

# **AN ASSESSMENT OF THE QUESTION OF ROHINGYAS' NATIONALITY**

**LEGAL NEXUS BETWEEN  
ROHINGYA AND THE STATE**

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# AN ASSESSMENT OF THE QUESTION OF ROHINGYA'S NATIONALITY

## *LEGAL NEXUS BETWEEN ROHINGYA AND THE STATE*

By U Kyaw Min

I

It is difficult for general Burmese to understand the legal status of Rohingya. Majority does not know the Geo-Political and historical background of Arakan. To general Burmese, a Burmese is a Buddhist. If a pure Burmese happens to be a Muslim he is regarded as a Kalah or a foreigner. Here, Rohingyas are Muslims, their complexions are different from general Burmese, so they are generally seen as foreigners or descendants of foreigners that mean Rohingyas are regarded as non-natives.

However, *Bokyo* Aung San, father of the nation and the leaders of post-independence period studied the affairs of all minorities in the nation and generously accepted Rohingyas as an indigenous race of Burma at the same par with Kachin, Kayah, Karen, Chin, Mon and Rakhine. He (*Bokyo*) sought the cooperation of Rohingyas. He assured them of their genuine nationality in Myanmar during his meeting with Muslim elders at Akyab in May 1946. U Aung Zan Wai and Mr. Sultan Mahmood (Ex-Health Minister) were said to have been assigned to go up to Maungdaw to organize Rohingyas there for AFPFL.

In early British census Rohingya, Kaman, Myedu and Chittagonians or Bengalis were all censured under the column of Muslims. Sometimes Arakanese (Rakhine) Muslims were categorized as Sheikhs and sometimes they were put under the column of Indian Muslims. Arakanese Muslims protested not to mix them with foreign Muslims. So in 1921 census only some Rakhine speaking Muslims were shown under separate column as Arakan Mohammedan. Then again in 1931 census Myedu and Kaman only were separately listed, whence some Rohingyas still remained under general Muslim headline. Yet Rohingyas are not foreigners in independent Burma. Grounds for this claim are:

- 1- In 1864 Foreigner Act was enacted and again it was amended as Foreigner Registration Act in 1940 and then came out Registration of Foreigner Rule in 1948. But Rohingyas, who settled in Arakan Village-wise, were not subjected to registration as foreigners.
- 2- In 91 department administrations of late colonial period, British election law had provisions for the representation of Indians in Burma. Rohingyas from north Arakan were allowed to represent as Burmese, not as Indians. Their representatives U Pho Khaing and U Gani Marakan had competed not as Indian, but as Burman against U Aung Tun Khaing and U Shwe Tha, who were Rakhines, in their respective nationality constituencies.





- 3- Further in the Constituent Assembly of Bogyoke Aung San, Sultan Ahmed from Maungdaw, Abdul Gaffar from Buthidaung and U Pho Khaing (a) Nasir Uddin from Akyab got elected as Burmese citizen representatives. The most interesting thing is on the very day of Bogyoke Aung San and his colleague's martyrdom, there was an official appointment at noon with these Arakan State Representatives.<sup>1</sup>
- 4- Under 1947 Burma Immigration (Emergency Provision) Act, no foreigner can enter the Union of Burma without any Immigration Permit issued by the controller or by any official authorized to issue such permits or a valid Passport duly visaed or endorsed by or on behalf of the President of the Union. Here a foreigner can enter secretly to Arakan but it is not easy for him to take permanent settlement in the midst of a functioning mechanism of Government.
- 5- Here again, there are the Immigration (Detention) Rules of 1951, in Burma. Under this rule any foreigner found entered the country illegally can be deported. There were instances of annulling deportation orders by Chief Court of Burma, in the cases of some Arakan Muslims <sup>2</sup>, who were arbitrarily arrested and sentenced for some years on conditions of deporting after the jail term.
- 6- There is the Union Constitution of 1947. Section 11 of this Constitution expressed: any of the indigenous races of the Burma means: the Arakanese, Burmese, Chin, Kachin, Karen, (Kayah), Mon or Shan races and such racial groups as has settled in any of the territories included within the Union as their permanent home since period anterior to 1823 A.D. (1185 B.E) [*Thus Rohingyas, whose residency in Arakan rooted so many centuries back, fall under this category of the indigenous race.*]
- 7- **The Union citizenship Act of 1948:** citizenship is a right to have rights. Section 3 (1) of this Act stipulates again Section 11 of the Constitution Section 4 (2) reads: 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 Union. [*If Rohingyas were not recognized as indigenous race as said above in Article 11 of the Constitution, they at least enjoyed citizenship under this Section of citizenship Act. Many Rohingyas in post independence period won the charges against them by immigration in Court, by showing clearance under this Section.*]
- 8- **Issuance of National Registration Certificate:** This is the most authentic document concerning Rohingya's citizenship. In parallel with Union Citizenship Act, the Residents of Burma Registration Act was enacted in 1949, followed by its executing Rules in 1951. Accordingly, all people residing in Myanmar were required to register either as residents or foreigners. To these two categories corresponded two novel document National

<sup>1</sup> Our Bogyoke by Takatho Ne Win.

<sup>2</sup> See, Moshe Yegar; 1972, p-102

**Registration Cards (NRCs) and Foreigner Registration Certificate (FRCs) (under 1864 Foreigner Act and then amended in 1940 as Foreigners Registration Act), for residents and foreigners respectively. NRCs were issued to all residents (mainly citizens) whilst registered foreigners (under Foreigners Registration Act and Rule of 1948) were issued FRCs. There was no third category of people in Burma, then. As a result, NRCs were used as a proof of nationality or citizenship.**

**Here Burma Residents Registration Rules of 1951, Section 33(b), stipulates what so ever this Rule cannot be applied to foreigners except the case in Section 29 and 31.**

**Section 33 Article (a) says Foreigners who were registered under 1940, Foreigners Registration Act should be accepted as registered under this rule, and their FRCs should be regarded as if issued under this rule.**

**Note: section 29, stipulates to carry the registration cards in case of traveling outside residing town.**

**Section 31, stipulates, in case of failure to abide by this rule, one is subject to face Legal action under Section 6 Article 2 of Burma Resident Registration Act.**

**In practice, too, the NRC holders had the right to possess immoveable properties, the right to public jobs, insurance, social security and professional educations. Rohingyas have been enjoying all these rights since independence up to 1990.**

