FIGHTING IMAGINED INVASIONS WITH ADMINISTRATIVE VIOLENCE: RACISM, XENOPHOBIA AND NATIVISM AS A CAUSE OF STATELESSNESS IN MYANMAR, THE DOMINICAN REPUBLIC AND ASSAM (INDIA)

JOSÉ-MARÍA ARRAIZA,* PHYU ZIN AYE** AND MARINA ARRAIZA SHAKIROVA‡

Discriminatory policies have the capacity to create statelessness on a massive scale and the majority of stateless persons around the world belong to impoverished minority communities. The intentionality of such discrimination is guided by xenophobia, racism and particularly nativism: the belief that an internal minority with foreign connections is a threat to the nation. Hence, target communities are re-imagined as an enemy invader. This article analyses and compares how such ideologies have resulted in statelessness in the cases of Myanmar, the Dominican Republic and the State of Assam in India. These three scenarios have internal minorities (Rohingya in Myanmar, ethnic Haitians in Dominican Republic and Bengalis in India) that have been represented, based on kinship lines with neighbouring states, as enemy intruders by public officials and institutions. The authors compare how in the three scenarios nativist policies, the erosion of jus soli in citizenship laws and administrative violence have been used to 'fight' these imagined invasions and identify common trends.

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* José María Arraiza is based in Madrid and holds a PhD from Åbo Akademi University. He is a researcher on minority issues specialising in legal identity and land rights. He has worked in the humanitarian field in research and peace-keeping since 1998, in conflict and post-conflict contexts such as Kosovo, East Timor and Myanmar.

** Phyu Zin Aye is a PhD student at Mahidol University, Thailand. She focuses on citizenship, statelessness and refugees from a non-discrimination perspective. She also currently works at OXFAM and has previously worked on statelessness, displacement and minority rights issues with UNHCR and the Norwegian Refugee Council in Myanmar.

‡ Marina Arraiza Shakirova is based in The Hague. She holds an LLM from Maastricht University. She is a jurist researching citizenship and statelessness. In 2019, she received the "Jaime Brunet" award from the Public University of Navarra on human rights and development for her research on the situation of the Rohingya from a legal perspective.

I INTRODUCTION

> An earthquake cannot swallow a nation, but another nation will.
>
> — Official Motto of the Burmese Ministry of Labour, Immigration and Population ('MoLIP').[1]

> The grave problem facing the country given the great number of Haitians who have passively invaded our territory on a massive scale, and, what is worse they are procreating children with Dominican women, who by virtue of having been born here are Dominican.
>
> — Memorandum from Manuel De Jesus Estrada Medina, Director General of Migration to President Joaquin Balague, 6 May 1969.[2]

> The silent and invidious demographic invasion of Assam may result in the loss of the geostrategically vital districts of lower Assam.
>
> — Supreme Court of India, *Sarbananda Sonowal v Union of India*.[3]

Discriminatory policies have the capacity to create statelessness on a massive scale. Unsurprisingly, the overwhelming majority of stateless persons around the world belong to impoverished minority communities whose members are not considered legitimate citizens of the countries they inhabit.[4] The intentionality of such discrimination is guided *inter alia* by xenophobia, racism and its nationalist expression: nativism, understood here as the belief that an internal minority with real or alleged foreign connections is a threat to the nation. Exclusionary narratives, according to this line of thought, present the target communities as an enemy invader.

Hence, this article analyses how nativism is reflected in the production of laws and policies that have led to large groups of stateless persons. It does so by comparing three relevant cases: Rakhine State and wider Myanmar, the Dominican Republic in the Caribbean and the State of Assam in India. In all three situations, discriminatory policies have led to the disenfranchisement of large groups of its minority population (the Rohingya and others in Myanmar, ethnic

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1 'Myanmar Info' *Ministry of Labour, Immigration, and Population* <http://www.modins.net/myanmarinfo/ministry/population.htm> ('*MoLIP Web Page*').

2 Memorandum from Manuel De Jesus Estrada Medina, Director General of Migration to President Joaquin Balague, 6 May 1969 in Allison Petrozziello, *Género y el Riesgo de Apatridia para la Población de Ascendencia Haitiana en los Bateyes de la República Dominicana* (Centro para la Observación Migratoria y el Desarrollo en el Caribe 2017) annex 1.

3 [2005] 5 SCC 665, 24 ('*Sonowal*').

4 This article develops the research undertaken by the authors for the Chapter 'Statelessness Motivated by Nativism, Racism and Xenophobia: A Comparison of Myanmar, the Dominican Republic and India' in *The World's Stateless: Deprivation of Nationality* (Institute on Statelessness and Inclusion 2020) 163.

Haitians in the Dominican Republic and ethnic Bengalis and other minorities in Assam).[5]

One of the basic tenets of xenophobia include ascribing a group (the 'other') with negative traits in order to construct a positive vision of one's own group by opposition. Such narratives follow a simple logic where 'unless we hate what we are not we cannot love what we are', or in the ultraconservative terms of Carl Schmitt: 'we don't know who we are, if we don't know our enemies'.[6] While xenophobia centres on the rejection or the fear of a foreign 'other', racism represents the ideology by which humanity is divided into superior and inferior races, justifying the supremacy of the higher ones institutionally, socially and politically.[7]

Within the realms of xenophobia and racism, the ideologies of nativism are particularly relevant in relation to citizenship. Nativism is a type of xenophobia more specifically engaged in the defence of the nation state, understood as a unity of culture, including religion, language and even 'blood' (following a racist understanding of biology and human evolution). The American historian John Higham described it in the United States context as 'intense opposition to an internal minority on the grounds of its foreign (*ie*, "unamerican") connections'.[8] In essence, nativism makes xenophobia a national project.[9] Indeed, the ultimate project of nationalism, in Ernest Gellner's terms, is to make the cultural (here ethno-national) and political boundaries coincide.[10]

Nativism has been described as 'the practice of assigning values to real or imagined differences, in order to justify the superiority of the native, to the benefit of the native and at the expense of the non-native, thereby defending the native's right to dominance'.[11] The concept is difficult to describe, as not all migrant restrictions are motivated by such ideology. Moreover, not all targeted groups can be fairly described as 'migrants' or non-natives (eg long settled minorities in Haiti, borderland communities in Assam and Rakhine State). This article however uses nativism as a tool to understand the ideological foundations behind the exclusion and denationalisation of the groups studied.

The targeting of minorities that results in statelessness is often motivated by the mixture of nationalism, racism, and xenophobia present in nativism. Its rejection of those considered to be the illegitimate 'others', not deserving citizenship due to their alleged foreign links or inferior ethnicity despite arguable legitimate claims for it and strong links with the state, is sometimes directly engrained in citizenship legislation and policies. While nativism has been primarily developed conceptually in contexts of mass migration, it is a useful notion in scenarios where

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5 The comparison does not include the whole of India, but rather the State of Assam, due to the relevance of its recent history to the matter in question.

6 Carl Schmitt, *The Concept of the Political* (University of Chicago Press 1996), quoted in Peter Hervik, 'Nativism and Xenophobia' in James D Wright (ed), *International Encyclopedia of the Social & Behavioral Sciences* (2nd ed, Elsevier 2015) 796.

7 Robert Miles and Malcolm Brown, *Racism* (Routledge 2003) 3–17; Michael Banton, 'Debate: Racism Today: A Perspective from International Politics' (1999) 22(3) *Ethnic and Racial Studies* 606.

8 John Higham, *Strangers in the Land, Patterns of American Nativism (1860–1925)* (Rutgers University Press 1983) 4 (emphasis in original).

9 David Haekwon Kim and Ronald Sundstrom, 'Xenophobia and Racism' (2014) 2(1) *Critical Philosophy of Race* 20, 31.

10 Ernest Gellner, *Nations and Nationalism* (Cornell University Press 2008).

11 Lindsay Perez Huber et al, 'Getting beyond the 'Symptom,' Acknowledging the 'Disease': Theorizing Racist Nativism' (2008) 11(1) *Contemporary Justice Review* 39, 42.

border communities, subject to a history of cross boundary migration flows, often either autochthonous or at least long settled in the countries in question, are re-imagined as 'illegal migrants' in nativist nation building narratives.[12]

In other cases, deprivation of citizenship may take place through irregular, discriminatory administrative practices, which result from abuse of authority and despite existing legal rights and remedial procedures on paper.[13] Such practices constitute administrative violence. Conceptually, administrative violence may be understood in the context of statelessness as 'the use of all possible administrative means to de-legitimise the claims to citizenship by anybody feeling some sense of entitlement'.[14] This is how Claire Beaugrand defines administrative violence as experienced by the Biduns in Kuwait. In this particular case, Beaugrand identifies four mechanisms of delegitimisation of the Bidun's claims: imposing an identity rejected by the concerned persons, the denial of socio-economic rights, a symbolic process of stigmatisation, and a complete lack of transparency.

For the purposes of this research, administrative violence takes place primarily as the deprivation of individual rights by arbitrarily denying official documentation and/or citizenship and is ideologically grounded in nativism. The end result of such policies is the consideration of groups of inhabitants who are, or arguably descend from, migrants (often regardless of how many generations) as foreigners.

Furthermore, citizenship is a tool of exclusion from an economic standpoint, shielding wealthier countries from impoverished migrants.[15] Hence, a mixture of xenophobia, racism (which in the three cases studied is linked to notions of post-colonial 'whiteness') and nativism together with classism serves to undermine legitimate claims to citizenship for impoverished migrants or otherwise internal minorities presumed to be 'foreign' and their descendants.[16] When such policies target large groups of persons who share a common cultural, religious or ethnic background, mass statelessness is produced.

With this frame in mind, the following sections will analyse the earlier mentioned case studies. The existence of historical kinship lines across the border with neighbouring states has brought forward a nativist re-imagination of certain groups as invaders and infiltrators. This is the case in Rakhine State and wider Myanmar, the State of Assam in India and the Dominican Republic. Hence, the article will look comparatively at citizenship policies and their relationship to nativism, the progressive erosion of *jus soli* and administrative violence exercised in these three scenarios. The relevance of nativism to the communities concerned is also problematised.

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12 See Tyler Anbinder, 'Nativism and Prejudice against Immigrants' in Reed Ueda (ed), *A Companion to American Immigration* (Blackwell 2006) 177–201; Hans-Georg Betz, 'Nativism across Time and Space' (2017) 23(4) *Swiss Political Science Review* 335.

