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ROHINGYA REFUGEES IN BANGLADESH The Search for a Lasting Solution

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HUMAN RIGHTS WATCH
485 Fifth Avenue
New York, NY 10017-6104
Tel: (212) 972-8400
Fax: (212) 972-0905
E-mail: hrwnyc@hrw.org

REFUGEES INTERNATIONAL
2639 Connecticut Ave., NW, #202
Washington, DC 20008
Tel: (202) 828-0110
Fax: (202) 828-0819
E-mail: ri@refintl.org

I. SUMMARY AND RECOMMENDATIONS

Between July 20 and 22, 1997, the Bangladesh government forcibly repatriated some 400 refugees belonging to the Rohingya minority of Burma's northern Arakan state. The repatriations, which drew international protests, highlighted the dilemma facing the United Nations High Commissioner for Refugees (UNHCR) and the international community in addressing the Rohingya situation. When the host government's patience runs out, and abuses are continuing in the country from which the refugees fled, what choices are available?

The 400 repatriated were among a group of 21,400 refugees remaining in two camps in the Cox's Bazaar district of Bangladesh from a much larger group of Rohingyas who fled persecution by Burma's State Law and Order Restoration Council (SLORC) in 1991 and 1992.¹ With the help of the UNHCR, tens of thousands voluntarily returned to Burma beginning in 1994, and a UNHCR team in Arakan was on hand to monitor their reintegration. But even as the refugees were returning, new arrivals continued to cross into Bangladesh, with over 10,000 arriving between March and July 1997 alone. Some of the 1997 arrivals reported that forced labor, arbitrary taxation, and the confiscation of Muslim property were continuing in northern Arakan, despite the UNHCR's presence. These abuses are part of systematic discrimination against Rohingyas, and amount to persecution according to criteria established by the UNHCR. Their exodus suggested serious flaws in the repatriation and reintegration program, and a need to reexamine both that program and Burma's practices in Arakan. The exodus also intensified the fears of those left in the refugee camp, making them more unwilling than ever to return, but at the same time, the option of resettlement in Bangladesh has been ruled out by the Bangladesh government.

This report, based on research conducted by Refugees International and Human Rights Watch/Asia, including a mission to Bangladesh by a Refugees International researcher in July 1997, is intended to encourage more openness by everyone involved in the search for a lasting solution which will ensure that the rights of the Rohingyas are respected. Both organizations recognize that the UNHCR's presence in Arakan is essential to monitor the situation for the returnees and, in cases of human rights violations, to intervene as necessary with authorities both locally and in Rangoon. But they remain concerned that UNHCR is not fully acknowledging the ongoing problems in Arakan, and this has two consequences: refugees cannot make an informed decision as to whether they should return to Burma, and the international community is unable to assist the UNHCR in pressing the Burmese government to cease its abusive practices.

The report describes the forced repatriations, and conditions for the new arrivals in Bangladesh. It then documents the abuses committed by the SLORC against the Rohingyas in Burma, including forced labor, arbitrary taxation, confiscation of property and restrictions on freedom of movement. These abuses are linked to the Rohingyas' status as non-citizens in Burma, a status which the Burmese government has thus far refused to alter. This policy is in clear violation of international standards on the elimination of statelessness. Human Rights Watch/Asia and Refugees International conclude that as long as individuals and families continue to flee Burma, temporary asylum in Bangladesh is critical, and the UNHCR should seek to maintain the camps there and assist the new arrivals. The longer term solution, however, lies in improving the human rights situation inside Burma, and for this, the involvement of the international community, and especially the Association of South East Asian Nations (ASEAN) which recently admitted Burma as a member, is crucial.

¹ The Rohingyas who arrived during 1991/92 were considered *prima facie* refugees by the UNHCR and have not been "screened", that is, interviewed by UNHCR protection officers to determine individual fear of persecution. They are all thus referred to throughout this report as refugees. These refugees have been interviewed by UNHCR to determine that they made a voluntary decision to return to Burma, and under the agreement between UNHCR and Bangladesh, they are entitled to a further interview at the point of departure, at which time they may express a fear of return. Of those who have said they do not wish to return to Burma, some 5,000 were screened by UNHCR and classified as having a well-founded fear of persecution and thus entitled to long term protection. The new arrivals, none of whom have been screened, are referred to in this report as asylum-seekers, since they assert a claim to refugee status, and are thus entitled to temporary asylum and assistance while their claims are investigated.

RECOMMENDATIONS

Human Rights Watch and Refugees International make the following recommendations:

To the Bangladesh Government

- Bangladesh should continue to offer temporary asylum to Rohingyas fleeing abuse in Burma. Any attempts to use force to push asylum seekers back to Burma or physically prevent them from entering Bangladesh would violate the principle of *non-refoulement*, which is an obligation on all states under customary international law. *Refoulement* means to expel or return a refugees in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion, as defined in the Article 33 of the 1951 Convention Relating to the Status of Refugees, as well as Article 14 of the Universal Declaration of Human Rights.
- Bangladesh should grant the UNHCR immediate and continued access to all refugees arriving in Bangladesh.
- The Bangladesh government should demonstrate its commitment to international human rights standards by becoming a party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.
- Bangladesh should seek to cooperate with the UNHCR in resettling the 5,000 refugees who have been screened by the UNHCR and recognized as persons with a well-founded fear of persecution.

