

III. International standards on discrimination and the human rights of minorities

"All human beings are born free and equal in dignity and rights."
Universal Declaration of Human Rights, Article 1

The prohibition on racial discrimination is part of customary international law. As the International Court of Justice has affirmed, protection against racial discrimination is one of those obligations that, by their very nature, "are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection".¹⁹

As a member of the United Nations, Myanmar is also legally obliged to take action to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."²⁰ Discrimination is an attack on the very notion of human rights – a denial that all human beings are equal in dignity and worth. This is why international human rights law is grounded in the principle of non-discrimination. The drafters of the Universal Declaration of Human Rights (UDHR) stated explicitly that they considered the non-discrimination principle to be the basis of the Declaration.

The UDHR provides in Article 2 that everyone is entitled to all the rights in the Declaration without distinction of any kind, such as "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Identical wording appears in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), in what is known as the "identity clause". Virtually identical language appears in the regional human rights conventions (Inter-American, African, European) and in the UN Convention on the Rights of the Child.

Non-discrimination on the basis of ones identity is so central to international human rights law that the identity clause constitutes either the first or second article of every one of these instruments. The thinking behind the identity clause is that it violates international human rights principles to be deprived of ones rights because of a characteristic that one cannot change – such as ones race or ethnic origin – or because of a characteristic that is so central to ones being that one should not be forced to change it, such as religion.

In addition to the general treaties cited above, several international treaties and other instruments are devoted wholly to tackling specific types of discrimination. Especially

¹⁹ Barcelona Traction, Light and Power Ltd (Belgium v. Spain), 1970, ICJ Reports p.32.

²⁰ The UN Charter, Articles 55(c) and 56.

pertinent to the issue on hand are the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981).

The International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination (in Article 1) as "*any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms*".

In addition, the special attention that states must pay to the rights of persons belonging to minorities has been recognised in Article 27 of the International Covenant on Civil and Political Rights, which provides that "*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*"

In 1992, the UN General Assembly adopted the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Declaration sets out in detail the rights of persons belonging to minorities, including the right to enjoy their own culture, to profess and practise their own religion, and to use their own language; to express their characteristics and to develop their culture, language, religion, traditions and customs; to participate effectively in cultural, religious, social, economic and public life; to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live; and to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group.

Article 4(1) of the Declaration provides that "*States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.*"

The abuses and restrictions against the Rohingyas which are described in this report violate the prohibition on racial discrimination in customary international law, and also constitute other human rights violations.

IV. Legal status of Rohingyas in Myanmar

Citizenship laws

The applicable law relating to citizenship in Myanmar traces an increasingly restrictive and complex history, detailed in Appendix I of this report. The current 1982 Burma Citizenship Law²¹ unlike the preceding 1948 Act, which conferred equal rights on all citizens, creates three classes of citizens: full citizens, associate citizens and naturalized citizens.

The 1982 Law also establishes a government-controlled “Central Body”, with wide powers to determine specific citizenship issues.²² For example, it is at liberty to determine what rights associate and naturalized citizens may or may not enjoy (Sec. 53) , and has wide discretion to revoke such citizenship on grounds that include “disaffection or disloyalty to the state by any act or speech or otherwise” (Sec. 35(d), 58(d)) or “moral turpitude” (Sec. 35(f), 58 (f)). Appeals may be made to the Council of Ministers (Sec.71), but there is no appeal to and independent appellate body. There is no requirement for reasons to be given by either the Central Body or the Council of Ministers for their decisions.

Even though the SPDC has stated that in the government’s official records the Rohingya “are recognized as permanent residents within Myanmar”,²³ the vast majority of Rohingyas fail to qualify for any of the three categories of citizenship:

1. The Rohingya are not considered to be a national ethnic group as provided by sec. 3 of the 1982 law, and members of the Rohingya population are therefore ineligible for **full citizenship**.
2. Few Rohingya were both eligible for citizenship under the 1948 Act *and* had applied for citizenship under that Act, as required for the grant of **associate citizenship** under the 1982 law. Most were reportedly unaware of the Act or did not understand its importance at the time.
3. As to eligibility for **naturalized citizenship**, few Rohingyas are in possession of the necessary documents that would provide “conclusive evidence” of entry and residence prior to 4 January 1948 or could establish the necessary bloodlines as required by the law. While to prove their residence they can use their family list, which names each member of the household, the family list only indicates names of family members and date of birth. It does not indicate place of birth, which in effect prevents people from “furnishing conclusive evidence” of birth in Myanmar as required by the 1982 law. In any case, the wide powers

²¹ *Burma Citizenship Law, Pyithu Hlittaw Law No. 4 of 1982*, entered into force on 15 October 1982.

²² Under sec. 67 of the law, the Central Body is to be formed by the government and comprised of the Ministers of Home Affairs, Defence and Foreign Affairs.

²³ See the SPDC’s reply to the Committee on the Rights of the Child, *List of issues to be taken up in connection with the consideration of the second periodic report of Myanmar*, CRC/C/Q/MMR/2, 6 February 2004. The reply was submitted to the Committee in April 2004.

conferred on the Central Body mean that any theoretical entitlement to citizenship may not be realised in practice.

Although the 1982 law is also discriminatory towards the vast majority of the Indian and Chinese population of Myanmar,²⁴ as the promulgation of this law took place soon after the Rohingyas who fled during 1978 had been repatriated, some observers have suggested that this law was specifically designed effectively to deny Rohingyas the right to a nationality.

The 1982 Citizenship law has had the effect of rendering the vast majority of Rohingyas ineligible to be Myanmar citizens. The law also makes no provision in relation to stateless persons.

Compliance with international standards

Under the 1982 Citizenship Law, for many people, all that is required in order to be granted full citizenship is membership of a particular “ethnic group”. For other ethnic groups, including the vast majority of Rohingya, even if they are able to prove their family has permanently resided in Myanmar since independence in 1948, or even since 1823, they cannot qualify for full citizenship. Amnesty International is concerned that this law is grossly discriminatory and is in clear violation of Myanmar’s obligation as a state and a member of the United Nations to protect and respect human rights without distinction, such as “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²⁵

Concerns about both the 1982 law’s “over-burdensome requirements for citizenship” and its “discriminatory effects on racial or ethnic minorities particularly the Rakhine Muslims”²⁶ were raised by the UN Special Rapporteur on the human rights situation in Myanmar, Professor Yozo Yokota, in 1993, who urged that the law “be brought in line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961”.²⁷ These principles include the requirement of a state to grant its nationality to a person born on its territory who would otherwise be stateless,²⁸ subject to conditions which

²⁴ See: *Burma: The Rohingya Muslims; Ending a Cycle of Exodus?*, Human Rights Watch/Asia, New York, September 1996, pp. 22-27.

²⁵ Article 2, Universal Declaration of Human Rights.

²⁶ The current Myanmar Government recognises ‘135 national races’ of Myanmar, and has published a list of them. According to this list “Rakhine comprises (7) ethnic groups”: Rakhine and six smaller ethnic minority groups of Northern Rakhine State: Kamein, Kwe Myi, Daingnet, Maramagi, Mro and Thet, but it does not recognise the Rohingyas. *Political Situation of Myanmar and its Role in the Region*, Col. Hla Min, Office of Strategic Studies, Ministry of Defence, Union of Myanmar, February 2001, p. 95-99.

²⁷ *Report on the situation of human rights in Myanmar*, prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights, United Nations Economic and Social Council, UN Doc. E/CN.4/1993/37, 17 February 1993, paragraph 242 (g).

