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Title:
Unmaking Rohingya Statelessness: New Evidence and Opportunities in Myanmar's Post-Coup Moment

Date:
2026-04-02

Citation:
Schissler, M. (2026). Unmaking Rohingya Statelessness: New Evidence and Opportunities in Myanmar's Post-Coup Moment. Peter McMullin Centre on Statelessness, Melbourne Law School, University of Melbourne.

Persistent Link:
<https://hdl.handle.net/11343/368526>

Unmaking Rohingya Statelessness: New Evidence and Opportunities in Myanmar's Post-Coup Moment

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2 April 2026

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* This Briefing Paper was made possible with the support of the Myanmar Research Network at the University of Melbourne and the Myanmar Research Centre at the Australian National University.

I. Introduction

The Rohingya are often referred to as the world's largest stateless population.¹ Nearly 80% of Rohingya, estimated to total 2.8 million worldwide, now live outside Myanmar.²³ Rohingya in Myanmar have been repeatedly attacked, including through large-scale military operations, as well as subjected to conditions so dire that UN investigators described them as “measures of slow death.”⁴ The situation for the Rohingya in Myanmar has also received major international attention over the last fifteen years, particularly after the UN investigators concluded in 2018 that the Myanmar State ought to be prosecuted for the crime of genocide.⁵ But inside Myanmar, state authorities and many others have insisted that the Rohingya are both illegal migrants from Bangladesh and potential “Islamic terrorists,” with military attacks in 2017 framed as the solution to the “unfinished job” of the “Bengali problem.”⁶ In this context, where even mentioning the word “Rohingya” has often prompted rebuke or attack,⁷ progress towards citizenship for the Rohingya has seemed unthinkable.⁸

¹ See for example Médecins Sans Frontières Australia, ‘The Rohingya: The World’s Largest Stateless Population’, *Médecins Sans Frontières Australia* (Web Page) <<https://msf.org.au/rohingya-worlds-largest-stateless-population>>.

² Médecins Sans Frontières, *Behind the Wire: Impact of State Containment and Exclusion Strategies on the Rohingya* (Report, August 2024) 9 <<https://doctorswithoutborders-apac.org/sites/default/files/2024-08/MSF-Behind-the-Wire-Report-2024.pdf>>

³ The country was known as “Burma” from independence in 1948 until 1989, when the military government changed the name to “Myanmar.” For simplicity’s sake this paper will use the current name, but “Burma” will also be used where discussing the government prior to 1989.

⁴ Independent International Fact-Finding Mission on Myanmar (IIFMM), *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN Doc A/HRC/39/CRP.2 (September 2018) 354.

⁵ The UN Fact-Finding Missions recommended further investigation and prosecution for genocide in September 2018, see IIFMM 2018, 1. The US concluded that genocide had been committed in March 2022. See Julian Borger, ‘US Declares Myanmar Army Committed Genocide against Rohingya’, *The Guardian* (Online, 22 March 2022) <<https://www.theguardian.com/world/2022/mar/21/us-to-declare-myanmar-army-committed-genocide-against-rohingya#:~:text=3%20years%20old-US%20declares%20Myanmar%20army%20committed%20genocide%20against%20Rohingya,at%20the%20Holocaust%20Memorial%20Museum.>>>

⁶ The last two quotes come from comments by Senior General Min Aung Hlaing as military attacks unfolded in late 2017. See Independent International Fact-Finding Mission on Myanmar, *Report of the Independent International Fact-Finding Mission on Myanmar*, UN Doc A/HRC/39/64 (27 August 2018).

⁷ For example, the BBC faced widespread backlash in Myanmar for mentioning the Rohingya (Sai Latt, ‘BBC under Fire on Rohingyas’, *New Mandala* (Web Page, 3 November 2011) <<https://www.newmandala.org/bbc-under-fire-on-rohingyas/>>), as did the US embassy (Hnin Yadana Zaw and Timothy McLaughlin, ‘Myanmar Protesters Denounce Term “Rohingya” outside U.S. Embassy’, *Reuters* (online, 28 April 2016) <<https://www.reuters.com/article/us-myanmar-politics-idUSKCN0XP1OB/.>>) Local activists accused of acting in solidarity with the Rohingya have also been subjected to systematic harassment, see Matt Schissler, ‘Beyond Hate Speech and Misinformation: Facebook and the Rohingya Genocide in Myanmar’ (2025) 27(3) *Journal of Genocide Research*, 445–70.

⁸ See Nehginpao Kipgen, ‘Myanmar’s Perspective on the Rohingya Crisis’ (2020) 37(1) *International Journal on World Peace* 43., for a summary. The article includes recounting a meeting between diplomats and representatives of the National League for Democracy (NLD) government in Copenhagen during 2018, in which

But the military coup in 2021 and the subsequent political and armed resistance, known popularly as the Spring Revolution, has altered the conditions of struggles to achieve citizenship for Rohingya. Nyi Nyi Kyaw has called this the “Rohingya moment”: Members of the political opposition, individually and in groups, have issued symbolic apologies to the Rohingya. Leading political organisations, such as the National Unity Government (NUG), have appointed Rohingya to important political roles, adopted policy positions that acknowledge past harm to the Rohingya, and committed to guaranteeing their citizenship, including by amending the 1982 law that has been used to make them stateless.⁹ In one sense, the future success of this “Rohingya moment” will hinge on the broader success of the Spring Revolution. Success of the Revolution would also not guarantee success for the Rohingya, especially as the NUG’s sincerity has often been questioned. But whatever the future holds for the Spring Revolution and for Myanmar, this moment is already significant because it has opened the way for challenging long-held assumptions about the naturalness and inevitability of the Rohingya’s exclusion from Myanmar citizenship. The aim of this paper is to contribute to ongoing efforts in this regard.¹⁰

This paper takes up the question of how the Rohingya have been made stateless, and particularly how this has hinged on the way citizenship by birth is available only to those who the state recognises as one of Myanmar’s “national races” (*taing yin thar*). The Rohingya have been denied *taing yin thar* status and treated categorically as “potential foreigners,” who must pass through a scrutiny process that is all but impossible to complete.¹¹ Yet for all the insistence that the *taing yin thar* category is an old and accepted fact, this paper argues that the version of the category which excludes the Rohingya is a novel and relatively recent creation. Rather than a direct inheritance from the British colonial government or the socialist state that followed later, as is commonly thought, it is one of many new products that resulted from a flurry of activity during the year 1989, when a nascent military government was attempting to build a new state and society following the collapse of socialism in 1988. This paper demonstrates that this creation closed a period of sustained ambiguity during which the legal meaning of the *taing yin*

the latter insisted that solutions to problems for Rohingya would be difficult to implement “under the present political environment” (see p.60).

⁹ Nyi Nyi Kyaw, ‘Statelessness in Myanmar: A Rohingya Moment after the 2021 Coup?’ in Michelle Foster, Jaclyn Neo and Christoph Sperfeldt (eds), *Statelessness in Asia* (Cambridge University Press, 2024) 281, 301.

¹⁰ See also Aung Ko Ko et al, ‘Beyond Federalism? Inclusion, Citizenship, and Minorities Without Territory in Myanmar’s Spring Revolution’ (2024) 54(5) *Journal of Contemporary Asia* 938, 938–61; Melissa Crouch, ‘States of Legal Denial: How the State in Myanmar Uses Law to Exclude the Rohingya’ (2021) 51(1) *Journal of Contemporary Asia* 87–110; Nick Cheesman, ‘How in Myanmar “National Races” Came to Surpass Citizenship and Exclude Rohingya’ (2017) 47(3) *Journal of Contemporary Asia* 461–483.

