

# BURMA

## THE ROHINGYA MUSLIMS Ending a Cycle of Exodus?

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## I. SUMMARY AND RECOMMENDATIONS

The title of this report is taken from a United Nations High Commissioner for Refugees (UNHCR) report of June 1995 on the repatriation of over 200,000 Burmese refugees, most of them members of the Rohingya Muslim minority, from Bangladesh to their home state of Arakan in northern Burma. The repatriation is being held up as a success story by the UNHCR in speeches of senior officials as well as in publications, including its annual report, *State of the World's Refugees 1995*. For the UNHCR, the return of so many refugees by early 1996, most of whom had left Burma in 1991 and 1992, was a vindication of its shift from providing refugee relief to promoting voluntary repatriation as the most durable solution to refugee problems.

But the story of the Rohingyas was not over: the cycle of exodus has not ended. On April 20, 1996, fifteen Burmese Muslims, part of a group of 150 who were seeking asylum in Bangladesh, drowned in the Naf river as they were being towed back to Burma by the Bangladesh Border Rifles, a branch of the Bangladesh army. All fifteen were women and young children. This incident brought much-needed attention to the plight of some 5,000 new asylum seekers who had entered Bangladesh since the end of February 1996. By the end of May their number had risen to an estimated 10,000. The Bangladesh government had refused UNHCR access to the new arrivals and was intent on sending them all back. Its security forces arrested 254 refugees without permitting them to apply for asylum and forcibly returned an estimated 200 others in violation of international standards.<sup>1</sup>

These new arrivals came to Bangladesh at a time when the UNHCR was attempting to wind up the repatriation of the Rohingya who had fled violent abuse by the Burmese military in 1991 and 1992. As one journalist put it, "The influx is something of an embarrassment for the UNHCR...[who] fear that any move to help the newcomers would spur others to follow."<sup>2</sup> Having conducted only a handful of individual interviews, the UNHCR in Dhaka publicly stated that all the new arrivals were "economic migrants" who were escaping poverty not persecution, and stepped up efforts inside Arakan State to ensure that those planning to leave would not do so.

The 1996 exodus from Burma raises several important questions about the UNHCR's repatriation operation from Bangladesh and about the promotion of "voluntary" return to countries with particularly abusive governments. Rohingyas are not the only refugees to have left Burma since its military government, the State Law and Order Restoration Council (SLORC), came to power after a series of popular uprisings in 1988. In June 1996 the 95,000 Burmese refugees in Thailand were joined by 2,300 new arrivals from Karenni state and at least 8,000 people from Shan state, all of whom came from areas where SLORC was forcibly relocating villages to bring them more directly under government control. The Shan, unlike other Burmese minorities, have been prevented from entering Thailand and seeking asylum, as is their right under international law. In the absence of refugee determination procedures and camps for new arrivals, those forced to flee who have managed to evade border patrols have sought low-paid jobs in the construction industry and agriculture, swelling the ranks of the estimated 600,000 Burmese illegal migrants in Thailand.

At the same time, inside Burma, the government's attitude towards political dissent was hardening, as revealed by the arrest at the end of May 1996 of 262 members of the political opposition, most of whom were elected members of parliament. While most have since been released, many of them have been harassed and threatened with the loss of their jobs or worse if they did not resign their seats and leave the National League for Democracy (NLD). By July 1, seventeen had resigned. Human rights abuses, in the form of summary executions of suspected rebels, forced labor, arbitrary arrest, cruel and inhumane treatment, violations of the laws of war, and a total denial of freedom of speech and association continue, despite Burma's obligations under international law. In 1955 Burma signed the 1930 International Labor Organization (ILO) Convention on Forced Labor; in 1991, it ratified the Convention on the Rights of the Child

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<sup>1</sup> These actions violate the right not to be *refouled* as defined in Article 33 of the 1951 Convention Relating to the Status of Refugees right to seek asylum, which has passed into customary international law, as well as Article 14 of the Universal Declaration of Human Rights.

<sup>2</sup> Alistair Lyon, "New Rohingya Influx and UNHCR Dilemma," Reuters, June 2, 1996.

and in 1992 the Geneva Conventions, yet it continues to flout their provisions. The SLORC has given limited cooperation to the United Nations Special Rapporteur on Myanmar, appointed by the U.N. Commission on Human Rights, who has visited the country every year since 1992, but it has failed to implement any of the rapporteur's recommendations or any of the successive resolutions of either the commission or the U.N. General Assembly.

Given such an abusive and intransigent government, what guarantees can be put in place to ensure the long-term safety of returning refugees? What more can the international community do to see that the government accepts its responsibility for the protection of human rights, especially the rights of ethnic and religious minorities who make up 40 percent of the population and 99 percent of refugees? In this context, is UNHCR's promotion of voluntary repatriation and its shift of emphasis away from the "right to seek asylum" towards the "right to remain" in the country of residence either appropriate or sustainable? In its 1994 Oslo Declaration, UNHCR itself acknowledged concerns:

There was a general agreement that voluntary repatriation is the preferred and best solution to the refugee problem. However, it was noted that in some instances UNHCR has placed too much emphasis on early return to countries of origin which has resulted in return movements to less than favourable conditions.<sup>3</sup>

The situation in Arakan was certainly less than favorable, despite the presence since January 1994 of a UNHCR office there to monitor the situation of returnees.

This report, based on four visits to the region and extensive interviews over the past four years with individuals involved in the repatriation and reintegration program, examines the issue of protecting refugees who return to an abusive environment, using the Muslims from Arakan state as an example. In setting the context for their flight and return, the report examines the claims of the Rohingyas to be a distinct ethnic minority within Burma and the efforts of the government since 1962 to deny them citizenship and all accompanying rights and to occasionally force them out as illegal immigrants.

The report then analyzes the attempts at repatriating Rohingya Muslim refugees in Bangladesh who fled in 1991. In the first forced repatriation, between September 1992 and the end of 1993, UNHCR was not present in Burma and had no agreement with the Burmese government to provide assistance to returnees. Even more seriously, while the agency was present in the camps in Bangladesh, it could not prevent serious abuses, including beatings and the denial of food rations by camp authorities directed at forcing the refugees back to Burma. The vast majority of the 50,000 refugees who returned to Burma did so involuntarily, and three years later the UNHCR has not been able to trace them. There undoubtedly was concern that without full UNHCR participation, the repatriation could have turned into a replay of the 1978 repatriation of Burmese Muslims from Bangladesh, worked out bilaterally between the two countries concerned, in which over 12,000 refugees starved to death as the Bangladesh government reduced food rations in the camps in order to force them back.<sup>4</sup> Given that worst case scenario, at least one journalist suggested that the principle of voluntary return became "a euphemism for 'no real alternative.'"<sup>5</sup>

The second repatriation effort took place after the UNHCR had established a limited field presence in Arakan state in 1994. It began promoting mass repatriation on the grounds that the situation in Arakan was now conducive to return, and it gave up the hard-won right to interview each refugee individually to ensure that she or he was returning voluntarily. The report examines the extent to which the refugees have been able to make fully informed decisions about their return, based on knowledge of their right to request continued asylum and objective information about conditions in Arakan. It also looks at various elements of the reintegration program and the consequences of the

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<sup>3</sup> UNHCR, "Oslo Declaration and Plan of Action," June 1994.

<sup>4</sup> Alan Lindquist (head of UNHCR suboffice in Cox's Bazaar in 1978), "Report on the 1978-1979 Bangladesh Refugee Relief Operation," June 1979. Lindquist states on pg. 9: "None of the U.N. agency heads raised any objection to using food as a political weapon."

<sup>5</sup> Robin Davies, "UNHCR at the Crossroads: Who's in the Driving Seat?" *The Daily Star* (Dhaka), January 13, 1996.

UNHCR having as its implementing agency or government partner an ostensibly civilian agency that in some parts of Arakan is under the direct command of the military.

Finally, the report documents a pattern of continuing discrimination and other abuses against the Muslims in Arakan state, from denial of citizenship to forced relocations and forced labor, leading to a new influx of refugees as described above.

Human Rights Watch/Asia concludes that while it applauds UNHCR's efforts at an international level to work toward preventing refugee outflows by promoting human rights, UNHCR has in many cases avoided addressing human rights concerns in Arakan, and its policy of promoting mass repatriation there must be thoroughly evaluated. In particular, the UNHCR must ensure that it does not neglect its responsibilities to the refugees in a situation where there is a conflict of interest: where the need to publicize and advocate against continued abuses takes second place to the need to maintain good relations with both the country of origin and the host country. In the case of the Rohingyas, the UNHCR policy since June 1996 of discouraging and sometimes assisting the government to prevent possible asylum seekers from leaving Burma is a cause for great concern. In the final analysis, the refugee problem will not be solved until and unless the Rohingyas are recognized as citizens by the Burmese government and granted the rights they are currently denied. They will remain a vulnerable group, always ready to flee if the alternative is to suffer further abuse.

## **Recommendations**

### **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 in a manner which has discriminatory effects on racial or ethnic minorities" as described by the U.N. Special Rapporteur to Burma, and grant the Muslims of Arakan State 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 State and across Burma in compliance with the 1930 ILO Convention on Forced Labor which the government signed in 1955.
- The rights of children should be especially protected, in accordance with the government's commitment to children's rights as indicated by its ratification of the Convention on the Rights of the Child in 1992. In particular, all children should be granted their right to nationality, including the 20,000 children born in refugee camps in Bangladesh. Children must not be forced to work, under any circumstances, and the government should not discriminate against Muslim children in its provision of health and education benefits.
- The government should permit the new Special Rapporteur to Burma to visit the area on his mission later this year, and he should be guaranteed free and confidential access to residents.
- Human rights abuses in Arakan State are a reflection of the situation all over the country, and the government of Burma should implement the main human rights components of 1995 U.N. General Assembly Resolution and the 1996 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 Government of Bangladesh**

- The newly-elected government of Sheikh Hassina should state unequivocally that it will permit individuals to seek asylum. In doing so, it should provide objective information to refugees on which they can make an informed decision to return and should ensure that refugees are fully aware of their right to protection from refoulement if they can establish a well-founded fear of persecution if they are returned. Bangladesh is obliged to give all asylum seekers, including all new arrivals, the opportunity to claim refugee status.

- The Bangladesh government should also 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. However, even without having become a party to the Convention, Bangladesh should fulfill its obligations with regard to the principle of non-refoulement which is customary international law.

**To the United Nations High Commissioner for Refugees**

- The UNHCR should conduct a thorough evaluation of its policy of promoting mass repatriation to Arakan State at a time when the situation there has not substantially improved. Under current circumstances, if the conditions in Arakan State deteriorate, UNHCR should not tolerate violations by the Bangladesh government of the right to seek asylum or the principle of non-refoulement. In addition, if or when the UNHCR finds that it cannot effectively protect the rights of returnees in northern Arakan State, the office should not assist in preventing potential authentic refugees from seeking asylum in Bangladesh. In doing so, the UNHCR would become complicit in the human rights violations and in addition would fail to protect authentic refugees by denying them refugee status and encouraging their refoulement.
- The UNHCR should reassess its classification of Burmese Muslims newly arrived in Bangladesh from Burma as “economic migrants” and seek assurances from Bangladesh that they will not be returned against their will without having had the opportunity to apply for refugee status.
- The UNHCR should put into practice the recommendations from the 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 1995 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.
- The UNHCR should be more open with information to nongovernmental partners to ensure that mutual trust is maintained. There should be a regular exchange of staff between offices in Cox’s Bazaar and Arakan, so that all staff are fully aware of conditions on both sides.

**To the Association of South East Asian Nations (ASEAN)**

- ASEAN should make Burma’s full membership in ASEAN conditional on the above steps being taken by the SLORC and the implementation of other key human rights provisions in the U.N. General Assembly resolution of December 1995.
- ASEAN governments should conduct a fact-finding mission to both Arakan and the refugee camps in Bangladesh to assess the condition of Rohingya refugees and make recommendations to the Burmese government to ensure that the rights of the Muslim minority are respected.

**II. THE 1996 INFLUX**

In February and March 1996, Human Rights Watch/Asia interviewed twenty Rohingyas who had just arrived in Bangladesh, at the beginning of the new influx. We found that forced labor, lack of freedom of movement, and the “forcible disappearance” of family members were the main reasons for leaving Burma. In most cases, the perpetrators were said to be members of a military unit, the Border Administration Force, known by its Burmese acronym, NaSaKa (Nay-Sat Kut-kwey Ye or Nay-sat Lu-win-mu Sit-say-ye hnin Kut-kwey-hmu Hta-na-gyoke).

There was also one account of rape. One twenty-four-year-old woman from Rathedaung told us that she had been taken from her home by five drunken soldiers to the nearby NaSaKa camp (which was built in 1992 and had about fifty soldiers) where she was gang raped all night, before being returned to her house at dawn. She said that this

happened for five nights in a row before she and her husband fled, leaving their five-year-old son behind. Another woman from Maungdaw township, who had come with her six children, told Human Rights Watch that her husband had been taken away to work as a porter over a year ago, but had not returned:

I was then seven months pregnant, with this child, and some villagers who had been taken as porters in the same group as my husband came and told me that he was killed. I waited for a long time, because I didn't believe that he could be dead, but now I have sold everything I had left, and must accept that he is dead. We had three acres of land before, but it was confiscated to build a Rakhine [Buddhist ethnic minority] village. We had to build the village and also build the new NaSaKa camp just one month ago. Since my husband was gone my eldest son, who is twelve years old, had to do the work. He also had to guard the NaSaKa camp at night, while the soldiers slept inside.

