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## **Refighting Old Battles, Compounding Misconceptions: The Politics of Ethnicity in Myanmar Today**

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### **EXECUTIVE SUMMARY**

- Race, or ethnicity, compounded by religion, was a powerful theme in the Burmese nationalist movement in the 1920s, '30s and '40s. Burmese nationalists felt their country was twice colonised, first by the British, and secondly by South Asians. As Burma was governed as an Indian province until 1937, South Asian immigrants and capital freely flowed into the colony. As a consequence, Buddhism was said to be in danger particularly from rapid growth of the South Asian Hindu and Muslim populations. Political activists, including Buddhist monks, are repeating this old cry today.
- The issue of race was compounded by the necessity of integrating the ethnically and linguistically diverse northern border regions of Myanmar which had been indirectly ruled together with the directly ruled central and southern parts of the country at the time of independence in 1948. This was further complicated by the special provisions made in British law for ethnic representation in the directly ruled areas. The upshot was continuing armed strife up to today.

- During the first period of parliamentary government, under Prime Minister U Nu, race became an issue upon which deals could be done and offers of concessions made in exchange for political support. The military socialist regime of General Ne Win failed to depoliticise the race issue. The current 2008 constitution merely compounds earlier efforts to appease political demands made in the name of ethnicity.
- With the re-establishment of constitutional government since 2011, these recurring themes have come back in both domestic and international guises, threatening to endanger the effort to re-establish a viable political system. The so-called Rohingya issue is now being used to fuel political discord.
- Only by depoliticising ethnicity and race will it be possible to maintain political order and reasoned politics. As human rights are confused with group aspirations in modern discourse, this will be extremely difficult but if an effort to remove race from discussions of public policy is not attempted, the result could be disastrous for the development of the constitutional order.

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## INTRODUCTION

Ethnicity, compounded by religion, has been the dominant motif of Myanmar's politics for a century or more. Since the cusp of the country's independence in 1948, the issue of ethnicity, or 'race', has been conflated with a debate over the question of the alleged rights of so-called 'national races',<sup>1</sup> and those who reside in the country but are not included within the rubric of 'national races'. The notion of national races was devised as means of recognising the existence of various ethnic groups within the territory of the Myanmar state, i.e. 'races of the nation', underscoring the confusing rhetoric the issue generates. The return to multi-party politics, freedom of the press, and the existence of representative institutions in Myanmar since 2010 has injected new life into these recurring themes.

Even in the days of authoritarian, avowedly secular, military rule, ethnicity and religion were always present in the background of major government actions. If not understood for what this motif is, how it came to dominate the country's politics, and the contentious nature of all discussions of group rights in law and theory, politicians and others, foreign and domestic, may merely compound multiple misconceptions. This will result, as so often in the past, in abandoning the politics of reason, as required by free political debate, and once more reverting to armed conflict on a large scale.<sup>2</sup> That would curtail again Myanmar's attempt to construct an open political system where disagreement exists but reason and law prevail.

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<sup>1</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. Literally, *lumyo* means variety or kind of human. The *Myanmar-English Dictionary* (Yangon: Myanmar Language Commission, 4<sup>th</sup> printing, 1994) defines the term as "1. race, nationality, 2. nation, 3. type (of people); character." There is a separate term for ethnic group, *lumyosu*, but it is little used. The concept of 'national races' is normally translated as *taing: yin: tha:*, defined by the same dictionary as "native of a country". "The people (of a country)" is *taing: thu pyi tha:*. The root, *taing:*, means either a division, an administrative unit, or a military command. There is a separate word for citizen, *naing ngan tha:*, derived from *naing ngan*, country, and *naing ngan tow*, state.

<sup>2</sup> Since 2011 there has been sporadic fighting between the Kachin Independence Army (KIA) and the government army in the northern Kachin State and conflict with a Palaung group and others in the Shan State. These and other groups had previously reached ceasefire agreements in the 1990s with the former military government. "Major Myanmar Insurgent Group Boycotts Peace Talks," *Nikkei Asia Review*, 23 December 2014; "Palaung Rebels Celebrates Insurgent History in Mountain Enclave," *Irrawaddy*, 14 January 2015; "PSLF/TNLA Releases Statement on Nationwide Ceasefire Deal," *Eleven News*, 14 January 2015; Brent Crane, "Kachin and China's Troubled Border," *The Diplomat*, 13 January 2015. On 12 February 2015, fighting once more broke out in the Kokang autonomous region on the Chinese border in and around the city of Laukkai generating thousands of refugees and more than a hundred casualties. "Government Forces Recapture Strategic Kokang Positions," *Democratic Voice of Burma*, 23 February 2015. Furthermore, the ongoing issue of the so-called Rohingya, one of the groups of self-identified persons largely followers of Islam in western Rakhine State, continued to attract international attention at the same time, though overt acts of violence in the area had not occurred for over a year. "Top UN Official Calls for Probe in Latest Violence in Myanmar's Rakhine State," UN News Centre, 23 January 2014.