²⁸ Article 1(1), 1961 Convention on the Reduction of Statelessness.

may include habitual residence in the territory not exceeding five years immediately preceding the lodging of the application nor ten years in all,²⁹ or that the person has not been convicted of a national security offence or sentenced to a term of not more than five years' imprisonment for a recognizably criminal offence.³⁰

Similarly, the UN Convention on the Rights of the Child, to which Myanmar is a state party, provides for the right of a child to a nationality, and makes specific provision for the obligation to ensure implementation of this right under the state party's national laws in particular where the child would otherwise be stateless.³¹

The International Court of Justice has determined that identifying the state in relation to which an individual may claim the right to a nationality should also be informed by the links that an individual has to a particular state. Just as an individual cannot disclaim nationality where "genuine and effective" links to a particular state are clearly established, a state cannot deny the existence of such links on the basis of a claimed sovereign prerogative to determine nationality and citizenship.³² Thus, Amnesty International believes that even where an individual was born outside his/her country of (disputed) nationality, genuine and effective links should be considered to be established where, for example, there are factors which should be taken into consideration such as an individual's habitual residence, centre of interests, family ties, participation in family life, and attachment shown and inculcated in his/her children.³³ These standards clearly apply to persons who would otherwise be stateless, including in particular children.³⁴

²⁹ Article 1(2)(b), 1961 Convention on the Reduction of Statelessness.

³⁰ Fair trial standards would, of course, apply.

³¹ Article 7, Convention on the Rights of the Child.

³² See *Nottebohm Case*, (Second Phase), I.C.J. Reports, 1955.

³³ See *Nottebohm Case*.

³⁴ This view is further reinforced by the views of the UN Human Rights Committee in its General Comment No. 27 (67) on Article 12 of the International Covenant on Civil and Political Rights (ICCPR), UN Doc. CCPR/C/21/Rev.1/Add.9, concerning the right to freedom of movement. The UN Human Rights Committee recognises that the right to enter one's 'own country' as provided by Article 12(4) of the ICCPR "includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality). The right to return is of the utmost importance for refugees seeking voluntary repatriation." Paragraph 20 states further: "The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such

Further citizenship policies and practices

To reinforce the three citizenship categories and easily identify the bearer’s status, colour-coded identity cards were introduced in 1989; pink cards were issued for full citizens, blue for associate citizens and green for naturalised citizens. These new cards also mention ethnicity and religion. In addition, those Rohingyas who were repatriated from Bangladesh to Myanmar with the assistance of UNHCR after 1991-92 were given yellow “Returnee Identity Cards” by the SPDC. This yellow card establishes nothing more than that the holder has returned from Bangladesh. These cards do not give them citizenship in Myanmar, and were only provided to those Rohingyas who were repatriated from Bangladesh.

In July 1995, after UNHCR convinced the authorities to provide all Rohingyas in Northern Rakhine State with some form of identification, the Myanmar Immigration and Population Department (IPD) started issuing Rohingyas with a temporary stay permit, the Temporary Registration Card (TRC), which is also known as the “white card”. However, not all Rohingyas have received such a card. The TRC explicitly states that the card does not give the holder any evidence of citizenship.³⁵

In an apparent but short-lived departure from policy, during the May 1990 general elections Rohingyas were reportedly not only able to vote but were also allowed to stand as candidates, a right normally denied to non-citizens. The National Democratic Party for Human Rights (NDPHR), a Rohingya supported party, won four seats, capturing all the constituencies in Buthidaung and Maungdaw townships. However, the Rohingya candidate in Sittwe was arrested and put in jail during the elections. Subsequently, the NDPHR was, like many other political parties which won seats in the 1990 election, deregistered by the Myanmar authorities in March 1992.

Practice in relation to family lists

As detailed above, inclusion on a family list is crucial to the Rohingya’s ability to prove residency. Many of the Rohingyas whose testimonies were made available to Amnesty International complained that people have been dropped from the family list if they were not present during a population check by the local authorities. Where someone is not present for such a count and their absence is not covered by a travel permit, in many instances the authorities have deleted people from the family list. Sometimes those people were able to prevent the deletion of their names from family lists by paying a ‘fine’. Nevertheless, if the absent person had not been issued with any travel pass at all, the individual generally has very little recourse. Population counts take place at random by *NaSaKa*, approximately two times a

residence. Since other factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country, States parties should include in their reports information on the rights of permanent residents to return to their country of residence.”

³⁵ *Analysis of the livelihood situation of the Muslim population in Northern Rakhine State*, Lisbeth Garly Andersen, Consultant to UNHCR, 31, July 1997.

year. Usually authorities take a photograph of the family and then one photograph of each family member separately. People must pay for these photographs.

The impact on the Rohingya population of citizenship law, policy and practice

Amnesty International is concerned that the Burma Citizenship Law of 1982 and the manner in which this law is implemented effectively denies the right to a nationality for members of the Rohingya population. This is clearly not in accordance with international legal standards relating to the reduction of statelessness, and importantly also those in relation to the rights of the child. Furthermore, these laws and practices represent a clear example of discrimination on the basis of race or ethnicity given that they clearly make distinctions, exclusions, restrictions or preferences based on ethnic origin with the purpose and/or effect of nullifying or impairing the Rohingya's recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, and cultural life of the people of Myanmar.³⁶ Such distinctions are not permissible distinctions relating to nationality, citizenship or naturalization given that they clearly discriminate against a particular ethnic group.³⁷

V. Restriction of movement

Rohingyas in northern Rakhine State must routinely apply for permission to leave their village, even if it is just to go to another nearby village. This practice does not apply to the Rakhine population in the Rakhine State. Rohingyas' freedom of movement, therefore, is considerably more limited than that of other residents of the Rakhine State. This has had serious repercussions on their livelihood and food security, as they are often unable to seek employment outside their village or trade goods and produce unless they have official permission and obtain a pass which they must pay for. Most Rohingyas cannot afford to pay on a regular basis for these permits. As an estimated half of the Rohingyas are poor day labourers, the restrictions on their movement also greatly affect their ability to find work in other villages or towns. This is especially important in the non-cultivating season, when there may not be enough work in their village.

In February 2001 tensions between the Muslim and Buddhist populations of Sittwe, the capital of Rakhine State, erupted in communal violence in which an unknown number of people were killed and Muslim property was destroyed. After that travel restrictions on Rohingyas increased.

In testimonies provided to Amnesty International, the constraints on freedom of movement were often identified as one of the major problems facing Rohingyas. These

³⁶ See Article 1(1) International Convention on the Elimination of All Forms of Racial Discrimination.

³⁷ See Article 1(3) International Convention on the Elimination of All Forms of Racial Discrimination.

restrictions prevented people from seeking work in other villages, trading, fishing, or even attending a funeral of a relative or visiting a doctor. Most people who gave testimony also stated that the restrictions on the freedom of movement for Rohingyas in northern Rakhine State have increased during 2003 and early 2004. In some instances Rohingyas were able to travel to a neighbouring village without a travel pass but generally they needed to apply for one and pay for it, as well as state the reasons for travel.

When Rohingyas want to travel to a village in the same township they must apply for a local travel pass at the VPDC. If they need to go further, for example to another township, they need to apply for a different kind of travel permit at the Immigration Department at the NaSaKa camp, the so-called 'Form 4'.

Other ethnic nationalities living in different areas of the country also face surveillance and monitoring of their movements at the hands of local authorities. In Myanmar some form of identification (ID) card is required to buy tickets for almost all forms of transport, for all kinds of transactions and official registration, and for travelling within Myanmar. Households who receive visitors from other townships must reportedly register their guests if they are spending the night. Failure to do so can result in fines or other reprisals. These restrictions are believed to apply to all areas of the country, including places where there is no counter-insurgency activity.³⁸ As discussed above, there is very little armed opposition in the Rakhine State, although there is a large military presence there.

However Rohingyas are believed to be subjected to the most harsh restrictions and reprisals in Myanmar. A 30-year-old Rohingya woman from southern Maungdaw township faced severe consequences for travelling without a permit to Bangladesh in December 2003 to find her husband, who had fled to avoid arrest for overstaying his travel permit. Shortly after she returned to her village in Myanmar, the VPDC Chairman discovered that she had been to Bangladesh without a permit. She gave him a bribe of 5,000 kyat³⁹ but he informed the NaSaKa anyway. The woman explained what happened to her then:

“The NaSaKa and the MI called me to their office and asked me why I had travelled to Bangladesh without permission. I denied it and I was so afraid. The NaSaKa beat me with a bamboo stick and they also detained me for 24 hours in their camp. Because of their threats, I offered to work for them in their camp and I cooked for them for seven days... One of the officers thought that I would agree to whatever he wants and his behaviour towards me changed. He thought that I would agree to all his proposals because I had offered to cook for them. After seven days, I felt too vulnerable...[I]... fled.”

