stability, the rule of law, to promote harmony and reconciliation among the various communities, as well as to ensure sustainable and equitable development in Rakhine State*".³² Similar statement on ASEAN support for Myanmar to mediate this 'intercommunal' conflict is further reiterated in following ASEAN Summit Statements, including the 33rd, 34th, 35th, 36th, and 37th Summit Statements. However, latest editions of the Summit, 38th and 39th Summit Statement, offers a slight change of tone. Despite still not using the term Rohingya and not explicitly making Myanmar military responsible, it read that "*We further underscored the*

³² ASEAN, ASEAN Chairman's Statement of the 32nd ASEAN Summit, Singapore, 28 April 2018, available from <https://asean.org/wp-content/uploads/2018/04/Chairmans-Statement-of-the-32nd-ASEAN-Summit.pdf> (accessed 5 July 2022)

importance of efforts to address the root causes of the conflict in Rakhine State".³³ Moreover, ASEAN also seeks to *"to promote inclusive and sustainable development, including to provide basic services and creating livelihood opportunities for the displaced persons"*. These rather short and vague statements might indicate more willingness from ASEAN to tackle root issue of statelessness, but until now, no practical implementation remains is seen.

V. Difficulty of Implementing Minority Rights and Protection in Southeast Asia

State-directed minority persecution is one of the most frequent cases of human rights violation in Southeast Asia. In some cases (e.g., in Myanmar), it takes the form of systematic exclusion and protracted violent conflicts that often evolve into serious humanitarian crisis that affect the entire region. Despite this, there is a glaring omission of specific provisions of minority rights and protection within ASEAN human rights regime. Consequently, there is significant lack of actions taken by ASEAN, its member states, and its human rights mechanism to address the issue of minority persecutions.

I observe two main reasons behind continuous omission of minority rights and protection in ASEAN human rights regime: firstly is the ASEAN Way principle, which upholds the primacy of state sovereignty and non-interference in internal affairs, and consensus-based decision-making in ASEAN level, which makes it difficult to hold states responsible as main perpetrator of minority rights persecution. Secondly, this reluctance can be explained by looking at the pattern of ethnocultural nationalism in some member states. As nation is identified along certain identity cores, minority rights, which facilitate preservation of minority identities, is difficult to implement.

5. 1. The ASEAN Way Principle

5. 1. 1. Definition of the ASEAN Way

Keeping ASEAN together and maintaining a relatively cooperative and amicable atmosphere between member states in recent years is a feat in itself, considering history of conflicts and massive diversity of characteristics of its member states. Indeed, ASEAN manages to unite States with relatively recent histories of disputes (e.g., Malaysia-Indonesia

³³ ASEAN, ASEAN Chairman's Statement of the 38th and 39th ASEAN Summit, 26 October 2021, available from <https://asean.org/wp-content/uploads/2021/10/FINAL-Chairmans-Statement-of-the-38th-and-39th-ASEAN-Summits-26-Oct....pdf> (accessed 5 July 2022)

dispute in 1960s, Cambodia-Vietnam war in 1970s-1980s), turning this volatile region into one of solidarity among member states in recent years. Moreover, ASEAN also unites countries with stark demographic, political, social, and economic differences.

Many scholars and politicians have suggested that this success is credited to the ASEAN Way principle as the main norms and foundational principles of ASEAN. ASEAN Way is cited to be “the oldest and most important norm adopted and internalized by ASEAN states which has been central to the conduct of ASEAN relations so far.” (Sarwar 2018:30). Acharya (2001) also argued that ASEAN Way is the basis of ASEAN’s regional collective identity as well. Three norms are widely accepted to be the strongest features of ASEAN Way (Yukawa, 2017): primacy of states’ national sovereignty, non-interference in member states’ internal matters, and consensus-based decision making.

5. 1. 2. ASEAN Way: National Sovereignty and Non-interference in Domestic Matters

National sovereignty and non-interference in domestic matters are certainly not unique to ASEAN. They are norms commonly found in regional or international organizations, but within ASEAN context, there is a distinctly strict adherence, mutual agreement, and obedience among its member states to these principles. This strict adherence to national sovereignty and non-interference are rooted in the common history of member states themselves, particularly regarding colonial and conflict history. Except for Thailand, all member states were under colonial control. Moreover, even after independence, Southeast Asia was vulnerable to outside influences of Cold War politics (e.g., Vietnam War which also affected Laos and Cambodia, US-backed coup in Indonesia to depose Soviet-backed regime, etc.). Moreover, member states faced multiple forms of security challenges in nation-building after independence, including ethnic tensions (e.g., Malaysia in 1969), civil wars (e.g., Cambodia in 1970, Laos in 1960-1970), secessionist movements (e.g., Aceh in Indonesia), and so on, which were frequently influenced and exacerbated by external powers as well.