To the State Law and Order Restoration Council

- As a matter of urgency, the SLORC should immediately amend or repeal the 1982 Citizenship Act "to abolish its over-burdensome requirements for citizens"—requirements that, as the U.N. Special Rapporteur to Burma points out, have "discriminatory effects on racial or ethnic minorities." The SLORC should also grant the Muslims of Arakan full citizenship and accompanying rights, in particular the right to freedom of movement.
- The SLORC should immediately cease the practice of forced labor in Arakan and across Burma in compliance with the 1930 International Labor Organization Convention on Forced Labor, which the Burmese government signed in 1955.
- The SLORC should also cease practices such as arbitrary taxation, confiscation of property without compensation and the denial of freedom of movement within Arakan, which together violate the right of Rohingyas to equal protection under the law, as set forth in Article 7 of the Universal Declaration of Human Rights and Article 26 of the International Covenant on Civil and Political Rights.
- The government should permit the new U.N. Special Rapporteur to Burma, Justice Rajsoomer Lallah to visit Burma and northern Arakan in time for him to report to the U.N. General Assembly in November. During that visit, he should be guaranteed free and confidential access to residents.
- Human rights abuses in Arakan are a reflection of the situation all over the country. To address those conditions, the government of Burma should implement the main human rights components of 1996 U.N. General Assembly Resolution and the 1997 U.N. Commission on Human Rights resolution on Burma, with particular attention to the paragraphs concerning the rights to freedom of movement, association and expression.

To the United Nations High Commissioner for Refugees

- The UNHCR must seek to ensure that temporary asylum is maintained for all refugees who have fled Burma.
- The UNHCR should commit itself to a presence in Bangladesh as long as required to monitor the repatriation process and offer protection to new arrivals. This commitment should be made clearly and unequivocally to the government of Bangladesh.

- The UNHCR should continue to press for measures to ensure that any return of Burmese refugees is voluntary as well as for access to those arriving in Bangladesh from Burma. In order to allow refugees to make an informed decision about whether or not to return, the UNHCR must regularly provide detailed and objective information on the situation in Arakan, including information concerning any human rights violations.
- The UNHCR should seek to remain in Arakan beyond the current 1998 deadline, and for as long as required to protect returnees. UNHCR should reconsider its plan to pass on to the United Nations Development Program (UNDP) responsibility to develop northern Arakan for the long term reintegration of Rohingyas, as UNDP lacks a protection mandate and staff trained in protection issues.
- The UNHCR should put into practice the recommendations from the U.N. Working Group on International Protection of August 1992 concerning “direct prevention” and work closely with the Secretary-General in carrying out his mandate to ensure the implementation of the 1996 General Assembly resolution on Burma and the work of the U.N. Special Rapporteur to Burma, with particular attention to the call for Burma to end forced labor and to amend its citizenship law.

To the International Community

- Those governments, notably the Netherlands, Germany, Japan, the United Kingdom and the United States, which have contributed funds to the refugee and repatriation program should encourage Bangladesh to continue allow refugees to enjoy asylum. Donor countries must be prepared to commit funds to the care and maintenance of this population.
- There must be some degree of burden-sharing with regard to those refugees who ultimately cannot return to Burma. The Association of South East Asian Nations (ASEAN) in particular should consider creating a pool from which to draw refugees eligible for third country resettlement. At the same time, a working group should be established within ASEAN to assist in establishing the necessary conditions to prevent further refugee outflows.
- The international community must step up efforts to ensure that the human rights situation in Burma is improved and conditions are created under which the Rohingyas could voluntarily return in safety and dignity. Coordinated pressure must be applied, with western and Asian governments working together through the United Nations Secretary- General's office. Governments should explore ways of exerting economic pressure, including the continued ban on assistance by international financial institutions.

II. BACKGROUND

Between December 1991 and March 1992, some 250,000 Rohingya Muslims from Burma's Arakan state fled to Bangladesh.² At the time the refugees reported summary killings, rape, forced labor, forced portering and religious

² Arakan state was renamed “Rakhine state” by the current military government in 1990. We continue to use the old name, as “Rakhine” refers to the predominant ethnic minority in Arakan state, and “Arakan” is more inclusive. In a previous exodus of Rohingyas, in 1978, some 200,000 fled to Bangladesh. Most were involuntarily returned to Burma by 1980, but some 20,000 were resettled in Bangladesh.

persecution by the Burmese army which had forced them leave their homes.³ The Bangladesh government granted temporary asylum to the refugees and called on the UNHCR to assist in the provision of humanitarian aid. In April 1992, however, the Bangladesh and Burmese governments came to a bilateral agreement on a repatriation scheme that did not allow for further UNHCR involvement. Some 5,000 refugees were forcibly repatriated under this agreement, until UNHCR's threat to leave the camps finally persuaded the Bangladesh government to cease the repatriation in December 1992. Despite an agreement between Bangladesh and the UNHCR signed in May 1993, nearly 50,000 refugees were involuntarily repatriated by November 1993. In that month the UNHCR finally secured an agreement from the SLORC allowing its representatives to be present in Arakan state, the first U.N. agency to do so. Once ten staff had been appointed and the program was up and running in Arakan, the UNHCR started a mass repatriation program with the cooperation of both sides, which was to have ended in December 1995.

