

## EXPLORING THE ISSUE OF CITIZENSHIP IN RAKHINE STATE

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### *Abstract*

There are over one million Muslims in Rakhine State whose legal status is obscure. They are generally referred to as "Rohingya", an ethnic designation unknown to the former British administration. Though the Rohingya are primarily located in the northern part of the State, there are many thousands, if not tens of thousands, of Muslims of Chittagonian origin living elsewhere in Myanmar who are likely to be inhibited from claiming openly to be Rohingya. There are in addition another million or more Rohingya said to be living overseas, as refugees in Bangladesh and elsewhere, or as workers in Saudi Arabia and other Gulf States.

For some time the international community has been urging the Myanmar Government to grant full citizenship rights to the Rohingya, and to review the controversial 1982 Citizenship Law in this context. But this is easier said than done as the extent of illegal immigration from Bangladesh into Rakhine State since independence in 1948 is difficult if not impossible to assess. I also argue that 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. The longer the Government delays action to resolve the impasse, the more entrenched and potentially explosive the situation is likely to become.

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Controversy surrounds the designation of some one million or more people of Islamic faith who live in Rakhine State in Myanmar. For some, this controversy is as unwelcome as it is unnecessary, since the issue at stake is the human rights, and especially the citizenship status of the people concerned. For others, the designation of the community as "Rohingya" is vital to their very survival and is not to be dismissed as a distraction.

The designation "Rohingya" is used, particularly by support organisations overseas, to refer to some reported three million or more Muslim residents and former residents of Rakhine State in Myanmar.<sup>1</sup> These numbers should however be treated with caution. Tens of thousands of former residents of Arakan are said to have sought sanctuary overseas from the early 1940s onwards, not only in what is today Bangladesh but as far afield as Saudi Arabia and the Gulf States. In Saudi Arabia alone there are reported to be some 300,000 or more "Rohingya"<sup>2</sup> longer term residents, though the Saudi authorities do not use this designation to describe them, and another 50,000 in the

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<sup>1</sup> It is often not clear whether communities accept the designation Rohingya by which they are described, nor whether self-identification as Rohingya is as voluntary as it might appear.

<sup>2</sup> See photographic essay at [https://www.flickr.com/photos/nayeem\\_kalam/sets/72157625071796986/](https://www.flickr.com/photos/nayeem_kalam/sets/72157625071796986/)

United Arab Emirates.<sup>3</sup> The precise origins of many of these people must however be suspect as some are known to have travelled on restricted Bangladeshi and Pakistani passports.<sup>4</sup>

In recent years the flow of refugees out of Rakhine State has continued. The United Nations High Commissioner for Refugees (UNHCR) has reported<sup>5</sup> that:

“Bangladesh has experienced two influxes of refugees from Myanmar, the first in 1978 and the second in 1991-92. Around 250,000 people were involved both times. Both influxes were followed by large-scale repatriation exercises whose voluntariness was seriously questioned. Some of those who were repatriated subsequently fled again to Bangladesh, but many were unable to recover their former and government-acknowledged refugee status.”

There are currently thought to be some 200,000 undocumented cases of Rohingya refugees in Bangladesh, as well as some 32,975 documented cases (2015 count) from the 1991-92 exodus in two UNHCR assisted government camps and another exodus of several thousands in the wake of insurgent attacks in October 2016. A further mass exodus of over 600,000 has taken place in late August/early September 2017. In recent years, other Rohingya have sought sanctuary in Malaysia, Thailand, Indonesia, Pakistan and India. Since the communal violence of July 2012, some 120,000 are estimated to have fled by boat to Malaysia and Indonesia.

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 19<sup>th</sup> and 20<sup>th</sup> 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.<sup>6</sup> The small majority of Muslims<sup>7</sup> who live

<sup>3</sup> <http://www.kaladanpress.org/index.php/seminar-and-event-mainmenu-38/61-the-first-rohingya-consultation-in-bangkok-2006/752-the-situation-of-rohingya-in-uae.html>

<sup>4</sup> A letter ref. 020/16/49 of 28 February 1949 from the British Embassy in Rangoon to the British High Commission in Karachi reported that “from information available it seems likely that the number of Muslims in the whole of Akyab District [present-day Sittwe, Mrauk-U and Maungdaw Districts combined] may be something like 200-250,000” and that a UK Foreign Office estimate for the number of Muslims in the Maungdaw-Buthidaung area alone was about 100-120,000. The Scotsman special correspondent Michael Davidson in a despatch from Akyab (Sittwe) published on 18 May 1949 noted that: “The great majority of Arakan Muslims are said to be Pakistanis from Chittagong, even if they have settled here for a generation. Of the 130,000 Muslims here, 80,000 are still Pakistani citizens.” The 1931 census estimate of 250,000 Muslims in Arakan under British rule was generally accepted by the Muslim Council of North Arakan in an Address on 25 October 1948 to Prime Minister U Nu – see later.

<sup>5</sup> <http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=4ee754c19&query=rohingya>

<sup>6</sup> The Guardian 3 August 1960 – news report “Ruhangyas against Statehood”

<sup>7</sup> The 2014 Census Volume 2-C released in July 2016 lists the total enumerated population at 50,279,900 of whom 1,147,495 were Muslim, or 2.28% of this total. This included Kaman and other Muslim persons in Rakhine State. An estimated 1,090,000 Muslims in Rakhine State who wished to be enumerated as “Rohingya” were not allowed to do so. The Census estimated the total population, enumerated and not enumerated, at 51,485,253, of whom 2,237,495 or 4.34% were Muslims.

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.

In this article, I consider primarily the position of those claiming to be Rohingya who live either in Rakhine State or who have a valid case to seek repatriation from elsewhere in South East Asia where they have sought refuge in recent years. Those who have been overseas for 30 years or more can have little prospect of ever returning to Myanmar. So the total number under consideration might be as high as 1.5 million, but at least one-third of this number could be illegal immigrants into Arakan from East Pakistan/Bangladesh since 1948 and by now impossible to identify as such as they would have long ago destroyed any Bengali documentation about their origins, and are by now indistinguishable from longer-term residents.

### ***The Rohingya designation***

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<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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,

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<sup>8</sup> The context could imply that the meeting was in Amarapura, though this is not explicitly stated. The full single-sentence paragraph reads: "The first [Hindustani-derived dialect] is that spoken by the *Mohammedans* who have long been settled in *Arakan*, and who call themselves *Rooinga*, or natives of *Arakan*". It is however possible that the 50-word *Rooinga* vocabulary provided in the article may not have been wholly garnered in Amarapura, but may have been completed on Buchanan's return to India. Buchanan does not give in his article the sources of his vocabulary, though he does in most other cases.

<sup>9</sup> Records I investigated included British census reports between 1826 and 1948. I have not yet been able so far to track down the original annual 'capitation-tax' censuses which were carried out jointly by revenue officers and local officials, in the case of Arakan from 1829 onwards. However extracts from these annual records are available in other documents. I have been impressed by the detail, clarity and intellectual integrity of the full censuses held in 1872, 1881, 1891, 1901, 1911, 1921 and 1931. I also found other reports from the British era of invaluable assistance, including local and national gazetteers and official as well as private papers and correspondence and personal reminiscences.

<sup>10</sup> There are isolated references in encyclopaedias and other reference works published during the 19<sup>th</sup> Century to Buchanan's account, but none of these references is a new or independent source.

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 Rooinga 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 19<sup>th</sup> and 20<sup>th</sup> Centuries.

Financial Secretary James Baxter noted in his 1941 Report on Indian Immigration that in Akyab District (present-day Sittwe, Mrauk-U and Maungdaw Districts combined) no less than "79% of the Indian population was born in Burma, evidence of the presence of a large and established Chittagonian agricultural community". Tables in his report show that as many as 82.43% of all 186,327 Chittagonians and 15,586 Bengalis recorded in the 1931 Census as living in Akyab District gave Burma as their place of birth. The 1931 Census shows that Chittagonian migrants from Bengal outnumbered Muslims in Arakan identified as indigenous by about four to one.<sup>11</sup> The figures

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<sup>11</sup> This ratio is disputed by some who argue that the British could not distinguish between the descendants of indigenous and immigrant families. However, as Moshe Yegar observes in a footnote on page 95 of his highly respected 1972 publication “The Muslims of Burma” (Yegar, 1972): “According to the 1931 census, there were 130,524 Muslims in the regions of Maungdaw and Buthidaung. A significant section of these were not Arakanese Muslims, called Rohingya (see above page 25) – but Chittagongs who came from Bengal with the annual stream of immigrating cheap labour brought by landowners and merchants. Many

recorded in the Census are that in Arakan migrant British-era Chittagonians and their descendants numbered 186,327 and other immigrant British-era Bengalis and their descendants 15,585, a total of 201,912, while the descendants of quasi-indigenous (that is, pre-1823) settlers (Yakhain-kala, Kaman, Myedu, Zerbaidis etc.) numbered only 56,963.

Charney (1999, 264) in his seminal 1999 dissertation,<sup>12</sup> noted "the surprisingly low percentage of Muslims (twenty per cent) in the Arakan Littoral found by the British at the close of Burman rule".<sup>13</sup> The first properly conducted peace-time census for the capitation tax in 1829 assessed the population of Arakan at 121,288 by which time many of those, both Muslims and Buddhists, who had sought refuge in Bengal during Burman rule, had returned home. By 1832 the population had risen to 195,107 and by 1842 to 246,766. The Rev GS Comstock (1847) recorded that the 1842 Annual Census estimated the population at the time at some 257,000. "Of these about 167,000 were Mugs [Rakhine], 40,000 are Burmese, 20,000 are Mussulmans, 5,000 are Bengalese, 3,000 are Toungmroos, 2,000 are Kemees, 1,250 are Karens and the remainder are of various races, in smaller numbers and sundry other ethnic groups." This would indicate an 8 to 1 ratio of Buddhists (Rakhine and Burmese) to Muslims in Arakan as a whole.<sup>14</sup>

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,<sup>15</sup> "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 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

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of them remained and settled in Arakan". It should be added that the 1881 Census noted 113,557 Indians resident in Arakan of whom 71,104, or 62.6%, declared that they were born in India and so mostly came to Arakan during British rule, that is, after 1824. The extent of Chittagonian penetration into Arakan is further examined by Yegar in his later study (Yegar, 2002, Pages 27-28 and Appendix B).

