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INTERNATIONAL RELIGIOUS FREEDOM

HEARING ON
CITIZENSHIP LAWS AND RELIGIOUS FREEDOM

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P A R T I C I P A N T S

COMMISSIONERS PRESENT:

Tony Perkins, Chair
Gayle Manchin, Vice Chair
Nadine Maenza, Vice Chair
Gary L. Bauer
Anurima Bhargava

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P R O C E E D I N G S

CHAIR PERKINS: Good afternoon, everyone. I'd like to call this hearing to order. I want to welcome you to today's hearing on Citizenship Laws and Religious Freedom. I would like to thank our distinguished witnesses, whom I will introduce momentarily, for joining us today and offering their expertise on this topic.

I'd also like to take the opportunity to thank Senator Joe Manchin and his office for securing this hearing room for us today.

As many of you are aware, the U.S. Commission on International Religious Freedom, or commonly referred to as USCIRF, is an independent bipartisan U.S. government advisory body that was created by the 1998 International Religious Freedom Act.

Now the Commission monitors the universal right to freedom of religion or belief abroad, using international standards to do so, and based upon what we observe and what we find, we make policy recommendations to Congress, to the

President, and to the Secretary of State.

Today USCIRF exercises its statutory authority under the International Religious Freedom Act to convene this hearing.

Now today's topic has garnered much recent international attention. The use of restrictive citizenship laws is, however, a long-standing concern protecting individuals' freedom of religion or belief.

Now, we have convened this hearing to explore how some governments leverage citizenship laws as a tool of oppression against religious minorities and to help us develop policy recommendations for the U.S. government in response to these actions.

The right to a nationality is a fundamental human right and serves as a bedrock for accompanying political and civil rights. It is the right to have rights. Denying individuals this fundamental recognition not only strips them of accompanying rights but also denies them the ability to participate in the political process and

use legal pathways to seek redress for discrimination and persecution.

These individuals are effectively rendered stateless. This makes them vulnerable, vulnerable to exploitation, prolonged detention, and it exposes them to violence. In this way, the denial of citizenship can be a key predictor of mass atrocities. Therefore, it merits international attention.

Too often the denial of citizenship targets minority communities already vulnerable to oppression and persecution.

International legal standards have made it abundantly clear that governments have a responsibility to protect individuals' privileges as citizens of their home nation and not deny them this simply due to their faith.

Article 15 of the Universal Declaration of Human Rights states that everyone has the right to a nationality and no one shall be arbitrarily deprived of his or her nationality.

The United Nations Convention on the

Reduction of Statelessness adds that an individual may not be deprived of nationality on racial, ethnic, religious, or political grounds if this would render him or her stateless.

Unfortunately, men, women and children are being deprived and being left of this right, and they are being left stateless, and this appears to be happening based upon religious belief.

I will now turn the floor over to Vice Chair Gayle Manchin.

VICE CHAIR MANCHIN: Thank you very much, Chair Perkins, and a thank you to our witnesses and our guests that have joined us here today.

Unfortunately, we too often witness governments engaging in this very behavior, stripping people of their citizenship simply because of the faith they practice in clear violation of international human rights standards.

Today, we are focusing on how citizenship laws are a part of the process to target and disenfranchise minorities and the importance of understanding these laws through the framework of

atrocities prevention.

In some countries, individuals are denied citizenship, or denied the benefits of citizenship, because of their religious identity. Some Christians in Vietnam, especially those among the Hmong and Montagnard, belong to unrecognized denominations and are denied key identity documentation due to their faith.

This severely limits their access to employment, education, and other basic government services. Bahrain's government often revokes citizenship from dissidents on the grounds that they are complicit in terrorism, a tool that it uses disproportionately against Shi'a Muslims and with few legal safeguards to protect their individual rights and freedoms.

Several peaceful Bahraini opposition activists now live in exile as a result of citizenship revocation on this purported basis.

In Kenya, the introduction of a new digital ID system threatens to disenfranchise many members of minority communities given their lack of

documentation, especially those who have been displaced by conflict.

Even more worrisome are government efforts to introduce new citizenship laws for the purpose of excluding certain groups or citizenship verification processes which leave many marginalized communities vulnerable to widespread exclusion.

These processes often place the onus of proving one's citizenship on the individual through the use of historical family documents that very often are difficult to produce due to poverty, displacement by extreme weather or conflict, or simply due to the passage of time.

Amidst such efforts, we have recently seen a dramatic uptick in hate speech, in disinformation on social media, particularly exacerbating the impact on religious minority communities.

And to elaborate on this point, I gladly turn to my colleague, Commissioner Anurima Bhargava.

COMMISSIONER BHARGAVA: Thank you very

much, Vice Chair Manchin.

I would like to join in welcoming you all to today's hearing. I'd also like to express gratitude to our witnesses for the interest in citizenship laws and the communities impacted by those laws and our appreciation to those of you who have submitted statements to the record and shared your own stories and experiences.

Over the past year, through the work of the Commission, I've witnessed firsthand how the threat to and withdrawal of citizenship has transformed the lives of the Rohingya, who without citizenship have been denied the freedom to move, to work, to receive an education, to access health care, to a way out when they've been subject to domestic and sexual violence, or to feed and support themselves.

Their journey and recent events in India have helped bring the spotlight to the import of citizenship to our sense of belonging, identity and collective dignity, and to the horrors that ensue when citizenship of certain targeted communities

come into question.

In 1982, Burma redefined citizenship to be based on membership in one of 135 recognized ethnic groups or the residency of a person's ancestors in Burma prior to 1824. This new law excluded the Rohingya who were not listed among the recognized groups and leaving millions with their citizenship in question.

The Rohingya continue to face the violence unleashed by this action. The loss of citizenship serves as the foundation, as my fellow commissioners have mentioned, of their ongoing persecution--genocidal violence at the hands of the military and the mass forced migration of the majority of Rohingya to refugee camps abroad.

In Burma, the government continue to refuse to recognize the Rohingya, which has constrained those who are remaining in the country from possessing any form of identity documents, including birth certificates. Like their fellow Rohingya displaced abroad, those Rohingya residing in camps in Rakine State are confined with little

access to education, employment, health care and other rights in clear violation of international human rights standards.

Recent actions by the Indian government are likewise troubling. In December 2019, the Indian parliament passed the Citizenship Amendment Act, which provides a fast track for non-Muslim migrants from Afghanistan, Bangladesh, and Pakistan who are already in India to apply for and gain Indian citizenship.

The stated purpose of the law is to protect individuals facing religious persecution in India's neighboring countries, yet excludes, for example, Muslim communities facing persecution such as the Ahmadis in Pakistan, the Shi'a in Afghanistan, nor does it account, for example, for the Hindus facing persecution in other neighboring countries, like the 445 Hindus who for the last few years have been confined to the Rohingya camps.

Indian officials have stressed that this law will not impact those already residing in India. Yet, the fear is that the law in

conjunction with the planned National Population Register and a potential nationwide National Register of Citizens, or NRC, could result in the wide-scale disenfranchisement of Indian Muslims.

This would leave them vulnerable to prolonged detention, deportation, and violence. We are already seeing this process being conducted in the northeastern state of Assam, which we will hear about more in this hearing.

The NRC is claimed as a mechanism for identifying migrants in the region. Yet many Indian citizens, in particular Muslims, have had their citizenship questioned and challenged by local authorities by being excluded from the National Register of Citizens despite their families having lived in India for generations.

A number of citizens fear being sent to detention camps and effectively rendered stateless. With the Citizenship Amendment Act in place to protect non-Muslims excluded from the NRC, the fear again is that this process will largely impact Muslims.

Many Indians of all faiths have been exercising their peaceful right of protest to express their opposition to this law. Yet since the passing of the Citizenship Amendment Act in December, we have seen deadly violence throughout India and a crackdown by government authorities against protesters and recent violence in Delhi that has included the loss of life of many Muslims and Hindus.

I look forward to hearing from our witnesses on how citizenship laws and the details of citizenship processes in Burma, India, and more broadly can be leveraged as a weapon against religious communities and how the United States government and the international community can more effectively ensure that individuals of all faiths can freely live without fear of losing their citizenship and the many rights that come with that citizenship and the many difficulties that come from that loss.