13 Claire Beaugrand, 'Administrative Violence and Statelessness: Bidun's Survival Strategies in Kuwait' (2011) 101(2) *The Muslim World* 228, 234–36.

14 ibid.

15 Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Harvard University Press 1992).

16 Alfred J López, *Post-Colonial Whiteness: A Critical Reader on Race and Empire* (State of New York University Press 2005).

II MYANMAR

The first case is Myanmar (known officially as Burma until 1989).[17] In Myanmar, from the 1970s onwards, a variety of ethnic and religious minorities have been either gradually stripped of their citizenship (as it is the case for the Rohingya in Rakhine State) or demoted to a second-class citizenship status (through 'naturalised' and 'associated' citizenship for persons of Indian, Pakistani, Nepali, Bangladeshi or Chinese descent, as provided by the *Burma Citizenship Law 1982*).[18] Such process has been intimately interconnected with an overt nativist narrative that places the 135 'recognised national races' as the primary group entitled to full citizenship as legitimate members of Burmese society. The basic tenet of such a narrative is openly racist from a biological perspective and differentiates between 'pure' and 'mixed' blood. There is a group of legitimate and genuine citizens: the 'Taingyingtha' (the recognised ethnic groups) whose blood is 'pure'.[19] The 'others' be they Rohingya or persons of Chinese or Indian descent are considered by the government authorities to be of 'mixed blood'[20] and legally either second-class citizens or outright stateless.[21] In a sense, such a scheme embeds the colonial legacy of subordinate and master races and represents (as in the cases of Dominican Republic and Assam in India) an expression of 'post-colonial whiteness'.[22]

The nativist logic behind the rejection of non-Taingyintha unproblematically presents them as outsiders due to their South Asian origin and includes an effort to reinterpret history and produce a narrative whereby such groups are presented as infiltrators, illegal migrants not legitimately entitled to full citizenship.[23] The idea that Burma would be swamped by persons of Indian origin was very present in the political debates of the 1930s. As a representative of the Burmese Chamber of Commerce put it: '[w]e are sure to be swamped in a few years' time… If this state of affairs is allowed to go on forever, the Burmese nation will slowly and surely disappear from the earth'.[24] Such feelings contributed to the Indo–Burmese

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17 In 1989, the State Law and Restoration Council changed the country's official English name from the 'Socialist Republic of the Union of Burma' to the 'Union of Myanmar' in an effort to move away from British colonial influences and to encompass all ethnic groups in the country (in addition to the Bamar). See Lowell Dittmer, 'Burma vs Myanmar — What's in a Name?' 48(6) *Asian Survey* 885.

18 *Burma Citizenship Law*, Law No 4 of 1982, 15 October 1982 ('*Burma Citizenship Law 1982*'). The idea of 'Indian' ancestry needs here to be qualified, as Burma was formally a province of British India between 1886 and 1937. Former British India territories Pakistan and Bangladesh became independent in 1947 and 1971 respectively.

19 As General Ne Win put it: 'racially, only pure-blooded nationals will be called citizens': General Ne Win (Speech, Central Meeting Hall at President House, 8 October 1982), reproduced in *The Working People's Daily* (Burma, 9 October 1982) https://www.burmalibrary.org/docs6/Ne_Win%27s_speech_Oct-1982-Citizenship_Law.pdf ('*General Ne Win Speech*').

20 In Burmese: '*thwe Hnaw*' or 'သွေးနှော'.

21 Kyaw Nyi Nyi, 'Adulteration of Pure Native Blood by Aliens? Mixed Race Kapya in Colonial and Post-Colonial Myanmar' (2019) 25(3) *Social Identities* 345.

22 López (n 16) 4.

23 Maya Tudor, 'Why Nativism Rather Than Nativism Represents Southeast Asia's Democratic Danger' *The Asia Dialogue* (Blog Post, 18 March 2019) <https://theasiadialogue.com/2019/03/18/why-nativism-rather-than-nationalism-represents-southeast-asias-democratic-danger/>.

24 Legislative Council of the Governor of Burma, *Proceedings of the Legislative Council of the Governor of Burma*, sixth session, third council, vol XVIII (Superintendent, Government Printing and Stationery 1932) 285, quoted in Nyi Nyi Kyaw (n 21) 350.

riots of July 1938, which forced the return/migration to India of thousands of persons of Indian descent.[25] Two decades later, in the early 1960s and under the 'Burmanisation' programmes of General Ne Win, the nationalisation of property and other measures drove thousands of Indians and others out of Burma.[26]

Following a similar nativist logic, in Rakhine State, the forcible displacement crises that led to the internal displacement or expulsion of Rohingya and other predominantly Muslim minorities to Bangladesh in 1978, 1991–92, 2012, 2016 and the largest one in 2017 and 2018 suggest links between deprivation of nationality motivated by nativism and broader processes of exclusion that have ultimately led to international crimes such as crimes against humanity and possibly genocide.[27]

A Citizenship and Nativism in Myanmar

Since the early 20th century, Burmese nationalism has struggled to define the national identity of what would later become independent Burma.[28] While citizenship during this period was influenced by many other non-nativist notions, an idea of one nation, one language and one equivalent state took the form of a Buddhist and Bamar-centred national project to be followed harmoniously by the other 'national races'.[29] This vision was more or less evenly reflected (albeit with significant shifts) in the historiographies presented in school text books, in an effort at nation-building.[30] Such a view, however, contrasted with the tensions implicit in a highly diverse society with a wide variety of ethnic groups as well as persons of Indian or Chinese ancestry, colonial workers and their descendants.[31]

The need to ensure peace and to accommodate the other ethnic groups that lived in the territory led to the recognition of certain ethnic groups (Kachin, Karen, Karenni, Chin and Shan) and their administrative territories in the 1947 *The Constitution of the Union of Burma*.[32] Most importantly, the *Union Citizenship Act 1948* recognised the Arakanese, Burmese, Kachin, Kayah, Karen, Chin and Shan, together with any other group which may have settled in the territory before the First Anglo Burmese War (1823) as 'indigenous races'.[33] Between 1948 and

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25 Rajashree Mazumder, '"I Do Not Envy You": Mixed Marriages and Immigration Debates in the 1920s and 1930s Rangoon, Burma' (2014) 41(4) *The Indian Economic and Social History Review* 497, 515–517.

26 Renaud Egreteau, 'Burmese Indians in Contemporary Burma: Heritage, Influence, and Perceptions Since 1988' (2011) 12(1) *Asian Ethnicity* 33, 40; Michael Gravens, *Nationalism as Political Paranoia in Burma: An Essay on the Historical Practice of Power* (Curzon 1999) 60; Renauld Egreteau, 'The Idealization of a Lost Paradise: Narratives of Nostalgia and Traumatic Return Migration among Indian Repatriates from Burma Since the 1960s' (2014) 18(1) *Journal of Burma Studies* 137.

27 For a historical overview of such crises, see Martin Smith, *Rakhine State, A Land in Conflict in Myanmar's Western Frontier* (Transnational Institute 2019).

28 Syed Badrul Ahsan, 'The Rohingya Crisis: Why the World Must Act Decisively' (2018) 49(4) *Asian Affairs* 571, 573–75.

29 Mikael Gravers, *Nationalism as Political Paranoia in Burma: An Essay on the Historical Practice of Power* (Nordic Institute of Asian Studies 1993) 35–41.

30 Rosalie Metro and Nicolas Salem-Gervais, 'A Text-book Case of Nation Building: The Evolution of History Curricula in Myanmar' (2012) 16(1) *The Journal of Burma Studies*, 27–78.

31 José María Arraiza, 'Myanmar, The Unflinching Law of the Ethnic Citizen and the "Mixed Blood" Other' in Dimitry Kochenov and Justin Lindeboom (eds), *Quality of Nationality Index* (4th ed, Hart Publishing 2020).

32 *The Constitution of the Union of Burma* (1947) (Union of Burma) ss 5,6,7. See also at pt V.

33 *Union Citizenship Act 1948*, Act No LXVI of 1948 (Union of Burma) s 3(1).

1982, Burmese citizenship legislation allowed for the naturalisation of all persons legitimately entitled to Burmese nationality through *jus soli* provisions and other rules.[34] Then, in 1962 a military coup led by General Ne Win took over the government of the country and initiated a military regime which in one form or another continues until now (at present, under the 2008 Constitution, the army retains three ministers, one third of the parliamentary seats and veto powers).[35]

It is important to understand Ne Win's point of departure in order to read the *Burma Citizenship Law 1982* in context. In line with a nativist view of the nation state, Ne Win saw the complex social heterogeneity of Myanmar as a problem. As he stated during the presentation of the citizenship law, 'the natives or Burmese nationals', had been 'unable to shape our own destiny'.[36] Hence, according to him the non-legitimate internal minorities (primarily persons of Indian descent) constituted a threat to the nation.

Ne Win's regime overtly attributed negative traits to the 'others'.[37] Therefore, in consonance with the logic of nativism, Ne Win justified the superiority of the native Taingyintha at the expense of such others. Following this xenophobic logic, which carried the baggage of colonial legacies — including the idea of 'whiteness' — his solution was simple: 'racially, only pure-blooded nationals will be called citizens', while all others would be what has been translated into English as 'naturalised' and 'associated citizens' (another plausible translation would be 'guest citizens').[38]

B Erosion of Jus Soli

In 1982, Ne Win presented his citizenship law, which erased the double *jus soli* provisions existing in the *Union Citizenship Act 1948* and established a second-class category of citizenship for persons not belonging to the eight recognised national races (and their 135 sub-groups, defined later on by the regime). The *Burma Citizenship Law 1982* has since been applicable, and discriminates persons on grounds of ethnicity and religion.[39] To prevent further external influences and 'mixing', the *Burma Citizenship Law 1982* created a closed system where the naturalisation of foreigners was not possible.

For example, naturalisation through marriage to a Burmese citizen is only possible if the date of marriage precedes the enactment of the 1982 *Burma Citizenship Law 1982* and the non-citizen had been issued with a 'Foreigner Registration Certificate'.[40] It is therefore no longer possible for a foreign spouse

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34 ibid s 4, 5.

35 *Constitution of the Republic of the Union of Myanmar 2008* (Republic of the Union of Myanmar) ch IV.

36 *General Ne Win Speech* (n 19).

37 ibid.

38 The Burmese terms are *eh-naing-ngan-tha* ('Associate Citizens') and *naingngan-tha-pyu-khwint-ya-thu* ('Naturalised Citizens'). Another possible translation would be 'guest citizens'.

