

## Historical Bias in the Report of the UN Fact-Finding Mission on Myanmar

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**The Report of the Detailed Findings** of the Independent International Fact-Finding Mission on Myanmar A/HRC/39/CRP.2 dated 17 September 2018 has yet to be scrutinised for the accuracy and impartiality of historical positions taken by the authors. Two paragraphs Nos. 473 and 475 in particular should arouse our concern.

Let me first deal with paragraph 473, which reads:

473. Most Muslims who then lived in what currently constitutes Rakhine State were therefore included, whether their ancestry could be traced to pre-colonial times, or whether they were colonial-era migrants from the region. Additionally, there are strong indications that at the time the Myanmar authorities accepted the Rohingya as an “indigenous group”. Both Prime Minister U Nu, and Sao Shwe Thaik, the country’s first President, are reported to have referred to the Rohingya as an indigenous group of Myanmar, with U Nu referring to the Rohingya by name in a 1954 radio address, as “... our nationals, our brethren”.<sup>1047</sup>

<sup>1047</sup> e.g. M. Haque, “Rohingya Ethnic Muslim Minority and the 1982 Citizenship Law in Burma”, *Journal of Muslim Minority Affairs*, 37:4 (2017), pp. 454-469.

### **The view of two respected post-war Burmese leaders misrepresented**

The evidence for the assertion that the Myanmar authorities accepted the Rohingya as an “indigenous group” at the time is not strong. There was certainly no formal acceptance. Neither in primary legislation, such as acts of parliament, nor in secondary legislation such as rules, regulations, and orders during the parliamentary period 1948-1962 is the designation “Rohingya” to be found anywhere. It is conspicuously absent from legislation relating to such matters as censuses, employment, education and family law. It does not appear, for example, in any documents relating to the Census initiated in 1953 or **in the list of 144 indigenous and foreign races used for the 1973 Census** which does however include six indigenous Muslims ethnicities, of which five were recorded in Arakan (then a Division, now Rakhine State). If anywhere, then the Censuses of 1953 and 1973 are where the designation “Rohingya” should have appeared if officially recognised.

The Special **Correspondent of “The Scotsman”** reported from Akyab (Sittwe) on 18 May 1949:

The great majority of Arakan Moslems are said to be really Pakistanis from Chittagong, even if they have been settled here for a generation. Of the 130,000 Moslems here, 80,000 are still Pakistani citizens.

In similar vein, in his “The Union of Burma” 1957 Professor Hugh Tinker noted on Page 357 that Census release № 3/1953 recorded that about 60% of the population in

Buthidaung Town and about 45% in Maungdaw Town were classified as “Pakistanis”. To remedy the absence of “Rohingya”, Azeem Ibrahim reported creatively on Page 8 of his “The Rohingyas” 2018 that Arakan Muslims “are described as ‘Rohingyas’ in the 1961 Census, indicating an ongoing recognition of their existence as an ethnic group”. A routine decennial Census was planned for 1963, but was cancelled because of the fraught internal situation after General Ne Win’s 1962 coup. Azeem Ibrahim’s 1961 Census exists only in the world of his imagination.

U Nu’s radio address on 25 September 1954 was not a statement of government policy, but a sermon on religious tolerance, with a political message. He quotes from the **Burmese court playwright U Ponnya** (1812-1867) on the importance of fixing a centre point when building a pagoda or drawing a tattoo. U Nu gives as an example building a house on land with depressions where the earth needs to be levelled to make sure the construction does not collapse. So too, U Nu continues, the construction of the State calls for equality among communities so that the majority will not treat the minorities arrogantly and arbitrarily, which is not the sort of country that he wants to build. After referring to the Kachin and Shan States where Christians and Buddhists live along the border with China and Laos, he mentions Arakan:

In the west of the country is Arakan Division. In Sittwe District, there are the two townships Buthidaung and Maungdaw. These two townships are on the border with Pakistan. In these townships of Buthidaung and Maungdaw, the nationals [natives] who live there are in the majority ethnic Ruhangya and they are Muslims. There is also a gang of rebels called the Mujahid. The main aim of this group is nothing less than to detach Buthidaung and Maungdaw from the Union and set up a separate Muslim state.

U Nu continues by saying that the plans of the rebels have not yet materialized and that it is the duty of everyone in the country to defend the 2,000 miles-border. He praises the leaders of the Muslim community in Buthidaung and Maungdaw who have pledged their unshakeable loyalty to the Government. The moral lesson then follows:

This region would have been very unruly indeed, were it not for our policy of religious tolerance.