¹¹ On how Myanmar’s citizenship regime produces a category of ‘potential foreigners’, see Elizabeth L Rhoads and Ritanjan Das, ‘The Specter of Potential Foreigners: Revisiting the Postcolonial Citizenship Regimes of Myanmar and India’ (2024) 56(2) *Critical Asian Studies* 155.

thar category had remained open. It also demonstrates that this closure required drawing selectively from among multiple available versions of the category while also working to obscure others, including those that had included the Rohingya. The paper concludes by highlighting three significant implications for the post-2021 coup moment. First, the history of Rohingya statelessness could have been otherwise. Secondly, the *taing yin thar* category that excludes the Rohingya can be confidently recognised as the creation of the new military government in the early 1990s. Recognising this presents a meaningful opportunity in the ongoing struggle for Rohingya citizenship, because many other products of this era are actively being challenged in the post-coup environment. Thirdly, scholars must take care not to inadvertently undermine this opportunity by offering accounts of Rohingya statelessness that obscure the recency of the current *taing yin thar* category and the history of ambiguity and multiplicity that preceded it.

II. Accounts of Rohingya statelessness

Before the Rohingya were made stateless they were recognised as citizens. One indicator of this recognition is the fact that thousands of Rohingya were issued with National Registration Cards (NRCs) in the decades following the formation of Burma as an independent country in 1948.¹² In these years, NRCs were the form of documentation issued to citizens and were not available to foreigners.¹³ Other indicators include Rohingya achieving advanced degrees and holding other positions only available to citizens, such as serving in government and elected office.¹⁴ Indeed, Rohingya representatives were included at the state or national level in every elected government from independence until 2020, when Rohingya candidates were barred from standing for election.¹⁵

The standard accounts of how the Rohingya were made stateless typically centre on a new citizenship law adopted by the national government in 1982. This law introduced

¹²Natalie Brinham, *Citizenship and Genocide Cards: IDs, Statelessness and Rohingya Resistance in Myanmar* (Routledge, 2024) 89. See also Rhoads and Das (n 11) 163–5, who describe case law during the 1950s and 1960s in which people facing deportation as “foreigners” were able to win status as citizens.

¹³ Nyi Nyi Kyaw, ‘Unpacking the Presumed Statelessness of Rohingyas’ (2017) 15(3) *Journal of Immigrant & Refugee Studies* 269, 276; see also Brinham (n 12) 89; Elizabeth L Rhoads, ‘Citizenship Denied, Deferred and Assumed: A Legal History of Racialized Citizenship in Myanmar’ (2023) 27(1) *Citizenship Studies* 38–58.

¹⁴ See documentation gathered by the Ek Khaale project for these and other examples of Rohingya accomplishments as Myanmar citizens. Ek Khaale, တစ်ခါတစ်ရံ Once Upon a Time - The Rohingya (Web Page) <<https://www.ekkhaale.org>>

¹⁵ On how the 1982 citizenship law produced new limits on political rights, see Aung Ko Ko et al (n 10) 950–1. On Rohingya elected to governments across Myanmar history, see e.g. Nurul Islam, ‘Rohingya and Nationality Status in Myanmar’ in Ashley South and Marie Lall (eds), *Citizenship in Myanmar: Ways of Being in and from Burma* (ISEAS Publishing, Institute of Southeast Asian Studies, 2018) 267; Mahbubul Haque, ‘A Future for the Rohingya in Myanmar’ in *The Rohingya Crisis* (Routledge India, 2020) 53; Brinham (n 12) 102; Greg Constantine, ‘Ch 2: They Did Not Deny Us’, *Ek Khaale* (Web Page, 2025) <<https://www.ekkhaale.org/chapter2>>

an unprecedented system of tiered citizenship, which places at the top those who acquire full citizenship at birth because their parents were both members of recognised “national races,” known as *taing yin thar* in Burmese. Those not recognised as *taing yin thar* are treated as potential foreigners, and must pass through a “citizenship scrutiny” process that both requires extensive documentation and exposes them to systematic discrimination.¹⁶ Those who can successfully prove that they or their parents were citizens before passage of the 1982 law are, in theory at least, able to access full citizenship.¹⁷ Others must apply for either naturalised or associate citizenship, which accord with lesser rights.¹⁸ Most accounts of how this law produced statelessness for the Rohingya can be grouped broadly into two camps.¹⁹ One has focused on implementation, arguing that the problem “it is not so much the Law”²⁰ but its “(mis)application”.²¹ The other has focused on the law itself, arguing that it stripped the Rohingya of citizenship by categorically excluding them from *taing yin thar* status.²² Neither account is adequate.

Those focused on misapplication of the 1982 law have correctly noted that theoretically provides Rohingya with two potential paths to citizenship. One path is available to Rohingya who were already recognised as citizens before 1982 or whose

¹⁶ Elizabeth L Rhoads, Natalie Brinham, Kathy Win and Nan Tinilar Win, ‘Modalities of Bureaucratic Violence: Bordering via Civil Documentation in Myanmar’ (2025) *Journal of Borderlands Studies* 1.

¹⁷ Rhoads (n 13) 38–58.

¹⁸ For example, only full citizens can vote, form political parties, and run for election. Citizenship can be revoked from naturalized and associate citizens on broad political grounds, which presents additional risks in a context where the state in Myanmar has long criminalised dissent. Lack of full citizenship also imposes barriers on education, particularly achieving advanced training in fields such as medicine, as well as obstacles to accessing health care and basic economic opportunities. See Mosaic Myanmar, Mosaic Myanmar (Web Page, 2023) <<https://mosaicmm.org/>>; Rhoads (n 13). Full citizenship is also required for government employment at all levels, which has prevented Rohingya from even working as teachers or participating formally in local administration of Rohingya-majority areas. See Brinham (n 12) 163.

¹⁹ This paper aligns with a third camp that has recently begun to emerge, and which argues that Myanmar’s citizenship regime involves two distinct axes of discrimination: one generated by the three categories of citizenship (full, associate, naturalized) and one generated by the two distinct pathways to acquiring citizenship (by birth or by registration). See Nyi Nyi Kyaw (n 13) 269; Rhoads et al (n 16) 1; Rhoads (n 14) 38–58 38; Rhoads and Das (n 11).

²⁰ Derrick Tonkin, ‘Exploring the Issue of Citizenship in Rakhine State’ in Ashley South and Marie Lall (eds), *Citizenship in Myanmar: Ways of Being in and from Burma* (ISEAS Publishing, Institute of Southeast Asian Studies, 2018) 237.

²¹ Australian Government, Department of Home Affairs (DFAT), *Country of Origin Information Services Section (COISS) Information for Myanmar (Burma) on Rohingya: Issues Relating to Statelessness* (Department of Home Affairs, 2 June 2021) 4 <<https://www.homeaffairs.gov.au/foi/files/2022/fa-220100492-document-released.PDF>>

²² For example, Peter McMullin Centre on Statelessness, ‘Factsheet: How Does Someone Become Stateless?’ (Factsheet, February 2023) <<https://law.unimelb.edu.au/centres/statelessness/education/factsheet/how-does-someone-become-stateless>> (See p.1, “The 1982 Citizenship Law in Myanmar deprived the Rohingya of their citizenship. This law lists only certain ethnic groups as entitled to full citizenship of Myanmar, which in effect is a mechanism for the discriminatory denial of citizenship to other ethnic groups, such as the Rohingya, who are not officially recognised as a national ethnic group”).

parents were, because the law affirms that anyone with citizenship at the time of its adoption would remain a citizen, as would their descendants.²³ The other path is available to Rohingya who can still apply for naturalised or associate citizenship.²⁴ But the latter path is at best still discriminatory, because naturalised and associate citizens are accorded lesser rights than full citizens. And in reality both paths are nearly impossible for Rohingya to complete due to the material consequences of long-term discrimination and violence. Applicants for all forms of citizenship must provide evidence of family history through documents that many Rohingya lack, either because the state refused to provide them in the first instance or because they were seized or destroyed during decades of repression and displacement.²⁵ It is thus not adequate to say that Rohingya statelessness results from the misapplication of the law: their statelessness is the inevitable result of implementing the law's "scrutiny procedures" in the conditions that have been imposed on the Rohingya.

