

# **THE ARAKAN PROJECT**

**UNITED NATIONS HUMAN RIGHTS COUNCIL**

**Submission to the UN Universal Periodic Review**

**23<sup>rd</sup> Session of the UPR Working Group, November 2015**

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**MYANMAR**

**A. INTRODUCTION**

1. The Arakan Project (AP) is a human rights organization based in Thailand, which, since 1999, has specialized in monitoring and documenting the situation of the Rohingya Muslims, an ethnic, religious and linguistic minority in Rakhine State of Myanmar. The Arakan Project has regularly submitted its findings to relevant UN Treaty Bodies<sup>1</sup> (CEDAW and CRC) and to UN Special Procedures, including the UN Special Rapporteur on the human rights situation in Myanmar, and other thematic experts.

2. Since the first review at the 10<sup>th</sup> Session of the UN Universal Periodic Working Group in January 2011, the situation of the Rohingya in Rakhine has significantly worsened. Two waves of sectarian violence broke out in Rakhine State in June and October 2012, mostly targeting the Rohingya, which resulted in 192 deaths and 8,614 houses burnt down, the displacement of 140,000 Rohingya to segregated IDP camps and further restrictions on movement not only applied to those displaced but to all Rohingya communities in Rakhine State.

3. This submission focuses on the Rohingya minority and covers two topics – denial of legal status which renders them stateless and the particular human rights situation in northern Rakhine State, the main research area of The Arakan Project, where Rohingyas have not been displaced to IDP camps but where they are subject to severe forms of discrimination, increased restrictions and other abuses.

**B. NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE**

**Implementation of international human rights obligations**

4. Myanmar is a state party to the UN Convention of the Rights of the Child (CRC) and the UN Convention for the Elimination of Discrimination against Women (CEDAW) but has completely ignored recommendations specific to the Rohingya minority in the Concluding Observations issued by the respective treaty bodies. Key recommendations in the Concluding Observations of the Committee on the Rights of the Child CRC/C/MMR/CO 3-4 dated 12 March 2012 call on Myanmar to address the issue of statelessness and discrimination (CRC, para 42), to ensure birth registration without discrimination and to lift local orders concerning marriage authorization and restriction of pregnancy (CRC, para 44).

5. Myanmar is also a State party to the ILO Convention No. 29 prohibiting forced labour and ratified the ILO Convention No. 182 proscribing the worst forms of child labour, but continues to impose compulsory labour on the Rohingya, including on children.

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<sup>1</sup> The Arakan Project submissions to treaty bodies can be found on the Online Burma Library: [www.burmalibrary.org](http://www.burmalibrary.org)

## **Cooperation with UN Human Rights mechanisms**

6. Myanmar has granted the UN Special Rapporteurs on the Situation of Human Rights in Myanmar access to Rakhine State since 2010 but has failed to implement any of their recommendations. Moreover, Myanmar has so far not extended an invitation to any thematic Special Rapporteurs despite repeated requests.

## **Domestic legal framework of the Rohingya's exclusion and discrimination**

7. The 1982 Citizenship Law<sup>2</sup>, essentially based on *jus sanguinis* criteria, identifies three categories of citizens: (*Full*) citizens, *Associate* citizens and *Naturalized* citizens, issued with colour-coded ID cards, with different sets of rights. (*Full*) citizens or citizens by birth are mostly those belonging to one of 135 'national races' settled in Burma/ Myanmar before 1823, the start of the British colonisation of Arakan, as published by the Government. Access to *naturalized citizenship* requires fulfilling stringent requirements such as tracing lineage for three generations, fluency in one of the recognised national languages, to be of sound mind and of good character. Moreover, naturalised citizenship can be revoked at any time. This law is discriminatory and does not conform to international standards.

8. A proposal to reform the 1982 Citizenship Law according to international standards was submitted to Parliament on 6 November 2012 but was turned down and, in July 2013, President Thein Sein confirmed that there would be no amendment to the Citizenship Law.

9. The 1982 Citizenship Law only provides two avenues for Rohingyas to access citizenship under Article 6, stating that those already granted citizenship under the 1948 Act remain citizens, or through application for naturalised citizenship.

