

# **The ARAKAN PROJECT**

## **ISSUES TO BE RAISED CONCERNING THE SITUATION OF STATELESS ROHINGYA WOMEN IN MYANMAR (BURMA)**



### **SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

**For the Examination of the combined 2<sup>nd</sup> and 3<sup>rd</sup> periodic State  
party Reports (CEDAW/C/MMR/3)**

**-MYANMAR-**

**October 2008**

# **ISSUES TO RAISE CONCERNING THE SITUATION OF STATELESS ROHINGYA WOMEN IN MYANMAR (BURMA)**

## **Submission to the Committee on the Elimination of Discrimination against Women (CEDAW)**

The ARAKAN PROJECT wishes to draw the attention of the Committee on the Elimination of Discrimination against Women (CEDAW) to the situation of Rohingya women and girls in North Rakhine State, Myanmar<sup>1</sup>, hoping that these issues will be addressed during the examination of Myanmar's second and third periodic reports.

### **The Rohingya minority: Exclusion and discrimination**

The Muslim population of northern Rakhine State, known as Rohingya<sup>2</sup>, constitutes an ethnic, linguistic and religious minority group. Their number is estimated at 725,000 or about 80% of the total population of that area (UNHCR). They are ethnically related to the Chittagonian Bengalis just across the border in Bangladesh. Of South Asian descent, they profess Sunni Islam and their language is close to the Chittagonian vernacular.

Discriminated against on the basis of their ethnicity and religion, the Rohingya have gradually been excluded from the process of nation-building in Myanmar. Their situation worsened after the military takeover in 1962 as they progressively became targets of increasing restrictions and harsh treatment imposed by state authorities.

These systematic policies were the root causes of two mass refugee exoduses to Bangladesh, in 1978 and again in 1991/92. The outflow has not stopped and today Rohingyas continue to flee from Myanmar. In addition to 28,000 camp refugees, Bangladesh currently hosts an estimated 200,000 Rohingyas living outside the camps. Tens of thousands also migrated toward Malaysia and the Middle-East.

## **ROHINGYA WOMEN AND GIRLS**

Rohingya women and girls suffer from the devastating consequences of brutal government policies implemented against their minority group but also from socio-religious norms imposed on them by their community, the combined impact of which dramatically impinges on their physical and mental well-being, with long-term effects on their development.

### **a) *State-sponsored persecution:***

The 1982 Citizenship Law renders the Rohingya stateless, thereby supporting arbitrary and discriminatory measures against them. Their freedom of movement

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<sup>1</sup> In this report, Burma is referred to as Myanmar and Arakan State as Rakhine State, as used by UN agencies and by the UN Committee on the Rights of the Child.

<sup>2</sup> The term "Rohingya" to refer to the Muslim population of Rakhine State is not acknowledged by the Government of Myanmar. Many Muslims of Northern Rakhine State identify themselves as such and the term is also used by international organisations. Therefore, the author has adopted it throughout the text.

is severely limited; they are barred from government employment; marriage restrictions are imposed on them; they are disproportionately subject to forced labour, extortion and other coercive measures. Public services such as health and education are appallingly neglected. Illiteracy is estimated at 80%. The compounded impact of these human right violations also results in household impoverishment and food insecurity, increasing the vulnerability of women and children.

On 2 April 2007, six UN human rights experts – the Special Rapporteurs on human rights in Myanmar, on Racism, on Adequate Housing, on Food and on Health as well as the Independent Expert on minority issues respectively – issued a joint statement urging Myanmar to address discrimination against members of the Muslim minority in North Rakhine State (see annex).

b) *Socio-religious restrictions:*

Rohingya women and girls are also subject to serious gender-based restrictions due to societal attitudes and conservative interpretation of religious norms in their male-dominated community. The birth of a son is always favoured. Girls' education is not valued and they are invariably taken out of school at puberty. Women and adolescent girls are usually confined to their homes and discouraged from participating in the economic sphere. They are systematically excluded from decision-making in community matters. Divorced women and widows are looked down upon, exposed to sexual violence and abandoned with little community support. Arranged marriages often operate successfully among Rohingyas but forced marriages are not uncommon, sometimes for the purpose of trafficking. The vast majority of Rohingya women have no control over their reproductive health, including in accessing birth control and in terminating a pregnancy. These harmful traditional practices are usually justified on social or religious grounds.