## RACE AS AN ISSUE IN MYANMAR NATIONALISM

Race entered Myanmar politics in the midst of the nationalist struggle for independence from Britain. Of course, ‘the race issue’ was a major factor in the politics of many countries around the world in the 1920s and 1930s as stereotypical discourse was much heard in those days in a manner which would be found shockingly ignorant and grossly offensive now. As Myanmar was a province of India until 1937, and gained control of immigration effectively only in 1947,<sup>3</sup> the relationship between the indigenous population, and the many persons of South Asian origin who arrived under the auspices of British rule became a subtheme in the nationalist campaign for independence. The flow of what were referred to as Indians<sup>4</sup> at all levels of the polity and economy generated strong anti-immigrant sentiments despite both Indian and Burmese mutual opposition to continued British rule.

Burmese nationalists saw themselves as colonised twice, first by the British, secondly by the Indians who, in particular, dominated the economy. Both had to go and while the parliamentary system of the 1950s failed to achieve the termination of foreign dominance over parts of the economy, even though the British rule had ended, General Ne Win’s nationalisation policies in the name of socialism after the 1962 coup achieved that goal. Approximately one-third of the South Asian population returned to India and Pakistan after their businesses were nationalised and their private schools and newspapers were closed. Nonetheless, a community of persons, approximately four percent of the total population, of persons of South Asian descent remained, both Hindus and Muslims.<sup>5</sup> Under the terms of both the 1948 and 1982 Citizenship Acts, they and their descendants as well as other persons who arrived in the country prior to independence were eligible to become citizens, and most have been assimilated into Myanmar society.<sup>6</sup> Those who entered legally subsequently could also apply for citizenship under existing legislation.

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<sup>3</sup> The government of Burma had no legal ability to control immigration from the Indian subcontinent until the Burma Immigration (Emergency Provisions) Act, 1947, came into effect. An earlier immigration agreement was about to come into effect in 1942 but was curtailed by the Japanese invasion.

<sup>4</sup> *Kala* in Burmese. The *Myanmar-English Dictionary* defines *kala* as “1. Native of the Indian subcontinent, 2. Court-card, picture card.” It is derived from the Pali word *kala*. A Caucasian or white person is a *kala hpyu*. In the highly charged ethnic politics of and about Myanmar, some claim *kala* to be pejorative and that it means black, though why calling a person black but not white is considered pejorative is unclear. Apparently there is a word *kala*, derived from Sanskrit in Hindi and Urdu, which means black. (Renaud Egretreau, “The Idealization of a Lost Paradise: Narratives of Nostalgia and Traumatic Return Migration among Indian Repatriates from Burma since the 1960s,” *The Journal of Burma Studies*, Vol. 18, No. 1 (2014), p. 138, fn. 2) Perhaps amongst those who are bilingual in these South Asian languages and Burmese a conflation of meanings occurs.

<sup>5</sup> “It is estimated that in fact, only a third of the Indian population did effectively leave Burma during the Ne Win administration (1962-1988); two-thirds actually decided to stay behind in Burma where life was construed as far less harsh than in India itself, with less segregation, more economic opportunities, and a better quality of life.” Egretreau, “Idealization of a Lost Paradise,” p. 174.

<sup>6</sup> For a discussion of Myanmar’s Muslim population, see Yegar, *Muslims of Burma*). As President Thein Sein underscored in July, 2012: “According to our laws, those descended from [the Bengalis (and other South Asians)] who came to Burma before 1948, the ‘Third Generation’, can be considered

## CONFLATED WITH RELIGION

Religion and ethnicity became twin themes in the Myanmar nationalist narrative. As Buddhist monks became heavily involved in the nationalist movement from the 1920s onwards, the alleged threat posed to the persistence of Buddhism as the religion of the majority of the population began to seem real. Not only did the existence of foreign, ‘Christian’, rule rankle, but so also the coming of hundreds of thousands of Hindus and Muslims from the subcontinent. While Hindus, after they abandoned the notion of caste, tended to blend into Burmese society relatively easily, the existence of separate Muslim law, and particularly the denial of property rights for Buddhist women who married Muslim men, became a political issue.

The call of Buddhism in danger came to be heard and anti-Muslim riots were easily generated in the 1930s.<sup>7</sup> The memory of “Indian domination” and “Buddhism in danger” became part of the legacy of the nationalist movement inherited by Myanmar politicians and historians. That memory has been revived since 2010 by movements such as that led by the Buddhist monk U Wirathu, known as the 969 Movement,<sup>8</sup> and subsequently the monk-led Organisation for the Protection of Race and Religion, or *Ma Ba Tha*. The latter has stimulated an effort to legislate to make religious conversation difficult and highlighted other communally charged issues including birth control, polygamy, and inter-faith marriage.<sup>9</sup> U Wirathu remains prominent for his inflammatory attacks on the United Nations for pressing for citizenship rights for predominately Muslim persons of contested ethnicity.<sup>10</sup>

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Burmese citizens.” “Call to Put Rohingya in Refugee Camps,” Radio Free Asia, 12 July 2012. See also <http://www.president-office.gov.mm/briefing-room/news/2012/07/12/id-172> For a discussion of the legal status of South Asians in Myanmar, and the problems associated with the operation of the citizenship laws, see Robert H. Taylor, “The Legal Status of Indians in Contemporary Burma,” in K. S. Sandhu and A. Mani, eds., *Indian Communities in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 1993), pp. 667-683.