Various factors, including cyclones in May 1994 and May 1996 that devastated the camps, political unrest, and a general strike in Bangladesh in 1996, conspired to slow the repatriation, but over the five years that the program was implemented, two other factors were more important: the reluctance of the refugees to return home when stories from returnees to Bangladesh suggested that little had changed; and constant delays by the Burmese side in clearing refugees for return.⁴ In a report published in 1996, Human Rights Watch/Asia described in detail the repatriation and reintegration programs and criticized all parties in the repatriation for failing to ensure the protection of refugees.⁵ That report concluded that the Rohingyas would always remain a vulnerable group as long as the SLORC refused to recognize them as citizens. In this situation, it concluded, the UNHCR must keep the rights of refugees uppermost whenever there is a conflict between the need to publicize and advocate against abuses and the need to maintain good relations with both the country of origin and the host country.

³ See Amnesty International, "Union of Myanmar (Burma): Human Rights Violations against Muslims in Northern Rakhine (Arakan) State," (London: Amnesty International, May 1992); Asia Watch, "Burma: Rape, Forced Labor and Religious Persecution in Northern Arakan," *A Human Rights Watch Short Report*, vol.4, no.13, May 1992.

⁴ Under a bilateral agreement between Bangladesh and Burma, lists of refugees willing to go back to Burma are given to Burmese authorities to enable them to check that the individuals did have habitual residence in Burma before 1991. Only then are they permitted to return. The "clearing" process can be very lengthy, though in mid-1996 there were suspicions that the Burmese had deliberately slowed the process once the number of returnees reached 200,000. See Human Rights Watch/Asia, "Burma: The Rohingya Muslims - Ending a Cycle of Exodus?" *A Human Rights Watch Short Report*, vol. 8, no. 9 (c), September 1996, p.21.

⁵ Human Rights Watch/Asia, "Ending a Cycle..." pp. 14-21.

December 1995 came and went, with some 35,000 refugees still in the camps. During 1996 resistance to the repatriation increased, and between January and October only 15,000 returned. The slow rate of return forced all parties to the repatriation to extend the deadline for completion of the operation to March 1997. Nongovernmental organizations (NGOs) working in the camps were informed in October 1996 that they would all have to leave the camps by March 31, 1997, after which time, if the repatriation was not completed, Bangladesh authorities, such as the Department of Health and Education, would take over the provision of humanitarian aid in any remaining camps.⁶

As the March deadline drew near, the newly-elected Awami League government in Bangladesh held extensive negotiations with Burma regarding the refugees. In January an upbeat news commentary on Bangladesh Radio Network reported that the "Myanmar government has agreed to take back all the 26,000 ethnic Rohingyas still living in camps in Bangladesh by the end of March."⁷ This optimism was short-lived, however, and as the deadline was reached over 20,000 remained in the camps, over half of whom had not been cleared to return by Burma. A new agreement was reached to keep the reception centers in Burma open until the end of April, and an additional 2,000 refugees were cleared. Only 246 of these volunteered to return however, and between April and July there were no further repatriations. Instead, the UNHCR formally proposed that the remaining caseload of 21,400 be resettled in Bangladesh. However, with local hostility towards the refugees increasing, and with Islamic fundamentalist elements actively working within the refugee camps the Bangladesh government refused the offer of increased assistance and resettlement packages.⁸ UNHCR threatened to end its operations within the camps by the end of June unless the government started to resettle at least the 5,000 refugees who had been classified through the UNHCR status determination procedure as being in fear of persecution.

Further negotiations took place between Burma and Bangladesh, and on July 14 it was announced that Burma would reopen its border for the repatriation of the 7,535 cleared refugees who would be repatriated in groups of 400 every other day until the deadline of August 15.

III. FORCED REPATRIATION

Five days after this agreement, on the night of Saturday, July 19, armed riot police entered Nayapara refugee camp in Cox's Bazaar district intending to arrest refugees cleared by Burma for repatriation. The refugees resisted, with some throwing stones, and tear gas was used to quell the protests. One hundred eleven refugees, mainly women and children, were held in the camp office overnight. The next morning, these people along with seventy-six other refugees were driven in buses to a repatriation point and forced onto boats to be taken back to Burma. A partly paralyzed man and a heavily pregnant woman were among those taken. The refugees were frightened and women threw themselves on the ground in the hope that they would not be taken. At least one woman was beaten with a cane. Back in the camp, refugees protested the forced repatriation, and there were violent clashes. Some fifteen people, including three Bangladesh policemen, were reported to have been injured, although the true figure may have been higher as it was reported that refugees were too afraid to report to the clinics for medical help.

⁶ Despite this threat, the two NGOs (MSF Holland and Concern) working in the two remaining camps were permitted to continue their work there through July 1997.

⁷ Bangladesh Radio Network, January 6, 1997. The Awami League, headed by Prime Minister Sheikh Hasina, was elected in July 1996.

⁸ The Jamaat Islami Party has actively supported Rohingya insurgent groups and political activists since the first mass exodus from Burma to Bangladesh in 1978. By 1997 the entire refugee population was very politically active, with reports of beatings and abuse within camps of those who did not cooperate with the camp bosses. Violence against refugees who have not followed the militant line has been a problem in some camps since 1992 (see Human Rights Watch/Asia "Ending a Cycle." p.13).