Thank you, and I will now turn the floor back to Chair Perkins.

CHAIR PERKINS: Thank you, Commissioner Bhargava. I would also like to recognize Commissioners Nadine Maenza and Gary Bauer, who are with us and will participate in our questioning of our panelists.

We've asked each of our panelists--and again I want to thank them for coming. Some have traveled a great distance to be here. We are looking forward to their expertise on this topic. I will introduce each of our panelists. Collectively I'll introduce the four and then recognize each one as we proceed down the line.

We've asked them to provide an opening statement of six to eight minutes, and then we will have a time of questioning with our commissioners.

First is Naomi Kikoler. She is the Director of the Simon-Skjodt Center for the Prevention of Genocide. She has also worked for the UN Office of the Special Advisor on the Prevention of Genocide, and we're thankful for her to join us today.

Next, we'll hear from Dr. Azeem Ibrahim.

He is the Director of the Program on Displacement and Migration at the Center for Global Policy and a Chair of the Rohingya Legal Forum in Washington, D.C. Thank you for being here.

Also, Aman Wadud. He is the Human Rights Lawyer based in Indiana--I'm sorry--in India.

[Laughter.]

CHAIR PERKINS: A little bit farther than Indiana. But you might be a Hoosier fan--maybe.

He defends people accused of being illegal migrants and those who are detained in various detention centers in Assam, and I look particularly, I'm very interested in the testimony that you'll provide for us today. So thank you for being here.

Ashutosh Varshney--sorry about that, Professor--he is Professor of International Studies and Social Sciences and Professor of Political Science at Brown University--grateful for you, Professor, being here today with us as well.

We will begin with Naomi.

MS. KIKOLER: Mr. Chairman, members of the

Commission, thank you for organizing this hearing to address the importance of citizenship laws, religious freedom and atrocity prevention, a nexus that is too often ignored.

I speak to you today as the Director of the Simon-Skjodt Center for the Prevention of Genocide at the United States Holocaust Memorial Museum.

At the core of the center's mission is the belief that timely global action by policymakers, advocates and concerned citizens can prevent mass atrocities and catalyze an international response when they occur.

As an institution devoted to the memory of the Holocaust, we understand all too well the consequences of a failure to respond to warning signs and of inaction in the face of mass atrocities.

The U.S. Congress, and in particular this Commission, has an essential role to play in fulfilling our collective responsibility to prevent and respond to mass atrocity crimes.

This discussion is a reminder of the importance of protecting basic human rights, carefully monitoring vulnerable communities, including religious, ethnic, national and racial minorities for violations of those rights, including the revision, denial, or revocation of citizenship, and responding to warning signs of possible genocide and related crimes against humanity.

If there are three things that you take away from today's testimony, they are:

First, the denial or revocation of citizenship can be a warning sign of possible future atrocity crimes, including genocide.

Denial and revocation can be part of an intentional strategy to create an in-group and out-group, where the out-group is not entitled to the same protection under the law. This can also contribute to the further marginalization in society through their vilification as an "other" and removal from day-to-day society.

Second, the revocation of citizenship is

contributing to the risk of genocide right now. The case of the Rohingya today is a powerful illustration of how communities face heightened risk of genocide and related crimes against humanity, in part as a result of the revocation of citizenship.

Two weeks ago, I was in Cox's Bazar, Bangladesh, where I met some of the one million Rohingya refugees living there. A 1982 law stripped most Rohingya of their citizenship and cast them as foreigners in their own country.

Rohingya leaders have told us how the stripping of citizenship has set the stage for other discriminatory policies that have impacted their ability to work, travel and marry.

The most common refrain we heard from Rohingya refugees who fled genocide was that they wanted their citizenship restored. Why? Because they, as did the Jews in Nazi Germany during the Holocaust, see themselves as citizens of their country and because they understand the future risks and their own security, perhaps their very

existence, is strongly linked to the myriad of rights associated with citizenship.

They know intimately that the discriminatory revocation of their citizenship because of their ethnic and religious identity has diminished the Rohingya's legal standing in Burma and contributed to their marginalization and an environment in which genocide occurred.

Three, early action taken in response to warning signs can help save lives. Congress and the administration can take certain steps to help prevent mass atrocities, tailoring precise actions to local realities. Congress and the Department of State have an important role and moreover the ability to monitor for changes in the legal status of vulnerable communities, in particular ethnic and religious minorities.

Notably, the Atrocity Early Warning Task Force, an interagency mechanism responsible for monitoring for atrocity risks and developing prevention strategies should be asked to report to Congress annually on their efforts to mitigate

against the risk of atrocities in specific countries and as such track discriminatory changes in citizenship rights as a possible indicator.

Second, the Eli Wiesel Genocide and Atrocity Prevention Act of 2018 explicitly calls for the Department of State to provide additional training to foreign service officers assigned to a country experiencing or at risk of mass atrocities, such as genocide or war crimes.

The training should include instruction on recognizing patterns of escalation and early signs of potential atrocities and methods of preventing and responding to atrocities.

This training should be accelerated in its implementation and the warning signs study should include looking for denial or revocation of citizenship.

We know through the passage of this act and the development of training and assessment tools, as well as the lessons learned from countries' examples where the U.S. government has acted early and spoken out about warning signs,

such as Burundi in 2015 and Kenya in 2008, it is clear that the U.S. is equipped and has a legislative mandate to do more, do it earlier, and lead the international community in the prevention of atrocities.

History shows us the dangers of ignoring such warning signs. The Holocaust is a glaring example of how denial or revocation of citizenship on the basis of ethnic or religious identity can help to foster an environment where genocide is possible.

The Nazis sought, starting in 1933, to use a law to curtail the rights of Jews and others who were deemed "racially unacceptable." They did so at first by targeting freedom of speech, assembly, and the press. Their efforts to create a German identity that was entitled to rights and aliens who were not were further entrenched in September 1935 by two laws referred to as the Nuremberg Laws--the Reich Citizenship Law and the law for the Protection of German Blood and German Honor.

The laws provided the legal framework for

the systematic persecution of Jews in Germany and articulated the racial theories underpinning Nazi ideology. Overnight over 500,000 German Jews were no longer German; rather they were subjects of the German state.

Holocaust Museum historian Edna Friedberg has noted that as the Holocaust progressed, citizenship was a life and death factor throughout Europe.

Statelessness or citizenship from another country than current place of residence corresponded to significantly lower survival rates for Jews during the Holocaust. The legal status of Jews was often used as a determining factor in selecting people for deportation to killing centers from both Axis, Allied and occupied countries.

Thousands of Jews were saved as a result of real, dubious, or phony citizenship, such papers such as those provided by Raoul Wallenberg and others. In the aftermath of the Holocaust, governments created institutions and legal norms to protect all human beings drawing explicitly on the

experience of the Holocaust.

Central to those efforts, and has been mentioned already, was the protection of the right to nationality and citizenship enshrined in Article 15 of the Universal Declaration of Human Rights.

This has been codified in numerous treaties. Our international system is recognized and nationality must be afforded without distinction to race, color, religion, national or ethnic origin.

These legal protections are critical for as the former Special Advisor to the Secretary General of the United Nations on the Prevention of Genocide, Francis Deng, would often note, in virtually every situation where genocide has occurred, there's an explicit effort undertaken to divide communities on the basis of their nationality, race, ethnicity and religion.

Two influential reports in the past decade created by the American Jewish Committee's Blaustein Institute and the United Nations Office for the Prevention of Genocide explicitly identify

protecting citizenship rights as central to the prevention of genocide.

One of those reports outlines why it is so critical. Members of particular groups may be particularly vulnerable to discriminatory measures that take the form of denial of nationality. Such measures may weaken the individual's right to legal protection through state institutions.

Nationality is typically the basis for enjoying a state's full protection of rights to establish residence and move freely within the state, devote and participate in public life, and in some cases to access health services and higher education, to work legally, to rent or own property.

The Department of State and the USAID developed an atrocities prevention framework in 2015. Using that framework, we see three ways that the revision of citizenship laws could be significant.

The first is in identifying potential perpetrators. That's described as key actors who

currently have or might plausibly develop the motive, means and opportunity to carry out large-scale deliberate attacks on civilians. Removing citizenship can indicate that government leaders seek to single out a certain population for expulsion or physical attack.

