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RESEARCH ARTICLE

# Looking Beyond Invisibility: Rohingyas' Dangerous Encounters with Papers and Cards

Natalie Brinham\*

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State registration and identity documents are often promoted as a way to lift an individual out of the condition of statelessness and begin to redress their deficit of rights. This paper looks beyond invisibility to differentiate between the types of visibility that are produced by documents and registration. Drawing on Rohingyas' historical experiences of documentation and registration in Myanmar, it explores meanings that Rohingyas' attach to their identity documents and asks what contributions these narratives can make to understandings of identity documents in statelessness studies. It concludes that in order to ensure the principle of 'do no harm', international approaches to statelessness could better factor in the lived experiences of the documented, undocumented and redocumented.

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**Keywords:** Rohingya; Myanmar; Statelessness; Identity Documents; Legal Identities; Narrative Research

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## 1 Introduction

Citizenship and statelessness are often associated with ideas of who is "visible" and "invisible" to states and to the law, who has been "counted" and who remains "uncounted", who is "documented" and "undocumented", and who is "registered" and "unregistered". State registration and ID papers are often promoted as a way to lift an individual out of the condition of statelessness and begin to redress their deficit of rights. This paper looks beyond invisibility to differentiate between the types of visibility that are produced by documents and registration. Drawing on Rohingyas' historical experiences of documentation and registration in Myanmar, it asks: How can the meanings that Rohingya attach to their identity documents contribute to understandings of visibility and identity documents from within statelessness studies? In answering this question, I draw on qualitative narrative research undertaken as part of my research with Rohingya participants. I demonstrate that Rohingyas' understandings and lived experiences of being registered and documented in Myanmar speak to different academic approaches to identity documents. In order to do this, I identify thematic areas within Rohingya narratives that converge with three of these academic approaches. These thematic areas are the emancipatory, repressive, and destructive powers of documents.

State-issued identity documents are material objects of law that can frame human experience, generate multiple meanings, and describe social identities.<sup>1</sup> It is through rich ethnographic description that these meanings can be represented effectively within academic research.<sup>2</sup> Therefore, these above-mentioned thematic areas are illustrated through the personal history of one Rohingya man named Mohammed and his three identity documents. Through discussion of the power of documents, I argue that identity documents do not merely prevent and reduce statelessness but can also produce and reproduce it in multiple ways. The lived experience of being registered and documented relates not only to being seen or unseen by the state but also to how one is seen and for what purpose. I suggest that approaches aiming to reduce statelessness through registration and documentation have primarily drawn on understandings of documents as emancipators. Incorporating deeper understandings of the ways in which documents and registration can also

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\* PhD student, Queen Mary University of London, UK, [n.j.brinham@qmul.ac.uk](mailto:n.j.brinham@qmul.ac.uk)

<sup>1</sup> Matthew S Hull, 'Documents and Bureaucracy' (2012) 41 *Annual Review of Anthropology* 251.

<sup>2</sup> Fiona McConnell, 'Citizens and Refugees: Constructing and Negotiating Tibetan Identities in Exile' (2013) 103 *Annals of the Association of American Geographers* 967.

be repressive and destructive could compliment such approaches and contribute to the principle of 'do no harm' that governs donor interventions.

The second section of this paper provides a background to Rohingya statelessness in Myanmar, as well as related research. I explain the relevance of an improved understanding of the lived experiences of registration and documentation practices. The third section sets out my methodological approach. It describes how qualitative social science research approaches state-issued documents as a series of encounters between individuals and the state. Thereafter, the research methods employed for the purposes of this paper are explained. The fourth section retells the story of Mohammed's encounters with the state through three identity documents. Referring back to Mohammed's account and the relevant academic literature, it identifies three powers attributed to identity documents—emancipatory, repressive, and destructive. The fifth section focuses on resistance to state power through identity documents. Finally, the paper concludes by suggesting that understanding statelessness as being more complex than invisibility to the state and the law may lead to a more critical and effective appraisal of the use of registration and the issuance of identity documents to redress the rights deficits associated with statelessness.

## 2 Bureaucratic Cleansing: Myanmar's Citizenship Law and Documentation Practices

In this section, a brief overview of the research on Rohingya statelessness in Myanmar is provided. I explain how an improved understanding of the lived experiences of historical registration and documentation practices can enhance study in this field.

Rohingyas' have generally been described as having been stripped of their citizenship through the enactment of the 1982 Citizenship Law. However, the broader processes of discrimination and persecution that are both a symptom and cause of their statelessness may better be understood through the study of Rohingya encounters with their state-issued identity documents.<sup>3</sup> Multiple studies, generally using a human rights approach, have provided a legal analysis of the citizenship law in Myanmar. They largely focus on the areas in which the law fails to comply with international standards.<sup>4</sup> Some studies have also identified areas within the law which could be used to advocate for an increased number of individual Rohingya to gain access to different types of citizenship by relaxing the administrative restrictions and expanding the scope of provisions within the existing law.<sup>5</sup> At the time of writing, the impact of such approaches on access to citizenship since the transition from a military government in 2010 has been negligible.<sup>6</sup>

The 1982 Citizenship Law created a hierarchy of citizenship with 'full citizenship' at the top.<sup>7</sup> In order to qualify for full citizenship, one is required to either be a member of one of the national ethnic groups, or to have both parents who are citizens. The list of official national ethnic groups is decided at the complete discretion of the Council of the State (1982 Citizenship Law section 4). The acquisition of nationality through other means became excessively burdensome under the 1982 Citizenship Law and almost impossible for Rohingya populations to access.<sup>8</sup> The list of ethnic groups changed from an open ended and loosely defined notion used in previous citizenship laws<sup>9</sup> to a list of fixed ethnicities that was produced without

<sup>3</sup> Lindsey Kingston, 'Worthy of Rights: Statelessness as a Cause and Symptom of Marginalization' in Tendayi Bloom and Katherine Tonkiss and Phillip Cole (eds), *Understanding Statelessness* (Routledge 2018).

<sup>4</sup> Human Rights Watch, 'All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State' (22 April 2013) <<https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>> accessed on 24 January 2019;

<sup>5</sup> Advisory Commission on Rakhine State, 'Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report' (August 2017) <[http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport\\_Eng.pdf](http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf)> accessed on 04 January 2019; Republic of the Union of Myanmar, 'Final Report of Inquiry Commission on Sectarian Violence in Rakhine State' (8 July 2013) <[http://www.burmalibrary.org/docs15/Rakhine\\_Commission\\_Report-en-red.pdf](http://www.burmalibrary.org/docs15/Rakhine_Commission_Report-en-red.pdf)> accessed on 04 January 2019; Jose M Arraiza and Olivier Vonk, 'Report on Citizenship Law: Myanmar' (European University Institute 2017).

<sup>6</sup> The following report showed that very limited numbers of Muslims in Rakhine had been assessed for citizenship. See: Global Light of Myanmar, 'The Report to the People on the Progress of the Implementation of the Recommendations of the Rakhine Report' (13 February 2018) <<http://www.globalnewlightofmyanmar.com/report-people-progress-implementation-recommendations-rakhine-state/>> accessed on 30 March 2019.

<sup>7</sup> *Burma Citizenship Law* (15 October 1982) <<https://www.refworld.org/docid/3ae6b4f71b.html>> accessed on 17 December 2018.

<sup>8</sup> Chris Lewa, 'North Arakan: an open prison for Rohingya in Burma' (2008) 32 *Forced Migration Review* 11.