Thus, principles of national sovereignty and non-interference is supposedly the remedy to prevent aggravation of domestic conflicts by foreign factors, which had directly influenced multiple conflicts in Southeast Asia (Acharya, 2001). Secondly, collective memory of major power influence to Southeast Asia during colonial and post-colonial era means that member states will not anymore allow foreign actors to interfere with their sovereignty. Thirdly, these principles are widely cited by ASEAN leaders to contribute to relative absence of conflicts between ASEAN member states, particularly since 2000s. Former Singaporean Foreign

Minister, Shunmugam Jayakumar, had stated that “*ASEAN countries’ consistent adherence to this principle of non-interference is the key reason why no military conflict has broken out between any two ASEAN countries since the founding of ASEAN*” (Tobing, 2018:157).

Practical implementation of adherence to national sovereignty and non-interference in ASEAN include, among others: refraining from criticizing, sanctioning, or taking direct measures against actions of a member states’ government towards its own people, including human rights violations; refraining from criticizing political measures, forms or styles of government, and not making them a conditionality for ASEAN membership; refraining from supporting secessionist, rebel or insurgent groups in other member states; absence of sanction mechanism in ASEAN; absence of supranational institutions, making ASEAN a collection of multiple intergovernmental forums; primacy of consensus, consultation, and mutual agreement in decision-making; and so on.

5. 1. 3. ASEAN Way: Consensus-based Decision-making

The third component of the ASEAN Way is primacy of consensus as basis of decision making. It means that in making an official decision, a form of agreement must be found among member states. Consensus-based decision making in ASEAN necessitates communication, consultation, informal bargaining, and non-confrontational diplomacy (Acharya, 2001). While consensus-based decision-making helps build mutual trust, respect, and alleviate tensions, it renders ASEAN slow and ineffective in its decision-making process, particularly in serious political or humanitarian conflicts (Koh & Karim, 2016). Narine (1997) noted that consensus in ASEAN does not always need to have unanimous agreement among member states. Frequently, it just needs a compromise that States could agree on without threatening the important national interests. As a result of this, however, ASEAN decisions particularly in serious political issues tend to be highly watered down, mostly operate on the basis of lowest common denominator that could be agreed on by all member states.

Thambipillai & Saravanamuttu (1985) suggested that this particular model of decision-making is rooted in Malay tradition of communal decision-making, namely ‘*musyawarah*’ and ‘*mufakat*’. *Musyawarah* refers to decision-making process through discussion, consultation, non-coercion, solidarity, understanding and mutual agreement, while *mufakat* refers to the result of this process, which indicates that mutual agreement has been reached, no sides are coerced to comply, and compromise has been made in mutual agreement.

Practical implementation of adherence to consensus-based decision-making in ASEAN include, among others: preference to address problems through high-level ministerial meetings; the use of *musyawarah* and *mufakat* in decision-making in high-level meetings; frequent use of closed preliminary meetings before high-level meetings take place; preference to address issues in case-to-case basis, rather than legalizing or institutionalizing certain way of problem-solving; avoidance of use of voting mechanism; avoidance of the use of international courts, arbitration or other international legal settlements in dealing with conflicts; and so on.

5. 1. 4. The ASEAN Way and Minority Rights in ASEAN

The three principles of ASEAN Way – National sovereignty, non-interference, and consensus – are naturally problematic for minority rights and protection against state-directed persecutions. It renders ASEAN and its member states reluctant to criticize other member states' human and minority rights violations, due to respect for sovereignty, non-interference, and non-confrontational diplomacy. Moreover, preference for consensus in decision-making process essentially gives each member state veto power, thus joint regional response to state-directed minority persecution is highly improbable to achieve.

The limits of ASEAN Way is evident in ASEAN and member states' response to the Rohingya persecution in Myanmar. Firstly, in a clear indication of respecting national sovereignty and non-interference in Myanmar's domestic matters, ASEAN continuously avoid the term 'Rohingya'. Moreover, ASEAN also never refers to the underlying cause of the issue, namely statelessness and denial of citizenship by successive Myanmar governments, thus does not pressure Myanmar governments to domestically alter the discriminatory 1982 Citizenship Law. This ASEAN attitude is a contrast to other human rights bodies and international organizations on the Rohingya issue, which view that solving statelessness and citizenship is core of the problem (e.g., the UN Human Rights Council resolution in 2021 or Advisory Commission on the Rakhine State in 2017). Secondly, in a clear indication of non-confrontational diplomacy, ASEAN does not seem to acknowledge role of Myanmar military in the violence, instead framing the issue as an intercommunal conflict. Even more controversially, ASEAN initially seemed to blame on the communities' attack against Myanmar security forces as initiator of the conflict, stating in 2017 Statement that ASEAN "*condemned attacks against Myanmar security forces on 25 August 2017 and all acts of violence which resulted in loss of civilian lives, destruction of homes and displacement of large numbers of people*". Thirdly, in a clear indication of consensus-based decision-making, no

robust measures are taken by ASEAN to address the conflict, apart from refugee repatriation issue, that is seemingly the lowest common denominator accepted by Myanmar government as well. This is also evident by absence of comprehensive sets of recommendations from ASEAN for Myanmar to implement in order to alleviate the conflict³⁴. Instead, ASEAN continuously only encourage Myanmar to implement recommendation made by Advisory Commission on the Rakhine State³⁵, while not coming with a set of recommendations on its own.