The second, identifying civilian groups that might be targeted for large-scale and systematic attack. Any group whose citizenship rights have been arbitrarily denied should be considered at risk of even more severe persecution and attack.

The third is identifying potential triggers or windows of atrocity risks. Arbitrary changes to citizenship laws can turn a fragile situation into a violent crisis. Denying citizenship to members of a certain group can be interpreted by some as a signal to carry out physical attacks.

This assessment tool is one of many resources available to the Commission, Congress, and the Department of State to identify warning

signs and risk factors and develop targeted mitigation strategies.

It is important to underscore that there is no direct causal link, and denial and revocation often occurs in an environment where human rights have already been violated or restricted. It's also important to note that citizenship rights alone do not prevent genocide.

Each situation must be evaluated in its own context to understand the risks and critically to develop mitigation strategies.

So to summarize our key recommendations, the first is the importance of monitoring changes in citizenship in regards to vulnerable groups. This is possible and important to track as one of the many early warning signs, risk signs of atrocities or even genocide.

The U.S. has the presence, resources, and skills to do this in real time at the country level.

The second is the U.S. should use its atrocity prevention tools and the legislative

mandate to act early to prevent atrocities.

The third is the U.S. should work in partnership with others, including through established UN forums, regional organizations, other like-minded donor countries, expert civil society organizations, and the new International Religious Freedom Alliance to prevent mass atrocities.

One suggestion would be for the Alliance to establish a working group on mass atrocity prevention.

Four, consider timely incentives as well as punitive measures to encourage states to refrain from discriminatory citizenship practices and policies and do so early.

And fifth, understand that citizenship rights and state policies have a direct link to migration patterns, humanitarian crises and our own national security and stability.

In closing, it's important to note that states have a responsibility to prevent atrocity crimes and protect all populations in their

borders, not just citizens. Citizenship is a critical right than when denied, revoked, or revised can serve as a warning sign of possible future atrocities. Often those most vulnerable are members of religious and ethnic minority groups.

Those of us who are here today are fortunate. We take for granted the rights afforded to us through citizenship. For the Rohingya who we just met, this is not a historical matter for academic discussion. This is their lived reality and one that persists.

They are asking for their citizenship to be restored. They're asking for their inherent dignity to be recognized. As one Rohingya leader told us, by denying us citizenship, they are denying our entire existence, our struggle and our survival.

We believe that while restoring citizenship alone will not be sufficient to protect them from future genocide and related crimes against humanity, it's a necessary step towards a safer future for them.

Thank you.

CHAIR PERKINS: Thank you, Ms. Kikoler.

Dr. Ibrahim.

DR. IBRAHIM: Chairman Perkins, fellow commissioners and fellow panelists, thank you so much for holding this critical panel at this very critical time.

Mr. Chairman, the concept of universal rights is important both at international and national levels, and it is no surprise that this concept is so often challenged by authoritarian regimes and movements.

The post-World War II legal framework sought to both define a minimum standard of human rights and to prevent states stripping their citizens of full citizenship. The latter is of real importance and one reason why it is, in international law, impossible to make someone stateless.

We know what happens if this occurs--after the First World War, people were trapped, unable to cross the new frontiers as they belonged to no

longer existing states. That is until the often maligned League of Nations stepped in to create a basic travel document--the Nansen passport, which offered no rights of abode but did offer the right to move in search of safety.

Equally, it was no surprise that regimes such as Stalin's Russia or Nazi Germany took great care to ensure those they saw as having no rights on the basis of birth or ethnicity lost their entitlement to be citizens of the state in which they were born.

Unfortunately, in many states, including Myanmar and India, we are seeing the consequences of governments seeking to treat identifiable communities within their polity as no longer being citizens.

This can be seen in the impact and consequences of the 1982 Citizenship Act in Burma. On independence, Burma placed the Rohingya in a special category--excluding them from the long list of "national" ethnic groups. But they were given National Registration Certificates, NRC, which

allowed them to vote and in practice treated them as any other ethnic group.

But by 1974, the Socialist regime that came to power in the early '60s was facing economic collapse and was looking for ready scapegoats. The Rohingya, as a Muslim, non-ethnic Burmese community, were an easy target, and their NRC were replaced by Foreign Registration Cards to emphasize that the Rohingya did not belong in Burma, even though they resided there.

The 1982 Citizenship Act went even further and allocated the Rohingya to the category of "foreigners." It also deliberately removed the path to citizenship of having been born in Burma, as all the Rohingya had been, as their parents were already deemed to be foreigners. So this removed the possibility of gaining citizenship by appeal.

The 2008 constitution--in other words, the current law--went further and insisted that citizenship would only be granted to individuals, and I quote, "born of parents both of whom are nationals of the Republic of the union of Myanmar"--

-end quote.

So as foreigners, the Rohingya have no rights and no means to gain citizenship. This is amplified by the long-term claims by the Myanmar elite--and in this, the NLD party, the National League of Democracy, is the same as the old military regime--that the Rohingya are really illegal Bengalis who arrived in Burma after 1824. That is the issue that underpins their exclusion from the list of approved ethnic groups.

As an identifiable group with no rights and subject to well-orchestrated vilification, the Rohingya have effectively been expelled from their country of birth in the period of 2013 to 2018.

And this has echoes in today's India. This pattern of using legal changes to mask religious discrimination and strip identifiable groups of citizenship is also a key feature of Modi's BJP government in India. The new citizenship law is aimed at Muslims and those from the poorest sections of India's caste system. It undermines that non-confessional basis of the

Indian constitution and, as in Myanmar, will create identifiable groups who are denied the basic right of citizenship.

There are two strands to Modi's approach. First, he is trying to define who might be an acceptable refugee. This is problematic, but it is more serious as the new law is retrospective and will affect many who fled what was East Pakistan in the early 1970s to live in Assam.

Worse, the new census law will remove citizenship from many who cannot provide appropriate paperwork. Those who are Hindus or Buddhists will be able to appeal for citizenship under Modi's Citizenship Law. Those who are Muslims are denied this route.

In effect, families who have lived in India for 40 to 70 years are about to find themselves declared stateless and threatened with deportation.

Thank you for listening.

CHAIR PERKINS: Thank you, Dr. Ibrahim.

Aman Wadud, thank you for being here.

MR. WADUD: Mr. Chairman and other commissioners, to understand what exactly is happening in India today, I think we need to understand what happened in Assam. In Assam, apart from the NRC, there is a parallel process of doubting citizenship. There are two so-called investigation agencies, Assam Border Police Organization, which has its presence all across, all over the police stations across Assam, and Election Commission of India.

Now, the border police job is to scan the area under jurisdiction, and if they come across any citizen who do not have any papers give them time. If they cannot provide papers, then accuse them of being illegal migrant.

What happened actually on the ground is that they do not investigate any case, randomly accuse Indian citizens of being a foreigner. Example: Mohammed Sanullah, an army officer who served India for 30 years, was accused of being an illegal migrant, subsequently declared as foreigner.

Mohammed Azmal Haque, 30 years, who served the Indian Army for 30 years, he was also accused of being illegal migrant. After hue and cry, the case was dropped against him. Sanullah was not that fortunate.

Randomly people--Indian citizens--are accused of being illegal migrants without any investigation whatsoever, violating the fundamental right to fair investigations.

Another agency is the Election Commission of India. Since 1997, they started something called the strict scooping [ph] of voter list. They mark people as "D" voter, or doubtful voter, again without any investigation whatsoever. Mostly they have accused women of being a foreigner. Now these cases go to the Foreigners Tribunal for trial, a tribunal which the cases are executed under the Foreigners Act 1946, a colonial act, where the burden of proof is on the accused.

In any criminal case, the burden of proof on the state. Here if you're accused of being an illegal migrant without an investigation, the

burden of proof is on you to prove that you are a citizen of India.

Under the Foreigners Tribunal Order 1964, Foreigners Tribunal were created by executive order. All other tribunals in India is the creation of legislation. The Foreigners Tribunal where the cases of citizenship is decided is a creation of the executive order.

Now when the cases come before the Tribunal, in Assam, one needs to provide documents before 25th March 1971, which is the cutoff date of citizenship in Assam.

