

# BURMA/BANGLADESH

## BURMESE REFUGEES IN BANGLADESH: STILL NO DURABLE SOLUTION

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## I. SUMMARY

Since 1991, Bangladesh has been the main country of refuge for members of the Muslim Rohingya minority in Burma's Arakan State, many thousands of whom have fled gross human rights violations perpetrated by the Burmese government. In 1991-92 alone, discrimination, violence and the imposition of forced labor practices by Burmese authorities triggered an exodus of some 250,000 Rohingya across the border into Bangladesh. Most of these refugees returned between 1993 and 1997 under a repatriation program arranged through the auspices of the United Nations High Commissioner for Refugees (UNHCR). The future of 22,000 Rohingya who remain in refugee camps in Bangladesh, however, remains unclear. Donor countries, frustrated by the lack of progress in finally resettling these remaining refugees, have reduced the level of support available to them. Meanwhile, continuing discrimination against, attacks upon, and other widespread violations of the rights of Rohingya in Burma have led to new refugee outflows into Bangladesh. More than 100,000 Rohingya, who have not been formally documented as refugees, now live in Bangladesh outside the refugee camps. Their situation too remains precarious.

This report describes the key obstacles which have up to now prevented the satisfactory resolution of this major refugee problem, with particular attention to completion of the agreed repatriation program. The primary obstacles are to be found on the Burmese side of the border. Burma's ruling State Peace and Development Council (SPDC), which replaced the State Law and Order Restoration Council (SLORC), persists in its policy of denying Burmese citizenship rights to most Rohingya on the grounds that they comprise an alien population on Burmese soil. As a direct consequence, Rohingya are treated as aliens in their own country, and are being subjected to restrictions on their freedom of movement, arbitrary taxation, and extortion by local officials. Rohingya villagers also continue to be required to undertake forced labor by local Burmese officials, who sometimes threaten to have them killed if they refuse to comply.

UNHCR has had a permanent presence in Arakan state since 1994 and has assisted many Rohingya returnees, but it has limited funding and has been unable, in practice, to provide adequate protection to many of the refugees who have returned to Burma. It was also initially hampered by Burmese government restrictions on access to certain areas and constant surveillance of its projects. UNHCR is now in the process of handing over responsibility for assisting the reintegration of Rohingya to the U.N. Integrated Programme (UN-IP), an umbrella group of other U.N. agencies concerned with development in Burma, and is considering reducing its own presence. If this occurs, it likely will increase the vulnerability of the Rohingya to further abuse. While some of the agencies involved in the UN-IP have expressed interest in more fully integrating human rights considerations into their policies and programs, they lack both the mandate and the expertise necessary to ensure adequate protection for the Rohingya.

In Bangladesh, the situation in the refugee camps has been at virtual impasse since a combination of unrest within the camps and pressure from the Burmese government led to the temporary suspension of the repatriation program in mid-1997. It then formally recommenced in November 1998 but under such restrictive conditions imposed by the Burmese authorities that very few of the remaining Rohingya who wanted to repatriate were able to return to Burma. Indeed, only 799 Rohingya were repatriated from the camps between November 1998 and October 1999 while, in the same period, the total number in the camps was swelled by the births of almost 1200 children. In early 2000, however, the Burmese government has lifted some of the restrictions in force since November 1998 and promised to remove the others, opening up the possibility of an increase in the flow of returns. If this does occur, close and continuing involvement by UNHCR will be essential in ensuring that any such returns are truly voluntary and that returning Rohingya are not subject to renewed persecution in Burma.

Despite various improvements, abuses in the refugee camps in Bangladesh have also continued. In the past, administrators at the Nayapara and Kutupalong camps used coercion to induce refugees to return to Burma. More recently, in May 1999, in an effort to complete a census registration of all families in the two camps, authorities confiscated the "family books" of a number of refugee families who refused to cooperate. Family books are the only legal form of identification for Rohingya in the camps and are essential for obtaining support, including food

and medical care. The families had apparently refused to fill out registration forms on the mistaken fear that doing so would increase the likelihood that they would be forcibly repatriated. The authorities' response exacerbated the mistrust. Refugees who fail to abide by camp regulations also continue to be subject to beatings and other forms of physical abuse, although camp administrators have begun in some cases to take disciplinary action against the responsible camp staff.

The Rohingya who remain in refugee camps represent a minority of the total number of Rohingya refugees in Bangladesh, and, due in large part to continuing abuses against Rohingya in Arakan, there are frequent new arrivals. In all, according to Bangladeshi authorities and NGOs, more than 100,000 Rohingya are currently estimated to be living in Burma outside refugee camps. Virtually all of them have no formal documentation as refugees and, therefore, are particularly vulnerable to the possibility of being forcibly returned to Burma. They are to be found in an area that stretches from Teknaf in the far south to the port city of Chittagong and the Bandarban region, and many also are believed to have made their way to the Bangladesh capital, Dhaka. Thousands of other Rohingya have made their way, or been trafficked, to countries such as Malaysia, Pakistan, Saudi Arabia, and the United Arab Emirates.

The principal cause of the continuing Rohingya refugee crisis is the Burmese government's abusive and discriminatory attitude towards this particular ethnic and religious minority. So long as Rohingya in Arakan continue to be the target of systematic human rights violations, further refugee flows out of Burma will occur. Given these circumstances, Human Rights Watch is greatly concerned about the prospect of a reduced UNHCR presence in Arakan State. In our view, it is essential under present circumstances that UNHCR should maintain a strong and active presence in Arakan to ensure that Rohingya refugees are afforded all possible protection of their rights, in accordance with international law. It should receive the necessary financial and political support from donor governments to facilitate such a presence. Further, the international community, and particularly the donor countries, must exert and sustain all possible pressure on the Burmese regime to comply with its obligations under international law to respect fully the rights of Rohingya and all other inhabitants of Burma.

The main focus needs to be on ending oppression and improving conditions for Rohingya in Arakan, but this should not minimize the need for steps to be taken in the interim to improve conditions for Rohingya who remain in refugee camps or who are otherwise living as undocumented refugees in Bangladesh. Limited resources should not be a pretext for sweeping the problem under the rug. The Burmese government's January 2000 decision to lift all major restrictions on Rohingya may well lead a number of Rohingya to opt for repatriation and thus to a reduction in the number remaining in the camps. Thousands of others in the camps, however, are believed to be unwilling to return to Burma and should not be forced to do so. The Bangladeshi government and the international community have an obligation to take the lead in efforts to find a durable solution to their plight and that of other Rohingya in Bangladesh who have reason to fear return to Burma.

## **RECOMMENDATIONS**

### ***To the Government of Burma***

- The State Peace and Development Council should immediately amend or repeal the 1982 Citizenship Law to remove the burdensome standard of proof for attaining citizenship. The government should grant the Rohingya full citizenship and accompanying rights. The SPDC should furthermore sign and ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and fulfill its international obligation to prevent statelessness.
- Burmese authorities should also address the other fundamental human rights problems which have caused the Rohingya to flee to Bangladesh. Specifically, it should abolish the practice of forced labor in compliance with the 1930 ILO Convention on Forced Labour which the government signed in 1955. Towards this end, as recommended by the International Labour Organization, the government should amend or appeal the sections of the Village and Towns Acts that legally sanction the conscription of labor.

- The rights of the child should be especially protected, in accordance with the government's commitment to children's rights through its ratification of the Convention on the Rights of the Child in 1991. In particular, all children should be granted Burmese nationality, including those 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 education benefits.
- The Burmese government must ensure that all refugees are able to exercise their right to return and must guarantee their full reintegration with full respect for their human rights.

***To the Government of Bangladesh***

- The Bangladeshi government should state unequivocally that it will permit individuals to seek asylum and should establish a formal mechanism through which UNHCR can gain consistent access to detained Rohingya and any other undocumented Rohingya who wish to make asylum claims. Persons found to have a well-founded fear of persecution in Burma should be provided international protection in Bangladesh. Given the current conditions in Arakan, there should be no summary deportation of undocumented Rohingya.
- The Bangladeshi government must seek durable solutions to the crisis. Where appropriate, the government should facilitate voluntary repatriation; it should also examine the feasibility of local integration for all or a portion of the remaining Rohingya in the camps or provide them temporary residence in Bangladesh until the conditions under which the Rohingya were recognized as refugees cease to exist.
- The Bangladeshi Refugee, Relief and Repatriation Commissioner, with the cooperation of UNHCR, must enact a proactive strategy to prevent the beating of refugees by administrative staff in the camps. UNHCR training should be mandatory for all camp authorities, preferably prior to assuming any duties in the camps. Guards or other staff found to be abusing refugees should be transferred out of the camps immediately and prosecuted under Bangladeshi law.
- The Bangladeshi government should ensure that UNHCR and NGOs receive full access to the refugees. Access is especially critical during repatriation so that voluntariness can be confirmed.
- The Bangladeshi government should demonstrate its commitment to international human rights standards and become a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol as well as the 1954 and 1961 conventions relating to the reduction and prevention of statelessness.

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

- UNHCR should continue to monitor and facilitate the repatriation of those refugees who wish to return. Refugees should be provided with full and impartial information about conditions in Arakan State prior to their return and UNHCR should insist that the Burmese government guarantee the full reintegration of all returnees and protection of their rights.
- Under no circumstances should assistance be withheld as a method of camp management. No party should use denial of access to food or medical services as leverage against refugee families.
- UNHCR should reassess its classification of undocumented Rohingya as "economic migrants" and produce a set of transparent criteria in accordance with international refugee legal standards to assess Rohingya claims to refugee status.
- UNHCR should seek durable solutions for the Rohingya refugees. It should in particular activate its mandate on statelessness under Article 11 of the 1961 Convention on the Prevention of Statelessness and subsequent UNHCR Executive Committee Conclusions and UN General Assembly resolutions and continue to offer technical assistance and guidance to the Burmese government on its national laws or measures to avoid and reduce statelessness as a long term solution to one of the fundamental causes of displacement.

- UNHCR should commit itself to a strong protection monitoring role in Burma. The transfer of development activities to the United Nations Integrated Program (UN-IP) in Burma should allow UNHCR staff to dedicate their time to protection monitoring and intervention. Donors must likewise commit to funding a strong UNHCR protection role in both Bangladesh and Burma.

***To Donors and the International Community***

- Donor governments should continue to engage the Bangladeshi government in efforts to explore the potential of local integration or temporary residence for a portion of the remaining Rohingya population. In the spirit of burden sharing, donors should also offer to commit to financially supporting a transition from assisted camps to local integration. The international community should also explore and provide third country resettlement possibilities as a durable solution for Rohingya refugees, especially for those persons who are either unable or unwilling to return to Burma and for whom long-term protection is not available in Bangladesh. For those persons who are unable to receive permanent protection in Bangladesh, the international community must give due consideration to resettlement in a third country.
- The international community must step up efforts to ensure that conditions are created under which the Rohingya can return to Burma in safety and with dignity and with human rights guarantees. The international community should coordinate their efforts to press the Burmese government to implement fully the April 2000 resolution of the UN Commission for Human Rights which calls on the Burmese government to address the causes of displacement.