On Tuesday, July 22, a similar event took place in the only other remaining refugee camp, Kutu Palong, with 212 refugees rounded up overnight and deported by boat and overland the next day. A total of sixty-seven children were separated from their mothers in the repatriations. Again there were protests in the camp, though in this case the security forces remained outside the camp, and some 300 demonstrators were allowed to sit in the middle of the road without interference. On Thursday, July 24, following protest letters from the UNHCR assistant high commissioner,⁹ the Bangladesh government denied that there had been any use of force in the repatriations, but also said that there would be no further repatriations without the UNHCR's presence. In the days following, Bangladesh issued several statements reiterating their determination to repatriate all refugees, with Foreign Minister Abdus Samad Azad saying, "It is not possible for us to allow them a permanent settlement on our land. This problem has to be addressed by the international community."¹⁰ Nevertheless, by August 6, the 13,000 refugees in Nayapara camp were on a hunger strike, refusing to collect their daily rations and refusing to access the available services, including medical clinics, in the camps.

A Bangladesh foreign ministry statement released on July 25 denied that any forced repatriations had taken place, saying, "The refugees are predominantly economic migrants and any generous subsidies and campaigns about local settlement will work as a disincentive for the refugees to return."¹¹ UNHCR was blamed for encouraging the refugees to refuse to go back to Burma by promising that they would be resettled.

IV. NEW ARRIVALS

⁹ "UNHCR Protests Expulsions in Bangladesh," UNHCR press release, July 23, 1997. In a letter to the Foreign Minister of Bangladesh, Assistant High Commissioner Sergio Vieira de Mello appealed to the Bangladesh authorities to refrain from further forced repatriations and allow UNHCR to carry out interviews to ensure refugees were returning voluntarily. "In the absence of such arrangements," the letter said, "UNHCR would no longer be in a position to associate itself with the repatriation operation."

¹⁰ "Bangladesh says some Burmese accept food," Reuters, July 31, 1997.

¹¹ Statement by Bangladesh Foreign Ministry, Bangla News Agency (BSS), July 25, 1997.

That the refugees do not wish to return to Burma is without doubt. As noted, their fears about the situation in their country of origin were heightened by the arrival of some 10,000 to 15,000 Rohingyas to Bangladesh in the first six months of 1997 who described increased forced labor, heavy taxation of Muslims and some instances of rape. This influx was almost an exact repeat of the events of the first six months of 1996.¹² The UNHCR and NGOs are not formally permitted to have access to the new refugees, although in 1996 the UNHCR was able to interview some 600 new arrivals. Those who have relatives or close friends in the refugee camps sometimes try and live in the camps, sharing the food rations of their relatives. Médecins Sans Frontières reported in June 1997 that this practice had led to an increase in the numbers of malnourished children coming to their supplementary feeding centers, as it seemed that families were no longer feeding the children from their own rations. However, in many cases in 1996 and 1997, the Bangladesh authorities in the camps rooted out new arrivals from the camps and had them charged with illegal entry. By October 1996 there were an estimated 900 Rohingyas in Cox's Bazaar jail, a facility built to house one hundred, and NGOs reported that overcrowding led to the death of four inmates in September 1996. Neither the UNHCR nor any other international body was permitted access to those detained.¹³ Arrests of new arrivals in the camps continued in 1997, although precise figures were not available. A BBC journalist reported that fourteen people were arrested by the so-called Camp-in-Charge, the camp commander, on June 17.

Those who do not enter the camps have hidden in jungle areas or in the slums around Cox's Bazaar, while some have traveled further afield in Bangladesh or abroad.¹⁴ Most try to eke out a living by sending their children to beg in the streets, working in the rice fields, or taking other jobs. According to those interviewed by Refugees International, Rohingyas generally received 40 *takas* per day, less than US\$1, as opposed to the local rate of 100 to 120 takas. Local hostility towards the newcomers from Bangladesh day laborers, who see their jobs are taken and wages forced down, is high. Four Rohingya women who arrived by boat in June told the BBC that they were robbed and then raped by some local Bangladesh men on arrival near Teknaf.¹⁵ Some reported that the local authorities have sometimes given Rohingyas food in return for their departure from the area, while the unlucky ones have been forcibly pushed back across the land border into Burma. In May the commander of the Bangladesh Rifles (BDR) in southeastern Cox's Bazaar district, Col. Wali Ullah, was quoted in the press as saying that several families who had tried to enter Bangladesh for "economic reasons" were immediately deported. He added that all boats crossing the Naf river, which marks the border with Burma, were also being checked by troops.¹⁶ In mid-June some 200 to 400 refugees were forcibly pushed back by the BDR.

V. CONTINUED ABUSE AND DISCRIMINATION IN BURMA

According to the U.N. Special Rapporteur to Burma:

¹² Some 10,000 refugees also arrived in the first six months of 1996. These figures are estimates based on reports by NGOs and journalists working in the area. The UNHCR gave figures of between 5,000 to 7,000 new arrivals in 1997 (press release, July 18, 1997), and in 1996 said that information had been gathered on "more than 2,000 persons." (Situation Update, September 1996).

¹³ Human Rights Watch/Asia was informed in November 1996 that there had been some discussions between the Bangladesh government and the International Committee of the Red Cross, but these appear to have been fruitless.