<sup>7</sup> See John F. Cady, *A History of Modern Burma* (Ithaca, New York: Cornell University Press, 3<sup>rd</sup> printing, 1965), especially pp. 393-395. For a detailed account, see Maung Maung, *From Sangha to Laity: Nationalist Movements in Burma, 1920-1940* (New Delhi: Manohar, 1980).

<sup>8</sup> Thomas Fuller, “Extremism Rises Amongst Burmese Buddhists,” *New York Times*, 20 June 2013.

<sup>9</sup> “Thousands in Mandalay Rally for Faith Laws,” *Irrawaddy*, 30 October 2014. Richard Horsey, “New Religious Legislation in Myanmar,” SSRC Conflict Prevention and Peace Forum, 13 February 2015.

<sup>10</sup> “Nationalist Monk Criticized after Inflammatory Speech,” *Irrawaddy*, 19 January 2015.

## HOW MANY ETHNO-LINGUISTIC GROUPS BECAME ‘135 NATIONAL RACES’

A second strand to the leitmotif of race in Myanmar’s politics emerged from the hastily agreed deals required before the British would grant independence to all of Burma. This required nationalist politicians to travel to the north of the country to meet with nominal leaders of the peoples who lived during most of the period of British colonial rule largely isolated from the rapid social and economic change that engulfed the central and southern portions of the country. These were the officially recognised leaders of what were referred to in those days as the hill tribes who were separately governed from the majority of the population living in the valleys to the south. During the Second World War this area was drawn into politics, regionally and nationally, and the legacy of British colonial anthropology came into play in post-colonial politics, abetted by Marshall Josef Stalin’s, the Bolshevik Commissar of Nationalities (1917-1924), theories on nationality.<sup>11</sup>

Diverse ethno-linguistic communities were present in these areas prior to colonisation, but were then transformed by being brought into contact with the larger world despite being considered remote from the main themes of Myanmar nationalism.<sup>12</sup> Hence was born the idea that Myanmar was a nation composed of many ‘national races’, of which eight were the most prominent – Chin, Kachin, Shan, Kayah, Kayin, Mon, Rakhine and Bamar. Thus identity, primarily ethnic identity,<sup>13</sup> became mobilised by political elites in order to generate support for claims to amorphous group rights and territorial control. The parliamentary political system of the 1950s facilitated such claims and the governments of Prime Minister U Nu sought support by making promises to respond to claims made in the name of ethnicity. Indigenous ethnicity also came to be written into the constitution just as ‘Indian’ and ‘Karen’ identity and special privileges had been written into the British-era laws and institutions.<sup>14</sup>

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<sup>11</sup> Though no representative institutions existed in the northern parts of the country, and the powers of the elected legislature and cabinet government in colonial Rangoon did not extend to the Shan States and the frontier areas prior to 1942, during the Japanese occupation they were formally linked though partially remained under British military control. Some colonial officials, including from the British and Indian armies, sought to ‘protect’ the hills peoples from the consequences of a united, egalitarian, state as expected after independence. As the British prepared to withdraw, they insisted on an act demonstrating a desire to unite the entire country under a republican regime. The leaders of the Myanmar nationalist movement, mainly leftists much influenced by socialist and Communist political theories as well as British liberalism, were attracted to Stalin’s theories of nationalities and also the example of multi-ethnic Yugoslavia. See Graham Smith, ed., *The Nationalities Question in the Soviet Union* (London and New York: Longman, 1990).

<sup>12</sup> See the excellent discussion of this process in Mandy Sadan, *Being and Becoming Kachin: Histories Beyond the State in the Borderworlds of Burma* (Oxford: Oxford University Press, 2013), particularly Chapter I, “Global Histories, Global Exclusions.”

<sup>13</sup> As many of the previously animist hill peoples converted to Christianity, both before and after independence, the politics of religion became a subtheme in this narrative. An analogous situation was created on Myanmar’s borders in Northeast India. See, for example, Bertil Lintner, *The Great Game East* (New Delhi: HarperCollins, 2012), Chapter Two.

<sup>14</sup> Under the British, representational rights were established on the basis of ethnicity, including European as well as Indian, Karen and ‘General’. Also, the British considered persons from the hills to belong to so-called martial races and they were favoured in recruitment relative to the Bamar.

Ethnic politics was thus raised from the condition of inchoate aspiration to the pivot of political action. The consequences were immense because the state's permanence, integrity and sovereignty became a continually open political question, not least because of the manner ethnicity was understood in terms of the 1947 constitution.<sup>15</sup> The 1962 coup, a direct result of the increasing politicisation of ethnicity, in the context of the Cold War in mainland Southeast Asia, seemingly provided an opportunity to subordinate ethnicity to other issues.

