

# The Rohingya, Genocide and a New Dawn for Myanmar

Written by Andrew Fagan

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ANDREW FAGAN, DEC 6 2015

The citizens of Myanmar/Burma[<sup>1</sup>] are living through a potentially momentous period in the history of their country. The staging of the only credible general election to have taken place in Myanmar since the annulled election of 1990 occurred on November 8<sup>th</sup> 2015 and attracted global media attention. The election undoubtedly marks the country's most significant step yet on its road towards what many hope will be a democratic and human rights respecting future (see Fagan 2015).

While the final and official confirmation of all of the results is still awaited, it is clear that Aung San Suu Kyi's National League for Democracy (NLD) has repeated the landslide which it reputedly secured and was denied in 1990 but which led to one of the most repressive periods during the period of the military dictatorship. In these most recent elections the NLD has secured 886 out of more than 1,100 seats it contested in both houses of parliament. Most importantly, it has won at least 390 seats within the Union Parliament, which exceeds the 329-seat majority it requires in order to select the next President. The current constitution effectively prevents Aung San Suu Kyi from becoming President on the grounds of her marriage to her now deceased British husband and the British citizenship of their two sons. In answer to a journalist's question during an election campaign press conference she shrugged off this legal obstacle and indicated that she will occupy a role "above the new President", who will be selected by the NLD dominated parliament. Precisely what her position, or title, might be is unclear.

The new parliament will sit and elect a president in February 2016. The new administration will begin its five-year term on April 1. Aung San Suu Kyi has already indicated that the new government will include members of other political parties and representatives of ethnic minorities. She has repeatedly stressed the need for securing national reconciliation amongst the many ethnic communities of Myanmar.

The result of the election has surprised some Myanmar analysts. Ethnicity features prominently in many citizens' social, cultural and political views and interests within the country. While it has persistently sought to transcend ethnic differences, the NLD has been widely perceived within Myanmar as a party dominated by the majority Bamar ethnic community. Given this perception and the entirely accurate evaluation of the attachment many have to their own ethnic affiliations, many external observers expected the smaller ethnic minority parties to take significant numbers of seats away from the NLD, especially in those areas where ethnic tensions have run particularly high or where there has been long-standing suspicion of the Bamar. I did not share this prediction and thought, in this instance at least, that the NLD would attract the level of support it has. The NLD has long been the principal vehicle for the national hopes for collective salvation amongst the various peoples of Myanmar. It seems only appropriate, perhaps, that they should have reaped the electoral rewards of having borne this burden for so long.

After over fifty years of repressive rule Myanmar will finally be governed by people who have been democratically elected to perform that task. The new president, (whoever it should turn out to be), Aung San Suu Kyi and the multi-ethnic cabinet will face many very difficult challenges as they seek to deliver upon the extremely high expectations the electorate has of them.

While many ethnic minorities opted to vote for the NLD on election-day, many such communities have suffered from decades of inter-ethnic conflict and violence. Securing peace and mutual respect amongst such communities will require more than appointing some of the community leaders to ministerial positions. Gender discrimination

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continues to blight the lives of many women and girls across the country. After decades of military dictatorship corruption amongst public officials is rife. The country's economy is experiencing runaway inflation and its environment has been damaged by many extractive ventures which have benefitted the very few at the expense of the very many. The judicial system enjoys little, if any, popular trust or legitimacy and remains largely dominated by entrenched interests. The military will continue to command a mandatory 25% representation in parliament and the portfolios of some of the key ministerial positions including the home affairs, border and defence ministries. There is, to my mind at least, little doubt over the new government's intention to address these challenges successfully. Whether they will be able to do so to the satisfaction of many of their voters remains to be seen.

Outside of Myanmar and amongst many sectors of the international community there is a groundswell of informed opinion which, whilst relieved and delighted by the outcome of the election, remains nevertheless very anxious about the will and ability of the new government to effectively address the suffering of the Rohingya ethnic minority. International bodies and organisations from the United Nations General Assembly and Human Rights Council to Human Rights Watch and countless other non-governmental human rights organisations have persistently condemned the appalling discrimination and suffering which the largely Muslim Rohingya people have been subjected to within the small enclave of territory they have been restricted to in the northern Rakhine state. Other, non-Rohingya, Muslims have also consistently suffered from forms of hate speech, destruction of businesses and homes and even murder. However, the very worst forms of human rights violations have been inflicted upon the Rohingya. The latest report to document these conditions has recently (October 2015) been published by a team of researchers from the Allard Lowenstein International Human Rights Clinic at Yale Law School (2015). Prepared for the human rights organisation, Fortify Rights, the report raises the question of whether the treatment of the Rohingya in Rakhine state constitutes a form of genocide under international law. The authors answer a question which has been frequently and widely raised outside of Myanmar with the following statement.