39 See *Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible: A Legal Briefing* (Report, International Commission of Jurists 2019) <https://www.icj.org/wp-content/uploads/2019/06/Myanmar-Citizenship-law-reform-Advocacy-Analysis-Brief-2019-ENG.pdf>. For gender aspects, see *A Gender Analysis of the Right to a Nationality in Myanmar* (Report, Norwegian Refugee Council, The Seagull, Institute of Statelessness and Inclusion and SNAP 2018) <https://www.nrc.no/globalassets/pdf/reports/myanmar/cedaw-report-web-7-march-2018.pdf> ('*A Gender Analysis of the Right to a Nationality in Myanmar*').

40 *Burma Citizenship Law 1982* (n 18) s 45; *Burma Registration of Foreigners Rules 1948*, 4 January 1949 (Union of Burma) s 6(2).

to acquire Burmese citizenship on the basis of their marriage to a Burmese citizen after 1982.

The move towards closing naturalisation avenues was clearly based on the rejection of potential foreign influence. This fear of the 'other' and rejection of any alien rule is best exemplified by the motto of MoLIP, which states that 'an earthquake will not swallow a race to extinction but another race will'.[41] Banners depicting this motto, as well as the list of the 135 recognised sub-groups, are placed prominently in all offices of the MoLIP at all administrative levels.

Overall, since 1982 eligibility for citizenship is based on ethnicity and *jus sanguinis*, descent-based criteria. The ability of confirming or acquiring citizenship depends on the individual providing sufficient evidence on the citizenship of their ancestors. Myanmar's *Burma Citizenship Law 1982* recognises three types of citizenship:[42]

1. *Full Citizenship*
   Automatic acquisition is possible in four ways: first, if the applicant was a citizen pursuant to the *Union Citizenship Act 1948* and the *Union Citizenship (Election) Act 1948* before the enactment of the *Burma Citizenship Law 1982*.[43] Second, if the person is deemed to belong to the recognised national races, or Taingyintha (Bamar, Chin, Kayah, Karen, Kachin, Shan, Rakhine and Mon).[44] Third, children born to 'full citizen' parents, are automatically citizens irrespective of whether they are born in or outside the country.[45] The fourth way is for persons whose parents are some combination of 'citizens', 'associate citizens' or 'naturalised citizens' and who have at least one set of grandparents who are either both 'associate citizens', 'naturalised citizens' or a combination.[46]

2. *Associate Citizenship*
   This is a 'second class' citizenship which may be acquired through application.[47] It is available for those persons whose application for nationality was pending at the time of the enactment of the 1982 *Burma Citizenship Law* and not qualifying for citizenship (eg not belonging to the recognised national races), are eligible for 'associate citizenship'.[48]

3. *Naturalised Citizenship*
   There are three mechanisms to acquiring naturalised citizenship through an application. First, the person must have entered and resided in Myanmar

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41 See *MoLIP Web Page* (n 1).

42 *Burma Citizenship Law 1982* (n 18) s 2. See also *A Gender Analysis of the Right to a Nationality in Myanmar* (n 39) 5–10.

43 *Union Citizenship Act 1948*, Act No LXVI of 1948 (Union of Burma); *Union Citizenship (Election) Act 1948*, Act No XXVI of 1948 (Union of Burma); *Burma Citizenship Law 1982* (n 18) s 6; *Procedures Relating to Myanmar Citizenship Law (1983 Procedures Relating to Citizenship)*, Notification 13/83 (Union of Myanmar) s 7 ('*Procedures Relating to Citizenship 1983*').

44 *Burma Citizenship Law 1982* (n 18) ss 3, 5; *Procedures Relating to Citizenship 1983* (n 43).

45 *Burma Citizenship Law 1982* (n 18) s 5.

46 ibid s 7.

47 ibid s 23.

48 ibid s 23. See also *Procedures Relating to Myanmar Citizenship Law, 1983 (1983 Procedures Relating to Associate Citizenship)*, Notification 14/83 (Union of Myanmar).

> prior to 4 January 1948.[49] Second, a person born in or outside of Myanmar to parents who are a specific combination of 'citizen', 'associate citizen', 'naturalised citizen' or 'foreigner'.[50] Third, a child whose name is included in one of their parents' successful application for naturalised citizenship is a 'naturalised citizen' following a formal oath by the child upon reaching 18 years of age.[51]

With exceptions, overall, persons not belonging to the 135 recognised ethnic groups are placed in a more vulnerable position, in line with the nativist understanding of the hierarchy of ethnic groups (with them being at the bottom end). Thus, the law provides a safeguard against a 'citizen' automatically losing citizenship merely by marriage to a foreigner.[52] However, such protection is only applicable for 'full citizens' and not 'associate citizens' or 'naturalised citizens'.[53]

The framework facilitates the deprivation of citizenship for persons of Indian or Chinese origin (or otherwise non-Taingyintha) if they migrate outside of Myanmar for a long period of time or permanently. Thus, an individual ceases to be a 'citizen', 'associate citizen' or 'naturalised citizen' when he or she leaves Myanmar permanently, acquires or registers as the citizen of another country, or acquires a passport or 'similar certificate of another country'.[54]

Of note, gender plays a significant role in citizenship policy in Myanmar. First of all, the implementation of the *Burma Citizenship Law 1982* has been observed to have a significant impact on women, despite the law being gender neutral.[55] Moreover, nativist policies have led to discriminatory legislation aimed at restricting the marriage of Buddhist women to those understood as illegitimate 'others' (eg Muslims, persons of Chinese or Indian descent).[56] The marriage of such women to persons of another religion and ethnicity is understood ultimately as a threat to the nation. The latest manifestation of such policies from a legislative point of view are the 2015 special laws for the defence of race and religion, including the *Buddhist Women Special Marriage Law* and *Law on the Practice of Monogamy*.[57] The package of four laws adopted in 2015 and supported by the Buddhist ultra nationalist organization Ma Ba Tha also included the *Law for Health Care Relating to Control of Population Growth*,[58] aimed at controlling the demographic growth of Muslims and the 2015 Religion Conversion law, aimed at limiting conversions of Buddhists to other religions.[59]

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49 *Burma Citizenship Law 1982* (n 18) s 42.

50 ibid s 43.

51 ibid s 47. See also *Procedures Relating to Myanmar Citizenship Law, 1983 (1983 Procedures relating to Naturalised Citizenship)*, Notification 15/83 (Union of Myanmar).

52 ibid s 15.

53 ibid s 15(a). This is contained within *Burma Citizenship Law 1982* (n 18) ch II, which applies *only* to type 1 'citizenship'.

54 *Burma Citizenship Law 1982* (n 18) ss 16, 34, 57.

55 *A Gender Analysis of the Right to a Nationality in Myanmar* (n 39).

56 See Mazumder (n 25).

57 *Buddhist Women Special Marriage Law*, Law No 50/2015 (Union of Myanmar); *Law on the Practice of Monogamy*, Law No 54/2015 (Union of Myanmar).

58 *Law for Health Care Relating to Control of Population Growth*, Law No 28/2015 (Union of Myanmar).

59 See, *Myanmar: Parliament Must Reject Discriminatory Race and Religion Laws* (Joint Statement ASA 16/1107/2015, Amnesty International and the International Commission of Jurists 3 March 2015) <https://www.amnesty.org/download/Documents/ASA1611072015ENGLISH.pdf>.

C Administrative Violence

The *Burma Citizenship Law 1982* clearly facilitates administrative violence by denying a right to an effective remedy. Its provisions prevent the judicial review of administrative decisions (the decisions of the Council of Ministers on matters concerning the *Burma Citizenship Law 1982* are final).[60] In addition, s 71 specifically states that: 'no reasons need to be given by organisations invested with authority under this law in matters carried under this law'.[61] No reasons are hence needed to justify the acts of the administration concerning citizenship.

The use of administrative violence to disenfranchise internal minorities is best exemplified by the recent persecution of the Rohingya. The Rohingya are an ethnic group present in Rakhine State and across the border into Bangladesh. They have their own language and culture.[62] Their existence as a group is contested by Bamar Nationalists, who consider them illegal Bengali migrants from Bangladesh and hence 'non-native'.[63] There have certainly been migratory movements between present-day Bangladesh and Myanmar, however this does not imply that the Rohingya are any less 'native' than other groups in the country (which also have complex histories of migration, demographics and self-identification). As for many other groups in Myanmar, the delineation of political borders has come after their own population movements and can hardly be used as an argument against their political participation or recognition as citizens.

Rakhine State itself is a highly diverse territory, inhabited by large groups such as the Rakhine and smaller minorities (Mro, Thet, Khami, Daingnet and Marmagyi).[64] The majority of Rohingya are Muslim and, as their Buddhist ethnic Rakhine neighbours, suffer the consequences of poverty and conflict in one of the least developed states of Myanmar. During the 1970's, the group was used as a scapegoat by the military regime in order to gain legitimacy by mobilising the masses against an alleged threat to the nation.[65] The Rohingya are a textbook example of John Higham's definition of the 'other'. They have been presented as an internal minority with foreign connections seen as rapidly growing demographically up to the present. Official authorities put the blame on the British colonial regime.[66] Hence, a Union Minister stated before the United Nations General Assembly in 2019, 'as in other colonised territories across the world, our local population had no say whatsoever with regard to the seismic demographic transformation of their land' (a narrative that resonates with the MoLIP motto mentioned earlier).[67] Evidence of such a massive influx of migrants before and after independence is subject to debate, often inconclusive.

From a legal standpoint, it could be argued that between 1948 and 1982, Rohingya were considered citizens. In terms of civil documentation and similarly to the rest of the population in Myanmar, the majority of Rohingya did not have the official proof of citizenship at the time — the Union Citizenship Certificates

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60 *Burma Citizenship Law 1982* (n 18) s 70(b).

61 ibid s 71.

62 Mikael Gravers, *Exploring Ethnic Diversity in Burma* (Nordic Institute of Asian Studies 2007) X.

63 ibid.

64 Ashley South and Marie Lall, *Citizenship in Myanmar* (ISEAS-Yusof-Ishak Institute 2018).

65 Smith (n 27) 40.

66 ibid 54.

