

THE ARAKAN PROJECT

UNITED NATIONS HUMAN RIGHTS COUNCIL

Submission to the UN Universal Periodic Review

10th Session of the UPR Working Group, January 2011

5 July 2010

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MYANMAR

EXECUTIVE SUMMARY

The Arakan Project raises concern over Myanmar's non-compliance with its international human rights obligations with regard to the Rohingya population in North Rakhine State and, in particular, the 1982 Citizenship Law which deprives the Rohingya of their rights to citizenship, legitimising discrimination and arbitrary treatment against them such as restriction on movement, on marriage and pregnancy, arbitrary detention, forced labour, and denial of socio-economic rights.

A. INTRODUCTION

1. The Arakan Project (AP) is a human rights organization which since 1999, has specialized in monitoring and documenting the situation of the Rohingya Muslims, an ethnic, religious and linguistic minority in northern Rakhine State of Myanmar. The Arakan Project has regularly submitted its findings to relevant UN Treaty Bodies (CEDAW and CRC) and to UN Special Procedures, including the UN Special Rapporteur on the human rights situation in Myanmar and other thematic experts.

2. This submission focuses on the Rohingya minority, whose population is about 725,000 in the three townships of North Rakhine State and who are subject to the most severe forms of discrimination and human violations in Myanmar, and it highlights key areas of concern regarding Myanmar's non-compliance with its international human rights obligations and its systematic discrimination against the Rohingya community through denial of citizenship, restrictions on movements, on marriages and pregnancy, arbitrary arrest and exaction of forced labour.

B. NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

Implementation of international human rights obligations

3. Myanmar has ratified the UN Convention of the Rights of the Child (CRC) and the UN Convention for the Elimination of Discrimination against Women (CEDAW) but has completely ignored recommendations specific to the Rohingya minority in the Concluding Observations issued by the respective committees. Key recommendations call on Myanmar to address the issue of statelessness and discrimination (CEDAW/C/MMR/CO/3, para 33 and 35, dated 7 November 2008 and CRC/C/15/Add.237, para 65, dated 4 June 2004), to ensure birth registration without discrimination (CRC, para 35) and to lift the orders concerning marriage authorization and restriction of pregnancy (CEDAW/C/MMR/CO/3, para 43).

4. Myanmar is also a State party to the ILO Convention No. 29 prohibiting forced labour, but continues to impose a disproportionate amount of compulsory labour on the Rohingya.

Cooperation with UN Human Rights mechanisms

5. In February 2010, Myanmar granted the UN Special Rapporteur on the Human Rights Situation in Myanmar access to North Rakhine State for a brief visit but it has failed to implement any of his recommendations¹. Moreover, Myanmar has so far not extended an invitation to any other thematic Special Rapporteurs such as the UN expert on the right to food, despite repeated requests.

6. On 2 April 2007, six UN Special Rapporteurs released a joint statement² calling upon Myanmar “to amend or repeal the 1982 Citizenship Law and to take urgent measures to eliminate discriminatory practices against the Muslim minority in North Rakhine State” but these recommendations have remained unheeded.

Domestic legal framework to the Rohingya’s exclusion and discrimination

7. The Citizenship Law³ enacted in 1982 deprives most people of Indian and Chinese descent of citizenship, but the timing of its promulgation, shortly after the Rohingya refugee repatriation of 1979, strongly suggests that it was specifically designed to exclude this group. This law, essentially based on a *jus sanguinis* criterion, identifies three categories of citizens: *Full*, *Associate* and *Naturalized* citizens, issued with colour-coded ID cards.

8. *Full citizens* are those belonging to one of 135 ‘national races’⁴ settled in Burma/ Myanmar before 1823, the start of the British colonisation of Arakan. The Rohingya do not feature in the official list published by the government, which does not contain any other terminology under which the Muslim population could be registered. Very few Rohingyas could apply for *naturalized citizenship* due to the difficulty of meeting necessary requirements (evidence of residence prior to 1948, tracing bloodlines as stipulated, fluency in the Burmese or Rakhine languages). Moreover, the wide powers assigned to a government-controlled ‘Central Body’ to decide on matters pertaining to citizenship mean that, in practice, their entitlement to citizenship is not recognised. Rohingyas are only issued with a Temporary Registration Card (TRC) with a specific mention that this card cannot be used to claim citizenship.