<sup>9</sup> Under the 1948 Citizenship Act, section 3 defines the national ethnic groups as 'Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and such racial group as has settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A.D. (1185 B.E.)'. No further guidance is provided on sub-groups. Under this definition Rohingya could either fall into Arakanese (also known as Rakhine) or 'such racial group'. See: *Burma Citizenship Law* (n 7).

consulting the population of Myanmar and often did not bear much relation to the ways in which groups on the ground self-identified.<sup>10</sup> Rohingya were not included as a group in this list, despite having been recognized as a national ethnic group in various other ways by the Myanmar State prior to this time.<sup>11</sup> The 1982 Citizenship Law, then, effectively changed the criteria for citizenship from a combination of ethnic origin and long-term residency to being based almost solely on ethnic origin.<sup>12</sup> The law had been drafted and enacted following the failed mass expulsion of approximately 200,000–230,000 Rohingya in 1978–1979. Myanmar was forced to take the vast majority back due to international pressure.<sup>13</sup> The timing of the law, combined with the reported confiscation, removal, and destruction of Rohingyas' documents immediately prior to the expulsions and on return, strongly suggests targeted attempts to denationalize Rohingya as part of a broader bureaucratic cleansing process.<sup>14</sup>

Recently, legal scholarship on Rohingya statelessness has shifted its focus away from the content of the 1982 Citizenship Law alone and onto state practices that occurred both inside and outside of domestic law and policy. The studies note that practices relating to documentation of Rohingya effectively prevented them from accessing citizenship. As former citizens of Burma, Rohingyas' should still be entitled to citizenship.<sup>15</sup> The International Fact-Finding Mission Report further shifted emphasis from the content of the Citizenship Law to state practices of seizing, removing and not issuing identity documents that occurred both before and since the enactment of the Citizenship Law.<sup>16</sup> The report noted how the arbitrary implementation of the law violated domestic law, international human rights law, and the principles of the rule of law and legal certainty.<sup>17</sup> It also emphasized that the law engendered discrimination and prejudice at the societal level and recommended an overhaul of Myanmar's citizenship law,<sup>18</sup> while further noting that recent attempts to document Rohingya under the nationality verification process have run in tandem with state violence that they conclude may amount to crimes against humanity and genocide.<sup>19</sup>

The study of Rohingya encounters with identity and state-issued documents can provide insights into how they understand and experience the nature of the state and the law in Myanmar, as well as the meanings they attach to citizenship beyond the documents that recognize it. The study also enables researchers to understand the forms and acts of resistance, collaboration, and negotiation in which Rohingya take part. Lastly, it provides a lens to explore the agency of Rohingya and to draw on their own analyses and lived experiences to gain a greater understanding and better interpretation of the historic events relating to the production of Rohingya statelessness.

<sup>10</sup> For example, see: Thomas Manch, 'For Muslims across Myanmar, citizenship rights a legal fiction' *Frontier Myanmar* (29 December 2017) <<https://frontiermyanmar.net/en/for-muslims-across-myanmar-citizenship-rights-a-legal-fiction>> accessed on 24 January 2019.

<sup>11</sup> Brigadier Aung Gyi, 'The future of May Yu' (Address at the ceremony of the Mujahadin surrender, 15 November 1961) The Burmese language transcript is available in, "Special Issue on May Yu", Current Affairs (or Khit Yay), Ministry of Defense, the Union of Burma, 12, 6 (July 18, 1961)". This speech mentions Rohingya as an ethnic group of Myanmar who should have equal rights as citizens of Myanmar. United Nations Human Rights Council, 'Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar' (Document A/HRC/39/CRP.2, released September 2018). Section 473 of this report states that '[b]oth Prime Minister U Nu, and Sao Shwe Thaik, the country's first President, are reported to have referred to Rohingya as an indigenous group of Myanmar, with U Nu referring to Rohingya by name in a 1954 radio address, as "... our nationals, our brethren."

<sup>12</sup> Based on a comparison of *Burma Citizenship Law* (n 7), and the Burma Citizenship Act 1948 available at: *The Union Citizenship Act, 1948* (as amended up to 1 December 1960) <[http://www.ibiblio.org/obl/docs/UNION\\_CITIZENSHIP\\_ACT-1948.htm](http://www.ibiblio.org/obl/docs/UNION_CITIZENSHIP_ACT-1948.htm)>.

<sup>13</sup> Jeff Crisp, "'Primitive people': the untold story of the UNHCR's historical engagement with Rohingya refugees' (2018) 73 *Humanitarian Exchange* <[https://odihpn.org/wp-content/uploads/2018/10/HE-73\\_web.pdf](https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf)> accessed on 14 January 2019; C R Abrar, 'Repatriation of Rohingya Refugees', UNHCR's Regional Consultation on Refugee and Migratory Movements, Colombo, UNHCR 1995. available at: <http://www.burmalibrary.org/docs/Abrar-repatriation.htm> accessed on 11 May 2019.

<sup>14</sup> 'Bureaucratic ethnic cleansing' is a term coined in: Robert M Hayden, 'Imagined Communities and Real Victims: Self-Determination and Ethnic Cleansing in Yugoslavia' (1996) 23 *American Ethnologist* 783. He explains that when states were unable to destroy group identities through bureaucratic means alone, they resorted to the physical removal or destruction of the group including mass expulsions and mass killings. Thus, the new 'imagined communities' produced 'real victims'.

<sup>15</sup> Nyi Nyi Kyaw, 'Unpacking the Presumed Statelessness of Rohingyas' (2017) 15 *Journal of Migration and Refugee Studies* 269; Nick Cheesman, 'How in Myanmar "National Races" Came to Surpass Citizenship and Exclude Rohingya' (2017) 47 *Journal of Contemporary Asia* 461.

<sup>16</sup> United Nations Human Rights Council, 'Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar' (Document A/HRC/39/CRP.2, released September 2018 110–119).

<sup>17</sup> *ibid* art 496.

<sup>18</sup> *ibid* art 497.

<sup>19</sup> *ibid* art 835.

### 3 Methodology

#### 3.1 State-Issued Documents in Social Science Research

In this section, a description of the way in which qualitative social science research approaches state-issued documents as both material objects of law and as anthropological objects is given. State-issued identity documents in statelessness studies are most frequently referred to as evidence or proof of whether a state recognizes individuals as citizens or not.<sup>20</sup> Securing access to the correct state-issued identity documents for individuals, through various means, forms a cornerstone for approaches to preventing and reducing statelessness. Commonly, the producers of documents claim that their products represent realities or facts that exist in the world outside of the processes that produce them.<sup>21</sup> However, identity documents are not simply neutral records or purveyors of externally available facts about individuals, such as citizenship status, gender, or ethnicity. Documents are crucial tools for states to build and maintain power by establishing a monopoly on the control over freedom of movement and access to rights and benefits.<sup>22</sup> States embrace particular populations while also excluding or 'Othering' in ways that produce noncitizens. State-issued categories and associated documents and registration processes do not merely describe or represent particular identities, they also bring identities into being.<sup>23</sup> In some cases, they also push identities out of being, reify them, or destroy them.<sup>24</sup>

Some literature, influenced by anthropological and sociological thought, views documents not only as the instruments of state power, but also as the interface between state power and individual subjectivities. Encounters between humans and state-issued documents can provide important insights into citizenship practices, the production of statelessness, and the nature of the state. Studies that view documents as both material objects of law and governance and as anthropological objects have analyzed state-formation and identities in Northern Cyprus, for Tibetan refugees in India, and in disaster situations in Pakistan.<sup>25</sup> Within this body of work, documents are not only evidence of citizenship but are also artefacts and mediators between individual subjects and the world.<sup>26</sup>

Sadiq notes that identity and citizenship documents carry affect.<sup>27</sup> For example, beyond the details recorded on them, they can carry notions such as belonging and loyalty. Hull identifies multiple broad and interlinked approaches to how humans encounter bureaucratic documents within contemporary literature, including those that emphasize affect or emotion relating to the moments of encounter with documents, and those that emphasize signs or describe 'the way documents link to people, place, things, times, norms, and forms of sociality'.<sup>28</sup> These research approaches can add depth and richness to the study of citizenship.