Now ideally what people do, they provide 1966 voter list and any document linking themselves with the 1966 voter list--say the father's documents or grandfather's documents of 1966 or any document before 1971 and linking themselves with that voter list.

Now in the tribunal, most of the people are now declared as foreigners because of minor anomalies in the name and ages, which is very common to everyone. If any witness makes a minor

contrary to his statement, they can be stripped of citizenship because the burden of proof is on the accused.

On July 2, 2019, the Home Minister said in the Parliament that 63959 people were--63,959 people were declared foreigners by ex parte order, which is more than 50 percent.

Now, most of the people, they can't defend their citizenship. They can't afford lawyers. So when they can't afford lawyers, they stop going to the Tribunal and that's how many are declared as foreigners. One of them was Mamiran Nessa. She was accused of being illegal migrant, marked as D voter 1997. She appeared before the tribunal, couldn't pay the lawyer; she was declared a foreigner by ex parte order. Subsequently she was detained in 2010. She was detained till December 2019 for nine years.

When she was detained, her youngest son was two years old, and all three children were minors. She was separated from her children who were minors. And once you are declared as foreign,

you can be detained in detention center. There are six detention centers in Assam. You can be detained there. The detainees do not have right to parole.

Mamiran Nessa's husband died when she was in detention. She was not allowed to come out of detention center because she did not have right to parole. She was allowed to come out of detention center because a Supreme Court order which said you cannot detain a person for more than three years, which is also I think is not justified because deportation is not possible.

A person is detained to deport to the country of origin. Now when you declare your own citizens as foreigners, you cannot deport that person.

The Home Ministry said before the parliament since last three years, from 13-3-2013, since when the formal process of deportation started, only four people have been deported to Bangladesh. Within this period, 130,000 people have already been declared as foreigners.

Now once you are declared as foreigner, you do not have an appellate body. You have to go to the High Court and file a writ where the Honorable High Court has very limited jurisdictions to decide the cases. Most of the cases, if a person is declared as foreigner, are appealed to the High Court because it has certiorari jurisdiction and supervisory jurisdiction and not an appellate jurisdiction.

Now under such circumstances, you are stripped of citizenship and then you become stateless. India disowns you and Bangladesh will definitely own you because you are not a citizen of Bangladesh; you are a citizen of India. In that backdrop, the NRC was implemented because of Supreme Court Order 2014. '15 the work started. According to the NRC rules, you need to prove that you are a descendent of a person who is in the territory of Assam before 25th March 1971, and you have to link with those documents. Five years, the process continued.

I would say that the process was very

harsh, stringent, technology driven, although there was, you know, nothing, no religion column on it, but the Bengali Hindus and Muslims who are seen as suspect, suspect citizens in Assam, were the vulnerable group, mostly the Muslims because of the anti-Muslim environment created by the government.

Very often Muslims are abused as Bangladeshis, even called as Jinnahs, who was the founder of Pakistan.

The Muslims did not participate in the NRC. They rather participated in NRC process because we all wanted a closure from this politicization, from this anti-Muslim rhetoric, from this rhetoric against illegal migrants and from this stigmatization of being called a suspect in your own beloved motherland.

After the entire process, 1.9 million people were excluded, and most of them are Indian citizens, including my cousins who are excluded. His parents are included in the list. The process is inherently gender biased because women find it very difficult to prove their citizenship because

they get married before 18 years of age, and the minimum age to vote in India is 18 so you lose the important document called voter list electoral roll.

You name is recorded in the voter list only after you get married, and then at the matrimonial home with your husband, not your parent. So you lose the most important document to prove linkage with your parents.

Now the government said they will scrap this NRC because it do not match with their propaganda that there are millions of illegal migrants here. There are no millions of illegal migrants in Assam. The NRC has exposed the propaganda of large-scale illegal migration into Assam.

The current protests started after the current Home Minister said that first comes the CAA, which is the Citizen Amendment Act, which is discriminatory towards Muslims, which provides expedited citizenship for non-Muslims from three Muslim countries, and he said that then will come

the NRC.

Now the legal foundation of the NRC is Citizenship Rule 2003. It says the NPR, National Population Register, and during the NPR process, your data will be collected. Your particulars will be collected. Your biometrics data, your parents place of birth, their date of birth--their place of birth will be collected, and when the NRC is notified, the Local Registrar, which is a junior level executive officer, can mark any person as doubtful for citizen.

That is when you need to prove your citizenship. And then the Citizenship Rule also weaponized fellow citizens of filing an objection against your citizenship. You will have to prove your citizenship then.

Now people in India are worried, particularly the Muslims, because they fear that something like Assam could happen where even an Army officer could be declared as foreigner, where Indian citizens are being rendered stateless and detained in detention center.

That is why, you know, the fear of losing citizenship forced people to protest, to come on the street, particularly women. Please go and ask these women who are protesting on the street, and they will tell you that we do not want to go to detention center, and that is why we are protesting. The protest is not only against CAA; it is against the CAA, NPR, and NRC, which is a sinister design.

Now every time there is a peaceful protest in BJP-ruled state, it has been crushed down by brutality, the police brutality. In UP20, Muslims were killed by bullet injuries. Police entered Muslim homes. They beat them up without any provocation whatsoever. In Karnataka, a BJP-ruled state, where an anti-CAA play was enacted by minor children, the mother was arrested for sedition charges. The principal of the school was arrested for sedition charges. The minor children were interrogated several times.

In Delhi, where people were peacefully protesting on the street when the president, Mr.

Trump was visiting India, a BJP politician gave an ultimatum that if you cannot remove these people, we will hit the street, and that was the spark of the violence. You know, the mob started attacking mostly Muslims, and the police did not stop the mob. Rather they participated in the violence.

There is an abdication of responsibility on the part of the police. Nothing was lodged against the persons who sparked this violence. Even lawyers who went to police stations were beaten up. The fear among Muslims today is genuine. The fear to leave, the fear of losing citizenship is genuine because they know if NRC is implemented, they will be asked to prove their citizenship.

It is almost, you know, the parameter of Assam is used all over India. Hardly anyone would prove their citizenship. To prove citizenship, you need to provide documents. The Citizenship Act 3A says that any person born in India from 26 January 1950, which is the commencement of the Constitution, to first of July 1987 is an Indian by

birth. So basically the jus soli concept/principle is applied during that period.

You need to prove that you were born in India before first of July 1987. How do you prove you were born in India? You need a birth certificate. Most of the people do not have birth certificates. These peaceful, non-violent protests is to live a dignified life, a dignified life which is granted by this great document called the Indian Constitution, an unparalleled document in the history of modern nations. This guarantees to live a dignified life. The entire protest is to live a dignified life.

Thank you so much.

CHAIR PERKINS: Thank you, Mr. Wadud.

Professor Varshney, thank you.

MR. VARSHNEY: Thank you, Chair Perkins, and the commissioners present here, thank you for inviting me.

My testimony is focused on two specific questions. Does India's recent Citizenship Amendment Act target the nation's Muslim minority?

Two, if so, in what precise ways?

On December 11, 2019, India's parliament passed an amendment to the nation's citizenship law, originally framed in 1955. Called the Citizenship Amendment Act, CAA, the new law provides for fast-track citizenship to the members of "persecuted minorities," who entered India before December 31, 2014, from Pakistan, Bangladesh and Afghanistan.

The law not only specifies these three countries, but also lists communities it designates as persecuted: the Hindus, the Sikhs, the Buddhists, the Jains, the Parsis, and the Christians.

It leaves out only the Muslim immigrants. The government's argument is that Muslims, by definition, cannot be persecuted in those countries where there is a Muslim majority and where Islam is the state religion.

Hindu-Muslim riots broke out in the national capital recently. Otherwise, anti-CAA protests have been primarily nonviolent and have

continued for over two-and-a-half months. They have raged in cities and towns virtually all across the country. Muslims have been at the forefront of these protests, but a large number of non-Muslims have also participated.

The protesters not only view CAA as a challenge to the fundamental properties of India's Constitution and polity, but also one, more importantly, which might render a large number of existing Muslim citizens stateless and take away their basic rights, making the community highly vulnerable to oppression and discrimination in the future.

India is about 80 percent Hindu and a little less than 15 percent Muslim, which adds up to about 180 to 190 million Muslims as of now. The 2021 exact census numbers will arrive next year.

