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January 12, 2015

President Thein Sein
Office of the President
Naypyidaw, Myanmar

Re: Amending the 1982 Citizenship Law

Dear President Thein Sein,

On December 29, 2014, the United Nations General Assembly adopted resolution A/RES/69/248 by consensus calling on your government to grant full citizenship rights to the Rohingya. We write to you to urge your government to heed the call of all members of the United Nations to amend the 1982 Citizenship Law to grant full citizenship rights to Rohingya on the same basis as all other ethnic groups in the country.

The General Assembly resolution expressed “serious concern” about your government’s treatment of the Rohingya. It called on your government to allow the Rohingya to have equal access to government services, including medical care and education, and to end discriminatory policies and practices. It also called on your government to take measures to conduct independent investigations into rights abuses, to ensure that the Rohingya can safely return to their communities, “and to promote peaceful coexistence.” This resolution is a powerful reminder that the international community will continue to take the treatment of the Rohingya very seriously.

We note your stated commitment to end racial and ethnic strife and divisions in the country and your acknowledgement of the deep-rooted discrimination against Rohingya Muslims by local Arakanese Buddhist communities. We urge you to take quick action to amend the citizenship law to bring it in line with international law and human rights standards. In particular, we urge that the law be amended to end the statelessness of most members of the Rohingya population and to provide full citizenship on a non-discriminatory basis and without reference to race, ethnicity, or religion. We are greatly concerned about the deep ethnic-religious divide in Arakan State where sectarian violence between ethnic Arakanese Buddhists and Rohingya and other Muslims erupted twice in 2012, leading to approximately 167 deaths, widespread property destruction, and the displacement of over 140,000 people. Human Rights Watch interviewed dozens of Arakanese Buddhist and Rohingya Muslim

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witnesses, and others, and found that both communities suffered violence and that local security forces failed to protect both communities during the early stages of the violence. We also found that local ethnic divisions were exacerbated by abuses such as mass arrests, killings, and other abuses committed by state security forces against Rohingya in the state capital, Sittwe, and in northern Arakan State.¹ In the second round of violence in October 2012, Human Rights Watch research led us to conclude that state actions rose to the level of crimes against humanity and ethnic cleansing designed to drive the Rohingya population out of Sittwe and other urban areas of Arakan State.

Systematic and widespread abuses against the Rohingya minority continue to be perpetrated by state officials and security forces in northern Arakan State, particularly in Buthidaung and Maungdaw townships, and around internally displaced persons camps in Sittwe and Myebon townships. Rohingya are subject to restrictions on the rights to freedom of movement, religion, and to work, as well as denial of access to basic services. Human Rights Watch continues to receive credible information on a regular basis of abuses against Rohingya by state security forces, including at checkpoints and around villages, leading to a sharp rise in the number of Rohingya fleeing Arakan State during 2014. Despite promises by your government to ensure security for all residents of the state, these abuses continue with impunity.

There are currently approximately 145,000 displaced people in camps in Arakan State, according to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the majority in Sittwe township.

We remain especially concerned that humanitarian access to camps for internally displaced Rohingya in Sittwe and to Rohingya communities in northern Arakan State continues to be obstructed by local security forces. Moreover, pre-crisis humanitarian programs by the UN and international nongovernmental organizations have not been fully restored, denying life-saving humanitarian aid to thousands of Rohingya. Vital health services provided by Medecins Sans Frontieres (MSF) have not been fully restored since their suspension in February 2014. The suspension and continuing restrictions on humanitarian agencies have greatly increased the suffering of displaced Rohingya in camps throughout Arakan State, as well as Rohingya communities in Buthidaung and Maungdaw townships.

We are very concerned about your government's draft Rakhine Action Plan, which was disclosed by the media in September 2014. It contained deeply worrisome provisions that could, if enacted, ensure long-term segregation of displaced Rohingya and enshrine statelessness as a national policy. We are concerned that

¹ See Human Rights Watch, "'All You Can Do is Pray' Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State," April 22, 2013, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray-o>, and Human Rights Watch, "'The Government Could Have Stopped This': Sectarian Violence and Ensuing Abuses in Burma's Arakan State," August 1, 2012, <http://www.hrw.org/reports/2012/07/31/government-could-have-stopped>.

your government has failed to be transparent about this plan and the adverse impact it would have on many communities in Arakan State. Months after a promised release, the Rakhine Action Plan has yet to be made publicly available, which adds to concerns in affected communities. We urge you to amend the draft action plan to ensure that all elements meet the requirements of international law.