Encounters with documents and experiences of documentation processes are particularly prominent aspects of Rohingya oral histories, narratives, and analyses pertaining to the past forty years of their persecution in Myanmar. Oral histories relating to state authorities and documents describe perilous encounters which may result in physical harm, the symbolic destruction of one's group identity, and sometimes death.

<sup>20</sup> Lindsey Kingston, 'Worthy of Rights: Statelessness as a Cause and Symptom of Marginalization' in Tendayi Bloom and Katherine Tonkiss and Phillip Cole (eds), *Understanding Statelessness* (Routledge 2018).

<sup>21</sup> Colin Hoag, 'Assembling Partial Perspectives: Thoughts on the Anthropology of Bureaucracy' (2011) 34 *PolAR: Political and Legal Anthropology Review* 81.

<sup>22</sup> James C Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press 1998); John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge University Press 2000); Kamal Sadiq, 'Limits of Legal Citizenship: Narratives from South and Southeast Asia' in Benjamin N Lawrance and Jacqueline Stevens (eds), *Citizenship in Question: Evidentiary Birthright and Statelessness* (Duke University Press 2017).

<sup>23</sup> Scott (n 22); F K Lehman, 'Ethnic Categories in Burma and the Theory of Social Systems' in Peter Kunstadter (ed), *Southeast Asian Tribes, Minorities, and Nations* (Princeton University Press 1967) vol 1; E R Leach, *Political Systems of Highland Burma: A Study of Kachin Social Structure* (Berg 1973); Matthew S Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (University of California Press 2012).

<sup>24</sup> Timothy Longman, 'Identity Cards, Ethnic Self-Perception, and Genocide in Rwanda' in Jane Caplan and John Torpey (eds), *Documenting Individual Identity* (Princeton University Press 2001); Robert M Hayden, 'Imagined Communities and Real Victims: Self-Determination and Ethnic Cleansing in Yugoslavia' (1996) 23 *American Ethnologist* 783.

<sup>25</sup> Hull (n 23); Fiona McConnell, 'Governments-in-Exile: Statehood, Statelessness and the Reconfiguration of Territory and Sovereignty' (2009) 3 *Geography Compass* 1902; Vasudha Chhotray and Fiona McConnell, 'Certifications of citizenship: the history, politics and materiality of identity documents in South Asian states and diasporas' (2018) 26 *Contemporary South Asia* 111; Malavika Reddy, 'Identity Paper/Work/s and the Unmaking of Legal Status in Mae Sot, Thailand' (2015) 2 *Asian Journal of Law and Society* 251; Yael Navaro-Yashin, 'Make-believe papers, legal forms and the counterfeit: Affective interactions between documents and people in Britain and Cyprus' (2007) 7 *Anthropological Theory* 79.

<sup>26</sup> Sadiq (n 22); Matthew S Hull, 'Documents and Bureaucracy' (2012) 41 *Annual Review of Anthropology* 251.

<sup>27</sup> Sadiq (n 22).

<sup>28</sup> Matthew S Hull, 'Documents and Bureaucracy' (2012) 41 *Annual Review of Anthropology* p 255.

Accounts of documentation processes frequently feature state theft, deception, humiliation, and force. Documentation processes are also sites of resistance, through which Rohingya resist the (re)production of their statelessness and group destruction. Their narratives describe unity, heroism, tragedy, loss, and sometimes shame. They narrate the stories of “missing” documents that have been lost through confiscation, destruction, nullification, and targeted non-issuance, and of enforced and unwanted documents that have been issued as part of genocidal violence.<sup>29</sup>

### 3.2 Research Methods

My research employs narrative and ethnographic research methods to explore the slow production of Rohingya statelessness in Myanmar since 1978. The research focuses on what identity papers signify to people, the shifting meanings attached to registration processes, and the meanings that are attributed to citizenship beyond state-issued identity documents. Research participants were Rohingya who had been displaced from Myanmar and were living in camps and other diasporic communities. In order to reach Rohingya from various different waves of forced migration from Myanmar since 1978, field work was conducted between August 2017 and December 2018 amongst Rohingya populations in Bangladesh, Malaysia, India, and Europe. Methods included focus groups, in-depth interviews, and observations from visits to significant sites and community events. There were 100 research participants, 9 focus groups, 61 interviews with durations between 20 minutes and 3.5 hours, and 23 sets of observations based on separate events. The collected data was then coded and analyzed thematically, including for its narrative content.<sup>30</sup>

For the purposes of this paper—to explore the notions of visibility and invisibility—I drew on a set of themes that emerged from my broader research relating to the different positive and negative powers attributed to identity documents. The emancipatory, repressive, and destructive powers of identity documents were themes that recurred throughout the data. In order to represent and illustrate these themes that occur more broadly in the research, I have chosen to use one Rohingya man’s account of three identity documents. Narrative research and rich description are effective ways to present what documents signify to holders and the meanings that individuals attach to various interactions with the state. As such, a single in-depth narrative, when employed as part of a much wider body of research, can provide a clear explanation and illustration of both the structures and subjectivities involved in documentation processes, as well as insights into everyday processes and practices.<sup>31</sup> Mohammed’s story is one of many. It is not one of the more dramatic accounts, and he does not present events that occupy the extremities of human rights abuses or state-directed harm that some Rohingya have experienced. I selected his story because it binds together different periods of the history of state registration of Rohingya into one single narrative, and because his views and understandings of each era occupy a middle-ground that is broadly representative of other Rohingya that participated in this research. Mohammed’s story describes the three powers that he, other Rohingya, and academic literature from various fields attribute to ID cards.

## 4 Three Powers Attributed to State-Issued ID Cards

In this section, the story of Mohammed’s encounters with the state through three identity documents is retold. Then, it is examined how documents feature in statelessness and social science literature, referring back to Mohammed’s accounts to provide context. His accounts are used to illustrate some of the recurring themes within my qualitative research relating to visibility and invisibility. The purpose is to identify the relevance of various social science analyses to Rohingya situation and to point towards the importance of further analysis of the meaning of documents to communities affected by statelessness. Three themes relating to the power of identity documents are identified. The first draws primarily from statelessness literature and relates to the emancipatory power of documents. The second focuses on the repressive powers of documents found in literature on surveillance and securitization. The third draws on notions from within the sociology and anthropology of genocide relating to the destruction and reorganization of national and ethnic identities.

<sup>29</sup> Natalie Brinham, “Genocide cards”: Rohingya refugees on why they risked their lives to refuse ID cards’ (*OpenDemocracy*, 21 October 2018) <<https://www.opendemocracy.net/natalie-brinham/genocide-cards-why-rohingya-refugees-are-resisting-id-cards>> accessed on 4 January 2018.

<sup>30</sup> Amanda Coffey and Paul Atkinson, *Making sense of qualitative data: complementary research strategies* (SAGE Publications 1996).

<sup>31</sup> Corrine Squire and others, *What is Narrative Research?* (Bloomsbury 2014); D Jean Clandinin and F Michael Connelly, *Narrative Inquiry: Experience and Story and Qualitative Research* (Jossey-Bass 2000); Catherine Kohler Riessman, *Narrative Methods for the Human Sciences* (SAGE Publications 2008).

#### 4.1 A Tale of Three Identity Cards

There are three state-issued identity documents<sup>32</sup> that shaped the events of Mohammed's life as a Rohingya in Buthidaung of North Rakhine State in Myanmar and map his journey to the refugee camp in Bangladesh, where he has lived since October 2017.<sup>33</sup> The first is a hidden and treasured document, the second a nullified and removed document, and the third an enforced document. As international agencies and governments deliberate over solutions to the mass displacement of Rohingya into Bangladesh, Mohammed's personal history with these three documents also shapes his own visions of his family's future—of the possibilities and dangers of returning to his home in Buthidaung. He recounts the stories of these documents as a series of increasingly dangerous encounters with the Myanmar State.