³⁸ See page 11, *Myanmar: The climate of fear continues*, October 1993, Amnesty International, AI Index ASA 16/06/93).

³⁹ The kyat is the Myanmar official currency. Officially 6 kyat are worth one US dollar; unofficially the rate fluctuates between 800 – 1,000 to one US dollar.

Several Rohingyas reported that it was easier to go to Bangladesh than to travel east, to other towns in Northern Rakhine State, such as Rathedaung or Sittwe. After the communal violence of February 2001 in Sittwe, it has become almost impossible for Rohingyas to visit Sittwe. If Rohingyas from Sittwe manage to travel to Northern Rakhine State, it is extremely difficult for them to return to Sittwe, let alone travel to Yangon.

A 28 year old Rohingya man from northern Maungdaw explained the situation in his area:

“Over the last year [2003], the NaSaKa have imposed strict restrictions on our movement. We used to travel almost everywhere in Maungdaw with a [local travel pass] from the Chairman. But now, we cannot leave our village without permission of the NaSaKa. Each NaSaKa sector has its own laws. It all depends on their respective commanders... It is easier for us to visit Bangladesh than Maungdaw. To go to Maungdaw town, you must get a [local travel pass] from the SPDC office and pay 1,000 kyat - 500 kyat for the form and 500 kyat to get the signature and the stamp on it. You must then bring this [pass] to the Immigration officer inside the NaSaKa camp and give one gallon of diesel or 2,000 kyat. Then they will issue a Form 4.”

An extremely elderly Rohingya man from southern Buthidaung gave a historical perspective to restrictions on travel:

“In the old days, I used to visit Yangon [the capital] and many other places. But now I cannot even go to Sittwe. Muslims now live inside a cage. They cannot move from one place to another. Every time they must get permission from the VPDC Chairman and from the NaSaKa.”

A 40 year old Rohingya man from northern Maungdaw explained the drastic consequences of his inability to travel:

“Six months ago [mid 2003] my elder son aged 18 died from a gall bladder infection. I took him to the village health centre where a Burmese doctor examined him and told me to take him immediately to Sittwe hospital or to a hospital in Bangladesh. I took my son to the NaSaKa camp, showed them the doctor’s referral and begged them to give me immediate permission to go to Sittwe hospital or to Bangladesh. But they told me to go to Maungdaw hospital. In Maungdaw the doctor said he could do nothing for him. So, I returned to my village and again I applied for travel permission. By then it was too late and my son died without any treatment.”

Another 40 year old Rohingya man from northern Maungdaw reported his inability to earn a living as a result of travel restrictions:

“Life has become very difficult now. I became landless and there are no jobs. Since our movements are restricted, I cannot even go to another village to find a job. I am a carpenter

and the daily wage of a carpenter is 2,500 kyat, but in my village I can hardly find work for eight or 10 days a month."

Amnesty International is concerned by the official restrictions on travel for the Rohingya population of northern Rakhine State. Their inability to travel freely greatly inhibits the Rohingyas' ability to earn a living and obtain proper health care. Freedom of movement is a fundamental human right, upon which other human rights are contingent. Article 13 of the UDHR states: "Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including their own, and to return to their country." Restrictions on the right to freedom of movement and the right to work may only be imposed if they are based on law, pursue a legitimate objective, such as protecting public order, and are strictly necessary.

The UN Human Rights Committee, elaborating on this right as codified in Article 12 of the ICCPR stated: *"The application of the restrictions permissible under article 12, paragraph 3, needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination. Thus, it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"*.

The sweeping restrictions on the movement of Rohingyas are disproportionate and discriminatory; they are imposed on all Rohingyas *because* they are Rohingyas, and not on members of other ethnic nationalities in Rakhine State. They are broad and indiscriminate in their application and as such are unlawful. They have a severe negative impact on the lives of thousands of Rohingyas who have not committed any offence. Especially serious is the fact that these restrictions constitute, in addition, violations of other basic human rights for the Rohingyas, including the right to work, and the right to an adequate standard of living, both of which are enshrined in the UDHR.⁴⁰

Amnesty International urges the SPDC to put an end to the arbitrary and discriminatory regime of travel permits for Rohingyas. Authorities must ensure that restrictions on movement are only imposed if they are absolutely necessary, are related to a specific security threat and are non-discriminatory and proportionate in terms of their impact and their duration.

VI. Forced labour

The security forces continue to take civilians for forced labour duties in Myanmar, especially in ethnic minority states. Extensive forced labour in particular, and other human rights

⁴⁰ See articles 23 and 25 respectively.

violations, were the main reasons for the 1991-92 exodus of Rohingyas to Bangladesh. Forced labour, whether paid or unpaid, is in contravention of International Labour Organization (ILO) Convention concerning Forced or Compulsory Labour (No. 29) which the Myanmar Government acceded to in 1955. It also contravenes the right, enshrined in the UDHR, to “*just and favourable remuneration*”.⁴¹ For many years the ILO has been raising its concerns with the Myanmar Government about this practice.

In 1999 and 2000 the SPDC issued two orders which outlawed the practice of forced labour of civilians by both civilian and military authorities, making it a punishable offence. In an agreement with the SPDC in accordance with pre-determined ILO terms of reference, the ILO sent a High Level Team (HLT) to Myanmar in September/October 2001, in order to assess the effectiveness of the SPDC attempts to eradicate forced labour by promulgating these orders. In their report they concluded that forced labour of civilians was continuing in some regions, particularly in highly militarised areas.⁴²

In line with the HLT’s recommendations to establish a permanent presence of the ILO in the country in order to monitor the situation, and on the basis of a specific Understanding, the ILO appointed a Liaison Officer in Yangon in May 2002 in order to assist the authorities in eliminating the practice of forced labour. In May 2003 agreement was reached on a joint Plan of Action on forced labour, including the establishment of an independent Facilitator who could receive complaints from victims of forced labour or their representatives, which was also in line with the HLT’s recommendations. This Facilitator would be able to conduct an initial assessment of such cases and take up those cases he found to be *prima facie* plausible with the appropriate authorities, so that judicial or informal remedies could be obtained.

After the 30 May 2003 violence in Depayin, when government-backed groups attacked a convoy of the opposition party the National League for Democracy, the implementation of this Plan of Action, including the Facilitator, was not implemented. Following the March 2004 discussion of this issue by its Governing Body, before going ahead with the implementation of the Plan of Action, the ILO will examine whether the safeguards built into the Facilitator mechanism are sufficiently strong to give the necessary credibility and confidence in this mechanism. This evaluation is particularly relevant in light of a recent discovery of a Myanmar court decision whereby some persons appeared to have been sentenced to death for high treason after having been in contact with the ILO or on matters of ILO concern.⁴³

⁴¹ Article 23 (3).

⁴² International Labour Office, Governing Body, Report of the High Level Team, GB. 282/4, 282 Session, Geneva, November 2001.

⁴³ For more information on this see: *Myanmar: The Administration of Justice – Grave and Abiding Concerns*, Amnesty International, ASA 16/001/2004, London 1 April 2004, p.17-21.

In March 2003 the ILO stated that forced labour had recently decreased in central Myanmar, especially at the many large infrastructure projects. However, forced labour in northern Rakhine State and in conflict areas was reported:

“While it is her impression that there is probably less use of forced labour in central parts of Myanmar, the situation in areas near the Thai border where there is continuing insecurity and a heavy presence of the army, as well as in northern Rakhine State (which also has a heavy presence of security forces), is particularly serious and appears to have changed little.”⁴⁴

The *NaSaKa*, the military and the police continue to demand forced labour from the Rohingya population. People are forced to maintain camps, build and repair roads, work on plantations belonging to *NaSaKa*, provide firewood to camps, fetch water, bake bricks, and to perform sentry duty at night in their own village. These duties are typical of forced labour imposed on ethnic minority civilians in other parts of Myanmar, particularly in highly militarized areas. Rohingyas are sometimes paid for their forced labour, but the amount is well below market rates.

