

Excerpts from a chapter to appear in an upcoming volume "Citizenship in Myanmar: ways of being in and from Burma" edited by Ashley South and Marie Lall (ISEAS Press and Chiang Mai University Press, 2018).

Exploring the issue of Citizenship in Rakhine State

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...Inside Myanmar, some 1.1 million persons in Rakhine State were omitted from the 2014 Census because they declined to be enumerated other than as "Rohingya". But elsewhere in Myanmar there are thought to be many thousands, if not tens of thousands of residents of 19th and 20th Century Chittagonian (Bengali) origin - stevedores, riverboat crew, construction workers, small traders and artisans rather than farm workers - who might claim to be Rohingya, but understandably did not seek to be so enumerated at the 2014 Census. In 1960 speakers at a meeting of "Ruhangya" (sic) organisations in Rangoon claimed that there were some 700,000 "Ruhangya" in Burma, of whom 300,000 lived outside Arakan. The majority of Muslims who live outside Rakhine State seem lukewarm towards Rohingya aspirations, apart from a dedicated core in Yangon who may aspire to the political leadership of the community in Rakhine State...

...I have found not a single reference to the term "Rohingya" in any shape or form in any documents or correspondence, official or private, recording the 124 years of British rule in Arakan from 1824 to 1948. Those who support the Rohingya narrative of a specific ethnicity going back many centuries invariably do so on the basis of a very few unconnected historical events, like what some writers believe to be Dr Francis Buchanan's fortuitous meeting in 1795 in the Burman capital of Amarapura with an unknown number of deported Muslims who "call themselves *Rooinga* or natives of *Arakan*" (Buchanan 1799). But Buchanan never made use again of this designation, though he wrote prolific accounts until his death in 1829 about his travels along the Bengal-Arakan frontier where he met many Muslim refugees from Arakan. Nor was the designation used by any of his contemporaries. Nor did the British encounter any inhabitants calling themselves "Rooinga" when they arrived in Arakan in 1824.

The reason for this must surely be that the word means no more than "Arakaner" and is derived from the Bengali word for Arakan which is "Rohang" with a family taxonomic suffix - "gya". All the group wanted to tell Buchanan was that they came from Arakan, and not from Bengal. For that reason, the British never heard the word inside Arakan, because it was obvious that the Muslims living in Arakan were Arakaners. Buchanan was also told that both Muslims and Hindus, "by the real natives of *Arakan*, are called 'Kulaw Yakain' or stranger *Arakan*"; that is, they were regarded as settlers.

The British initially designated the Muslims simply as "Mohamedans", but by the 1921 Census had decided on the name "Arakan-Mohamedans" as a race category; this became "Arakan-Muslim" in the 1931 Census. The 1921 Census had this to say about the Arakan-Mohamedans:

“The Arakan-Mahomedans are practically confined to Akyab district and are properly the descendants of Arakanese women who have married Chittagonian Mahomedans. It is said that the descendants of a Chittagonian who has permanently settled in Akyab district always refuse to be called Chittagonian and desire to be called Arakan-Mahomedans; but as permanent settlement seems to imply marriage to an Arakanese woman this is quite in accordance with the description given. Although so closely connected with Chittagonians racially, the Arakan-Mahomedans do not associate with them at all; they consequently marry almost solely among themselves and have become recognised locally as a distinct race. The Arakanese Buddhists asked the Deputy Commissioner there not to let the Arakan-Mahomedans be included under *Arakanese* in the census. The instruction issued to enumerators with reference to Arakan-Mahomedans was that this race-name (in Burmese *Yakaing-kala*) should be recorded for those Mahomedans who were domiciled in Burma and had adopted a certain mode of dress which is neither Arakanese nor Indian and who call themselves and are generally called by others *Yakaing-kala*.”

It will be clear that the term “Kulaw-Yakain” which Buchanan had heard in 1795 is the “Yakaing-kala” of the 1921 Census. The Roinga whom Buchanan may have met at Amarapura or in Bengal are indeed the Arakan-Muslims of the era of British rule. They are differentiated from the Chittagonian and other Bengali migrants of the 19th and 20th Centuries...

