

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	126
Land:	Burma
Kilde:	UN Human Rights Council
Titel:	Oral update of the High Commissioner for Human Rights
Udgivet:	29. september 2015
Optaget på baggrundsmaterialet:	4. januar 2016

Advance version

Distr.: Restricted
29 September 2015

English only

Human Rights Council

Thirty session

Agenda items 2 and 10

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Technical assistance and capacity-building

**Oral update of the High Commissioner for Human Rights on
the human rights violations and abuses against Rohingya
Muslims and other minorities in Myanmar***

* Reproduced as received.

1. After 50 years of military rule and armed conflict, the Government of Myanmar has undertaken sweeping and potentially transformative reforms, accelerating economic development, and relaxing restrictions on civil and political rights. But the country's welcome advances on a number of important human rights issues have not been matched with progress to address institutionalized discrimination against Rohingya and other minorities.
2. Myanmar is made up of a rich diversity of cultures. It is estimated that at least one third of the population comes from ethnic and religious minorities. States reflecting the largest ethnic groupings of Chin, Kachin, Kayah, Kayin, Mon, Rakhine and Shan, cover more than 50 per cent of the territory. There is also a myriad of smaller ethnic groups. Some minorities share Theravada Buddhism with the majority Bamar ethnic group, while other minority religions include animists, Christians, Hindus and Muslims.
3. The High Commissioner is pleased to provide this update on the human rights violations and abuses against Rohingya Muslims and other minorities in Myanmar, pursuant to Human Rights Council resolution 29/21.
4. The Human Rights Council adopted resolution 29/21 in the context of a migration crisis in South East Asia, which brought international attention to the desperate plight of migrants and asylum seekers in the Bay of Bengal. Following Thailand's crackdown on smuggling and trafficking, thousands of people were left stranded at sea when crew abandoned overcrowded boats, leaving men, women and children with little food and water.
5. Since 2014, it is estimated that 94,000 people have departed irregularly from the Myanmar-Bangladesh maritime border. In the first half of 2015 alone, 31,000 Rohingya and Bangladeshi people are estimated to have departed, of whom 370 are thought to have died at sea. Many are violently abused and robbed by the smugglers whom they pay to facilitate their voyage. Mass graves continue to be found in Thailand and Malaysia, filled with the bodies of victims who fled intolerable conditions only to die at the hands of criminal gangs whose only motivation is profit. The High Commissioner urges the Governments of Thailand and Malaysia, and all countries in the region, to thoroughly investigate and act upon such crimes, and to intensify their individual and collective efforts to curb human trafficking and abusive smuggling. He further encourages these countries to strengthen their systems of protection for asylum seekers, refugees and other individuals in need of international protection.
6. But the root causes of this problem must also be addressed. Since 2012, an ever-increasing number of Rohingya Muslims have risked their lives to depart Myanmar. While some returns have taken place and more may be possible before the end of this year, durable solutions are still to be found for the overwhelming majority of Muslim internally displaced persons (IDPs) in Rakhine State. The atrocious conditions under which they live are overlaid by discriminatory laws, policies and practices, which constitute forms of institutionalized discrimination, some of which target Rohingya Muslims in Rakhine State, while others affect all minorities in the country. With the rainy season coming to an end in September in South East Asia, boat movements taking people from the Bay of Bengal are likely to resume imminently. The High Commissioner also notes the severe impact of the floods in Rakhine State in August 2015 on all communities.
7. This update highlights a number of areas of concern for minorities, with a particular focus on their situation in the pre-election environment. It also outlines current concerns specific to the Rohingya in Rakhine State and touches briefly on discrimination as an underlying cause of armed conflict in Myanmar that is yet to be fully tackled.

Citizenship

8. The 1982 Citizenship Law denies equal access to citizenship to ethnic minorities that are not listed under its regulations. This has led to Myanmar hosting one of the largest stateless populations in the world, including the Rohingya and people of Indian and Chinese descent. The right to a nationality imposes a duty on States to ensure that no one is arbitrarily deprived of their nationality and to grant citizenship to those born on its territory who would otherwise be stateless.