Most of the accounts that have focused on the 1982 law itself are also inadequate. As a number of scholars have noted, it is not correct to say that the 1982 law categorically excluded Rohingya from the full citizenship by birth as *taing yin thar* because the law did not define who was, and was not, recognised as *taing yin thar*.²⁶ Rather, the definition of *taing yin thar* in the 1982 law is explicitly open-ended (Article 3). It includes a list of eight groups—the Kachin, Karenni, Karen, Chin, Burman, Mon, Arakanese, and Shan²⁷—while also allowing for the inclusion of other "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."²⁸ In other words, Article 3 of the 1982 law provided the criteria for identifying a *taing yin thar* group—as one resident in Myanmar prior to the British Invasion

²³ Myanmar Citizenship Law 1982 (Myanmar) ss 6, 18. Section 6 reads: "A person who is already a citizen on the date this Law comes into force is a citizen. Action, however, shall be taken under section 18 for infringement of the provision of that section." Notably, those citing this section often elide that it is simultaneously the portion of the law that called for "scrutiny" of every citizen. Section 18 reads: "A citizen who has acquired citizenship by making a false representation or by concealment shall have his citizenship revoked, and shall also be liable to imprisonment for a term of ten years and to a fine of kyats fifty thousand."

²⁴ DFAT (n 21).

²⁵ Brinham (n 12) provides comprehensive documentation of state authorities seizing and destroying Rohingya identity documents, including NRCs, as well as refusing to provide replacements or other necessary documents such as birth certificates.

²⁶ See e.g., Amanda R Cheong, 'Racial Exclusion by Bureaucratic Omission: Non-Enumeration, Documentary Dispossession, and the Rohingya Crisis in Myanmar' (2025) 72(2) *Social Problems* 341–57; Ronan Lee, 'Myanmar's Citizenship Law as State Crime: A Case for the International Criminal Court' (2019) 8(2) *State Crime Journal* 241–79; Tonkin (n 20); Cheesman (n 10) 461–83; Kyaw (n 13) 269–86.

²⁷ Article 3 of the 1982 Law thus corresponds with similar passages used in earlier laws, such as Article 3(1) of the 1948 Union Citizenship (Election) Act.

²⁸ The law mentions the year 1823 because this is the last year before Burma was invaded by the British and then, through a series of three wars, annexed into British India. By fixing this as the date, the law excludes from *taing yin thar* status all groups who came to the country during colonial rule.

in 1824—but it did not provide any further indication of the category’s full extension.²⁹ This was further confirmed in 1983, when procedures for implementing the law were issued stating that “many other races and ethnic groups that are national races [*taing yin thar*] remain.”³⁰

Many scholars have thus reported that the Rohingya were made stateless not by the law’s immediate adoption but when the state subsequently issued a list of 135 groups that it recognised as *taing yin thar* (“national races”), which did not include the Rohingya and thus prevented them from qualifying for full citizenship by birth.³¹ Yet how this list of 135 *taing yin thar* groups came to be created is, as Ferguson put it, “something of a mystery.”³² The basic premise of this paper is that this mystery needs further investigation. As the next section will demonstrate, all current accounts of how the list was created remain inadequate. In many cases, they also reproduce a linear sense of historical continuity that obscures sustained periods of categorical multiplicity and ambiguity, including one that persisted for some eight years after the law’s adoption in 1982.

III. The mysterious list of 135 “national races”

The state in Myanmar has not treated the origins of the *taing yin thar* list as a mystery. Instead, authorities have often simply asserted as a fact that there are only 135 *taing yin thar* groups, without explaining how this is known.³³ In other cases they have reported that it is based upon a national census conducted in 1983, as if it were a demographic

²⁹ Throughout this paper I will refer to the “extension” of the *taing yin thar* category, following the way semantics, philosophy, and other fields use the term to contrast against a word’s “intension.” In this usage, *intension* refers to the criteria or definition of a word while *extension* refers to the set of actual objects to which the word can be applied. The crucial point is that, as demonstrated by Putnam, in practice the *intension* of a word does not determine the range of objects that constitute its *extension*. In this case, the extension of a category like *taing yin thar* is ultimately determined by power, politics, and history. See Hilary Putnam, ‘The Meaning of “Meaning”’ in *Mind, Language and Reality* (Cambridge University Press, 1975).

³⁰ Council of Ministers Notification No. 13/83, para 9, quoted and translated in Cheesman 2015.

³¹ As will be discussed below, the list was expanded to 136 groups with the inclusion of the “Mong Woon Bamar” in 2016. See Ardeth Maung Thawnghmung and Yadana, ‘Citizenship and Minority Rights: The Role of “National Race Affairs” Ministers in Myanmar’s 2008 Constitution’ in Ashley South and Marie Lall (eds), *Citizenship in Myanmar: Ways of Being in and from Burma* (ISEAS Publishing, Institute of Southeast Asian Studies, 2018) 113. This paper will continue to refer to the “list of 135” throughout, because the arguments are ultimately about the specific list that was published in September 1990, and which included 135 groups.

³² Jane M Ferguson, ‘Who’s Counting? Ethnicity, Belonging, and the National Census in Burma/Myanmar’ (2015) 171(1) *Bijdragen Tot de Taal-, Land- En Volkenkunde* 1, 16.

³³ “There are no Rohingya among the races,” then-President Thein Sein told the Washington Post, for example. Anne Gearan, ‘Burma’s Thein Sein says military ‘will always have a special place’ in government’, *The Washington Post* (online, 19 May 2013) <https://www.washingtonpost.com/world/national-security/burmas-thein-sein-says-military-will-always-have-a-special-place-in-government/2013/05/19/253c300e-c0d4-11e2-8bd8-2788030e6b44_story.html>.

reality that requires no further elaboration.³⁴ When pressed, meanwhile, officials have cited an article published by the *Working People's Daily* in September 1990, which explains that the list of 135 was developed for enumerating the 1983 census by drawing from a variety of earlier sources, particularly earlier censuses. This is how, for example, the Deputy Minister of Immigration responded to a query from a member of parliament during preparations for the 2014 census:

“With regards to the 135 *taingyintha* in Myanmar the September 26, 1990 edition of the *Working People's Daily* made known that the list had been the list of *taingyintha* used in the 1983 census, drawn up based upon the list of ethnic groups in the 1931 and 1953–54 censuses, and advice given in 1960 by the Office for Ancient Literature and Culture under the Ministry of Culture and in the same year by the advisory board of the Burma Historical Commission, with the coordination in 1972 of the Committee for National Race Affairs, Burma Socialist Programme Party Central Committee Headquarters.”³⁵

The state, in other words, has either affirmed the list as a fact that requires no explanation, or presented it as the result of tidy linear process that built consistently from each national census, 1931 to 1953-54 to 1983 to 1990 and after. Explanations for the origins of the list from scholars have been similar. In many cases they have noted that the list of 135 *taing yin thar* is an accepted fact, sometimes reporting that it was created in the late 1980s or early 1990s but without providing any indication of who created it or how.³⁶ Others have pointed to when it first began to be invoked publicly, with the earliest-known example occurring in a July 1989 speech by General Saw Maung, then Tatmadaw commander in chief and head of the military government, known at the time as the State Law and Order Restoration Council (SLORC).³⁷

³⁴ See for example Hla Tun Aung, *Myanmar: The Study of Processes and Patterns* (National Centre for Human Resource Development Publishing Committee, Ministry of Education, 2003) 219–22.

³⁵ Translated and quoted in Cheesman (n 10) 468.

³⁶ Brett & Kyaw Yin Hlaing, for example, write: “The 1982 Citizenship Law explicitly provides for the possibility of recognizing different groups as *taing-yin-tha* rather than setting out a finite list, but after 1988 the idea that there was a fixed list of 135 *taing-yin-tha* came to be accepted” (2020, 3). Notably, they provide a footnote for the first clause, citing the citizenship law, but do not provide any source for the second clause indicating that the term was defined in 1990. Peggy Brett and Kyaw Yin Hlaing, *Myanmar's 1982 Citizenship Law in Context* (Policy Brief No 122, Torkel Opsahl Academic E-Publisher, 2020) 3.