## **TWO KEY LEGAL ISSUES TO BE ADDRESSED**

Key legal issues of concern with regard to fundamental human rights denied to Rohingya women and girls by the Myanmar regime and enshrined in the Convention for the Elimination of Discrimination against Women (CEDAW), under which the Government of Myanmar has international obligations, are:

### **1. Right to a nationality – Article 9 and General Recommendation 21**

***Rohingya women and girls are stateless, deprived of the right to citizenship***

The Rohingya have been rendered stateless by the 1982 Citizenship Law<sup>3</sup>. This law, essentially based on a *jus sanguinis* criterion, states that citizens are those belonging to one of 135 'national races'<sup>4</sup> settled in Myanmar before 1823, the

<sup>3</sup> The 1982 Burma Citizenship Law can be accessed at:

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

<sup>4</sup> The official list of 135 national races are found at: <http://www.myanmar.gov.mm/ministry/hotel/fact/race.htm>

beginning of British colonial rule, among which the Rohingya do not feature. Its promulgation, shortly after the refugee repatriation of 1979, strongly suggests that it was specifically designed to exclude the Rohingya.

The Myanmar authorities describe them as 'Myanmar residents', which has no legal status. But, on more than one occasion, government officials have termed them 'illegal immigrants from Bangladesh'.

In 1995, the Myanmar authorities started issuing them with a Temporary Registration Card (TRC), which fails to mention the bearer's place of birth and explicitly states that it cannot be used to claim citizenship. Such documentation therefore precludes Rohingyas and their children from gathering any official evidence of birth in Myanmar and perpetuates statelessness. Moreover, since 1994, the authorities have stopped issuing Rohingya children with birth certificates. Thousands of children are left unregistered.

**Denying citizenship rights to the Rohingya is primarily a legal stratagem to legitimise arbitrary treatment against them.**

Women and girls are specifically affected in a number of ways:

*a) Restriction of freedom of movement*

The Rohingya are virtually confined to their villages as they must apply for a travel pass, which they have to pay for, even to visit a neighbouring village. In any case, travel is restricted to North Arakan. Since 2001, even Sittwe, the state capital, was declared off-limits for them. Women's mobility is already seriously curtailed by societal bias, but the requirement for travel permits hampers their ability to seek timely medical treatment in local hospitals. It makes referrals to better equipped facilities in Sittwe impossible. Similarly, the few girls who completed secondary education are barred from pursuing university studies, which are only available in Sittwe. The system of travel pass also disrupts family ties. A married woman traditionally lives with her in-laws and, if she moves to a different village, she faces difficulties to visit her own family or to look after a sick parent. Family support can be critical if the woman is abused by her husband or her in-laws.

*b) Ban on government employment*

As non-citizens, Rohingya women are barred from serving as schoolteachers or as nurses. International humanitarian agencies are not allowed to train Rohingya health workers, even auxiliary midwives.

*c) Vulnerability to sexual violence*

Female headed-households are particularly vulnerable to sexual abuses, including rape. Women and teenaged girls are also at risk when left alone at home while their husbands forcibly work as sentries or are absent. NaSaKa<sup>5</sup> patrols routinely enter homes at night searching for unlawfully married couples or unregistered guests. Girls have also been raped while collecting firewood.

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<sup>5</sup> The NaSaKa is the Border Administration Force constituted from five government agencies: police, Lone Htein (riot police), immigration, customs and military intelligence

Stigmatised by their lack of status, Rohingya are usually unable to seek redress, allowing perpetrators to act with impunity.

d) *Vulnerability to trafficking*

The lack of legal status has heightened Rohingya women's vulnerability to trafficking. Without documentation, they can only use unsafe migration channels and are exposed to exploitation by unscrupulous traffickers and smugglers.

Women are also affected by restriction of movement, forced labour and extortion imposed on their husband, which prevents him, as the breadwinner, from earning a decent income, therefore impacting on the food security of the whole family. When her husband is detained, she has to fend by herself to support the family, causing further economic hardship. A woman is also very vulnerable, physically and economically, if her husband flees or leaves the country as he is then banned from returning home.

## 2. Right to marry and have a family – Article 16

***Rohingya women [and men] require official permission to marry and have children and are criminalised for non-compliance.***

The Myanmar State party report stated that 'women can marry on their free will' (§ 100) according to laws regulating marriages such as Islamic Law for Muslim women.

However, this is certainly not the case for Rohingya women. In the late 1990s, the authorities issued a local order exclusively applying to Rohingya Muslims in northern Rakhine State, which stipulates that couples planning to marry must acquire official permission from the NaSaKa. Marriage authorisations are issued against the payment of fees and bribes and can take up to several years to obtain. This local order also prohibits any cohabitation or sexual contact outside wedlock. Non-compliance can lead to prosecution under Section 493 of the Penal Code (that the man deceitfully married the woman) punishable with up to 10 years imprisonment.