Many of the new arrivals complained of excessive forced labor. A man from northern Rathedaung who had arrived just the day before the interview took place told Human Rights Watch that he had been repatriated to Burma after severe beatings by the Bangladeshi officer in charge of the Dum Dumia refugee camp in December 1993. He had got back the four acres of land he "owned" (see below for discussion of land issues), but found it increasingly difficult to survive, due to forced labor and excessive taxation. His village is predominantly Rakhine, with a small Muslim quarter, which meant that the Muslims had to perform forced labor in the Rakhine area, as well as for the military farther away. Two weeks before he left he had been taken along with about sixty other men in a boat to Ponnagyun where he had to work for ten days building a prawn pond for the army. He said, "It is much more difficult now, even than in 1992, because now we cannot travel even from one village to another." A forty-one-year-old man from Buthidaung said that he had been taken with about forty other men after evening prayers at the village mosque in January 1995. They were taken by boat and forced to work on the Kyauktaw - Mrauk-Oo (also known as Myauk-Oo or Myo-Haung) road for fifteen days, then were immediately sent to an army camp in Buthidaung township where he had to work on a road which is being built to service a new hydroelectric plant at Sayde-taung (close to a large military camp). He was taken back home after ten days there, but was allowed only ten days rest before being taken for two days to work as a porter carrying cans of gasoline for the army. He left for Bangladesh as soon as he got back home.

A fifteen-year-old boy said he had left on his own because he could not bear to do forced labor any more. His parents were separated, and as the only boy in the family, he had to fulfill the family's quota of work, cutting bamboo, cleaning the latrines and cooking in the NaSaKa camp, as well as working as a porter carrying the army's supplies when it went on patrol. He had been to Bangladesh before, in 1992, and returned, only to find that the forced labor requirements were harsher than before.

Two other men left after being arrested and accused of working for the guerrilla group, the Rohingya Solidarity Organization (RSO). Both of them were subjected to cruel and inhuman treatment while in detention. One of them, a twenty-one-year-old man from Buthidaung, who had never been in Bangladesh before, gave the following account:

We were fishing in the river when two drunken soldiers called out to us to take them across the river. They were swearing and shouting, so we went over and picked them up. Our boat is very small and narrow, and when the soldiers got in they were so drunk they were singing and swaying around. I tried to ask them to keep still, but they didn't understand what I was saying and just got angry. Finally, the boat capsized, and despite our efforts to find them, the two soldiers had their bog boots on and guns and things, and they drowned. A local villager raised the alarm, and my friend and I were arrested. The soldiers accused us of being RSO and said we had deliberately killed the soldiers to get their guns. They made us dive continuously for nine days looking for the weapons. After nine days I realized that we would be killed, as we couldn't find anything, as so we both slipped away with some villagers when the soldiers were resting.

The other man, also twenty-one years old, from Maungdaw, had come back to Bangladesh after being in hiding for two months in Arakan state. He told Human Rights Watch that he voluntarily returned in 1995, but three months later the local NaSaKa officers accused him of being in contact with the RSO. He was briefly arrested, but after an interrogation

during which he claimed to have been badly beaten, he was released when his family gave the NaSaKa most of his repatriation grant (2,000 kyats or US\$20). “Even though I had paid, a month later I heard that they were looking for me again, as they still had my name down as a terrorist. I went into hiding for two months, before finally leaving for good. I will never go back.”

Despite these accounts and others like them, the UNHCR has insisted that the new arrivals are economic migrants. The UNHCR's position was based on interviews in Bangladesh with some 200 individuals who arrived by May 1996, and on cross-checking of their stories by the UNHCR team in Maungdaw, Arakan. In March, UNHCR staff in Maungdaw had checked the stories of seven new arrivals, including the woman we quoted above who claimed to have been raped. The team spoke to people and relatives from the village the new arrivals claimed to have come from and could not confirm any of the seven cases, including the rape case. They said that in some cases the refugees had given false names or the wrong village name, and in others, relatives had contradicted the stories that the UNHCR staff in Cox's Bazaar had been told. A UNHCR senior legal advisor for Asia, Hiromitsu Mori, visited Burma for a month in February and Bangladesh for two weeks in May-June and told Human Rights Watch that he found categorically that forced labor does not take more than four days a month for each family. He also looked into the cases of twelve new arrivals in Bangladesh in detail and found that the refugees stories “were not credible,” citing inconsistencies in their stories and saying that they did not correspond with the current situation in Maungdaw.<sup>6</sup> Without access to the Arakan state themselves, NGOs including Human Rights Watch, found themselves having to decide whom they should believe: the UNHCR or the refugees?

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<sup>6</sup> Discussion with Human Rights Watch, Geneva, June 13, 1996.

The UNHCR position was expected: having secured, after long and hard negotiations, a presence in Arakan state that became operational in March 1994 and after saying continually that conditions there had greatly improved, the organization did not readily acknowledge the difficulties in reintegration. At the same time, Bangladesh was not willing to accept any of the new arrivals as refugees. Those who attempted to stay in the refugee camps were liable to arrest and deportation as the Bangladesh Border Rifles conducted daily searches and head counts. In at least three cases in mid-March, individuals found to be harboring new arrivals were reportedly beaten in front of other refugees by camp officials. They therefore were forced to hide in the jungle area to the west of the main Teknaf - Cox's Bazaar road, or in villages. UNHCR did call on the Bangladesh government to grant them access to new arrivals, especially to those held in detention, though this was not granted. Indeed, access to the new arrivals by both the UNHCR and NGOs was severely restricted, and despite the fact that many of them were reported to have been in poor physical condition, food and medical aid could only be given in secret, without the knowledge of Bangladesh authorities. Moreover, UNHCR was concerned that food given to the new arrivals would create a "pull factor" and the UNHCR resident representative in Dhaka was reported as saying, "If we give food to this group, we'll attract 50,000 more the next day."<sup>7</sup> He has reason to worry, as the patterns of arrivals in 1976 and 1991 were that around 10,000 people arrived in Bangladesh before the rainy season in June and were followed by over 200,000 when the rain stopped in November.

Since late May there have been no new arrivals reported in Bangladesh. This can be explained in part by the rainy season, but mostly it is due to new measures taken by the NaSaKa to prevent people from leaving. Around 2,000 people, who were reported to have moved towards the Naf river where they could get a boat across to Bangladesh, were rounded up in army trucks and taken back to their villages. Mr. Mori confirmed the report and said that the NaSaKa had treated the people well, giving them food on the journey. In addition, UNHCR's team in Arakan state had identified thousands of villagers, mainly from Maungdaw south, who were planning to leave. Visitors to the area claim that the NaSaKa used the UNHCR's information to target these villages and sent teams there to distribute information and threats warning them not to leave. It is unclear whether this action to dissuade potential asylum seekers from leaving Burma involved force.<sup>8</sup> However, reports in late June suggested that the UNHCR was assisting the government by providing trucks to transport people waiting to leave Burma back to their villages, and that in at least one case fleeing villagers were beaten to force them onto the truck.<sup>9</sup> The UNHCR was also distributing its own information, telling people that if they left they would face arrest in Bangladesh. It was after this that Lt. Gen. Khin Nyunt told UNHCR that he would stop all forced labor, an indication that he accepted that forced labor was a main cause of the outflow. Throughout this period the repatriations continued, and in May, 2,300 people were returned.

By immediately classifying the new arrivals as economic migrants, the UNHCR gave carte blanche to Bangladesh to push them back, in clear violation of Article 33 of the 1951 Convention Relating to the Status of Refugees. NGOs working in the area told Human Rights Watch of severe physical abuse of new arrivals, including the alleged rape of a twelve-year-old girl by two soldiers of the Bangladesh Border Rifles. In other instances, two women were among a group arrested by the Bangladesh Border Rifles on March 17. They were held for two days near Teknaf before being put on a boat to return to Burma. The two women persuaded the boatmen to take them back to Bangladesh, and when they reached a refugee camp they showed an NGO worker there cuts and bruises they said they received from beatings by the soldiers.

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<sup>7</sup> Alistair Lyon, "New Rohingya Influx....," Reuters.

<sup>8</sup> If it did, it violated the widely recognized right to leave one's own country, as found in the Universal Declaration of Human Rights, Article 13.

<sup>9</sup> The source of this information wishes to remain anonymous.



### III. HISTORICAL BACKGROUND

To understand the dynamics of the Rohingya issue, it is important to understand the claims made by both the Burmese government and by the ethnic group now known as "Rohingya," since the term itself has become politically charged.

Rohingya political leaders claim that Rohingyas are an ethnically distinct group, descendants of the first Muslims who occupied northern Arakan in the ninth century, though they also say that they are a mix of Bengalis, Persians, Moghuls, Turks and Pathans who came to the area later.<sup>10</sup> The ethnic group "Rohang" or "Rohan" is said to be the name used for the northern Arakan region in the ninth and tenth centuries. Arakan was then inhabited by the Rakhine people, whom scholars believe to be a mixture of an indigenous Hindu people with the Mongols who invaded in the ninth century. The Rakhine people today are Buddhist and speak a dialect of Burmese; they constitute the ethnic majority in Arakan.

Rohingyas give as further evidence of their long settlement in Arakan the fact that the kings of Arakan from 1400 to 1600 took Muslim (as well as Buddhist) names.<sup>11</sup> Their claim to be an indigenous ethnic group was recognized by the democratic government of Premier U Nu in the 1950s, for what most observers consider to be political motives, but it has been denied by subsequent governments since the military took control of the country in 1962.<sup>12</sup> The current military government has denied that Rohingyas are an ethnic group and claims that all the Muslims in northern Arakan are Bengalis whose arrival is far more recent.<sup>13</sup> Many foreign historians believe that most of Arakan's Muslim residents came to Burma from Chittagong from 1891 to 1931, when British colonial authorities were encouraging labor migration in order to develop Arakan's agricultural potential, or after the civil war in East Pakistan which led to the creation of Bangladesh in 1971.

During the Japanese occupation of Burma in World War II, the Rohingyas remained loyal to the British and thus were on the opposite side of the pro-independence Rakhine. As a reward for their loyalty, the Rohingyas were promised a separate Muslim state in northern Arakan, but like similar promises and assurances made to ethnic groups in northern and eastern Burma, this promise was not fulfilled.<sup>14</sup>

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<sup>10</sup> Rohingya Solidarity Organization (RSO), "A Memorandum of the Burma Citizenship Law of 1982", November 1982 unpublished paper; RSO, "The Problems of Rohingya Muslims of Arakan in Burma," 1992, unpublished paper. Rohingya Patriotic Front (RPF) *Rohingya Outcry and Demands* (Bangladesh: RPF), 1976.

<sup>11</sup> Ibid. However, other historical sources (see below) show that the kings of Arakan were Rakhine Buddhists who took Muslim names to ease their relationships with their Muslim neighbors. Nevertheless, Persian was the language of the Rakhine court until the late eighteenth century.

<sup>12</sup> See Martin Smith, *Burma: Insurgency and the Politics of Ethnicity* (London: Zed Press) 1994. Recognizing them as citizens gave them the ability to vote, and many voted for his party in gratitude at this recognition.

<sup>13</sup> "In actual fact, although there are 135 national races in Myanmar today, the so-called Rohingya people are not one of them. Historically, there has never been a 'Rohingya' race in Myanmar...Since the first Anglo-Myanmar war in 1824, people of Muslim faith from the adjacent country illegally entered Myanmar Naing-Ngan, particularly Rakhine State. Being illegal immigrants they do not hold immigration papers like other nationals of the country," Press release from U Ohn Gyaw, Minister for Foreign Affairs, February 21, 1992.

<sup>14</sup> Moshe Yegar, "The Muslims of Burma: A Study of a Minority Group," *Schriftenreihe des Sudasien-Instituts der Universitat Heidelberg*, Heidelberg University, 1972.

During the war communal violence broke out in Arakan in 1942 as thousands of Indians fled Burma through Arakan to India, and again in 1948, leaving thousands of Rakhines and Rohingyas dead, and thousands more fled to seek refuge in India. By 1947 the Rohingyas had formed an army and had approached President Jinnah of the newly-created Pakistan to ask him to incorporate northern Arakan into East Pakistan (Bangladesh). It was undoubtedly this move more than any other which determined the present-day governmental attitude towards the Rohingyas: they had threatened Burma's territorial integrity in the eve of independence and could never be trusted again.<sup>15</sup>

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<sup>15</sup> See Smith, *Burma: Insurgency and the Politics of Ethnicity*, p. 41.

Rohingyas claim that following the 1962 coup the military government undertook a series of measures designed to encourage them to leave the country by withdrawing recognition of them as citizens of Burma and restricting their freedom. It became increasingly difficult for Rohingyas to join the civil service, and many Rohingyas already in the civil service were harassed by frequent transfers away from their families and other measures until they resigned.<sup>16</sup> Since the late 1970s Rohingyas have not been accepted in the army. In 1974 the government promulgated the Emergency Immigration Act, designed to curtail immigration from India, China and Bangladesh. All citizens were required to carry identity cards (National Registration Certificates), but the Rohingyas were only offered Foreign Registration Cards (FRCs), which many refused to accept. Even without FRCs however, the local authorities did not grossly disrupt the daily lives of the Rohingyas, and those who needed them often found it possible to obtain them through bribery or forgery.

In 1977, however, the government initiated a program called *Nagamin* (Dragon King) to “scrutinize each individual living in the State, designating citizens and foreigners in accordance with the law and taking actions against foreigners who have filtered into the country illegally.”<sup>17</sup> While the program was nationwide, in Arakan it degenerated into abusive attacks on Rohingyas by both the army and local Rakhines. The situation was complicated, as in 1991, by the operations of a Rohingya guerrilla group that became militarily active as the Nagamin operation got under way in Buthidaung. By May 1978, over 200,000 Rohingyas had fled to Bangladesh (see below).