**The most noteworthy thing is that the first town in the Union to issue this NRC in 1954 was Maungdaw. People in that area did not approach to immigration and Registration offices, individually or in groups to obtain the documents in illegal way. But the official under special project got to the grass root villages and issued the Cards to the villagers. Then how can we say, people obtained NRCs by bribing the local officials. So the notion that Rohingyas in Arakan acquired NRCs by fraud is not reasonable at all.**

**All NRC issued in earlier years bear no additional remarks. A remark stating, “holding this certificate shall not be considered as a conclusive proof of as to citizenship” was sealed later on NRCs. The reason behind this extra remark sealed later was the best known to the authorities. Perhaps one of the objectives of 1978, Dragon King Operation was to stamp the above remark on all NRCs.**

**9- Issuance of National Passports: Since independence, Muslims from Arakan States obtained National Passports to travel abroad. In the last few decades, pilgrims to Makkah, from Rakhine State, got Passports of the Union of Burma, too. Under international law, the possession of such document is a proof of nationality.**



**10. Eligibility to elect and to be elected:** In International laws, only citizens can compete in national elections. Burmese Constitution and Election Law prohibit foreigners from the right to elect and to be elected. The criterion to run for election is not only that the candidate is a full citizen but also both of his parents must be citizens too.<sup>3</sup>

Noteworthy thing here is, there were several general elections of Pyithu Hluttaw from 1947 to 1990's SLORC sponsored election, to 2010 democracy election in all these elections Rohingyas of Arakan or Muslims of Arakan enjoyed both rights, to elect and to be elected.

**Here is a list of MPs period wise.**

<b>Year</b>	<b>Position</b>	<b>Name of Candidate</b>	<b>Area Represented</b>
1936	M.C.C	Mr. Gani Marakan	Buthidaung+Maungdaw
1947	M.L.C	U Pho Khaing (a) Nasir Uddin	Akyab West
	M.L.C	Mr. Sultan Ahmed	Maungdaw
	M.L.C	Mr. Abdul Gaffar	Buthidaung
1951	M.P	Mr. Abdul Gaffar	Buthidaung North
	M.P	Mr. Abul Bashar	Buthidaung South
	M.P	Mr. Sultan Ahmed	Maungdaw North
	M.P	Daw Aye Nyunt (a) Zurah	Maungdaw South
1956	M.P	Mr. Ezar Meah	Buthidaung North
	M.P	Mr. Sultan Mahmood	Buthidaung North (By election)
	M.P	Mr. Abul Bashar	Buthidaung South
	M.P	Mr. Sultan Ahmed	Maungdaw North
	M.P	Mr. Abul Khair	Maungdaw South
	M.P	Mr. Abdul Gaffar (Upper House)	Both Maungdaw and Buthidaung
1960	M.P	Mr. Abul Bashar	Buthidaung South
	M.P	Mr. Sultan Mahmood	Buthidaung North
	M.P	Mr. Abul Khair	Maungdaw South
	M.P	Mr. Rashid	Maungdaw North
	M.P	M. A. Subhan (Upper House)	Both Maungdaw and Buthidaung

### **Ma-Sa-La (BSPP) Period**

<b>Year</b>	<b>Designation</b>	<b>Name of Candidate</b>	<b>Region Represented</b>
1974	Hluttaw	Dr. Abdu Rahim	Maungdaw
	Member	Mr. Abul Hussein	Buthidaung
1978	Hluttaw	Mr. Abdul Hai (a) U Tun Aung	Maungdaw
	Member	Kyaw	

<sup>3</sup> Pyi Thu Hluttaw Election Law 1991, Section 6(a) and Section 10(f).

## SLORC Sponsored Elections

1990	Hluttaw Member	Mr. Fazal Ahmed U Chit Lwin (a) Ibrahim U Tin Maung (a) Noor Ahmed U Kyaw Min (a) Anwarul Haq U Shwe Yat	Maungdaw South Maungdaw North Buthidaung South Buthidaung North Akyab
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## PRESENT DEMOCRACY

2010	Government Pyithuhluttaw Amyothar Hluttaw	U Shwe Maung U Aung Zaw Win U Htay Win	Buthidaung Maungdaw Maungdaw
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During the Ma.Sa-La period, in all level of elections: Village Tracts, Townships, and State or Division Councils; Rohingyas got the right to represent there. In the last Pa-Ta-Sa Cabinet of U Nu, Health Minister was Mr. Sultan Mahmood, M.P., from Buthidaung North.

To sum up, until recently, Rohingyas enjoyed full citizenship rights. So they naturally are full Burmese citizens. By 1982 Citizenship Law too they are citizens, because Article 6 of this law stipulates as one who is a citizen at the commencement of this law is also a citizen. But present government minister interpreted it to refer to Ucc-holders. Rohingya is said not to enjoy the rights under this article. Arbitrarily depriving one's citizenship or degrading one's citizenship status, I hope, is contrary to international laws and norms. The reason behind denial is self-interpretation of 1982 citizenship law. They say Rohingya is not in 135 ethnic groups list which was designated lately by Ma-Sa-La. It is said, Rohingya's residency in Myanmar might be for centuries, yet they have to apply for naturalized or associate citizenship. Gaining of this degraded status is also subject to the approval of highest authority.

Presently TRCs or white cards as it is called, Temporary Registration cards have been issued to Rohingyas in North Arakan' UNHCR officials say "According to the explanation of Department of immigration, TRCs can be regarded as a step towards granting citizenship to Rakhine Muslims."<sup>4</sup> According to Burma Resident Registration Rule Section 13, a-1, TRC is a substitute for NRC for a temporary reason. In the last decades many NRCs were seized and some were substituted with TRCs. Now Government says TRC is not a proof of citizenship.

<sup>4</sup> A. Joseph; *A nation within a nation*, a UNHCR compilation, 1998, P-34.

After all, UNHCR in its assessment of the situation, remarks:

*“One would be incorrect in asserting that because there exists no formal citizenship nexus between Rakhine Muslims and Myanmar Naing Ngan as this population is living in a legal limbo. In fact there exist a wide series of genuine affective links between the two above mentioned. Historically the national nexus between the Rohingya and Rakhine kingdom was following from higher legal political nexus. i.e. the nominal vassalage of the Rakhine King to Sultan of Gaur, which guaranteed Muslim subjects to be treated on equal footing with the Rakhine Buddhist.”<sup>1</sup>*

**11. Degrading of Nationality Status:** Despite profound rationale and historical as well as legal proofs, Rohingyas today are barred from gaining citizenship Scrutiny Cards. Their nationality status is made a subject of suspicion. Many happened to incline to believing the fabricated or distorted stories concerning Rohingyas. But the UN Universal Declaration on Human Rights in 1948 in its Article No. 15 says, “Everyone has the right to a nationality, none shall be arbitrarily deprived of his nationality, and no one be denied the right to change the nationality.” Rohingyas had been full-fledged citizens of Myanmar through out its history up to 1990 SLORC sponsored Parliamentary election and then 2010 election. Degrading their nationality status is seemed to be unlawful.