67 Derek Tonkin, 'Migration from Bengal to Arakan During British Rule, 1826–1948' [2019] *Occasional Paper Series* 26.

(which were rarely applied for) — but rather 'National Registration Cards' ('NRC'), pursuant to the *Residents of Burma Registration Act 1949* and its *Residents of Burma Registration Rules 1951*.[68]

The *Burma Citizenship Law 1982* included a new card, the 'Citizenship Scrutiny Card', which replaced the NRCs and implied a recognition of the citizenship status of the cardholder after 'scrutiny'.[69] Hence, the government used the implementation of the new citizenship law to deny the Rohingya the issuance of new 'Citizenship Scrutiny Cards' and citizenship. This was actually contrary to the provisions of the *Burma Citizenship Law 1982*, where Rohingyas could have been issued with 'Naturalised Citizenship Cards', 'Associate Citizenship Cards' or full Citizenship Scrutiny Cards depending on their individual situation.[70] Instead, they were given 'Temporary Registration Cards' (also known as 'white cards'), a temporary document foreseen in the *Residents of Burma Registration Rules 1951*, arguing that the citizenship status of these persons was in need of further verification.[71]

One of the reasons that led to denationalisation was the insistence by immigration officials that the Rohingya officially self-identify as 'Bengali' (implying foreign descent and sparking fears of a future deportation). The confrontation between Rohingya and Rakhine political representatives on the depiction of the former as either 'Bengali' or 'Rohingya' are indigeneity-based arguments where each side seeks to prove which group can claim historically to be a native to Rakhine.[72] The complexity of the history of the region disqualifies any simplistic answer to such questions.

As a result of Ne Win's citizenship policy, close to one million persons were rendered stateless. In addition to being deprived of nationality, a quasi-apartheid regime was imposed in Rakhine from the 1970s up to the present, characterised by undue restrictions on freedom of movement and the discriminatory denial of services.[73]

The progressive denationalisation of the Rohingya from the 1970s onwards was followed by policies and practices which led to the forcible displacement of their population across the border to Bangladesh. The partition of Pakistan and the creation of Bangladesh increased the fears of illegal migration and led the government to implement the *Burma Immigration (Emergency Provisions) Act 1947* restrictively and require all Rakhine inhabitants to carry publicly their identity documents.[74] Further along, in 1978, the implementation of the 'Operation Naga Min' ('Dragon King'), officially aimed to identify illegal

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68 *Residents of Burma Registration Act 1949*, Act No 41 of 1949 (Union of Burma); *Residents of Burma Registration Rules 1951* (Union of Burma) r 2 ('*Residents of Burma Registration Rules 1951*').

69 *Burma Citizenship Law 1982* ss 4, 8, ch III, IV.

70 ibid.

71 *Residents of Burma Registration Rules 1951* (n 68) r 2.

72 Ardeth Maung Thawnghmung, 'The Politics of Indigeneity in Myanmar: Competing Narratives in Rakhine State' (2016) 17(4) *Asian Ethnicity* 527.

73 For an overview of such policies, see *Policies of Persecution: Ending Abusive State Policies against Rohingya in Myanmar* (Report, Fortify Rights 2014) <https://reliefweb.int/report/myanmar/policies-persecution-ending-abusive-state-policies-against-rohingya-muslims-myanmar>.

74 See *Burma Immigration (Emergency Provisions) Act 1947*, Act No XXI of 1947 (Union of Burma).

migrants and counter the armed activities of the Rohingya Solidarity Organisation led to the displacement of thousands to Bangladesh.[75]

A similar scenario was repeated in 1991, when a similarly framed 'Operation Clean and Beautiful Country' ('Pyi Thaya') led to over 250,000 persons displaced across the border. In 2012, a series of incidents between Rohingya and Rakhine led to riots that displaced 125,000 persons internally.[76] These internally displaced persons ('IDPs') were housed in detention camps that continue to exist, despite commitments from the government such as those reflected in the *Final Report of the Advisory Commission on Rakhine State*.[77]

From 2016 onwards, the government started replacing the former Temporary Registration Cards with 'Identity Cards for National Verification' namely to scrutinise whether the applicant meets the eligibility to become a citizen of Myanmar and to identify them as residents of Myanmar during the citizenship verification process.[78] In practice, it prolonged a situation of legal uncertainty without a clear process of conferring citizenship.

In November 2016 and August 2017, following attacks by the Arakan Rohingya Salvation Army, the army launched an offensive that led to the displacement of 750,000 Rohingya civilians to Bangladesh.[79] The scale of the violence used, including rape, torture, killings and other crimes, led to claims that the Burmese authorities committed crimes against humanity and genocide against the Rohingya.[80]

III DOMINICAN REPUBLIC

The second case analysed is the Dominican Republic, which shares the island of Hispaniola with Haiti in the Caribbean archipelago. Since independence from Haiti in 1844, the Dominican elites made an effort to build a Dominican national identity in opposition to the Haitian identity in line with the logic of nation building.[81] Hence, during the 20th century, *antihaitianismo* (xenophobia against Haitians) was fed by the political elites, promoting a European and Hispanic identity and denying any African roots.[82] The delegitimisation of African heritage was put in practice through the omission of any reference to the contribution of

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75 Smith (n 27) 42.

76 ibid 54.

77 Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Commission on Rakhine State (Report, Advisory Commission on Rakhine State 25 August 2017) <https://storage.googleapis.com/kofiannanfoundation.org/2017/08/FinalReport_Eng.pdf>

78 'Press Release on Issuing Identity Card for National Verification (NVC) and Collecting Three Categories in Rakhine' (Press Release, State Counsellor Office Information Committee 26 December 2016) [7]. The original is no longer offered on the Information Committee website but can be found on the Committee's Facebook page. See State Counsellor Office Information Committee, 'Press release on issuing Identity Card for National Verification (NVC) and collecting three categories in Rakhine' (Facebook, 28 December 2016) <https://www.facebook.com/InfomationCommittee/posts/661370280702748>.

79 Smith (n 27) 97.

80 Human Rights Council, *Detailed Findings of the International Fact-Finding Mission on Myanmar*, UN Doc A/HRC/42/CRP.5 (16 September 2019).

81 Simone Rodrigues Pinto, 'Anti-Haitianismo en la República Dominicana: de Sánchez Valverde hasta Balaguer' in Matías Bosch Carcuro, Eliades Acosta Matos, Amaury Pérez (eds), *Masacre de 1937: 80 Años Después: Reconstruyendo la Memoria* (CLACSO 2018) 25–45.

82 Bridget Wooding, 'Upholding Birthright Citizenship in the Dominican Republic' (2014) 44(1–2) *Iberoamericana — Nordic Journal of Latin American and Caribbean Studies* 99.

African slaves and their descendants in history textbooks. References to slavery presented it as a minor phenomenon which was quickly incorporated by the Dominican culture, where slaves were treated benevolently and where their contribution to the development of the island was downplayed. The emphasis on differences presented a white, Amerindian, Spanish, Catholic, civilised Dominican citizen against a black, African, pagan, uncivilised Haitian. Such racism in the island is often depicted by the statement 'I am black, but white black' claimed in order to emphasise the lack of belonging to the Haitian ethnicity.[83] This statement also emphasises a suspicion towards those who are black and poor to be the succession of parents with an irregular residence status at the time of birth.[84] Of course, such differences are exaggerated and hide the existence of important commonalities, as well as a past of cohesion, denied by xenophobic historiography. Administratively, *antihaitianismo* was promoted through the creation of a civil registry system that classified Dominicans according to their either Hispanic or Amerindian roots, denying any connection to Haiti.[85]

A Citizenship and Nativism in the Dominican Republic

Antihaitianismo policies were a concerted effort to highlight or create the differences between the Dominican citizen and the Haitian citizen (including their descendants in the Dominican Republic), ascribing the former a superior value to justify its dominance, in consonance with the logic of nativism. The process included ignoring commonalities such as the Catholic religion, the rural economy or the colonial past and highlighting differences in skin colour (where Haitians are darker) and language. The history of violence produced by such nativist 'otherisation' is exemplified by the 1937 massacre of thousands of ethnic Haitians (both Haitians and Dominicans of Haitian ancestry) in the Northwest of the country ordered by Trujillo's forces, known as El Corte (Kotou-a in Haiti) or the 'Parsley Massacre'. Indeed, the period after the massacre saw an increase in *antihaitianismo* narratives and policies.[86]

Paradoxically, in the mid-1930's relations between Haiti and Dominican Republic were friendly. During the first half of the 20th century the economy relied heavily on Haitian migrants to cut sugarcane.[87] During the dictatorship of Rafael Trujillo, the Dominican state recruited what they saw as a temporary male Haitian workforce.[88] A border demarcation agreement had been reached in 1936.[89] However, in October 1937, Trujillo unexpectedly ordered the systematic killing of persons of Haitian descent in the border areas with Haiti.[90] As a result, between 12,000 and 25,000 persons were massacred over five days by the army and

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83 Silvio Torres-Saillant, 'The Tribulations of Blackness: Stages in Dominican Racial Identity' (1998) 25(3) *Latin American Perspectives* 107.

84 Lippmann Mazzaglia, Natalia, and Pedro F Marcelino, 'Migratory Policy as an Exclusionary Tool: The Case of Haitians in the Dominican Republic' (2014) 3(1) *Laws* 163, 170.

85 María Paz Bermejo Pérez, *Políticas de Inmigración y Ciudadanía y el Estado Dominicano: un Desafío de Gobernanza Democrática* (Universidad Complutense Madrid 2018) 124.

86 Robin L H Derby and Richard Turits, 'Historias de Terror y los Terrores de la Historia: La Masacre Haitiana de 1937 en la República Dominicana' (1993) 92(1) *Estudios Sociales* 65.

87 Amelia Hintzen, 'Cultivating Resistance: Haitian–Dominican Communities and the Dominican Sugar Industry' (PhD Thesis, University of Miami 2016) 1.

88 ibid.

89 Eric Paul Roorda, 'Genocide Next Door: The Good Neighbour Policy, The Trujillo Regime and the Haitian Massacre of 1937' (1996) 20(3) *Diplomatic History* 301, 305.

90 ibid 301.

government hired thugs who used machetes instead of guns in an attempt to hide the official policy behind such crimes.[91] What started as an impulsive initiative by a dictator was later construed as a necessary evil to defend the homeland against a 'pacific invasion'.[92] Nation building narratives from then on, construed an image of Haiti and the Haitians or persons of Haitian descent (who had lived together with their neighbours in relative peace until then) as an enemy and a threat to the Dominican Republic. Both countries had been united by a permeable border, but from then onwards they would be separated by an unforgettable wound.[93]

While the Trujillo dictatorship between 1930 and 1961 fully embraced *antihaitianismo*, it also profited significantly from migration. The fact that the 1937 massacre took place during this period is a sign of its contradictory policies.[94] Indeed, during his mandate immigration was stimulated.