The threat is serious, and the implications quite horrendous. Something deeply injurious to the Muslim minority can happen once their citizenship rights are taken away.

In this testimony, I'll concentrate on

three aspects of the problem. First, as I've said, the first issue is one of fundamental constitutional principles. India's original 1955 citizenship law drew no religious distinction between Muslims and others. As a nation, Pakistan was indeed conceptualized as a Muslim homeland where non-Muslims could be citizens but would have fewer rights.

However, India was never envisioned by its Constitution makers as a Hindu homeland. All religions were equal. In those early days, even Muslims who had gone to Pakistan but returned could reclaim their Indian citizenship.

India under Prime Minister Nehru, that is 1947 through '64, 1964, was lauded worldwide for its constitutionally enshrined inclusive citizenship with no religious distinctions.

If America's constitutive ideals were freedom and equality, India's founding values were equality, including religious equality, diversity and tolerance. So that's the first point about the fundamental properties of the constitution polity

which the properties that are being violated by the CAA.

The second issue is whether it is true to say that no Muslim communities in Pakistan, Afghanistan and Bangladesh are persecuted, and whether persecution is confined in South Asia, India's neighborhood, to only these three countries.

The case of Ahmediyyas, or the Ahmadis, in Pakistan, is only too well-known. Since the mid-1970s, the Pakistani state has treated them legally and politically as non-Muslims, which makes them easy targets of persecution. Some would also easily add the Hazara community to the list of persecuted communities in Pakistan.

In addition, the Buddhist-majority Sri Lanka and Myanmar are beyond the ambit of CAA, Citizenship Amendment Act, though both are India's neighbors and have had a history of discrimination, even persecution against their minorities.

The persecution of the Rohingya, who are Muslim, has attracted worldwide attention, and

you've heard quite a bit already. The Tamils in Sri Lanka, one might add, have also complained of discrimination if not persistent persecution.

The government of India is thus denying, on one hand, the well-documented existence of persecuted Muslim minorities in Muslim majority countries in the neighborhood. And also implying, on the other hand, that the oppression of religious minorities does not mark societies where Muslims are not a majority. Both arguments are wrong.

But it is the third issue that is most threatening to India's Muslim minority. The government's citizenship move consists of two steps, at least two; one can make it three. But two steps are most relevant for our discussion.

In 2019, the Minister of Home Affairs announced several times that (1) a National Registry of Citizens (NRC) would be created as a sequel to (2) the CAA, the Citizenship Amendment Act, in the next few months. These are coupled in his statements.

Whether, after the unending citizen

protests, an NRC will finally be legislated in parliament, or announced as an executive decree, in the coming months, remains an open question. But the awfully exclusionary implications for the Muslim minority ought to be clearly understood and noted.

The key issue is how an NRC will be created and what documents will be necessary to prove citizenship. The government has not announced which documents it will ask for. The fear is--it's a genuine fear, legitimate fear--the fear is that if the existing Muslim citizens of India are unable to produce documents of Indian ancestry, which simply cannot be ruled out until we know what documents are required, and also the fact that very few Indian citizens have birth certificates, the NRC, using CAA--the National Registry of Citizens using Citizenship Amendment Act--can easily call Muslims, quote-unquote, "infiltrators," a term repeatedly used by the Home Minister in the last few months.

That, in turn, will make Muslims an object

of internment or expulsion, and/or deprive them of the right to vote. In contrast, if the Hindus have a similar documentary deficit, they would neither be interned, nor expelled, nor disenfranchised.

They can simply claim that they are welcome only in a Hindu homeland, namely India, and persecuted elsewhere in South Asia, which thereby will open the door for an Indian citizenship for them, not for Muslims.

In short, using the Citizenship Amendment Act, the National Registry of Citizens can render stateless a large number of Muslims, even if they were born in India and have lived in the country for decades, as have their ancestors.

That is an important reason the protests have not ceased. The protesters can clearly visualize extreme Muslim marginalization and its attendant negative consequences, some profoundly so, should the NRC, should the National Registry of Citizens, become the law of the land, through legislation or through an executive decree.

Thank you.

CHAIR PERKINS: Thank you, Professor.

We will turn now to questions from the commissioners, and we'll either direct our questions direct to a member of the panel or in general, and I'll begin with just a general question to any of our panelists who would like to answer this.

We've heard in the testimony that these citizenship laws have been used for quite some time in the 20th century, 21st century. The question is do we see an increase in the use of the citizenship laws to render individuals and groups stateless, and if so, why do we see this increase? Do we have an idea of why it might be increasing? And I'll throw that to any of our panelists.

DR. IBRAHIM: So, Mr. Chairman, the situation of the Rohingya and the manner in which they were stripped of their citizenship happened in incremental stages over a long period of time.

So I think this has become a model, not just for other authoritarian regimes, but certainly as we see in the case of India, they're essentially

being replicated in many facets in the same kind of fashion.

So it's simply a very legitimate mechanism framed within a legal framework that allows you to discriminate against minority populations, which in the past, you know, you would organize pogroms or other kind of mass incarceration mechanisms by which to discriminate against them.

So it's all couched up on the language and within constitutional language and amending laws and other kind of mechanisms, but it's really allowing you to undertake the kind of policies that you have always advocated but within the legal kind of framework, and if one looks at the stages of genocide--genocide has never been very thoroughly well studied--the stages of genocide, the precursors of genocide, the signs of genocide, are relatively quite well-known, and most of the signs are there.

This is simply one of the stages by which persecution is actually undertaken, and is referred to as discrimination, identifying a particular

group and using legal mechanisms by which to make them outcasts, very similar to the 1935 Nuremberg Laws, which as my colleagues mentioned was a mechanism by which to make the entire Jewish population stateless.

MR. VARSHNEY: I can answer your question, Chair Perkins, conceptually. I haven't collected data on a whole variety of countries. I can certainly speak with great confidence about the Indian case, but conceptually the problem is as follows--and perhaps others can talk about whether denial of citizenship rights has been rising, as you asked.

Most citizenship laws in the world theoretically fall into two, two kinds of claims or domains. One is well-known as jus soli, suggest birth alone in a given territory is the basis for citizenship. That's jus soli. In the literature, the classic cases are United States and France. And they are discussed in great detail in the literature.

The other model for granting citizenship

in the literature is conceptually called jus sanguinis, which is bloodline-based, which is ethnicity-based, race-based, and religion-based, where religion is seen as a bloodline, not a voluntary exercise, which is true in much of the world actually. And the classic examples of that in the literature are Germany and Japan.

Now, the 1935 Nuremberg Laws are discussed, of course, plentifully in this literature. They illustrate the extreme version of jus sanguinis, namely that Jews though born in Germany, living there for decades, were denied German citizenship after 1935, and that led to truly awful consequences.

The other example in the literature, of course, is the denial of citizenship to Rohingya in Burma, but I'm sure there are others also.

What I can say, I cannot answer that empirically because I have not studied that worldwide, but in India, what is happening is that India started with jus soli in the 1955 law. It's moving toward ius sanguinis.

So it started with a broad conception, inclusive conception of citizenship, and now it's heading towards exclusion of certain religious groups, especially Muslims, well, Muslims only at this point actually--Muslims from the ambit of possible citizenship.

CHAIR PERKINS: Commissioner Maenza.

VICE CHAIR MAENZA: Thank you. Thank you so much to our panelists for your presentation.

Ms. Kikoler, you mentioned using timely incentives and punitive measures in order to respond to revoking citizenship. What recommendations do you have as well as the panelists, other panelists, on what actions the U.S. government could take to incentivize or provide some sort of action for these governments that are acting this way?

Thanks.

MS. KIKOLER: Thank you, commissioner, and I'm sure that my colleagues will have specific recommendations for the countries that they have been referring to.

For us, first and foremost, governments themselves have the responsibility to protect their own populations. So clear and consistent messaging around the fact that the U.S. government is monitoring these types of changes is a fundamental starting point.

In order to do that, you have to empower the foreign service officer, USAID officials, and those on the ground to be looking for the specific vulnerabilities that these minority groups face.

Our hope is that as a result of the Eli Wiesel Act, we will see greater training so that people are able to actually look for those warning signs, and that you are messaging first and foremost in country through the embassy to the governments the types of concerns that one has around revisions or changes in the laws.