## THE FAILURE TO DEPOLITICISE THE RACE ISSUE

That opportunity, if it existed, was lost, however, and the perpetuation of the dialogue about ethnicity, and particularly the so-called rights of ethnic groups to territory, power, esteem, and autonomy was continued in a new constitution and additional legislative acts by the authoritarian government of the Burma Socialist Programme Party (BSPP). While the 1974 constitution attempted to undermine ethnicity as a central feature of Myanmar politics,<sup>16</sup> it failed to do so, in part because the BSPP government continued to rely on the same concepts of ethnicity as its predecessors. The 'big eight' ethnic groups became entrenched as the names of seven states with the Bamar (Burman) majority therefore perceived as living in the remaining seven divisions. The linking of territory, administrative authority, and ethnicity remained captured in the structures of the state and therefore in politics despite repeated emphasis upon the principle of the equality of all citizens.

The BSPP's 1982 citizenship act, for example, again raised the issue of national races. This was merely gratuitous. The act states in clause three: "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." The next clause states that "the Council of State may decide whether any ethnic group is national or not." With the abolition of the 1974 constitution and its eventual replacement with the 2008 constitution, presumably under the terms of this act, which remains in effect, it would be up to the two chambers of the *hluttaw* (parliament) to recognise other national races than the 'big eight', the seven national races after which states have been named and the Bamar majority. After 1990, there came into circulation a list of 135 national races<sup>17</sup> which some claim had the force of law, though what

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<sup>15</sup> The 1947 constitution included a clause which, under terms almost impossible to achieve, the Shan and Kayah States (not ethnic groups) would be allowed to secede from the Union of Burma after ten years. See Josef Silverstein, "Politics in the Shan State: The Question of Secession from the Union of Burma," *Journal of Asian Studies*, Vol. 18, No. 1 (November 1958), pp. 43-57.

<sup>16</sup> See Robert H. Taylor, "Burma's National Unity Problem and the 1974 Constitution," *Contemporary Southeast Asia*, Vol. 1, No. 3 (1979), pp. 232-48. Critics of that effort referred to it as Burmanisation.

<sup>17</sup> The list was mentioned first in a speech by Senior General Saw Maung on 5 July 1989, *State Law and Order Restoration Council Chairman Commander in Chief of the Defence Services General Saw Maung's Addresses and Discussions in Interview with Foreign Correspondents* (Yangon: Ministry of Information, 1989), pp. 182-183, p. 247 in English translation. The list was eventually published more than a year later apparently only in Burmese in the *Loktha Pyithu Neizin (The Working People's*

law was enacted to make this a legal reality is not known.<sup>18</sup> Nonetheless, residents of Myanmar were provided with a list of 135 national races from which to choose their ethnicity during the 2014 census.<sup>19</sup>

## COMPOUNDING THE RACE ISSUE

The origins of the now frequently mentioned list of the 135 ethnic groups living in Myanmar anterior to 1823 remains unknown, though General Saw Maung, then the head of the ruling military government, in 1989 said he had received it from ‘the census department’. However, one might reasonably speculate that it was derived from the last published British census of Burma taken in 1931. “Imperial Table XVIII – Race. Part I – Provincial Totals of Races by Religion” provides a list 135 ethno-linguistic groups which could be considered as being extant within Burma’s borders at that time.<sup>20</sup> The 1921 British census<sup>21</sup> provides a list of 125 groups listed by language groups. Some, which appear in both of the last British period censuses and the 1990 *Working People’s Daily* list, are remarkably small. There were, for example, 306 Lushei speakers in 1921, and 375 members of the Lushei “race” in 1931. The number of members of the Lushei national race today is unknown, but likely much less than a thousand, assuming Lushei is still spoken as Falam, Tedim, Hakka, and other larger Chin dialects have become more widely spoken as a result of improvements in means of communications amongst residents in the Chin State in the intervening years. Whatever the case, it would appear that in 2015, 67 years after independence, people are still discussing a nearly hundred year old list created by British colonial officials and amateur linguistics and ethnographers.

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*Daily*) on 26 September 1990. International Crisis Group, “Myanmar: The Politics of Rakhine State,” Asia Report No. 261 (22 October 2014), fn. 42, p. 10. The list is available in English in Hla Min, *Political Situation of Myanmar and Its Role in the Region* (Yangon: Office of Strategic Services, Ministry of Defense, 26st edition, October 2000), as an un-paginated appendix entitled “Composition of the Different Ethnic Groups Under the 8 Major National Ethnic Races in Myanmar”.

<sup>18</sup> See, for example, Republic of the Union of Myanmar, “Final Report of Inquiry Commission on Sectarian Violence in Rakhine State,” 8 July 2013, fn. 4, p. 4, which states: “Those who are not of the 135 indigenous groups of Myanmar, according to the Country’s constitution and official documents, have been classified according to their ethnic root as ‘Bengali,’ ‘Indian,’ ‘Chinese,’ etc.” The national races are never identified, nor the claim that there 135 of them established, in the 2008 constitution or any other official document at least prior to the 2014 census.