**II. HISTORICAL BACKGROUND**

Northern Arakan, consisting of contemporary Maungdaw and Buthidaung townships, has since the late eighteenth century been a region of intermittent unrest and refugee flows. Thousands of Rohingya fled to what is now Bangladesh in four main periods: the late 1700s and early 1800s, the 1940s, 1978 and, most recently, in 1991 and 1992. Refugee flows have been prompted by ethnic and religious conflict which were in turn triggered by broader political struggles. This section provides a description of each of the first three flights and concludes with specific attention to the 1991-92 exodus, asylum and return. A historic overview of the region not only serves to reveal the long history of refugee flows in the area, but also traces the attachment of the Rohingya to northern Arakan and thus their firmly established link to what is modern Burma.

The Rohingya were once counted as a part of the Mrauk-U (Mrohaung) kingdom in Arakan which stood independent of both the Burman kingdoms in the Irrawaddy delta and central Burma as well as Bengal and the Moguls to the west. Muslim traders came to the area in the eighth century when the local dynasty was seated at Wesali, not far from contemporary Mrauk-U and some of the traders settled along the shores. More Muslim sailors made their way to the Arakan region during the twelfth and thirteenth centuries. Migrants also gradually filtered into Arakan from neighboring Muslim Bengal. In the 1400s, when Mrauk-U was invaded by forces of the Burman kingdom at Ava, King Narmeikhla sought help from Bengal and expelled the invaders with the help of a Muslim army. The link between Bengal and Mrauk-U from this point solidified, to the extent that the Mrauk-U king began to use Muslim court titles along with traditional ones. Buddhist kings ruled Mrauk-U but Muslim officials often played a significant role in the court. Indeed, the inclusion of a variety of ethnic minority and religious officers in courts was a common practice throughout the mainland Southeast Asian sub-region.

In 1784, the Burman King Bodawpaya conquered and incorporated the Arakan region into his kingdom of Ava in central Burma. As a consequence of the invasion, refugees began to pour into what is today the Cox's Bazar area of southern Chittagong. Cox's Bazar takes its name from the British lieutenant who was sent to the

area to organize and provide relief for the refugees.<sup>1</sup> One of the groups of dissatisfied Rohingya that fled to British controlled Chittagong in East Bengal proceeded to conduct raids against the Burman king. In one incident, the king's men pursued the Rohingya insurgents into British territory.<sup>2</sup> The incursion led to tension between the British colonial government and King Bodawpaya over the king's demands for extradition of the insurgents. In 1811, the leader of the insurgents, Chin Bya, organized his forces and managed to capture much of Arakan.<sup>3</sup> A request by Chin Bya for British protection, however, was rejected and the Burmese army pushed Chin Bya back into Bengal. Many of the Rohingya that fled during this period never returned to Burma, but instead settled in the area of Cox's Bazar and became integrated with the local community.

The British colonized Burma in a series of three wars beginning in 1824. During their rule, the Arakan problem declined as the British allowed for a relative degree of local autonomy. From 1824 to 1942, there were few recorded incidences of uprisings. This period witnessed significant migration of laborers to Burma from neighboring South Asia. The British administered Burma as a province of India, thus migration to Burma was considered an internal movement. The Burmese government still considers, however, that the migration which took place during this period was illegal, and it is on this basis that they refuse citizenship to the majority of the Rohingya. The reality is that the Rohingya have had a well established presence in the country since the twelfth century.

### **World War II, Independence, and Rohingya Flight**

In 1942, Japanese forces invaded Burma and during the British retreat communal violence erupted. Attacks were made against those groups that had benefited from British colonial rule. Burman nationalists attacked Karen and Indian communities, while in Arakan Rakhine and Rohingya villagers attacked one another causing a displacement of Buddhist villagers to the south and Muslims to the north.<sup>4</sup> Some 22,000 Rohingya are believed to have crossed the border into Bengal.<sup>5</sup> The region remained under Japanese control until a British offensive drove out the Japanese in 1945. Prior to the Japanese invasion, the British, seeking to bolster support for their forces, had promised the Muslims of northern Arakan a Muslim National Area,<sup>6</sup> and some of the displaced returned with the British. But Britain never delivered on its promise to create a Muslim National Area.

After Burma became independent in January 1948, tensions between the government and the Rohingya grew. Immediately following independence, a group of Arakanese Muslims went on the political offensive, pushing for the integration of Maungdaw and Buthidaung into what was then known as East Pakistan.<sup>7</sup> The proposal was rejected by the Constituent Assembly in Rangoon. The government contributed to the escalation of tension by treating the Rohingya as illegal immigrants.

The immigration authorities imposed limitations of movement upon Muslims from the regions of Maungdaw, Buthidaung, and Rathedaung to Akyab [Sittwe]. The Muslims were not resettled in the villages from which they had been driven out in 1942 (with the exception of villages they left in the Maungdaw and Buthidaung regions). Some 13,000 Rohingya still living in refugee camps in India and Pakistan whence they had fled during the war, were unable to return; as for those who

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<sup>1</sup> G.E. Harvey, *History of Burma: From the Earliest Times to 10 March 1824 The Beginning of the English Conquest*, (London: Frank Cass and Co. Ltd), 1967, p. 282.

<sup>2</sup> Frank Trager, *Burma: From Kingdom to Republic* (London: Pall Mall Press), 1966, p. 26.

<sup>3</sup> Maung Htin Aung, *A History of Burma*, (New York and London: Columbia University Press), 1967, p. 206.

<sup>4</sup> Joseph Silverstein, *Burmese Politics: The Dilemma of National Unity*, (New Brunswick, New Jersey: Rutgers University Press), 1980, pp. 50-51; Moshe Yegar, *The Muslims of Burma: The Study of a Minority Group*, (Wiesbaden: Otto Harrassowitz), 1972, p. 95.

<sup>5</sup> Yegar, p. 95.

<sup>6</sup> *Ibid.*, p. 96.

<sup>7</sup> Hugh Tinker, *The Union of Burma: A Study of the First Year of Independence*, (London, New York, and Toronto: Oxford University Press) 1957, p. 357.

did manage to return, they were considered illegal Pakistani immigrants. The properties and land of all these refugees have been confiscated.<sup>8</sup>

Because they were denied the right to citizenship, Rohingya were prohibited from military service and Buddhist Rakhine villagers replaced Rohingya civil servants.<sup>9</sup>

Beginning in 1950, segments of the Rohingya community resorted to armed action, led by armed groups called *Mujahids*. In a series of attacks, *Mujahid* fighters pushed out both non-Muslims and Muslim villagers unsympathetic to their cause from Maungdaw, Buthidaung and part of Rathedaung.<sup>10</sup> Aware of the conflict just across the border, the Pakistani government in 1950 sent a warning to its Burmese counterparts about the treatment of Muslims in Arakan. However, Burma's Prime Minister, U Nu, quickly dispatched a Muslim ambassador, U Pe Kin, to negotiate an understanding according to which Pakistan would no longer provide weapons to the *Mujahids*.<sup>11</sup> In 1954, authorities in Pakistan finally arrested Cassim, the leader of the *Mujahids*, and placed him in a Chittagong jail. In November 1954, the Burmese army stepped up counterinsurgency operations in Arakan and succeeded in quieting the rebellion.

### Operation Nagamin and the 1970s Exodus

Shortly after General Ne Win and his Burma Socialist Programme Party (BSPP) seized power in 1962, the government began to dissolve Rohingya social and political organizations.<sup>12</sup> In 1977, Burmese immigration and military authorities conducted what they called Operation *Nagamin* (Dragon King), a national effort to register citizens and screen out foreigners prior to a national census.<sup>13</sup> By May 1978, more than 200,000 Rohingya had fled to Bangladesh: this, the Burmese authorities claimed, signified the Rohingya's illegal status in Burma. Refugees reported that the Burmese army had forcibly evicted them and alleged widespread army brutality, rape and murder.<sup>14</sup> The International Committee of the Red Cross and the Bangladeshi government supplied emergency relief but were quickly overwhelmed. The Bangladeshi government requested assistance from the United Nations and soon thirteen camps for the refugees were established along the border.

Almost immediately upon the refugees' arrival, the Bangladeshi government engaged its Burmese counterpart in a discussion on their repatriation. Bangladeshi authorities complained of the economic and social burden the presence of the Rohingya placed on the local community and insisted that there would be no local integration.<sup>15</sup> The United Nations also urged the Burmese leadership to allow the Rohingya's repatriation. U.N. officials hinted that a flow of aid, which the Ne Win government in Burma was pursuing through a more open foreign policy, would be more readily accessible should the ruling Burmese Socialist Programme Party agree to

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<sup>8</sup> Ibid.

<sup>9</sup> Yegar, p. 98.

<sup>10</sup> Tinker, p. 56.

<sup>11</sup> U Nu, *U Nu: Saturday's Son*, (New Haven and London: Yale University Press) 1975, p. 272.

<sup>12</sup> In 1964, in response to the new round of abuses the insurgency that had been quieted in the 1950s gained strength with the formation of the Rohingya Independence Force (RIF). In 1973, the RIF became the Rohingya Patriotic Front (RPF). The early 1980s saw the emergence of another group, the Rohingya Solidarity Organization (RSO). In 1986 the RPF and a faction of the RSO led by Nurul Islam agreed to join forces as the Arakan Rohingya Islamic Front (ARIF). In December 1998, ARIF and two other factions of the RSO merged into the Arakan Rohingya National Organization (ARNO). For a history of the evolution of Rohingya political organizations see AFK Jilani, *The Rohingyas of Arakan: Their Quest for Justice*, (Dhaka), 1999.

<sup>13</sup> K. Maudood Elahi, "The Rohingya Refugees in Bangladesh: Historical Perspectives and Consequences," In John Rogge (ed.), *Refugees: A Third World Dilemma*, (New Jersey: Rowman and Littlefield), 1987, p. 231.

<sup>14</sup> Martin Smith, *Burma: Insurgency and the Politics of Ethnicity*, (London and New Jersey: Zed Books), 1991, p. 241.

<sup>15</sup> Tony Reid, "Repatriation of Arakanese Muslims from Bangladesh to Burma, 1978-79: 'Arranged Reversal of the Flow of an Ethnic Minority,'" Paper presented to the 4<sup>th</sup> International Research and Advisory Panel Conference, University of Oxford, January 1994, pp. 13-14.

the returns.<sup>16</sup> The Burmese government relented and the Rohingya began to go home. At first, in the early months of the program, few refugees opted for repatriation, but the number increased when the Bangladeshi government allowed camp conditions to decline and restricted food rations.<sup>17</sup>

### ***Flight in the 1990s***

The most recent mass outflow from Arakan to Bangladesh took place in 1991 and 1992, when more than 250,000 Rohingya refugees fled forced labor, rape and religious persecution at the hands of the Burmese army. With the assistance of UNHCR and non-governmental relief agencies, the Bangladeshi government sheltered the refugees in nineteen camps in the vicinity of Cox's Bazar in southeastern Bangladesh.