<sup>12</sup> <http://www.scribd.com/doc/97188422/Where-Jambudipa-and-Islamdom-Converged-Religious-Change-and-the-Emergence-of-Buddhist-Communalism-in-Early-Modern-Arakan-15th-19th-Centuries-by-Mic>

<sup>13</sup> In Volume XVI of "Asiatic Researches" of 1828, Charles Paton, Sub-Commissioner in Aracan, recorded on page 372 that: "The population of *Aracan* and its dependencies (sic), *Ramree*, *Cheduba* and *Sandoway*, does not, at present, exceed a hundred thousand souls, and may be classed as follows: Mugs [Rakhine], six-tenths, Musselmans, three-tenths, Burmese, one-tenth : Total 100,000 souls".

<sup>14</sup> Lt. Phayre estimated "the present *Kola* (foreign) population.....[at] about 15% of the whole population" of Arakan – *Account of Arakan*, Journal of the Asiatic Society, Page 681, No. 117 of 1841. *Kola/Kala* includes both Muslim and Hindus.

<sup>15</sup> <https://archive.org/details/burmapastandpre02fytcgoog>

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).<sup>16</sup> But the ratio had fallen to less than 2 to 1.

According to the 2014 Census <sup>17</sup>, there was a population estimated at 3,188,807 in Arakan, of whom 1,118,731 were Muslim, or 35.08%. These figures include an estimate of some 1,090,000 who declined to be enumerated because they could not be recorded as Rohingya. <sup>18</sup>

### ***1948: The Start of the Citizenship Dilemma***

The Japanese invasion of Burma brought massive inter-communal violence which saw the flight in 1942 of most Muslims in southern Arakan to the north, or into Bengal itself, and of most Buddhists to the south (see for example Leider, this volume). By the time of independence in 1948, Arakan was in a state of ferment. There was however no doubt about the Burmese citizenship of Muslims in Arakan after independence. They qualified provided they belonged to an indigenous group like the Yakaing-kala (in English “Arakan-Muslim”), Myedu, Kaman and Zerbadi (from 1941 renamed “Burmese Muslim”), tracing roots back before the British invasion in 1823; or provided they could trace family history back at least three generations even if they arrived in Arakan after 1823;<sup>19</sup> or provided their application for naturalisation, based on a minimum 5 years’ residence, was approved; or finally provided that they had been resident, like some later Chittagonian immigrants, for 8 years out of 10 prior to 1 January 1942 (the time of the Japanese invasion) or 4 January 1948 (Independence Day). The relevant texts are the 1947 Constitution, the 1948 Union Citizenship Act (for ‘indigenous’ and third generation residents as well as applicants for naturalisation) and the 1948 Union Citizenship (Election) Act (for those eligible to elect for citizenship by 30 April 1950 by reason of 8 out of 10 years’ residence). <sup>20</sup>

Only indigenous residents were automatically citizens. All others had to make application. That indigenous (“pre-1823”) groups included the Muslim groups mentioned above is confirmed in the list of 144 ethnicities approved for the 1973

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<sup>17</sup> [http://myanmar.unfpa.org/sites/default/files/pub-pdf/UNION\\_2-C\\_religion\\_EN\\_0.pdf](http://myanmar.unfpa.org/sites/default/files/pub-pdf/UNION_2-C_religion_EN_0.pdf)

<sup>18</sup> See Note 7.

<sup>19</sup> Section 4 (2) of the 1948 Citizenship Act: Citizens include: “Any person 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 of such territories shall be deemed to be a citizen of the Union.”

<sup>20</sup> In the 1921 and 1931 Censuses, the indigenous Muslim groups in Arakan were classified as “Indo-Burman” which thereby recognised both their Indian and Burmese heritage, while the 19<sup>th</sup> and 20<sup>th</sup> Century migrants from Bengal were classified as “Indian”.

Census <sup>21</sup> which classified them as Rakhine-Chittagong, Rakhine Kaman, Burmese Muslim, Other Burmese Indian, Burmese Chinese and Myedu.

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 19<sup>th</sup> and 20<sup>th</sup> 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 (see e.g. Amrith 2013)?

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.<sup>22</sup> More pointedly, on 18 June 1948 the President of the Council, Sultan Ahmed, in a Memorandum to the Burmese Government <sup>23</sup> 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.<sup>24</sup>

“Burmese Muslims” was, Sultan Ahmed recalled, a term which the former British administration had approved in 1941 at the request of community representatives of those who had previously been designated “Zerbadis”, a designation applied mostly to Muslims of mixed race or parentage, though other explanations exist.<sup>25</sup> Sultan Ahmed also recalled in his Memorandum <sup>26</sup> that:

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<sup>21</sup> Instruction Book “How to fill up the Census Form” issued by the Immigration and Manpower Department on 9 December 1972 for the 1973 Census

<sup>22</sup> Letter dated 24 February 1947 signed by all members of the Jamiatul-ulama North Arakan to the Hon. A.G. Bottomley.

<sup>23</sup> Text in Volume 1 Issue No 6 of “Arakan” - News and Analysis of the Arakan Rohingya National Organisation June 2009

<sup>24</sup> When the designation “Rohingya” eventually came into use, according to Brig Gen Aung Gyi writing in 1992: “Specifically, the Rohingya leaders asked us not to call the Rohingya (pejorative terms such as) ‘Khaw Taw’, nor ‘Bengali’, nor ‘Chittagonian Kalar’ nor ‘Arakan Muslims’.” -

<http://www.dvb.no/analysis/suu-kyi-govt-must-not-continue-state-persecution-of-rohingya/60196>

<sup>25</sup> See for example the explanation of “Zairbaidis” on Page 111 of the 1901 Census Report

<sup>26</sup> This report is probably apocryphal, in the sense that it has not been formally recorded in any parliamentary assembly or committee proceedings, though the content is credible. Sao Shwe Thaik, a Shan Sawbwa, would not however have wished to include later settlers from Chittagong who were not third generation residents, though such persons were entitled, if eligible, to elect for citizenship or to apply for naturalisation.

“When Section 11 of the Constitution of the Union of Burma was being framed, a doubt as to whether the Muslims of North Arakan fell under the section sub-clauses (i) (ii) and (iii), arose and in effect an objection was put in to have the doubt cleared in respect of the term ‘indigenous’ as used in the constitution, but it was withdrawn on the understanding and assurance of the President of the Constituent Assembly, at present His Excellency the President of the Union of Burma (Sao Shwe Thaik), who when approached for clarification with this question, said, ‘Muslims of Arakan certainly belong to one of the indigenous races of Burma which you represent. In fact there is no pure indigenous race in Burma, and that if you do not belong to indigenous races of Burma, we also cannot be taken an indigenous races of Burma’. Being satisfied with his kind explanation, the objection put in was withdrawn.”

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....”<sup>27</sup>

In a despatch dated 22 December 1949 to the Foreign Secretary, Ernest Bevin, on the Muslim insurrection, British Ambassador James Bowker reported that:<sup>28</sup>

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<sup>27</sup> This archaic dialect, most probably based on the 17<sup>th</sup> Century Chittagonian Bangla dialect interlaced with non-Bengali words and phrases, was indeed spoken by those enumerated as “Arakan-Muslims” or “Yakaing-kala” by the British and was recorded by Francis Buchanan in 1795. Moshe Yegar states (Yegar, 1972) that the dialect “was a mixture of Bengali, Urdu and Arakanese” which is more credible than the mish-mash of Arabic, Persian, Urdu, Arakanese, and Bengali claimed by Rohingya ideologues. Although Yegar stated that “poets and writers wrote in Persian and Arabic or in the mixed language Rohingya [sic]”, there is no evidence that this ancient patois ever had a written form in any script. It is not the dialect of most Muslims in Rakhine State today which is much closer to the Chittagonian dialect. In claiming that this was the *lingua franca* of the Muslim population generally, the Council could already have taken a conscious decision to deny the Indian roots of the population and to cloak everyone protectively in an indigenous minority Muslim culture. In his Memorandum “The Mujahid Revolt in Arakan” of 31 December 1952, Foreign Office historian Professor Bertie R Pearn wrote that the Council was “largely composed of *Rwangyas*”, including the Members of Parliament for Maungdaw and Buthidaung - Council Members Sultan Ahmed and Abdul Gaffar were at the time Members of Parliament for Maungdaw (North) and Buthidaung (North) respectively.

<sup>28</sup> “Rwangya” is a word whose etymology was at one time thought to be related to the words “rwam” and “kya”, meaning “in-between”, according to Foreign Office historical advisor Professor Bertie Pearn in an



“.....publicity has been given to protestations of loyalty to the Union Government made to U Aung Zan Wai <sup>29</sup> on his visit in October by the 'Rwangya' Community (Arakanese as opposed to Chittagonian Muslims); it is doubtful whether these represent the true feelings of more than a small fraction of the North Arakan Muslims.”