³⁷ Cheesman (n 10) 468 n 6; Robert H Taylor, *Refighting Old Battles, Compounding Misconceptions: The Politics of Ethnicity in Myanmar Today* (ISEAS Perspective No 12, Institute of Southeast Asian Studies, 2015) 7 n 17. Ferguson (n 32) also quotes interlocutors speculating that a comment from General Saw Maung may have been the basis for the list of 135 but does not indicate when he is said to have made the comment.

Saw Maung's speech referenced an "accumulated list of national racial groups" that "confirmed... there are 135 categories."³⁸ But it did not name them all. The earliest-known instance of public reference to the full list cited by scholars is the same September 1990 *Working People's Daily* article cited by the Deputy Minister.³⁹ Like the Deputy Minister, and the *Working People's Daily* article he summarised, scholars have also explained the source of the list of 135 by saying that it was developed for enumerating the 1983 census, which is in turn sometimes said to have been based upon the British colonial census in 1931.⁴⁰ The problem is not just that such accounts replicate the linear sense of an "accumulated list" asserted by the state. It is that this tidy linearity is a fiction created after the fact, as the next section will demonstrate.

IV. Acknowledging ambiguity

There are good reasons to think that the linear account of the list moving from 1931 to 1953-54 to 1983 to 1990 and after is a retrospective fiction. One is that the legal basis for using the census to define a category in the 1982 law is uncertain. The 1982 law granted the "Council of State" authority to define the full set of recognised *taing yin thar* groups.⁴¹ No one, however, has ever shown evidence that the Council of State actually took such an action.⁴² A second reason is that the government appears to have remained undecided about the details of the *taing yin thar* list until at least June 1989, when it acknowledged

³⁸ State Law and Order Restoration Council Chairman General Saw Maung's Statement', *Burma Press Summary (Working People's Daily)* (5 July 1989) 41 (ellipsis in original).

³⁹ Rhoads (n 13), 11; International Crisis Group, *An Avoidable War: Politics and Armed Conflict in Myanmar's Rakhine State* (Asia Report No 307, 2020) 7 n 3; Lee (n 19), 251; Tonkin (n 20), 236; Taylor (n 37) 7–8 n17; International Crisis Group, *Myanmar: The Politics of Rakhine State* (Asia Report No 261, 2014) 10 n 42. Litner also points to a slightly later article in the *Working People's Daily*, published in August 1991, as one of the earliest examples. See Bertil Lintner, 'A question of race in Myanmar', *Asia Times* (online, 3 June 2017) <<https://asiatimes.com/2017/06/question-race-myanmar/>>.

⁴⁰ ICG2020 (n 31), 4–5; Ardeth Maung Thawngmung, "'National Races' in Myanmar' in *Oxford Research Encyclopedia of Asian History* (Oxford University Press, 2022) 5.; Centre on Constitutional Change, *Turning Ethnicity Against Ethnic Nationalities*. 2019. Centre on Constitutional Change, 'Turning Ethnicity Against Ethnic Nationalities', *Centre on Constitutional Change* (Web Page, 2019) <<https://www.centreonconstitutionalchange.ac.uk/opinions/turning-ethnicity-against-ethnic-nationalities>>; Ferguson (n 32) 15.

⁴¹ This authority passed to the Union President after adoption of a new constitution in 2008. See International Commission of Jurists 2019, p.8. Then-President Thein Sein exercised this authority near the end of his administration in March 2016, recognizing a 136th *taing yin thar*, the "Mong Woon Bamar," a group in Shan State estimated to total some 60,000 people. See Thawngmung and Yadana (n 31), 270.

⁴² State authorities such as the Deputy Minister of Immigration have instead cited the September 1990 article in the *Working People's Daily* as the authoritative basis for the list of 135 *taing yin thar*. Presumably, he would have cited an order from the Council of State had one been issued. It is also notable that the *Working People's Daily* also made no mention of any order by the Council of State when it explained the origins of the list of 135. See 'The Union of Myanmar Is Home to 135 National Races

[တိုင်းရင်းသားလူမျိုးစု(၁၃၅)မျိုးနေတိုင်ရာတို့ပြည်ထောင်စုမြန်မာနိုင်ငံ]', *Working People's Daily* [လုပ်သားပြည်သူ့နေ့စဉ်] (26 September 1990).

as much in the *Working People's Daily*. This acknowledgement appeared as part of a series of articles explaining the country's citizenship laws, exhorting public servants and citizens to implement them fully, and warning of the dangers that Myanmar faced from regional migration.⁴³ When the series offered a definition of *taing yin thar* for the purposes of citizenship eligibility, it also stated explicitly that there were ongoing difficulties in confirming the category's extension:

"The vocabulary '*taing yin thar*' includes races [*lu myo*] and ethnic groups [*myo nwe su*]⁴⁴ that are well established for generations, such as Kachin, Kayah, Kayin,

⁴³ The articles were presented as a fourteen-part series. But this was also a retrospective fiction. Half the articles were published in February 1989, with the seventh entry marked as the end of the series, including using phrases characteristic of a conclusion and closing with a list of works cited. The series was then reopened four months later, with the addition of another seven articles in June 1989. See section VI and n 74. The fourteen articles are: 'Afraid for Disappearance of the Race [1] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၁]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (20 February 1989) 6; 'Afraid for Disappearance of the Race [2] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၂]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (21 February 1989) 6; 'Afraid for Disappearance of the Race [3] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၃]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (22 February 1989) 6; 'Afraid for Disappearance of the Race [4] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၄]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (23 February 1989) 6; 'Afraid for Disappearance of the Race [5] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၅]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (24 February 1989) 6; 'Afraid for Disappearance of the Race [6] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၆]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (25 February 1989) 6; 'Afraid for Disappearance of the Race [7] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၇]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (26 February 1989) 6; 'Afraid for Disappearance of the Race [8] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၈]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (3 June 1989) 6; 'Afraid for Disappearance of the Race [9] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၉]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (5 June 1989) 4; 'Afraid for Disappearance of the Race [10] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၁၀]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (8 June 1989) 5; 'Afraid for Disappearance of the Race [11] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၁၁]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (9 June 1989) 6; 'Afraid for Disappearance of the Race [12] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၁၂]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (13 June 1989) 6; 'Afraid for Disappearance of the Race [13] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၁၃]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (20 June 1989) 6; 'Afraid for Disappearance of the Race [14] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၁၄]]', *Working People's Daily* [လုပ်သား ပြည်သူ့နေ့စဉ်] (28 June 1989) 5.

⁴⁴ My decision to translate "*myo nwe su*" as "ethnic groups" is based upon the way the term is translated in the English versions of the 1982 Citizenship Law published in the *Working People's Daily* (WPD 1982). Special thanks to Rofiq Alam and Soe Htet, whose feedback on my translation of this passage pushed me to reflect

Chin, Bamar, Mon, Rakhine, and Shan. Regarding their ethnic groups [*myo nwe su*], because the research is still being done to compile the list of ethnic groups [*myo nwe su*] that are Union-born *taing yin thar*, it is difficult to state accurately the names of the ethnic groups [*myo nwe su*].”⁴⁵

Where the state and scholars have affirmed a linear account in which the list of 135 published in 1990 built on lists created earlier, the article series in 1989 shows that the accumulation of these earlier efforts had not resulted in a stable set of categories. The point thus far is simple but significant and bears repeating. The 1982 citizenship law had made *taing yin thar* the operative category determining access to full citizenship. It had provided some criteria for defining this category by requiring that *taing yin thar* groups have resided in the country prior to the British Invasion in 1824. But not only had the law not determined what groups met that criteria, for the next eight years it had remained unclear what groups were and were not included, among them the Rohingya. Not only were the Rohingya *not* made instantly stateless by the new citizenship law in 1982, but its adoption was also followed by a period of sustained ambiguity during which it could also not be said that they were not *taing yin thar*.