Faced with this new influx of refugees, the Bangladesh government announced that it would not countenance any local integration and that the Rohingya would have to return home. Bangladesh was not then, and is still not, a signatory to either the 1951 U.N. Convention on the Status of Refugees or its 1967 Protocol. As in the 1970s, the Bangladeshi government intended to send all the refugees home quickly and sought to achieve this through negotiation with the ruling State Law and Order Restoration Council (SLORC) in Rangoon.

The Rohingya repatriation, which the Bangladeshi and Burmese governments began in September 1992, was troubled from the outset, as Human Rights Watch and other organizations have previously reported.<sup>18</sup> Following reports of forced repatriation, UNHCR began to monitor a proportion of the returns in October 1992 but withdrew its support in December 1992 when it became clear that coercion was continuing. UNHCR then agreed a formal Memorandum of Understanding (MOU) with the Bangladeshi government and in May 1993 began to interview refugees individually in order to ensure that the Bangladeshi authorities were respecting the principle of voluntariness. When a UNHCR survey revealed that less than 30% of the Rohingya wished to repatriate, however, the Bangladeshi government responded by insisting that all of the Rohingya should return by the end of 1994 and allowing the MOU with UNHCR to expire in July 1994.<sup>19</sup> The same year, UNHCR gained access to the return sites located in the Buthidaung, Rathedaung, and Maungdaw townships of Arakan State; this, it insisted, would facilitate the safe return of the Rohingya because UNHCR could now monitor what became of them. UNHCR then abandoned its system of individual interviews with refugees in August 1994 in favor of a program of mass repatriation in which thousands of Rohingya returned to Burma each week. Initially, however, UNHCR representatives were not permitted to travel within Arakan state without prior clearance from the Burmese government, and the latter also failed to provide a firm commitment that it would recognize the rights of the Rohingya to Burmese citizenship. At the time, Human Rights Watch questioned the accuracy of the information about conditions in Arakan which UNHCR provided to the refugees and noted the concerns expressed by non-governmental organizations (NGOs) involved with the repatriation that it was being conducted in "less than optimum conditions."<sup>20</sup> Even so, between 1993 and 1997, some 230,000 refugees returned to Arakan.

### ***Continued Obstacles to Repatriation***

In July 1997, a series of events surrounding the repatriation led to disturbances in the refugee camps in Bangladesh. A few months earlier, the Burmese government had informed both Bangladesh and UNHCR that it would accept no more returning refugees after August 15, 1997. The Bangladeshi authorities then sought to return as many refugees as possible before the deadline, in the course of which they forcibly expelled over three

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<sup>16</sup> Ibid., pp. 14-15.

<sup>17</sup> Ibid., p. 19.

<sup>18</sup> For a discussion of the repatriation from 1992 to 1995 see Human Rights Watch, "Bangladesh: Abuse of Burmese Refugees from Arakan," Vol. 5, No. 17, October 9, 1993; Curt Lambrecht, "The Return of the Rohingya Refugees to Burma: Voluntary Repatriation or *Refoulement*?" (Washington, DC: US Committee for Refugees), March 1995. Amnesty International, "Rohingyas - The Search for Safety," (London), September 1997.

<sup>19</sup> Lambrecht, p. 8.

<sup>20</sup> See Human Rights Watch, "The Rohingya Muslims: Ending a Cycle of Exodus?," Vol.8, No. 9, September 1996, pp. 16-21.

hundred Rohingya across the Naf River into Burma.<sup>21</sup> This provoked a violent reaction on the part of other refugees, who seized control of the two remaining camps at Nayapara and Kutupalong. For over a year, only a select few UNHCR and NGO officials were permitted to enter the camps and the leaders of the protest would not allow refugees to leave the camps, and, in some cases, forced refugees to forego rations. A UNHCR vehicle was also stolen.

In March and October 1998, Bangladeshi authorities and local villagers moved into the camps and restored order. Some refugees were beaten by police and many of those responsible for the disturbances were arrested. From July 1997, when the disturbances broke out, until the Bangladeshi authorities restored order in 1998, all repatriation ceased.

Following the police action and negotiations between UNHCR and the Bangladeshi and Burmese governments, the Burmese authorities announced that as of November 15, 1998 they would once again permit the repatriation of Rohingya refugee families but only if they, the Burmese authorities, could re-verify residence, limit the number of returnees to fifty per week, and receive only complete families. Later they added the stipulation that they be allowed to confirm each refugee's willingness to return. As a result of these conditions, which have proven onerous in practice, even those Rohingya who wish to return to Arakan have not been able to do so.

As this report was being prepared in late 1999 and early 2000, there were still problems in the camps and conditions inside Burma for Rohingya remained dismal. In Bangladesh, UNHCR has made progress in reducing violence in the camps and in pressing the Bangladeshi government to respect the principle of *non-refoulement*, but there are still reports of violence by camp officials against refugees. UNHCR itself has been accused by NGOs and refugees of employing coercive tactics in its pursuit of refugee registration. In Arakan state, the Burmese government has continued to demand forced labor from Rohingya villagers, arbitrarily confiscate their property, and restrict their movement. Moreover, members of the Rohingya minority are still being denied full rights of citizenship. Unsurprisingly, therefore, there are continued outflows of Rohingya and Bangladeshi officials and NGOs estimate that there are now more than 100,000 undocumented Rohingya in Bangladesh.

Faced with a multi-million dollar deficit for the Rohingya operation and reduced funding from international donors for a program that donors perceive as failing to progress,<sup>22</sup> UNHCR informed the Bangladeshi government in June 1999 that it would be forced to terminate its assistance program for the Rohingya by year's end. Because of delays in the transfer of assistance programs to other UN development agencies and ongoing protection concerns, UNHCR then decided to maintain its presence until the end of 2000. Reductions in the number of UNHCR personnel in Bangladesh and Burma are now being discussed.

### III. DISCRIMINATION IN ARAKAN

Some Rohingya families, understandably, wish to return to Burma after spending years in camps in Bangladesh, but conditions in the townships in Arakan from which they fled still have not significantly improved. Discrimination against the Rohingya in Burma continues unabated, and the structural causes of the initial 1991-92 exodus remain unresolved. Denial of citizenship, forced labor, and arbitrary confiscation of property continue to prompt new refugee flows and limit the reintegration of those who have returned.

#### Denial of Citizenship

The most critical issue remains the legal status of the Rohingya in Burma and the implications that it carries in practice. While they have been permitted to reside in Burma, most Rohingya are considered by the Burmese

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<sup>21</sup> Amnesty International, "Rohingyas – The Search for Safety," (London), September 1997, p. 4.

<sup>22</sup> Human Rights Watch discussion with UNHCR Country Office, Dhaka, August 13, 1999. Large-scale crises in Kosovo, the African Great Lakes, and East Timor have also placed strains on the financial and human resources of the agency.

authorities to be “resident foreigners,” not citizens. This lack of full citizenship rights means that the Rohingya are subject to other abuses, including restrictions on their freedom of movement, discriminatory limitations on access to education, and arbitrary confiscation of property. Denial of citizenship, and of the rights that go with it, inevitably pose serious obstacles to the achievement of a durable solution to the refugee flows.

The 1982 Burma Citizenship Law, promulgated not long after the mass return of Rohingya who fled in 1978, distinguishes between three categories of citizenship: citizenship, associate citizenship, and naturalized citizenship. A person is issued a color-coded Citizenship Scrutiny Card consistent with his or her citizenship status – pink, blue, and green respectively.<sup>23</sup> Citizens are persons who belong to one of the national races (Kachin, Kayah (Karenni), Karen, Chin, Burman, Mon, Rakhine, Shan, Kaman, or Zerbadee) or whose ancestors settled in the country before 1823, the beginning of British occupation of Arakan State. If a person cannot provide evidence that his ancestors settled in Burma before 1823, he or she can be classified as an associate citizen if one grandparent, or pre-1823 ancestor, was a citizen of another country. Those persons who qualified for citizenship under the 1948 law, but who would no longer qualify under this new law, are also considered associate citizens if they had applied for citizenship in 1948. To become a naturalized citizen, a person must be able to provide “conclusive evidence” that he or his 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. Beyond these two qualifications, Section 44 of the act stipulates that the person must be eighteen years old, be able to speak well one of the national languages (the Rohingya language, a dialect related to Chittagonian, is not one), be of good character, and be of sound mind.<sup>24</sup>

The stipulations of the Burma Citizenship Law governing the right to one of the three types of Burmese citizenship effectively deny to the Rohingya the possibility of acquiring a nationality. Despite being able to trace Rohingya history to the eighth century, Burmese law does not recognize the ethnic minority as one of the national races. Many Rohingya families migrated to and settled in Arakan during the British colonial period which would immediately exclude them from citizenship. Even for those Rohingya whose families settled in the region before 1823, moreover, the onerous burden of proof has made it nearly impossible for all but a handful to secure citizenship. Rohingya who cannot provide “conclusive evidence” of their lineage or history of residence find themselves ineligible for any class of citizenship. And because of their formal legal status as resident foreigners, Rohingya are subject to restrictions on their freedom of movement, are denied access to higher education, and are restricted from holding public office.

Human Rights Watch has repeatedly urged the Burmese government to repeal the 1982 Citizenship Law or else amend it in accordance with the recommendations of the U.N. Special Rapporteur on the situation of human

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<sup>23</sup> For more on the Citizenship Scrutiny Cards see Human Rights Watch, “Burma: The Rohingya Muslims: Ending a Cycle of Exodus?” (New York: Human Rights Watch), Vol. 8, No. 9 September 1996, p. 26.

<sup>24</sup> Sections 42 to 44 of the 1982 Burma Citizenship Law on the qualifications required for Burmese naturalized citizenship read:

42. Persons who have entered and resided in the State prior to 4th January, 1948, and their children born within the State may, if they have not yet applied under the Union Citizenship Act, 1948, apply for naturalized citizenship to the Central Body, furnishing conclusive evidence.

43. The following persons, born in or outside the State, from the date this Law comes into force, may also apply for naturalized citizenship: (a) persons born of parents one of whom is a citizen and the other a foreigner; (b) persons born of parents, one of whom is an associate citizen and the other a naturalized citizen; (c) persons born of parents, one of whom is an associate citizen and the other a foreigner; (d) persons born of parents, both of whom are naturalized citizens; (e) persons born of parents, one of whom is a naturalized citizen and the other a foreigner.