The ASEAN Way of national sovereignty, non-interference, and consensus seems to be strictly adopted by majority of member states as well, in addressing the Rohingya conflict. Member states either take a non-confrontational diplomatic approach (e.g., Indonesia), focus on non-political assistance (e.g., Singapore and Brunei), or simply support Myanmar's right for non-interference and national sovereignty, thus rejecting foreign involvement on the matter (e.g., Cambodia). The only member state who breaks this ASEAN Way was Malaysia, which under PM Najib Razak pressured ASEAN to move beyond ASEAN Way and come up with measures against Myanmar government. However, some observers argued that this was an attempt by the PM to reestablish his domestic popularity and image which was rocked due to accusation of his involvement in corruption scandal (Ekklesia & Fitriani, 2018).

ASEAN Way is also deeply embedded in ASEAN Human Rights Mechanism (AICHR) that it hinders its effectiveness in dealing with minority rights violations. As part of main principle that guides AICHR in its Terms of Reference, ASEAN Way shapes AICHR into an intergovernmental consultative body, without power to hear complaints, adjudicate state violations, or issue binding decision. Thus, as evident in its silence on the Rohingya persecution (as well as in other minority persecutions such as in Indonesia and Thailand), it can be concluded that AICHR is ineffective in dealing with state-directed minority persecutions.

With continuous adherence to ASEAN Way, inserting of minority rights into ASEAN human rights regime will prove difficult. As State itself poses the ultimate threat for violation of minority rights, inclusion of minority rights provisions mean that ASEAN will ultimately be

³⁴ The 2017 Chairman Statement is rather short and reactionary, while the comprehensive report under the PNA Mission only deals with issue of repatriation, thus not comprehensive.

³⁵ Advisory Commission on Rakhine State was established in September 2016 through the joint effort of Aung San Suu Kyi and Kofi Annan. Intended to be an impartial body to observe and investigate the Rohingya conflict, it was composed of 6 Myanmar and 3 international experts, and chaired by Kofi Annan. Nevertheless, Chan (2017) argued that its establishment is a political ploy by Aung San Suu Kyi to relieve international pressure on her and Myanmar and to convince international community of Myanmar's supposed democratization. The work of Advisory Commission ended with final report published in August 2017, shortly before the peak of military campaigns against the Rohingya (in November 2017) took place.

forced to act against its member states in the case of minority rights violations. Moreover, as other major multilateral agreements on minority rights (e.g., UNDM and FCNM) have displayed, provisions on minority rights not only require elaboration of those rights, but also to provide directions and requirements on what states need to do protect minorities and these rights. Thus, regional minority rights provisions would require a certain degree of supranational pressure on the State – something which ASEAN, up to this point, would not seem to agree on.

5. 2. Ethnocultural nationalism in ASEAN member states

Minority rights in Southeast Asia and ASEAN are further exacerbated by the fact that some member states have historically been the perpetrators of minority persecutions. Even more so, these minority persecutions are often justified and perceived as necessary part of post-colonial nation-building. In some states where certain minority groups face the most precarious condition (in Myanmar, Cambodia, and Thailand), these persecutions are made possible due to ethnocultural nationalism that those States follow - as the meaning of nation and nationality is identified with certain identity markers (e.g., certain ethnicity, language and religion), it gives way to marginalization, exclusion, forced assimilation, and even systematic expulsion of minority groups who are outside of these identity cores. Combined with regional adherence to ASEAN Way principle, this form of minority policies is tolerated in ASEAN as normal part of nation-building that member states have the domestic sovereignty to undertake.

Distinction between ethnocultural nationalism and civic nationalism is one of the most discussed issues in nationalism studies. According to David Brown (2000:50), ethnocultural nationalism³⁶ means a sense of community (in this case, nation) based on myth of common ancestry, rooted in historically shared identity markers such as ethnicity, language, or religion. Myth of common ancestry is seen as primordial and exist long before statehood, thus it gives a sense of authenticity of the nation that forms collective national self-determination. On the other hand, for civic nationalism, this sense of community is based on legal and political aspect of statehood and citizenship. Regardless of their distinct ancestry, in civic nationalism the member of this community (i.e., citizens) are based on their residence in particular territory of state sovereignty, whose foundation is based on common rights, duties, & citizenship values.

³⁶ Other scholars may refer to ethnocultural nationalism as used by Brown as ‘ethnic nationalism’

5.2.1. Ethnocultural Nationalism & State-directed Minority Persecutions in Southeast Asia

In many cases of state-directed minority persecutions in Southeast Asia (in Thailand, Cambodia, and Myanmar), the central role of ethnocultural nationalism in the conflicts is evident, thus many of these state-directed minority persecutions have several common patterns attributed to ethnocultural nationalism.