B Erosion of Jus Soli

The *Constitution of the Dominican Republic 1844* recognised as Dominicans all individuals who had the nationality at the time of the publication of the *Constitution*, as well as persons born to Dominican parents in its territory.[95] Dominican nationality implied a combination of birth on the eastern side of the island and belonging to the Dominican/Spanish culture.[96] Later on, the *Constitution of the Dominican Republic 1865* introduced the acquisition of nationality through *jus soli.*[97]

Then, the *Constitution of the Dominican Republic 1908* introduced the controversial 'in transit' clause, which restricted the application of *jus soli* to persons who were not permanently settled in the country.[98] Its broader or stricter interpretation has been at the crux of deprivation of nationality for persons of Haitian descent. From 1916 until 1924 the Dominican Republic was occupied by the US. Haitian migration increased alongside demand for cheap labour for the sugar industry from then until the 1980s. Haitian migrants were not only tolerated by the Dominican authorities but also documented in a civil registry until 1986. They received migration permits and identity cards.[99] Between the 1950s and the 1990s, many Dominicans of Haitian descent were recognised as citizens because their parents could register them as children born in the Dominican Republic using their Haitian documents. The files and identification cards provided by the sugarcane companies where they worked were allowed to be presented to acquire

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91 ibid 306.

92 Hintzen (n 87) 71.

93 ibid.

94 Ernesto Sagás, *Race and Politics in The Dominican Republic* (University Press of Florida 2000) 46.

95 *Constitution of the Dominican Republic 1844* arts 7(1), (2).

96 Ernesto Sagás, *Report on Citizenship Law: Dominican Republic* (Report, Globalcit 2017) 3 <https://cadmus.eui.eu/handle/1814/50045> ('*Report on Citizenship Law*').

97 *Constitution of the Dominican Republic 1865* art 5(1).

98 *Constitution of the Dominican Republic 1908* art 7(2).

99 Riveros Natalia, 'El Estado de la Cuestión de la Población de los Bateyes Dominicanos en Relación a la Documentación' (Report, Observatorio de Migrantes del Caribe Santo Domingo 2014) 42

nationality as well. Those were the first generations of Dominican citizens of Haitian origin.[100]

During this time, citizenship policies were derived from the *Constitution of the Dominican Republic 1924*, which was applicable until 1934 and provided nationality to individuals born from Dominican parents and those born from foreigner parents in the territory, among others.[101] In addition, *Law No 1683 of 16 April 1948 Relating to Naturalisation*, which is currently in force, allows foreigners to naturalise with the fulfilment of requirements of residence or marriage, implying the possession of documents to certify them.[102]

C Administrative Violence

The fall in sugar prices from the middle of the 1980s led to an increase in the arrival of unauthorised migrant workers in the Dominican Republic looking for other sources of labour.[103] This created fears of a 'peaceful invasion' of Haitians.[104] Starting in the 1990s, a nationalist movement promoted a restrictive interpretation of the term 'in transit', leading to the denial of birth registration of children born of undocumented Haitian migrants. Birth registration was often refused on a discriminatory basis (ie through administrative violence).[105]

In 2004, with the *General Law on Migration No 285-04*, access to nationality was limited because undocumented immigrants, notwithstanding how long they had lived in the country, were considered as non-residents ('in transit').[106] Three years later, in 2007, the Central Electoral Board started issuing administrative resolutions to cancel and suspend identity cards and birth certificates issued to children before the 2004 law.[107] It applied such criteria retroactively, depriving many ethnic Haitians of their nationality and who continue to lack a nationality until present.

In 2005, a landmark judgment of the Inter American Court on Human Rights ('IACtHR') brought forward by civil society organisations led by the *Movimiento de Mujeres Dominico-Haitianas* ('Dominico-Haitian Women's Movement') ('MUDHA') rejected such discriminatory practices.[108] In *Yean y Bosico v República Dominicana* ('*Yean y Bosico*'), the Court concluded that the discriminatory application of Dominican laws concerning access to civil documents and nationality violated the right to a nationality and equality,[109] leaving open the space for civil society to continue to contest the issues on the

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100 Open Society Foundations, *Dominicans of Haitian Descent and the Compromised Right to Nationality: Report presented to the Inter-American Commission on Human Rights on the Occasion of its 140th Session* (Report, Open Society Institute 5 October 2010) <https://www.justiceinitiative.org/publications/dominicans-haitian-descent-and-compromised-right-nationality> ('*Compromised Right to Nationality Report*').

101 *Constitution of the Dominican Republic 1924* art 8.

102 *Law No 1683 of 16 April 1948 Relating to Naturalisation* (Dominican Republic) s 1.

103 Perez (n 11) 118, 137.

104 ibid.

105 *Compromised Right to Nationality Report* (n 100).

106 *General Law on Migration No 285-04* (2004) (Dominican Republic) art 36(4) ('*Migration Law No 285-04*').

107 María Paz Bermejo Pérez, 'Políticas De Inmigración Y Ciudadanía Y El Estado Dominicano: Un Desafío De Gobernanza Democrática' (Universidad Complutense 2018) 25

108 *Caso las Niñas Yean y Bosico v República Dominicana (Judgment)* (Inter-American Court of Human Rights, series C No 130, 8 September 2005).

109 ibid.

island. Thus, it is important to highlight thus the role of the IACtHR in the struggle for equality and the right to a nationality in the Dominican Republic.

The role of MUDHA, a women's rights association, in the *Yean y Bosico* advocacy effort helps to highlight the gender aspects of Dominican citizenship law and policy. As in Myanmar, nativism understood mixed marriages between foreigners (or those considered otherwise 'others') and nationals as a threat to the nation. This has resulted in gender discrimination in both law and practice. For instance, the law delineates a birth registration process for foreign mothers who give birth in the Dominican Republic, which is different from that of Dominican nationals.[110]

According to the norm established by the Central Electoral Board to register births, when a foreign mother does not possess identification documents (even if the father is Dominican and possesses an identification card) the process cannot be initiated without the passport of the mother. This is the main obstacle in registering children from mixed couples, mainly when the foreign mother does not possess the document.[111] Thus, it is crucial to establish an alternative accreditation mechanism for the foreign mother's identity where the mother does not have a passport or equivalent identity card for a foreign resident. The passport requirement, in practical terms, prevents birth registration for children of mixed couples, even if the Dominican father owns his identification document and is willing to recognise the child.[112] The measure has a disproportionate impact on both Haitian women and women of Haitian descent, as they are often unable to provide the documentation and follow the administrative hurdles set by the procedure.

As a result of these historical developments, the present legal framework of the Dominican Republic shifted from *jus soli* towards *jus sanguinis*, and its implementation has made it more difficult for persons of Haitian descent to acquire or retain citizenship. Indeed, compliance with the *Yean y Bosico* sentence was incomplete, and the authorities changed their strategy towards codifying what had been administrative violence into positive law. They did so by re-interpreting 'in transit' to apply to all irregular migrants and, later, through the 2010 *Constitution of the Dominican Republic*'s restrictions on *jus soli*: art 18(3) established that individuals born in the Dominican Republic of parents residing illegally in the Dominican Republic were not entitled to nationality by birth.[113] Later on in 2013, a Constitutional Tribunal sentence attempted mass citizenship deprivation of all persons born in the country with irregular status since 1929.[114]

In 2013, the Constitutional Tribunal for the Dominican Republic delivered *Judgement 168-13* retroactively changing the interpretation of the *Constitutions* in effect from 1929 to 2010, by stating that children born in Dominican territory of

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110 *Migration Law No 285-04* (n 106) art 28, arts 36–41. See also Allison J Petrozziello, '(Re)producing Statelessness via Indirect Gender Discrimination: Descendants of Haitian Migrants in the Dominican Republic' (2019) 57(1) *International Migration* 213.

111 *Facilitando el Acceso al Registro Civil Dominicano a Descendientes de Parejas Mixtas: Protocolo para su Acompañamiento Legal* (Report, Centro Para la Observación Migratoria y el Desarrollo Social en el Caribe 2018) 27.

112 ibid 57.

113 *Constitution of the Dominican Republic* (2010) art 18(3).

114 ibid 216.

migrants in an irregular migratory situation were not entitled to Dominican nationality,[115] affecting approximately 210,000 individuals.[116]

In response to this judgment, the *Law No 169-14* attempted to remedy the situation by establishing a 'Special Regime for Individuals Born in the National Territory and Irregularly Registered in the Dominican Civil Registry and on Naturalisation'.[117] The law created two categories of individuals and a special procedure for them:

- Group A: those listed in the Civil Registry, eligible for recognition as nationals,[118] and
- Group B: those who were not, who were required to apply for naturalisation through a special procedure. The procedure included numerous obstacles and thousands of individuals are still awaiting naturalisation.[119]

In essence, ethnic Haitians whose birth was registered are in Group A and those whose birth was not registered are in Group B. The Central Electoral Board was in charge of regularising or transcribing in the Civil Registry the records of individuals from Group A, thus accrediting them as Dominican nationals, without charging any administrative fee. A provision establishing special rules of procedure for this group did not exist. The law merely determined the expedition of the restoration of documents. Nevertheless, in 2014 the Central Electoral Board made a call to the affected persons to present themselves for interview with regard to their documentation situation, which was not nationally announced. Due to this, the inspectors were given discretion regarding the transcription or annulment of the birth certificates, and the burden of proof was shifted to the particular individuals.[120]

Moreover, the situation of persons belonging to Group B was even more complicated. Theoretically, according to art 6 of *Law No 169-14*, such persons could register in the 'Book of Foreign Nationals' provided by the *Law* as long as they credibly certified the fact of birth.[121]

In addition, those individuals belonging to Group B were required to make a registration request within ninety days from the entry into force of the regulation of application of the law, providing one of the documents mentioned by art 11 as

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115 *Report on the Situation of Human Rights in the Dominican Republic (Country Report)* (Inter-American Commission on Human Rights, Series L Doc 45/15, 31 December 2015) 73, 99.

116 *Primera Encuesta Nacional de Inmigrantes en la República Dominicana* (Report, European Union, United Nations Population Fund and Oficina Nacional de Estadistica 2012) 136.

117 *Law No 169-14 Establishing a Special Regime for Individuals Born in the National Territory and Irregularly Registered in the Dominican Civil Registry and on Naturalisation* (May 2014) (Dominican Republic) ('*Law No 169-14*').