9. In the 2008 Constitution⁵, Article 345 (a) sets a double *jus sanguinis* model whereas (b) refers to the existing 1982 Citizenship Law. The new constitution therefore does not alter the fact that Rohingyas’ legal status remains entirely dependent on the wishes of the government.

C. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Statelessness and Discrimination

10. Denying citizenship rights to the Rohingya has served to legitimise discrimination and arbitrary treatment against them.

¹ Report A/HCR/13/48 dated 10 March 2010 – paras 83-94

² <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/F0ED9448671A73E6C12572B100553470?opendocument>

³ The 1982 Burma Citizenship Law can be accessed at:

<http://www.unhcr.org/cgi-bin/tehis/vtx/refworld/rwmain?page=printdoc&docid=3ae6b4f71b>

⁴ The official list of 135 national races is found at: <http://www.myanmar.gov.mm/ministry/hotel/fact/race.htm>

⁵ The 2008 Constitution is found at: http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

11. Government officials generally refer to the Rohingya as ‘illegal immigrants from Bangladesh’. On 9 February 2009, Ye Myint Aung, the Myanmar Consul in Hong Kong, described them as ‘ugly as ogres’ in a letter to all heads of foreign missions and the media⁶.

12. The authorities have ceased to issue new-born Rohingya children with individual birth certificates since the mid-1990s, in contravention of Section 9 of the 1982 Citizenship Law and Section 9(a) of the 1993 Child Law which make it mandatory to register the birth of any child born in the country. In addition, thousands of Rohingya children also remain unregistered because their parents are too poor to afford travel costs or bribes for registration or due to fear of arrest if the child is born out of unauthorised marriage.

13. Identity documentation available to Rohingya are the TRC and the family list, which do not mention the holder’s place of birth, precluding them from establishing any official evidence of birth in Myanmar and thereby perpetuating statelessness.

14. As a direct outcome of their lack of legal status, the Rohingya are subject to severe restrictions of movement and banned from employment in the civil service, including the education and health sectors. In addition, Rohingyas in North Rakhine State are the only group required to obtain official authorisation to marry and to sign a declaration limiting pregnancy to two children. Other coercive measures such as forced labour, arbitrary taxation and confiscation of land are practiced elsewhere in Myanmar, but are disproportionately imposed on the Rohingya population.

15. Infringement of any of these discriminatory rules is punishable with long prison sentences. During his visit to Buthidaung jail in February 2010, the UN Special Rapporteur observed that the prison population was predominantly Muslim, most sentenced for immigration or marriage offences⁷.

Restriction of movement

16. The Rohingyas are virtually confined to their village tracts. They must apply for a travel pass even to visit a neighbouring village, and travel is strictly restricted within North Rakhine State. In February 2001, Sittwe, the state capital, was declared off-limits for them. Their lack of mobility has devastating consequences, limiting their access to markets, employment opportunities, health facilities and higher education. Those who overstay the validity of their travel pass find their names deleted from their family list, obliterating them administratively, and preventing them from returning home. Rohingyas are also forbidden to travel to Bangladesh. If caught upon return, they could face up to 5 years imprisonment under the Burma Immigration (Emergency Provisions) Act, 1947. Once outside Myanmar, Rohingyas are systematically denied the right to return to their country.

Arbitrary arrest and torture

17. Arbitrary arrest and detention is common practice, essentially for the purpose of extortion. The accused can often evade prosecution or secure his/her release in exchange for a large bribe. This illustrates the absence of the rule of law and the prevailing climate of impunity, which is to a large degree based on discrimination.

⁶AFP, “Myanmar envoy brands boat people ‘ugly as ogres’”, 11 February 2009

⁷ Ibid. - A/HRC/13/48 – para 89.

18. Detention in NaSaKa⁸, police or Army camps invariably puts arrestees at risk of torture or rape. Allegations of contacts with rebel groups are frequently brought against those who had visited Bangladesh illegally and interrogation sessions involve physical and psychological torture such as beatings, electric shocks, deprivation of sleep and denial of food and water. The detainee is blindfolded, handcuffed and often put in wooden stocks. In some cases, torture results in death in custody. When Rohingyas are arrested for offences such as breaching marriage rules, the NaSaKa generally demand bribes with a promise of release, but beatings are also widely used to pressure the detainee's family to come up with the amount demanded as quickly as possible. Many Rohingya women have been raped and gang raped in custody. When relatives are unable to pay, the detainee is referred to the judicial system.