UNHCR official A. Joseph in his research paper observes:

*“Losing this status (Nationality Status) pertains to the nuclei of rights Universally considered jus cogent, which may not be limited, curtailed or infringed for any reason of national emergency, national security, sovereignty or national unity. As to the rights expressed in Article 3 and 5 of the Universal Declaration of Human Rights, there can be no derogation as far as denationalization is concerned. According to children Rights convention, every child has a right to citizenship. Myanmar is a party to this convention. She signed and ratified it. Myanmar had enacted Myanmar Children Law, in 1993. Section 10 of the said Law stipulates that every child shall have the right to citizenship in accordance with statutory language of existing laws. Since Myanmar is a party to the (Children) Convention, she is obliged under Article 7, to afford nationality to every child born on its territory, in particular when the child would otherwise be stateless. The rigorous nature of the restrictions imposed on NRC, TRC holders of Arakan leaves little doubts that the concerned authorities seek to relegate such persons into positions of inferiority, particularly not only in the sphere of political affairs but also in the economic realm.”<sup>4A</sup>*

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<sup>4A</sup> Ibid; P-17



UNHCR annual report of 1997 remarks:

“Myanmar and UNHCR signed a Memorandum Of Understanding (MOU) on November 05, 1993. Article 5 of that MOU Says returnees will enjoy the same freedom of movement as all other nationalities in Rakhine State. But the second part of the sentence, “in conformity with existing laws”---, bring us to the earth. What these laws are? This is the legal basis for movement restrictions that currently applied in Northern Rakhine State. These regulations are:

- (a) Section 10 of the Foreigners Registration Act of 1940, which stipulates that foreign residents in Myanmar have to request a license to leave their place of residence; and
- (b) Section 11 of above act of 1940, which elucidates, in this context, every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass or the limit within which he is authorized to travel, and the period of travel and so on.

It has been well noticed that improving the legal status of Muslims in this region is the first step towards social and economic development. Culturally, socially or simply humanly the consequences of a weakened legal status of Muslims population in North Arakan State are many. They touch every realm of life”.

It should be tackled in a fair way, without neglecting the historical and legal background of this population of Arakan. They should be treated as equal. Their citizenship right should be handled with an approach clean of virulence, in Burmese term, devoid of *Gadhi Tyaa*.



**A MUSLIM GOLD COIN OF MARUK-U PERIOD ( 1430 – 1784 A.D ) with *Kallima***

## SUCCESSIVE BURMESE GOVERNMENTS AND ROHINGYA

### II

***Do the Rohingyas have the right to be Burmese citizens?***

***Do they fall in the norm and form of Burmese indigenous category?***

It is a question most people raise, at least in their mind. To be straight to the point Burma has neither during the reign of Burmese kings nor during the Period of British rule, any specific legal corpus stipulating the rights and duties of Burmese; it neither had any law concerning the issuance of identity documents whatsoever. So when we speak of citizenship or national races, we have to start from the laws enacted since Myanmar's independence. It is not nationalism of some section of the people, but the question of law, because a country functions not only on nationalism but also on laws. [Here all laws enacted in Burma could not be interpreted to satisfy the need and wish of minorities]. The Land Rohingyas inhabit has never been exclusively a Rakhine province. Rakhine got control of Arakan only in 10<sup>th</sup> century AD. Before this it was the land of Rohingyas. (See ancient Arakan scriptures). From that time up to 1823, the Muslims or Rohingyas have been the majority population of Arakan. The notion that Rohingya are British time products is a none-sense.

Burmese laws concerning citizenship were neither jus sanguine nor jus soli; it is a mixture of both. So we cannot say that to be a Burmese citizen one should be a Buddhist or from so designated group or tribe. Since Burma is a multi-racial country, peoples of different racial and cultural background live here. So, all these peoples should be accommodated in the family of national races. For example, in India, Nagas in east are ethnically and culturally very much different from the Malwaris in the west. Yet all have the same status and equal rights. Taking into consideration these points, all previous Governments in Burma, treated Rohingyas as Burmese nationals despite their ethnic differences. Though there had been some occasional discrimination, on the whole, Rohingyas were provided with full citizenship rights. But lately there came 1982 citizenship new law, which made Rohingyas quasi-stateless. Government has a bizarre stand against them. Sometimes they say Rohingyas are illegal immigrants, sometimes say their citizenship is doubtful.

Some major proofs of recognizing Rohingya as citizens, by successive Government are as follows:-

1. British first ruled Burma under the Governor of India. Next there was a Governor for Burma. Then in late colonial period there was a Governor's Council, represented by all racial groups

including Indian and European residents in Burma. Where Indian population reached the quota prescribed in the Council's regulation, there was an Indian Constituency. Thus Akyab, where was a vast Indian populace, got an Indian Constituency for the Governor's Council. There was a Nationality Constituency too. All other Constituencies in Arakan were nationals. Thus the representative elected from Maungdaw, Buthidaung was a National Representative. Mr. Gani Marakan of Akyab represented Maungdaw and Buthidaung in 1936 election. The competitors of that period with Gani Marakan were U Shwe Tha and U Aung Tun Khaing both of who were Rakhine. A Rakhine candidate never tried to be a representative of foreigners. This is a proof that Muslims from northern Arakan were regarded as Burmese nationals, even in British period.