U Nu’s remarks might be seen as the informal, politically motivated recognition of a distinct ethnicity among Arakan Muslims. U Nu was anxious to secure the support of Arakan Muslims to counter **the insurgency launched in 1948 by the Mujahid** (who also claimed to be Arakan Muslims). A deeply religious man, his Buddhist convictions led him to deliver moral-political lessons not infrequently. At the time the population would have interpreted his isolated reference to “Ruhangya” - one of several variations of the Bengali word for “Arakaner” seeking recognition - as no more than political support from the Prime Minister to the Arakan Muslim community, whose representatives in Parliament invariably voted with U Nu’s APFPL (Anti-Fascist People’s Freedom League) against his political opponents in Arakan, the Rakhine Buddhist ANUO (Arakan National United Organisation). The ANUO leader at the time, the British-educated former Indian Civil Service officer **U Kyaw Min, was well known for taking the APFPL to task**. To the best of my knowledge, U Nu never used the term “Ruhangya” again. One Ruhangya

swallow in fourteen years does not make a Rohingya summer. Nor am I impressed by the compendium of isolated Rohingya/Rohinja/Rwangya references over the years compiled by the activist Maung Zarni; the very paucity of this material is its most striking aspect.

The Fact-Finding Mission Report claims that in his radio address on 25 September 1954 U Nu referred to the Rohingya as “our nationals, our brethren”. I have found this phrase in neither English nor Burmese versions of this address. As a careful reading of Haque’s endnote No. 53 however makes clear, they are supposedly taken from remarks said to have been made by U Nu and his Defence Minister U Ba Swe at public gatherings in Maungdaw and Buthidaung on 3 and 4 November 1959, over five years later. No written texts of these 1959 remarks are known to exist. The authors of the Report have misinterpreted Haque’s article.

The same licence is taken with respect to remarks by Sao Shwe Thaik (preferred spelling), the first President of independent Burma, who was a Shan. The reference to the article by Haque should not mislead us, because in his article Haque makes no mention of Sao Shwe Thaik. No doubt this is why the footnote reference has the cautious “e.g.” which suggests that those who drafted the Report had difficulty in finding a reference to support their comments.

After independence in 1948, the President of the quasi-political Muslim Council (Jamiat ul Ulema or “Council of Religious Leaders”) of North Arakan, Sultan Ahmed, M.P. for Maungdaw and later Parliamentary Secretary to the Minister of Minorities, recorded in a Memorandum to the Burmese Government dated 18 June 1948 the objections which had been made to the use of the designation “Chittagonian” 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”. This designation 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. Sultan Ahmed noted in his Memorandum that:

“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 as indigenous races of Burma’. Being satisfied with his kind explanation, the objection put in was withdrawn.”

Neither Sultan Ahmed nor Sao Shwe Thaik made reference to “Rohingya”. The term was not then in use by anyone in Burma, whatever their religion or ethnicity. “Muslims of Arakan” is generic, in the sense that Muslim communities in Arakan at the time reflected several historically separate ethnicities. As a Shan, Sao Shwe Thaik would have had a natural affinity with non-Burman peoples, many of whom had seen British rule as a protection against Burmanisation. His remarks, of which no formal record apparently exists although they were reportedly made in the Constituent Assembly, are perfectly understandable in the context of the time. The British administration too noted in their **1931 decennial Census** (Part I Page 52) that: “In parts of Akyab District, Indians [British-era migrants] are so numerous that they should perhaps be regarded as indigenous”, while formally grouping Muslims in Arakan into two broad groups, one designated as “Indo-Burman” and indigenous, the second as “Indian” and migrant. The implication in the Report of the Fact-Finding Mission that the President was referring to “Rohingyas” is just one of many examples in the Report of the anachronistic use of the designation “Rohingya” before it gained broad international currency only some thirty years ago, as a nascent, coalescing ethnicity associating historically distinct Muslim communities, almost all of whom originated from Bengal.

Whatever assurances Sao Shwe Thaik may have given about the application of Article 11 of the Constitution sub-sections (i), (ii) and (iii), it should be noted that the **Union of Myanmar Citizenship Act 1948** made provision for the entitlement to citizenship of non-indigenous Arakan Muslims who were British-era migrants by creating another special category on the basis of third generation descent. Article 4(2) of the Act provides for statutory citizenship for such persons, but has no reference back to the 1947 Constitution and there is no suggestion of indigeneity. These descendants of British-era migrants in fact accounted for the majority - up to 80% - of Arakan Muslims at the time. Sao Shwe Thaik’s assurances about their indigeneity should perhaps be seen as no more than reassurance to Arakan Muslims that they would become citizens of the new Union of Burma, whether indigenous or not, and that they had nothing to worry about. Indeed, the law so provided, so Sao Shwe Thaik did not let them down.