The first pattern is identification of nation and national identity towards certain cores of identity markers (e.g., ethnic, language and religion). However, this national identification is not purely an organic representation of shared common ancestry that develop organically over long period. Rather, this identification is materialized as a part of political process by certain actors to pursue certain goals. In this sense, ethnocultural nationalism is not purely 'primordialist', that it is an organically developed sense coming from shared ancestry. Rather, it is closer to what Anthony Smith (1986) call perennial type of primordialist, in which this common ancestry is reinterpreted, manipulated, and politicized in the context of modern nation to legitimize themselves. In the Rohingya case, the Rohingya enjoyed full citizenship rights until 1962 when General Ne Win rose to power and started strict Burmanization policies which reify Burman and Buddhism as cores of Myanmar national identity, which culminated in the Operation Dragon King and 1982 Citizenship Law. The second pattern is the role of colonialism and foreign influence in the process of constructing ethnocultural nationalism. Here, by associating certain minority groups with colonial powers and the historical enmity it entails, these minority groups are essentially perceived as 'Others' and enemy of the nation. In the case of Rohingya, they are continuously perceived as aftermath of British colonialism of Myanmar, thus ethnocultural nationalist policies of Burmanization seek to exclude them. The third pattern is practical legal implementation of ethnocultural nationalism that automatically legitimizes minority persecution and exclusion. Adoption of 'National Races' as basis of 1982 Citizenship Law of Myanmar institutionalized the loss of citizenship for the Rohingya people.

5.2.2. Ethnocultural Nationalism and Minority Rights in ASEAN

While ethnocultural nationalism gives way for state-directed minority persecutions within some member states, adherence to ASEAN Way also renders state-directed minority persecutions unchallenged in regional level. In the case of Rohingya, for member states who pursue ethnocultural nationalism and minority persecutions of their own, pressuring Myanmar government would automatically put their own minority persecutions under the microscope. Whereas other ASEAN member states' strict adherence to ASEAN Way principle means that

this is treated as a part of States' national sovereignty and domestic matter that no outside actors should interfere. Consequently, in the face of state-directed minority persecutions, minority groups are left without protection both in domestic and regional level.

It is perhaps unsurprising that, in the Rohingya case, the recent strongest support for Myanmar among ASEAN members come from those with ethnocultural nationalism and minority persecution of their own: Cambodia and Thailand. Cambodia has persistently opposed internationalization of the Rohingya issue due to emphasis of Myanmar's domestic affairs, and Thailand has supported Myanmar military role in the Rohingya conflict as a much-needed part of national defense (Harper, 2018). Moreover, both Thailand and Cambodia have continuously voted against multiple UN General Assembly resolutions in the Rohingya conflict.

In the context of ASEAN, ethnocultural nationalism makes inclusion of minority rights in ASEAN much more difficult to realize. For member states with ethnocultural nationalist aspirations, granting special rights to minorities (e.g., their expressions of identity, rights to political participation, etc.) would run against their continuous practices of ethnocultural nation-building, such as homogenization, forced assimilation, or forced exclusion. Meanwhile, due to consensus-based decision-making embedded in the ASEAN Way principle, other ASEAN member states, even if they aspire to include minority rights into ASEAN human rights regime, they would not be able to do so without other member states consenting to it.

VI. Conclusion

6.1. On the Necessity of Minority Rights in ASEAN

There is an evident lack of reference to minority rights as a specific field within human rights in addressing such cases, both in academic and legal spheres. In academic field, there is an overwhelming tendency to view such cases from general human rights perspective while specific rights covered under minority rights scope are largely under-researched. Moreover, as indicated by previous discussions, in ASEAN level, absence of minority rights provisions contributes to lack of effective responses by ASEAN and its member states in dealing with minority persecutions, as the Rohingya case displayed.

Considering how common state-directed minority persecutions are in Southeast Asia, I urge the importance to elevate minority rights discussions both in academic and legal spheres in Southeast Asia. Human rights principles and ASEAN adherence to the principles are

necessary but insufficient, since in many cases it is the denial of minority rights (e.g., denial of ethnic identity in the Rohingya case) that forms the underlying root causes of the conflict. Thus, if ASEAN wants to seriously address such cases, it needs to start by considering needs and interests of minority groups and expressions of their identity. There are several steps that ASEAN should consider to achieve those aims.

Firstly, there needs to be an official legal discourse on minority rights in ASEAN level. As previously discussed, the term ‘minority’ as specific subjects of human rights protection in ASEAN are almost entirely missing. This is a contrast to other beneficiaries of human rights (e.g., women, children and the disabled), which are explicitly enshrined in various ASEAN human rights documents. Thus, I propose an amendment to major ASEAN documents that relates to human rights protection (e.g., AHRD, ASEAN Community Vision) to specifically include minorities as subjects of human rights protection. In practice, it could take the form of inserting the term ‘minority’ or ‘persons belonging to minorities’ as subjects of human rights protection, substituting or adding to the vague term of ‘vulnerable and marginalized groups’ that has been used in ASEAN documents. Moreover, ASEAN human rights documents should also refer to the UNDM as one of the international human rights documents that ASEAN seek to adhere to. Secondly, there needs to be a specific declaration or consensus in ASEAN level regarding minority rights and protection of minorities, in similar manner to ASEAN Consensus on the Protection and Promotion of the Right of Migrant Workers or The Declaration on The Elimination of Violence Against Women and Elimination of Violence Against Children In ASEAN. Although both are simply declarations with no legally binding effect, they serve as platform for more discussion, and cooperation on the issues of rights of migrant workers and of women and children among member states, thus giving States at least moral authority to pay attention to such issues. Similarly, minority rights declaration would promote and elevate the discussion of minority rights and protection in ASEAN level and provide moral authority for member states. Thirdly, with regards to ASEAN response to state-directed minority persecutions, there needs to be certain exception to strict adherence to ASEAN Way. While institutionalized supranational human rights mechanism might be implausible in ASEAN level, stronger mandates need to be given to ASEAN and AICHR in dealing with such cases. For instance, AICHR should be able to initiate and facilitate regional arbitration and mediation involving member states, member states should issue joint declaration condemning grave human rights violations, and certain forms of sanctions in the ASEAN level could be applied.