<sup>19</sup> Transnational Institute – Burma Centrum Nederland, “Ethnicity Without Meaning, Data Without Context: the 2014 Census, Identity and Citizenship in Burma/Myanmar,” Burma Policy Briefing No. 13 (February 2014), p. 6.

<sup>20</sup> The list also contains a number of other ethnic categories which would be construed as primarily external to Myanmar’s borders, i.e. foreigners. The table is available on the Network Myanmar website, <http://www.networkmyanmar.org/>. A comparison of the 1990 list and the 1931 census shows at least 72 or more of the terms for the ethnic groups are identical despite the switch from the colonial Hunterian system of transliteration of Burmese terms to the system devised by the Myanmar Language Commission.

<sup>21</sup> Also available on the Network Myanmar website, *ibid*.

Like the 2014 census, the 2008 constitution compounds the problem of politicised ethnicity though the authors probably thought they were creating a structure which would allow expressions of ethnic wishes to be routed through peaceful channels. First, the constitution maintains the seven ethnically designated states as well as seven geographically designated regions<sup>22</sup> and devolves certain limited powers to governments of the states and regions. It also established six autonomous zones with ethnic designations. In addition “race affairs” ministers are to be elected when at least 0.01 per cent of an ethnic group exists which is not otherwise nominally represented in the nomenclature of the state or region. There are currently 29 such race affairs ministers in state and regional governments who are elected on the basis of their respective ethno-linguistic group.<sup>23</sup> How one is determined to be a member of such a group is not clear, but presumably this is on the basis of self-identification as indicated on national registration certificates.<sup>24</sup>

Despite the efforts of the constitution and the 2014 census to accommodate expressions of ethnic identity, as noted above, armed conflict between the government and ethnically-designated armed groups continues in various parts of the country. The government’s intention of reaching a nation-wide ceasefire agreement with all of the armed groups by Union Day, 12 February 2015, proved to be impossible. Even a more limited Deed of Commitment to Peace and Reconciliation signed on that day by a number of government officials and a few ethnically designated armed groups quickly generated dissent within at least one of the signatory organisations.<sup>25</sup> Various ethnic groups continue to organise in opposition to government, including pledging to form their own ‘federal’ army.<sup>26</sup> Demands in the name of politicised ethnicity appear to be endless and continue to undermine efforts of the central government to control violence and establish peace across the country. Warfare in the name of politicised ethnicity has apparently become a way of life.<sup>27</sup>

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<sup>22</sup> Formerly known as divisions.

<sup>23</sup> None is elected from the group after whom a state is named or if there is an autonomous zone by the name of a group. *Irrawaddy*, 15 January 2014. “Ethnic Affairs Ministers Issue a Statement,” *Global New Light of Myanmar*, 14 January 2015. For example, the Shan State has ethnic affairs ministers for the Kayan, Inn, Lisu, Lahu and Bamar ethnic groups.

<sup>24</sup> For an example of the confusion these notions have created, see ‘Identity Hurdle Snags Tanintharyi Mon’s Ethnic Affairs Ministers Push,’ *Irrawaddy*, 6 February 2012.

<sup>25</sup> “Deed of Commitment for Peace and Reconciliation,” Shan Herald Agency for News, 18 February 2015; ‘KNU Rejects Union Day Commitment,’ *Democratic Voice of Burma*, 17 February 2015.

<sup>26</sup> “Ethnic Alliance Ponders Future Federalism, Create ‘Federal Union Army’”, *Irrawaddy*, 9 December 2014.

<sup>27</sup> An area of research which would be valuable for understanding the nature of the continuous insurgency in Myanmar and other countries is the difference between how politicians perceive conflicts in contrast to the motivations of those who fight them.

## INTERNATIONALISING RACE AGAIN: THE ROHINGYA ISSUE

Not only has the continued discussion of ethnicity remained an enduring domestic motif under Myanmar's new constitutional order. It has also become an international issue with many dimensions. While international attention to what is normally referred to as Myanmar's civil war has been of long standing, more recently the so-called 'Rohingya' issue has emerged. This has now been accepted by international media and foreign governments, including the United Nations General Assembly, as an issue in terms of the rights of an ethnic group not found on the list of 135.<sup>28</sup> The intervention of the General Assembly in the ongoing debate over the status of the 'Rohingya' in Myanmar prompted an inevitable negative response from both the government and dominant majority ethnic group political party of region where most of them reside, Rakhine State.<sup>29</sup>

The 'Rohingya' issue is complex and there are strident claims made on all sides as is inevitable when claims about ethnic origins, historical roots, and legal rights are combined.<sup>30</sup> However, among all the various Muslim communities present in Myanmar,<sup>31</sup> some of which are recognised as indigenous, only the 'Rohingya' leadership makes a disputed claim to being one of Myanmar's indigenous national races, presumably number 136. The British recognised no such group. Persons known as Bengalis or Bengali Muslims, of whom there were nearly half a million in Rakhine State in 1983, then made no such claim.