10. The 1949 Burma Residents Registration Act and its 1951 Rules made it mandatory for anyone residing in Burma to be registered. Most people in Burma, including Rohingyas, were then issued with a National Registration Card (NRC), except foreigners. Section 13(1) of the 1951 Rules also provides for the issuance of a Temporary Registration Card (TRC) or 'white card' for a fixed period awaiting its replacement.

11. Following the enactment of the 1982 Citizenship law and its 1983 rules, most NRC holders had their card replaced by a Citizens Scrutiny Card (CSC) but, in Rakhine State, the Rohingyas have been issued with TRCs or White Cards since 1995. While these white cards constitute a proof of identity and residence, they do not confirm citizenship. White card holders were nevertheless allowed to vote in the 2008 Constitutional Referendum and the 2010 national elections.

12. On the eve of the 2014 nationwide population census conducted by the Ministry of Immigration and Population and following Rakhine attacks on UN and INGO premises in Sittwe, the Government announced that the Rohingya would not be allowed to self-identify as Rohingya, giving them the choice of identifying as Bengali or being excluded. As a result, most Rohingyas were not counted in the census.

13. In July 2014, the Government started a Citizenship Verification process in Rakhine State based on the 1982 Citizenship Law in which Rohingyas have to self-identify as Bengali to

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<sup>2</sup> The 1982 Burma Citizenship Law can be accessed at: <http://www.refworld.org/docid/3ae6b4f71b.html>

apply. A draft Rakhine State Action Plan stated that those who refuse to participate and those who do not meet required criteria would be relocated to camps or deported elsewhere.

14. A pilot exercise was conducted in Taung Paw IDP camp in Myebon, where displaced Rohingyas survive in a particularly hostile environment and where they had accepted to self-identify as Bengali during the census. Out of 1,280 applications, 40 were granted full citizenship and 266 naturalised citizenship as of 31 January 2015, despite protests by local Rakhine, but 14 were rejected, 8 for being mentally unsound and 6 on language grounds. The remaining applications are still pending a decision on eligibility. However, for successful applicants, citizenship has not improved their situation as they remain confined to the IDP camp for security reasons.

15. A September 2014 amendment to the 2010 Political Parties Registration Law requires party leaders to be full citizens, and party members to be full or naturalised citizens, thereby excluding the Rohingyas holding white cards to form or join political parties.

16. A law allowing a referendum to amend the Constitution was approved by Parliament on 2 February 2015, reaffirming the right of white card holders to vote. But following protests by Rakhine activists, the President's Office announced in Notification No. 19/2015 dated 11 February 2015 that white cards will expire on 31 March 2015 and will have to be handed over by 31 May 2015. On 17 February, in response to a request submitted by Rakhine political leaders, the Constitutional Tribunal ruled that allowing white card holders the right to vote was unconstitutional.

17. As the citizenship verification is stalled over the Rohingyas' self-identification as 'Bengali' and over Rakhine objections to the exercise, this situation is likely to disenfranchise the Rohingya in future elections but also to leave them without any identity document.

18. On 19 March 2015, as part of a package of four bills referred to as the "Race and Religion Protection" legislation, the Population Control Healthcare Bill was adopted by both the Upper and Lower Houses. This law grants authorities the power to identify regions with high birth rates where women may be required to have 3-year birth-spacing between pregnancies. This bill appears to be an attempt to control Rohingya population growth in replacement of the 2-child policy previously applied by border security forces in northern Rakhine State.

### **C. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

19. As a direct outcome of their lack of legal status, the Rohingya are subject to severe restrictions of movement and are banned from employment in the civil service, including the education and health sectors. Forced labour, arbitrary taxes and land confiscation are disproportionately imposed on the Rohingya population.

#### **Restrictions on movement**

20. Restrictions on movements have been imposed on Rohingyas in Northern Rakhine State (NRS) for several decades. Rohingyas must apply for a special permit (Form 4) to travel between townships even within NRS. The establishment of many new road check-posts throughout NRS after the 2012 violence has led to arbitrary taxes, fines or arrests. This, combined with curfew regulations, has further reduced freedom of movement for the Rohingya community.