In the cases of Sao Shwe Thaik, and to some extent in that of U Nu, we may well be dealing with no more than plausible oral legend, but manipulated by the authors of the Report to suit their agenda and raised to the status of Holy Writ. More especially, the authors of the Report may not understand that many Burmese today might regard the comments in the Report as a motivated misrepresentation of the views of two highly respected post-war leaders.

Let us now turn to paragraph 475 of the Report, which reads:

475. At the start of General Ne Win’s regime, the citizenship legal framework remained unchanged. The 1974 Constitution also did not alter the definition of “citizen” significantly. All Rohingya who were citizens during the 1948-1962 period were still to be considered citizens. However, in practice, the narrative that most Muslims in Rakhine State were illegal Bengali immigrants took root, in the context of an increasing emphasis on the importance of “national races” and the need to deport alleged aliens. In 1978, the Tatmadaw and immigration officials implemented a nationwide project called “Operation

Dragon King” to register all citizens and aliens ahead of a national population census. Its implementation in Rakhine State led to more than 200,000 Rohingya fleeing to Bangladesh, amid allegations of serious human rights violations. The Government claimed that the number of Rohingya escaping from scrutiny was an admission of their illegal status. However, analysis suggests that the number of alleged illegal immigrants identified was very low.<sup>1050</sup> The Government agreed with Bangladesh to repatriate the “lawful residents of Burma who are now sheltered in the camps in Bangladesh”. Nearly all refugees returned to Myanmar.

<sup>1050</sup> See analysis in Nyi Nyi Kyaw, “Unpacking the Presumed Statelessness of Rohingyas”, several State officials and State-run media indicating that the numbers of illegal immigrants 2,296 people across the country).

### **Controversial remarks about illegal immigration 1948-1978**

I have a number of concerns with the accuracy of the information in this paragraph.

- i. At the time Rohingya was not (and still is not) an officially recognised ethnicity, so to speak of “Rohingyas who were citizens during the 1948-1962 period” is anachronistic.
- ii. Operation Dragon King (“Naga Min” in Burmese) was never seriously intended to be a “nationwide immigration and residence check” as Dr Nyi Nyi Kyaw, Fellow at the Institute of Southeast Asian Studies in Singapore, **characterised the project**. The Department of Immigration and Manpower of the Home and Religious Affairs Ministry would have liked, according to **William Scully and Frank Trager** writing in 1979, to “register all residents, classify them categorically as either Burmese citizens or foreigners, register them, and issue them with certificates of registration”. In the event, the authorities used the US\$ 20 million allocated for the limited objective of rooting out illegal migrants in areas of Chin and Kachin States as well as Mandalay, Sagaing and Arakan Divisions.
- iii. The Tatmadaw (Armed Forces) did not “implement” the project. They were only brought into action in Arakan Division when the security situation there got out of hand, particularly in rural areas. Putting the Tatmadaw ahead of “immigration officials” is clearly designed to give the misleading impression of a nationwide military operation.
- iv. The suggestion that the intention was “to register all citizens and aliens ahead of a population census” is improbable. There is clearly no purpose in organising a nationwide registration system in 1978 when the next Census, which took place in 1983, was still five years away. “Preparatory work such as preparation of area lists and census maps began as early as late 1980” **according to the Census Report**. The Census in any case sought to enumerate for national planning purposes every person in Burma on 1-5 April 1983, legally resident or not and whatever their nationality, not to establish their citizenship, which was not a question asked in the Census.

Yet another dubious assertion meriting detailed examination is the statement that “analysis suggests that the number of alleged illegal immigrants identified was very low”.

This is seriously misleading. This analysis is the opinion of the author Nyi Nyi Kyaw. In his article the author, who has written widely on Muslim affairs in Myanmar, argued that “it is important that *Na-Ga-Min [Operation Dragon King]* did not find thousands or tens of thousands of *illegal* Bengalis in Rakhine State as the BSPP government claimed prior to, during, and even after the operation.” I agree with Nyi Nyi Kyaw that the authorities “did not find” thousands of illegal Bengalis in Rakhine State. But the reason is surely that they were able to escape arrest with relative ease by fleeing across the Naaf River to Bangladesh. The situation merits clarification.

In Sittwe City, where sample checks by the immigration authorities began in mid-February 1978 without trouble, a total of 1,025 persons out of 1,316 arrested were convicted of illegal entry out of a targeted community of 36,824 examined in Muslim areas of the city. This 2.8% of the targeted community was a relatively high percentage since we can assume that most illegals would have gone to ground as soon as immigration officials appeared. Both the German author [Klaus Fleischmann](#) and UNHCR Senior Repatriation Officer [Peter Nicolaus](#) have shown that when the inspection teams moved north, physical resistance in Buthidaung Township made it necessary to call in the Tatmadaw (Army) to deal with the unrest. As a result of the heavy-handed approach of the Tatmadaw many tens of thousands of Arakan Muslims abandoned their homes and fled to Bangladesh. Nicolaus also refers to an increase in insurgency by the Rohingya Patriotic Front at the time.