2. In the Legislative Hluttaw of Bogyoke Aung San, which had drawn first Burmese Constitution, Rohingyas too, got the chance to represent, which indicates, Bogyoke Aung San, father of our independence, accepted Rohingya as Burman. Their being Kalahs *in Rakhine version* (Muslims) did not infringe in their citizenship. M. L. Cs. of Hluttaw were U Sultan Ahmed from Maungdaw, U Abdul Gaffar from Buthidaung and U Pho Khaing (a) Nasir Uddin from Akyab West.
3. In 1950, Prime Minister U Nu took along with him the Ambassador of Pakistan, Mr. Aureng Zeb, to Maungdaw and Buthidaung, where he (the Prime Minister) arranged mass public meeting and assured the Ambassador as well as the local public that Burma regard these people as genuine Burmese citizens and henceforth no discrimination will ever occur in this area. (See; Mushe Yegar, Muslims of Burma)
4. We have, Burma Residence Registration Act of 1949, under which NRCs were issued only to Burmese citizens. The most notable thing is Maungdaw was the first town in the Union to issue the NRCs. The teams of immigration and Manpower or National Registration Department got down to the grassroots villages to register and issue these NRCs. No one came to the town office to obtain that NRCs by fraud or bribe. According to the Rules of said Act, foreigners cannot be issued NRCs. So having NRCs <sup>5</sup> is a proof of Rohingya's being Burmese Citizens.
5. U Nu, the Union Prime Minister, on the radio speech relayed from BBS (Burma Broadcasting Service) on 25<sup>th</sup> September 1954 at 8:00 PM explained that the people living in Maungdaw and Buthidaung regions are our national brethren. They are called Rohingyas<sup>6</sup>.
6. Both Prime Minister U Nu and then Defense Minister U Ba Swe in November, 03 and 04 1959 made public speeches to the mass public gathering in Maungdaw and Buthidaung. There, they assured the public that the government was clean and clear in regard of Rohingya's Burmese citizenship. They told Rohingyas were at the same par in the status of nationality with Kachin, Kayah, Karen, Mon, Rakhine and Shan.

<sup>5</sup> A seal canceling the guarantee of nationality preserved by NRCs was affixed on it, some years later.

<sup>6</sup> Explanation of U Nu's radio speech 25<sup>th</sup> Sep. 1954, p-3.



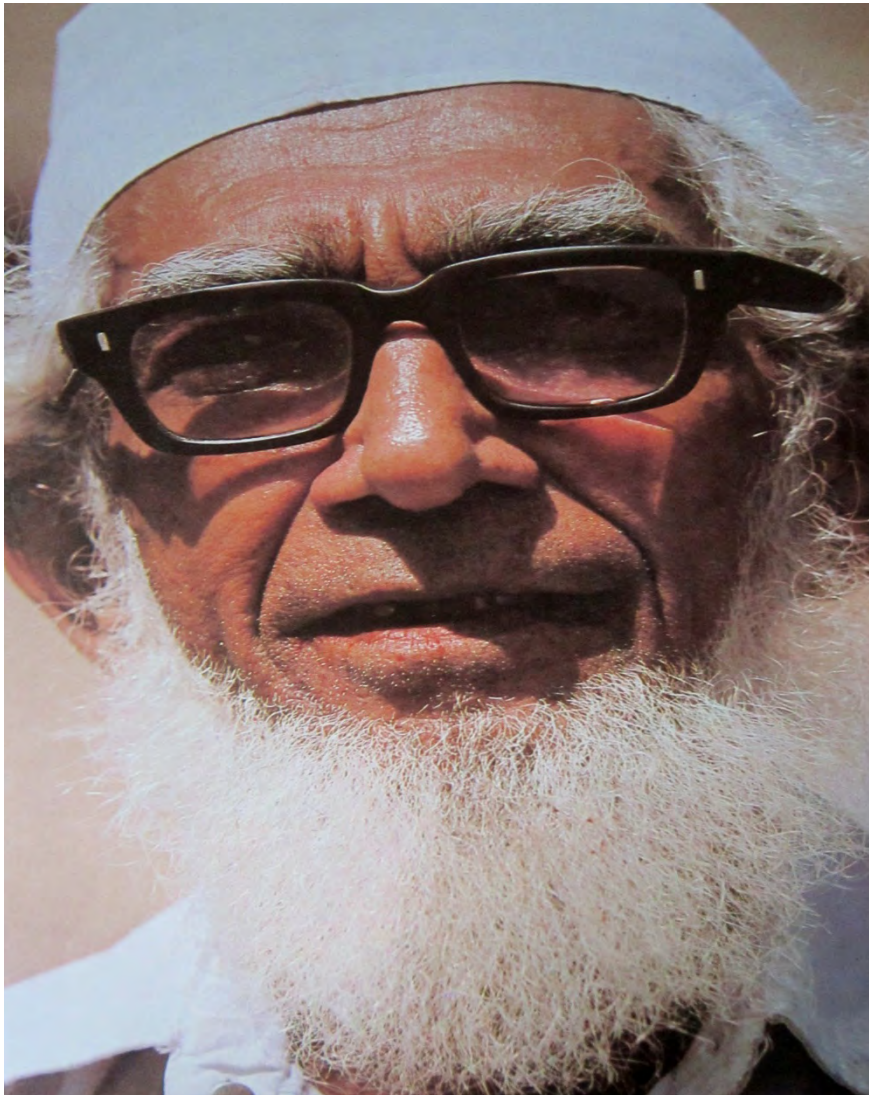
7. A notification is issued on November 20, 1961 by Frontier Administration Department, under Prime Minister's office designated *May Yu Frontier Area* as a Rohingya majority region and emphasized that Frontier Administration was introduced only to uplift the socio-economic life of these people.
8. Rohingya language was relayed from BBS for ten minutes two times per week in its indigenous races' broadcasting program, from 15 May 1961 to 30 October 1965 <sup>7</sup>. Mr. Kalim Ullah (a) U Ba Tun (B.A., B.L.) was the newscaster.
9. "*Sarpay Beikman*" is a Government controlled publishing house. Government censored well its publications. In its publication, especially Myanmar Encyclopedia Vol. 9, 1964, on page 89, narration was given in detail concerning Rohingya and their being Burmese nationals.
10. *Khityae Sasaung*, a bulletin of Defense Ministry, in its Volume number 12, No. 6 and 9 dated 18/7/61 and 8/8/61 respectively, carried long stories concerning Rohingya. It described northern Arakan, a place of Rohingya majority where some minorities, Khami, Mru, Dainet and Rakhine, too reside.
11. The groups of *Mujahids*, one on 8/7/61 and the other on 15/11/61, surrendered. Both surrendering ceremonies were chaired by then Brigadier Aung Gyi, Deputy Chief of Staff. The speeches he made on those occasions were produced in booklets, named "*Future of May Yu*". These booklets are in the hands of many people today. Summarizing his speeches, we get the following points. He said, "*The people in this district (May Yu) are Rohingya. On the other side of the border, there are Muslims too. They are Pakistanis. Muslims in Arakan side are Rohingyas. Some ethnic peoples live on the both sides of the border not only in this border, but also in our borders with India, China and Thailand. For example: Lisu, EiKaw, Lawa live in Kachin State where their main clans were in China. In the same way we have Shan in Burma, whereas in China there are Tain Shan too. There are Mon, Karen, Malays in Burma as well as in Thailand. On the Indian border, in our side, there are Chin, Lishaw and Naga. These people settled down on Indian side of the border as well. So frankly speaking people living in this May Yu region are our national brother, and one of our national minorities. So if we had any wrongs in the past, forget them. From today, you all are our Union citizens. Feel yourself as our family members, not strangers*". He further explained many other things. Rohingya people want to live a life like this. They hope the above promise of elderly statesman is still official. It will still work it cannot be a deceit to the Rohingya people.
12. High School Geography of Ma-Sa-La period printed in 1978 indicates in a map of Burma, the scattering of national peoples, where northern Arakan is spotted as a region of Rohingya settlements.
13. Traditionally, Union Day celebrations on 12<sup>th</sup> of February have been yearly celebrated in a grandeur manner, under the sponsorship of the Government. Representatives of Union races