Soon after, the settled “Chittagonians” also felt that they no longer wished to be designated by the name used in British censuses and cloaked themselves in the "Rwangya" mantle as well.<sup>30</sup> Thompson and Adloff (1955) wrote:

“The postwar illegal immigration of Chittagonians into that area (Arakan) was on a vast scale, and in the Maungdaw and Buthidaung areas they replaced the Arakanese.....The newcomers were called Mujahids (crusaders), in contrast to the Rwangya or settled Chittagonian population, and though they were economic differences between them, both groups were Muslims and together came to outnumber the Arakanese Buddhists.”<sup>31</sup>

In Bengal, a number of "Rwangya" (*aka* "Rawangya") support groups had indeed emerged, and the cross-border origins of and support given to the Mujahid rebellion were no secret. Van Schendel (2001) referred to the "All-Burma Rwangya Refugee Organisation (East Pakistan)" at the border settlement of Nhila which had in 1951 sought the support of the Burmese Consul to introduce a "permit system to facilitate their going to Burma for earning their bread".

### ***The Search for a Better Designation***

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.<sup>32</sup> The Rakhine scholar Khin Maung Saw has also

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internal Foreign Office memorandum “The Mujahid Revolt in Arakan” Bur/24/52 dated 31 December 1952. A less complicated explanation is that “Rwangya” is but another version of “Rooinga”, used by the same community of indigenous Arakan Muslims whom Francis Buchanan met in 1795. In the 1931 Census, some 51,612 Arakan-Muslims *aka* Yakaing-kala *aka* (later) Rwangya were recorded as living in Akyab District compared with 186,327 Chittagonians and 15,586 Bengalis. Buchanan noted that both “the Mohammedans long settled in *Arakan*” and “the *Hindus of Arakan*”, by the real natives of *Arakan*, are called *Kulaw Yakain* or stranger *Arakan*.” That is, they were regarded by Rakhine Buddhists as settlers from India, not indigenous.

<sup>29</sup> Minority Affairs Minister, himself a Rakhine Buddhist.

<sup>30</sup> In June 1978 the US Embassy in Rangoon still classified Rakhine refugees in Bangladesh as “Chittagonian” - [https://search.wikileaks.org/plusd/cables/1978RANGOO02140\\_d.html](https://search.wikileaks.org/plusd/cables/1978RANGOO02140_d.html)

<sup>31</sup> It is possible that the authors were using the term “settled Chittagonians” to refer primarily to Bengalis settled in Arakan prior to the Burmese invasion of 1785, that is the “Rwangya”, rather than to those who arrived during British rule and by 1955 could also reasonably be regarded as “settled”.

<sup>32</sup> The Bengali word for Arakan is “Rohang” with variants noted by Francis Buchanan in his 1798 account of his journey in Southeast Bengal such as: “Rossawn, Rohhawn, Roang, Reng or Rung for by all these names is Arakan called by the Bengalese” (van Schendel, 1992).

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 8<sup>th</sup> Century on Ramree Island).<sup>33</sup> The above list of Muslim and Rakhine references, though, is by no means exhaustive. Controversy exists about when the first reference to “Rohingya” was made. This is most recently attributed to Abdul Gaffar, Member of Parliament for Buthidaung, in a letter dated 20 November 1948<sup>34</sup> to the Minister of Home Affairs, but I have seen no original text and doubt that “Rohingya” was the word actually used, more probably “Rwangya” which was then current, though both words could be etymologically related.

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.

Calls for unity among the Muslim population of Arakan were a particular theme in the 1960s. Writing in the “Guardian Magazine” of August 1960 on the need for understanding in Arakan between Buddhists and Muslims, Mohammed Akram Ali was moved to say:

“I feel very sorry to mention that there is also a lack of unity among the Arakanese Muslims themselves. The main causes of the disruption of unity among them are racial and sectional prejudices. Some of them style themselves as Rowengyas while others call themselves Kamans and yet others Chittagonian descendants etc..... Some of them have a deep-seated sense of localism and therefore take pride in their birth places, such as Maungdaw, Buthidaung, Akyab, Mrohaung, Kyaukpyu, Sandoway. If we go on in this way, I can say with certainty that we will not be able to achieve any good work, nor will we be able to get unity among ourselves. I should therefore like to request my people that they should forget the past and make their future bright by sinking their racial differences.”

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<sup>33</sup> See for example Khin Maung Saw : “Arakan a Neglected Land and her Voiceless People” and “Behind the Mask - The Truth behind the Name “Rohingya”: both books published in Yangon 2016

<sup>34</sup> Posting on the Facebook of the Ministry of Religious Affairs and Culture on 12 December 1948

The writer however makes no mention of "Rohingya". That designation had scarcely come on to the radar-screen. It was to make its most important appearance the following year. The (Rangoon) Guardian recorded the surrender of Mujahid insurgents at formal ceremonies at Maungdaw, Mayu Frontier District, Rakhine State, on 4 July and 15 November 1961. The ceremonies were presided over by the Vice-Chief of the General Staff, Brigadier (later Brigadier General) Aung Gyi. At the ceremony on 4 July 1961, The Guardian reported under the headline "Rohinja (sic) is one of the minorities of the Union and Rohinjas must be loyal":

“The VCGS (Brigadier Aung Gyi) pointed out that like all other minorities such as Nagas, Shans, Yingphaws, Lisus, people of Chinese origin in Kokang and others who live on both sides of the 2,000 mile long frontier, there are people of Chittagonian origin living on both sides of the border. As Lisus on the Burmese side of the frontier is taken as Burmese citizens, similar status applies to the Rohinjas who have been residing on Burmese side of the border for generations. But those minorities must be loyal to the Union, Brigadier Aung Gyi emphasized...”

I should add that I am intrigued by the arguments of one “Abu Anin” (the pseudonym, I understand, of the Rohingya politician U Kyaw Min) who in 2009 wrote as “a scholar of Arakan history” that:

“Here as people of Chittagong are called Chatghannya, so do people of Rohang are called Rohangya. It is very comprehensive from linguistic point of view of Bengali language.....

“Rohingya classified the Rakhine as Rohingya Magh and Anaukiya Magh, which means Rakhine from Arakan and Rakhine from Anouk Pyi (Bengal). So here Rohingya means settlers of Rohang alias Arakan. Thus Rohingya is synonymous to Arakanese.....

“In fact, all the native peoples in ancient Arakan were called Rohingya disregard [regardless] of their faith just as all the people of Burmese extraction in Arakan have been called ‘Rakhine Thar’ by Burmans.”<sup>35</sup>

According to this interpretation, Rohingya/Rohangya/Rwangya/Rooinga means, as I have already concluded above, no more than “Arakaner” in Bengali-related languages and applies to all permanent residents of Arakan, whatever their race or ethnicity.<sup>36</sup>

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<sup>35</sup> A study on the issue of ethnicity in Arakan: Abu Anin - 2009, first published in November 2002: <https://merhrom.wordpress.com/2009/03/04/towards-understanding-arakan-history-part-i/> .

<sup>36</sup> Contemporary concerns that Chittagonian migrants were usurping the Rooinga/Rohingya label may be found in a 1954 article by U Thaung Myine, an AFPFL historian, at <http://www.networkmyanmar.org/ESW/Files/Guardian-ASMI.pdf>, a 1961 article by Seit Twe Maung, a Rakhine writer, at <http://web.archive.org/web/20160501110918/http://www.networkmyanmar.org/images/stories/PDF20/Rohengya-Affairs.pdf> and a 1964 article by Tha Thu at <http://www.networkmyanmar.org/ESW/Files/Tha-Thu-Akyab.pdf>

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<sup>37</sup> 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.”

We can debate the extent of this illegal migration between 1948 and 1978, but it may be doubted whether it significantly exceeded 15% of the total population. This might be inferred from a report by the West German Ambassador to Pakistan on General Ne Win’s return visit to Pakistan a few weeks later, Günther Scholl told the Auswärtiges Amt in Bonn:<sup>38</sup>

“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...”

What percentage of these Muslims did not possess Burmese nationality is impossible to say, and the Ambassador was reporting of course not from Rangoon, but from Dacca.

The flow of illegal migrants continued, notably at the time of the creation of Bangladesh in 1971. By December 1975 the British Ambassador had recorded a conversation with his Bangladeshi colleague in which this matter had come up:<sup>39</sup>

“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<sup>40</sup> and had been pleased that the Burmese had not taken advantage of his country's

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<sup>37</sup> I was Burma Desk Officer in the Foreign Office at the time and processed the despatch on receipt in London.

<sup>38</sup> Federal German Ambassador to Pakistan Günther Scholl reporting from Karachi in his letter (German original) dated 22 February 1965 to the Auswärtiges Amt on the visit to Pakistan by General Ne Win, Chairman of the Revolutionary Council: 12 - 19 February 1965. German origin. <http://networkmyanmar.org/ESW/Files/Karachi-Scholl-1965.pdf>

<sup>39</sup> National Archives: Folio 35 on File FCO 15/2041. Extract from record by UK Ambassador Terence J O'Brien of his call in Rangoon on the Bangladesh Ambassador to Burma Khwaja Mohammed Kaiser on 23 December 1975.

<sup>40</sup> The military coups of August and November 1975.

misfortunes in this respect. He denied that there had been any fresh exodus into Burma.”

It is however to be doubted that this figure of over 500,000 really represents any realistic figure of the number of illegal migrants. Indeed, it is more than likely that Ambassador O’Brien misunderstood or mistakenly recorded what his Bangladeshi colleague was saying, since this figure broadly represents the total number of non-Kaman Muslims in Arakan at the time and among whom there were doubtless numerous illegal trespassers.<sup>41</sup>

Even so, concerns were sufficiently high that the Burmese Government decided to carry out a process of citizenship verification in the border regions. Operation Naga Min (“Dragon King”) was accordingly launched in late 1977. This passed off without trouble in the Karen, Mon, Shan and Kachin States, but in Arakan the campaign initiated in Sittwe in early 1978 led to the early deportation of over 1,250 illegal migrants. The heavy-handed action of local police and officials caused consternation among the local Muslim population further north, and within a matter of days the headlong flight began into Bangladesh of the mostly rural populations from Maungdaw and Buthidaung townships.