44. An applicant for naturalized citizenship shall have the following qualifications: (a) be a person who conforms to the provisions of section 42 or section 43; (b) have completed the age of eighteen years; (c) be able to speak well one of the national languages; (d) be of good character; (e) be of sound mind.

rights in Myanmar and to grant Rohingya full citizenship and accompanying rights.<sup>25</sup> The U.N. special rapporteur called on the Burmese government to “abolish its over-burdensome requirements for citizens in a manner which has discriminatory effects on racial or ethnic minorities.”<sup>26</sup>

UNHCR is the international intergovernmental organization which has special responsibilities for stateless persons. Designated by the United Nations General Assembly as a mediating agency under Article 11 of the 1961 Convention on the Reduction of Statelessness, UNHCR’s role was further defined by its Executive Committee Conclusion No. 78 of 1995. This confers on UNHCR the mandate to promote state accession to both the 1954 Convention relating to the Status of Stateless Persons, as well as to the aforementioned 1961 Convention, and to “promote the prevention and reduction of statelessness through the dissemination of information, and the training of staff and government officials; and to enhance cooperation with other interested organizations.”

In pursuit of this mandate, UNHCR has urged the Burmese government to review its citizenship law, including as part of its National Convention deliberations, and has offered to consider the provision of financial, technical, and legal support for government distribution of Citizenship Scrutiny Cards.<sup>27</sup> But Burma’s ruling SPDC has, to date, made no progress in addressing the legal obstacles to a sustainable return of Rohingya refugees and has responded negatively to UNHCR overtures.

Provisions in the 1982 law perpetuate the Rohingya citizenship crisis by denying Burmese citizenship to children born to those considered non-citizens. In order for a child to attain Burmese citizenship, at least one parent must already hold one of the three types of Burmese citizenship. In this respect, the citizenship law conflicts with the Burmese government’s obligation under Article 7 of the U.N. Convention on the Rights of the Child, which 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.” The Burmese government ratified the convention in 1991 and is obliged to grant citizenship to children born in Burma who would otherwise be stateless.

### ***Freedom of Movement***

The Burmese government restricts Rohingya from traveling within Arakan, to other parts of the country, and abroad. It is a well established principle of international law that any person who is lawfully in the territory of a state should enjoy the right to freedom of movement and residence within that state. This principle is enshrined in Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights.<sup>28</sup>

Drawing on the Registration of Foreigners Act and Rules of 1940, the Burmese government requires Rohingya villagers to obtain a travel permit from their local Peace and Development Council chairman to cross

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<sup>25</sup> Human Rights Watch, “Burma: The Rohingya Muslims: Ending a Cycle of Exodus?” (New York: Human Rights Watch), Vol. 8, No. 9, September 1996; Human Rights Watch and Refugees International, “Rohingya Refugees in Bangladesh: The Search for a Lasting Solution,” (New York: Human Rights Watch) Vol. 9, No.7, August 1997.

<sup>26</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 special rapporteur in 1993 to be replaced by Justice Rajsoomer Lallah. From the time he accepted the position, Lallah has not been permitted to enter Burma.

<sup>27</sup> On the National Convention see Janelle M. Diller, “The National Convention: an Impediment to the Restoration of Democracy” In Peter Carey (ed.), *Burma: The Challenge of Change in a Divided Society*, (New York: St. Martin’s Press) 1997, pp. 27-54; The National Convention was SLORC’s response “to the 1990 landslide election victory of the National League for Democracy (NLD). The National Convention...was conceived by the SLORC as a mechanism to draft a new constitution for the country in accordance with military wishes.” Diller, p. 27.

<sup>28</sup> Burma has not signed or ratified the International Covenant on Civil and Political Rights.

township and state boundaries.<sup>29</sup> A valid permit allows a Rohingya to travel for up to forty-five days. A copy must be submitted to authorities upon departure and arrival at the destination. Should a Rohingya wish to stay overnight in a village within the township, a similar permit must be procured and then presented to the headmen of the home village and the village visited. Heavy fines of up to 10,000 kyat (twenty-nine US dollars) and detention have been imposed on those violating the requirements. The necessity of documentation has exposed the Rohingya to systemic exploitation by corrupt officials. Rohingya routinely must pay bribes to the authorities to obtain travel documents. A source familiar with Arakan State told Human Rights Watch that a strict screening procedure for those who wish to make the *hajj* (pilgrimage to Mecca) has also invited bribery and inhibited the ability of Rohingya to fulfill one of the tenets of the Muslim religion.<sup>30</sup> The western area military commander has final authority over who may undertake the Muslim pilgrimage.

### ***Education and Employment***

The Burmese government reserves secondary education for citizens only. Rohingya do not have access to state run schools beyond primary education.<sup>31</sup> The Rohingya's lack of citizenship also bars them from securing positions in the civil service. Many Rohingya therefore cannot be teachers or health workers nor are they permitted to participate formally in local government.

### ***Arbitrary Confiscation of Property***

As in many parts of Burma with a high military presence in Arakan, soldiers have required villagers to provide them with rice and livestock. With the central government unable to provide adequately for its 450,000 strong army, battalions have often turned to extortion and theft as well as forced labor. Extortion has manifested itself in the confiscation of food and demands for bribes at checkpoints. Rohingya must routinely pay higher fees for travel than other Burmese. A Rohingya woman living in Bangladesh but outside the refugee camps reported that before she came to Bangladesh just over a year before, Burmese soldiers had taken chickens from her on a regular basis.<sup>32</sup> In another case related to Human Rights Watch, members of a NaSaKa unit demanded and took a truckload of watermelons from a farmer's field.<sup>33</sup> Soldiers who commit such acts reportedly do so with impunity.

### ***Forced Labor***

Local government authorities continue to require Rohingya to perform forced labor. Human Rights Watch was told that those who refuse or complain are physically threatened, sometimes with death, and that children as young as seven years old have been seen on forced labor teams. The compulsory, unpaid labor includes work in state-run, profit-making industries and construction of "model villages" for non-Muslim migrants in Arakan.

In most areas, forced labor is organized by a NaSaKa officer or local Peace and Development Committee member. Typically, the officer comes to a village in the morning and demands that a set number of laborers are provided. This demand is passed down through village leaders in order that they instruct villagers to report to the

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<sup>29</sup> A Rohingya traveler must submit five photographs and procure eight copies of this Form 4, or "Suspect Form," prior to departure. Among other personal data, the form requires the applicant to record her race/nationality.

<sup>30</sup> Human Rights Watch interview, August 23, 1999.

<sup>31</sup> Article 26(2) of the Universal Declaration of Human Rights and Article 13(b) of the International Covenant on Economic, Social, and Cultural Rights guarantees accessibility to secondary education.

<sup>32</sup> Human Rights Watch interview with a Rohingya woman, August 8, 1999

<sup>33</sup> The NaSaKa (Border Administration Forced) was created in 1992, after the Rohingya exodus, and comprises five different government agencies: the police, military intelligence (MI), Lon Htein (riot police), customs, and the Immigration and Manpower Department. The NaSaKa is under the direct command of the SPDC and the army's Western Commander based in Sittwe. See Human Rights Watch and Refugees International, "Rohingya Refugees in Bangladesh: The Search for a Lasting Solution," August 1997, p. 13.

work site. Wealthier villagers can often pay someone else to take their place but others must send family members to the site. Rakhine villagers in northern Arakan do not have to participate in these projects.<sup>34</sup>

In his report to the United Nations General Assembly of October 4, 1999 Rajsoomer Lallah, the U.N. Special Rapporteur, pointed out that the Burmese government maintains this practice in many parts of Burma, especially in ethnic minority states.<sup>35</sup> At its annual meeting in June 1999, following a commission of inquiry into the use of forced labor in contravention of the Forced Labour Convention of 1930 (29), the International Labor Organization (ILO) banned the Burmese government from participating in its activities or benefiting from its technical assistance until it takes positive action in response to the commission's recommendations.<sup>36</sup> These included immediate cessation of the use of forced labor and abrogation of those sections of the Village Act and Towns Act under which it is legally sanctioned. In May 1999, the SPDC issued an order recommending that local authorities stop using forced labor, but no significant reduction in its application has been reported.

In 1994, after lobbying by UNHCR, Arakan state officials informally agreed to limit forced labor demands in northern Arakan to four days a month. The UNHCR sub-office in Cox's Bazar told Human Rights Watch that some authorities adhered to the four-day-a-month principle and have even paid workers, although only around twenty kyat (US five cents) per day for their labor.<sup>37</sup> In many communities, however, Rohingya continue to be subjected to more onerous obligations. Rohingya report that units of the Burmese military have continued to conscript villagers for work in excess of seven days a month without pay on model villages, infrastructure projects, portering and military camp maintenance. The number of days Burmese authorities have required villagers to work appears to be governed by local commanders and not by a general regional policy.<sup>38</sup>

A man from a village in Maungdaw Township who left Burma for Bangladesh in late 1997 described his experience to Human Rights Watch as follows:

The village headman was responsible for drawing up the list of those who will go give forced labor. If your name is not checked off as attending the work project, you will be detained or fined. We had to do all sorts of work from hauling stone for the road and cutting trees to clear a path for its construction to cleaning the army base. This was all going on just two years ago, before I came. The road was the Tumburu to Bangladesh border connecting road. The army didn't give us any food or pay us to do the work. The local Rakhine did not have to do any work. The pattern was that one man worked one day and then you had two days free to do your own work. I did some farming and day labor for about seventy kyat a day. This roadwork was for the NaSaKa. If the military caught you to go portering, then you had to work seven to fifteen days. If you cannot go, you must pay eight hundred kyat. The military would take us portering on their patrols to look for the Rohingya Solidarity Organization. We had to carry both bullets and rice along with many other things. I didn't see it happen but we heard they shoot some people. The army warned us that if anyone complained about portering to the UNHCR that person would be killed. UNHCR could not know what was going on.

The UNHCR office was two kilometers from our village but they only came occasionally and the government watched for them. Because the UNHCR office was nearby the army didn't torture people in the village. UNHCR came to visit and just saw that everything was fine.

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<sup>34</sup> Human Rights Watch interview, August 23, 1999.

<sup>35</sup> Rajsoomer Lallah, *Situation of human rights in Myanmar*, October 4, 1999.

<sup>36</sup> "ILO concludes 87<sup>th</sup> Conference: Adopts new instruments against child labour and resolution on Myanmar," ILO Press Release, ILO/99/23, June 17, 1999.

<sup>37</sup> Human Rights Watch discussion with UNHCR Sub-Office, Cox's Bazar, August 10, 1999; Human Rights Watch interview with Rohingya woman, Cox's Bazar, August 8, 1999.

<sup>38</sup> Human Rights Watch interview with UNHCR Sub-office, Cox's Bazar, August 10, 1999.

The villagers also had to work as sentries. The sentries guarded the village at night without pay or food. If anyone fell asleep, he had to pay the military or NaSaKa five kilograms of petrol or two chickens. I saw this happen to a man once. He got caught sleeping and the NaSaKa and the chairman caught him and demanded five kilograms of petrol or two chickens.