The first document, hidden and treasured, is endowed with intergenerational belonging despite its lack of legal value and is now also furnished with the personal suffering and sacrifices that Mohammed has made to maintain his group identity and keep this ID card. It is his father's "three-fold card" or National Registration Card (NRC) that was issued to Rohingya in post-independence Myanmar before military rule. It is the same document that other citizens of Myanmar carried before 1989.<sup>34</sup> Mohammed's father, aware that many Rohingya had had these documents confiscated, destroyed, or removed and never returned, kept it well hidden long after the time when it had ceased to be of any practical use. Before his death in 2005, he instructed Mohammed to keep it safe, as it may one day be useful to prove that he and his family belonged to the country. Mohammed paid heed to this advice and when the security forces came to his village with a list a year later to collect all the old NRCs, he denied all knowledge of the card and refused to disclose its hiding place. As a result, Mohammed was arrested and sentenced to three years in prison. The charges bore little relation to his "offence"—they were immigration charges. In return for payment of a large fee, he was able to have his sentence reduced to seven months. Upon being released, he had still not revealed the location of the ID card. When Mohammed's village was torched in 2017, he grabbed the ID card from its hiding place, hid it on his body, and fled. With him, the ID card endured the difficult journey to the camps of Bangladesh, where he still has it. He explained that—just in case—he has not even disclosed the location of the card to his wife. He is adamant that, regardless of how they try to persuade him, he will never show this card to Myanmar State officials.

The second document, which was nullified and removed, had been laced with false promises of future citizenship recognition from the military government when it was issued to Mohammed in the middle of the 1990s. It was his Temporary Registration Card (TRC), also known as a "white card". Mohammed described how white cards had been used by the Myanmar State to "trick" both Rohingya and the United Nations Refugee Agency (UNHCR), which was working in Rakhine State at the time and was advocating for documentation for Rohingya.<sup>35</sup> The Agency had been led to believe—or hope—that citizenship cards would be issued to Rohingya in the future. White cards had been issued to all Rohingya after the mass forced repatriations from Bangladesh in the 1990s instead of the citizenship cards issued to people of other ethnic identities in Myanmar.<sup>36</sup> The white card's meaning and significance in Myanmar's society transmuted over the decades as the political system changed. Mohammed's experiences of the apartheid system in North Rakhine State

<sup>32</sup> Mohammed was interviewed on September 27, 2018 in a refugee camp in the Coxes Bazar area of Bangladesh. All names and references to villages of origin have been changed or omitted to ensure the confidentiality and safety of research participants.

<sup>33</sup> There exists a fourth document, the household list, which is also important in Rohingyas' lives. However, I have chosen to focus on three different 'identity documents' for the purposes of clarity and conciseness.

<sup>34</sup> NRCs were issued in Myanmar from the 1950s until the end of the 1980s. Although most of the cards contained the words 'holding this certificate shall not be considered as conclusive proof of citizenship', the cards were effectively used across the country as national identity cards. Foreigners were required to carry different documents known as the Foreigner Registration Certificates (FRCs). Rohingya were not issued with FRCs but with NRCs. These allowed them to access the same rights as other citizens across the country, including freedom of movement within Myanmar.

<sup>35</sup> The UNHCR became operational in North Rakhine State in 1993–1994 following the large-scale repatriations of approximately 200,000 Rohingya from Bangladesh. Although their mandate primarily related to monitoring the returns, advocating with the Myanmar government for the documentation of all Rohingya populations was central to their work. See: Human Rights Watch, 'Rohingya Muslims: Ending a Cycle of Exodus?' (1 September 1996) <<https://www.hrw.org/legacy/summaries/s.burma969.html>> accessed on 04 January 2019.

<sup>36</sup> After 1989, under the 1982 Citizenship Law 'full citizens'—or those considered to be members of one of the 135 listed ethnic nationalities—were issued with Citizenship Scrutiny Cards (CRCs) which were pink in color. It was primarily Rohingya who were issued with white cards during this period, singling them out for a different set of local policies since the 1990s. See: Fortify Rights, 'Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar' (February 2014) <[https://www.fortifyrights.org/downloads/Policies\\_of\\_Persecution\\_Feb\\_25\\_Fortify\\_Rights.pdf](https://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf)> accessed on 13 May 2019; Amnesty International, "'Caged without a Roof': Apartheid in Myanmar's Rakhine State' (Index ASA 16/7484/2017, 21 November 2017) <<https://www.amnesty.org/en/documents/asa16/7484/2017/en/>> accessed on.

since the 1990s, were locked in by the ID card, shaping his everyday life. As such, in order to visit his family in a neighboring village, take his cattle to the market, and to get married, he needed his white card. With it, he negotiated the obstructive bureaucracy and the harsh restrictions imposed on daily life. Ultimately, with the card, he became an object of an all-pervasive and repressive state surveillance system. Later, the card also bore his shattered dreams of civic participation in Myanmar's political transition. Despite their otherwise repressive qualities, white cards carried voting rights and the right to stand for public office—rights which Rohingya had enjoyed since Myanmar's independence. These political rights were of minimal significance during the years of military rule but gained significance when national elections, hailed as an "opening-up" of the country, were finally held from 2008 onwards. In 2015, the white cards were voided and collected, marking the end of Rohingya participation in national elections. Thus, when Mohammed handed his white card back to the state authorities, his emotions were mixed. Although the ID card had singled him out for state repression, he also felt a sense of loss and a foreboding for his community's future.

The third document that shaped the events of Mohammed's life was the enforced one. Mohammed identified the enforcement of this card as an immediate driver of his expulsion to Bangladesh. It has not been issued to him yet, as Mohammed and almost all Rohingya in his village refused to accept it, but the threat of its issuance in a future return to Myanmar still circulates in worried conversations throughout the camps of Bangladesh. It has been described by some as a "tool of genocide".<sup>37</sup> This document is the National Verification Card (NVC) that the Myanmar authorities have been trying—largely unsuccessfully—to issue to Rohingya since 2015.<sup>38</sup> For Mohammed, the NVC is inscribed with the intent of the Myanmar State to destroy his group identity. It singles his people out as foreigners who need to apply for citizenship;<sup>39</sup> not, as he feels, as a community that belongs to Rakhine State of Myanmar. Government promises that the NVC could potentially lead to citizenship in the future fell flat for Mohammed—not just because of the similar promises and deceptions attached to his other documents in the past, but also because he believes that a future citizenship card that marks him out as "Bengali", or anything other than a member of a recognized ethnic group of Myanmar, would not secure his safety, let alone secure him access to equal rights that other citizens enjoy.<sup>40</sup> It would also be a source of shame—an act of "collaboration" with a regime that is intent on destroying Rohingya as a group.<sup>41</sup>

When civil authorities, immigration, police, and border guard police organized meetings in his community about the NVCs in 2016, Mohammed and other villagers refused to participate. They were told that under the law, they would not be allowed to stay in the country if they did not comply with the nationality verification procedure. They were fearful but determined to stand united against the issuance of these cards—against being labelled as "foreign". The pressure mounted. Without the NVC, Mohammed could no longer pass through the seven checkpoints between the land where he grazed his cattle and the market where he traded them. He was forced to sell his cattle at a discounted price. His trading business was no longer viable. Without a livelihood, it was difficult to provide for his family. Nonetheless, he refused to comply. The number of visits to his village by the armed forces increased. Afraid that they would be forced to accept the NVC card or be arrested, he would hide in the forest along with the other men of his village—even at night. On one such night, while sleeping in the forest, Mohammed's older brother was bitten by a snake and, unable to access medical attention, passed away. Mohammed described him as a victim of the NVCs.