Marriage authorisations

19. Since 1994, local orders have been issued, applied exclusively to the Muslim population in North Rakhine State, stipulating that couples intending to marry must obtain official permission from the local authorities, generally the NaSaKa. Marriage authorisations are granted against the payment of bribes and can take up to several years to obtain. Any cohabitation or sexual contact outside wedlock can lead to prosecution of the man under Section 493 of the Penal Code (that the man had deceitfully married the woman) punishable with up to 10 years imprisonment. In practice, a prison sentence of 4 to 5 years is generally imposed by local courts. Since 2009, the Supreme Court has overturned a few convictions for unauthorised marriage but these rulings have not served to stop such practices.

20. Such humiliating rules have dramatic consequences on women. Rohingya women who become pregnant without official marriage authorisation often resort to repeated backstreet abortions, an illegal practice in Myanmar, which has resulted in maternal deaths. Others have registered their newborn child with another legally married couple, sometimes as the child of their own parents. Some have gone to deliver secretly in Bangladesh and abandoned their baby there. Many young couples, unable to obtain permission to marry, have fled to Bangladesh in order to live together.

21. After marriage permission is granted, couples must also sign an undertaking that they will not have more than 2 children.

22. These discriminatory orders for official marriage permission and restriction on pregnancy are deliberately imposed to control birth rates and limit the expansion of the Rohingya population.

Forced labour

23. As documented by the ILO, compulsory labour continues to be exacted by the authorities for the construction and maintenance of Army or NaSaKa camps, road building and repair, portering, sentry duty, the establishment of villages for new settlers, for cultivation work in military-owned shrimp farms and plantations, for brick-baking, and for collection of wood and bamboo, etc. The poor cannot pay bribes to avoid it and are thus compelled to perform not only their own stint of work, but also that of those who had paid off the authorities. As

⁸ The NaSaKa is the Border Administration Force and comprises five different government agencies: the Police, Military Intelligence (MI), Lone Htein (riot police), Customs, and Immigration.

male adults are busy earning the daily wage to feed the family and women culturally prevented from participating in activities outside their homes, the burden of carrying out forced labour duties often falls on children. Forced labourers have been widely recruited for the construction of the border fence along the Bangladesh border and to repair roads damaged by torrential rains in June 2010.

Denial of socio-economic rights

24. The compounded effect of these various forms of persecution have driven many into deep poverty and their degrading conditions have caused mental distress, compelling many to flee across the border to Bangladesh.

25. Socio-economic indicators in North Rakhine State are appalling. The Special Rapporteur, Mr. Ojea Quitana, cited in his report of March 2010 that 26% of the Rohingya population in North Rakhine State suffer from malnutrition, that only 30% benefit from public health care, that the maternal mortality rate peaks at 380 deaths for 100,000 births and that there are only 5 medical doctors for a population of 725,000.

26. The illiteracy rate of the Rohingya is estimated at 80%. Most village tracts have at least one primary school (1 to 4th Standard) but in remote areas access is impaired by distance and lack of communication during the rainy season. But widespread poverty keeps many children out of school, as they need to contribute to the survival of their family. Only 35 middle schools (5th to 8th Standard) and 6 high schools (9th and 10th Standard) are available in Maungdaw and Buthidaung Townships. Very few Rohingya children reach 10th Standard and complete basic education. Access to higher education is even more restricted. Sittwe has the only university in Rakhine State. Since a travel ban to Sittwe was enforced on the Rohingya population in February 2001, Rohingya students are not allowed to join university on a full-time basis. They can only study university level courses through distance education and have been facing serious difficulties in obtaining permission to take their examination in Sittwe.

D. RECOMMENDATIONS

27. The Human Rights Council should urge the Government of Myanmar:

- To immediately amend or repeal the 1982 Citizenship Law, with the effect of granting citizenship and accompanying rights to the Rohingya in Rakhine State, and to abide by its international human rights obligations under Article 7 of the Convention of the Rights of the Child and Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women.
- To issue birth certificates to all Rohingya born in Myanmar in compliance with domestic and international law.
- To abolish local orders restricting marriages and limiting the number of pregnancies of Rohingya women in northern Rakhine State, as well as to release without delay those detained for having married without official marriage permission.
- To take immediate steps to eradicate all discriminatory policies and practices against the Rohingya population, including restriction on movements and arbitrary detention.

- To eliminate forced labour and other coercive measures.