From there, we hope that the reporting can trickle up, and that there is a consistent message that comes from the highest levels within U.S. government, especially when we see threats of revision or revocation being used, as has been

mentioned by all of the panelists, to dehumanize and marginalize a particular community.

It is worrying when we see a silence or absence of messaging from the highest levels when these types of things take place.

As many of you know, we're approaching another election in Burma where it's very likely that the Rohingya community will be disenfranchised yet again, where their citizenship is one of the reasons and lack thereof that they will not be able to vote. When we have moments like that, moments where we can signal what a free and fair election should look like, where we may provide support for the holding of certain elections, we should be raising consistently our concerns about communities that are going to be discriminated against, marginalized.

We should be considering withholding support. One cannot say that that's a free and fair election when you have an entire people that have been disenfranchised. So there are a number of tools at the disposal. But the fundamental

starting point is actually monitoring and looking for these types of changes. And one of the things that we often say when we talk about religious and ethnic minorities is that at times they are sadly the canaries in the coal mines.

They are the communities that are markers for what might come in terms of the potential risks of genocide and other related crimes against humanity in a country. And we have to be looking and truly understanding the unique situations and vulnerabilities that they face, and to do so, we have to dedicate the resources and support reporting on that particular issue.

CHAIR PERKINS: Professor.

MR. VARSHNEY: So my comments are partly based on a general understanding of the problem and partly what would be India based because that's what I'm covering for this panel.

The general problem is as follows:
citizenship laws which move towards exclusionary practices and articles are typically in parliamentary systems, which India has,--it doesn't

have a presidential system--or expressions of brute parliamentary majorities which governments have.

There are four possible ways to resist, and that's a straightforward political way which is very relevant here. One, if judicial review is available, then judiciary can pronounce on the constitutionality of the law.

Petitions have been filed in India's judiciary. We don't know how it will come out, but India has judicial review. That's an internal mechanism.

Two, federalism, if the system is federal. Twelve of India's state governments have already announced that they will not implement NRC, and many have also opposed NPR, which we have not discussed. I think it will become too technically complicated a matter, the difference between NPR and NRC, et cetera. But let's say even the government, some government, the state governments, which have supported the Citizenship Amendment Act, have said NRC will not be implemented in their states. So there's federalism as a check on what

the central government can do. That's also an internal check.

Third, non-violent protests, which are legal; right? Civil disobedience is legal. And so long as protests remain non-violent, the government will have to figure out a way to deal with them. That's also another source of resistance which is internal.

The fourth is, is international opinion, and that can be divided into two parts: non-governmental--what the newspapers are saying, what New York Times is saying, what WAPO is saying, what Financial Times is saying. They're all very critical of Modi government today.

The second is governmental. If that's the question that Vice Chairperson asked, it's a complicated one for the following reason. If the U.S. government were to forthrightly, explicitly, openly criticize the Indian government, the Indian government would also say why aren't you criticizing what's happening to Uighurs in China and many of the minorities in different parts of

the world? Where is--

So the question would be is there, in American foreign policy, is there equality of treatment with respect to nations, many of whom might be denying doing this?

So that's question number one, which leads to the second question, which is, is it better to talk diplomatically as opposed to outright denunciation? Would it produce the effect that you want--outright denunciation?

My sense is outright governmental denunciation will not achieve very much. There are three internal mechanisms, which are currently underway. It's diplomatic methods which will achieve a great deal more than outright denunciation and open denunciation at the governmental level.

CHAIR PERKINS: Thank you, Professor.

Commissioner Bhargava.

COMMISSIONER BHARGAVA: I have a couple questions, and they speak to different aspects of what all of you have spoken to today.

But first I wanted to draw you into the conversation in this question and answer period. I have a technical question for you, and then a broader question, which is the technical question is for the 1.9 million who have, who after multiple phases of this process, including with the foreigner tribunals, have still been excluded from the National Register of Citizens in Assam. What is their fate now?

And then what is the concern about what that process will lead to given the six detention centers that are already in Assam, and some concerns that others are being--others are being built, and I want to ask about that too?

But, second, you've spoken to this. I just want to ask you directly, right, which is from your perspective, not only in terms of what's happened since 2015, but even prior to that, what is the purpose, what's the design of having a National Register of Citizens in India given the fact that both people who are in poverty and for the reasons that you described, for women, for

various different populations, it would be extraordinarily difficult for many of us to be able to show that we have documentation as of 1971 or, frankly, and many years later past that date?

MR. WADUD: The first question, about 1.9 million people who have been excluded from the list, they will have to appeal before the foreigners tribunal.

The Foreigners Tribunal Amendment Order 2019 says that within 120 days, but that, you need to challenge the rejection order, where they will give the reasons why you have been excluded, but it's been six months now. The rejection order has not been issued yet. So people who have been excluded are constantly under fear of losing citizenship.

Only the foreigners tribunal can strip you of your citizenship. These people are not non-citizens now, not foreigners now.

When you go to the foreigners tribunal, the tribunal order, which was amended, it said that only if there is merit, the notice will be issued

in your case. So that is an arbitrary power, additional arbitrary power given to the foreigners tribunal, which is a problematic clause.

Now if only you are declared as foreigner by the tribunal, then you will be detained. Apart from the six, six detention centers, one of the largest detention centers in India is coming up in Assam, which is under construction, which can hold up to 2,800 people.

So once you are declared foreigner, you can be detained. Now detention is not a sentence; it's not a punishment. You will be detained to deport to the country of origin. Now here--to Bangladesh--how, most of the people that I meet, either Bengali Hindus or Muslims, they all have document. They have been arbitrarily excluded from the list.

Now the Citizenship Amendment Act will say that everyone who will be protected under this act, every case will stand abated. There will be no case against them. So most of the Bengali Hindus will be protected under CAA, but they will have to

maybe claim that, you know, I'm a persecuted community from, from the these three countries. But a lot of peoples are Indian citizens. They will have to claim that I am persecuted.

Secondly, the four district, four, five district, which has been exempted from the CAA, where the CAA does not apply--the six areas where there are three or four major districts where there is a sizable Bengali Hindu population, they will also will have to go to the foreigners tribunal to prove their citizenship.

Because these people can never be deported, our External Affairs minister was in Dhaka after the NRC list was excluded, he said the NRC is an internal matter. Yesterday, the Foreign Secretary told the Bangladesh counterpart that you don't have to worry about NRC. Apparently it is an internal matter. So basically the intent is not deportation.

So what do you want to do with these people? After all, any person who is declared as foreigner, most likely to be, what will you do with

them? Right? If you detain, what after detentions? These people stand stateless, and stateless peoples are open to different kind of abuses. So this will create statelessness.

Secondly, what is the purpose? Well, that is, you know, that has been, Assam has seen migrations, but not every migration is illegal migrations. There has been migrations since 1826. First, Bengali Hindus, then Bengali Muslim peasants. By 1930, the Census Commissioner said that there are around half a million Muslim peasants who came to Assam.

By 1951, the Muslim population was 24.7 percent. Now, you see a lot of politicians view that every Muslim is a Bangladeshi in Assam, is an illegal migrant.

Before 1971, there were Bengali Hindus who were persecuted in East Pakistan. But they were granted citizenship by Assam court, Section 6A of the Citizenship Act--right? So the people who are accused of being illegal migrants, whose cases are tried before the foreigners tribunal, I fight lot

of those cases. My friend lawyers fight a lot of those cases. I hardly come across any illegal migrant. I have not come across one.

If there are illegal migrants, then where did they go? The NRC was mandated in Assam, justifying last illegal migration. And only 1.9 million people have been excluded. Most of them are Indian citizens. So the purpose is very apparent that you lied to the people that there are millions of illegal migrants here.

Where you cannot, where you fail to find illegal migrants, you are manufacturing illegal migrants. You are stripping citizenship of Indian citizens just because you lied before people there are millions of illegal migrants here. The NRC completely annihilated the myth of illegal migration in Assam. The foreigners tribunal who declare people as foreigners, they are Indian citizens, most of them.

29 people died in detention center in last three years. Every body has been handed over to Indian family. Every time a person dies in

detention center, body is handed over to Indian family. Everyone who is declared as a foreigner has Indian family as Indian citizens. Right? So these, you know at the end of the day, in the guise of detecting illegal migrants, it is the Indian citizens who are being stripped of citizenship and rendered stateless.