9. In July 2014, the Government started a Citizenship Verification process in Rakhine State, based on the 1982 Citizenship Law. The process has since stalled at least in part due to fundamental problems in its design and implementation. The verification process requires Rohingya applicants to identify as “Bengali”, a term used by the Government for the Rohingya population, but often denoting “illegal migrants”. Such a requirement is in violation of the right of minorities to self-identify, further suppresses the identity of the Rohingya minority, and has reinforced a justifiable fear among Rohingya that the process will not benefit them in the long run. In addition, the IDPs in Myebon who were granted citizenship as a result of a pilot exercise for this process did not experience an improvement in the enjoyment of their rights as citizens as undue restrictions on freedom of movement and access to basic services remain in place. These factors have served to discourage many Rohingya from participating in the verification process.

10. On 11 February 2015, President Thein Sein issued a notification, announcing the expiry of all existing temporary registration cards. While the Government has since begun to issue a new “Identity Card for National Verification”, OHCHR has received reports from the north of Rakhine State that those who do not accept the new card are subjected to threats and intimidation and refused travel permissions, even in cases of medical referral. The High Commissioner is also concerned that the legal status and rights granted by the new “Identity Card for National Verification” have not been fully clarified.

Limitation of political rights

11. The impact of citizenship issues has become evident in the lead up to the general election in November 2015. During the 2010 election, temporary registration certificate holders had the right to form political parties, be members of political parties and vote. However, legislative changes to the Political Parties Registration Law in 2014 now require party leaders to be “full citizens”, and party members to be “full or naturalized citizens”. In February 2015, the President announced the expiry of all temporary registration certificates (TRC). The Constitutional Tribunal subsequently ruled that a legislative provision allowing TRC holders to vote in a proposed national referendum was unconstitutional. Furthermore, in June, Parliament approved the amendment of three election laws that revoke the right of TRC holders to vote in the general election. This means that some 700,000 former TRC holders across the country, including Rohingya Muslims, ethnic Chinese and other minority groups, have been disenfranchised, are not able to vote, and are expelled from, or no longer have the right to join political parties.

12. Although the vast majority of former TRC holders were eligible voters in previous elections, the decision to disenfranchise former TRC holders prior to the election disproportionately affects members of minorities, further marginalizes the Rohingya from effective participation in public life, and limits the exercise of their civil and political rights. Given that a whole sector of the population has been disenfranchised by these measures, this raises serious questions as to the fairness and integrity of the upcoming elections.

13. In August, the Union Election Commission disqualified 61 candidates from running in the election due to questions regarding their citizenship or the citizenship of their parents. All were from ethnic minority groups and over 40 of them were Muslims. In one example, a currently sitting Rohingya parliamentarian, U Shwe Maung, was disqualified from standing for the general election on the basis that he was not a citizen, although he claims to hold a citizenship card. The High Commissioner is concerned that the decisions in these cases may be discriminatory and compromise the right to take part in the conduct of public affairs, which includes the right to stand for elections. He welcomes the decision of the Union Election Commission to reinstate 11 candidates who had appealed their disqualification, including ten previously disqualified on citizenship grounds.

Incitement to violence and hate speech

14. Effective measures to combat prejudice, racism and religious intolerance are urgently needed. In the pre-election environment, religious ultra-nationalist groups continue to organize the spread of hate speech and incitement to violence. In May 2015, during the maritime migration crisis in the Bay of Bengal, two video clips were circulated on the internet depicting the Chair of the Peace and Diversity Party calling for the killing of Rohingya and “boat people” during public gatherings. Women human rights defenders have also reported an increase in hate speech with sexually violent overtones and intimidation against themselves, as part of the growing nationalist rhetoric.

15. Since the violence in Rakhine State in 2012, violence against Muslim communities has occurred in several locations across the country, including Meikhtila and Lashio in 2013, and Mandalay in 2014, resulting in dozens of deaths, thousands of people displaced, and destruction of property. This is an example of discrimination leading to fragmentation of society and causing tensions between groups. Discrimination serves as both a material cause and a justification for group violence. Myanmar has the obligation to uphold the fundamental human rights of all, including Rohingya Muslims, as well as to hold accountable those who commit human rights violations and abuses, including violations of the right to life, the right to freedom of religion or belief, and incitement to discrimination.