Many members of your government, echoing racist claims by others, claim that the Rohingya do not exist and that the term cannot be used. While you have stated that you no longer intend to follow this approach, it is deeply problematic that in daily practice members of your government refuse to acknowledge the term “Rohingya” and commonly refer to the Rohingya population in Arakan State as “Bengali,” “so-called Rohingya,” or the pejorative “Kalar,” claiming that they are all illegal migrants from what is now Bangladesh. While many government officials claim that the word “Rohingya” should not be used, we note that you used the term “Rohingya” when you met with me and others from Human Rights Watch in February in Naypyidaw. This was a welcome sign of leadership that we hope will continue.

The effective denial of citizenship to Rohingya has resulted in various human rights violations against them, including restrictions on the right to freedom of movement, discriminatory limitations on access to education, arbitrary detention and taxation, forced labor, and arbitrary confiscation of property. The dissolution of the Na Sa Ka border guard force, which committed widespread and systematic abuses against the Rohingya for decades, is an important development. Its successors, including newly raised border security forces and Combat Police Battalions tasked with security around the displaced person camps, have behaved more professionally than the Na Sa Ka, but reports of abuse, intimidation, and corruption by security forces persist. We urge you to strengthen efforts to ensure a security environment in Arakan State that protects all communities equally and without discrimination and builds trust with the Rohingya community.

1982 Citizenship Law

Burma’s 1982 Citizenship Law states that “full” citizens are members of named “national races” (including Arakan, Burman, Chin, Kachin, Karen, Karenni, Mon, and Shan), or those whose ancestors settled in the country before 1823, the beginning of British occupation of what is now Arakan State. If individuals cannot provide evidence that their ancestors settled in Burma before 1823, and if they are not of a national race, the law denies them full citizenship.

The law designates three categories of citizens: (1) full citizens, (2) associate citizens, and (3) naturalized citizens. Foreigners may become naturalized citizens if they can provide “conclusive evidence” that they or their parents entered and resided in Burma prior to independence in 1948. Persons who have at least one parent who holds one of the three types of Burmese citizenship are also eligible to become naturalized citizens. Beyond this qualification, section 44 of the 1982 Citizenship

Law requires that a person seeking to become a naturalized citizen must be at least 18-years-old, able to speak one of the national languages well (the Rohingya language is not recognized as a national language), of good character, and of sound mind. The UN Human Rights Committee has long expressed concern over stringent language criteria for citizenship.²

While states are entitled to control the granting of citizenship, entry, and residency requirements for non-citizens, they must act in accordance with their international human rights obligations. The Universal Declaration of Human Rights and all major international human rights conventions prohibit discrimination on the basis of race, religion, language, and other grounds. By applying distinctive standards to the Rohingya that are not supported by reasonable and objective criteria, the 1982 Citizenship Law discriminates against them.

Under the Convention on the Rights of the Child, to which Burma is a party, children have the right to acquire a nationality and have this right ensured under national law, particularly where they would otherwise be stateless.³

The Rohingya

There have been Muslim inhabitants in western Burma for centuries. Even for those Rohingya whose families settled in the region before 1823, the extreme difficulty of proving it to the satisfaction of the Burmese authorities to obtain full citizenship has made it nearly impossible for many entitled to full citizenship to secure it, let alone naturalized citizenship or status as an ethnic race or nationality of Burma. Very few Rohingya have formal documents, any means of obtaining documents, or any way of providing “conclusive evidence” of their lineage in Burma. Those who cannot provide the government “conclusive evidence” of their lineage or history of residence find themselves ineligible for any class of citizenship, along with their children.

Successive Burmese governments, including yours, have used the discriminatory 1982 Citizenship Law to deny citizenship to an estimated 800,000 to 1.3 million Rohingya in Burma. Using the denial of citizenship to treat Rohingya as if they are living illegally on Burmese soil is a significant cause of negative popular attitudes towards Rohingya and contributes to communal strife.