There is no reliable evidence however that this flight was deliberately instigated by the Burmese authorities. The view among UN and diplomatic observers at the time was that there may even have been a measure of Muslim instigation for political reasons. Whatever the case, whole villages decamped in a display of what UN Development Programme Director for Bangladesh Zagorin described in May 1978 as “mass hysteria”,<sup>42</sup> inspired perhaps by memories of the communal savagery of 1942. The US Embassy in Rangoon typically<sup>43</sup> reported on 14 June 1978:<sup>44</sup>

“At dinner on June 13, the Ambassador discussed Burmese-Bangladeshi issues with the British, Australian, West German and Malaysian Ambassadors. To a man the other diplomats agreed that on the basis of their information the Bangladesh charges (of deliberate expulsion) appeared to be considerably exaggerated and inconsistent. They also noted that journalists.....saw normally functioning Muslim villages in the Arakan which were not being harassed by GUB (Government of Burma) authorities.....We remain sceptical that the GUB has embarked on a systematic campaign to drive Muslims of Chittagonian ancestry from the Arakan or that the refugee-alleged atrocities have occurred.”

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<sup>41</sup> The 1983 Census records the presence of only 497,208 “Bangladeshis” in Arakan, a figure which clearly represents the majority of non-Kaman Muslims resident in Arakan; “upward of ½ million” in 1975 would be compatible with the data in the 1983 Census.

<sup>42</sup> US Embassy Dacca [https://search.wikileaks.org/plusd/cables/1978Dacca02901\\_d.html](https://search.wikileaks.org/plusd/cables/1978Dacca02901_d.html)

<sup>43</sup> For a comprehensive account of these events, see Fleischmann 1981 “Vorgeschichte und Folgen des Flüchtlingsstroms von 1978” Hamburg 1981. Fleischmann himself concluded (translated from the German original) that: “From everything that we know about this operation, there is nothing to suggest that an expulsion of all Muslims from Arakan was planned”.

<sup>44</sup> US Embassy Rangoon [https://search.wikileaks.org/plusd/cables/1978RANGOO02140\\_d.html](https://search.wikileaks.org/plusd/cables/1978RANGOO02140_d.html) - “Chittagonian Refugees from Arakan State.” US, British, Australian and UN reports at the time contain no references to “Rohingya”.

Some 170,000 out of an estimated 200,000 refugees who had fled to Bangladesh were eventually repatriated under Agreements concluded in Dacca on 10 July 1978<sup>45</sup> and Maungdaw on 10 October 1978<sup>46</sup>. British Ambassador Charles Booth reported the history and outcome of these events in a despatch to London dated 3 July 1979.<sup>47</sup> The Ambassador noted in his despatch that some 65% of all returnees held National Registration Cards (NRCs) issued under the authority of the 1948 Citizenship Acts or Foreign Registration Cards. It was however widely suspected that some NRCs had been improperly obtained and that others may well have been forgeries.<sup>48</sup> The Ambassador's Bangladeshi colleague Zaniruddin had already confirmed in February 1979<sup>49</sup> that NRC holders amounted to 105-110,000 and FRC holders to "some 3,000 at the most".

### ***The 1982 Citizenship Law***

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.<sup>50</sup> A draft of the proposed legislation was finally published on 21 April 1982.<sup>51</sup> In a report to the Foreign and Commonwealth Office in May 1982<sup>52</sup> 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:

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<sup>45</sup> Transcript at <http://dataspace.princeton.edu/jspui/handle/88435/dsp01th83kz538>.

<sup>46</sup> Main provisions reported in *The Guardian (Rangoon)* of 11 October 1978.

<sup>47</sup> Despatch dated 3 July 1979 from British Ambassador Charles Booth reference 020/1 on FCO 15/2468.

<sup>48</sup> The Final Report of the Inquiry Commission on Sectarian Violence in Rakhine State issued on 8 July 2013 put the number of returnees at 31,505 families comprising 186,968 persons, though according to the Inquiry Commission's figures only 25,905 families comprising 156,630 persons had actually left Arakan in the first place.

<sup>49</sup> Letter of 6 February 1979 Charles Booth to South-East Asian Department reference 020/1 on FCO 15/2468

<sup>50</sup> See Fleischmann 1981 Pages 194-196 for further details of the process of public and parliamentary consultation 1976-1981.

<sup>51</sup> Supplement to "The Guardian" of 21 April 1982

<sup>52</sup> Letter of 12 May 1982 to Robert Flower South East Asia Department on File FCO 15/3177- 1982

“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<sup>53</sup>, 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<sup>54</sup> shed considerable light on the intentions of the legislators. I would in particular quote one passage from General Ne Win’s address:<sup>55</sup>

“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.<sup>56</sup> 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

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<sup>53</sup> Text at <http://www.ibiblio.org/obl/docs/Citizenship%20Law.htm> and in Appendix.

<sup>54</sup> Text at [http://www.burmalibrary.org/docs6/Ne\\_Win's\\_speech\\_Oct-1982-Citizenship\\_Law.pdf](http://www.burmalibrary.org/docs6/Ne_Win's_speech_Oct-1982-Citizenship_Law.pdf)

<sup>55</sup> To my knowledge, the only associate citizenships awarded to date are those few hundred granted in the Myebon pilot scheme launched in June 2014.

<sup>56</sup> Although a late addition, it was foreshadowed in Ne Win’s reported statement (Fleischmann 1981 Page 195) in December 1979 to a BSPP Central Committee meeting that the new law should “define two different statuses for citizens of pure Burmese parentage and for those with mixed blood as well as for the third category of naturalized citizens – foreigners who settled down in Burma”.

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)<sup>57</sup> 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 (whose provisions are well summarized in Nurul Islam’s contribution to this volume and are accordingly not repeated here) 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 Rohingyas/Rohingyas in Burma were said to live outside Arakan (see Footnote 6), 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

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<sup>57</sup> See Footnote 15.



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.<sup>58</sup> 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.<sup>59</sup> The transitional nature of such arrangements merits recognition.<sup>60</sup>

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<sup>61</sup> 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<sup>62</sup> or even noted for identification purposes only on a very few corporate (non-State) ID cards, but never on NRCs which recorded citizenship status.<sup>63</sup>

It does not appear that the 1973 list<sup>64</sup> was used for the 1983 Census, but what list if any was used is not apparent from the census returns in English which listed only the main ethnic groups.<sup>65</sup> Under the column “Race”, Muslims in Arakan were overwhelmingly listed as “Bangladeshi”, 497,208 in the State and 567,985 in the country altogether. “Bangladeshi” is not of course a “race”, but the intention presumably was to indicate that the persons so enumerated were of a race to be found historically in what is today

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<sup>58</sup> The principle of “third generation” eligibility is to be found not only in the 1948 Act and 1982 Law, but also in pronouncements made by senior ministers from time to time.

<sup>59</sup> Under the 1948 Citizenship Acts, citizens enjoyed exactly the same rights, whether citizenship was acquired through birth, ancestry, election or naturalisation. Under the 1982 Law, associate and naturalised citizens enjoy full citizen rights except as later stipulated by the Council of State. To date, I am not aware of any such stipulation. According to General Ne Win in his speech of 8 October 1982, “we will have to leave them out in matters involving the affairs of the country and the destiny of the State”.

<sup>60</sup> The Final Report of the Advisory Commission on Rakhine State chaired by Kofi Annan and published in August 2017 recommends on Page 31 “the abolition of distinctions between different types of citizens”. This is a counsel of perfection in Myanmar’s particular circumstances. The Report does not examine the provision for “associate citizenship”, only for “naturalised citizenship”.

<sup>61</sup> Loktha Pyithu Neizin (Working People’s Daily in Burmese) of 26 September 1990. See also analysis of the 135 national races at [https://en.wikipedia.org/wiki/List\\_of\\_ethnic\\_groups\\_in\\_Myanmar](https://en.wikipedia.org/wiki/List_of_ethnic_groups_in_Myanmar).

<sup>62</sup> See use of “Ruhingya” by U Nu in 1954 and of “Rohinja” by Brigadier Aung Gyi in 1961 analysed by Jacques Leider at <https://www.iseas.edu.sg/images/pdf/ASEANFocus%20Mar-Apr.pdf>.

<sup>63</sup> See <http://www.rohingyablogger.com/2013/05/the-official-evidence-of-rohingya.html> by Maung Zarni.

<sup>64</sup> The 1973 Census records on Page 21 that 98.9% of all those enumerated were “Myanmar” citizens. This would include all Muslims in Arakan, apart from a very small number of foreigners. No comparable table is to be found in the 1983 Census.

<sup>65</sup> In his informative presentation: “A genealogy of *taingyintha*, Myanmar’s national races” at the Australian National University on 27 October 2015, Nick Cheesman noted that the Loktha Pyithu Neizin of 26 September 1990 stated that the 1983 Census used the list of the 135 national races. The article indeed rehearses the history of national races, but notes that the 1983 Census is the “final authority” for the list.

Bangladesh. As Robert Taylor has also pointed out <sup>66</sup> “the confusion over ethnicity and race in Myanmar is compounded by the fact that one word, ‘lumyo’, is normally used to express both concepts”. Finally, there is the provision in Article 8(a) of the 1982 Law that: “The Council of State may, in the interest of the State, confer on any person citizenship, or associate citizenship or naturalised citizenship.” This gives the Executive today the right to grant citizenship to anyone it chooses, whatever their race or ethnicity.

As both I and Nick Cheesman have shown, <sup>67</sup> whereas under the 1948 Act belonging to a “national race” was the least complicated path to citizenship, there were other channels. The 1982 Law however, as Cheesman writes, made “ethnic identity, which is to say, membership in a ‘national race’ category, the primary basis for citizenship”. Belonging to a “national race” became “the gold standard for membership in the political community ‘Myanmar’ and also a guarantee of membership.” Rohingya claims to membership however were rejected; the Rohingya ethnicity was not formally accepted in law as a pre-1823 indigenous identity. The political objective of achieving this had thus failed totally, despite broad uncritical acceptance of the designation internationally.