A 23 year old Rohingya man from southern Buthidaung provided details about his experience of forced labour:

“In our village, I have to be a sentry four nights a month. There are four sentry posts and four people must guard in each post every night...This is common. When the NaSaKa of Buthidaung or the police from nearby villages need any labour, they send an order to our VPDC Chairman and he collects the labourers and sends them to Buthidaung. In my view, the use of labour has increased...Every time they had new jobs for us: digging mud, repairing a road, collecting wood and bamboo from the jungle, etc. [In February 2004] I worked to consolidate the jetty and put stones to repair the embankment of the river. There is also an MI camp close to our village and they also requested labour. I must work two or three times a month. The last time was about 20 days ago [January 2004]...We are never paid for this work and do not even receive any food. Five or six months ago [second half of 2003], I also had to work at a new model village...The people from our village are poor and cannot pay to avoid labour or to hire someone else to do it.”

Another Rohingya man from southern Buthidaung explained what happened to him:

“There is a NaSaKa camp inside our village and there is a brick baking yard inside their camp area... To build their camp they confiscated 64 kani⁴⁵ of land from the villagers and they now have their own vegetable garden, paddy fields, brick-baking yard and about 20

⁴⁴ International Labour Office, Governing Body, Sixth Item on the Agenda, *Development concerning the question of the observance by the government of Myanmar of the Forced Labour Convention, 1930 (No.29)*, GB.286/6, 286th Session, Geneva, March 2003.

⁴⁵ About 25 acres. One acre is approximately 2.5 kani.

houses. This entire area is fenced with bamboo and wooden poles. We have to maintain all their things [garden, rice fields, and houses] and repair the fence every year. I had to work in this camp, sometimes twice a month, sometimes five times a month. [January 2004] was the worst. I had to work two days inside the camps and to supply 15 logs for firewood. Altogether I had to work 17 days for the NaSaKa."

Forced labour demands from the authorities place a large burden on the Rohingya population as it leaves them with not enough time to do their own work. The kind of forced labour that is requested and the frequency differs from place to place, and appears to be related to the attitude of local authorities and number of military or *NaSaKa* camps near the village. Most of the time it is the poorest who must undertake forced labour, as people who can afford it often are able to pay a bribe to the authorities. As an estimated 50% of the Rohingya population are poor landless day labourers, the forced labour that they are required to do can prevent them from having sufficient time to earn a cash income to sustain themselves and achieve food security for their families.

A 50 year old Rohingya man from southern Maungdaw reported his inability to earn a living because of forced labour duties:

"Sometimes I had to work three times a week... Our NaSaKa camp is large with 80 NaSaKa men and 20 of them live in it with their families. There are a lot of houses in it and almost everyday they need labour. Poor people are always suffering in our village. The rich men can pay to avoid it and those connected to the authorities do not have to go. So the poor have to perform double duty. This is why I had to work up to three times a week. I also used to work as a sentry four times a month. So I did not have much time to work for my family. I could work for myself for about 15 days a month. I do not have any land and it was very difficult to survive."

The same man was mistreated because he was ill and unable to perform forced labour:

"About one and a half years ago [mid 2002], [the leader of a group of houses reporting to the VPDC] recruited me for forced labour. I was sick and asked him to replace me but he refused because I could not pay him any money. During the same morning he called me to the VPDC office. The Chairman told me: 'if you cannot pay, then you must go, even with your fever!'... I went home but the next day the NaSaKa called me to their camp and beat me up severely with their boots and with a stick. They fined me two big chickens for disobeying the Chairman's order."

The burden of forced labour demands from the authorities falls mainly on the Rohingya population, as the Rakhine population living in the same areas appear to often be exempted from it. In Maungdaw and Buthidaung townships, and to a lesser degree in Rathedaung township, only Rohingyas are normally required to perform forced labour.

Forced labour on infrastructure projects, mainly roads, is one of the most common forms of the practice in Myanmar, as the military forces civilians to construct new roads or repair existing ones. Those who can pay, as the two examples which follow illustrate, can often avoid forced labour.

A 56 year old Rohingya man from northern Maungdaw provided the following information:

“They are now building a road from NaSaKa Sector 2 HQ to NaSaKa Sector 3 HQ. There was a road before but they are making it wider. There are nine Village Tracts under the NaSaKa Sector 2, and all the people, even the women and children, have to work. In my Village Tract alone there are 700 houses. They ordered to start the work on the 1st day of February [2004] and the work is still going on. Some people are collecting pebbles from the river. Each family has been ordered to supply 100 baskets of pebbles. They have now completed three miles and they are putting stones on it. I was also asked to supply pebbles and to work on the road. But my son and my wife suggested that we sell some chickens and goods. It is better to pay some money. I discussed the matter with our [VPDC] Chairman and he asked me for 10,000 kyat. This is really a minimum. I was lucky and paid this, because this time no one is spared. Everyone must go, even the imam, madrassah teachers and the government schoolteachers. But of course only the Muslims, not the [Rakhines]! Each family from our village received 600 kyat to build this road.”

A 23 year old Rohingya man from northern Maungdaw stated in February 2004:

“After the harvest was completed [in late 2003/early 2004], the NaSaKa started a big road construction project. They have begun to widen and elevate the road from Maungdaw to Taung Pyo. There are 1,200 houses in my village. Over the last ten days, they ordered landless people to work on road construction and they demanded 50,000 to 250,000 kyat from those who possess land. They also collect this money to build the road. I saw with my own eyes 50 people from my hamlet working on the road. In my hamlet there are 200 houses and 50 people are recruited for one day. I have never worked as a forced labourer and I used to pay 1,500 kyat every month to cover my sentry duty and other labour work. At the moment, they are using labourers for the road, but usually they recruit them to repair their houses, to make fences around their camps, to collect firewood for them, to carry their belongings, etc. This is done by the NaSaKa.”

Another common type of forced labour which many Rohingyas testified about is sentry duty, often in addition to other types of forced labour. This usually is done by a number of people, who have to guard a particular road, a NaSaKa camp, or the entrances to a village at night.

A 28 year old Rohingya man from northern Maungdaw reported his experience of sentry duty and other types of forced labour:

“In my own hamlet, the NaSaKa sent 12 men every night to perform sentry duty, which means a total of 36 men for the village tract... Every day the NaSaKa recruits some people from our village to extract the mud from the moat. They also demand labour to carry drinking water from the stream at the bottom of the hill to their camp on the top of the hill. They need at least 10 labourers from our village on a daily basis. This is the average but sometimes they need a large number of labourers, especially just after the monsoon when they need to build a new fence around the hill and clear the bushes on the hillsides. Last month I worked once inside the NaSaKa camp and twice I sent someone else to replace me.”

A 25 year old Rohingya man from southern Maungdaw stated:

“Sentry duty is ongoing in my village. For the last 10 years it has never stopped even for one night. I used to do sentry duty in my village four to five nights a month. Sometimes the rate of this duty increases, either when many people pay to avoid it or when the NaSaKa received any news of security problems.”

Although forced labour is still a major burden on the Rohingya population, there is evidence that it has decreased over the last decade. This appears to be as a result of the presence of UNHCR in Rakhine State. The World Food Program (WFP), which commissioned the building of some of the infrastructure projects, and through “food for work”⁴⁶ programs is also believed to have contributed to its decrease. The fact-finding mission of the ILO High Level Team in Rakhine State during September 2001 also resulted in less forced labour for the Rohingyas; a number of interviewees testified that forced labour has decreased after the ILO visit. Some people said that there also have been cases of paid labour. However, even though the labour is paid it remains forced, and the payments are well below the market rate.

According to a 33 year old Rohingya man from northern Buthidaung:

“Before the ILO visited in 2001, the army was using forced labour indiscriminately, even to carry a pair of shoes! Thanks to the ILO the army have stopped using forced labour completely... But the NaSaKa still uses forced labour today, but in lesser quantities than two years ago, and they are now paying a small wage of 100 or 150 kyat, which is far below the daily wage of 500 kyat in my village.”

A 26 year old Rohingya man from Rathedaung reported:

“There is a NaSaKa camp as well as a police station near my village. They mostly use us as porters when they are moving from one camp to another. They also recruit us to maintain their houses and camps, to collect firewood for them, to fetch water, etc. The NaSaKa also have a brickyard and we need to supply firewood for it. We have to perform forced labour

⁴⁶ In WFP's food for work projects workers are paid with food rations to work on labour intensive projects such as road and pond construction.

four or five days a month, one day each time, because we are a small village. The work is mostly for NaSaKa. After the government order to stop forced labour they started paying 150 or 200 kyat per day. But we are not going willingly. The daily wage in our village is 800 to 1.000 kyat per day.”