¹⁴ When Malaysia conducted a crackdown on illegal workers in March 1997, 8,000 Rohingyas were detained.

¹⁵ Frances Harrison, conversation with Human Rights Watch/Asia, June 23, 1997.

¹⁶ "Rohingya said to be Fleeing Famine," *The Nation* (Bangkok), May 11, 1997; "Bangladesh Tightens Security on Border with Burma," Agence France Press, April 5, 1997.

Lt. Gen. Mya Thinn [the minister for home affairs] recalled that the Muslim population of Rakhine State were not recognized as citizens of Myanmar under the existing naturalization regulations, and they were not even registered as so-called foreign residents. Consequently, the Minister added, their status situation did not permit them to travel in the country...They are also not allowed to serve in the State positions and are barred from attending higher educational institutions.¹⁷

¹⁷ Special Rapporteur to Burma, "Report on the Situation of Human Rights in Myanmar, prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1995/72," U.N. Document No. E/CN.4/1996/65, February 5, 1996.

In mid-July 1997 a researcher from Refugees International visited Cox's Bazaar and interviewed thirteen Rohingyas in slums around the town, all of whom had arrived within two weeks of the interview date. All said they had fled because of starvation, a claim which is supported by evidence of the situation in Arakan.¹⁸ This has led the Bangladesh government to conclude that most or all of the new arrivals are economic migrants, not bona fide refugees. Nonetheless, even if the lack of food and economic opportunity were the most pressing reason for flight, further questioning revealed that in fact they had been subject to abuses such as forced labor, arbitrary taxation, denial of freedom of movement and access to educational institutions in a manner which discriminates against them on the basis of their race and religious beliefs.

Human Rights Watch and Refugees International believe that the discriminatory laws and practices which the majority of Rohingyas in Arakan state are subject to amount to persecution according the criteria established by the UNHCR. That is, the laws and practices "lead to consequences of a prejudicial nature for the person concerned, e.g., serious restrictions on his right to earn his livelihood, his right to practice his religion, or his access to normally available educational facilities" which "produce, in the minds of the person concerned, a feeling of apprehension and insecurity as regards his future existence."¹⁹

This is not to say however, that all Rohingyas should therefore be classified as *prima facie* refugees, since there are circumstances in which some individuals and families may not be subject to abuses of sufficient severity to amount to persecution. Much depends on the attitude of the local military commander or other government officials such as NaSaKa officers and IMPD personnel. Abusive officials, however, are in no danger of being punished by their superiors and their victims have no legal recourse. In some cases, individuals or families may be protected from abuse by their social or financial position, their willingness and ability to cooperate with the authorities, perhaps at the expense of other Rohingyas, or other factors. Thus, there are Rohingyas from Arakan in Bangladesh who do not have a fear of persecution and are living as economic migrants. These include businessmen who travel between the two countries, others who regularly travel to Bangladesh to find work with relatives during the lean months in Burma, or those who live and work in Dhaka and elsewhere. But these are usually not the people who end up in the slums around Cox's Bazaar.

Citizenship Status

Under Burma's 1982 Citizenship Law, which was promulgated shortly after Rohingya refugees returned from the 1978 exodus to Bangladesh and was designed specifically to deny citizenship to the Rohingyas, a person in order to become a full citizen must prove the residency in Burma of all his or her ancestors back to 1823, the year before the British government annexed Arakan.²⁰ This law violates several fundamental principles of customary international law, and in 1993 the U.N. requested that the SLORC repeal or amend it to bring into line with international standards.²¹ In

¹⁸ Extreme poverty among the Muslims in Arakan led the World Food Program to conduct a malnutrition survey in late 1996. The results of this survey were not made public. In addition, in mid-1997 the whole of Burma suffered rampant inflation, with the value of the Kyat falling from \$1 = 120 Kyat in January to \$1 = 380 Kyat in June. In Arakan rice prices increased to 60 Kyat per kilo in June 1997 (compared to 20 Kyats in June 1996), when an average wage for a day laborer was only 50 Kyat. While rice prices increased, the SLORC refused to allow local traders to import rice from Bangladesh. The UNHCR and WFP negotiated with the local military commander to overturn this decision in June, but there were no reports of a change in this policy.

¹⁹ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees" (Geneva: UNHCR) January 1988

²⁰ For a full discussion of citizenship in Burma, see Human Rights Watch/Asia, "Ending the Cycle..." pp. 24 - 29.

²¹ The former U.N. Special Rapporteur to Burma, Prof. Yozo Yokota, first made this recommendation in his "Report on the Situation of Human Rights in Myanmar." U.N. Doc. No.E/CN.4/1993/37, February 17, 1993. It was then incorporated into the U.N. Commission on Human Rights resolution on Burma in April 1993.

particular, the law violates the 1961 Convention on the Reduction of Statelessness, the International Covenant of Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child.²²

Given the over-burdensome requirements for citizens in the 1982 law, few Rohingyas qualify as either full, associate or naturalized citizens (the three categories created by the law), and even those who do would find proof almost impossible. Citizenship is essential in Burma to gain access to basic social, educational and health services. To add to the difficulties faced by Rohingyas, in 1989 the Burmese government began to issue new identity cards to all citizens, which include not only a photograph of the bearer, his or her father's name, place of residence and so on, but also ethnicity and religion. The identity card must be carried at all times, and the card number has to be given when buying tickets to travel; registering children in school; staying overnight with friends outside one's own council area; applying for any professional post, including all civil service posts; buying or exchanging land and other acts of everyday life. All residents in Burma had to apply for these new cards, and even for those with old cards (which included many Rohingyas who had been able to get some form of citizenship under pre-1982 laws), proof of citizenship had to be reestablished. Across Burma the process of issuing the new cards is not yet over—in ethnic minority areas in particular, the process has been very slow—but for Rohingyas it never really began.