This analysis does not conclude definitively whether genocide is occurring. Such a conclusion would require a full and independent investigation by an appropriately authorized institution with investigatory powers and provisions for the accused to respond to allegations. However, assuming that the information to which the Lowenstein Clinic has had access is credible and comprehensive and accurately reflects the Rohingyas' situation, the paper finds strong evidence that genocide is being committed against Rohingya. (2015:3)

In support of their core claim, the authors of the Yale report catalogue an extensive list of what are often truly appalling conditions which the Rohingya have been exposed to. These include the relocation and forced detention of many Rohingya within displaced persons camps within which many fundamental freedoms and rights are denied or violated. Beginning with the obvious violation of the detainees' right of freedom of movement, the conditions within the camps further expose many to a wider range of life-threatening human rights violations such as their rights to an adequate diet, clean drinking water, adequate shelter, their access to education, opportunities to work, the right to practice their religion, and access to medical supplies and treatment. In addition, many Rohingya both inside and outside the camps (which the government claims are intended only for the protection of those consigned to them), have been the victims of harassment, physical and mental assault, rape, torture and even murder. An estimated 140,000 Rohingya are living under these conditions within these government-established camps. The UN Refugee Agency estimates that a further 130,000 Rohingya fled from northern Rakhine State and the Bangladesh border between January 2012 and 2014. As global news outlets were reporting during the summer of 2015, many Rohingya asylum seekers were dying in their attempts to escape Myanmar.

It is clear that members of the Rohingya community are being subjected to systematic human rights violations and that these are at least as grievous as those which much of the wider population of Myanmar had to endure under repressive rule for so long. However, the targeting of the Rohingya, paradoxically perhaps, begins with Myanmar's consistent and adamant denial that any such community exists in the same way that the other 135 officially recognised ethnic groups in Myanmar do. Beyond the borders of Myanmar, the term "Rohingya" seems to be constantly expressed in discussions about the reform process in the country. Within Myanmar, the same term is widely denounced as referring to no one. The government rigorously denies the application of the term to over one million people whom it prefers to label as "Bengali". Even Aung San Suu Kyi appears reluctant to use the "R" word in public speeches. Thus, many human beings are suffering human rights violations directly as a consequence of their

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bearing an ethnic identity, which according to the same state which most of them have been born within does not exist. This really isn't mere semantics or nomenclature but is a matter of life and death.

An individual's membership of a constitutionally and legally recognised ethnic community within Myanmar is the condition for access to the protections and provisions which the state has a duty to provide for its citizens. Because the Rohingya are not included on the scheduled list of state-recognised ethnic communities, they cannot claim the rights (and duties) which the most recent 2008 Constitution accords to citizens of Myanmar. The state's denial of the very existence of the ethnic community which it nevertheless continues to systematically target was most recently reiterated at the UN's Human Rights Council (HRC) where Myanmar underwent its second cycle of universal periodic review and which coincided with those historic elections in early November. The national delegation repeatedly rejected other HRC members' references to the plight of the Rohingya by denying the existence of any such ethnic community under the terms of Myanmar's 1982 Citizenship Act.

As I mentioned above, it is clearly not the case that the government refuses to acknowledge the *physical* existence of one million people on its territory. Rather, it insists that these people have no rightful claims upon Myanmar as a consequence of their belonging to an ethnic community which has no standing within the country. Myanmar has insisted that the term "Rohingya" is basically an invented term, the invention of which was intended to force the government to grant legal standing to a large group of people it does not recognise as a legitimate part of the multi-ethnic whole which is Myanmar. A not entirely dissimilar set of problems has consistently confronted the Roma and Gypsy communities in large parts of contemporary Europe. Ethnic essentialism is alive and well in many parts of the world today.

The UN has persistently condemned Myanmar's treatment of the Rohingya. Numerous General Assembly and Human Rights Council resolutions have referred to the systematic suffering inflicted upon the Rohingya as a cause of very serious concern.<sup>[ii]</sup> Successive UN Special Rapporteurs on the human rights situation in Myanmar have deployed the same language with one occupant of that position, Tomas Quintana, referring to the treatment of the Rohingya as amounting to a crime against humanity, under the terms of the Rome Statute (2014: 13). The UN has not, however, opted to pursue any investigation into the possibility that such treatment amounts to an act of genocide. Ultimately, politics seems the only feasible explanation for the UN's inaction in this regard. For whatever series of highly complex reasons, a military dictatorship embarked upon a process of reform which has culminated in what looks set to be a handover of power to a democratically-elected new government in the near future. One can only imagine what effect a UN Security Council resolution condemning Myanmar of perpetrating genocide might have had upon that reform process. As many have argued before now, international human rights law is often best understood as a political tool. The justification for deploying human rights law in a political manner must, however, ultimately refer back to the wider effects upon human rights such a strategy will have. Somewhat tentatively and cognizant of how many are likely to disagree with this claim, I suggest that the charge of genocide would have been counter-productive and potentially catastrophic for the human rights of many within Myanmar. The UN has, in my opinion, been justified in continuing to systematically condemn the treatment of the Rohingya people in terms which avoid the severe legal implications of a resort to the language of genocide. A different, less overtly political, strategy may have resulted in many more years of military dictatorship and severe repression.