...The population of Arakan trebled during the first 25 years of British rule from 100,000 or so to more than 350,000 (352,348 recorded in the 1852 Annual Census). This was, as former Chief Commissioner of Burma Lt. Gen Albert Fytche put it, "due to immigration from provinces under Burmese government, and notably from Pegu". This meant "the desertion of their own sovereign and country by these masses, and their voluntarily placing themselves under an alien rule, coupled with the vast increase of prosperity in every shape of the portion of Burma which has become British." These migrants were overwhelmingly Buddhist, not Muslim.

This process however was later reversed in Akyab District (that is, Northern Arakan) when the migration of Muslims from Bengal started in earnest after 1870. By the time of the first full census of 1872, the population of Arakan as a whole had reached 484,673. Buddhists (364,023) still exceeded Muslims (64,313) by a ratio of nearly 6 to 1. However, in Akyab District 185,266 Buddhists were counted against 58,203 Muslims, a ratio of nearly 3 to 1. From then on, the ratio of Buddhists to Muslims in Akyab District showed a steady decline as migration from Bengal into the District gradually increased. By the time of the 1931 Census there were still more Buddhists (448,288) in Akyab District than Muslims (244,398). But the ratio had fallen to less than 2 to 1...

...On independence in 1948, the Muslim communities of Arakan understandably felt that they needed to redefine their ethnicity, not least in order to demonstrate their loyalty to the newly independent Burma. The designations which the British had used to describe Muslims in Arakan were felt to be out of date and out of place. This was an issue, indeed a dilemma for many Indians - Hindu, Sikh and Muslim - who had crossed the Bay of Bengal in the 19th and 20th Centuries in search of a better life. Should they return to an India which some had never seen and which was reluctant to accept their

return, or should they declare their loyalty to the newly independent states of Ceylon, Malaya, Singapore and Burma?

An approach in early 1947 by the quasi-political Muslim Council (Jamiatul-ulama or "Council of Religious Leaders") of North Arakan to the Parliamentary Under-Secretary of State Arthur Bottomley seeking an autonomous Muslim district for North Arakan and the same status accorded under the Panglong Agreement to certain other frontier areas fell on deaf ears. More pointedly, on 18 June 1948 the President of the Council, Sultan Ahmed, in a Memorandum to the Burmese Government recorded the objections which had been made to the use of the designation "Chittagonians" to describe the Northern Arakan Muslim community. He reminded the Government that Prime Minister U Nu had apologised and had directed that the correct designation should be either "Arakanese Muslims" or "Burmese Muslims". It should be noted however that he did not ask that the community should be designated "Rohingya" as the term was not at that time in use or even known.

Four months later, in an Address to visiting Prime Minister U Nu on 25 October 1948, the Council laid the blame on the British for the rise of inter-communal tensions over the years, citing as the improbable cause their alleged "divide and rule" policy which supposedly "culminated in the massacre of 1942" of Muslims in the central and southern regions of Arakan. In this Address the Council again sought an autonomous Muslim District. They also recorded, though without providing any sources, that the descendants of early Muslim settlers were known as "Ruhangyas" or "Rushangyas". The Council however denied, to the astonishment of the Government and everyone else, that there had ever been any substantive immigration from the Chittagong region into Arakan at any time:

"We are dejected to mention that in this country we have been wrongly taken as part of the race generally known as Chittagonians and as foreigners. We humbly submit that we are not. We have a history of our own distinct from that of Chittagonians. We have a culture of our own. Historically we are a race by ourselves.....Our spoken language is an admixture of Arabic, Persian, Urdu, Arakanese and Bengali...."

In the 1950s other possible designations in addition to "Rwangya" emerged, and we can find in Burmese periodicals a number of articles by the Muslim scholarly and political elite putting forward various designations with differing etymologies, all based on words beginning with "R". Apart from Rwangya and its variant Rawangya, we find Roewenhnya, Roewengya and Rushangya, as well as Rohingya and its variants Rohinja, Rohinga, Ruhangya and Rohangya. The Rakhine scholar Khin Maung Saw has also drawn attention to other variants including Rwahaung Ga Kyar ("Tiger from Old Village"), Rahingya/Rahinja (descendants of Prince Rahin, a Mogul Emperor), Roan Ane Gya (from a Sultanate "Roang" said to be feudatory to Arakan), Rowunhnyar (from the Rakhine words Ro Wan Hnyar meaning "honest and brave people"), and Ronjan/Rohan (a plea for mercy from Arab seafarers wrecked in the 8th Century on Ramree Island). The above list of Muslim and Rakhine references, though, is by no means exhaustive...