²² Burma's practice is contrary to prevailing international norms enjoining states to reduce statelessness as well as the Universal Declaration of Human Rights Article 15 stipulation that "no one shall arbitrarily be deprived of his nationality." The Convention on the Rights of the Child, to which Burma acceded in 1992, obliges states to provide children who would otherwise remain stateless with the right to acquire a nationality.

Because citizenship is so vitally important, the registration process continues to be a major concern for the refugees and all Rohingyas, and has also been taken up by the UNHCR in their negotiations with the Burmese authorities. At the time of the forced repatriations in July, the UNHCR representative in Cox's Bazaar was quoted as saying, "The Rohingyas are not citizens of Myanmar. The question of formal Myanmar nationality for the Rohingyas is a crucial issue."²³ The UNHCR endeavored to ensure that the returnees—and to prevent non-discrimination between returnees and Rohingyas who did not leave, all Muslims in northern Arakan State—were given some form of identity cards and in July 1995 the government, through the Immigration and Manpower Department (IMPD), moved to regularize the population of northern Arakan by issuing new identity cards to all resident Rohingyas.

The new cards were issued under the 1949 Residents of Burma Registration Act and the 1951 Residents of Burma Registration Rules, both of which were superseded by the 1982 Citizenship Law but were reintroduced in order to be used solely for the registration of Rohingyas. These laws allow for the issuing of Temporary Registration Certificates to foreign residents or stateless persons and for citizenship applications to be made by the holder at some point, although it is not known if there is a time limit within which the application has to be made. Some returnees interviewed by a Refugees International representative in January 1997 were able to produce these temporary cards. The cards carry a number, as well as the bearer's photograph, name, year of birth, ethnicity, and religion, color of hair and eyes, father's name and father's ethnicity and religion. The card obtained by Refugees International stated "Muslim, Islam" in the space marked "race/religion," and there was nothing on the card to show place of birth or residence. While the UNHCR and others may hope that these cards will offer a permanent future for the Rohingyas in Burma, by June 1997 there was no sign that the cards would be the first step towards Burmese citizenship. Unless the 1982 Citizenship Law is repealed or amended, there seems to be little point in Rohingyas applying.

In short, Rohingyas in Burma continue to be non-citizens under the prevailing law, which was designed to exclude them as an ethnic group and make naturalization virtually impossible. Deprivation of citizenship has resulted in deprivation of fundamental rights, to which all persons, citizens and non-citizens alike, are due. The withholding of citizenship has become a mechanism for discrimination and persecution on the basis of ethnicity. Thus, Rohingyas are doubly at risk in a country where citizens face abuse such as forced labor, forced relocation, and denial of freedom of speech, association and assembly on a daily basis.

Forced Labor

²³ Van To Nguyen, quoted in "Burmese Refugees Set Preconditions for Going Home", *Reuters*, July 26, 1997.

All the interviewees reported an increase in forced labor, to around two weeks per month in the three months prior to their departure. Two of those interviewed had worked clearing land at a place called Angooma by the coast in Maungdaw township. One man, a forty-five-year-old father of three, described how the NaSaKa (Border Administration Force)²⁴ came to his village near Maungdaw town to decide how long each person would have to work on this project. Those with enough rice or funds to buy rice for three days were taken, with their rice, to work for three days. Those who could afford more were taken for longer. However, since it was a two-day journey, on foot, to reach the work site, the rice would not last. He was told he would be taken for twenty days but escaped before he had to go. Another man from south Maungdaw reported that he had had to work for two weeks every month since the Burmese new year (April) building houses for Burmese Buddhist families whom the government had relocated to the area.

Since most of the Rohingyas are unskilled day laborers, one day of work without pay can mean one day without food for the whole family. The availability of work depends very much on the agricultural cycle, and during the dry season (December - July), there tends to be very little work. In the past, Rohingyas would have traveled to find work in towns or in areas where work was available, but since 1991 their freedom of movement has been severely restricted by the NaSaKa (see below). They thus have very few sources of income to begin with, and since the dry season also happens to be the best time for construction work when forced labor demands are most intense, the burden on the Rohingyas is particularly acute.

Forced labor occurs throughout Burma. Because it is not targeted specifically at Rohingyas UNHCR has said that while the practice is abusive, it cannot be considered grounds for refugee status. Rather, UNHCR has taken a pragmatic approach and attempted to negotiate a reduction in the burden of forced labor on the returnees.²⁵ The agency has maintained since 1994 that returnees are only required to work four days of every month (one day per week) and that monitoring by UNHCR representatives in Arakan has not revealed any increase. Returnees and visitors to the region, however, consistently report that the burden of forced labor remains much higher than the figure cited by UNHCR, and there is concern that UNHCR's sixteen international staff in Arakan cannot effectively monitor the situation for the 200,000 returnees in an area where transportation is extremely difficult.²⁶

Confiscation of Land and Property

In addition to having to work for the government for no pay, those among the new arrivals who had been landowners told Refugees International that their land had been confiscated by the military, leaving them with no means of livelihood.