Throughout the period of military rule there was no effort to assimilate the Rohingyas, and access to the Burmese education system was very limited, especially after 1974. While the whole of Arakan state, and indeed all ethnic minority areas, suffered from this neglect by central government, the Rohingyas suffered most. The situation was exacerbated by the lack of development projects and planning to integrate the refugees who returned in 1978 and 1979, many of whom remained landless and without documentation.<sup>18</sup>

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<sup>16</sup> This information comes from confidential interviews conducted by Human Rights Watch/Asia in Bangladesh, Burma and Thailand between 1991 and 1996.

<sup>17</sup> Statement by the Ministry for Home and Religious Affairs, November 16, 1977.

<sup>18</sup> A clear indication of the neglect of northern Arakan is found in health surveys conducted by UNICEF and UNHCR since 1993. In an August 1994 report published by UNHCR, called “Report on Health Related Issues in Project Area (Arakan state),” it was found that Buthidaung and Maungdaw had the lowest ratio of hospital beds per 10,000 inhabitants in Burma (1.1 and 1.2 respectively, compared to an average in Arakan state of 2.99 beds per 10,000 people, and a national average of 6.57). The same report also found that the number of rural health centers per head was also dramatically less than in other parts of Burma, in fact in Maungdaw it was half the national average. Unsurprisingly, infant mortality rates were also the highest in Burma, at 114 and 213 deaths per 1,000 births for Maungdaw and Buthidaung respectively.

When the current military government took power in 1988, very little changed in the government attitude towards the Rohingyas, but surprisingly, the Rohingyas were not only allowed to vote in the May 1990 elections but were represented by two parties who captured 80 percent of the votes cast in their constituencies (see appendix). In July 1990, shortly after the election, however, the SLORC announced that the elected representatives would be forming not a parliament but a constituent assembly which would write a new constitution under which new elections would be held.<sup>19</sup> The government's failure to hand over power provoked demonstrations by monks and students towards the end of 1990, and even political prisoners in Rangoon's central Insein jail went on hunger strike in protest.<sup>20</sup> The government needed a scapegoat, a distraction and common enemy to unite a disillusioned and angry populace. They chose the Rohingyas.<sup>21</sup> At the start of 1991, the first reports of a dramatic increase in the numbers of army posted to northern Arakan state came from Rohingyas who had fled to Bangladesh. Before the rains started in May 1991, some 10,000 refugees had already arrived in Bangladesh. While some had been arrested, others avoided arrest by finding work in towns or living in villages where they had relatives. At the end of the rainy season, in November 1991, the trickle became a flood, and by March 1992 there were over 270,000 refugees scattered in camps along the Cox's Bazaar - Teknaf road in Bangladesh. The refugees told of summary execution, rape and other forms of torture which they had witnessed or personally endured at the hands of the military.<sup>22</sup> In most cases, the abuses took place in the context of forced labor: the Rohingyas were being forced to work as porters, build new army barracks, new roads and bridges, dig fish and prawn ponds, and cut bamboo for the military.<sup>23</sup>

Predictably, the SLORC first denied there were any problems in Arakan state at all, then claimed that all those who were leaving were illegal Bangladeshis who had come to find seasonal work in Burma, and now that the work was finished, they were returning home. They later added that in fact the exodus was due to immigration checks that the government was undertaking. They also consistently denied the scale of the problem, saying in February 1992 that only 4,000 people had left Burma, at a time when the Bangladesh authorities and aid workers in the area were counting over 250,000 arrivals.

However, none of these reasons justified the military build-up in Maungdaw and Buthidaung, and for this the SLORC gave another reason: Rohingya insurgents. The insurgents, they claimed, were Islamic "extremists" who had been stirring up the local population and making them leave and then telling lies to the international press in order to encourage Islamic countries to support the rebels.

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<sup>19</sup> SLORC Announcement No. 1/90, July 27, 1990. The constituent assembly was not convened until January 1993 and is still deliberating, though with only a handful of elected representatives. See Janelle M. Diller, "The National Convention in (Burma) Myanmar," (Washington, D.C.: International League for Human Rights), April 1996.

<sup>20</sup> In response to these demonstrations two monks and a student were killed by the army in Mandalay, and in November 1990 some 150 monasteries in Mandalay and Rangoon were raided and hundreds of monks were arrested. In Insein jail the hunger strikers were tortured, and later the leaders were moved to prison labor camps far from their homes, making family visits almost impossible. See Win Naing Oo, *Cries from Insein* (Bangkok: ABSDF, 1996).

<sup>21</sup> See Bertil Lintner, "Diversionary Tactics: Anti-Muslim campaign seen as effort to rally Burmans," *Far Eastern Economic Review* (Hong Kong), August 29, 1991.

<sup>22</sup> For details of their allegations, see Asia Watch, "Burma: Rape, Forced Labor and Religious Persecution in Northern Arakan," *A Human Rights Watch Short Report*, vol. 4, no. 13, May 1992; Amnesty International, "Union of Myanmar (Burma): Human Rights Violations Against Muslims in the Rakhine (Arakan) State" (London: Amnesty International), ASA 16/06/92, May 1992.

<sup>23</sup> Ironically, much of the bamboo the Rohingyas had cut in Burma was sold by soldiers on the black market to the UNHCR to build the refugee camps.

This argument demands further investigation, since there is conflicting evidence as to the power of the Rohingya rebel groups and they continue to be cited as a justification for the SLORC's actions. Unlike other Burmese rebel groups, very little is known about the operations and capacity of the Rohingya Solidarity Organization (RSO) and the Arakan Rohingya Islamic Front (ARIF), in part because of the difficulty of access to the areas on the Bangladesh/Burma border where they have their camps. The RSO, formed in 1982, is currently led by Mohammed Yunus, a medical doctor who graduated from Rangoon University in 1975. Some members of the RSO, led by Nurul Islam, broke away from the main group to form ARIF in 1987. In January 1996, the RSO and ARIF formed an alliance called the Rohingya National Alliance (RNA).

While the Rohingya insurgencies have a long history, they do not appear to have much support from the local Rohingya people they claim to represent. Bertil Lintner, one of the most knowledgeable researchers of Burma's ethnic minority groups, estimated in 1994 that the two groups had only 150 armed men between them.<sup>24</sup> However, in 1991 he had also quoted "impartial observers" as saying that they had a combined strength of 800 men,<sup>25</sup> tiny compared, for example, to the 20,000 or so armed men in the United Wa State Army in eastern Shan state. What they lack in numbers however, they make up in support from international Islamic organizations, including the Saudi Arabia-based Rabitat al-Alam al-Islami and the Afghan Hizbe-Islami of Gulbuddin Hekmatyar, and from the estimated one million Rohingyas who have sought exile abroad since the military coup of 1962.

The arrival of the refugees was clearly an opportunity for these groups to gain access to potential recruits. In 1992, Amnesty International and Human Rights Watch/Asia witnessed the RSO and ARIF setting up makeshift offices within the refugee camps. Members of the ARIF were also regularly seen on the Cox's Bazaar road, often meeting with refugee leaders and with the International Islamic Relief Committee, and in 1992, the deaths near Balukhali camp of three refugees thought to be promoting repatriation were attributed by Bangladeshi officials to the RSO.<sup>26</sup>

By the end of 1992 the RSO and ARIF no longer had open access to the refugee camps, but it is likely that recruitment continued. However, knowing that Bangladesh was permitting the Rohingya groups to operate in the hills near Bandraban, the Burmese demanded that their bases be closed down and their political activities in the camps be curtailed. In bilateral talks during November and December 1992, this was a key topic of discussion. By the end of the year Bangladesh had moved the rebel bases farther away from the border, but they were not disarmed. As on Burma's other border with Thailand, the ethnic rebels played an important buffer role between the armies of the two countries, and during 1992 and 1993 with the Bangladesh Border Rifles on full alert and many rumors of impending attacks by Burma on Bangladesh, the rebels clearly still had a role to play. Only three years later, as relations between Bangladesh and Burma had improved during 1994 and 1995, with the return of nearly 190,000 refugees and the signing of cross-border trade deals, did Bangladesh finally disarm the remaining insurgents in December 1995.

As the new arrivals started entering Bangladesh in late February 1996, there were new rumors of Rohingya National Alliance (RNA) activity in Maungdaw township. A new build-up of the Burmese government's troops in northern Maungdaw, and an increase in forced portering for the army, were again reported, in a situation which seemed all too familiar. However, unlike 1991, information about the current situation is coming only from inside Arakan state and has not been made public by the government or the UNHCR. Although the UNHCR, has admitted in private that there was fighting in the area between March and May 1996, it has not included this fact in its public statements about the new arrivals.<sup>27</sup>

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<sup>24</sup> Bertil Lintner, *Burma in Revolt: Opium and Insurgency since 1948* (Colorado: Westview Press, 1994).

<sup>25</sup> Bertil Lintner, "Diversionary Tactics..." *Far Eastern Economic Review*.

<sup>26</sup> "Hacked bodies of refugees found; 109 Burmese detained", Associated Press, July 19, 1992.

<sup>27</sup> Interview with the UNHCR, June 13, 1996

#### IV. THE REPATRIATION

The repatriation program must be analyzed in light of the pattern of discrimination against the Rohingya described above. The details of that program, as carried out between 1992 and 1994, have been discussed elsewhere and will not therefore be repeated in full here.<sup>28</sup> A review of the pertinent issues, however, is necessary to an understanding of the current situation facing those refugees remaining in Bangladesh and those who have been returned. It is also necessary to consider the chronology of events in the repatriation in order to understand UNHCR's current position in Bangladesh and Burma. All analysts, the UNHCR and NGOs working in the refugee camps, agree that at times the repatriation has been involuntary, and that at times, particularly but not only in the period 1992-93, the government of Bangladesh has used force, withheld rations, imprisoned and beaten refugees into agreeing to return. In addition, NGOs have expressed the concern that throughout the repatriation, although the use of physical force was curtailed after the extremes of 1992-93, the principle of voluntariness, which the UNHCR asserts is a basic right of refugees, has been frequently compromised.<sup>29</sup> NGOs have seen the repatriation as representing a possible shift in policy by the UNHCR from a notion of strictly voluntary return, whereby individual refugees are interviewed in confidence and informed of their right to remain and given the opportunity to express their free desire to return, to a policy of "involuntary return," whereby refugees will be returned to their country of origin if the UNHCR considers that their chances of safety and freedom from abuse are better there than in the country of asylum. This is now known as repatriation in "less than optimum conditions."<sup>30</sup>

Human Rights Watch supports the right of all refugees to return to their country of origin, but it equally supports the right of all refugees to choose not to return if they believe they would face persecution in their country of origin. Voluntary repatriation is a desirable option if individual refugees have access to accurate and independent information on which to make an informed decision about whether it is safe to go back. Where possible, groups of refugee representatives should be able to return, without obligation to remain, in order to assess the situation for themselves. The use of pressure of any kind from the host government — physical assault, verbal abuse, denial of food rations, denial of basic human rights including the right to health and education facilities — makes the expression of voluntariness less than meaningful and in most circumstances would mean that the repatriation could not be supported by Human Rights Watch. In addition, repatriation in less than optimum conditions may be acceptable in circumstances where refugees, having full and accurate information about those conditions, voluntarily decide to return. However, if return in these conditions is sought because the refugees would be better off in their country of origin rather than the country of first asylum, and it would lead to an erosion of the principles of voluntariness and of non-refoulement, then return should not be tolerated. The UNHCR should endeavor at all times to hold receiving countries to their primary obligation not to send refugees back to situations in which they have a well-founded fear of persecution.

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<sup>28</sup> See Asia Watch, "Bangladesh: Abuse of Burmese Refugees from Arakan," and US Committee for Refugees, "The Return of the Rohingya Refugees to Burma"; Mediciens Sans Frontières, "MSF's concerns on the repatriation of Rohingya refugees from Bangladesh to Burma" (MSF France/Holland, May 1995). Other international humanitarian agencies working in the camps who supported the position taken by MSF were Save the Children (UK) and Oxfam.

<sup>29</sup> Although not guaranteed by the Convention on Refugees, the principle of voluntariness has been affirmed in three UNHCR Executive Committee resolutions since 1980: Conclusion 18 XXXI, 1980; and Conclusion 40 XXXVI, 1985; and Conclusion 74 XLV, 1994). In May 1996, the UNHCR published a *Handbook on Voluntary Repatriation: International Protection* which sets out the "fundamental principles" of voluntary repatriation (Geneva: UNHCR) 1996.

<sup>30</sup> UNHCR, "Note on International Protection: International Protection and Mass Influx," submitted by the High Commissioner to the 46th Session of the Executive Committee, September 1995. She noted an "increasing number of situations where various factors, including the welfare of the refugee population, indicate that large-scale voluntary return must nevertheless be considered despite the existence of less than optimum conditions in the country of origin."

Many NGOs also felt the UNHCR in Dhaka and Rangoon has been less than open as to the real situation facing returnees, a feeling reinforced by the return of some 10,000 refugees in early 1996. One of the key criteria for voluntary repatriations, as defined by the UNHCR, is that refugees have access to objective information about the situation in the country of origin, so that they are able to make an informed choice.<sup>31</sup> In Arakan state, only the UNHCR has had free access to the refugees' home villages, and then only since February 1994, although it is likely that in fact free access to all areas was not achieved until the end of 1994.<sup>32</sup> Despite this lack of access, UNHCR's position when it began the promotion of repatriation in June 1994 was that while the fundamental situation in Burma had not changed, the abuses to which Rohingyas are subject are no different from abuses experienced by all people in Burma. In the view of UNHCR officials, there was no longer any persecution of the Rohingyas on the grounds applicable in the 1951 Convention Relating to the Status of Refugees — that is, of race, religion, nationality, membership of a social group or political belief.<sup>33</sup> Therefore, the conditions in the country of origin were conducive to return and UNHCR's presence in Burma would give reassurance to refugees and encourage them to return.