<sup>37</sup> NVCs were repeatedly referred to as 'tools of genocide' during two focus groups that I conducted in a Kutapalong refugee camp in August 2018.

<sup>38</sup> These are formally called Identity Card for National Verification (ICNV). However, they are generally referred to as NVCs. These NVCs were piloted in Rakhine State in 2015 and rolled out in 2016. They were piloted with the term 'Bengali' written on them and were largely rejected by Rohingya. The term 'Bengali' was later removed, and no other term was included in its place. However, Rohingya continued to reject the cards. In numerous focus groups and interviews, Rohingya said they felt concerned that they were being registered as Bengali 'behind the NVC card' anyways.

<sup>39</sup> "Classification" and "symbolisation" are the first two stages of genocide, whereby people are organised and made to stand out according to race, religion or nationality. See Genocide Watch, 'The Ten Stages of Genocide' (2013) <http://www.genocidewatch.org/genocide/tenstagesofgenocide.html> accessed on 13 May 2019.

<sup>40</sup> The citizenship cards that in some cases would be issued to Rohingya following nationality verification use the term 'Bengali' and do not carry the same rights as full citizens in Myanmar enjoy. Research participants noted that Rohingya who have accepted these cards have not been able to claim their rights and have become the target of threats and intimidations from Rakhine Buddhist populations.

<sup>41</sup> 'Shame', 'selling out' Rohingya resistance, and 'collaboration' were repeated themes in interviews relating to feelings about being forced to accept the NVC cards.

While the men hid in the forest, the women left behind in their homes were subjected to abuse by the armed forces—the kind of abuse about which Mohammed said that he simply could not speak.<sup>42</sup>

Mohammed associated each repressive or violent encounter with the armed forces between 2016 and 2017 with the enforced issuance of NVC cards; even the last, in which his friends were killed and his village was torched. Each refusal to accept the NVCs and each act of defiance against these documents, he associated with Rohingyas' organized resistance against their long-running persecution. These were acts of civil disobedience against unjust documentation processes. In many Rohingya oral histories and biographic accounts, the absence of the NVC cards amongst Rohingya populations were explained as stories of group endurance, unity, and sometimes heroism.

## 4.2 The Emancipatory Powers of Identity Documents

Identity cards and state-issued documents are described as both emancipatory and repressive in academic literature. They can enable people to access freedoms, rights, and benefits, but they are also crucial tools available for states to exert (excessive) control and implement systems of surveillance over populations.<sup>43</sup> Mohammed's attachment to his hidden and treasured documents relates to the state recognition and the attached bundle of rights that his family enjoyed in the past, as well as to the hope that he and his children may one day also access rights equal to the other citizens of Myanmar. Many Rohingya narratives tell of the extraordinary lengths to which they are prepared to go to retain possession of similar documents.

The emancipatory qualities of identity documents and state registration procedures are at the heart of human rights approaches to reducing and preventing statelessness. Although everyone is entitled to human rights by virtue of being a human, within the international state system states are responsible for upholding those rights.<sup>44</sup> Stateless people find themselves unable to claim their rights from any state and fall through the cracks of this system. Citizenship then is understood as “the right to have rights”, whereby a lack of citizenship leads to a depletion of many other human rights.<sup>45</sup> In extreme circumstances, being rendered stateless and being cast outside the international system without any recourse to state protection can lay the conditions that enable mass atrocities or genocides to occur. Hannah Arendt, for example, describes how the production of statelessness in Europe of the 1930s and 1940s preceded and lay conditions which contributed to the Holocaust.<sup>46</sup> Thus, state-issued documents can provide a practical method for human beings to access the rights and protections to which they are entitled.<sup>47</sup> For “unregistered” or “undocumented” people, documents or registration procedures can provide evidence of existing citizenship or otherwise form part of a body of evidence that can be used to plot a person's way on a trajectory towards future citizenship. From that citizenship, then, other rights and responsibilities can flow.<sup>48</sup>

Citizenship and statelessness are often associated with ideas of who is “visible” and “invisible” to states and to the law, who has been “counted” and who remains “uncounted”, who is “documented” and “undocumented”, and who is “registered” and “unregistered”.<sup>49</sup> Documents and registration procedures can move individuals from a state of invisibility into one of visibility. The idea of documents and registration

<sup>42</sup> For reports of sexual violence perpetrated against Rohingya women by the Myanmar military between 2016 and 2017, see for example: Kaladan Press, ‘Rape by Command: Sexual Violence as a weapon against Rohingya’ (February 2018) <<https://www.kaladanpress.org/images/document/2018/RapebyCommandWeb3.pdf>> accessed on 4 January 2019; Human Rights Watch, ‘All of My Body Was Pain’: Sexual Violence against Rohingya Women and Girls in Burma (HRW 2017).

<sup>43</sup> Jane Caplan and John Torpey (eds), *Documenting Individual Identity* (Princeton University Press 2001); John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge University Press 1999); Colin J Bennett and David Lyon (eds), *Playing the Identity Card: Surveillance, Security and Identification in Global Perspective* (Routledge 2008); James C Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press 1998).

<sup>44</sup> William E Conklin, *Statelessness: The Enigma of the International Community* (Hart Publishing 2014).

<sup>45</sup> Kristy A Belton, ‘Statelessness: A Matter of Human Rights’ in Rhoda E Howard-Hassman and Margaret Walton-Roberts (eds), *The Human Rights to Citizenship: A Slippery Concept* (University of Pennsylvania Press 2015); Tendayi Bloom and Katherine Tonkiss and Phillip Cole, ‘Introduction: providing a framework for understanding statelessness’ in Tendayi Bloom and Katherine Tonkiss and Phillip Cole (eds), *Understanding Statelessness* (Routledge 2018).

<sup>46</sup> Hannah Arendt, *The Origins of Totalitarianism* (2nd end, George Allen and Unwin 1958).

<sup>47</sup> Lucía González López and others, ‘Civil Registration, Human Rights, and Social Protection in Asia and the Pacific’ (2014) 29 *Asia-Pacific Population Journal* 75; Ben Oppenheim and Brenna Marea Powell, ‘Legal Identity in the 2030 Agenda for Sustainable Development: Lessons from Kibera, Kenya’ (Policy Paper, Open Society Foundations 2015).

<sup>48</sup> Laura van Waas, ‘The Right to Legal Identity or the Right to Legal ID?’ (*European Network on Statelessness*, 1 May 2015) <<https://www.statelessness.eu/blog/right-legal-identity-or-right-legal-id/>> accessed on 29 December 2018; Lucía González López and others (n 46).