...Rohingya is today still more of a political label seeking to associate a number of Muslim communities rather than an established ethnic designation. Its political purpose was to seek acceptance of the designation as a "national race" and thus as an indigenous ethnicity. Rohingya might however also be seen to reflect an emerging, coalescing ethnic process among persons of Bengali racial origin designed as much as anything for self-protection in an increasingly hostile environment. But in the process, the former quasi-indigenous Muslim communities classified by the British as "Indo-Burman" - the Arakan-Muslims (*aka* Yakaing-kala), the Myedus, the former Zerbadis now designated "Burmese Muslims" - have faded as the non-indigenous Chittagonians classified by the British as "Indian" moved to centre-stage. Only the Kaman have remained distinct. The Myedus have already been subsumed...

...Despite the debate among the scholarly and political Muslim elite about the future designation of Muslims in Arakan, their status as citizens of Burma was accepted internationally and was not challenged at home. In a despatch to the Foreign Office in January 1965 reporting on the visit to Burma of the ill-fated Pakistani Foreign Minister Zulfiqar Ali Bhutto, British Ambassador Gordon Whitteridge referred to the "extremely oppressive measures" which the local Burmese authorities had been using to root out illegal immigrants from what was then still East Pakistan. Mr Bhutto had promised General Ne Win Pakistan's maximum cooperation in dealing with any "genuine illegal immigrants". The Ambassador recorded in his despatch: "The Moslems in that portion of Arakan which adjoins the border with East Pakistan number about 400,000 and have lived there for generations and have acquired Burmese nationality. But they are patently of Pakistani origin and occasionally some Pakistanis cross into Arakan illegally and mingle with the local population."

The extent of this illegal migration was noted in the same year by the West German Ambassador to Pakistan. In his report on General Ne Win's return visit to Pakistan a few weeks later, Günther Scholl told the Auswärtiges Amt in Bonn:

"Also discussed was the problem of the roughly 250,000 Moslems resident in the Province of Arakan whose nationality is unclarified because the Burmese regime regards them as illegal immigrants from East Pakistan. A majority of these Pakistani immigrants who are unable to prove that they have been resident in Burma for at least three generations are being and will be deported by the Burmese authorities to East Pakistan..."

The extent of illegal immigration had become very apparent to the diplomatic communities in both Burma and Pakistan. This flow of migrants did not unfortunately abate, and at the time of the creation of Bangladesh in 1971 the problem was exacerbated. By December 1975 the British Ambassador had recorded a conversation with his Bangladeshi colleague in which this matter had come up:

"He (Mr Kaiser) admitted that there were upward of ½ million Bangalee trespassers in Arakan whom the Burmese had some right to eject. He had implored the Burmese authorities not to press this issue during Bangladesh's present troubles and had been pleased that the Burmese had not taken advantage of his country's misfortunes in this respect. He denied that there had been any fresh exodus into Burma."

...Indeed, two years before Operation Naga Min was launched, the Government had begun consideration of a revised citizenship law. As early as October 1976 the National Assembly was informed that a draft law was already under preparation. However, progress was slow. By May 1979 a Law Commission had been established under Dr Maung Maung, the principal drafter of the 1974 Constitution. The Commission sought the views of local and regional authorities. In July 1980 a process of public consultation began which lasted six months. A draft of the proposed legislation was finally published on 21 April 1982. In a report to the Foreign and Commonwealth Office in May 1982 British Ambassador Charles Booth noted that the proposed bill "is far more restrictive than existing legislation." He enclosed a highly critical opinion from his Indian colleague who "took an apocalyptic view of this legislation". Asked however whether he would be protesting about the discriminatory provisions of the bill, Indian Ambassador Swell replied in the negative: this was a strictly internal affair, from which Ambassador Booth concluded that "the Indians are not at present at any rate considering the possibility that the legislation may be in breach of international human rights declarations and that Burma may be vulnerable to criticism in human rights fora."

In his covering letter to London, however, Ambassador Booth concluded that:

"The new bill reflects little credit on the legislators and ultimately on the regime as a whole, and I see it as another move in Burma's policy of keeping itself 'pure' of foreign involvement. Its immediate concern, I assume, is with illegal Bengali immigration into Arakan."