Having exclusive access to Arakan state put UNHCR in a very powerful position with regard to information about the situation there. While refugees and NGOs and at times new arrivals during 1993 and 1994 continued to give reports of severe abuses against returnees and local Rohingyas alike, the UNHCR was able to discount these as mere rumors. Two of the most prevalent "rumors," which were reported widely by the RSO in 1994, were the issue of alleged forced sterilization of women returning to Burma and the forced attendance of Muslim girls at vocational boarding schools run by the army. In UNHCR's June 1995 *Bulletin* reference is made to these two allegations:

Allegations have been reported concerning forced contraception of Muslim women by local authorities implementing the government's birth-spacing program in Rakhine state. UNHCR has raised the issue with the authorities, who have given assurances that the program was never intended to result in forced contraception, and in no way targeted Muslim women.

A UNHCR official told Human Rights Watch/Asia that the Burmese Ministry of Health had in fact been injecting returning women with Depro-Nova, a contraceptive drug which lasts for three years. This was part of a UNICEF-sponsored family planning program. But in most cases, the injections had not been explained to the Rohingya women and their husbands, and one UNHCR official told Human Rights Watch that the Burmese doctors had been "rather overzealous" in their approach. The same person also expressed concern that the injected women may not receive the necessary follow-up checks and information.

On occasion UNHCR did verify "rumors" — such as it confirmed that a Rohingya man was summarily killed for refusing to work for no pay in November 1995, or when Muslim school children were forced to pay their respects to the Burmese flag despite their conviction that this was against their faith — but only after being pressed by refugees themselves. The fact that such incidents only came to light in this way and were never offered as information by the UNHCR heightened the suspicion felt by many NGOs that the UNHCR were holding back information about the true situation. By December 1995, even staff at the local UNHCR office in Cox's Bazaar expressed their unease about the quality of information their colleagues in Burma were giving to refugees and took the unprecedented step of stopping promotional activities in the camp until they could revise the information being given. For their part, UNHCR officials told Human Rights Watch in May 1996 that they had to be careful with such information for fear that NGOs would blow the story out of all proportion or that such leaks would threaten their position within Arakan state.

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<sup>31</sup> UNHCR, Executive Committee, Conclusion No. 18 XXXI, 1980.

<sup>32</sup> This is based on conversations with UNHCR staff based in Maungdaw and discussions between Werner Blatter and NGOs in Washington DC, September 1994.

<sup>33</sup> U.N. Convention Relating to the Status of Refugees, Article 1 (A, 2).

The concerns of NGOs, including Human Rights Watch, have been increased by the UNHCR's public statements about the repatriation and resettlement programs which, with the exception of the June 1995 *Information Bulletin* quoted above, have generally admitted no problems at all. The fear among NGOs that UNHCR may be contemplating what its role should be in cases of "imposed return" by host governments was confirmed to some extent in the 1995 *State of the World's Refugees* report. Here the UNHCR elaborated on a new kind of *voluntary* repatriation to a country "where only limited changes have taken place because they cannot remain indefinitely in their country of asylum and because they have received assurances regarding their safety once they return to their homeland."<sup>34</sup> The return of the Rohingyas was cited as an example of this. "While the situation in Rakhine State may not be an easy one, the refugees *appear to have recognized* that it is better to go home now and to benefit from UNHCR's presence and program, rather to remain in refugee camps which offer them no future" (emphasis added).<sup>35</sup> Thus, rather than protest violations by a host government determined to force refugees back to their country of origin, as UNHCR had done in Bangladesh in December 1992 — when the office withdrew from all camps entirely and made vociferous public complaints against the Bangladesh authorities until it was able to win agreements which enabled UNHCR protection officers to interview individual refugees in confidence — the UNHCR would now be considering how best to assist in the return of refugees in the face of such violations. In doing so, the fundamental principle of protection from refoulement would be put at risk, and the principle of voluntary return, which UNHCR always seeks to uphold, would be stretched to the point that it becomes meaningless. In the case of the Rohingyas, the UNHCR position, that the refugees "appear to have recognized that it is better to go home now" and were thus making a voluntary decision to return, remains subject to debate.

#### **The first stage, September 1992 to January 1994**

It is not subject to debate, however, to say that the first stage of the repatriation was forced. The governments of Burma and Bangladesh signed a bilateral Memorandum of Understanding (MOU) on April 28, 1992, under which the repatriation was to start in May. In the memorandum, the SLORC agreed that it would accept back all persons who could establish "*bona fide* residence" in Burma, that the repatriation would be "safe and voluntary" and that "[b]oth sides recognize the role of the UNHCR in various stages of the repatriation process, facilitating the reduction of international concern in the context of voluntary and safe return of Myanmar residents." However, although the then chief of the U.N. Department of Humanitarian Affairs (DHA), Jan Eliasson, had met with and assisted the two governments in drawing up the MOU, there was no guarantee from SLORC officials that they would allow UNHCR to operate in Arakan state. The only reference to this was that the government *could* draw upon the services of the UNHCR at an appropriate time.

In this regard, it must be remembered that at the time U.N. agencies and NGOs had very little involvement in Burma, and none at all in Arakan state. This was due in part to the government's reluctance to allow foreign nationals access to the areas of greatest need (that is, ethnic minority areas) and in part to the habitual reluctance of NGOs and U.N. agencies to support programs over which they do not have sufficient control and which may end up simply supporting an abusive government.<sup>36</sup> Thus, it was never going to be easy for the UNHCR to become operational in Burma. In addition, Burmese officials, like many other governments, considered acceptance of a UNHCR presence to be an admission of guilt. The only U.N. access which had been granted was a mission in December 1992 by the U.N. Special Rapporteur on Burma, a low-risk venture since access to the Muslim population was very limited, and he had to rely on government translators when speaking to individuals. In the end, it was international pressure, notably from

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<sup>34</sup> UNHCR, *State of the World's Refugees* (London: Oxford University Press, 1995).

<sup>35</sup> *Ibid.* p.62-63.

<sup>36</sup> This concern was reflected in the April 1992 decision by the United Nations Development Program (UNDP) whose governing body insisted that all programs in Burma must be directed at the grassroots and that projects must be monitored over a one-year period (rather than the usual five-year plans of action). See also Martin Smith, *Fatal Silence? Freedom of Expression and the Right to Health in Burma* (London: Article 19, August 1996).



China and Malaysia, that persuaded the SLORC to accept a limited UNHCR presence, but it took over a year to achieve.<sup>37</sup>

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<sup>37</sup> The role of China was confirmed to Human Rights Watch by western and Asian diplomats in 1992. The High Commissioner's former role as Special Expert to Burma for the U.N. Commission on Human Rights under the confidential 1503 procedure in 1991, and the experience of the then UNHCR director for Asia and the Pacific, Werner Blatter, as UNHCR representative in Rangoon during the 1976-78 repatriation, were also helpful.

At the same time, while UNHCR had been providing assistance in the refugee camps since March 1992, there was no agreement with the Bangladesh government to allow UNHCR to take part in the repatriation. This agreement was essential to enable the UNHCR to fulfill its protection mandate and ensure that the refugees were returned voluntarily in conditions of safety and dignity. Repatriations under a bilateral agreement between the two governments did not start until September 1992, but when they did, refugees were forced to “volunteer” for return by suffering threats of or actual beatings, confiscation of ration cards, and other abuse. In response, in many camps there were protests and riots which were put down by excessive force, leaving a total of fifteen refugees dead, forty injured and 119 imprisoned. UNHCR was involved in the registration process from October until the beginning of December, when it withdrew from all camps in protest at the abuses. By this time, some 5,000 refugees had been forcibly returned. By withdrawing from the camps and insisting on the protection of the refugees, the UNHCR sought and won international condemnation of the abuses. This pressure forced the government of Bangladesh to suspend the repatriation while a new agreement was discussed with the UNHCR, although when repatriations recommenced at the end of the month there had been very little improvement.<sup>38</sup> An agreement between UNHCR and Bangladesh was finally signed in May 1993, but again, while UNHCR interviews somewhat slowed the rate of repatriation, the agreement did not stop some Bangladesh camp officials from using force and other means of coercion to make the refugees “volunteer.” Throughout this period, while UNHCR was involved in the registration of volunteers for repatriation, neither they nor any other international body had access to returnees in Arakan state.

### **Mass repatriation, July 1994 - December 1995**

An agreement between Burma and the UNHCR was finally signed on November 5, 1993. By then, over 50,000 refugees had been repatriated under the bilateral agreement. While some had been through UNHCR procedures of individual interviews with the right to not be returned if they had valid reason to fear persecution in Burma, the vast majority were forcibly returned with no UNHCR supervision. After the agreement was signed, there was a delay of four months before UNHCR found the staff to become operational in Burma, with four staff in Rangoon and six in Arakan. Their presence in Burma, coupled with the continued pressure on the refugees by the Bangladesh government, led the UNHCR to initiate a new program of mass repatriation in December 1993. The UNHCR presented the new plan to NGOs in Bangladesh at their regular meeting and told the NGOs that once the UNHCR was operational in Arakan State, the UNHCR would implement a repatriation which would be completed in one year. In January and February 1994 senior UNHCR staff, including Werner Blatter the Asia and Pacific Director, made investigative missions to Burma and returned to tell NGOs in Bangladesh that the situation had considerably improved. Following Blatter's visit, the UNHCR and the Bangladesh authorities began information sessions in the camps, informing refugees of the new situation. Despite these assurances, a UNHCR survey revealed that only 27 percent of the refugees wanted to return. The slow rate of repatriation angered the Bangladesh government, which was increasingly eager to see the refugees go back as their presence had caused considerable unrest locally, and national elections were due. Bangladesh accused the UNHCR of holding up the repatriation and threatened not to renew their MOU. The plan was put back by a massive cyclone which hit the region on May 2 and 3, killing some 200 people in Bangladesh and leaving 10,000 refugees without shelter.

Four days before this, however, nine bombs exploded in Burmese government buildings in the center of Maungdaw town. There were no casualties. The NaSaKa claimed the attack was the work of the RSO, though a source close to the RSO interviewed by Human Rights Watch in March 1996 claimed that while they had indeed intended to plant a bomb in Maungdaw, the position of all the RSO men involved were given away to the NaSaKa by the Bangladesh Border Rifles, and all thirty of them were killed on arrival in Burma. Others who were present in Maungdaw at the time stated that there was considerable doubt among even government officials that the RSO could have mounted such an attack. For the NaSaKa, the bomb attack meant that they could justify denying all access by the UNHCR to areas outside the town limits, and continue to insist on military escorts for UNHCR personnel. Despite these measures, which effectively confined the UNHCR staff to their compounds in Maungdaw and Sittwe thereby denying them access to any possible returnees — a key requisite for the UNHCR's involvement in the repatriation — the first return of refugees involving the UNHCR on both sides of the border took place on April 30.

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<sup>38</sup> See USCR, “The Return of Refugees....” pp. 6-9.

The aftermath of the bombs was felt for months, as suspected RSO sympathizers were taken late at night from their homes for questioning. Many Rohingyas, including returnees, were alleged to have been disappeared by the authorities. Extra military battalions were brought into Maungdaw, new road blocks were set up and Muslims living in Maungdaw reported being taken for interrogation "every night" for a week between May 1 and May 7. One woman interviewed in Bangladesh in March 1996 told Human Rights Watch/Asia that her son, Abu, aged thirty, who was repatriated in 1993, was arrested on suspicion of being a member of the RSO and was killed by the NaSaKa after a prolonged interrogation. Her daughter-in-law had visited the refugee camp to tell the woman the news soon after he died. The daughter-in-law had told her that Abu was shot while his family were taking him by cart to hospital after his legs and one arm were broken during the interrogation. The woman said she had informed UNHCR of the incident but had not heard from them since. Other refugees gave Human Rights Watch/Asia lists of a total of fifteen relatives or fellow-villagers whom they believed had been killed during this period, but were unable to provide details of when or how they died. The UNHCR made no mention of the bomb attack or of the subsequent arrests and killings in any of its public information, something it would normally do when events impede or otherwise effect its operations.