Some refugees would undoubtedly have fled because they were illegal migrants. Nyi Nyi Kyaw does not apparently believe so. Nor do the members of the Fact-Finding Mission. It is however in my view perfectly understandable why in the chaos and unrest at the time the immigration authorities found so few illegal residents in Buthidaung Township (594), and later in Maungdaw Township (230). (Both townships were at the time sub-districts of Sittwe District.) We might even wonder that any illegals stayed behind at all, inviting arrest.

Reasoned analysis suggests exactly the opposite of what the Fact-Finding Mission Report concluded. The majority of those who fled to Bangladesh came from disturbed areas of Buthidaung and Maungdaw Townships, not from Sittwe Township (which included Sittwe City). Even before the inspection teams arrived in Buthidaung, “mass hysteria”, to quote the description used by both [Fleischmann](#) and [UNDP Director Zagorin](#), had already gripped the local Muslim population. It is not logical to argue that, because the authorities were not able to question tens of thousands of fleeing Arakan Muslims, then none of them could have been illegals. The fact that all but a few thousand refugees were eventually permitted to return, whether illegals or not, says more about the determination of General Ne Win to resolve the crisis than about the precise status of the refugees.

The impression left by the Report is that its authors do not accept the view held by most international observers at the time, that illegal immigration in the 1950s, 1960s and 1970s was a serious problem. In particular, the Report implicitly rejects the Government claim “that the number of Rohingya escaping from scrutiny was an admission of their illegal status”. All this plays into the hands of international Rohingya lobby, but has only the flimsiest basis in fact when set against the compendium of reports of illegal

immigration to be found at [the Network Myanmar website](#) which I have compiled mostly from contemporary diplomatic and UN agency archives. The authors of the Report however rely on the opinion of a single Islamic scholar.

### **Impact which the distortions may have on the general credibility of the Report**

Cherry-picking of this magnitude is the hallmark of denialism. We should also be disturbed by the erratic views of one member of the Fact-Finding Mission, Dr Radhika Coomaraswamy, on Myanmar's recent history. Among numerous erroneous assertions [she assured an audience in Colombo in May last year](#), at a time when the Mission was in full swing, that General Aung San had "called the Panglong Conference [February 1947] and negotiated with the ethnic minorities, including the Rohingyas, and created the Union of Burma." General Aung San did not meet any Arakanese Muslims at Panglong. Only representatives of the Shan, Kachin, Chin and Karen were invited. No representatives came from Arakan, which was then a Division of Burma, not part of the Frontier Areas. The designation "Rohingya" was in any case unknown to Aung San. There were other ethnic minorities who were not invited to Panglong and their opinions were subsequently sought by the [Frontier Areas Committee of Enquiry 1947](#). This Enquiry did not seek the views of Arakan Muslims, nor Arakan Buddhists, nor any of the other minorities in Arakan.

I recognise that it was not the intention of the Fact-Finding Mission to take sides over disputed historical narratives. But in paragraphs 473 and 475 of their Report they have done precisely this, and in doing so have revealed in the process their preference if not support for a particular historical narrative held by the international Rohingya lobby. Any historical fact which does not fit in with their preconceptions is simply discarded and ignored. Such bias is not the hallmark of independent inquiry. It was surely vitally important that the authors of the Report should remain strictly neutral and not allow their prejudices to become apparent. I would add that, at their request, I sent to the Mission background materials on Myanmar, which are the basis of the presentation in this article. Their decision to take a particular historical line in the Report was clearly not based on ignorance of the facts, but was calculated and motivated.

This raises the more general question of just how reliable overall should we then take their "fact-finding" report to be when their historical "facts" are based on such contentious and partisan grounds. This is not to question that the Rohingyas have been the victims of appalling discrimination and victimisation for many years, that shocking crimes, like the confirmed slaughter of Rohingyas at Tula Toli, have been committed in Rakhine State, and that the perpetrators must be brought to account. But we might ask what trust should we place in the judgement of the members of the Mission who in my view have shown ignorance and prejudice in their presentation of the historical situation.

There is perhaps a silver lining to this unfortunate affair. The cases now before the International Criminal Court and the International Court of Justice may well turn out to provide a catalyst to uncover the truth and to resolve if possible the sharply differing narratives presented to the international community over the years. It is encouraging that [the Judges of the Pre-Trial Chamber III](#) have promised that the three *amicus curiae* Applicants from Myanmar "will have ample opportunity to raise their concerns". An open,

informed discussion in Court, preferably in both the ICC and the ICJ, of the historical issues at the root of the crisis in Rakhine State can only assist the essential process of peace, repatriation and reconciliation.

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