Amnesty International has reported on the widespread practice of forced labour in Myanmar since 1988. The organization remains concerned that the practice continues in parts of the country, particularly in northern Rakhine State, where Rohingyas appear to be targeted for such abuse. In spite of the fact that forced labour has decreased in the area, and that some people are paid, forced labour as practiced in Myanmar is in contravention of international human rights law in general, and in particular of ILO Convention 29, which the Myanmar Government has ratified. Amnesty International renews its calls on the SPDC to ensure that no local security forces take civilians for forced labour duties. Those found responsible for the practice should be brought to justice, in compliance with the SPDC’s own decrees.

VII. Land confiscation, forced eviction and house destruction

The confiscation of land in Northern Rakhine State is related to the establishment of “model villages”; the construction or expansion of NaSaKa, military, and police camps; and establishing plantations for the security forces and also for new settlers. More recently, a number of forced evictions have taken place when people were accused of having built houses on land that local authorities claim is officially registered as farmland or rice fields, not residential land.

“Model Villages”

The SPDC policy of relocating Rakhine Buddhists and other non-Rohingyas to especially established “model villages” in Northern Rakhine State has resulted in the confiscation of land from the Rohingya population. Before 1992 several model villages were built in Rakhine State, mainly in Maungdaw and Buthidaung townships. After the formation of the *NaSaKa* in 1992, the building of model villages reportedly intensified. In practice the *NaSaKa* is responsible for implementing the model village program in Rakhine State. However, officially the programme is under the supervision of the Ministry for Development of Border Areas and National Races, better known under its Myanmar acronym “*NaTaLa*”.⁴⁷ Therefore model villages in Rakhine State are locally known as “*NaTaLa* villages”.

⁴⁷ The “Central Committee for the Development of Border Areas and National Races” was formed in May 1989, soon after the Myanmar government signed the first cease-fire agreements with armed groups in northern Shan State who formerly belonged to the Communist Party of Burma (CPB). In September 1992 this committee was upgraded to a Ministry. See: Ministry for Progress of Border

The majority of the population of model villages are poor Rakhine people from other parts of Rakhine State. Others include poor *Bama* from the central plains; retired civil servants; former prisoners; former insurgents (Communist Party of Burma and Rakhine armed groups); and ethnic minorities such as the Kamein, Daingnet, Mro and Thet, who live in the highlands near the border with Bangladesh and Chin State. There are 26 model villages in Buthidaung and Maungdaw townships.

A model village is usually built to house about 100 families. Each family reportedly receives one to four acres of land, a pair of oxen and a house. The large majority of these model villages have been built on land that was confiscated from the Rohingya population. Houses and other facilities such as schools and health centres in the model villages are often built by forced labour by the Rohingya population. The majority of people in model villages do not cultivate the land allocated to them, and instead rent it out to Rohingya farmers, in some cases the same people from whom the land was originally confiscated. Although according to an official decree of 1997 the renting of land by inhabitants of model villages is no longer allowed, the practice continues.⁴⁸

A 45 year old Rohingya man from Rathedaung explained the impact of the establishment of model villages near him:

“Five years ago, they established a NaTaLa village near [a village]. Last year, they set up another one close to [another village]. It has about 100 houses and I had to work on that. It is about seven kilometres from my village. The Chairman instructed us that the people from our village had to build seven houses and we did it. If 10 people work together, it takes five days to build one house. I built one house and other villagers built the other houses. I also had to make fences around the houses. The new settlers arrived during the last rainy season [mid-2003]. They were Burmese, not [Rakhine]”.

A 22 year old Rohingya man from southern Maungdaw had his land confiscated when a model village was constructed:

“My Family had 5 kanis [2½ kani is 1 acre] of land. But these fields were confiscated by the NaSaKa about two years ago [early 2002]. There is a NaTaLa village in our area, which was established in 1995 or 1996, shortly after the NaSaKa was formed. Since then, every year, the NaSaKa is extending this village by bringing in five to six new families a year. Two years ago, the NaSaKa brought a few Burmese families in this NaTaLa village and confiscated our land, my family’s land as well as other’s land too. I remember that, the time we lost our land, they brought in 30 new families from Upper Myanmar. Moreover, we had to build houses for them

Areas and National Races and Development Affairs, *Concise of Master Plan for Development of Border Areas and National Races*, Yangon, Myanmar, 23 June 1994.

⁴⁸ *Analysis of the livelihood situation of the Muslim population in Northern Rakhine State*, Lisbeth Garly Andersen, Consultant to UNHCR, 31, July 1997, p.11.

with forced labour in late 2001 and early 2002. Our life became much harder after we lost our land. We were a farming family and suddenly we became a labour family... Last year, the NaSaKa, also confiscated almost all our grazing pasture and distributed it to the NaTaLa villagers for their cattle. Some of them leased it out again back to our villagers.”

A 27 year old Rohingya man from southern Buthidaung described how his land was confiscated:

“I had five kani of land and up to last year [2003], I was a farmer. But just before the planting season, the NaSaKa confiscated my land for a NaTaLa village to be built near our village. Other people also lost their land. They confiscated 21 kani of land in total, all cultivable land. I had proper land title for this land that my father bought from a [Rakhine]. They had issued a judicial stamp on it. They first confiscated the land before the planting season and then the NaSaKa cultivated it with forced labour for themselves. Then, after harvesting, they started building 40 houses for the new settlers. They employed and paid [Rakhine] carpenters to build the houses, all of them in wood with a tin roof, but we had to provide all the material free of charge. They did not pay us for the building material, nor did they give us any food... After Eid el-Fitr [November 2003], 40 [Rakhine] families were brought in. As far as I heard, they all came from Minbya Township [west of Sittwe]. We can see they are very poor.”

In a number of cases model villages have also been built for some of the other ethnic nationalities that live in Rakhine State, such as the Thet.

A 22 year old Rohingya man from northern Buthidaung said:

“My family has 15 kani of land, all cultivable. In the past we had 32 kani of land, but 17 kani was confiscated from us about three years ago [2000] by the government to distribute to Thet people. About 35 Thet families were brought in from the eastern part of Buthidaung. For this new village, our people lost a lot of land and did not receive any compensation. Now the land we still have is not enough for my family.”

The policy of building of model villages has presented several problems for the Rohingya population. The confiscation of land from Rohingyas to build model villages deprives them of opportunities to sustain their livelihood, as these are in almost all cases grazing grounds for their cattle, rice fields or shrimp farms. Furthermore, the Rohingya population of nearby villages are often forced to build the houses and other facilities of the model villages without pay. In some cases they also had to provide some of the building materials. All of these factors have greatly contributed to increasing poverty and food insecurity for the Rohingya population.

Other cases of land confiscation and evictions

The building and the extension of military camps, mainly for the *NaSaKa*, have also led to land confiscation. Moreover the *NaSaKa* has on numerous occasions confiscated land for

commercial purposes, mainly to establish shrimp farms but also rice fields for themselves. People reportedly receive no compensation, and are sometimes also forced to work on the same fields that were confiscated from them. In other cases the NaSaKa has rented out confiscated land as shrimp farms or rice fields to the local population.

A 25 year old Rohingya man from Rathedaung described the confiscation of his land:

“My father is a farmer and we used to have 47 kani of land, but now we only have seven kani left and this is not enough for our subsistence. The Myanmar Army confiscated most of our land in the early 1990s to make shrimp farms for themselves. After that, we survived with our cattle... There was grazing land in our village for our cattle but this was also confiscated three years ago just before the authorities built a NaTaLa village for new settlers. After that, we could no longer graze out cattle...There are four shrimp farms near our village, two belong to the NaSaKa and two to the army. Every year, before the monsoon, we must repair the embankments of those shrimp farms. This year [2003] I had to work for three days in one of the NaSaKa shrimp farms.”