As “the law of each State primarily determines who are its nationals” <sup>68</sup>, and as a reasonable interpretation of the provisions of the 1982 Law discussed above gives the State the right to grant citizenship to all those Muslims in Rakhine State who meet certain basic criteria, and even to those who do not, frequent calls from the international community for “reviewing the 1982 Citizenship Law” <sup>69</sup> and related regulations <sup>70</sup> are in my view not altogether justified because they reveal an ignorance of the provisions of the Law itself.<sup>71</sup> As Cheesman has shown (Cheesman, 2017):

“..... the process of rendering stateless hundreds of thousands hitherto identified or self-identifying as Rohingya but now officially designated “Bengali” was not de jure but de facto. It was not achieved by complying with the terms of the Citizenship Law per se, even though the law’s contents were in their general intentions inimical to the interests of this population, but through their deliberate breach and selective application.”

Nyi Nyi Kyaw has also pointed out (Kyaw, 2017):

“It is a fact that they [Rohingya] were once citizens of Myanmar until the First Exodus occurred in 1978.....In this article I argue that the root cause of the chronic statelessness

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<sup>66</sup> “The Politics of Ethnicity in Myanmar Today” - ISEAS Perspective 12/2015 Footnote 1

<sup>67</sup> “Problems with Facts about Rohingya Statelessness” <http://www.e-ir.info/2015/12/08/problems-with-facts-about-rohingya-statelessness/> 8 December 2015.

<sup>68</sup> Anthony Aust “Handbook of International Law” Page 179 Cambridge UP 2005. It is generally agreed that by international custom each sovereign state has the right to determine who it will recognise as its nationals and citizens.

<sup>69</sup> Resolution of the Human Rights Council A/HRC/Res/29/21 of 22 July 2015

<sup>70</sup> Accessed 10 June 2017 at [http://www.networkmyanmar.org/ESW/Files/Citizenship\\_Rules\\_1983.pdf](http://www.networkmyanmar.org/ESW/Files/Citizenship_Rules_1983.pdf) .

<sup>71</sup> Surprisingly, on 20 January 2014 Baroness Warsi, the Senior Minister of State in the Foreign and Commonwealth Office told the House of Lords in response to a Question that: “The Burmese government view is that over 90% of the Rohingya will be eligible for citizenship under the existing 1982 law”. Hansard House of Lords 20 January 2014.

of the Rohingya lies more in the intentional failure to implement the law to citizenize or naturalize the Rohingya. I, therefore, highlight the fact that successive governments have intentionally left out the Rohingya from becoming citizens even under the discriminatory law.”

**It is indeed 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 the primary cause of current tensions.<sup>72</sup>**

### *Repercussions of Government Inaction on Citizenship Applications*

What had been lacking from 1948 to 1982 was the political will to tackle the problem of some two million residents<sup>73</sup> with foreign ancestry. Since 1982 the authorities have likewise shown no urgency or even serious interest in taking those measures needed to grant citizenship to Muslims in Rakhine State on the basis of the 1982 Law, to dispense with the impossibly strict level of documentary evidence currently demanded, and to cease the chicanery and obstructionism to which Muslims both as candidates and voters in the recent elections have been subject.

Insistence on use of the term “Rohingya” by their international backers has however made it difficult for the authorities to apply the Citizenship Law in a liberal and constructive manner, even if they had the political will to do so. Myanmar is a party to neither of the UN Conventions on Statelessness<sup>74</sup>, neither the 1954 Convention to which 83 countries have so far acceded, nor the 1961 Convention which has so far attracted 61 signatories from among the UN’s 193 Members. Nor has it yet acceded to the International Convention on Civil and Political Rights. Article 15 of the Universal Declaration of Human Rights adopted by the UN General Assembly in December 1948 however provides that: “Everyone has the right to a nationality” and that: “No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”.

Article 7 of the 1989 Convention of the Rights of the Child, to which Myanmar acceded in 1991, provides that:

“1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

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<sup>72</sup> In her report A/HRC/31/71 of 8 March 2016 to the Human Rights Council, Special Rapporteur Yanghee Lee nonetheless called in paragraph 82(c) for a review and the amendment of the 1982 Law “to bring it into line with international standards. In particular, remove any provisions that provide for the granting of citizenship on the basis of ethnicity or race.” This is a counsel of perfection, in that other nationality laws have similar provisions. China, for example, provides in paragraph 2 of its 1980 Nationality Law that: “Persons belonging to any of the nationalities in China shall have Chinese nationality.” Indeed, I doubt that there are any international standards in this context.

<sup>73</sup> Estimate by British Embassy in Rangoon. Letter from Chancery to the Foreign Office dated 21 January 1958 reference DB1821/1.

<sup>74</sup> <http://www.unhcr.org/pages/4a2535c3d.html>

“2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”

Myanmar may well be in breach of their Article 15 (1948) obligation through their prolonged delay in issuing new IDs under the 1982 Law and possibly also in breach of their Article 7 (1989) obligation through the alleged unwillingness of local authorities on occasions to register new Rohingya births, especially of the third or subsequent child in a family, though Myanmar has denied this allegation.<sup>75</sup>

Minister of Immigration and Population Khin Yi, when asked about the problem of “White Card” (temporary registration card) holders, told The Irrawaddy in February 2015: “This has not happened during our term. It was in 1990 when their NRCs were seized, as there were reports of people obtaining fake cards. We have now allowed them to reapply for citizenship. When they apply, we issue them the appropriate documents.....” The strong suggestion in the Minister’s remarks is that what happened from 1988 to 2011 when the country was under military rule is not the responsibility of subsequent administrations. This is not a satisfactory answer. Most “White Card” holders have waited over 25 years for their applications for new IDs to be considered. Some 800,000 cards were issued, mostly to Arakan Muslims, and a pilot citizenship verification process was for a time suspended.<sup>76</sup> As a result, many Rohingya have existed for far too long in a stateless limbo. “White Cards” have in any case been invalidated and those who have handed them in have received green-turquoise coloured receipts valid for only two years.<sup>77</sup> This happened in the context of the disenfranchisement of “White Card” holders prior to the elections held on 8 November 2015, which was for many Rohingya the last straw.<sup>78</sup>

The Myanmar authorities have viewed with some concern the transformation and coalescence of a rich historical kaleidoscope of Muslim communities in Arakan, encouraged by a vociferous and well-coordinated international lobby<sup>79</sup> and enhanced by substantial illegal emigration from Bengal, into a monolithic political community. The Rohingya narrative, which denies any significant immigration from Bengal, implies an astonishing, almost 100-fold natural increase in the Rohingya population in Arakan

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<sup>75</sup> On 14 March 2016 the Myanmar delegate to the interactive dialogue on Myanmar at the Human Rights Council described as “false information” reports by the UN Special Rapporteur Yanghee Lee “that couples in northern Rakhine State needed permission to marry and were limited to two children.”

<sup>76</sup> At a refugee camp in Myebon in Sittwe District, out of 1,280 applications only some 97 persons have reportedly received full citizenship (presumably as Kamans) and another 360 naturalisation as citizens.

<sup>77</sup> These receipts appear to have been followed by the issuing of what was described by the Presidential Office on 27 December 2016 as an “Identity Card for National Verification”. However, by 23 December 2016 only 6,077 such IDs had been issued out of 397,497 “White Cards” surrendered in Rakhine State, or about 60% only of the total issued in Rakhine State judged against 469,183 surrendered out of 759,672 issued throughout the country. Otherwise known as National Verification Cards (NVDs), they represent only the next stage in the process of citizenship recognition.

<sup>78</sup> Noted particularly by the International Crisis Group in their report of 15 December 2016 “Myanmar: A new Muslim insurgency in Rakhine State”: “Disenfranchisement prior to the 2015 elections severed the last link with politics and means of influence.”

<sup>79</sup> <http://www.bt.com.bn/2011/06/10/arakan-rohingya-union-aru-formed>

as a whole since the Rev. Comstock's recording of some 20,000 "Mussulmans" of 1842, and an increase since the end of the Second World War in Sittwe, Mrauk-U and Maungdaw Districts (former Akyab District) twice the rate of neighbouring East Pakistan/Bangladesh where the rate of natural increase is now declining. This is not credible unless the large-scale migration from Bengal into Arakan since 1948 is recognised.

### ***International Implications***

The United Nations and Western Governments are under pressure to accept the Rohingya identity. That is a political decision which only they can take. It is important though that their unqualified recognition of the Rohingya identity in Myanmar and overseas should not provide moral and political support to a highly questionable and pretentious narrative. Such an uncritical acceptance damages the prospects for reconciliation by further polarizing the Buddhist and Muslim communities.

British Ambassador Andrew Patrick in Myanmar made his own position clear when he said in an interview with Mizzima Business Weekly on 8 May 2014:

“Generally in the UK, and in Europe, ethnic groups are allowed to call themselves by the name they want to use, whether or not that name has any historic validity. Of course when we use it, that's not to say we're expecting some sort of special status or a recognition of the Rohingya as an ethnic group. That is for the Burmese parliament to decide.<sup>80</sup> What I would say, is that it's obviously very important for that community to have the rights they are entitled to. And the Government has made a commitment to ensure that everyone who is entitled to citizenship under the 1982 law gets that.”

The British Government itself, however, has been reluctant to provide such a nuanced clarification. The Ambassador would only state what he knows or believes to be the position of his Government. In this context, Western Governments surely have a responsibility to ensure that, if they use the designation "Rohingya" in their statements, they should also make it clear that this does not imply any recognition of the Rohingya as an ethnic group, nor any view about precisely who they are and where they might be living in Myanmar.