As far as the repatriation was concerned the effects of the bombs were immediately forgotten when the cyclone struck. In Bangladesh, all of the refugee camps were devastated, leaving half the refugees without any shelter. Although it was little reported at the time however, the worst affects were felt inside Arakan, in Maungdaw and Buthidaung, where 7,000 people were left homeless. The repatriation was completely stopped for a month, while repairs were made to the reception centers in Arakan state. In the meantime, in a concerted attempt to force the refugees to leave, the Bangladesh authorities made it difficult for the UNHCR and NGOs to repair the camps and reinstate water supplies and sanitation: promised supplies took days or even weeks to arrive and both the UNHCR and NGOs told Human Rights Watch/Asia that this was directly due to government interference. The repatriation resumed in June, and the UNHCR conducted a survey of refugees in one camp, Kutu Palong, where interviews revealed that one-fourth of the population wanted to return. A second round of interviews was conducted in the same camp days later and found miraculously that 97 percent were willing to return. UNHCR did not mention that in between the two surveys, three refugees were beaten to the point of hospitalization for what the camp magistrate (the second highest Bangladesh official in charge of the camp) described as "anti-repatriation activities."<sup>39</sup>

Nevertheless, in July, to the astonishment of the NGOs, the UNHCR used this survey as part of a justification for a change of policy from "information" to "promotion." The other main justification was that the situation in Arakan was now "conducive" to return. The UNHCR claimed that it had unrestricted access to all returnees, despite the fact that some of the emergency military measures which the NaSaKa put in place after the Maungdaw bomb were still in effect and that physical constraints of transportation in Arakan made such free access virtually impossible for the six UNHCR ex-patriate staff there. Under its new policy of "promoting" repatriation the UNHCR gave up its hard-won right to confidential interviews with individual refugees in favor of "a mass voluntary repatriation-registration campaign."<sup>40</sup> Loudspeakers were used to disseminate information about the situation in Arakan, advising the refugees that circumstances had changed and they should return. Refugees were permitted to approach UNHCR if they did not wish to return but would no longer be sought out for interviews. As a further incentive to return, the information included warnings to the refugees that if they came back after the repatriation, they would be arrested for illegal departure and given three years imprisonment in Burma, despite the fact that this charge is a violation of international law concerning freedom of movement.

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<sup>39</sup> Ibid.

<sup>40</sup> UNHCR, *Information Bulletin*, June 1995.

New UNHCR guidelines for the promotion of voluntary repatriation had been written by the agency's working group on international protection, a committee of the agency's highest body, the Executive Committee, in August 1992. These emphasized the need for "supplementing traditional protection notions and approaches with protection activities in new areas...balancing humanitarian concerns with political realism and States' interests with the rights and needs of refugees."<sup>41</sup> Voluntary repatriation as a solution to refugee situations was identified as the solution of choice, but:

Criteria for promotion and organization of large-scale repatriation must balance the protection needs of refugees against the political imperative towards resolving refugee problems. The prevailing security situation in the country of origin, existing guarantees or assurances of safety on return, access arrangements and monitoring possibilities for UNHCR, the adequacy of reception arrangements and the voluntariness of returns, are all relevant considerations in determining the appropriateness of ... voluntary repatriation.

It is questionable whether all or even any of these criteria were sufficiently favorable in June 1994 to promote a voluntary return, but the political imperative towards a solution was very pressing. The government of Bangladesh had not renewed the MOU with the UNHCR, which was therefore under more pressure to "assist" with the wishes of Bangladesh officials to send all the refugees back. In addition, the refugee and repatriation program had already cost over US\$60 million.<sup>42</sup>

At the beginning of August the UNHCR started to register all refugees for repatriation. Of the 176,297 persons who agreed to register, only 8,903 were "undecided." Although these cases were later classified as special cases with political or criminal histories, the figure was widely questioned as a measure of the number of refugees who could expect reprisals or persecution in Burma. NGOs in Bangladesh were skeptical of UNHCR's claims and felt that most of the refugees did not understand the implications of the registration, and most did not know that they were permitted, by right, to say no to the repatriation and apply for asylum. This was later confirmed in a survey conducted by Médecin Sans Frontières-Holland (see below). In an attempt to dispel the misgivings of the NGOs about the situation in Arakan, a team from Médecin Sans Frontières (MSF) France and Holland visited Rangoon for the first time. They were not permitted to go to Arakan state and the trip did little to raise their confidence regarding the safety of returnees. At the same time, in Bangladesh, camp authorities resumed coercion in the form of threats of beatings and aggressive messages relayed over loudspeakers in the camps. During September nearly 14,000 refugees were returned.

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<sup>41</sup> UNHCR Executive Committee, "Note on International Protection," A/AC.96/799, August 25, 1992.

<sup>42</sup> It should be noted however, that figures produced in the UNCHR magazine, *Refugees: The High Cost of Caring* in 1995 show that of all programs undertaken by the UNHCR in 1995, the Rohingya repatriation alone was not only funded sufficiently, but donor governments had contributed \$600,000 more than was required for that year.

As more refugees returned, relations between the NGOs in the camps and the UNHCR deteriorated. NGOs expressed their concern to donor governments, and the European Union sent a mission to Arakan state in October 1994.<sup>43</sup> Only one month later, on November 27, there was communal violence in Sittwe, the state capital of Arakan, in which Rakhine students attacked the houses and shops of Muslims in the main market. The violence is believed to have started after an argument between a Muslim shopkeeper and a Buddhist monk. The attacks continued for three days, and several mosques, including the largest and oldest in Sittwe, were also attacked by students throwing stones. At least two Muslims were killed, one of them a pregnant woman, and several others were seriously injured. The authorities responded only belatedly to the attacks, and no Rakhines were arrested. Instead, most of the Muslims living in the area were ordered to relocate. The riots, again, were never publicly mentioned by the UNHCR, though they were an indication of the strong anti-Muslim feeling which still exists in Arakan State. While in Sittwe in February 1996, Human Rights Watch/Asia was told by several Muslims that Rakhine civilians and NaSaKa soldiers alike would frequently take things from their stalls without paying and said that there was simply nothing they could do about it, as the police would never listen. There are no Rohingya policemen in Arakan.

In late September, MSF France produced a report<sup>44</sup> condemning the repatriation as involuntary, an initiative which did not have the full support of other NGOs, including MSF Holland, though all NGOs remained frustrated with the lack of response to their concerns from UNHCR at the local level and in Geneva. In February 1995, MSF Holland conducted a survey in all camps in order to ascertain the level of voluntariness: the survey found that while 60 percent said that they did want to return, 84 percent said they were not informed by the UNHCR of the possibility to say no. The study was published as a draft in March 1995,<sup>45</sup> but the repatriations continued until July when the Burmese government dramatically slowed down the numbers of people they cleared, and the monsoon became a convenient excuse for an almost complete halt of the repatriation. In October 1995, MSF France and Holland took the unprecedented step of submitting a written complaint to the UNHCR's Executive Committee. The complaint was summarily dismissed by UNHCR representatives as being "ill-conceived" and "unprofessional," despite the fact that it had universal support among the NGOs which implement the UNHCR program in Bangladesh. By then nearly 200,000 Rohingyas had returned to Burma but it was evident that the UNHCR program had failed to inform them of the dangers in Arakan state or protect them from it. Their concerns were echoed in December 1995 when the local office of the UNHCR in Cox's Bazaar took the unusual step of not cooperating with the promotion of repatriation after news reached the staff of continued abuses in Arakan. By contrast however, the UNHCR in Rangoon and in Geneva remained determined to complete the repatriation by June 1996 — a clearly unrealistic deadline.

The action taken by UNHCR staff in Cox's Bazaar, coupled with the unrest and general strikes in Bangladesh during the period of the general election in February and March,<sup>46</sup> resulted in less than 2,000 refugees being repatriated in the first quarter of 1996, and until June, the repatriation continued at a very slow pace. In addition, on the Burmese side the SLORC, while never enthusiastic about the return, appears to have decided that it would not accept more than 200,000 people.<sup>47</sup> The repatriation process required that lists of names of people willing to repatriate, the names of the

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<sup>43</sup> The repatriation had been stopped at the time because Burma had closed the border after an outbreak of bubonic plague in India. A subsequent EU report expressed concern about the difficulties of monitoring the returnees, but considered that overall the repatriation should be supported. A similar mission proposed by the US State Department was rejected by the SLORC in March 1995.

<sup>44</sup> MSF France, "The Rohingyas: Forcibly Repatriated to Burma," September 22, 1994.

<sup>45</sup> MSF Holland, "Awareness Survey: Rohingya Refugee Camps, Cox's Bazaar District, Bangladesh," March 15, 1995.

<sup>46</sup> For an analysis of the unrest and violence in Bangladesh, see Human Rights Watch/Asia, "Bangladesh: Political Violence on All Sides," *A Human Rights Watch Short Report*, vol. 8, no. 6 (C), June 1996.

<sup>47</sup> In 1978 as well, the then government of Burma established a limit of 200,000, leaving some 30,000 Rohingyas to integrate locally in Bangladesh. Having done so, however, the current government has insisted to UNHCR officials and diplomats in Rangoon that more people were returned to Burma than actually left from Arakan state in 1978.

villages they left from and any other identifying information be sent to Burma's Immigration and Manpower Department (IMPD) for verification. After checking with the local village Law and Order Restoration Council (LORC, the local administration unit of the SLORC), where lists of all householders are maintained, the person or family is then accepted or rejected as a resident of Burma. In some cases, this verification process can be very lengthy, especially of the person married while in Bangladesh, or if families had become separated while in the camps. The SLORC will only accept marriages between Rohingyas. If a Rohingya has married a Bangladeshi woman, the woman (and any children they may have) are not permitted to enter Burma. These administrative difficulties, which could legitimately delay the clearance of remaining cases, have been exacerbated by an increasing lack of cooperation by the Burmese authorities: it was clear that as the numbers returning to Burma increased, so did the delays in clearing people. For example, in July 1995 and again in February and March 1996, the Burmese government delayed the transfer of lists of people who had been cleared to return for nearly three weeks.

The repatriation from Bangladesh does appear to herald a new, pragmatic approach by the UNHCR, in which a speedy return is valued over and above protection concerns, often due to pressure from the host government. This suspicion, voiced by many NGOs is supported by internal UNHCR documents. In 1994 the UNHCR undertook a review to assess the terms under which the repatriation was taking place. This confidential document, a copy of which was given to Human Rights Watch, notes that "monitoring would be delicate as complaisance could compromise our credibility while zealous orthodoxy could spoil UNHCR's chances of remaining involved in Arakan."<sup>48</sup> The document went on to state, "Evidently we cannot concern ourselves with issues of human rights with our focus remaining on elements of execution."

## V. THE REINTEGRATION PROGRAM

The MOU between UNHCR and the SLORC in November 1994 was not made public. However, Human Rights Watch/Asia has obtained a copy, and it is reproduced as Appendix II. It allowed for the establishment of a field office in Maungdaw, with ten expatriate staff, four of whom would be based in Rangoon. In addition, two World Food Program (WFP) staff were to work in the area to provide food rations to the returnees and establish food for work programs. The MOU does not mention the involvement of NGOs; in fact, this "was unofficially excluded by the [SLORC]."<sup>49</sup> The UNHCR continued to press for access by NGOs to assist in the implementation of projects, but only in January 1995 (by which time 152,827 refugees had returned) were three international NGOs permitted projects in the area, two of them through UNHCR. Bridge Asia, a Japanese NGO, has two expatriate staff who initially maintained UNHCR boats and trucks and now provide engineering training to returnees in Maungdaw town; Action Contre la Faim is working through UNHCR in Maungdaw and Buthidaung and, through a separate MOU with the Health Ministry in Kyauktaw, on water and sanitation projects with a total of eight expatriate staff; and MSF Holland is working through an MOU with the Ministry of Health on a malaria research and control project in Kyauktaw, Maungdaw and Buthidaung with two expatriate staff. Thus, by June 1996, there was a total of twenty-eight expatriate staff operating in northern Arakan.

The UNHCR's implementing agency, or government partner, is the Immigration and Manpower Department (IMPD), whose projects are funded and overseen by the UNHCR. While the IMPD is ostensibly part of the civilian administration, in Maungdaw and Buthidaung (although not in Rathedaung) it is part of NaSaKa, the Border Administration Force. According to most sources, 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 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-

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<sup>48</sup> UNHCR, "Note on 'Conditions of Safety' in Arakan Relating to Mass Repatriation of Rohingyas," no date.

<sup>49</sup> UNHCR/NGO Document, "Myanmar Country Report," presented at the Regional ParInAc (Partnership In Action) meeting for South/South East Asia and Oceania, May 3, 1995.

military body. That the UNHCR should work so closely with such an organization is perhaps surprising, although in Burma there are few organizations over which the military does not have direct control. However, to returning refugees and the local populace, UNHCR's independence from the military is seriously undermined by this connection, a view which is reinforced by the fact that all the UNHCR offices in Sittwe, Maungdaw, Buthidaung and Rathedaung were built in the compounds of the local IMPD offices. In March 1996 the UNHCR established an independent office in Maungdaw, but all other offices remained in IMPD compounds as of June 1996.

UNHCR personnel say the agency's access and freedom of movement (ability to travel without armed escort) have considerably improved over the two years that they have been in Burma. But, with the SLORC's extensive military intelligence apparatus, it is unlikely that anyone who speaks to the UNHCR can be assured of confidentiality. UNHCR also had to rely, at first, on the government for help in finding interpreters. Refugees claim that they are too afraid to talk to the UNHCR, and one man whose wife had worked as an interpreter (from Chittagonian to Burmese) told Human Rights Watch/Asia that she was regularly visited, each evening, by military intelligence who asked her whom she had spoken with that day. UNHCR nonetheless has always insisted that the returnees are not afraid to talk to them, and that UNHCR personnel are accessible outside of the IMPD compound for confidential information.

As Human Rights Watch and other independent monitoring organizations have not had access to northern Arakan state, it has not been easy to pull together a detailed account of the reintegration program or assess its success. Reports by the UNHCR, UNDP and WHO on their programs in northern Arakan lack important details. It is known that returnees are given a repatriation package on return, consisting of a cash handout of 2,000 kyats (US\$20) per family to pay for the rebuilding of their homes (most of which, being made of bamboo and similarly impermanent materials, had been ruined while the refugees were away); 2,000 kyats per adult; 100 kyats to pay their fares back to their village; a mosquito net (one for three people), and food rations for two months. Only especially vulnerable individuals (mainly the sick and women heads of households), who were permitted two months of rice, received any further assistance. The returnees were therefore expected to be able to become self-supporting within one month.

