

North Arakan: an open prison for the Rohingya in Burma

by Chris Lewa

Many minorities, including the Rohingya of Burma, are persecuted by being rendered stateless.

Hundreds of thousands have fled to Bangladesh and further afield to escape oppression or in order to survive. There were mass exoduses to Bangladesh in 1978 and again in 1991-92. Each time, international pressure persuaded Burma to accept them back and repatriation followed, often under coercion. But the outflow continues.

The Rohingya are an ethnic, linguistic and religious minority group mainly concentrated in North Arakan (or 'Rakhine') State in Burma, adjacent to Bangladesh, where their number is estimated at 725,000. Of South Asian descent, they are related to the Chittagonian Bengalis just across the border in Bangladesh, whose language is also related. They profess Sunni Islam and are distinct from the majority Burmese population who are of East Asian stock and mostly Buddhists. Since Burma's independence in 1948, the Rohingya have gradually been excluded from the process of nation-building.

The 1982 Citizenship Law

In 1982, Burma's military rulers brought in a new Citizenship Law¹ which deprived most people of Indian and Chinese descent of citizenship. However, the timing of its promulgation, shortly after the refugee repatriation of 1979, strongly suggests that it was specifically designed to exclude the Rohingya. Unlike the preceding 1948 Citizenship Act, the 1982 Law is essentially based on the principle of *jus sanguinis* and

identifies three categories of citizens: full, associate and naturalised.

Full citizens are those belonging to one of 135 'national races'² settled in Burma before 1823, the start of the British colonisation of Arakan. The Rohingyas do not appear in this list and the government does not recognise the term 'Rohingya'. Associate citizenship was only granted to those whose application for citizenship under the 1948 Act was pending on the date the Act came into force. Naturalised citizenship could only be granted to those who could furnish "conclusive evidence" of entry and residence before Burma's independence on 4 January 1948, who could speak one of the national languages well and whose children were born in Burma. Very few Rohingyas could fulfil these requirements. Moreover,

the wide powers assigned to a government-controlled 'Central Body' to decide on matters pertaining to citizenship mean that, in practice, the Rohingyas' entitlement to citizenship will not be recognised.

In 1989, colour-coded Citizens Scrutiny Cards (CRCs) were introduced: pink cards for full citizens, blue for associate citizens and green for naturalised citizens. The Rohingya were not issued with any cards. In 1995, in response to UNHCR's intensive advocacy efforts to document the Rohingyas, the Burmese authorities started issuing them with a Temporary Registration Card (TRC), a white card, pursuant to the 1949 Residents of Burma Registration Act. The TRC does not mention the bearer's place of birth and cannot be used to claim citizenship. The family list, which every family residing in Burma possesses, only records family members and their date of birth. It



Peace Walk for Rohingyas

Stephen Hendry

does not indicate the place of birth and therefore provides no official evidence of birth in Burma – and so perpetuates their statelessness.

The Rohingya are recognised neither as citizens nor as foreigners. The Burmese government also objects to them being described as stateless persons but appears to have created a special category: ‘Myanmar residents’, which is not a legal status. However, on more than one occasion, government officials have described them as ‘illegal immigrants from Bangladesh’. In 1998, in a letter to UNHCR, Burma’s then Prime Minister General Khin Nyunt wrote: “These people are not originally from Myanmar but have illegally migrated to Myanmar because of population pressures in their own country.” And a February 2009 article in the government-owned *New Light of Myanmar* newspaper stated that “In Myanmar there is no national race by the name of Rohinja.”

Deprivation of citizenship has served as a key strategy to justify arbitrary treatment and discriminatory policies against the Rohingya. Severe restrictions on their movements are increasingly applied. They are banned from employment in the civil service, including in the education and health sectors. In 1994, the authorities stopped issuing Rohingya children with birth certificates. By the late 1990s, official marriage authorisations were made mandatory. Infringement of these stringent rules can result in long prison sentences. Other coercive measures such as forced labour, arbitrary taxation and confiscation of land, also practised elsewhere in Burma, are imposed on the Rohingya population in a disproportionate manner.