As Robert Taylor has also noted<sup>81</sup>, the Rohingya issue is not simply a Myanmar responsibility. There is an international dimension to the problem, and especially a Bangladeshi one. It is impossible to say just how many Bangladeshis have migrated illegally into Myanmar since 1948, but the number may run into tens if not hundreds of thousands. Yet in most cases even these illegal migrants have now been in Myanmar for 30 years or more, and so it is difficult to see, on a purely practical basis, how they could

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<sup>80</sup> The new NLD administration has already stated that they do not accept the "Rohingya" designation - <http://www.the-american-interest.com/2016/05/06/suu-kyi-kicks-the-rohingya/>

<sup>81</sup> [http://www.iseas.edu.sg/documents/publication/iseas\\_perspective\\_2015\\_12.pdf](http://www.iseas.edu.sg/documents/publication/iseas_perspective_2015_12.pdf)

now be forcibly removed to Bangladesh, especially as up to 200,000 Rohingya refugees currently in Bangladesh might reasonably claim repatriation to Myanmar.

The International Crisis Group (ICG) in “Myanmar: The Politics of Rakhine State” (2014) highlighted the dilemmas facing all parties, and the anxieties of both Buddhist Rakhine and Muslim Rohingya. ICG quote a Rohingya elder as saying: "The violence in 2012 changed the situation. Before the violence our Rohingya name was not something we thought about every day. Since the violence, everything has been stolen from us - now all we have left is our Rohingya identity. All of us are united on this." The ICG commented: "Rohingya leaders see defending their political identity as vital to gain Myanmar citizenship and ease discrimination and denial of rights. They see international use of the term as an important source of legitimacy and support for their rights."

It would make it much easier for the international community to promote this usage if the Rohingya lobby could at least try to explain, if indeed they know, how the designation emerged in the late 1950s, rather than proclaiming a dogmatic historical narrative which is scarcely credible and is based on an almost if not total absence of documentary sources.<sup>82</sup> Emerging ethnicities cannot reasonably be backdated many hundreds of years in support of a political agenda.

Many ordinary Rohingya people are fearful, impoverished, poorly educated and in many cases now unable to earn their traditional living as farmers and fishermen. But as the ICG report of last October noted: "Camp leaders have considerable coercive powers, and there is widespread fear, limiting the possibility for individuals to break with the political orthodoxy". Furthermore, as Crouch (2014) reported in *New Mandala* of 4 November 2014:

“Some religious leaders from the Indian Muslim community issued a fatwa (Islamic legal opinion) to their community members to instruct them on how to list their identity in the census. They emphasized that Muslims should not be afraid to list their religious identity on the census. Some Indian Muslim leaders even argued that it was haram (forbidden) for a Muslim to fail to list their religion on the census.”

Western Governments tend to lament that this problem over the designation "Rohingya" is a distraction. In August 2015 it was reported that US Secretary of State John Kerry had told Myanmar's leaders that the name issue should be set aside and that to force any community to accept a name they consider to be offensive is to invite conflict. Yet the matter of designation is of the very essence of the dispute and should not in my view be swept under the carpet. While Rohingya may well say they find it offensive to be called

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<sup>82</sup> It may also depend on whether you interpret Francis Buchanan's "Rooinga" as a geographic locator, as I do, or as an ethnicity.

"Bengalis", Rakhine Buddhists find it equally offensive that Rakhine Muslims should call themselves "Rohingya".<sup>83</sup>

### ***The Significance of the 2012 Statement by President Thein Sein to the UNHCR***

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:<sup>84</sup>

“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.<sup>85</sup> It seems possible, even likely, that pressure among

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<sup>83</sup> At a press conference with US Secretary of State John Kerry on 22 May 2016, Daw Aung San Suu Kyi made the same point: “There are two terms which are emotive, and we’ve got to face them fairly and squarely. The Rakhine Buddhists object to the term ‘Rohingya’, just as much as the Muslims object to the term Bengali, because these have all kinds of political and emotional implications which are unacceptable to the opposing parties.”

<sup>84</sup> Unofficial independent translation made at my request by news media in Yangon

<sup>85</sup> As indeed provided for in Article 4(2) of the 1948 Citizenship Act and Articles 23 and 42 of the 1982 Citizenship Law (for associate and naturalised citizenship respectively). The ‘Myanmar Times’ report of UNHCR’s press conference in Yangon on 12 July 2012 at <http://www.mmtimes.com/index.php/national-news/yangon/395-unhcr-seeks-true-community-reconciliation-in-rakhine-state.html> quotes Mr Guterres as observing that “.....it is important to say that it [Rohingya] is not the designation that the government of Myanmar uses for the population”.

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.<sup>86</sup>

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.

I have no reason to question the Bangladeshi position. But the only possible explanation I can offer for this quite remarkable state of affairs affecting what was for centuries one of the most porous borders in the region is that just as there are no historical ethnic “Rohingya” communities in Bangladesh, so there are no historical ethnic “Rohingya” communities on the Myanmar side of the border either. The Rohingya in Myanmar may well exist today, but they are not an indigenous community, otherwise they would be found in Bangladesh as well. In the words of Brigadier Aung Gyi in 1961, however, there are Chittagonians on both sides of the border, and Bangladesh would at least agree that there are Chittagonians on their side.<sup>87</sup>

Western governments are hoping that the new National League for Democracy (NLD) administration in Myanmar which took over at the end of March 2016 in the wake of the 8 November 2015 elections will seek to resolve the Rohingya citizenship issue as a matter of urgency.<sup>88</sup> It is fortunate that on 26 January 2016 the Joint Bill Committee of the Union Parliament voted by a narrow margin against the merger of the Ministry of Immigration and Population with the Ministry of Home Affairs. The Ministry of Home Affairs is a military sinecure, as are defence and border affairs. All three departments have been active historically in Rakhine State and are very influential there. The merger

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<sup>86</sup> Radio Free Asia - <http://www.rfa.org/english/news/rohingya-07122012185242.html> - was one of the very few media reports to highlight the distinction between Bengalis who arrived legally before independence and those who arrived illegally after independence.

<sup>87</sup> We should only expect Muslims permanently resident in Rakhine to describe themselves as “Arakaners” which in their dialect is “Rohingya”. Their ethnicity though is a different matter.

<sup>88</sup> In their report at <http://theconversation.com/myanmars-new-leaders-could-end-rohingya-conflict-by-tapping-into-reserves-of-goodwill-51465> dated 6 December 2015, Anthony Ware and Ronan Lee of Deakin University have shown that the desire exists among both Muslim and Rakhine communities in Rakhine State to resolve the predicament of the “Rohingya” community, provided only that the political will also exists to seek a solution. VOA quoting Rohan Lee on 28 December 2016: “What’s actually going on is that there is a difference of opinion as to which group of people should be allowed to use the name ‘Rohingya’. But then when you ask the Muslims how much do you believe that the name Rohingya is really, really important to your identity, their attitude was very much: ‘Look, we just want our rights and our citizenship - we want to be part of Myanmar - we have lived here for generations, we have a heritage here that goes back hundreds of years’.”



of Immigration and Population with Home Affairs would have removed citizenship matters from the NLD's orbit of responsibilities and created a serious problem.

The resolution of these complex issues will test the powers of negotiation and compromise of the civilian and military branches of the administration to the utmost. Recently the authorities resumed a citizenship verification project suspended before the elections. Although the NLD said soon after the elections that they did not see the Rakhine issue as a priority,<sup>89</sup> the new administration announced on 31 May 2016 a comprehensive initiative at the highest level: a "Central Committee" of 20 Cabinet Ministers chaired by State Counsellor Daw Aung San Suu Kyi, with four working groups on security and stability, immigration and citizenship, resettlement and socio-economic development, and cooperation with UN and international agencies. Since then the administration has agreed to the establishment of an Advisory Commission under the chairmanship of former UN Secretary-General Kofi Annan, but its international membership has aroused controversy. The insurgent attacks which began on 9 October 2016 are also under scrutiny by a government appointed Investigation Commission.

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.

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<sup>89</sup> NLD Spokesman U Win Htein said the Rohingya' Muslims' plight was not top of the agenda for his party. "We have other priorities. Peace, the peaceful transition of power, economic development and constitutional reform." The Telegraph 19 November 2015.

## **Appendix**

### **Burma Citizenship Law promulgated on 15 October 1982<sup>90</sup>**

#### **Chapter I - Title and Definition**

##### **1.**

This Law shall be called the Burma Citizenship Law.

##### **2.**

The expressions contained in this Law shall have the following meanings:

- (a) "State" means the Socialist Republic of the Union of Burma;
- (b) "Citizen" means a Burma citizen;
- (c) "Associate Citizen" means an associate citizen prescribed by this Law;
- (d) "Naturalized Citizen" means a naturalized citizen prescribed by this Law;
- (e) "Foreigner" means a person who is not a citizen or an associate citizen or a naturalized citizen;
- (f) "Certificate of citizenship" means a certificate of citizenship granted under the Union Citizenship (Election) Act, 1948 or the Union Citizenship Act, 1948 or this Law;
- (g) "Certificate of Associate Citizenship" means a certificate of associate citizenship granted under this Law;
- (h) "Certificate of Naturalized Citizenship" means a certificate of naturalized citizenship granted under this Law;
- (i) "Central Body established under this Law.

#### **Chapter II - Citizenship**

##### **3.**

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.

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<sup>90</sup> Text taken from <http://www.ibiblio.org/obl/docs/Citizenship%20Law.htm>

4.

The Council of State may decide whether any ethnic group is national or not.

5.

Every national and every person born of parents, both of whom are nationals are citizens by birth.

6.

A person who is already a citizen on the date this Law comes into force is a citizen. Action, however shall be taken under section 18 for infringement of the provision of that section.