As well as the repatriation packages, the UNHCR is implementing a number of small-scale projects to "anchor" the returnees and improve the social and economic situation more generally. Initially many of these projects involved the repair or building of hospitals, health centers and schools; small road-building projects to improve access to villages; and the construction of wells and water tanks (carried out by Action Contre la Faim). Some of these projects were undertaken by the World Food Program, which established food-for-work programs to build 150 village ponds, eighty wells and some road embankments. The UNHCR also works through local "nongovernmental" organizations, such as the Myanmar Maternal Child Welfare Association (MMCWA), the Myanmar Red Cross (MRC), and the Islamic Religious Affairs Council (IRAC). None of these groups, however, including the IRAC, which in other parts of Burma has a good reputation as a moderate but independent body, is genuinely free of government control.<sup>50</sup>

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<sup>50</sup> When questioned by Human Rights Watch/Asia, Rohingyas who knew the head of the Maungdaw IRAC, Dr. Tun Aung (also known as Nurul Hoque), refugees described him as a "SLORC lackey" or as simply being politically ambitious at the expense, rather than for the betterment, of Rohingyas. In 1990 Dr. Tun Aung formed the Mayu Youth and Development Party which won no seats and was later dissolved.

In response to the new influx of refugees in 1996, the UNHCR desk officer for Burma, Herman Sturwold, told Human Rights Watch in June 1996 that UNHCR plans to increase the food-for-work programs and establish other income-generating projects in villages where many families were planning to leave. However, with the reintegration program costing US\$38.4 million over the past four years, and the flight or attempted flight of so many people, the success of the program so far deserves further investigation. Human Rights Watch/Asia is concerned that many of the projects undertaken so far do not reach the people they are intended to help and that Rohingyas are discriminated against in access to health and education facilities on the basis of ethnic origin. There is clearly a massive need for an improvement in the health facilities in Arakan state, but in the case of hospitals and health centers and the training of MMCWA members in midwifery and community health, it is likely that Rohingyas are not serviced by the new arrangements. An August 1994 UNHCR report on health care in Arakan state concluded that one of the main problems, apart from the lack of facilities, was getting trained midwives to treat Rohingya women.<sup>51</sup> The midwives are all Rakhine or Burmese, and though Rohingya villages may be in their catchment area, the midwives rarely visit them, preferring instead to stay in Rakhine areas. Moreover, to Human Rights Watch's knowledge, there are no Rohingya members of the MMCWA. This situation may improve, when many refugees who had been trained as community health workers in the camps return. However, with the restriction on the movement of Rohingyas, it is also unlikely that they could get permission to travel to regional centers to go to hospital. Projects implemented by the NaSaKa/IMPD are also open to abuse: one man who had left Burma in March 1996 told Human Rights Watch that his village in Maungdaw township had to "donate" money and labor for the construction of a new health center at Nay Mye, even though the IMPD had been given money to build it themselves. Another man from Buthidaung said that he had also been forced to build a clinic for his village, but the clinic was built in a neighboring Rakhine village and "we have not got any medical help from them."

## VI. CONTINUING DISCRIMINATION

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.<sup>52</sup>

Returning Rohingyas and those who did not leave Burma continue to face discrimination and persecution by the government because of their ethnicity. In a country where even recognized citizens face daily abuse of their rights, in particular their rights to freedom of association, speech and assembly, the Rohingyas are doubly at risk. As non-citizens, they are discriminated against in their ability to travel freely within the country and access to government services, health education and employment are restricted. As a minority group which is represented by an armed opposition, Rohingya men are vulnerable to arbitrary arrest and even killing by the NaSaKa or the military if they are suspected of being supporters of the rebels. In addition, along with many other ethnic minorities in Burma, Rohingyas are forced to work on government-sponsored projects for no pay and in often appalling conditions. The frequency of the work, determined by the government's ambitious plans for the development of road and rail links between Bangladesh and Burma and by the desire for free labor on business ventures by corrupt members of the army, is such that often Rohingyas are left with no time to earn a living for their families. On top of this, since the refugees were returned to Burma, there has been a marked increase in arbitrary taxation of Rohingya families, taxes which the authorities expect them to pay out of their repatriation kits. These abuses are discriminatory practices which call for a reevaluation of the

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<sup>51</sup> UNHCR, "Report on Health Related Issues in Project Area (Arakan State)," August 1994.

<sup>52</sup> Quoted by the Special Rapporteur to Burma, Professor Yokota, in his "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," (Geneva: UNECOSOC) E/CN.4/1996/65, February 5, 1996.



repartition program and greater effort on behalf of the UNHCR, supported by the international community, to bring about an end of these practices before more refugees are returned.

At the time when the agreement was made to accept the Rohingyas back into Burma, the SLORC was under considerable pressure from its Asian Muslim neighbors and from China: accepting them back was a pragmatic move by the SLORC to try to secure membership in the Association of South East Asian Nations (ASEAN), not one made willingly. They were certainly not welcomed back with open arms, and as the quote from Mya Thinn makes clear, the attitude of the highest authorities in the government towards the Rohingyas has not changed. Those who have returned find that while the worst physical abuses of the kind that occurred in 1991 and 1992 have been curtailed, the discrimination against the Rohingyas has been even further institutionalized and is now enforced by the presence of military barracks in every village tract. Muslims from other areas of Arakan State have been forcibly relocated into the northern Arakan area, while in the most prosperous areas the government has established what it calls "model villages" populated by Rakhine and other Buddhist minority groups.

### **Citizenship Legislation and Identity Cards**

Burma's first written constitution as an independent nation, following British colonization, in 1947 defined a citizen to be

- (i) Every person, both of whose parents belong or belonged to any of the indigenous races of Burma;
- (ii) every person born in the territories included within the Union, at least one of whose grandparents belong or belonged to any of the indigenous races of Burma;
- (ii) every person born in any of the territories included within the Union, of parents both of whom are, or if they had been alive at the time of the commencement of this Constitution, would have been, citizens of the Union;
- (iv) every person who was born in any of the territories which at the time of his birth was included within His Britannic Majesty's dominions and who has resided in any of the territories included within the Union for a period of not less than eight years in the ten years immediately preceding the 1st January 1942 and who intends to reside permanently therein and who signifies his election of citizenship of the Union in the manner within the time prescribed by law.

Under the constitution, while Rohingyas were not recognized as an indigenous race, they would have been able to seek citizenship under Section (iv). In 1948, however, a new Citizenship Act was promulgated which restricted Section (iv) to any person "from ancestors who for two generations at least have all made any of the territories included within the Union their permanent home and whose parents and himself were born in any such territories." As a measure to prevent the continued immigration of Indians into Burma, all residents in Burma were required to apply for registration within one year of the law and were given identity cards. Many Rohingyas registered and were given cards which enabled them to vote during the democratic period between 1950 and 1962. After the military coup in 1962, Rohingyas claim that it became increasingly difficult for the children of recognized citizens to receive citizenship. The law required parents to register their children when they reached the age of ten, so that in many families those born before 1952 will have cards, whereas when their younger siblings applied, they simply never received a response.

In 1974, a new constitution was introduced to enshrine the one-party state that had effectively existed since 1962. Those Rohingyas who were not considered citizens under the 1948 law and who could not provide evidence of their families' residence in Burma for two generations prior to 1948 were only able to apply for Foreigners Registration Certificates (FRC). Once again new identity cards were issued, and again, Rohingya interviewees claimed that when their cards were given in for replacement, they never saw them again. When the 200,000 Rohingyas fled to Bangladesh in 1976, the government of Burma claimed that they were all illegal immigrants who fled when they were unable to produce their identification papers during a routine immigration check. Shortly after the last refugees were forced back to Burma in 1980, the government drafted a new Citizenship Law, which was promulgated in 1982. Both the timing and content of the 1982 law indicate that it was deliberately targeted at the Rohingyas, while also discriminating against

other Asian immigrants who had entered the country during the British colonial period.<sup>53</sup> It defined three categories of citizens: “citizens,” “associate citizens” and “naturalized citizens.” Full citizenship was limited to “nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period prior to 1185 B.E.[Buddhist Era], 1823 A.D.” (The date of the beginning of the British occupation of Arakan state. The rest of Burma was not fully colonized until 1856) A list of recognized ethnic groups was later published including the Kaman and Zerbadee but not Rohingyas. If a person cannot give proof of residence of all ancestors prior to this date, he or she can be classified as an associate citizen if one grandparent, or pre-1823 ancestor, was a citizen of another county. Those persons who had qualified for citizenship under the 1948 law, but who would no longer qualify under this new law (i.e. those people whose ancestors came to Burma two generations prior to 1948), were also considered associate citizens if they had applied for citizenship in 1948. However, under the new law, applications for associate citizenship had to be made within one year of the promulgation of the law. Since then, all former foreigners or stateless persons can only apply for naturalization.

A naturalized citizen, according to the law, is one who has a parent who was a full citizen and one who was an associate citizen (or qualified for citizenship under the 1948 law). But a naturalized citizen must also “speak well one of the national languages”, “be of good character” and “be of sound mind.” According to the terms of the law, only full and naturalized citizens are “entitled to enjoy the rights of a citizen under the law, with the exception from time to time of the rights stipulated by the State.”

All forms of citizenship, “except a citizen by birth” (i.e. full citizen), may be revoked by the state. In the case of associate citizens, being imprisoned for one year or more is grounds for the revocation of citizenship. Under the law, the Central Body, which comprises the Ministers for Home Affairs, Foreign Affairs and Defense, makes decision as to citizenship. Appeals may be made to the Council of Ministers, whose decision is final.

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<sup>53</sup> This includes others of south Asian origin, and ethnic Chinese. The total population of immigrants is thought to be around one million people (see also Martin Smith, *Ethnic Groups of Burma*).

Under the new law, few Rohingyas could qualify for full citizenship, and many would not be entitled to either associate or naturalized citizenship, due not only to their individual histories but also to the difficulty of providing legal evidence. Thus, most Rohingyas are only recognized as foreign residents. Those Rohingyas who had the old National Registration Cards (NRC) which they had been given after 1948 were ordered to turn in their cards when they made an application for citizenship under the new law: many of them complained that they had received neither new documents nor the old ones back. When interviewing over one hundred refugees in 1992, Amnesty International only came across ten Rohingyas who produced pre-1962 documents.<sup>54</sup> A sixty-year-old man from Buthidaung township showed Amnesty International an old Foreigners Registration Card from 1952,<sup>55</sup> and a form which he had been issued in March 1979 when he returned from Bangladesh in the 1978-80 repatriation. He said that although his father and grandfather had both been born in Burma, he could not get any new identification card.<sup>56</sup> A UNHCR report of interviews with 167 refugees in March 1992 stated that 50 percent of them claimed to have had documents taken from them in the previous year. However, the remaining 50 percent had managed to retain some kinds of documents to prove their residency in Burma, ranging from house registration, land titles, shop license and personal IDs.<sup>57</sup> In 1996, a twenty-four-year-old man told Human Rights Watch/Asia:

I had a National Registration Certificate, but none of my family has one. At the end of 1991 new cards were being issued, and I applied for one. On my form I wrote "Rohingya" for ethnicity, but they said that Rohingyas don't exist. It is impossible to complain about these things. So now, I have no ID card at all.

Following the promulgation of the 1982 law, all residents in Burma had to reapply for citizenship, exchanging their old identity documents for new ones. In 1989, a further change was made and all residents had to apply for new Citizenship Scrutiny Cards (*naing-ngan-tha si-sit-ye ka 'bya*), rather than the old Identity Cards (*hmat-hpone-tin*). The new cards are color-coded for easy identification of the citizenship status of the bearer. Pink cards are given to full citizens; blue is for associate citizens and green for naturalized citizens. Foreigners Registration Cards (FRCs) are white. Most Rohingyas do not have FRCs but can use their "family list," that is, the lists of household members which are kept by the local village or township-level authorities, as proof of residence. Like the old cards, the post-1989 cards carry a photograph, signature and thumb-print of the holder as well as name, father's name, date of birth, address and occupation. However, unlike the old cards, they also include the holder's ethnicity (*lu-myo*) and religion (*ba-tha*). Needless to say, "Rohingya" is not accepted as an ethnic group and Muslims from northern Arakan cannot use this identification when applying for any form of registration.

The cards are used to control the movement of people internally and to ensure that associate and naturalized citizens and foreigners do not receive benefits to which they are not legally entitled. ID cards have to be shown in Burma for the smallest of transactions, and at each of these the card number is noted down, often in triplicate to be sent to the relevant ministries and government departments. This includes buying a bus, boat, train or plane ticket, applying for a place in school; visiting a friend outside one's ward (the smallest division of local administration. A ward in a town can be as small as ten streets); or applying for any government job.

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<sup>54</sup> Personal communication.

<sup>55</sup> Issued under the 1949 Residents of Burma Registration Act.

<sup>56</sup> Personal communication.

<sup>57</sup> Henry Domzalski, UNHCR Senior Protection Officer, "International Protection and the Myanmar Refugees in Bangladesh," unpublished paper, April 4, 1992.

When the government began to issue the post-1989 cards, the IMPD was given technical assistance by the U.N. Fund for Population Activities (UNFPA) to develop a computer database which would form the basis of future population censuses.<sup>58</sup> Under this new system, figures from IMPD from November 1992 show that nearly 30 percent of all those who applied for cards from the Arakan state were either rejected or were still waiting a decision. This compares to a national average of 3 percent. However, while this is already low, it is based on population figures which omit large numbers of Muslims, most of whom probably never applied for cards. Thus, while the figures do not give a breakdown by ethnic group or religion, it is clear that Arakan state has the worst record for rejection of citizenship applications in Burma. Indeed, it is likely that only those Rohingyas who were successful businessmen or professionals and who needed cards in order to travel were able to get the new green cards, and even then, of the ten Rohingyas whom Human Rights Watch/Asia has met who had obtained these cards, six admitted having paid large bribes to local officials for them.