<sup>49</sup> Institute on Statelessness and Inclusion, ‘Paperless People Podcast 2: The Legal Identity Dilemma’ (9 October 2018) <<http://www.institutesi.org/forum/podcasts.php>> accessed on 29 December 2018; Kamal Sadiq, *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries* (Oxford University Press 2009).



as being central to people's practical ability to access their rights is reflected in the United Nations Sustainable Development Goal 16.9, aiming to 'provide legal identity to all', as well as in the Global Compact on Migration Objective 4, which seeks to ensure that all migrants (and nationals) have 'proof of legal identity and adequate documentation'.<sup>50</sup> It has also formed the mainstay of approaches to preventing and reducing statelessness, whereby stateless persons, or persons at risk of statelessness, are identified and made visible to the state with the ultimate goal of ensuring documentation by the state as evidence of citizenship, from which the rights available to citizens can follow.<sup>51</sup>

### 4.3 The Repressive Powers of Identity Documents

Recent literature on statelessness has criticized such increased promotion of national registration and documentation as potentially entrenching the exclusion of particular populations. Academics have warned that increasing the focus on registration and documentation as a solution to a lack of rights or to statelessness, without addressing the underlying causes of discrimination, has the potential to do more harm than good.<sup>52</sup> Manby, for example, has pointed out that national registration processes in Africa are in danger of "locking in statelessness" and creating a system that, by placing increased weight on documentation in order to access rights and benefits, creates further exclusion for those without documents.<sup>53</sup> This is the case for those facing increasing difficulty in accessing health and education services in Uganda and Tanzania. Further, people who were previously described as being "at risk of statelessness" become stateless under the new registration schemes. Manby provides the example of Sudan and Mauritania where, she argues, new national registration processes have been used as tools to denationalize particular sections of the populations. In Mauritania, non-Arabic speaking populations have been left off the national register—an issue described by activist groups as "biometric genocide".<sup>54</sup> Likewise, India's National Register of Citizens (NRC) has increasingly come under international scrutiny regarding issues of exclusion. It is evident that a large number of people in Assam and other areas of India have, being unable to produce the correct documents to evidence their Indian citizenship, been excluded from the NRC. In Assam, this has disproportionately impacted groups who are Muslim or of Bengali origin. At the same time, biometric technology in the hands of the state has reduced the opportunities available to people of informal or uncertain legal status in the country, placing increasing significance on the documents carried by individuals and excluding undocumented or unregistered people from basic services and work.<sup>55</sup>

These criticisms and warnings about the potential negative consequences arising from the increased international emphasis from statelessness scholars on securing "legal identities for all" are highly relevant to the Myanmar context. As the story of Mohammed's white card demonstrates, documentation and registration processes can have deeply negative impacts on people's lives—far from providing access to rights. The issuance of NVCs since 2015 in Rakhine State has morphed into a process which he experienced not only as repressive but also as persecution. Yet, since the middle of the 1990s until today, securing state-issued documents and registration has been integral to the internationally proposed solutions to the long-running human rights crisis in Rakhine State.<sup>56</sup> These approaches are based on the same premise: that documents can help to plot Rohingyas' way towards citizenship and emancipation. Consequently, it is not only state authorities but also international agencies that feature in Rohingya narratives relating to their encounters with identity documents. It is often with strong emotions that Rohingyas relate their understandings of the

<sup>50</sup> Amal de Chickera 'GCM Commentary: Objective 4: Ensure that all migrants have proof of legal identity and adequate documentation, (Refugee Law Initiative 2018) <https://rli.blogs.sas.ac.uk/2018/11/08/gcm-commentary-objective-4/> accessed on 15 May 2019.

Legal identity is not clearly defined in these documents, and the boundaries between legal identity and legal documentation are, in practical terms, difficult to distinguish. Open Society Foundation uses the following definition for legal identity: 'The recognition of a person's existence before the law, facilitating the realization of specific rights and corresponding duties.' See: Oppenheim and Powell (n 46).

<sup>51</sup> Van Waas (n 47).

<sup>52</sup> Institute of Statelessness and Inclusion (n 48).

<sup>53</sup> Bronwen Manby, "'Legal Identity" and Biometric Identification in Africa' (2018) 6(2) Newsletter of the American Political Science Association's Organized Section on Migration and Citizenship 54.

<sup>54</sup> *ibid*; Institute of Statelessness and Inclusion (n 48).

<sup>55</sup> Vasudha Chhotray and Fiona McConnell, 'Certifications of citizenship: the history, politics and materiality of identity documents in South Asian states and diasporas' (2018) 26 Contemporary South Asia 111; Bidisha Chaudhuri and Lion König, 'The Aadhaar scheme: a cornerstone of a new citizenship regime in India?' (2018) 26 Contemporary South Asia 127.

<sup>56</sup> Advisory Commission on Rakhine State, 'Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report' (August 2017) <[http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport\\_Eng.pdf](http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf)> accessed on 04 January 2019.

role of UN agencies and foreign governments in supporting, promoting, or failing to prevent state documentation and registration that they associate with state persecution.<sup>57</sup>

Throughout Rohingya narratives, there are frequent examples of oppression related to birth registration, registration of livestock, household registration, and registration of minor alterations to homes and buildings. Thus, for Mohammed and other Rohingya, the condition of statelessness was very different from invisibility. They were not legally invisible in Myanmar; rather, the problem described was one of hypervisibility to state authorities. From Mohammed's perspective, which was reiterated by many others, the problem was the nature of the law itself and the malicious intent of the law-makers and security forces. Unlike Mohammed's father's ID document, the documents he was issued or refused to accept never contained those illusive emancipatory qualities—only the oppressive ones. His white card made him an object of state surveillance, whereby his every movement and activity beyond his village could be monitored. He was subject to a set of persecutory policies that only applied to holders of the card.<sup>58</sup>

For Mohammed, the NVC card carried with it a whole different set of perils. The dangers of the NVC cards did not relate so much to invisibility or hyper-visibility but to their capacities to further damage or destroy Rohingya group identity. They had the powers to further impose and consolidate a national identity in Myanmar and in Rakhine State which had no symbolic or physical space for certain minority groups within their nation, most pertinently not for Rohingya.

#### 4.4 The Destructive Powers of Documents

Identity documents do not only embrace populations into the national fold; they also serve a function in the (re)documenting, (re)counting, (re)categorizing, and (re)organizing of national identities. Mohammed and other Rohingya were not “uncounted”, they were “recounted” as something they were not—Bengali and foreign. Their problem was not that they were “undocumented” or “unregistered”; they were “redocumented” and “recategorized” in ways that radically changed the ways in which they could function and interact with the world. Rohingyas' resistance against the NVCs shows that the wrong kinds of documents can be much worse than no documents at all. For Mohammed and other Rohingya, documents were neither a neutral record of life's events, such as birth, marriage, or death, nor did they purvey “facts” about them, such as their country of origin or ethnicity. To Mohammed and almost all participants in this research, NVCs were viewed as an attempt to symbolically and materially destroy their ethnic and national identity.

The use and function of documents, registration, and categorization to reshape or reorganize social relations and individual and group identities is a feature of social science literature on national and ethnic identities. This body of work draws on the understanding that all ethnic, national, and social identities are fluid and relational because identities are socially constructed. They are not fixed and immutable as race was understood to be in colonial-era literature but shifted based on a mixture of structural and subjective factors. There is a rich body of literature, for example, relating to how state categories and administrative structures both influenced and reified ethnic identities, particularly as a result of colonial era policies and practices.<sup>59</sup> State-issued documents, registration, and associated categorization of populations do not always reflect how populations self-identify. Yet the categories and documents imposed on populations frame their experiences and interactions with the world around them. Studies and critiques of Rohingya identities have often exceptionalised the fluidity of their ethnic identity, emphasizing political calculations on the part of Rohingya leaders, without taking note of the equally fluid identities of other groups in Rakhine State and Myanmar.<sup>60</sup> They have rarely taken the relational and structural factors that frame and shape these ethnic identities into account.<sup>61</sup> State-issued documents are both a reflection and a material part of those structures that frame social relations and ethnic identities.<sup>62</sup> Documents have the power to reorganize social relations

<sup>57</sup> As they have been operational in Rakhine State since the 1990s, the international agency that featured in Rohingya accounts most frequently was the UNHCR.

<sup>58</sup> Fortify Rights, 'Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar' (February 2014) <[https://www.fortifyrights.org/downloads/Policies\\_of\\_Persecution\\_Feb\\_25\\_Fortify\\_Rights.pdf](https://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf)> accessed on 04 January 2019.