6.2. ASEAN Way and Ethnocultural Nationalism: Insurmountable Obstacles?

Nevertheless, inserting minority rights provisions in ASEAN will remain difficult with the ASEAN Way still accepted as the main principle of ASEAN regionalism and ethnocultural nationalism still deeply entrenched in several of ASEAN member states. With regards to ASEAN Way, three principles – national sovereignty, non-interference, and consensus-based decision-making – remain as ASEAN foundational principles as regional organization. Therefore, it is unlikely for ASEAN to act against member states in state-directed minority persecutions. However, at least for now, ASEAN involvement on minority rights need not to be solely in negative manner (e.g., adjudicating or sanctioning the states), but ASEAN can start with promoting minority rights as important parts of human rights instruments, in the same way it did for women and children rights and migrant workers' rights. By promoting and encouraging minority rights and protection, ASEAN will give moral authority to member states without necessarily violating ASEAN Way that it strictly adheres to.

A harder obstacle to overcome is ethnocultural nationalism that underlies many of these minority persecutions. Nevertheless, ethnocultural nationalism is not something fixed and organic, rather it is a (political) process undertaken by certain actors for certain purposes. With that in mind, it is not impossible for domestic changes to be undertaken, although it may require bold reforms executed by charismatic and trusted government. As ethnocultural nationalism in Southeast Asia often result in minority persecution and marginalization, a major part of changes will be to include minority groups into public life, and to ensure their participation, voices and interest be heard in social, economic, religious, and cultural life.

6.3. Contributions and Limits of the Research

The framework of minority rights is chosen due to its academic scarcity in Southeast Asian studies that relate it to state-directed minority persecutions. Thus, for scholars of Southeast Asian studies, this paper offers another academic lens and legal possibility to advocate for minority groups in Southeast Asia, in addition to general human rights perspective that dominate discussion on the issue. Furthermore, this paper also observes the legal status of minority rights both in international laws and ASEAN laws, therefore it may give insights on importance of minority rights provisions for legal experts and policy makers in Southeast Asia.

Nevertheless, there are certain limits of this research that may benefit future research regarding minority rights in Asia. Firstly, indigenous rights, which is commonly associated with minority rights, are not incorporated here. Indigenous peoples of Southeast Asia face

similarly grave persecutions, ranging from forced displacement from their ancestral land, forced assimilation to national culture, denial of citizenship, and so on. Moreover, as is the case of minority rights, there is no specific provisions regarding indigenous rights in ASEAN level. The bases of assumptions made in this research regarding minority rights (e.g., the ASEAN Way, ethnocultural nationalism, absence of indigenous rights in ASEAN human rights regime) is applicable in researching indigenous rights in Southeast Asia and linking it with minority rights. Nevertheless, as focus of this research is more about analyzing marginalization and exclusion of minority groups from public and official life (as is aim of minority rights), instead of indigenous peoples' rights to autonomy of their ancestral land (as is the aim of indigenous rights), minority rights is more fitting to be applied in the cases brought forward in this research.

Secondly, future research might benefit from in-depth analysis of comparison between ASEAN and other organizations in such cases. Particularly in the Rohingya case, many organizations (e.g., the UN and its bodies, OIC, etc.) are to certain degree involved, whose involvement are not covered in detail here due to focus on ASEAN and its minority rights and human rights mechanism. Comparing ASEAN with other organizations in future research may thus give another layer of understanding of how such principles like the ASEAN Way adhered to, and how such principles impact on such cases where these organizations need to adjudicate and take a stance on its member states in cases of human rights or minority rights violations.