<sup>7</sup> *Golden Jubilee Bulletin of BBS.*

have been invited as State Guest there. Rohingya representatives of Union races have been invited as State Guests there. Rohingya representatives too were invited in 1960 and 1961 Union Day Celebrations. Next a cultural exhibition and a sport race, were allowed to be shown and performed in *Theinbyu* Sport Ground, Yangon, on 1961 Union Day.

14. The last and most important reference of Rohingya's historicity is in the book "*Sasana Ronwa Htunzeph*" published by SLORC Government in 1997. In its chapter of "Islam" the book pointed out that Islam spread in Arakan since 8<sup>th</sup> century A.D. It was highly rooted there, and from there it further spread into inner Burma.
15. In Rangoon University, there were Ethnic Students Associations. Rohingyas also got registration of their Association in 1959-1960 and 1960-1961 academic years. Registration Numbers are: 113/59 Dec. 13, 1959 and Reg. 7/60 Sep. 17, 1960 respectively.

These all are some proof for those who suspect Rohingyas being genuine citizens of Burma. Still some may say these all rights were not by the decree, notification, declaration or decision of the highest organ of the State. No such documentations ever appeared in Burma in regards of so-called 135 indigenous peoples of Burma (save the original eight ethnic races whose names were



mentioned in Burmese constitutions). If the rest of all can be indigenous races without any decree or notification why not Rohingya?

Most unreasonable thing is those who were foreigners in 1973 census are today among so called 135 indigenous races. More deplorable is some major ethnic peoples are maneuvering for expansive rights for their peoples where as they say Rohingyas have no right to ethnicity and even no right to citizenship.

*An aged Rohingya national with traditional cotton cloth cap in the city of Akyab (Sittwe) in Arakan State, Burma*

## GEOPOLITICAL FACTORS CONCERNING ROHINGYA'S NATIONALITY

### III

In previous chapters we have obviously seen the facts, which show Rohingya's deeply rooted historic existence in Arakan (now Rakhine). In other words Arakan (Rakhine) is Rowang and Rohingya is Arakanese (Rakhine). So Rohingya's existence in Arakan (Rakhine) is as old as the land itself. Let us go into detail so that we have a clear vision of this subject.

Historical evolution and geographic situation always affects the life of, a people. Arakan political link with India had been deeper, greater and longer than that of with Burma proper. Geographers plainly remark that Arakan (Rakhine) is a continuation of Chittagong Plain and is separated by Arakan-Yoma range from Burma. Culturally too, until 10th century, - Burmese invasion and control of the land everything in Arakan (Rakhine) from language, culture, religion and scriptures to ethnic people, were all Indians. The cultural and ethnic characteristics of ancient Arakan (Rakhine) are today found in Rohingyas and the Buddhist Bruwas of Arakan (Rakhine), only. Perhaps some Bruwas mixed up with Rakhine in the course of last centuries. A scholar of ancient, Arakan (Rakhine) history says:

"Dividing Rakhine coast from the rest of Myanmar, the Rakhine Yoma mountain range historically has been a barrier between Myanmar and Indian subcontinent. Hence the range, not only functions as a climate barrier (cutting off the "south-west monsoon rain from central Myanmar) but historically functioned as natural obstacle against permanent settlement of Muslims dwellers and further as a visible and accepted fracture between the two subcontinents. The latter therefore preferred to settle down on the shores of the Naf River and along the coast of Bay of Bengal." <sup>8</sup>

Another author rightly concluded, these geographical facts explain the separate historical development of that area Arakan (Rakhine) until it was conquered by the Burmese kingdom at the close of 18<sup>th</sup> century. <sup>9</sup> Again A. Joseph concluded:

"The 20th century witnessed an acceleration of history of some sorts: where Rakhine Muslims and Buddhists alike had a massively out (only) once per century in the 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries, namely: clash between Prince Shah Shujah and the Mrauk-U King (Sanda Thudamma) in 1664, Burmese conquest of Arakan (Rakhine) in 1784, first Anglo-Burmese war in 1824. The recurrent of displacement occurred in the 20<sup>th</sup> century, with four massive exodus, namely second-world war; the Mujahid rebellion in the 1950s, the exodus, of 1978 (Operation Dragon King, "Nagamin") and the recent 1991 outflow." <sup>10</sup>