The issuance of marriage authorisations was suspended for several months in 2005 and, when the process restarted, a new condition was added requiring that couples certify they won't have more than 2 children. The amount of bribes and time necessary to secure marriage permission keeps increasing year after year. Delaying tactics are also used for extortion purposes.

This order has dramatic consequences on women. Rohingya women who become pregnant without official marriage authorisation often resort to repeated clandestine abortions, an illegal practice in Burma, with serious effects on women's health and which has resulted in maternal deaths. Others have registered a newborn child with another legally married couple, sometimes their own parents. Some have gone to deliver secretly in Bangladesh, abandoning their baby there. Many young couples, unable to obtain permission to marry, fled to Bangladesh.

This discriminatory order and its predatory application are deliberately imposed to control birth rate and to limit expansion of the Rohingya population.

## CONCLUSION

Rohingya women and girls are gravely affected by the military regime's policies of exclusion and discrimination towards the Muslim population of Rakhine State, compounded by socio-religious restrictions and harmful traditional practices imposed by their community.

Denial of fundamental rights such as citizenship, freedom of movement and the right to marry and start a family not only jeopardises Rohingya women's physical and mental health but also harms their children's development.

With regard to Rohingya women and girls, the State Peace and Development Council has failed to implement most provisions of the CEDAW Convention, which Myanmar ratified in 1997. The Government has also ignored the recommendations provided by the Committee on the Rights of the Child in 2004, in particular, paragraph 35 urging Myanmar "to strengthen its efforts to reform its civil registration system to ensure that all children are registered at birth without discriminatory conditions" and paragraph 65: "to take necessary measures to allow children and their families who have returned to Myanmar and who are stateless to acquire Myanmar citizenship"

## RECOMMENDATIONS

In light of deep concerns (paragraphs 34, 64 and 79) and recommendations (paragraphs 35 and 65) stated by the Committee of the Right of the Child in its Concluding Observations adopted on 30 June 2004 (CRC/C/15/Add. 237), and with reference to the joint statement of six UN human rights experts dated 2 April 2007,

We recommends that the CEDAW Committee urge the Government of Myanmar:

- To amend or repeal the 1982 Citizenship Act, with the effect of granting citizenship and accompanying rights, to the Muslim population of Rakhine State; and to eradicate all discriminatory policies and practices against them; and
- To immediately abolish the local order restricting marriages and limiting the number of pregnancies of Muslim women in northern Rakhine State, as well as to release without delay all women and men detained for having married without official permission in breach of such local order.

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# UNITED NATIONS

Press Release

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## UN HUMAN RIGHTS EXPERTS CALL ON MYANMAR TO ADDRESS DISCRIMINATION AGAINST MEMBERS OF MUSLIM MINORITY IN NORTH RAKHINE STATE

2 April 2007

*The following statement was issued today by the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sergio Pinheiro; the Independent Expert on minority issues, Gay McDougall; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène; the Special Rapporteur on adequate housing, Miloon Kothari; the Special Rapporteur on the right to food, Jean Ziegler; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt:*

Under the 1982 Citizenship Law, the members of the Muslim minority in North Rakhine State, generally known as the Rohingyas, have been denied Myanmar citizenship, which has seriously curtailed the full exercise of their civil, political, economic, social and cultural rights and led to various discriminatory practices. This includes severe restrictions on freedom of movement; various forms of extortion and arbitrary taxation; land confiscation and forced evictions; restricted access to medical care, food and adequate housing; forced labor; and restrictions on marriages. As a consequence, thousands have fled to neighbouring countries, in turn creating complex humanitarian situations in the region.

We call on the Government of Myanmar to take urgent measures to eliminate discriminatory practices against the Muslim minority in North Rakhine State, and to ensure that no further discrimination is carried out against persons belonging to this community. We remind the Government of its obligation to protect all individuals within its territory and subject to its jurisdiction from any form of discrimination.

We reiterate the important role of minority rights in promoting equitable development, peace and stability, as enshrined in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

We urge the Government of Myanmar 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; and to guarantee that the right to nationality as enunciated in article 15 of the Universal Declaration of Human Rights and article 5 of the Convention on the Elimination of All Forms of Racial Discrimination finds meaningful expression within Myanmar's borders.