²⁴ NaSaKa was created in 1992, after the Rohingya exodus, and comprises five different government agencies: the police, military intelligence (MI), Lone Htein (riot police, notorious for their involvement in the killings in Rangoon in March and April 1988), customs, and the Immigration and Manpower Department (IMPD). The NaSaKa is under the direct command of the SLORC and the army's Western Commander based in Sittwe and is thus a quasi-military body.

²⁵ UNHCR has concluded, "Extensive recruitment for compulsory labor was believed to be one of the main reasons for the mass-exodus in 1991/92 and continues to be an issue of concern. UNHCR has [...] focused on this issue and has repeatedly intervened with regard to returnees being called for compulsory labor. Whilst the aim of this intervention is the eventual elimination of this practice, UNHCR has to be pragmatic in its approach and therefore sought to minimize the burden placed on the population of northern Rakhine [Arakan] State." See "Voluntary Repatriation and Reintegration: Bangladesh/Myanmar. Situation Update," (Geneva: UNHCR), September 1996.

²⁶ See "Situation Update...", and also Human Rights Watch/Asia "Ending the Cycle..." ; U.S. Committee on Refugees, "The Return of the Rohingya Refugees to Burma: Voluntary Repatriation or Refoulement?" (Washington, D.C: March 1995).
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In Burma all land is owned by the government. Tenants may have land use rights, which can be inherited by children, but on land designated for rice cultivation (paddy land), which constitutes over half the agricultural land in Burma, use rights cannot be rented or sold.²⁷ As associate or naturalized citizens or as foreign residents (see below), Rohingyas are not permitted land use rights. Nevertheless, customary law applies in most villages, and Rohingyas have been able to acquire tenancy of land over the years. In many parts of Maungdaw, Buthidaung and Kyauktaw townships, however, the military has confiscated land to build roads, "model villages" (see below), military barracks, hydroelectric stations, prawn farms and other commercial activities. In cases where land is taken in this way, there is no compensation for the owner and no recourse to law. The confiscation of land for development occurs throughout ethnic minority areas of Burma. While ethnic Burmans can also be relocated for urban or rural development projects they are given, or have the possibility of buying at discounted rates, new land or housing, which ethnic minorities including the Rohingya, do not.

A sixty-year-old man from Maungdaw township had arrived in Cox's Bazaar with his three wives and sixteen children. He had owned a fairly large farm, but in June 1997 military intelligence officers came to his house and ordered him to give up his land. He refused and the next day they came back and raped one of his daughters and took a second daughter to jail. Eleven days later, after much begging, he was swapped for his daughter and spent twenty days in jail. During that time he was beaten. He and the rest of the family fled after he was released; he later learned that the daughter who was raped had died. When they reached the border his family were pushed back by Bangladesh guards. Burmese NaSaKa troops then took all the money they had before letting them go. After a five-day walk, they crossed into Bangladesh at another crossing.

A fifty-year-old man from a village twenty-five miles south of Maungdaw told Refugees International that his land was confiscated by the government in September 1996. Later a family of Burmese Buddhists were given this land. As his savings decreased, he sold his cattle to survive. His son left to escape the demands of forced labor, and when he had nothing left, he finally took the rest of his family to Bangladesh. This man had not been a refugee in the past.

A woman, a widow with three children, from south Maungdaw said she left after the military confiscated her small plot of land on which she grew beetles. Having no other means of support, and being afraid of abuse by the NaSaKa, she left for Bangladesh.

Arbitrary Taxation

Taxation in Burma is notoriously arbitrary.²⁸ As a condition of exercising land use rights, tenants must pay taxation in kind to the government: usually, a percentage or quota of the harvest that the farmers must sell to the government at a price fixed by the government. In Arakan state the rice tax is calculated as a percentage of the land acreage available to the farmers, rather than on the basis of the yield of the land. The calculation has a discriminatory impact on Rohingyas, who for the most part have access to only the poorest quality land where yields are much less than for good land.

In addition to the land tax, Rohingyas have also been subject to increasing new forms of taxation since 1992. It seems that all forms of business are now taxed. Every family in northern Arakan has to pay a chili tax, regardless of whether they actually grow chilies. As a result, many Rohingyas are forced to buy chilies at the market rate of 500 kyats, and "sell" them to the NaSaKa at the government rate of 100 kyats. Refugees who had arrived in Bangladesh in February 1996 told Human Rights Watch that they had had to pay a fee when going on to the river to fish and when going the forest to cut bamboo. The fishing fee only applies to the Rohingyas, as Buddhist Rakhines do not fish. New arrivals in 1997 said that the taxes had been extended to farm animals; the owners of a cow must pay 80 Kyats a year, while a goat is assessed at 30 Kyats a year. Finally, Rohingyas have to pay for permits to travel from their village to the next, or to the market village to sell whatever produce they may have. A thirty-five-year-old man from Maungdaw township interviewed by Refugees International in July said he had to pay 20 Kyats every time he wanted to travel to

²⁷ See World Bank, "Myanmar: Policies for Sustaining Economic Reform," Country Report, 1995.