118 ibid art 1.

119 ibid arts 8–10. See also *Report on Citizenship Law* (n 94).

120 Wooding (n 82) 111.

121 *Decree 250-14 Containing Regulations for Implementation of Law 169-14* (23 July 2014) (Dominican Republic) art 11 establishes the means of proof of the birth in the national territory. These are the accreditation by the hospital where the person was born, where the name of the mother, gender of the child and date of birth should be indicated; the Notary Act of seven Dominican witnesses that indicate the date and place of birth, as well as the name of the child and of the parents; the sworn declaration through a Notary Act from the person who received the child, indicating the date and place of birth and the name of the mother, and the sworn declaration through a notary act of Dominican family members in first or second degree that possess Dominican documentation.

evidence.[122] After the application for registration, the Ministry of Interior and Police had a term of thirty days to process it without objection for the Central Electoral Board.[123] Following the registration in the Book of Foreign Nationals, the person had a term of sixty days in order to regularise his or her irregular migratory situation according to the National Regularisation Plan, established by the *Decree No 327-13*.[124]

If this plan were implemented properly, it would have entailed an opportunity to reduce the risk of statelessness for the children of migrants born in the Dominican Republic. Had there been a level playing field, a large number of irregular migrants could have obtained residency documents.[125] However, even if the law provided a registration process for persons within Group B, most persons of Haitian descent falling in this category were not able to follow it. The reason behind the lack of registration in practice lies on the fact that, in reality, individuals were required to present more than one of the mentioned documents and even additional documents not provided by law, particularly an identity document of the mother. Likewise, the registration systems of public hospitals did not always provide live birth documentation, and regarding the birth certificates, they needed to be translated and sometimes even sealed.[126]

In all, the law did not provide for automatic reacquisition of nationality for individuals who lost it due to *Judgement 168-13* and who had it by 2010.[127] The naturalisation process instead treated them as aliens, not regarding their right to nationality due to their birth in the Dominican territory.[128] While the process for Group A took place immediately, the provisions for Group B became applicable later, and had 1 of February 2015 as deadline. Thus, the currently applicable relevant legal instruments for persons of Haitian descent (and any other candidate for naturalisation) are those prior to the special regime of *Law No 169-14*.

In conclusion, the current citizenship regime of the Dominican Republic entails discrimination towards the biggest ethnic minority in the country: Haitian immigrants and their descendants. It essentially consists of obstacles placed by governmental authorities upon the process of acquiring nationality by individuals who were entitled to it under the constitutional framework that was in place at the time when they were born. The core problem for the exclusion of Dominicans of Haitian ancestry from Dominican nationality, as occurs in Myanmar and Assam, lays on the hostility towards the Haitian 'other' and their descendants, which has

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122 *Law No 169-14* (n 117)

123 ibid

124 *Decree No 327-13, National Regularisation Plan for Foreigners in an Irregular Immigration Situation in the Dominican Republic* (29 November 2013) (Dominican Republic). Children born to foreign parents in an irregular migratory situation in the Dominican Republic, who regularised according to plan, could opt for the ordinary naturalisation. This could take place after two years since obtaining one of the migratory categories, meaning residents or non-residents. The certification of lack of criminal records was necessary for it. This was an overall cumbersome procedure that most persons in Group B could not easily follow.

125 Samuel Martínez and Bridget Wooding 'El Antihaitianismo en la República Dominicana: ¿Un Giro Biopolítico' (2017) 15(28) *Zacatecas, Revista Migración y Desarrollo* 95, 104 <http://www.redalyc.org/pdf/660/66053147004.pdf>.

126 Wooding (n 82) 110

127 *Dominican Republic — Submission to the UN Human Rights Committee: Comments on the Follow-Up State Party's Report of 24 August 2015* (Report, Amnesty International 2015) 6 <https://www.amnesty.org/download/Documents/AMR2729782015ENGLISH.pdf>.

128 *Case of Expelled Dominicans and Haitians v Dominican Republic (Judgment)* (Inter-American Court on Human Rights, Series C No 282, 28 August 2014) [105].

been shaped throughout the years and has produced the statelessness of the largest ethnic minority on the island.[129]

Finally, those individuals who did not fulfil the requirements for naturalisation under the National Regularisation Plan, becoming at risk of statelessness, have faced a potential risk of deportations since 2015. However, much has been done by both the UN and civil society to ensure that this does not happen. Indeed, those unregistered persons are *not* illegal migrants, but persons at risk of statelessness who continue to seek their Dominican nationality.[130]

IV ASSAM

As in Myanmar and the Dominican Republic, in the Assam region of north-eastern India, the process of nation-building was characterised by a rejection of the 'other', identified in this case as the Bengali Muslim and, to a lesser extent, Hindu Bengali communities. These groups, considered by their detractors to be mainly comprised of illegal migrants from Bangladesh (a high proportion of them have some degree of ancestry in the territory of the country), were henceforward marked as a target for denationalisation. The important cultural, religious and linguistic commonalities between those coming (or allegedly coming) from across the border, their descendants and the more 'indigenous' population of Assam made such an otherisation process highly problematic administratively. The government of Narendra Modi and his Bharatiya Janata Party ('BJP') has, since 2014, exacerbated such trends by proactively promoting an exclusive form of Hindu nationalism.[131]

A Citizenship and Nativism in Assam and Wider India

Citizenship in India has been deeply influenced by its colonial past and the partition of 1948. The British Empire sought to identify, classify and map all communities throughout its dominions (including present day India and Myanmar). It also made hierarchies of ethnic groups (according to how they evaluated their development). These colonial racist taxonomies continued in different forms in the postcolonial era and had an important influence on local politics and conflicts.[132]

During and after independence, the objective of defining who is an Indian citizen has been marked by the tension between the two main religions (Hindus make up 80 per cent of the population and Muslims 14 per cent according to the 2011 Census of India)[133] and the territorial division, first with Pakistan in 1948 and later on, in 1971, the independence of Bangladesh from Pakistan.

Underlying such tensions is a confrontation between (at least) two visions of the Indian nation: a secular and a nationalist one. The intensity of such opposition

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129 *Report on Citizenship Law* (n 94) 16.

130 '"Personas Ilegales" Haitianos y Domínico-Haitianos en la República Dominicana', *Human Rights Watch* (Web Page, 4 April 2002) <https://www.hrw.org/es/report/2002/04/04/personas-ilegales/haitianos-y-dominico-haitianos-en-la-republica-dominicana>.

131 Nitasha Kaul, 'Rise of the Political Right in India: Hindutva-Development Mix, Modi Myth, and Dualities' (2017) 20(4) *Journal of Labor and Society* 523.

132 Nel Vandekerckhove '"We Are Sons of this Soil"' (2009) 41(4) *Critical Asian Studies* 523, 528.

133 See '2011 Census Data' *Office of the Registrar General & Census Commissioner, India* (Web Page, 2011) <https://censusindia.gov.in/2011-common/censusdata2011.html>.

became visible during the controversies concerning the revisions of history textbooks by the BJP party between 1998 and 2004. The revisions presented an 'Indianised, nationalised and spiritualised' education, and the subsequent move by the Congress United Progressive Alliance government to 'detoxify' school education.[134]

The return to power of the BJP in 2014 and recent rise of populist nationalism added complexity to the scenario. It confirmed a trend from *jus soli* towards *jus sanguinis* that is based on the citizenship of an individual's parents as well as a tendency to discriminate against persons of the Muslim faith. Hindus do not always benefit from such trends, as seen with the Tamil Hindus from Sri Lanka.[135]

From 1858 to 1947, India was under British colonial domination through the East India Company. During this time, native Indians were formally recognised as British subjects but were substantially treated as second class citizens. *The British Nationality and Status of Aliens Act 1914* codified citizenship, and was based primarily on *jus soli* ('any person born within His Majesty's dominions').[136]

The birth of India in 1947 and the partition of its former territory, leading to the creation of Pakistan, deeply influenced citizenship policy from then onwards. The partition included the forcible displacement of thousands of persons across the new borders at a time when Indian citizenship was undefined. Moreover, the potential citizenship claims of large numbers of persons of Indian descent in Burma, Malaya, Fiji and Ceylon needed to be resolved.[137]

B Erosion of Jus Soli

The 1950 *Constitution of India* established that persons born in the territory of India, persons whose parents were born in India or persons who had lived for five years preceding the *Constitution* were Indian citizens.[138] The *Constitution* also contained provisions for the conferral of citizenship for persons who had fled Pakistan. In addition, it created rules for persons born in the territory of India prior to partition who had relocated to Pakistan and later on would decide to move back to India. The rules for those who fled Pakistan before 19 July 1948 (mostly Hindus) were more relaxed than rules for those who returned to India afterwards (primarily Muslims), which required a recognition by an official within a certain deadline.[139]

The principle of *jus soli* was therefore restricted through policies based on the inter-communal tensions of the time, where Muslims were often viewed with suspicion and targeted for exclusion. The definition of the 'other' and the legitimate citizen, influenced by nativist ideology, had a fundamental role. In this sense, the north eastern State of Assam, bordering Bangladesh, has been at the centre of such tensions since independence. This signifies an interesting parallel with Rakhine State in Myanmar.

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134 Sylvie Guichard, *The Construction of History and Nationalism in India: Textbooks, Controversies and Politics* (Routledge 2010) 17.

135 Ashna Ashesh and Arun Thiruvengadam, *Report on Citizenship Law: India* (Report, Globalcit 2017) 3 <https://cadmus.eui.eu/handle/1814/47124> ('*Report on Citizenship Law: India*').

136 *British Nationality and Status of Aliens Act 1914* s 1.

137 *Report on Citizenship Law: India* (n 135) 5.

138 *Constitution of India 1950* s 5.

139 ibid ss 5–7.