The suffering of the Rohingya people is appalling and must cease. There was no prospect of any abatement of the Rohingya's suffering under the succession of former military and notionally civilian regimes which have ruled Myanmar for so long. The new government represents a fundamental opportunity to begin to address both the plight of the Rohingya and international fears over the likelihood of this being a key priority for the new NLD dominated government. It is my view that, while the plight of the Rohingya does not provide the sole criterion for evaluating the ethical credentials of the new regime, it will be an essential and necessary element of subsequent assessments of the government's score-card during the first years of its rule. Simply put, irrespective of the iconic status of Aung San Suu Kyi as a defender of human rights, her period of rule must include bringing an end to the crime against humanity which her political opponents perpetrated against the Rohingya.

There is a constituency outside of Myanmar that is less than entirely assured of the NLD's willingness or ability to address this core issue. A number of factors support this anxiety.

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Firstly, there is little popular sympathy for the suffering of the Rohingya within Myanmar. Many NLD voters basically accept the claim that the Rohingya are better described as “Bengali” and, as such, have no valid claims to citizenship. This may appear to some as little more than crude racial prejudice. In some instances this is no doubt the case. However, a more sophisticated analysis requires recognition of just how fundamental ethnic identity is for many within Myanmar and how this form of self-identification rests upon deeply reified conceptions of identity. There is little appetite for more cosmopolitan attitudes toward self and other within Myanmar. Given the extent of popular antipathy towards the Rohingya across Myanmar, it is perhaps not surprising that the NLD rarely discussed their plight in its electioneering and campaigning.

Secondly, Myanmar has witnessed the emergence and growth of an ultra-nationalist Buddhist movement which bases most of its appeal upon its aversion towards other religious communities, but is particularly hostile towards Islam. Clearly many avowed Buddhists cannot and do not endorse the platform of hatred which some have erected. However, the perception that Islam poses a threat to other religious and secular communities within Myanmar and across the world is undoubtedly fuelling many Buddhists’ anxieties.

Thirdly, effectively addressing the plight of the Rohingya will require amending parts of the 2008 constitution and replacing the 1982 Citizenship Act, both of which legally reinforce the denial of recognition of the Rohingya. The military retains a 25% representation in parliament, which enables them to block any attempt to reform the constitution. There would also appear to be little popular appetite for reforming the 1982 law given how many ethnic communities legal status is derived from it.

Finally, it still isn’t at all clear to many that Aung San Suu Kyi and the NLD genuinely share the outside world’s assessment of the extent of the suffering which Muslims and the Rohingya have been subjected to. Thus, the NLD selected only one Muslim candidate for the elections and that candidate was selected in an effectively un-winnable constituency. One hopes that this reluctance to unequivocally pin the colours to the mast of denouncing the specific targeting of electorally unpopular constituencies will end with the NLD’s landslide. If it does and Aung San Suu Kyi and others in the NLD begin to make the right noises in this respect, they will have to be prepared for criticism within their own ranks and the continuing description of the Rohingya as “Bengalis”.

Putting right the terrible suffering which has been systematically inflicted upon the Rohingya is going to require a great deal of political courage, changes in popular beliefs and fundamental changes to the legal and political infrastructure of Myanmar. Such things cannot be achieved within a single term of office. The broader international community, in my opinion, should continue to support the reform process within Myanmar without making any overly dramatic gestures or interventions. However, Aung San Suu Kyi and the NLD have benefitted greatly from their and others’ appeals to human rights. Once in power they will have (albeit) limited opportunities to reassure us all of their human rights credentials. The single greatest move they can make in this respect is to begin to practically end the suffering of the Rohingya.

## References

[i] The nomenclature of how one refers to the country is controversial. I shall refer to ‘Myanmar’ throughout this paper in accordance with the United Nations’ designation.

[ii] The most recent example of the UN General Assembly passing a resolution on the human rights situation in Myanmar dates to February 2014. See United Nations, General Assembly, Resolution 68/242. A/RES/68/242

The most recent Human Rights Council resolution is Resolution 29/21. (July 2015) Situation of human rights of Rohingya Muslims and other minorities in Myanmar. A/HRC/RES/29/21

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## About the author:

**Dr. Andrew Fagan** is the director of undergraduate studies at the School of Law and Human Rights Centre, University of Essex. His research interests include human rights and cultural diversity. He has taught about human rights since 1998, and published widely on the subject, including *Human Rights: Confronting Myths and Misunderstandings* (2009) and *Human Rights Atlas* (2010).