When the bill was finally enacted on 15 October 1982, Acting Head of Mission Roger Leeland reported to London on 25 November 1982 that:

"The new Law is blatantly discriminatory on racial grounds. If the new procedures that are being prepared turn out to be as rigorous as we suspect they will be, then the Law may in practice be even more discriminatory than its text pretends.

On the other hand it would be possible to argue that the new Law is a generous and far-sighted instrument to resolve over a period of time an awkward legacy of the colonial era."

These views were generally reflected in a detailed analysis enclosed with Leeland's letter to London and prepared by the Australian Embassy in Rangoon. Political Officer Roland Rich noted that a lengthy speech by General Ne Win on 8 October 1982 shed considerable light on the intentions of the legislators. I would in particular quote one passage from General Ne Win's address:

"We are, in reality, not in a position to drive away all those people who had come at different times for different reasons from different lands. We must have sympathy on those who had been here for such a long time and give them peace of mind. We have therefore designated them *eh-naingngan-tha* (associate citizens) in this law. Why have we given them this name? Because, we were all citizens in the beginning; then these people came as guests [which is what "eh" means in Burmese - Derek Tonkin] and eventually could not go back and have decided to go on living here for the rest of their lives. Such being their predicament, we accept them as citizens. We can leniently give them the right to live in this country and to carry on a livelihood in the legitimate way. But we will have to leave them out in matters involving the affairs of the country and the destiny of the State..."

Rich pointed out that the concept of “associate citizens” was a late addition to the law and had not been included in the draft released in April 1982. He wrote:

“It deals with a limited category of persons who applied for citizenship under the 1948 Union Citizenship Act but, presumably, have not yet been granted it. We have been told that there are 80,000 to 90,000 such applicants who, for one reason or another, have not had their application processed. It is likely that bureaucratic inertia is a major contributing factor in this state of affairs.”

This “bureaucratic inertia” however spread beyond unprocessed claims under the Union Citizenship Act 1948. Many who applied to register as Foreign Nationals in order to obtain Foreign Registration Certificates were never called for interview. Others who qualified for citizenship as indigenous Muslim citizens and were not required to submit an application (Myedu, Kaman, Arakan Muslim, Other Indian Muslim, Burmese Muslim and Chinese Muslim recognised as categories even as late as the 1973 Census) never received their ID documentation on various excuses, such as that they were not at home when the registrar called at their village, or that there were details or discrepancies which needed to be checked. Some, not many, might unwisely not have regarded the acquisition of an ID under the 1948 Act as a priority, but as persons resident in a border region most would have understood instinctively the importance of certification.

There is another aspect of the 1982 Law which merits attention. Article 6 of the Law reads that: “A person who is already a citizen on the date this Law comes into force is a citizen.” The explanation of this provision given in the April 1982 draft is that: “Under Article 145(b) of the (1974) Constitution, persons who are already citizens according to law on 3rd January 1974, the day the Constitution came into force, are citizens.” However because of the prevalence of forged IDs, it seems that the decision was taken that, exceptionally in Arakan, no new IDs would be issued to Muslims at all until their documentation had been checked, even in cases where valid IDs issued under either of the 1948 Acts were legitimately held. Elsewhere in Myanmar it would seem that the many thousands of “Chittagonians” who might claim to be Rohingya had little or no difficulty in exchange their old IDs for new IDs and thus continuing their full citizenship, including voting rights and access to State welfare and educational facilities. Although in 1960 some 300,000 out of 700,000 Ruhangyas/Rohingyas in Burma were said to live outside Arakan, it is noteworthy that neither the 1982 Citizenship Law nor the 2014 Census would appear to have affected them and their descendants detrimentally.

There is yet another issue which may not be widely understood. Although much attention has been paid to the provision in Article 3 of the 1982 Law (paralleling a similar article in the 1948 Act) that: “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. are Burma citizens”, this does not mean that membership of one of these races - an illustrative and not a definitive list - is essential for eventual full citizenship. The Law makes clear in Article 7, and General Ne Win confirmed this in his 8 October 1982 speech, that the third generation (the first generation only resident, the next two actually born in Burma) of descendants of both associate and naturalised Citizens would indeed become full citizens, regardless of their race or ethnicity. In other

words, any problems affecting the granting of less than full citizenship through “associate” and “naturalised” status would largely disappear with the arrival of the third generation who would be full citizens. The transitional nature of such arrangements merits recognition.