This timeline is consistent with evidence indicating that the 1982 law only began to be implemented throughout Myanmar later in the decade.⁴⁶ Most importantly, it is consistent with accounts from Rohingya. While some Rohingya and others were quick to recognize that the 1982 law would be wielded against them, many have also emphasised that it was after 1989 that these concerns began being realized.⁴⁷ Oral histories gathered

further on the significance of the way it diagrams a nesting relationship in which race (*lu myo*) is a larger category that subsumes ethnic groups (*myo nwe su*).

⁴⁵ Schissler translation from:

“‘တိုင်းရင်းသား’ဆိုသောဝေါဟာရတွင်လူမျိုးနှင့်မျိုးနွယ်စုများပါဝင်သည့်ကချင်၊ကယား၊ကရင်၊ချင်း၊ဗမာ၊မွန်၊ရခိုင်၊ရှမ်းစသည်တို့မှာလူမျိုးများဖြစ်ပြီးအစဉ်အလာအရခိုင်မာနေပြီဖြစ်သောတိုင်းရင်းသားများဖြစ်ကြသည်။ယင်းတို့၏မျိုးနွယ်စုများသည်လည်းပြည်ထောင်စုဖွားတိုင်းရင်းသားများဖြစ်ကြသည့်မျိုးနွယ်စုများစာရင်းကိုသက်ဆိုင်ရာမှသုတေသနပြုဆဲဖြစ်သောကြောင့်မျိုးနွယ်စုအမည်များကိုတိကျစွာဖော်ရန်အခက်အခဲရှိပါသည်။” See ‘Afraid for Disappearance of the Race [8] [အမျိုးပျောက်မှာ စိုးကြောက်ပါလှသည် [၈]]’, *Working People’s Daily* [လုပ်သား [ပြည်သူ့နေ့စဉ်]] (3 June 1989) 6

⁴⁶ Significantly, Cheesman found differing recollections as to when implementation may have begun, with dates referenced ranging from 1985 to 1988. But he also cites a letter circulated to the chairmen of military councils in all states and divisions, which was issued on 24th August 1989 (Cheesman (n 10) 472 n 14). My thanks to Cheesman for sharing a copy of the letter. Notably, it does not make any mention of the *taing yin thar* category. On implementation of the 1982 law not beginning until 1989 in general, see also Center for Diversity & National Harmony, *Myanmar’s Citizenship Law: An Analysis* (Report, August 2018) 201–3.

⁴⁷ On 1989 as the key turning point, see e.g. Islam (n 15), 269. On the way Rohingya began to recognize the likelihood that the 1982 law would be used against them, even as it was being drafted. See Greg Constantine, ‘Ch 7: Resistance’, *Ek Khaale* (Web Page, 2025) <<https://www.ekkhaale.org/chapter7>>. During the drafting

by Brinham show how the Rohingya had long faced significant discrimination and violence, including efforts to seize NRC cards or refuse to provide them and other documentation, and that this worsened after 1989 with new “citizenship scrutiny” activities authorized under the 1982 law, as they were officially known.⁴⁸ Conditions further worsened in 1991 and 1992, with the next major military operation in northern Rakhine State, which drove at least 250,000 Rohingya into Bangladesh, and the creation of “NaSaKa,” the Border Area Immigration Scrutinization and Supervision Bureau, which was given unprecedented powers and focused exclusively on the Rohingya.⁴⁹ It was over the next two decades that NaSaKa developed what Brinham and Zarni describe as a system of “security grids” for Rohingya, which restricted life to such an extent that the UN investigators eventually charged it with producing “measures of slow death” for the entire population.⁵⁰

V. Paths not taken and obscured

The previous section suggested that the list of 135 *taing yin thar* groups must have been created after June 1989, and that this involved closing a period of categorical ambiguity during which the extension of the 1982 citizenship law’s operative category had remained open. Other accounts of the list, by the state and by scholars, have obscured this period of ambiguity, particularly where they claim that the list of 135 *taing yin thar* published in 1990 is simply based upon earlier available lists. These accounts also obscure the way that the list first published in 1990 was a new creation not a copy, the result not of combining older lists but carefully selecting from some while neglecting others. For example, the oft-cited article in the September 1990 *Working People’s Daily* claimed that the list of 135 was based on lists for the national censuses in 1931, 1953-54, and 1983. But this series of references is only to three out of the four most recent national censuses:

process foreign diplomats also speculated that it was aimed at excluding Rohingya from citizenship, Tonkin (n 20), 233–4; see also Sardiña Ganache, *Burmese Labyrinth* (Verso, 2020) 190.

⁴⁸ Brinham reports many of her Rohingya interlocutors explicitly contrasting the time before and after 1989. “The equalising and emancipatory functions of state-issued IDs issued prior to 1989,” she writes, “were often juxtaposed with the repressive and destructive properties of IDs issued after this time (n 12) 124). In addition to her focus on the repression and destruction effected by identity documents and related state practices, Brinham’s research also provides a rich set of examples that illustrate other changes in the lives of individual Rohingya, such as former teachers in government schools who describing being “pushed out” from the 1990s onwards. One man she interviewed described his father, who had been a teacher in Rakhine State for 35 years, and his sister, who was able to secure a teaching job when she applied in 1989. His own application was rejected when he applied in 1990. See Brinham (n 12) 104.

⁴⁹ Nyi Nyi Kyaw, ‘Understanding Causes of Human Rights Violations: A Case Study of the Plight of the Rohingya in Myanmar’ (PhD Thesis, University of New South Wales, 2015) 168–72; Mary Callahan, *Political Authority in Burma’s Ethnic Minority States: Devolution, Occupation, and Coexistence* (Policy Studies No 31, East-West Center, 2007) 33.

⁵⁰ Maung Zarni and Alice Cowley, ‘The Slow-Burning Genocide of Myanmar’s Rohingya’ (2014) 23 *Pacific Rim Law & Policy Journal* 681, 752; IIFFMM (n 4) 354. “Alice Cowley” was a pseudonym used by Brinham. See Brinham (n 12) 2 n 3.

it excludes the census of 1973. That exclusion is significant because enumerators for the 1973 census had been given instructions that included a list of 144 *taing yin thar* groups.⁵¹ Publishing the list of 135 in 1990 thus involved deleting nine of the groups enumerated in 1973, three of which were Muslim. One of these groups was named as “Rakhine Chittagong.”⁵²

Leading Rohingya figures have pointed to the “Rakhine Chittagong” entry in the 1973 census list as a category that encompasses the Rohingya.⁵³ They have also cited other examples in which the Rohingya were included among others on lists of *taing yin thar* groups, including one that named a total of 50 groups in use during the 1960s.⁵⁴ Research by Cheesman also found examples in which lists of 53 or 160 *taing yin thar* groups were used in 1960, and 144 and 143 in 1972 and 1973.⁵⁵ There are other examples as well. In 1971, the journal *Viewpoint* (*Shu Daung*) published an issue celebrating Union Day, a national holiday designed to promote unity among Myanmar’s different peoples.⁵⁶ The issue included a dedicated “*Taing Yin Thar* section,” which featured a poem celebrating “Our *Taing Yin Thar*.” The poem names “Rohingya” among a total of some 50 other groups.⁵⁷

None of these lists were created for the purposes of determining citizenship because, before 1982, citizenship had never hinged exclusively on securing inclusion within the *taing yin thar* category.⁵⁸ But they are significant no less because they confirm

⁵¹ Myint Thein, ‘The Problem of Muslim National Identity in Myanmar’ (PhD Dissertation, International Institute of Islamic Thought and Civilization, International Islamic University Malaysia, 2012) 191–213; Myint Thein, ‘Islam and Ethnic Diversity in Myanmar’ in Perry Schmidt-Leukel, Hans-Peter Grosshans and Madlen Krueger (eds), *Ethnic and Religious Diversity in Myanmar: Contested Identities* (Bloomsbury Academic, 2021) 195.