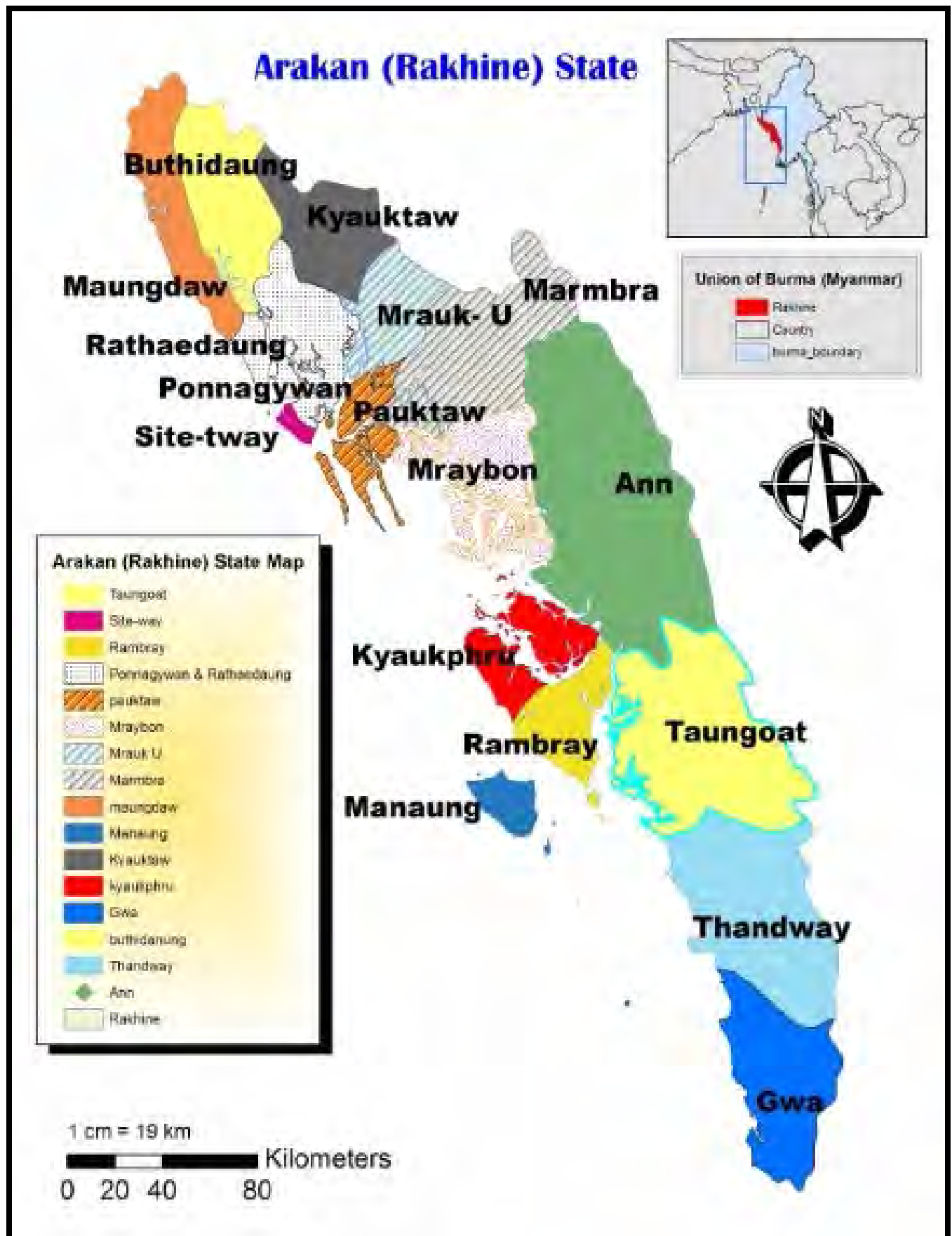
<sup>8</sup> A. Joseph; *"A nation within a nation"* (An UNHCR study record, 1998)

<sup>9</sup> Mosche Yegar; 1972, p-18.

<sup>10</sup> A. Joseph; *"A nation within a nation"* (An UNHCR study record, 1998)



# **ARAKAN STATE WITH 17 ADMINISTRATION TOWNSHIPS**



These occurrences of human fluctuations indeed have some cultural as well as ethnic effects on both sides of the border. There are today a great many Rakhines in Chittagong area, despite their massive official repatriation by U Ne Win's Government, where as there are Bengalis in Arakan (Rakhine) indeed. The Rakhines adopted a life suitable in Bengali environment; whereas the Bengalis in Arakan (Rakhine) did the same indeed. The Rakhines adopted a life suitable in Bengali environment, whereas the Bengalis in Arakan (Rakhine) are too acculturated to Rakhine situations. The Bengalis in Arakan (Rakhine) today hardly be said to be identical with those in Bangladesh. Today they are different in everything from Bangali; they have their own socio- Economic life. Thus since, centuries ago, historians had designated them as Rohingya; the native of Rohang. (See, Arthurphayre, Buchanan, Renell and many other's works). In Bengal Arakan is called Rohang and its people are called Rohingya".

An UNHCR official who has been studying political, Social and historical background of Arakanese (Rakhine) peoples writes:

*"In official rhetoric and publications Rakhine Muslims (Rohingya) are said to speak Bengali. This, however, reveals inaccurate, as the Bengali language spoken in Decca, does not belong to the same stock of language in Arakan (Rakhine) and has a very few in common with the language spoken in Northern Rakhine State. More correctly the local language spoken by Rakhine Muslim is a Chittagonian dialect, an idiom spoken in Bangladesh region, bordering Rakhine State. Whilst being very close to the Chittagonian dialect, it is by no means identical. For example, the Rakhine Muslims dialect is indicative of historical residency in Myanmar, as it approximately includes as much as 10% - 15% of Rakhine words and expression."*<sup>11</sup>

A factor most worthy is that Arakan (Rakhine) and Chittagong from the early Christian era to the end of Mrauk-U dynasties, for many, many centuries had been under the same rule. Sometimes there were political fluctuations. So, D. G. E. Hall says;

*" That Arakan (Rakhine) managed to maintain itself as an independent kingdom until almost the end of the eighteenth century, mainly due to its geographical position--- From the very early days the older and purer form of Buddhism, the Hinayana or Lesser Vehicle, was established there. It must date from before the arrival of Burmese in the 10<sup>th</sup> century, when Arakan (Rakhine) was an Indian land, with a population of similar to that of Bengal -- And although before the establishment of Mrohong by Naramaikhla in AD 1433, there was from time to time a certain amount of Burmese and Mon interference. Arakan's (Rakhine) contacts with Mohammedan India were probably closer than those with Burma. None of its rivers rises in Burma and throughout its history its water communications with Bengal were*

<sup>11</sup> A. Joseph; *"A nation within a nation"* (An UNHCR study record, 1998), p-29

*easier than it's over land communication with Burma. When Bengal was strong its rulers received tribute from Arakan (Rakhine); at other times Arakan (Rakhine) claimed tribute from parts of Ganges Delta. This fluctuation of power affected Chittagong, which was held alternatively by one side or the other. In 1459 it came into the hands of Arakan (Rakhine), which held it until it was finally annexed to the Mogul Empire in AD 1666. Mohammedanism spread to Arakan (Rakhine), but failed to make much impression upon its Buddhism. Myohaung had its Sandhi Khan Mosque and its kings assumed Mohammedan titles, but the predominance of Buddhism was never shaken."*<sup>12</sup>

But from AD 1666 up to 1785 i.e. throughout 3<sup>rd</sup> Mrauk-U period Arakanese (Rakhine) chronicles show Muslim to be predominant politically.

Burma share borders with Bangladesh, India, China, Laos and Thailand. Various ethnic minorities along all these borders dwell. Most of these minorities have their mainstream clans across the border on the other side. For example, Kuki Chins, Zhomi and Naga on Indian border; Wa, Kokan and Zinphaw on the eastern border and Chakmas and Bruwas on the Bangladesh border, all of them today, are amongst so called 135 ethnic minorities of SPDC and the present Governments. All of those people's mainstream clans live beyond the border in adjacent countries. Some of them have their own Autonomous States in Bangladesh, India and China.