It is not true to say, as is frequently alleged, that Arakan Muslims have been deliberately excluded by the 1982 Law from citizenship. At the time this Law came into force, the most recent list of officially recognised ethnicities was not the present list of 135 ethnicities which was first published only in 1990 but the list used for the 1973 Census which included several indigenous, even non-indigenous Muslim ethnicities, though not “Rohingya”. A critical test is surely whether “Rohingya” has ever been formally recorded as an ethnicity by the Myanmar authorities anywhere in the Burma Civil Code and as an option for use during any census held since independence in 1948. The answer is that this has never been the case, even though the term may on infrequent occasions have been used by persons in authority or even noted on isolated corporate (non-State) ID cards.

It is not so much the Law itself which is at fault as the failure to implement the Law in Rakhine State in a timely and responsible manner. This is indeed the primary cause of current tensions...

...On 11 July 2012 President Thein Sein met the then UN High Commissioner for Refugees António Guterres (now UN Secretary-General) and in a statement issued through the Presidential Office the following day, in the Burmese language only, we read:

“The President said that Bengalis came to Myanmar because the British colonialists invited them in prior to 1948, when Myanmar gained independence from Britain, to work in the agricultural sector. Some Bengalis settled here because it was convenient for them to do so, and according to Myanmar law, the third generation of those who arrived before 1948 can be granted Myanmar citizenship. He added that, if we look at the situation in Rakhine State, some people are the younger generation of Bengalis who arrived before 1948, but some are illegal immigrants claiming to be Rohingyas and this threatens the stability of the State. The Government has been looking seriously for a solution to this problem. The country will take responsibility for its native people, but it cannot accept illegal immigrant Rohingya in any way. So in the end the solution to the problem is to set up refugee camps for them so that UNHCR can look after them. If a third country accepts them, we will send them there.”

No official English version of this statement has appeared, and it was almost universally reported, inaccurately, that the President was telling the UN High Commissioner that all those who claimed to be Rohingya were illegal Bengali immigrants. The President was rather seeking to make the point that in his view the “Rohingya” designation had cross-border origins and that those claiming to be “Rohingya” could not claim to be pre-1948 legal migrants. The President also made it clear that Bengalis who had settled in Burma under British rule were legal migrants and that their descendants at the third generation could apply for citizenship. It seems possible, even likely, that pressure among Muslims in Arakan to use the designation

“Rohingya” in preference to several other “R” words mooted at the time indeed came from Mujahid rebel sources.

People of Islamic faith have indeed been in Arakan for a very long time. Even so, over 90% of the Muslim population of Arakan, whenever and however they arrived, are likely to have Bengali ancestry. Myanmar’s borders extend to over 6,150 kms. There are Malay, Karen, Mon, Shan, Kachin, Jingpaw, Yao, Naga and many other historical ethnic communities on both sides of Myanmar’s borders with Malaysia, Thailand, Laos, China, India and Bangladesh. The Bangladeshi position is that, despite the cultural, linguistic, ethnic and family ties between Bengal and Arakan, there are no, and never have been any historical, indigenous “Rohingya” communities on their side of the 270 km border with Myanmar, although other minor ethnic groups are to be found on both sides of the same border in the Chittagong and Arakan Hill Tracts, such as the Daignet, Maramagyi, Mro, Chakma and Mrama...

...It is not the objective of this chapter to suggest what needs to be done. But it is appropriate to draw attention to matters which are at the heart of the current repression and discrimination against the Rohingya community. These include in particular three issues, which are in the nature of broken promises, are all directly related to citizenship and affect a substantial majority of all those claiming to be Rohingya in Rakhine State:

- the guarantee in Article 6 of the 1982 Citizenship Law that no one would lose their citizenship already held prior to the enactment of the Law;
- the assurance given by President Thein Sein on 11 July 2012 to the then United Nations High Commissioner for Refugee and now UN Secretary-General, António Guterres, that Myanmar accepts as Burmese citizens descendants of Bengali (Chittagonian) immigrants under British rule.
- The restoration of voting rights to all those Muslims in Arakan who were entitled to them from 1948 to 2015 when they were summarily disenfranchised.

The public recognition of these legal entitlements and the restoration of what are basic political and human rights are long overdue, especially when it is apparent that Muslims of the same heritage living elsewhere in Myanmar have lost none of these entitlements as a result of the 1982 Citizenship Law.