Restrictions of movement

The Rohingyas are virtually confined to their village tracts. They need to apply for a travel pass even to visit a neighbouring village – and they have to pay for the pass. Travel is strictly restricted to North Arakan. Even Sittwe, the state capital, has been declared off-limits for them. Their lack of mobility has devastating consequences, limiting their access to markets, employment opportunities, health facilities and higher education. Those who overstay the time allowed by their travel pass

are prevented from returning to their village as their names are deleted from their family list. They are then obliterated administratively and compelled to leave Burma. Some Rohingyas have been prosecuted under national security legislation for travelling without permission.

Rohingyas are also forbidden to travel to Bangladesh, although in practice obtaining a travel pass to a border village and then crossing clandestinely into Bangladesh has proved easier than reaching Sittwe. But, similarly, those caught doing so could face a jail sentence there for illegal entry. Many people, including patients seeking medical treatment in Bangladesh, were unable to return home when, during their absence, their names were cancelled on their family list. Once outside Burma, Rohingyas are systematically denied the right to return to their country.

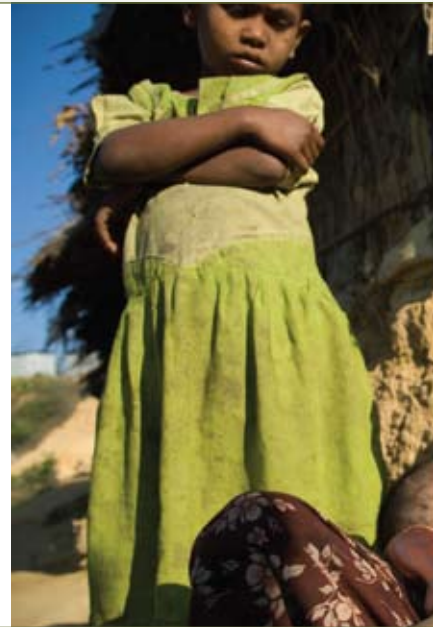
Marriage authorisations

In the late 1990s, a local order was issued in North Arakan, applying exclusively to the Muslim population, requiring couples planning to marry to obtain official permission from the local authorities – usually the NaSaKa, Burma’s Border Security Force. Marriage authorisations are granted on the payment of fees and bribes and can take up to several years to obtain. This is beyond the means of the poorest. This local order also prohibits any cohabitation or sexual contact outside wedlock. It is not backed by any domestic legislation but breaching it can lead to prosecution, punishable by up to 10 years’ imprisonment.

In 2005, as the NaSaKa was reshuffled following the ousting of General Khin Nyunt, marriage authorisations were completely suspended for several months. When they restarted issuing them in late 2005, additional conditions were attached including the stipulation that couples have to sign an undertaking not to have more than two children. The amount of bribes and time involved in securing a marriage permit keeps increasing year after year.

The consequences have been dramatic, particularly on women. Rohingya women who become pregnant without official marriage authorisation often resort to

Unregistered Rohingyas in Bangladesh must fend for themselves. This mother gave birth 40 days previously and has not been able to feed her baby properly.



backstreet abortions, an illegal practice in Burma, which has resulted in many maternal deaths. Others register their newborn child with another legally married couple, sometimes their own parents. Some deliver the baby secretly in Bangladesh and abandon their baby there. Many children are reportedly unregistered. Many young couples, unable to obtain permission to marry, flee to Bangladesh in order to live together.

Education and health care

As non-citizens, the Rohingya are excluded from government employment in health and education and those public services are appallingly neglected in North Arakan. Schools and clinics are mostly attended by Rakhine or Burmese staff who are unable to communicate in the local language and who often treat Rohingyas with contempt. International humanitarian agencies are not allowed to train Muslim health workers, not even auxiliary midwives. Some Rohingya teach in government schools, paid with rice-paddy under a food-for-work programme as they cannot hold an official, remunerated teacher’s post.