16. The abovementioned incidents of violence have not been fully investigated. Members of the MaBaTha, also known as the “Association for the Protection of Race and Religion”, an organization of monks in Myanmar who propagate nationalist and anti-Muslim rhetoric, appear immune to investigation, while some of those who speak out against hate speech and violence have been subjected to a range of criminal prosecutions. For example, in June 2015, a peaceful advocate, U Htin Lin Oo, was jailed on charges of insulting religion, for questioning the misuse and manipulation of religion for extremist ends.

17. Following the targeting of members of the Muslim minority in 2013, the President of Myanmar publicly stated the need for interfaith dialogue and understanding to secure a more peaceful and harmonious future. The High Commissioner is encouraged by the efforts of some civil society groups and members of the Buddhist, Muslim, Catholic and Hindu communities that promote such dialogue. There are also signs that the Myanmar Police have made improvements following criticism of their role in the violence in 2013. During the July 2014 Mandalay violence, the police took more timely action to protect communities and prevent the spread of violence. However, there is a long way to go in efforts to develop a modern police force that protects and upholds the human rights of all. This has to include measures to ensure the gender and ethnic make-up of the police, as well as of the wider civil service, is more reflective of the communities in which they work. The High Commissioner is encouraged by the participation of the Myanmar Police in the human rights trainings conducted by OHCHR since 2014.

“Race and religion” laws

18. In the context of increasing nationalist sentiments in the lead up to the November elections, the MaBaTha proposed a package of four bills, introduced in Parliament in November 2014, that seek to “protect race and religion”. In May 2015, the President signed one of these bills, the Population Control Healthcare Bill, into law. It grants authorities the power to identify regions with high birth rates and to implement measures for 36-month-birth spacing between children. In July 2015, the Buddhist Women’s Special Marriage Bill was passed by Parliament, requiring permission for Buddhist women to marry outside their faith. In August 2015, the Religious Conversion Bill and the Monogamy Bill were passed. The Religious Conversion Law provides that any person wishing to change religion must receive permission from the authorities. The Monogamy Law repeats restrictions on bigamy which are already in other laws and further unduly limits the rights of people living in unmarried relationships.

19. These laws represent a regression in the protection of human rights in Myanmar, particularly for women’s rights and religious freedom. Serious concerns were expressed in this regard by the Special Rapporteur on the situation of human rights in Myanmar, the Special Rapporteur on minority issues, the Special Rapporteur on the right to health, the Special Rapporteur on freedom of religion or belief and the Working Group on the issue of discrimination against women in law and in practice.

Rohingya in Rakhine State

20. Three years on from the violence in 2012, there remain some 130,000 IDPs in Rakhine State. In March 2015, the Rakhine State Government announced plans for the return and relocation of parts of the IDP population. Government plans indicated that 5,061 households would be targeted for relocation in the first phase. While progress on return and relocation for Rakhine and some Rohingya displaced populations has occurred, protracted displacement continues for the overwhelming majority of the displaced Muslim population. Neither the Union Government nor the Rakhine State Government has proposed a clear path for durable solutions for some 90,000 Rohingya Muslims who are displaced mainly in Sittwe, leaving a situation of ongoing segregation of communities and discriminatory restrictions on Rohingya from moving outside the camps.

21. The deteriorating living conditions of those displaced, and the severe and discriminatory restrictions on freedom of movement they face, continue to affect all areas of life, including access to health, education and other basic services. This entrenches marginalization of Muslims, particularly the Rohingya. The August 2015 floods have brought new challenges and opportunities, relaxing some restrictions and raising hopes for improved relations between communities. The High Commissioner urges the Government to remove freedom of movement restrictions in the State and to begin a process of reintegration of communities, economically and socially.

22. A system of regional and local orders, issued by a range of local authorities, target the Rohingya in a discriminatory manner and appear designed to control the Muslim population. The impact of these policies is the severe deprivation of fundamental rights on discriminatory grounds, contrary to international law, adding to claims of persecution against the Rohingya minority, particularly in the north of Rakhine State.