When Senior General Than Shwe of Myanmar visited Yunan Province of China in the year 2000, Kachin females in their Kachin national dresses lined up along the street to given rousing welcome to the General. Even Shans in South-East Shan State speak a Saimese dialect. In Arakan (Rakhine) the Chakma, Sak and Bruwa too speak Chittagonian dialect <sup>13</sup>. Genealogically and culturally Bruwas have a very close affinity with Bengalis. Yet U Hla Tun Pru put Bruwa at the par with Burmese speaking Rakhine, and said Bruwa is from Rakhine's ethnic stock too? It is only because Bruwas are Buddhist. Next, the Chakmas of Chittagong hill tract have their own autonomous region. The Chakma, whom we called in Myanmar Dainet, too, speak Bengali. <sup>14</sup> Yet all these peoples are designated as Burmese indigenous peoples. This logic is not applied in the case of Rohingya, Arakan (Rakhine). Without mentioning Rohingya, Arakan (Rakhine) history, both ancient and modern cannot be said to be complete. Sayadaw Winmala writes "there have been political and cultural link between Arakan (Rakhine) and Bengal for centuries. So almost all ethnic people in Arakan (Rakhine) have an affinity with her clans in Bengal, especially the Bruwas speak the same language as Chittagonians."<sup>15</sup> If we accept all these different minorities, with their affinities with clans across the borders, why don't we want

<sup>12</sup> D.G.E.Hall; 1950, PP57-58.

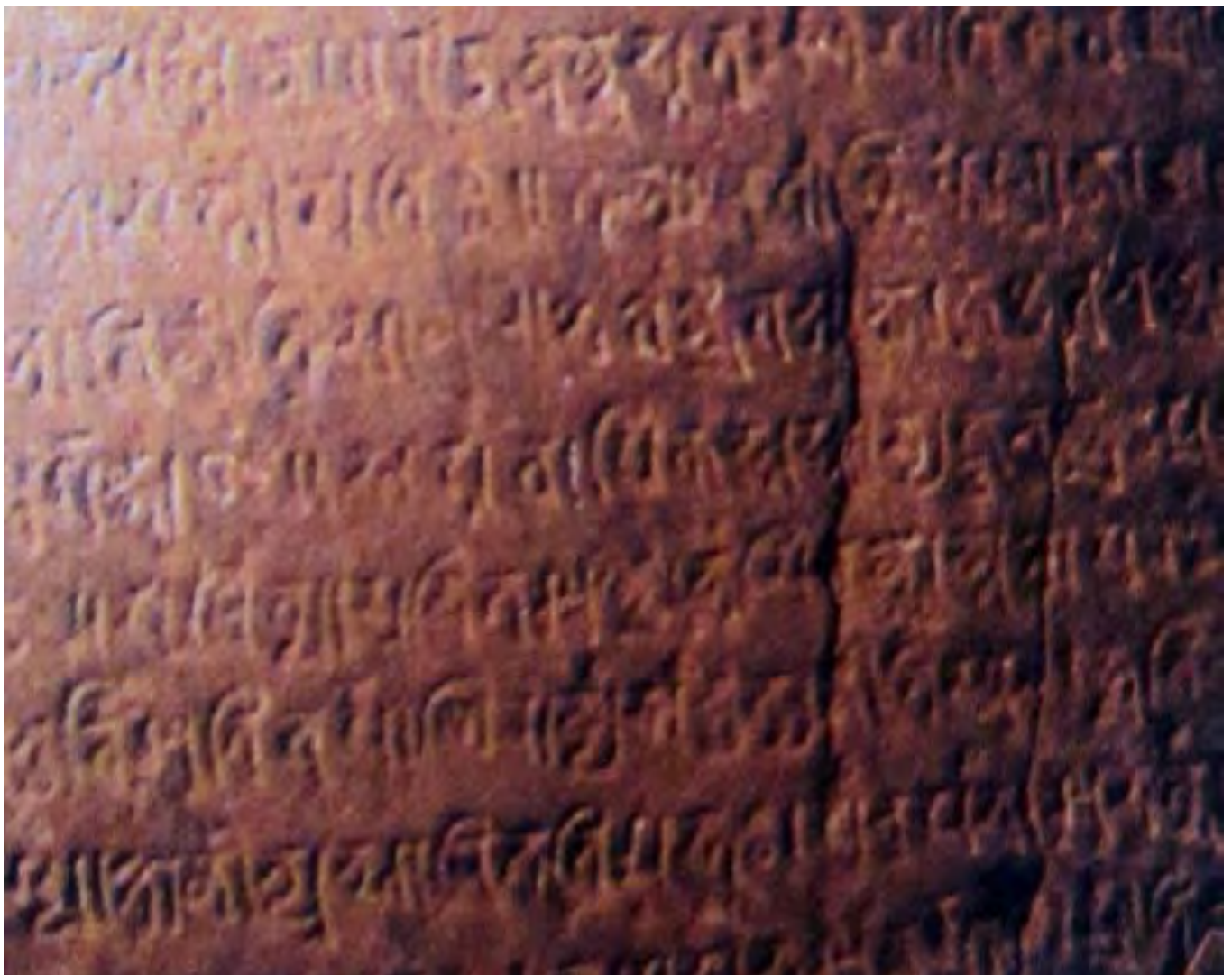
<sup>13</sup> U Hla Tun Pru; 1981, p-33

<sup>14</sup> U Hla Tun Pru; 1981, p-34

<sup>15</sup> Pathein Sayadaw Winmala; 1320 B.E. PP. 14-16



it to apply in the case of Rohingya? Indeed Rohingya alone has a more deeply rooted connection with Arakan (Rakhine) as we have seen above and in previous chapters. The world today has many instances of such phenomena: Malays in Southern Thailand, Tamils in Sri Lanka, Turks in Cyprus and many others in Europe are enjoying full citizenship rights. These all can co-exist peacefully and honorably in their respective residency. I hope this sort of harmony would prevail in Arakan (Rakhine), too. **The notion of separation of Muslims and Rakhines, in Arakan is racist and apartheid in nature.** I hope no one will encourage this segregation policy. Democracy and human rights conscious peoples of the world should not sit aloof with their hands folded, to see the Rohingyas are strip of their ethnicity in the present point of their desperation and despondency. Rohingyas are subjected to annihilation by racist Rakhiness breded by present military governments. Before this military there was peaceful co-existence between the Rakhine and the Rohingyas for centuries. [See the historical records of Mrauku period. Mrauku was founded by Muslims in 15<sup>th</sup> century.] So please come to our rescue in this critical point of our history.