⁵² Myint Thein discusses the list of 144 *taing yin thar* groups used for the 1973 census in his PhD thesis and includes a copy of the guide for enumerators as an appendix (2012, 191–213). A scanned copy of the census instructions is also available online: ‘The Instruction Book “How to Fill-Up the Form” for the 1973 Population Census List Issued by the Immigration and Manpower Department, the Ministry of Home and Religious Affairs, the Government of the Union of Burma on 9 December 1972, pp 45–46’ (PDF) <<https://www.networkmyanmar.org/ESW/Files/List-of-144.pdf>>. He also cites an article from the state-owned newspaper *Botataung*, which discusses the 1973 census and includes a list of 143 *taing yin thar* groups. According to Myint Thein, the discrepancy between 144 and 143 groups was not generated by removing any of the three Muslim groups on the list. See Thein 2012 (n 51) 191–213; Thein 2021 (n 51) 195.

⁵³ Islam (n 15) 270.

⁵⁴ Ibid.

⁵⁵ Cheesman (n 10) 461–83, 468–9.

⁵⁶ The holiday specifically celebrates the Panglong Agreement, in which leaders representing different groups in Myanmar agreed to cooperate in fighting for the country’s independence. On the way this event has been used for national myth making in subsequent years, see Matthew Walton, ‘Ethnicity, Conflict, and History in Burma: The Myths of Panglong’ (2008) 48(6) *Asian Survey* 889, 910.

⁵⁷ See Tin Aung Soe [တင်အောင်စိုး], ‘Our Taing Yin Thar [ဒို့တိုင်းရင်းသား]’ (1971) 46(15) *Viewpoint Journal* [ရှုခေါင်းစာတိုက်].

⁵⁸ Rhoads (n 13) 38–58.

that there had been other extensions of the category and, most importantly, that these, in some cases, had included the Rohingya. This should not be taken to mean that the Rohingya were once simply welcomed in Myanmar and then later excluded. In the decades after independence, for example, Rohingya political leaders had briefly been able to secure their own region in western Myanmar, the Mayu Frontier District, only to see it dissolved into the new state of Rakhine when it, along with Mon State, was created by Myanmar's 1974 constitution.⁵⁹ In 1978, widespread abuses by the military during what it called Operation Dragon King (*Naga Min*) drove at least 200,000 Rohingya to seek refuge in Bangladesh, until international pressure forced Burma to accept their repatriation in 1979. A few years later, even as the 1982 law was being drafted, some Rohingya and foreign diplomats were already anticipating that it was aimed at excluding them from full citizenship.⁶⁰ Some scholars have also argued that the drafting of the law was shaped by Rakhine intellectuals, whose primary agenda was to exclude the Rohingya from citizenship.⁶¹

Yet it also remains the case that, as late as June 1989, the state was treating *taing yin thar* as a category whose extension still required confirmation. When the fixed extension of the category, totalling precisely 135 groups and excluding the Rohingya, was then announced in September 1990, that coincided with a phase shift in the violence that the Rohingya were facing, and which continued to worsen with the formation of NaSaKa soon after. But before all this occurred, the SLORC had ample opportunity to chart a different course. It could have rejected the move to make citizenship dependent on racial categorisation entirely, and replaced the 1982 law or returned to citizenship laws created by earlier independent governments in Burma.⁶² Even as it did continue with the 1982 law, the SLORC still could have proceeded differently: if it was going to close the *taing yin thar* category, it could have done this using other available sources, such as the list of 144 from the 1973 census. Had the SLORC made this choice, the Rohingya would have retained *prima facie* access to full citizenship by birth.⁶³ But the point is not to say

⁵⁹ Arakan (Rakhine) and Mon states were not created until the 1974 Constitution. Rohingya leaders had similarly advocated that "Arakanese Muslims" have a Mayu Frontier district, either separate from Arakan State or as a defined district within it. They were briefly successful, winning formation of the district in 1961—notably, before the formation of Arakan State. But the Mayu district was dissolved when the 1974 Constitution created Arakan State. See Kei Nemoto, 'The Rohingya Issue: A Thorny Obstacle Between Burma (Myanmar) and Bangladesh' in Kyoko Inoue, Etsuyo Arai and Mayumi Murayama (eds), *Elusive Borders: Changing Sub-Regional Relations in Eastern South Asia* (Institute of Developing Economies, 2005) 149–50; Crouch (n 10) 87–110.

⁶⁰ See discussion at n 47.

⁶¹ Zarni and Cowley (n 50) 698; Transnational Institute and Burma Centre Netherlands, *Ethnicity without Meaning, Data without Context* (Burma Policy Briefing No 13, 2014) 10.

⁶² Elizabeth L Rhoads, 'Impacts of Conflict and Displacement on Myanmar Citizenship Pre- and Post-2021' (IFM-Working Paper Series 1/2025, 2025); Rhoads (n 13) 38–58.

⁶³ That is, if the 1973 census list was used, to say it would have included the Rohingya would have required treating a category like "Rakhine Chittagong" as another way of naming the "Rohingya," in the way done by

that the solution to Rohingya statelessness is thus a matter of picking the right list. It is that things could have been otherwise. As the next section will show, the list of 135 was neither some kind of pre-given ethnological fact nor required by consensus among prior sources.

VI. Variation among the lists

The list of 135 *taing yin thar* groups is not a reflection of social reality. Scholars have amply demonstrated the fluidity of racial and ethnic identities and the futility of attempts to arrest this movement with rigid categorical schemes.⁶⁴ The sources cited by SLORC were also aware of this, though each attempted to overcome it by revising and updating the work of their predecessors. The 1931 census, for example, followed on six prior colonial censuses that had each also reformulated their categories in attempts to address earlier failures.⁶⁵ Continuing this pattern, the 1931 census then introduced a new set of racial categories, while simultaneously acknowledging that “extreme instability of... racial distinctions” made its own data unreliable and including an appendix suggesting that yet another alternate categorisation scheme might be preferable.⁶⁶ Even so, the list of 135 *taing yin thar* has often been said to have been based on such sources. Yet analysis from Cheesman has shown that it diverges from its predecessors, and further comparison highlights additional discrepancies.⁶⁷

The *Working People’s Daily* article cited sources including censuses from 1931, 1953, and 1983. Of these, the most detailed materials are available for the 1931 census, which tabulated a total of 136 “indigenous races.”⁶⁸ But while the lengths of the two lists

Islam (n 15) 270, or in the way that other people in Myanmar may utilise categories such as “Kachin” or “Palaung,” even as they simultaneously self-identify using other terms. Mandy Sadan, ‘Translating Gumlau: History, the “Kachin” and Edmund Leach’ in *Social Dynamics in the Highlands of Southeast Asia: Reconsidering Political Systems of Highland Burma* by E.R. Leach (Brill, 2007) 68; Mandy Sadan, *Being and Becoming Kachin: Histories Beyond the State in the Borderworlds of Burma* (Oxford University Press, 2013); Francesco Buscemi, *Arms Politics: Becoming and Being a Weapon in the Borderlands of Myanmar* (Cornell University Press, 2025). On the complicated question of the way Rohingya and other Muslims in western Myanmar self-identify, see Elliott Prasse-Freeman, ‘Refusing Rohingya: Reformulating Ethnicity Amid Blunt Biopolitics’ (2023) 64(4) *Current Anthropology* 432.

⁶⁴ Two influential works to make this point, in different ways, were based on research in Burma. See Edmund Leach, *Political Systems of Highland Burma: A Study of Kachin Social Structure* (G Bell and Sons Ltd, 1954); James C Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (Yale University Press, 2009).

⁶⁵ Erin Lynn McAuliffe, ‘Caste and the Quest for Racial Hierarchy in British Burma: An Analysis of Census Classifications from 1872–1931’ (Master’s Thesis, University of Washington, 2017); Ferguson (n 32) 1–28.