Bibliography

- Acharya, Amitav. (2001). *Constructing a security community in Southeast Asia: Asean and the problem of Regional Order*. New York: Routledge.
- Ahsan Ullah, AKM. (2016). Rohingya crisis in Myanmar. *Journal of Contemporary Criminal Justice*, 32(3), 285–301. <https://doi.org/10.1177/1043986216660811>
- Al Jazeera. (2018). *Myanmar: Who are the Rohingya?* Retrieved January 20, 2021, from <https://www.aljazeera.com/features/2018/4/18/who-are-the-rohingya>
- Alam, Aftab. (2015). Minority rights under international law. *Journal of the Indian Law Institute*, 57(3), 376–400. <http://www.jstor.org/stable/44782787>
- Alam, Jobair. (2019). The current Rohingya crisis in Myanmar in historical perspective. *Journal of Muslim Minority Affairs*, 39(1), 1–25. <https://doi.org/10.1080/13602004.2019.1575560>
- Arraiza, Jose M., & Vonk, Olivier. (2017). (rep.). *Report on Citizenship Law: Myanmar*. Robert Schuman Centre for Advanced Studies. Retrieved November 16, 2021, from https://cadmus.eui.eu/bitstream/handle/1814/48284/RSCAS_GLOBALCIT_CR_2017_14.pdf.
- Barten, Ulrike. (2015). *Minorities, minority rights and internal self-determination*. London: Springer International Publishing.
- Bigagli, Francesco. (2019). School, ethnicity and nation-building in post-colonial Myanmar. *Research in Educational Policy and Management*, 1(1), 1–16. <https://doi.org/10.46303/repam.01.01.1>
- Brown, David. (2000). *Contemporary nationalism: Civic, ethnocultural and multicultural politics*. London: Routledge.
- Capotorti, Francesco. (1979). *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*. Retrieved October 18, 2021, from <https://digitallibrary.un.org/record/10387?ln=en>. (accessed 20 October 2021)
- Carroll, Joshua. (2014, August 4). *Myanmar's Rohingya deprived of Education*. Al Jazeera. Retrieved November 23, 2021, from <https://www.aljazeera.com/features/2014/8/4/myanmars-rohingya-deprived-of-education>.
- CBS News. (2018). *Weaponizing social media: The Rohingya crisis*. Retrieved December 03, 2020, from <https://www.cbsnews.com/news/rohingya-refugee-crisis-myanmar-weaponizing-social-media-main/?linkId=48515958>
- Chang, Jennifer. (2016). *Myanmar's aung san suu kyri doesn't even want to hear the term "Rohingya"*. Quartz. Retrieved November 17, 2021, from <https://qz.com/678359/myanmars-aung-san-suu-kyri-doesnt-even-want-to-hear-the-term-rohingya/>.
- Crouch, Melissa. (2019). States of legal denial: How the state in Myanmar uses law to exclude the Rohingya. *Journal of Contemporary Asia*, 51(1), 87–110. <https://doi.org/10.1080/00472336.2019.1691250>
- Democracy Reporting International. (2018). *Buddhist nationalists used Facebook to fuel hate speech in Myanmar*. Retrieved December 05, 2020, from <https://democracy-reporting.org/buddhist-nationalists-used-facebook-to-fuel-hate-speech-in-myanmar/>
- Deschênes, Jules. (1985). *Proposal concerning a definition of the term "minority"*. Retrieved October 18, 2021, from <https://digitallibrary.un.org/record/88267?ln=en>. (accessed 20 October 2021)
- Ekklesia, Gabriela, & Fitriani, Evi. (2018). Changes in Malaysia's behaviour of ASEAN non intervention principle in the Rohingya case. *Journal of Strategic and Global Studies*, 1(1), 84–100. <https://doi.org/10.7454/jsgs.v1i1.1005>