Ananda Chandra Pillar's inscription of Veshali (Wesali)Chandra Period 788-957 AD of Arakan

## THE SURVEY OF UNHCR

### IV

In the aftermath of 1992 refugee problem, many NGOs entered Arakan and have been working there. Especially refugees have been repatriated under UNHCR's supervision. Only a few thousand refugees remained in Bangladesh, whose case is under negotiation between Myanmar and Bangladesh. UNHCR has its yearly reports. Further some of its senior officials have compiled some thesis concerning the Rohingyas.

These comprise "*A nation within a nation*", by A. Joseph; "*Analysis of the livelihood situation of the Muslim population in Northern Arakan State*" by Andersen; and "*A brief account on the history of Muslim Population in Arakan*" by P. Nicolas.

Their study seemed to be of many fold. Their theses contain various viewpoints: the official version, the Rakhine version and the version of Rohingya themselves. According to UNHCR's documents:

*"An increasing number of Rakhine Muslims have shown willingness to acquire formal Citizenship. It said, recent survey indicated 70 to 80% interviewees- declare that holding Myanmar citizenship is first on their list of priorities. Further 60 to 90% declare that they consider themselves as nationals of Myanmar.<sup>16</sup> But the Rakhine version in regard of Rohingya's nationality is, "the indigenous races of Myanmar have no Muslim religion."<sup>17</sup> Finally the official (SLORC and SPDC Government's) version in regard to Rohingya is, "the so-called Rohingyas never belonged to the national races or national racial groups of Myanmar. The Rohingya do not exist in Myanmar historically, politically or legally nor do they in any way represent any segment of the population in Myanmar including those professing the Islamic faith. The so-called Rohingya is an invention of insurgent terrorist organizations like Rohingya Solidarity Organization (RSO) and Arakan Rohingya Islamic Front (ARIF). Both organizations are alien to Myanmar in form and content and are largely supported from abroad."<sup>18</sup>*

Again Minister for Foreign Affairs, U Ohn Gyaw, in 1992 opined, "*Persons, who could not produce and Identity Card should have a problem*". He further said "*it is a rubbish thing*

<sup>16</sup> A. Joseph : *A nation within nation*, P-1.

<sup>17</sup> Ibid; P-19.

<sup>18</sup> UN DOC., E/EN4/1993/62 P-175. (Official note of permanent mission of Myanmar to UN, in response to the allegations made by special rapporteur for Myanmar in 1992), *a nation within a nation*, P-19.

*that people have left Myanmar: These people who are in the refugee camps in Bangladesh are perhaps from Decca, but not one single person has left Myanmar”.*

This reflects the official position concerning the Rohingyas and Rohingya refugees. Myanmar Government is ready to register or issue Registration Cards to Rohingyas, but reluctant to issue them either NRCs or so-called Citizen Scrutiny Cards.<sup>19</sup> --- But their words have no consistency and later they accepted the refugees. UNHCR survey in 1998 reflects the perception; sense of belonging. It says their interviewees claim to be Burmese nationals.

One of the returnees says, “Now I feel they are wrong in saying that we are foreigners”. Here in these connections UNHCR official, observed as follows:

“One would be incorrect in asserting that, because there exist no formal citizenship nexus between Rakhine Muslim and the Myanmar, this population is living in a state of legal limbo. In facts there exist a wide series of genuine effective links between the two above mentioned. To name a few:-

- i. The mere fact that returnees revealed themselves of Myanmar National protection is an unmistakable nexus and decidedly a persuasive one.
- ii. The fact that Rakhine Muslims have enjoyed habitual residence rights for generations and continue to do so.
- iii. Formal and informal taxes are paid to the local authorities.
- iv. Participation for social security system for those Rakhine Muslims who were working (in Public Departments)
- v. Massive participation in the nationwide election of 1990, a right normally reserved for citizens.
- vi. Some legal documents; the author had a chance to review and testify that Rakhine Muslims are nationals of the Union of Myanmar.

UNHCR annual protection report of 1997 said:

“The Rakhine Muslims are not stateless persons per se, since they were granted some residency right on the territory of Myanmar Naing Gnan. The report further said the contention that Rakhine Muslims presently residing Arakan State are, all descendants from illegal immigrants who entered Burma in the past decades because of the irresistible thrust of over population in Bangladesh and search for “greener Pasture” is deemed incorrect, especially in view of the fact that Muslim settlements in this area can be traced back to A.D 1430 – albeit not being formally recognized as citizens, Rakhine Muslims enjoy

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<sup>19</sup> A. Joseph, *A nation within a nation*, P-33.



most of the historical, cultural and legal characteristics of Myanmar nationals. Historically the national nexus between Rohingya and Rakhine Kingdom was flowing from a higher legal and political nexus i.e. the nominal vassalage of the Rakhine Kingdom to Sultan of Gaur, which granted Muslim subjects to be treated on an equal footing with Rakhine Buddhists. (UNHCR also remarks): that there is a formal link between their NRCs and Citizenship – (UNHCR further remarks): As outlined above, the 1982 Citizenship Law is based on an official position, which discourages amalgams between immigrants and old settlers. In that context, mutual respect is strongly discouraged in day-to-day interactions between communities. – Practically, any Muslim looking person, or one with Muslim name, is a suspect of being an intruder, or even a member of insurgent groups. Being not a citizen, the average Muslim is subject to all sorts of frustrations particularly at checkpoints, being called “Kalah”.

Yet some expressed doubt that there might be some illegal immigrants of recent decades. The truth is that life in Arakan for a Muslim is very restricted and humiliating. It is unimaginable that Bangladeshi would enter into this antagonistic atmosphere. In contrast thousands of Rohingyas gradually have been leaving Arakan for permanent settlement in other Muslim countries since Burmese independence.

It is because they see no one is coming to mend their fences and to protect them. Further in recent decades, proper Government mechanism has been functioning well to persecute and suppress them aiming to degenerate them. It is unthinkable for a foreigner to settle there and acquire residency documents.

Whatsoever, the final assessment of UNHCR office at Maungdaw is a breath of relief for Rohingyas. It says:

*“First priority should be given to the issue of nationality, for without nationality not only Rakhine State development is conceivable, but the perfect root cause for future massive displacement will be maintained at the dawn of 21 century. It is serious and positive attentions must be given to the problem of incorporating Rakhine Muslims as full and equal citizen into Myanmar Nation”.*

Dated. 25<sup>th</sup> August, 2012

U Kyaw Min

Yangon, Myanmar

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