A 25 year old Rohingya man from southern Maungdaw also had his land confiscated recently:

“Most of the shrimp farms in our area belong to the military, the NaSaKa and other government agencies. Originally all this land belonged to our Muslim villagers, but it was confiscated by various government agencies. Then again they rent it out to our people on a yearly basis.”

In 2002 the NaSaKa reportedly began to strictly implement land use policies and this has led to number of evictions of Rohingyas. Due to population growth, some families built their houses on land registered as paddy fields decades ago. Recently they have been issued with expulsion orders and forced to dismantle their homes. Similarly, many local shrimp farms were ordered to be destroyed or to be planted with paddy because they were established on land registered for other purposes.

A 27 year old Rohingya man from central Maungdaw reported in early 2004:

“The eviction process started about two years ago. First they evicted 40 houses in [a village] near Maungdaw. Eighteen families protested and refused to dismantle their houses. They were arrested and sent to Buthidaung jail. They are still there. They detained mostly the head of the family but they also jailed some women, even one pregnant woman. She gave birth inside the jail. 18 people are still in jail about this case. After that, they evicted 15 houses in [another village], also near Maungdaw. Then they evicted 60 houses in my village. My house was among them. This happened one year ago [2003]. I did not receive any written order from the NaSaKa, but the NaSaKa called our Chairman and provided him with a list of houses with the name of each family head. The Chairman summoned all the people mentioned in the list. He ordered us to vacate the land and explained: ‘The land where your houses

stand is registered as paddy land. So, you must leave.' Nobody dared to protest after what happened in the other villages. I was given five days time to leave my house and dismantle it. We were not given any other place to go."

A 35 year old Rohingya man from northern Maungdaw reported extreme impoverishment as a result of land confiscation:

"I had a house and one kani of paddy field. But in 1995, my land was confiscated together with other people's land. After I lost my land, I started renting a plot to do cultivation but I did not have any oxen, so I had to hire oxen to plough. Because of this, I could not make any profit. Then I decided to work as a labourer on other people's land in order to make ends meet. But now jobs have become very scarce and I felt compelled to leave my village and come to Bangladesh... Apart from forced labour there was no work in my village. My family spent many days without even one meal a day. My children became sick due to malnutrition and I also became ill. I had nothing to sell except my utensils and a few chickens."

Amnesty International is concerned by the practice by local authorities in the Rakhine State of confiscating land from Rohingyas with no compensation. The right to housing is a basic right, which is a fundamental component of the right to an adequate standard of living and central to the enjoyment of other human rights. In the words of UN-HABITAT, the UN Human Settlements Programme, *"the requisite imperative of housing for personal security, privacy, health, safety, protection from the elements and many other attributes of a shared humanity, has led the international community to recognize adequate housing as a basic and fundamental human right."*⁴⁹ This right is enshrined in Article 25 (1) of the Universal Declaration of Human Rights.

The right of children to adequate housing is enshrined in Principle 4 of the Declaration of the Rights of the Child (1959). Under the UN Convention on the Rights of the Child (CRC, 1989), the obligation of states parties, in cases of need, to provide material assistance and support programmes to families and children, particularly with regard to housing, is set out in Article 27(3). The obligation of states to eliminate discrimination against women in rural areas in order to ensure that they enjoy adequate living conditions, particularly in relation to housing, is provided for in Article 14(2)(h) of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1981). The Myanmar Government is a state party to both the CRC and CEDAW.

According to the UN Committee on Economic Social and Cultural Rights, forced eviction is the *"permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of,*

⁴⁹ *Housing Rights Legislation, Review of international and national legal instruments*, United Nations Housing Rights Programme, Report No. 1, UN Human Settlements Programme (UN-HABITAT) and the Office of the High Commissioner for Human Rights (OHCHR), 2002, p. 1.

and access to appropriate forms of legal or other protections.”⁵⁰ In its resolution on Forced Evictions in 1993, the UN Human Rights Commission stated that: “the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing” and urged governments to “confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups.”⁵¹

VIII. Extortion and arbitrary taxation

Rohingyas in northern Rakhine State are subjected to extortion and arbitrary taxation at the hands of the authorities. These vary from tax on collecting firewood and bamboo to fees for the registration of deaths and births in the family lists, on livestock and fruit-bearing trees, and even on football matches. The type of taxes and the amounts people have to pay appear to be applied in an arbitrary fashion and vary from place to place, depending on the local authorities.

The form of taxation which has been the heaviest burden for rice paddy farmers in Rakhine State, and in Myanmar as a whole, is the government “rice tax”. Under this system farmers were required to sell a portion of their harvest at fixed prices to the state Myanmar Agricultural Products Trade (MAPT). These prices are well below the market rate, varying from ½ to 1/8 of the market price. As in other areas of Myanmar, the amount of rice tax people have had to pay is based on the size of cultivated land area instead of on the actual yield of the rice harvest. Under a new policy of the Myanmar government, the rice tax was abolished in April 2003.⁵² However many Rohingyas who were interviewed complained that instead the authorities have imposed several other new taxes and have increased existing ones.

A 55 year old Rohingya man from southern Maungdaw reported on taxation in his village:

“The government did not collect any paddy tax this year [2003]. We were hoping for this for a long time and we were very happy about that. But it creates other problems for us as other taxes have significantly increased. The VPDC and our Chairman are constantly asking for taxes for the NaSaKa, the military, the police and the MI camp. Our Chairman told us that it is our responsibility to provide this money because they are all providing security for us. Just before I left I paid 500 kyat for a football match in our village. The football match is among the villagers but the NaSaKa also watch it...Most of the time our Chairman does not tell us why he is collecting the money. He just mentions some amount to each [leader of a group of

⁵⁰ Committee on Economic Social and Cultural Rights, The right to adequate housing (Art. 11.1): forced evictions, CESCR General Comment 7 (1997), paragraph 3.

⁵¹ UN Human Rights Commission Resolution 1993/77: Forced Evictions, paragraphs 1 and 3.

⁵² *New Light of Myanmar*, the SPDC official newspaper, 24 April 2003.

houses reporting to the VPDC]. *Almost every month I have to pay such kind of taxes ranging from 500 to 1,000 kyat. Before the rice tax was abolished, the monthly amount only varied between 100 and 200 kyat, and afterwards it increased to 500 to 2,000 kyat.*”

Other Rohingyas from northern Maungdaw and northern Buthidaung also reported having to pay football taxes during 2003 and early 2004.

A 62 year old Rohingya man from Rathedaung reported discriminatory taxation of Rohingyas:

“This year [2003], the rice tax has been abolished. But, last November, our VPDC Chairman demanded money from us instead...Even those who have no paddy fields and only a yard around the house also had to pay 10,000 kyat. Only widows were spared. I am landless now but I still had to pay 8,000. These taxes were collected only from the Muslims, not from the 24 [Rakhine] villages around our village.”

There have been several reports of Rohingyas being arrested and accused of breaking various regulations, such as having been to Bangladesh. If they can pay a sum of money, which varies but is often extremely high, they can be released.

A 25 year old Rohingya man from southern Maungdaw reported money he had to pay:

“My family had four kani of land, which they had to sell to give bribes to the NaSaKa because of me. I was arrested three times. The first time I was arrested because I sold a chicken, but chickens are now under [brokers under a licence system]. The broker complained about me and they arrested me. The second time a neighbour girl accused me of harassing her and she complained to the NaSaKa. For these cases, my family had to pay 350,000 kyat in order to release me. To pay this amount, my family had to sell their land... All these incidents happened within the last four months [end of 2003 – early 2004]. Now all the members of my family are suffering and starving... Each time I was arrested I was beaten seriously. My head and other parts of my body were wounded and I was bleeding... They did not interrogate me at all. They only beat me like this so my parents would give them money to release me. They know that if they beat the money would come faster... About one month and 10 days ago [January 2004] I visited Maungdaw with a [permit] but when I returned home, I was arrested by the Military Intelligence (MI) of our village. They put me in wooden stocks in their camp for three days and demanded 200,000 kyat as they accused me of having visited Bangladesh illegally. It is very common that someone is arrested by the MI and released against money, then the NaSaKa takes over.”