I didn't have citizenship and the forced labor left me insufficient time to work on my own fields or make money. I had no money and no food so we left.<sup>39</sup>

A woman from Maungdaw Township who came to Bangladesh in July 1998 cited forced labor as one of the main reasons she left Burma.

The army made villagers go work on the Tang Ma Road. I had to go and break stones that would be used for the road surface. The army did not pay us or give us any food. I had to work in seven to fifteen day shifts from seven in the morning until eight in the evening. I couldn't go home so I had to sleep in the army camp. Each time the army would come to collect twenty to forty villagers to go work. The village headman made the lists and if we did not go, we could be arrested. I worked on this project from 1997 to early 1998.

Just before I left I was working for the state owned Sukrasa Sugar Mill in Kaung Daung. I had to cut sugar cane and then carry it to the trucks. Here again I worked seven to fifteen day shifts with no pay or food provided.<sup>40</sup>

The case above illustrates the use of compulsory labor in state agricultural industry – a profit-making venture. Sources inside Burma also reported the use of forced labor on a NaSaKa-owned peanut farm in early 1999.

Children as young as seven years old have been seen working on road repair in 1999 in some of the areas to which Rohingya refugees have returned. One witness described the working conditions to Human Rights Watch:

The children were working on widening a road in Maungdaw Township. They had to dig a ditch and broaden the road and then put down chipping stones to maintain the track. Occasionally, a soldier gave a child a swat with a bamboo cane if that child became sluggish or lax. The local Peace and Development Council chairman arranged it with the help of a Muslim assistant.

Use of child labor directly contravenes the Burmese government's duties under the U.N. Convention on the Rights of the Child.

Construction of model villages was also reported to be on the rise in 1999. The Burmese government initiated the model village program in 1988 to encourage ethnic Burman Buddhist villagers from the Irrawaddy delta to move voluntarily into the sites.<sup>41</sup> Later, the government forced villagers to move and drew people from the delta and within Arakan. For the new villages built in 1999, many of the occupants were drawn from Rangoon, to which a substantial number of rural villagers had migrated during the mid 1990s to find jobs in the

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<sup>39</sup> Human Rights Watch interview, Cox's Bazar, August 9, 1999.

<sup>40</sup> Human Rights Watch interview, Cox's Bazar, August 8, 1999.

<sup>41</sup> Living conditions in the model villages vary but are generally poor. The government often constructs the houses in remote locations with no access to a market. Some do not have any good source of water or a proper sanitation system. The Burmese government initially supplies the villagers with some basic assistance such as oil, rice, peas, cartwheels and a little money, but the villages quickly exhaust these meager supplies.

construction industry. When construction projects evaporated in the wake of the Asian economic crisis, these people were left without jobs and the government has since moved people out of the city in order, it appears, to minimize the risk of urban unrest. Model villages are reserved exclusively for Buddhists, so Muslim Rohingyas are prohibited by the government from occupying them.

Most often, though, it is the Rohingya who must pay for the construction of model villages through the provision of land, labor and building materials. Authorities have frequently confiscated Rohingya lands and ordered Rohingya families to provide labor and building materials for the construction of model village homes.<sup>42</sup>

Sources from inside Arakan interviewed by Human Rights Watch in August 1999 said that in one area of Maungdaw that year, each Rohingya village tract was responsible for building two houses in the model village. Villagers had to collect wood from the forest, cut it into boards, and build each house from scratch, a process that took several hundred hours of labor per house. For the construction of another model village in Buthidaung, also in 1999, Burmese authorities confiscated approximately 250 acres of land, including prime farmland, from nearby Rohingya villagers. The villagers reportedly thereafter experienced difficulties in securing food.<sup>43</sup>

#### IV. CONDITIONS IN THE CAMPS

As detailed above, the conditions and abuses which prompted refugee flows from Arakan over the past decade have still not been addressed raising concern that there are today probably tens of thousands of Rohingyas now in Bangladesh who would have good grounds to fear persecution should they return to Arakan. In the meantime, significant problems -- most notably physical abuse and coercion -- continue to occur in the refugee camps in Bangladesh. Although UNHCR has responded to many complaints and conditions have improved, the combination of lack of funds and the lack of progress in achieving durable solutions to the Rohingya refugee problem have led to renewed pressure to simply sweep the problem under the rug.

##### **Registration: Withholding Essential Services as Leverage**

Each refugee family registered in the camps has been issued with a family book that identifies all members of the family as refugees deserving of protection and assistance. The books are required to gain access to food and medicine in the camps. In the beginning of 1998, UNHCR held a series of meetings with the Bangladeshi government, staff of private agencies, and refugee leaders to introduce the Individual Family File Registration (IFFR) system, a registration system which UNHCR said would improve services for the refugees and more clearly identify persons who would be at particular risk if returned to Burma.<sup>44</sup> UNHCR said that the IFFR process did not represent formal status determination, but it nevertheless required heads of families to answer a series of questions relating to possible repatriation. According to UNHCR, the registration, among other things, allows it to more easily identify protection cases. To ensure the reliability of information provided in the IFFR, UNHCR staff announced that each head of family would need to sign or mark a thumbprint on the document. UNHCR announced the dates of registration and counseling over the public address systems of each camp. A special UNHCR team then conducted the registration from May 1998 to May 1999 starting in Kutupalong Camp.

In May 1999, sixteen families in Nayapara Camp refused to complete the form. In their correspondence to relief workers, refugees expressed fears of signing or marking a thumbprint on any document that contained questions about repatriation because they had witnessed the forced return of refugees in the past after those persons had signed other documents. Question number fifteen on the IFFR form asked the refugee "Are you willing to return to your country?" with the option of answering "yes," "no," or "yes, on condition." If the refugee answered "no," the form then asked that the person specify their reason. Although responses on the form

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<sup>42</sup> Human Rights Watch interview, August 23, 1999.

<sup>43</sup> Correspondence with Human Rights Watch, December 19, 1999.

<sup>44</sup> Human Rights Watch discussion with UNHCR Country Office, Dhaka, August 13, 1999.

did not, in fact, commit the refugee to voluntary repatriation, the group of sixteen families feared their response would be used in future to justify their being pressured to leave.

After UNHCR staff tried several times to meet the families to discuss the problem, the refugees' family books were confiscated at the food distribution point.<sup>45</sup> Precisely who took the family books -- UNHCR staff or Bangladeshi camp officials -- is not clear.

Refugees who had completed the IFFR had received a stamp in their family books. When the refugees came to the food distribution point to collect their rations, officials were able quickly to identify those who had failed to complete the form by the absence of a stamp. When questioned about the incident by a Human Rights Watch researcher, a UNHCR official claimed that this was done not as a punitive measure but as a final incentive for the refugees to come and discuss their problems with UNCHR staff.<sup>46</sup> UNHCR had predicted that the refugees would immediately come and collect their books, at which point UNHCR could allay their fears about completing the registration form. This was not the case.

Instead, through confiscation of the books and cutting the refugees' formal access to food and medicine, UNHCR found itself caught in a power struggle in which it was perceived as using its control over resources to force the refugees to adhere to its wishes. The refugees then began to complain about the lack of food. With refugees still refusing to meet with UNHCR, the Camp in Charge (CIC), the Bangladeshi administrator of the camp, called the protesting refugees to his office.<sup>47</sup> On May 31, when the refugees still refused to cooperate, staff of the CIC beat four of the refugee men so severely that they required medical attention.<sup>48</sup>

After two more weeks of standoff, the CIC announced that camp authorities would give refugees coupons so that they could obtain their regular rations. However, the refugees refused to collect the coupons or go and receive their rations, insisting that they receive back rations for the weeks they had missed.<sup>49</sup> When the CIC subsequently agreed to return their family books, the group of refugees set conditions that included citizenship and democracy in Burma, compensation for all the rations missed and a promise that the CIC and UNHCR would never again confiscate their family books.<sup>50</sup> With the arrival in August of a new CIC, and further discussions, four of the refugee families agreed to take back their books unconditionally,<sup>51</sup> but in January 2000, twelve families were still refusing to take back their books.

### **Physical Abuse**

In previous reports, Human Rights Watch has documented a pattern of physical abuse of refugees in the camps, noting that such abuses had been particularly common in the context of repatriation.<sup>52</sup> Such abuses continue, Human Rights Watch found in preparing this report, but on a reduced level compared to the past. UNHCR has provided training for camp staff, holding annual protection workshops for Bangladeshi officials -- the June 1999 training, for example, included security personnel from the offices of the Deputy Commissioner,

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<sup>45</sup> Human Rights Watch discussion with UNHCR Country Office, Dhaka, August 13, 1999.

<sup>46</sup> Human Rights Watch discussion with UNHCR Country Office, Dhaka, August 13, 1999.

<sup>47</sup> The Camp in Charge is the Bangladeshi government's administrative head of the refugee camps. In discussions with Human Rights Watch, staff of the UNHCR office in Dhaka claimed that UNHCR at this time handed over the family books to the CIC.

<sup>48</sup> This case is described in greater detail below under the heading *Physical Abuse*.

<sup>49</sup> Human Rights Watch discussion with aid worker, Dhaka, August 6, 1999; Discussion with the Office of the Refugee, Relief and Repatriation Commissioner, Cox's Bazar, August 11, 1999. During this time the group of absconding refugees were reportedly receiving food from other refugees.

<sup>50</sup> Human Rights Watch discussion with UNHCR, RRRC, and relief agencies, Dhaka and Cox's Bazar, August 1999.

<sup>51</sup> Human Rights Watch communication with UNHCR Country Office, November 25, 1999.

<sup>52</sup> See Human Rights Watch, "Bangladesh: Abuse of Burmese Refugees from Arakan."

Superintendent of Police, Cox's Bazar jail, and the refugee camps. Yet, even with such training abuses have continued to be committed against refugees.

In February 1999, the Camp Magistrate of Kutupalong delivered three strokes of the cane to the thigh of a refugee who had refused to volunteer for repatriation. The man, whom the Burmese government had already cleared to return, refused to go along, claiming to have a case of misappropriation of funds pending against him in Arakan. UNHCR documents reveal that its staff examined the injury and advised the magistrate "not to punish refugees for refusing to volunteer to repatriate." The magistrate was not otherwise disciplined for the incident.

In a second incident, already mentioned above, the Bangladeshi guards at the CIC's office in Nayapara reportedly beat Rohingya family leaders who had refused to sign the IFFR. When the refugees refused to sign, the CIC's staff allegedly caned them on the hands, the soles of their feet, and the torso. Some of them required medical attention as a result.

When UNHCR officials learned of the beatings, they asked the refugees to come and see them, but only four did so. They were medically examined but this revealed only what appeared to be old injuries.<sup>53</sup> There was no further investigation and none of the officials responsible was punished.