Associate or naturalized citizens are entitled to enjoy “the rights of a citizen under the laws of the State, *with the exception of the rights stipulated from time to time by the Council of State*” [emphasis added].<sup>59</sup> It is not clear what the legal framework is for the exceptions, a lack of legal clarity which was noted as a major obstacle to the rule of law by the former Special Rapporteur to Burma, Professor Yokota, in his report of February 1993.<sup>60</sup> Many interviewees however, stated that the rights denied associate and naturalized citizens include the right to own immovable property; the right to be employed as civil servants; the right to stand for election. In addition, university admission guidelines prevent all but full citizens from studying medicine, dentistry and engineering at institutes of higher education.<sup>61</sup> Those Rohingyas who are neither associate nor naturalized citizens (that is, the majority) but stateless persons or holders of FRCs are also denied these rights, and in addition they are denied freedom of movement. Under the 1864 (amended in 1940) Foreigners Act they are required to apply for a license to leave their place of residents or travel within Burma. Section 12 of the act states, “Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to travel, and the period, if any, during which the license is intended to have effect.” Under the 1974 Constitution, foreigners are also denied basic civil and political rights such as the freedom to practice any religion (Article 156a), the right of association (Article 158), and access to courts (Article 101f). There no similar restrictions on the social and economic rights of foreigners, for example on the right to work, to basic education, and to the ownership of movable property.

## **International Law and the 1982 Citizenship Act**

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<sup>58</sup> At the time, the IMPD was a department of the Home and Religious Affairs Ministry. In June 1995 the SLORC created a new Ministry of Immigration and Manpower under military hard-liner, Lt Gen Maung Hla (who is also responsible for military appointments, and was formerly Military Operations Commander). The IMPD is the only department of the new Ministry.

<sup>59</sup> 1982 Citizenship Law, sections 30 (c) and 53 (c).

<sup>60</sup> Yozo Yokota, “Situation of Human Rights in Myanmar” (Geneva: U.N. Commission on Human Rights) E/CN.4/1993/3, February 17, 1993. Yokota resigned as Rapporteur to Burma in April 1996, in protest at a lack of financial and administrative support from the U.N. for his mandate and has been replaced by Mr. Rajsoomer Lallah.

<sup>61</sup> These are traditionally the most popular subjects at universities in Burma as they enabled students to seek work permits abroad or in shipping lines.

The 1982 Citizenship Law should be revised or amended to abolish its over-burdensome requirements for citizens in a manner which has discriminatory effects on racial or ethnic minorities particularly the Rakhine Muslims. It should be brought in line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961. Prof. Yokota.<sup>62</sup>

Burma's citizenship law violates several fundamental principles of international common law and leaves Rohingyas exposed with no legal protection of their rights. Nationality is the principal link between the individual and the law. People invoke the protection of the state by virtue of their nationality. As well as being denied specific rights in Burma, such as the right to freedom of movement, the right to education, the right to own property, and so on, by being denied citizenship Rohingyas are also denied recourse to the law in any situation, including international law.<sup>63</sup> Since citizenship is thus essential for the protection of all rights, international norms have been developed that impose an obligation on states to grant citizenship to stateless people who are not recognized as citizens of any other state. The International Covenant of Civil and Political Rights (ICCPR) addresses this issue in Article 24 (a), which states: "Every child has the right to acquire a nationality." The 1961 Convention on the Reduction of Statelessness goes further by obliging the state in which a person is born to grant nationality under certain circumstances. Article 1 states: "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless."

Burma is not a party to either the ICCPR or the convention on statelessness, but the cited provisions do reflect a clear trend in international law that Burma should follow. In the case of the Convention on the Rights of the Child (CRC), Burma did accede in 1991 and is therefore legally obliged to respect its provisions. Article 7 of the CRC states: "The child shall be registered immediately after birth and shall have the right to a name, the right to acquire a nationality...States Parties shall ensure implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless." This means that, in the case of children who would otherwise be stateless, Burma is obliged to grant them citizenship.

The country with the primary responsibility to provide a nationality is the one where the person has lived for more years or generations than anywhere else, where he or she at one time enjoyed legal status, settled and was given reasonable expectations of being a citizen.<sup>64</sup> Under this standard, the 1982 Citizenship Act clearly violates international norms by placing an excessive burden of proof on the applicant. Section 8 (b) of the act permits the State to arbitrarily revoke the citizenship of anyone "except a citizen by birth," in contravention of Article 15 of the Universal Declaration of Human Rights, which states: "No one shall be arbitrarily deprived of his nationality." The 1982 act is even more objectionable insofar as it was promulgated to deliberately deny citizenship to persons who had previously been recognized as citizens.

While in practice the law is often not actively applied, as can be seen by the fact that Rohingyas were permitted to vote in the 1990 election — a right given only to citizens — the fact remains that the law discriminates against Rohingyas and other "foreigners," even though they may have resided in Burma for at least three generations.

### **Current Status of Returnees**

As seen above, one of the key points of the MOUs between Bangladesh and Burma and between Burma and the UNHCR was that returnees would be granted "appropriate identification papers." In practice however, this initially meant that returnees received "returnee identification cards," yellow cards which only identified them as persons having returned from Bangladesh but giving them no legal status in Burma. The returnees were photographed in the reception

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<sup>62</sup> Yozo Yokota, "Report on the Situation of Human Rights in Myanmar," UNECOSOC E/CN.4/1993/37, February 17, 1993.

<sup>63</sup> For a discussion of the implications of statelessness, see Human Rights Watch/Middle East, *The Bedoons of Kuwait: Citizens without Citizenship*, (New York: Human Rights Watch, 1995).

<sup>64</sup> *Ibid.*, p. 92.

centers, their village of origin, number of family members and other particulars were noted down and for a fee of fifty kyats (US\$0.50), the returnees received these yellow cards within a month of return. In addition, the 'family lists' which are local council documents certifying village residency, were updated to include any births, deaths and marriages which may have taken place while in Bangladesh.

In July 1995 the government, through the IMPD, moved to regularize the population of northern Arakan by issuing new cards to all resident Rohingyas. Although not a long term solution, this must be seen as a considerable breakthrough and owes much to the efforts of the UNHCR, who had pushed for permanent legal documentation of the Rohingyas since 1992. The new cards were issued under the 1949 Residents of Burma Registration Act and the 1951 Residents of Burma Registration Rules, both of which acts were superseded by the 1982 Citizenship Law but were reintroduced in order to be used solely for the registration of Rohingyas. Human Rights Watch/Asia has been unable to obtain either of these laws but understands that they allow for the issuing of Temporary Registration Certificates for foreign residents or stateless persons. It is not known how long the certificates will be valid for nor what may replace them, but the laws do allow for citizenship applications to be made by the holder — and again, it is not known if there is a time limit within which the application has to be made.

While not guaranteeing the Rohingyas any additional rights, the new cards are a positive step in that they do not discriminate between returnees and those who did not leave Arakan State, and, as they do not prohibit the holder from applying for citizenship, they also leave room for a permanent solution to the issue of statelessness for the Rohingyas. Thus, while they are not in themselves a solution, the UNHCR hopes the new temporary registration cards will be the first step towards full citizenship rights for the Rohingyas, if the government chooses to act on their applications for citizenship. However, the government's present attitude towards the Rohingyas gives little ground for such optimism. On the contrary, since they are only temporary documents, the government also has the power to rescind them at will, and continue to ignore Rohingyas claims to their rights as full citizens. Even with the temporary cards, there is still a major problem of the speedy implementation and registration of the cards, despite the presence and pressure of the UNHCR. It is not yet known what percentage of the population had received them by June 1996, although none of the six returnees who had come back to Bangladesh and were interviewed by Human Rights Watch/Asia in March 1996 had received these certificates.

Whatever may happen in the future, the fact remains that during the ongoing UNHCR repatriation program the Rohingyas are considered either stateless persons or Bangladesh citizens by the Burmese authorities. Statelessness is cited in the 1995 *State of the World's Refugees* as one of the prime reasons for refugee outflows. The report states: "When it occurs on a collective basis, statelessness is almost always an indicator of underlying social and political tensions, involving minority groups which are perceived by the majority community and the authorities as different, disloyal or dangerous...In most situations, people become stateless not as a result of some historical quirk, but because a state has not yet learned to live with or tolerate its minorities."<sup>65</sup> Regrettably, the UNHCR does not go so far as recommending in its own guidelines that recognition of nationality should be a pre-condition to any repatriation.

## **Forced Labor**

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<sup>65</sup> UNHCR, *State of the World's...* p. 67.

Forced labor in Burma has been thoroughly documented by the U.N. Special Rapporteur to Burma, Human Rights Watch, and Amnesty International.<sup>66</sup> The ILO has repeatedly condemned the government for the use of unpaid civilian laborers on infrastructural and other development projects across the country, as has the U.N. General Assembly in successive resolutions on Burma. As in other parts of the country, forced labor in Arakan state is often accompanied by physical abuse by the military or NaSaKa guards who oversee the work. Since Arakan state is a particularly undeveloped region of Burma, and since the military would like to establish road and rail links from Bangladesh to Rangoon and to encourage tourism in the region, there is much infrastructural work to be done — in fact, there are plans for an estimated 1,200 miles of road. In addition to working on roads, Rohingyas also have to build hundreds of new NaSaKa barracks and often have to work there, for no pay, once construction is completed.

The UNHCR has not denied that forced labor remains a problem for the returnees and other residents of northern Arakan, but it determines that since forced labor also takes place everywhere else in the country, it cannot be considered a persecutory practice and therefore cannot generate “a reasonable fear of persecution on the grounds of race, nationality, religion, membership of a social group or political belief.” In its June 1995 *Bulletin* UNHCR stated:

[C]ompulsory labor continues to be a nation-wide practice in Myanmar. The UNHCR had intervened repeatedly on behalf of returnees being called for compulsory labor, and feels it has succeeded in reducing significantly the burden for the local population and returnees. The authorities have agreed to limit compulsory labor in Rakhine State to a maximum of four days of work from every family per month.

Reports from inside Arakan state, however, suggest that in the dry season (December - July) especially, the number of days Rohingyas have to work averages about a week a month and can sometimes be as much as ten days or two weeks. To this economically disadvantaged group, where most people are day laborers, one day of work without pay can mean one day without food for the whole family. As a result, visitors to the area report that often the family will send their children to work for the army, leaving the father to find paid work.

For day laborers, work tends to be seasonal. Unfortunately, the dry season, which is the busiest time for construction projects, is also the time of least agricultural work, so that any additional forced labor in the dry season tends to exacerbate an already difficult situation. In March 1996, sporadic fighting between the Rohingya National Alliance and NaSaKa in northern Maungdaw led the SLORC to send in extra men and supplies. All these troops required porters to carry their supplies, and the job fell to local Rohingyas, a situation which was all too reminiscent of that just prior to the 1991-92 exodus.

In September 1995 the UNHCR was shown documents by the SLORC which purported to be new instructions to regional administrators to cease the practice of no payment for forced laborers. This directive was later published by the U.N. Special Rapporteur in his February 1996 report. It was addressed to divisional LORCS and relevant ministries and called on them to ensure that workers be paid “their due share” to prevent “[t]he sufferings of the people [which] may in turn create misperception, misunderstanding and misjudgment of the government and the Tatmadaw [armed forces].” It is clear that, in the majority of cases where the government does allocate funds for development projects, corruption by senior military commanders and their juniors is the main cause of non-payment. Given this, and the lack of access to legal redress for unpaid labor, it is unlikely, as the Special Rapporteur noted, that the directive would be implemented. In June 1996, as increasing numbers of people indicated their desire to leave Arakan state, due in part to forced labor, Lt. Gen. Khin Nyunt, the secretary-1 of the SLORC, visited the area and was reported by UNHCR as agreeing to end all unpaid forced labor in Arakan. It is yet to be seen whether this new resolve on the part of the Secretary-1 will have any effect. If it does, the Rohingyas will be lucky to receive the twenty-five kyats (US\$0.25

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<sup>66</sup> See Human Rights Watch/Asia, “The Mon: Persecuted in Burma, Forced out of Thailand,” vol. 6, no. 14, December 1994; See Human Rights Watch/Asia, “Burma: Abuses Linked to the Fall of Manerplaw” , vol.7, no.5, March 1995; See Human Rights Watch/Asia, “Burma: Entrenchment or Reform?” Vol. 7, No.10, July 1995; Amnesty International, “Myanmar: Human Rights Still Denied” ASA 16/18/94, November 1994; “Myanmar: No Place to Hide” ASA 16/13/95, March 1995; U.N. Special Rapporteur to Burma, “Reports on the Situation of Human Rights....”

cents) which the government considers the “due share” for a day’s labor, even though the market rate is about four times higher.

### **Land Ownership and Arbitrary Taxation**

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.<sup>67</sup> As associate or naturalized citizens or as foreign residents, Rohingyas are not permitted land use rights. In practice, however, as noted above, at least half of the 176 refugees interviewed by the UNHCR in 1992 produced documents which gave proof of such rights. Nevertheless, while customary law applies in most villages, there is no legal avenue for Rohingyas to protest at loss of land or to acquire new usage rights.