Thank you.

VICE CHAIR MANCHIN: The question that I would ask is in countries that they are targeting, a particular religion, a particular group of people, they're trying to marginalize, deport, exclude, even if that doesn't happen, even if somehow their citizenship is protected, do you think that solves the problem? I mean if they don't do it through like a National Register or something they're creating, what, what then happens to these people?

Obviously, there is a targeted audience in each of these countries so what is the next step if it's not through citizenship?

MR. WADUD: Well, finally, even if peoples

are not stripped of citizenship, the process of proving citizenship is very, very traumatic. The fear of losing citizenship can actually kill you.

You know, in Assam, the last five years, the vulnerable communities, the Muslims and the Hindus, Bengali Hindus and Bengali Muslims, they were constantly under fear of losing citizenship. And some even committed suicide, including a 17-year-old girl who apparently committed suicide because of fear of going to detention center.

Now, if tomorrow, say, the NRC is mandated and implemented across India, the Executive Officers have arbitrary power to mark any person as "doubtful" citizen. Any random person can file an objection against your citizenship.

The process of proving citizenship--you know, people undergo unimaginable harassment. Firstly, where do you find documents? Where do you find birth certificate to prove that you or your parent were born here before first of July 1987? It is almost impossible, you know, because, because the act which governs data and birth came in 1969.

It became mandatory much later.

So it is almost impossible to prove your citizenship. The process is not worth it. It is not in the interest of the country. You cannot ask every person to prove their citizenship. Right? Stripping of citizenship is later on. It is the end, end result, but the process, you know, you are stripping the person of his dignity, to live a life dignified--the right to live with dignity has been stripped off. You're dehumanizing the moment you ask to prove citizenship.

So even if you are not stripped of citizenship, the process will be very traumatizing, and it will harass Indian citizens unimaginably.

CHAIR PERKINS: Professor Varshney.

MR. VARSHNEY: One more point can be added to this, in my view, very correct analysis that was just presented, that the very act of proving citizenship entails remarkable suffering and harassment so that that very--even if it doesn't come through--even if the Citizenship Act, NRC for the nation is not put through, let's say in a few

months, and I said it remains an open question. It's not been decreed by the executive nor has it been legislated by parliament yet. CAA has been, but not NRC.

However, there is one more point. It creates an enabling atmosphere for violence. Once you say that a particular community is not fully Indian, or its Indianness is in grave doubt, you begin to marginalize them in politics, and you begin to generate a certain discourse against them in politics, about their loyalty, about their commitment to the nation, about a whole variety of things--the way they raise their children, the way they marry, the way--it's a whole variety of things you can say.

So this act of marginalization politically executed or politically engineered or politically led creates an enabling atmosphere for those who think they can act violently on behalf of the nation against the minority so targeted.

So I think, so in other words, enabling atmosphere for violence is another reason why we

should worry about creating a National Registry of Citizens where every citizen has to produce a document about their citizenship.

VICE CHAIR MANCHIN: Thank you.

That was exactly my point. We go back to do we create another Holocaust, genocide? I mean that--yes. The threat of violence becomes so prevalent.

Thank you.

CHAIR PERKINS: Commissioner Bhargava.

COMMISSIONER BHARGAVA: Unfortunately, it's not the threat. It's what happened in the last couple of weeks, and in terms of people being beaten and burned in the streets from targeted communities.

And so I want to go to the other end of this, which is what happens when people are in a position where they want their citizenship to be restored? And I'm taking from your language, and so, you know, Commissioner Maenza and I both heard repeatedly that they just wanted, from those in the Rohingya community that they wanted their

citizenship to be current and so, and were very worried about this notion that they were stateless; right?

And so I want to ask two questions, which is building from what has happened in Assam where the burden, right, of proving citizenship is placed on a person who's been accused in some way; right?

It seems like that's the same kind of--the same burden has been placed on the Rohingya to demonstrate, right, their citizenship when--and this is a more technical question--when it appears that the Burmese government, for example, has forms, Form 1, where they have it in local communities. They also have it in the national--the national government also has forms that could show that people were born in, right, or part of, you know, Rakine State and other parts of Burma where the Rohingya lived.

And so I'm wondering how you think about this process of citizenship being restored? And given that you don't have a situation in which Burma recognizes the Rohingyas' identity, what are

the kind of possibilities for that process actually going forward given, given the way that this battle has been pitched thus far?

DR. IBRAHIM: Commissioner Bhargava, usually these processes that have been set up, you know, within the legal framework are designed to ensure that those people will remain without citizenship, and they are designed to ensure that they don't come back.

When I visited the Rohingya refugee camps in early 2000, I met with a number of refugees who had been there since the '90s. Many of them had been refugees multiple times so had come over, had been forced out of Myanmar into Bangladesh in the '80s and in '88 and '92, multiple times. I remember asking a number of them, you know, whether they would go back and if they have a specific requirement.

And at that time, the government of Myanmar had made a very clear criteria which they had to fulfill to ensure that they can come back. So their attitude to the international community

was that absolutely these people could come back as long as they meet the legal requirement, and the legal requirement was set up to ensure that none of them come back.

So, for example, they had to produce birth certificates from their grandfathers at a time when birth certificates were never issued. They had to produce documentation from the land registry of property that they owned, property that had obviously been burnt down as they fled, and then they had to produce documentation of where they crossed the border into Bangladesh so the equivalent of passports and passport stamps.

So their mandate and their language to the international community was, look, we just want to make sure that the people that return are legitimately from Myanmar, but it was all designed to ensure that none of them actually come back.

So that once again it touches upon Chairman Perkins' point that this is all within the legal framework, and that's the kind of language that they would use to ensure that, look, we are

absolutely happy to take these people back. And the reality is that they have actually nothing to go back to.

In the Rohingya situation, their villages were all burnt to the ground. They were bulldozed. The land has already been redistributed to the locals, and the border has been mined to ensure that none of these people will actually come back.

So on behalf of, on the part of the Burmese government, there is absolutely no goodwill there at all and there is no genuineness in their actual approach.

MS. KIKOLER: Thank you, Commissioner, for the question.

I'm going to maybe answer the second part around opportunities and maybe just start by kind of echoing what Azeem said. We can always come up with legal technicalities as a reason for inaction or as an obstacle, but there are numerous different strategies that have been used around the world to try to help restore citizenship or protect the citizenship of vulnerable communities.

Right now we have a unique opportunity, and when I say we, as an international community, to raise the issue of citizenship in the context of the Rohingya. A recent January 23 decision by the International Court of Justice enacted something called "provisional measures."

The provisional measures serve essentially as almost an injunction. They ask the government of Myanmar to take certain steps to uphold their responsibilities under the Convention on the Prevention and Punishment of Genocide. Part of those responsibilities are to prevent future crimes including genocide.

One critical way in which they could do so is by restoring citizenship for the Rohingya community. The provisional measures are not clearly outlined or defined as to what the benchmarks are.

There is no reason why a commission like your own, other entities within Congress, the U.S. government, cannot articulate for the purposes of the U.S. government what standards must be met for

provisional measures to be upheld.

And I think it would be very much in keeping with, as I mentioned, the reports that have been done for the UN Office on the Special, for the Special Advisor on Prevention of Genocide, that citizenship and the right to nationality is one of the foremost rights that must be affirmed when a government is upholding their responsibilities under the Convention.

So I would encourage you to take this opportunity to articulate in detail what steps the government of Myanmar must take in order to meet their obligations under the Convention and fulfil then the provisional measures that have been required by the International Court of Justice.

The reporting timeline for that is their first report is due--oh--six months from the start of January. Sorry. Four months from January. So it's a key moment right now for there to be a single voice emerging from the U.S. government articulating clearly that if the government of Myanmar is sincere about preventing genocide, they

will restore the citizenship rights of the Rohingya community.

CHAIR PERKINS: Ms. Kikoler, as you have the microphone, I want to ask you a question because you have made this your life's work-- preventing genocide, tracking it. And I don't want to, I don't want you to resurrect the TSA code of-- their color-coded threat warning system that they rejected.