<sup>59</sup> F K Lehman, 'Ethnic Categories in Burma and the Theory of Social Systems' in Peter Kunstadter (ed), *Southeast Asian Tribes, Minorities, and Nations* (Princeton University Press 1967) vol 1; E R Leach, *Political Systems of Highland Burma: A Study of Kachin Social Structure* (Berg 1973); James C Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (Yale University Press 2009); Victor B Lieberman, 'Ethnic Politics in Eighteenth-Century Burma' (1978) 12 *Modern Asian Studies* 455.

<sup>60</sup> Michael Charney, 'State and Society in Arakan from the Fourteenth Century: From Inclusion to Polarisation and Exclusion' (Presentation at the research workshop 'Myanmar's Democratic Transition and Rohingya Persecution, Oxford University, 11 May 2016).

<sup>61</sup> Charles Tilly, 'Citizenship, Identity and Social History' (1995) 40(S3) *International Review of Social History* 1.

<sup>62</sup> Kamal Sadiq, 'Limits of Legal Citizenship: Narratives from South and Southeast Asia' in Benjamin N Lawrance and Jacqueline Stevens (eds), *Citizenship in Question: Evidentiary Birthright and Statelessness* (Duke University Press 2017).

and profoundly change the lived realities of the (re)documented. Building on these notions, there is a growing body of literature that understands documents not only as the material objects of law and policy but also as anthropological objects around which identities and lived realities are organized.<sup>63</sup> In cases where the power relations between the state and the population are so unequal and where dialogue and consultation are quashed, as they are in Myanmar following almost fifty years of military rule, the power of documents and state categories to frame people's lived experiences is much greater. Equally, the power of new technologies related to registration and documentation, such as biometrics, can further consolidate the power of the state.<sup>64</sup> This makes it harder to escape or resist recategorization.

Identity documents are not simply neutral records or purveyors of externally available facts about individuals—like citizenship status, gender or ethnicity—as is sometimes claimed. State-issued documents and categories do not just describe or represent particular identities; they also shape, change, and reify them. Longman's work on the role of identity cards that preceded genocide in Rwanda for example, shows how state categorizations cemented ethnic identities within heterogenous communities, such as the Hutu and Tutsi, and ultimately enabled genocidal violence.<sup>65</sup>

The producers of documents are generally state authorities. Players in the private sector, specializing in biometric and blockchain technologies, are also increasingly becoming producers.<sup>66</sup> Additionally, in the case of Rohingya or other camp-based populations like refugees and internally displaced people (IDPs), international agencies like the UNHCR and the International Organization for Migration (IOM) are also involved in the production of documents and the ultimate (re)categorization of populations.<sup>67</sup> Sometimes, international organizations work on the premise that documents, rather than being objects that imbue state power, represent external facts about people.<sup>68</sup> They frequently note the state's power to exclude populations from their documentation processes but do not take account of the power of the state's documents to recategorize and reorganize societies and re-write histories.<sup>69</sup>

Anthropological and sociological studies of genocide generally focus on the symbolic destruction of groups that accompanies the physical destruction.<sup>70</sup> They often also note that the ultimate goal of a genocide may be to reorganize national or social identities in new ways that consolidate the power of dominant groups. These reorganized identities do not always reflect the historical or demographic reality on the ground. This phase of genocide is what Raphael Lemkin—who coined the term—referred to as 'the imposition of the national pattern of the oppressor', which occurred alongside 'the destruction of the national pattern of the oppressed'.<sup>71</sup> This process is also referred to in the work of genocide scholar Feierstein as "symbolic enactment".<sup>72</sup>

<sup>63</sup> Matthew S Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (University of California Press 2012); Fiona McConnell, 'Governments-in-Exile: Statehood, Statelessness and the Reconfiguration of Territory and Sovereignty' (2009) 3 *Geography Compass* 1902; Vasudha Chhotray and Fiona McConnell, 'Certifications of citizenship: the history, politics and materiality of identity documents in South Asian states and diasporas' (2018) 26 *Contemporary South Asia* 111; Malavika Reddy, 'Identity Paper/Work/s and the Unmaking of Legal Status in Mae Sot, Thailand' (2015) 2 *Asian Journal of Law and Society* 251; Yael Navaro-Yashin, 'Make-believe papers, legal forms and the counterfeit: Affective interactions between documents and people in Britain and Cyprus' (2007) 7 *Anthropological Theory* 79.

<sup>64</sup> Alan Gelb and Bronwen Manby, 'Has Development Converged with Human Rights? Implications for the legal identity SDG' (*Center for Global Development*, 3 November 2016) <<https://www.cgdev.org/blog/has-development-converged-human-rights-implications-legal-identity-sdg>> accessed on 04 January 2019; Bronwen Manby, "'Legal Identity' and Biometric Identification in Africa' (2018) 6(2) *Newsletter of the American Political Science Association's Organized Section on Migration and Citizenship* 54.

<sup>65</sup> Timothy Longman, 'Identity Cards, Ethnic Self-Perception, and Genocide in Rwanda' in Jane Caplan and John Torpey (eds), *Documenting Individual Identity* (Princeton University Press 2001).

<sup>66</sup> Colin J Bennett and David Lyon (eds), *Playing the Identity Card: Surveillance, Security and Identification in Global Perspective* (Routledge 2008).

<sup>67</sup> Katja Lindskov Jacobsen, *The Politics of Humanitarian Technology: Good Intentions, Unintended Consequences and Insecurity* (Routledge 2015).

<sup>68</sup> Sadiq (n 61).

<sup>69</sup> The denial of Rakhine's heterogenous past and the reframing of the region as largely Buddhist and homogenous has been integral to the denial of citizenship and persecution of Rohingya. See: Charney (n 59).

<sup>70</sup> Alexander Laban Hinton (ed), *Annihilating Difference: The Anthropology of Genocide* (University of California Press 2002); Bettina Arnold, 'Justifying Genocide: Archaeology and the Construction of Difference' in Alexander Laban Hinton (ed), *Annihilating Difference: The Anthropology of Genocide* (University of California Press 2002).

<sup>71</sup> Raphael Lemkin, *Axis Rule In Occupied Europe: Laws Of Occupation, Analysis Of Government, Proposals For Redress* (Carnegie Endowment for International Peace 1944) reprinted in 2<sup>nd</sup> Edition, The Lawbook Exchange 2008.

<sup>72</sup> Daniel Feierstein, *Genocide as Social Practice: Reorganizing Society Under the Nazis and Argentina's Military Juntas* (Rutgers University Press 2014). The International State Crime Initiative (ISCI) drew on Feierstein's concept of stages of genocide to analyze Rohingya situation in Myanmar. See: Penny Green and Thomas MacManus and Alicia de la Cour Venning, *Countdown to Annihilation: Genocide in Myanmar* (International State Crime Initiative 2015).

Mohammed's story, similar to many other accounts, reflects how integral documents are to this type of reorganisation of national identities. Laws and documents punctuate Myanmar's changed national vision of its State, which on its eve of independence in 1948 set out to strategically embrace multi-ethnic and warring populations and then, following the onset of military rule, sought to remove and repress certain populations and instill a new or reworked form of Buddhist nationalism.<sup>73</sup> Mohammed's story describes documentation, registration, and the production of his statelessness as part of a broader state-led process involving mass atrocities. Mohammed's story is not so much one in which his statelessness precedes the physical destruction of his ethnic group but one in which the production of his statelessness accompanies his group's symbolic and physical destruction. This notion of identity cards destroying one's identity was one of the most prominent themes arising from my research.