Registration of births and deaths in families

All households are obliged to report any changes to the family list to the authorities. For the registration of births and deaths in families Rohingyas are forced to pay fees to the VPDC or the NaSaKa, depending on which of them is responsible for keeping the family lists. The

amounts people have to pay to register births and deaths are different from place to place, and vary from 1,000 to 8,000 kyat. On some occasions people had to partially pay in fuel, or had to work for the authorities to pay for the fee. The sale of cattle must also be registered and paid for.

A 45 year old Rohingya man from Rathedaung reported death registration taxes:

“My mother died during the last Ramadan [November 2003]. When I went to the Immigration officer of the NaSaKa to register her death, they charged me 1,500 kyat. It is very hard to live in Myanmar, especially for people like me who are poor. Rich men have to pay taxes but it is nominal for them, and the [Rakhines] who are living nearby do not need to pay such taxes at all.”

There have also been reports that since mid-2002 some pregnant women have had to register themselves in person at the nearest NaSaKa camp, which may be some hours walk away from their village. According to some testimonies women were asked to show their faces and their abdomens.

A 26 year old Rohingya man from northern Maungdaw explained the situation in his area:

“Now there is a new law for couples in our area. The husband must inform the NaSaKa within three months of his wife’s pregnancy. After she delivers the baby, the husband must obtain a delivery certificate from a midwife or a nurse and then go to the NaSaKa with it to register the child’s name in the family book. He can then get the baby registered for 7,000 or 8,000 kyat. But if the father is late in informing the NaSaKa, he has to supply two bags of cement and two to 10 gallons of kerosene.”

A 27 year old Rohingya man from central Maungdaw reported his family’s experience:

“I have three children. I registered their names in my family list and each time I had to pay 6,000 kyat. Our NaSaKa camp demands that all pregnant women go to their camp to have their picture taken. The pregnant women must show her belly and her face to the cameraman. This practice stopped two years ago, but over the last four months it started again in our area.”

States may only impose taxes to the extent and in a manner that will not violate fundamental human rights. Amnesty International is concerned that taxation on the Rohingya population, as described above, does not meet this criterion: taxation is often imposed arbitrarily, sometimes even at the momentary whim of local officials, in violation of the freedom from arbitrary deprivation of property (Art. 17(2) of the UDHR). Taxation is often excessive, driving people to destitution, in violation of the right to an adequate standard of living (Article 25[1]) of the UDHR. Imposing heavy taxes on registration of births and deaths

in families also interferes arbitrarily with family life, in violation of the right to be free from such interference (Article 12 of the UDHR).

IX. Other restrictions

Marriage Permission

Since the creation of NaSaKa in 1992, the authorities in Northern Rakhine State have reportedly introduced a regulation that the Rohingya population in Northern Rakhine State are required to ask for permission to get married. This restriction appears to be only enforced on the Muslim population in this area, and not on the Buddhist Rakhine population, nor on any of the other smaller ethnic minority groups living in the region. Rohingyas and Muslims living in other parts of Rakhine State, including the capital Sittwe, also do not seem to be affected by this policy.

In recent years, particularly during 2003, the authorities have begun to demand large amounts in taxes from people who ask for permission to get married. The authorities also appear to have limited the number of permissions given each year. In some cases people have had to wait for two to three years to get permission, even after paying large sums of money, and they had to go to the *NaSaKa* camp several times for it.

In general, most Rohingya couples must pay a substantial amount of money to the *NaSaKa*, varying from 50,000 to 300,000 kyat. Usually the bride and groom must each pay the same amount of money. After payment, permission is not always given. This restriction especially affects poor people, who are unable to obtain such large amounts of money. Amnesty International has received credible reports that in some villages there have been no marriages at all during the last year because of this restriction. There are also consistent reports of young couples fleeing to Bangladesh because this is the only way for them to get married. Once in Bangladesh it is very difficult for them to return, as their names have often been removed from their family list by the authorities.

In the cases cited below, all the couples were over the age of 18.⁵³ These restrictions on marriages have a strong negative impact on poor families, as many parents cannot afford the high permission fees, and are left to take care of their unmarried youth in their homes. Some people have also gone into serious debt to pay for marriage permission, which some of them have been unable to reimburse, and as a result have fled to Bangladesh.

A 56 year old Rohingya man from northern Maungdaw reported his family's experience:

⁵³ Traditionally Rohingya women marry at puberty; the SPDC has banned marriages of people under 18 years of age.

“In order to marry, the girl should be 18 and the boy 25. We have to fill in eight different forms and get two stamps. On each stamp there should be a picture of the boy and the girl, as well as a picture of the couple. If the age is okay, it will cost 50,000 kyat for the couple to get marriage permission, but if there is any problem, it may cost at least 200,000 kyat. There are some families who want to marry their very young daughter and they can only do this by paying a huge bribe... I selected a girl for my son. I had to pay 50,000 kyat because my son is almost 25 and the girl is now over 18.”

A 23 year old Rohingya man from southern Buthidaung also experienced problems getting married:

“Two years ago I got engaged with a girl of my village. But I have no money to obtain permission to marry her. The fee is too high. The VPDC office asked for 10,000 to 15,000 kyat for the application and you must then bring this form to the NaSaKa office in Buthidaung. The NaSaKa then demanded 100,000 kyat. There has been no wedding in my village for more than five years. But if you cannot pay immediately, it is wasted because most officers are transferred within a year. So it is better to gather all the money first and then pay.”

A 23 year old Rohingya male from northern Maungdaw reported restrictions in his area:

“In my village, one must pay a large amount of money to get permission to marry. About three years ago, my elder brother got married and in order to obtain permission, my family had to pay 200,000 kyat to the Chairman and to the NaSaKa while my sister-in-law’s family also had to pay 130,000 to them. About two months ago, two of my close friends fled to Bangladesh with their fiancées because they could not obtain permission without paying a bribe, which they could not afford.”

According to the UDHR (Article 16), *“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.”* Amnesty International is concerned that the excessive and arbitrary fees and taxes imposed on Rohingya couples wishing to marry inhibits their ability to exercise this right.

X. Conclusion and recommendations

Amnesty International is concerned that the local Myanmar authorities' policies regarding the Rohingya population in the northern Rakhine State result in violations of a wide range of their basic human rights. While the general human rights situation in Myanmar is far from satisfactory,⁵⁴ the Rohingyas suffer from specific deeply discriminatory policies targeting them. The vast majority of Rohingyas are effectively denied Myanmar citizenship; subjected to severe restrictions on freedom of movement; forced labour; forced evictions; and extortion and arbitrary taxation. Other ethnic nationalities in the northern Rakhine State are not subjected to the same extent to such restrictions and human rights violations. The combination of all these practices makes it almost impossible for Rohingyas to enjoy their right to an adequate standard of living. In order to ensure that the fundamental rights of Rohingyas are respected, Amnesty International makes the following recommendations to the Myanmar Government:

Freedom of Movement

- i. Put an end to the harsh regime of permits and travel bans currently imposed on Rohingyas in the Rakhine State.
- ii. Ensure that any restrictions on movement are only imposed if they are absolutely necessary, are related to a specific security threat and are non-discriminatory and proportionate in terms of their impact and their duration.

Forced Eviction and House Destruction

- i. All outstanding orders for forced evictions and demolitions should be cancelled and a moratorium should be placed on future forced evictions and demolitions until such time as the relevant laws are amended in a manner that complies with international standards.
- ii. Relevant laws and policies governing the zoning and allocation of land must be amended immediately. Provisions which are discriminatory must be repealed or amended. Laws and policies must be implemented in a manner that both respects the prohibition on discrimination on grounds including race, religion, national or ethnic origin and descent, as well as the right of all people to an adequate standard of living.

Forced labour

- i. The SPDC should ensure that no local security forces take civilians for forced labour duties.

⁵⁴ *Myanmar: The Administration of Justice – Grave and Abiding Concerns*, Amnesty International, April 2004, AI Index 16/001/2004.

ii. The SPDC should fully cooperate with the International Labour Office's recommendations and technical assistance with regard to the total elimination of forced labour.