- Faridul Alam, Muhammad. (2020). Myanmar General Election (2020) And Rohingya Crisis: A Dark Road To Democracy. *Journal of Indian Research*, 8(3-4), 16–25. Retrieved November 23, 2021, from <https://jir.mewaruniversity.org/wp-content/uploads/2021/03/JIR%20Volume%208,%20Issue%20.3-4,%20Jul-Dec%202020.pdf#page=22>.
- Farrelly, Nicholas. (2016). Muslim Political Activity in Transitional Myanmar. In M. Crouch (Ed.), *Islam and the State in Myanmar: Muslim-Buddhist Relations and the Politics of Belonging* (pp. 99–128). essay, Oxford University Press.
- Farzana, Kazi F. (2018). *Memories of Burmese rohingya refugees: Contested Identity and belonging*. New York: Palgrave Macmillan.
- Fink, Christina. (2013). *Living silence in burma: Surviving under military rule*. London: Zed Books.
- Fink, Christina. (2018). Myanmar: Religious minorities and constitutional questions. *Asian Affairs*, 49(2), 259–277. <https://doi.org/10.1080/03068374.2018.1469860>
- Forum Asia. (2007). *Ethnic minorities and indigenous peoples: The insignificant others in ASEAN*. Forum Asia. Retrieved November 6, 2021, from <https://www.forum-asia.org/?p=7241>.
- Greenwalt, Patrick (2020). (rep.). *Factsheet Rohingya Refugees*. United States Commission on International Religious Freedom. Retrieved November 15, 2021, from <https://www.uscirf.gov/publication/factsheet-rohingya-refugees>.
- Habib, Mohshin, et al. (2018). *Forced migration of Rohingya: The untold experience*. Ontario International Development Agency. Retrieved November 15, 2021, from https://www.researchgate.net/publication/326912213_Forced_Migration_of_Rohingya_a_The_Untold_Experience/link/5b6e99ce92851ca65055283d/download.
- Hanara, Desi. (2019). (rep.). *A Decade in Review: Assessing the Performance of the AICHR to Uphold the Protection Mandates*. Forum Asia. Retrieved November 4, 2021, from <https://www.forum-asia.org/uploads/wp/2019/06/AFreviewdecadeFAR1-1.pdf>.
- Harper, Jo. (2018). *Bangkok backs Myanmar military as Rohingya clashes intensify*. DW.com. Retrieved December 4, 2021, from <https://www.dw.com/en/bangkok-backs-myanmar-military-as-rohingya-clashes-intensify/a-42724164>.
- Hofman, Lennart. (2016, February 25). *Meet the most persecuted people in the world*. Retrieved January 20, 2021, from <https://thecorrespondent.com/4087/meet-the-most-persecuted-people-in-the-world/293299468-71e6cf33>
- Howe, Adam. E. (2018). Discourses of exclusion: The societal securitization of burma's Rohingya (2012–2018). *Journal of Asian Security and International Affairs*, 5(3), 245–266. <https://doi.org/10.1177/2347797018799000>
- Inoue, Tatsuo. (2004). Human rights and Asian values. In Coicaud, Jean Marc., Doyle, Michael W., & Gardner, Anne-Marie. (Eds.), *The globalization of human rights* (pp. 116–136). New Delhi: Rawat Publications.
- Itasari, Endah R. (2020). The role of the ASEAN Intergovernmental Commission of Human Rights in giving protection to the ethics Rohingya of the spirit in Southeast Asia. *Jurnal IUS Kajian Hukum Dan Keadilan*, 8(3), 569–583. <https://doi.org/10.29303/ius.v8i3.803>
- Kaewjullakarn, Saovanee. (2015). What Legal Measures Should ASEAN Apply to Help The Rohingya? *South East Asia Journal of Contemporary Business, Economics and Law*, 6(4), 6–14. Retrieved November 24, 2021, from https://seajbel.com/wp-content/uploads/2015/05/Law11_PAID_SEAJBEL_KLIBEL6_Law__11_2ffmN03Wuj_template-2.pdf

- Karim, Abdul. (2016). *The Rohingyas: A short account of their history and culture*. Dhaka: Jatiya Sahitya Prakash.
- Koh, Kheng L., & Karim, Mohammad. S. (2016). The role of ASEAN in shaping regional environmental protection. In Hirsch, Philip (Ed.), *Routledge Handbook of the environment in Southeast Asia* (pp. 315–333). essay, New York: Routledge.
- Kyaw, Nyi N. (2016). Islamophobia in Buddhist Myanmar: The 969 Movement and Anti-Muslim Violence. In Crouch, Melissa (Ed.), *Islam and the State in Myanmar: Muslim-Buddhist Relations and the Politics of Belonging* (pp. 183–210). essay, Oxford: Oxford University Press.
- Langlois, Anthony. J. (2001). *The Politics of Justice and Human Rights: Southeast Asia and Universalist theory*. Cambridge: Cambridge Univ. Press.
- Langlois, Anthony. J. (2021). Human rights in Southeast Asia: ASEAN's rights regime after its first decade. *Journal of Human Rights*, 20(2), 151–157. <https://doi.org/10.1080/14754835.2020.1843144>
- Lee, Ronan. (2019). Myanmar's citizenship law as state crime: A case for the International Criminal Court. *State Crime Journal*, 8(2), 241. <https://doi.org/10.13169/statecrime.8.2.0241>
- Lee, Ronan. (2021). *Myanmar's Rohingya genocide: Identity, history and hate speech*. London: I.B. Tauris.
- Lidauer, Michael. (2021). Boundary making in Myanmar's electoral process: Where elections do not take place. *Modern Asian Studies*, 1–34. <https://doi.org/10.1017/s0026749x20000335>
- Mahbulul Haque, Mohammad. (2017a). Political Transition in Burma/Myanmar: Status of Rohingya Muslim Minority. *South Asian Journal of Policy and Governance*, 41(2), 21–40. Retrieved October 14, 2021, from <http://www.sjpgjournal.org/index.php/sjpg/article/view/14>.
- Mahbulul Haque, Mohammad. (2017b). Rohingya ethnic Muslim minority and the 1982 Citizenship Law in burma. *Journal of Muslim Minority Affairs*, 37(4), 454–469. <https://doi.org/10.1080/13602004.2017.1399600>
- Mahmood, Syed S., et al. (2017). The Rohingya people of Myanmar: Health, human rights, and identity. *The Lancet*, 389(10081), 1841–1850. [https://doi.org/10.1016/s0140-6736\(16\)00646-2](https://doi.org/10.1016/s0140-6736(16)00646-2)
- Narine, Shaun. (1997). ASEAN and the ARF: The limits of the "ASEAN way". *Asian Survey*, 37(10), 961–978. <https://doi.org/10.2307/2645616>
- Nya Mon, Pon. (2014). Education reform and national reconciliation in Burma . *2014 Western Conference Association for Asian Studies*, 1–22. Retrieved November 23, 2021, from https://www.salweeninstitute.org/uploads/1/2/6/3/12630752/ed_reform_and_national_reconciliation_1.pdf.
- Petričušić, Antonija. (2005). The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations. *Croatian International Relations Review*, 11(38), 47–57. Retrieved October 25, 2021, from <https://hrcak.srce.hr/6628>.
- Radio Free Asia. (2012). *Call to put Rohingya in refugee camps*. Radio Free Asia. Retrieved November 17, 2021, from <https://www.rfa.org/english/news/rohingya-07122012185242.html>.
- Renshaw, Catherine. S. (2013). The ASEAN Human Rights Declaration 2012. *Human Rights Law Review*, 13(3), 557–579. <https://doi.org/10.1093/hrlr/ngt016>
- Reny, Marie-Eve. (2020). Myanmar's transition and the resurgence of Buddhist nationalism. *Asian Survey*, 60(6), 1072–1089. <https://doi.org/10.1525/as.2020.60.6.1072>