In another incident in 1999, a witness described a beating in the Nayapara CIC's office:

A friend and I saw one of the Camp in Charge's staff at Nayapara beating a man on his feet when we walked into the radio room. The man's ankles were locked in the leg stocks. When my friend asked the officer what was happening, the officer replied that the man had been accused of robbing people along the road. The camp authorities eventually took the man to jail. He had many bruises and his eye was swollen shut.<sup>54</sup>

The Bangladeshi government occasionally punishes those authorities found to be abusing refugees, but the punishments usually amount to mild disciplinary measures, such as transfers and, in rare cases, demotions. In 1999, eleven staff/security personnel were subjected to disciplinary action. In October 1999, the government of Bangladesh transferred out of Kutupalong two police who had beaten a refugee. Following repeated complaints, the Bangladeshi government in 1999 demoted the CIC in Kutupalong to deputy administrator and transferred him to Nayapara. The officer was regularly seen beating and physically punishing refugees during his tenure as CIC.

UNHCR has intervened during, but most often after, physical abuse. The Refugee, Relief and Repatriation Commissioner (RRRC), the senior Bangladeshi official responsible for administration and implementation of refugee policy, has also voiced concern about beatings in the camps.<sup>55</sup> New CICs took over in each of the two camps in August 1999 replacing those under which abuses of refugees had previously been reported.

## V. UNDOCUMENTED ROHINGYA

Bangladesh has witnessed a steady influx of Rohingya for most of the past decade. Members of this group are locally referred to as "new arrivals," even though some of them arrived as long as ten years ago. Over the past ten years some Rohingya have chosen not to stay in the camps, but rather to live and work in eastern Bangladesh. Since the commencement of the repatriation program in 1992, however, the Bangladeshi government has also denied newly arriving Rohingya access to the refugee camps. The term "new arrivals" in the Bangladesh case

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<sup>53</sup> Human Rights Watch communication with UNHCR Country Office, November 25, 1999.

<sup>54</sup> Human Rights Watch interview, Dhaka, August 6, 1999.

<sup>55</sup> Human Rights Watch discussion with UNHCR Sub-Office, Cox's Bazar, August 10, 1999; Human Rights Watch discussion with the RRRC Office, Cox's Bazar, August 10, 1999.

therefore refers to those Rohingya not registered in either of the two remaining refugee camps or in Dhaka. For the purpose of this report, we refer to this group as “undocumented Rohingya.”

Estimates of the number of undocumented Rohingya varied broadly in 1999 but an article citing a Bangladeshi official put the population at some 150,000.<sup>56</sup> With only minor differences in language and appearance, the average Bangladeshi cannot readily distinguish a Rohingya from a Bangladeshi.<sup>57</sup> The fact that Bangladesh does not have a system of national identity cards has also made it difficult to identify Rohingya. Well-established networks allow the Rohingya to find jobs and be absorbed into local communities.<sup>58</sup> From Teknaf in the far south to the port city of Chittagong, the Rohingya have occupied lower tier occupations in the Bangladeshi economy including those of rickshaw driver, fisherman, and domestic servant. Officials and NGO representatives alike suspect that many Rohingya have also made their way into Dhaka, where they would be even less detectable than in the southeastern districts.

Thus far Bangladeshi villagers have tolerated the presence of the Rohingya. Indeed, Human Rights Watch was told that Rohingya women have assumed leadership roles in some local women’s organizations. It is also an open secret that some Rohingya have been registered to vote in local elections by politicians. Some Bangladeshi officials and businessmen have also profited illegally by demanding bribes and hiring the Rohingya at lower wages.

There are signs, nevertheless, that anti-Rohingya sentiment may be building. Local authorities and residents of Cox’s Bazar told Human Rights Watch that small-scale clashes have occasionally erupted over the effects of Rohingya labor on the market wage. Manual laborers in these areas already earn a mere one hundred to one hundred fifty taka per day (around three US dollars). Rohingya work for sixty to eighty taka, further suppressing the local wage. Some villagers permit Rohingya to build homes in their community only if the Rohingya agree to work away from the immediate area.<sup>59</sup> In February 1999, Bangladeshi authorities expelled two hundred and fifty undocumented Rohingya families from St. Martin’s Island after villagers there claimed that the families were taking their jobs.<sup>60</sup> Other locals have claimed Rohingya engage in theft and abuse narcotics.<sup>61</sup> The Bangladeshi government’s annual disaster report includes negative commentary on the Rohingya, claiming that “armed Rohingya activists” control seven out of eight blocks in Nayapara camp and that the Rohingya are involved in “communicating with the Talebans, trafficking women and children, and other illegal and unsocial works.”<sup>62</sup>

Some Bangladeshi officials have made known their concerns about the presence of thousands of undocumented Rohingya. In an article in a Cox’s Bazar newspaper, the RRRC drew attention to the presence of some 100,000 to 150,000 “new arrivals.”<sup>63</sup> He was reported to have called for measures to be put in place to identify, arrest, and expel all illegal Rohingya immigrants from Bangladeshi territory.<sup>64</sup> Some efforts to repatriate

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<sup>56</sup> Aman-ud-dollah, “Worrying information in government documents: 150,000 Rohingyas are permanently residing in the Chittagong region,” *The Daily Janakontha*, July 17, 1999 (In Bengali).

<sup>57</sup> Locals of the Chittagong region claim to be able to identify Rohingya from their dress and speech.

<sup>58</sup> Local observers have noted that this is a long-standing network that can absorb small movements of Rohingya refugees but can in no way accommodate mass exoduses such as those of the 1970s and 1990s.

<sup>59</sup> Local NGO workers suggested that a consequence of this pattern is that women become vulnerable. The men often move to Dhaka and are not heard from again leaving the women alone in the village unable to provide for themselves or their children. Some have been reported to resort to commercial sex work or have become vulnerable to human traffickers. Traffickers are said to have sent women and children to South Asia and the Persian Gulf states. In the Gulf states, Human Rights Watch was told young boys are used as jockeys in camel races. Many boys have lost their lives in such races.

<sup>60</sup> C.R. Abrar, “Human Rights Condition of the Rohingya Refugees,” *Daily Star*, 16 May 1999.

<sup>61</sup> Internal report from a humanitarian agency working in Bangladesh, 1998.

<sup>62</sup> *Bangladesh: Disaster Report 1998*, Dhaka, pp. 235, 236.

<sup>63</sup> NGOs which closely monitor the undocumented Rohingya population estimate the population to be just above 150,000.

<sup>64</sup> Aman-ud-dollah, *Ibid.*

undocumented Rohingya are already underway. In an interview with NGO staff, Human Rights Watch learned that community leaders in the slums around Cox's Bazar have been instructed to identify those Rohingya families and homes in their respective communities and to submit lists of their names to the authorities.<sup>65</sup> In addition, RRRC staff told Human Rights Watch that Rohingya could be identified by their lack of Bangladeshi voter registration cards. Sixty percent of Bangladeshi voters are registered and the process of registration is continuing.

Efforts to repatriate undocumented Rohingya are likely to face significant obstacles. Documents can be bought on the black market and the Rohingya can move elsewhere to avoid raids. Ultimately though, the greatest obstacle will likely prove, as it has on other borders, that the Burmese government will not readily accept them back. During the Thai government's November 1999 attempt to deport thousands of Burmese migrants, the Burmese authorities simply refused to receive them and even reportedly threatened to shoot them if Thai immigration officials attempted to deposit them at the official checkpoint in Myawaddy.<sup>66</sup> The Burmese government has also already refused to take back Rohingya from Bangladesh who have been arrested there for illegal entry or have served jail terms in Bangladesh for other reasons. Many of these Rohingya remain in detention in Bangladesh as illegal immigrants despite having completed their sentences.<sup>67</sup> Even if Bangladesh is able to deport large numbers of Rohingya, there is a strong likelihood, given current conditions in Arakan, that many will soon make their way back to Bangladesh. The costs of detention and deportation will continue to be significant and will continue to fall on the Bangladeshi government. The only way to end the cycle of exodus and return is for the Burmese government to end abuses and address the fundamental problems that have prompted the refugee flows from Arakan. The international community must take the lead in pressing the SPDC to make these reforms.

### ***Refugee status determination***

For the past decade, Rohingya have continued to cross the border into Bangladesh both to escape human rights abuses and for economic reasons. With no access to the protection and assistance of UNHCR, "new arrivals" have often opted to seek employment in the Bangladeshi labor market, making it difficult to distinguish victims of abuse in Arakan, who would qualify as refugees, from purely economic migrants, who would not. Although the Bangladeshi government contends that all such Rohingya are illegal migrant laborers and UNHCR itself believes that the majority could fall into this category, there could be thousands among them who, were their stories known, would be eligible for UNHCR protection as refugees.

Rumors of an official crackdown on illegal immigrants have circulated throughout the Chittagong region since mid-1999. Should such a crackdown materialize, undocumented Rohingya with a legitimate fear of persecution if returned to Burma would be particularly at risk. Yet, neither the Bangladeshi government nor UNHCR have set in place a mechanism through which potential asylum seekers can identify themselves and seek protection and assistance.

According to UNHCR officials, their office is routinely notified by the Bangladeshi authorities when any Rohingya are arrested in order that UNHCR may interview them as a means of determining whether they are refugees in need of protection. UNHCR officials also visit prisons and detention centers from Chittagong to Teknaf and make occasional visits to the border. According to UNHCR, all the Rohingya whom the agency has interviewed in the first half of 1999 had crossed the border for economic reasons. Distinguishing economic migrants from those who fled because of human rights abuses is particularly difficult in this context, however. Initially, villagers may say that they have come to Bangladesh because they have been unable to make a living in Burma, but under more thorough questioning it may emerge that the reason they were destitute in Burma was

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<sup>65</sup> Human Rights Watch Interview with non-governmental organization, August 6, 1999.

<sup>66</sup> *The Nation*, "Junta vows to shoot returnees," November 4, 1999.

<sup>67</sup> The government estimates there to be some 1,700 Rohingya in prisons throughout the country, the majority serving or having completed terms for illegal entry. *United News of Bangladesh*, "Rohingya-Prisoners," October 25, 1999.

related directly to the use of forced labor, arbitrary taxation, and the confiscation of goods and land from Rohingya.

UNHCR has no established set of criteria for identifying Rohingya with a genuine fear of persecution if returned to Burma. The agency has never undertaken individual status determinations in the refugee camps, so the question to what extent the use of forced labor and arbitrary confiscation of property in Burma should be considered grounds for conferring refugee status and protection on Rohingya has not been decided. Nor has the question of the Rohingya's lack of full citizenship rights, and the relevance of this to determining refugee status, been adequately addressed.

A refugee is defined as someone who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."<sup>68</sup>

Although there is no universally accepted definition of "persecution," the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (hereafter referred to as the "*Handbook*") provides some guidance on how to interpret "persecution," some of which is applicable to the Rohingya refugees. The term "nationality" in the refugee definition should be interpreted more broadly than 'citizenship,' according to the *Handbook*: "It refers also to membership of an ethnic or linguistic group and may occasionally overlap with the term 'race.'" Persecution for reasons of nationality may consist of adverse attitudes and measures directed against a national (ethnic, linguistic) minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to well-founded fear of persecution."<sup>69</sup> The Rohingya constitute such a distinct ethnic, linguistic and racial group and the discrimination they experience in Burma is based on their membership of such a group.