Statelessness

Recommendations to the Myanmar Government

Amnesty International recommends that the Myanmar Government amend or repeal its citizenship laws in order to bring them into line with international standards. In particular, the citizenship laws should ensure:

- i. that all legal provisions and all decisions regarding citizenship are free of any discrimination on the basis of race, colour, ethnic origin, sex, language or religion;
- ii. the grant of nationality with full citizenship rights, without discrimination of any kind, to persons born in its territory who would otherwise be stateless, including in particular children;
- iii. the grant of nationality to persons not born in its territory but able to establish a genuine and effective link to Myanmar;
- iv. that any decision to deny citizenship be properly motivated and that written reasons for such a decision are given, and communicated in a language the applicant for citizenship understands;
- v. that persons denied citizenship are entitled to appeal against such a decision, and that the appeal be heard by an independent and impartial review body;
- vi. that the powers to revoke citizenship be reviewed to ensure that an individual cannot be arbitrarily deprived of his/her citizenship.

Amnesty International further recommends that the Myanmar Government accede to and implement the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the 1966 International Covenant on Civil and Political Rights, and the 1969 International Convention on the Elimination of All Forms of Racial Discrimination.

Recommendations to the United Nations High Commissioner for Refugees (UNHCR)

Amnesty International recommends that UNHCR, consistent with its mandate in relation to stateless persons, and recognising the close link between statelessness and the creation of refugees and protracted refugee situations, should:

- i. actively promote accession to the 1954 and 1961 Conventions on Statelessness;
- ii. Provide technical and advisory services to the Myanmar government on necessary measures to bring the government's law, policy and practice into line with international legal standards;
- iii. Engage in training and confidence-building measures in local communities, including with local officials dealing with the Rohingya population on a day-to-day basis.

Recommendations to the International Community

Recognising the important responsibility it has in reducing statelessness and minimising the human rights abuses perpetrated against stateless persons, Amnesty International recommends that the international community should:

- i. ensure that UNHCR is adequately resourced to give priority and effect to its mandate in relation to persons who have been rendered effectively stateless in Myanmar;
- ii. bring pressure to bear on the Myanmar government to bring its law, policy and practice in relation to citizenship and the right to nationality into line with international standards.

Amnesty International further recommends that the SPDC accede to the following international human rights treaties: the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol. In addition, the organization urges the SPDC to accede to the Rome Statute of the International Criminal Court. These treaties should become incorporated into the domestic law in Myanmar, obligating its government and justiciable in its courts.

APPENDIX I: Myanmar Citizenship Laws

The applicable law relating to citizenship in Myanmar traces an increasingly restrictive and complex history. Current citizenship laws are governed principally by the 1982 Burma Citizenship Law, which superseded the 1948 Union Citizenship Act.⁵⁵

The 1947 Constitution, which first established the legal framework pertaining to citizenship, primarily defined a citizen as a “person, both of whose parents belong or belonged to any of the indigenous races of Burma”.⁵⁶ Indigenous races were not defined in the Constitution and, in practice, the government did not recognise Rohingyas as an indigenous race. However, prior to the promulgation of the 1948 law, there was still some scope for Rohingyas to qualify as citizens under subsection 11(iv) of the Constitution, if they could establish that they were born in territories “included within his Britannic Majesty’s dominions”, had resided in the territories of the Union of Burma for at least eight years in the preceding ten years, and intended to reside there permanently.⁵⁷

In 1948, the Parliament adopted the 1948 Union Citizenship Act, which restricted the scope of subsection 11(i) of the Constitution by defining “indigenous race” in such a way as would clearly exclude Rohingyas.⁵⁸ Sec. 4(2) of the 1948 Act further restricted the scope of subsection 11(iv) to persons “descended from ancestors who for two generations at least have all made any of the territories included within the Union their permanent home and whose parents and himself were born in any such territories.”⁵⁹ This section thus altered applicable timeframes within the Constitution and further limited Rohingyas’ eligibility for citizenship. Under the 1948 Act, the acquisition of citizenship through naturalization remained at least theoretically possible for Rohingyas, following a five year period of continuous residence.⁶⁰ The grant of a certificate of naturalization was, however, at the discretion of the Minister,

⁵⁵ Elements of the 1948 Union Citizenship Act nonetheless remain relevant to the application of the 1982 Act. See for example, Sec. 23 of the 1982 Act.

⁵⁶ Section 11(i).

⁵⁷ Under the 1947 Constitution, a Rohingya may have qualified for citizenship under Section 11(iv) as a “person who was born in any of the territories which at the time of his birth was included within His Britannic Majesty’s dominions and who has resided in any of the territories included in the Union for a period of not less than eight years in the ten years immediately preceding the 1st January 1942 and who intends to reside permanently therein...”.

⁵⁸ Section 12 of the 1947 Constitution conferred on Parliament the power to legislate on citizenship regardless of the Constitution’s own provision in Section 11. Section 3(1) of the 1948 Act provides that: “For the purposes of section 11 of the Constitution the expression “any of the indigenous races of Burma” shall mean the Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and such racial group as has settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A. D. (1185 B.E.)”

⁵⁹ *Burma: The Rohingya Muslims; Ending a Cycle of Exodus?*, Human Rights Watch/Asia, New York, September 1996, p.23.

⁶⁰ Section 7(1).

with no requirement for reasons, and no right of appeal.⁶¹ The 1948 Act made no distinction between the right conferred on citizens by birth or by naturalization.

Under the provisions of a new constitution in 1974⁶², only persons both of whose parents were Burmese nationals, or who had been granted citizenship under previous laws by the time the Constitution came into force, were eligible for citizenship.⁶³

In 1982, a new Citizenship Law came into force.⁶⁴ Unlike the preceding 1948 Act, which conferred equal rights on all citizens, the law creates three classes of citizen. The 1982 law also establishes a government-controlled “Central Body” with wide powers to determine specific citizenship issues.⁶⁵

1. **Full citizenship** is granted (sec. 3) to “*Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D.*” Although this definition appears on its face to be flexible (“such as”), sec. 4 grants the Council of State practically unfettered powers to decide “whether any ethnic group is national or not.” Under sec. 5, “*Every national and every person born of parents, both of whom are nationals are citizens by birth.*” In addition, under sec. 6 “*A person who is already a citizen on the date this Law comes into force is a citizen.*” Children born abroad to parents belonging to specified combinations of citizenship categories are also citizens (sec. 7).

2. **Associate citizenship** is granted, under certain conditions, to persons who had applied for citizenship under the 1948 (sec. 23) law and their children, and whose application was ongoing at the time of promulgation. Under sec. 30(c), (c) an associate citizen would “*be entitled to enjoy the rights of a citizen under the laws of the State, with the exception of the rights stipulated from time to time by, the Council of State.*” This grants the government a virtually unlimited discretion to deprive such persons of their rights as citizens. The “Central Body” also enjoys wide discretion to revoke “associate citizenship” on grounds that include “disaffection or disloyalty to the state” or “moral turpitude” where a sentence has been imposed of a minimum of one year imprisonment or a fine of one thousand kyats (sec. 35).

⁶¹ Section 7(3).

⁶² The 1974 Constitution was abrogated on 18 September 1988 when the military re-asserted control in a *coup d'état*, and violently suppressed the pro-democracy movement.

⁶³ Article 145.

⁶⁴ *Burma Citizenship Law, Pyithu Hlittaw Law No. 4 of 1982*, entered into force on 15 October 1982.

⁶⁵ Under sec. 67 of the law, the Central Body is to be formed by the government and comprised of the Ministers of Home Affairs, Defence and Foreign Affairs. Under sec. 71, appeals may be made to the Council of Ministers, so there is no appeal to an independent appellate body. There is no requirement for reasons to be given by either body for their decisions.

3. **Naturalised citizenship** may be granted to non-nationals such as members of ethnic groups not recognised as indigenous races, which would include the Rohingya. Sec. 42 stipulates “Persons who have entered and resided in the State anterior to 4th January, 1948, and their offspring 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.” Persons with parents belonging to specified combinations of naturalised citizens, associate citizens and foreigners may also apply (sec. 43). Other criteria apply to all applicants for naturalized citizenship; they must be over 18, able to speak a national language well, of good character, and of sound mind, (sec. 44). As in the case of associated citizens, the Central Body is at liberty to determine which right naturalised citizens may or may not enjoy (sec. 53), and has wide discretion to deprive “naturalised citizens” of their status, including for being disloyal, or for “moral turpitude” (sec. 58).