- Saputra, Oddie. (2019). Peran ASEAN Intergovernmental Commission on Human Rights Sebagai Institusi HAM ASEAN: Kasus Rohingya di Myanmar 2012-2016. *Journal of International Relations*, 5(1), 946-957.
- Sarwar, Mariam. (2018). Human Rights The “Asean Way”: Exploring The Possibilities For A Regional Adr And Adjudicative Body In Southeast Asia. *Loyola Of Los Angeles Law Review*, 52(27), 27–61. Retrieved November 27, 2021, from <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=3048&context=llr>.
- Schissler, Matt, et al. (2018). Reconciling Contradictions: Buddhist-Muslim Violence, Narrative Making and Memory in Myanmar. *Interpreting Communal Violence in Myanmar*, 42-59. Doi:10.4324/9781315146263-3
- Sidel, John T. (2012). The fate of nationalism in the new states: Southeast Asia in comparative historical perspective. *Comparative Studies in Society and History*, 54(1), 114–144. <https://doi.org/10.1017/s0010417511000612>
- Smith, Anthony D. (1986). *The Ethnic Origins of Nations*. Oxford: Basil Blackwell.
- Sobandi, Khairu R. (2011). Separatisme di Asia Tenggara: Antara Penguasa dan Gerakan Kelompok Minoritas. *Jurnal Kajian Wilayah*, 2, 35–55.
- Southwick, Katherine. (2015). Preventing Mass Atrocities Against the Stateless Rohingya in Myanmar: A Call For Solutions. *Journal of International Affairs*, 68(2), 137–156. Retrieved November 22, 2021, from <https://www.proquest.com/docview/1679734035?pq-origsite=gscholar&fromopenview=true>.
- Straits Times. (2019). *Outcry as ASEAN report predicts 'smooth' return of Rohingya to Myanmar*. The Straits Times. Retrieved November 29, 2021, from <https://www.straitstimes.com/asia/se-asia/outcry-as-an-asean-report-predicts-smooth-return-of-rohingya-to-myanmar>.
- Thambipillai, Pushpa, & Saravanamuttu, J. (1985). *Asean negotiations: Two insights*. Singapore: Institute of Southeast Asian Studies.
- The Irrawaddy. (2018). *Snr-Gen Min Aung Hlaing's Armed Forces Day Speeches*. The Irrawaddy. Retrieved November 17, 2021, from <https://www.irrawaddy.com/news/burma/snr-gen-min-aung-hlaings-armed-forces-day-speeches.html>.
- Thornberry, Patrick. (2001). *International law and the rights of Minorities*. Oxford: Clarendon Press.
- Abraham, Itty, & Jaehn, Miriam. (2019). Immanent nation: The Rohingya quest for international recognition. *Nations and Nationalism*, 26(4), 1054–1068. <https://doi.org/10.1111/nana.12560>
- UN Refugees.org. (2021). Rohingya refugee crisis explained. UN Refugees.org. Retrieved November 15, 2021, from <https://www.unrefugees.org/news/rohingya-refugee-crisis->
- Van der Stoel, Max. (1994). *OSCE Minorities Seminar in Warsaw in 1994*. In OSCE. Retrieved October 18, 2021, from www.osce.org/hcnm/37959. (accessed 19 October 2021)
- Ware, Anthony, & Laoutides, Costas. (2018). *Myanmar's 'Rohingya' conflict*. Oxford: Oxford University Press.
- Yukawa, Taku. (2017). The ASEAN way as a symbol: An analysis of discourses on the ASEAN norms. *The Pacific Review*, 31(3), 298–314. <https://doi.org/10.1080/09512748.2017.1371211>
- Zarni, Maung, & Brinham, Natalie. (2017). Reworking the Colonial-era Indian Peril: Myanmar's State-directed Persecution of Rohingyas and Other Muslims. *The Brown Journal of World Affairs*, 24(1), 53–74. Retrieved November 22, 2021, from https://www.maungzarni.net/sites/maungzarni.net/files/pdf-news/zarni_and_natalie_brown_piece.pdf.

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