23. Regional and local orders and regulations require Rohingya to obtain permission to marry, and impose limitations on the number of children per couple. This has resulted in many children remaining unregistered, rendering them legally invisible. Mandatory updating of household lists is at times enforced with violence and intimidation, as observed

again in May 2015, when security forces allegedly beat and arrested those who did not want to participate.

24. The construction and repair of residential housing and Muslim places of worship are unnecessarily restricted. Curfews are still in place, as are restrictions on gatherings of more than four people. In the north of Rakhine, these restrictions have stopped people from gathering to pray in mosques since 2012. Throughout Rakhine State, all movement of Rohingya, and sometimes other Muslims, is severely restricted: they may not travel between townships without permission, and must obtain specific and exceptional authorization to travel outside the state. Failure to comply with these restrictions is grounds for arrest and imprisonment and is regularly and harshly enforced.

25. The Government has shown a willingness to engage with the international community on issues in Rakhine State, particularly on the situation of IDPs. A draft Rakhine Action Plan from early 2015 – which to date has not been formally finalized or released – contained some positive elements, including improved services and infrastructure. However, the key elements on citizenship verification processes remain based on discriminatory laws. Expanded security and surveillance measures focused on dealing with irregular immigration, rather than the protection of the communities and improvements in accountability of security forces. The Government's refusal to allow the Rohingya to be counted in the nationwide population census unless they identified as "Bengali" also highlighted its unwillingness to find solutions that respect the rights of this effectively stateless population.

Armed conflict, ceasefire and discrimination

26. The High Commissioner recognizes the ongoing efforts of the Government's Union Peacemaking Work Committee and the Nationwide Ceasefire Coordination Team towards the signing of a nationwide ceasefire agreement. Although important progress has been made, a more inclusive political dialogue will be needed to build lasting peace and stability. In the context of the ceasefire negotiations, it is important to recognize that a significant driver of conflict has been longstanding grievances of exploitation, marginalization and lack of respect for ethnic and other minorities by the authorities. Those living in the ethnic minority areas of the country have suffered violations of the rights to language, culture and freedom of religion and belief, which compound poverty.

27. Conflict-related violence and alleged violations of international humanitarian law and international human rights law have brought particular suffering to ethnic minorities in areas such as Kachin State and Northern Shan State. This includes allegations of arbitrary detention, torture and ill-treatment in detention, lack of due process and fair trial rights, sexual violence and rape by security forces. The lack of accountability mechanisms results in impunity in such cases, which further erodes the rule of law, undermines reconciliation efforts and respect for human rights, and inflicts further suffering for the victims.

28. Violations against religious minorities are also prevalent. For example, OHCHR has received reports of violence against Christians in Chin State, and of the destruction of religious buildings in Karen and Kachin States.

29. Inclusive political talks, with representation of these minority communities and adequate gender representation are needed to address these issues, including a path to ensure accountability and guarantees of non-recurrence. In areas where local ceasefires are holding, the challenge is to find ways to fully involve ethnic minorities in meaningful consultations on pressing human rights concerns, such as durable solutions, safe return, and housing, land and property issues.

Conclusion

30. Concerted action is urgently needed to address issues of systemic discrimination and policies of exclusion, and ensure accountability for human rights violations and abuses in Myanmar, including against the Rohingya and other ethnic minorities. Failure to investigate and prosecute crimes committed against the Rohingya and other minorities gives a clear signal of impunity and encourages repetition. The State's obligation to establish the rule of law and ensure accountability for human rights violations and abuses should lie at the very centre of efforts to develop a peaceful and harmonious society, where the rights of minorities are recognized and upheld.

31. Until issues of discrimination are fully addressed in Myanmar, particularly the institutionalized discrimination against the Rohingya, forced displacement of minorities from Myanmar will continue. It is therefore urgent that the Government of Myanmar, with the support of the United Nations, the Association of Southeast Asian Nations and other Member States, takes meaningful steps to improve the lives of the Rohingya and other minorities, in full conformity with international human rights norms and standards.