Restrictions of movement have a serious impact on access to health and education. Even in emergencies, Rohingyas must apply for travel permission to reach the poorly equipped local hospital. Access to better medical facilities in Sittwe hospital is denied. Referral of



UNHCR/Suthep Kritsanavarin

critically ill patients is practically impossible. Consequently, patients who can afford it have sought medical treatment in Bangladesh but are sometimes unable to return to their village. Likewise, there are few secondary schools in North Arakan and pupils need travel permission to study outside their village. The only university is in Sittwe. After 2001, most students could no longer attend classes and had to rely on distance learning, only being allowed to travel to Sittwe to sit examinations. Since 2005, however, even that has been prohibited. Not surprisingly, illiteracy among the Rohingyas is high, estimated at 80%.

For the Rohingya, the compounded effect of these various forms of persecution has driven

many into dire poverty and their degrading conditions have caused mental distress, pushing them to flee across the border to Bangladesh.

In exile

In Bangladesh, the 28,000 Rohingyas still remaining in two camps are recognised as refugees and benefit from limited protection and assistance by UNHCR but it is estimated that up to 200,000 more live outside the camps. Bangladesh considers them as

irregular migrants and they have no access to official protection.

The combination of their lack of status in Bangladesh and their statelessness in Burma puts them at risk of indefinite detention. Several hundred Rohingyas are currently languishing in Bangladeshi jails arrested for illegal entry. Most are still awaiting trial, sometimes for years. Dozens have completed their sentences but remain in jail – called ‘released prisoners’ – as they cannot be officially released and deported, since Burma refuses to re-admit them.³

Tens of thousands of Rohingyas have sought out opportunities overseas, in the Middle East and increasingly in Malaysia, using Bangladesh as a transit country. Stateless and undocumented, they have no other option than relying on unsafe illegal migration channels, falling prey to unscrupulous smugglers and traffickers, or undertaking risky journeys on boats.⁴

In Malaysia or Thailand, the Rohingyas have no access to protection. They are regularly caught in immigration crackdowns and end up in the revolving door of ‘informal’ deportations. Since Burma would not take them back, Thailand has occasionally deported Rohingya boat people unofficially into border areas of Burma controlled by insurgent groups.

Malaysia usually deports them over the border into Thailand in the hands of brokers. Against the payment of a fee, they are smuggled back into Thailand or Malaysia

and those unable to pay are sold into slavery on fishing boats or plantations.

In December 2008, Thailand started implementing a new policy of pushing back Rohingya boat people to the high seas. In at least three separate incidents, 1,200 boat people were handed over to the Thai military on a deserted island off the Thai coast and ill-treated before being towed out to sea on boats without an engine and with little food and

water. After drifting for up to two weeks, three boats were finally rescued in the Andaman and Nicobar Islands of India and two boats in Aceh province of Indonesia. More than 300 boat people are reportedly missing, believed to have drowned.

The issuing of a TRC to Rohingyas has been praised as ‘a first step towards citizenship’. On 10 May 2008, the Rohingyas were allowed to vote in the constitutional referendum but ironically the new Constitution, which was approved, does not contain any provisions granting them citizenship rights. There is no political will for the Rohingyas to be accepted as Burmese citizens in the foreseeable future.

Recommendations

On 2 April 2007, six UN Special Rapporteurs put out a joint statement addressing the Rohingya situation and called upon the Burmese government to:

- repeal or amend the 1982 Citizenship Law to ensure compliance of its legislation with the country’s international human rights obligations, including Article 7 of the Convention of the Rights of the Child and Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women;
- take urgent measures to eliminate discriminatory practices against the Muslim minority in North Rakhine [Arakan] State, and to ensure that no further discrimination is carried out against persons belonging to this community.

In addition, Bangladesh, Malaysia and Thailand should put in place effective mechanisms to allow Rohingyas access to protection as refugees.

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

2. See <http://www.myanmar.gov.mm/ministry/hotel/fact/race.htm>

3. See article p42.

4. See Chris Lewa ‘Asia’s new boat people’, FMR 30: <http://www.fmreview.org/FMRpdfs/FMR30/40-41.pdf>