But give us a sense of how acute is the threat right now. I mean is this, if we hesitate to act at this moment, how great is the threat?

MS. KIKOLER: Thank you very much, Chairman, for asking that question.

As I mentioned, we just came back from what we call a "Bearing Witness" trip to Cox's Bazar. We take Bearing Witness trips in situations where we believe that the risk of genocide and related crimes against humanity is extremely high.

Our findings when we returned were that the situation for Rohingya who remain in Northern Rakine and remain in Rakine State is one where they

face on a daily basis a risk of genocide, where if there was going to be a return of the one million refugees that are currently in Bangladesh, they would be returned to a situation where they face a risk of genocide.

We cannot, I think, stress enough the urgency of the situation. Despite the international attention that has been on the government of Myanmar, especially around the International Court of Justice case, we've seen a continued denial of the extreme nature of the crimes committed.

We've seen the leadership continue to refuse to even use the name "Rohingya," let alone acknowledge their citizenship. If this was 1939 or 1941, and you had a government refuse to even use the term "Jews," what would be our response as a government and as an international community?

We don't use that language lightly, and we acknowledge that every situation is unique, but in this particular case, you have a community that has been repeatedly referred to as the most vulnerable

community on earth.

So I appreciate your question because we believe that they are the victims of genocide, and we believe that that risk remains ongoing. Hence, the fact that this is such an incredibly timely discussion. And the stripping of their citizenship in 1982 was a critical turning point in enhancing their vulnerability, and in, as has been mentioned by many panelists when they've talked about the phenomenon of how important citizenship is, a critical moment that helped to create an enabling environment where sadly genocide could take place.

Thank you.

COMMISSIONER BHARGAVA: This is a particular question, but it's also a broader question for everyone, which is what the role of the judiciary and a legal system has been in facilitating some of the processes that we're seeing both in Burma and India? And, in particular, what I want to ask you about some of the challenges that human rights lawyers are facing on the ground, and I understand the process by

which people throw up legal technicalities that might not have existed the day before for a range of purposes.

But what are the kinds of ways in which, particularly right now where we have concerns about the role of the judiciary and whether or not cases, cases that might take years to resolve, even in the Supreme Court, will be a way in which to address some of the violence that we're seeing on the ground?

MR. WADUD: So, in India, the foreigners case is inspired by one case where the current Chief Minister went to the Supreme Court challenging the erstwhile IMDT Act where the burden of proof is on the, was on the state, which was before 2005. While deciding this case, the Honorable Supreme Court referred to a report by former Assam governor, where it said that the Muslim dominated district of India will one day demand to merge with Bangladesh.

So it created--the Supreme Court justified those statements, which was completely bigoted

statement, and it justified large scale illegal migration. It quoted from the former Home Minister report of 1997 where he said there are four million illegal migrants in Assam, and subsequently another Home Minister, State Home Minister, said in 2004 that there are five million illegal migrants in Assam.

The next day he retracted the statement, but the retracted statement was not found in the judgment. So it created a presumption of non-citizenship. So the lower judiciary thinks that, you know, their last illegal migration into Assam, and that's how they're already prejudiced that, you know, everyone are accused of being illegal migrants are actually legal migrants.

So it is, at the end of the day, it is not about the lack of documentation. Everyone who are asked to prove their citizenship submits documents, but their documents are not accepted for--by cherry-picking minor anomalies in the names and the age and for minor contradictions.

So I believe that that judgment of

Honorable Supreme Court of 2005 has created this presumption of non-citizenship because of that judgment. A lot of people are now losing citizenship. Indian citizens are losing citizenship.

So that is what has been the role of judiciaries. And my, still now, you know, these cases which goes before the Honorable Supreme Court, they are not being decided. Most of the cases are being remanded. Therefore, review petition before the High Court, which, you know, most of the review petitions are dismissed. So I hope these cases are decided on merit, which is not happening right now.

MR. VARSHNEY: So Commissioner Bhargava, if you look at the history of Indian judiciary, the first thing to note is, of course, that constitutionally it's independent. So there's no doubt that there are times in the post-independence history of India when it has acted very independently and taken the executive or parliament to task for excessive behavior.

There have also been times, however, when the judiciary has supported the government against citizens. There have been times. So the history of Indian judiciary is full of ups and downs.

Whether it will act in a very independent manner today, we can't fully predict, but there are certainly doubts about that. The reason I don't want to give up on the judiciary is that India actually has a bench system. So unlike the United States judiciary where nine judges would pronounce on every case that came up, the Chief Justice of India, out of its 31, 32, 33, judges, I think 31 right now. I could be slightly wrong. It could be 32 judges. It would set up a bench of three, five, seven. The largest I think has been 11 so far or it could be 13. But that's not relevant for the larger point.

The larger point is that depending on the nature of the bench and depending on which judges are on the bench, which are looking at the case, the decision could go in favor of citizens as opposed to the government.

So the idea of giving up on the judiciary as a principle is not a good one. We should not, we should not give up our faith in the judiciary. We should simply say how empirically the bench system evolves and which way the judiciary goes, but there is no doubt--I report something that I've heard now--repeatedly, there's no doubt that a very large number of Indian intellectuals today believe that judiciary might not act independently, while the hope is, of people like me, that it will perhaps. The "perhaps" word is important here.

DR. IBRAHIM: I think, Commissioner Bhargava, in the case of Myanmar, I think it would be hugely unwise to have any reliance on the judiciary at all to safeguard any of the rights of these minority groups, and it's not just the Rohingya.

You know, Myanmar is a country that's been at war with every single ethnic minority since independence. These are longest-running civil wars in the world. And almost all the persecution of the Rohingya has been done under the legal

framework, and it was all done in incremental steps.

When Myanmar became independent in 1948, the Rohingya were given not full citizenship but national registration certificates. But they still enjoyed almost full rights, right to vote, right to participate, and elections like to stand for election. And even in the 1961 census, they were recognized as legitimate ethnic group.

It was only after the 1974 Constitution of the Socialist Republic of Myanmar which indicates that both your parents have to be citizens for you to be a citizen, and then this followed on by 1982 Citizenship Act and then the 1990s Act.

So it was done very incrementally, almost unnoticeable, and it was all done completely legally, and I think it was very telling that the two Reuters journalists who exposed the massacre at Inn Din camp were arrested and despite the appeal, you know, despite that any action being taken by the Myanmar government to investigate the actual massacre itself, they were arrested, and they lost

their appeal at the highest court in the country.

So I think that's very telling, and I would simply echo the statement by my colleague here, Naomi, in terms that there is no judgment from the ICJ, which has been long coming, and I think it's a hugely unfortunate situation that it took a little country like Gambia to actually initiate this, and I think it's extremely important for the United States and other countries now to support this action because if this action fails, I believe along with multiple other genocide scholars that the Genocide Convention will be dead. You know, there will be no other recourse to this.

So I think it's very important that this government, this Commission, makes it very clear that they support the action of the ICJ and ensure--and I'd also emphasize that the ICJ is under no obligation to produce its findings unless its mandated by the Security Council. So this is a further thing that this Commission can do, is to request the reporting from Myanmar, which we submit to ICJ, to make available to the Security Council

to ensure that a proper scrutiny is undertaken.

CHAIR PERKINS: Thank you, Dr. Ibrahim.

Our time has come to a close for this hearing. I want to, again, thank all of our panelists for coming here today and sharing with us their views but more importantly their expertise on this topic.

I also want to thank you and commend you for your work in a broader sense of what you do for human rights and for the persecuted around the world. We have found this helpful. This will inform our policy recommendations to the Congress, to the administration.

I would leave with these final words. We find that history does run in cycles. We see many of the same things again and again. Unfortunately, our response often is a repeat of history. Some of us drive with the engine light flashing on our car for months before we take it into the shop.

The warning light is flashing when it pertains to the use of the citizenship laws to discriminate against individuals, leaving them

stateless, and opening them up to violence, discrimination, and more importantly, as has been articulated here, a sense of human dignity.

And that is our mission here as the Commission on International Religious Freedom to advocate for that basic human right, not to be discriminated against based upon one's faith and denied the most essential elements of citizenship.

So thank you all for being here. Again, I thank our panelists for joining us today, and we are adjourned.

[Whereupon, at 4:05 p.m., the hearing was adjourned.]