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<sup>28</sup> "UN Urges Myanmar to Give Rohingya 'Full Citizenship'", VOA News, 30 December 2014.

<sup>29</sup> "Rakhine Minister Warns About UN Interference in 'Rohingya' Affairs," Mizzima, 8 January 2015; "Rakhine National Party Says It Will Break Off Relations with UN," Mizzima, 14 January 2015.

<sup>30</sup> One hundred and twenty documents, papers, reports, laws, diplomatic reports, and academic papers were readily available on the issue on the networkmyanmar.org website as of 21 January 2015.

<sup>31</sup> See Moshe Yegar, *The Muslims of Burma* (Wiesbaden: O. Harrassowitz, 1972).

## Population of Rakhine State, 1983, by Ethnic Group and Religion

	Total	Buddhist	Animist	Baptist	Catholic	Hindu	Sunni Muslim
Kachin	0	0	0	0	0	0	0
Kayah	0	0	0	0	0	0	0
Karen	1	1					
Chin	64	64	36	22	4	0	0
Burman	14	14	0	0	0	0	0
Mon	0	0	0	0	0	0	0
Rakhine	1,387	1,369	3	0	0	0	16
Shan	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
Mixed Foreign and Burman	9	1	0	0	0		8
Chinese	1	1	0	0	0	0	0
Indian	49	4				3	41
Pakistani	0	0	0	0	0	0	0
Bangladeshi	497	0	0	0	0	0	496
Nepalese	0	0	0	0	0	0	0
Other Foreign	22	0	0	0	0	0	21
Total	2,046	1,425	24	5	3	3	584

'000's. Adapted from Table 6. Population by Race, Sex and Religion, *The Socialist Republic of the Union of Burma 1983 Population Census: Rakhine State* (Rangoon: Census Division, Immigration and Manpower Department, November 1987), pp. 2-42 to 2-46.

The Rohingya claim to indigeneity anterior to 1823 is rejected the government and apparently the majority of the population, including opposition politicians, are in agreement with it on the matter. Myanmar's 'democracy icon', Daw Aung San Suu Kyi, has been internationally criticised for not taking a stand in favour of the 'Rohingya'.<sup>32</sup>

The effort by the leadership of the 'Rohingya' movement to gain recognition of their ethno-linguistic group as an indigenous national race is presumably a means of overcoming the administrative obstacles to each of the persons considered to be 'Rohingya' applying for citizenship under the terms of the 1982 citizenship act. However, for those who arrived before 1948 and their descendants, in law there should not be a serious obstacle<sup>33</sup> unless they have no evidence to support their claim. In 1978, long before the claim to being Rohingya

<sup>32</sup> For example, "Burma's Aung San Suu Kyi, a Human Rights Icon, Is Criticized on Anti-Muslim Violence," *The Washington Post*, 23 December 2013.

<sup>33</sup> There may still remain administrative obstacles as the Myanmar bureaucracy is notoriously slow and difficult to access.

was widely heard, more than 200,000 Muslim refugees fled to Bangladesh from Rakhine State following about 1,600 arrests after a police and immigration department check of local identity papers. Under an agreement with the Bangladesh government, most returned to Myanmar the following year. Repatriation took place on the basis of national registration cards, foreigner registration cards, or some proof of links to a village.<sup>34</sup> To those who arrived illegally after 1948, of which there are an unknown number,<sup>35</sup> the obstacles to being granted citizenship would be significant and therefore forcing acceptance of the indigeneity claim would be the only way they could guarantee being assured of citizenship.<sup>36</sup>

As is widely accepted, Buddhists and Muslims of various ethno-linguistic groups have resided on both sides of the now internationally recognised border between Bangladesh's Chittagong Province and Myanmar's Rakhine State. What is under international scrutiny is whether all of the persons who reside on the Myanmar side have a legal right to be there. Illegal immigration is a highly sensitive political subject as witnessed around the world today.<sup>37</sup> Now that electoral politics have been restored in Myanmar, the status of immigrants also becomes a politicized issue. The extent to which they are granted franchise rights once divided politicians within Myanmar. President Thein Sein was known to desire that holders of so-called White (after their colour) temporary registration cards (pending scrutiny of their eligibility for citizenship) should be allowed to vote in any forthcoming referendum or election as they were able to do during both the 2008 referendum on the constitution and the 2010 nationwide elections. Approximately 850,000 holders of White registration cards are believed to be held by Bengali Muslims or Rohingya. Many others are held by persons of Chinese descent or of Myanmar origins in remote border areas.<sup>38</sup>

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<sup>34</sup> Letter, Ambassador C. L. Booth to British Foreign Secretary, Lord Carrington, 3 July 1979. United Kingdom National Archives, FCO 15/2468.