In 1983, the Burmese government completed a nationwide census in which the Rohingya were not counted, effectively rendering them stateless through exclusion. The 1982 Citizenship Law had, of course, already legalized this exclusion.

² UN Human Rights Committee, Consideration of Reports Submitted By States Parties Under Article 40 of the Covenant (1995) CCPR/C/79/Add.59, para. 12 (regarding the Russian-speaking minority in Estonia).

³ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990, article 7.

During the 2014 nationwide census conducted in Burma by the Ministry of Immigration and Population in conjunction with the United Nations Population Fund (UNFPA), the Rohingya were excluded by government enumerators who would not permit people to self-identify as Rohingya, being given only the choice of identifying as Bengali or not be included. The preliminary census data released in August 2014 estimated 1.09 million people who were not counted, the majority of whom are estimated to be Rohingya.

In June 2014, the promised citizenship verification process began in Myebon township. On September 22, the authorities announced that out of 1,094 applications who took part in the process, 40 were granted full citizenship; 169 were granted naturalized citizenship, with many of this group self-identifying as Kaman Muslims and a small number as Kaman-Bengali. Protests by Arakanese ultra-nationalists have caused the process to be suspended. This process has been seen as a failure by donors, the UN and, most importantly, the Rohingya community. The underlying problem is the government's continued use of the discriminatory 1982 Citizenship Law to determine citizenship for Rohingya applicants.

Human Rights Watch is also deeply concerned about amendments to political party laws that will bar temporary citizenship card holders ("white card" holders, as distinct from Citizenship Scrutiny Cards issued to citizens) from forming or being members of political parties, and proposals in the national parliament to deny voting rights to white card holders. This essentially disenfranchises an estimated 850,000 temporary ID card holders from voting in the 2015 elections, a right that was extended to many Rohingya in the May 2008 nationwide referendum and the November 2010 national elections.

Recommendations

We recommend that the Burmese government:

1. Amend the 1982 Citizenship Law to grant full citizenship to Rohingya on the same basis as the 135 other groups listed in the Citizenship Law. Request assistance from the United Nations to ensure that all elements of the law are amended to meet international standards, in particular by ensuring that the law makes no one stateless, that stateless children are granted citizenship, and that no ethnic group is denied full citizenship rights. Ensure that the amended law removes the category "associate citizen" or other form of second-class citizenship that gives local officials legal tools and bureaucratic latitude to deny minority groups their full rights.
2. Reject any citizenship verification process that would further strip rights from the Rohingya.
3. Ensure that any "action plan" to address displacement and other humanitarian issues in Arakan State does not include forced relocation, segregation of ethnic groups, or measures in violation of international human rights law. Any "action

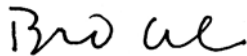
plan” should establish conditions and provide the means to allow displaced persons to return voluntarily, in safety and with dignity, to their homes or other places of voluntary resettlement. Take all necessary measures to end sectarian violence and discrimination and provide security and equal protection of the law for minority populations.

4. Ensure humanitarian and development assistance reaches all communities without discrimination.
5. End longstanding impunity by holding those responsible for serious human rights violations against minority groups to account.

We recognize that there have been important advancements in human rights in Burma in the past three years, including the release of most political prisoners, the easing of official censorship, and passage of a new labor law that permits unions and the right to strike. We expect these reforms to be widened and deepened so that the basic rights of everyone in Burma are respected and there is no return to the military dictatorship of the past.

In conclusion, we do not underestimate the challenges that your administration faces in presiding over a democratic transition and building a culture of human rights in Burma. We wholly support reforms that promote and protect the human rights of everyone in the country. Ensuring respect for the rights of the Rohingya and other minorities at risk is an essential step, without which the entire reform process, as you have said, could fail.

Sincerely,



Brad Adams
Executive Director
Asia Division

cc:

Lt-Gen Thet Naing Win, Minister of Border Affairs
U Khin Yi, Minister of Immigration and Population
Kyaw Yin Hlaing, Secretary of the Commission of Inquiry into Violence in Arakan State
U Than Aung, Minister of Health
Daw Khin San Yi, Minister of Education