The *Handbook* goes on to assert that discrimination against different groups in a society would amount to persecution if it led "to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practice his religion, or his access to normally available educational facilities".<sup>70</sup> All of these restrictions apply to the Rohingya in Burma, who because of their lack of full citizenship rights experience severe and "substantially prejudicial" social, economic, and legal exclusion.

Moreover, the *Handbook* also provides guidance on the difficulties in distinguishing between an economic migrant and a refugee which is of particular relevance to the Rohingya. "The distinction between an economic migrant and a refugee is, however, sometimes blurred in the same ways as the distinction between economic and political measures in an applicant's country of origin is not always clear. Behind economic measures affecting a person's livelihood there may be racial, religious or political aims or intentions directed against a particular group. Where economic measures destroy the economic existence of a particular section of the population (e.g. withdrawal of trading rights from, or *discriminatory or excessive taxation of, a specific ethnic or religious group*), the victims may according to the circumstances become refugees on leaving the country" (our emphasis), states the *Handbook*.<sup>71</sup> The Rohingya are subjected to excessively high taxation, arbitrary confiscation of their property, and other economic restrictions precisely because of their membership of a specific ethnic and religious group.

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<sup>68</sup> Article 1(A) (2) 1951 Convention Relating to the Status of Refugees

<sup>69</sup> *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, UNHCR, reedited Geneva, January 1992, p. 18

<sup>70</sup> *Ibid*, p. 15

<sup>71</sup> *Ibid*, p. 16

The refugee legal scholar, Guy Goodwin Gill, provides a synopsis of the term “persecution” which is particularly relevant to the Rohingya case:

In its broader sense, however, it remains very much a question of degree and proportion; less overt measures may suffice, such as the imposition of serious economic disadvantage, denial of access to employment, to the professions, or to education, or other restrictions on the freedoms traditionally guaranteed in a democratic society, such as speech, assembly, worship and freedom of movement.<sup>72</sup>

Lack of citizenship exposes the Rohingya to serious human rights violations including restrictions on their movement, exclusion from some education and employment opportunities, and arbitrary confiscation of their property. These violations, in combination with forced labor and the constraints on political rights faced by all Burmese, may well constitute persecution as elucidated in the UNHCR *Handbook*.<sup>73</sup> Accordingly, many Rohingya likely would have valid claims to refugee status. They should be given a proper opportunity to present these claims to both UNHCR and to the Bangladeshi government, to have their claims assessed in a full and fair manner, and to receive full refugee protection where necessary.

## V. THE SEARCH FOR DURABLE SOLUTIONS

Eight years after the 1991-92 mass exodus of Rohingya to Bangladesh, a durable solution for all the refugees has still not been found. Repatriation continues to be promoted while the structural causes of flight persist. At the same time as refugees are returning from Bangladesh to Arakan State, other Rohingya are continuing to leave Arakan to seek asylum in Bangladesh. This dynamic poses serious questions about the durability of the repatriation program.

Ultimately, there will be no durable solution to the Rohingya refugee problem until Burma complies with its obligations under international law and respects the basic rights of its Rohingya minority. To this end, the international community, including the U.N. and the Association of South East Asian Nations (ASEAN), must press the Burmese government to undertake fundamental reforms in its treatment of the Rohingya. In the meantime, both intermediate and long-term solutions must be sought for the remaining Rohingya in Bangladesh.

The refugee regime offers three durable solutions for refugees: voluntary repatriation, local integration, and resettlement. The principal objective of each durable solution is to restore national protection to refugees. The suitability and availability of solutions may vary for different groups of refugees or even for refugees within the same population. It is the responsibility of UNHCR, with the cooperation of the home and host states as well as the international community, and in consultation with the refugees, to identify the appropriate solutions for a given population.

### **Voluntary Repatriation**

Over the past decade or more, voluntary repatriation, (the voluntary return of refugees to their home countries), has been promoted as the optimal solution to refugee crises. UNHCR has statutory responsibility to seek, promote, and facilitate the voluntary return of refugees to their country of origin. Though the 1951 Convention is silent on the question of voluntariness, the UNHCR *Handbook on Voluntary Repatriation* states that: “The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees...A person with a well-founded fear of persecution is a refugee, and cannot be compelled to repatriate.”<sup>74</sup> Unfortunately, host countries often press refugees to return before conditions in their homeland have sufficiently

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<sup>72</sup> Guy S. Goodwin Gill, *The Refugee in International Law*, (Oxford: Clarendon Press) 1996, p. 68.

<sup>73</sup> The Burmese government has routinely violated the rights of all Burmese citizens by denying them the freedom of speech, assembly and association.

<sup>74</sup> UNHCR, *Handbook on Voluntary Repatriation: International Protection*, (Geneva: UNHCR) 1996, p. 10.

improved. For voluntary repatriation to be a durable solution, the home country must be able and willing once again to assume the responsibility of providing for the legal and physical security of the returnee. The international community can play an important role in ensuring that conditions in the country of origin are conducive to return and by supplying the funds necessary for the full reintegration of returnees.

Rohingya repatriation has passed through a number of stages, during which return was not always voluntary. From September 1992 and November 1993, the Burmese and Bangladeshi governments pursued the repatriation of some 50,000 Rohingya refugees through a bilateral memorandum of understanding. UNHCR participated in the repatriation from October 1992 but withdrew in December when it became clear that the principle of voluntariness was not being respected. In November 1993, UNHCR signed an MOU with the government of Burma which allowed the agency access to northern Arakan. A month later, UNHCR began to promote the mass repatriation of Rohingya refugees. Some international NGOs had concerns that refugees were not repatriating voluntarily, an accusation supported by a survey of the populations in the camps.<sup>75</sup> Repatriation continued until July 1997 when refugees took over both camps in response to Bangladeshi authorities attempts to coerce refugees to return. The refugees barred Bangladeshi officials and UNHCR staff from entering. The repatriation program finally resumed in November 1998. A new problem has arisen since resumption of the repatriation program: obstacles to return. Under international human rights law, all people have the right to return to their own country. Article 13 (2) of the Universal Declaration of Human Rights states, "Everyone has the right to leave any country, including his own, and to return to his country." Reinforcing this principle, article 12 (4) of the 1966 International Covenant on Civil and Political Rights which states, "No one shall be arbitrarily deprived of the right to enter his own country."<sup>76</sup> For Rohingya who wished to return to Burma upon the 1998 resumption of repatriation, restrictive bureaucratic procedures and conditions put in place by the Burmese authorities have proved an obstacle.

In some instances, the government's conditions are clearly violating the refugees' right to return. Before the Burmese government stopped repatriation in August 1997, it had already cleared for return over seven thousand refugees who had signed voluntary repatriation forms. When the program resumed in November 1998, the Burmese authorities refused to accept these previously cleared refugees; the new round of verifications have been a redundant and time-consuming exercise. When repatriations recommenced, the Bangladeshi RRRC was required each week to submit to the Burmese Immigration and Manpower Department (IMD) a list of those refugees who had volunteered to return to Burma. The Burmese authorities subsequently made a determination of the merits of the residency claim of each refugee. The Bangladeshi government submitted an initial list of 217 families from Kutupalong who had come forward after the restoration of order in the camp requesting to return to Burma.<sup>77</sup> The RRRC later submitted other lists including lists of all of the seven thousand refugees who had volunteered to repatriate before the program was suspended in August 1997. The refugees on the list of 217 families have been the only ones cleared for repatriation. In response to objections by their Bangladeshi counterparts, Burmese officials stated that they would begin considering names from the other lists but requested that the Bangladeshi government not submit any new names.<sup>78</sup> The immediate repercussion of the policy is that the 15,000 or so refugees who did not volunteer for repatriation prior to 1997 have effectively been made ineligible for return.

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<sup>75</sup> See MSF-France and MSF-Holland, "MSF's Concerns on the Repatriation of Rohingya Refugees from Bangladesh," May 1, 1994; and MSF-France and MSF-Holland, "Awareness Survey: Rohingya Refugee Camps, Cox's Bazar District, Bangladesh," March 15, 1995.

<sup>76</sup> Burma has not ratified the International Covenant on Civil and Political Rights.

<sup>77</sup> Human Rights Watch discussion with UNHCR Country Office, Dhaka, August 13, 1999.

<sup>78</sup> Discussion with the Refugee, Relief and Repatriation Commissioner's Office, Cox's Bazar, August..., 1999. The names of all of the approximately 7000 persons whom the Burmese had cleared in 1997 have been sent to the Burmese side. This leaves some 15,000 whose names have never been submitted.

The Burmese government also initially insisted that the repatriation accommodate just fifty persons per week. Each Monday, Burmese authorities return a list of approved names to their Bangladeshi counterparts. Bangladeshi camp authorities then transport the refugees to the departure point on Tuesday and return the group to Burma early Wednesday morning. In the first eleven months of the repatriation, the Burmese government rarely approved the return of the full fifty persons in one week. The numbers more often averaged fifteen to twenty persons per week, with the result that the number of refugees in the camps has already gone up due to the number of new births exceeding the number of those returned from the camps to Burma (See table of monthly figures below).<sup>79</sup> This quota was finally lifted at the close of 1999.

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<sup>79</sup> Human Rights Watch discussion with humanitarian relief agency's medical personnel, Cox's Bazar, August 9, 1999.

**REFUGEE STATISTICS (repatriation, birth & death)**

Month	REPATRIATION		Birth	Death	Net population
	Families	Persons	Persons	Persons	Increase/(decrease)
Nov-98	8	46	52	13	(7)
Dec-98	11	60	123	18	45
Jan-99	-	-	94	2	92
Feb-99	4	19	130	19	92
Mar-99	5	29	92	2	61
Apr-99	6	34	89	9	46
May-99	9	57	135	13	65
Jun-99	9	55	76	13	8
Jul-99	11	73	78	5	-
Aug-99	15	99	111	7	5
Sep-99	22	99	97	6	(8)
Oct-99	34	228	111	6	(123)
Total:	134	799	1,188	113	276

Source: UNHCR Country Office, Dhaka

The Burmese authorities have also refused to receive incomplete families. When one family member is missing, the government has usually not cleared the rest to cross the border. If one family member refuses to repatriate, none is permitted to return. The government has also insisted that the father of each child born in the camps be identified and included in the repatriation. In some instances, the father has abandoned the family for another woman or left to seek work in another part of the country. In other cases the father has been a Bangladeshi citizen. Unable to locate the father, the family is stranded in Bangladesh. In some rare exceptions,

the Burmese government has accepted an incomplete family but has stated that the missing member would never again have the right to return to Burma.<sup>80</sup>

In late July 1999, the Burmese Foreign Minister, Win Aung, visited Dhaka to meet with his Bangladeshi counterpart and the Prime Minister. The priority of the Bangladeshi government was to secure a commitment from Win Aung on the expedient return of the remaining Rohingya but to the consternation of the Bangladeshi government, Win Aung made no substantive promises on the repatriation.<sup>81</sup> Apparently to show its displeasure at this, the Bangladesh government told the Burmese commerce minister to postpone a planned visit to the country.<sup>82</sup> The bilateral agreement of December 1999 to lift the ceiling on the number of weekly repatriations, however, has been to the satisfaction of the Bangladeshi authorities. The move has reportedly led to camp officials pressuring refugees to return and UNHCR has already intervened in a number of cases in early 2000.<sup>83</sup>

### **Protection and Prevention: The United Nations in Northern Arakan**

Though repatriation continues, the concurrent outflow of Rohingya calls into question the durability of return. In its General Conclusion on International Protection of 1994, UNHCR's Executive Committee stated that "for repatriation to be a sustainable and thus truly durable solution to refugee problems it is essential that the need for rehabilitation, reconstruction, and national reconciliation be addressed in a comprehensive and effective manner." UNHCR pursues reintegration of returnees through three activities: peace-plan operations, human rights protection and advocating the rule of law, and economic and social reintegration.<sup>84</sup> These activities are fundamental if the Rohingya community is to be solidly anchored in Burma. In order for voluntary repatriation to be sustainable, U.N. agencies must pursue effective protection and development activities in northern Arakan.