⁶⁶ John Jennings Bennison, *Census of India, 1931: Volume XI, Burma: Part I – Report* (Office of the Superintendent, Government Printing and Stationery, Burma, 1933) 174, 245–7.

⁶⁷ Cheesman (n 10) 468–9.

⁶⁸ John Jennings Bennison, *Census of India, 1931: Volume XI, Burma: Part I – Report* (Office of the Supdt, Government Printing and Stationery, Burma, 1933) 242–4. Some scholars report that the 1931 census utilised

sound similar, their contents differ substantially: only about half of the list of 136 from 1931 matches the list of 135 published in 1990.⁶⁹ A similar comparison cannot be done for the 1953 census because it did not include such detailed materials, but it does confirm that it coded for fewer total “indigenous race groups”: 122, rather than the 136 used in 1931.⁷⁰ The 1983 census report also did not include a full list of all groups counted.⁷¹ Individual result books were published for all fourteen of Burma’s states and regions, however, and each begins with an introduction listing its main resident racial groups. These references were clearly not meant to be comprehensive. In total, they only name 57 groups.⁷² What is significant, however, is that of these 57 groups, 10 are subsequently missing from the list published in 1990.⁷³

When the *Working People’s Daily* published the list of 135 in 1990, then, it could not have been based on any consistent consensus among the predecessors it cited. Instead, the list of 135 continued the practice of revising and updating earlier attempts, including by removing and replacing at least half the groups named in 1931, adding at least 13 on top of the total coded in 1953, and removing at least 10 named in 1983. Such comparisons between the list published in 1990 and its putative sources reveal significant

a list of 135 “indigenous races,” but this is not correct. That census identified 15 “indigenous races” from others among a total set of 20 “race-groups,” by clustering them together and marking them with a letter, “Group A,” “Group B,” through to “Group O”. These groups each serve as headers for sub-groups, whose entries add up to 136. The race groups are the same as the language groups and can best be seen listed in full, from pages 198–200.

⁶⁹ This is based only on matching names on the two lists, which warrants the caveats below.

⁷⁰ Sithu U Kyaw Khine, *Union of Burma 1953 Stage Census Series A* (Superintendent, Union Government Printing and Stationery, Burma, 1955) vi.

⁷¹ Census Division of the Immigration and Manpower Department, *Burma: 1983 Population Census* (1986).

⁷² See *Chin State: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Irrawaddy Division: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Kachin State: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Karen State: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Kayah State: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Magwe Division: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Mandalay Division: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1986) 1; *Mon State: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Pegu Division: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Rakhine State: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Rangoon Division: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1986) 1; *Sagaing Division: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Shan State: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1; *Tenasserim Division: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1.

⁷³ One group mentioned in the Kachin State report does not appear anywhere on the list of 135, along with one missing from the Karen State Report, two missing from each of the reports for Rakhine and for Shan, and three from Kayah. One group is also missing from the report for Tenasserim Division. Notably, this group, referenced in the 1983 census report as “Pashu (Malay),” is often described as Muslim. See *Tenasserim Division: 1983 Population Census* (Census Division, Immigration and Manpower Department, 1987) 1.

differences. But conclusions about the degree of these differences must come with caveats. Some variation among the different census lists undoubtedly resulted from armed conflicts and limits in the state's control of territory; no government was ever able to conduct a census in every part of the country. Variation also undoubtedly results from the way group names change, including for reasons of self-identification and due to shifts between use of exonyms and endonyms.⁷⁴ Inconsistent transliteration into Burmese and English may also have made some groups appear to be missing from one list or another, where differences in spelling are so significant as to create the appearance of two distinct group names. But it is unlikely that such caveats would resolve all of the variation in the length of and contents of the various lists. Instead, they are most significant for the way they further highlight the basic absurdity of treating census lists as the basis for a fixed set of categories that determine citizenship.

VII. A new SLORC product

The important conclusion based on the analysis here is that the list of 135 *taing yin thar* appears clearly to have been a new creation. Recognising that it was new, published for the first time in September 1990, also means recognising that it was an early act among a flurry of initiatives in a much broader transformation. In 1988, three decades of socialism had abruptly ended. Popular uprisings in August of that year had brought about the collapse of the socialist government, which had been led by a single general since a coup in 1962. Soon after the uprisings a new military leadership, which would rule Myanmar for the next two decades, formulated itself as SLORC and began reconsolidating power. SLORC abolished organs of the state formed under the 1974 constitution, terminated senior officials appointed by the socialist government, and then set to work creating a new post socialist state and society.⁷⁵ One of its very first creations, in April 1989, was the “Committee for Writing Slogans for Nationals,” which soon began producing the slogans that would become omnipresent and remain visible for decades, on billboards posted in public spaces and at government offices and included as a mandatory feature of every newspaper, magazine, or book published in the country. Another, in May 1989, was a “Commission of Enquiry into the True Naming of Myanmar Names,” which would lead to changing the country’s name from “Burma” to “Myanmar,” along with changes to the names of a host of other locations, from streets to townships to cities and states.⁷⁶

⁷⁴ Crouch also reports an instance of the Ministry of Immigration offering an additional reason for fluctuation, which is that groups have “gone extinct,” making the current total 108. See Melissa Crouch, *The Constitution of Myanmar: A Contextual Analysis* (Hart Publishing, 2019) 139.

⁷⁵ Mary P Callahan, ‘Junta Dreams or Nightmares? Observations of Burma’s Military since 1988’ (1999) 31(3) *Bulletin of Concerned Asian Scholars* 52–58; Gustaaf Houtman, *Mental Culture in Burmese Crisis Politics: Aung San Suu Kyi and the National League for Democracy* (ILCAA, 1999) 67, 44.

⁷⁶ Houtman (n 75) 67, 44.

On 3rd June 1989, when the *Working People's Daily* published the article confirming that the extension of the *taing yin thar* category had yet to be fully decided, the SLORC's new committees and commissions were still in the midst of their work. Announcement of the country's name change, for example, would occur some two weeks later, when the order was published in the *Working People's Daily* on 18th June.⁷⁷ The postsocialist transformation remained ongoing for years, particularly the formation of new state institutions, mandatory political trainings for government employees, and the creation of new documents of state ideology. But that work was also often completed quickly, even frantically, on short deadlines imposed by leading generals.⁷⁸ This is the larger context in which the list of 135 emerged. It is likely that its creation took barely one month, based on the timing of the *Working People's Daily* article in June 1989, which announced that the category remained open, and Saw Maung's speech on 5th July, which reported that the census department had "confirmed" a list of 135.⁷⁹ This short timeframe might explain why the list is riddled with rudimentary errors, such as names that are included twice with different spellings or even simply duplicated in different places.⁸⁰ In a flurry of activity, amidst a whole host of other changes, and with clear lack of attention to detail, the SLORC solidified a structure of racial categories that had never remained stable in spite of more than a century of prior attempts. This structure continues to have devastating consequences, including denying Rohingya access to full citizenship. It is important to be clear on precisely how this was done and by whom.

⁷⁷ State Law and Order Restoration Council, *The Adaptation of Expressions Law*, Law No. 15/89, 18 June 1989.

⁷⁸ For example, the Department for the Promotion and Propagation of the Sasana (DPPS) was established in 1991 and immediately tasked with producing many of the works that made up the ideological program that replaced socialism (Houtman (n 75) 128–9). One of its very first and most significant publications, titled *A Good Buddhist* (ဗုဒ္ဓဘာသာကောင်းတစ်ယောက်), was created by a score of DPPS staff who were given a deadline of just three months at the personal urging of Than Shwe, then SLORC vice-chairman and soon-to-be Senior General. The resulting manual, which totalled more than 700 pages, was created in large part by repurposing previously published writings of the first director of DPPS U Kyaw Lwin.

⁷⁹ The *Working People's Daily* article from June 1989 provides other indicators of the situation of transformation in which the list emerged. As discussed above (Section III, n 43), the June article was the first of seven entries that were added to an earlier, and completed, seven-part article. That seven-part series had been published in February 1989, before the "Committee for Writing Slogans for Nationals" and begun its work. It thus begins by referencing a set of national objectives that are not the same as those used to re-open the series with the article in June. In this light, the second set of articles, which focused on citizenship laws, were the result of the state gaining increasing clarity on the steps it would take as it reconsolidated control of the country.