7.

The following persons born in or outside the State are also citizens:

- (a) persons born of parents, both of whom are citizens;
- (b) persons born of parents, one of whom is a citizen and the other an associate citizen;
- (c) persons born of parents, one of whom is a citizen and the other a naturalized citizen;
- (d) persons born of parents one of whom is
  - (i) a citizen; or
  - (ii) an associate citizen; or
  - (iii) a naturalized citizen;

and the other is born of parents, both of whom are associate citizens;

- (e) persons born of parents, one of whom is
  - (i) a citizen; or
  - (ii) an associate citizen; or
  - (iii) a naturalized citizen;

and the other is born of parents, both of whom are naturalized citizens;

- (f) persons born of parents one of whom is

- (i) a citizen; or
- (ii) an associate citizen; or
- (iii) a naturalized citizen;

and the other is born of parents, one of whom is an associate citizen and the other a naturalized citizen.

**8.**

(a) The Council of State may, in the interest of the State confer on any person citizenship or associate citizenship or naturalized citizenship.

(b) The Council of State may, in the interest of the State revoke the citizenship or associate citizenship or naturalized citizenship of any person except a citizen by birth.

**9.**

A person born in the State shall have his birth registered either by the parent or guardian in the prescribed manner, within year from the date he completes the age of ten years, at the organizations prescribed by the ministry of Home Affairs

Proviso. If registration is not possible within one year from the date he completes the age of ten years, application may be made by the parent or guardian, furnishing sufficient reasons to the organizations prescribed by the Ministry of Home Affairs.

**10.**

A person born outside the State shall have his birth registered either by the parent or guardian in the proscribed manner within one year from the date of birth at the Burmese Embassy or Consulate or organizations prescribed by the Ministry of Home Affairs.

Proviso. If registration is not possible within one year from the date of birth, application may be made by the parent or guardian, furnishing sufficient reasons to the Central Body through the Burmese Embassy or Consulate or organizations prescribed by the Ministry of Home Affairs.

**11.**

(a) A parent or guardian who fails to comply with section 9 or section 10 shall be liable to pay a penalty of kyats fifty per year to the Burmese Embassy or Consulate or an organization prescribed by the Ministry of Home Affairs.

(b) A parent or guardian who fails for five years in succession to comply with section 9 or section 10 shall be liable to a penalty of kyats one thousand.

**12.**

A citizen shall

- (a) respect and abide by the laws of the State;
- (b) discharge the duties prescribed by the laws of the State
- (c) be entitled to enjoy the rights prescribed by the laws of the State.

**13.**

A citizen shall not as well acquire the citizenship of another country.

**14.**

A citizen shall have no right to divest himself of his citizenship during any war in which the State is engaged.

**15.**

- (a) A citizen shall not automatically lose his citizenship merely by marriage to a foreigner.
- (b) A foreigner shall not automatically acquire citizenship merely by marriage to a citizen.

**16.**

A citizen who leaves the State permanently, or who acquires the citizenship of or registers himself as a citizen of another country, or who takes out a passport or a similar certificate of another country ceases to be a citizen.

**17.**

The citizenship of a citizen by birth shall in no case be revoked except in the case of cessation of citizenship due to infringement of the provision of section 16.

**18.**

A citizen who has acquired citizenship by making a false representation or by concealment shall have his citizenship revoked, and shall also be liable to imprisonment for a term of ten years and to a fine of kyats fifty thousand.

**19.**

A citizen who has committed abetment of obtaining, in a fraudulent manner, a certificate of citizenship or a certificate of associate citizenship or a certificate of naturalized citizenship for another person shall be liable to imprisonment for a term of seven years and to a fine of kyats ten thousand.

**20.**

(a) The certificate of citizenship of a person whose citizenship has ceased or has been revoked shall be cancelled. A person holding such a cancelled certificate shall surrender it in the manner prescribed by the Ministry of Home Affairs.

(b) Failure to surrender a cancelled certificate of citizenship or continued use of it or transfer of it in a fraudulent manner to another person shall entail imprisonment for a term of ten years and a fine of kyats twenty thousand.

(c) Whoever holds and uses a cancelled certificate of citizenship or the certificate of a deceased citizen shall be liable to imprisonment for a term of ten years and to a fine of kyats twenty thousand.

**21.**

Whoever forges a certificate of citizenship or abets such act shall be liable to imprisonment for a term of fifteen years to a fine of kyats fifty thousand.

**22.**

A person whose citizenship has ceased or has been revoked shall have no right to apply again for citizenship or associate citizenship or naturalized citizenship.

**Chapter III - Associate Citizenship**

**23.**

Applicants for citizenship under the Union Citizenship Act, 1948, conforming to the stipulations and qualifications may be determined as associate citizens by the Central Body.

**24.**

A person who has been determined is an associate citizen by the Central Body shall appear in person before an organization prescribed by the Ministry of Home Affairs, and shall make an affirmation in writing that he owes allegiance to the State, that, he will respect and abide by the laws of the State and that he is aware of the prescribed duties and rights.

**25.**

The Central Body may include in the certificate of associate citizenship the names of children mentioned in the application. The child whose name is so included is an associate citizen.

**26.**

The child whose name is included under section 25, and who has completed the age of eighteen years shall make an affirmation in accordance with section 24, along with the parents.

**27.**

(a) The child whose name is included under section 25 and who has not completed the age of eighteen years shall, within one year from the date he completes the age of eighteen years appear in person before an organization prescribed by the Ministry of Home Affairs and make an affirmation in accordance with section 24.

(b) A person who fails to comply with sub-section (a) shall be liable to pay a penalty of kyats fifty per year to an organization prescribed by the Ministry of Home Affairs.

**28.**

If affirmation is not possible within one year, application may be made, furnishing sufficient reasons to the Central Body, through the organizations prescribed by the Ministry of Home Affairs. If there are no sufficient reasons after the date on which he completes the age of twenty-two years, he shall lose his associate citizenship.

**29.**

(a) When both the parents, of the children included in their certificate of associate of associate citizenship, lose their associate citizenship, the child who has not completed the age of eighteen years, and the child who has completed the age of eighteen years, but has not made an affirmation cease to be associate citizens.

(b) Where one of the parents, of the children included in the certificate hold by her or him, is an associate citizen and the other a foreigner, and if the mother or father who is an associate citizen loses her or his associate citizenship the child who has not completed the age of eighteen years, and the child who has completed the age of eighteen years, but has not made an affirmation cease to be associate citizens.

**30.**

An associate citizen shall

(a) respect and abide by the laws of the State;

(b) discharge the duties prescribed by the laws of the State;

(c) 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.

**31.**

An associate citizen shall not as well acquire the citizenship of another country.

**32.**

An associate citizen shall have no right to divest himself of his associate citizenship during any war in which the State is engaged.

**33.**

An associate citizen shall not automatically acquire citizenship merely by marriage to a citizen.

**34.**

An associate citizen who leaves the State permanently or, who acquires the citizenship of or registers himself as a citizen of another country, or who takes out a passport or a similar certificate of another country ceases to be an associate citizen.

**35.**

The Central Body may revoke the associate citizenship of a person if he infringes any of the following provisions:

(a) trading or communicating with enemy countries or with countries assisting the enemy country, or with citizens or organizations of such countries during a war in which the State is engaged or abetting such an act;

(b) trading or communicating with an organization or with a member of such organization which is hostile to the State, or abetting such an act;

(c) committing an act likely to endanger the sovereignty and security of the State or public peace and tranquillity or giving rise to the reasonable belief that he is about to commit such an act;

(d) showing disaffection or disloyalty to the State by any act or speech or otherwise;

(e) giving information relating to a state secret to any person, or to any organization, or to any other country or countries,, or abetting such an act;



(f) committing an offence involving moral turpitude for which he has been sentenced to imprisonment for a minimum term of one year or to a minimum fine of kyats one thousand.

**36.**

An associate citizen who has acquired such citizenship by making a false representation or by concealment shall have his associate citizenship revoked, and shall also be liable to imprisonment for a term of ten years and to a fine of kyats fifty thousand.

**37.**

An associate citizen who has committed abetment of obtaining in a fraudulent manners a certificate of citizenship or a certificate of associate citizenship or a certificate of naturalized citizenship for another person shall have his associate citizenship revoked; and shall also be liable to imprisonment for a term of seven years and to a fine of kyats ton thousand.

**38.**

An associate citizen who has personal knowledge of an offence committed by any person under section 36 or section 37, or as an accomplice who has committed such an act, discloses or admits the offence before organizations prescribed by the Ministry of Home Affairs within one year from the date this Law comes into force, or within one year from the date of commission of the offence shall be exempted from the penal provisions relating to such offence.

**39.**

(a) The certificate of associate citizenship of a person whose associate citizenship has ceased or has been revoked shall be cancelled. A person holding such a cancelled certificate shall surrender it in the manner prescribed by the Ministry of Home Affairs.

(b) Failure to surrender a cancelled certificate of associate citizenship or continued use of it or transfer of it in a fraudulent manner to another person shall entail imprisonment for a term of ten years and a fine of kyats twenty thousand.

(c) Whoever holds and uses a cancelled certificate of associate citizenship or the certificate of a deceased associate citizen shall be liable to imprisonment for a term of ten years and to a fine of kyats twenty thousand.

**40.**

Whoever forges a certificate of associate citizenship or abets such act shall be liable to imprisonment for a term of fifteen years and to a fine of kyats fifty thousand.

**41.**

A person whose associate citizenship has ceased or has been revoked shall have no right to apply again for associate citizenship or naturalized citizenship.

#### **Chapter IV - Naturalized Citizenship**

**42.**

Persons who have entered and resided in the State anterior to 4th January, 1948, and their offsprings 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.