As noted in the retelling of Mohammed's story, Rohingya visions of the future—of the possibilities and dangers of potential repatriations to their home in Rakhine State—are shaped by their personal histories with their documents and, in particular, their experiences with enforced issuance of NVCs. The news that Rohingya that had been deported from India in 2018 were issued NVCs upon returning to Myanmar circulated through the refugee camps and settlements of India and Bangladesh, causing concern.<sup>74</sup> The available draft of the Memorandum of Understanding on repatriations between the Myanmar government, the UNHCR, and the United Nations Development Programme (UNDP) includes reference to nationality verification on return to Myanmar under the existing law in section 15.<sup>75</sup> Although a small number of “naturalized” citizenship cards have been issued to Rohingya as a result of the nationality verification process, these cards contain the word “Bengali” and thus are often associated not with belonging but with identity destruction and shame.<sup>76</sup> These factors increase the concerns and insecurities of Rohingya in the refugee camps, who worry about how their safety can be ensured on return to Myanmar. Various UN and international agencies at the time of writing were lending support to the continued issuance of NVCs in Rakhine State.<sup>77</sup> The desirability of registration and documents in human rights approaches to statelessness, then, can sometimes converge with the interests of the perpetrating state in ways that are understood, by those being documented, as producing harm. Approaches that continue to support the issuance of NVCs neither take account of the nature of state power in Myanmar, nor do they do not consider the function and power of documents themselves. Documents do not only include and exclude, make visible or render invisible. The issuance of documents neither solely leads to emancipation, nor is the non-issuance of documents the only way in which states use them to repress. Documents can bring identities into and out of being, reorganize them, and destroy them.

## 5 Imbuing Documents with Resistance to State Power

Section 4 considered how identity documents are imbued with state power and how these structures of power frame an individual's lived experiences of the world. However, these processes are often also resisted and subverted. It is evident from Mohammed's narrative about his encounters with the state authorities over the NVCs that resisting these identity cards was not a form of “voluntary statelessness”, as has been the case in other forms of resistance to state power.<sup>78</sup> Rohingya were not choosing to be undocumented or invisible. They were resisting the reorganization of state categories and the destruction of their identity. The issuance of cards became a key aspect where Rohingya could resist the state's power to further entrench their recategorization. The organizing, community retelling, and recounting of these acts of resistance gives the identity cards an emotional salience and significance that transcends the words or contents of the documents themselves. Whilst documents may be tools of state power, they are also material objects of the

<sup>73</sup> Maung Zarni and Natalie Brinham, 'Reworking the Colonial-Era Indian Peril: Myanmar's State-Directed Persecution of Rohingyas and Other Muslims' (2017) 24 *Brown Journal of World Affairs* 53.

<sup>74</sup> From discussion in focus group 9 and follow up Delhi on 2 October 2018.

<sup>75</sup> The official version of the MOU between the Ministry of Labour, the Immigration and Population of the Government of Myanmar, the United Nations Development Program, and the Office of the United Nations High Commissioner of Refugees agreed on 31 May 2018 has not been formally released. A leaked version dated 30 May 2018 is available here: <https://www.scribd.com/document/382854287/The-MOU-between-Myanmar-Government-and-UNDP-and-UNHCR>.

<sup>76</sup> The notion of shame associated with NVCs and naturalized citizenship cards containing the term 'Bengali' recurred in focus groups and interviews conducted in Bangladesh, India, and Malaysia between August 2017 and December 2018.

<sup>77</sup> See: Burma Campaign UK, 'UN Special Envoy should drop “appalling” support for NVC process' (31 January 2019) <<http://burmacampaign.org.uk/rohingya-crisis-un-special-envoy-should-drop-appalling-support-for-nvc-process/>> accessed on 9 March 2019.

<sup>78</sup> Jocelyn Kane, 'Voluntary Statelessness: Reflections on the Implications for International Relations and Political Theory' (2018) 6(2) *Newsletter of the American Political Science Association's Organized Section on Migration and Citizenship* 44.

state that individuals and groups can use to resist, subvert, negotiate, and cooperate with that power.<sup>79</sup> The absence of NVCs in Mohammed's community is not characterized by emptiness. In Rohingya narratives, it is an absence filled with suffering, sacrifice, agency, and resistance. The emotional investments of resistance occupy that space, flavoring narratives with talk of unity against the odds, bravery, endurance, and heroism. For Mohammed, the way how he is documented, both on return to Myanmar and in the camps of Bangladesh, is not just a matter of accessing rights but also of group survival and valor. Attempts to ensure the "voluntariness" of Rohingya repatriations by international organizations may also need to take account of the decades-long role that identity cards have played in Rohingyas' struggle against state persecution.

## 6 Conclusion: Seeing Beyond the Visibility/Invisibility Dichotomy

Mohammed's three documents provide insights into how Rohingya have encountered different state-issued identity documents over the years. His story is merely one of many oral histories that reflect similar themes. Together, they can plot the bureaucratic and administrative processes and practices that have occurred before and after each major cycle of mass expulsion and mass repatriation.

Mohammed's first identification document, his father's NVC, provided the kind of visibility that features in the sustainable development goals and in approaches to preventing statelessness; it was one that carried status, rights, and belonging—or national identity.<sup>80</sup> The second ID card, the white card, did not provide rights but facilitated state control and surveillance, reflecting a different set of literature on documents and securitization.<sup>81</sup> The third identity document was one which destroyed and reorganized social identities in ways that did not reflect demographic realities in Rakhine State. This document better reflects the literature from the sociology and anthropology of genocide.<sup>82</sup> Mohammed and other Rohingya experienced the production of their statelessness not as invisibility, but as reclassification and targeted identity destruction. Their experiences of persecution and genocide were not preceded by statelessness and invisibility. They were experiences in which the production of statelessness was a slow process that was integrated into state-led and state-perpetrated violence and in which the symbolic destruction of their group became inseparable from the physical destruction.

Documents do not merely prevent and reduce statelessness; they also produce and reproduce it in multiple ways. The significance of registration and documentation is much more complex than being visible or invisible, included or excluded, registered or unregistered, and documented or undocumented. In this article, I have argued that statelessness scholarship can be enriched by drawing on approaches from multiple social science disciplines to understand the role of documents in producing, reducing, and preventing statelessness. These approaches enable us to understand documents and registration as more than neutral statements about facts on the ground; namely as material objects that can change social relations and social realities, thus possessing both emancipatory and repressive qualities. In this regard, documents are much more than tools to move people from a state of invisibility into a state of visibility. They not only relate to whether people are seen or unseen by the state and the law but also to how and for what purpose they are seen. Whilst registration and the issuance of documents can be important ways to lift people out of statelessness and enable them to access rights, interventions by international agencies could better factor in the lived experiences of the documented, undocumented, and re-documented in order to effectively ensure the principle of "do not harm".

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## Competing Interests

The author has no competing interests to declare.

<sup>79</sup> Malavika Reddy, 'Identity Paper/Work/s and the Unmaking of Legal Status in Mae Sot, Thailand' (2015) 2 *Asian Journal of Law and Society* 251.

<sup>80</sup> Christian Joppke, 'Transformation of Citizenship: Status, Rights, Identity' (2007) 11 *Citizenship Studies* 37; Katherine Tonkiss and Tendayi Bloom, 'Theorising noncitizenship: concepts, debates and challenges' (2015) 19 *Citizenship Studies* 837.

<sup>81</sup> Colin J Bennett and David Lyon (eds), *Playing the Identity Card: Surveillance, Security and Identification in Global Perspective* (Routledge 2008).

<sup>82</sup> Alexander Laban Hinton (ed), *Annihilating Difference: The Anthropology of Genocide* (University of California Press 2002); Daniel Feierstein, 'Debates on the Criminology of Genocide: Genocide as a Technology for Destroying Identities' (2015) 4 *State Crime Journal* 115; Raphael Lemkin, *Axis Rule In Occupied Europe: Laws Of Occupation, Analysis Of Government, Proposals For Redress* (Carnegie Endowment for International Peace 1944).

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