⁸⁰ In the analysis of one observer, 76 of the 135 groups on the list of 135 are either duplicates or fabrications. See Gamani, '135: Counting Races in Burma', *Shan Herald Agency for News* (Web Page, 2005) <http://www.shanland.org/index.php?option=com_content&view=article&id=4965:135:counting:aces:in:burma&catid=115:opinions&Itemid=308>. See also Bertil Lintner, 'A Question of Race in Myanmar', *Asia Times* (online, 3 June 2017) <<https://asiatimes.com/2017/06/question-race-myanmar/>>; Sai Wansai, '2014 Population Census: The Problematic of 135 Ethnic Groups Categorization', *Shan Herald Agency for News* (Web Page, 5 December 2017) <<https://www.burmalink.org/2014-population-census-problematic-135-ethnic-groups-categorization/>>; Ferguson (n 32) 15–16.

VIII. Implications for the post-2021 coup moment

The list of 135 *taing yin thar* that continues to be used by the state in Myanmar appears to have come together very quickly in 1989 during the early rush of the SLORC's postsocialist transformation. Much remains to be learned about how this was done. But this paper shows that it can be said with high confidence that the list was a novel creation. Creating it involved selecting from among prior sources and cobbling these together into something unlike any of them. When compared against some of these sources, the differences are apparent. Making the current list of 135 required removing and replacing approximately half the groups on a list of 136 "indigenous races" published with the colonial census of 1931. It required adding 13 groups beyond a total of 122 coded in the census of 1953, and then removing 9 on a list of 144 coded in the 1973 census and another 10 named among the census results in 1983.

When the SLORC first began referencing the list of 135 in public during July 1989, it worked to obscure the fact that it was new by presenting it as an "accumulated list" based on earlier sources. The first time the full details of the list were published in September 1990, these sources were also cited in elaborate detail, creating the image of something that had built consistently from 1931 to 1953 to 1983 to the present. But this image was a fiction. The list was not a mere product of accumulation, growing through additions over time. It also relied on subtractions, through the removal of groups named on the earlier lists that the SLORC itself referenced and through the omission of other lists entirely. The image of accumulation was also a fiction because it obscured the period of ambiguity that had preceded it. When the socialist government adopted the new citizenship law in 1982 this freighted the *taing yin thar* category with unprecedented significance, yet the government does not appear to have taken further steps to clarify its meaning. Moreover, even as the SLORC consolidated power after 1988 and began to make the racialised citizenship regime central to a new postsocialist state and society, it also acknowledged that the exact contents of the *taing yin thar* category had yet to be confirmed. In 1982, the law had offered criteria for identifying *taing yin thar* groups, but it had not determined the category's extension—and nor had the SLORC, as of June 1989. In the years after the new citizenship law was adopted in 1982, in other words, it could not be said whether the Rohingya were or were not eligible for citizenship by birth as *taing yin thar*. They were already being subjected to systematic violence and discrimination during this time. But this paper sheds further light on the trajectory of this violence: it entered a new phase after 1989, when the formation of "security grids" in Rohingya areas coincided with their formal exclusion from *taing yin thar* status.

Scholars and analysts should take care not to inadvertently lend authority and verisimilitude to the fictional account of the list's origins. This can be the effect where

scholars repeat the state's claim that the list of 135 *taing yin thar* was based on earlier sources, such as the census of 1983 or 1931. It can also be the effect when the list of 135 is simply said to have been created in 1990, without acknowledging the corollary fact that a period of ambiguity must then have remained for eight years following adoption of the 1982 law. Even where the intention is to highlight long-term patterns of violence against Rohingya, the effect may be to reinforce their exclusion by affirming the apparent linear inevitability of its progress. But it was not inevitable. Instead of a single *taing yin thar* category that never included the Rohingya, it would be more accurate to say that the extension of the category has varied across a multiplicity of lists. Some of these lists included the Rohingya. They were not formally excluded until the SLORC created a new list in 1990 and elevated that one above all others, asserting its character as law. As this paper has shown, for over a century, no two governments in Burma/Myanmar ever used the same list twice—until the SLORC's creation and after, when the USDP and then the NLD governments continued to insist on its definitive authority.

Successive governments in Burma/Myanmar have contributed to Rohingya statelessness. But it is crucial to recognise that the list of 135 *taing yin thar* was a distinctively SLORC creation, because this locates it among a host of other SLORC creations that were and are seen as illegitimate. These include SLORC's other decisions to change categorical schemes in the country, particularly the switch from "Burma" to "Myanmar," which occurred during the very same weeks in 1989 when the SLORC was also likely determining the list of 135. Indeed, it is because these name changes were said to be illegitimate by Daw Aung San Suu Kyi and others that governments such as Australia, the US, UK, and many more continued to refer to the country as "Burma" and not "Myanmar" for more than two decades.⁸¹ Other creations that many in Myanmar still see as illegitimate include the new national constitution that was drafted and confirmed during the period of military rule, which has been rejected by many inside the country both for the illegitimacy of its drafting process and the many problems with the result.

In the context of the 2021 coup and the Spring Revolution, many products from this era of military rule are actively being challenged, including through work on a new national constitution and a replacement for the 1982 citizenship law.⁸² The important point is that recognising the contingent process through which the Rohingya were excluded may open new pathways for conceptualising, and governing, citizenship. Conversely, continued reliance on a definition of *taing yin thar* that excludes the Rohingya can be more sharply characterised as the continued reliance on a product of the SLORC. There

⁸¹ Andrew Selth, 'More Name Games in Burma/Myanmar' in *Interpreting Myanmar: A Decade of Analysis* (ANU Press, 2020).

⁸² On the broader cultural process of challenging the legacies of military rule, see for example Ma Thida (Sanchaung), *A-Maze: Myanmar's Struggle for Democracy, 2011–2023*, tr Maung Zaw (Balestier Press, 2024).

is a real risk that this will occur, particularly given that a draft constitution and other political documents developed within the Spring Revolution continue to utilise the *taing yin thar* category.⁸³ But any contemporary government of Myanmar could also treat the term as having a different meaning, such as the one given by the list of 144 groups used for the 1973 census or the list of 50 published by *Viewpoint* in 1971. Both included the Rohingya. Such a move would not involve modifying the 1982 citizenship law: it would involve rejecting the military's act of creation in 1989, just as those who advocate for a new constitution reject the one it later adopted in 2008. But the lesson is not to simply advocate for a better list. It is to challenge the apparent inevitability of the current arrangement in which citizenship is based on race, so that people in Myanmar can develop better alternatives entirely.⁸⁴

⁸³ The Federal Democracy Charter, which has provided the organizing principles for the post-coup political resistance, contains a section on “Fundamental rights” [အခြေခံအခွင့်အရေးများ] that continues to use the language of *taing yin thar* though the term is not defined. See *Federal Democracy Charter Part 1 – Declaration of Federal Democratic Union* [ဖက်ဒရယ်ဒီမိုကရေစီပဋိညာဉ်အစိတ်အပိုင်း(၁)ဖက်ဒရယ်ဒီမိုကရေစီပြည်ထောင်စုကြေညာစာတမ်း] (2021) pt III (25) (III [23] in some English versions); Melissa Crouch, *The Palimpsest Constitution: The Social Life of Constitutions in Myanmar*, Oxford Studies in Asian Laws (Oxford University Press, 2025) 223.

⁸⁴ For concrete discussions of how this can be done, see Rhoads (n 62) 938–61; Aung Ko Ko et al (n 10) 938–61; U Myo Win and José María Arraiza, 'Citizenship Advocacy in Myanmar – What Is the Way Forward After the Coup?' (2023) 5(1) *The Statelessness & Citizenship Review* 91, 91–9.