UNHCR and other U.N. agencies have a potentially positive role to play in northern Arakan. UNHCR must continue to seek to intervene with the Burmese government and offer genuine protection through actively pursuing an end to forced labor and remedying the problem of Rohingya legal status as root causes of abuse and displacement. In an effort to promote sustainable human development and attack the roots of poverty, other U.N. agencies active in northern Arakan should cooperate in achieving this objective.

UNHCR has attempted to engage the Burmese government in a dialogue on outstanding protection issues including the problems of citizenship, forced labor, freedom of movement, and arbitrary taxation. The agency has submitted recommendations and offered technical assistance but the failure of the SPDC to respond positively reveals a distinct lack of political will in Rangoon to address the problems.

On an organizational level, the number of UNHCR staff in northern Arakan was insufficient to pursue a proper protection role. Before 1997, UNHCR had no staff assigned specifically to protection monitoring responsibilities. In mid-1997, the agency set up a team of four officers headed by a senior legal officer for protection monitoring which improved their capacity to intervene on behalf of the 230,000 returnees. Around one dozen other UNHCR international staff and a group of local employees also monitor developments in tandem with their other duties, such as administering quick impact reintegration projects. Any further downsizing of the UNHCR program in Arakan is likely to put the refugees at risk as the agency's presence and intervention does, in

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<sup>80</sup> The most recent stipulation, initiated in November 1999, requires that the Burmese government screen all returnees to verify voluntariness. When the Rohingya reach the Burmese bank of the Naf River, officials interview each person to insure they have returned willingly, allowing for an opportunity to return to Bangladesh. There have been no cases of Rohingya reporting involuntary return to the Burmese officials since this policy began.

<sup>81</sup> "All Rohingyas must go back," *New Nation*, July 21, 1999.

<sup>82</sup> M. Anwarul Haq, "Bangladesh stalls visit of Myanmar minister: Non-committal attitude on Rohingyas," *Daily Star*, July 22, 1999.

<sup>83</sup> Human Rights Watch correspondence with development worker, February 14, 2000.

<sup>84</sup> See UNHCR, *The State of the World's Refugees: A Humanitarian Agenda*, (London and New York: Oxford University Press) 1997, pp. 168-169, 172-174.

some instances, deter violations by the Burmese authorities. As of April 2000, whether UNHCR will retain any protection role remained unclear, but the organization stated that it intended to maintain at least three staff who would carry out protection monitoring. As UNHCR staff terms expired, however, the Burmese government was blocking the appointment of new staff by refusing to issue visas. UNHCR plans by 2001 to transfer its assistance duties to the UN Integrated Programme (UN-IP), whose list of participants includes all the U.N. development agencies working in the country and which is headed by the country representative of the United Nations Development Programme (UNDP) in his capacity as resident coordinator. The UN-IP will focus on the development and stabilization of the population of northern Arakan.

As a member of the UN-IP, UNDP has a potential role in addressing some of the long-term human rights issues in northern Arakan as they pertain to development. Traditionally, the UNDP mandate has not included any protection monitoring role beyond keeping tabs on its own specific projects but in recent agreements with the Office of the UN High Commissioner for Human Rights, UNDP has sought to integrate human rights and sustainable development into its work.<sup>85</sup> In its policy paper “Integrating Human Rights with Sustainable Human Development,” UNDP has incorporated civil, political, economic, social, and cultural rights into its definition of the right to development. The paper points to poor governance and poverty as two of the principal culprits in the denial of rights and clearly states the organization’s determination to combat both. A report prepared in Burma by the U.N. Working Group there draws attention to the country’s numerous obstacles to sustainable development. In one section, the report addresses the insecurity of the Rohingya in northern Arakan and their marginalized position due to their legal status.<sup>86</sup> If UNDP maintains an organizational position that poverty constitutes a deprivation of basic rights and if in Burma insecure legal status results in poverty, low levels of education, and lack of opportunities in society, then seeking solutions to the condition of the Rohingya in northern Arakan falls directly within the purview of UNDP. Nevertheless, UNDP does not have a specific protection mandate nor does it have the institutional capacity to tackle the contentious protection issues of northern Arakan.<sup>87</sup> UNDP and other agencies could, however, seek to support existing UNHCR initiatives on the issue of citizenship. It is unclear whether, as the UN-IP proposal stands, UNHCR will maintain any presence in Arakan after the initiation of the UN-IP. UNHCR, with its clear mandate for protection of refugees and returnees, should have an explicit role in the immediate future of U.N. operations in Arakan.

### **Local Integration**

Local integration involves the long-term, or permanent settlement of refugees in the country of first asylum. The success of local integration depends on several factors. These include first and foremost the willingness of the refugees to settle locally; second, the receptiveness and commitment of the host country and local population towards the integration of refugee populations; third, access to livelihoods and means for economic survival; and fourth, and finally, opportunities for refugees to acquire citizenship and achieve full integration into the host society.<sup>88</sup> The international community can also share responsibility by providing financial assistance to the host government, local communities, and to the refugees to assist in their integration into the host society.

In Bangladesh, the government is acutely aware of local sensitivities surrounding land allocation and population pressure and has unequivocally rejected all recommendations of local integration. The most densely populated country on earth, Bangladesh has a population of 127 million people and a landmass of approximately

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<sup>85</sup> See United Nations Development Programme, *Integrating Human Rights with Sustainable Human Development: A UNDP Policy Document*, (New York: UNDP) January 1998.

<sup>86</sup> United Nations Working Group, *Human Development in Myanmar*, (Yangon: UN Working Group) July 1998 p. 12.

<sup>87</sup> For an assessment of UNDP’s protection monitoring capacity see Human Rights Watch, *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya*, (New York), 1997.

<sup>88</sup> UNHCR, *The State of the World’s Refugees*, 1997, pp. 92-93, 96-97.

84,000 square miles, much of which seasonal floods annually inundate. In its statement to the 1999 UNHCR Executive Committee meeting, the Bangladeshi delegation said:

The long presence of Myanmar refugees in Bangladesh has not been without cost to our already fragile socio-economic structure. The strains on local government, the infrastructure and on the local population have been heavy. It has therefore been our endeavor to ensure their voluntary repatriation to their homeland in safety and dignity, within the shortest period of time...We believe that each and every refugee has a right to return home. To this score, we would urge the Government of Myanmar to intensify their efforts in ensuring their early return.<sup>89</sup>

The official position of the government is that it will not entertain any notion of local integration. The reality is that Bangladeshi society has allowed for integration for decades, if not centuries. Because of ethnic affinities, a porous border, and a common history Rohingya have been integrated into Chittagonian society. As is revealed by the large undocumented caseload, the Rohingya have been able to make their way into the economy and, in some instances, play a role in the local community. The government apparently fears that institutionalizing what is already happening on the ground would attract still more Rohingya, serving as an additional "pull" factor.

Despite the Bangladeshi government's reservation, local integration might be a feasible solution if international donors and the U.N. commit to providing assistance. Sharing the financial burden of integrating the Rohingya into the broader society is one option. Local integration, as is the case with all durable solutions, must be voluntary. Rohingya who choose local integration should have the option of becoming Bangladeshi citizens but until that time should enjoy all the rights and protection associated with citizenship.

Temporary residence, through which the Rohingya could pursue a more normal life in Bangladesh until an improvement in the situation in Burma could facilitate return, is a less ideal option but one that could achieve some of the basic objectives of full local integration. If the remaining Rohingya refugees received temporary residence, they could seek legal employment and enroll in education – opportunities they have been unable to enjoy since their arrival in the camps - as well as enjoy the legal protections available to other foreign visitors.

## Resettlement

Resettlement is the transfer of a refugee from the country of first asylum to a third country which has agreed to provide the refugee with protection.<sup>90</sup> Resettlement was most widely used as a solution to refugee outflows during the 1980s when some 700,000 Vietnamese refugees were resettled, in mainly industrialized countries.<sup>91</sup> Resettlement is an appropriate protection strategy for refugees whose safety and security cannot be secured in the country of first asylum or who have special humanitarian needs which cannot be met in the country of first asylum. It is also an appropriate durable solution for those who are unable or unwilling to return to their own country or to locally integrate in their country of asylum.<sup>92</sup> Resettlement is also a mechanism whereby wealthier countries can share the responsibility for the global refugee problem.<sup>93</sup>

Until now there has been little resettlement of Rohingya from Bangladesh. Of the 22,000 refugees remaining in the camps in Bangladesh, at least some 7,000 have at one time expressed a willingness to repatriate to Burma. Durable solutions must therefore be sought for the remaining 15,000 Rohingya, many of whom have spent nearly a decade languishing in the camps. Third country resettlement may be an option for some of these

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<sup>89</sup> Statement of the Bangladeshi representative to the UNHCR Executive Committee, 1999.

<sup>90</sup> UNHCR, *Resettlement Handbook*, (Geneva: UNHCR, Division of International Protection), July 1997, p. 2.

<sup>91</sup> For a history of the asylum and resettlement of Indochinese refugees see W. Courtland Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response*, (London and New York, Zed Books, Ltd.) 1998.

<sup>92</sup> UNHCR, *The State of the World's Refugees: A Humanitarian Agenda*, (London and New York: Oxford University Press) 1997, pp. 86, 88-89.

<sup>93</sup> *Ibid.*, p. 89.

people, especially those who can not return to Burma due to fear of persecution. Governments should consider resettlement options for Rohingya refugees who are unable or unwilling to return to Burma or to stay in Bangladesh. This would also be an effective way in which the international community could share responsibility for the Rohingya refugee crisis.

## Human Rights Watch

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