### **Arbitrary arrest and sentencing**

21. In the months following the unrest in Maungdaw Township on 8 June 2012, more than 1,000 Rohingyas were arrested and detained. At least 62 died in custody in Buthidaung Jail from torture and beatings aggravated by lack of medical care, poor nutrition and appalling detention conditions. Others were buried in mass graves in the days after the violence. 72 children were among those jailed and sexual abuse against Rohingya child detainees by Rakhine prisoners was consistently reported. In total, 973 Rohingyas were sentenced to between 5 and 13 years imprisonment under Penal Code Sections 148 (rioting) and 506 (intimidation causing destruction of property or death) and other charges without fair trial.

22. From September 2014, Myanmar security forces stepped up raids, arbitrary arrests and random beatings of Rohingya villagers, particularly in Maungdaw Township. This appears to be an orchestrated campaign of intimidation and harassment with the objective of spreading fear among the Rohingya population and encouraging them to leave the country. The Arakan Project documented 260 Rohingyas arrested arbitrarily from 25 September to 31 December 2014 alone: 235 in 37 village tracts in Maungdaw Township and 25 in and around Buthidaung Town. At least 5 Rohingya men were killed in North Maungdaw – two tortured to death in Border Guard Police (BGP) custody, two beaten to death during raids on villages and one shot dead.

23. These arrests were mostly conducted by BGP and, in some cases, by the Myanmar Army, SaYaPa (Military Intelligence) or in joint operations and generally occurred during night raids on villages, in villagers' houses or shops, and occasionally at check posts on the road.

24. During this period, arbitrary arrests in Maungdaw Township were ostensibly related to alleged links to Rohingya insurgents and involved torture, imprisonment and sentencing. However, the Maungdaw Court ultimately sentenced 23 of those arrested to 5 years imprisonment on immigration charges. In Buthidaung, 8 Rohingyas, mostly owners of computer shops, were also arrested and brutally tortured. Nevertheless, the purpose of arbitrary arrests is often extortion as, in the majority of reported cases, detainees were released against the payment of a bribe.

25. Another 59 Rohingyas have been arrested in NRS since 1 January 2015, many for refusing to update their household list.

### **Arson attacks and homelessness**

26. Following unrest in 2012, Rakhine villagers evicted 48 families from Than Dar and 62 families from Zaw Ma Tet in South Maungdaw, after destroying their houses and orchards. These families took shelter in neighbours' houses and, in March 2015, they have still not been rehabilitated or allowed to return to their original place.

27. In March 2014, a series of arson attacks took place in various Rohingya villages in North Maungdaw. At least 150 houses were set on fire, allegedly by Rakhine villagers, in Laung Done and Ngar Sar Kyu villages. Other villages in Maungdaw Township were also affected by similar fires. Villagers who lost their homes in these arson attacks returned to live in makeshift shelters on their own plot of land as most are still awaiting official permission from the authorities to rebuild their houses.

28. Permission to rebuild homes was also denied to at least 27 households in Maungdaw town whose houses were burnt down in June 2012. However, 21 houses in the western hamlet of Du Chee Yar Tan set ablaze on 28 January 2014 have been reconstructed.

### **Marriage authorisations**

29. Rohingyas in NRS are the only community in Myanmar who must apply for official permission to marry as per a regional order. After the dissolution of the NaSaKa, Village Administrators are now responsible for issuing such permission but newly married couples are no longer required to sign a declaration that they will not have more than two children. However, children previously blacklisted or unregistered have still not been registered.

### **Forced Labour**

30. Forced labour has not yet been eradicated despite a general decrease observed over the last 3-4 years nationwide, including in Maungdaw Township, although not in Buthidaung Township where the Army continue to requisition forced labourers extensively for camp maintenance and sometimes for cultivation. Sentry duty, by which villagers are forcibly recruited to sit in sentry posts and guard villages at night, has increased throughout NRS.

### **Access to health care**

31. On 26 February 2014, the Government, under pressure from Rakhine protesters, suspended *Médecins sans Frontières* (MSF) from operating in Rakhine State. In December 2014, MSF was allowed to return to northern Rakhine State and, with other INGOs, provide limited humanitarian assistance; but expatriate and local staff, as well as patients, face tighter travel restrictions. In addition, a curfew from 11 p.m. to 4 a.m. remains in place since 2012.