Following repatriation, most Rohingyas have been able to win back land which had previously “belonged” to them before they left in cases brought before local magistrates’ courts and/or with the payment of a hefty bribe to the local council chairman. One man interviewed by Human Rights Watch/Asia in March 1996, who had returned to Bangladesh for a second time, said that he had got his land back only after giving away most of the repatriation money he was given in “fees” to the council head, the magistrates court and to the Muslim family who had taken the land. In many parts of Maungdaw and Buthidaung, 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. In this however, the Rohingyas are not discriminated against any more than full citizens: all of Burma’s ethnic groups, including Burmans, have been subject to arbitrary confiscation of property under the current government.

As a condition of the land use rights, tenants must pay taxation to the government. The taxation is paid in kind, as a percentage or quota of the harvest which the farmers must sell to the government at a price fixed by the government. In Arakan state however, 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, the system is often abused by the soldiers who collect the rice, resulting in Muslim farmers having to give much more than the amount required by the government. The rice procured by this means is then used to feed the military and subsidize the salaries of civil servants and to export by the government or companies which have joint venture contracts with the Ministry of Agriculture and Fisheries. Figures produced by the World Bank show that the percentage of paddy procured in this way rose by 3.3 percent between 1988 and 1994, while the ratio of the difference in price between the government and the market has increased in the same period.<sup>68</sup> These figures, which are from the government, are unlikely to be accurate, but they do point to a trend. Interviews with farmers around Burma suggest that the real procurement program may be much larger than these figures suggest, as they would be to make sense of the dramatic increase in the size of the military and civil service and in the amount of rice exported by the government which the increase in paddy yield cannot account for.<sup>69</sup> Moreover, these figures do not take into account the additional paddy taxes levied by local military commanders for their own profit.

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<sup>67</sup> See World Bank, “Myanmar: Policies for Sustaining Economic Reform,” Country Report, 1995.

<sup>68</sup> Ibid. The ratio in 1989/90 was 0.45 and in 1993/4 it was 0.59.

<sup>69</sup> See Khin Maung Kyi, “Burmese Gleam: Will it Endure and Glow or Flicker and Die? Prognosis of recent economic changes in Burma,” National University of Singapore, mimeo, 1995.



In Arakan state in February 1996, the land tax was twelve *din* (about sixteen kilos) of rice per acre. In February, the government price for rice was seventy-five kyats per *din*, compared to a market price of 350 kyats. This has to be paid regardless of the quality of the land or the rice yield in any particular season. For the average farmer, twelve *din* is about a quarter of their normal yield, though obviously the yield can differ widely in different areas. On November 25, 1995 a cyclone hit northern Arakan, destroying much of the rice crop, just before harvest time. As a result many Rohingya farmers lost their entire crop. Yet in February, at harvest time, the NaSaKa came round to each village to demand the government's rice. Human Rights Watch/Asia interviewed one Rohingya man who had gone to Cox's Bazaar in order to try and contact his relatives abroad and ask them for money to help pay this tax. He had come across the Naf river on a day pass, which cost him 50 kyats (US\$ 8.45) on the Burma side, and ten Taka (US\$ 0.24) to get into Bangladesh. He said that he made the journey often, mainly in order to buy vegetables, which he said were much cheaper in Bangladesh.<sup>70</sup>

It is much easier to travel to Cox's Bazaar than to Sittwe. It is very serious for me now. The NaSaKa came to my house twenty days ago, but I saw them coming and ran away. They took my three-year-old daughter instead, and sent my wife to find me, saying they would keep my daughter until I came. I tried to explain to them that I had no money, that my crop had failed because of the cyclone, but they just kept insisting that I had to pay a 12,000 kyats [US\$120] fine, so now I have come here to telephone my relatives in Saudia Arabia and ask them to send me some money.

In addition to the land tax, Rohingyas have also been subject to other 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 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. This fee only applies to the Rohingyas, as Buddhist Rakhines do not fish. Taxes are also demanded for a variety of different projects: cleaning the streets and roads when SLORC leaders visit the area; paying for schools and clinics to be built; and even for the restoration of Buddhist pagodas. To add to the difficulties faced by all Rohingyas, the inflation rate in Arakan rose steadily during the repatriation, and by January 1996 rice prices had increased by 30 percent. The price of other staple foods had also risen by twice this amount.

### **Forced Relocations**

Whatever documents a Rohingya may have to claim land use rights, these are worth nothing if the NaSaKa decides to relocate their village. As in the case of Sittwe, above, many Rohingyas and other Muslims from different areas of Arakan state have been forcibly moved to Maungdaw and Buthidaung, adding fuel to the rumors that the SLORC intends to contain the Rohingyas in these two townships for the indefinite future. According to the Special Rapporteur to Burma in his February 1995 report, in July 1994 over 500 Muslim families from Nga Let village tract in Minbya township, just east of Mrauk-Oo, were taken by boat to Maungdaw and Buthidaung (in March and May of 1996 all the Rakhine residents of Mrauk-Oo were also forced to move out from areas around old pagodas as part of the SLORC's move to clean up the country and encourage tourism); between November 1994 and February 1995 over 1,500 Muslim villagers from four villages in the same township were also forced to move to Buthidaung; in late 1994, 150 households from Min-bya and 350 households from Mrauk-Oo were moved to Maungdaw;<sup>71</sup> and in March 1995, 3,000 Muslims from Pike Thee village tract were given an order to move. In some cases, forced relocations have taken place in order to secure prime land sites for the construction of prawn cultivation ponds, owned by the military.

### **Model Villages**

Since 1988, the government has established a program it calls "model villages" in Maungdaw and Buthidaung in order to "encourage" Rakhine families to settle in these townships. By 1995 there were twelve such villages. Sources

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<sup>70</sup> Many people in Arakan state told Human Rights Watch that since 1992 they had only been permitted to grow rice on their land, as part of the governments agricultural program. As a result, the price of vegetables had dramatically increased.

<sup>71</sup> Yozo Yokota, "Situation of Human Rights in Myanmar," (Geneva: U.N. Commission on Human Rights, February 23, 1995).

inside Arakan state whom Human Rights Watch/Asia interviewed in February 1996 claimed that these villages were intended to reestablish Rakhine villages which had existed before the communal violence in the 1940s. Human Rights Watch also met Rakhine villagers who had moved from areas of Bangladesh to these model villages, where they said they were given land and had homes built for them. They did not add that the land was usually confiscated without compensation from Muslim villagers, and that the houses were built for them, under the instruction of the NaSaKa, by Muslims who received no money for their labor.

By taking Rohingya land and giving it to Rakhines in this way, the government exacerbated existing tensions. The UNHCR has negotiated with the central government on this issue, which had the potential of disrupting the whole repatriation as rumors circulated in the refugee camps about huge tracts of land which had been given to Rakhine families. Despite the intervention of the UNHCR, however, Human Rights Watch has learned that new model villages for Rakhines from the Mrauk-Oo area were being constructed in early 1996 using the unpaid labor of Rohingyas on land which Rohingyas had occupied.

### **Freedom of Movement**

The classification of all Rohingyas as resident foreigners becomes clear when one examines the right to freedom of movement, as the statement by the home minister quoted above illustrates. Whatever the provisions of the 1982 Citizenship Law concerning the rights of associate and naturalized citizens, there is no freedom of movement for Muslims in Arakan state. Freedom of movement seemingly only exists out of Arakan and into Bangladesh, and even that is restricted: to move within Arakan state or from Arakan to other parts of Burma is virtually impossible for Muslims. In this regard the situation has dramatically worsened since 1992, as the government has established increasing numbers of military bases and road/river blocks throughout Arakan State. While the military, which has more than doubled in size since 1988, has now established bases in other ethnic minority areas of Burma<sup>72</sup> as a means of controlling the population and cutting off support for insurgent forces, northern Arakan state is unique in having units of the NaSaKa.

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<sup>72</sup> See Human Rights Watch/Asia, "The Mon: Persecuted in Burma, Forced out of Thailand," and Human Rights Watch/Asia, "Burma: Abuses Linked to the Fall of Manerplaw."

Thus, Rohingyas who would like to travel outside their villages must apply to the local LORC, 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. 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, was cited by both returnees and the UNHCR as virtually impossible. To travel to Rangoon, which would mean purchasing a plane ticket, was completely impossible. This is equally true for Rohingyas who had never left Burma and Muslims who are not from Arakan state.<sup>73</sup> The sheer complexity 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 LORC 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.

## VII. CONCLUSIONS

To avert any further occurrences of this type [exoduses or expulsions from Myanmar to Bangladesh], efforts will evidently be needed to provide Myanmar's Muslim minority with greater security, by protecting their human rights, by improving their legal and social status and by providing them with greater income-generating opportunities. While UNHCR is attempting to address these concerns, ultimate responsibility must be assumed by the country of origin.<sup>74</sup>

Human Rights Watch concurs with the above statement. However, in a country like Burma, which has an appalling human rights record and has shown itself to be remarkably impervious to international criticism, UNHCR is failing to live up to its own responsibilities and protective function by expecting the government to assume "ultimate responsibility" for the safety of a persecuted minority. The government has shown twice in the past thirty years (1976 and 1991) that it does not want the Rohingyas and that it will only accept them as non-citizens.

The UNHCR's new emphasis on "durable" solutions, and on voluntary repatriation as the preferred solution, is part of the High Commissioner's current three-pronged approach which includes prevention and preparedness.<sup>75</sup> In the 1992 Executive Committee note on protection, prevention is defined essentially as protection in the country of origin:

In terms of specific activities which the office should undertake in the area of prevention...it was agreed that early-warning, preventive diplomacy, human rights promotion, economic and social development and protection of internally displaced persons were all areas appropriate for specific UNHCR initiatives.<sup>76</sup>

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<sup>73</sup> A Muslim with full citizenship who was the assistant manager for the Myanmar Economic Holdings Bank (a bank owned by the military) in Buthidaung was called to Rangoon by his head office in September 1992. Despite his position, the Arakan state LORC did not permit him to purchase a plane ticket in Sittwe. The same month a Muslim (not a Rohingya) veterinary surgeon, who was also working for the government, was taken ill in Buthidaung and required treatment which was only available in Rangoon. Again, despite the fact that his family were still living in Rangoon, he was not permitted to leave, and he died in Sittwe hospital.

<sup>74</sup> UNHCR *State of the World's Refugees*, 1995.

<sup>75</sup> The UNHCR still retains, under the rubric of solutions, third-country resettlement and integration in the country of first asylum, but for the most part, the emphasis is now nearly always on voluntary repatriation.

<sup>76</sup> UNHCR, "Findings and recommendations of the Working Group in International Protection..."

This notion of prevention included the aim of working more closely with other U.N. bodies, notably the U.N. Center for Human Rights and the Commission on Human Rights, as well as “making public information a more integral part of protection strategies, incorporating a role for protection advocacy bodies, parliamentarians, teachers, journalists and other opinion-makers.”<sup>77</sup>

Human Rights Watch/Asia applauds moves by UNHCR to work towards prevention of refugee outflows by promoting human rights, and we have long called for a coordinated response to the human rights crisis in Burma. However, there is little evidence that the UNHCR has used a coordinated, rights-based strategy in the Burmese context thus far. To the contrary, the UNHCR appears to have deliberately avoided human rights concerns, in an effort to maintain a presence in the country of origin. In this case, what passes for prevention or returnee monitoring has not resulted in the communication of important information about ongoing abuses to potential returnees. In the worst case scenario, UNHCR presence in the country of origin, combined with pressure by the host government for repatriation, could prevent new refugees from seeking asylum when persecution continues or is stepped up.

While there is no evidence that UNHCR would knowingly act in such a way, there is a point at which the need for silence about human rights abuses in order to maintain a presence in a refugee-producing country becomes complicity in those abuses. In the Burmese case, the Special Rapporteur to Burma was discouraged from visiting Arakan state once the UNHCR became operational there; the UNHCR has not supported applications by human rights organizations to visit Arakan state and has not been forthcoming with information about continued human rights abuses against returnees nor against other Rohingyas or the Rakhine population of Arakan state. Without information provided by UNHCR, governments, human rights groups, the media and other influential bodies have been prevented from applying the necessary pressure on the governments of Burma and Bangladesh which at crucial times could have lessened abuses and assisted the UNHCR in its efforts to fulfill its protection mandate including negotiations with those governments, as indeed occurred in December 1992.

Finally, while Human Rights Watch welcomes the effort made by UNHCR to define in great detail in its new *Handbook on Voluntary Repatriation* the conditions under which a repatriation can be considered voluntary, and when and how UNHCR will become involved in such repatriations, it appears that such conditions were not in place for the Rohingyas. A coordinated policy which includes all U.N. agencies working in Burma, the U.N. Secretary-General and influential governments is clearly needed to ensure against involuntary return of refugees, prevent further refugee outflows and improve the human rights situation in Burma more generally.

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<sup>77</sup> Ibid.

### *Human Rights Watch/Asia*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. The staff includes Kenneth Roth, executive director; Cynthia Brown, program director; Holly J. Burkhalter, advocacy director; Barbara Guglielmo, finance and administration director; Robert Kimzey, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Juan Méndez, general counsel; Susan Osnos, communications director; Jemera Rone, counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Asia division was established in 1985 to monitor and promote the observance of internationally recognized human rights in Asia. Sidney Jones is the executive director; Mike Jendrzejczyk is the Washington director; Robin Munro is the Hong Kong director; Patricia Gossman is a senior researcher; Jeannine Guthrie is NGO Liaison; Dinah PoKempner is Counsel; Zunetta Liddell is a research associate; Joyce Wan is a Henry R. Luce Fellow; Paul Lall and Olga Nousias are associates; Mickey Spiegel is a research consultant. Andrew J. Nathan is chair of the advisory committee and Orville Schell is vice chair.

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