Indian citizenship was further codified through the *Indian Citizenship Act, 1955*.[140] Such law enshrined *jus soli* through art 3, whereby any person born in India, regardless of descent would normally acquire citizenship.[141] This article was, however, amended twice: in 1985 in connection with the Assam conflict and the '*Assam Accord*' and later on in 2003, in a move towards a more *jus sanguinis*-inclined framework.[142]

The *Citizenship (Amendment) Act, 1986* motivated by the Assam Accord eroded *jus soli* by preventing access to citizenship for children of parents who were both illegal aliens, as will be explained in the section below.[143] Then, the *Citizenship (Amendment) Act 2003* introduced and defined the notion of illegal migrant, subject to detention and deportation, making this category ineligible for citizenship by registration and naturalisation.[144] It restricted even further access to citizenship by disallowing citizenship acquisition if either parent was an illegal migrant. The *Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules*, *2003* created the legal basis for the National Register of Indian Citizens as well as a National Population Register, a registry of all usual residents of India, which was not initiated until 2010.[145]

More recently, the *Citizenship (Amendment) Act 2019* to the *Indian Citizenship Act, 1955* signify another turn of the screw, facilitating the naturalisation of refugees from Pakistan, Bangladesh and Afghanistan provided that they are of Hindu, Parsi, Jain, Sikh, Christian or Buddhist (ie not Muslim) religious backgrounds and entered India before December 2014.[146] Such an explicit mention of concrete religious (and ethnic) groups in the legislation is comparable to the prominence given in Myanmar to the Taingyintha, as particular groups are openly mentioned in law.

As in the Dominican Republic and Myanmar, gender considerations have intersected with nativist policies since India's independence. Some of the most salient features of such aspects are found in the *Abducted Persons (Recovery and Restoration) Act, 1949* passed by the Constituent Assembly, which was meant as a tool to 'restore' Hindu women to India and Muslim women to Pakistan after partition.[147] The impact of restrictive measures concerning access to citizenship, as in Myanmar, has disproportionately affected women. For example, wives of Assamese men born in other states and wives who married before reaching 18 years of age often have difficulties in proving their identity and descent

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140 Act No 57 of 1955 (India) ('*Indian Citizenship Act, 1955*').

141 ibid art 3.

142 'Assam Accord' (1985) 20(33) *Economic and Political Weekly* 1369, 1369–70, discussing *Accord between AASU, AAGSP and the Central Government on the Foreign National Issue (Assam Accord)*, signed 15 August 1985 (Memorandum of Settlement) <https://peacemaker.un.org/sites/peacemaker.un.org/files/IN_850815_Assam%20Accord.pdf> ('*Assam Accord*'); *Citizenship Amendment Act 1986*, Act No 51 of 1986 (India) ('*Citizenship Amendment Act 1986*'); Anupama Roy, *Mapping Citizenship in India* (Oxford 2010).

143 *Citizenship (Amendment) Act, 1986* (n 142).

144 *Citizenship (Amendment) Act 2003*, Act No 6 of 2004 (India).

145 *Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules*, *2003*, GSR 937(E) (India) rr 2, 4, 7.

146 *Citizenship (Amendment) Act 2019*, Law No 27 of 2019 (India).

147 *Abducted Persons (Recovery and Restoration) Act, 1949*, Act No 65 of 1949 (India), *Report on Citizenship Law: India* (n 135) 8; Niraja Gopal Jayal, *Citizenship and Its Discontents: An Indian History* (Harvard University Press 2013).

administratively. Transgender women often lose all connections with their families, hampering evidence-gathering later in life.[148]

The roots of inter-ethnic conflict in Assam may be traced even earlier, to the mid-19th century, when British colonisers sponsored the migration of Bengali speaking Muslims to work in the tea industry.[149] By the beginning of the 20th century, migrants comprised close to one third of Assam's population.[150] Thus, Assamese nationalism grew against a population they considered to be a threat: primarily Bengali speaking Hindus and Muslims. Soon after independence, in 1951, the concerns about the influx of migrants to Assam led to the Parliament of Indian enacting the *Immigrants (Expulsion from Assam) Act, 1950*. The *Act* allowed authorities in Assam to expel immigrants whose entry and stay is 'detrimental to the interests of the general public of India or of any section thereof or of any Scheduled Tribe in Assam'.[151] In addition, the government initiated a first attempt at a 'National Registry of Citizens'.[152]

Xenophobia against real or perceived migrants in Assam continued after independence and was the cause of major outbreaks of inter-ethnic violence. The reaction of the authorities was primarily repressive. For example, between 1961 and 1967, Assam implemented a 'detect and deport' policy which saw the deportation of 66,000 persons to East Pakistan.[153] After the independence of neighbouring Bangladesh from Pakistan in 1971, there was an additional influx of refugees into Assam, accompanied by further anti-Bengali riots.[154]

The tensions grew steadily. In 1979, it was discovered that 45,000 undocumented Bangladeshi migrants had been listed on the electoral rolls, sparking further unrest led by the All Assam Students Union. In the 1983 elections, Assamese Nationalists perpetrated the 'Nellie Massacre', which took the lives of at least 2,000 persons, mostly Bengali Muslims.[155]

Continuous pressure by Assamese Nationalists led to the signing of the '*Assam Accord*' in 1985. This agreement provided that:

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148 Nanrita Pandecha, 'The National Register of Citizens in Assam: A Flawed Policy Process' *Geopolitical Monitor* (Blog Post, 30 July 2019) <https://www.geopoliticalmonitor.com/the-national-register-of-citizens-in-assam-a-flawed-policy-process/>.

149 Monica Encinas, 'Migrant Rights and Extraordinary Law in India: The Cases of Assam and Jammu & Kashmir' (2017) 40(3) *South Asia: Journal of South Asian Studies* 463.

150 ibid 465, quoting Sanjib Baruah, *India against Itself: Assam and the Politics of Nationality* (University of Pennsylvania Press 1999) 46.

151 *Immigrants (Expulsion from Assam) Act, 1950*, Act No 10 of 1950 (India) s 2; *Designed to Exclude: How India's Courts are Allowing Foreigners Tribunals to Render People Stateless in Assam* (Report, Amnesty International 2019) 8 <https://amnesty.org.in/wp-content/uploads/2019/11/Assam-Foreigners-Tribunals-Report-1.pdf> ('*Designed to Exclude*').

152 Roli Misra and Shipra Srivastava, 'Identity Crisis and National Register for Citizens in Assam' (2018) 11(1) UPUEA Economic Journal 104; Ipsita Chakravarty, 'Why Did Assam Prepare the 1951 NRC, Which Has Become a Touchstone for Citizenship Today?', *The Final Count* (online, 17 July 2019) <https://scroll.in/article/931879/why-did-assam-prepare-the-1951-nrc-which-has-become-a-touchstone-for-citizenship-today>.

153 Monirul Hussain, 'State Development and Population Displacement in North-East India' in C Joshua Thomas (ed), *Dimensions of Displaced People in North-East India* (Regency 2002) 288, quoted Encinas (n 149) 466.

154 ibid.

155 Makiko Kimura, *The Nellie Massacre of 1983: Agency of Rioters* (Sage 2013).

- migrants who had arrived between January 1966 and 24 March 1971 could access naturalisation under the regular requirements, however their voting rights would be suspended for a period of ten years;[156]
- any migrant coming to Assam on or after 25 March 1971 could be detained and expelled.[157]

The starting date of the independence war of Bangladesh constituted both an extension of the cut-off date for *naturalisation* in Assam — whereas the date is 19 July 1948 in wider India — as well as the cut-off date for inclusion in the National Register of Citizens.[158] As mentioned earlier, such rules were entrenched as an amendment (art 6A) to the *Indian Citizenship Act, 1955*.[159]

C Administrative Violence

Administrative violence against minorities in Assam has taken place as a result of a progressive delegitimisation process, as in Myanmar. The role of the judicial system and particularly the Supreme Court in supporting such process has been significant.

In 2005, in *Sarbananda Sonowal v Union of India*, the Supreme Court observed an alleged 'silent and invidious demographic invasion' of Assam.[160] This judgment also controversially identified this alleged mass influx as an act of 'external aggression' as per art 355 of the *Constitution of India 1950*.[161] It struck down the more rights-oriented *Illegal Migrants (Determination by Tribunals) Act, 1983* and placed the burden of proving citizenship back on the individual.[162] The judgment made it possible to repurpose the quasi-judicial Foreigners Tribunals, created through the pre-independence *Foreigners Act, 1946* and the *Foreigners (Tribunal) Order*, *1964* to scrutinise the citizenship status of the inhabitants of Assam.[163] The Foreigner Tribunals are essentially quasi-judicial bodies set up to determine whether or not a person is a foreigner. The first ones were created in 1964 and since 2005 they had been responsible for implementing s 6A of the *Indian Citizenship Act, 1955* (reflecting the *Assam Accord*).[164]

The role of the Supreme Court on the issue was further strengthened in 2009 when a nongovernmental organisation ('NGO') called Assam Public Works requested that the names of undocumented migrants be removed from the voter list.[165] The NGO also requested an update of the National Registry of Citizens.[166]

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156 *Assam Accord* (n 142) arts 5.2–5.6.

157 ibid art 5.8.

158 *Constitution of India 1950* s 6.

159 *Indian Citizenship Act, 1955* (n 140) art 6A, as amended by the *Citizenship (Amendment) Act, 1986* (n 142).

160 See *Sonowal* (n 3).

161 ibid 24, 38:

> This being the situation there can be no manner of doubt that the State of Assam is facing 'external aggression and internal disturbance' on account of large-scale illegal migration of Bangladeshi nationals.

162 *Illegal Migrants (Determination by Tribunals) Act, 1983*, Act No 39 of 1983 (India).

163 *Foreigners Act, 1946*, Act No 31 of 1946 (India); *Foreigners (Tribunals) Order, 1964*, GSR 1401 of 1964 (India). See also *Designed to Exclude* (n 151) 5.

164 *Indian Citizenship Act, 1955* (n 140) art 6A.

165 *Assam Public Works v Union of India* [30 May 2019] Case No WP(C) 274/2009 (Supreme Court of India).

166 ibid.