<sup>35</sup> While it is widely accepted that millions of Bangladeshis fled across the border between India and then East Pakistan during the war which created Bangladesh, it is not known how many crossed over the border to Myanmar in 1971-72. The Bangladesh ambassador to Myanmar told the British ambassador in December, 1975, that 'there were upward to ½ million Bangalee trespassers in Arakan.' Note by T. J. O'Brien, Talk with Mr. K. M. Kaiser, Bangladesh Ambassador to Rangoon, 23 December 1975, United Kingdom National Archives, FCO 15/2041.

<sup>36</sup> As Martin Smith wrote in 1995, ". . . the whole ['Rohingya'] crisis is overshadowed by a complete absence of reliable anthropological or social field research, which means that different sides continue to circulate – or even invent – very different versions of the same people's histories." "Scholar Column: The Muslim Rohingya of Burma," Kaladan News, 11 October 2006.

<sup>37</sup> Well known examples are the question of illegal immigration across the United States-Mexican border and legal immigration to the United Kingdom from Poland and other eastern European states. India has been building a fence between itself and Bangladesh for more than 25 years to stop illegal immigration. Scott Carney, Jason Miklian, and Kristian Hoelscher, "Fortress India: Why is India Building a New Berlin Wall to Keep Out Its Bangladeshi Neighbours," *Foreign Policy*, 20 June 2011.

<sup>38</sup> Nyein Nyein, "Thein Sein Pushes Referendum Suffrage for White Card Holders," *Irrawaddy*, 22 December 2014. While in many jurisdictions non-citizens do not have the right to vote, this is not a universal policy. Commonwealth and Irish residents in the United Kingdom or Europeans living in a state other than that of their nationality in elections for the European parliament have the right to vote.

Though opposed by both the Rakhine National Party<sup>39</sup> and Daw Aung San Suu Kyi's National League for Democracy,<sup>40</sup> legislation was passed by the national legislature permitting White card holders to vote in any forthcoming referendum on the constitution. However, this promptly generated public demonstrations against the act and the President then promptly announced that all White registration cards would be withdrawn from 31 March 2015, thus disenfranchising more than a million persons.<sup>41</sup> In an election year, no politician, not even a Noble prize winner, could be seen to be favouring what most Myanmar consider to be illegal immigrants. While voting by White card holders in 2008 and 2010 prompted little comment, the Rohingya campaign has turned the franchise for persons of undetermined nationality into a highly emotive and dangerous political issue.

## SEEKING A SOLUTION

Thus, what began as an effort to find an equitable solution to the citizenship status of perhaps a million human beings about which there is little agreement over their legal status and therefore the subject of legal scrutiny has become a political issue of a highly complex nature. Recognising the classification of Rohingya as the 136st national race of Myanmar would presumably require legislation passed by the *hluttaw*. As the imbroglio over whether the stateless persons in Rakhine and other areas of Myanmar should have the right to vote in elections and referenda demonstrated, the possibility of passing such legislation is extremely remote. Therefore the condition of their statelessness remains unresolved and unresolvable if the stateless insist on being treated as an indigenous ethnic group. Were they to be considered as immigrants, or descended from immigrants, on an individual basis regardless of ethnicity, their status could be resolved.<sup>42</sup>

People who consider themselves Rohingya live on both sides of the border between Bangladesh and Myanmar.<sup>43</sup> Migrants arriving in Thailand and other countries stating they are Rohingya, as is well known, come from both Bangladesh and Myanmar.<sup>44</sup> The language

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<sup>39</sup> Lawi Weng, "Upper House Approves Ban on Politics for Non-citizens," *Irrawaddy*, 20 March 2014.

<sup>40</sup> "'They Are Not Foreigners', Referendum: MPs Spurn President Over Ban on White Card Holders," *Mizzima*, 26 January 2015.

<sup>41</sup> "Myanmar Leader Voids Temporary ID Cards for Non-Citizens," *Associated Press*, 11 February 2015.

<sup>42</sup> As apparently some have. See "10,000 People in Rakhine State 'Willing to be Listed as Bengali,'" *Mizzima*, 31 December 2014. The same article reports that 40 persons were granted citizenship and 165 became naturalized citizens in 2015, according to the Rakhine State Immigration Department.

<sup>43</sup> "The Rohingya are people split by a border. People on both sides look the same. They have the same religion. Speak the same language. Have the same colour. The same culture. They have the same face. In Burma we are accused of being Bangladeshi and because of that they torture us." Quoting a person who identifies as a Rohingya in Bangladesh in Greg Constantine, *Exile to Nowhere: Burma's Rohingya* (NP: Nowhere publications, 2012), p. 16.

<sup>44</sup> "Dozens of Rohingya Migrants Arrested in Thailand," *Agence France Presse*, 6 January 2015.

of the Rohingya 'is similar to Chittagonian, which is closely related to Bengali.'<sup>45</sup> Not only people calling themselves Rohingya seek asylum in foreign lands; many Bangladeshis do, also.<sup>46</sup> The problem of the Rohingya has been treated up to now as essentially a Myanmar problem. It is not. It is an international problem and Bangladesh and other countries should not be allowed to avoid their international human rights obligations by pretending that the 'Rohingya' reside only in Myanmar or that Bangladeshi asylum seekers are Rohingya. India and Pakistan accepted responsibility for thousands of their nationals who chose to return to the lands of their and their parents' and grandparents' birth when their businesses were nationalised in the 1960s. Why should Bangladesh be allowed to evade its own obligations toward a people divided?