**43.**

The following persons born in or outside the State from the date this Law comes into force may also apply for naturalized citizenship:

- (a) persons born of Parents one of whom is a citizen and the other a foreigner;
- (b) persons born of parents, one of whom is an associate citizen and the other a naturalized citizen;
- (c) persons born of parents one of whom is an associate citizen and the other a foreigner;
- (d) persons born of parents, both of whom are naturalized citizens;
- (e) persons born of parents, one of whom is a naturalized citizen and the other a foreigner.

**44.**

An applicant for naturalized citizenship shall have the following qualifications:

- (a) be a person who conforms to the provisions of section 42 or section 43;
- (b) have completed the age of eighteen years;
- (c) be able to speak well one of the national languages;
- (d) be of good character;
- (e) be of sound mind.

**45.**

A person married to a citizen or to an associate citizen or to a naturalized citizen, who is holding a Foreigner's Registration Certificate anterior to the date this Law comes into force shall have the following qualifications to apply for naturalized citizenship:

- (a) have completed the age of eighteen years;
- (b) be of good character;
- (c) be of sound mind;
- (d) be the only husband or wife;
- (e) have resided continuously in the State for at least three years is the lawful wife or husband.

**46.**

(a) A person who has been determined as a naturalized citizen by the Central Body shall appear in person before an organization prescribed by the Ministry of Home Affairs, and shall make an affirmation in writing that he owes allegiance to the State, that he will respect and abide by the laws of the State and that he is aware of the prescribed duties and rights.

(b) A person who has been determined as a naturalized citizen by the Central Body and holding a Foreigner's Registration Certificate shall appear in person before an organization prescribed by the Ministry of Home Affairs, and shall make an affirmation in writing that he renounces his foreign citizenship, that he owes allegiance to the State, that ha will respect and abide by the laws of the State and that he is aware of the prescribed duties and rights.

**47.**

The Central Body may include in the certificate of naturalized citizenship the name of a child mentioned in the application. The child whose name is so included is a naturalized citizen.

**48.**

The child whose name is included under section 47, and who has completed the age of eighteen years shall make an affirmation in accordance with sub-section (a) of section 46, along with the parents.

**49.**

(a) The child whose name is included under section 47, and who has not completed the age of eighteen years shall, within one year from the date on which he completes the age of eighteen years appear in person before an organization prescribed by the Ministry of Home Affairs and make an affirmation in accordance with sub-section (a) of section 46.

(b) A person who fails to comply with sub-section (a) shall be liable to pay a penalty of kyats fifty per year to an organization prescribed by the Ministry of Home Affairs.

**50.**

If affirmation is not possible within one year, application may be made, furnishing sufficient reasons to the Central Body, through the organizations prescribed by the Ministry of Home Affairs. If there are no sufficient reasons after the date on which he completes the age of twenty-two years, he shall lose his naturalized citizenship.

**51.**

(a) When both the parents, of the children included in their certificate of naturalized citizenship, lose their naturalized citizenship the child who has not completed the age of eighteen years, and the child who has completed the age of eighteen years, but has not made an affirmation cease to be naturalized citizens.

(b) Where one of the parents of the children included in the certificate held by her or him, is a citizen and the other a foreigner, and if the mother or father who is a citizen loses her or his citizenship, the child who has not completed the age of eighteen years and the child who has completed the age of eighteen years, but has not made an affirmation cease to be naturalized citizen.

(c) Where one of the parents, of the children included in the certificate held by her or him, is an associate citizen and the other a foreigner, and if the mother or father who is associate citizen loses her or his associate citizenship, the child who has not completed the age of eighteen years, and the child who has completed the age of eighteen years, but has not made an affirmation cease to be naturalized citizens.

(d) Where one of the parents, of the children included in the certificate held by her or him, is a naturalized citizen and the other a foreigner, and if the mother or father who is a naturalized citizen loses her or his naturalized citizenship, the child who has not completed the age of eighteen years, and the child who has completed the age of eighteen years, but has not made an affirmation cease to be naturalized citizens.

**52.**

If a person married to a citizen or to an associate citizen or to a naturalized citizen, who is holding a Foreigner's Registration Certificate anterior to the date this Law comes into

force applies for naturalized citizenship and the husband or wife of such a person dies or is divorced from such a person before acquiring naturalized citizenship, the application for naturalized citizenship of such a person shall lapse.

**53.**

A naturalized citizen shall

- (a) respect and abide by the laws of the State;
- (b) discharge the duties prescribed by the laws of the State;
- (c) 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.

**54.**

A naturalized citizen shall not as well acquire the citizenship of another country.

**55.**

A naturalized citizen shall have no right to divest himself of his naturalized citizenship during any war in which the State is engaged.

**56.**

A naturalized citizen shall not Automatically acquire citizenship or associate citizenship merely by marriage to a citizen or to an associate citizen.

**57.**

A naturalized citizen who leaves the State permanently, or who acquires the citizenship of or registers himself as a citizen of another country, or who takes out a passport or a similar certificate of another country ceases to be a naturalized citizen.

**58.**

The Central Body may revoke the naturalized citizenship of a person if he infringes any of the following provisions:

- (a) trading or communicating with enemy countries Or with countries assisting the enemy country, or with citizens or organizations of such countries during a war in which the State is engaged, or abetting such an act;
- (b) trading or communicating with an organization or with a member of such organization which is hostile to the State, or abetting such an act;

- (c) committing an act likely to endanger the sovereignty and security of the State or Public peace and tranquillity or giving rise to the reasonable belief that he is about to commit such an act;
- (d) showing disaffection or disloyalty to the State by any act or speech or otherwise;
- (e) giving information relating to a State secret to any person, or to any organization, or to any other country or countries, or abetting such an act;
- (f) committing an offence involving moral turpitude for which he has been sentenced to imprisonment for a minimum term of one year or to a minimum fine of kyats one thousand.

**59.**

A naturalized citizen who has acquired such citizenship by making a false representation or by concealment shall have his naturalized citizenship revoked, and shall also be liable to imprisonment for a term of ten years and to a fine of kyats fifty thousand.

**60.**

A naturalized citizen who has committed abetment of obtaining in a fraudulent manner, a certificate of citizenship or a certificate of associate citizenship or a certificate of naturalized citizenship for another person shall have his naturalized citizenship revoked, and shall also be liable to imprisonment for a term of seven years and to a fine of kyats ten thousand.

**61.**

A naturalized citizen who has personal knowledge of an offence committed by any person under section 59 or section 60, or as an accomplice who has committed such an act, discloses or admits the offence before organizations prescribed by the Ministry of Home Affairs within one year from the date this Law comes into force, or within one year from the date of commission of the offence shall be exempted from the penal provisions relating to such offence.

**62.**

(a) The certificate of naturalized citizenship of a person, whose naturalized citizenship has ceased or has been revoked, shall be cancelled. A person holding such a cancelled certificate shall surrender it in the manner prescribed by the Ministry of Home Affairs.

(b) Failure to surrender a cancelled certificate of naturalized citizenship or continued use of it or transfer of it, in a fraudulent manner, to another person shall entail imprisonment for a term of ten years and a fine of kyats twenty thousand.

(c) Whoever holds and uses a cancelled certificate of naturalized citizenship or the certificate of a deceased naturalized citizen shall be liable to imprisonment for a term of ten years and to a fine of kyats twenty thousand.

**63.**

Whoever forges a certificate of naturalized citizenship or abets such act shall be liable to imprisonment for a term of fifteen years and to a fine of kyats fifty thousand.

**64.**

A person whose naturalized citizenship has ceased or has been revoked shall have no right to apply again for naturalized citizenship.

**Chapter V - Decision as to Citizenship, Associate Citizenship or Naturalized Citizenship**

**65.**

Any person may apply to the Central Body when it is necessary for a decision as to his citizenship, associate citizenship or naturalized citizenship.

**66.**

The Central Body shall

- (a) permit the applicant the submission of application with supporting evidence;
- (b) decide in accordance with law;
- (c) inform its decision to the applicant.

**Chapter VI - Central Body**

**67.**

The Council of Ministers shall form the Central Body as follows:

- (a) Minister Chairman Ministry of Home Affairs
- (b) Minister Member Ministry of Defence
- (c) Minister Member Ministry of Foreign Affairs

**68.**

The Central Body has the authority:

- (a) to decide if a person is a citizen, or an associate citizen or a naturalized citizen;
- (b) to decide upon an application for associate citizenship or naturalized citizenship;
- (c) to terminate citizenship or associate citizenship or naturalized citizenship;
- (d) to revoke citizenship or associate citizenship or naturalized citizenship;
- (e) to decide upon an application regarding failure as to registration or affirmation.

**69.**

The Central Body shall give the right of defence to a person against whom action is taken

**Chapter VII - Appeals**

**70.**

- (a) A person dissatisfied with the decision of the Central Body may appeal to the Council of Ministers in accordance with the procedure laid down.
- (b) The decision of the Council of Ministers is final.

**71.**

Organizations conferred with authority under this Law shall give no reasons in matters carried out under this Law.

**Chapter VIII - Miscellaneous**

**72.**

Except under any of the provisions of this Law, no foreigner shall have the right to apply for naturalized citizenship from the date this Law comes into force.

**73.**

A foreigner who is adopted by a citizen or by an associate citizen or by a naturalized citizen shall not acquire citizenship or associate citizenship or naturalized citizenship.

**74.**

Except on penal matters, all matters relating to this Law shall be decided by the only organizations which are conferred with authority to do so.



**75.**

The Council of Ministers, shall, for the purpose of carrying out the provisions of this Law, lay down necessary procedures with the approval of the Council of State.

**76.**

The following Acts are repealed by this Law:

- (a) The Union Citizenship (Election) Act, 1948;
- (b) The Union Citizenship Act, 1948.

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(to be read in conjunction with the Bibliography to Chapter 7)

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