The Supreme Court took up the petition in 2013 and directed the Governments of India and Assam to begin the process for updating the NRC under its oversight.[167] In February 2015, the Assam state government initiated the process of updating the National Registry of Citizens, requiring every person in Assam who claimed Indian citizenship to submit proof of their ancestry (or birth) in the country pre-dating 1971. The final National Registry of Citizens list was published on 31 August 2019. It left out of it as many as 1.9 million Assam residents, leaving them stateless. All residents not appearing in the final National Registry of Citizens published in August 2019 are required to appear before 120 days before 'Foreigner Tribunals' which would ascertain whether they are nationals (with non-nationals subject to detention and expulsion). The number of Foreigner Tribunals has increased exponentially, and the standard criteria of legal experience and the quality of their procedures has been lowered. Overall, the procedure followed is in essence administrative violence: an arbitrary and discriminatory process against Muslims of Bengali descent.[168]

Moreover, in its August 2019 *Assam Public Works v Union of India* decision, drawing from s 3(1)c of the *Indian Citizenship Act, 1955*, the Supreme Court interpreted the deprivation of nationality as covering a) children of 'D Voter' (doubtful voters);[169] and b) those declared to be foreigners and/or whose cases were pending before a Foreigners Tribunal.[170] The section excludes a child born to an 'illegal immigrant' parent from acquiring Indian citizenship. Specifically, it held that for people born after 3 December 2004, if one of their parents belonged to one of these three categories, they would not be included in the National Registry of Citizens, notwithstanding the status of the second parent. This judgment has been viewed by Amnesty International as breaching the principle of retroactivity as well as the protections against statelessness contained in the *Convention on the Rights of the Child*.[171]

As Amnesty International and 124 other civil society organisations stated in September 2019:

> requiring individuals to prove their citizenship by providing documentary evidence dating back over 50 years, and excluding applicants on the basis of not being able to fulfil this evidentiary burden that sits solely on them, is an act of mass-arbitrary deprivation of nationality, contrary to art 15 of the *Universal Declaration of Human Rights*.[172]

Indeed, it was a massive exercise of administrative violence towards minorities.

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167 *Indian Citizenship Act, 1955* (n 140) art 6A.

168 *Designed to Exclude* (n 151) 4.

169 *Assam Public Works v Union of India* [13 August 2019] Case No WP(C) 274/2009 (Supreme Court of India) [1], citing *Assam Public Works v Union of India* [23 July 2019] Case No WP(C) 274/2009 (Supreme Court of India) [7].

170 ibid.

171 *Designed to Exclude* (n 151) 15, citing *Convention on the Rights of the Child,* opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 8.

172 'Joint Statement: 125 Civil Society Organisations Condemn the Exclusion of 1.9 Million Persons from the Assam National Registry of Citizens' *Amnesty International* (Statement, 6 September 2019) <https://amnesty.org.in/news-update/amnesty-india-joint-statement-to-condemn-the-exclusion-of-1-9-million-people-from-the-assam-nrc/>, citing *Universal Declaration of Human Rights,* GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) art 15.

V COMPARATIVE ANALYSIS

A comparison of Myanmar, the Dominican Republic and the State of Assam in India brings out interesting commonalities. First, in all three cases nativism — the idea that the nation is threatened by an internal minority (with real or imagined migrant origins) with alleged links to foreign states — has been determinant in the making of citizenship laws and policies. In this sense, the three cases show that denationalisation is usually a long-term historical process: a series of discriminatory and arbitrary acts, the cumulative effect of which makes people stateless. This makes it more difficult to remedy the situation. Moreover, deprivation of nationality is often exercised through the administrative violence of bureaucracy: procedures are implemented discriminatorily to prevent individuals from exercising their legal identity rights.

In all three countries there is a similar narrative which reimagines the ethnic 'other' as a peaceful invader who threatens the pillars of the nation. The need to fight such peaceful invasion justifies the use of administrative violence and discriminatory legislation. In the case of India, we see this in the reasonings of the Supreme Court.[173] In Myanmar, the Rohingya are seen as a threat to the territorial integrity of the state, with the assumption that demographic dominance of this group would lead to a partition of Northern Rakhine and its incorporation to Bangladesh. The creation of Bangladesh in 1971 had a deep impact in the domestic immigration and citizenship policies concerning both Assam and Rakhine States.[174] Similarly, the demographic dominance of ethnic Haitians in the border areas was seen as a 'pacific invasion' and a threat by the Dominican government that justified violence and discrimination against ethnic Haitians. The three cases show in this sense a commonality: the existence of a minority with alleged connections to a bordering 'kin-state' (Haiti for the Dominican Republic and Bangladesh for India and Myanmar), which is seen as a threat by their host country.

In contrast with such nativist visions, both Dominicans of Haitian descent, Assamese Bengali and Rohingya and other disenfranchised minorities in Myanmar consider themselves full citizens of the countries where they live (or used to live). Despite such allegiance, all three countries have engaged in a boundary making exercise through administrative violence, discriminatory laws and sometimes direct physical violence against the targeted minorities.

Secondly, a trend towards the erosion of *jus soli* provisions and the emergence of *jus sanguinis* as the primary criteria is observed as part of the earlier mentioned tendency in the recent legislative history all the three countries studied. A move towards ethnicisation of the citizenship framework is clearly visible in Myanmar (through the prominent concept of the Taingyingtha in the 1982 *Burma Citizenship Law*), to a lesser extent in Assam (with the *Citizenship (Amendment) Act 2019* to the *Indian Citizenship Act, 1955* clearly prioritising certain religious backgrounds being the exception) and less visible still in the laws of the Dominican Republic.[175] In all, the difference with the Dominican Republic is that arguably ethnically neutral laws are applied in a discriminatory manner through administrative violence against Haitians and their descendants (the group that is least likely to have their papers in order).

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173 *Sonowal* (n 3).

174 Smith (n 27) 43.

175 *Burma Citizenship Law 1982* (n 18); *Indian Citizenship Act, 1955* (n 140).

Third, also in terms of administrative violence, members of the targeted communities in the three scenarios have suffered discrimination in accessing civil documentation and citizenship recognition. The situation in Dominican Republic provides the clearest example of discriminatory administrative practices, as exemplified by the arbitrary denial of birth registration documentation in the *Yean v Bosico* case, which then triggered reforms that provided an incomplete solution to the problems of ethnic minorities. In Assam, administrative violence was massively exercised in a top down manner through the disenfranchisement of the 'doubtful voters' and throughout the ensuing bureaucratic process of the National Registry of Citizens update. The complicity of the courts in the process of denationalising ethnic Bengalis and others is represented both by the decisions of the Supreme Court and the quasi-judicial Foreigner Tribunals. In Myanmar the sheer lack of judicial remedies and the explicit lack of reasoning in administrative decisions (which are not even given on writing) concerning the issuance of full, naturalised or associated cards creates a Kafkaesque environment where justice is not even remotely possible. The creation of temporary solutions, in the form of Temporary Registration Cards and more recently the Identity Cards for National Verification are in practice a form of administrative disenfranchisement ultimately based on ethnic background.

Moreover, the three scenarios provide a variety of examples of immigration control laws that are designed to target specific groups, either formally or in their implementation (through special operations such as the 1978 Naga Min, the 1991 Pyi Thaya or special procedures such as the 2016 National Verification Process). There are important similarities between the Burmese, Indian and Dominican migration laws.

Sixth, in this sense, in parallel to administrative violence it is worth reflecting on the role of mass physical violence and its influence on law and policy concerning citizenship. The 1937 El Corte massacre was, in essence, an attempt at eliminating the Haitian 'other' from the border areas. It was used by the Trujillo regime as a nationalist propaganda narrative in the context of *antihaitianismo*.[176] The 1983 Nellie Massacre was the result of xenophobic anti-migrant agitation. In Myanmar, the 1938 Indo-Burmese riots are an interesting showcase of how nativism narratives in the political sphere (by Burmese nationalist under British domination) led to real violence against persons of Indian descent in Rangoon and elsewhere.[177] The forced migration of Indians out of Burma during General Ne Win regime are a continuation of a history of xenophobia.

Further on, the 1978 and 1991 episodes of violence and mass expulsion of Rohingya in Rakhine State were linked to operations on detecting and deporting 'illegal migrants', while the 2017 operations were presented as 'clearance operations' (in terms of anti-terrorist law enforcement) but were largely a mass expulsion of Rohingya coupled with other international crimes such as rape, torture and killings.[178] Further research on the role of political violence in the context of nativism-related citizenship policies is warranted.

Seventh, the gender implications of the citizenship policies put in place by the three countries bear some similarities. In a gendered conception of the nation,

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176 Roorda (n 89).

177 Smith (n 27) 18.

178 *Myanmar's Rohingya Crisis Enters a Dangerous New Phase* (Report 292/Asia, International Crisis Group 7 December 2017) <https://www.crisisgroup.org/asia/south-east-asia/myanmar/292-myanmars-rohingya-crisis-enters-dangerous-new-phase>.

Myanmar and Assam see the possibility of foreigner males having sexual relationships, or marrying, national women as a national threat. Interestingly, in the Dominican Republic it is the opposite: Dominican men who partner with Haitian or Haitian descended women are seen as the threat. This is reflected in either explicit discriminatory legislation, as in the case of the Myanmar 'race and religion laws', the Indian laws concerning 'abducted persons' or discriminatory practices, as in the case of the Dominican Republic. The various implications of gender considerations in the making of nativist citizenship laws and policies warrant also further research.

In terms of differences, there are a variety of features that are unique to each of the countries from the perspective of this analysis. The quasi-apartheid regime that has been present in the State of Rakhine in Myanmar since the 1970s is a salient difference. The Burmese effort to enumerate who are the indigenous natives is also very peculiar to Myanmar, as is the fact that naturalisation is not possible at all. The almost absolute lack of effective administrative and judicial remedial avenues in the Burmese context is also unique (even though Assam comes quite close with its Foreigner Tribunals). Of the three states, the Dominican Republic is the only one where citizenship policies have come under scrutiny of a human rights judicial body, the Inter-American Court of Human Rights. Unfortunately, this has not yet resulted in a significant improvement on the protection of the right to a nationality.

VI Concluding Observations

The ideologies of racism, xenophobia and, particularly in its nationalist version, nativism are important root causes of mass statelessness in ethnic and religious minorities.

The imagining of peaceful invasions by alleged illegal migrants and the various narratives observed in the three countries analysed demonstrate how nativism and its exclusionary policies are a global phenomenon that manifests itself in similar ways in different contexts, despite its pretension of representing unique problems in different nations.

The move towards eroding *jus soli* and to identify and disenfranchise 'the other', be it migrants or border and long-settled communities constitute solid trends in the decades after independence in both India and Myanmar and from the 1930s onwards in the Dominican Republic.

The use of administrative violence in all three cases places individuals in a defenceless position that is often exacerbated by the lack of accessible, effective remedies (especially in Myanmar). The fact that such violence is overwhelmingly used against persons who face the worst conditions of social, economic and political vulnerability makes it a great human rights concern.

The episodes of physical violence against minorities described in all three cases show an important parallel between discriminatory policies and violence. In this sense, the mass expulsion of Rohingya from Myanmar in 2017 are a cautionary tale as to what could happen in places like Assam if such policies are taken to the extreme.

Conversely, the human rights associated with citizenship, statelessness and legal identity represent the standards upon which to base advocacy for the inclusion and protection of vulnerable individuals and minorities at the global level.