32. In ill-equipped government hospitals in Maungdaw and Buthidaung towns, Rohingyas are generally treated roughly, sometimes insulted, by Rakhine doctors and nurses whom they have to bribe to receive the most basic care.

### **Access to education**

33. Since June 2012, Rohingya youths and children have had little to no access to education. All Muslim religious education institutions were closed down, even *maktabs* where young children learn the basic tenets of Islam. However, maktabs have restarted clandestinely in villagers' houses. Government schools have mostly reopened but Rohingya and Rakhine students remain segregated in separate classrooms in some schools in Maungdaw Town. In 2014, only about 150 Rohingya students successfully passed high school matriculation in Maungdaw and Buthidaung Townships (out of a total population of 800,000) and have no opportunity to pursue higher studies as Muslim students are barred from Sittwe University and are not allowed to travel to and enrol anywhere else in the country.

### **Access to livelihood**

34. Deterioration in the level of access to livelihood and endemic insecurity in NRS, have been key factors prompting large numbers of Rohingyas to flee by boat or other means since June 2012. The combination of restrictions on movement, curfew regulations and arbitrary taxes has the most serious impact on economic insecurity. Rohingya traders need to rely on

Rakhine middlemen to purchase and sell goods outside the district and they are often cheated. Moreover, in 2014, border trade with Bangladesh was also limited to those with official import licences. Even trade between Maungdaw and Buthidaung has decreased due to costs involved in acquiring travel permits. Bribes collected at numerous check-posts have also hindered access to markets. Moreover, new taxes are also imposed on fishing.

35. Villagers complained about the role of Buddhist settlers whose model villages<sup>3</sup> are often situated at the foot of the hills. Together with the Forest Department, these settlers prevent Rohingya villagers from collecting firewood and other forest resources or from grazing their cattle in the hills.

### **National elections in 2015**

36. By the time the Working Group on the Universal Periodic Review examines the human rights situation in Myanmar, new developments are likely to have taken place before or during the national elections scheduled in October/November 2015. We anticipate that Rohingyas would be denied voting rights and could be left without identification documents. This could trigger renewed violence, human rights violations and a larger exodus of refugees.

### **D. RECOMMENDATIONS**

37. The Human Rights Council should urge the Government of Myanmar:

- To immediately amend the 1982 Citizenship Law to prevent statelessness, with the effect of granting citizenship and accompanying rights to the Rohingya in Rakhine State, and to abide by international human rights standards, in particular by its obligations under the Convention of the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women.
- To implement recommendations of the UN Special Rapporteur on the Situation of human rights in Myanmar and to extend an official open invitation to other thematic UN Special Procedures to Rakhine State.
- To cancel any citizenship verification process that would remove rights from the Rohingya.
- To ensure that the Rakhine State Action Plan is consistent with international human rights principles and does not include measures subjecting Rohingyas to forced encampment, segregation or deportation.
- To repeal the Population Control Healthcare Bill that may affect Rohingya women's reproductive rights.
- To take immediate steps to eradicate all discriminatory policies and practices against the Rohingya population, including on restriction on movement, and ensure they are treated equally to other Myanmar nationals.

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<sup>3</sup> 'Model villages' to settle Buddhists from various parts of Myanmar were established during previous decades by the Ministry of Border Affairs (NaTaLa) on Rohingya land along the border with Bangladesh.

- To cease campaigns of arbitrary arrest, ensure access to fair judicial process and immediately release those unjustly detained.
- To order an investigation into the deaths of five Rohingya killed in North Maungdaw including two tortured to death by BGP, to prosecute perpetrators and ensure redress for the families of victims.
- To permit victims of arson attacks and of eviction to rebuild their houses in their original location.
- To abolish local orders restricting marriages.
- To eliminate forced labour and other coercive measures.
- To ensure that humanitarian assistance as well as access to health care, education and livelihood benefit all communities in Rakhine State without discrimination.
- To ratify key human rights treaties such as the ICCPR, ICESCR, ICERD and CAT and its Optional Protocols.