A resolution of the Rohingya issue also requires clear thinking about the meaning and nature of human rights. In contemporary political discourse, there is much discussion of group rights. This is to misunderstand the fundamental nature of human rights. Going back to the Universal Declaration of Human Rights, the ur-document of post Second World War concerns for human rights, it is clear that human rights adhere to us as individuals. Article 2 of the Declaration states: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Nowhere in the Declaration is there any notion of 'group rights'. Rights adhere to us as individuals in our common humanity.

## **CONFUSING HUMAN RIGHTS WITH GROUP ASPIRATIONS**

Claims to group rights are made as political claims or aspirations, not actual declarations of human rights. They are ideological claims. Rights and the denial of rights are established in law and that means that rights holders and deniers have the power to sue and be sued.<sup>47</sup> An ethnic group by its nature is not a legal entity, it is a social construct as is the notion of ethnicity, created either by an external agency<sup>48</sup> or by self-identification.<sup>49</sup> The idea of ethnic

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<sup>45</sup> International Rescue Committee, "Resettlement and the Rohingya," [their.org/usprograms](http://their.org/usprograms), p. 1. According to the same source, amongst Rohingya living in UNHCR camps in Bangladesh, two percent of the population speak Burmese. Amongst those who live in Malaysia, fewer than 20 percent speak Burmese.

<sup>46</sup> Refugee Action Coalition (Sydney, NSW), "Screening Out Starts Again: Many Bangladesh Asylum Seekers Face Immediate Deportation," 5 March 2013.

<sup>47</sup> Those who argue to the contrary do so on highly controversial and contentious grounds. See Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2013), particularly chapter 3, "Economic Rights and Human Rights", pp. 40-54. See also Jack Donnelly, "Human Rights and Asian Values: A Defense of 'Western' Universalism," in Joanne R. Bauer and Daniel A. Bell, eds., *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), pp. 60-88 and Peter Jones, "Human Rights, Group Rights, and Peoples' Rights," *Human Rights Quarterly*, Vol. 21, No. 1 (1999), Pp. 80-107.

<sup>48</sup> Such as British colonial officials in preparing their lists of linguistic or racial groups in the 1920s or 1930s.

identity is separate from a legal claim to human rights. One claims one's human rights as rights that adhere to us as humans, regardless of ethnicity or religion.<sup>50</sup>

Ideas of race and ethnicity will continue to be a motif in Myanmar politics for as long into the future as we can see. The existence of the 'big eight' ethnic groups is implicit in the names of the seven states of the union. However, in time these can become rights which stem from residence in a given territory or jurisdiction, not derived from the social construct of ethnicity. Just as residents of Scotland and Wales vote for their own legislatures not as indigenous and immigrant (Scottish or Welsh and Indian, West Indian, etc.) persons, so in time perhaps people will come to realise that many differently identifying persons live in any state and division of Myanmar. Acknowledging the identical powers of the states and regions by referring to all 14 as either states or regions would also help end a distinction without a difference.

Discarding the relatively recently created list of 135 so-called indigenous ethnic groups and any implication that there are ethnic groups other than the eight normally identified in discussion of ethnicity in Myanmar would return the question of the rights of the stateless persons now resident in Rakhine State to a question of human rights, not group rights. Removing from legislation phrases "such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups" which add nothing of legal value to laws such as the 1982 citizenship act, would emphasise that rights adhere to individuals. The confusion and discord that is generated by arguing whether or not people can call themselves Rohingya would be terminated and the question of their human rights could then be addressed in a calmer and more reasoned manner. Taking the emotion out of rights claims is difficult but it has to start sometime if peace is to be maintained and rights persevered.

The subordination of ethnicity as a political issue obviously is not an easy task in the current period. International media, with its desire to simplify and amplify complex and emotional subjects, work against reason. The futility or self-defeating nature of many claims made in the name of ethnicity are rarely questioned. While it would be naïve to believe that ethnicity as a factor in the politics of Myanmar can become insignificant, a fuller understanding of the conceptual problems that ethnicity poses for the comprehension of Myanmar politics or the resolution of human rights claims would help to depoliticise an inherently emotional topic.<sup>51</sup>

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<sup>49</sup> No one can deny me if I say I am a Hottentot if I believe I am a Hottentot. They might, however, question my sanity.

<sup>50</sup> Moral claims are a separate, political, not justiciable, claim. See footnote 47 above.

<sup>51</sup> These issues were explored earlier in Robert H. Taylor, "Perceptions of Ethnicity in the Politics of Burma," *Southeast Asia Journal of Social Science*, Vol. 10, No. 1 (1982), pp. 7-22, and "Do States Make Nations? The Politics of Identity in Myanmar Revisited," *South East Asia Research*, Vol. 13, No. 3 (November 2005), pp. 261-286.

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