²⁸ For a discussion of taxation in Burma, see "Burma: A Country Study," U.S. Embassy, Rangoon, July 1996.

the market to sell his eggs or chicken meat. In the end it was not worth his while, because once at the market the military would come to his stall and take whatever they wanted without paying for it.

Forced Relocations

The SLORC appears to be working on a program of population engineering, moving all Muslims in Arakan from areas outside Maungdaw and Buthidaung into those townships, and moving Burmese or Arakenese families into "model villages" in the wealthiest parts of Maungdaw and Buthidaung. In most cases the Burmese families are the relatives of soldiers based in the area, and as the military has continued to expand nationally (from 280,000 men under arms in 1988 to around 400,000 in 1996), so military barracks have become an ubiquitous presence in every village. Reports from visitors to Arakan and from the BBC correspondent in Dhaka suggest that many of the new arrivals in 1997 were from Kyauktaw township, an area of mixed Rohingya and Rakhine villages which previously had seen no exodus of refugees. The UNHCR has confirmed this impression, though as they do not operate in Kyauktaw they could give no reasons for the outflow.²⁹ However, Human Rights Watch/Asia and Refugees International believe that it is forced relocations from Kyauktaw to Buthidaung and Maungdaw, or simply the confiscation of Muslim-owned land in Kyauktaw, which has caused people to flee.

Freedom of Movement

There is no freedom of movement for Rohingyas, as Lt. Gen. Maung Thinn made clear in the statement quoted by the U.N. Special Rapporteur in his 1996 report. All of the new arrivals mentioned the lack of freedom of movement as a major factor in forcing them to leave Burma. Indeed, some noted that it was considerably easier to travel from their villages to Bangladesh than it was to travel within Arakan State. Rohingyas are not allowed to travel anywhere beyond their village boundaries without getting prior permission. Request to travel must be made to the village council, which then passes on the request to the nearest NaSaKa base. Here, the IMPD, police, riot police, military intelligence, and customs all have to agree to the request. Once that happens, a permit must be purchased. In most cases passes are only given for a twelve-hour round trip to nearby villages: only in exceptional cases are Muslims permitted to stay overnight. To travel further, for instance to the township capitals at Maungdaw or Buthidaung, or the state capital at Sittwe, is virtually impossible. The sheer complexity and cost of this arrangement was said by some Muslims to dissuade them even for applying to leave their village. While everyone in Burma has to register and pay a small fee at the local SLORC office when staying overnight in a town or village other than their own, only non-citizens, such as the Rohingya, have to apply for permission prior to leaving their home. Being unable to travel, even within Arakan state, makes it extremely difficult for landless Rohingyas to find work during the dry season, when there is very little agricultural work available.

VI. CONCLUSION

²⁹ UNHCR representatives in Cox's Bazaar speaking to Human Rights Watch on June 31, 1997. Also confirmed in a telephone conversation with the UNHCR Head of Asia Division, Francois Fouinat, on July 29, 1997.

It has been a year since Human Rights Watch/Asia published its report on the repatriation of the Rohingyas. Although the UNHCR has implemented some of the recommendations of the report, including increasing its international staff in Arakan and ensuring regular exchange of staff between Burma and Bangladesh, the SLORC has changed little in its attitude towards the Rohingyas. They are still considered non-citizens and are unwelcome except for the free labor they provide. Indeed, the continued antagonism and racism of many Buddhist Burmese towards members of the Muslim minority in Burma was revealed in violence that broke out in March 1997 when Muslim communities in Burmese cities were attacked by groups of Burmese. Many reports indicated that the violence may have been encouraged by the government to deflect criticism of its treatment of Buddhist monks incarcerated since 1988. In Rangoon, Mandalay, Prome, Pegu and Toungoo, mosques were ransacked, Muslim shops looted, and Muslims physically assaulted.³⁰

But the Rohingya Muslims are not the only ethnic minority to suffer abuse at the hands of the Burmese military, nor are they the only refugees to flee Burma. During 1997 the number of refugees in camps in Thailand rose to over 100,000, and there are at least another one million Burmese eking out a precarious existence as illegal migrant workers in Thailand. The refugees in Thailand fare no better than the Rohingyas; indeed, since there is no UNHCR presence in their camps to provide protection from involuntary repatriations, their position may be even worse.³¹ In the final analysis, while protection must be provided to those fleeing persecution in Burma to neighboring countries, only improvements in the human rights situation in Burma will bring about a lasting solution for the Rohingyas and all of Burma's ethnic minority groups.

³⁰ "Burma puts five cities on security alert after religious unrest", AFP March 19, 1997; "Burmese government says religious unrest 'under control'", Associated Press, March 25, 1997. See also Images Asia, *Report on the Situation for Muslims in Burma* (Bangkok: Images Asia) May 1997. To prevent the spread of violence, curfews were implemented in these towns for periods of up to ten days, but it is not known if any of the perpetrators of the violence were prosecuted.

³¹ See Human Rights Watch/Asia, "Burma/Thailand: No Safety in Burma, No Sanctuary in Thailand," *A Human Rights Watch Short Report*, vol. 9, no. 6 (c), July 1997.

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